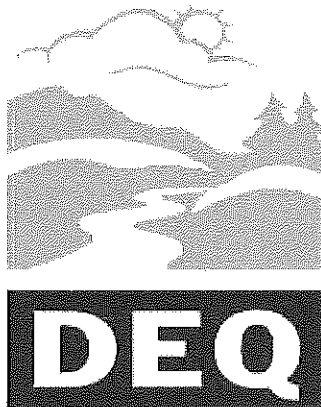


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 08/20/2009**



**State of Oregon
Department of
Environmental
Quality**

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EQC Meeting Agenda
August 20-21, 2009
Best Western Agate Beach Inn
Newport

Thursday, August 20 -- Regular Meeting

Time	Item	Topic	Presenter/Status	Background
9 a.m. 15 min	A	Preliminary Commission Business: Adopt minutes of the June 18-19, 2009, regular meeting and July 10, 2009, special meeting		Review, amend if necessary and approve the minutes from recent EQC meetings.
9:15 30 min	B	Informational Item: Update on the status of the Umatilla Chemical Agent Disposal Facility	Joni Hammond, Rich Duval	
9:45 60 min	C	Informational item: Director's Dialogue	Dick Pedersen	
10:45 15 min		BREAK		
11:00 60 min	D	Action Item: Morsman contested case	Leah Koss	Contested case hearing on the denial of the Morsman's request for a waiver to connect to the city of Madras' sewer
Noon 30 min	E	Action Item: Title V air permitting fees temporary rules	Andy Ginsburg and Andrea Curtis	Temporary rulemaking
12:30 90 min		Lunch break and executive session	Larry Knudsen	Discuss current and pending litigation with counsel
2 p.m. 60 min	F	Informational Item: Update on budget and legislation	Greg Aldrich	Debrief from the 2009 Legislative session
3:00 15 min	G	Action Item: Issuance of DEQ pollution control bonds	Greg Aldrich and Jim Harris	Proposed approval of bond issuance
3:15 15 min		BREAK		
3:30 45 min	H	Action Item: Compost rules	Wendy Wiles and Charlie Landman	Rulemaking
4:15 30 min	I	Discussion Item: Climate change symposium	Wendy Wiles, Neil Mullane and Andy Ginsburg	Discussion of proposed climate change symposium in late fall or early winter 2009/2010
4:45 p.m.		Recess until Town Hall		
7 p.m. 120 min	J	Town Hall		Town hall-style meeting with residents, stakeholders, local officials and interested parties to address issues of local concern
9 p.m.		Recess until Friday morning		

Friday, August 21 -- Regular Meeting

Time	Item	Topic	Presenter/Status	Background
9 a.m. 150 min	K	Tour of projects and sites of interest in Western Region	Keith Andersen	GP Toldeo, Nye Beach, Port of Newport dock,
11:30 30 min	L	Public Forum		
Noon 90 min		Lunch break		Lunch meeting with tribal council members from the Confederated Tribes of Siletz
1:30 p.m. 45 min	M	Informational Item: Collaborative Water Quality Planning	Neil Mullane and Christine Svetkovich, DEQ; Phil Ward, Water Resources Department	
2:15 30 min	N	Action Item: Coburg Petition	Neil Mullane and Judy Johndohi	
2:45 30 min	O	Action item: Tax Credits	Maggie Vandehey	Proposed approval of tax credits
3:15 45 min	P	Action Item: Temporary Rulemaking for the Clean Water State Revolving Fund	Neil Mullane and Judy Johndohi	Temporary rulemaking to allow the use of state fiscal year 2010 program funds for new priority projects.
4:00 15 min		Commissioner Reports		Commissioners give verbal updates on any issues of relevance that were not covered during the meeting
4:15 p.m.		Adjourn		

Please Sign In

Environmental Quality Commission Meeting
 Newport, Oregon - Department of Environmental Quality
 August 20-21, 2009

Name	Affiliation or Interest	Phone or Email
Mike Sheehan	Mossman	503 543-7172
Brigitte Mossman		541-475-3976
Phillip Thorsman		541-475-3976
Stacy Polkassice	Lincoln SWCD	541-265-2631

FIRST

PEL

Milo Meclam	City of Coburg	541-682-9023 mmeclam@leog.org
Diana Purdy	Concerned Citizens For Clean Air	541-563-6672
Mapine Cantela	"	lwatona@harborside.com
Tom Kerns	"	TKerns@peak.org
Charlie Plybon	Surfrider Foundation	CPlybon@surfrider.org
Terence O'Connor	City of Coquille	541-396-2115 x 201
PHIL WARD	OR. WATER RESOURCES DEPT.	503-986-0910
Brenda Bateman	Water Resources Dept	503-986-0879

The commission discussed safety and process for the mustard burn and Mr. Duval answered some clarifying and informational questions from the commission.

C. Informational Item: Director's Dialogue

Dick Pedersen

Director Pedersen gave updates to the commission on a number of relevant issues. Director Pedersen added two brief updates to the staff report. He noted that Deputy Director Hammond recently attended a weeklong conference for governments that have used the Kaizen process to improve their processes. Director Pedersen also stated that he will be visiting all DEQ offices in the state after the close of the legislative session.

Item taken out of order

Commissioner Reports

Vice Chair Williamson reported that OWEB funded all the watershed councils across Oregon with a graduated funding system based on their ratings of proposals and projects will begin in the fall. He explained that OWEB lost about \$15 million in funding due to the economic downturn and reduced lottery profits this year. He thanked Director Pedersen for agreeing to serve on the advisory committee for the school of Civil and Construction Engineering at Oregon State University.

Commissioner Uherbelau reported that Southern Oregon University started a new major in new environmental studies with a certificate in sustainability and is integrating sustainability into their operations. She stated that the school encouraged graduation attendees to bring their own reusable water containers instead of using disposable water bottles and had extensive recycling support on-site.

Item taken out of order

N. Action Item: Hazardous waste omnibus rulemaking

Andree Pollock and Scott Latham, Department of Environmental Quality

Andree Pollock, hazardous waste manager, introduced Scott Latham, policy analyst, to present the proposed rulemaking. Mr. Latham explained that the proposed rulemaking is an update and harmonization with federal hazardous waste rules. He noted that DEQ held two public hearings, with no attendees at either hearing, and received two letters of public comment, with one in support of and one in opposition to the proposed rules. Mr. Latham stated that most of the rules in the omnibus are less or no more stringent than previous rules, with few changes. Mr. Latham stated that EPA could add a rule that would call for further updates.

Action: Adopt the proposed hazardous waste rules as presented in attachment A3.

Move: Commissioner O'Keeffe

Second: Vice Chair Williamson

Passed unanimously

D. Action Item: Ross Bros. contested case

*Jane Hickman and Courtney Brown, Department of Environmental Quality
WQ/SW-WR-06-257*

Larry Knudsen, legal counsel for DEQ, introduced the item and outlined the process for the contested case hearing. Ms. Brown presented DEQ's argument for the contested case. She noted that there is no dispute over the facts of the case and that Ross Bros. admits to not placing any erosion or discharge controls until the end of February. Ms. Brown explained that Ross Bros.' argument is based on an incorrect assertion that the 1200 CA permit issued to ODOT for this work covered them as the contractor for ODOT's project. Ms. Brown also stated that Administrative Law Judge Murphey's proposed order upheld all parts of DEQ's enforcement notice as well as the application of the penalty matrices as objected to by Ross Bros.

No representatives for Ross Bros. were present when asked for by Chair Blosser after Ms. Brown's presentation.

Commissioner Uherbelau asked several clarifying and technical questions to which Ms. Brown replied. Chair Blosser closed testimony and brought the item for the commission's discussion.

Action: Uphold Judge Murphey's proposed order and issue a final order.

Move: Vice Chair Williamson

Second: Commissioner O'Keefe

Passed with four commissioners in support and one abstention.

Ayes: Chair Blosser, Vice Chair Williamson, Commission Dodson and Commissioner O'Keefe

No: none

Abstention: Commissioner Uherbelau

Larry Knudsen will prepare a final order for Director Pedersen's signature on behalf of the commission. No representatives for Ross Bros. were present or identified themselves when asked for several times during or after the item's consideration.

Item taken out of order

M. Informational Item: Composting rules

Charlie Landman, Department of Environmental Quality

Charlie Landman, Land Quality Division legal analyst, presented an informational item on DEQ's proposed changes to the compost rules. Mr. Landman noted that this rulemaking has been in development for seven years, and will be presented for possible adoption at the August 2009 EQC meeting.

Mr. Landman presented the highlights of the proposed rules and explained the stakeholder and public process for gathering support and agreement on the rulemaking.

The commission asked for clarification on what permits apply, if there is an expectation for the number of compost operations to increase and how DEQ will provide guidance to facilities if management plans are facility-developed. Mr. Landman explained the permit process, that an increase in farm-based composting operations is likely and that the major growth will be for food-waste composting operations which struggle to find suitable land. Mr. Landman added that DEQ will guide facilities toward best management practices and provide technical assistance to facilitate the exchange of good ideas.

Director Pedersen expressed his thanks to Mr. Landman for his work on a very complicated rulemaking.

Lunch and Executive Session

The EQC met in executive session over lunch from approximately 11:30 to 12:45 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation against the DEQ. This executive session was held pursuant to ORS 192.660(2)(f), (h).

Item added at the Chair's discretion

Case settlement: Proposed settlement agreements for two cases, both known as NEDC vs. DEQ. Mr. Knudsen distributed the settlement claims for the commission's consideration.

Action: Approve the settlements for Director Pedersen's signature on behalf of the commission

Move: Commissioner Uherbelau

Second: Commissioner Dodson

Passed unanimously

Director Pedersen will sign the settlement agreement on behalf of the commission.

E. Action Item: Morsman contested case

Jane Hickman and Leah Koss, Department of Environmental Quality

Larry Knudsen introduced and outlined the process for the contested case. He clarified that the principal argument focuses on a requirement to connect to sewer when available. The Morsmans applied to Director Pedersen for a waiver of this requirement in August 2008, were denied and have appealed. The waiver denial is a separate issue and not part of this contested case. Michael Sheehan represented the Morsmans and Leah Koss represented DEQ.

Mr. Sheehan presented the Morsmans' argument and highlighted issues of cost, DEQ lack of requirements for connection to city sewer and stated that the drain hole overflows did not pollute the city of Madras' actual water supply.

Leah Koss, DEQ environmental law specialist stated that Judge Han issued a proposed order in which the Morsmans were liable for three of four violations alleged by DEQ, a civil

penalty and the DEQ order to connect to city sewer as first notified in 1997. She also noted that sewage discharges and the refusal to decommission the drain hole and connect to city sewer are the two issues of the contested case. Ms. Koss stated while the Morsmans assert that they have a de facto waiver because they were not asked to connect when they were first legally able to connect to sewer in 1997, she noted that DEQ repeatedly told the Morsmans that they are required to connect to the sewer and there is no such thing as a de facto waiver. Ms. Koss also stated DEQ has a duty to protect all groundwater from pollution, which is why the agency, as mandated by the commission, has been phasing out drain holes since 1969. Current Oregon statutes forbid them.

Mr. Sheehan presented his rebuttal, stating that past statements from DEQ staff indicated that the sewer connection was located so far from the Morsmans' property that they were not required to connect to it.

Ms. Koss rebutted Mr. Sheehan's comment by addressing that the definition of "reasonably available" sewer connection was made at a time when the connection was further away from the Morsmans' property and the sewer was not able to accept the waste from 55 homes in the park. Ms. Koss added that DEQ thought the well was 250 feet deep, but when it was inspected it was found to be deeper which makes it a higher priority for decommissioning.

The commission asked clarifying questions for Mr. Sheehan and Ms. Koss with some direction from Mr. Knudsen on legal clarification and questions.

Action: Uphold Judge Han's proposed order and issue a final order.

Moved: Vice Chair Williamson

Second: Commissioner Dodson

Passed with four commissioners in support and one in opposition

Ayes: Chair Blosser, Vice Chair Williamson, Commissioner Dodson and Commissioner O'Keeffe

No: Commissioner Uherbelau

Abstention: none

Larry Knudsen will prepare the final order for Director Pedersen's signature on behalf of the commission.

F. Action Item: City of Coburg waiver request

Neil Mullane and Mark Hamlin, Department of Environmental Quality

Neil Mullane, Water Quality Division administrator, introduced the action item for a waiver of the minimum dilution requirement and introduced Mark Hamlin, lead permit writer for Western Region, who presented the staff recommendation. Mr. Hamlin stated that DEQ wants to issue an NPDES permit to Coburg but needs a waiver of the dilution rule to allow Coburg to discharge from a new wastewater treatment facility into the East Irrigation Canal/Muddy Creek.

Mr. Hamlin stated that DEQ supports Coburg's request for a waiver of the dilution rule because the discharge will not affect beneficial uses and will not exceed water quality standards. DEQ created the dilution rule to prevent violations of dissolved oxygen standards.

Chair Blosser invited Mayor Judith Volta to speak to the commission. She noted that Coburg has been working for a very long time to resolve its wastewater concerns and is the largest community along the I5 corridor still on septic systems. Mayor Volta outlined the efforts that Coburg has undertaken to solve its issues, identified the Little Muddy Creek/East Irrigation Canal discharge as the best solution and asked the commission to grant the dilution waiver.

Action: Approve the request to waive the dilution rule for the city of Coburg

Moved: Vice Chair Williamson

Second: Commissioner O'Keeffe

Passed unanimously

Vice Chair Williamson suggested that DEQ reviews the dilution rule to assess its usefulness at this point.

Request for public comment on the Clean Water Act State Revolving Fund

Milo Mecham, attorney for the city of Coburg, provided comments on the DEQ's decisions regarding the Clean Water Act State Revolving Fund. Mr. Mecham identified a gap between the federal stimulus bill and the DEQ rule. He stated that Coburg has initiated two administrative proceedings to make Coburg eligible for State Revolving Fund stimulus money. Mr. Mecham recognized that Coburg and DEQ are in agreement on many matters and have a good working relationship. Mr. Mecham stated that proposed changes, as stated in a petition to Director Pedersen, are as narrow as possible to ensure that only Coburg would qualify. Mr. Mecham expressed his thanks to the commission for hearing Coburg's perspective and would like to expedite the process to disperse the stimulus funds as quickly as possible.

Vice Chair Williamson asked how much money Coburg has requested in the past and Mr. Mecham replied that Coburg received about seven of the necessary \$24 million. Chair Blosser asked for clarification on the petition and confirmed that 19 other communities would qualify under language proposed by Coburg.

Item taken out of order

O. Informational Item: Recycled water internal management directive

Neil Mullane, Judy Johndohl and Ron Doughten, Department of Environmental Quality

Ron Doughten, biosolids and reuse water specialist outlined the background of water reuse in Oregon, current program implementation, current interest in water reuse and recent legislative actions that promote water reuse in Oregon.

Minutes are not final until approved by the commission.

Oregon Environmental Quality Commission Minutes of the Three Hundred and Fiftieth Meeting

June 18 and 19, 2009

The Environmental Quality Commission held a public meeting beginning at 8:34 a.m. on June 18, 2009, at the Department of Environmental Quality Headquarters in Portland, Oregon.

The following members of the Environmental Quality Commission were present:

Bill Blosser, Chair
Kenneth Williamson, Vice Chair
Donalda Dodson, Member
Judy Uherbelau, Member
Jane O'Keeffe, Member

A. Preliminary Commission Business: Adoption of minutes of the April 17, 2009 regular meeting

The Environmental Quality Commission reviewed and amended the April 17, 2009 meeting minutes for several typographical and grammatical errors.

Action: Approve the April 17, 2009 EQC meeting minutes with corrections

Move: Commissioner Uherbelau

Second: Commissioner Dodson

Passed unanimously

B. Informational Item: Update on the status of the Umatilla Chemical Agent Disposal Facility

Joni Hammond and Rich Duval, Department of Environmental Quality

Rich Duval, DEQ's chemical demilitarization program administrator, presented an update on the activities at the Umatilla facility. The Army began its mustard agent disposal campaign on June 3. During the first part of the campaign, the standard operating procedure is to process under capacity. However the Army anticipates beginning a demonstration trial burn in August and processing the mustard agent at maximum operating capacity during that trial burn.

Mr. Duval explained that the Army must finalize the spent-carbon strategy by December 31, 2009, which could require a best available technology determination from the commission. The strategy must show that no agent remains on the ton containers after the agent is removed. He also noted that some of the containers will have to be treated on-site if the Army cannot prove that all chemical agent has been removed.

Mr. Doughten stated that DEQ has been allowing recycled water use for many years, but never had specific guidance directives, which was the impetus for the internal management directive. The directive was developed collaboratively with five other state agencies and deals with over 60 issues identified by stakeholders, the public and DEQ staff working on water use and recycling issues. Mr. Doughten explained that the internal management directive clarifies recent changes in rules, guides DEQ staff on use of discretionary authority, clarifies when DEQ must confer with other state agencies and facilitates better communication between wastewater treatment facility operators and the public through reviews of plans and system designs.

Mr. Doughten noted that there is significant interest in recycled water use, with over 120 municipalities using some style of recycled waste. Mr. Doughten explained that the Legislature has expressed a lot of interest and support for this issue and just passed House Bill 2080, which legalizes the use of gray water outside of homes connected to community sewer systems for uses approved by DEQ, and requires rulemaking by the commission. DEQ has begun this process, which could take up to two years.

Mr. Doughten noted that interest in recycled water use is likely to grow and DEQ is prepared to support increased interest in green recycled water use projects.

Chair Blosser invited Janet Gillespie, of the Association of Clean Water Agencies, and Dan Hanthorn, from the city of Corvallis, to speak. Ms. Gillespie asked that the rulemaking be a major priority over the next couple of years and Mr. Hanthorn shared information on several recycled water projects being developed and discussed in Corvallis. Mr. Hanthorn stated that some of the elements of the internal management directive may be perceived as restrictive and supports development of rules and mechanisms to allow the reuse of treated wastewater into drinking water. Ms. Gillespie added that she looks forward to working with DEQ on this issue.

H. Action Item: Total dissolved gas waiver request

Neil Mullane, Gene Foster and Agnes Lut, Department of Environmental Quality

Neil Mullane, Water Quality Division administrator, introduced Gene Foster, watershed management manager, and Agnes Lut, Columbia River coordinator. Mr. Mullane explained that this action item is a request from the Army Corps of Engineers for a waiver of the total dissolved gas standard at four dams on the lower Columbia River. The dams are operated by the Corps and the last waiver request was approved in June 2007. The current waiver expires Aug. 31, 2009, and a new waiver must be in place by April 2010 for successful fish migration.

Ms. Lut gave background on the total dissolved gas standard, its effects on aquatic life and how that applies to the proposed waiver request. She explained that current rules allow the commission to modify the total dissolved gas standard to allow for fish passage. The Corps provided the information for the waiver request in collaboration with the US Fish and Wildlife Service and NOAA.

Ms. Lut stated that DEQ recommends granting the waiver with three modifications: require a seasonal, rather than year-round waiver; remove the 115 percent limit for total dissolved gas management in the forebay and include only the 120 percent tailrace limit; and include an adaptive management component. Ms. Lut also stated that DEQ supports a five-year waiver with continued physical and biological monitoring and annual reporting from the Corps. She stated that this plan balances the risks associated with total dissolved gas and gas bubble trauma with the benefits for the migrating fish.

Ms. Lut stated that the proposed waiver was noticed for public comment and four comments were received, all in support of DEQ's proposed waiver.

The commission asked for clarification on the modifications made by DEQ to the waiver request from the Corps. Ms. Lut answered their questions and clarified the differences between the Corps' request and the DEQ recommendation.

Chair Blosser welcomed Rud Turner, staff with the Corps, to speak. Mr. Turner gave some background to the waiver request and stated the intent of the Corps to participate in the adaptive management process to resolve all issues and complexities of monitoring and attainment of all water quality standards. He stated that the Corps is amenable to the changes recommended by DEQ.

Action: Approve the request with DEQ's modifications as outlined in attachment D of the staff report

Move: Vice Chair Williamson

Second: Commissioner O'Keefe

Passed unanimously

Vice Chair Williamson thanked Ms. Lut for her very clear presentation.

Chair Blosser recessed the meeting until Friday morning.

Friday, June 19

Commissioner Blosser reconvened the meeting at 9:02 a.m.

I. Public Forum

At approximately 9:00 a.m., the EQC provided members of the public an opportunity to speak to commission members on environmental issues. Chair Blosser instructed the commission and the audience that no comment can be heard on any rulemaking for which the public comment period is closed, which includes the regional haze and PGE Boardman proposed rulemaking scheduled as Item J on the meeting's agenda.

Larry Knudsen further clarified this rule through explanation of the administrative rule that established that requirement. He also stated that the commission can hear from the audience after action has been taken on a rulemaking item.

No audience members had comment.

J. Action Item: Oregon Regional Haze Plan and Boardman BART rulemaking

Andy Ginsburg, Mark Fisher and Brian Finneran, Department of Environmental Quality

Andy Ginsburg, Air Quality Division administrator, introduced Mark Fisher, senior permit writer, and Brian Finneran, air quality planner. Mr. Ginsburg gave an overview of the proposed rulemaking's scope and goals and stated that he and DEQ appreciated the significant public interest in this plan and proposed rulemaking.

Mr. Ginsburg clarified that this proposed rulemaking is not about greenhouse gases and that it is premature for DEQ to propose any rulemaking on greenhouse gases and carbon based on federal rules that are evolving. He stated that there is a process for coordinating when federal greenhouse gas regulations are finalized.

Mr. Finneran background on the proposed rulemaking, a review of public comments and a synopsis of the rationale and actual recommendation. Mr. Finneran stated that the proposed rulemaking is designed to protect Oregon's pristine areas, mostly Class I Wilderness Areas, through the 2008 Oregon Regional Haze Plan, adoption of a proposed smoke management plan, changes to mercury rules and specific controls for the PGE Boardman plant which is the largest source of human-caused haze-producing pollution in Oregon. Mr. Finneran also gave a general overview of what regional haze is, how it is produced and how it affects areas in Oregon. He explained that EPA adopted a federal regional haze rule in 1999 to protect 156 Class I areas in the U.S., of which 12 are located in Oregon. He explained elements of the federal rule and how it relates to the proposed rulemaking.

Mr. Finneran specifically addressed the best available retrofit technology review and process proposed for the PGE Boardman power plant. Mr. Finneran explained that DEQ evaluated over 100 potential BART sources, ten were determined BART-eligible and evaluated through a modeling process for a determination of significant impact. The results of the modeling had five sources with significant impacts, three of which chose to take permanent permit-enforceable emission limits. Mr. Finneran stated that of the five sources, the PGE Boardman plant had the greatest affect on regional haze. Mr. Finneran also explained that a sugar plant, the other BART-eligible source, is currently shut down and has an active air quality permit and will have to take permanent permit-enforceable emission limits or install BART controls if it restarts operations.

Mr. Finneran stated that this proposed rulemaking includes two modifications to the mercury rule and would allow for a two-year extension to align with SO₂ controls required in 2014. Mr. Finneran also explained the need for adoption of the Oregon Smoke Management Plan.

Mr. Finneran explained the public comment process and Mr. Fisher gave an overview of public comments received and some key comments and responses. Mr. Finneran explained the timeline for proposed controls at Boardman and gave a summary of the information presented and DEQ's recommendation to the commission.

The commissioners asked clarifying and informational questions that staff responded to on the process and proposed rules. Mr. Finneran stated that DEQ will reevaluate accomplishable goals throughout the lifespan of the rule, and that Oregon is in good shape for achieving the goals for the 2018 milestone year.

Commissioner O'Keeffe thanked DEQ staff for presenting the information in a comprehensive and understandable format, and stated that she appreciated the way that public comment was made available for commissioners. She noted that she carefully considered all materials provided in preparation for this proposed rulemaking.

Action: Adopt the following proposed plans and rules as revisions to the Oregon State Implementation Plan: proposed new regional haze rules; division 223 from attachment A1; the Oregon Smoke Management plan, division 629 from attachment A2, and the Oregon Regional Haze Plan from attachment A3. Also adopt the amendment to the mercury rules, division 228 from attachment A4.

Move: Commissioner O'Keeffe

Second: Vice Chair Williamson

Passed unanimously

Chair Blosser thanked the meeting attendees and apologized for the confusion regarding testimony on this issue today. He also thanked DEQ staff for their work to craft a reasonable and supportable solution to the issue.

Commissioner Dodson stated that she appreciated the 60 day public comment period and the outreach work done by DEQ staff.

Vice Chair Williamson thanked Mark Fisher for his work on the technical specifications on this project. He urged staff to consider PGE's opt-out clause and possible closure options in 2014, as federal carbon regulations will be clearer at that time. Vice Chair Williamson stated that there is a tension between operating existing technologies with significant negative effects and embracing new technologies with unknown effects.

Mr. Ginsburg acknowledged a number of staff and partners, including the public at large, who participated or submitted comment and have been engaged with this rulemaking in thoughtful and helpful ways. Mr. Ginsburg extended special recognition to Director Pedersen, Deputy Director Hammond and the commission for their support and leadership.

Comment from Director Pedersen on public participation

Chair Blosser acknowledged Director Pedersen who spoke briefly after the close of the regional haze rulemaking. Director Pedersen gave a public apology for recent actions by DEQ that presented an appearance of operating in a closed manner by possibly changing a rule related to the calculation of financial assurance for non-municipal landfills in a way that precludes public comment. Director Pedersen further apologized to all DEQ stakeholders, including the public at large, for this issue and stated that he should be held

personally accountable for making sure DEQ honors public input on all rulemakings and changes. Chair Blosser thanked him for his comments.

Public Comment on regional haze rulemaking

Chair Blosser invited public comment on the regional haze rulemaking after the closure of the item and rulemaking.

Sabina Hilding, a Portland resident, gave a brief comment on the 2008 Oregon Regional Haze Plan and PGE Boardman controls. Ms. Hilding stated that regional haze is a neutralizing euphemism for cancer-causing materials in the air. Ms. Hilding noted that the basic right to clean air trumps all procedural, departmental and industrial arguments.

No other audience members had comment.

Item taken out of order

G. Action Item: Updates to CAFO memorandum of understanding

Neil Mullane and Ranei Nomura, Department of Environmental Quality, and Wym Matthews, Department of Agriculture

Neil Mullane introduced the item and asked Ranei Nomura, alternative compliance policy analyst, and Wym Matthews, Oregon Department of Agriculture CAFO program manager, to present. Mr. Mullane noted that they expect to have the permit ready for signature next week instead of August, as indicated in the staff report.

Ms. Nomura gave an overview of the item and distributed her speaking notes to the commission. She gave background of the permit program, current permit status and the roles and responsibilities for DEQ and the Oregon Department of Agriculture. Ms. Nomura explained the need for an extension of the current agreement to allow for time to complete the new permit, update the agreement and implement different public notice requirements and reporting of data to EPA. Mr. Matthews clarified several points for the commission and answered general and clarifying questions about the program and permits.

Action: Extend the CAFO memorandum of understanding between EQC and the Oregon Department of Agriculture through February 28, 2010.

Move: Commissioner Dodson

Second: Vice Chair Williamson

Passed unanimously

Director Pedersen acknowledged and thanked ODA Director Katy Coba for her attendance today and stated that the DEQ-ODA relationship is very strong and beneficial for all.

K. Informational Item: Budget and Legislative update

Greg Aldrich, Department of Environmental Quality

Note: The commission heard this item as part of a working lunch that was open to the general public.

Greg Aldrich, government relations manager for DEQ, presented an update on the DEQ legislative agenda, budget and other related issues. He stated that the session is expected to close by June 30, 2009, and legislators are working effectively and quickly to adjourn.

Mr. Aldrich noted that the DEQ budget was passed yesterday by the full Senate and will go to the House next week. If passed by the House, it will be submitted to Governor Kulingowski for his signature. Mr. Aldrich explained that the Legislature can reconvene for a special session and would be expected to do so if revenue forecasts put the budget out of balance. The next two forecasts are expected in September and December 2009.

Mr. Aldrich discussed DEQ's 2009-11 proposed full agency budget and also explained the items of the operational budget, which guides the internal work at DEQ. Mr. Aldrich explained which of the proposed policy option packages were approved and how those decisions affect DEQ for the 2009-11 biennium.

Director Pedersen noted that several of the policy option packages are restoring positions that had been lost in the past. Director Pedersen also clarified that the budget before the commission is fairly firm and must pass the House and be signed by the Governor, but DEQ is operating at 700 full-time equivalency positions instead of the full allocation of nearly 800 full-time equivalency positions in order to cushion DEQ from further cuts. He stated that DEQ is frugal and thoughtful with purchasing and spending decisions in anticipation of a special session of the Legislature in which they could ask for further reductions.

Mr. Aldrich explained the DEQ reduction options and Director Pedersen stated that the Ways and Means committee was very concerned and thoughtful in their choices for reduction options. Mr. Aldrich stated that the reductions taken from DEQ seem roughly equivalent to the proportional reductions taken from other natural resource agencies. Mr. Aldrich also explained the budget as it pertains to staffing concerns, furlough days, salary concerns and a freeze on merit raises. Commissioner Dodson thanked Mr. Aldrich for his clear and concise presentation of the budget material.

Mr. Aldrich gave an update on specific DEQ bills and related Legislative highlights, and noted which DEQ-related bills passed or were pending approval in the House or Senate. Mr. Aldrich stated that he will bring a full update on legislation from the current session to the next EQC meeting, as well as contextualizing the role of the commission for any necessary rulemaking activities or other actions.

Chair Blosser adjourned the meeting at 1:11 p.m. on Friday, June 19, 2009.

Draft X
Approved _____
Approved with Corrections _____

Minutes are not final until approved by the commission.

Oregon Environmental Quality Commission Minutes of Special Meeting

July 10, 2009

2 p.m.

Oregon Department of Environmental Quality Headquarters
811 SW 6th Avenue, Portland, OR
Room EQC-A, 10th floor

The following members of the Oregon Environmental Quality Commission were in attendance:

Bill Blosser, Chair
Kenneth Williamson, Vice Chair
Jane O'Keeffe, Commissioner
Judy Uherbelau, Commissioner

Vice Chair Williamson presided over the meeting, and the other commissioners attended by telephone.

Vice Chair Williamson convened the special meeting at 2:02 p.m. and gave opening remarks. He ensured that all parties connected by conference call could hear the discussion, and asked Brian Finneran, DEQ air quality planner, to present the agenda's sole topic.

Brian Finneran gave a brief background, overview and presentation on the proposed memorandum of understanding on field burning between the EQC and the Oregon Department of Agriculture. The commissioners discussed the memorandum, and asked several technical and clarifying questions about language in Senate Bill 528, which the agreement references in part. Counsel Larry Knudsen, DEQ staff and Oregon Department of Agriculture clarified that DEQ will prepare guidance and definitions to address the questions about certain language in the bill when starting rulemaking on this issue in fall 2009. Vice Chair Williamson asked for additional questions or comments from the commissioners, who presented none.

Action: Approve the memorandum of understanding to delegate operation of the field burning program to the Oregon Department of Agriculture for the two year period ending June 30, 2011, and authorize the DEQ Deputy Director to sign on the commission's behalf.

Move: Chair Blosser

Second: Commissioner O'Keeffe

The motion passed unanimously, with four commissioners in agreement, none in opposition and none abstaining.

Vice Chair Williamson adjourned the meeting at 2:22 p.m.



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
August 20, 2009**

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

As of August 7, 2009, 218,041 munitions have been destroyed, which represents 99 percent of all Umatilla munitions and bulk containers and 39 percent of the original Umatilla stockpile by agent weight, and 100 percent of the nerve agents.

Mustard Operations

The facility started the nerve agent-to-mustard changeover Nov. 6, 2008, and completed the process June 3, 2009. There are 2,635 mustard ton containers in the stockpile. This represents 1 percent of all Umatilla munitions and bulk containers and 63 percent, by agent weight, of the original stockpile. As of August 7, 2009, the facility has treated 72 ton containers containing 127,619 pounds of mustard agent, which is 2.7 percent of the mustard stockpile.

The facility continues the initial ton container characterization sampling and shakedown treatment operations under the temporary authorization request. The sampling of the initial 60 ton containers required by the permit has almost been completed.

The comment period for the mustard agent trial burn permit modification request was extended to August 12, 2009, and will likely be extended again until the sampling characterization results and other required information are provided.

The draft Title V air quality permit was issued for public comment on July 15, 2009. A public hearing will be held August 25, 2009, and the DEQ public comment period closes on August 26, 2009. After addressing public comments, the draft Title V permit will be sent to the Environmental Protection Agency for review and comment.

Sarin Operations:

Sarin munitions and bulk items processing was completed July 2007. Sarin munitions and bulk items comprised 21.4 percent of the total Umatilla stockpile by agent weight. The facility destroyed 155,539 munitions and bulk containers filled with 2,028,020 pounds of sarin nerve agent. This represented 70.5 percent of all Umatilla munitions and bulk containers and 21.4 percent of the original Umatilla stockpile by agent weight.

The only remaining sarin-related waste is used PFS carbon. All other sarin secondary wastes have been treated.

Nerve agent Operations:

The facility completed nerve agent munitions processing Nov. 5, 2008. Nerve agent munitions and bulk items comprised 9.8 percent of the total Umatilla stockpile by agent weight. The facility destroyed 14,519 nerve agent rockets and warheads, one nerve agent ton container, 156 nerve agent spray tanks, 32,313 155mm nerve agent projectiles, 3,752 eight-inch nerve agent projectiles, and 11,685 nerve agent mines filled with over 720,000 pounds of agent.

Except for carbon, the facility has treated all nerve agent-related wastes previously stored in J-Block igloos. Secondary wastes produced during changeover are being treated as generated.

Other UMCDF Chemical Demilitarization Program News

UMCDF Permit Modification Request Activity (May 21, 2009, through August 7, 2009):

SUBMITTALS			
<i>(09-005 was rejected and 09-009 and 09-019 were also accepted/approved during this period)</i>			
Permit Modification Request Number	Title	Submitted	
UMCDF-09-009-ACS(1N)	Agent Collection System (ACS) Tanks Administrative Corrections	05/22/09	
UMCDF-09-016-MISC(1N)	Redline Annual Update for CHB, HVAC, and MISC Systems	05/22/09	
UMCDF-09-019-MISC(1R)	Change in Interim Compliance Date	06/18/09	
UMCDF-09-020-DMIL(1R)	Change in Bulk Drain Station Weight Instrument Operating Range	07/01/09	
UMCDF-09-005-MISC(1N)	Annual Procedures Update	07/08/09	
UMCDF-09-017-MISC(1N)	Redline Annual Update for DMIL, MDB, and MISC Systems	08/06/09	
DENIALS/REJECTIONS			
Permit Modification Request Number	Title	Received	Decln
UMCDF-07-005-MISC(2)	Condition II.M-Liability Insurance Requirement Changes	01/30/07	07/13/09
UMCDF-09-005-MISC(1N)	Annual Procedures Update	07/08/09	07/14/09
APPROVALS/ACCEPTANCES			
Permit Modification Request Number	Title	Received	Decln
UMCDF-08-025-MISC(1N)	Redline Annual Update-DMIL/MDB/ Misc Systems	09/08/08	07/24/09
UMCDF-09-009-ACS(1N)	Agent Collection System (ACS) Tanks Administrative Corrections	05/22/09	07/13/09
UMCDF-09-019-MISC(1R)	Change in Interim Compliance Date	06/18/09	06/29/09

IN PROCESS: The following Permit Modification Notices and Permit Modification Requests are under DEQ review <i>(includes 09-016, 09-017, and 09-020, which were also submitted during this period)</i>				
Permit Modification Request Number	Title	Received	Public Comment Period Close	Target Decision/ Review Date
UMCDF-05-034-WAST(3)	Deletion of the DUN and Addition of the CMS	10/25/05	12/24/05 ¹	TBD
UMCDF-07-006-DFS(3TA)	Minimum Temperature Limit Change on the DFS	01/16/07	04/25/08 ³	TBD
UMCDF-08-037-MISC(1N)	Annual Procedures Update	05/29/08	N/A	TBD
UMCDF-08-028-MISC(1N)	Redline Annual Update for General/PAS Systems	11/26/08	N/A	TBD
UMCDF-09-001-MISC(1N)	Redline Annual Update-Furnace System	01/21/09	N/A	TBD
UMCDF-09-003-MISC(3)	Resubmittal of HD ATBP	02/26/09	08/12/09 ²	08/26/09
UMCDF-09-010-MISC(1N)	Redline Annual Update for the BRA, Tank, and MISC Systems	03/17/09	N/A	TBD
UMCDF-09-018-PAS(1N)	High-Moisture Automatic Waste Feed Cut-Off	04/21/09	N/A	06/01/09
UMCDF-09-016-MISC(1N)	Redline Annual Update for CHB, HVAC, and MISC Systems	05/22/09	N/A	TBD
UMCDF-09-020-DMIL(1R)	Change in Bulk Drain Station Weight Instrument Operating Range	07/01/09	N/A	08/17/09
UMCDF-09-017-MISC(1N)	Redline Annual Update for DMIL, MDB, and MISC Systems	08/06/09	N/A	TBD

¹ Initial (permittee) public comment period.
² Additional public comment period required/opened due to incompleteness of original PMR submittal
³ Department (draft permit) public comment period.

UMCD Permit Modification Request Activity: None for the period May 21, 2009, through Aug. 7, 2009

Significant Events at Other Demilitarization Facilities

To date, 61.6 percent of the national chemical agent stockpile tonnage has been destroyed.

Anniston Chemical Agent Disposal Facility, Alabama

The Anniston facility has destroyed 56.2 percent of its total stockpile by agent weight. The facility began mustard processing on July 2, 2009 (HT/HD 4.2-inch mortars). As of July 14, 2009, 856 mortars have been destroyed. Anniston's mustard campaign may end in early 2012.

Pine Bluff Chemical Agent Disposal Facility, Arkansas

The Pine Bluff facility has destroyed 34.7 percent of its total stockpile by agent weight. The facility started mustard ton container processing Dec. 7, 2008, and had processed 831ton containers as of July 13, 2009. Pine Bluff was authorized May 15, 2009, to increase its agent feed rates from 50 to 75 percent of the permitted maximum for each furnace.

Tooele Chemical Agent Disposal Facility, Utah

Agent disposal is 81.5 percent complete at the Tooele facility. Tooele is treating mustard ton containers and has treated 3,778 ton containers as of July 12, 2009. Tooele is installing three sulfur-impregnated carbon filters as part of an expansion to the existing pollution abatement system. The filters will be used to capture mercury that may remain after incineration of high-mercury (> 1 ppm mercury) mustard mortars and ton containers. The Tooele facility has completed its sampling of 10 Lewisite containers, and the sampling of four GA containers is underway.

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. The unventilated monitoring test was planned for late July.

Pueblo Chemical Agent Destruction Pilot Plant, Colorado

The Pueblo facility will use neutralization followed by biotreatment to destroy its 2,611-ton mustard stockpile of artillery and mortar projectiles. The overall design is complete and some construction is under way, but site-specific equipment is still being designed and fabricated. The facility began some testing of special equipment in spring 2009, and the target date for startup is 2014.

Based on the U.S. Army's commitment to treat all agent-contaminated secondary wastes onsite versus offsite shipment, all hydrolysates will be processed onsite.

Because of continuing schedule delays, the State of 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 Colorado on Oct. 17, 2008, allows the project to build the remainder of the plant.

Blue Grass Chemical Agent Destruction Pilot Plant, Kentucky

The Blue Grass facility will use neutralization followed by supercritical water oxidation to destroy the 524-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 94 percent complete and should be final in 2010. The Blue Grass facility had two leaking mustard projectiles in separate igloo magazines.

Three nerve agent ton containers, representing 0.2 percent of the stockpile have been neutralized as part of Operation Swift Solution. When completed, the operational facilities will be shut down and the temporary structures and equipment will be shipped back to the Aberdeen Proving

Grounds. Based on the U.S. Army's commitment to treat all agent-contaminated secondary wastes onsite versus offsite shipment, all hydrolysates will be processed onsite.

Jeffrey L. Brubaker is the new site project manager. He was previously the site project manager at Newport.

One of the specialty equipment items being fabricated specifically for the Blue Grass facility, the metal parts treater, is being fabricated at the Parsons facility in Pasco, Washington. Testing of this and other site-specific equipment will be conducted over a six-month period.

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

BDS – Bulk Drain Station – the used in the Munitions Demilitarization Building to weigh, hole punch and drain liquid HD from ton containers

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

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

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

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

Administrator and the Oregon CSEPP Manager serve on the CAC as non-voting members

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

CDC – Centers for Disease Control and Prevention – a federal agency that provides oversight and technical assistance to the U.S. Army related to chemical agent monitoring, laboratory operations, and safety issues at chemical agent disposal facilities (Website: <http://www.cdc.gov/nceh/demil/>)

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

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

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

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

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

HTS – Heel Transfer Station – the part of the HD bulk drain station that contains the water and air sprays that used to solubilize solid heels in ton containers for purposes of sampling and meeting waste feed limitations

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: August 17, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item C, Informational Item: Director's Dialogue
August 20-21, 2009 EQC meeting

Paint Producer Responsibility Law

Oregon is now the first state in the nation to enact a law requiring paint manufacturers to safely manage leftover latex and oil-based paint from consumer and contractor painting jobs. This historic product stewardship legislation responds to the problem of managing leftover paint, which is the largest component of local household hazardous waste collection programs. The new paint stewardship law, signed July 23, is expected to result in the proper management of an estimated 800,000 gallons of leftover paint each year and to provide Oregon governments with service valued at over \$6 million. Paint recycling will be more convenient throughout the state, particularly in areas where local governments do not offer paint recycling opportunities. Governments that currently collect leftover paint will realize a direct financial savings. Communities that are currently underserved will see new services. Under the new law, the paint industry will set up a program to reduce paint waste, increase reuse and recycling, and safely dispose of remaining unusable paint. The purchase price of paint will incorporate the costs for safely managing leftover paint.

This new law connects to the wider producer responsibility movement, in which Oregon is a national leader. Producer responsibility means manufacturers take responsibility to reduce the life cycle impacts of a product, including internalizing the end-of-life management costs, rather than having government set up and fund collection programs for waste products. The US movement has resulted in 19 state electronics laws, including Oregon E-Cycles, seven state thermostat laws, one fluorescent lamp law and several laws on batteries and auto switches.

The paint producer responsibility law requires the program begin no later than July 2010, but since the Oregon law will serve as a demonstration for other states, we expect collection to begin by January 2010. DEQ and the paint industry have been meeting, and we expect a plan to be submitted to DEQ for approval in early fall.

Oregon E-Cycles

Oregon E-Cycles has collected 9.54 million pounds of TVs, computers, and monitors for recycling during the first six months of 2009. By weight, 56 percent were TVs, 33 percent monitors and 11 percent computers. The amounts collected remain relatively steady, with first and second quarters collecting 4.73 and 4.81 million pounds, respectively. Collection sites diverted 13,910 units for reuse. Collection sites report the number of units they divert for resale, but report total units collected in pounds, so we are unable to place an exact percentage on units

resold versus disposed of. In general, however, the units diverted for resale represent a very small percentage of overall units collected. Although DEQ expects all three manufacturer-run programs and the state contractor program to exceed their respective shares of the 12.2 million pounds of recycling projected statewide for 2009, they all must continue to collect and recycle electronics year-round.

DEQ is developing the sampling methodology that Oregon E-Cycles programs will begin using in 2010 to obtain brand return share data for Oregon. DEQ will use the data to allocate responsibility for recycling among electronics manufacturers. The methodology is being adapted from the sampling process E-Cycle Washington uses. Using similar sampling procedures in both states will gain efficiencies for recyclers and manufacturer plans that operate in both states and will enable the states to compare common sets of data. The Oregon E-Cycles Advisory Work Group will discuss the proposed methodology in September. The three manufacturer-run programs currently operating in Oregon E-Cycles have submitted plans to operate programs in 2010. DEQ will approve or deny plans by October 1.

Toxics Policy Update

The EQC directed DEQ to prioritize the evaluation and control of toxic chemicals and, as a result, DEQ has a number of initiatives focused on this issue. The Water Quality Division is planning a rulemaking to update water quality standards. This rulemaking revises Oregon's toxics criteria based on an increased fish consumption rate, which will more fully protect human health, and revises the criteria for a few naturally occurring earth metals to reflect current science and natural background levels. DEQ plans to propose rules to improve our ability to implement the criteria in an environmentally meaningful and cost effective manner. The DEQ staff will bring this as an informational item at the February EQC meeting, and will include draft proposed rules that we will then take out for formal public comment and hearings.

The Water Quality Division is also implementing Senate Bill 737, as directed by the 2007 Legislature. DEQ is working to finalize a list of priority persistent bioaccumulative toxics, known collectively as the P3 list. DEQ provided the Legislature with an interim list in June, and will refine and submit a final document in October 2009. Senate Bill 737 directed DEQ to identify the levels at which the pollutants on this list have potential to cause health effects for either humans or aquatic life. We plan to propose a rulemaking for this issue in summer 2010. Where the largest municipal wastewater treatment facilities exceed these levels in effluent, Senate Bill 737 requires them to submit toxics reduction plans to DEQ for approval by July 2011.

DEQ is developing an agency-wide, cross-media toxics reduction strategy. The toxics team, which includes staff from the three divisions and many programs, is working to identify toxic chemicals of greatest concern based on their priority ranking across multiple DEQ programs. After identifying these priority chemicals, we will evaluate the associated sources and pathways and assess the effectiveness of our current reduction efforts, reprioritizing those efforts if necessary. Finally, where our current efforts are not sufficiently protective of health and the environment, we will identify new reduction and control opportunities. We are currently starting a stakeholder process for public input on this strategy and expect to have a draft document available in February 2010. The toxics team will present an informational item on the agency-

wide strategy at the October EQC meeting. DEQ will host a day-long workshop on reducing toxic pollutants in Oregon's environment on November 17. We are finalizing the logistics, and will communicate details as soon as they are available.

Willamette Valley Assessment

The DEQ lab completed the final report for the Willamette Valley Assessment. DEQ used data collected using statistically-based sampling designs and summarized results by sub-basin and by land use categories. The assessment evaluated and reported on the relative risk various stressors posed to aquatic life. Lab staff will present an informational item at the October EQC meeting.

ESCO

DEQ will engage with ESCO and members of the community before drafting the ESCO foundry's air quality Title V permit, and will establish a schedule of public meetings to discuss aspects of the permit. DEQ senior management recently met with community members to continue a dialogue and to reinforce DEQ's commitment to an open and transparent process. The community members, who are neighbors to the ESCO foundry requested an independent audit of the possible control technologies which could be implemented at the facility and DEQ agreed to consider this request. ESCO is aware of the request and DEQ will continue to discuss the possibility with all involved before making a decision.

Representative Greenlick's Interim Air Quality Work Group

Representative Mitch Greenlick convened an interim committee on Friday, August 7 in Portland to examine the effects of air pollution in Portland, in response to concerns raised by his constituents about industrial emission sources. Representatives Kotek, Cannon and Dembrow also attended, as did DEQ, Department of Human Services, Multnomah County, EPA, members of the community and ESCO. The town hall-style meeting involved time for presentations and questions, and was the first of several meeting in 2009 and 2010.

Portland Air Toxics Solutions

The Portland Air Toxics Solutions project group met for the first time on Thursday, August 14. That meeting was the first of many over the next 18 months, and DEQ assembled a broad range of stakeholders to serve on the advisory committee to assist DEQ in coming up with strategies to reduce air toxics in the Portland metro area. The project goal is to target multiple pollutants with early actions that could be both voluntary and regulatory. The advisory group will bring recommendations to the EQC as part of a 10 year air toxics reduction plan.

DEQ is the first in the nation to implement this type of program. This is a significant departure from the way any regulatory agency has approached pollution reduction, and is very different from the past 30 years of regulation in the US. The meetings are open to the public and we will post information on DEQ's web site as the project progresses.

Rulemaking Update: 2009 Water Quality Permit Fee Increase

DEQ has decided not to pursue the 2009 Water Quality Permit Fee Increase rulemaking. DEQ initially proposed a three percent fee increase for water quality permits, and planned for the proposed fees to become effective July 1, 2009. After completing public hearings on the

rulemaking, DEQ placed the rulemaking on hold in early March due to agency budget and union contract uncertainty.

The state statute and methodology for determining fee increases is based on anticipated program cost increases, including personnel services, services and supplies, capital outlay, special payments and indirect services. Some assumptions DEQ used to calculate anticipated costs for 2009-2011 are no longer valid. DEQ assumed annual step increases for eligible full-time employees, consistent with Department of Administrative Services' instructions for DEQ's budget preparation. Since placing the rulemaking on hold, the Legislature approved the 2009-2011 agency budget but it does not appear that step increases will be awarded during fiscal year 2010. DEQ is still waiting for definitive information regarding anticipated program costs, including final approval of the union contract. The Legislature will likely reinstate step increases for eligible full-time employees for fiscal year 2011 and DEQ plans to pursue a 2010 Water Quality Permit Fee Increase rulemaking.

Air Quality Advisory Committees and Rulemaking

The 2009 Legislature passed a number of environmental bills, and many of the bills direct DEQ to develop rulemaking. The Air Quality Division will convene six major advisory committees as part of the rulemaking process.

- House Bill 2186: Low Carbon Fuel Standard to reduce greenhouse gas emissions from transportation fuel
- Senate Bill 38: Greenhouse gas reporting update for electricity importers and fuel distributors
- Senate Bill 102: Heat Smart woodstove change out program
- Senate Bill 528: Field burning ban in the Willamette Valley
- Klamath Falls fine particulate attainment plan
- Portland Air Toxics Solutions to reduce health risks from air toxics

An additional advisory committee will help develop recommendations for future legislation on truck efficiency and idling, based on House Bill 2186. Additional rulemaking is necessary to update fee tables, update Oregon's adoption of federal standards and update Oregon's adoption of California motor vehicle standards. The advisory committees will include diverse representation and will use an open and transparent process.

Federal Stimulus Funding Update for DEQ's Clean Water State Revolving Fund Loan Program

On July 10, EPA Region 10 approved DEQ's Amended Final Intended Use Plan Update #3 for the Clean Water State Revolving Fund loan program. The approval meant that EPA could release the associated grant funds (about \$45 million) under the 2009 American Recovery and Reinvestment Act for eligible projects. DEQ provided a public comment period on the IUP from May 8 to June 8, 2009, and received written comments from 32 commenters. DEQ prepared a summary of comments and agency responses and included it with the plan update. The stimulus funding generated an unusual amount of interest in the plan, as DEQ rarely receives any comments on the annually updated plan.

DEQ received 160 applications from communities, irrigation districts and other entities throughout Oregon requesting funding for \$718 million in water quality improvements projects. With the \$45 million available, DEQ is able to provide funding to 13 applicants.

DEQ determined more projects could be funded and the use of funds would better meet the intent of the stimulus act if each borrower was allowed a maximum of \$4 million per loan. Many of the projects' total costs exceed what DEQ could provide through federal stimulus funding. Stimulus funding has been allocated to the following applicants:

- **City of Albany, \$4 million.** To construct wetlands which will provide additional treatment of effluent from the Albany wastewater treatment plant before the treated wastewater discharges into the Willamette River.
- **City of Astoria, \$4 million.** To work on the Denver Street water storage project as part of city's combined sewer overflow elimination project.
- **Central Oregon Irrigation District (Redmond), \$4 million.** To install irrigation piping so that irrigation water can be taken out of open ditches and into an enclosed system.
- **Clackamas County Service District #1 (Oregon City), \$4 million.** To construct collector sewers to replace septic systems.
- **Farmers Irrigation District (Hood River), \$4 million.** To install irrigation piping so water can be transported through an enclosed system.
- **Metropolitan Wastewater Management Commission (Springfield), \$4 million.** To make phase-one wastewater treatment improvements and expansion for system serving Eugene and Springfield.
- **City of Millersburg, \$4 million.** (In conjunction with City of Albany project). To construct wetlands to provide additional effluent treatment.
- **City of Milwaukie, \$4 million.** To install sewer lines in areas previously unconnected to the city's sewer system.
- **City of Pendleton, \$4 million.** To make wastewater treatment system upgrades.
- **City of St. Helens, \$4 million.** To make sewer system improvements to reduce the amount of unwanted stormwater leaking into the existing sewer system.
- **City of Scappoose, \$705,660.** To make sewage treatment and pump station improvements.
- **Swalley Irrigation District (Bend), \$3.4 million.** To install irrigation piping so water can be transported through an enclosed system.
- **Three Sisters Irrigation District (Sisters), \$165,340.** To install irrigation piping so water can be transported through an enclosed system.

DEQ is working with these 13 applicants to execute loan agreements. The Department of Justice is reviewing the loan agreement documents to ensure conditions for meeting federal stimulus requirements are included.

DEQ has no specific estimates on how many jobs will be created through these projects at this time, but it is expected that the cumulative work on the projects will likely require hundreds of people in various project phases.

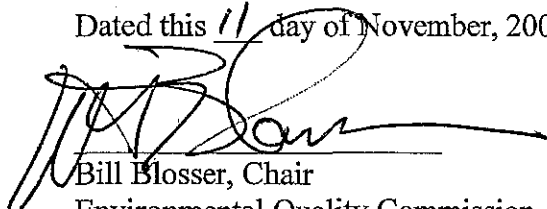
**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON**

In the Matter of)	
)	
Phillip Dean Morsman and	)	Final Contested Case
Brigitte Renate Morsman, dba	)	Hearing Order
Tops Trailer Park,)	
	)	WQ/D-ER-07-186
	)	OAH Case No. 900963
Petitioners)	

On August 20, 2009, the Environmental Quality Commission considered a petition for review of the Ruling on Motion for Summary Determination and Proposed Order contested case order issued on June 18, 2009, by Administrative Law Judge Dove L. Gutman, and incorporated herein as Attachment A. The Commission considered the proposed order, the exceptions and briefs submitted on behalf of the Petitioners and the brief submitted on behalf of the Department of Environmental Quality. The Commission also considered oral arguments presented by Michael F. Sheehan on behalf of the Petitioners and Leah Koss on behalf of the Department. The Commission considered but did not grant the Petitioners' Motion for Administrative Notice of Exhibits.

The Commission affirms the Proposed Order of the Administrative Law Judge in all respects and it is incorporated by reference into this Order.

Dated this 11 day of November, 2009.


Bill Blosser, Chair
Environmental Quality Commission

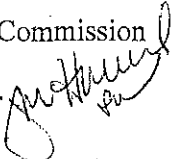
Attachment A

Notice of Appeal Rights

RIGHT TO JUDICIAL REVIEW: You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 7, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item D, Action Item: Morsman contested case

Background On December 19, 2007, DEQ issued the Morsmans a Notice of Violation, Department Order, and Civil Penalty Assessment No. WQ/D-ER-07-186. DEQ alleged that the Morsmans failed to decommission the sewage drain hole at property they own in Madras, and failed to connect to the city of Madras' available sewer system, in violation of their Water Pollution Control Facilities General Permit No. 4400, ORS 468B.025(2) and OAR 340-044-0015(3)(b). The Department Order required the Morsmans to decommission the sewage drain hole at their property and to connect the facility to the city of Madras sewer system.

On January 8, 2008, the Morsmans requested a contested case hearing on the Notice and Order. Administrative Law Judge James Han presided over a hearing on July 25 and 30, 2008. On October 21, 2008, Judge Han issued a Proposed Order that included findings of fact and conclusions of law on each of the violations and the Department Order. On November 20, 2008, the Morsmans petitioned the Environmental Quality Commission for review of the Proposed Order. The EQC heard the appeal on June 18, 2009, and upheld Judge Han's Proposed Order with four commissioners in agreement and one in opposition.

On August 8, 2008, the Morsmans petitioned the DEQ director for a waiver from the requirement that they decommission their sewage drain hole and connect to municipal sewer. On October 6, 2008, the director responded, denying the request for a waiver from the requirement. On October 16, 2008, the Morsmans again petitioned the director for a reconsideration of the waiver request. On October 21, 2008, the director responded and again denied the request for a waiver notwithstanding the additional information and argument. On October 28, 2008, the Morsmans requested a contested case hearing to review the director's denial of their waiver request.

Standard and Burdens of Proof The standard of proof for administrative proceedings is by a preponderance of the evidence. Pursuant to ORS 183.450(2), the proponent of a fact or assertion has the burden of proving that fact or assertion. The Morsmans assert that they should not have to connect to municipal sewer despite the Final Order because the DEQ director abused his discretion in denying the waiver. The Morsmans have the burden to prove that Director Pedersen abused his discretion.

The question on review for abuse of discretion is whether the director properly interpreted the criteria in the rule and, if so, whether his resulting decision was within the range of his lawful options to approve the waiver or deny the waiver in light of the policy underlying the law.

**Conclusions of the
Administrative
Law Judge**

On June 18, 2009, Administrative Law Judge Gutman issued a Proposed Order and concluded that Director Pedersen did not abuse his discretion in denying the Morsmans request for a waiver. Judge Gutman also found that the director had properly defined and applied the terms “unreasonably burdensome” and “impracticable.”

**Designation of
Record**

As discussed in DEQ’s answering brief, seen here as attachment B, submittals of new and additional evidence by either party in this case are not allowed by law. ORS 340-011-0575(5) states that a request to present additional evidence must be submitted by motion and accompanied by a statement showing good cause with the requesting party’s exceptions and brief. The Morsmans did not submit these required documents with their exceptions and brief. Therefore, the commission should not consider the new and additional exhibits that the Morsmans have submitted which were not part of the record in the contested case hearing before Judge Gutman and which were not considered by Director Pedersen in his denial of the waiver.

Issues On Appeal

The Morsmans do not take exception to any of Judge Gutman’s Findings of Fact in her Proposed Order. They take exception only to Judge Gutman’s conclusion that the director did not abuse his discretion in denying the Morsmans’ request for a waiver.

1. Definitions of “Impracticable” and “Unreasonably Burdensome”

The Morsmans’ Argument

The Morsmans argue that the director improperly defines and interprets the terms “impracticable” and “unreasonably burdensome.” They state that the director’s definitions are idiosyncratic, arbitrary and capricious. They state that because they do not have the financial means to comply with the rules, the requirement to connect is impracticable and unreasonably burdensome. The Morsmans offer a different dictionary definition and claim that their definitions made more sense.

DEQ’s Argument

In considering the Morsman’s waiver request, Director Pedersen applied common dictionary definitions of the terms “impracticable” and “unreasonably burdensome.” Where operative terms of a rule are not otherwise defined, reference to the dictionary is proper. The director

concluded that connection to the sewer, though costly and perhaps even prohibitively so to the Morsmans, was neither impracticable nor unreasonably burdensome under common definition of those terms.

Judge Gutman's findings:

"When an agency's interpretation of its own rule is plausible and not inconsistent with the wording of the rule itself, the rule's context or any other source of law, the agency is entitled to some deference. (OAR 340-011-0545(3). I find that the director reasonably construed the terms 'impracticable' and 'unreasonably burdensome.' I further find that the director's interpretation of the rule is plausible and not inconsistent with the wording of the rule itself. In addition, the director chose not to limit the term 'unreasonably burdensome' to Respondents' ability to pay, which is supported by the text of the rule."

2. Criteria beyond "impracticable" and "unreasonably burdensome"

The Morsmans' argument:

In their exceptions and brief, the Morsmans state that the commission's rule which allows the director to grant a waiver if compliance with the rule would be impracticable or unreasonably burdensome should contain criteria to explain what is considered "impracticable" and "unreasonably burdensome." They also argue that the financial burden on them clearly makes connection "impracticable" and "unreasonably burdensome."

DEQ's Argument:

The terms "impracticable" and "unreasonably burdensome" are criteria that the director is to use when considering a request for a waiver. Many rules, such as this one, do not contain specific criteria to define terms or limit what may be considered in construing those terms. The director considered the Morsmans' financial burden, but did not limit his consideration to financial issues only. Director Pedersen properly weighed competing interests in this case, including the potential harm to the environment as well as the EQC's policy to phase-out sewage drain holes, such as the Morsmans'.

Judge Gutman's Findings:

"The director used the common and ordinary meaning of the terms 'impracticable' and 'unreasonable,' which is supported by case law. In addition, the director chose not to limit the term 'unreasonably burdensome' to the Morsmans' ability to pay, which is supported by the text of the rule. Thus, the Morsmans' argument is unpersuasive. The text of the rule is not limited to financial considerations only. In addition,

such an interpretation of the rule would restrict the waiver request to an ability to pay, which is not the criteria the commission established when it promulgated the rule. Therefore, the Morsmans' argument is unpersuasive."

3. The director's decision to deny the waiver

The Morsmans' argument:

The Morsmans contend that Director Pedersen abused his discretion in denying their waiver request. They state that the terms "impracticable" and "unreasonably burdensome" relate to their financial burden and that because they would have a financial burden to comply with the rule, the director abused his discretion in denying the waiver request.

DEQ's Argument:

DEQ argues that the director properly applied the terms of the rule and concluded that a waiver was not warranted in this case. Nothing mandates that the director must grant a waiver even if he were to find that compliance was "impracticable" or "unreasonably burdensome." The rule states that the director may grant a waiver and that the terms "impracticable" and "unreasonably burdensome" are the criteria he should consider in his decision.

The regulation at issue confers discretionary authority on the director and, therefore, the director cannot be compelled to grant a waiver pursuant to OAR 340-044-0015(3)(b)(B). The director's decision was within the range of lawful options available to him under the relevant law. The director reasonably interpreted the criteria for considering a waiver request and properly applied those criteria. The director also properly considered the applicable law and policy of the Environmental Quality Commission in balancing the competing interests.

Judge Gutman's Findings

"Respondents contend that the director's decision was arbitrary and capricious. I disagree. The director reasonably construed the terms at issue, reviewed the evidence, applied the terms, weighed competing interests, and made a decision that was available to him under the rule. As such, Respondents' argument is without merit. The evidence in the record establishes that the director made a reasoned decision, which was supported by the evidence, and the decision was within the range of legally permissible outcomes available to the director under OAR 340-044-0015(3)(b)(B). Consequently, the director did not abuse his discretion when he denied Respondents' waiver request."

EQC Authority EQC has the authority to hear this appeal under OAR 340-011-0575.

DEQ's contested case hearings must be conducted by an administrative law judge.¹ The proposed order was issued under current statutes and rules governing the administrative law judge panel.²

Under ORS 183.600 to 183.690, EQC's authority to change or reverse an administrative law judge's proposed order is limited, as follows:

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.³
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.⁴ 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.
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.⁵

The rules implementing these statutes also have more specific provisions addressing how commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.⁶

- (1) In addition, the EQC will not consider matters not raised before the administrative law judge unless it is necessary to prevent a manifest injustice.⁷ 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.⁸

¹ ORS 183.635.

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

³ ORS 183.650(2).

⁴ ORS 183.650(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

⁵ OAR 137-003-0655(5).

⁶ OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

⁷ OAR 340-011-0132(3)(a).

⁸ *Id.* at (4).

Alternatives

The EQC may:

1. As requested by DEQ, issue a final order adopting Judge Gutman's proposed order; or
2. Issue a final order determining that the director abused his discretion and remand to Judge Gutman for further proceedings; or
3. Issue a final order determining that the director abused his discretion and grant the waiver.

Attachments

- A. The Morsmans' reply to DEQ's answering brief, dated July 22, 2009
- B. DEQ's answering brief, dated July 16, 2009
- C. The Morsmans' exceptions and brief, dated July 9, 2009
- D. The Morsmans' petition for review, dated July 9, 2009
- E. Administrative Law Judge Gutman's proposed order, dated June 18, 2009
- F. DEQ's reply brief re: Motion for Summary Determination, dated June 2, 2009
- G. The Morsmans' response brief to DEQ's Motion for Summary Determination, dated May 26, 2009
- H. DEQ's Motion for Summary Determination, dated May 12, 2009
 1. Morsmans' request for a contested case hearing, dated Oct. 29, 2008
 2. DEQ's reply to the addendum, dated Oct. 21, 2008
 3. Morsmans' addendum, dated Oct. 16, 2008
 4. DEQ's reply to the waiver request, dated Oct. 6, 2008
 5. Morsmans' request for a waiver, dated July 29, 2008

Approved:


Leah E. Koss, Interim Manager
Office of Compliance and Enforcement

Agenda Item D, Morsman waiver contested case
Corrected alternatives for EQC action – Aug. 20, 2009

Please substitute the following corrected alternatives for EQC action for the ones presented on page six of the staff report for Item D, Morsman waiver contested case.

Alternatives

The EQC may:

1. Affirm Judge Gutman's decision.
2. Remand the issue back to Judge Gutman with instructions, if Judge Gutman made a mistake that can be corrected and does not require further action from Director Pedersen
3. Remand the issue back to Judge Gutman with instructions to remand the issue to Director Pedersen, if the EQC concludes that there is a mistake that the director must fix.

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

July 23, 2009

****HAND DELIVERY****

Stephanie Clark
Environmental Quality Commission
811 SW 6th Avenue
Portland, Oregon 97204

RE: In the Matter of Phil & Brigitte Morssman, dba Tops Trailer Park
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

Dear Ms Clark:

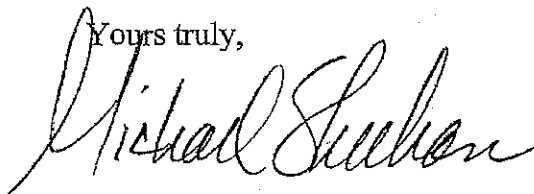
Please accept for filing the enclosed original and one copy of,

**MORSMANS' REPLY BRIEF
MORSMANS' MOTION FOR THE EQC TO TAKE
ADMINISTRATIVE NOTICE OF EXHIBITS 5-11.**

Also enclosed are copies of the same documents for delivery to Leah Koss.

If there is a problem or if you have questions please give me a call. Thank you for your assistance.

Yours truly,



Michael F. Sheehan

CERTIFICATE OF SERVICE AND FILING

DEQ Case No. WQ/D-ER-07-186

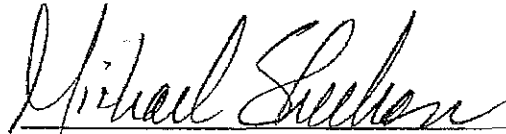
OAH Case No. 900963

I hereby certify that on the date set forth below I served the following documents:

**Morsmans' Reply Brief
Morsmans' Motion for the EQC to take
Administrative Notice of Exhibits 5-11.**

by hand delivering a the original and one true copy to the offices of the persons or
entities listed below.

DATED: July 23, 2009.



Michael F. Sheehan, OSB 88126
33126 Callahan Road
Scappoose, Oregon 97056
503-543-7172 Fax 503-543-7172
mikesheehan@centurytel.net

SERVICE LIST

Environmental Quality Commission
10th Floor
811 SW Sixth Avenue
Portland, Oregon 97204

Leah Koss
DEQ Compliance and Enforcement
811 SW Sixth Ave
Portland, OR 97204

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	DEQ Case No. WQ/D-ER-07-186
)	
PHILLIP and BRIGITTE MORSMAN,	)	OAH Case No.: 900963
doing business as TOPS TRAILER)	
PARK,)	
Petitioners.	)	MORSMANS' REPLY BRIEF
)	
)	

I. OVERVIEW

The Morsmans are an older retired couple who own, live in, and manage on a full time basis the TOPs manufactured home park ("park"). The park is a valuable low income housing resource in the Madras area that provides housing for approximately 55 resident families (including about 100 children) and older single people almost all of whom are low income, almost all of whom own their own singlewide homes in the park.

The park has been in existence since 1954. Sewage disposal is through a parkwide collection system which leads to a large underground septic tank. Solids are regularly pumped from this tank and hauled away by a licensed septic company. The remaining liquids go from the tank to a drywell which has been in operation over the same time period. The system is currently permitted by DEQ and has been for a number of years.

Recently there was a proposal to fund the extension of the city sewer up from the south through the neighborhood and to the park with state Community Development

1 Block Grant funds on application from the City. The application was not successful
2 because it could not be shown that the majority of the parcels that would benefit from the
3 sewer were low income. This was because, even though the residents of the park do
4 certainly qualify as low income, many of the residents of the area to the south do not and,
5 moreover, vacant lots in the area to the south were counted by the state against eligibility.

6 Within the last month the City of Madras has again applied for a loan, this time to
7 the Department of Environmental Quality, to build the connecting sewer at issue in this
8 case from Lee Street to the southern boundary of the park, thereby providing sewer
9 service to the park as well as the intervening Lee to Birch Street neighborhood which
10 currently also has no sewer service. Notwithstanding the Department of Environmental
11 Quality's position on the need for this extension of the sewer, the request for the loan was
12 denied by the DEQ and the money allocated elsewhere. (See Exhibit 11, p.3). However
13 Eric Nigg, the Department's Water Quality Manager for Eastern Oregon, was quoted on
14 July 8th as saying that the City's long term goal has been and apparently still is to extend
15 the sewer to the southern boundary of the park. (Exhibit 11, p.1).

16 It seems clear from these efforts by the City that at some point in the near future
17 the sewer will be extended from Lee Street to the Lee to Birch Street neighborhood and
18 up to the southern boundary of the park. At that point the Morsmans agree to connect to
19 the sewer and abandon the use of the drywell. **Just for that interim period the**
20 Morsmans would continue to use the drywell as currently permitted. The request for the
21 waiver is only for the period from now until the City extends the sewer to Birch Street

1 and the park. (See the City's map, last page of Exhibit 11, showing the proposed Birch
2 Street terminus of the sewer. The park property is the property on the north side of Birch
3 Street).

4 Data presented to the Director included the following:

- 5 1. Three construction cost estimates for building the sewer in the \$450,000
6 range;
- 7 2. Income tax records for the Morsmans showing income in the range of
8 \$15,000 to \$26,000 per year.
- 9 3. Park mortgage records showing that the mortgage on the park was in excess
10 of the real market value of the park as set forth by the County Assessor's
11 data as provided.
- 12 4. Documentation from the Morsmans' bank refusing a loan request from the
13 Morsmans for \$300,000 on the grounds that the income from the park did
14 not justify a loan in this amount.

15 In the June 18th hearing before the EQC in this matter it was set forth by the
16 chairman of the Commission that even if the costs estimates provided in Spring 2008
17 were in the \$450,000 range they would be much lower now given the subsequent and
18 continuing economic crash. In response to this the Morsmans solicited new construction
19 cost estimates. Two of these have been received since and both show slightly *higher* cost
20 estimates. (See Exhibits 7 and 8).¹ We ask that the Commission take administrative

¹ As of this date a response has not been received from Hooker Creek.

1 notice of these estimates.

2 It was also suggested that a loan request from Morsmans' own bank was not
3 enough evidence of an inability to get a loan for the construction amount. The Morsmans
4 have therefore also applied for a loan from a second bank, Community First Bank, and
5 reapplied to their own bank. Both banks have refused these further loan requests, again
6 on the grounds that the revenue from the park does not justify a loan in these amounts.
7 See Exhibits 5 and 6.

8 Also provided as an update were the Morsmans' income tax data for the 2008 return filed
9 in April 2009 showing net income of \$25,370 for 2008. We ask that the Commission take
10 administrative notice of these exhibits.

11 In sum:

- 12 1. It should be noted that the DEQ presented no evidence contradicting the
13 cost of construction evidence provided by the Morsmans.
- 14 2. It should be noted that the DEQ presented no evidence contradicting the
15 Morsmans' income evidence.
- 16 3. It should be noted that the DEQ presented no evidence contradicting the
17 data provided by the Morsmans as to the unwillingness of lenders to lend
18 under these circumstances.
- 19 4. It should be noted that the DEQ presented no evidence contradicting the
20 fact that the assessed value of the park under these economic conditions is
21 substantially below the mortgage on the park.

1 Thus it would seem clear that the preponderance of the evidence presented at the
2 time to the Director (and supported by updated evidence as of now confirming the earlier
3 evidence) shows that given the costs of building the sewer line through the hard rock in
4 the Lee to Birch Street neighborhood up to the park, and given the Morsmans' income
5 and the negative net value of the park, it would be unduly burdensome and impracticable
6 given the resources "at hand" to require the Morsmans to build the sewer line at this
7 distance.

8 II. THE EQC'S RULES ON WAIVER

9 A. EQC's Two Part Policy on Drywells in Central Oregon

10 OAR 340-044-0010(2) provides in part:

11 The injection of untreated or inadequately treated sewage or
12 wastes to waste disposal wells and particularly to waste
13 disposal wells in the lava terrain of Central Oregon constitutes
14 a threat of serious, detrimental and irreversible pollution of
15 valuable groundwater resources and a threat to public health.
16 The policy of the Environmental Quality Commission is to
17 restrict, regulate or prohibit the further construction and use of
18 waste disposal wells in Oregon and to phase out completely
19 the use of waste disposal wells as a means of disposing of
20 untreated or inadequately treated sewage or wastes as rapidly
21 as possible **in an orderly and planned manner.** (Emphasis
22 added).

23
24 EQC rule OAR 340-044-0015(3)(b)(A) then goes on to say:

25
26 (A) A sanitary sewer shall be **deemed available** to a property when,

27
28 (i) A sanitary sewer is extended to within 300 feet from the
29 property boundary for a single family dwelling or other
30 establishment with a maximum design flow not more than 450
31 gallons per day, or 200 feet multiplied by the number of

1 dwellings or dwelling equivalents for other establishments or
2 greater flows. (Emphasis added).
3

4 Thus under a strict reading of the rule just stated sewer service would have been
5 'deemed available' to the Morsmans' park when the city's sewer was 11,000 feet from
6 the park (55 dwellings times 200 feet), that is to say at a distance of more than two miles.

7 This part of the policy is balanced by the second part of the policy. In OAR 340-
8 044-0015(3)(b)(B) the EQC explicitly provides for a waiver of the connection
9 requirement:

10 (B) Within 90 days after the sanitary sewer service is available to a
11 property, the owner of that property shall make connection to the sewer and
12 shall abandon and decommission the sewage drain hole in accordance with
13 OAR 340-044-0040. **On a case-by-case basis, the Director may waive**
14 **the requirement to connect to sewer if the Director determines that**
15 **connection to the sewer is impracticable or unreasonably burdensome.**
16 (Emphasis added).

17 Over the years the DEQ has never strictly enforced the "200 feet X the number of
18 units" part of the rule without looking at the facts and the waiver portion of the rule, it
19 being clear that to look only at the "200 feet X units" would cross the line to
20 "impracticable or unreasonably burdensome" and create a lot of hardship and
21 homelessness in situations like this.

22 Implicitly, the DEQ has always taken the position that the Morsmans would have
23 to connect to the sewer only when the cost to do so was financially "practicable." We
24 know this because the DEQ knew when the permit was issued in the mid-1990s that a
25 drywell was involved, they knew as well that downtown Madras had a functioning sewer

1 system, and they knew that the City's sewer system was a little over one mile from the
2 park. Given these circumstances the DEQ administration granted an implicit or informal
3 waiver pursuant to OAR 340-044-0015(3)(b)(B) by looking at the facts and then issuing
4 and renewing the permit at appropriate intervals. In fact DEQ's Eastern Region
5 Administrator Joni Hammond has made it clear that her interpretation of the rule in this
6 case is that "reasonably available" means 1/4 of a mile. See R-54², p.1. See also
7 Hammond, R-54, p.2, ¶2:

8 At the meeting "reasonably available" was defined as a
9 location approximately 1/4 mile from the TOPS Trailer Park."

10 and again, Hammond, R-54, p.3:

11 Based on the number of dwelling units at the park, these rules
12 would require TOPS to extend a sewer line up to 2.5 miles,
13 while we have defined a reasonable distance in this case as
14 approximately 1/4 mile.

15
16 Thus, in practice, an implicit waiver in the form of permit renewal was granted
17 when the cost to connect would plainly be disproportionately costly. This is the
18 balancing between the first part of the policy which says that drywells in Central Oregon
19 should be phased out in an "orderly and planned manner" and the second part that says
20 that waivers should be available in cases where a requirement to connect to sewer would
21 be "impracticable" or "unduly burdensome."

22

² The R-54 and other "R" references are to Exhibit numbers for admitted exhibits in the main case.

1 III. THE DIRECTOR'S LOGIC

2 A. Summary

3 This case is perhaps particularly important since it will set a precedent as it appears
4 to be the first time that there has been a Director's decision on a request for a waiver.
5 (DEQ Memorandum p.4, line 19, DEQ Response to Discovery, Exhibit 2 (3089), and
6 DEQ's Answering brief p.5, lines 8-9).

7 In his response to this request the Director tries to justify his refusal in five ways:

- 8 1. Through his adoption of dictionary definitions of the waiver rule's
9 "impracticable" and "unduly burdensome" language in a way that clearly
10 defeats the purpose of the waiver provision.
- 11 2. Through the claim that the waiver in this case would pose a substantial
12 threat public health and to the groundwater resources of the area.
- 13 3. Through his claim that the Morsmans have not shown that the park would
14 close if the waiver were denied;
- 15 4. Through his claim that the Morsmans haven't shown that they don't have
16 substantial other financial resources other than the park; and,
- 17 5. That the depth of the drywell violates a clearly set forth policy in OAR 340-
18 044 prohibiting drywells deeper than 100 feet.

19 B. Criteria Used by the Director to Determine Whether an
20 Otherwise Required Connection to a Sewer is "Impracticable"

21 When asked in discovery what criteria the Director uses to determine whether the

1 proposed connection to a sewer would be “impracticable,” the DEQ responded that the
2 criteria used to determine “impracticability” is whether the proposed connection is
3 “impracticable.” (Morsman Discovery Request and DEQ response of May 7, 2009.
4 Exhibit 2).

5 **C. Criteria Used by the Director to Determine Whether an**
6 **Otherwise Required Connection to a Sewer is “Unduly Burdensome”**

7
8 When asked what criteria the Director uses to determine whether the proposed
9 connection to a sewer would be “unreasonably burdensome,” the DEQ responded
10 similarly that the criteria used to determine “unreasonably burdensome” is whether the
11 proposed connection is “unreasonably burdensome.” (Morsman Discovery Request and
12 DEQ response of May 7, 2009 to Discovery. Exhibit 2).

13 **D. Director’s Interpretation of “Impracticable”**

14 The Director has determined what “impracticable” means in this context by
15 consulting his dictionary and arriving at the following determination. The meaning of
16 impracticable is “incapable of being performed or accomplished by the means employed
17 or at command.” (Director’s letter of October 6, 2008, p.2 ¶3). **The Director then**
18 **concludes in this case that since “the work is capable of being accomplished and that**
19 **there are contractors in the area that will in fact perform this work,” connecting to**
20 **the sewer is not ‘impracticable.’”** (Director’s Waiver Denial letter of October 6, 2008,
21 p.2 ¶4). (Emphasis added).

22 The Director in his second denial letter goes on to say that “the fact that two cost

1 estimates of the work to connect have been provided, shows that connection to the City
2 sewer is clearly not impracticable, as the work is capable of being performed.” Director’s
3 letter of October 21, 2008, p.2 ¶1.

4 Thus, under the Director’s interpretation, in any situation where the applicant for a
5 waiver is able to find contractors willing to provide estimates of the cost of connection,
6 the applicant will automatically be denied the waiver on impracticability grounds,
7 because if a person is able to obtain a cost estimate from a contractor, no matter what the
8 estimate may be—e.g. \$20 billion, the connection requirement is, therefore, for that very
9 reason not “impracticable.”

10 This interpretation is clearly unreasonable, arbitrary and capricious.

11 **E. Director’s Interpretation of “Unreasonably Burdensome”**

12 In determining whether the cost to the Morsmans of building the sewer connection
13 is “unreasonably burdensome” the Director again looks to his dictionary where he selects
14 the following abstract definitions, out of context with the word that “unreasonably”
15 modifies, i.e. “burdensome”:

- 16 (a) Unreasonable: “not governed by or acting according to reason; not
17 conformable to reason; absurd, exceeding the bounds of reason or
18 moderation.”
19
20 (b) Reasonable: “being in accordance with reason; not extreme or excessive;
21 moderate, fair, possessing sound judgment.” Director’s letter of October 6,
22 2008, p.2 ¶4.
23

24 The Director then embellishes on his definition of “Unreasonable” as to the cost
25 of connection so as to define it as a **comparison of whether the cost to build the**

1 connection in the current case and place is significantly more than would be the case
2 in some other place and circumstance. In rejecting the request for a waiver he finds,

3 "In addition, there is no evidence that the cost of connection is an
4 unreasonable one. There are no cost comparisons of the same work being
5 performed **somewhere else** where the cost was much less, for example,
6 which would suggest that these estimates are extreme or excessive."
7 (Director's letter of October 6, 2008, p.3 ¶2). (Emphasis added).
8

9 Thus "unreasonably burdensome" in the mind of the Director would focus **not** on
10 the financial capability of the applicant to pay for the connection, nor on "burdensome"
11 which clearly relates to the impact on the person asking for the waiver, but would instead
12 be just a comparison of the cost to connect **here**, relative to the cost to do a similar project
13 in **some other place**. Is not such an interpretation sufficiently out of sync with what
14 would appear to be the plain meaning of the waiver rule language to constitute an
15 arbitrary and capricious interpretation? And since the DEQ publishes no guidance on this
16 interpretation of the rule, and since even when asked what its criteria are for determining
17 whether a proposed connection would be "unreasonably burdensome" it simply responds
18 that it is "unreasonably burdensome" **when it is "unreasonably burdensome,"** is this
19 interpretation and the denial of the waiver based upon it not unreasonable and an abuse of
20 discretion?

21 Moreover, consider the definition of "burdensome" and "burden" from Webster's
22 New Collegiate Dictionary.

23 Burdensome: Grievous to be borne; oppressive; onerous.

24 Burden: Thing borne, load; hence care, responsibility; something borne with

1 difficulty; a heavy obligation or expense.

2 Do these definitions of "burdensome" and "burden" not make more sense in the
3 context of the rule? Does not "unreasonably burdensome" clearly relate to the size of the
4 burden giving rise to the request for the waiver, relative to the person who has to carry it?
5 Are not the Director's choice of definitions clearly unreasonable and arbitrary and
6 capricious?

7 Having adopted these definitions, the Director concludes that given these
8 definitions he is "unconvinced that your compliance with the law would be unreasonably
9 burdensome to you" and rejects the waiver request. (Director's letter of October 6, 2008,
10 p.3 ¶2).

11 **IV. THE DEQ'S ANSWERING BRIEF**

12 **A. "The Director Cannot Be Compelled to Grant a Waiver"**

13 **1. Criteria Beyond the "Impracticable or Unduly Burdensome Standard"**

14 The Department's position appears to be that even if the policy set down in OAR
15 340-044-0015(3)(b)(B) allows the Director to grant a waiver, he doesn't have to if he
16 doesn't want to even if connection is "impracticable or unduly burdensome." There are
17 no criteria set forth as to what controls this claimed discretion beyond the "impracticable
18 or unduly burdensome" standard.

19 **2. Danger to Public Health**

20 In this case there was no evidence that the park drywell posed any significant
21 danger to the drinking water resources of the City, and the well testing data collected

1 regularly by DHS and published on their Drinking Water Program website (Exhibit 9)
2 shows no contamination of the nearest City well; nor has the DEQ proffered any evidence
3 of any groundwater pollution at all from the park drywell. Yet the lack of any past or
4 current evidence of contamination of nearby City wells was characterized by the Director
5 as “not relevant.” (Director’s Letter of October 21, 2008, p.1, ¶3). Yet had there been
6 pollution of neighboring wells would that not have been relevant? Clearly the lack of
7 pollution of the nearby City well over at least the years DHS has been collecting data is
8 relevant. (Exhibit 9).

9 **3. Due Process**

10 One of the problems the Morsmans encountered in this process was that DEQ had
11 never before required a formal waiver for the Morsmans in all the years the park has been
12 there and permits had been issued for the park system. Then in the middle of the hearing
13 in the main case the DEQ’s attorney insisted that a waiver could only be obtained
14 pursuant to a *formal* request to the Director. For such a request there is no guidance on
15 what a sufficient showing would be to meet the criteria when applying for the waiver.
16 Was a showing of “impracticable or unduly burdensome” sufficient or were there
17 unpublished factors in the mind of the Director that would determine whether or not a
18 waiver would be granted even with a showing that connection was “impracticable or
19 unduly burdensome.”

20 The Morsmans’ first formal request was denied with the Director claiming that not
21 enough data was provided as to “impracticable or unduly burdensome.” A request for

1 reconsideration accompanied by addition data was also denied claiming that still not
2 enough data was provided. Yet there is no guidance on how much is enough. Is not a
3 preponderance of the evidence “enough”? Should there not be some guidance as to what
4 needs to be shown? And didn’t in reality the Morsmans provide “enough?”

5 But then the Answering Brief shifts the ground to argue that even if “enough” was
6 provided to show that having to connect would be “impracticable or unduly burdensome”
7 the Director still doesn’t have to grant a waiver if he doesn’t feel like it:

8 “even if the Commission finds that connection is unreasonably burdensome
9 or impracticable, this does not lead to the conclusion that the Director
10 abused his discretion in denying the waiver. The waiver provision allows
11 consideration of those terms in granting a waiver, but it in no way states
12 that the Director *must* grant a waiver, even if he or the Commission finds
13 those conditions to be present in the particular case.”³ (Emphasis in the
14 original).

15 Thus the Department’s position appears to be that even if the explicit conditions
16 are met the Director may grant or refuse the waiver pursuant to other factors, either
17 explicit or non-explicit. So, for example, one of the factors also stated by the Director in
18 refusing the waiver was that there was a Department rule that drywells could be no more
19 than 100 deep. (Director’s Letter of October 21, 2008, p.1, ¶3). Yet there is no such rule.
20

21 The Director states that drywells are a risk, but then says that evidence of the lack
22 of any contamination of neighboring wells is “irrelevant.” (Director’s Letter of October
23 21, 2008, p.1, ¶3).

24

³ Answering Brief, pp.6-7.

1 **B. Closure of the Park**

2 In the Answering Brief the DEQ also argues that,

3 “there is zero evidence in the record that the Morsmans would close the
4 park, lose their home, or that 55 families would lose their homes. This is
5 pure speculation in the briefings and nothing more.” (Answering Brief, p.7,
6 ¶1).

7
8 Yet the Order recently confirmed by the EQC requires that:

9
10 3. Within sixty (60) days of the date of this Notice and Order, either:

- 11
12 (a) Connect the Facility to the City of Madras sewerage system; or
13 (b) Disconnect all plumbing fixtures from the waste disposal system and
14 ensure that all plumbing fixtures are connected for discharge only to an
15 approved and property permitted disposal system that is not failing . . .
16 (DEQ, Notice of Violation, Department Order and Civil Penalty
17 Assessment, December 19, 2007, p.4, and Answering brief, p.1).

18 Thus it is clear that if the Morsmans don't have the \$450,000 to build the
19 connection to the Lee Street sewer, the alternative is to **disconnect** all 55 homes
20 (including the Morsmans) from the existing septic tank drywell system and connect to
21 some other permitted system. But there is no other permitted system available. A septic
22 drainfield won't work—as everyone agrees—due to the basalt layer under this whole area of
23 the county. There is no other sewer option. This means that in the absence of a waiver
24 the only choice is to disconnect all 55 units from sewage disposal; without sewage
25 disposal, the residents can't occupy the units. Residents of the park must therefore find
26 somewhere else to live. Hence closing of the park. **This is what is set forth in the**
27 **Order; it is not speculation.**

28 The DEQ and the Director have also suggested that in the event that it is

1 financially impossible for the Morsmans to build the 2000 foot sewer line, the Morsmans
2 could simply sell the park to someone else who would then pay to connect to the Lee
3 Street sewer, while at the same time maintaining the park in its current use with the
4 current tenants.

5 There is no evidence at all to support this claim. Consider, the park currently has a
6 mortgage of over \$770,000. The current real market value of the park, according to the
7 County Assessor, is \$606,233 (and this is *with* the \$100,000 gain in value between 2006
8 and 2007 but before the collapse of the economy). We also know from the Morsmans'
9 income tax returns that their net taxable incomes including park revenues net of park
10 costs year by year are Year 2006 = \$14,757, Year 2007 = \$19,362, and Year 2008 =
11 \$25,370. The income from the park is low because the residents are almost all low
12 income. Thus the likelihood that in this economy a buyer will materialize with \$770,000
13 to clear the mortgage and then cover the approximately \$450,000 cost of connecting to
14 the sewer, while at the same time deciding to maintain the use of the property as a low
15 income singlewide manufactured home park with net revenues per annum in the \$15,000
16 to \$26,000 range, is clearly unreasonable and there is no evidence at all in the record that
17 it is a viable alternative.

18 V. SUMMARY

19 In sum, the Director based his decision to refuse the waiver on:

- 20 1. A clearly arbitrary and unreasonable definition of "impracticable."
- 21 2. A clearly arbitrary and unreasonable definition of "unduly burdensome."

- 1 3. An approach that attempted to use the policy language in OAR 340-044-0010(2)
2 with respect to the health and pollution problems with drywells to effectively
3 repeal the waiver provisions of 340-044-0015(3)(b)(B) as being inconsistent with
4 the 0010(2) policy.
- 5 4. A claim by the Director that data showing no current or historic pollution or public
6 health threat of the Morsmans' drywell to Madras' groundwater resources was
7 "irrelevant."
- 8 5. A claim by the Director that the Morsmans' drywell violated the policy set forth in
9 "OAR 340-044" that drywells are not allowed to be deeper than 100 feet when
10 such a policy does not appear to exist.
- 11 6. A claim by the Director that a waiver wasn't appropriate because the Morsmans
12 hadn't shown that they did not have substantial investment resources in addition to
13 their ownership of the park, when the Morsmans' income tax data presented shows
14 no such resources.
- 15 7. A claim by the Director that the failure to issue a waiver in light of the inability of
16 the Morsmans to finance the sewer would not "necessarily" result in the closure of
17 the park since the Morsmans could sell the park and the new owner might elect to
18 maintain the park as low income housing with the current tenants, when the data
19 presented on the cash flow from the park, the mortgage, and the market value of
20 the park all provide substantial evidence that any such outcome is economically
21 unreasonable to assume, especially in light of the current economic situation.

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VII. LEGAL STANDARD

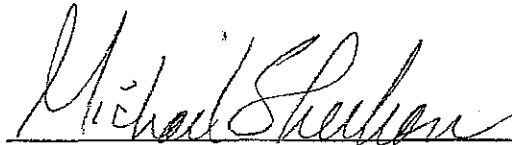
The standards for review of agency actions set out in ORS 183.482(8) reflect a legislative policy, embodied in the APA, that decisions by administrative agencies be rational, principled, and fair, rather than ad hoc and arbitrary. *Gordon v. Board of Parole*, 343 Or. 618, 633 (Or. 2007).

VIII. CONCLUSIONS

For all these reasons the ALJ's holding that the Director did not abuse his discretion should be overruled and the following findings substituted:

1. The preponderance of the evidence clearly establishes that it would be impracticable for the Morsmans, given their resources at hand to construct the sewer line from the Park to Lee Street;
2. The preponderance of the evidence clearly shows that it would be "unduly burdensome" for the Morsmans, given their resources at hand, to construct the sewer line from the Park to Lee Street;
3. The preponderance of the evidence, including the terms of the proposed order, clearly shows that requiring the Morsmans to build the sewer line to Lee Street at this point given their limited resources would result in the closure of the park and the loss of housing to approximately 55 families as well as the Morsmans.
4. A temporary waiver is appropriate to allow the Morsmans to continue to use the currently permitted drywell up to the point that the City advances the sewer at least to the southern boundary of the park at Birch Street.

Dated this 23th day of July, 2009.



Michael F. Sheehan, OSB #88126
Attorney for Respondents Phil and Brigitte
Morsman

3c:\Law\Morsmans\Brief Reply 22July09

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: PHILLIP and
BRIGITTE MORSMAN, doing
business as TOPS TRAILER PARK,

Respondents.

)
) OAH Case No. 900963
) NO. WQ/D-ER-07-186
)

) MOTION REQUESTING THAT
) THE EQC TAKE
) ADMINISTRATIVE NOTICE
) OF EXHIBITS 5-11.
)

COMES NOW, Michael F. Sheehan, attorney for the Morsmans, and requests that

the EQC take administrative notice of the following exhibits:

Exhibit 5 is a letter dated July 7, 2009 from Bank of the West refusing the Morsmans loan request.

Exhibit 6 is a letter dated July 8, 2009 from Community First Bank refusing the Morsmans loan request.

Exhibit 7 is a response dated July 7, 2009 to Morsmans request for a current estimate of the cost of constructing the sewer connection.

Exhibit 8 is a response dated June 29, 2009 from Tye Engineering providing a current estimate of the cost of the engineering for the construction of the connection sewer line.

Exhibit 9 (Exhibit 43 in the main case) is the state well testing data for the City of Madras well near the park from 2001 through April 2008 showing no coliform-related contamination of the well.

Exhibit 10 (Exhibit R-3 in the main case) is an area map showing the Park, Lee Street, and the City's airport area to the north.

Exhibit 11 is a Madras Pioneer article published July 8, 2009. It quoted Eric Nigg, DEQ's water quality manger for the Eastern Oregon Region as saying that the City

MICHAEL F. SHEEHAN
Attorney at Law
33126 Callahan Road
Scappoose, OR 97056
503-543-7172 Fax 503-543-7172

1 of Madras has submitted an application for a loan to extend sewer up into that
2 area” noting that this has been “a long term goal of the city.” Also part of Exhibit
3 11 is the DEQ’s email to the City of Madras dated July 13, 2009 notifying the City
4 that the DEQ had rejected its request for a loan to build the sewer extension, along
5 with a map provided by the City showing that the proposed extension would
6 provide sewer up to the southern boundary of the TOPs Trailer Park.
7

8 The reasons these exhibits weren’t entered into evidence previously are as follows:

9 Exhibits 5-8 are simply updates of previously entered data. These are in response to
10 statements from the EQC board at the last hearing suggesting that current bids for the
11 construction work would show that the cost of constructing the connecting sewer would
12 be much lower in this economy than at the time of the hearing prior to the collapse of the
13 economy.

14 Exhibit 9 is Oregon DHS Drinking Water Program well testing data showing that
15 there is no indication at all of any contamination in the City of Madras well nearest to the
16 Park.

17 Exhibit 10 is a map of the area making it easier to understand the location of the
18 various geographic entities being referred to in the briefs and at the hearing.

19 Exhibit 11 is information documenting the DEQ’s rejection on July 13, 2009 of a
20 loan request from the City of Madras to build the extension of the sewer at issue in this
21 case, and quoting the DEQ’s Eric Nigg, DEQ’s water quality manger for the Eastern
22 Oregon Region, confirming that the City had requested a loan from DEQ to build the
23 sewer up to the park, and that the City’s goal was to build such an extension. This
24 information was not available prior to July 13, 2009, but is relevant to this case. Since the

1 exhibit involves DEQ's receipt of, and denial of, the City's request for a loan to build
2 this, but also notes the City's long term desire to extend this sewer line up to the park, it
3 would appear to be relevant to the issue of phasing out
4 the drywell at the park "in an orderly and planned manner" without being "unreasonably
5 burdensome" and a major threat to the existence of the park and the residents' housing.

6 Date: July 22, 2009

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9 Michael F. Sheehan
10 Attorney for the Morsmans
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23 3c:Law\Morsman07\Motion for Admin Notice 22July09

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: PHILLIP and)
BRIGITTE MORSMAN, doing) OAH Case No. 900963
business as TOPS TRAILER PARK,) NO. WQ/D-ER-07-186
Respondents.)
DECLARATION OF
MICHAEL F. SHEEHAN

I, Michael F. Sheehan, state as follows:

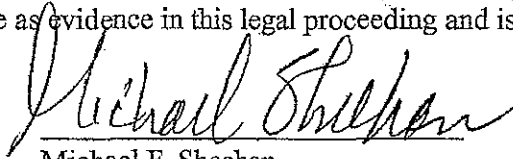
1. I am the attorney for the Morsmans in this case. The following enclosed exhibits are true and accurate copies of the actual documents.
2. Exhibit 5 is a letter dated July 7, 2009 from Bank of the West refusing the Morsmans loan request.
3. Exhibit 6 is a letter dated July 8, 2009 from Community First Bank refusing the Morsmans loan request.
4. Exhibit 7 is a response dated July 7, 2009 to Morsmans request for a current estimate of the cost of constructing the sewer connection.
5. Exhibit 8 is a response dated June 29, 2009 from Tye Engineering providing a current estimate of the cost of the engineering for the construction of the connection sewer line.
6. Exhibit 9 (Exhibit 43 in the main case) is the state well testing data for the City of Madras well near the park from 2001 through April 2008 showing no coliform-related contamination of the well.
7. Exhibit 10 (Exhibit R-3 in the main case) is an area map showing the Park, Lee Street, and the City's airport area to the north.
8. Exhibit 11 is a Madras Pioneer article published July 8, 2009. It quoted Eric Nigg, DEQ's water quality manger for the Eastern Oregon Region as saying that the City of Madras has submitted an application for a loan to extend sewer up into that area" noting that this has been "a long term goal of the city." Also part of Exhibit 11 is the DEQ's email to the City of Madras dated July 13, 2009 notifying the City that the DEQ had

MICHAEL F. SHEEHAN
Attorney at Law
33126 Callahan Road
Scappoose, OR 97056
503-543-7172 Fax 503-543-7172

1 rejected its request for a loan to build the sewer extension, along with a map provided by
2 the City showing that the proposed extension would provide sewer up to the southern
3 boundary of the TOPs Trailer Park.
4

5 I hereby declare that the above statements are true to the best of my knowledge and belief, and
6 that I understand it is made for use as evidence in this legal proceeding and is subject to the
7 penalty for perjury.
8

9 Date: July 22, 2009



10 Michael F. Sheehan
11 Attorney for the Morsmans
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MICHAEL F. SHEEHAN
Attorney at Law
33126 Callahan Road
Scappoose, OR 97056
503-543-7172 Fax 503-543-7172

Exhibit 5 Page



July 7, 2009

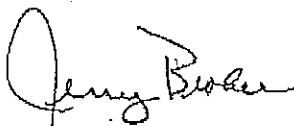
Phil Morsman
Brigette Morsman
Tops Trailer Park
23 N W Depot Rd
Madras, Oregon 97741

Dear Mr. & Mrs. Morsman,

Thank you for your recent request of \$450,000.00 to finance the construction of a new sewer line for Tops Trailer Park. Due to insufficient cash flow to service the loan requested as well as existing debt we are declining your request.

If you have any questions please feel free to call me at 475-3817.

Sincerely,



Jerry Broker
Manager
Madras branch

Exhibit 6 Page 1



P.O. Box 447
Prineville OR 97764
541-694-2547

Date: July 8, 2009

NOTICE OF ACTION TAKEN

Phillip D Morsman
23 NW Depot Rd.
Madras, OR 97741

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is:

Federal Reserve Consumer Help Center
P.O. Box 1200
Minneapolis, MN 55480

Regarding your Application for \$460,000 real estate improvements

We are unable to make a decision on your Application because it is missing the following information:

Please furnish this information to us on or within 10 days of the date of this notice at the address listed above or we will be unable to give your application further consideration and will consider this application withdrawn.

We are unable to approve your request.

Although you have withdrawn your request with us, please consider Community First Bank for your future financial needs.

We are unable to offer you credit on the terms that you requested, but can offer you credit on the following terms:

If this offer is acceptable to you, please notify us on or within 10 days of the date of this notice at the address listed above after which time this offer is withdrawn.

We are changing your credit with us as follows:

Our principal reasons for this decision are indicated below

- | | | |
|--|--|--|
| <input type="checkbox"/> Insufficient number of credit references provided | <input type="checkbox"/> Length of employment | <input type="checkbox"/> Delinquent past or present credit obligations with others |
| <input type="checkbox"/> Unacceptable type of credit references provided | <input type="checkbox"/> Length of residence | <input type="checkbox"/> Slow or past due in trade or loan payments |
| <input type="checkbox"/> Unable to verify credit references | <input type="checkbox"/> Temporary residence | <input type="checkbox"/> Garnishment, attachment, foreclosure, collection action or judgement. |
| <input checked="" type="checkbox"/> Income insufficient for amount of credit requested | <input type="checkbox"/> Unable to verify residence | <input type="checkbox"/> Bankruptcy |
| <input type="checkbox"/> Excessive obligations in relation to income | <input type="checkbox"/> No credit file | <input checked="" type="checkbox"/> Value or type of collateral not sufficient |
| <input type="checkbox"/> Unable to verify income | <input type="checkbox"/> Limited credit experience | <input type="checkbox"/> Lack of established earnings record |
| <input type="checkbox"/> Temporary or irregular employment | <input type="checkbox"/> Poor credit performance with us | |
| <input type="checkbox"/> Unable to verify employment | <input type="checkbox"/> Other, Specify: _____ | |

If you have any questions regarding this notice, you should contact: Chris DuPont Telephone: 541-416-4456

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE:

- In evaluating your request for credit, we obtained credit information from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to obtain a disclosure of the nature of this information if you submit a written request to us no later than 60 days after you receive this notice.
- In evaluating your request for credit, we obtained a consumer credit report from the consumer reporting agency listed below. However, the reporting agency did not make the decision and is unable to supply you with specific reasons for why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to obtain a free copy of this report if you submit a written request to the agency named below no later than 60 days after you receive this notice. Under the Fair Credit Reporting Act you also have the right to dispute with the consumer reporting agency the accuracy or completeness of any information in the report.

Name: Equifax Information Services, LLO Telephone: 800-685-1111

Address: P.O. Box 74241 Atlanta, GA 30374-0241

NOTICE OF RIGHT TO RECEIVE COPY OF APPRAISAL

You have a right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application. In your letter, give us the following information: Loan or application number, if known, date of application, name(s) of loan applicant(s), property address, and your current mailing address.

Revision Date: 10/2008

Handwritten signature and stamp: Item D-090093



**Community
First Bank**

Facsimile

To: Michael Sheehan Attorney at Law Fax: 503-543-7172
From: Chris DuPont Phone: 541-416-4456
CC: Phil Morsman Date: 7/08/09
Re: Loan Application Pages: 2

Urgent For review Please comment Please reply Please recycle

This fax is only intended for the person(s) to whom it is addressed and may contain confidential information. Unless stated to the contrary, any opinions or comments are personal to the writer and do not represent the official view of the company. If you have received this fax in error, please notify us immediately by phone and shred any pages received. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Exhibit 6 Page 2

Exhibit 7 Page

Tops Mobile Home Park Sewer



Knife River - Central Oregon Division (CCB #62998)

P.O. Box 83
 Bend, OR 97709
 Contact: Doug Baker
 Phone: 541-388-0445
 Fax: 541-318-0437

Quote To: Phil Morsman

Job Name: Tops Mobile Home Park

Date of Plans: N/A

Revision Date:

Proposal Date: 7/1/09

Bid Number: 2009102

Contact:

Phone: 475-3976

Fax: 475-3155

E-Mail:

Revised to match quantities from 2008.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	10" 3034 SEWER MAIN 6'-10' DEPTH	1,000.00	LF	98.00	98,000.00
2	10" 3034 SEWER MAIN 10'-20' DEPTH	1,000.00	LF	213.00	213,000.00
3	MANHOLES, SURFACE RESTORATION, TESTING, ETC.	1.00	LS	103,500.00	103,500.00
GRAND TOTAL					\$414,500.00

NOTES:

This estimate is to be used for budget purposes only. An accurate estimate cannot be completed until final approved drawings prepared by an engineer are available for review.

Footage is based on information provided by the owner and a potential path for the sewer main that he described.

FROM :Tye Engineering & Surveying

FAX NO. :5413851341

Jun. 29 2009 03:38PM P1

FAX TO: 475-3155

Exhibit 8 Page 1



TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341
email: tyeengr@bendcable.com webpage: tyeengineering.com

June 29, 2009

Phil Morsman
Tops Trailer Park
23 NW Depot Rd.
Madras, Oregon 97741

RE: Engineering Services Budgetary Price Estimate - Tops Trailer Park Sewer Line

Dear Mr. Morsman,

Tye Engineering & Surveying, Inc. is pleased to present the following updated budgetary price estimate for professional engineering and surveying services to design and oversee construction of a gravity sewer line from Tops Trailer Park, to the City of Madras' sewer main tie-in at the intersection of SW Lee Street and SW 4th Street.

From our phone conversation on April 21, 2008 and June 29, 2009, I understand the preliminary alignment of the proposed gravity sewer line to start at the existing Tops Trailer Park septic tank, travel south to the intersection of NW Birch Lane and NW 3rd Street, cross Birch and follow 3rd southeast to its intersection with SW Lee Street. The sewer line will follow Lee east to the existing City of Madras sewer main located at the intersection of SW 4th Street and Lee. The proposed sewer line alignment is approximately 2,000 feet long and appears to be within existing public right of ways allowing construction without the need for easements. Preliminary Construction cost estimates should be based on a nominal pipe diameter of 10 inches.

Please consider the following budgetary price estimate for engineering, drafting and surveying services for the project, as I understand it.

PHASE 1 - Preliminary Design and Final Design

1. Preliminary Work:

- | | |
|---|---------|
| a. Site Visit and Project Review with Owner | \$750 |
| b. Project Coordination with Agencies
(City of Madras & DRQ) | \$2,500 |

2. Develop Base Map:

- | | |
|----------------------------|---------|
| a. Topographic Survey | \$3,600 |
| b. Drafting - Map Creation | \$3,600 |

3. Preliminary Design:

Exhibit 8 Page 2

a. Engineering Design	\$5,000
b. Drafting - Plan and Profile	\$5,000
c. Agency Design Review Coordination	\$2,500
4. Final Design:	
a. Engineering Design	\$2,500
b. Drafting - Final Construction Plans	\$5,000
c. Technical Specifications - Materials	\$2,500
d. Agency Approval Coordination	\$2,500
5. Phase 1 Total Estimated Budgetary Price:	\$35,450

PHASE 2 - Construction Services

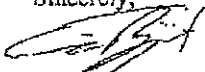
1. Construction Bid Coordination:	\$2,000
2. Construction Survey Staking:	\$4,320
3. Inspection Services During Construction:	\$4,500
4. As-built Plans:	\$1,200
5. Agency Acceptance Coordination:	\$1,500
6. Phase 2 Total Estimated Budgetary Price:	\$13,520

TOTAL ESTIMATED BUDGETARY PRICE: \$48,970 ($\pm 20\%$)

This is an estimate only. The final price could be 20% higher, or lower, depending on the final scope of work.

Thank you for your consideration. If you have any questions or concerns regarding this budgetary price estimate, please contact me at 389-6959.

Sincerely,



Eric Nyquist, P.E., C.W.R.F.

TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341 • tyenegr@bncdncable.com

Oregon Department of Human Services

Drinking Water Program

[Click here for Coliform fact sheet :: Spreadsheet](#)

PWS ID: 00500 --- MADRAS, CITY OF

Recent Coliform Test Results (SDWIS database)

Sample Date	# Samples	Type	Coliform Type	Results ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Apr 01, 2008	1	RT	Total	Absent--B8D012204		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012203		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012202		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012201		N/A		Apr 21, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041504		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041503		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041502		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041501		N/A		Mar 31, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121805		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121804		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121803		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121802		N/A		Feb 25, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090404		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090403		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090402		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090401		N/A		Jan 22, 2008
Dec 11, 2007	1	RT	Total	Absent--B7L110901-4		N/A		Dec 21, 2007
Dec 11, 2007	1	RT	Total	Absent--B7L110901-3		N/A		Dec 21, 2007
Dec 11, 2007	1	RT	Total	Absent--B7L110901-2		N/A		Dec 21, 2007

ID: 0000038

Attachment A
August 20-21, 2009 EQC meeting
Page 32 of 51

Exhibit 9 Page 1

Exhibit R43 Page 1

000000

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 11, 2007	1	RT	Total	Absent--B7L110901-1		N/A		Dec 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-4		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-3		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-2		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-1		N/A		Nov 21, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-4		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-3		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-2		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-1		N/A		Oct 22, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-4		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-3		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-2		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-1		N/A		Oct 04, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211804		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211803		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211802		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211801		N/A		Sep 07, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103504		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103503		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103502		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103501		N/A		Jul 27, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-4		N/A		Jun 25, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-3		N/A		Jun 25, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-2		N/A		Jun 25, 2007

Item D 000039

Attachment A
August 20-21, 2009 EQC meeting
Page 33 of 51

Exhibit 9 Page 2
Exhibit B Page 2

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 05, 2007	1	RT	Total	Absent--B7F052401-1		N/A		Jun 25, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-4		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-3		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-2		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-1		N/A		Jun 04, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-4		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-3		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-2		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-1		N/A		Apr 16, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-4		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-3		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-2		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-1		N/A		Apr 06, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062004		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062003		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062002		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062001		N/A		Mar 01, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091304		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091303		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091302		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091301		N/A		Jan 22, 2007
Dec 05, 2006	1	RT	Total	Absent--B6L051401-4		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-3		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-2		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-1		N/A		Dec 20, 2006

Attachment A
 August 20-21, 2009 EQC meeting
 Page 34 of 51

Exhibit 9 Page 3
 Exhibit 14 Page 3

Nov 07, 2006	1	RT	Total	Absent--B6K073401-4	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-3	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-2	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-1	N/A	Nov 30, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-4	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-3	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-2	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-1	N/A	Oct 19, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-4	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-3	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-2	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-1	N/A	Oct 12, 2006

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	Cl Residual	Receive Date
Aug 08, 2006	1	RT	Total	Absent--B6H081001-4		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-3		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-2		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-1		N/A		Sep 01, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-4		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-3		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-2		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-1		N/A		Jul 28, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-4		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-3		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-2		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-1		N/A		Jun 22, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-4		N/A		May 24, 2006

RemP0000041

Attachment A
August 20-21, 2009 EQC meeting
Page 35 of 51

Exhibit 9 Page 4
Exhibit 14 Page 4

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
May 09, 2006	1	RT	Total	Absent--B6E092501-3		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-2		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-1		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-4		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-3		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-2		N/A		May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-1		N/A		May 24, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-4		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-3		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-2		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-1		N/A		Apr 28, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-4		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-3		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-2		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-1		N/A		Apr 04, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-4		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-3		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-2		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-1		N/A		Mar 09, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-4		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-3		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-2		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-1		N/A		Feb 02, 2006
Dec 06, 2005	1	RT	Total	Absent--5120737-4		N/A		Dec 30, 2005
Dec 06, 2005	1	RT	Total	Absent--5120737-3		N/A		Dec 30, 2005

Attachment A
 August 20-21, 2009 EQC meeting
 Page 36 of 51

Exhibit 9 Page 5

Exhibit 143 Page 5

Return to 060002

Attachment A
 August 20-21, 2009 EQC meeting
 Page 37 of 51

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 06, 2005	1	RT	Total	Absent--5120737-2		N/A		Dec 30, 2005
Dec 06, 2005	1	RT	Total	Absent--5120737-1		N/A		Dec 30, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-4		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-3		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-2		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-1		N/A		Dec 01, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-4		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-3		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-2		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-1		N/A		Nov 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-4		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-3		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-2		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-1		N/A		Oct 07, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-4		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-3		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-2		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-1		N/A		Aug 22, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-4		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-3		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-2		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-1		N/A		Jul 29, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-4		N/A		Jun 24, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-3		N/A		Jun 24, 2005

Exhibit 9 Page 10

Exhibit 143 Page 6

Report ID 0000433

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 07, 2005	1	RT	Total	Absent--5060847-2		N/A		Jun 24, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-1		N/A		Jun 24, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-4		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-3		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-2		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-1		N/A		Jun 08, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-4		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-3		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-2		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-1		N/A		Apr 20, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-4		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-3		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-2		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-1		N/A		Mar 10, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-4		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-3		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-2		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-1		N/A		Feb 22, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-5		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-4		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-3		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-2		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-1		N/A		Jan 20, 2005
Dec 10, 2004	1	RP	Total	Absent--NB412156	NB412092	26 SE HILLCREST		Dec 29, 2004
Dec 10, 2004	1	RP	Total	Absent--NB412155	NB412092	57 NE HILLCREST		Dec 29, 2004

Item ID 00004

Attachment A
August 20-21, 2009 EQC meeting
Page 38 of 51

Exhibit 9 Page 7

Exhibit R13 Page 7

Sample Date	# Samples	Coliform Type	Type	Results-ID	Repeat of Sample ID	Sample Site	Cl Residual	Receive Date
Dec 10, 2004	1	RP	Total	Absent--NB412153	NB412092	97 SE HILLCREST		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-3		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-2		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-1		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	POSITIVE--NB412092		26 SE HILLCREST		Dec 29, 2004
		RT	E.Coli	Absent--NB412092		26 SE HILLCREST		Dec 29, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-4		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-3		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-2		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-1		N/A		Nov 22, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-1		37 NE 8TH		Nov 08, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-2		715 SW 4TH		Nov 08, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-3		34 SE D ST		Nov 08, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-4		216 NW B ST		Nov 08, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-4		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-3		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-2		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-1		N/A		Oct 04, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-4		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-3		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-2		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-1		N/A		Aug 30, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-4		N/A		Aug 09, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-3		N/A		Aug 09, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-2		N/A		Aug 09, 2004

Attachment A
 August 20-21, 2009 EQC meeting
 Page 39 of 51

Exhibit 9 Page 8

Exhibit 143 Page 8

Item ID 0600765

Jul 13, 2004	1	RT	Total	Absent--NB407305-1	N/A	Aug 09, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-4	N/A	Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-3	N/A	Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-2	N/A	Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-1	N/A	Jun 21, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-4	N/A	May 26, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-3	N/A	May 26, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-2	N/A	May 26, 2004

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
May 11, 2004	1	RT	Total	Absent--NB405191-1		N/A		May 26, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-4		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-3		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-2		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-1		N/A		Apr 28, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-4		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-3		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-2		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-1		N/A		Mar 18, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-4		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-3		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-2		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-1		N/A		Feb 25, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-4		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-3		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-2		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-1		N/A		Jan 28, 2004

Item ID 060078

Attachment A
August 20-21, 2009 EOC meeting
Page 40 of 51

Exhibit 9 Page 9

Exhibit 243 Page 9

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 02, 2003	1	RT	Total	Absent--NB312028-4		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-3		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-2		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-1		N/A		Dec 15, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-4		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-3		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-2		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-1		N/A		Nov 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-4		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-3		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-2		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-1		N/A		Oct 17, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-4		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-3		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-2		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-1		N/A		Sep 18, 2003
Aug 19, 2003	1	RT	Total	Absent--NB308446		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-3		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-2		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-1		N/A		Sep 05, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-4		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-3		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-2		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-1		N/A		Jul 21, 2003

Remed 060047

Attachment A
August 20-21, 2009 EQC meeting
Page 41 of 51

Exhibit 9 Page 10

Exhibit 10 Page 10

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 03, 2003	1	RT	Total	Absent--NB306053-4		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-3		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-2		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-1		N/A		Jun 20, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-4		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-3		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-2		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-1		N/A		May 27, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-4		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-3		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-2		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-1		N/A		Apr 17, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-4		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-3		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-2		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-1		N/A		Mar 24, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-4		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-3		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-2		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-1		N/A		Feb 14, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-4		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-3		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-2		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-1		N/A		Jan 27, 2003
Dec 03, 2002	1	RT	Total	Absent--NB212019-4		N/A		Dec 11, 2002

Attachment A
 August 20-21, 2009 EQC meeting
 Page 42 of 51

Exhibit 9 Page 11

Exhibit 14 Page 11

Item 000004

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 03, 2002	1	RT	Total	Absent--NB212019-3		N/A		Dec 11, 2002
Dec 03, 2002	1	RT	Total	Absent--NB212019-2		N/A		Dec 11, 2002
Dec 03, 2002	1	RT	Total	Absent--NB212019-1		N/A		Dec 11, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-4		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-3		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-2		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-1		N/A		Nov 18, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-4		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-3		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-2		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-1		N/A		Oct 21, 2002
Sep 17, 2002	1	RT	Total	Absent--NB209333		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-3		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-2		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-1		N/A		Oct 02, 2002
Aug 06, 2002	1	RT	Total	Absent--NB208117-4		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-3		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-2		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-1		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-4		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-3		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-2		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-1		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-4		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-3		N/A		

Attachment A
August 20-21, 2009 EQC meeting
Page 43 of 51

Exhibit 9 Page 12

Exhibit 113 Page 12

Remed 000049

Sample Date	# Samples	Coliform Type	Type	Results-ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 04, 2002	1	RT	Total	Absent--NB206070-2		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-1		N/A		
May 07, 2002	1	RT	Total	Absent--NB205109-4		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-3		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-2		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-1		N/A		May 30, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-4		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-3		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-2		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-1		N/A		May 06, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-4		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-3		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-2		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-1		N/A		Apr 04, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-4		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-3		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-2		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-1		N/A		Mar 14, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-4		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-3		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-2		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-1		N/A		Jan 22, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-4		N/A		Jan 04, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-3		N/A		Jan 04, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-2		N/A		Jan 04, 2002

Attachment A
 August 20-21, 2009 EQC meeting
 Page 44 of 51

Exhibit 9 Page 13

Exhibit 14 Page 13

File: D:\000050

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	Cl Residual	Receive Date
Dec 11, 2001	1	RT	Total	Absent--NB112121-1		N/A		Jan 04, 2002
Nov 06, 2001	1	RT	Total	Absent--NB111048-4		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-3		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-2		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-1		N/A		Nov 19, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-4		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-3		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-2		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-1		N/A		Oct 31, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-4		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-3		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-2		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-1		N/A		Sep 28, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-4		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-3		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-2		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-1		N/A		Aug 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-4		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-3		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-2		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-1		N/A		Jul 27, 2001

[Click here to show results prior to](#)

[Recent Batch Numbers](#)

Attachment A
August 20-21, 2009 EQC meeting
Page 45 of 51

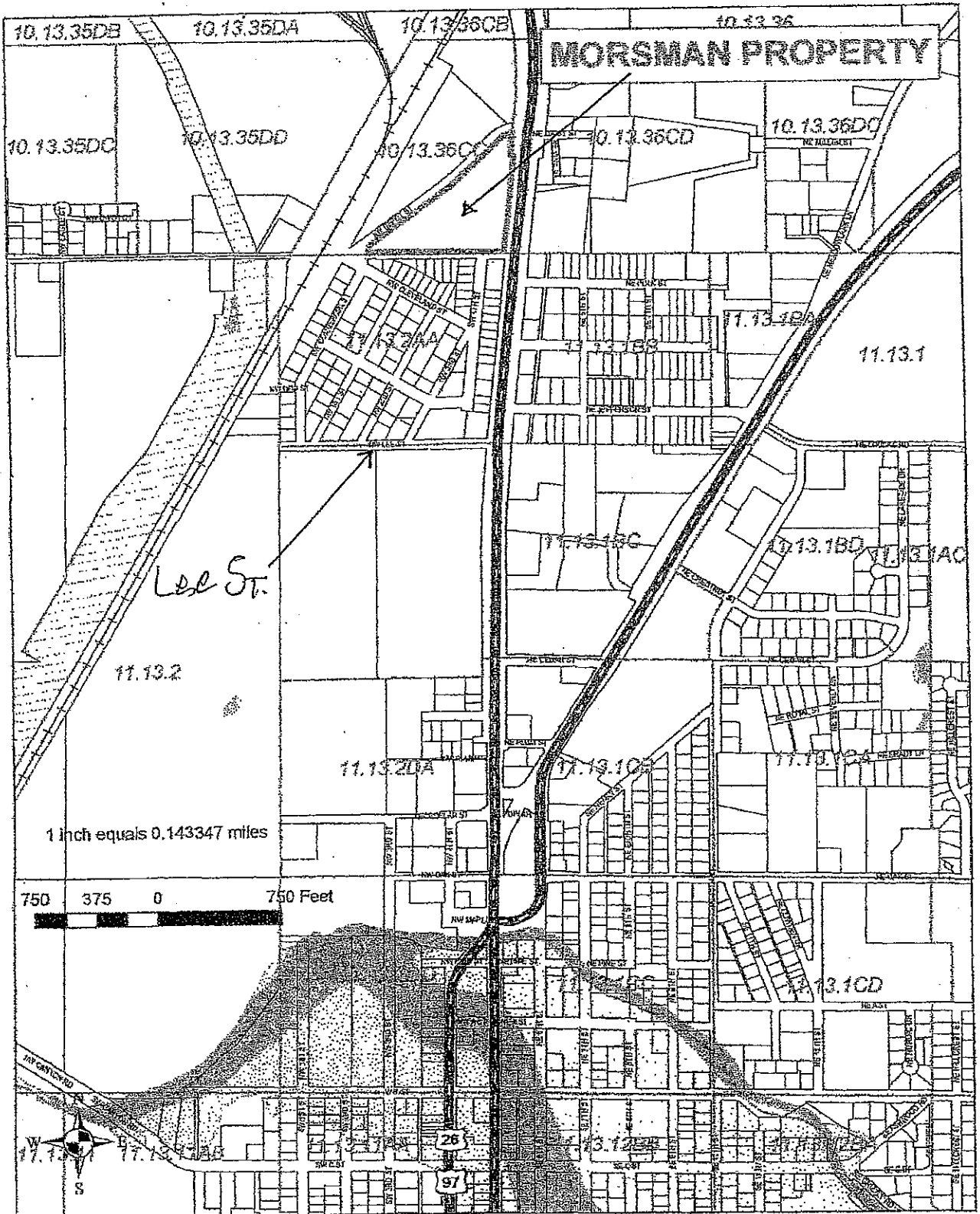
Exhibit 9 Page 14

Exhibit R13 Page 14

Item D 00051

Exhibit 9 Page 15

Exhibit R43 Page 15



shaded area at the
bottom
Creek.

Section A, July 8, 2009



Morsmans/DEQ: battle lingers

(Continued from page 1)
judge granted that and agreed that the director acted within the rules and had not abused his authority," said Eric Nigg, of Bend, water quality manager for the Eastern Oregon region of the DEQ.

The DEQ found that "Unduly burdensome does not relate to the citizens who would have to pay for it," said Sheehan. "They're interpreting it by saying the words 'unduly burdensome' have only to do with whether or not the cost to build the sewer line here would be much higher than say if you had to build it in Bend. So if it cost you a billion dollars to build it here and a billion in Bend, it's not unduly burdensome to you."

On the main issue, Nigg said, "The Environmental Quality Commission upheld the judge's determination that our enforcement and penalty against Tops Trailer Park was appropriate."

Sheehan argued that the Morsmans had an implicit

waiver.

"The DEQ has never enforced this against the park before," he said. "It has been there since 1954, and there has certainly been city sewer within two miles."

In his decision, administrative law Judge James Han wrote that even though city sewer had been within 11,000 feet of the Morsmans' park, for years, "The DEQ had not required the Morsmans to connect to the sewage line because it was unclear whether the city's existing sewer lines had the capacity to receive the Morsmans' sewage and the DEQ was waiting for the city's new and larger sewage line to move closer to the Morsmans' park."

Appeals for the two decisions are on different timelines.

"Regarding the motion for summary determination, they have 30 days from June 18 to appeal that decision to the Environmental Quality Commission," said Leah Koss, environ-

mental law specialist for the DEQ. "Regarding the EQC hearing we just had, when their final order is issued, the Morsmans will have 60 days to appeal that to the Oregon Court of Appeals."

In the meantime, the city of Madras is looking into ways to extend the sewer line even closer. "The city has submitted an application for a loan to extend sewer up into that area," said Nigg, noting that it has been a long-term goal of the city.

Morsman, who pays out over \$6,000 per month on the \$700,000 mortgage on the park, is concerned about the 56 or 57 families living in the park, along with their 98 children, who would have to find new homes if the park was forced to close.

"Everything worked fine for 50 years," said Morsman, who believes that sabotage to his dry well system caused several sewer spills in 2006. "After we got it cleaned out, it's worked perfectly ever since."

Morsman, DEQ dispute continues; new rulings appealed

By Holly M. Gill
News Editor

Despite two recent decisions against them, the owners of Tops Trailer Park have not given up their fight against an order to hook up to city sewer.

Financially, connecting is not an option, according to Phil Morsman, who has owned the 55-unit mobile home park, located on Depot Road in Madras, with his wife Brigitte since 1994.

"There's no way. I talked to my bank and they said being it's low-income housing, not a lot of turnover, they would not even consider loaning that kind of money to me," he said. "I don't have the cash flow that could repay the loan."

On June 18, two separate decisions against the Morsmans were issued, one from an administrative law judge on a request for a waiver of the requirement that Tops build the sewer line, on the basis that it would be "unreasonably burdensome," and the other, from the Environmental Quality Commission on an appeal of the DEQ's order that the Morsmans connect to city sewer and pay a fine of \$194,342, or close the park.

The Morsmans' attorney, Michael Sheehan, of Scappoose, said they plan to appeal both rulings.

In the waiver request, administrative law Judge Dove Gutman considered whether or not the director of the DEQ, Dick Pedersen, had correctly considered the Morsmans' request.

"It went before an administrative law judge, and a hearing was set, and the DEQ asked for a summary opinion, and the

See Morsman on page 5

Exhibit 11 Page 2

FAX

DATE: 7/17/2009

ATTN: Mike Sheehan

FAX NUMBER: 503-543-7172

FROM: CITY OF MADRAS, SARA PUDDY

FAX NUMBER: 541-475-1038

PHONE NUMBER: 541-475-2622

NOTE: Attached are the documents you requested.

Gus Burrell

From: WATTERS Rick [WATTERS.Rick@deq.state.or.us]
Sent: Monday, July 13, 2009 10:09 AM
To: gburrell@ci.madras.or.us
Cc: OLSON Shanna
Subject: FW: SRF Loans with ARRA Funds

Exhibit 11 Page 3

This e-mail came back to me Friday "undeliverable"

Rick Watters, Loan Specialist

DEQ CWSRF Loan Program

From: WATTERS Rick

Sent: Friday, July 10, 2009 3:26 PM

To: 'AdairVillage'; 'Amity'; 'ArchCape'; 'Ashland'; 'Athena'; 'Aumsville'; 'Bandon'; 'BayCity'; 'Beaverton'; 'Beaverton2'; 'Bend'; 'Brookings'; 'Cannon Beach'; 'CannonBeach'; 'Canyonville'; 'Carlton'; 'CentralPoint'; 'Charleston'; 'ClackamasCounty2'; 'ClackamasSWCD'; 'CleanWater'; 'CleanWater2'; 'Coburg'; 'Columbia City'; 'CoosBay'; 'Coquille'; 'Coquille2'; 'Cove'; 'Crescent'; 'Culver'; 'Dallas'; 'Deschutes County'; 'DevilsLake'; 'Drain'; 'Dundee'; 'DunesCity'; 'Eugene'; 'Florence'; 'GardinerSD'; 'Garibaldi'; 'Glendale'; 'Gold Beach'; 'GoldHill'; 'GreenSD'; 'Gresham'; 'Haines'; 'Halsey'; 'HarborSD'; 'Hermiston'; 'Hillsboro'; 'HoodRiver'; 'Irrigon'; 'Jefferson'; 'Klamath Co. Schools'; 'KlamathCoSchools'; 'KlamathFalls'; 'LakeOswego'; 'LaPine'; 'Lebanon'; 'Lowell'; 'Madras'; 'Malin'; 'McMinnville'; 'Molalla'; 'Monmouth'; 'Monroe'; 'Moro'; 'Myrtle Point'; 'MyrtleCreek'; 'Netarts-Oceanside'; 'Newberg'; 'Newport'; 'Nyssa'; 'Oak Lodge S.D.'; 'Oakridge'; 'Ontario'; 'OregonCity'; 'Portland'; 'PortOrford'; 'PowderValley'; 'Powers'; 'PrairieCity'; 'Redmond'; 'Reedsport'; 'Richland'; 'Riddle'; 'RockawayBeach'; 'RogueRiver'; 'Roseburg'; 'RUSA'; 'RVSS'; 'Salem'; 'Salem_Cliff'; 'Seaside'; 'Seneca'; 'Shoreline S.D.'; 'Silverton'; 'Sisters'; 'Springfield'; 'Stayton'; 'StPaul'; 'Sublimity'; 'SundownSD'; 'Sutherlin'; 'SweetHome'; 'Toledo'; 'Tri-CityWater'; 'TwinRocksSD'; 'Vernonia'; 'Waldport'; 'WarmSpringsTribe'; 'Wedderburn S.D.'; 'WindmasterSD'; 'Winston'; 'Woodburn'; 'Yachats'; 'Yamhill'; 'Yoncalla'

Cc: 'SIMPSON Manette'; ISAZA Jaime; HABERMAN Bob; OLSON Shanna; JOHNDOHL Judy; MCALLISTER Larry; CARLSON Kimberly A; MULLANE Neil

Subject: SRF Loans with ARRA Funds

Thank you for submitting an application to the Clean Water State Revolving Fund (CWSRF) loan program that was considered for funding under the American Recovery and Reinvestment Act of 2009. As you may know, there was a great amount of interest for these funds and DEQ received a large increase in applications for water quality improvement projects. Based on the amount of the capitalization grant received under the Act, DEQ is only able to fund 13 applications out of 160.

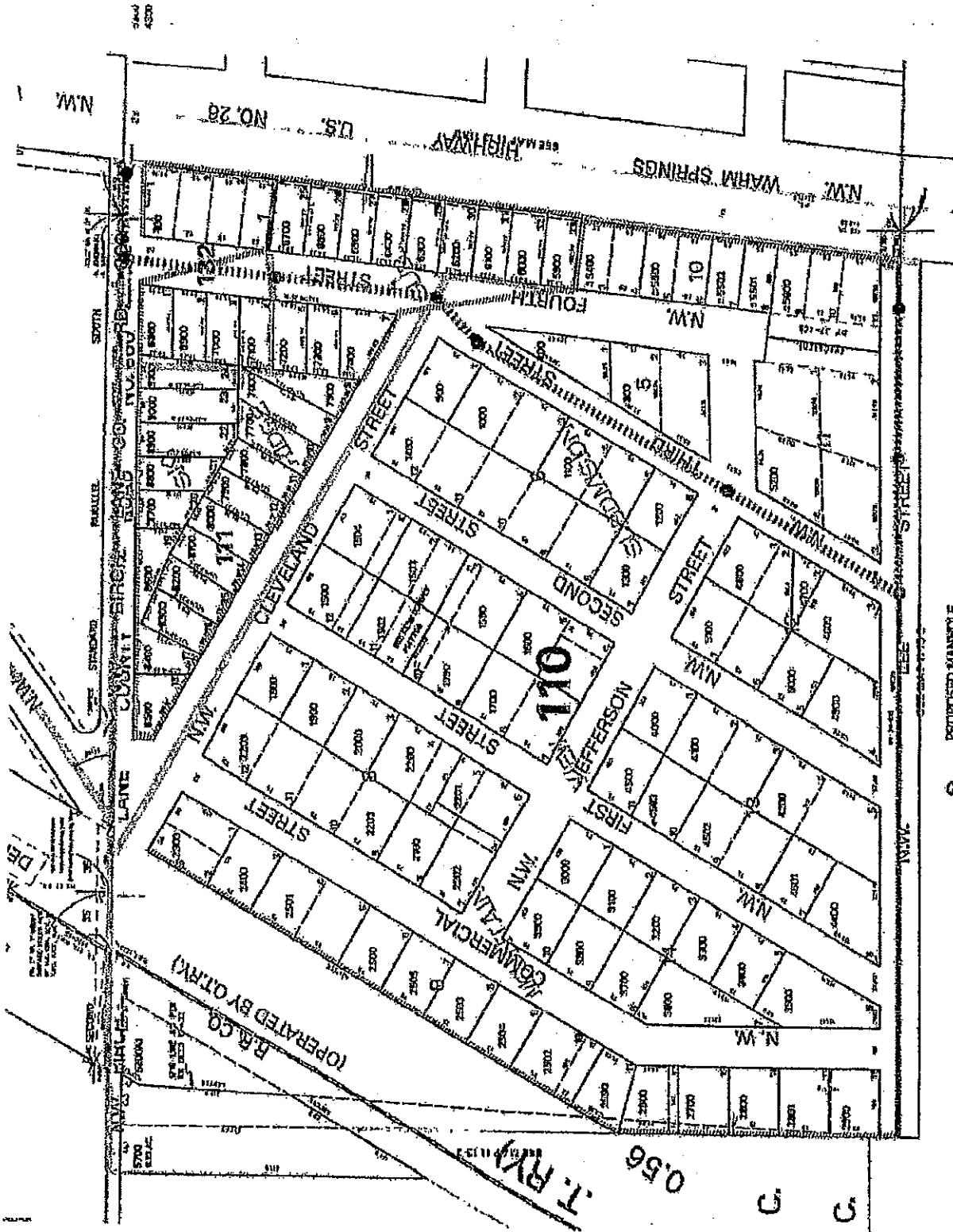
* All eligible applications were evaluated and included in DEQ's CWSRF Intended Use Plan (IUP). We regret that you did not receive funding at this time and we will use the IUP in considering future allocation of funds when they become available. Applicants would still have to satisfy all CWSRF requirements in order to receive a loan.

If you have any questions about application requirements, please contact the CWSRF project officer for your region which can be found on our web site at: <http://www.deq.state.or.us/wq/loans/loans.htm>

Additional information regarding the IUP and projects funded under the Act is available on the web site. I would also be happy to answer any questions you may have.

Thanks < Rick

11 13



PROPOSED MANHOLE
PROPOSED TO SEWER LINE (158010)

Scale: 1/2" = 100'



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 1-800-735-2900

July 16, 2009

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

Re: Phillip and Brigitte Morsman Appeal to the Environmental Quality Commission
Department's Answering Brief
DEQ Case No. WQ/D-ER-07-186 (waiver case)

Chair Blosser and Members of the Commission:

Please find enclosed the Department's Answering Brief for the Phillip and Brigitte Morsman 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: Mike Sheehan

Enclosure

RECEIVED

JUL 17 2009

Oregon DEQ
Office of the Director



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1		
2		
3		
4	IN THE MATTER OF:	) DEPARTMENT'S ANSWERING
5	PHILLIP AND BRIGITTE MORSMAN,	) BRIEF
6	Doing business as Tops Trailer Park,)
7		) OAH Case No. 900963
8		) DEQ Case No. WQ/D-ER-07-186
9	Respondents.)

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 the contested case hearing on the Department Director's denial of the Morsmans' waiver request, filed by Phillip and Brigitte Morsman, Respondents.

I. INTRODUCTION

On December 19, 2007, the Department issued to Respondents Notice of Violation, Department Order, and Civil Penalty Assessment No. WQ/D-ER-07-186 which alleged four violations and included a Department Order. The Department alleged that Respondents failed to decommission the waste disposal well at property they own located at 23 NW Depot Road in Madras, Oregon and failed to connect to the City of Madras available sewer system, in violation of their Water Pollution Control Facilities General Permit No. 4400, ORS 468B.025(2) and OAR 340-044-0015(3)(b). The Department Order required Respondents to decommission the waste disposal well at their property and to connect the facility to the City of Madras sewer system.

On August 8, 2008, Respondents petitioned the Director for a waiver from the requirement that they decommission their waste disposal well and connect to municipal sewer. On October 6, 2008, the Director responded, denying the request for a waiver. On October 16, 2008, Respondents again petitioned the Director for a reconsideration of the waiver request. On October 21, 2008, the Director responded, again denying the request for a waiver notwithstanding Respondents' additional

1 information and argument. On October 28, 2008, Respondents requested a contested case hearing
2 on the matter. On June 18, 2009, Administrative Law Judge Dove Gutman issued a Proposed
3 Order concluding that the Director had not abused his discretion in denying the Morsmans' request
4 for a waiver.

5 II. ADMINISTRATIVE LAW JUDGE'S CONCLUSION

6 The ALJ concluded that the Director of the Department did not abuse his discretion when he
7 denied Respondents' request for a waiver. (Proposed Order, page 8)

8 III. COMMISSION ACTION REQUESTED

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

11 IV. DESIGNATION OF RECORD

12 The Department agrees that all exhibits admitted by Judge Gutman and the pleadings and
13 written submissions of the parties. However, the Morsmans' attempt to submit *new and additional*
14 information and exhibits into the record is prohibited by rule. OAR 340-011-0575(5) states:

15
16 Additional Evidence: A request to present additional evidence must be submitted
17 by motion and must be accompanied by a statement showing good cause for the
18 failure to present the evidence to the administrative law judge. The motion must
19 accompany the brief filed under subsection (5)(a) or (b) of this rule. If the
20 commission grants the motion or decides on its own motion that additional
evidence is necessary, the matter will be remanded to an administrative law judge
for further proceedings.

21 Respondents did not file any motion for additional evidence, nor did they file a statement showing
22 good cause for the failure to present the evidence to the administrative law judge. Therefore, the
23 evidence may not be submitted. Additionally, as a policy matter, it would be inappropriate to use
24 information and exhibits not available to the Director in making his decision on the waiver request
25 in determining whether or not the Director abused his discretion in making his determination. The
26 Department requests that the Commission not consider the additional exhibits improperly submitted
27 by Respondents.

1 V. APPLICABLE LAW AND POLICY¹

2 It is the policy of the Environmental Quality Commission that the injection of wastes to
3 the subsurface shall be limited and controlled in a manner that protects existing groundwater
4 quality for current or potential beneficial uses including use as an underground source of
5 drinking water.² The injection of untreated or inadequately treated sewage or wastes to waste
6 disposal wells and particularly to waste disposal wells in the lava terrain of Central Oregon
7 constitutes a threat of serious, detrimental and irreversible pollution of valuable groundwater
8 resources and a threat to public health. The policy of the Environmental Quality Commission is
9 to restrict, regulate or prohibit the further construction and use of waste disposal wells in Oregon
10 and to phase out completely the use of waste disposal wells as a means of disposing of untreated
11 or inadequately treated sewage or wastes as rapidly as possible in an orderly and planned
12 manner.³

13 Oregon law prohibits the new construction, maintenance, or use of waste disposal wells
14 where any other means of sewage disposal is available.⁴ OAR 340-044-0015(3) provides:

15
16 No person shall cause or allow Class V injection systems injecting
17 sanitary waste, sewage, or industrial or commercial waste into
18 sewage drain holes or sewage drill holes, except as allowed under
19 OAR 340-044-0015(3)(b), 340-044-0017, or 340-044-0018(3).
20 (b) After January 1, 1983, use of existing sewage drain holes or
21 sewage drill holes is prohibited unless municipal sanitary sewer
22 service is not available to the property. Except for single family
23 residences, use of an existing sewage drain hole must be authorized
24 by a permit.
25 (B) Within 90 days after sanitary sewer service is available to a
26 property, the owner of that property shall make connection to the
27 sewer and shall abandon and decommission the sewage drain hole
in accordance with OAR 340-044-0040. On a case-by-case basis,
the Director may waive the requirement to connect to sewer if the

24 ¹ The Morsmans make reference to several laws and statutes in their Exceptions and Brief, pages 15-18. These
25 provisions are irrelevant to the laws and regulations at issue in this case.

26 ² OAR 340-044-0010(1)

27 ³ OAR 340-044-0010(2)

⁴ OAR 340-044-0012(2) Permits shall not be issued for construction, maintenance or use of an underground
injection system where any other treatment or disposal method that affords better protection of public health or
water resources is reasonably available or possible.

1 Director determines that connection to the sewer is impracticable or
2 unreasonably burdensome.

3
4 VI. DISCUSSION

5 A. Department's position

6 The Morsmans do not take exception to any of Judge Gutman's Findings of Fact in her
7 Proposed Order. They take exception only to Judge Gutman's conclusion that the Director did
8 not abuse his discretion in denying the Morsmans' request for a waiver.⁵

9 The regulation in question is one that confers discretionary authority on the Director.
10 Use of the word "may" in statute or regulation indicates that the relevant entity has discretion
11 whether to take the action described therein. *In Defense of Animals*, 199 OR App 160, 190, 112
12 P.3d 336(2005); *State v. Larson*, 325 Or. 15, 26, 933 P.2d 958 (1997).

13 Thus, the Director cannot be compelled to grant a waiver pursuant to OAR 340-044-
14 0015(3)(b)(B). Nevertheless, a proper standard for review in a contested case of the Director's
15 exercise of his discretion is whether he abused that discretion (the standard of review used by
16 Oregon appellate courts in reviewing discretionary actions).

17 Under a review for abuse of discretion, the Director's decision must be found to have
18 been within the range of lawful options available to him under the relevant law. *See State v.*
19 *Rogers*, 330 Or. 282, 310-12, 4 P.3d 1261 (2000) (discretion means the authority of the decision-
20 making body to choose among legally correct outcomes); *McCarthy v. Oregon Freeze-Dry, Inc.*,
21 327 Or. 185, 188, 957 P.2d 1200 (1998) (court must exercise its discretion according to relevant
22 statutory criteria). And the decision must be found not to have been clearly against reason and
23 evidence. *In the Matter of K.J.B. v S.P.V.* 218 Or.App 97, 178 P.3d 307.

24 ⁵ While the Morsmans only take exception to Judge Gutman's conclusion of law, their Exceptions and Brief states
25 that they are only seeking a "temporary waiver" and that they will connect when it is financially feasible for them to
26 do so. This discussion is irrelevant to whether or not the Director abused his discretion. Furthermore, this
27 "promise" is completely unenforceable and may not actually come to fruition as the Morsmans may never have the
financial capability to connect even if the line is at their front door. Nor is there any guarantee that the sewer line
will be brought closer to their property. Finally, a temporary waiver does not alleviate the environmental concerns
posed by this well.

1 Where, as here, the regulation provides general narrative criteria to inform a discretionary
2 decision (a waiver may be granted where connection to the sewer is “impracticable” or
3 “unreasonably burdensome”), the question on review for abuse of discretion is whether the
4 Director properly interpreted the criteria in the rule (whether he reasonably construed the terms
5 “impracticable” and “unreasonably burdensome”), and, if so, whether his resulting decision was
6 within the range of his lawful options – i.e. to approve the waiver or deny the waiver – in light of
7 the policy underlying the law.

8 The Director was not aware of any prior agency interpretation or application of the
9 waiver in OAR 340-044-0015(3)(b)(B). Therefore, in considering the Morsman’s waiver
10 request, he applied common dictionary definitions of the terms “impracticable” and
11 “unreasonably burdensome.” Where operative terms of a rule are not otherwise defined,
12 reference to the dictionary is proper. See e.g. *McCollum v. KMART CORPORATION*, 2009 WL
13 1140164 (OR.App.) The Director concluded that connection to the sewer, though costly
14 (perhaps even prohibitively so) to the Morsmans, was neither impracticable nor unreasonably
15 burdensome as those terms are commonly defined. On review, deference is due to the Director’s
16 reasonable interpretation of the rule. OAR 340-011-0545(3); *Don't Waste Oregon Com. v.*
17 *Energy Facility Siting*, 320 Or. 132, 142, 881 P.2d 119 (1994)

18 **B. ALJ Gutman’s Opinion**

19 In her Opinion, Judge Gutman agreed with the Department’s position that the Director
20 did not abuse his discretion. She found that the Director, as clearly stated in OAR 340-044-
21 0015, has discretionary authority to grant or deny a waiver. She found that the Director’s
22 definitions of “impracticable” and of “unreasonably burdensome” were reasonable and plausible
23 and not inconsistent with the rule itself as Respondent contends. (Proposed Order, page 9-10)

24 Judge Gutman found that Respondents argument that the Director’s definitions of the
25 terms were idiosyncratic was not persuasive. She stated that the Director’s use of common
26 dictionary definitions of the terms “impracticable” and “unreasonably burdensome” is supported
27 by case law and that not limiting the term “unreasonably burdensome” to ability to pay was

1 supported by the text of the rule. She reasoned that “the text of the rule is not limited to financial
2 considerations only” and that “such an interpretation would restrict the waiver request to an
3 ability to pay, which is not the criteria the Commission established when it promulgated the
4 rule.” (Proposed Order, page 10) Finally, Judge Gutman found that Respondents’ argument that
5 the Director’s decision was arbitrary and capricious is without merit. She found that the Director
6 appropriately construed the terms, reviewed all the evidence presented, weighed competing
7 interests and made a decision legally available under the law. (Proposed Order, page 10)

8 C. Respondents’ suggested findings

9 Respondents propose new findings that they ask the Commission to substitute for Judge
10 Gutman’s conclusion that the Director did not abuse his discretion in denying the waiver.

11 Respondents ask that the Commission make the following findings:

- 12 1. The preponderance of the evidence clearly establishes that it would be
13 impracticable for the Morsmans, given their resources at hand to construct the
14 sewer line from the Park to Lee Street;
- 15 2. The preponderance of the evidence clearly shows that it would be “unduly
16 burdensome” for the Morsmans, given their resources at hand to construct the
17 sewer line from the Park to Lee Street;
- 18 3. The preponderance of the evidence, including the terms of the proposed order,
19 clearly shows that requiring the Morsmans to build the sewer line to Lee
20 Street at this point given their limited resources would result in the closure of
21 the park and the loss of housing to approximately 55 families as well as the
22 Morsmans; and
- 23 4. A temporary waiver is appropriate to allow the Morsmans to continue to use
24 the currently permitted drywell up to the point that the City advances sewer
25 reasonably close to the sewage collection point in the park.

26 Beginning with proposals one and two, the issue in this case to be determined by the
27 Commission is very narrow – it is simply whether or not the Director abused his discretion.
Because the rule confers discretion to the Director to grant a waiver, even if the Commission
finds that connection is unreasonably burdensome or impracticable, this does not lead to the
conclusion that the Director abused his discretion in denying the waiver. The waiver provision
allows consideration of those terms in granting a waiver, but it in no way states that the Director
must grant a waiver, even if he or the Commission finds those conditions to be present in the

1 particular case.

2 Next, the third proposal asking the Commission to find that the park would close, that 55
3 families would lose their homes and that the Morsmans would lose their home is also outside the
4 scope of this case. Again, the issue before the Commission is whether or not the Director abused
5 his discretion and any conclusion should be regarding that issue. Further, even if this were an
6 appropriate conclusion to consider, there is zero evidence in the record that the Morsmans would
7 close the park, lose their home, or that 55 families would lose their homes. This is pure
8 speculation in the briefings and nothing more.

9 Finally, the fourth proposal for a temporary waiver has been discussed in this Answering
10 Brief and the Department opposes this proposal. (See page 4, FN 5) Again, this proposal is
11 outside of the issue of whether the Director abused his discretion.

12 VII. CONCLUSIONS

13 The only matter on appeal in this case before the Commission is whether or not the Director
14 abused his discretion in denying the Respondents' waiver request. The regulation at issue confers
15 discretionary authority on the Director and therefore, the Director cannot be compelled to grant a
16 waiver pursuant to OAR 340-044-0015(3)(b)(B). The Director's decision was within the range of
17 lawful options available to him under the relevant law. The Director reasonably interpreted the
18 criteria for considering a waiver request and properly applied those criteria. The Director also
19 properly considered the applicable law and policy of the Environmental Quality Commission in
20 balancing the competing interests at hand. The Director did not abuse his discretion in carefully
21 considering the evidence presented to him and concluding that a waiver was not appropriate in this
22 case.

23 The Department requests that the Administrative Law Judge issue a proposed order that
24 finds that the Director did not abuse his discretion in denying Respondents waiver request.

25
26 Date

7/16/2009

27 Leah Koss

Environmental Law Specialist

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

5	IN THE MATTER OF:	)	DEQ Case No. WQ/D-ER-07-186
6)	
7	PHILLIP and BRIGITTE MORSMAN,	)	OAH Case No.: 900963
8	doing business as TOPS TRAILER)	
9	PARK,	)	PETITIONER’S BRIEF AND
10	Petitioners.	)	EXCEPTIONS TO THE
		)	RULINGS AND PROPOSED
		)	ORDER OF HEARING
		)	OFFICER
)	

11
12 Petitioner, Phillip and Brigitte Morsman, dba Tops Trailer Park (“Morsmans”),
13 hereby excepts from the rulings of the administrative law judge and to the Proposed Order
14 as detailed below and for the reasons stated below.

15 **I. EXCEPTIONS**

16 The Morsmans except to:

- 17 1. the ALJ’s Conclusion of Law and Opinion finding that the Director’s denial of the
- 18 request was not an abuse of discretion and that the facts relied on by the Director
- 19 were supported by substantial evidence.

20 **II. DESIGNATION OF RECORD**

21 The Morsmans designate all exhibits admitted by Judge Gutman and the pleadings
22 and written submissions of the parties. The Morsmans also request that the EQC take
23 administrative notice of the more recent attempts of the Morsmans to obtain a bank loan

1 to finance the sewer connection (Exhibits 5, and 6), as well as current cost estimates from
2 contractors to build the sewer connection in response to EQC questions and suggestions
3 at the hearing before the EQC on the main case (Exhibits 7 and 8), along with Exhibit 9
4 (R-43 from the main case) state well testing data; and Exhibit 10, a map of the area (R-3
5 from the main case).

6 III. BACKGROUND

7 The Morsmans are an older retired couple who own, live in, and manage on a full
8 time basis the TOPs manufactured home park ("park") on the west side of Hwy 26 north
9 of Madras. The park has approximately 55 resident families (including about 100
10 children) and older single people almost all of whom are low income, almost all of whom
11 own their own homes in the park, and almost all of which homes are older singlewides.

12 The park has been in existence since 1954. Sewage disposal is through a parkwide
13 collection system which leads to a large underground septic tank. Solids are regularly
14 pumped from this tank and hauled away by a licensed septic company. The remaining
15 liquids go from the tank to a drywell which has been in operation over the same time
16 period. The system is currently permitted by DEQ and has been for a number of years.

17 In 2006 there was problem where the drywell was sabotaged, its lid broken off
18 and materials including garbage bags and sweatshirt shoved down the well shaft. As soon
19 as drywell was cleaned of these materials the well was back into full operation and the
20 system has been working fine ever since. The person who did the damage has never been
21 identified, but a suspect has since been removed from the park and there have been no

1 problems since.

2 The park itself is outside the city limits of the City of Madras. However, a line of
3 property owned by a single developer bordering on the south side of the park is annexed
4 to the City and the area immediately to the north and west of the park leading up to the
5 Madras airport has also been annexed. See Exhibit 1. The area to the south of the park
6 beyond the developer's line of houses down to Lee Street has not been annexed to the
7 city, is more or less fully developed with many homes, but is not served by city sewer
8 which now stops south of them at Lee Street.

9 Recently there was a proposal to fund the extension of the city sewer up from the
10 south through the neighborhood and to the park with state Community Development
11 Block Grant funds on application from the City. The application was not successful
12 because it could not be shown that the majority of the parcels that would benefit from the
13 sewer were low income. This was because, even though the residents of the park do
14 certainly qualify as low income, many of the residents of the area to the south do not and,
15 moreover, vacant lots in the area to the south were counted by the state against eligibility.

16 The Morsmans themselves are not well off. Income tax records were presented to
17 the Director for 2006 and 2007 showing that net income for the Morsmans was \$14,757
18 in 2006 and \$19,362 in 2007. The Morsmans' adjusted gross income from their 2008
19 Form 1040 was \$25,370 (Exhibit 4). Since the crash of the economy, especially in central
20 Oregon, where the most recent state figures (OED July 2009 report with May 2009 data)
21 show Jefferson County unemployment at 16.4% seasonally adjusted, cash flow from the

1 park is down further. Documentation was also presented to the Director showing that the
2 Jefferson County Assessor's real market value of the park for the year ending June 30,
3 2008 was \$606,233¹ with the net mortgage on the park at roughly \$788,000 as of October
4 2007 and approximately \$770,000 as of May 2009. Thus the mortgage on the park
5 substantially exceeds the real market value of the property even with the real market
6 value determined before the onset of the current recession.

7 The DEQ has demanded that the Morsmans either pay to build a sewer line from
8 the park approximately 2,000 feet south to the nearest city sewer connection at Lee Street
9 at the south end of the neighborhood south of the park or close the park. (A-12, Notice of
10 Violation, p.4 Department Order, ¶¶ 2 and 3a (2145)).

1 The Morsmans have spent a good deal of time and effort to obtain cost estimates
12 for building such a sewer line through the hard rock underlying this area. The Morsmans
13 provided cost information from three entities: Knife River at \$400,000 not counting
14 engineering (R30)(April 22, 2008); Tye Engineering estimating around \$50,000 +/- 20%
15 for engineering plans alone (R31)(April 22, 2008); and Hooker Creek Asphalt and Paving
16 with a \$392,000 estimate for construction. (R32)(April 23, 2008). These estimates do not
17 include city fees including SDCs and others estimated at approximately \$30,000. In
18 response to questions from the EQC chair at the hearing on the main case suggesting that
19 the estimates under current conditions might be substantially lower, the Morsmans asked

¹ The Jefferson County reports that figures for FY2009 will not be ready until October 2009.

1 for current cost estimates. The response from Knife River is for \$414,500 (Exhibit 7)(July
2 7, 2009). The response from Tye Engineering is for \$48,970 +/- 20% for engineering
3 alone. (Exhibit 8)(June 29, 2009). As of the time of filing this brief a response from
4 Hooker Creek Asphalt and Paving had not yet been received. Based on the two new cost
5 estimates the costs are not significantly different than those in the earlier bids.

6 The Morsmans also went to their bank (Bank of the West) to see if the bank would
7 be willing to provide a loan to finance the construction of the sewer. At the time they
8 made the request the Morsmans had not gotten back the information from the construction
9 companies showing the likely cost in the \$400,000 range and so asked the bank if a loan
10 in the \$300,000 range would be possible. The bank refused the loan on the grounds that
11 the Morsmans' ratio of income to existing debt was insufficient to cover a new loan of
12 \$300,000, much less one in the \$400,000 range (R36 in the main case). The 2008 letters
13 from the construction companies and the 2008 letter from the bank were provided to the
14 Director.

15 Since then the Morsmans have again asked banks in the area for loans for the
16 construction of the sewer connection. Exhibit 5 is the response from the Bank of the
17 West manager on July 7, 2009 denying the Morsmans' loan request in the amount of
18 \$460,000. Exhibit 6 is a letter from Community First Bank dated July 8, 2009 denying
19 the Morsmans' request for a \$460,000 loan. Both letters indicate that the reason for the
20 denial of the loans was an insufficient level of income to cover the repayment of the
21 loans.

1
2 **IV. THE WAIVER REQUEST**

3 It is also important to emphasize that the Morsmans' request for waiver has never
4 been that a waiver would mean that they would never have to connect to the Madras
5 sewer. The request has been, and is now, that while they are financially unable to connect
6 to the sewer by building a major underground sewer line from the mid-eastside line of the
7 park to the current placement of the City's sewer at Lee Street (at the distance of
8 approximately 2,000 feet through hard rock), **they are willing to connect** when the City
9 in due course extends the sewer from within the City limits at Lee Street (See Exhibit 10)
10 up to the City territory on the southern boundary of the park and then to the city limits
11 just to the north of the park (the City's airport area). At that point the costs should be
12 within the Morsmans' financial capability and the Morsmans will connect and participate
13 in the usual repayment mechanism used by cities.

14 In this connection it should be noted that the City substantially financed the
15 extension of its sewer line from below the two parcels of property just south of Lee Street
16 to the new hotel built in the area of those two parcels. Having done this the City then
17 provided for the extension of the sewer line northward all the way to Lee Street.

18 The area to the north of Lee street but below the park (the "Neighborhood") is
19 divided into two parts. The first is the "flag pole" and the "flag" of lots along the right
20 side (parallel to the highway) from approximately Lee Street to the north end and to the
21 left of which there is a triangle containing many more small lots, all of this is the

1 "O'Meara Property." All these lots have recently been annexed into the City. The
2 remaining area south and west of the O'Meara Property over to the railroad and down to
3 Lee Street is **not** in the City even though it is surrounded on all four sides by the City.
4 Note also that the area to the north and west of the park is also within the City limits. The
5 City has brought the sewer line up to Lee Street. The City, as noted above, attempted to
6 obtain CDBG funds to extend the sewer further northward but was thwarted in this
7 because so much of the property between Lee Street and the park is not low income.
8 However, the construction of the sewer from the hotel north to Lee Street is an indication
9 that the City has some intention to facilitate the development of the "Neighborhood" area
10 by the provision of sewer, especially to the O'Meara area on the northside recently
11 annexed to the City. Extension of the sewer to the northeast corner of the O'Meara
12 section of the "Neighborhood" would place the sewer line adjacent to the Morsman
13 property and sharply reduce the cost of connection.

14 Thus the issue is not whether the Morsmans are to be given a permanent waiver,
15 but whether a waiver limited to the period it will take the City to extend the sewer line to
16 the vicinity of the park's sewage connection point about halfway up the right side of the
17 park would be consistent with the DEQ's policy of phasing out drywells moderated by the
18 waiver provisions when, as here, it is financially impossible to extend the line 2,000 feet.
19 In sum, the Morsmans are willing to connect when the sewer line is brought within their
20 financial capability; the alternative is the destruction of the park and the loss of the homes
21 of the Morsmans and the residents.

V. DEQ RULES AND PRACTICE ON
DRYWELLS AND WAIVER

A. "Availability" of Municipal Sewer

1 OAR 340-044-0010(2) provides in part:

2 The injection of untreated or inadequately treated sewage or
3 wastes to waste disposal wells and particularly to waste
4 disposal wells in the lava terrain of Central Oregon constitutes
5 a threat of serious, detrimental and irreversible pollution of
6 valuable groundwater resources and a threat to public health.
7 The policy of the Environmental Quality Commission is to
8 restrict, regulate or prohibit the further construction and use of
9 waste disposal wells in Oregon and to phase out completely
10 the use of waste disposal wells as a means of disposing of
11 untreated or inadequately treated sewage or wastes as rapidly
12 as possible in an ordered and planned manner.
13
14
15
16
17

18 EQC rule OAR 340-044-0015(3)(b)(A) then goes on to say:

19 (A) A sanitary sewer shall be **deemed available** to a property when,

20 (i) A sanitary sewer is extended to within 300 feet from the
21 property boundary for a single family dwelling or other
22 establishment with a maximum design flow not more than 450
23 gallons per day, or 200 feet multiplied by the number of
24 dwellings or dwelling equivalents for other establishments or
25 greater flows.
26
27
28

29 (Emphasis added).

30 Thus under a strict reading of the rule just stated sewer service would have been
31 'deemed available' to the Morsmans' park when the city's sewer was 11,000 feet from
32 the park (55 dwellings times 200 feet), that is to say at a distance of more than two miles.
33
34
35

1 **B. DEQ's Implicit Waiver**

2 Over the years the DEQ has never strictly enforced the "200 feet X the number of
3 units" part of the rule without looking at the facts and the waiver portion of the rule, it
4 being clear that to look only at the "200 feet X units" would cross the line to
5 "impracticable or unreasonably burdensome" and create a lot of hardship and
6 homelessness in situations like this.

7 Implicitly, the DEQ has always taken the position that the Morsmans would have
8 to connect to the sewer only when the cost to do so was financially "practicable." We
9 know this because the DEQ knew when the permit was issued in the mid-1990s that a
10 drywell was involved, they knew as well that downtown Madras had a functioning sewer
11 system, and they knew that the City's sewer system was a little over one mile from the
12 park. Given these circumstances the DEQ administration granted an implicit waiver
13 pursuant to OAR 340-044-0015(3)(b)(B) by looking at the facts and then issuing and
14 renewing the permit at appropriate intervals. In fact DEQ's Eastern Region
15 Administrator Joni Hammond has made it clear that her interpretation of the rule in this
16 case is that "reasonably available" means 1/4 of a mile. See R-54², p.1. See also
17 Hammond, R-54, p.2, ¶2:

18 At the meeting "reasonably available" was defined as a
19 location approximately 1/4 mile from the TOPS Trailer Park."

² The R-54 and other "R" references are to Exhibit numbers for admitted exhibits in the main case.

1 and again, Hammond, R-54, p.3:

2 Based on the number of dwelling units at the park, these rules
3 would require TOPS to extend a sewer line up to 2.5 miles,
4 while we have defined a reasonable distance in this case as
5 approximately 1/4 mile.
6

7 Thus, in practice, an implicit waiver in the form of permit renewal was granted
8 when the cost to connect would plainly be disproportionately costly. The DEQ implicitly
9 granted a waiver to the Morsmans when the city sewer was one block south of Lee Street
10 (well within the 11,000 feet), yet refused it when the sewer moved north one block from
11 Cedar Street to Lee Street.

12 C. EQC's Formal Waiver Rule

13 In OAR 340-044-0015(3)(b)(B) the EQC explicitly provides for a waiver of the
14 connection requirement:

15 (B) Within 90 days after the sanitary sewer service is available to a
16 property, the owner of that property shall make connection to the sewer and
17 shall abandon and decommission the sewage drain hole in accordance with
18 OAR 340-044-0040. **On a case-by-case basis, the Director may waive**
19 **the requirement to connect to sewer if the Director determines that**
20 **connection to the sewer is impracticable or unreasonably burdensome.**
21 (Emphasis added).

22 In sum, DEQ's past treatment of the Morsman property is inconsistent with its
23 current claim that the Morsmans' drywell poses such a threat to the groundwater
24 resources of the area that the park must be shut down if the Morsmans do not have the
25 roughly \$500,000 in financial resources required to built the roughly 2000 feet of sewer
26 line to Lee Street.

1 **VI. THE DIRECTOR'S INTERPRETATION OF THE RULE**

2 **A. Overview and Context**

3 This case appears to be the first time that there has been a request for a waiver.
4 (DEQ Memorandum p.4, line 19 and DEQ Response to Discovery, Exhibit 2 (3089)).

5 In his response to this request the Director tries to justify his refusal in five ways:

- 6 1. Through his adoption of dictionary definitions of the waiver rule's
7 "impracticable" and "unduly burdensome" language in a way that clearly
8 defeats the purpose of the waiver provision.
- 9 2. Through the claim that the waiver in this case would pose a substantial
10 threat public health and to the groundwater resources of the area.
- 11 3. Through his claim that the Morsmans have not shown that the park would
12 close if the waiver were denied;
- 13 4. Through his claim that the Morsmans haven't shown that they don't have
14 substantial other financial resources other than the park; and,
- 15 5. That the depth of the drywell violates a clearly set forth policy in OAR 340-
16 044 prohibiting drywells deeper than 100 feet.

17 **B. Criteria Used by the Director to Determine Whether an**
18 **Otherwise Required Connection to a Sewer is "Impracticable"**

19 When asked in discovery what criteria the Director uses to determine whether the
20 proposed connection to a sewer would be "impracticable," the DEQ responded that the
21 criteria used to determine "impracticability" is whether the proposed connection is

1 “impracticable.” Morsman Discovery Request and DEQ response of May 7, 2009.

2 Exhibit 2.

3 **C. Criteria Used by the Director to Determine Whether an**
4 **Otherwise Required Connection to a Sewer is “Unduly Burdensome”**
5

6 When asked what criteria the Director uses to determine whether the proposed
7 connection to a sewer would be “unreasonably burdensome,” the DEQ responded
8 similarly that the criteria used to determine “unreasonably burdensome” is whether the
9 proposed connection is “unreasonably burdensome.” Morsman Discovery Request and
10 DEQ response of May 7, 2009 to Discovery. Exhibit 2.

11 **D. Director’s Interpretation of “Impracticable”**

12 The Director has determined what “impracticable” means in this context by
13 consulting his dictionary and arriving at the following determination. The meaning of
14 impracticable is “incapable of being performed or accomplished by the means employed
15 or at command.” Director’s letter of October 6, 2008, p.2 ¶3. **The Director then**
16 **concludes in this case that since “the work is capable of being accomplished and that**
17 **there are contractors in the area that will in fact perform this work,” connecting to**
18 **the sewer is not ‘impracticable.’”** Director’s Waiver Denial letter of October 6, 2008,
19 p.2 ¶4. (Emphasis added).

20 The Director in his second denial letter goes on to say that “the fact that two cost
21 estimates of the work to connect have been provided, shows that connection to the City
22 sewer is clearly not impracticable, as the work is capable of being performed.” Director’s

1 letter of October 21, 2008, p.2 ¶1.

2 Thus, under the Director's interpretation, in any situation where the applicant for a
3 waiver is able to find contractors willing to provide estimates of the cost of connection,
4 the applicant will automatically be denied the waiver on impracticability grounds,
5 because if a person is able to obtain a cost estimate from a contractor, no matter what the
6 estimate may be—e.g. \$20 billion, the connection requirement is, therefore, for that very
7 reason not "impracticable."

8 This interpretation is clearly unreasonable, arbitrary and capricious.

9 **E. Director's Interpretation of "Unreasonably Burdensome"**

10 In determining whether the cost to the Morsmans of building the sewer connection
11 is "unreasonably burdensome" the Director again looks to his dictionary where he selects
12 the following abstract definitions, out of context with the word that "unreasonably"
13 modifies, i.e. "burdensome":

- 14 (a) Unreasonable: "not governed by or acting according to reason; not
15 conformable to reason; absurd, exceeding the bounds of reason or
16 moderation."
17
18 (b) Reasonable: "being in accordance with reason; not extreme or excessive;
19 moderate, fair, possessing sound judgment." Director's letter of October 6,
20 2008, p.2 ¶4.
21

22 The Director then embellishes on his definition of "Unreasonable" as to the cost
23 of connection so as to define it as **a comparison of whether the cost to build the**
24 **connection in the current case and place is significantly more than would be the case**
25 **in some other place and circumstance.** In rejecting the request for a waiver he finds,

1 “In addition, there is no evidence that the cost of connection is an
2 unreasonable one. There are no cost comparisons of the same work being
3 performed somewhere else where the cost was much less, for example,
4 which would suggest that these estimates are extreme or excessive.”
5 Director’s letter of October 6, 2008, p.3 ¶2.
6

7 Thus “unreasonably burdensome” in the mind of the Director would focus **not** on
8 the financial capability of the applicant to pay for the connection, nor on “burdensome”
9 which clearly relates to the impact on the person asking for the waiver, but would instead
10 be just a comparison of the cost to connect here, relative to the cost to do a similar project
11 in some other place. Is not such an interpretation sufficiently out of sync with what
12 would appear to be the plain meaning of the waiver rule language to constitute an
13 arbitrary and capricious interpretation? And since the DEQ publishes no guidance on this
14 interpretation of the rule, and since even when asked what its criteria are for determining
15 whether a proposed connection would be “unreasonably burdensome” it simply responds
16 that **it is** “unreasonably burdensome” **when it is** “unreasonably burdensome.” (See IV.C
17 above), is this interpretation and the denial of the waiver based upon it not unreasonable
18 and an abuse of discretion?

19 Moreover, consider the definition of “burdensome” and “burden” from Webster’s
20 New Collegiate Dictionary.

21 Burdensome: Grievous to be borne; oppressive; onerous.

22 Burden: Thing borne, load; hence care, responsibility; something borne with
23 difficulty; a heavy obligation or expense.

24 Do these definitions of “burdensome” and “burden” not make more sense in the

1 context of the rule? Does not “unreasonably burdensome” clearly relate to the size of the
2 burden giving rise to the request for the waiver, relative to the person who has to carry it?
3 Are not the Director’s choice of definitions clearly unreasonable and arbitrary and
4 capricious?

5 Having adopted these definitions, the Director concludes that given these
6 definitions he is “unconvinced that your compliance with the law would be unreasonably
7 burdensome to you” and rejects the waiver request. Director’s letter of October 6, 2008,
8 p.3 ¶2.

9 **F. The Context of Related DEQ Rules and Statutes**

10 It may provide context as to the proper interpretation of the waiver language at
11 issue here to review how DEQ rules and related statutes treat people in parallel situations,
12 for example:

13 1. The extreme view taken here is inconsistent with other parts of OAR 340-
14 044-0015 (dealing with injection systems), for example, OAR 340-044-0015(2):

15 No person shall cause or allow the following types of Class V
16 injection systems injecting:

17
18 (b) Fluids from industrial or commercial processes that use
19 hazardous substances or toxic materials including petroleum
20 products. The Director may grant exceptions to this prohibition
21 and issue a permit if:

22
23 **(A) No other reasonable alternative to injection is**
24 **available; (1153)**

1 Thus even when dealing with injection of materials involving toxic and hazardous
2 materials into the ground, the threshold showing is simply that “no other **reasonable**
3 **alternative . . .** is available.”

4 2. ORS 183.335 and ORS 183.540 dealing with the impact of agency rules on
5 small businesses.

6 ORS 183.335(2)(b)(E) requires agencies adopting rules shall provide a fiscal
7 impact statement which shall include an analysis of the cost of compliance’s effect on
8 small businesses. Moreover, ORS 183.540 (“**Reduction of economic impact on small**
9 **business**”) requires:

10 If the statement of cost of compliance effect on small business . . . shows
11 that a rule has a significant adverse effect upon small business, to the extent
12 consistent with the public health and safety purpose of the rule, the agency
13 shall reduce the economic impact of the rule on small business by: . . .

14
15 (5) **Otherwise establishing less intrusive or less costly alternatives**
16 **applicable to small businesses.**

17 3. ORS 454, dealing with sewage treatment and disposal systems, also
18 manifests special concern for minimizing where possible the impacts of rules on
19 vulnerable populations.

20 Consider ORS 454.365 Safety Net Program to Provide Financial Relief:

21 (1) Any municipality providing sewage collection, treatment and
22 disposal services within an affected area shall approve and **adopt a safety**
23 **net program** designed to provide financial relief to eligible property
24 owners who would experience extreme financial hardship if required to pay
25 costs associated with the construction of and connection to treatment

1 works.³ (Emphasis added).

2 4. The variance provisions of ORS 454.657 reflect similar concerns:

3 ORS 454.657 Variance from, subsurface sewage disposal rules or
4 standards; conditions; hearing.

5
6 (1) The commission shall grant such specific variance only where after
7 hearing it finds that strict compliance with the rule or standard is
8 inappropriate for cause or because special physical conditions render strict
9 compliance **unreasonable, burdensome, or impractical.**

10
11 **(2) The commission shall adopt rules for granting variances from rules**
12 **or standards pertaining to subsurface sewage disposal systems in cases**
13 **of extreme and unusual hardships.** The rules shall provide for
14 consideration of the following factors in reviewing applications for
15 variances due to hardship:

16
17 (a) Advanced age or bad health of applicant;

18
19 (b) Relative insignificance of the environmental impact of
20 granting the variance;

21
22 (c) The need of applicants to care for aged, incapacitated or
23 disabled relatives.

24
25 **(3) The department shall strive to aid and accommodate the needs**
26 **of applicants for variances due to hardship.**

27
28 **(4) Variances granted due to hardship may contain conditions such**
29 **as permits for the life of the applicant, limiting the number of**
30 **permanent residents using a subsurface disposal system and the**
31 **use of experimental systems for specified periods of time.**

32

³ Note that ORS 454.505(5) defines "sewage treatment works" as including sewer lines.

1 5. Conclusion

2 These examples of related rules and legislation show that terms like
3 “impracticable” and “unreasonably burdensome” should have their normal commonsense
4 or dictionary meanings (see above) as they relate to the burden placed on those impacted
5 by the rules, which is clearly what the waiver provision is meant to provide for.
6 “Impracticable” should relate to the availability of resources in the hands of those called
7 upon to make substantial outlays to comply with the rules. “Unreasonably burdensome”
8 should have the same connotation.

9 The interpretation adopted by the Director, that “impracticable” relates just to
10 whether there are any contractors available who would do the project for some amount of
11 money no matter how large, misses the point. Similarly to interpret “unduly
12 burdensome” as relating to whether the cost of the project in Jefferson County is not
13 much different from the cost of a similar project if done in Crook County, again, clearly
14 misses the point, and secondly doesn’t make sense. It implies that if a required project is
15 inexpensive and well within the financial resources of the person bearing the burden, but
16 costs twice as much on site in Jefferson county then it would in Crook County then the
17 applicant would qualify for a waiver, whereas if the costs were the same in each county,
18 but the cost was wildly exorbitant then the applicant wouldn’t qualify regardless of his or
19 her ability to pay.

1 **G. Who is the Drafter of the Director's Decision Letters Providing the First**
2 **Interpretation of the Rule and Refusing the Waiver Request**
3

4 In response to the Morsmans' discovery request for a copy of the Director's file on
5 the waiver request, a much blacked out set of documents was provided. (Exhibit 3).
6 These documents included some email exchanges. There it appears that the DEQ
7 delegated the task of framing for the first time the interpretation of the language of the
8 waiver rule, and then using that interpretation of the rule to deny the Morsmans' request,
9 to the DEQ's attorney on both the main DEQ case against the Morsmans now before the
10 EQC and the Morsmans' waiver case. These cases are adversary proceedings, and to
11 assign these tasks to the very capable and ardent attorney representing the DEQ on these
12 cases would appear to compromise what should have been a neutral and objective
13 interpretation of the EQC's rule, and the Morsmans' right to have a neutral and objective
14 decision from the Director. Can we imagine the court of appeals allowing an attorney for
15 one side to draft its decision in a case between the two parties, especially without telling
16 the other side?

17 **H. Closure of the Park**

18 The Director further attempts to justify his decision by claiming that:

19 "There is also no evidence that the requirement to connect to municipal
20 sewer would necessarily lead to closing of the Park, nor would the sale of
21 the Park necessitate changing the current use of the Park for the current
22 tenants." Director's Decision letter of October 21, 2008, p.2, ¶2.

23 The requirement in the Order recently confirmed by the EQC requires that:

24 3. Within sixty (60) days of the date of this Notice and Order, either:

- 1 (a) Connect the Facility to the City of Madras sewerage system; or
2 (b) Disconnect all plumbing fixtures from the waste disposal system and
3 ensure that all plumbing fixtures are connected for discharge only to an
4 approved and property permitted disposal system that is not failing . . .⁴

5 Thus it is clear that if the Morsmans don't have the \$450,000 to build the
6 connection to the Lee Street sewer at approximately 2000 feet, the alternative is to
7 disconnect all 55 homes from the existing septic tank drywell system and connect to some
8 other permitted system. But there is no other permitted system available. A septic
9 drainfield won't work—as everyone agrees—due to the basalt layer under this whole area of
10 the county. There is no other sewer option. This means that in the absence of a waiver
11 the only choice is to disconnect all 55 units from sewage disposal; without sewage
12 disposal, the residents can't occupy the units. Residents of the park must therefore find
13 somewhere else to live. Hence closing of the park.

14 The DEQ and the Director have also suggested that in the event that it is
15 financially impossible for the Morsmans to build the 2000 foot sewer line, the Morsmans
16 could simply sell the park to someone else who would then pay to connect to the Lee
17 Street sewer, and at the same time maintain the park in its current use with the current
18 tenants.

19 There is no evidence at all to support this claim. Consider, the park currently has a
20 mortgage of over \$770,000. The real market value of the park, according to the County

⁴ DEQ, Notice of Violation, Department Order and Civil Penalty Assessment,
December 19, 2007, p.4.

1 Assessor, is \$606,233 (and this is *with* the \$100,000 gain in value between 2006 and 2007
2 but before the collapse of the economy). We also know from the Morsmans' income tax
3 returns that their net incomes including park revenues net of park costs year by year are
4 Year 2006 = \$14,757, Year 2007 = \$19,362, and Year 2008 = \$25,370. The income from
5 the park is low because the residents are almost all low income. Thus the likelihood that
6 in this economy a buyer will materialize with \$770,000 to clear the mortgage and then
7 cover the approximately \$450,000 cost of connecting to the sewer, while at the same time
8 deciding to maintain the use of the property as a low income singlewide manufactured
9 home park with net revenues per annum in the \$15,000 to \$26,000 range, is clearly
10 unreasonable.

1 **I. Morsmans' Assets**

12 In trying to justify his decision on the waiver the Director also suggests again that
13 not enough data was filed to justify a waiver:

14 "While these documents (income tax statements and Assessors sheets) provide
15 some insight into your finances, they do not present a complete picture of your
16 assets and total financial portfolio."⁵

17 Again, not quite so. A review of the Morsmans Form 1040s for the years 2007 and
18 2008 shows that they have no significant income from investments, other than an
19 occasional sale of an abandoned singlewide, and a small amount of interest received in
20 2007 on two or three residents buying on time abandoned singlewides cleaned up by the
21 Morsmans. The Morsmans have no other significant investment assets, and there is no

⁵ Director's decision letter of October 21, 2008, p.2 (3136a).

1 evidence in the record whatsoever that would suggest that they did.

2 **J. The Existing Permitted Drywell as a “Great**
3 **Threat to Human Health and the Environment”**

4 The Director also attempts to justify his refusal of the waiver by characterizing the
5 existing, permitted, grandfathered drywell as a “great threat to human health and the
6 environment.”⁶ The problem with this claim is that it lacks an evidentiary basis, and is
7 inconsistent with virtually all the hard evidence in the case.

8 While in general the policy of the EQC that drywells should be phased out is set
9 forth in OAR 340-044-0010:

10 (2) The injection of untreated or inadequately treated sewage or wastes to
11 waste disposal wells and particularly to waste disposal wells in the lava
12 terrain of Central Oregon constitutes a threat of serious, detrimental and
13 irreversible pollution of valuable groundwater resources and a threat to
14 public health. The policy of the EQC is to restrict, regulate or prohibit the
15 further construction and use of waste disposal wells in Oregon and to phase
16 out completely the use of waste disposal wells as a means of disposing of
17 untreated or inadequately treated sewage or wastes as rapidly as possible in
18 an orderly and planned manner.

19
20 This policy is implemented by OAR 340-044-0015(3)(b)(A)(i) setting up the “200 feet X
21 the number of dwellings” rule, but balanced by the policy setting up the waiver provision
22 in (3)(b)(B),

23 On a case-by-case basis, the Director may waive the requirement to connect
24 to sewer if the Director determines that connection to the sewer is
25 impracticable or unreasonably burdensome.

26
27 Thus it would seem as a legal matter that the policy in OAR 340-044-0010(2),

⁶ Director’s decision letter of October 21, 2008, p.2 (3136a).

1 “waste disposal wells in the lava terrain of Central Oregon constitute a
2 threat of serious, detrimental and irreversible pollution of valuable
3 groundwater resources and a threat to public health.”
4

5 cannot be used to overrule the waiver policy in OAR 340-044-0015(3)(b)(B). The two
6 provisions have to be read and implemented together. Yet the Director refuses the waiver
7 based on the policy statement that drywells are a threat to public health, thus effectively
8 repealing the waiver provision and the policy balance it is supposed to implement.

9 Moreover, there is no **evidence** in this case that the Morsmans’ drywell poses a
10 real, current threat to the drinking water supplies in the area. The clear preponderance of
11 the evidence in this case shows that the Morsmans’ drywell is not endangering
12 neighboring wells now, and there is nothing to show that what has worked since 1954,
13 and during all the years that the Park has been within 11,000 feet of a City sewer, could
14 not safely continue to be allowed for the limited time period between now and when the
15 City provides sewer to the “Neighborhood” and the Park.

16 There has been no evidence of any problem from 1954 when the system was
17 constructed up to the time permits were required. In 2006 the nearest City water well
18 was approximately one third of a mile from the Park on the other side of Highway 26 (see
19 DEQ main case Exhibit A-10).. Research on this well in the DHS Drinking Water
20 Program records shows that there is no record of any sewage-related pollution of this
21 well from the beginning of the available data in 2001 onward. (Exhibit 9).

22 The City’s next nearest well is well #3, which is over a mile away from the park.
23 (See DEQ main case Exhibit A-11). Here also DEQ has made no claim that there was

1 any impact on this well from the drywell at TOPs. Moreover, it should be noted that the
2 City of Madras gets all or almost all its water supply from Deshutes Valley Water from a
3 source almost 20 miles from TOPs. In response to this evidence, however, the Director
4 responds:

5 **The fact that past tests of the well water show no contamination is not**
6 **relevant in considering the future threat that exists because of waste**
7 **disposal wells.** The EQC had future risks to water in mind in promulgating
8 the rules, and the Department is charged with preventing the realization of
9 those risks.⁷ (Emphasis added).

10 Here again the Director attempts to suggest that the policy statement without more
11 trumps the waiver provision; essentially saying that drywells are to be phased out and
12 that the waiver provision shouldn't interfere with that process; and evidence of no actual,
13 immediate threat is "not relevant" when considering whether to grant a waiver. Thus, in
14 essence, the Director is attempting to overrule the waiver provision, and the policy
15 behind it.

16 At this point the Director tries to reinforce his position by claiming that the
17 Morsmans well is 326 feet deep and this violates a rule provision that only allows
18 drywells to be 100 feet deep, "OAR 344, Division 44 states that while all disposal wells
19 are to be phased out as soon as municipal sewer is available, those still existing should
20 not be deeper than 100 feet."⁸

⁷ Director's decision letter of October 21, 2008, p.1 (3136).

⁸ Director's decision letter of October 21, 2008, p.1 (3136).

1 The problem with this is that there appears to be no such provision in OAR 344-
2 044, and interestingly the Director in his letter decision doesn't provide a specific section
3 number. The only section that mentions "100 feet" is OAR 340-044-0017(2), but this is
4 a section which deals only with "repair" of drywells.

5 (2) A repair permit issued by the Director shall specify the method to be
6 used for sewage treatment, disposal and drain hole repair. **Deepening or**
7 **repair** of a sewage drain hole shall be approved only if the Director
8 determines that no other on-site or off-site option for sewage treatment and
9 disposal is feasible. **Deepening the sewage drain hole shall be limited to**
10 **a maximum depth of 100 feet, and the drain hole shall terminate at**
11 **least 100 feet above groundwater.** (Emphasis added).

12
13 In sum, the Director based his decision to refuse the waiver on:

- 14 1. A clearly arbitrary and unreasonable definition of "impracticable."
- 15 2. A clearly arbitrary and unreasonable definition of "unduly burdensome."
- 16 3. An approach that attempted to use the policy language in OAR 340-044-0010(2)
17 with respect to the health and pollution problems with drywells to effectively
18 repeal the waiver provisions of 340-044-0015(3)(b)(B) as being inconsistent with
19 the 0010(2) policy.
- 20 4. A claim by the Director that data showing no current or historic pollution or public
21 health threat of the Morsmans' drywell to Madras' groundwater resources was
22 "irrelevant."
- 23 5. A claim by the Director that the Morsmans' drywell violated the policy set forth in
24 "OAR 340-044" that drywells are not allowed to be deeper than 100 feet when
25 such a policy does not appear to exist.

1 6. A claim by the Director that a waiver wasn't appropriate because the Morsmans
2 hadn't shown that they did not have substantial investment resources in addition to
3 their ownership of the park, when the data presented shows no such resources.

4 7. A claim by the Director that the failure to issue a waiver in light of the inability of
5 the Morsmans to finance the sewer would not "necessarily" result in the closure of
6 the park since the Morsmans could sell the park and the new owner might elect to
7 maintain the park as low income housing with the current tenants, when the data
8 presented on the cash flow from the park, the mortgage, and the market value of
9 the park all provide substantial evidence that any such outcome is economically
10 unreasonable to assume, especially in light of the current economic situation.

11 **VII. LEGAL STANDARD**

12 The standards for review of agency actions set out in ORS 183.482(8) reflect a
13 legislative policy, embodied in the APA, that decisions by administrative agencies be
14 rational, principled, and fair, rather than ad hoc and arbitrary. *Gordon v. Board of Parole*,
15 343 Or. 618, 633 (Or. 2007).

16 **VIII. CONCLUSIONS**

17 For all these reasons the ALJ's holding that the Director did not abuse his
18 discretion should be overruled and the following findings substituted:

- 19 1. The preponderance of the evidence clearly establishes that it would be
20 impracticable for the Morsmans, given their resources at hand to construct the
21 sewer line from the Park to Lee Street;

- 1 2. The preponderance of the evidence clearly shows that it would be “unduly
2 burdensome” for the Morsmans, given their resources at hand, to construct the
3 sewer line from the Park to Lee Street;
- 4 3. The preponderance of the evidence, including the terms of the proposed order,
5 clearly shows that requiring the Morsmans to build the sewer line to Lee Street at
6 this point given their limited resources would result in the closure of the park and
7 the loss of housing to approximately 55 families as well as the Morsmans.
- 8 4. A temporary waiver is appropriate to allow the Morsmans to continue to use the
9 currently permitted drywell up to the point that the City advances the sewer
10 reasonably close to the sewage collection point in the park.

1 Dated this 9th day of July, 2009.

12 
13

Michael F. Sheehan, OSB #88126
Attorney for Respondents Phil and Brigitte
Morsman

14
15
16 3c:\Law\Morsmans\Brief & Except to EQC Waiver 9July09

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3)	
4	)	OAH Case No. 900963
5	)	NO. WQ/D-ER-07-186
6)	
7	)	DECLARATION OF
8	)	MICHAEL F. SHEEHAN
9)	
10)	

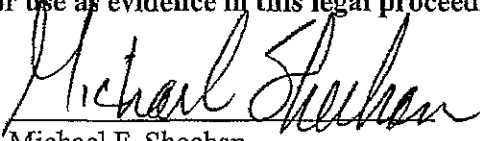
IN THE MATTER OF: PHILLIP and
BRIGITTE MORSMAN, doing
business as TOPS TRAILER PARK,
Respondents.

I, Michael F. Sheehan, state as follows:

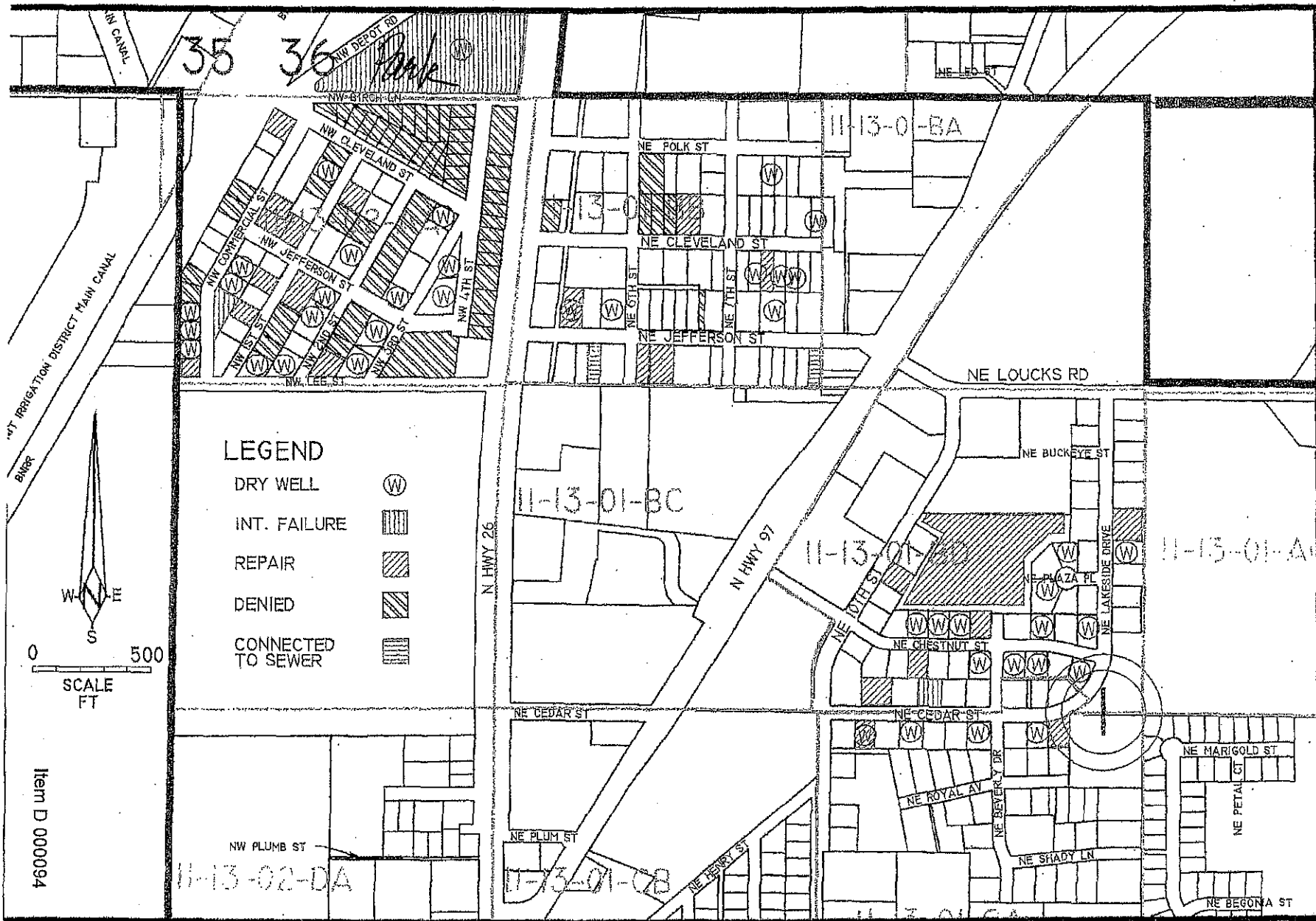
1. I am the attorney for the Morsmans in this case.
2. Exhibit 5 is a letter dated July 7, 2009 from Bank of the West refusing the Morsmans loan request.
3. Exhibit 6 is a letter dated July 8, 2009 from Community First Bank refusing the Morsmans loan request.
4. Exhibit 7 is a response dated July 7, 2009 to Morsmans request for a current estimate of the cost of constructing the sewer connection.
5. Exhibit 8 is a response dated June 29, 2009 from Tye Engineering providing a current estimate of the cost of the engineering for the construction of the connection sewer line.
6. Exhibit 9 (Exhibit 43 in the main case) is the state well testing data for the City of Madras well near the park from 2001 through April 2008 showing no coliform-related contamination of the well.
7. Exhibit 10 (Exhibit R-3 in the main case) is an area map showing the Park, Lee Street, and the City's airport area to the north.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in this legal proceeding and is subject to the penalty for perjury.

Date: July 9, 2009


Michael F. Sheehan
Attorney for the Morsmans

MICHAEL F. SHEEHAN
Attorney at Law
33126 Callahan Road
Scappoose, OR 97056
503-543-7172 Fax 503-543-1172 Item D 000093



NORTH MADRAS ON SITE SEPTIC STATUS

Exhibit 14
 Page 158
 Exhibit 14
 1

Item D 000094

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

COPY

May 4, 2009

****BY FAX AND MAIL****

Leah Koss
DEQ Compliance and Enforcement
811 SW Sixth Ave
Portland, OR 97204

RE: DEQ v. Morsman Waiver Case
Further Discovery Request

Leah Koss:

This is the Morsmans' further informal request for discovery. This request is for the following:

1. A copy of the criteria used by the Director to determine pursuant to a waiver request under OAR 340-044-0015(3)(b)(B) whether the connection to the sewer is "impracticable."
2. A copy of the criteria used by the Director to determine pursuant to a waiver request under OAR 340-044-0015(3)(b)(B) whether the connection to the sewer is "unreasonably burdensome."
3. Copies of past decisions by the Director on waiver requests pursuant to OAR 340-044-0015(3)(b)(B) rendered during the last five years.

Thank you for your help. Give me a call if you have questions.

Yours truly,



Michael F. Sheehan

cc: Morsmans



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 1-800-735-2900

May 7, 2009

Mike Sheehan
Attorney at Law
33126 S.W. Callahan Road
Scappoose, OR 97056

By email and mail

RE: Response to Discovery Requests

Mike,

The following are the Department's responses to your requests for discovery.

Discovery Request No. 1 (April 30, 2009)

The attached emails respond to this request. A few sentences have been redacted based on attorney-client privilege with the Department of Justice.

Discovery Request No. 2 (May 4, 2009)

1. The criteria used by the Director to grant or deny a waiver request are "impracticability" and "unreasonable burden" as noted in OAR 340-044-0015(3)(b)(B).
2. Same response as no. 1 above.
3. There are no past decisions by the Director on waiver requests pursuant to OAR 340-044-0015(3)(b)(B) rendered during the last five years.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

HAMMOND Joni

From: HAMMOND Joni
Sent: Wednesday, September 17, 2008 1:11 PM
To: PEDERSEN Dick
Cc: KOSS Leah; HICKMAN Jane; SNYDER Gwen
Subject: FW: Morsman Waiver Request
Attachments: Morsmanwaiverresponse2.doc

Importance: High

Dick-- attached is the letter in response to a waiver request from the Morsmans'. Please review and I will ask Gwen to format and prepare it to be sent out. I think Leah did an excellent job in the response.

[REDACTED]

Gwen--please format and prepare for Dick's signature---then hold up on sending until we get the ok from Leah.

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

From: KOSS Leah
Sent: Tuesday, September 16, 2008 5:39 PM
To: HAMMOND Joni
Cc: 'HICKMAN Jane'; KOSS Leah
Subject: Morsman Waiver Request
Importance: High

Joni,

Please see the attached draft response to the Morsmans' waiver request. Jane has reviewed this and I'd like you to review this and let me know your thoughts. Please also advise on next steps for moving this forward to Dick.

[REDACTED]

Please let me know if you have any questions or concerns.

Thanks! Leah

Leah Koss
DEQ - Office of Compliance and Enforcement
koss.leah@deq.state.or.us
phone: 503-229-6408
fax: 503-229-5100

Department of the Treasury — Internal Revenue Service
Form 1040 U.S. Individual Income Tax Return 2008 (99) IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2008, or other tax year beginning , 2008, ending , 20

Label (See instructions.)
 Your first name MI Last name
PHILLIP D. MORSMAN
 Your social security number
540-38-5402

Use the IRS label. Otherwise, please print or type.
 If a joint return, spouse's first name MI Last name
BRIGITTE R. MORSMAN
 Spouse's social security number
541-60-5717

Home address (number and street). If you have a P.O. box, see instructions. Apartment no.
23 NW DEPOT RD.
 You must enter your social security number(s) above.

City, town or post office. If you have a foreign address, see instructions. State ZIP code
MADRAS, OR 97741
 Checking a box below will not change your tax or refund.

Presidential Election Campaign
 Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) You Spouse

Filing Status
 1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above & full name here
 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
 5 Qualifying widow(er) with dependent child (see instructions)

Check only one box.

Exemptions
 6a Yourself. If someone can claim you as a dependent, do not check box 6a
 6b Spouse
 c Dependents:
 (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if qualifying child for child tax credit (see instrs)
 * lived with you
 * did not live with you due to divorce or separation (see instrs)
 Dependents on 6c not entered above.
 Add numbers on lines above **2**

If more than four dependents, see instructions.

d Total number of exemptions claimed **2**

Income
 7 Wages, salaries, tips, etc. Attach Form(s) W-2 **7**
 8a Taxable interest. Attach Schedule B if required **8a**
 b Tax-exempt interest. Do not include on line 8a **8b**
 9a Ordinary dividends. Attach Schedule B if required **9a**
 b Qualified dividends (see instrs) **9b**
 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) **10**
 11 Alimony received **11**
 12 Business income or (loss). Attach Schedule C or C-EZ **12**
 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here **13** **11,290.**
 14 Other gains or (losses). Attach Form 4797 **14**
 15a IRA distributions **15a** b Taxable amount (see instrs) **15b**
 16a Pensions and annuities **16a** **17,038.** b Taxable amount (see instrs) **16b** **1,488.**
 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E **17** **10,054.**
 18 Farm income or (loss). Attach Schedule F **18**
 19 Unemployment compensation **19**
 20a Social security benefits **20a** **18,574.** b Taxable amount (see instrs) **20b** **886.**
 21 Other income Gambling Winnings **21** **1,652.**
 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. **22** **25,370.**

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.
 If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Adjusted Gross Income
 23 Educator expenses (see instructions) **23**
 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ **24**
 25 Health savings account deduction. Attach Form 8889 **25**
 26 Moving expenses. Attach Form 3903 **26**
 27 One-half of self-employment tax. Attach Schedule SE **27**
 28 Self-employed SEP, SIMPLE, and qualified plans **28**
 29 Self-employed health insurance deduction (see instructions) **29**
 30 Penalty on early withdrawal of savings **30**
 31 a Alimony paid b Recipient's SSN **31 a**
 32 IRA deduction (see instructions) **32**
 33 Student loan interest deduction (see instructions) **33**
 34 Tuition and fees deduction. Attach Form 8917 **34**
 35 Domestic production activities deduction. Attach Form 8903 **35**
 36 Add lines 23 - 31a and 32 - 35 **36** **0.**
 37 Subtract line 36 from line 22. This is your adjusted gross income **37** **25,370.**

SCHEDULE E
 (Form 1040)

Department of the Treasury
 Internal Revenue Service (99)

Supplemental Income and Loss
 (From rental real estate, royalties, partnerships,
 S corporations, estates, trusts, REMICs, etc)
 Attach to Form 1040, 1040NR, or Form 1041.
 See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074
2008
 Attachment Sequence No. 13

Name(s) shown on return: **PHILLIP D. AND BRIGITTE R. MORSMAN**
 Your social security number: **540-38-5402**

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and address of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)	Yes	No
A	TOPS TRAILER PARK 23 NW DEPOT RD, MADRAS OR 97741				X
B					
C					

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	189,367.			189,367.
4	Royalties received				
Expenses:					
5	Advertising				
6	Auto and travel (see instructions)	7,000.			
7	Cleaning and maintenance	1,412.			
8	Commissions				
9	Insurance	4,996.			
10	Legal and other professional fees	18,893.			
11	Management fees				
12	Mortgage interest paid to banks, etc (see instructions)	51,015.			51,015.
13	Other interest	19,221.			
14	Repairs	1,570.			
15	Supplies				
16	Taxes	4,609.			
17	Utilities	38,409.			
18	Other (list) Statement 1	28,474.			
19	Add lines 5 through 18	175,599.			175,599.
20	Depreciation expense or depletion (see instructions)	3,714.			3,714.
21	Total expenses. Add lines 19 and 20	179,313.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198.	10,054.			
23	Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2.				
24	Income. Add positive amounts shown on line 22. Do not include any losses				10,054.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.				
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2.				10,054.

2008

Federal Statements

Page 1

PHILLIP D. AND BRIGITTE R. MORSMAN

540-38-5402

Statement 1
Schedule E, Line 18 - TOPS TRAILER PARK
Other Rental and Royalty Expenses

Amortization.....	\$	625.
Association Dues.....		30.
BANK CHARGES.....		180.
Gardening.....		350.
Licenses and Permits.....		1,169.
MOWER & EQUIPMENT FUEL.....		2,920.
Painting and Decorating.....		5,315.
Plumbing and Electrical.....		7,589.
POSTAGE.....		242.
SCH E PORTION TAX PREP.....		365.
SECURITY.....		556.
SEPTIC SYS PUMPING.....		4,000.
Telephone.....		4,133.
	Total \$	<u>28,474.</u>

Attachment C

August 20-21, 2009 EQC meeting

JUL/08/2009 07:49 PM BACK OF THE WEST

FAX No. 15414751907

P. 001/001

5

Exhibit 5 Page



July 7, 2009

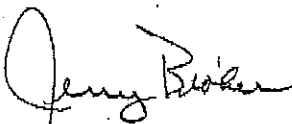
Phil Morsman
Brigette Morstman
Tops Trailer Park
23 N W Depot Rd
Madras, Oregon 97741

Dear Mr. & Mrs. Morsman,

Thank you for your recent request of \$450,000.00 to finance the construction of a new sewer line for Tops Trailer Park. Due to insufficient cash flow to service the loan requested as well as existing debt we are declining your request.

If you have any questions please feel free to call me at 475-3817.

Sincerely,



Jerry Broker
Manager
Madras branch

Exhibit 6 Page 1



P.O. Box 447
Prineville OR 97754
503-404-2047

Date: July 8, 2009

NOTICE OF ACTION TAKEN

Phillip D Morsman
23 NW Depot Rd.
Madras, OR 97741

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is:

Federal Reserve Consumer Help Center
P.O. Box 1200
Minneapolis, MN 55480

Regarding your Application for \$480,000 real estate improvements

We are unable to make a decision on your Application because it is missing the following information:

Please furnish this information to us on or within 10 days of the date of this notice at the address listed above or we will be unable to give your application further consideration and will consider this application withdrawn.

We are unable to approve your request.

Although you have withdrawn your request with us, please consider Community First Bank for your future financial needs.

We are unable to offer you credit on the terms that you requested, but can offer you credit on the following terms:

If this offer is acceptable to you, please notify us on or within 10 days of the date of this notice at the address listed above after which time this offer is withdrawn.

We are changing your credit with us as follows:

Our principal reasons for this decision are indicated below

- | | | |
|--|--|--|
| <input type="checkbox"/> Insufficient number of credit references provided | <input type="checkbox"/> Length of employment | <input type="checkbox"/> Delinquent past or present credit obligations with others |
| <input type="checkbox"/> Unacceptable type of credit references provided | <input type="checkbox"/> Length of residence | <input type="checkbox"/> Slow or past due in trade or loan payments |
| <input type="checkbox"/> Unable to verify credit references | <input type="checkbox"/> Temporary residence | <input type="checkbox"/> Garnishment, attachment, foreclosure, collection action or judgement. |
| <input checked="" type="checkbox"/> Income insufficient for amount of credit requested | <input type="checkbox"/> Unable to verify residence | <input type="checkbox"/> Bankruptcy |
| <input type="checkbox"/> Excessive obligations in relation to income | <input type="checkbox"/> No credit file | <input checked="" type="checkbox"/> Value or type of collateral not sufficient |
| <input type="checkbox"/> Unable to verify income | <input type="checkbox"/> Limited credit experience | <input type="checkbox"/> Lack of established earnings record |
| <input type="checkbox"/> Temporary or irregular employment | <input type="checkbox"/> Poor credit performance with us | |
| <input type="checkbox"/> Unable to verify employment | <input type="checkbox"/> Other, Specify: | |

If you have any questions regarding this notice, you should contact: Chris DuPont Telephone: 541-416-4456

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE:

- In evaluating your request for credit, we obtained credit information from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to obtain a disclosure of the nature of this information if you submit a written request to us no later than 60 days after you receive this notice.
- In evaluating your request for credit, we obtained in a consumer credit report from the consumer reporting agency listed below. However, the reporting agency did not make the decision and is unable to supply you with specific reasons for why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to obtain a free copy of this report if you submit a written request to the agency named below no later than 60 days after you receive this notice. Under the Fair Credit Reporting Act you also have the right to dispute with the consumer reporting agency the accuracy or completeness of any information in the report.

Name: Equifax Information Services, LLC Telephone: 800-685-1111

Address: P.O. Box 74241 Atlanta, GA 30374-0241

NOTICE OF RIGHT TO RECEIVE COPY OF APPRAISAL

You have a right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application. In your letter, give us the following information: Loan or application number, if known, date of application, name(s) of loan applicant(s), property address, and your current mailing address.

Revision Date: 10/2008

Item # 800762



To: Michael Sheehan Attorney at Law Fax: 503-543-7172
From: Chris DuPont Phone: 541-415-4456
CC: Phil Morsman Date: 7/08/09
Re: Loan Application Pages: 2

Urgent For review Please comment Please reply Please recycle

This fax is only intended for the person(s) to whom it is addressed and may contain confidential information. Unless stated to the contrary, any opinions or comments are personal to the writer and do not represent the official view of the company. If you have received this fax in error, please notify us immediately by phone and shred any pages received. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Exhibit 6 Page 2

Tops Mobile Home Park Sewer



Knife River - Central Oregon Division (CCB #62998)

P.O. Box 83
 Bend, OR 97709
 Contact: Doug Baker
 Phone: 541-388-0445
 Fax: 541-318-0437

Quote To: Phil Morsman

Contact:
Phone: 475-3976
Fax: 475-3155
E-Mail:

Job Name: Tops Mobile Home Park
Date of Plans: N/A
Revision Date:
Proposal Date: 7/7/09
Bid Number: 2009102

Revised to match quantities from 2008.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	10" 3034 SEWER MAIN 6'-10' DEPTH	1,000.00	LF	98.00	98,000.00
2	10" 3034 SEWER MAIN 10'-20' DEPTH	1,000.00	LF	213.00	213,000.00
3	MANHOLES, SURFACE RESTORATION, TESTING, ETC.	1.00	LS	103,500.00	103,500.00
GRAND TOTAL					\$414,500.00

NOTES:

This estimate is to be used for budget purposes only. An accurate estimate cannot be completed until final approved drawings prepared by an engineer are available for review.

Footage is based on information provided by the owner and a potential path for the sewer main that he described.

FROM : Tye Engineering & Surveying

FAX NO. : 5413851341

Jun. 29 2009 03:38PM P1

FAX TO: 475-3155

Exhibit 8 Page 1



TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341
email: tyeengr@bendcable.com webpage: tyeengineering.com

June 29, 2009

Phil Morsman
Tops Trailer Park
23 NW Depot Rd.
Madras, Oregon 97741

RE: Engineering Services Budgetary Price Estimate - Tops Trailer Park Sewer Line

Dear Mr. Morsman,

Tye Engineering & Surveying, Inc. is pleased to present the following updated budgetary price estimate for professional engineering and surveying services to design and oversee construction of a gravity sewer line from Tops Trailer Park, to the City of Madras' sewer main tie-in at the intersection of SW Lee Street and SW 4th Street.

From our phone conversation on April 21, 2008 and June 29, 2009, I understand the preliminary alignment of the proposed gravity sewer line to start at the existing Tops Trailer Park septic tank, travel south to the intersection of NW Birch Lane and NW 3rd Street, cross Birch and follow 3rd southeast to its intersection with SW Lee Street. The sewer line will follow Lee east to the existing City of Madras sewer main located at the intersection of SW 4th Street and Lee. The proposed sewer line alignment is approximately 2,000 feet long and appears to be within existing public right of ways allowing construction without the need for easements. Preliminary Construction cost estimates should be based on a nominal pipe diameter of 10 inches.

Please consider the following budgetary price estimate for engineering, drafting and surveying services for the project, as I understand it.

PHASE 1 - Preliminary Design and Final Design

1. Preliminary Work:

- | | |
|---|---------|
| a. Site Visit and Project Review with Owner | \$750 |
| b. Project Coordination with Agencies
(City of Madras & DRQ) | \$2,500 |

2. Develop Base Map:

- | | |
|----------------------------|---------|
| a. Topographic Survey | \$3,600 |
| b. Drafting - Map Creation | \$3,600 |

3. Preliminary Design:

Exhibit 8 Page 2

- a. Engineering Design \$5,000
- b. Drafting – Plan and Profile \$5,000
- c. Agency Design Review Coordination \$2,500
- 4. Final Design:
 - a. Engineering Design \$2,500
 - b. Drafting – Final Construction Plans \$5,000
 - c. Technical Specifications - Materials \$2,500
 - d. Agency Approval Coordination \$2,500
- 5. Phase 1 Total Estimated Budgetary Price: \$35,450

PHASE 2 – Construction Services

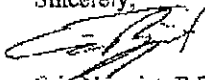
- 1. Construction Bid Coordination: \$2,000
- 2. Construction Survey Staking: \$4,320
- 3. Inspection Services During Construction: \$4,500
- 4. As-built Plans: \$1,200
- 5. Agency Acceptance Coordination: \$1,500
- 6. Phase 2 Total Estimated Budgetary Price: \$13,520

TOTAL ESTIMATED BUDGETARY PRICE: \$48,970 (± 20%)

This is an estimate only. The final price could be 20% higher, or lower, depending on the final scope of work.

Thank you for your consideration. If you have any questions or concerns regarding this budgetary price estimate, please contact me at 389-6959.

Sincerely,



Eric Nyquist, P.E., C.W.R.F.

TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341 • tyenegr@bendcable.com

Oregon Department of Human Services

Drinking Water Program

[Click here for Coliform fact sheet :: Spreadsheet](#)

PWS ID: 00500 --- MADRAS, CITY OF

Recent Coliform Test Results (SDWIS database)

Sample Date	# Samples	Type	Coliform Type	Results ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Apr 01, 2008	1	RT	Total	Absent--B8D012204		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012203		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012202		N/A		Apr 21, 2008
Apr 01, 2008	1	RT	Total	Absent--B8D012201		N/A		Apr 21, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041504		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041503		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041502		N/A		Mar 31, 2008
Mar 04, 2008	1	RT	Total	Absent--B8C041501		N/A		Mar 31, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121805		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121804		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121803		N/A		Feb 25, 2008
Feb 12, 2008	1	RT	Total	Absent--B8B121802		N/A		Feb 25, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090404		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090403		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090402		N/A		Jan 22, 2008
Jan 09, 2008	1	RT	Total	Absent--B8A090401		N/A		Jan 22, 2008
Dec 11, 2007	1	RT	Total	Absent--B7L110901-4		N/A		Dec 21, 2007
Dec 11, 2007	1	RT	Total	Absent--B7L110901-3		N/A		Dec 21, 2007
Dec 11, 2007	1	RT	Total	Absent--B7L110901-2		N/A		Dec 21, 2007

Item# 000107

Attachment C
August 20-21, 2009 EOC meeting
Page 42 of 57

Exhibit 9 Page 1

Exhibit R43 Page 1

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 11, 2007	1	RT	Total	Absent--B7L110901-1		N/A		Dec 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-4		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-3		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-2		N/A		Nov 21, 2007
Nov 06, 2007	1	RT	Total	Absent--B7K063101-1		N/A		Nov 21, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-4		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-3		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-2		N/A		Oct 22, 2007
Oct 02, 2007	1	RT	Total	Absent--B7J024601-1		N/A		Oct 22, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-4		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-3		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-2		N/A		Oct 04, 2007
Sep 11, 2007	1	RT	Total	Absent--B7I112201-1		N/A		Oct 04, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211804		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211803		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211802		N/A		Sep 07, 2007
Aug 21, 2007	1	RT	Total	Absent--B7H211801		N/A		Sep 07, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103504		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103503		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103502		N/A		Jul 27, 2007
Jul 10, 2007	1	RT	Total	Absent--B7G103501		N/A		Jul 27, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-4		N/A		Jun 25, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-3		N/A		Jun 25, 2007
Jun 05, 2007	1	RT	Total	Absent--B7F052401-2		N/A		Jun 25, 2007

Item D 000108

Attachment C
August 20-21, 2009 EQC meeting
Page 43 of 57

Exhibit 9 Page 2

Exhibit 10 Page 2

Sample Date	# Samples	Coliform Type	Type	Results-ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 05, 2007	1	RT	Total	Absent--B7F052401-1		N/A		Jun 25, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-4		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-3		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-2		N/A		Jun 04, 2007
May 08, 2007	1	RT	Total	Absent--B7E081901-1		N/A		Jun 04, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-4		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-3		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-2		N/A		Apr 16, 2007
Apr 03, 2007	1	RT	Total	Absent--B7D033101-1		N/A		Apr 16, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-4		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-3		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-2		N/A		Apr 06, 2007
Mar 14, 2007	1	RT	Total	Absent--B7C140201-1		N/A		Apr 06, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062004		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062003		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062002		N/A		Mar 01, 2007
Feb 06, 2007	1	RT	Total	Absent--B7B062001		N/A		Mar 01, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091304		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091303		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091302		N/A		Jan 22, 2007
Jan 09, 2007	1	RT	Total	Absent--B7A091301		N/A		Jan 22, 2007
Dec 05, 2006	1	RT	Total	Absent--B6L051401-4		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-3		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-2		N/A		Dec 20, 2006
Dec 05, 2006	1	RT	Total	Absent--B6L051401-1		N/A		Dec 20, 2006

Revised 5/30/10

Attachment C
August 20-21, 2009 EQC meeting
Page 44 of 57

Exhibit 9 Page 3
Exhibit 143 Page 3

Nov 07, 2006	1	RT	Total	Absent--B6K073401-4	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-3	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-2	N/A	Nov 30, 2006
Nov 07, 2006	1	RT	Total	Absent--B6K073401-1	N/A	Nov 30, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-4	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-3	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-2	N/A	Oct 19, 2006
Oct 03, 2006	1	RT	Total	Absent--B6J032401-1	N/A	Oct 19, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-4	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-3	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-2	N/A	Oct 12, 2006
Sep 19, 2006	1	RT	Total	Absent--B6I191801-1	N/A	Oct 12, 2006

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	Cl Residual	Receive Date
Aug 08, 2006	1	RT	Total	Absent--B6H081001-4		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-3		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-2		N/A		Sep 01, 2006
Aug 08, 2006	1	RT	Total	Absent--B6H081001-1		N/A		Sep 01, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-4		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-3		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-2		N/A		Jul 28, 2006
Jul 11, 2006	1	RT	Total	Absent--B6G111601-1		N/A		Jul 28, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-4		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-3		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-2		N/A		Jun 22, 2006
Jun 06, 2006	1	RT	Total	Absent--B6F063701-1		N/A		Jun 22, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-4		N/A		May 24, 2006

Item D00010

Attachment C
August 20-21, 2009 EAC meeting
Page 45 of 57

Exhibit 9 Page 4
Exhibit 10 Page 4

May 09, 2006	1	RT	Total	Absent--B6E092501-3	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-2	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E092501-1	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-4	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-3	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-2	N/A	May 24, 2006
May 09, 2006	1	RT	Total	Absent--B6E0925011-1	N/A	May 24, 2006

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Apr 11, 2006	1	RT	Total	Absent--6041269-4		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-3		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-2		N/A		Apr 28, 2006
Apr 11, 2006	1	RT	Total	Absent--6041269-1		N/A		Apr 28, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-4		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-3		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-2		N/A		Apr 04, 2006
Mar 14, 2006	1	RT	Total	Absent--6031525-1		N/A		Apr 04, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-4		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-3		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-2		N/A		Mar 09, 2006
Feb 02, 2006	1	RT	Total	Absent--6020844-1		N/A		Mar 09, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-4		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-3		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-2		N/A		Feb 02, 2006
Jan 10, 2006	1	RT	Total	Absent--6011149-1		N/A		Feb 02, 2006
Dec 06, 2005	1	RT	Total	Absent--5120737-4		N/A		Dec 30, 2005
Dec 06, 2005	1	RT	Total	Absent--5120737-3		N/A		Dec 30, 2005

Item D 000111

Attachment C
August 20-21, 2009 EQC meeting
Page 46 of 57

Exhibit 9 Page 5
Exhibit 113 Page 5

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 06, 2005	1	RT	Total	Absent--5120737-2		N/A		Dec 30, 2005
Dec 06, 2005	1	RT	Total	Absent--5120737-1		N/A		Dec 30, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-4		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-3		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-2		N/A		Dec 01, 2005
Nov 08, 2005	1	RT	Total	Absent--5110954-1		N/A		Dec 01, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-4		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-3		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-2		N/A		Nov 07, 2005
Oct 11, 2005	1	RT	Total	Absent--5101245-1		N/A		Nov 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-4		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-3		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-2		N/A		Oct 07, 2005
Sep 13, 2005	1	RT	Total	Absent--B5091334-1		N/A		Oct 07, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-4		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-3		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-2		N/A		Aug 22, 2005
Aug 02, 2005	1	RT	Total	Absent--5080349-1		N/A		Aug 22, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-4		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-3		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-2		N/A		Jul 29, 2005
Jul 12, 2005	1	RT	Total	Absent--5071365-1		N/A		Jul 29, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-4		N/A		Jun 24, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-3		N/A		Jun 24, 2005

Item D 000112

Exhibit 9 Page 10

Exhibit R43 Page 6

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 07, 2005	1	RT	Total	Absent--5060847-2		N/A		Jun 24, 2005
Jun 07, 2005	1	RT	Total	Absent--5060847-1		N/A		Jun 24, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-4		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-3		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-2		N/A		Jun 08, 2005
May 03, 2005	1	RT	Total	Absent--NB505067-1		N/A		Jun 08, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-4		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-3		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-2		N/A		Apr 20, 2005
Apr 05, 2005	1	RT	Total	Absent--NB504047-1		N/A		Apr 20, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-4		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-3		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-2		N/A		Mar 10, 2005
Mar 01, 2005	1	RT	Total	Absent--NB503008-1		N/A		Mar 10, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-4		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-3		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-2		N/A		Feb 22, 2005
Feb 01, 2005	1	RT	Total	Absent--NB502007-1		N/A		Feb 22, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-5		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-4		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-3		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-2		N/A		Jan 20, 2005
Jan 04, 2005	1	RT	Total	Absent--NB501053-1		N/A		Jan 20, 2005
Dec 10, 2004	1	RP	Total	Absent--NB412156	NB412092	26 SE HILLCREST		Dec 29, 2004
Dec 10, 2004	1	RP	Total	Absent--NB412155	NB412092	57 NE HILLCREST		Dec 29, 2004

Item D 000113

Attachment C
August 20-21, 2009 EQC meeting
Page 48 of 57

Exhibit 9 Page 7

Exhibit 143 Page 7

Dec 10, 2004	1	RP	Total	Absent--NB412153	NB412092	97 SE HILLCREST		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-3		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-2		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	Absent--NB412093-1		N/A		Dec 29, 2004
Dec 07, 2004	1	RT	Total	POSITIVE--NB412092		26 SE HILLCREST		Dec 29, 2004
		RT	E.Coli	Absent--NB412092		26 SE HILLCREST		Dec 29, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-4		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-3		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-2		N/A		Nov 22, 2004
Nov 02, 2004	1	RT	Total	Absent--NB411044-1		N/A		Nov 22, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-1		37 NE 8TH		Nov 08, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-2		715 SW 4TH		Nov 08, 2004
Oct 05, 2004	1	RT	Total	Absent--P4J0186-3		34 SE D ST		Nov 08, 2004

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Oct 05, 2004	1	RT	Total	Absent--P4J0186-4		216 NW B ST		Nov 08, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-4		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-3		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-2		N/A		Oct 04, 2004
Sep 21, 2004	1	RT	Total	Absent--NB409445-1		N/A		Oct 04, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-4		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-3		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-2		N/A		Aug 30, 2004
Aug 03, 2004	1	RT	Total	Absent--NB408102-1		N/A		Aug 30, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-4		N/A		Aug 09, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-3		N/A		Aug 09, 2004
Jul 13, 2004	1	RT	Total	Absent--NB407305-2		N/A		Aug 09, 2004

Item D700714

Attachment C
August 20-21, 2009 EQC meeting
Page 49 of 57

Exhibit 9 Page 8

Exhibit R15 Page 8

Sample Date	# Samples	Coliform Type	Type	Results-ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jul 13, 2004	1	RT	Total	Absent--NB407305-1		N/A		Aug 09, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-4		N/A		Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-3		N/A		Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-2		N/A		Jun 21, 2004
Jun 08, 2004	1	RT	Total	Absent--NB406229-1		N/A		Jun 21, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-4		N/A		May 26, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-3		N/A		May 26, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-2		N/A		May 26, 2004
May 11, 2004	1	RT	Total	Absent--NB405191-1		N/A		May 26, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-4		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-3		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-2		N/A		Apr 28, 2004
Apr 13, 2004	1	RT	Total	Absent--NB404148-1		N/A		Apr 28, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-4		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-3		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-2		N/A		Mar 18, 2004
Mar 02, 2004	1	RT	Total	Absent--NB403028-1		N/A		Mar 18, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-4		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-3		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-2		N/A		Feb 25, 2004
Feb 10, 2004	1	RT	Total	Absent--NB402085-1		N/A		Feb 25, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-4		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-3		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-2		N/A		Jan 28, 2004
Jan 13, 2004	1	RT	Total	Absent--NB401098-1		N/A		Jan 28, 2004

Item D0000115

Attachment C
 August 20-21, 2009 EQC meeting
 Page 50 of 57

Exhibit 9 Page 9

Exhibit 12 Page 9

Attachment C
 August 20-21, 2009 EQC meeting
 Page 51 of 57

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 02, 2003	1	RT	Total	Absent--NB312028-4		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-3		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-2		N/A		Dec 15, 2003
Dec 02, 2003	1	RT	Total	Absent--NB312028-1		N/A		Dec 15, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-4		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-3		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-2		N/A		Nov 17, 2003
Nov 04, 2003	1	RT	Total	Absent--NB311021-1		N/A		Nov 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-4		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-3		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-2		N/A		Oct 17, 2003
Oct 07, 2003	1	RT	Total	Absent--NB310165-1		N/A		Oct 17, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-4		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-3		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-2		N/A		Sep 18, 2003
Sep 09, 2003	1	RT	Total	Absent--NB309222-1		N/A		Sep 18, 2003
Aug 19, 2003	1	RT	Total	Absent--NB308446		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-3		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-2		N/A		Sep 05, 2003
Aug 12, 2003	1	RT	Total	Absent--NB308294-1		N/A		Sep 05, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-4		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-3		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-2		N/A		Jul 21, 2003
Jul 08, 2003	1	RT	Total	Absent--NB307216-1		N/A		Jul 21, 2003

Item D-000116

Exhibit 9 Page 10

Exhibit 10 Page 10

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 03, 2003	1	RT	Total	Absent--NB306053-4		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-3		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-2		N/A		Jun 20, 2003
Jun 03, 2003	1	RT	Total	Absent--NB306053-1		N/A		Jun 20, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-4		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-3		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-2		N/A		May 27, 2003
May 13, 2003	1	RT	Total	Absent--NB305235-1		N/A		May 27, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-4		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-3		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-2		N/A		Apr 17, 2003
Apr 01, 2003	1	RT	Total	Absent--NB304010-1		N/A		Apr 17, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-4		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-3		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-2		N/A		Mar 24, 2003
Mar 11, 2003	1	RT	Total	Absent--NB303080-1		N/A		Mar 24, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-4		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-3		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-2		N/A		Feb 14, 2003
Feb 04, 2003	1	RT	Total	Absent--NB302057-1		N/A		Feb 14, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-4		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-3		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-2		N/A		Jan 27, 2003
Jan 07, 2003	1	RT	Total	Absent--NB301054-1		N/A		Jan 27, 2003
Dec 03, 2002	1	RT	Total	Absent--NB212019-4		N/A		Dec 11, 2002

Attachment C
August 20-21, 2009 EQC meeting
Page 52 of 57

Exhibit 9 Page 11

Exhibit 14 Page 11

Item D 000117

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 03, 2002	1	RT	Total	Absent--NB212019-3		N/A		Dec 11, 2002
Dec 03, 2002	1	RT	Total	Absent--NB212019-2		N/A		Dec 11, 2002
Dec 03, 2002	1	RT	Total	Absent--NB212019-1		N/A		Dec 11, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-4		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-3		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-2		N/A		Nov 18, 2002
Nov 05, 2002	1	RT	Total	Absent--NB211041-1		N/A		Nov 18, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-4		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-3		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-2		N/A		Oct 21, 2002
Oct 01, 2002	1	RT	Total	Absent--NB210032-1		N/A		Oct 21, 2002
Sep 17, 2002	1	RT	Total	Absent--NB209333		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-3		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-2		N/A		Oct 02, 2002
Sep 10, 2002	1	RT	Total	Absent--NB209184-1		N/A		Oct 02, 2002
Aug 06, 2002	1	RT	Total	Absent--NB208117-4		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-3		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-2		N/A		
Aug 06, 2002	1	RT	Total	Absent--NB208117-1		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-4		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-3		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-2		N/A		
Jul 09, 2002	1	RT	Total	Absent--NB207209-1		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-4		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-3		N/A		

Attachment C
August 20-21, 2009 EQC meeting
Page 53 of 57

Exhibit 9 Page 12

Exhibit P123 Page 12

Item D 000118

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Jun 04, 2002	1	RT	Total	Absent--NB206070-2		N/A		
Jun 04, 2002	1	RT	Total	Absent--NB206070-1		N/A		
May 07, 2002	1	RT	Total	Absent--NB205109-4		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-3		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-2		N/A		May 30, 2002
May 07, 2002	1	RT	Total	Absent--NB205109-1		N/A		May 30, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-4		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-3		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-2		N/A		May 06, 2002
Apr 09, 2002	1	RT	Total	Absent--NB204108-1		N/A		May 06, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-4		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-3		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-2		N/A		Apr 04, 2002
Mar 12, 2002	1	RT	Total	Absent--NB203097-1		N/A		Apr 04, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-4		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-3		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-2		N/A		Mar 14, 2002
Feb 12, 2002	1	RT	Total	Absent--NB202102-1		N/A		Mar 14, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-4		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-3		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-2		N/A		Jan 22, 2002
Jan 08, 2002	1	RT	Total	Absent--NB201656-1		N/A		Jan 22, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-4		N/A		Jan 04, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-3		N/A		Jan 04, 2002
Dec 11, 2001	1	RT	Total	Absent--NB112121-2		N/A		Jan 04, 2002

Attachment C
 August 20-21, 2009 EOC meeting
 Page 54 of 57

Exhibit 9 Page 13

Exhibit 10 Page 13

Item D000119

Sample Date	# Samples	Coliform Type	Type	Results--ID	Repeat of Sample ID	Sample Site	CI Residual	Receive Date
Dec 11, 2001	1	RT	Total	Absent--NB112121-1		N/A		Jan 04, 2002
Nov 06, 2001	1	RT	Total	Absent--NB111048-4		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-3		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-2		N/A		Nov 19, 2001
Nov 06, 2001	1	RT	Total	Absent--NB111048-1		N/A		Nov 19, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-4		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-3		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-2		N/A		Oct 31, 2001
Oct 09, 2001	1	RT	Total	Absent--NB110177-1		N/A		Oct 31, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-4		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-3		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-2		N/A		Sep 28, 2001
Sep 11, 2001	1	RT	Total	Absent--NB109187-1		N/A		Sep 28, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-4		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-3		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-2		N/A		Aug 27, 2001
Aug 07, 2001	1	RT	Total	Absent--NB108173-1		N/A		Aug 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-4		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-3		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-2		N/A		Jul 27, 2001
Jul 17, 2001	1	RT	Total	Absent--NB107323-1		N/A		Jul 27, 2001

Attachment C
August 20-21, 2009 EQC meeting
Page 55 of 57

Exhibit 9 Page 14

Exhibit R13 Page 14

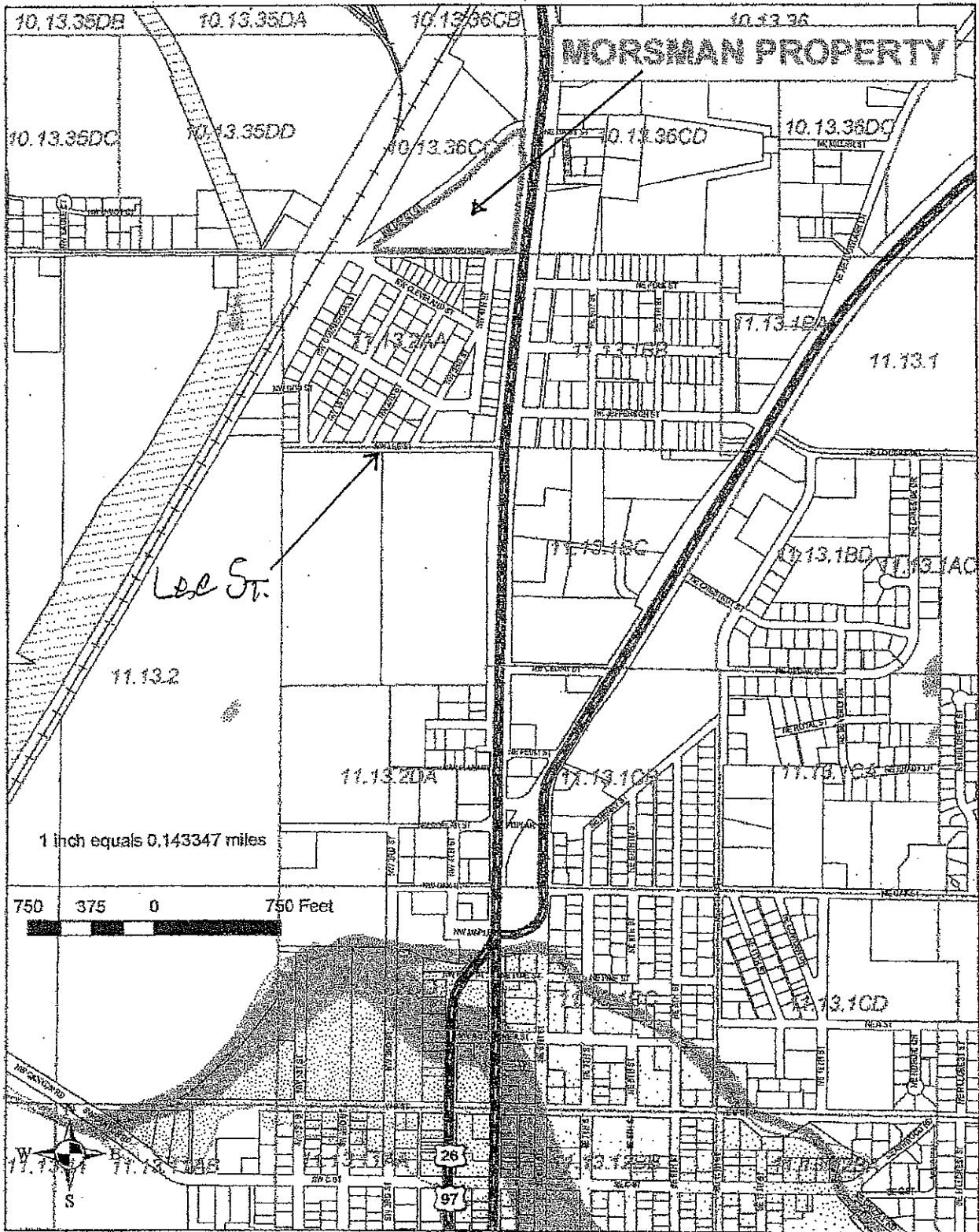
Item D 090120

[Click here to show results prior to](#)

[Recent Batch Numbers](#)

Exhibit 9 Page 15

Exhibit R43 Page 15



shaded area at the
bottom is the
Creek. Item D 000122

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

IN THE MATTER OF:) DEQ Case No. WQ/D-ER-07-186
)
Phillip and Brigitte Morsman, dba Tops) OAH Case No.: 900963
Trailer Park,)
Respondents) RESPONDENTS' PETITION
FOR REVIEW
)
)
)
)
)
)
_____)
_____)

Pursuant to Oregon Administrative Rule 340-011-0575, respondents Phillip and
Brigitte Morsman hereby request that the Environmental Quality Commission review the
hearing officer's Proposed Order in the above referenced case, dated and served by mail
on June 18, 2009. A copy of the Proposed Order is attached as Exhibit "A."

Dated this 8th day of July, 2009.



Michael F. Sheehan, OSB #88126
Attorney for Respondents Phil and Brigitte
Morsman

3c:\Law\Morsmans\Petition for Review EQC Waiver 7July09

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

IN THE MATTER OF:) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION, AND PROPOSED**
PHILLIP DEAN MORSMAN AND) **ORDER**
BRIGITTE RENATE MORSMAN)
doing business as Tops Trailer Park,) OAH Case No.: 900963
Respondents) Agency Case No.: WQ/D-ER-07-186

HISTORY OF THE CASE

On December 19, 2007, the Department of Environmental Quality for the State of Oregon (Department) issued a Notice of Violation, Department Order, and Civil Penalty Assessment (Notice of Violation) to Phillip Dean Morsman and Brigitte Renate Morsman doing business as Tops Trailer Park (Respondents). On January 8, 2008, Respondents requested a hearing. On July 25 and July 30, 2008, a hearing was held before Administrative Law Judge (ALJ) James Han. On October 21, 2008, ALJ Han issued a Proposed Order. On November 20, 2008, Respondents petitioned the Environmental Quality Commission for review of the Proposed Order.

On August 8, 2008, Respondents filed a Request for a Waiver with the Department's Director. On October 6, 2008, the Director denied the request. On October 16, 2008, Respondents requested reconsideration. On October 21, 2008, the Director denied the request. On October 28, 2008, Respondents requested a hearing on denial of the waiver.

On March 2, 2009, the Department referred the hearing request to the Office of Administrative Hearings (OAH). Senior ALJ Dove L. Gutman was assigned to preside at hearing. On April 21, 2009, a pre-hearing telephone conference was held. Leah Koss represented the Department. Michael Sheehan, attorney at law, represented Respondents. On April 22, 2009, ALJ Gutman issued a Pre-hearing Order that set forth the issue for hearing, the discovery and motion schedule, and the date for the contested case hearing.

On May 12, 2009, the Department filed a Motion for Summary Determination, along with Exhibits A1 through A6. On May 27, 2009, Respondents filed a Response, along with Exhibits 1 through 4. On June 4, 2009, the Department filed a Reply.

EVIDENTIARY RULINGS

On June 4, 2009, the Department's Exhibits A1 through A6 and Respondents' Exhibits 1 through 4 were admitted into evidence without objection.

ISSUE

Whether the Director of the Department abused his discretion when he denied Respondents' Request for a Waiver. OAR 340-044-0015.

LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides in pertinent part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

FINDINGS OF FACT

1. Respondents own Tops Trailer Park (trailer park) located at 23 NW Depot Road in Madras, Oregon. The trailer park consists of 55 mobile home units. The residents are mostly low-income. (Exs. A1, A6; Respondents' Response.)

2. Respondents maintain and operate a waste disposal system at the trailer park subject to the terms and conditions of Water Pollution Control Facilities General Permit No. 4400 (Permit) issued by the Department pursuant to Oregon law. (Notice of Violation.)

3. The trailer park's waste disposal system collects sewage in a large septic tank. The solids are pumped out and hauled away. The remaining liquid effluent is discharged into a waste disposal well¹ on the property. The waste disposal well has been in operation since 1954. (Ex. A1; Respondents' Response.)

4. In 1969, the Environmental Quality Commission (Commission) decided to phase out the use of waste disposal wells because of the serious threat they posed to groundwater resources and the public health. The Commission issued rules to decommission waste disposal wells as

¹ Respondents' waste disposal well is considered an underground injection system. See OAR 340-044-0005(24); OAR 340-044-0011(5)(a).

soon as alternative sewage systems became reasonably available. (Ex. A2; Department's Motion.)

5. On or about October 2, 2007, the City of Madras extended its sewer line to Lee Street, a distance of approximately 2,000 feet from Respondents' waste disposal well. The Department determined that an alternative sewage system had become reasonably available to Respondents.² (Ex. A1; Notice of Violation; Respondents' Response.)

6. On November 7, 2007, the Department sent Respondents a pre-enforcement notice, requesting that Respondents comply with the Permit and Oregon law by connecting their facility to the city's sewer system and decommissioning the well on the property. (Notice of Violation.)

7. On December 19, 2007, the Department issued a Notice of Violation, Department Order, and Civil Penalty Assessment to Respondents. The Notice of Violation cited ORS 468B.025(2) and OAR 340-044-0015(3)(b) and alleged, among other things, that since at least October 2, 2007, Respondents had violated the conditions of the Permit by failing to decommission the well on their property and by failing to connect to the City of Madras sewer system when it became reasonably available. The Notice of Violation also contained an order requiring Respondents to connect to the City of Madras sewer system within 60 days and to decommission their waste disposal well within 90 days. (Notice of Violation; Department's Motion.)

8. Respondents did not connect the trailer park to the city's sewer system, nor did they decommission the well on the property. (Department's Motion; Respondents' Response.)

9. On January 8, 2008, Respondents requested a contested case hearing on the Notice of Violation. On July 25 and July 30, 2008, a hearing was held before ALJ James Han.³ (Department's Motion.)

10. On August 8, 2008, Respondents filed a Request for a Waiver with the Department's Director. Respondents requested a waiver from the requirement that they decommission their waste disposal well and connect to the municipal sewer. Respondents asserted that the disposal well had been in operation since 1954 and had not contaminated the city's water. Respondents also asserted that they could not finance the cost of the sewer line. Respondents attached the following documents to the request:

- A cost estimate, dated April 22, 2008, of \$400,000 from Knife River to connect the trailer park to the city's sewer line.
- A cost estimate, dated April 22, 2008, of \$50,470, plus or minus 20 percent, from Tye Engineering & Surveying, Inc., for professional engineering and surveying services to design and

² Respondents did not contest that the city's sewer line was "reasonably available." (Respondents' Response.)

³ On October 21, 2008, ALJ Han issued a Proposed Order. On November 20, 2008, Respondents petitioned the Environmental Quality Commission for review of the Proposed Order. (Department's Motion.)

oversee construction of a gravity sewer line from the trailer park to the city's sewer line.

- A letter, dated April 22, 2008, from the Bank of the West declining Respondents' request for a \$300,000 loan to upgrade their sewer system because of "insufficient reported income to existing debt servicing requirement."
- A cost estimate, dated April 23, 2008, of \$392,800 from Hooker Creek Asphalt & Paving to connect the trailer park to the city's sewer line.
- An account summary indicating that Respondents' mortgage on the trailer park was in excess of \$700,000 in October 2007.

(Ex. A1.)

11. On October 6, 2008, the Director denied the request for waiver. The Director reasoned, in pertinent part:

The Department, through the EQC, is charged with protecting water quality as mandated by the Clean Water Act and the Safe Drinking Water Act. In order to meet this charge, the EQC felt it necessary and prudent to promulgate rules for the phasing-out of sewage drain holes because of the risk that they pose to groundwater and drinking water of the State. As you know, the City of Madras in particular has underground reserves of well water, the quality of which is affected by the quality and condition of groundwater. Therefore, maintaining the quality of the groundwater in and around Madras is of particular importance for the protection of human health and the environment.

Another point of significance is the depth of the sewage drain hole at the Tops Trailer Park. I understand that the depth has reached approximately 326 feet after the last drilling was done to stop the discharge of sewage from the drain hole. As you may be aware, Department policy states that sewage drain holes should be no deeper than 100 feet in order to protect groundwater. The groundwater tables in and around Madras are particularly shallow, and the significant depth of your drain hole increases the risk of impact to water wells there.

In determining whether a waiver from the rule requiring connection to municipal sewer should be granted, the Director must weigh the interests at issue in light of the terms "impracticable" and "unreasonably burdensome" from the waiver provision. I have reviewed with great care the letter and exhibits that you submitted with your request for a waiver. According to the dictionary, "impracticable" means "incapable of being performed or

accomplished by the means employed or at command." Based on the documents you submitted, it does not appear that connection to the City of Madras sewer is impracticable. The two estimates of the cost to do the work evidence the fact that the work is capable of being accomplished and that there are contractors in the areas that will in fact perform this work.

You state in your waiver request that the financial hardship of connecting to City sewer is "unreasonably burdensome." I understand your concern that the cost of connecting to municipal sewer is a significant one. Assuming that any cost is a burden of sorts, I refer to the dictionary definition of "unreasonable" and "reasonable." These definitions are as follows: "Unreasonable" means "not governed by or acting according to reason; not conformable to reason; absurd; exceeding the bounds of reason or moderation" and "reasonable" means "being in accordance with reason; not extreme or excessive; moderate, fair, possessing sound judgment."

After reviewing the evidence that you submitted, I am unconvinced that your compliance with the law would be unreasonably burdensome to you. The only document relating to your finances is Exhibit R35, which shows payments you have made on your mortgage for approximately fifteen months. The documents submitted show no evidence of the real market value of the Tops Trailer Park property, your assets, your income from the Park, expenses for the Park, taxes, investments or any other information that provides a complete or accurate picture of your financial situation.

In addition, there is no evidence that the cost of connection is an unreasonable one. There are no cost comparisons of the same work being performed somewhere else where the cost was much less, for example, which would suggest that these estimates are extreme or excessive. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park and the loss of homes to the tenants.

In weighing the burden to you of connecting to municipal sewer against the potential threat to human health and the environment, I find that the burden to you is not unreasonable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied.

(Ex. A2.)

12. On October 16, 2008, Respondents petitioned the Director for reconsideration of the waiver request. Respondents asserted, among other things, that the well shaft was not deepened, and that their income was less than \$20,000 in 2007. Respondents attached the following documents to the request:

- A letter, dated December 19, 2006, from Abbas Well Drilling, indicating, among other things, that the original depth of the well was 327 feet.
- Jefferson County Assessor's sheet, indicating that the fair market value on the trailer park had increased from \$498,203 in 2006 to \$606,233 in 2007.
- Respondent's 2007 Form 1040, page 1, indicating that their gross income totaled 19,362.
- Respondent's 2007 Schedule E, page 1, indicating rents totaling \$161,613, and expenses totaling \$165,265.
- Respondent's 2007 Federal Statement 1.
- Respondent's 2007 Oregon Income Tax Summary.

(Ex. A3.)

13. On October 21, 2008, the Director denied the request. The Director reasoned, in material part:

In asking for this reconsideration, you state that my decision was largely based on the depth of the well and the Morsmans' financial status. The primary basis for my denial of your request for waiver is my intent to support the Environmental Quality Commission's (EQC) policy and purpose in promulgating the rules for waste disposal wells in OAR 340, Division 44. As I discussed, the EQC has been concerned with the antiquated nature of these wells since 1969 and since that time, 95% have indeed been decommissioned. As the Department is charged with carrying out the EQC's rules and policies, I give great weight to their determination that disposal wells pose a threat to groundwater, drinking water and human health, and that they should therefore be phased out as soon as possible.

Regarding the well depth, there seems to be some disagreement as to how the well reached its current depth of approximately 326 feet. However, the manner in or date on which the well became 326 feet is not material in my decision. Rather, it is the fact the well is 326 feet deep that is concerning and poses a significant threat to the groundwater and well water of Madras. OAR 340, Division 44 states that while all disposal wells are to be phased out as soon as municipal sewer is available, those still existing should not be deeper than 100 feet. Your well is a greater risk than those which are only 100 feet deep. The fact that past tests of the well

water show no contamination is not relevant in considering the future threat that exists because of waste disposal wells. The EQC had future risks to water in mind in promulgating the rules, and the Department is charged with preventing the realization of those risks.

Regarding your finances, you have provided a tax statement and a property assessment which I have carefully reviewed. While these documents provide some insight about your finances, they do not present a complete picture of your assets and total financial portfolio. Additionally, the fact that you were turned down in one attempt for a loan does not evidence the impossibility of getting a loan, especially considering the more than \$100,000 gain in real market value of the Park just between 2006 and 2007. Further, your financial status is only one element in the totality of the circumstances which must be considered in granting a waiver from the EQC's mandate that your disposal well be decommissioned.

As I discussed in my October 6, 2008 response, my decision must be based on a balancing of the competing interests at hand. This balancing must take into consideration the terms in the waiver provision: "impracticable" and "unreasonably burdensome." Without recapping the definitions of these terms, I have again contemplated their meaning and applicability to the information you recently provided. The fact that two cost estimates of the work to connect have been provided, show that connection to City sewer is clearly not impracticable, as the work is capable of being performed.

While I understand that any cost may be a burden, that in itself does not mean that the burden is an unreasonable one based on finances, as well as all of the other competing interests. First, there is nothing that suggests that these estimates are unreasonable. None of the information provided suggests that these estimates, compared to others, are greatly inflated or unreasonable for the work to be performed. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park, nor would sale of the Park necessitate changing the current use of the Park for the current tenants. Finally, an "unreasonable" burden suggests that there are not competing interests which hold greater weight. This is not the case in this circumstance. A waiver in this case would come at great threat to human health and the environment, without sound reason as to its impracticability or unreasonable burden.

In weighing the burden to you of connecting to municipal sewer

against the potential threat to human health and the environment, and after considering the addendum of October 16, 2008, I find that the burden to you is not unreasonable or impracticable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied.

(Ex. A4.)

14. On October 28, 2008, Respondents requested a hearing on the denial of the waiver. (Department's Motion.)

CONCLUSION OF LAW

The Director of the Department did not abuse his discretion when he denied Respondents' request for a waiver. OAR 340-044-0015.

OPINION

The Department contends that its Motion for Summary Determination should be granted. Respondents contend that it should be denied. I agree with the Department.

Abuse of discretion

The first step is to review the rule at issue and determine if the Director was granted discretionary authority to deny Respondents' waiver request.

OAR 340-044-0015 is titled "Prohibited Underground Injection" and provides, in pertinent part:

(3) No person shall cause or allow Class V injection systems injecting sanitary waste, sewage, or industrial or commercial waste into sewage drain holes or sewage drill holes, except as allowed under OAR 340-044-0015(3)(b), 340-044-0017, or 340-044-0018(3).

(b) After January 1, 1983, use of existing sewage drain holes or sewage drill holes is prohibited unless municipal sanitary sewer service is not available to the property. Except for single family residences, use of an existing sewage drain hole must be authorized by a permit.

(B) Within 90 days after sanitary sewer service is available to a property, the owner of that property shall make connection to the sewer and shall abandon and decommission the sewage drain hole in accordance with OAR 340-044-0040. **On a case-by-case basis, the Director may waive the requirement to connect to sewer if the Director determines that connection to the sewer is impracticable or unreasonably burdensome.**

(Emphasis added.)

The rule cited above uses the word “may” when discussing the Director’s authority to waive the requirement to connect to the sewer. The use of the word “may” in statute or regulation indicates that the relevant entity has discretion whether to take the action described therein. *In Defense of Animals*, 199 Or App 160, 190 (2005); *State v. Larson*, 325 Or 15, 26 (1997). Thus, OAR 340-044-0015(3)(b)(B) confers discretionary authority on the Director to grant or deny a waiver request.

The next step is to determine if the Director abused his discretionary authority when he denied Respondent’s waiver request.

In reviewing for abuse of discretion, the Director’s decision must have been within the range of legally permissible outcomes available to him under the relevant law, and the decision must not have been clearly against reason and evidence. *State Ex Rel. Dept. of Human Services v. S.P.B.*, 218 Or App 97, 103 (2008); *State v. Rogers*, 330 Or 282, 312 (2000).

In this case, because the terms “impracticable” and “unreasonably burdensome” were not defined by statute or rule, the Director applied common dictionary definitions of the terms in his analysis of the evidence. “[W]ords of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993). Unless the disputed term is a “term of art,” its ordinary meaning is presumed to be what is reflected in a dictionary. *Dept. of Rev. v. Faris*, 345 Or 97, 101 (2008) (“The word ‘certify’ is not statutorily defined. Thus, we look to the dictionary.”); *State v. Murray*, 340 Or 599, 604 (2006) (“Absent a special definition, we ordinarily would resort to dictionary definitions, assuming that the legislature meant to use a word of common usage in its ordinary sense.”).

The Director defined “impracticable” as “incapable of being performed or accomplished by the means employed or at command.” The Director reviewed Respondents’ cost estimates for the sewer connection and concluded that the connection was capable of being performed, and thus, not impracticable.

The Director defined “unreasonable” as “not governed by or acting according to reason; not conformable to reason; absurd; exceeding the bounds of reason or moderation.” The Director reviewed Respondents’ financial documents, but chose not to limit the term “unreasonably burdensome” to Respondents’ ability to pay. Instead, the Director reviewed other

criteria as well, including whether Respondents' cost to connect to the sewer was unreasonable as compared to the cost for the same work in another location, and whether the requirement to connect to the city sewer would necessarily lead to closing the Park and the loss of homes to the tenants. The Director also weighed the burden of Respondent connecting to the sewer against the potential threat to human health and the environment. The Director concluded that connection to the sewer, although possibly very costly to the Respondents, was not unreasonably burdensome, given the policy decisions of the Commission and the potential impact to groundwater resources.

When an agency's interpretation of its own rule is plausible and not inconsistent with the wording of the rule itself, the rule's context or any other source of law, the agency is entitled to some deference. *Don't Waste Oregon Committee v. Energy Facility Siting Council*, 320 Or 132, 142 (1994); *see also*, OAR 340-011-0545(3). I find that the Director reasonably construed the terms "impracticable" and "unreasonably burdensome." I further find that the Director's interpretation of the rule is plausible and not inconsistent with the wording of the rule itself.

Accordingly, the evidence in the record establishes that the Director made a reasoned decision, which was supported by the evidence, and the decision was within the range of legally permissible outcomes available to the Director under OAR 340-044-0015(3)(b)(B). Consequently, the Director did not abuse his discretion when he denied Respondents' waiver request.

Respondents contend that the definitions that the Director applied were idiosyncratic. I disagree. As indicated above, the Director used the common and ordinary meaning of the terms "impracticable" and "unreasonable," which is supported by case law. In addition, the Director chose not to limit the term "unreasonably burdensome" to Respondents' ability to pay, which is supported by the text of the rule. Thus, Respondents' argument is unpersuasive.

Respondents next contend that the terms "impracticable" and "unreasonably burdensome" should apply to Respondents' financial circumstances. Respondents argue that it is impracticable and unreasonably burdensome to connect to the sewer because of the prohibitive cost. However, the text of the rule is not limited to financial considerations only. In addition, such an interpretation of the rule would restrict the waiver request to an ability to pay, which is not the criteria the Commission established when it promulgated the rule. Therefore, Respondents' argument is unpersuasive.

Respondents' also contend that the Director's decision was arbitrary and capricious. I disagree. The Director reasonably construed the terms at issue, reviewed the evidence, applied the terms, weighed competing interests, and made a decision that was available to him under the rule. As such, Respondents' argument is without merit.

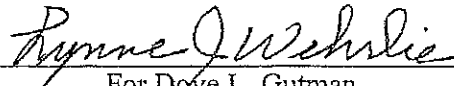
RULING

The Department's Motion for Summary Determination is GRANTED. The contested case hearing scheduled for July 15, 2009, is hereby CANCELED.

ORDER

I propose the Department of Environmental Quality issue the following order:

The Director of the Department did not abuse his discretion when he denied Respondents' request for a waiver.



For Dove L. Gutman
Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: June 18, 2009

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 (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. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

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

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

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 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. 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 183.480 et. seq.

CERTIFICATE OF MAILING

On June 18, 2009, I mailed the foregoing Ruling on Motion For Summary Determination and Proposed Order in OAH Case No. 900963.

By: First Class and Certified Mail
Certified Mail Receipt #7008 1830 0003 4612 2368

Michael Sheehan
Attorney at Law
33126 SW Callahan Rd
Scappoose OR 97056

By: First Class Mail

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

Pam Arcari
Administrative Specialist
Hearing Coordinator

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

IN THE MATTER OF:) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION, AND PROPOSED**
PHILLIP DEAN MORSMAN AND) **ORDER**
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ISSUE

Whether the Director of the Department abused his discretion when he denied Respondents' Request for a Waiver. OAR 340-044-0015.

LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides in pertinent part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

FINDINGS OF FACT

1. Respondents own Tops Trailer Park (trailer park) located at 23 NW Depot Road in Madras, Oregon. The trailer park consists of 55 mobile home units. The residents are mostly low-income. (Exs. A1, A6; Respondents' Response.)
2. Respondents maintain and operate a waste disposal system at the trailer park subject to the terms and conditions of Water Pollution Control Facilities General Permit No. 4400 (Permit) issued by the Department pursuant to Oregon law. (Notice of Violation.)
3. The trailer park's waste disposal system collects sewage in a large septic tank. The solids are pumped out and hauled away. The remaining liquid effluent is discharged into a waste disposal well¹ on the property. The waste disposal well has been in operation since 1954. (Ex. A1; Respondents' Response.)
4. In 1969, the Environmental Quality Commission (Commission) decided to phase out the use of waste disposal wells because of the serious threat they posed to groundwater resources and the public health. The Commission issued rules to decommission waste disposal wells as

¹ Respondents' waste disposal well is considered an underground injection system. See OAR 340-044-0005(24); OAR 340-044-0011(5)(a).

soon as alternative sewage systems became reasonably available. (Ex. A2; Department's Motion.)

5. On or about October 2, 2007, the City of Madras extended its sewer line to Lee Street, a distance of approximately 2,000 feet from Respondents' waste disposal well. The Department determined that an alternative sewage system had become reasonably available to Respondents.² (Ex. A1; Notice of Violation; Respondents' Response.)

6. On November 7, 2007, the Department sent Respondents a pre-enforcement notice, requesting that Respondents comply with the Permit and Oregon law by connecting their facility to the city's sewer system and decommissioning the well on the property. (Notice of Violation.)

7. On December 19, 2007, the Department issued a Notice of Violation, Department Order, and Civil Penalty Assessment to Respondents. The Notice of Violation cited ORS 468B.025(2) and OAR 340-044-0015(3)(b) and alleged, among other things, that since at least October 2, 2007, Respondents had violated the conditions of the Permit by failing to decommission the well on their property and by failing to connect to the City of Madras sewer system when it became reasonably available. The Notice of Violation also contained an order requiring Respondents to connect to the City of Madras sewer system within 60 days and to decommission their waste disposal well within 90 days. (Notice of Violation; Department's Motion.)

8. Respondents did not connect the trailer park to the city's sewer system, nor did they decommission the well on the property. (Department's Motion; Respondents' Response.)

9. On January 8, 2008, Respondents requested a contested case hearing on the Notice of Violation. On July 25 and July 30, 2008, a hearing was held before ALJ James Han.³ (Department's Motion.)

10. On August 8, 2008, Respondents filed a Request for a Waiver with the Department's Director. Respondents requested a waiver from the requirement that they decommission their waste disposal well and connect to the municipal sewer. Respondents asserted that the disposal well had been in operation since 1954 and had not contaminated the city's water. Respondents also asserted that they could not finance the cost of the sewer line. Respondents attached the following documents to the request:

- A cost estimate, dated April 22, 2008, of \$400,000 from Knife River to connect the trailer park to the city's sewer line.
- A cost estimate, dated April 22, 2008, of \$50,470, plus or minus 20 percent, from Tye Engineering & Surveying, Inc., for professional engineering and surveying services to design and

² Respondents did not contest that the city's sewer line was "reasonably available." (Respondents' Response.)

³ On October 21, 2008, ALJ Han issued a Proposed Order. On November 20, 2008, Respondents petitioned the Environmental Quality Commission for review of the Proposed Order. (Department's Motion.)

oversee construction of a gravity sewer line from the trailer park to the city's sewer line.

- A letter, dated April 22, 2008, from the Bank of the West declining Respondents' request for a \$300,000 loan to upgrade their sewer system because of "insufficient reported income to existing debt servicing requirement."
- A cost estimate, dated April 23, 2008, of \$392,800 from Hooker Creek Asphalt & Paving to connect the trailer park to the city's sewer line.
- An account summary indicating that Respondents' mortgage on the trailer park was in excess of \$700,000 in October 2007.

(Ex. A1.)

11. On October 6, 2008, the Director denied the request for waiver. The Director reasoned, in pertinent part:

The Department, through the EQC, is charged with protecting water quality as mandated by the Clean Water Act and the Safe Drinking Water Act. In order to meet this charge, the EQC felt it necessary and prudent to promulgate rules for the phasing-out of sewage drain holes because of the risk that they pose to groundwater and drinking water of the State. As you know, the City of Madras in particular has underground reserves of well water, the quality of which is affected by the quality and condition of groundwater. Therefore, maintaining the quality of the groundwater in and around Madras is of particular importance for the protection of human health and the environment.

Another point of significance is the depth of the sewage drain hole at the Tops Trailer Park. I understand that the depth has reached approximately 326 feet after the last drilling was done to stop the discharge of sewage from the drain hole. As you may be aware, Department policy states that sewage drain holes should be no deeper than 100 feet in order to protect groundwater. The groundwater tables in and around Madras are particularly shallow, and the significant depth of your drain hole increases the risk of impact to water wells there.

In determining whether a waiver from the rule requiring connection to municipal sewer should be granted, the Director must weigh the interests at issue in light of the terms "impracticable" and "unreasonably burdensome" from the waiver provision. I have reviewed with great care the letter and exhibits that you submitted with your request for a waiver. According to the dictionary, "impracticable" means "incapable of being performed or

accomplished by the means employed or at command.” Based on the documents you submitted, it does not appear that connection to the City of Madras sewer is impracticable. The two estimates of the cost to do the work evidence the fact that the work is capable of being accomplished and that there are contractors in the areas that will in fact perform this work.

You state in your waiver request that the financial hardship of connecting to City sewer is “unreasonably burdensome.” I understand your concern that the cost of connecting to municipal sewer is a significant one. Assuming that any cost is a burden of sorts, I refer to the dictionary definition of “unreasonable” and “reasonable.” These definitions are as follows: “Unreasonable” means “not governed by or acting according to reason; not conformable to reason; absurd; exceeding the bounds of reason or moderation” and “reasonable” means “being in accordance with reason; not extreme or excessive; moderate, fair, possessing sound judgment.”

After reviewing the evidence that you submitted, I am unconvinced that your compliance with the law would be unreasonably burdensome to you. The only document relating to your finances is Exhibit R35, which shows payments you have made on your mortgage for approximately fifteen months. The documents submitted show no evidence of the real market value of the Tops Trailer Park property, your assets, your income from the Park, expenses for the Park, taxes, investments or any other information that provides a complete or accurate picture of your financial situation.

In addition, there is no evidence that the cost of connection is an unreasonable one. There are no cost comparisons of the same work being performed somewhere else where the cost was much less, for example, which would suggest that these estimates are extreme or excessive. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park and the loss of homes to the tenants.

In weighing the burden to you of connecting to municipal sewer against the potential threat to human health and the environment, I find that the burden to you is not unreasonable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied.

(Ex. A2.)

12. On October 16, 2008, Respondents petitioned the Director for reconsideration of the waiver request. Respondents asserted, among other things, that the well shaft was not deepened, and that their income was less than \$20,000 in 2007. Respondents attached the following documents to the request:

- A letter, dated December 19, 2006, from Abbas Well Drilling, indicating, among other things, that the original depth of the well was 327 feet.
- Jefferson County Assessor's sheet, indicating that the fair market value on the trailer park had increased from \$498,203 in 2006 to \$606,233 in 2007.
- Respondent's 2007 Form 1040, page 1, indicating that their gross income totaled 19,362.
- Respondent's 2007 Schedule E, page 1, indicating rents totaling \$161,613, and expenses totaling \$165,265.
- Respondent's 2007 Federal Statement 1.
- Respondent's 2007 Oregon Income Tax Summary.

(Ex. A3.)

13. On October 21, 2008, the Director denied the request. The Director reasoned, in material part:

In asking for this reconsideration, you state that my decision was largely based on the depth of the well and the Morsmans' financial status. The primary basis for my denial of your request for waiver is my intent to support the Environmental Quality Commission's (EQC) policy and purpose in promulgating the rules for waste disposal wells in OAR 340, Division 44. As I discussed, the EQC has been concerned with the antiquated nature of these wells since 1969 and since that time, 95% have indeed been decommissioned. As the Department is charged with carrying out the EQC's rules and policies, I give great weight to their determination that disposal wells pose a threat to groundwater, drinking water and human health, and that they should therefore be phased out as soon as possible.

Regarding the well depth, there seems to be some disagreement as to how the well reached its current depth of approximately 326 feet. However, the manner in or date on which the well became 326 feet is not material in my decision. Rather, it is the fact the well is 326 feet deep that is concerning and poses a significant threat to the groundwater and well water of Madras. OAR 340, Division 44 states that while all disposal wells are to be phased out as soon as municipal sewer is available, those still existing should not be deeper than 100 feet. Your well is a greater risk than those which are only 100 feet deep. The fact that past tests of the well

water show no contamination is not relevant in considering the future threat that exists because of waste disposal wells. The EQC had future risks to water in mind in promulgating the rules, and the Department is charged with preventing the realization of those risks.

Regarding your finances, you have provided a tax statement and a property assessment which I have carefully reviewed. While these documents provide some insight about your finances, they do not present a complete picture of your assets and total financial portfolio. Additionally, the fact that you were turned down in one attempt for a loan does not evidence the impossibility of getting a loan, especially considering the more than \$100,000 gain in real market value of the Park just between 2006 and 2007. Further, your financial status is only one element in the totality of the circumstances which must be considered in granting a waiver from the EQC's mandate that your disposal well be decommissioned.

As I discussed in my October 6, 2008 response, my decision must be based on a balancing of the competing interests at hand. This balancing must take into consideration the terms in the waiver provision: "impracticable" and "unreasonably burdensome." Without recapping the definitions of these terms, I have again contemplated their meaning and applicability to the information you recently provided. The fact that two cost estimates of the work to connect have been provided, show that connection to City sewer is clearly not impracticable, as the work is capable of being performed.

While I understand that any cost may be a burden, that in itself does not mean that the burden is an unreasonable one based on finances, as well as all of the other competing interests. First, there is nothing that suggests that these estimates are unreasonable. None of the information provided suggests that these estimates, compared to others, are greatly inflated or unreasonable for the work to be performed. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park, nor would sale of the Park necessitate changing the current use of the Park for the current tenants. Finally, an "unreasonable" burden suggests that there are not competing interests which hold greater weight. This is not the case in this circumstance. A waiver in this case would come at great threat to human health and the environment, without sound reason as to its impracticability or unreasonable burden.

In weighing the burden to you of connecting to municipal sewer

against the potential threat to human health and the environment, and after considering the addendum of October 16, 2008, I find that the burden to you is not unreasonable or impracticable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied.

(Ex. A4.)

14. On October 28, 2008, Respondents requested a hearing on the denial of the waiver. (Department's Motion.)

CONCLUSION OF LAW

The Director of the Department did not abuse his discretion when he denied Respondents' request for a waiver. OAR 340-044-0015.

OPINION

The Department contends that its Motion for Summary Determination should be granted. Respondents contend that it should be denied. I agree with the Department.

Abuse of discretion

The first step is to review the rule at issue and determine if the Director was granted discretionary authority to deny Respondents' waiver request.

OAR 340-044-0015 is titled "Prohibited Underground Injection" and provides, in pertinent part:

(3) No person shall cause or allow Class V injection systems injecting sanitary waste, sewage, or industrial or commercial waste into sewage drain holes or sewage drill holes, except as allowed under OAR 340-044-0015(3)(b), 340-044-0017, or 340-044-0018(3).

(b) After January 1, 1983, use of existing sewage drain holes or sewage drill holes is prohibited unless municipal sanitary sewer service is not available to the property. Except for single family residences, use of an existing sewage drain hole must be authorized by a permit.

(B) Within 90 days after sanitary sewer service is available to a property, the owner of that property shall make connection to the sewer and shall abandon and decommission the sewage drain hole in accordance with OAR 340-044-0040. **On a case-by-case basis, the Director may waive the requirement to connect to sewer if the Director determines that connection to the sewer is impracticable or unreasonably burdensome.**

(Emphasis added.)

The rule cited above uses the word “may” when discussing the Director’s authority to waive the requirement to connect to the sewer. The use of the word “may” in statute or regulation indicates that the relevant entity has discretion whether to take the action described therein. *In Defense of Animals*, 199 Or App 160, 190 (2005); *State v. Larson*, 325 Or 15, 26 (1997). Thus, OAR 340-044-0015(3)(b)(B) confers discretionary authority on the Director to grant or deny a waiver request.

The next step is to determine if the Director abused his discretionary authority when he denied Respondent’s waiver request.

In reviewing for abuse of discretion, the Director’s decision must have been within the range of legally permissible outcomes available to him under the relevant law, and the decision must not have been clearly against reason and evidence. *State Ex Rel. Dept. of Human Services v. S.P.B.*, 218 Or App 97, 103 (2008); *State v. Rogers*, 330 Or 282, 312 (2000).

In this case, because the terms “impracticable” and “unreasonably burdensome” were not defined by statute or rule, the Director applied common dictionary definitions of the terms in his analysis of the evidence. “[W]ords of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993). Unless the disputed term is a “term of art,” its ordinary meaning is presumed to be what is reflected in a dictionary. *Dept. of Rev. v. Faris*, 345 Or 97, 101 (2008) (“The word ‘certify’ is not statutorily defined. Thus, we look to the dictionary.”); *State v. Murray*, 340 Or 599, 604 (2006) (“Absent a special definition, we ordinarily would resort to dictionary definitions, assuming that the legislature meant to use a word of common usage in its ordinary sense.”).

The Director defined “impracticable” as “incapable of being performed or accomplished by the means employed or at command.” The Director reviewed Respondents’ cost estimates for the sewer connection and concluded that the connection was capable of being performed, and thus, not impracticable.

The Director defined “unreasonable” as “not governed by or acting according to reason; not conformable to reason; absurd; exceeding the bounds of reason or moderation.” The Director reviewed Respondents’ financial documents, but chose not to limit the term “unreasonably burdensome” to Respondents’ ability to pay. Instead, the Director reviewed other

criteria as well, including whether Respondents' cost to connect to the sewer was unreasonable as compared to the cost for the same work in another location, and whether the requirement to connect to the city sewer would necessarily lead to closing the Park and the loss of homes to the tenants. The Director also weighed the burden of Respondent connecting to the sewer against the potential threat to human health and the environment. The Director concluded that connection to the sewer, although possibly very costly to the Respondents, was not unreasonably burdensome, given the policy decisions of the Commission and the potential impact to groundwater resources.

When an agency's interpretation of its own rule is plausible and not inconsistent with the wording of the rule itself, the rule's context or any other source of law, the agency is entitled to some deference. *Don't Waste Oregon Committee v. Energy Facility Siting Council*, 320 Or 132, 142 (1994); *see also*, OAR 340-011-0545(3). I find that the Director reasonably construed the terms "impracticable" and "unreasonably burdensome." I further find that the Director's interpretation of the rule is plausible and not inconsistent with the wording of the rule itself.

Accordingly, the evidence in the record establishes that the Director made a reasoned decision, which was supported by the evidence, and the decision was within the range of legally permissible outcomes available to the Director under OAR 340-044-0015(3)(b)(B). Consequently, the Director did not abuse his discretion when he denied Respondents' waiver request.

Respondents contend that the definitions that the Director applied were idiosyncratic. I disagree. As indicated above, the Director used the common and ordinary meaning of the terms "impracticable" and "unreasonable," which is supported by case law. In addition, the Director chose not to limit the term "unreasonably burdensome" to Respondents' ability to pay, which is supported by the text of the rule. Thus, Respondents' argument is unpersuasive.

Respondents next contend that the terms "impracticable" and "unreasonably burdensome" should apply to Respondents' financial circumstances. Respondents argue that it is impracticable and unreasonably burdensome to connect to the sewer because of the prohibitive cost. However, the text of the rule is not limited to financial considerations only. In addition, such an interpretation of the rule would restrict the waiver request to an ability to pay, which is not the criteria the Commission established when it promulgated the rule. Therefore, Respondents' argument is unpersuasive.

Respondents' also contend that the Director's decision was arbitrary and capricious. I disagree. The Director reasonably construed the terms at issue, reviewed the evidence, applied the terms, weighed competing interests, and made a decision that was available to him under the rule. As such, Respondents' argument is without merit.

RULING

The Department's Motion for Summary Determination is GRANTED. The contested case hearing scheduled for July 15, 2009, is hereby CANCELED.

ORDER

I propose the Department of Environmental Quality issue the following order:

The Director of the Department did not abuse his discretion when he denied Respondents' request for a waiver.

/s/ Lynne J. Wehrle

For Dove L. Gutman
Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: June 18, 2009

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 (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. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

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

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

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 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. 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 183.480 et. seq.

CERTIFICATE OF MAILING

On June 18, 2009, I mailed the foregoing Ruling on Motion For Summary Determination and Proposed Order in OAH Case No. 900963.

By: First Class and Certified Mail
Certified Mail Receipt #7008 1830 0003 4612 2368

Michael Sheehan
Attorney at Law
33126 SW Callahan Rd
Scappoose OR 97056

By: First Class Mail

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

Pam Arcari
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 1-800-735-2900

June 2, 2009

Michael Sheehan
Attorney at Law
33126 SW Callahan Rd
Scappoose, OR 97056

RE: Morsman: Reply to Morsmans' Response to Motion for Summary Determination
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

Dear Mr. Sheehan:

Please find enclosed the Department's Reply to the Morsmans' Response, which was sent to ALJ Gutman today. This is an exact copy.

Please let me know if you have any questions.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

Enclosures





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 1-800-735-2900

June 2, 2009

Judge Dove Gutman
Office of Administrative Hearings
2510 Oakmont Way
Eugene, OR 97401

RE: Morsman: Reply to Morsmans' Response to Motion for Summary Determination
OAH Case No: 900963
DEQ Case No. WQ/D-ER-07-186

Dear Judge Gutman:

Please find enclosed the Department's Reply to the Morsmans' Response in the above-referenced case. An exact copy has been sent to Mr. Sheehan.

Please let me know if you have any questions.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

Enclosures



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1
2
3 IN THE MATTER OF:
4 PHILLIP AND BRIGITTE MORSMAN,
5 Doing business as Tops Trailer Park,

) DEPARTMENT OF
) ENVIRONMENTAL QUALITY'S
) REPLY TO RESPONDENTS'
) RESPONSE TO DEPARTMENT'S
) MOTION FOR SUMMARY
) DETERMINATION

6
7 Respondents.

) OAH Case No. 900963
) DEQ Case No. WQ/D-ER-07-186
8

9 I. REPLY

10 The Department of Environmental Quality (the Department), through this Reply Brief,
11 requests that the Administrative Law Judge make a summary determination in this case based on
12 the Department's Motion for Summary Determination, Respondents' Response to the Motion,
13 and this Reply. The Department stated in its Motion for Summary Determination that there are
14 no material facts at dispute in this case. Respondents replied and did not assert that there are
15 material facts in dispute in this case. Therefore, summary determination is proper and supported
16 by the pleadings of both sides in this matter.

17
18 II. THE DIRECTOR'S DENIAL OF THE WAIVER WAS NOT AN ABUSE OF
HIS DISCRETION.

19 The following discusses and responds to the relevant issues raised in Respondents'
20 Response to the Department's Motion for Summary Determination.¹

21 A. The Director's Interpretation of the Environmental Quality Commission's Rule

22 The Morsmans argue that there are no criteria by which to prove their allegation that
23 decommissioning their waste disposal well and connecting to the City of Madras sewer system is

24 ¹ Two issues that do not merit in-depth discussion include the following: (1) The Morsmans' theory that they had an
25 implicit waiver and (2) the Morsmans' issue with DEQ's drafting of the waiver denial letters. The implicit waiver
26 theory is not properly before this Administrative Law Judge as it was an issue raised in the previous hearing before
27 ALJ Han and is at issue on appeal before the Environmental Quality Commission on June 18, 2009. The drafting of
the waiver denial letters is properly delegated to DEQ staff by the Director after the Director considers the evidence,
makes a determination, assigns the drafting of that determination to his staff with expertise in the matter and finally
reviews, approves and signs the document.

1 impracticable and unreasonably burdensome. The existence of criteria in the rule has no bearing on
2 the determination of whether the Director acted properly in exercising his discretion to deny the
3 waiver. The criteria stated in OAR 340-044-0015(3)(b)(B) for whether a waiver should be
4 considered are whether connection to city sewer would be "impracticable" and "unreasonably
5 burdensome." Rules do not always provide definitions for the criteria, as the rule does not in this
6 case. The Morsmans were not limited in their ability to show why decommissioning and
7 connection to City sewer is impracticable or unreasonably burdensome. The Director considered all
8 of the information the Morsmans submitted to show why they shouldn't be required to comply with
9 OAR 340-044-0015(3). The fact that they had no limits on how to show impracticability or
10 unreasonable burden does not make the Director's interpretation of those terms an abuse of his
11 discretion.

12 The Morsmans further take issue with the Director's interpretation of the terms
13 "impracticable" and "unreasonably burdensome." The Director, in the absence of definitions for
14 these terms in the rule, properly used the dictionary definition of these terms, and properly used his
15 discretion to apply those definitions to the evidence provided by the Morsmans. The Morsmans
16 claim that the Director's authority to grant a waiver is not absolute. The Department does not
17 disagree with this. As the Department noted in its Motion for Summary Determination, the standard
18 applicable to the Director's decision is whether or not he abused his discretion. That discretion in
19 this case is broad, since the rule does not require the Director to grant a waiver *even when* he
20 determines that connection is impracticable or unreasonably burdensome. Rather, the rule states
21 that the Director *may* grant a waiver if he finds impracticability or unreasonably burden.

22 **B. The Director's Decision to Deny the Waiver**

23 The Morsmans argue that the Director's decision was an abuse of his discretion and state
24 that his decision was arbitrary and capricious. However, they offer no evidence of prejudice or
25 inconsistency in the Director's actions with this rule, and repeatedly argue that compliance with the
26 rule is a financial difficulty for them.

27 ////

1 The Morsmans argue that because they provided cost estimates for construction, the
2 Director's failure to conclude that connection is impracticable was arbitrary and capricious. They
3 appear to argue that because they provided information on cost and because they allege this cost to
4 be prohibitive, that any decision *but* finding impracticability would be arbitrary and capricious. In
5 this case, the Director did not find the Morsmans' evidence of cost to be compelling or conclusive
6 and further, cost is not the only consideration in determining that connection to municipal sewer is
7 impracticable. If, for example, no contractor in Oregon could perform the work, it would be
8 possible for the Director to find that connection to City sewer was impracticable. That is not what
9 the Morsmans argued in this case. Were, for example, several contractors contacted to do the work
10 to refuse because the line would have to go through a wetland, the Director might find that
11 connection was impracticable. That is not the case here. Connection is both possible and
12 practicable in this case.

13 Similarly, the Morsmans argue that the Director's finding that because the cost of
14 connection in their situation is not unreasonable as compared to the cost for the same work in
15 another location, that his reasoning was an abuse of discretion. They argue without legal support
16 that the term "unreasonably burdensome" can only take into account their financial capability. The
17 EQC did not choose to limit these criteria to financial considerations only. Such an interpretation
18 would make the waiver solely an ability to pay waiver, which it clearly is not given the
19 applicable criteria. A person requesting a waiver has the option to show that in their particular
20 case, connection to municipal sewer is impracticable or unreasonably burdensome for reasons other
21 than cost alone. If, for example, a property was situated so that it was within the reasonably
22 available distance as defined in OAR 340-044-0015(3), but because of state or federally
23 protected lands, the person would have to pay for a much longer sewer line around the protected
24 lands at a length beyond the reasonably available distance defined by rule, the Director could
25 find that to be an "unreasonable burden." Or if, for example, the particular city which would be
26 providing the sewer service to the property were unable to handle the amount of sewage that the
27 facility would be generating and the person had to connect to another municipal sewer beyond

1 the distance proscribed as reasonable by rule, the Director could find this to be an "unreasonable
2 burden."

3 All of these potential examples show that financial burden is not the only possible
4 consideration in determining whether compliance with the law is impracticable or unreasonably
5 burdensome. In fact, the Director outlined other competing concerns that also must be
6 considered in determining whether to grant a waiver request, including the potential for
7 environmental harm and public health hazards as exist in this case.² The Director's decision was
8 based on the evidence he had before him and was a reasonable exercise of the authority granted
9 to him by rule.

10 III. CONCLUSION

11 Because the factual record is complete and undisputed, the Department urges that the
12 Administrative Law Judge find, as a matter of law, that there is no genuine issue as to any material
13 fact that is relevant to resolution of the legal issues in this matter. Based on such a ruling, the
14 Department requests that the Administrative Law Judge issue a Proposed Order that finds that the
15 Director did not abuse his discretion in denying the Morsmans' waiver request.

16
17
18 Date 6/2/09

19 Leah Koss
20 Leah Koss
21 Environmental Law Specialist
22
23

24 ² OAR 340-044-0010(2) provides: "The injection of untreated or inadequately treated sewage or wastes to waste
25 disposal wells and particularly to waste disposal wells in the lava terrain of Central Oregon constitutes a threat of
26 serious, detrimental and irreversible pollution of valuable groundwater resources and a threat to public health. The
27 policy of the Environmental Quality Commission is to restrict, regulate or prohibit the further construction and use
of waste disposal wells in Oregon and to phase out completely the use of waste disposal wells as a means of
disposing of untreated or inadequately treated sewage or wastes as rapidly as possible in an orderly and planned
manner."

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3)	
4	IN THE MATTER OF: PHILLIP and	)	OAH Case No. 900963
5	BRIGITTE MORSMAN, doing	)	NO. WQ/D-ER-07-186
6	business as TOPS TRAILER PARK,)	
7		)	RESPONDENTS' RESPONSE
8	Respondents.	)	TO DEQ MOTION FOR
9		)	SUMMARY DETERMINATION
10	_____)	
11			

13 The Morsmans request that the DEQ's motion for summary determination be
14 denied for the reasons set forth below.

15 **I. BACKGROUND**

- 16 1. The Morsmans are an older retired couple who own, live in, and manage on a full
17 time basis the TOPs manufactured home park ("park") on the west side of Hwy 26
18 north of Madras. The park has approximately 55 resident families or older single
19 people almost all of whom are low income, almost all of whom own their own
20 homes in the park, and almost all of which homes are older singlewides.
- 21 2. The park has been in existence since 1954. Sewage disposal is through a parkwide
22 collection system which leads to a large underground septic tank. Solids are
23 regularly pumped from this tank and hauled away by a licensed septic company.
24 The remaining liquids go from the tank to a drywell which has been in operation
25 over the same time period. The system is currently permitted by DEQ and has
26 been for a number of years.

- 1 3. In 2006 there was problem where the drywell was sabotaged, its lid broken off
2 and materials including garbage bags and sweatshirt shoved down the well shaft.
3 As soon as these materials were removed the well was back into full operation and
4 the system has been working fine ever since. The person who did the damage has
5 never been identified, but a suspect has since been removed from the park and
6 there have been no problems since.
- 7 4. The park itself is outside the City limits of the City of Madras. However, a line of
8 property owned by a single developer bordering on the south side of the park is
9 annexed to the City and the area to the north and west of the park leading up to the
10 Madras airport has also been annexed. See Exhibit 1. The area to the south of the
11 park beyond the developer's line of houses down to Lee Street has not been
12 annexed to the city, is more or less fully developed with many homes, but is not
13 served by city sewer which now stops south of them at Lee Street.
- 14 5. Recently there was a proposal to fund the extension of the city sewer up from the
15 south through the neighborhood and to the park with state Community
16 Development Block Grant funds on application from the City. The application
17 was not successful because it could not be shown that the majority of the parcels
18 that would benefit from the sewer were low income. This was because, even
19 though the residents of the park do certainly qualify as low income, many of the
20 residents of the area to the south do not and, moreover, vacant lots in the area to
21 the south were counted by the state against eligibility.

- 1 6. The Morsmans themselves are not well off. Income tax records were presented to
2 the Director for 2006 and 2007 showing that net income for the Morsmans was
3 \$14,757 in 2006 and \$19,362 in 2007 including pensions and Social Security
4 income. (The Morsmans' adjusted gross income from their 2008 Form 1040 was
5 \$25,370). Since the crash of the economy, especially in central Oregon, where the
6 most recent state figures show Jefferson County unemployment at 16.2%
7 seasonally adjusted and 19.7% actual, cash flow from the park is down further.
8 Documentation was also presented to the Director showing that the Jefferson
9 County Assessor's real market value of the park for the year ending June 30, 2008
10 was \$606,000 with the net mortgage on the park at roughly \$788,000 as of October
11 2007 (currently the mortgage balance is approximately \$770,000 as of May 2009).
12 Thus the mortgage on the park exceeds the real market value of the property even
13 with the real market value determined before the onset of the current recession.
- 14 7. The DEQ has demanded that the Morsmans either pay to build a sewer line from
15 the park approximately 2,000 feet south to the nearest city sewer connection at Lee
16 Street at the south end of the neighborhood south of the park or close the park. (A-
17 12, Notice of Violation, p.4 Department Order, ¶¶ 2 and 3a (2145)).
- 18 8. The Morsmans have spent a good deal of time and effort to obtain cost estimates
19 for building such a sewer line through the hard rock underlying this area. The
20 Morsmans provided cost information from three entities: Knife River at \$400,000
21 not counting engineering (R30); Tye Engineering estimating around \$50,000 +/-

1 20% for engineering plans alone (R31); and Hooker Creek Asphalt and Paving
2 with a roughly \$400,000 estimate for construction. (R32). These estimates do not
3 include city fees including SDCs and others estimated at approximately \$30,000.

4 9. The Morsmans also went to their bank (Bank of the West) to see if the bank would
5 be willing to provide a loan to finance the construction of the sewer. At the time
6 they made the request the Morsmans had not gotten back the information from the
7 construction companies showing the likely cost in the \$400,000 range and so asked
8 the bank if a loan in the \$300,000 range would be possible. The bank refused the
9 loan on the grounds that the Morsmans' ratio of income to existing debt was
10 insufficient to cover a new loan of \$300,000, much less one in the \$400,000 range.
11 All this information—including the letters from the construction companies and the
12 letter from the bank was provided to the Director.

13 II. DEQ RULES AND PRACTICE ON DRYWELLS AND WAIVER

14 A. "Availability" of Municipal Sewer

15 OAR 340-044-0010(2) provides in part:

16 The injection of untreated or inadequately treated sewage or
17 wastes to waste disposal wells and particularly to waste
18 disposal wells in the lava terrain of Central Oregon constitutes
19 a threat of serious, detrimental and irreversible pollution of
20 valuable groundwater resources and a threat to public health.
21 The policy of the Environmental Quality Commission is to
22 restrict, regulate or prohibit the further construction and use of
23 waste disposal wells in Oregon and to phase out completely
24 the use of waste disposal wells as a means of disposing of
25 untreated or inadequately treated sewage or wastes as rapidly
26 as possible in an ordered and planned manner.

1 EQC rule OAR 340-044-0015(3)(b)(A) then goes on to say:

2 (A) A sanitary sewer shall be **deemed available** to a property when,

3
4 (i) A sanitary sewer is extended to within 300 feet from the
5 property boundary for a single family dwelling or other
6 establishment with a maximum design flow not more than 450
7 gallons per day, or 200 feet multiplied by the number of
8 dwellings or dwelling equivalents for other establishments or
9 greater flows.

10
11 (Emphasis added).

12
13 Thus under the rule just stated sewer service would have been 'deemed available'
14 to the Morsmans' park when the city's sewer was 11,000 feet from the park (55
15 dwellings times 200 feet), that is to say more than two miles.

16 **B. DEQ's Implicit Waiver**

17 Over the years the DEQ has never strictly enforced the "200 feet X the number of
18 units" part of the rule without looking at the facts and the waiver portion of the rule, it
19 being clear that to look only at the "200 feet X units" would cross the line to
20 "impracticable or unreasonably burdensome" and create a lot of hardship and
21 homelessness in situations like this.

22 Implicitly, the DEQ has always taken the position that the Morsmans would have
23 to connect to the sewer only when the cost to do so was financially "practicable." We
24 know this because the DEQ knew when the permit was issued in the mid-1990s that a
25 drywell was involved, they knew as well that downtown Madras had a functioning sewer
26 system, and they knew that the City's sewer system was a little over one mile from the

1 park. Given these circumstances the DEQ administration granted an implicit waiver
2 pursuant to OAR 340-044-0015(3)(b)(B) by looking at the facts and then issuing and
3 renewing the permit at appropriate intervals. In fact DEQ's Eastern Region
4 Administrator Joni Hammond has made it clear that her interpretation of the rule in this
5 case is that "reasonably available" means 1/4 of a mile. See R-54, p.1. See also
6 Hammond, R-54, p.2, ¶2:

7 At the meeting "reasonably available" was defined as a
8 location approximately 1/4 mile from the TOPS Trailer Park."

9
10 and again, Hammond, R-54, p.3:

11 Based on the number of dwelling units at the park, these rules
12 would require TOPS to extend a sewer line up to 2.5 miles,
13 while we have defined a reasonable distance in this case as
14 approximately 1/4 mile.

15 Thus, in practice, an implicit waiver in the form of permit renewal was granted
16 when the cost to connect would plainly be disproportionately costly. The DEQ implicitly
17 granted a waiver to the Morsmans when the city sewer was one block south of Lee Street
18 (well within the 11,000 feet), yet refused it when the sewer moved north one block from
19 Cedar Street to Lee.

20 C. EQC's Formal Waiver Rule

21 In OAR 340-044-0015(3)(b)(B) the EQC explicitly provides for a waiver of the
22 connection requirement:

23 (B) Within 90 days after the sanitary sewer service is available to a
24 property, the owner of that property shall make connection to the sewer and
25 shall abandon and decommission the sewage drain hole in accordance with

1 OAR 340-044-0040. **On a case-by-case basis, the Director may waive**
2 **the requirement to connect to sewer if the Director determines that**
3 **connection to the sewer is impracticable or unreasonably burdensome.**
4 (Emphasis added).

5 **II. THE DIRECTOR'S INTERPRETATION OF THE RULE**

6 **A. Context**

7 This case appears to be the first time that there has been a waiver.
8 (DEQ Memorandum p.4, line 19 and DEQ Response to Discovery, Exhibit 2 3089).

9 **B. The Director's Interpretation of His Authority Under the Waiver Rule**

10 According to the DEQ, the Director's discretion not to grant a waiver appears to
11 be, absolute. "(T)he Director cannot be compelled to grant a waiver pursuant to OAR
12 340-044-0015(3)(b)(B)." DEQ Motion for Summary Determination, p.4, line 1. It will
13 no doubt come as a surprise to the EQC and the courts that no matter how capricious and
14 ill-founded the Director's decision to refuse to grant a waiver in a particular case may be,
15 his authority to do so is absolute and beyond the scope and authority of the EQC or even
16 the Oregon appellate courts to correct.

17 **C. Criteria Used by the Director to Determine Whether an**
18 **Otherwise Required Connection to a Sewer is "Impracticable"**

19 When asked in discovery what criteria the Director uses to determine whether the
20 proposed connection to a sewer would be "impracticable," the DEQ responded that the
21 criteria used to determine "impracticability" is whether the proposed connection is
22 "impracticable." Morsman Discovery Request and DEQ response of May 7, 2009.
23 Exhibit 2.
24

1 **D. Criteria Used by the Director to Determine Whether an**
2 **Otherwise Required Connection to a Sewer is “Unduly Burdensome”**

3 When asked what criteria the Director uses to determine whether the proposed
4 connection to a sewer would be “unreasonably burdensome,” the DEQ responded
5 similarly that the criteria used to determine “unreasonably burdensome” is whether the
6 proposed connection is “unreasonably burdensome.” Morsman Discovery Request and
7 DEQ response of May 7, 2009 to Discovery. Exhibit 2.

8 **E. Director’s Interpretation of “Impracticable”**

9 The Director has determined what “impracticable” means in this context by
10 consulting his dictionary and arriving at the following determination. The meaning of
11 impracticable is “incapable of being performed or accomplished by the means employed
12 or at command.” Director’s letter of October 6, 2008, p.2 ¶3. **The Director then**
13 **concludes in this case that since “the work is capable of being accomplished and that**
14 **there are contractors in the area that will in fact perform this work,” connecting to**
15 **the sewer is not ‘impracticable.’”** Director’s Waiver Denial letter of October 6, 2008,
16 p.2 ¶4.

17 The Director in his second denial letter goes on to say that “the fact that two cost
18 estimates of the work to connect have been provided, shows that connection to the City
19 sewer is clearly not impracticable, as the work is capable of being performed.” Director’s
20 letter of October 21, 2008, p.2 ¶1.

21 Thus, apparently under the Director’s interpretation, in any situation where the

1 applicant for a waiver is foolish enough to attempt to provide estimates of the cost of
2 connection relative to its own financial resources, the applicant will under this
3 interpretation of “impracticable” automatically be denied the waiver, because if a person
4 can obtain a cost estimate from a contractor, no matter what the estimate may be—e.g. \$20
5 billion, the connection requirement is, therefore, for that very reason not “impracticable.”

6 **F. Director’s Interpretation of “Unreasonably Burdensome”**

7 In determining whether the cost to the Morsmans of building the sewer connection
8 is “unreasonably burdensome” the Director again looks to his dictionary where he selects
9 the following definitions:

10 (a) Unreasonable: “not governed by or acting according to reason; not
11 conformable to reason; absurd, exceeding the bounds of reason or
12 moderation.”

13 (b) Reasonable: “being in accordance with reason; not extreme or excessive;
14 moderate, fair, possessing sound judgment.” Director’s letter of October 6,
15 2008, p.2 ¶4.

16 The Director then embellishes on his definition of “Unreasonable” as to the cost
17 of connection so as to define it as a comparison of whether the cost to build the
18 connection in the current case and place is significantly more than would be the case in
19 some other place and circumstance. In rejecting the request for a waiver he finds,

20 “In addition, there is no evidence that the cost of connection is an
21 unreasonable one. There are no cost comparisons of the same work being

1 performed somewhere else where the cost was much less, for example,
2 which would suggest that these estimates are extreme or excessive.”

3 Director’s letter of October 6, 2008, p.3 ¶2.

4 Thus “unreasonably burdensome” in the mind of the Director would focus **not** on
5 the financial ability of the applicant to pay for the connection, but would instead be just a
6 comparison of the cost to connect here relative to the cost to do a similar project in some
7 other place. Is not such an interpretation sufficiently out of sync with what would appear
8 to be the plain meaning of the waiver rule language to constitute an arbitrary and
9 capricious interpretation? And since the DEQ publishes no guidance on this
10 interpretation of the rule, and since even when asked what its criteria are for determining
11 whether a proposed connection would be “unreasonably burdensome” it simply responds
12 that it is “unreasonably burdensome” when it is “unreasonably burdensome.” (See II.D
13 above), is this interpretation and the denial of the waiver based upon it not unreasonable
14 and an abuse of discretion? Moreover, under these circumstances, how would an
15 applicant for a waiver ever know what had to be shown in order to justify a waiver in the
16 eyes of the Director?

17 Having adopted these definitions, the Director concludes that given these
18 definitions he is “unconvinced that your compliance with the law would be unreasonably
19 burdensome to you” and rejects the waiver request. Director’s letter of October 6, 2008,
20 p.3 ¶2.

1 **G. Who is the Drafter of the Director's Decision Letters Providing the First**
2 **Interpretation of the Rule and Refusing the Waiver Request**

3 In response to the Morsmans' discovery request for a copy of the Director's file on
4 the waiver request, a much blacked out set of documents was provided. (Exhibit 3).
5 These documents included some email exchanges. There it appears that the DEQ
6 delegated the task of framing for the first time the interpretation of the language of the
7 waiver rule, and then using that interpretation of the rule to deny the Morsmans' request,
8 to the DEQ's attorney on both the main DEQ case against the Morsmans now before the
9 EQC and the Morsmans' waiver case. These cases are adversary proceedings, and to
10 assign these tasks to the ardent attorney representing the DEQ on these cases would
11 appear to compromise what should have been a neutral and objective interpretation of the
12 EQC's rule, and the Morsmans' right to have a neutral and objective decision from the
13 Director. Can we imagine the court of appeals allowing an attorney for one side to draft
14 its decision in a case between the two parties, especially without telling the other side?

15 **III. LEGAL STANDARD**

16 The standards for review of agency actions set out in ORS 183.482(8) reflect a
17 legislative policy, embodied in the APA, that decisions by administrative agencies be
18 rational, principled, and fair, rather than ad hoc and arbitrary. *Gordon v. Board of Parole*,
19 343 Or. 618, 633 (Or. 2007).

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IV. ANALYSIS

In this case the DEQ has issued an Order requiring that the Morsmans either connect to the City sewer or disconnect the residences in the park from the park's septic system. (See Exhibit A-12, Notice of Violation, p.4 Department Order, ¶¶ 2 and 3a).

If the residences are disconnected from the septic system they may no longer be occupied as residences, and the residents must leave their homes.

The Morsmans have provided substantial evidence in the form of two written estimates from construction companies for construction work and one cost estimate from an engineering company as to the cost of providing engineering plans for the approximate cost of building a sewer line from the park to connect to the City of Madras connection about 2,000 feet away. The Morsmans have also provided 2006 and 2007 income tax records to show their adjusted gross income for those years (and are ready to provide the same data for 2008) and the costs associated with operating the park. Their adjusted gross income levels were \$14,757 for 2006, and \$19,362 for 2007. Data was also presented both as to the net outstanding mortgage on the park (approximately \$789,000 as of October 2007), and the Jefferson County Appraiser's estimate of the real market value (RMV) of the park for tax year July07 through June08 at \$606,233. Note that the RMV is substantially less than the outstanding mortgage amount, and also note that these figures for RMV are also from before the recession hit in central Oregon. The Morsmans also presented data in the form of a letter from their bank in response to their request for a loan from the bank to pay for building the sewer. The request was for a loan in the amount of

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1 \$300,000 (this was before the cost data came in from the construction companies). The
2 bank refused the loan on the grounds that the Morsmans had insufficient income to justify
3 a loan for even \$300,000.

4 In the face of this uncontradicted evidence on the cost of building the connection
5 and the financial condition of the Morsmans, which again the DEQ does not dispute, and
6 which would appear to a reasonable person to be substantial evidence that given these
7 facts, it is "impracticable" for the Morsmans, given their assets and income, to build the
8 connection to the sewer at this distance. Similarly, and for the same reasons, forcing the
9 Morsmans to build the connection or close the park and go out of business would seem to
10 be a perfect example of connection requirement which is "unreasonably burdensome."

11 Yet the Director's idiosyncratic definitions of "impracticable" as no contractor
12 willing to do the work at any price, and "unduly burdensome" as relating not to whether
13 the Morsmans have the financial capability of covering the cost of building the
14 connection, but instead whether the cost of construction is significantly higher in the
15 Madras area than in some other area, appear ad hoc and arbitrary, and more for the
16 purpose of assuring that the outcome of the waiver case is in accord with the DEQ's
17 litigation goals in the Morsman cases than arriving at a fair and unbiased interpretation of
18 the waiver rule.

19 \\\

20 \\\

21 \\\

V. CONCLUSION

For all these reasons the DEQ's motion for summary determination should be denied.

DATED: May 26, 2009

Respectfully submitted,



Michael F. Sheehan, OSB 88126
Of Attorneys for the Morsmans
33126 Callahan Road
Scappoose, Oregon 97056
503-543-7172 Fax 503-543-7172
mikeshsheehan@centurytel.net

3c:\Law\Morsmans07\Response to brief on Waiver 24May09

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: PHILLIP and	)	OAH Case No. 900963
BRIGITTE MORSMAN, doing	)	NO. WQ/D-ER-07-186
business as TOPS TRAILER PARK,)	
	)	AFFIDAVIT OF
Respondents.	)	MICHAEL F. SHEEHAN

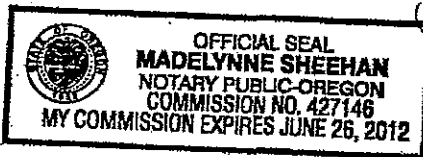
Michael F. Sheehan, being duly sworn, states as follows:

1. I am the attorney for the Morsmans in this case.
2. Exhibit 1 is a map that fairly represents the relative locations of the Morsmans' mobilehome park.
3. Exhibit 2 are materials provided to me by DEQ in response to a discovery request.
4. Exhibit 3 is additional material provided to me by DEQ in response to the same discovery request.
5. Exhibit 4 is the Morsmans' Form 1040 for year 2008.

Date: 26 May 2009

Michael F. Sheehan
Attorney for the Morsmans

Subscribed and sworn to before me on May 26, 2009.


Notary Public for Oregon

MICHAEL F. SHEEHAN
Attorney at Law
33126 Callahan Road
Scappoose, OR 97056
503-543-7172 Fax 503-543-7172

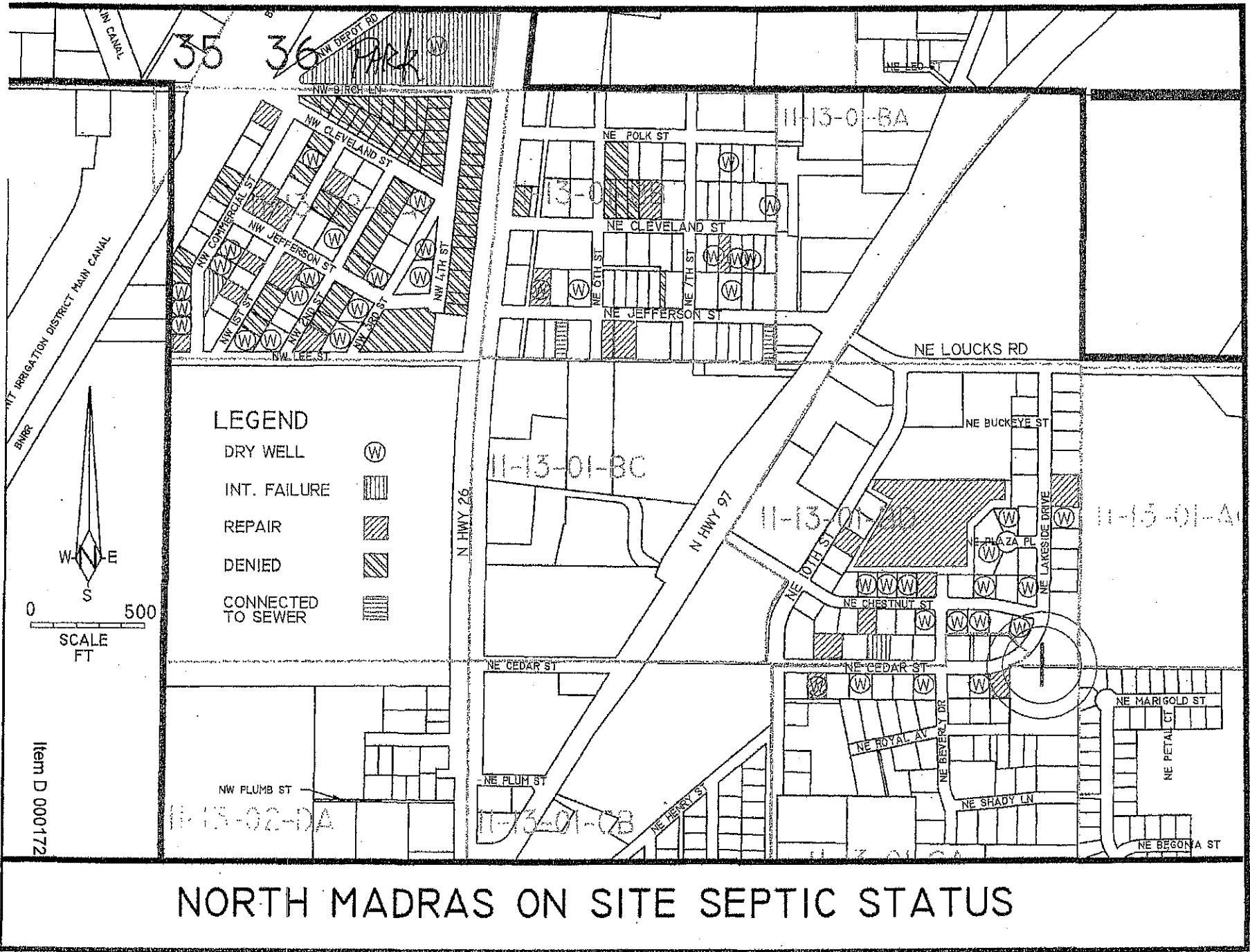


Exhibit 14
 Page
 Exhibit 1

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

COPY

May 4, 2009

****BY FAX AND MAIL****

Leah Koss
DEQ Compliance and Enforcement
811 SW Sixth Ave
Portland, OR 97204

RE: DEQ v. Morsman Waiver Case
Further Discovery Request


Leah Koss:

This is the Morsmans' further informal request for discovery. This request is for the following:

1. A copy of the criteria used by the Director to determine pursuant to a waiver request under OAR 340-044-0015(3)(b)(B) whether the connection to the sewer is "impracticable."
2. A copy of the criteria used by the Director to determine pursuant to a waiver request under OAR 340-044-0015(3)(b)(B) whether the connection to the sewer is "unreasonably burdensome."
3. Copies of past decisions by the Director on waiver requests pursuant to OAR 340-044-0015(3)(b)(B) rendered during the last five years.

Thank you for your help. Give me a call if you have questions.

Yours truly,


Michael F. Sheehan

cc: Morsmans



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 1-800-735-2900

May 7, 2009

Mike Sheehan
Attorney at Law
33126 S.W. Callahan Road
Scappoose, OR 97056

By email and mail

RE: Response to Discovery Requests

Mike,

The following are the Department's responses to your requests for discovery.

Discovery Request No. 1 (April 30, 2009)

The attached emails respond to this request. A few sentences have been redacted based on attorney-client privilege with the Department of Justice.

Discovery Request No. 2 (May 4, 2009)

1. The criteria used by the Director to grant or deny a waiver request are "impracticability" and "unreasonable burden" as noted in OAR 340-044-0015(3)(b)(B).
2. Same response as no. 1 above.
3. There are no past decisions by the Director on waiver requests pursuant to OAR 340-044-0015(3)(b)(B) rendered during the last five years.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

HAMMOND Joni

From: HAMMOND Joni
Sent: Wednesday, September 17, 2008 1:11 PM
To: PEDERSEN Dick
Cc: KOSS Leah; HICKMAN Jane; SNYDER Gwen
Subject: FW: Morsman Waiver Request
Attachments: Morsmanwaiverresponse2.doc

Importance: High

Dick-- attached is the letter in response to a waiver request from the Morsmans'. Please review and I will ask Gwen to format and prepare it to be sent out. I think Leah did an excellent job in the response.

[REDACTED]

Gwen--please format and prepare for Dick's signature--then hold up on sending until we get the ok from Leah.

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

From: KOSS Leah
Sent: Tuesday, September 16, 2008 5:39 PM
To: HAMMOND Joni
Cc: 'HICKMAN Jane'; KOSS Leah
Subject: Morsman Waiver Request
Importance: High

Joni,

Please see the attached draft response to the Morsmans' waiver request. Jane has reviewed this and I'd like you to review this and let me know your thoughts. Please also advise on next steps for moving this forward to Dick.

[REDACTED] Please let me know if you have any questions or concerns.

Thanks! Leah →

Leah Koss
DEQ - Office of Compliance and Enforcement
koss.leah@deg.state.or.us
phone: 503-229-6408
fax: 503-229-5100

Department of the Treasury - Internal Revenue Service
Form **1040** U.S. Individual Income Tax Return **2008** (99) IRS Use Only - Do not write or staple in this space.

Label (See instructions.)	For the year Jan 1 - Dec 31, 2008, or other tax year beginning , 2008, ending , 20	CMB No. 1545-0074
	Your first name MI Last name PHILLIP D. MORSMAN	Your social security number 540-38-5402
	If a joint return, spouse's first name MI Last name BRIGITTE R. MORSMAN	Spouse's social security number 541-60-5717
	Home address (number and street). If you have a P.O. box, see instructions. Apartment no. 23 NW DEPOT RD.	You must enter your social security number(s) above.
City, town or post office. If you have a foreign address, see instructions. State ZIP code MADRAS, OR 97741	Checking a box below will not change your tax or refund.	
Presidential Election Campaign	Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) <input type="checkbox"/> You <input type="checkbox"/> Spouse	

Filing Status

1 <input type="checkbox"/> Single	4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
2 <input checked="" type="checkbox"/> Married filing jointly (even if only one had income)	5 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instructions)
3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above & full name here	

Exemptions

6a Yourself. If someone can claim you as a dependent, do not check box 6a

b Spouse

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> If qualifying child for child tax credit (see instrs)	Boxes checked on 6a and 6b
					2

Total number of exemptions claimed 2

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a Taxable interest. Attach Schedule B if required	8a	
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	
b Qualified dividends (see Instrs)	9b	
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	
13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here	13	11,290.
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount (see instrs)	15b	
16a Pensions and annuities	16a	17,038.
b Taxable amount (see instrs)	16b	1,488.
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	10,054.
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	18,574.
b Taxable amount (see instrs)	20b	886.
21 Other income Gambling Winnings	21	1,652.
22 Add the amounts in the far right column for lines 7 through 21. This is your total income	22	25,370.

Adjusted Gross Income

23 Educator expenses (see instructions)	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 Health savings account deduction. Attach Form 8889	25	
26 Moving expenses. Attach Form 3903	26	
27 One-half of self-employment tax. Attach Schedule SE	27	
28 Self-employed SEP, SIMPLE, and qualified plans	28	
29 Self-employed health insurance deduction (see instructions)	29	
30 Penalty on early withdrawal of savings	30	
31a Alimony paid b Recipient's SSN	31a	
32 IRA deduction (see instructions)	32	
33 Student loan interest deduction (see instructions)	33	
34 Tuition and fees deduction. Attach Form 8917	34	
35 Domestic production activities deduction. Attach Form 8903	35	
36 Add lines 23 - 31a and 32 - 35	36	0.
37 Subtract line 36 from line 22. This is your adjusted gross income	37	25,370.

SCHEDULE E
(Form 1040)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)
▶ Attach to Form 1040, 1040NR, or Form 1041.
▶ See instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2008

Attachment
Sequence No. **13**

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on return

PHILLIP D. AND BRIGITTE R. MORSMAN

Your social security number

540-38-5402

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use

Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and address of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)	Yes	No
A	TOPS TRAILER PARK 23 NW DEPOT RD, MADRAS OR 97741				X
B					
C					

		Properties			Totals	
		A	B	C	(Add columns A, B, and C.)	
3	Rents received	3	189,367.		3	189,367.
4	Royalties received	4			4	
Expenses:						
5	Advertising	5				
6	Auto and travel (see instructions)	6	7,000.			
7	Cleaning and maintenance	7	1,412.			
8	Commissions	8				
9	Insurance	9	4,996.			
10	Legal and other professional fees	10	18,893.			
11	Management fees	11				
12	Mortgage interest paid to banks, etc (see instructions)	12	51,015.		12	51,015.
13	Other interest	13	19,221.			
14	Repairs	14	1,570.			
15	Supplies	15				
16	Taxes	16	4,609.			
17	Utilities	17	38,409.			
18	Other (list) ▶	18	28,474.			
			Statement 1			
19	Add lines 5 through 18	19	175,599.		19	175,599.
20	Depreciation expense or depletion (see instructions)	20	3,714.		20	3,714.
21	Total expenses. Add lines 19 and 20	21	179,313.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198.	22	10,054.			
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2.	23				
24	Income. Add positive amounts shown on line 22. Do not include any losses.	24			24	10,054.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.	25			25	
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2.	26			26	10,054.

2008		Federal Statements		Page 1	
		PHILLIP D. AND BRIGITTE R. MORSMAN		540-38-5402	
Statement I					
Schedule E, Line 18 - TOPS TRAILER PARK					
Other Rental and Royalty Expenses					
Amortization.....		\$	625.		
Association Dues.....			30.		
BANK CHARGES.....			180.		
Gardening.....			350.		
Licenses and Permits.....			1,169.		
MOWER & EQUIPMENT FUEL.....			2,920.		
Painting and Decorating.....			6,315.		
Plumbing and Electrical.....			7,589.		
POSTAGE.....			242.		
SCH E PORTION TAX PREP.....			365.		
SECURITY.....			556.		
SEPTIC SYS PUMPING.....			4,000.		
Telephone.....			4,133.		
		Total \$	<u>28,474.</u>		



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 1-800-735-2900

May 12, 2009

Judge Dove Gutman
Office of Administrative Hearings
2510 Oakmont Way
Eugene, OR 97401

RE: Morsman: Motion for Summary Determination
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

Dear Administrative Law Judge Gutman:

Please find enclosed the Department's Motion for Summary Determination in the above-referenced case. An exact copy has been sent to Mr. Sheehan.

Please let me know if you have any questions.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

Enclosures



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 1-800-735-2900

May 12, 2009

Michael Sheehan
Attorney at Law
33126 SW Callahan Rd
Scappoose, OR 97056

RE: Morsman: Motion for Summary Determination
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

Dear Mr. Sheehan:

Please find enclosed the Department's Motion for Summary Determination, which was sent to ALJ Gutman today. This is an exact copy.

Please let me know if you have any questions.

Sincerely,

Leah Koss
Office of Compliance and Enforcement

Enclosures



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1		
2		
3	IN THE MATTER OF:)
4	PHILLIP AND BRIGITTE MORSMAN,)
5	Doing business as Tops Trailer Park,)
6)
7)
8	Respondents.)
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DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MOTION FOR SUMMARY DETERMINATION
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

I. MOTION FOR SUMMARY DETERMINATION

The Department of Environmental Quality (the Department), via this Motion for Summary Determination filed pursuant to OAR 137-003-0580, moves that the Administrative Law Judge rule in the Department's favor upholding the Director's denial of waiver under OAR 340-044-0015(3)(b)(B). This Motion is supported by the attached documents and exhibits which establish that there are no genuine issues as to any material facts in this case (as explained in the attached Affidavit of Leah Koss, Exhibit No. A6); the matter can be decided on the law; and the Department is entitled to a favorable ruling as a matter of law.

II. MEMORANDUM IN SUPPORT FOR MOTION FOR SUMMARY DETERMINATION

A. Background

On December 19, 2007, the Department issued to Respondents Notice of Violation, Department Order, and Civil Penalty Assessment No. WQ/D-ER-07-186 which alleged four violations and included a Department Order. Regarding the violation at issue in this motion, the Department alleged that Respondents failed to decommission the waste disposal well at property they own located at 23 NW Depot Road in Madras, Oregon and failed to connect to the City of Madras available sewer system, in violation of their Water Pollution Control Facilities General Permit No. 4400, ORS 468B.025(2) and OAR 340-044-0015(3)(b). The Department Order required Respondents to decommission the waste disposal well at their property and to connect the facility to the City of Madras sewer system.

1 On January 8, 2008, Respondents requested a contested case hearing on the Notice and
2 Order. A hearing was held on July 25 and July 30, 2008 before Administrative Law Judge James
3 Han. On October 21, 2008, ALJ Han issued a Proposed Order that included findings of fact and
4 conclusions of law on each of the violations and the Department Order. On November 20, 2008,
5 Respondents petitioned the Environmental Quality Commission for review of the Proposed Order.
6 The appeal is scheduled to be heard by the Commission on June 18, 2009.

7 On August 8, 2008, Respondents petitioned the Department's Director for a waiver from the
8 requirement that they decommission their waste disposal well and connect to municipal sewer. On
9 October 6, 2008, the Director responded, denying the request for a waiver from the requirement.
10 On October 16, 2008, Respondents again petitioned the Director for a reconsideration of the waiver
11 request. On October 21, 2008, the Director responded, again denying the request for a waiver
12 notwithstanding Respondents' additional information and argument. On October 28, 2008,
13 Respondents requested a contested case hearing on the matter.

14 **B. Applicable Law and Policy**

15 OAR 340-044-0010(1) provides: "It is the policy of the Environmental Quality
16 Commission that the injection of wastes to the subsurface shall be limited and controlled in a
17 manner that protects existing groundwater quality for current or potential beneficial uses
18 including use as an underground source of drinking water."

19 OAR 340-044-0010(2) provides: "The injection of untreated or inadequately treated
20 sewage or wastes to waste disposal wells and particularly to waste disposal wells in the lava
21 terrain of Central Oregon constitutes a threat of serious, detrimental and irreversible pollution of
22 valuable groundwater resources and a threat to public health. The policy of the Environmental
23 Quality Commission is to restrict, regulate or prohibit the further construction and use of waste
24 disposal wells in Oregon and to phase out completely the use of waste disposal wells as a means
25 of disposing of untreated or inadequately treated sewage or wastes as rapidly as possible in an
26 orderly and planned manner."

////

1 Oregon law prohibits the new construction, maintenance, or use of waste disposal wells
2 where any other means of sewage disposal is available.¹ OAR 340-044-0015(3) provides, in
3 relevant part:

4 No person shall cause or allow Class V injection systems injecting
5 sanitary waste, sewage, or industrial or commercial waste into
6 sewage drain holes or sewage drill holes, except as allowed under
7 OAR 340-044-0015(3)(b), 340-044-0017, or 340-044-0018(3).

8 (b) After January 1, 1983, use of existing sewage drain holes or
9 sewage drill holes is prohibited unless municipal sanitary sewer
10 service is not available to the property. Except for single family
11 residences, use of an existing sewage drain hole must be authorized
12 by a permit.

13 (B) Within 90 days after sanitary sewer service is available to a
14 property, the owner of that property shall make connection to the
15 sewer and shall abandon and decommission the sewage drain hole
16 in accordance with OAR 340-044-0040. On a case-by-case basis,
17 the Director may waive the requirement to connect to sewer if the
18 Director determines that connection to the sewer is impracticable or
19 unreasonably burdensome.

20 C. Standard for Contested Case Review of the Director's Waiver Denial²

21 The Morsmans have requested a contested case on the Director's denial of their request
22 for a waiver of the requirement to connect to municipal sewer pursuant to OAR 340-044-
23 0015(3)(b)(B), which states in relevant part: "*On a case-by-case basis, the Director may waive
24 the requirement to connect to sewer if the Director determines that connection to the sewer is
25 impracticable or unreasonably burdensome.*"

26 The regulation in question is one that confers discretionary authority on the Director.
27 Use of the word "may" in statute or regulation indicates that the relevant entity has discretion
whether to take the action described therein. *In Defense of Animals*, 199 OR App 160, 190, 112
P.3d 336(2005); *State v. Larson*, 325 Or. 15, 26, 933 P.2d 958 (1997).

¹ OAR 340-044-0012(2) Permits shall not be issued for construction, maintenance or use of an underground injection system where any other treatment or disposal method that affords better protection of public health or water resources is reasonably available or possible.

² The proper standard and scope of review for the Director's discretionary decision is a question of law. The Department sought and obtained advice from its counsel at the Oregon Department of Justice in this regard and DOJ counsel concurs with this legal analysis.

1 Thus, the Director cannot be compelled to grant a waiver pursuant to OAR 340-044-
2 0015(3)(b)(B). The proper standard for review in a contested case of the Director's exercise of
3 his discretion is whether he **abused that discretion** (the standard of review used by Oregon
4 appellate courts in reviewing discretionary actions).

5 Under a review for abuse of discretion, the Director's decision must be found to have
6 been within the range of lawful options available to him under the relevant law. *See State v.*
7 *Rogers*, 330 Or. 282, 310-12, 4 P.3d 1261 (2000) (discretion means the authority of the decision-
8 making body to choose among legally correct outcomes); *McCarthy v. Oregon Freeze-Dry, Inc.*,
9 327 Or. 185, 188, 957 P.2d 1200 (1998) (court must exercise its discretion according to relevant
10 statutory criteria). And the decision must be found not to have been clearly against reason and
11 evidence. *In the Matter of K.J.B. v S.P.V.* 218 Or.App 97, 178 P.3d 307.

12 Where, as here, the regulation provides general narrative criteria to inform a discretionary
13 decision (a waiver may be granted where connection to the sewer is "impracticable" or
14 "unreasonably burdensome"), the question on review for abuse of discretion is whether the
15 Director properly interpreted the criteria in the rule (whether he reasonably construed the terms
16 "impracticable" and "unreasonably burdensome"), and, if so, whether his resulting decision was
17 within the range of his lawful options – *i.e.*, to approve the waiver or deny the waiver – in light
18 of the policy underlying the law.

19 Because there are no prior agency interpretations or applications of the waiver provision
20 in OAR 340-044-0015(3)(b)(B), the Director, in considering the Morsman's waiver request,
21 applied common dictionary definitions of the terms "impracticable" and "unreasonably
22 burdensome." (See Exhibit Nos. A2 and A4, the Director's responses) Where operative terms of
23 a rule are not otherwise defined, reference to the dictionary is proper. *See e.g., McCollum v.*
24 *KMART CORPORATION*, 2009 WL 1140164 (OR.App.) In this case, the Director concluded
25 that connection to the sewer, though possibly very costly to the Morsmans, was neither
26 impracticable nor unreasonably burdensome as those terms are commonly defined, given the
policy decisions of the Commission and the potential impacts to public groundwater resources.

1 On review, deference is due to the Director's reasonable interpretation of the rule. OAR 340-
2 011-0545(3); *Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or. 132, 142, 881 P.2d
3 119 (1994).

4 **D. Evidence in Support of Department's Motion**

5 Exhibit A1 – Morsmans' request for a waiver and attached exhibits, dated August 8, 2008

6 Exhibit A2 – The Director's response, dated October 6, 2008

7 Exhibit A3 – Morsmans' request for reconsideration of the waiver denial and attached
8 exhibits, dated October 16, 2008.

9 Exhibit A4 – The Director's response, dated October 21, 2008

10 Exhibit A5 – Morsmans' petition for a contested case hearing, dated October 28, 2008

11 Exhibit A6 – Affidavit of Leah Koss, dated May 12, 2009

12 **E. Conclusions**

13 The regulation at issue confers discretionary authority on the Director and therefore, the
14 Director cannot be compelled to grant a waiver pursuant to OAR 340-044-0015(3)(b)(B) absent an
15 abuse of that discretion. The Director considered Respondents' requests and exhibits attached
16 thereto, and not disputed herein (see Exhibit Nos. A1 and A3), in determining whether to grant a
17 waiver request in this case. The Director's decision was within the range of lawful options available
18 to him under the relevant law. He reasonably interpreted the criteria for considering a waiver
19 request and properly applied those criteria. The Director also properly considered the applicable
20 law and policy of the Environmental Quality Commission in balancing the competing interests at
21 hand. Finally, neither the Department nor the Director takes issue with any of the evidence
22 submitted by the Morsmans to support their request for a waiver. The factual record is complete
23 and undisputed.

24 In conclusion, the Department moves that the Administrative Law Judge find, as a matter of
25 law, that there is no genuine issue as to any material fact that is relevant to resolution of the legal
26 issues in this matter.

27 ///

1 Based on such a ruling, the Department requests that the Administrative Law Judge issue a
2 Proposed Order that finds that the Director did not abuse his discretion in denying Respondents
3 waiver request.
4

5 5.12.09
6 Date

Leah Koss
7 Leah Koss
8 Environmental Law Specialist
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1
2
3 IN THE MATTER OF:
4 PHILLIP AND BRIGITTE MORSMAN,
5 Doing business as Tops Trailer Park,
6 Respondents.

AFFIDAVIT OF LEAH KOSS

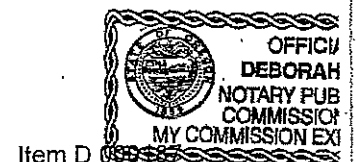
OAH Case No. 900963
DEQ Case No. WQ/D-ER-07-186

MULTNOMAH COUNTY

7
8 Leah Koss, being duly sworn, deposes and states as follows:

- 9 1. I am an Environmental Law Specialist (ELS) with the Department of Environmental
10 Quality's (the Department) Office of Compliance and Enforcement.
11 2. I am the ELS assigned to and familiar with this matter and there are no material facts in
12 dispute.
13 3. The undisputed facts are:
14 a. The Morsmans own and operate the facility known as the Tops Trailer Park located
15 at 23 NW Depot Road in Madras, Oregon.
16 b. The Morsmans discharge wastewater to a wastewater disposal well on that property.
17 c. The Morsmans requested a waiver from the Director of the Department from the
18 requirement in OAR 340-044-0015(3)(b)(B) that they decommission their waste
19 disposal well and connect to municipal sewer.
20 d. The Director considered both the Morsmans' initial request and accompanying
21 exhibits of August 8, 2008 as well as the request for reconsideration and
22 accompanying exhibits of October 16, 2008.
23 e. The Director denied both the request for waiver and the request for reconsideration.
24 4. A complete copy of the Morsmans' requests for waiver and all exhibits, as well as the
25 Director's responses, are attached to this affidavit and are incorporated herein by this
26 reference.

27 ///

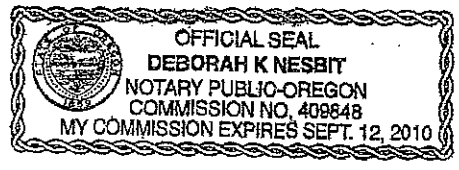


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5.12.09

Leah Koss

Date Leah Koss, Environmental Law Specialist

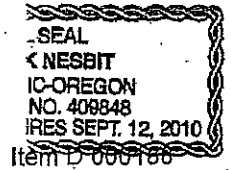


Sworn to and subscribed before me this 12th day of May 2009.

Deborah K. Nesbit

Notary Public for Oregon.

My Commission expires: 09/12/2010



MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX: 503-543-7172

October 28, 2008

FAX COVER SHEET

TO: Dick Pedersen, Director DEQ

FR: Mike Sheehan

RE: Request for a Contested Case

Enclosed is our request for a contested hearing on the issue of our request for request for a waiver. This request is also being mailed.

Pages(including this cover sheet): 9

Confidentiality Notice: The information contained in this fax transmittal may be privileged and is confidential. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that reading, disseminating, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. If you have received this transmittal in error, please notify me immediately by telephone (503-543-7172) to arrange for the return of the documents. Thank you.

Item D 000189

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

October 28, 2008
****BY FAX AND MAIL****

Dick Pedersen
Director, DEQ
811 SW Sixth Ave
Portland, OR 97204

RE: Request for a Contested Case
Hearing on Denial of Waiver
Morsmans & TOPs Trailer Park
No. WQ/D-ER-07-186

Dear Mr. Pedersen:

Please consider this a request for a contested case hearing pursuant to the last paragraph of your letter of October 6, 2008. We would also be happy to participate in an informal discussion of these matters if your office would be willing.

I. Context

As you know I represent the Morsmans who own and operate a 60 unit low-income manufactured home park just north of Madras along Highway 26. Mr. Morsman is a retired Madras police officer and he and his wife Brigitte both live in the park and do most of the maintenance work in the park. We are currently involved in a contested case proceeding with the DEQ office in Bend. The issue involves a proposed order that would require that the Morsmans pay to build a city sewer from the collection point of their in-park sewer system approximately 2,000 feet through hard rock down to a Madras City sewer on the other side of the neighborhood just to south of the park.

The problem is that the estimates that we have gotten for the construction of such a line along with various city permits would run in the neighborhood of \$430,000. We have presented evidence in the current proceeding that given the \$700,000+ mortgage on the park and the current state of the mortgage lending market, it is impossible to finance any such additional mortgage debt given the cash flow generated by the park.

The proposed order arises out of a Department policy that drywells for sewage disposal should be phased out. The system on the Morsmans' property collects the sewage in a large septic tank which is pumped regularly, with the liquid effluent which

would otherwise go to a drainfield were the bedrock not so close to the surface, going instead to a drywell. This drywell has been in operation since about 1954. In 2006 someone broke the head off the drywell and stuffed a sweatshirt, trashbags and what appeared to be a wig down the drywell. This produced an overflow of liquid sewage which couldn't get down the drywell. Local DEQ officials refused to allow these materials to be removed from the drywell shaft for 8 days and required instead that the septic tank be pumped on an ongoing basis. The cost to the Morsmans for doing this for these eight days was well over \$20,000. As soon as the local DEQ officials allowed the well shaft to be cleared of the materials described above, the well was back in perfect operation and there have been no problems in the roughly two years from then to now.

Local DEQ officials claim, however, that since the depth of the drywell is approximately 327 feet that this could pose a public health threat to city water wells. It is significant to note first that the TOPs drywell has been in operation for approximately 54 years. Secondly, the nearest city well is across Highway 26 approximately a third of a mile from TOPS (1,682 feet away). This well is not used by the city since this entire area of the city (and almost all of the city) is served by the Deschutes Valley Water District from the District's supply at Opal Springs, more than 20 miles away from TOPS. Moreover, I have checked the state well testing data on this well and there is no record whatsoever of any contamination by sewage-related matter at all before, during, or since the sabotage of the drywell in 2006.

The city does have another well more than a mile away (5,315 feet) in the downtown area which it used as a backup supply for fire protection. This well is more than a mile away and no evidence at all has been brought forward by DEQ of any contamination of this well either. In sum, the TOPs drywell has been in operation for about 54 years and there is no indication of any sewage related contamination of either well and certainly none in the nearest one.

Local DEQ staff have issued their proposed order citing OAR 340-044-0015(3)(b), which says that drywells may not be used unless municipal sanitary sewer service is not available to the property. (Emphasis added). OAR 340-044-0015(3)(b)(A)(i) defines "available" in this case as being within the number of units in the park (60) X 200 feet. This equals 12,000 feet or well over two miles. This has never been enforced since the cost of building such a sewer line would have been financially impossible.

The city, as an adjunct to having provided sewer service to a new hotel approximately half a mile downhill from TOPs, has now extended a sewer line to approximately 2,000 feet of the Morsmans' drywell location. Local DEQ staff have now said that at this point the sewer is "available" and the Morsmans must pay to build the sewer from that point through the intervening neighborhood up to the Morsmans collection point.

The difficulty, as noted above, is that the cost of building this 2,000 feet of sewer line, according to the estimates we have gotten, is approximately (the contractors say +/- 20%) \$400,000 plus city SDC fees and other charges which would add at least another \$30,000. Given the cash flow of the park—again almost all the units in the park are older singlewides owned by low income elderly and working families—there isn't enough cash flow to support another \$430,000 second mortgage, and the bank has said so. (R36, attached).

This brings us to the crux of the matter. Given the impossibility of financing the \$430,000+ for the sewer line associated costs, the choice presented by the local DEQ is come up with the money or close the park.

“Connect the facility to the City of Madras sewerage system; or disconnect all plumbing fixtures from the waste disposal system.” Notice of Violation, p.4, lines 19-22.

I have asked Eric Nigg about whether there were alternatives that he might approve instead of building the sewer line for the \$430,000 and he said he knew of none.

II. Our Waiver Request

The city has annexed up to the southern property line of TOPs. The city has also annexed most of the airport area property to the north of TOPs. At some point the city will probably find it either necessary or convenient to extend sewer north to or beyond TOPs, or south from the airport area to the industries around TOPs currently not served by sewer.

Given the risk of eliminating 55 units of low income housing, with the loss to those families living in TOPs of their homes (virtually all unmovable singlewides), and the Morsmans' business we respectfully request a waiver pursuant to OAR 340-044-0015(3)(b)(B):

“On a case-by-case basis, the Director may waive the requirement to connect to sewer if the Director determines that connection to the sewer is impracticable or unreasonably burdensome.”

After your denial of our request we took the opportunity to provide additional information on several issues and asked for your reconsideration based on that new

information.

The first of these issues related to p.2 ¶ 2 of your letter of October 6, 2008. There you say that "the depth (of the drywell) has reached approximately 326 feet after the last drilling was done to stop the discharge of the sewage from the drain hole." The suggestion being that the drywell was significantly deeper after the "drilling" than before. This was not the case. The well was "drilled out" to clear the existing shaft. The shaft was not deepened. Attached is the affidavit of the driller submitted in the hearing as Exhibit R24. Note that it says that:

"After a few feet of drilling the obstruction downward it gave way and pushed down to approximately 320 feet. At this point it was drilled on to 327 feet. With the action of the drill rig it was determined that the original depth had been reached."

Note that the standard for "available" was 200 feet per housing unit. This would make the standard for availability 12,000 feet for a manufactured home park of this size (approximately 60 units). This is well over two miles. There has been a city sewer line within two miles for a number of years and the Department has always implicitly agreed that enforcement of the connection requirement at that distance would be unreasonably burdensome.

Here the suggestion is that since the well shaft was "deepened" that it is now more of a threat than it was and so justifies a refusal of the requested waiver. However, as the affidavit says, the shaft was not deepened, and based on this we respectfully request that your decision be reconsidered.

Secondly, it is suggested that the Morsmans have not supplied enough documentation of their financial condition to justify a hardship waiver. We have supplied a copy of the letter from their bank refusing a loan \$300,000 for this purpose. We also provided information on the \$700,000+ existing mortgage on the park. In addition we provided bid information from three entities, Knife River at \$400,000 not counting engineering; Tye Engineering estimating around \$50,000 +/- 20% for engineering; and Hooker Creek Asphalt and Paving with a roughly \$400,000 estimate. These estimates do not include city fees including SDCs and others.

You suggest that without documentation of income and assets that a determination of whether the requirement would be unreasonably burdensome could not be made. We provided a copy of the Jefferson County Assessor's sheet for the TOPs property and also a copy of the Morsmans' income tax return for tax year 2007.

Note that on the Assessor's sheet shows real market value ("RMV") of the

property is listed as \$606,233. (2007 Assessor Sheet). Now consider the Morsmans' 2007 form 1040, Schedule E, and their Oregon Income Tax Summary page (Tax 1-4). Note that the Morsmans' net income was less than \$20,000 in 2007 and less than \$15,000 in 2006 (see Tax-4).

Now it may be that the property could be sold and then converted to another use. It should be kept in mind, however, that the park is occupied by 55 to 60 low income families and that the sale of the land would result in the loss of ~60 units of housing—almost all of which is older singlewide manufactured homes owned by these families. The Morsmans proffered an expert witness at the hearing who would have testified that alternative housing was not available in the area for these families, nor are there vacancies in other nearby parks for these singlewides should the park close. The ALJ refused to allow this testimony because he said the impact of a park closure on these residents was irrelevant.

The Morsmans net income is very modest and the park generates little by way of net income. There is a large mortgage on the park and service on that mortgage takes up a substantial part of the revenue. Finally, this application for a hardship waiver should be considered within the current financial climate with respect to mortgage lending, as well as the deteriorating employment situation in central Oregon for residents of the park and their ability to pay rent.

III. Issues

- 1. The argument that there is a significant threat to public health from this well, yet there is no evidence that this well has ever had any adverse impact on any city well in the roughly 50 odd years of its existence.**

In Mr. Pedersen's letter of October 21, 2008 he suggested that the central issue in denying the request for the waiver was the EQC's policy on the phasing out of these drywells, the depth of this drywell (regardless of when it was drilled to its depth). Mr. Pedersen also says that the fact that "past tests of the well water show no contamination is not relevant in considering the future threat . . ." * * *

Mr. Pedersen nevertheless concludes that "a waiver in this case would come at great threat to human health and the environment . . ."

There is no evidence presented that this well is, has been, or will be any significant threat to the city's wells in this area. And we are only talking about the time involved in getting the City to finish its line from where it is now to the Morsmans' property.

- 2. Mr. Pedersen claims that the evidence showing that the Morsmans are retired working class people, the County Assessor's sheets showing the assessed value of the park, and the Morsmans' income tax filing showing income levels of \$20,000 and \$15,000 respectively for the last two years "do not present a complete picture of your assets and total financial portfolio."**

It is not clear what the DEQ's standard for the demonstration of financial hardship is and why given the facts presented the Morsmans given their situation wouldn't qualify.

- 3. Evidence was presented showing the Morsmans had made a loan request to their bank for \$300,000 (before they found that construction cost estimates were in the \$400,000+ range) and were refused given their financial circumstances.**

Mr. Pedersen response was that:

"(T)he fact that you were turned down in one attempt for a loan does not evidence the impossibility of getting a loan, especially considering the more than \$100,000 gain in real market value of the Park just between 2006 and 2007. Further, your financial status is only one element in the totality of circumstances which must be considered in granting a waiver from the EDC's mandate that your disposal well be decommissioned."

Yet the loan request refused by the Morsmans' own bank was only—as noted—for \$300,000 and not the \$400,000 to \$500,000 of the actual estimates. Moreover, though the real market value on the Assessor's sheet may have increased between 2006 and 2007, given the burgeoning financial crisis the it is even less likely that a loan of this magnitude would be forthcoming given the deteriorating financial situation in central Oregon

- 4. Notwithstanding the Morsmans limited income—as manifested by their income tax return information—along with the \$400,000+ cost estimates to construct the sewer line, and the refusal of their bank to fund even a substantially smaller loan, was rejected as evidence that the DEQ's demand that they build the sewer line now was "unreasonably burdensome." "Unreasonable" in this context was used in relation to the cost estimates relative to the work to be performed, and not relative to the financial situation of the Morsmans.**

"While I understand that any cost may be a burden, that in itself does not mean that the burden is an unreasonable one based on finances, as well as all of the other competing interests. First, there is nothing that suggests that these estimates are unreasonable. None of the information provided suggests that these estimates, compared to others, are greatly inflated or unreasonable for the work to be performed."

5. **The DEQ's order requires the Morsmans to either comply with the order or disconnect all the connections to the sewage disposal system, thereby effectively forcing a closure of the park. The park—given the income situation of the residents—produces a limited income stream. The Director suggests that this is irrelevant since a different owner—were the park sold—might somehow be able to keep the existing tenants while at the same time having the cash flow of the park be sufficient to cover the cost of servicing the existing mortgage on the park, a second mortgage for the loan amount for sewer construction, and care and maintenance for the park, leaving a reasonable return on the investment for the new owner.**

"There is also no evidence that requirement to connect to municipal sewer would necessarily lead to closing the Park, nor would sale of the Park necessitate changing the current use of the Park for the current tenants."

The Morsmans' have testified to the contrary and have presented evidence on the inadequacy of the cash flow from the park. It is not clear why this testimony backed by the income tax data is not seen as evidence.

6. **The Director has taken the position that "impracticable" in the phrase "impracticable or unreasonably burdensome" means that the required improvement is not feasible in some engineering sense regardless of cost. This use of the term makes "impracticable" synonymous with impossible. A more reasonable definition of "impracticable" is something that is infeasible given the expense.**

"The fact that two cost estimates of the work to connect have been provided, show that connection to the City sewer is clearly not impracticable, as the work is capable of being performed." p.2.

7. **The standard used by the Department for when a city sewer is deemed "available" seems to vary with the situation.**


8. **Thus the grant or denial of waivers pursuant to OAR 340-044-0015(3)(b) as indicated in this situation does not seem to be pursuant to any clear standards or criteria set forth in rule or written policy.**

IV. Request for a Stay

Given this appeal we respectfully request that the Department's Order in this matter be stayed pending the outcome of the appeal of this denial of a waiver. The operation of the Order rendered by Judge Han would be unduly burdensome, might cause the financial ruin of the Morsmans given their financial condition as described above before the hearing in this matter is completed, and might well cause the closure of the park.

If you have any questions please do give me a call.

Respectfully Submitted,



Michael F. Sheehan



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

October 21, 2008

CERTIFIED MAIL NO. 7006 3450 0000 7001 9082

Phillip and Brigitte Morsman
c/o Michael Sheehan
Attorney at Law
33126 S.W. Callahan Road
Scappoose, OR 97056

Re: Addendum to Request for a Waiver pursuant to OAR 340-044-0015(3)(b)

Dear Mr. and Mrs. Morsman,

This letter is in response to your letter of October 16, 2008, in which you ask for reconsideration of your request for a waiver from the requirement that you connect the Tops Trailer Park (the Park) to the City of Madras sewer system.

In asking for this reconsideration, you state that my decision was largely based on the depth of the well and the Morsmans' financial status. The primary basis for my denial of your request for waiver is my intent to support the Environmental Quality Commission's (EQC) policy and purpose in promulgating the rules for waste disposal wells in OAR 340, Division 44. As I discussed, the EQC has been concerned with the antiquated nature of these wells since 1969 and since that time, 95% have indeed been decommissioned. As the Department is charged with carrying out the EQC's rules and policies, I give great weight to their determination that disposal wells pose a threat to groundwater, drinking water and human health, and that they should therefore be phased out as soon as possible.

Regarding the well depth, there seems to be some disagreement as to how the well reached its current depth of approximately 326 feet. However, the manner in or date on which the well became 326 feet is not material in my decision. Rather, it is the fact the well is 326 feet deep that is concerning and poses a significant threat to the groundwater and well water of Madras. OAR 340, Division 44 states that while all disposal wells are to be phased out as soon as municipal sewer is available, those still existing should not be deeper than 100 feet. Your well is a greater risk than those which are only 100 feet deep. The fact that past tests of the well water show no contamination is not relevant in considering the future threat that exists because of waste disposal wells. The EQC had future risks to water in mind in promulgating the rules, and the Department is charged with preventing the realization of those risks.

Regarding your finances, you have provided a tax statement and a property assessment which I have carefully reviewed. While these documents provide some insight about your finances, they do not present a complete picture of your assets and total financial



Morsman Waiver Request Addendum, Page 2

portfolio. Additionally, the fact that you were turned down in one attempt for a loan does not evidence the impossibility of getting a loan, especially considering the more than \$100,000 gain in real market value of the Park just between 2006 and 2007. Further, your financial status is only one element in the totality of the circumstances which must be considered in granting a waiver from the EQC's mandate that your disposal well be decommissioned.

As I discussed in my October 6, 2008 response, my decision must be based on a balancing of the competing interests at hand. This balancing must take into consideration the terms in the waiver provision: "impracticable" and "unreasonably burdensome." Without recapping the definitions of these terms, I have again contemplated their meaning and their applicability to the information you recently provided. The fact that two cost estimates of the work to connect have been provided, show that connection to City sewer is clearly not impracticable, as the work is capable of being performed.

While I understand that any cost may be a burden, that in itself does not mean that the burden is an unreasonable one based on finances, as well as all of the other competing interests. First, there is nothing that suggests that these estimates are unreasonable. None of the information provided suggests that these estimates, compared to others, are greatly inflated or unreasonable for the work to be performed. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park, nor would sale of the Park necessitate changing the current use of the Park for the current tenants. Finally, an "unreasonable" burden suggests that there are not competing interests which hold greater weight. This is not the case in this circumstance. A waiver in this case would come at great threat to human health and the environment, without sound reason as to its impracticability or unreasonable burden.

In weighing the burden to you of connecting to municipal sewer against the potential threat to human health and the environment, and after considering the addendum of October 16, 2008, I find that the burden to you is not unreasonable or impracticable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied.

Sincerely,



Dick Pedersen
Director

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

October 16, 2008
****BY FAX AND MAIL****

Dick Pedersen
Director, DEQ
811 SW Sixth Ave
Portland, OR 97204

RE: Request for a Waiver
Morsmans & TOPs Trailer Park
No. WQ/D-ER-07-186

Dear Mr. Pedersen:

Thank you for your letter of October 6, 2008. In the hopes of avoiding the mutual costs of a lengthy appeal hearing I wonder if you would allow me to make three points relating to your response to the Morsmans' request for a hardship waiver in this matter.

The first of relates to p.2 ¶ 2 of your letter. There you say that "the depth (of the drywell) has reached approximately 326 feet after the last drilling was done to stop the discharge of the sewage from the drain hole." The suggestion being that the drywell was significantly deeper after the "drilling" than before. This was not the case. The well was "drilled out" to clear the existing shaft. The shaft was not deepened. Attached is the affidavit of the driller submitted in the hearing as Exhibit R24. Note that it says that:

"After a few feet of drilling the obstruction downward it gave way and pushed down to approximately 320 feet. At this point it was drilled on to 327 feet. With the action of the drill rig it was determined that the original depth had been reached."

Note that the standard for "available" was 200 feet per housing unit. This would make the standard for availability 12,000 feet for a manufactured home park of this size (approximately 60 units). This is well over two miles. There has been a city sewer line within two miles for a number of years and the Department has always implicitly agreed that enforcement of the connection requirement at that distance would be unreasonably burdensome.

Here the suggestion is that since the well shaft was "deepened" that it is now more of a threat than it was and so justifies a refusal of the requested waiver. However, as the affidavit says, the shaft was not deepened, and based on this we respectfully request that

your decision be reconsidered.

Secondly, it is suggested that the Morsmans have not supplied enough documentation of their financial condition to justify a hardship waiver. (R36). We had supplied a copy of the letter from their bank refusing a loan \$300,000 for this purpose. We also provided information on the \$700,000+ existing mortgage on the park. (R35). In addition we provided bid information from three entities, Knife River at \$400,000 not counting engineering (R30); Tye Engineering estimating around \$50,000 +/- 20% for engineering (R31); and Hooker Creek Asphalt and Paving with a roughly \$400,000 estimate. (R32). These estimates do not include city fees including SDCs and others.

You suggest that without documentation of income and assets that a determination of whether the requirement would be unreasonably burdensome could not be made. Please allow me to provide this information. I enclose a copy of the Jefferson County Assessor's sheet for the TOPs property and also a copy of the Morsmans' income tax return for tax year 2007.

Note that on the Assessor's sheet shows real market value ("RMV") of the property is listed as \$606,233. (2007 Assessor Sheet). Now consider the Morsmans' 2007 form 1040, Schedule E, and their Oregon Income Tax Summary page (Tax 1-4). Note that the Morsmans' net income was less than \$20,000 in 2007 and less than \$15,000 in 2006 (see Tax-4, attached).

Now it may be that the property could be sold and then converted to another use. It should be kept in mind, however, that the park is occupied by 55 to 60 low income families and that the sale of the land would result in the loss of ~60 units of housing—almost all of which is older singlewide manufactured homes owned by these families. The Morsmans proffered an expert witness at the hearing who would have testified that alternative housing was not available in the area for these families, nor are there vacancies in other nearby parks for these singlewides should the park close. The ALJ refused to allow this testimony because he said the impact of a park closure on these residents was irrelevant.

Summary

The request for a waiver appears to have been denied because of two major factors: The thought that the drywell had been drilled deeper and therefore was a greater risk than it had been since 1954. The affidavit of Abbas Well Drilling's Mr. Peck shows that the well was not drilled any deeper when the shaft was cleaned out to remove the materials forced down it. Therefore there is no reason to believe that the well is any more of a threat than it had been in all the years from 1954. The Morsmans also presented the testing data for the nearest of the City's wells showing that there is no evidence in the

nearest of the city's wells of any contamination. DEQ staff didn't argue to the contrary.

The Morsmans net income is very modest and the park generates little by way of net income. There is a large mortgage on the park and service on that mortgage takes up a substantial part of the revenue. Finally, this application for a hardship waiver should be considered within the current financial climate with respect to mortgage lending, as well as the deteriorating employment situation in central Oregon for residents of the park and their ability to pay rent.

In sum, with this letter we have sought to address the issues you raised as the basis for your decision to refuse the hardship waiver. Presented here is straightforward evidence on the issue you cited as central to your decision. We respectfully request that you reconsider your decision given the information provided with this letter in light of the welfare of the older couple that own and live in the park and the 60 families that live there also.

Thank you for your consideration.

Yours truly,



Michael F. Sheehan
Attorney for the Morsmans

Attachments

Abbas Well Drilling

2130 A Ave.
P.O. Box 2130
Terrebonne, OR 97780
541-548-2787

December 19, 2006

Phil Morrison

Tops Trailer Park
23 NW Depot Rd
Madras, Or 97741

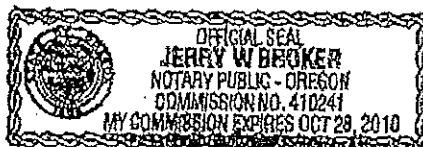
Dear Mr. Morrison,

On October 25, 2006 Abbas Well Drilling set a drill rig on a septic drain hole at Tops Trailer Park in Madras Oregon. First obstruction was measured approximately at 250 feet. This was drilled on to make sure that this was the bottom of well bore. A representative from the DEQ had also asked that we drill on this obstruction. After a few feet of drilling the obstruction downward it gave way and pushed down to approximately 320 feet. At this point it was drilled on to 327 feet. With the action of the drill rig it was determined that the original depth had been reached. At the request of the representative of the DEQ, a bailer was run into the well bore to the bottom to remove any sludge from the bottom of the well bore. This was done twice. *Debris consisting of plastic bags, appeared to be away and sludge - TRP*

After the blockage was removed the well bore was able to drain fluid into surrounding formation.

Sincerely,

Thomas R Peck
Driller



STATE OF OREGON
COUNTY OF JEFFERSON

SIGNED OR ATTESTED BEFORE ME ON 12-20-06 (DATE) BY

Thomas R. Peck (NAME OF PERSON(S))

Jerry W. Braker
(SIGNATURE OF NOTARIAL OFFICER)

MY COMMISSION EXPIRES: 10-28-2010

OCT 07 2008 10:48

HP LASERJET 3200

P-1

PROPERTY DESCRIPTION
 CODE: 0060
 MAP: 101336CC00500
 CLASS: 207
 SITUS: 23 NW DEPOT RD MADRAS

JULY 1, 2007 TO JUNE 30, 2008
 JEFFERSON COUNTY, OREGON
 66 S.E. D STREET, SUITE E
 MADRAS, OR 97741

ACCOUNT NO:
 10883

MORSMAN, PHILIP D & BRIGITTE
 23 NW DEPOT ROAD
 MADRAS, OR 97741 USA

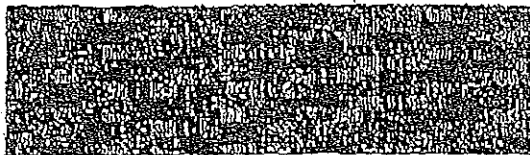
COCC	114.31
JEFF CO BND	44.19
SDR508J MADRAS	145.22
JEFFERSON COUNTY GENERAL	657.11
JAIL Levy	182.42
MT. VIEW HOSPITAL	46.21
JEFFERSON CO APPD Levy	218.79
MADRAS AQUATIC CENTER	48.07
JEFFERSON COUNTY LIBRARY DIST	80.13
COUNTY JAIL BOND	149.38
MT VIEW HOSP BOND	20.34
COCC BOND	17.01
MADRAS AQUATIC CENTER BOND	98.38
SDR508J MADRAS BONDS	624.46

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	231,343	277,993
STRUCTURES	266,860	328,240
TOTAL RMV	498,203	606,233
TOTAL ASSESSED VALUE	178,900	184,260
EXEMPTIONS		
NET TAXABLE:	378,900	184,260
TOTAL PROPERTY TAX:	2,993.96	3,143.52

This is your copy and not a bill. If your mortgage company is responsible for paying your taxes, this statement was sent for First American Commercial Real Estate Service. Lender Reference #: 991076925

ASSESSMENT QUESTIONS (541) 475-2448
 TAX QUESTIONS (541) 475-4458

2007-08 TAX (Before Discount) 3,143.52



TOTAL DUE (After Discount and Pre-payments) 3,049.21

↑ Tear Here * COURTESY STATEMENT IF LENDER IS SCHEDULED TO PAY * Tear Here ↑

2007-2008 PROPERTY TAXES		JEFFERSON COUNTY REAL				ACCOUNT NO. 10883	
PAYMENT OPTIONS	Discount	Date Due	Amount	Date Due	Amount	Date Due	Amount
Full Payment Enclosed	3%					11/15/07	3,049.21
or 2/3 Payment Enclosed	2%	05/15/08	1,047.84			& 11/15/07	2,053.77
or 1/3 Payment Enclosed	0%	05/15/08	1,047.84	& 02/15/08	1,047.84	& 11/15/07	1,047.84

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE Making address change on back

JEFFERSON COUNTY
 \$

MORSMAN, PHILIP D & BRIGITTE
 23 NW DEPOT ROAD
 MADRAS, OR 97741 USA

MAKE PAYMENT TO:
 JEFFERSON COUNTY TAX OFFICE
 66 S.E. D STREET, SUITE E
 MADRAS, OR 97741

TAX-1

Department of the Treasury — Internal Revenue Service
Form 1040 U.S. Individual Income Tax Return 2007 OMB No. 1545-0047

For the year Jan 1 - Dec 31, 2007, or other tax year beginning 2007, ending 2007

Label (See instructions)
 Your first name: **PHILLIP D. MORSMAN**
 If a joint return, spouse's first name: **BRIGITTE R. MORSMAN**

Use the IRS label. Otherwise, please print or type.
 Home address (number and street). If you have a P.O. box, see instructions.
23 NW DEPOT RD.
 City, town or post office. If you have a foreign address, see instructions.
MADRAS, OR 97741

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) You Spouse

Filing Status
 1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above & full name here
 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
 5 Qualifying widow(er) with dependent child (see instructions)

Check only one box.

Exemptions
 6a Yourself. If someone can claim you as a dependent, do not check box 6a.
 b Spouse.
 c Dependents:
 (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) If anything child or grandchild (and grandchild) No. of children on 6a who:
 • live with you
 • did not live with you due to divorce or separation (see instrs.)
 • dependent on 6a not entered above.
 Add numbers on lines above
 d Total number of exemptions claimed **2**

Income
 7 Wages, salaries, tips, etc. Attach Form(s) W-2 **7**
 8a Taxable interest. Attach Schedule B if required **6a 2,614.**
 b Tax-exempt interest. Do not include on line 8a **8b**
 9a Ordinary dividends. Attach Schedule B if required **9a**
 b Qualified dividends (see instrs) **9b**
 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) **10**
 11 Alimony received **11**
 12 Business income or (loss). Attach Schedule C or C-EZ **12**
 13 Capital gain or (loss). Attach Sch D if reqd. If not reqd, ck here **13 9,261.**
 14 Other gains or (losses). Attach Form 4797 **14 1,328.**
 15a IRA distributions **15a** b Taxable amount (see instrs) **15b**
 16a Pensions and annuities **16a** b Taxable amount (see instrs) **16b**
 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E **17 -7,401.**
 18 Farm income or (loss). Attach Schedule F **18**
 19 Unemployment compensation **19**
 20a Social security benefits **20a 18,168.** b Taxable amount (see instrs) **20b 0.**
 21 Other income **Gambling Winnings** **21 13,560.**
 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. **22 19,362.**

Adjusted Gross Income
 23 Educator expenses (see instructions) **23**
 24 Certain business expenses of restaurateurs, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ **24**
 25 Health savings account deduction. Attach Form 8889 **25**
 26 Moving expenses. Attach Form 3903 **26**
 27 One-half of self-employment tax. Attach Schedule SE **27**
 28 Self-employed SEP, SIMPLE, and qualified plans **28**
 29 Self-employed health insurance deduction (see instructions) **29**
 30 Penalty on early withdrawal of savings **30**
 31a Alimony paid b Recipient's SSN **31a**
 32 IRA deduction (see instructions) **32**
 33 Student loan interest deduction (see instructions) **33**
 34 Tuition and fees deduction. Attach Form 8917 **34**
 35 Domestic production activities deduction. Attach Form 9913 **35**
 36 Add lines 23 - 31a and 32 - 35 **36 0.**
 37 Subtract line 36 from line 22. This is your adjusted gross income **37 19,362.**

Attach Form(s) W-2 here. Also attach Form W-2c and 1099-R if tax was withheld.
 If you did not get a W-2, see instructions.
 Enclose, but do not attach, any payment. Also, please use Form 1040-V.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions. Form 1040 (2007)

TAX-2

SCHEDULE E
(Form 1040)

Supplemental Income and Loss
 (From rental real estate, royalties, partnerships,
 S corporations, estates, trusts, REMICs, etc.)
 Attach to Form 1040, 1040NR, or Form 1041.
 See instructions for Schedule E (Form 1040).

OMB No. 1545-0047

2007

Alphabetical
 Sequence No. 13

Department of the Treasury
 Internal Revenue Service

Name(s) shown on return

PHILLIP D. AND BRIGITTE R. MORSMAN

Your social security number

540-38-5402

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EI (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 4D.

1	List the type and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: a 14 days, or b 10% of the total days rented at fair rental value? (See instructions.)	Yes	No
A	TOPS TRAILER PARK 23 NW DEPOT RD, MADRAS OR 97741				X
B					
C					

Income:		Properties			Totals (Add columns A, B, and C.)
		A	B	C	
3	Rents received	161,613.			161,613.
4	Royalties received				
Expenses:					
5	Advertising	1,177.			
6	Auto and travel (see instructions)	6,216.			
7	Cleaning and maintenance	9,163.			
8	Commissions				
9	Insurance	4,886.			
10	Legal and other professional fees	10,409.			
11	Management fees				
12	Mortgage interest paid to banks, etc (see instructions)	56,239.			56,239.
13	Other interest				
14	Repairs	7,167.			
15	Supplies	137.			
16	Taxes	4,902.			
17	Utilities	36,411.			
18	Other (list)	26,558.			
		Statement 1			
19	Add lines 5 through 18	165,265.			165,265.
20	Depreciation expense or depletion (see instructions)	3,749.			3,749.
21	Total expenses. Add lines 19 and 20	169,014.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6199.	-7,401.			
23	Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2.	-7,401.			
24	Income. Add positive amounts shown on line 22. Do not include any losses.				
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.				-7,401.
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Part II, III, IV, and line 4D on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2.				-7,401.

TAX-3

2007		Federal Statements		Page 7	
		PHILLIP D. AND BRIGITTE R. MORSMAN		540-38-5402	
Statement 1 Schedule E, Line 18 - TOPS TRAILER PARK Other Rental and Royalty Expenses					
Amortization.....		\$	525.		
Association Dues.....			162.		
BANK CHARGES.....			180.		
Gardening.....			189.		
Licenses and Permits.....			250.		
MOWER & EQUIPMENT FUEL.....			2,721.		
Painting and Decorating.....			7,702.		
Pest Control.....			1,200.		
Plumbing and Electrical.....			4,309.		
POSTAGE.....			103.		
SECURITY.....			523.		
SEPTIC SYS PUMPING.....			3,386.		
Telephone.....			5,208.		
		Total	\$	26,558.	

TAX-4

2007		Oregon Income Tax Summary		Page 1
PHILLIP D. AND BRIGITTE R. MORSMAN				
	2007	2006	Diff	
FEDERAL ADJUSTED GROSS INCOME				
Federal AGI.....	19,362	14,757	4,605	
ADDITIONS TO AGI				
Total additions.....	0	0	0	
Income after additions.....	19,362	14,757	4,605	
SUBTRACTIONS FROM AGI				
Total subtractions.....	0	0	0	
Income after additions/subtractions.....	19,362	14,757	4,605	
DEDUCTIONS				
Itemized deduct. from Sch. A, line 28....	25,640	14,591	1,049	
Special Oregon medical deductions.....	1,452	1,107	345	
Total Oregon itemized deductions.....	17,092	15,698	1,394	
State tax claimed as itemized deduct.....	0	4,461	-4,461	
Net Oregon itemized deductions.....	17,092	11,237	5,855	
Standard deduction.....	5,650	5,685	-35	
Total itemized/standard deduction.....	17,092	11,237	5,855	
Oregon taxable income.....	2,270	3,520	-1,250	
OREGON TAX CALCULATION				
Oregon income tax.....	113	178	-65	
Total Oregon tax.....	113	178	-65	
NONREFUNDABLE CREDITS				
Exemption credit.....	330	318	12	
Total credits.....	330	318	12	
Tax after credits.....	0	0	0	
TAX PAYMENTS				
Estimated tax payments.....	0	2,400	-2,400	
Total payments.....	0	2,400	-2,400	
REFUND OR AMOUNT DUE				
Overpayment.....	0	2,400	-2,400	
Net refund.....	0	2,400	-2,400	
TAX RATES				
Marginal tax rate.....	5.0%	5.0%	0.0%	
Effective tax rate.....	5.0%	5.1%	-0.1%	



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY: 503-229-6993

October 6, 2008

Certified Mail No. 7006 3450 0000 7001 9068

Phillip and Brigitte Morsman
c/o Michael Sheehan
Attorney at Law
33126 S.W. Callahan Road
Scappoose, OR 97056

Re: Request for a Waiver pursuant to OAR 340-044-0015(3)(b)

Dear Mr. and Mrs. Morsman,

This letter is in response to your letter of July 29, 2008 requesting a waiver from the requirement that you connect The Tops Trailer Park to the City of Madras sewer system according to OAR 340-044-0015(b), which states in relevant part:

“After January 1, 1983, use of existing sewage drain holes or sewage drill holes is prohibited unless municipal sanitary sewer service is not available to the property. Except for single family residences, use of an existing sewage drain hole must be authorized by a permit. Within 90 days after sanitary sewer service is available to a property, the owner of that property shall make connection to the sewer and shall abandon and decommission the sewage drain hole in accordance with OAR 340-044-0040. On a case-by-case basis, the Director may waive the requirement to connect to sewer if the Director determines that connection to the sewer is impracticable or unreasonably burdensome.”

Thank you for taking the time to explain your position and the status of the sewage drain hole at Tops Trailer Park.

As you are aware, Oregon law requires that all sewage drain holes in existence after 1983 be decommissioned if municipal sewer is available to the property. In 1969, the Environmental Quality Commission (EQC) first required that sewage drain holes be decommissioned, noting that they were an environmental threat and an antiquated means of sewage disposal.¹ The EQC, in an effort to make this transition less burdensome on

¹ OAR 340-044-0010(1) These rules set forth requirements for the State of Oregon Underground Injection Control (UIC) program adopted in conformance with Part C of the federal Safe Drinking Water Act (SDWA) in effect on the date of this rule adoption. It is the policy of the Environmental Quality Commission that the injection of wastes to the subsurface shall be limited and controlled in a manner that protects existing groundwater quality for current or potential beneficial uses including use as an underground source of drinking water.

Morsman Waiver Request, Page 2

property owners with sewage drain holes, made the requirement less stringent by allowing the property owners to use the drain holes until municipal sewer became available to the property. Since 1969, approximately 95% of the waste disposal wells in Oregon have been decommissioned.

The Department, through the EQC, is charged with protecting water quality as mandated by the Clean Water Act and the Safe Drinking Water Act. In order to meet this charge, the EQC felt it necessary and prudent to promulgate rules for the phasing-out of sewage drain holes because of the risk that they pose to groundwater and drinking water of the State. As you know, the City of Madras in particular has underground reserves of well water, the quality of which is affected by the quality and condition of groundwater. Therefore, maintaining the quality of the groundwater in and around Madras is of particular importance for the protection of human health and the environment.

Another point of significance is the depth of the sewage drain hole at the Tops Trailer Park. I understand that the depth has reached approximately 326 feet after the last drilling was done to stop the discharge of sewage from the drain hole. As you may be aware, Department policy states that sewage drain holes should be no deeper than 100 feet in order to protect groundwater. The groundwater tables in and around Madras are particularly shallow, and the significant depth of your drain hole increases the risk of impact to water wells there.

In determining whether a waiver from the rule requiring connection to municipal sewer should be granted, the Director must weigh the interests at issue in light of the terms "impracticable" and "unreasonably burdensome" from the waiver provision. I have reviewed with great care the letter and exhibits that you submitted with your request for a waiver. According to the dictionary, "impracticable" means "incapable of being performed or accomplished by the means employed or at command."² Based on the documents you submitted, it does not appear that connection to the City of Madras sewer is impracticable. The two estimates of the cost to do the work evidence the fact that the work is capable of being accomplished and that there are contractors in the area that will in fact perform this work.

You state in your waiver request that the financial hardship of connecting to City sewer is "unreasonably burdensome." I understand your concern that the cost of connecting to municipal sewer is a significant one. Assuming that any cost is a burden of sorts, I refer to the dictionary definition of "unreasonable" and "reasonable." These definitions are as follows: "Unreasonable" means "not governed by or acting according to reason; not conformable to reason; absurd; exceeding the bounds of reason or moderation" and "reasonable" means "being in accordance with reason; not extreme or excessive; moderate, fair, possessing sound judgment."³

² <http://www.merriam-webster.com/dictionary>

³ <http://www.merriam-webster.com/dictionary>

Morsman Waiver Request, Page 3

After reviewing the evidence that you submitted, I am unconvinced that your compliance with the law would be unreasonably burdensome to you. The only document relating to your finances is Exhibit R35, which shows payments you have made on your mortgage for approximately fifteen months. The documents submitted show no evidence of the real market value of the Tops Trailer Park property, your assets, your income from the Park, expenses for the Park, taxes, investments or any other information that provides a complete or accurate picture of your financial situation.

In addition, there is no evidence that the cost of connection is an unreasonable one. There are no cost comparisons of the same work being performed somewhere else where the cost was much less, for example, which would suggest that these estimates are extreme or excessive. There is also no evidence that the requirement to connect to municipal sewer would necessarily lead to closing the Park and the loss of homes to the tenants.

In weighing the burden to you of connecting to municipal sewer against the potential threat to human health and the environment, I find that the burden to you is not unreasonable such as to warrant a waiver from the rule. Based on the waiver request and supporting documents submitted, the request for a waiver pursuant to OAR 340-044-0015(3)(b) is denied. If you wish to appeal this action, you must submit a written request to the Department for a contested case hearing that states the grounds for the request within 21 days of receiving this letter pursuant to ORS 183.310(2)(a)(D).

Sincerely,



Dick Pedersen, Director
Department of Environmental Quality

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

cc:
Leah Kass
Ltr. Revid OD
8/8/08

July 29, 2008

Dick Pedersen
Director, DEQ
811 SW Sixth Ave
Portland, OR 97204

RE: Request for a Waiver
Morsmans & TOPs Trailer Park
No. WQ/D-ER-07-186

Dear Sir:

I represent the Morsmans who own and operate a 60 unit low-income manufactured home park just north of Madras along Highway 26. Mr. Morsman is a retired Madras police officer and he and his wife Brigitte both live in the park and do most of the maintenance work in the park. We are currently involved in a contested case proceeding with the DEQ office in Bend. The issue involves a proposed order that would require that the Morsmans pay to build a city sewer from the collection point of their in-park sewer system approximately 2,000 feet through hard rock down to a Madras City sewer on the other side of the neighborhood just to south of the park.

The problem is that the estimates that we have gotten for the construction of such a line along with various city permits would run in the neighborhood of \$430,000. (See R30, R31, and R32 attached). We have presented evidence in the current proceeding that given the \$700,000+ mortgage on the park and the current state of the mortgage lending market, it is impossible to finance any such additional mortgage debt given the cash flow generated by the park. (See R35 and R36 attached).

The proposed order arises out of a Department policy that drywells for sewage disposal should be phased out. The system on the Morsmans' property collects the sewage in a large septic tank which is pumped regularly, with the liquid effluent which would otherwise go to a drainfield were the bedrock not so close to the surface, going instead to a drywell. This drywell has been in operation since about 1954. In 2006 someone broke the head off the drywell and stuffed a sweatshirt, trashbags and what appeared to be a wig down the drywell. This produced an overflow of liquid sewage which couldn't get down the drywell. Local DEQ officials refused to allow these materials to be removed from the drywell shaft for 8 days and required instead that the septic tank be pumped on an ongoing basis. The cost to the Morsmans for doing this for

these eight days was well over \$20,000. As soon as the local DEQ officials allowed the well shaft to be cleared of the materials described above, the well was back in perfect operation and there have been no problems in the roughly two years from then to now.

Local DEQ officials claim, however, that since the depth of the drywell is approximately 327 feet that this could pose a public health threat to city water wells. It is significant to note first that the TOPs drywell has been in operation for approximately 54 years. Secondly, the nearest city well is across Highway 26 approximately a third of a mile from TOPS (1,682 feet away). This well is not used by the city since this entire area of the city (and almost all of the city) is served by the Deschutes Valley Water District from the District's supply at Opal Springs, more than 20 miles away from TOPS. Moreover, I have checked the state well testing data on this well and there is no record whatsoever of any contamination by sewage-related matter at all before, during, or since the sabotage of the drywell in 2006.

The city does have another well more than a mile away (5,315 feet) in the downtown area which it used as a backup supply for fire protection. This well is more than a mile away and no evidence at all has been brought forward by DEQ of any contamination of this well either. In sum, the TOPs drywell has been in operation for about 54 years and there is no indication of any sewage related contamination of either well and certainly none in the nearest one.

Local DEQ staff have issued their proposed order citing OAR 340-044-0015(3)(b), which says that drywells may not be used unless municipal sanitary sewer service is not available to the property. (Emphasis added). OAR 340-044-0015(3)(b)(A)(i) defines "available" in this case as being within the number of units in the park (60) X 200 feet. This equals 12,000 feet or well over two miles. This has never been enforced since the cost of building such a sewer line would have been financially impossible.

The city, as an adjunct to having provided sewer service to a new hotel approximately half a mile downhill from TOPs, has now extended a sewer line to approximately 2,000 feet of the Morsmans' drywell location. Local DEQ staff have now said that at this point the sewer is "available" and the Morsmans must pay to build the sewer from that point through the intervening neighborhood up to the Morsmans collection point.

The difficulty, as noted above, is that the cost of building this 2,000 feet of sewer line, according to the estimates we have gotten, is approximately (the contractors say +/- 20%) \$400,000 plus city SDC fees and other charges which would add at least another \$30,000. Given the cash flow of the park—again almost all the units in the park are older

singlewides owned by low income elderly and working families—there isn't enough cash flow to support another \$430,000 second mortgage, and the bank has said so. (R36, attached).

This brings us to the crux of the matter. Given the impossibility of financing the \$430,000+ for the sewer line associated costs, the choice presented by the local DEQ is come up with the money or close the park.

“Connect the facility to the City of Madras sewerage system; or disconnect all plumbing fixtures from the waste disposal system.” Notice of Violation, p.4, lines 19-22.

I have asked Eric Nigg about whether there were alternatives that he might approve instead of building the sewer line for the \$430,000 and he said he knew of none.

OUR REQUEST

This brings us to the purpose of this letter. The city has annexed up to the southern property line of TOPs. The city has also annexed most of the airport area property to the north of TOPs. At some point the city will probably find it either necessary or convenient to extend sewer north to or beyond TOPs, or south from the airport area to the industries around TOPs currently not served by sewer.

Given the risk of eliminating 55 units of low income housing, with the loss to those families living in TOPs of their homes (virtually all unmovable singlewides), and the Morsmans' business we respectfully request that pursuant to OAR 340-044-0015(3)(b)(B),

“On a case-by-case basis, the Director may waive the requirement to connect to sewer if the Director determines that connection to the sewer is impracticable or unreasonably burdensome.”

||||

||||

||||

||||

that you waive the requirement at this time and distance in favor of a requirement that connection only be required when the city has extended the sewer up to the TOPs property.¹

Thank you for your consideration.

Yours truly,



Michael F. Sheehan
Attorney for the Morsmans

Attachments

¹ The question may arise as to why we have waited so long to make such a direct request to you. The answer is that I thought—apparently mistakenly—given several meetings with the local DEQ staff, our repeated explanation of the problem, and our formal “answer” to the Notice of Violation, that the staff would be the ones to grant our request or not. We were disabused of this view last week during the hearing when we were told by a DEQ enforcement official that if we wanted the DEQ to respond to such a request we would have to send in a separate and specific written request.



P.O. Box 13
Bend, OR 97709
(541) 344-9445
(541) 318-4337 FAX

Central Oregon Division
CCB #62958

April 22, 2008

Mr. Phil Morsman
Tops Trailer Park
23 NW Depot Road
Madras, Oregon 97741

Re: Sanitary Sewer Cost Estimate

Dear Mr. Morsman:

I appreciated your call and the opportunity to provide cost information on the proposed sanitary sewer main extension to serve your property.

Without plans it is impossible to provide an accurate estimate of the cost of this project. I can provide a "ball park" cost based on similar projects. Costs vary dramatically with the depth of the excavation, soil / rock conditions, surface restoration required and access to the work.

Based on the information you provided, here are some rough costs:

1000 lineal feet of 10-inch sewer at 6' - 10' depth @ \$100 /lf	= \$ 100,000
1000 lineal feet of 10-inch sewer at depths of 10' to 20' @ \$200 /lf	= \$ 200,000
Manholes, surface restoration, testing, etc	= <u>\$ 100,000</u>

Total **\$ 400,000**

Once you have engineered plans available, we will be pleased to provide a firm quote for this project.

Sincerely,

James Baker
Project Manager / Estimator

FROM :Tye Engineering & Surveying

FAX NO. :5413851341

Apr. 22 2008 11:19AM P2

Exhibit B31 / Page 1



TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341
email: tyeengr@bendcable.com webpage: tyeengineering.com

April 22, 2008

Phil Morsman
Tops Trailer Park
23 NW Depot Rd.
Madras, Oregon 97741

RE: Engineering Services Budgetary Price Estimate - Tops Trailer Park Sewer Line

Dear Mr. Morsman,

Tye Engineering & Surveying, Inc. is pleased to present the following budgetary price estimate for professional engineering and surveying services to design and oversee construction of a gravity sewer line from Tops Trailer Park, to the City of Madras' sewer main tie-in at the intersection of SW Lee Street and SW 4th Street.

From our phone conversation on April 21, 2008, I understand the preliminary alignment of the proposed gravity sewer line to start at the existing Tops Trailer Park septic tank, travel south to the intersection of NW Birch Lane and NW 3rd Street, cross Birch and follow 3rd southeast to its intersection with SW Lee Street. The sewer line will follow Lee east to the existing City of Madras sewer main located at the intersection of SW 4th Street and Lee. The proposed sewer line alignment is approximately 2,000 feet long and appears to be within existing public right of ways allowing construction without the need for easements. Preliminary Construction cost estimates should be based on a nominal pipe diameter of 8 inches.

Please consider the following budgetary price estimate for engineering, drafting and surveying services for the project, as I understand it.

PHASE 1 - Preliminary Design and Final Design

- | | |
|---|---------|
| 1. Preliminary Work: | |
| a. Site Visit and Project Review with Owner | \$750 |
| b. Project Coordination with Agencies
(City of Madras & DEQ) | \$2,500 |
| 2. Develop Base Map: | |
| a. Topographic Survey | \$3,600 |
| b. Drafting - Map Creation | \$3,600 |
| 3. Preliminary Design: | |

Exhibit R31 Page 2

a. Engineering Design	\$5,000
b. Drafting - Plan and Profile	\$5,000
c. Agency Design Review Coordination	\$2,500
4. Final Design:	
a. Engineering Design	\$2,500
b. Drafting - Final Construction Plans	\$5,000
c. Technical Specifications Materials	\$2,500
d. Agency Approval Coordination	\$2,500
5. Phase 1 Total Estimated Budgetary Price:	\$35,450

PHASE 2 - Construction Services

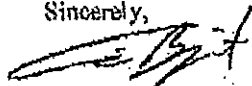
1. Construction Bid Coordination:	\$2,500
2. Construction Survey Staking:	\$4,320
3. Inspection Services During Construction:	\$4,500
4. As-built Plans:	\$1,200
5. Agency Acceptance Coordination:	\$2,500
6. Phase 2 Total Estimated Budgetary Price:	\$15,020

TOTAL ESTIMATED BUDGETARY PRICE: **\$50,470 (± 20%)**

This is an estimate only. The final price could be 20% higher, or lower, depending on the final scope of work.

Thank you for your consideration. If you have any questions or concerns regarding this budgetary price estimate, please contact me at 389-6959.

Sincerely,



Eric Nyquist, P.E., C.W.R.E.

TYE ENGINEERING & SURVEYING, INC.

725 NW Hill, Bend, Oregon 97701 • (541) 389-6959 • Fax (541) 385-1341 • tyeengr@bondcable.com

APR-23-2008 10:41

HOOKER CREEK



Hooker Creek Asphalt & Paving

CCB# 140887

Estimator: Kris Karpstein Fax: (541) 322-5712
Phone No.: (541) 322-5700 Email: kkarstein@hookercreek.net
Cell No.: (541) 410-6774

To: Phil Morsman
Tops Trailer Park
Madras, OR

Date: 4/23/2008
Fax: (541) 475-3155
Phone: (541) 475-3976

PROJECT: Tops Trailer Park Sewer Line Budget

Hooker Creek Asphalt & Paving, LLC is pleased to submit the following proposal on the above referenced project. The following shall serve as a breakdown:

Item No.	Description	Quantity	Unit	Unit Price	Total Price
10	10" SEWER 10' DEPTH	1,000	LF	\$125.00	\$125,000.00
20	10" SEWER 20' DEPTH	1,000	LF	\$255.00	\$255,000.00
50	MANHOLES	4	Each	\$3,200.00	\$12,800.00
Total Proposal Price:					\$592,800.00

392,800

Special Conditions:

- 1 Bonds are excluded; however, payment and performance bonds are available for 1.5% of the total proposal price.
- 2 This proposal is a budget only and verbal conversation with Phil Morsman.
- 3 Proposal excludes all engineering, permits, permit acquisition, fees, right-of-way acquisition, erosion control, survey, staking, QD/QA, testing, over excavation, number boring, saw cutting, soil stabilization, weed killer and unsuitable material.
- 4 Proposal excludes all utility cost, fog seal, aggregate base prime coat, utility lowering or raising, concrete aggregate base placement and traffic control.
- 5 Proposal excludes storage and permanent and temporary striping.
- 6 One mobilization is included. Any additional move-ins will be billed as an extra \$1,500.00.
- 7 Proposal is based on Non-Craving Wage rates.
- 8 Due to volatile world crude markets, this proposal is subject to a fuel and asphalt escalation clause.

If you have any questions regarding this proposal, please call (541) 410-6774. Thank you for your consideration.

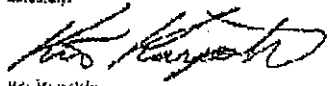
APR-23-2008 10:41 HOOKER CREEK

Tops Trailer Park Sewer Line Budget Proposal (cont'd)

Exhibit B32 Page 2

P.02

Sincerely,



Kris Karpolew
Hooker Creek Asphalt & Paving

ACCEPTANCE

Customer accepts this Proposal by returning this Proposal signed below by Hooker Creek Asphalt & Paving, LLC, or by executing any part of Hooker Creek Asphalt Paving LLC's performance bond. THIS DOCUMENT AND PERFORMANCE BOND ARE THE SOLE BASIS OF THE AGREEMENT AND GUARANTEE. Upon acceptance, Customer agrees to be bound by the Terms and Conditions stated above. If acceptance fails to occur within thirty (30) days of this date above, this Contract shall be void unless accepted by Hooker Creek Asphalt Paving, LLC.

ACCEPTANCE DATE _____

CUSTOMER _____

By _____

For _____

10/23/97 Tuesday PAGE 3
 7:25 P.M.

CARDMARK - MORTGAGE ACCOUNT STATE SUMMARY
 FOR 1/01/05 TO 10/21/07

977410000

DATE	TRANSACTION PG FOR	AMOUNT	PRINCIPAL	GROSS INT	PRN/INT	R.R. TAXES	PROP LINE	RESERVE	MISC FEE	REG. FEES	SUBJECT	LAST CHRG	INT DOWN AMOUNT	PRINCIPAL BAL	INT DATE
4/20/07	SUPP PNT	2900.00												789965.67	
4/21/07	PMT REC'D	9707	701.10	4588.55	337.37	536.35								789264.53	8/23/2007
8/22/07	SUPP DR													789264.53	
8/27/07	--REBATE	544.01	4181.4											789264.53	
10/01/07	PMT REC'D	30707	705.26	4876.39	357.17	536.59								788559.37	10/02/2007
	BALANCE TO DATE	6246.01	781559.27	75307.32	2618.48	2377.02								788559.37	
														788559.37	

TOTAL PAYES PAID 2904.14
 TOTAL INTEREST CREDITED TO BPCR
 TOTAL LATE CHARGES PAID
 TOTAL FEE DOWNS PAID

CUR. DUE INT BAL .00
 DFLT INT RATE 3.000004
 DFLT INT RATE * MONTH -000004
 NEXT PAYMENT DUE DATE 11/01/2007

CUR. BAL 261589.37
 DUAL BALANCE .00
 INTEREST 7.118584
 DUAL RATE .000000

ORIG. PLAN 800000.00
 BEG. 4/98
 TERM 30 YRS @ 6%
 MON 5/31

977410000

10/21/07 Tuesday 7:15 P.M.

CUMULATIVE - FRIEDLAND
ACCOUNT STATUS SUMMARY
FOR 1/01/05 TO 10/22/07

LOAN NO. 95-10752G - PHILIPPER
PHILIPPER, PHILIP J
BRIDGEVIEW HOLDINGS
33-BY BERRY RD
HAZLETON, OR
97111-0000

ORIG. BAL. 806001.00 CUR. DEBT INT BAL .00
PRN 4/86 DEBT INT RATE 3.000000
TERM 20 YRS 00 MOS. INTEREST 7.110000
END 5/15 DIAL RATE .000000
NEXT PAYMENT DUE DATE 11/01/2007

DATE	TRANSACTION NO FOR AMOUNT	CHK PRINCIPAL	GROSS INT	PREM/PIP	R.E. TAXES	PROP INC	RESERVE	HELOC REC	MISC FEES	LACK CURC	SUSPENSE	MUT DOWN AMOUNT	PRINCIPAL BAL	INT CD	EFF DATE
7/01/05	BEGIN BALANCE														
7/01/05	LOAN ADDED	799354.23											799354.23		
7/07/06	TAX PAY		1145.65												
7/07/06	INT PAY		743.18												
7/07/06	SUSP PAY		6017.10								6017.10				7/07/2006
7/12/06	INT PAY		6017.10												
7/12/06	INT REC'D		6017.10												
7/17/06	INT REC'D		515.45												
7/17/06	INT REC'D		649.28												
8/22/06	INT REC'D		653.23												
9/12/06	INT REC'D		558.23												
10/12/06	INT REC'D		640.15												
11/02/06	TAX DED	381385													
11/02/06	TAX PAY		3964.14												
11/02/06	INT PAY		350.78												
11/27/06	INT REC'D		4716.15												
12/14/06	INT REC'D		666.80												
1/10/07	INT REC'D		672.70												
2/07/07	INT REC'D		671.05												
3/07/07	INT REC'D		600.78												
4/23/07	INT REC'D		684.73												
5/15/07	INT REC'D		607.60												
6/25/07	INT REC'D		638.87												
7/11/07	INT REC'D		6017.80												
8/28/07	INT REC'D		6017.80												

44-475-3151

Jun 02 08 04:07P
Item D 000222



Exhibit R36 Page

April 22, 2008.

Phil d Morsman
Brigitte Morsman
Tops Trailer Park
23 N W Depot Rd
Madras, Oregon 97741

Dear Mr & Mrs. Morsman,

Thank you for your request for a \$300,000.00 loan to upgrade your sewer system. However Bank of The West is declining your request due to insufficient reported income to existing debt servicing requirements.

If you have any questions please feel free to contact me 475-3817.

Sincerely,


J. Broder
Manager



12 SW 5th Street

Madras Office
Madras, Oregon 97741 (541) 475-3817

(541) 475-1907 fax

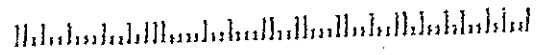
Member FDIC

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056



Dick Pedersen
Director, DEQ
811 SW Sixth Ave
Portland, OR 97204

9720481334 0023



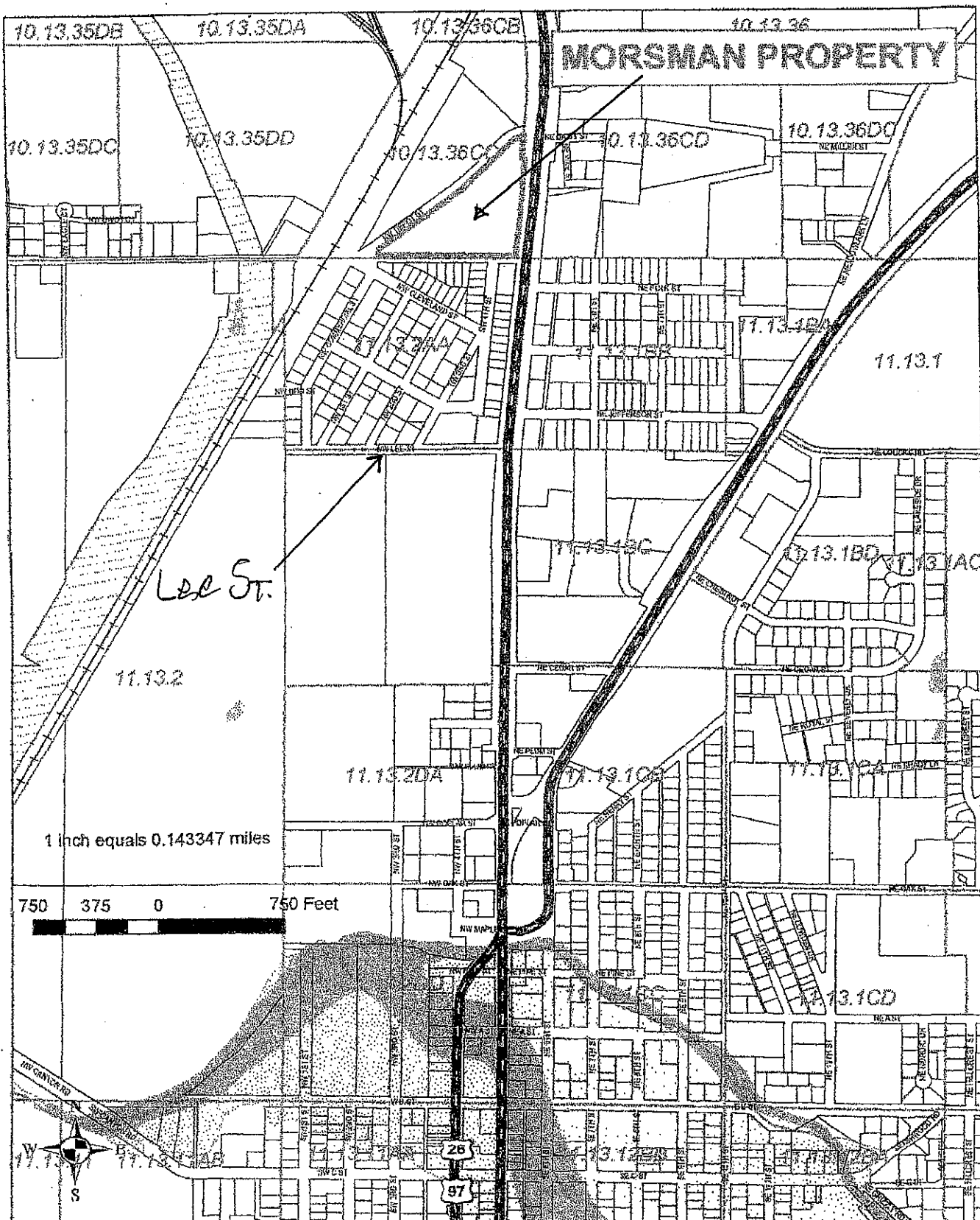
Agenda Item D, Morsman waiver contested case
Corrected alternatives for EQC action – Aug. 20, 2009

Please substitute the following corrected alternatives for EQC action for the ones presented on page six of the staff report for Item D, Morsman waiver contested case.

Alternatives

The EQC may:

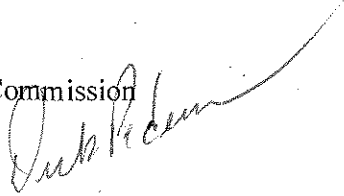
1. Affirm Judge Gutman's decision.
2. Remand the issue back to Judge Gutman with instructions, if Judge Gutman made a mistake that can be corrected and does not require further action from Director Pedersen
3. Remand the issue back to Judge Gutman with instructions to remand the issue to Director Pedersen, if the EQC concludes that there is a mistake that the director must fix.



shaded area at the bottom is the Creek.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item E, Temporary Rule Adoption: Oregon Title V Operating Permit CPI Fee Increase
August 20-21, 2009 EQC Meeting

Why is this Important

Oregon's Title V operating permit program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and risks from air toxics. State and federal laws require the program to be entirely funded by permit fees. Failure to maintain sufficient funding could affect the Department of Environmental Quality's ability to maintain federal approval of the program. DEQ needs the proposed increases to Oregon's Title V permit fees to cover all costs to implement the program.

Department Recommendation

DEQ recommends that the Environmental Quality Commission:

- (1) Determine that increasing the Title V fees by the change in the consumer price index, pursuant to the proposed rules presented in Attachment A, is necessary to cover the reasonable indirect and direct costs of implementing Oregon's Title V operating permit program;
- (2) Adopt the rules as amended in Attachment A to increase Oregon's Title V operating permit fees by the change in the CPI and implement Senate Bill 104 (2009), pursuant to ORS 468A.315; and
- (3) Adopt the justification for temporary rules as provided in Attachment B.

Background and Need for Rulemaking

Federal law requires major industrial sources of air pollution to have operating permits under Title V of the Clean Air Act. Oregon's Title V program, which was approved by the EPA in 1994, is an important part of DEQ's strategy to maintain clean air. The purpose of the program is to ensure that Title V permit holders comply with regulations to protect air quality.

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all costs of the Title V program. Title V fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA. The fees also support a portion of air quality monitoring, planning and program management costs. To help meet the funding requirement, federal and state laws authorize annual increases to the fees based on the change in the consumer price index.

DEQ needs 35 full-time equivalent positions to administer an effective program. The agency cut program staff in previous years due to inadequate revenue. Based on fee increase legislation in 2007, DEQ made a commitment to the Oregon Legislature and stakeholders to use the fees collected in 2009, with the consumer price index fee increase, to restore the final Title V position required to return full staff levels to the program.

The revenue from the proposed fees would fund the program through 2010. A fully staffed program benefits Oregonians and the environment by helping DEQ:

- Issue and renew Title V permits in a timely manner;
- Complete required Title V inspections;
- Monitor and enforce compliance with air quality regulations;
- Comply with requirements to maintain a federally approved and delegated Title V program; and
- Issue public notices and information about the program.

Temporary rules are needed to maintain a single Title V billing in 2009. DEQ was unable to propose the fee increase through a regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical correction. This correction became effective upon passage of Senate Bill 104 on June 16, 2009. Without temporary rules, DEQ would issue invoices in August 2009 as scheduled and issue a second billing for the increase after adoption of the permanent rulemaking. With or without the temporary rules, permittees would owe the same amount of fees because the statute has a retroactive clause for fee collection.

Effect of Rule

Title V Fee Increases

The proposed rule amendments increase fees for all 122 Title V sources in the program. Title V permit holders are generally the largest stationary emission sources, including power generation, wood and paper products and fiberglass manufacturing facilities. The EPA bases the Title V permit requirements on the quantity of emissions from a source rather than size of the business. Smaller sources such as wood refinishing and fiberglass reinforced plastic facilities are also subject to the Title V program if they have the potential to emit at or above major source emission thresholds.

DEQ rules establish Title V permit fees in three categories:

- Annual base fee, assessed to all Title V sources regardless of emission quantities;
- Emission fee, assessed on emissions from the individual sources per calendar year; and
- Specific activity fee, assessed when a source owner or operator modifies a permit or installs ambient monitoring networks requiring DEQ's review.

This proposal would increase the Title V fees by 4.6 percent based on the 2008 consumer price index. The table below illustrates the proposed fees.

Fee Category	Existing fees	Proposed fees	Increase
Annual Base Fee	\$5,183	\$5,421	\$238
Emission Fee (per ton)	\$51.83	\$54.21	\$2.38
<i>Specific Activity Fees:</i>			
Administrative	\$418	\$437	\$19
Simple	\$1,672	\$1,748	\$76
Moderate	\$12,540	\$13,115	\$575
Complex	\$25,081	\$26,231	\$1,149
Ambient Review	\$3,344	\$3,497	\$153

Correction to Consumer Price Index Period Used in Fee Calculations

This proposal implements a technical correction required by Senate Bill 104. The bill aligned the consumer price index period in statute with the federal definition. While the Clean Air Act defines the consumer price index calendar year as the twelve-month period ending Aug. 31, the statute simply provided "calendar year," commonly understood as the twelve-month period ending Dec. 31. The correction shifts the period used in fee calculations back several months.

- Commission Authority** The commission has authority to take this action under ORS 468.020, 468.065, 468A.025, 468A.040, 468A.310 and 468A.315
- Stakeholder Involvement** DEQ worked with stakeholders and received their support for the legislation that corrected the consumer price index period. DEQ mailed letters to Title V sources in July 2009 to describe how this rulemaking proposal would affect invoices. DEQ did not convene an advisory panel to develop this proposal because the legislature authorized the fees and the technical correction in statute.
- Public Comment** No public comment period is required for adoption of temporary rules. DEQ will proceed with the required public notice and comment process when it performs the permanent rulemaking.
- Key Issues** DEQ must issue invoices to Title V permit holders as scheduled in August 2009 to prevent a shortfall in program funding. If the commission did not immediately revise the rules, but required DEQ to proceed with a permanent rulemaking, the rulemaking would not be complete before DEQ issues the invoices. DEQ would be required to invoice the 2009 Title V permit fees twice: the invoice in August, and a supplemental invoice at the conclusion of

permanent rulemaking. The supplemental invoice would cause additional cost and budgeting difficulties for DEQ and Title V permit holders.

Next Steps

If the commission adopts the temporary rules, the fee increases would become effective upon filing with the Secretary of State. The fees would be reflected in invoices that DEQ will issue to Title V permittees in August 2009, with payment due in October 2009. Because this is a continuation of an existing program, DEQ does not need additional resources or training to implement the rule amendments. DEQ will propose a permanent rulemaking in February 2010 to make the fee increases permanent. The permanent rulemaking proposal will also include the Title V fees authorized in statute for next year's billing. Because Senate Bill 104 corrected the statute, the commission is now able to establish Title V fees on a two-year schedule, reducing the frequency of future consumer price index fee increase rulemakings from once per year to once per biennium.

Attachments

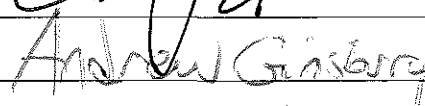
- A. Proposed Rule Changes
- B. Statement of Need and Justification
- C. Senate Bill 104

Available Upon Request

- 1. ORS 468A.315
- 2. 2009-2011 Legislatively Approved Budget
- 3. Fiscal Year 2010 Title V Revenue Forecast

Approved:

Section: 

Division: 

Report Prepared By: Andrea Curtis
Phone: (503) 229-6866

Oregon Department of Environmental Quality

Proposed Rule Changes

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

Annual Base Fee

(1) The Department will assess an annual base fee of \$ 4,390 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2007 to November 14, 2008.

(2) The Department will assess an annual base fee of \$ 4,849 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2008 to November 14, 2009.

(3) The Department will assess an annual base fee of \$ ~~5,183~~5,421 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2009 to November 14, 2010, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

340-220-0040

Emission Fee

(1) The Department will assess an emission fee of \$ 43.90 per ton of each regulated pollutant emitted during calendar year 2006 to each source subject to the Oregon Title V Operating Permit Program.

(2) The Department will assess an emission fee of \$ 48.49 per ton of each regulated pollutant emitted during calendar year 2007 to each source subject to the Oregon Title V Operating Permit Program.

(3) The Department will assess an emission fee of \$ ~~51.83~~54.21 per ton of each regulated pollutant emitted during calendar year 2008 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(4) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035

340-220-0050

Specific Activity Fees

(1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 21, 2007 to August 25, 2008 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 406;

(B) Simple -- \$ 1,626;

(C) Moderate -- \$ 12,194;

(D) Complex -- \$ 24,387.

(b) Ambient Air Monitoring Review -- \$ 3,252.

(2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2008 for the period of August 26, 2008 to August 25, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 418;

(B) Simple -- \$ 1,672;

(C) Moderate -- \$ 12,540;

(D) Complex -- \$ 25,081.

(b) Ambient Air Monitoring Review -- \$ 3,344.

(3) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 437;

(B) Simple -- \$ 1,748;

(C) Moderate -- \$ 13,115;

(D) Complex -- \$ 26,231.

(b) Ambient Air Monitoring Review -- \$ 3,497.

*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality

OAR Chapter 340

Agency and Division

Administrative Rules Chapter Number

Rule Caption: Oregon Title V Operating Permit CPI Fee Increase

In the Matter of: Oregon Title V Operating Permit Fees, Division 220

Statutory Authority: ORS 468.020, ORS 468.065, ORS 468A.025, ORS 468A.040, ORS 468A.310 and ORS 468A.315

Other Authority: N/A

Statute Implemented: ORS 468A.315

Need for the Temporary Rules: Temporary rules are needed to maintain a single Title V billing in 2009. State and federal laws authorize annual increases to Oregon's Title V operating permit fees based on the change in the consumer price index. A temporary rulemaking to adopt the consumer price index fee increase is required for the Department of Environmental Quality to meet its customary schedule for assessing and invoicing Title V fees. Without temporary rules, DEQ would need to invoice Title V sources in August 2009 for fees currently specified in OAR 340-220-0030 through 0050, and after adoption of a permanent rulemaking, send a supplemental invoice for the difference between the current fees and the newly-increased fees. Two invoices for permit fees could cause confusion, potential budgeting difficulties for fee payers and additional work for DEQ and the regulated community. With or without the temporary rules, permittees would owe the same amount because the statute has a retroactive clause for fee collection.

Background:

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all program costs. The fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA. The fees also support a portion of air quality monitoring, planning and program management costs.

DEQ needs to increase the Title V fees in 2009 by the change in the consumer price index to operate the program at full staff levels. While DEQ needs 35 FTE to administer an effective program, it cut program staff in previous years due to inadequate revenue. Based on fee increase legislation in 2007, DEQ made a commitment to the Oregon Legislature and stakeholders to use the fees authorized for 2009, with the consumer price index increase, to restore the final Title V position required to return full staff levels to the program.

DEQ was unable to propose the increase through regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical

correction, which only recently became effective with the passage of Senate Bill 104 on June 16, 2009.

Documents Relied Upon: Documents relied upon are available by contacting DEQ or online as follows:

- Senate Bill 104 (a Public Law number is not yet available): <http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0104.en.pdf>
- ORS 468A.315: <http://www.leg.state.or.us/ors/468a.html>
- Consumer Price Index history for all urban consumers (U.S. Department of Labor, Bureau of Labor Statistics): <http://www.bls.gov/cpi/>
- DEQ Fiscal Year 2010 Title V revenue forecast

Justification of Temporary Rules: The commission finds that failure to adopt the temporary rules will result in serious prejudice to the public interest and the interest of DEQ and Title V permit holders because it will have the following consequences:

Without these rule changes, Oregon rules concerning the dates for consumer price index fee increases would conflict with state statute and the federal Clean Air Act, which would potentially jeopardize federal delegation of the Title V operating permit program. Failure to adopt the rules could also jeopardize federal delegation because the state program must be entirely funded by permit fees; the rules are necessary to generate revenue to cover program costs. DEQ must issue invoices to Title V permit holders as scheduled in August 2009 to prevent a shortfall in program funding. If the commission did not immediately revise the rules, but required DEQ to proceed with a permanent rulemaking, the rulemaking would not be complete before DEQ issues the invoices. DEQ would be required to invoice the 2009 Title V permit fees twice: the invoice in August, and a supplemental invoice at the conclusion of permanent rulemaking. The supplemental invoice would cause additional costs for DEQ and Title V permit holders.

Housing Cost Impacts:

DEQ has determined that this proposed rulemaking may have a negative impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel because increased permit fees could be passed along in the form of slightly higher costs for development and construction (such as building products and utilities). DEQ is not able to quantify the impact of the proposed rulemaking due to a lack of available information, but expects any impact to be minimal.

Dick Pedersen, Director
On Behalf of the Environmental Quality Commission

Date Signed

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled
Senate Bill 104

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Environmental Quality)

CHAPTER

AN ACT

Relating to fee schedule for federal operating permit program; amending ORS 468A.315; and declaring an emergency.

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

SECTION 1. ORS 468A.315 is amended to read:

468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established [every two years] by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fee under subsection (2)(e) of this section, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section, subject to annual fee increases as set forth in paragraph (d) of this subsection. The following emission fees apply:

(A) \$27 per ton emitted during the 2006 calendar year.

(B) \$29 per ton emitted during the 2007 calendar year.

(C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.

(b) Fees for the following specific elements of the federal operating permit program:

(A) Reviewing and acting upon applications for modifications to federal operating permits.

(B) Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.

(C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

(D) Department review of ambient monitoring networks installed by a source.

(E) Other distinct department activities created by a source or a group of sources if the commission finds that the activities are unique and specific and that additional rulemaking is necessary and will impose costs upon the department that are not otherwise covered by federal operating permit program fees.

(c) A base fee for a source subject to the federal operating permit program. This base fee shall be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases as set forth in paragraph (d) of this subsection:

(A) \$2,700 for the period of November 15, 2007, through November 14, 2008.

(B) \$2,900 for the period of November 15, 2008, through November 14, 2009.

(C) \$3,100 for the period of November 15, 2009, through November 14, 2010.

(D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual period thereafter.

(d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index [for the calendar year] as of the close of the 12-month period ending on August 31, 1989, if the commission determines by rule that the increased fees are necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

(2)(a) The fee on emissions of regulated pollutants required under this section shall be based on the amount of each regulated pollutant emitted during the prior calendar year as documented by information provided by the source in accordance with criteria adopted by the commission or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on the emission limit for the plant site of the major source.

(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000 tons per year of all regulated pollutants for each calendar year thereafter. The department may not revise a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

(A) Emission monitoring;

(B) Material balances;

(C) Emission factors;

(D) Fuel use;

(E) Production data; or

(F) Other calculations.

(d) The department shall accept reasonably accurate information that complies with the criteria established by the commission as documentation of emissions.

(e) The rules adopted under this section shall require an additional fee for failure to pay, substantial underpayment of or late payment of emission fees.

(3) The commission shall establish by rule the size fraction of total particulates subject to emission fees as particulates under this section.

(4) As used in this section:

(a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide; and

(b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June 20, 2007.

SECTION 2. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate March 3, 2009

.....
Secretary of Senate

.....
President of Senate

Passed by House May 22, 2009

.....
Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State



Blue Heron Paper Company

419 Main Street, Oregon City, Oregon 97045

August 19, 2009

Commissioners
Oregon Environmental Quality Commission
c/o Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon, 97204-1390
Via Email

Subject: August 20, 2009 Agenda Item E., Title V Permitting Fees

Dear Commissioners:

Thank you for considering the following.

I am the Chief Operating Officer for Blue Heron Paper Company, an employee-owned, union-operated business in Oregon City. We offer family wage jobs in a very difficult economy.

You have been asked by the Department of Environmental Quality (DEQ) to consider Agenda Item E., Action Item, Title V Air permitting fees temporary rulemaking, at your August 20, 2009 meeting. We feel it is inappropriate to address this matter which has significant economic impact on our business in a temporary rule without public hearing.

Since 2005 actual assessed Title V fees have been increased 107.32% while the cumulative Consumer Price Index (CPI) for all urban consumers published by the Federal Bureau of Labor Statistics has increased 10.3%. DEQ has already been granted increases in excess of the cumulative CPI since 2005. DEQ is requesting an additional increase over this already excessive 107.32% increase. A detailed breakdown of per year increases is presented on the attached table and briefly outlined below.

The 2007 Oregon Legislature approved a twenty four percent (24%) increase to annual per ton emitted fees and the annual base fee over a three year period (2006, 2007, 2008). This legislation changed the nominal annual emission fees per ton emitted per calendar year in Oregon Revised Statute (ORS) 468A.315 from \$25 per ton in 2005 to \$31 per ton in 2008 and the nominal base fee per period from \$2,500 (11/15/06 through 11/14/07) to \$4,100 (11/15/20 through 11/14/2011).

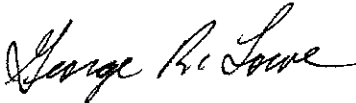
The ORS fees cited above are not the actual fees. These amounts were further increased over the same time period by rules. The actual per ton fees over this period including 2005 through 2008 ranged from \$39.38 (2005) to \$51.83 (previously approved 2008) or \$54.83 (proposed by DEQ); and actual base fees were \$3,268 (11/15/05-11/14/06) to \$5,183 (previously approved 2008) or \$5,483 (proposed by DEQ).

This matter will still require a full public rulemaking. Following full public rulemaking if the matter is not approved will DEQ issue credits for overpayments? Our experience is that DEQ has not issued credits in the past when documented requests have been made, but DEQ has issued supplemental billings for previous years.

Rather than granting an increase without public input, please postpone action on this item (Agenda Item E) until you can fully consider all the relevant information and hear from the public.

Thank you for your time and consideration.

Sincerely,
Blue Heron Paper Company



George R. Lowe
Chief Operating Officer

Enclosures: As noted

cc: Andy Ginsburg, Oregon Department of Environmental Quality - Air Quality Division

Comparison of Statutory to Actual Assessed Title V Fees 2005 to 2008

Assessment Period		Fees Approved by Statute		Fees Actually Assessed		% Increase Over Prior Year		% Increase over Statutory		% Increase 2005 to 2008		CPI	
Base Year	Emission Year	Base		Base		Statutory		Actual		Actual		Annual Increase***	
		Base	\$\$\$ / ton	Base	\$\$\$ / ton	Base	\$\$\$ / ton	Base	\$\$\$ / ton	Base	\$\$\$ / ton		
11/15/06-11/14/07	2005	\$2,500	\$25.00	\$3,379	\$39.38	--	--	35.16%	57.52%	--	--	2005	3.4%
11/15/07-11/14/08	2006	\$2,700	\$27.00	\$4,390	\$43.90	8.00%	8.00%	62.59%	62.59%	--	--	2006	3.2%
11/15/08-11/14/09	2007	\$2,900	\$29.00	\$4,849	\$48.49	7.41%	7.41%	67.21%	67.21%	--	--	2007	2.8%
11/15/09-11/14/10	2008	\$3,100	\$31.00	\$5,183	\$51.83 *	6.90%	6.90%	67.19%	67.19%	107.32%	107.32%	2008	3.8%
11/15/09-11/14/10	2008	\$3,100	\$31.00	\$5,421	\$54.21 **	--	--	74.87%	74.87%	116.84%	116.84%	09/07-08/08	4.8%

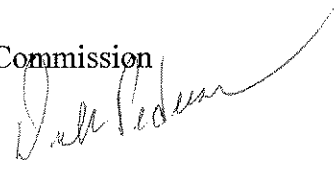
* Currently approved by Statute and Rule

** Additional Increase Proposed by DEQ under August 20, 2009 Temporary Rulemaking

*** Cumulative Annual CPI (All Urban Consumers) 2005 (195.3) to 2008 (215.303) increased 10.3% (<ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>)

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item F, Informational Item: 2009 Budget and Legislative Agenda Update August 20-21, 2009 EQC Meeting

Purpose of Item The purpose of this agenda item is to provide an update to the Environmental Quality Commission on the Department of Environmental Quality's 2009-11 Legislatively Adopted Budget and to review key budget implementation issues for 2009-11. This presentation will include an overview of agency bills and other bills affecting DEQ. It will also include an overview of legislative commitments made during the Legislative Session such as upcoming rulemakings and special reviews that will come before the EQC.

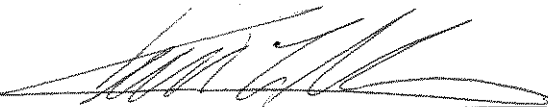
Background DEQ staff presented an update on the DEQ budget policy packages and bills of interest for the 2009 legislative agenda at the June EQC meeting. At that meeting, an update was provided regarding the budget status and key legislation as the end of Legislative Session was approaching.

2009 Legislative Session

The 2009 Legislative Session started Jan. 12 and adjourned June 29. Later this summer, interim legislative committee hearings will begin and will be held periodically until the end of 2010. A supplemental Legislative Session is anticipated in February 2010. The Legislature held a supplemental session in 2008 as an experiment, and might eventually hold annual Legislative Sessions in Oregon.

EQC Involvement DEQ presented 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

DEQ Legislative Update

August 2009

DEQ Budget Bills

DEQ Appropriations Bill – Senate Bill 5521 is the main DEQ budget bill that includes the base budget as well as all the budget policy packages that are not supported by fee bills. This bill passed the Senate 19-11 and the House 38-21.

State Omnibus Budget Bill – House Bill 5054 was the final budget adjustment bill of the 2009 Session that reduced funding for virtually all state agencies. Over \$5.3 million dollars were disappropriated from the DEQ budget via this bill, including a reduction of \$718,130 in General Fund and \$130,227 in Lottery Funds. Federal Fund reductions were over \$600,000 and Other Fund reductions were nearly \$3.9 million. Implementation of these reductions will not reduce staffing levels but will reduce the cost of individual positions and reduce statewide service charges to DEQ.

Bills Related to the Air Quality Program

Greenhouse Gas (GHG) Reduction Measures - HB 2186 allows the Environmental Quality Commission to adopt targeted measures to reduce greenhouse gas emissions from the transportation sector, which accounts for approximately 33 percent of the greenhouse gas emissions in Oregon. Measures include a low carbon fuel standard, tire pressure checks for maximum fuel efficiency, standards for vehicle emission system replacement parts and reduced idling of commercial ships in port. The bill calls for a DEQ study of measures to improve truck fuel efficiency by retrofitting heavy and medium duty trucks to reduce air drag and rolling resistance. The bill also requires an evaluation by a special Metropolitan Planning Organization Task Force of land use and transportation scenarios and planning processes that accommodate growth while reducing GHG emissions.

DEQ Work: Study of truck aerodynamics and idling and submit report and recommendation for legislation to an interim committee on or before October 1, 2010.

Also, develop rules to implement the following authorities:

- a) adopt a low carbon fuel standard;
- b) prevent changes to motor vehicle pollution control systems;
- c) require motor vehicle service providers to check and inflate tires;
- d) restrict idling by commercial ships in port and provide alternatives to engine use.

Report on implementation to interim legislative committees on or before December 31, 2010 and the 2011, 2013 and 2015 Legislative Assemblies. Recommend adoption of rules for the low carbon fuel standard this biennium; rules for vehicle pollution control systems will be combined with the rule update to the Oregon Low Emission Vehicle Program, also this biennium; rules for the remaining authorities will be developed next biennium.

Greenhouse Gas Reporting – Senate Bill 38 fills gaps in the Environmental Quality Commission's authority to require greenhouse gas reporting from imported power and distributed fuel, both major sources of greenhouse gas emissions.

DEQ Work: Develop rules identifying the specifics of GHG reporting for these sources. Also, Evaluate funding mechanism for GHG reporting including a schedule of fees for electricity and fuel reporters. Report to the 2011 Legislature or any special session during the 2009-2011 biennium.

Heat Smart - Senate Bill 102 is an important measure to protect public health by speeding conversion from old polluting wood stoves to new certified wood stoves that are much cleaner. The bill accelerates the turnover of older uncertified woodstoves by requiring their removal upon sale of home; authorizes the Environmental Quality Commission to set emission standards for new woodstoves; and clarifies that materials banned from being burned outdoors may not be burned in woodstoves and fireplaces. This bill is a cornerstone of Air Quality's plan to meet the federal fine particulate standard.

DEQ Work: Develop rules for removal of uncertified woodstoves upon sale of home, etc.

Registration Fees (Alternative to Permitting) – Senate Bill 103 is a streamlining measure that will enable DEQ to implement new federal air quality regulations for hazardous air pollutants without requiring many small businesses to obtain permits. DEQ may allow a business to register with DEQ and pay a registration fee rather than obtain a permit and pay a permit fee. Registration is only available to small businesses that voluntarily participate in an environmental performance certification program where businesses perform pollution prevention and sustainable practices to not only meet all federal environmental regulations but go beyond compliance. The bill was requested by auto body shops, and has the enthusiastic support of the Northwest Automotive Trades Association. The bill also allows the Commission to set fees for greenhouse gas reporting.

DEQ Work: Develop rules to establish a fee schedule for new area sources who want to avoid a permit and go beyond compliance.

Title V Technical Correction - Senate Bill 104 corrects a technical problem with the Commission's authority to set Title V permit fees that would have resulted in a loss of revenue.

DEQ Work: Develop rules to increase fees by the 2009 Consumer Price Index.

Field Burning – Senate Bill 528 reduces field burning in the Willamette Valley by 2010 and a phase out of stack burning and propane flaming by 2013. The bill establishes 15,000 acres as the maximum amount of steep terrain burning. The bill also gives the EQC authority to cease all burning, allow up to 2,000 acres for emergency burning and establish critical non-burn areas.

DEQ Work: Develop rules to reduce annual field burning acreage, provide exception provisions and increase fees. Rules must be adopted by June 2010, prior to the 2010 field burning season.

Vehicle Inspection Hours of Operation - House Bill 2564 streamlines operation of Vehicle Inspection Stations by allowing DEQ to set evening hours based on demand, rather than staying open until 9 p.m. every Wednesday. This was an efficiency and organization health issue initiated by the inspectors themselves, and they are to be commended for pointing this out.

DEQ Work: Vehicle Inspection Program will have to do outreach to inform the public about new station hours.

Small Scale Local Energy Projects - House Bill 2952 lessens some of the technical requirements for air quality permitting of small scale local energy projects unless DEQ determines the source will pose a material threat to a nonattainment or maintenance area's ability to maintain compliance with air quality standards. The net effect will be reductions in methane emissions from landfills and a positive impact on air quality. DEQ worked with Associated Oregon Industries to make sure provisions in the bill retain DEQ's authority to impose the requirements if DEQ determines that the project will pose a threat to air quality.

DEQ Work: DEQ is researching the need for rules.

Oregon Jobs and Transportation Bill – House Bill 2001 funds multiple components of the state transportation system.

DEQ Work: Requires DEQ to develop information and projections for GHG reduction goals for metropolitan service districts and submit to Land Conservation and Development Commission on

or before March 1, 2011. DEQ's Vehicle Inspection Program will have to make system changes for higher vehicle registration fees collected at VIP stations

Reports to Interim Committees

HB 2186 requires DEQ to submit a report and recommendation for legislation on truck aerodynamics and idling to an interim committee on or before October 1, 2010; Report on general progress of HB 2186 implementation to an interim legislative committees on or before December 31, 2010.

Air Quality Reports to 2011 Legislature

- HB 2186 - Report on general progress of HB 2186 implementation to the 2011, 2013 and 2015 Legislative Assemblies
- SB 38 – Evaluate funding mechanism for GHG reporting including a schedule of fees for electricity and fuel reporters. Report to the 2011 Legislature or any special session during the 2009-2011 biennium.

Bills Related to the Land Quality Program

Invasive Species Council – House Bill 2213 expands the membership of the Oregon Invasive Species Council to include DEQ.

DEQ Work: DEQ Director must formally appoint someone to serve as the DEQ representative on the council. Land Quality staff will participate in council proceedings and activities as appropriate.

Ballast Water Task Force (Discharge Standards and Emergency Procedures) – House Bill 2714 continues the Shipping Transport of Aquatic Invasive Species Task Force (aka, the Ballast Water Task Force) until Jan. 2, 2012 and requires the submittal of their report to the Legislature by June 1, 2010. In addition to making recommendations regarding the transport of aquatic invasive species, the task force also serves in an advisory capacity for any related administrative rulemaking efforts undertaken by DEQ.

In addition, the bill authorizes the EQC to adopt new ballast water management requirements by rule for vessels discharging into state waters (that where practical and feasible are consistent with adjacent states). The current management practice required, mid-ocean ballast exchange, is a stop-gap measure that reduces the risk of transporting non-native species but does not provide sufficient environmental protection. Furthermore, this bill would authorize the EQC to define appropriate emergency procedures for managing high-risk ballast water (i.e., previously unmanaged ballast with a high probability of invasive species) when such ballast must be discharged into state waters.

DEQ Work: Recommended names sent to Director Pedersen for appointment of task force members. Work with task force to identify, discuss and develop possible rulemakings for discharge standards and emergency procedures. Work with the task force to identify, discuss and develop recommendations for legislative report due June 1, 2010.

Paint Product Stewardship (Pilot Program) - House Bill 3037 creates a paint stewardship pilot program to reduce the generation of postconsumer paint by promoting its reuse and developing a process of collecting, transporting and processing it in an environmentally sound fashion. The bill requires the creation of a stewardship organization made up of paint manufacturers to implement and fund the program, including development of educational materials for consumers. It prohibits the sale of paint unless a producer is participating in a stewardship pilot program and retailers must provide information to consumers on collection / recycling / disposal options at time of sale.

The bill also grants the pilot program protection from federal and state antitrust laws and requires the Department of Environmental Quality (DEQ) to supervise program. The law sunsets on June 30, 2014.

DEQ Work: Review and approve any plans submitted by a stewardship organization for the collection, transportation, recycling and safe disposal of paint. (We expect to review only one plan submitted by the entire industry.) Review and approve the financing identified in the plan to fund the stewardship organization's activities. Develop and maintain a website of participating paint producers. Work with retailers and paint industry to develop appropriate educational materials for consumers. Review annual reports from a stewardship organization on the performance of the pilot program. Monitor compliance and take necessary enforcement actions as appropriate. Prepare a legislative report by October 1, 2011 that describes the results of the pilot program and recommends whether the program should be made permanent.

Land Quality Reports to 2010 Legislature

Shipping Transport of Aquatic Invasive Species Task Force report is due by June 1, 2010 (HB 2714).

Land Quality Reports to 2011 Legislature

- Report by DEQ that describes the results of the paint stewardship pilot program and recommends whether the program should be made permanent is due by October 1, 2011 (HB 3037).
- Report by DEQ regarding the discharges of sewage, gray water and hazardous materials from cruise ships is due by January 2011 (HB 3132).
- Report by DEQ regarding additional programs and authority for managing wastes using a product stewardship approach is due prior to the 2011 session.

Bills related to the Water Quality Program

Water Quality 401 Certification Fees – House Bill 2185 removes existing exemptions regarding which types of projects can be charged fees for 401 certifications. This means that all 401 certification applicants will need to pay a fee once rulemaking is done to change the fees.

DEQ Work: Convene Advisory Committee to alter proposed fee table, develop timeline for new fees/positions, and begin rulemaking.

Ecosystem Marketplaces Bill – Senate Bill 513 establishes a policy on ecosystem services and directs the Sustainability Board to convene an ecosystem services markets working group. If passed, DEQ expects to participate on the work group.

DEQ Work: Participate in working group, provide updates to the EQC.

Gray Water Bill – House Bill 2080 legalizes the use of gray water outside homes that are connected to a community sewer system. It establishes that a person may not construct, install or operate a gray water system without a permit from DEQ and directs the EQC to adopt rules for gray water permitting.

DEQ Work: Convene and staff Advisory Committee, execute rulemaking plan.

Phosphorous in Cleaning Agents Bill – Senate Bill 631 changes the limit for the amount of phosphorous allowed in non-commercial automatic dishwasher detergents from 8.7 percent to 0.5 percent

DEQ Work: Develop and send letters to retailers, sellers and distributors of dishwasher detergents notifying them of the new requirements and then respond to any complaints or reports by the public of product being sold that does not meet the limit. Add information to DEQ's website.

Cruise Ship Bill – House Bill 3123 directs DEQ to study the impacts of sewage, gray water and hazardous material discharged from passenger vessels, the availability of facilities to remove and treat sewage from passenger vessels, and to report to the Legislature by January 2011.

DEQ Work: Attend Cruise Ship tour in Astoria on September 22nd; review existing studies regarding cruise ship discharges from AK, WA, and CA; develop legislative report. This bill affects both the Water Quality and Land Quality Program; Water Quality is the lead.

Sand and Gravel Mining Bill – House Bill 2929 requires the Department of State Lands to work with DEQ and the Department of Geology and Mineral Industries to study the feasibility of creating one state permit for in-water sand and gravel projects.

DEQ Work: Participate in discussion regarding the feasibility of one state permit, assist in legislative report and updates as needed.

Integrated Water Resources Strategy – House Bill 3369, among other items, requires the Water Resources Department to work with DEQ to develop an integrated water resources strategy for Oregon.

DEQ Work: Assist WRD in developing a plan for implementing this section of the bill; provide regular updates to the EQC; work with the Water Resources Commission as needed; participate in the town hall meetings; provide water quality information and policy direction.

Water Quality Reports to 2010 Legislature

Wastewater Permitting Program Improvements and Measures; final report is due to Legislature and EQC Jan. 31, 2010.

Water Quality Reports to 2011 Legislature

- Wastewater Permitting Program Improvements and Measures; final due Jan. 7, 2011.
- Groundwater –required by statute to report to each Legislature; final due Jan. 7, 2011.
- Operator Certification--statute requires joint report with DHS to each new Legislative Session; final due Jan. 7, 2011.

Bills related to Enforcement

Maximum Enforcement Penalties – Senate Bill 105 increased the maximum possible statutory penalties for most violations of laws administered by DEQ from \$10,000 to \$25,000. The bill did not disturb the penalty rules that the EQC has already adopted in Division 340-012. Under existing penalty rules and formulas, few penalties will exceed \$10,000. Modification of those rules would be necessary to implement the additional authority given by the bill.

DEQ Work: To more fully implement the new maximum enforcement penalties, a rulemaking will be needed to revise the existing enforcement penalty matrix.

Figure 1
2009-2011 Legislative Approved Budget, By Program
\$401,626,682

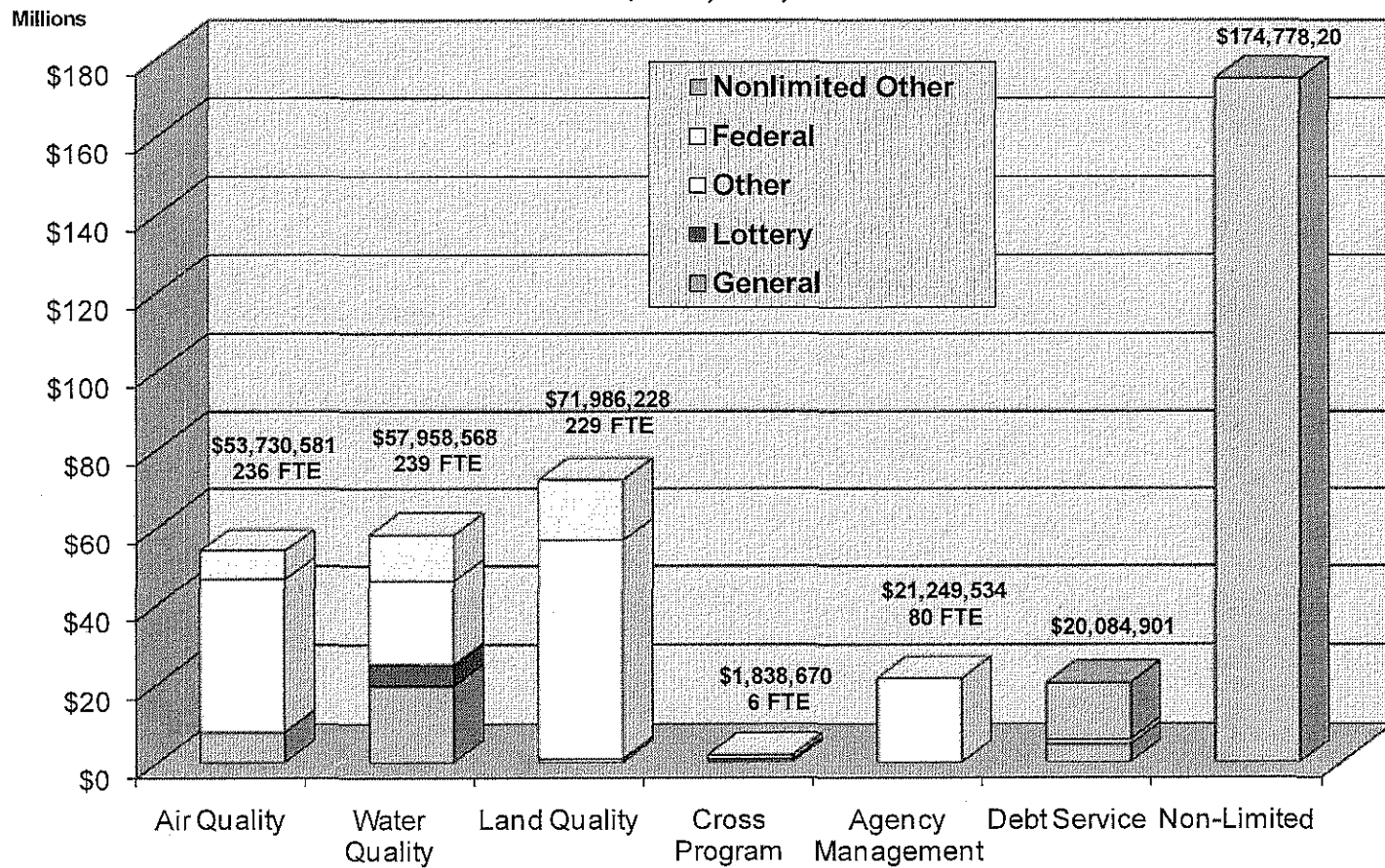


Figure 2

2007-2009 Approved vs 2009-2011 Legislative Approved Budget

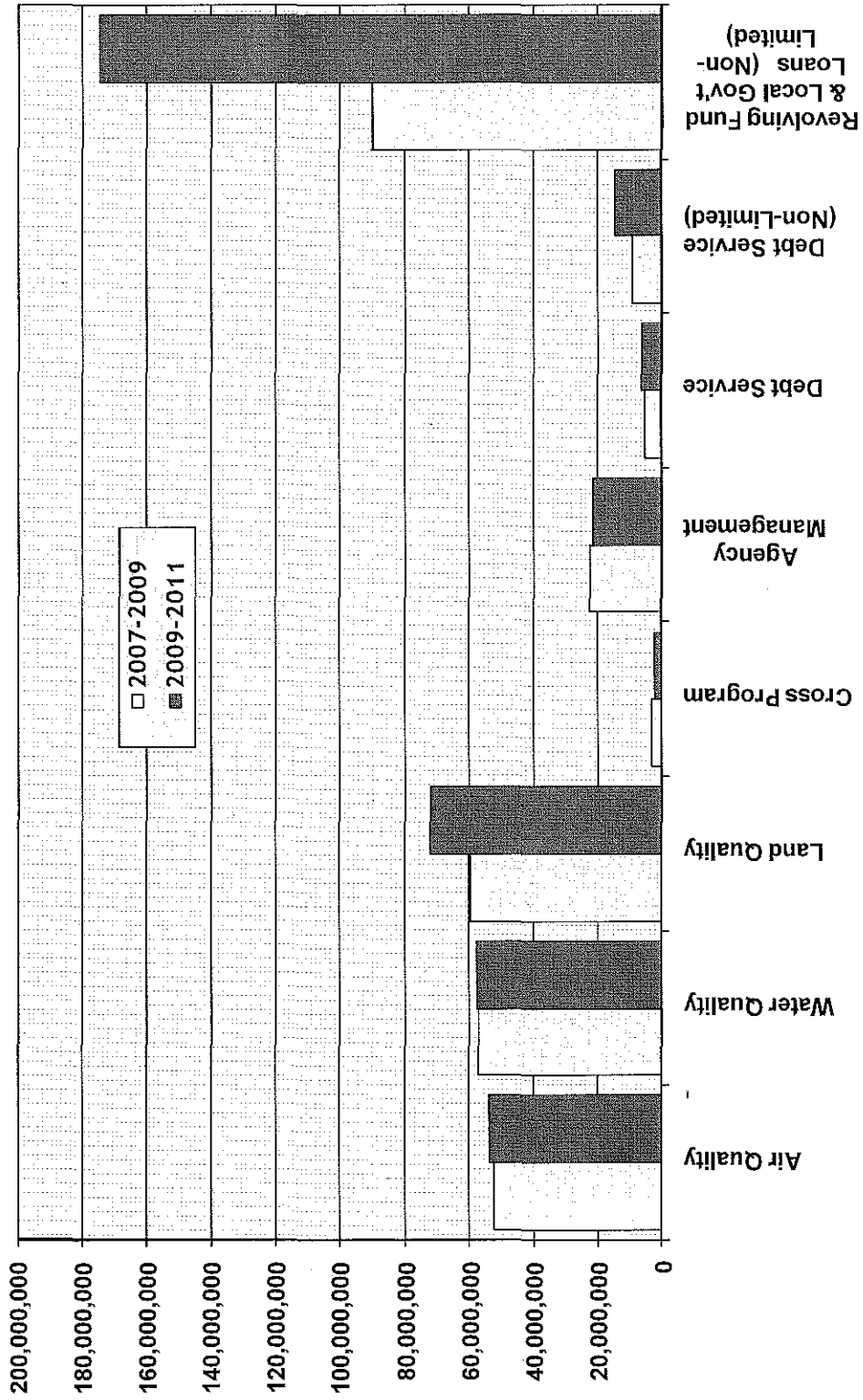


Figure 3

2007-2009 Approved vs 2009-2011 Legislative Approved Budget - FTE

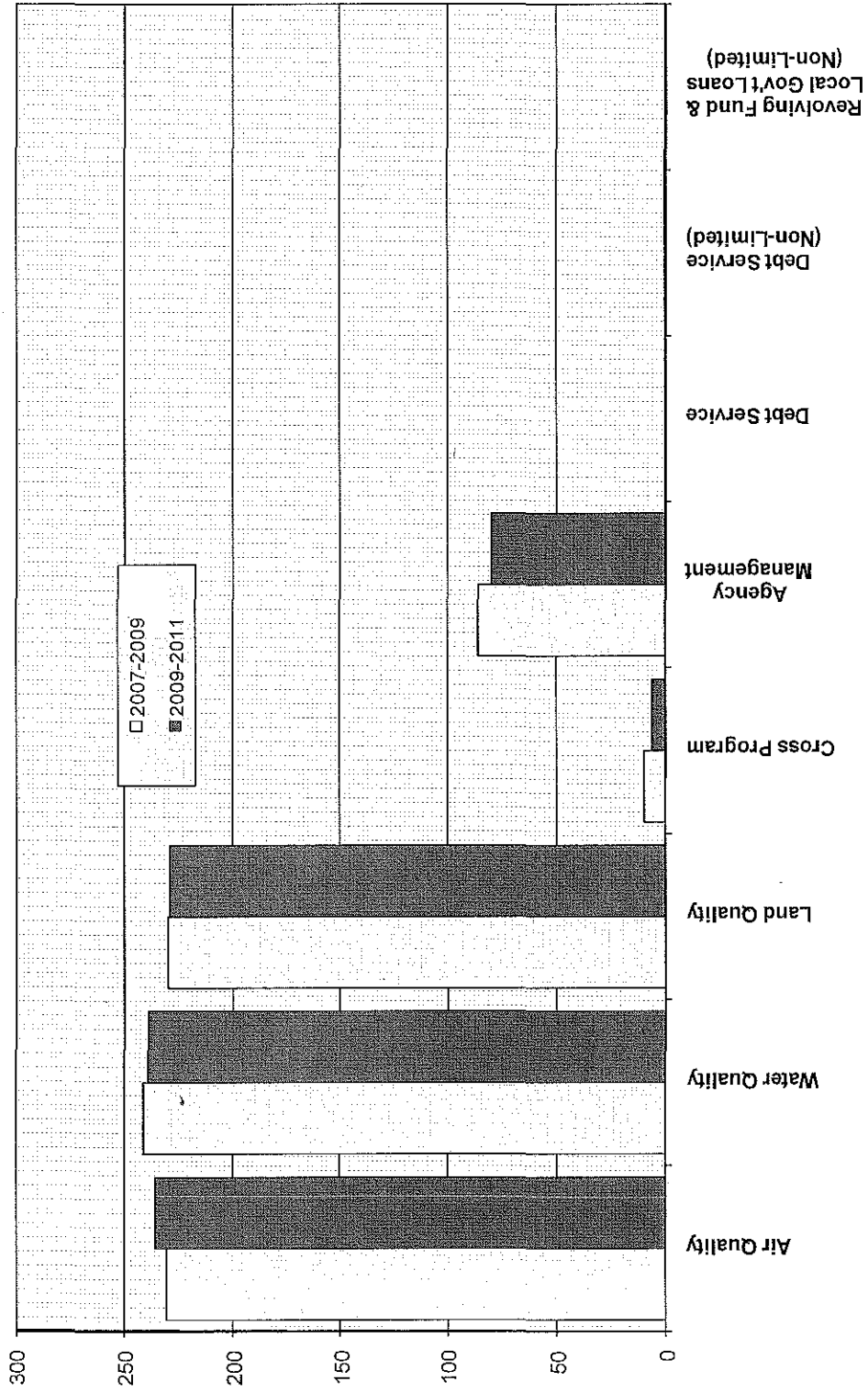


Figure 4

2007-2009 Approved vs 2009-2011 Legislative Approved Budget

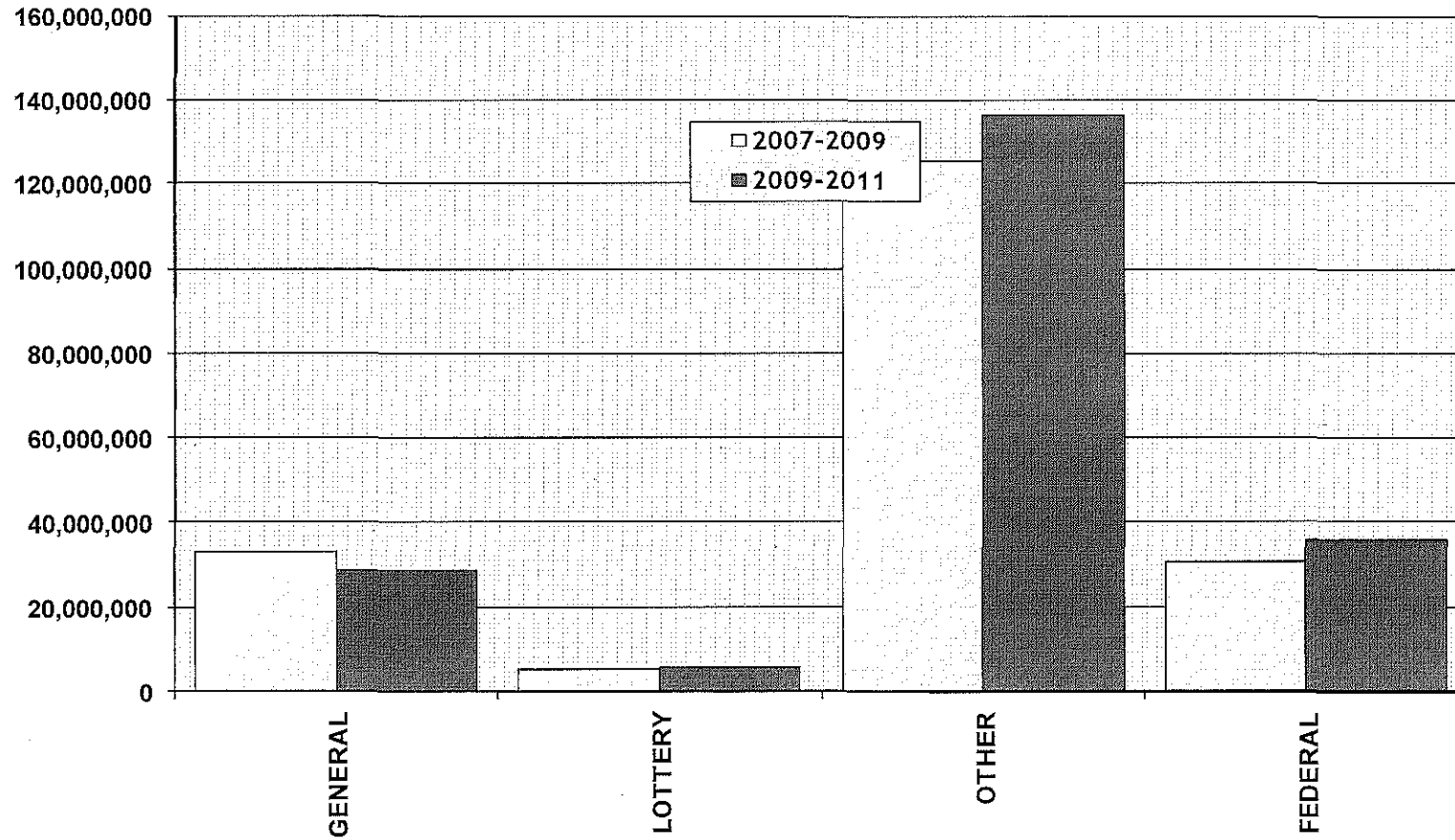


Figure 5

**2009-2011 Legislative Approved Budget
Operating Budget - \$206,763,581**

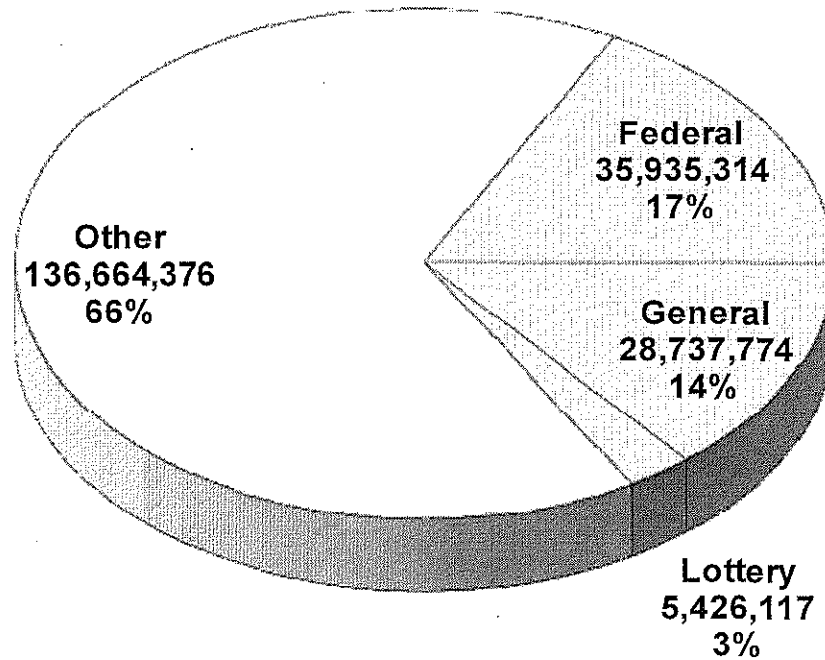


Figure 6

2009-2011 Legislative Approved Budget
Operating Budget - \$206,763,581

Millions

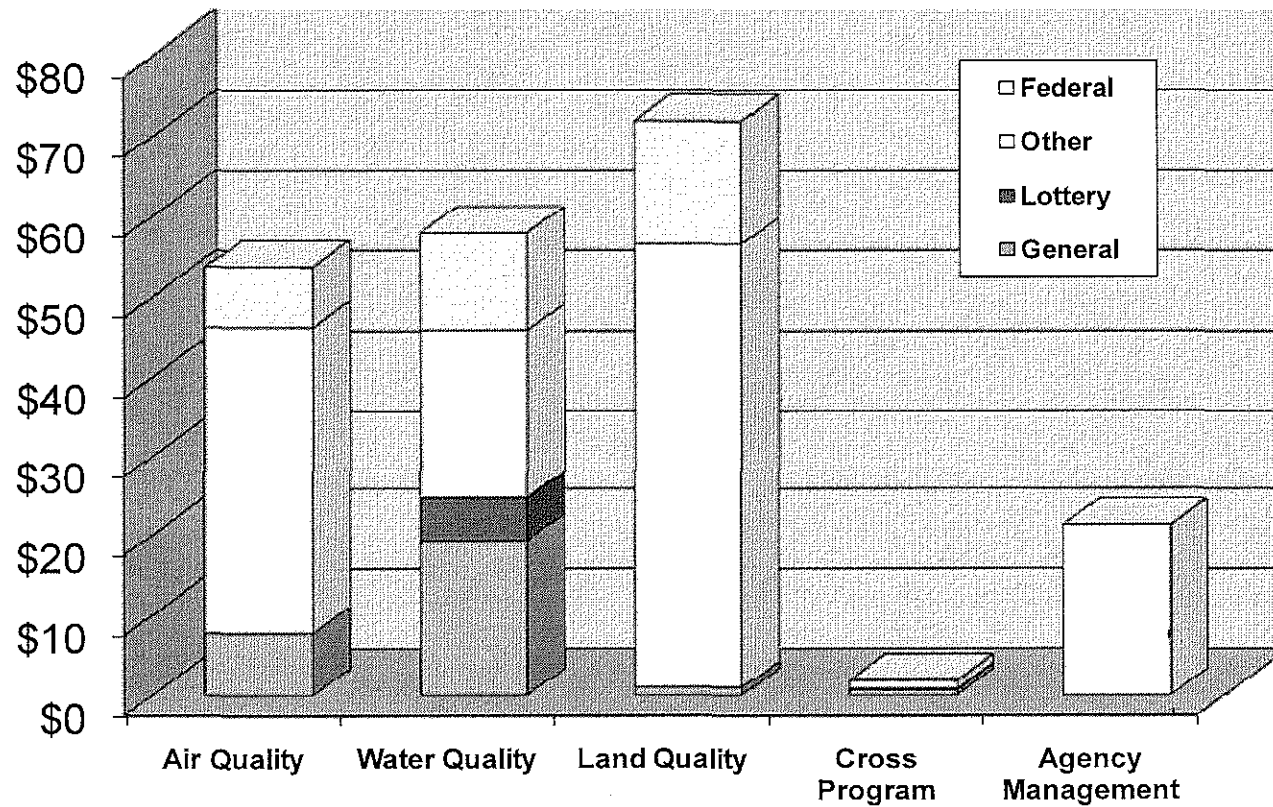
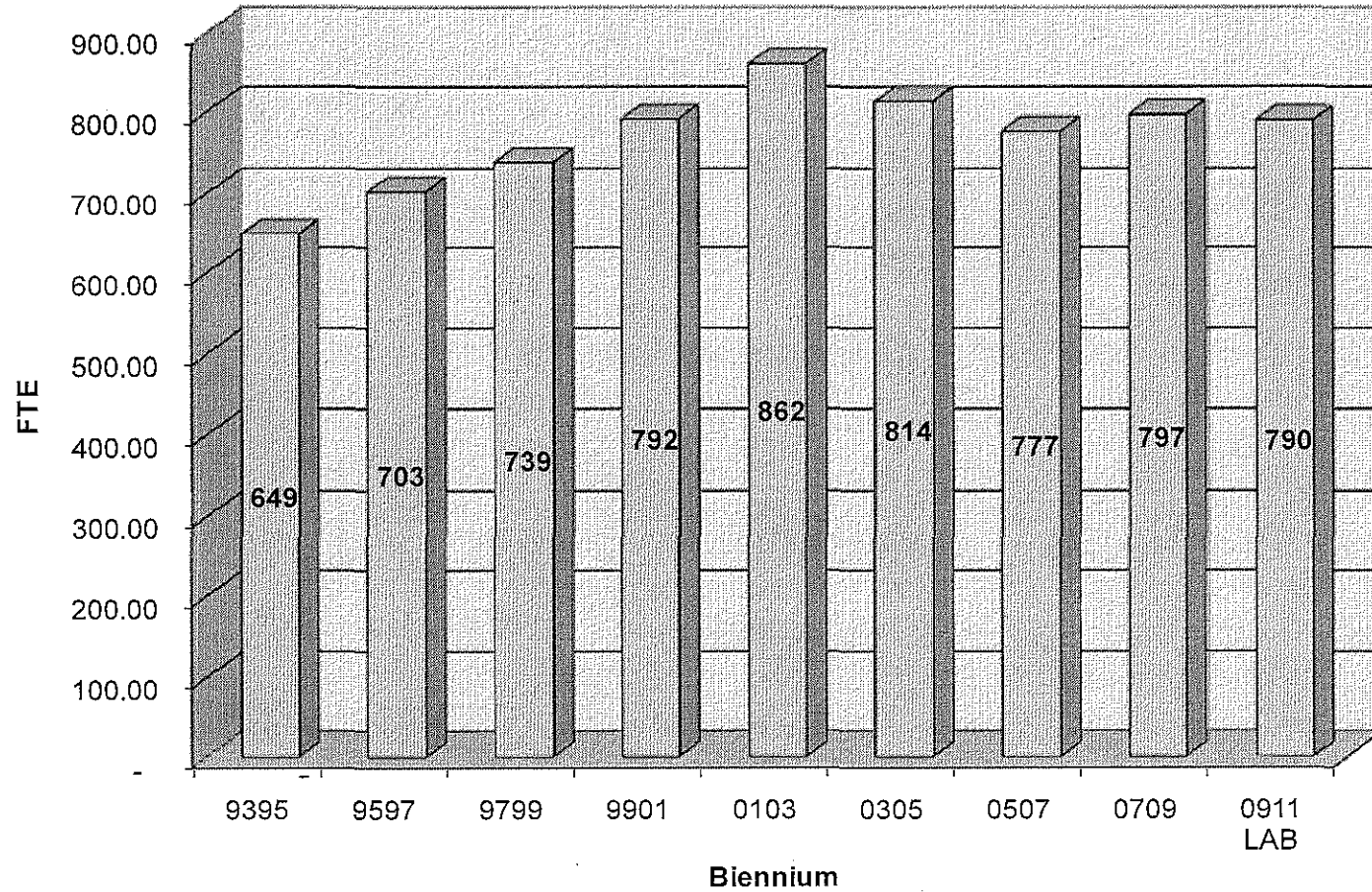


Figure 7

DEQ STAFFING OVER TIME



DEQ 2009-11 Budget

Background

The Legislature approved \$402 million for DEQ's 2009-11 budget, of which \$195 million, or 49 percent, is funding for loans to Oregon communities for clean water projects and debt service on bonds. The substantial growth in new funding for these loans and grants from the federal stimulus package and the president's proposed 2010 budget, is coupled with increased demand from communities. These projects improve the quality of Oregon's water and have a positive impact on local jobs and the Oregon economy.

While this increase in loans and grants is directly responsible for a 20 percent increase in DEQ's total budget relative to the 2007-09 biennium, these loan funds are pass-through only and cannot be used to provide any of DEQ's other environmental services. DEQ's operating budget for its core services consists of the remaining \$206 million.

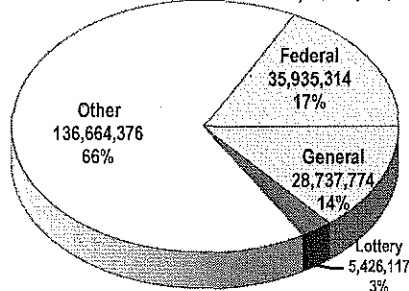
In addition to the budget approved through Senate Bill 5521, House Bill 5054 further reduced DEQ's 2009-11 budget by more than \$5 million. The bill reduced general fund by an additional \$718,000 and lottery funds by \$130,000. These reductions affect DEQ's compensation package, but not air, land or water program work or number of full-time employees.

For DEQ's ongoing operations, the budget approves:

- \$33.3 million in general fund, a 14 percent reduction and 18.4 fewer full-time positions compared to DEQ's 2007-09 Legislatively Approved Budget.
- \$5.4 million in lottery funds, maintaining the same level of services as 2007-09.
- \$36 million federal funds, a \$5.3 million increase driven mainly by federal stimulus money for leaking underground storage tank cleanups (\$2.7 million) and diesel upgrade grants (\$1.7 million), as well as a grant for maintaining the McCormick and Baxter cleanup site (\$1.3 million). Most of the increase will be used directly in Oregon communities rather than funding DEQ services.
- \$138 million in other funds, mostly from fees. The increase is driven by a \$5.3 million increase in E-waste recycling budget to fund a contractor recycling program.

In the 2009-11 operating budget, general funds make up 14 percent of the budget, lottery funds contribute 3 percent, federal funds provide 17 percent, and fees and other revenues provide the majority – 66 percent.

2009-2011 Total Legislative Approved Operating Budget
(Excludes Non-Limited and Debt Service) - \$206,763,581



The budget funds 790 staff (full time equivalents), a net decrease of 7.18 staff from 2007-09 levels. While general fund reductions reduced 18.4 positions, the budget also approved 10.34 new positions for continuing and new work.

Air Quality Program budget

The Air Quality Program's \$53.7 million budget includes a \$2.1 million general fund decrease since 2007-09, to a 2009-11 level of \$7.8 million. The budget also includes \$38.5 million in fee funding and a \$7.4 million in federal funding, including \$1.1 million from a one-time federal stimulus grant. The budget supports 236.27 full-time employees, compared to 230.44 for 2007-09.

Reductions. Air quality had a general fund reduction of \$2.2 million which resulted in the following effect on program activities:

- Reduced Clean Diesel grants (\$1 million) and staffing for diesel reduction outreach and grant administration (2 FTE).
- Reduced air quality technical assistance to small businesses (0.5 FTE).
- Eliminated one air toxics monitoring site in Medford (1 FTE).
- Reduced enforcement work on open burning violations (0.5 FTE).
- Reduced general fund support for Lane Regional Air Protection Agency (\$74 K).



State of Oregon
Department of
Environmental
Quality

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

Contacts:

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Director
(503) 229-5300

Greg Aldrich
Government Relations
Manager
(503) 229-6345

Last Updated: 08/11/09
By: M.Aerne
DEQ 09-MSD-005

- Eliminated support for multi-state air quality modeling center, which provides technical data for air pollution reduction work (\$206 K).

Highlights. The Air Quality Program received authority for the following new and continuing work:

- Permitting, enforcement and technical assistance for new sources subject to recently adopted federal regulation for hazardous air pollutants.
- Developing and implementing a new greenhouse gas reporting program for Oregon, supported by fees on program participants.
- Restoring an engineering position for Title V permitting and compliance work. No new fees.
- Restoring a diesel grant administration position and some of the diesel grants using one-time federal stimulus funding.

Water Quality Program budget

The Water Quality Program's \$58 million budget includes a \$870,000 general fund decrease from 2007-09, to a 2009-11 level of \$19.3 million. The budget also includes \$5.4 million in lottery funds, \$12 million in federal funds, and \$21.2 million in fees. The budget funds 239.01 full-time employees, compared to 241.45 for 2007-09.

Reductions. A \$1.7million general fund reduction, eliminating 8 full-time employees from the program, will affect water quality activities as follows:

- Eliminated the Oregon Plan biomonitoring program (4 FTE).
- Reduced communications and outreach (1 FTE).
- Reduced program support (1 FTE).
- Reduced stormwater program (2 FTE).

Highlights. Although the program had general fund reductions, DEQ also received authority for the following new and continuing work:

- Supporting ongoing implementation of Senate Bill 737, including providing technical assistance to municipal wastewater treatment plants that need to develop toxic reduction plans, developing guidance documents, reviewing the persistent pollutant plans submitting and incorporating those plans into permits.
- Assisting municipalities on water and wastewater infrastructure and opportunities for reducing their carbon footprints; conducting work associated with the required EPA Clean Watersheds Needs Survey; and conduct additional outreach and

marketing for the program, which EPA has requested.

- Restoring 2.5 positions in the Onsite Septic System Program that are unaffordable in the 2009-11 biennium.
- Continuing federal funds to protect drinking water in Oregon.
- Continuing federal funds to monitor bacteria levels at Oregon's coastal beaches.

Land Quality Program budget

The Land Quality Program's \$72 million budget includes a general fund reduction of \$1.4 million from 2007-09, to a 2009-11 level of \$1.0 million. The budget also includes \$55.6 million in other funds and \$15.4 million in federal funds. The budget funds 229.12 FTE, just short of the 229.92 FTE approved for 2007-09.

Reductions. The Land Quality Program had a \$1.4 million general fund reduction, which affects program activities as follows:

- Reduced hazardous waste compliance inspections (1 FTE).
- Reduced hazardous waste program management (1 FTE).
- Reduced hazardous waste technical assistance (1FTE). The program saved additional general funds by shifting FTE to other funding sources, making program work, primarily in the hazardous waste program, more reliant on fee funding.

In addition, \$957,000 of orphan site cleanup program funds will be used to pay a portion of general fund debt service, reducing the amount available to clean up contaminated sites.

Highlights. The budget authorizes development of product stewardship policies and programs, funded with existing fees.

Cross Program

Cross program is not a program, but a budget structure for funding activities crossing more than one media (air, land or water).

Reductions. The Cross Media Program's general fund budget was reduced by \$169,000, which affects program activities as follows:

- Reduced Economic Revitalization Team support of Oregon communities (.60 FTE). The FTE will be redirected to environmental work in other DEQ programs.

Highlights. DEQ received continued federal funding for positions working on the National Environmental Exchange Network.



Agency Management

Reductions. The Agency Management Program is funded by a surcharge on the air, water and land quality budgets. Due to program budget reductions, the Agency Management Program's budget is reduced by \$1 million and 5.5 full-time employees. The reductions affected activities as follows:

- Eliminated senior policy support for high priority environmental issues (1 FTE).
- Eliminated policy support for performance measure coordination (1 FTE).

- Eliminated support for Communication and Outreach and Human Resources (1.5 FTE).
- Eliminated grant coordination (1 FTE).
- Eliminated an Accounting position (1 FTE).

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.



DEQ's 2009-11 Legislative Agenda
August 20, 2009 EQC Talking Points

Brief Presentation Outline

- Purpose:
 - Legislative Update
 - Review of key bills
 - Work efforts for this biennium
 - 2009-11 Budget Status
 - Review of Legislative Approved Budget
 - 2010 Special Session
 - Preparing for 2011 Session

Legislative Update:

- Review of key bills affecting DEQ
- DEQ work efforts for the 2009-11 biennium
- See pages "Item F 2-6"

2009-11 Budget Status

- Review of Legislative Approved Budget
- See pages "Item F 7-13" for budget charts

- 2007-09 vs. 2009-11 Legislative Approved Budget:
 - Full budget: \$298M vs. \$402M
 - Operating budget: \$194M vs. \$207M
 - FTE: 797 vs. 790

- 2009-11 Legislative Approved Budget
 - See pages "Item F 14-16" for budget fact sheet

 - New policy packages
 - Reduction Options taken by Ways and Means
 - Additional reductions taken by HB 5054 – to reduce cost of an employee:
 - 12 furlough days in draft union contract ~ 2.5% pay reduction – ratification is needed
 - Number of manager furlough days have not been announced
 - Rollback of top salary step implemented 7/1/08 for managers and discussion of rollback of new top salary step (scheduled 6/30/09) for represented staff.
 - Freeze merit (annual salary step) increases.

2010 Special Session:

- Details are being worked out
- No Executive Branch bills
- Tentative dates

Preparing for the 2011 Session:

- Initial planning to start in fall 2009
- Budget development
- Legislative concept development

Next Steps:


Next EQC meeting – October 2009

- Update on 2010 Special Session
- Initial thought and ideas for budget and legislative concepts for 2011 Session
- Review of proposed 2011 Session preparation process and schedule

Questions?

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item G, Action Item: Issuance of DEQ Pollution Control Bonds
August 20-21, 2009 EQC Meeting

Reason for EQC Action Under ORS 286A.025, a state agency must request the State Treasurer to issue bonds for the agency. The proposed Environmental Quality Commission resolution will give the Department of Environmental Quality the authority to request the issuance of bonds under ORS 468.195 to 468.260.

Background DEQ has used bonding for several decades to finance solid waste disposal facilities, municipal sewage treatment facilities, water pollution control facilities and cleanup of contaminated orphan sites. DEQ works with financial advisors, bond counsel, and the State Treasurer in issuing and selling bonds. For a more detailed explanation of the uses and history of Pollution Control Bonds, see Attachment B.

EQC Action Alternatives Approval of this bond sale will provide DEQ with \$10 million in matching funds for up to \$50 million of federal Clean Water State Revolving Fund grants in the 2009-2011 biennium. DEQ will be able to accept additional CWSRF grants only if the EQC adopts the resolution,.

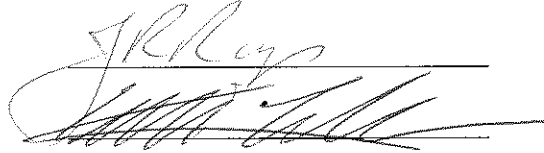
DEQ Recommendation DEQ recommends that the commission adopt the resolution in attachment A authorizing DEQ and the State Treasurer to sell \$10 million in bonds for Clean Water State Revolving Fund matching funds during the 2009-2011 biennium.

Attachments
A. Resolution Authorizing and Requesting Issuance of Bonds
B. Pollution Control Fund and State Pollution Control Bonds

Agenda Item G, Action Item: Issuance of DEQ Pollution Control Bonds
August 20-21, 2009 EQC Meeting
Page 2 of 2
Approved:

Section:

Division:

Handwritten signatures of Jim Roys and Jim Harris, each followed by a horizontal line.

Prepared By: Jim Roys and Jim Harris
Phone: (503) 229-6817

**RESOLUTION AUTHORIZING
AND REQUESTING ISSUANCE OF BONDS**

Section 1. Findings.

The Environmental Quality Commission of the State of Oregon finds:

- A. ORS 286A.025 allows the Oregon State Treasurer to issue bonds for a state agency if requested by the state agency.
- B. The Department of Environmental Quality recommends that the Environmental Quality Commission adopt this resolution authorizing DEQ to request the state treasurer to issue \$10 million of General Obligation Pollution Control Bonds for Clean Water State Revolving Fund match.

Section 2. Resolutions.

The Environmental Quality Commission of the State of Oregon hereby resolves:

- A. The Oregon State Treasurer is authorized and requested to issue State of Oregon General Obligation Pollution Control Bonds in amounts that the state treasurer determines, after consultation with the DEQ director or the director's designee, sufficient to provide funding for Clean Water State Revolving Fund match and to pay costs associated with issuing the bonds. The state treasurer may issue the bonds in one or more series at any time during the 2009-11 biennium; allow the bonds to mature, bear interest and be subject to redemption; or sell the bonds according to terms established by the state treasurer after consultation with the DEQ director or director's designee.
- B. DEQ must comply with all provisions of the Internal Revenue Code of 1986, as amended, that are required to exclude interest on tax-exempt General Obligation Pollution Control Bonds from gross income. DEQ must pay any rebates or penalties that may be due to the United States under Section 148 of the code in connection with the bonds. The DEQ director or the director's designee may, on behalf of DEQ, enter into covenants for the benefit of the owners of the bonds to maintain the tax-exempt status of the bonds.

Section 3. Other Action.

The DEQ director or the director's designee may, on behalf of DEQ, execute any agreements or certificates, and take any other action that is desirable, to issue and sell the bonds and to provide funding for the purposes described in this resolution.

Pollution Control Fund and State Pollution Control Bonds

ORS 468.215 authorizes the **Pollution Control Fund** to separately account for the receipt and expenditure of **State Pollution Control Bonds**.

Article XI-H of the Oregon Constitution authorizes **State Pollution Control Bonds**. The article empowers the state “to lend credit for financing pollution control facilities or related activities, to provide funds “for the purpose of planning, acquisition, construction, alteration or improvement of facilities for or activities related to, the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state.” The article also allows funds to be advanced “by contract, grant, loan, or otherwise” to state agencies and local units of government, and the state to purchase financial instruments issued by units of local government, to take advantage of the state’s credit rating in financing pollution control facilities. Article XI-H was adopted in 1970 and amended in 1990.

Authorized Uses of the Pollution Control Fund: The Department of Environmental Quality is responsible for the administration of the Pollution Control Fund. ORS 468.220 authorizes its use for several purposes, including:

- Financing municipal sewage treatment facilities or sewerage systems (as defined in ORS 468B.005), and related planning
- Financing local government solid waste disposal facilities and related planning
- Funding the Orphan Site Account for the cleanup of contaminated sites where the responsible party is either unknown, unwilling, or unable to pay for necessary cleanup
- Funding the Sewer Assessment Deferral Loan Program Revolving Fund, which funds local government financial assistance programs associated with water pollution control projects, typically to homeowners who can’t afford increased assessments
- Providing matching funds for federal grants made available to capitalize the Water Pollution Control Revolving Fund, commonly called the Clean Water State Revolving Loan Fund or CWSRF.

Historical and Current Uses of the Pollution Control Fund: DEQ used the fund in the 1970s and 1980s to finance solid waste disposal facilities and municipal sewage treatment facilities. Those debts have been retired. In the early 1990s, State Pollution Control Bonds were issued to provide funds to purchase debt issued by the cities of Portland and Gresham to finance water pollution control facilities, and to establish a Sewer Assessment Deferral Loan Program. As of 2004 all these bonds had been fully paid.

Bonds have been issued since the early 1990s primarily to provide funding for the Clean Water State Revolving Loan Fund, and the Orphan Site Account. The attached “Pollution Control Bonds History and Status” chart shows the amounts issued and outstanding for each of these programs.

Repayment of Bonds Issued: The Oregon Constitution, Article XI-H, allows for repayment of Pollution Control Bonds through an ad valorem tax to be levied on all taxable property in the

state. The tax has never been levied, and bond debt has been serviced with diverse funding through repayments of loans from the Water Pollution Control Fund, Assessment Deferral Loan Revolving Fund and the Clean Water State Revolving Fund; general and lottery fund appropriations; fees levied specifically to repay orphan site debt; payments of interest and principal from municipalities whose bonds were purchased by the state; and user fees on borrowers. Funds used for debt service, except general and lottery funds, are deposited to and expended from the **Pollution Control Sinking Fund**, as directed by ORS 468.230.

Accounting for Bonds and Debt Service: Proceeds from the sale of pollution control bonds are deposited to the Pollution Control Fund. Each bond issue is tracked separately. Similarly, funds received for repayment of bond issues (except general fund and lottery) are deposited to the Pollution Control Sinking Fund, and tracked by bond issue. Maintaining separate funds for bond proceeds and debt payments (sinking fund) is standard government accounting practice. Some additional accounting practices are mandated by statute for the Orphan Site Account, at least in part to ensure that no cost recoveries from responsible parties are used for debt service. This additional control was established to ensure that bond administration meets IRS tests for tax-free bonds.

Category	Purpose	Amount Issued	Outstanding* as of 06/30/2009
Original "Pollution Control Bonds"	Grants and loans for solid waste disposal & municipal sewage treatment facilities	187,500,000	0
Special Assessment Improvement Bonds	To purchase debt issued by the cities of Portland and Gresham to finance water pollution control facilities	95,640,000	0
Sewer Assessment Deferral Loan Program	Local government financial assistance programs associated with water pollution control projects	5,500,000	0
Orphan Site Cleanup	Cleanup of contaminated sites where the responsible party is either unknown, or unwilling or unable, to pay for necessary cleanup	62,735,000	24,872,419
Clean Water State Revolving Fund Loan Program	Matching funds for federal grants made available to capitalize the Clean Water State Revolving Fund	43,780,000	14,997,581
Total, excluding original "Pollution Control Bonds"		\$207,655,000	\$39,870,000

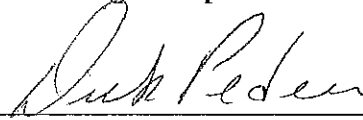
CERTIFICATE REGARDING APPROVAL OF RESOLUTION

On behalf of the State of Oregon Department of Environmental Quality I hereby certify as follows with respect to the "Resolution Authorizing and Requesting Issuance of Bonds" that was presented as "Agenda Item G Action Item: Issuance of DEQ Pollution Control Bonds" at the August 20-21, 2009 Environmental Quality Commission Meeting

1. I am the Director of the Department of Environmental Quality and authorized by Section 3 of the resolution to take all action that is desirable to provide funding for the purposes described in the resolution.
2. At its regular meeting on August 20, the Environmental Quality Commission approved the resolution.
3. All five members of the Environmental Quality Commission were present at that meeting; they constituted a quorum and unanimously approved the resolution.

Dated as of this 25 day of August, 2009.

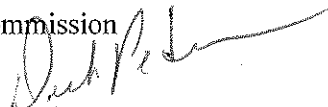
State of Oregon Department of Environmental Quality



Dick Pedersen, Director

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item H, Rule Adoption: Composting Facility Rulemaking
August 20-21, 2009, EQC Meeting

Why this is Important

Composting facilities provide numerous environmental and waste reduction benefits. However, if not conducted in the proper manner or at a proper location, composting has the potential to cause environmental problems including surface water and groundwater contamination. The proposed rules will provide more streamlined, risk-based permitting and greater environmental benefits, ensuring protection of public health and the environment while allowing Oregon's composting industry to grow. The rules focus DEQ resources on sites with the greatest risk to human health or the environment.

DEQ Recommendation

The Department of Environmental Quality recommends that the Environmental Quality Commission amend the existing rules to regulate composting facilities as presented in Attachment A.

Background and Need for Rulemaking

Composting facilities are operations that process various organic feedstocks into a finished product called compost. The most commonly used feedstocks for composting are yard debris, wood waste, manure and food waste. Under Oregon's solid waste laws and rules, these feedstocks are solid waste and composting facilities that process these wastes are disposal sites. DEQ is responsible for regulating disposal sites, including composting facilities, to ensure protection of human health and the environment.

DEQ first began regulating composting facilities under rules designed for the regulation of solid waste landfills. It became clear that those rules were not appropriate for regulation of composting facilities. In July 1997, the commission adopted the existing rules for regulation of composting facilities. The existing rules were drafted in response to citizen concerns about odor and water quality problems, and to composting industry concerns that application of the landfill rules would discourage composting.

The existing rules include a complex scheme of three different types of solid waste permits with exemptions from permitting for smaller facilities, institutional composters and some agricultural composters. The permit types and exemptions are based on the types, amounts and sources of feedstocks used by the composting

operation. Stakeholders have stated that the existing rules are unclear and overly restrictive and do not create a level playing field for all composters. The rules also need updating to address unresolved stormwater permit and groundwater protection issues, and to require human pathogen reduction. In response, DEQ and stakeholders decided to revise the 1997 rules.

DEQ initially proposed amendments to the composting facility rules in January 2008. Public comments on the proposed amendments revealed a number of unresolved and contentious issues, primarily centered on the agricultural and other permit exemptions and groundwater protection requirements. The solid waste program conducted extensive discussions internally and with interested persons to resolve those issues. These proposed rules address those concerns, in a structure dramatically different from the existing rules.

Effect of Rule

These proposed rules resolve problems with the existing rules by creating a new and integrated approach to composting facility rulemaking. This approach provides for: (1) environmental performance standards that must be met by all composting facilities; (2) an initial, site-specific environmental risk assessment for each facility; (3) a simplified registration permit for low risk facilities; (4) a flexible, site-specific plan approval and permit process for facilities that present more environmental risk; and (5) specific rules and a process for evaluating and addressing potential groundwater contamination.

Specifically:

- The proposed rules create clear environmental performance standards that all composting facilities, regardless of size, location or types of feedstocks, must meet. Composting facilities will be allowed to decide for themselves how they will meet those standards. Composting operators will select and implement measures that will meet environmental performance goals, subject to DEQ review and approval.
- Under the previous proposal, all composting facilities would have been required to conduct all operations on impermeable surfaces, unless DEQ granted a variance. Many composters, especially smaller operators, believed that requirement was unnecessary and could be financially burdensome. The proposed rules address this issue by providing an initial environmental risk screening of all new and existing composting facilities. DEQ will evaluate all facilities for risks to surface water and groundwater, and for the potential to create offsite odor problems. The screening process will be based on facility size and operational characteristics, and on site-specific physical characteristics such as the amount of rainfall, distance to surface water, depth to groundwater, distance to residences and other factors.

- The proposed rules create a two-tiered permitting structure to align with the risk screening described above. This two-tiered system will make the composting program more efficient and focused because the level of DEQ involvement will be proportional to the potential environmental risk presented by the facility.
 - Composting facilities that DEQ determines are low risk operations will operate under a low-cost registration permit. For these low risk facilities, DEQ oversight will be based primarily on complaints and other information received.
 - Composting facilities that DEQ determines present more environmental risk must submit a facility operations plan for DEQ approval. The plan must describe how the facility will be designed, constructed, and operated to address the identified environmental risks. These facilities will operate under a compost permit and receive more traditional regulatory oversight.

- The previous rule package included a new general stormwater permit, designated 1200-CP, designed specifically for composting facilities. This proposed permit was similar to the 1200-Z, the general industrial stormwater permit composting facilities currently use, but included some additional compost-specific benchmarks for biological oxygen demand and other constituents. DEQ reviewed the status of the proposed 1200-CP permit after litigation involving the 1200-Z. Based on that review and advice from the Department of Justice, DEQ has decided not to move forward with the 1200-CP at this time. We will evaluate the status of the 1200-CP and next steps as we work on revision to the 1200-Z. In the meantime, composting facilities may continue to register and operate under the 1200-Z. DEQ is also encouraging composting facilities to consider opportunities to beneficially reuse stormwater and facility process water. For example, facilities could use this water to water compost piles during dry months or to irrigate crops as alternatives to discharging into surface water.

Commission Authority

The commission has authority to take this action under ORS 459.045, 459.205, 459.215, 459.225, 459.235, and 459A.025.

Stakeholder Involvement

A composting facility rulemaking work group of composting facility operators, local and regional governments, Compost Council of Oregon representative, agricultural composters and other interested parties met more than fifteen times between February 2004 and October 2007 to develop the proposed rules. In addition, DEQ also conducted a survey of composting facility operators in October 2005, contacting 75 percent of the permittees. Of those surveyed, only two were unaware that DEQ was conducting this rulemaking process. Twenty-

seven facilities reported that they were involved in the process and attended meetings or followed the process by viewing the minutes on DEQ's website.

In the fall of 2008, DEQ met with representatives of commercial composting operations and local governments to discuss the proposed rules, and held a workshop for farm-based composting facilities on the proposed rules. In February 2009, just before the proposed rules were offered for public comment, DEQ provided the external workgroup with copies of the rulemaking documents for their review and comment, and met with the group to discuss the rules.

The advisory committee membership list is set out in Attachment C.

Public Comment

A public comment period extended from April 1, 2009, to April 30, 2009, and included public hearings in Bend, Eugene, and Portland. Twenty-four persons submitted comments on the proposed rules. Most of the comments supported the proposed rules and offered minor suggestions and technical edits. The major comments are reflected in the Key Issues below. Please see the summary of all comments and DEQ's responses in Attachment B. A copy of the full comments is available upon request.

Key Issues

The key issues raised during the public comment period were:

1. What is the appropriate composting facility size below which a facility should not be required to go through the screening and registration or permitting process?

Discussion: The existing rules allow composting facilities processing fewer than 20 tons of feedstocks per year to operate without a DEQ permit or significant regulatory involvement by DEQ. DEQ and some stakeholders considered that limit too low. In the rules proposed in 2008, DEQ proposed raising that limit to 250 tons per year of most feedstocks, which was viewed as too high by many stakeholders, who argued that smaller facilities that were improperly constructed or operated could cause environmental problems. After reconsideration and discussion with stakeholders, these proposed rules allow a limit of 100 tons per year for most feedstocks, with a limit of 20 tons per year of dead animals or food wastes, without significant DEQ involvement. Materials depicting composting operations of various sizes are available upon request.

A number of individuals argued that the proposed 100 tons per year limit was too high and could lead to environmental damage or a proliferation of smaller composting operations designed to avoid the requirements of the rules. Other commenters argued that the 100-ton limit was too small and would restrict the development of new composting operations.

Recommendation: DEQ recommends adopting the proposed 100 tons per year exemption limit. To address potential risks from smaller facilities, all composting operations, including facilities smaller than 100 tons, must meet the environmental performance measures described above. In addition, the rules allow DEQ to bring smaller facilities into the screening and permitting process if necessary to protect public health or the environment. To address the possibility that larger facilities might not cause environmental problems, DEQ has proposed the environmental risk screening and simplified registration for low-risk facilities.

2. Do the proposed rules provide an unnecessary burden, in favor of environmental protection, that will restrict the growth of composting in Oregon?

Discussion: DEQ has statutory responsibilities to regulate composting operations to protect human health and the environment. At the same time, DEQ recognizes that composting can produce significant environmental and solid waste reduction benefits. The proposed rules create a regulatory system that provides a low level of regulatory involvement and burden for facilities that present little environmental risk. The proposed rules also provide a streamlined, operator-driven process for addressing issues at facilities that may present environmental problems.

Recommendation: DEQ recommends the commission adopt the rules as proposed. DEQ believes the proposed rules provide for a reasonable, efficient, and streamlined regulatory process that will protect the environment while allowing the growth of composting in Oregon.

3. Does the site-specific approach and flexibility in the proposed rules create the likelihood that implementation of the rules will be based on the subjective judgment of individual DEQ staff, leading to inconsistent application of the rules?

Discussion: DEQ intends to conduct the screening using a panel that includes a hydrologist and a solid waste program staff person from each regional office. This panel will screen all facilities statewide to insure consistent application of the screening section of the proposed rules. DEQ has prepared an internal management directive to guide staff through the screening process. DEQ made this document available to stakeholders and can provide it to the commission upon request.

At the conclusion of the screening process, DEQ will make a determination about current and potential environmental risks at each facility. DEQ intends to work with each facility operator through the screening process and will provide an opportunity for operators to meet with DEQ concerning any disputed screening decisions. To create a baseline for future screening decisions, provide

transparency in decision-making, and allow interested persons to evaluate the screening decisions, DEQ will make all screening decisions publicly available.

As discussed previously, low risk facilities will exit the process and operate under a simplified registration. For sites that present environmental risk, DEQ will identify the risks, after which it will be the responsibility of each facility to decide how it will address its particular environmental issues. The facility will work with DEQ on solutions to those issues. After final DEQ approval, the facilities will incorporate those measures into their facility operations plan. Facilities with different environmental issues will adopt different measures. Facilities with similar environmental issues may arrive at different solutions to those problems based on facility-specific factors such as location, geography, land base, water reuse opportunities, feedstocks, methods of operation, and others.

The Department will identify facilities with similar issues that might be expected to propose similar measures. Solid Waste staff responsible for each facility will coordinate with staff assigned to other facilities with similar issues during the development and approval of facility operating plans. This coordination will provide consistency and will also allow Department staff and operators the opportunity to compare proposed solutions to various problems.

Recommendation: DEQ recommends the commission adopt the rules as proposed. DEQ agrees that similarly situated facilities should receive the same regulatory response. DEQ will implement a number of measures to ensure consistent application of the rules in similar circumstances. At the same time, DEQ understands that consistent application of the rules does not necessarily mean that all facilities should be treated the same, regardless of facility-specific differences. The proposed rules and implementation plan will provide consistency while allowing individual operators the flexibility to develop and implement measures appropriate for that facility.

Next Steps

If adopted by the commission, the proposed rules would become effective upon filing by the Secretary of State.

DEQ will implement the rule as described in the Rules Implementation Plan. The plan is available upon request. Implementation tasks include:

- Work with stakeholders and, as appropriate, the external advisory committee to develop new registration and composting facility permits.
- Revise enforcement guidance consistent with the new rules.
- Create and distribute a packet of information describing the new rules, timeline for implementation, and schedule for transition from existing permits to new registration and permits, and how the rules will affect

existing and proposed composting facilities.

- Develop new application packets.
- Conduct training for DEQ staff in implementation of the new rules.
- Meet with Oregon Department of Agriculture to discuss coordination with ODA as the rules are implemented.
- Meet with individual composting facility operators and conduct informational meetings as necessary or upon request to discuss and explain the new rules to composting operators.

Attachments

- A. Proposed Rule Revisions
 1. Summary of Rule Revisions
 2. Proposed Rule Revisions – Division 12
 3. Proposed Rule Revisions – Division 93
 4. Proposed Rule Revisions – Division 96
 5. Proposed Rule Revisions – Division 97
- B. Summary of Public Comments and Agency Responses
- C. Work Group Membership
- D. Presiding Officer's Report on Public Hearings
- E. Relationship to Federal Requirements Questions
- F. Statement of Need and Fiscal and Economic Impact
- G. Land Use Evaluation Statement

Available Upon Request

1. Legal Notice of Hearing
2. Cover Memorandum from Public Notice
3. Written Comments Received
4. Rule Implementation Plan
5. Screening Guidance Internal Management Directive

Approved By:

Section: Loretta Pedersen
Solid Waste Manager

Division: Ward R. R.
Land Quality Division Administrator

Report Prepared By: Charlie Landman
Phone: (503) 229-6461

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Composting Facilities

Amend solid waste composting facility rules. Clarify financial assurance requirements for solid waste disposal facilities and public notice requirements for renewal of several solid waste permits.

SUMMARY OF RULE REVISIONS

This proposed rulemaking amends four rule divisions: OAR Chapter 340, Division 12, 93, 96 and 97. Following is a summary of the proposed amendments.

Division 12 Amendments

These rules propose to amend OAR 340 Division 12, the rule that describes DEQ Enforcement Procedures and Civil Penalties, as follows:

- (1) 340-012-0065 is amended to identify specific violations for composting facilities

Division 93 Amendments

OAR 340 Division 93 provides definitions and general procedures for most solid waste facilities and for the permits issued to those facilities. The proposed rules make several substantive changes and numerous non-substantive stylistic and grammatical changes, as follows:

- (1) 340-093-0030 Definitions, is amended to:
 - Revise the definition of “agricultural waste” and “agricultural composting”
 - Create a new definition of “composted material” and revise definition of “composting” and “composting facility”
 - Create new definitions of “feedstock” types and delete existing definition of “green” and “non-green” feedstocks
 - Delete the definition of “institutional composting” and supplemental feedstocks”, and
 - Create new definition to address “vermicomposting.”
- (2) 340-093-0050 is amended to delete existing exemptions and permit requirements for composting facilities. New exemptions and permit requirements are found in OAR 340 division 96.

- (3) 340-093-0070 is amended to delete the composting general permit. Composting permits are now provided for in OAR 340 Division 96.
- (4) 340-0105 is amended to clarify public notice categories for various permit actions.
- (5) The remainder of the changes to Division 93, in 93-0100, 0130, 0140, and 0150, are non-substantive changes to update the style of the rule to meet current standards.

Division 96 Amendments

OAR 340 Division 96 provides rules for certain types of solid waste disposal sites. The proposed rules make certain technical and stylistic changes, but are amended primarily to create a new set of rules, 340-096-0060 through 0150, specifically to address composting facilities.

- (1) 340-096-0001 is amended to make clear existing requirements that all facilities address in Division 96, including all composting facilities, are subject to financial assurance requirements. The proposed amendment would allow DEQ to waive financial assurance requirements for low risk facilities.
- (2) 340-096-0050 is amended to make non-substantive changes to update the style of the rule to meet current standards.
- (3) 340-096-0060 Special Rules Pertaining to Composting: Applicability is a new rule.
 - Highest level organizer, applies the exemptions that moved over from Div 93, directs composting facilities to the rules that apply to each facility
 - Raises the exemption size limit from 20 to 100 tons. All non-exempt facilities over that amount, including commercial, agricultural, and institutional facilities, must go through Screening (0080)
 - Requires that all facilities, including exempt facilities, must comply with Performance Standards (0070)
- (4) 340-097-0070 Special Rules Pertaining to Composting: Performance Standards is a new rule.
 - Describes the performance standards that must be met by all compost facilities, including those exempt from screening, registration, and permitting.
- (5) 340-096-0080 Special Rules Pertaining to Composting: Screening is a new rule.
 - Describes submission requirements and screening process for all non-exempt facilities. DEQ will provide a template that will assist both operators and DEQ in gathering and organizing this information.
 - Describes general screening criteria and decisions DEQ will make. Screening is supplemented by the internal guidance document on screening.

- Facilities that DEQ determines are low risk go directly to Registration (0100)
 - Facilities that DEQ determines pose risk go to Operations Plan Approval (0090) and then to Compost Permit (0110) with a department-approved plan.
- (6) 340-096-0090 Special Rules Relating to Composting: Operations Plan Approval I a new rule.
- Sections (1)–(4) are general process provisions
 - Section (5) describes elements that must be in every operations plan
 - Allows each facility to decide how that facility will meet the performance standards.
 - Provides links to special rules related to Groundwater Protection, Leachate Collection and Design, Pathogen Reduction, and Odors for facilities that DEQ determines must address those matters
 - Section (6) includes material that was in various parts of the revised Div 96 and SW permits. Functions as a menu; allows DEQ to require additions to and modification of an Operations Plan as necessary for an individual facility.
- (7) 340-096-0100 Special Rules Relating to Composting: Registration is a new rule.
- Describes registration process, reporting requirement, etc.
 - Allows DEQ to attach Approval Conditions for facilities that need conditions that don't require a full composting plan
- (8) 340-096-0110 Special Rules Pertaining to Composting: Compost Permit is a new rule
- Describes issuance of a Compost Permit, reporting requirements, etc.
- (9) 340-096-0120 Special Rules Pertaining to Composting: Groundwater Protection is a new rule.
- Describes generally department standards for groundwater protection, conditions for approval of infiltration; department authority to condition or prohibit infiltration.
- (10) 340-096-0130 Special Rules Pertaining to Composting: Leachate Collection Design Requirements
- Collects in one place the provisions related to leachate management structures and operation that were in existing Division 96 and solid waste permits.

(11) 340-096-0140 Special Rules Pertaining to Composting: Pathogen Reduction is a new rule.

- Collects in one place the pathogen reduction provisions that were in existing 96-0026 and 96-0027
- Required for all composting facilities, except exempt farm composters.
- Allows DEQ to approve alternative methods.

(12) 340-096-0150 Special Rules Pertaining to Composting: Odors is a new rules

- Collects in one place requirements for addressing odor that were scattered in rules and permits.
- Describes process DEQ will use to evaluate and take action on odor concerns.

Division 97 Amendments

OAR 340 Division 97 provides the fee schedules for solid waste permits, including permits issued for composting facilities. Division 97 is amended to adopt new fee schedules for composting permits.

340-097-0110 is amended to make an addition to the schedule of weight to volume conversions in section (7).

340-097-0120 is amended:

- to provide a screening fee for all composting facilities
- to provide a plan review fee for composting facilities that require plan review and approval,
- to provide an engineering review fee for composting facilities that require DEQ engineering review, and
- to amend existing permit compliance fees for composting facilities that will operate under a Composting Permit.

**The Oregon Administrative Rules contain OARs filed through May 15,
2009**

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0065

Solid Waste Management Classification of Violations

(1) Class I:

- (a) Establishing or operating a disposal site without first obtaining a registration or permit;
- (b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the department and obtaining department approval;
- (c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the department to receive that solid waste;
- (d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;
- (e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from the department, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;
- (f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, department approved plans, or department rules;

(g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or department rules;

(h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;

(i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order; or

(j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal; or

(k) Operating a composting facility in a manner that causes a discharge to surface water of pollutants, leachate or stormwater when that discharge is not authorized by a NPDES permit.

(2) Class II:

(a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;

(b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;

(c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;

(d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining department approval or without complying with an approved plan for a HHW collection event; or

(e) Receiving or managing waste in violation of or without a department approved Special Waste Management Plan; or

(f) Unless otherwise specifically classified, operating a composting facility in a manner that fails to comply with the facility's registration, permit, department-approved plans or department rules.

(3) Class III:

(a) Failing to post required signs;

- (b) Failing to control litter;
- (c) Failing to notify the department of any name or address change; or
- (d) Violating any labeling requirement under ORS 459A.675-.685.

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 93

SOLID WASTE: GENERAL PROVISIONS

340-093-0030

Definitions

As used in OAR chapter 340, divisions 93, 94, 95, 96 and 97 unless otherwise specified:

- (1) "Access Road" means any road owned or controlled by the disposal site owner that terminates at the disposal site and that provides access for users between the disposal site entrance and a public road.
- (2) "Agricultural Waste" ~~means waste on farms resulting from the raising or growing of plants and animals including but not limited to crop residue, manure, animal bedding, and carcasses of dead animals, means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.~~
- (3) "Agricultural Composting" ~~means composting conducted of agricultural waste by an agricultural operation (as defined in ORS 467.120(2)(a)) as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming (as defined in ORS 215.203), composting as an agricultural operation (as defined in ORS 467.120(2)(a)) conducted on lands employed for farm use (as defined in ORS 215.203). Agricultural composting operations may include supplemental feedstocks to aid in composting feedstocks generated on the farm~~
- (4) "Agronomic Application Rate" means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case ~~shall~~may such application adversely impact the waters of the state. Such application ~~shall~~must be designed to:
 - (a) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
 - (b) Condition and improve the soil comparable to that attained by commonly used soil amendments; or
 - (c) Adjust soil pH to desired levels.

- (5) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.
- (6) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.
- (7) "Asphalt paving" means asphalt which has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and that is weathered, consolidated, and does not contain visual evidence of fresh oil.
- (8) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.
- (9) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.
- (10) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.
- (11) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.
- (12) "Biosolids" means solids derived from primary, secondary or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors.
- (13) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.
- (14) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.
- (15) "Closure Permit" means a document issued by the ~~Department~~ department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the ~~Department~~ department.

(16) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

(17) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.

(18) "Composted material" is the product resulting from the composting process.

~~(1819) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste feedstocks. A managed process includes but is not limited to reducing particle size, adding moisture, manipulating piles, and performing procedures to achieve human pathogen reduction. Composting may include amendments beneficial to the composting process. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process.~~

~~(1920) "Composting Facility" means a site or facility which utilizes composting feedstocks organic solid waste or mixed solid waste to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Sites and facilities that use methods such as Vermiculture, vermicomposting and agricultural composting to produce a useful product are also operations are considered composting facilities.~~

(2021) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

~~(2122) "Construction and Demolition Landfill" means a landfill that receives only construction and demolition waste.~~

~~(2223) "Corrective Action" means action required by the Department-department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR chapter 340 division 40, whichever is more stringent.~~

~~(2324) "Cover Material" means soil or other suitable material approved by the Department department that is placed over the top and side slopes of solid wastes in a landfill.~~

(2425) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

(2526) "Current Assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(2627) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(2728) "Department" means the Department of Environmental Quality.

(2829) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(2930) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.

(3031) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (3132)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting ~~plants~~ facilities and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site that is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(3132) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;

(c) Industrial waste going to an industrial waste facility; or

(d) Waste received at an ash monofill from an energy recovery facility.

~~(3233)~~ "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

~~(3334)~~ "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

~~(35)~~ "Feedstock" means organic and other solid wastes used in a composting process to produce composted material:

~~(a)~~ Type 1 feedstocks include source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, vegetative food wastes including department approved industrially produced vegetative food waste, and other materials the department determines pose a low level of risk from hazardous substances, physical contaminants and human pathogens.

~~(b)~~ Type 2 feedstocks include manure and bedding and other materials the department determines pose a low level of risk from hazardous substances and physical contaminants and a higher level of risk from human pathogens compared to type 1 feedstock.

~~(c)~~ Type 3 feedstocks include dead animals, meat and source-separated mixed food waste and industrially produced non-vegetative food waste. They also include other materials the department determines pose a low level of risk from hazardous substances and a higher level of risk from physical contaminants and human pathogens compared to type 1 and 2 feedstocks.

~~(3436)~~ "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department~~department~~.

~~(35)~~ ~~(37)~~ "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the base flood.

~~(36)~~ ~~(38)~~ "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

~~(37)~~ "Green Feedstocks" are materials used to produce a compost. Green feedstocks are low in a) substances that pose a present or future hazard to human health or the environment and b) low in and unlikely to support human pathogens. Green feedstocks include but are not limited to: yard debris, animal manures, wood waste (as defined in OAR 340-093-0030(94)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by products

~~and crop residue. Green feedstocks may also include other materials that can be shown to DEQ by the compostor to be low in substances that pose a present or future hazard to human health or the environment and low in and unlikely to support human pathogens. This term is not intended to include materials fed to animals and not used for composting.~~

~~(38)~~(39) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

~~(39)~~(40) "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

~~(40)~~(41) "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes that are defined as hazardous waste pursuant to ORS 466.005.

~~(41)~~(42) "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

~~(42)~~(43) "Home composting" means composting operated and controlled by the owner or person in control of a single or multiple family dwelling unit and used to dispose of compost residential food waste produced within the dwelling unit and yard debris produced on the property.

~~(43)~~(44) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled airflow and temperature.

~~(44)~~(45) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

~~(45)~~(46) "Industrial Waste Landfill" means a landfill that receives only a specific type or combination of industrial waste.

(46)(47) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

(47)(48) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

~~(48)(49) "Institutional Composting" means the composting of green feedstocks generated on site from the a facility's own activities. It may also include supplemental feedstocks. Feedstocks must be composted on-site, the compost produced must be utilized within the contiguous boundaries of the institution and not offered for sale or use off site. Institutional composting includes but is not limited to composting at facilities such as: parks, apartments, universities, schools, hospitals, golf courses and industrial parks.~~

(49) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

(50) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

(51) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(52) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

(53) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(54) "Local Government Unit" means a city, county, Metropolitan Service District formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(55) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the ~~Department~~ department determines to be unlikely to adversely impact the waters of the State or public health.

(56) "Material Recovery" means any process of obtaining from solid waste, by pre-segregation or otherwise, materials which still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

(57) "Material Recovery Facility" means a solid waste management facility that separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected.

(58) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

(59) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

(60) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.

(61) "Net Working Capital" means current assets minus current liabilities.

(62) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

~~(63) "Non-green Feedstocks" are materials used to produce a compost. Non-green feedstocks are high in:~~

~~(a) Substances that pose a present or future hazard to human health or the environment; and~~

~~(b) High in and likely to support human pathogens. Non-green feedstocks include but are not limited to: animal parts and by-products, mixed materials containing animal parts or by-products, dead animals and municipal solid waste. This term is not intended to include materials fed to animals and not used for composting.~~

(634) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(645) "Permit" means a document issued by the ~~Department~~ department which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

(656) "Permit Action" means the issuance, modification, renewal or revocation by the ~~Department~~ department of a permit.

(667) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(678) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

(689) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(6970) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(704) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(712) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the Metropolitan Service District. For a county within the Metropolitan Service District, "immediate service area" means that Metropolitan Service District boundary.

(723) "Release" has the meaning given in ORS 465.200(14).

(734) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

(745) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(756) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(767) "Sensitive Aquifer" means any unconfined or semiconfined aquifer that is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

(778) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

(789) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(7980) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

(804) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

(812) "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 term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

(823) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(834) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

~~(85) "Supplemental Feedstock" are green feedstocks from off farm or off site used to produce a compost at an agricultural or institutional operation, are the minimum amount necessary to allow composting of on farm and on site feedstocks, and can be shown by the composter to DEQ to be necessary to maintain porosity, moisture level or carbon to nitrogen ratio in the farm or institution's composting operation. The goal of these feedstocks is to supplement those feedstocks generated on the farm or at the institution so that composting may occur.~~

(846) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(857) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

(868) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

(879) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (18) of this rule, "material recovery" as defined in section (56) of this rule, nor does it apply to a "material recovery facility" as defined in section (57) of this rule.

(8890) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

(8994) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

(902) "Vegetative" means feedstocks used for composting that are derived from plants including but not limited to: fruit and vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease, or dairy products such as milk, mayonnaise or ice cream.

(913) "Vermicomposting" means the controlled and managed process by which live worms convert solid waste into dark, fertile, granular excrement.

(924) "Vermiculture" means the raising of earth worms for the purpose of collecting castings for composting or enhancement of a growing medium.

(93) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

(94) "Wellhead protection area" means the surface and subsurface area surrounding a water well, spring or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield. A public water system is a system supplying water for human consumption that has four or more service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day.

(95) "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, stumps, bark, hog-fuel and log sort yard waste, but do not

include wood pieces or particles containing or treated with chemical additives, glue resin, or chemical preservatives.

(96) "Wood waste Landfill" means a landfill that receives primarily wood waste.

(97) "Zone of Saturation" means a three-dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

[Publications: The publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459 & ORS 459A

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 15-2000, f. & cert. ef. 10-11-00

340-093-0050

Permit Required

(1) Except as provided by section (3) of this rule, no person ~~shall~~may establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person ~~shall~~may change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefore from the ~~Department~~department.

(2) Persons owning or controlling the following classes of disposal sites ~~shall~~must comply with~~abide by~~ the requirements in the following rules:

(a) Municipal solid waste landfills ~~shall~~must comply with~~abide by~~ OAR 340, Division 94 "Municipal Solid Waste Landfills";

(b) Industrial Solid Waste Landfills, Construction and Demolition Landfills, Wood Waste Landfills and other facilities not listed in OAR 340, Division 96 ~~shall~~must comply with~~abide by~~ OAR 340, Division 95 "Land Disposal Sites Other Than Municipal Solid Waste Landfills";

(c) Energy recovery facilities and incinerators receiving domestic solid waste ~~shall~~must comply with~~abide by~~ OAR 340, Division 96 "Special Rules Pertaining to Incineration";

(d) Composting facilities ~~except as excluded in OAR 340-093-0050(3)(d) shall~~ must comply with ~~abide by~~ OAR 340-096-006020 through OAR 340-096-0150; ~~340-096-0024 and 340-096-0028~~ "Special Rules Pertaining to Composting."

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges ~~shall~~ must comply with ~~abide by~~ OAR 340-096-0030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites";

(f) Transfer stations and Material Recovery Facilities ~~shall~~ must comply with ~~abide by~~ OAR 340-096-0040 "Transfer Stations and Material Recovery Facilities";

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities ~~shall~~ must comply with ~~abide by~~ OAR 340-096-0050 "Solid Waste Treatment Facilities."

(3) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340, Divisions 93 through 97, but ~~shall~~ must comply with all other provisions of OAR Chapter 340, Divisions 93 through 97 and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 468B.050 if all applicable requirements in OAR chapter 340, divisions 93 through 97 have been met;

(c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the ~~Department~~ department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety;

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the ~~Department~~ department with such information as the ~~Department~~ department may require to evaluate the request for exemption, pursuant to OAR 340-093-0080.

~~(d) Composting facilities. The following are exempted from the above requirements to obtain a permit:~~

~~(A) Sites, facilities or agricultural composting operations utilizing an amount of green or non-green feedstocks less than or equal to 20 tons in a calendar year~~

~~(B) Agricultural composting operations that are~~

~~(i) Composting green feedstocks generated and composted at the same agricultural operation; and~~

~~(I) All the compost produced is used at the same agricultural operation at an agronomic rate or less; or~~

~~(II) If any of the compost produced is sent off farm, the operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composter for this exclusion to apply.~~

~~(ii) composting non-green feedstocks:~~

~~(I) Generated and composted at the same agricultural operation; and~~

~~(II) The operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composter in order for this exclusion to apply.~~

~~(C) Production of silage on a farm for animal feed;~~

~~(D) Home composting, unless the Department determines there is an adverse impact on to ground water, surface water or public health or safety;~~

~~(E) Institutional composting, provided there is no adverse impact on ground water, surface water or public health or safety;~~

~~(F) A site or facility that accepts and reloads only yard debris and wood waste (as defined in OAR 340-093-0030(94)) or transports those materials to another location, providing no composting occurs at the site.~~

~~(de) A Site or facility utilizing any amount of sewage sludge or biosolids under a valid water quality permit, pursuant to ORS 468B.050;~~

~~(ef) Facilities which receive only source separated materials for purposes of material recovery, except when the Department ~~department~~ determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health;~~

~~(fg) A site used to transfer a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck); if:~~

~~(A) The container or vehicle is not available for direct use by the general public;~~

(B) The waste is not removed from the original container or vehicle; and

(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the ~~Department~~department.

(4) The ~~Department~~department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR Chapter 340, Divisions 93 through 97.

(5) If it is determined by the ~~Department~~department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the ~~Department~~department may waive any or all requirements of OAR 340-0930-0070, 340-093-0130, 340-093-0140, 340-093-0150, 340-094-0060(2) and 340-095-0030(2) and issue a letter authorization in accordance with OAR 340-093-0060.

(6) Each person who is required by sections (1) and (5) of this rule to obtain a permit ~~shall~~must:

(a) Make prompt application to the ~~Department~~department therefore;

(b) Fulfill each and every term and condition of any permit issued by the ~~Department~~department to such person;

(c) Comply with OAR Chapter 340, Divisions 93 through 97;

(d) Comply with the ~~Department's~~department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby;

(e) Allow the ~~Department~~department or an authorized governmental agency to enter the property under permit at reasonable times to inspect and monitor the site and records as authorized by ORS 459.385 and 459.272.

(7) Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit or OAR Chapter 340, Divisions 93 through 97, or failure to obtain a permit is a violation of OAR Chapter 340, Divisions 93 through 97 and ~~shall~~may be cause for the assessment of civil penalties for each violation as provided in OAR Chapter 340, Division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.205, ORS 459.215 & ORS 459.225

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-020; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 2-1995, f. & cert. ef. 1-10-95; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

340-093-0070

Applications for Permits

(1) Any person wishing to obtain a new, modified, or renewal permit from the ~~Department~~ department must submit a written application on a form provided by the ~~Department~~ department. The ~~Department~~ department must receive renewal applications at least 180 days before a permit is needed. All other applications must be received 60 days before a permit is needed. All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility.

(2) The ~~Department~~ department will accept applications for a permit, ~~including those required for a composting facility general permit,~~ only when complete, as detailed in section (3) and (4) of this rule. Within 45 days after receipt of an application, the ~~Department~~ department will conduct a preliminary review of the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the ~~Department~~ department from later requesting further information from the applicant as provided in this section.

(a) If the ~~Department~~ department determines that additional information is needed it will promptly request the needed information from the applicant. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as the ~~Department~~ department establishes in writing.

(b) If additional measures are necessary to gather facts regarding the application, the ~~Department~~ department will notify the applicant that such measures will be instituted, and the timetable and procedures to be followed. The application will be considered to be withdrawn if the applicant fails to comply with these additional measures.

~~(3) General permit: Composting facilities as defined in OAR 340-096-0024(2) are considered to be "lower risk disposal sites" and thus subject to general permits. General permits are permits and permittees shall comply with all pertinent rules except subsections (4)(e) and (f) of this rule, and the requirements of OAR 340-093-0150, 340-093-0210, 340-094-0060(2) and 340-095-0030(2). In order to comply with requirements, persons applying for a general permit must submit to DEQ items listed in (4)(a), (b), (c), and (d) of this rule prior to receiving a permit. To comply with the remainder of all pertinent rules, these composting facilities must have procedures in place and documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met. A composting facility for which a general permit has been issued, but DEQ determines has inadequate or incomplete plans, specifications, operations and maintenance manuals, operational procedures, or other requirements, may be required to revise documents or operational procedures to comply with current technological practices and pertinent rules of the Department.~~

(43) Applications for a ~~registration or permit shall~~will be complete only if they:

(a) Are submitted in triplicate on forms provided by the ~~Department~~department, are accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the ~~Department~~department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction with respect to new or existing disposal sites, or alterations, expansions, improvements or changes in method or type of disposal at new or existing disposal sites. Such recommendations ~~shall~~must include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the ~~Department~~department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit;

(d) Include payment of application fees as required by OAR 340-097-0110 and 340-097-0120;

(e) Include a site characterization report(s) prepared in accordance with OAR 340-093-0130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-093-0140;

(g) For a new land disposal site:

(A) Include a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life pursuant to OAR 340-094-0110 to 340-094-0120 or OAR 340-095-0050 to 340-095-0060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance, of the land disposal site, pursuant to OAR 340-094-0140 or OAR 340-095-0090, unless the ~~Department~~department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-095-0050(3).

(h) Include any other information the ~~Department~~department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the ~~Department~~department.

(54) If the ~~Department~~department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the ~~Department~~

~~department~~ may waive any of the requirements of subsections (43)(e) and (f) of this rule, OAR 340-093-0150, 340-094-0060(2) and 340-095-0030(2). In making this judgment, the ~~Department~~ ~~department~~ may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any information the ~~Department~~ ~~department~~ deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the ~~Department~~ ~~department~~.

(65) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the ~~Department~~ ~~department~~, there is sufficient public concern regarding the proposed disposal site, the ~~Department~~ ~~department~~ may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

(76) ~~Permit or registration~~ modifications and renewals:

(a) Permit Modification: An application for a permit modification is required for:

(i A) The sale or exchange of the activity or facility; or

(ii B) Any change in the nature of the activities or operations from those of the last application including modification or expansion of the disposal site or a change in the method or type of disposal. Any application that would substantially change the scope or operations of the disposal site must include written recommendations from the local government unit as required in subsection (43)(b) of this rule.

(b) Permit Renewal: An application for a permit renewal is required if a permittee intends to continue operation beyond the permitted period. A complete renewal application must be filed at least 180 days before the existing permit expires.

(i A) A complete application for renewal must be made in the form required by the ~~Department~~ ~~department~~ and include the information required by this Division and any other information required by the ~~Department~~ ~~department~~.

(ii B) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (43)(b) of this rule.

(iii C) If a completed application for renewal of a permit is filed with the ~~Department~~ ~~department~~ in a timely manner before the expiration date of the permit, the permit does not expire until the ~~Department~~ ~~department~~ takes final action on the renewal application.

(iv D) If a completed application for renewal of a permit is not filed with the ~~Department~~ ~~department~~ in a timely manner before the expiration date of the permit, the ~~Department~~ ~~department~~

department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-094-0100 or 340-095-0050.

(~~7~~) Permits extended under subsection (~~76~~) of this rule remain fully effective and enforceable until the effective date of the new permit.

Stat. Auth.: ORS 459

Stats. Implemented: ORS 459.235

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0025; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 15-2000, f. & cert. ef. 10-11-00

340-093-0100

Public Notice and Participation Requirements Regarding Permit Actions

(1) The ~~Department~~ department has categorized permit actions according to environmental and public health significance. Category I1 represents permit actions with low environmental and public health significance and less public notice and opportunity for public participation. Category IV4 represents permit actions with potentially high environmental and public health significance, and the greatest level of public notice and opportunity for participation.

(2) OAR 340-093-0105 classifies permits as Category I1 through Category IV4. If a permit action is uncategorized, the permit action will be processed under Category III3. The following describes the public notice and participation requirements for each category:

(a) Category I1 -- No public notice or opportunity for public participation;

(b) Category II2 -- The ~~Department~~ department will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.

(c) Category III3 -- The ~~Department~~ department will provide public notice of the proposed permit action and a minimum of 35 days to submit written comments. The ~~Department~~ department will provide a minimum of 30 days notice for a hearing if one is scheduled. The ~~Department~~ department will schedule a hearing to allow interested persons to submit oral or written comments if:

(i A) Within 14 days of the mailing of the notice, the ~~Department~~ department receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing, or

(ii B) The ~~Department~~ department determines that a hearing is necessary.

(d) Category IV4 -- Once an application is considered complete under OAR 340-093-0070, the ~~Department~~ department will:

(i ~~A~~) Provide public notice of the receipt of a completed application and requested permitting action; and

(ii ~~B~~) Schedule an informational meeting within the community where the facility will be or is located and provide public notice of the meeting. The ~~Department~~ department will consider any information gathered in this process when it drafts the proposed permit.

(iii ~~C~~) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments.

(iv ~~D~~) Schedule a public hearing to allow interested persons to submit oral or written comments and a minimum of 30 days notice for the hearing.

(3) The ~~Department~~ department may move a permit action to a higher category under (2) of this rule, based on, but not limited to, the following factors:

(a) Anticipated public interest in the facility;

(b) Compliance and enforcement history of the facility or owner;

(c) Potential for significant environmental or public harm due to location or type of facility; or

(d) A change in the nature of the facility or the quantity or types of solid waste received, processed or disposed of at the facility.

(4) The public notice required under (2)(b), (2)(c) and (2)(d) (~~C~~iii) of this rule will contain at least the following information:

(a) Name of the applicant and location of the facility;

(b) Type of facility including a description of the facility's process subject to the permit;

(c) Description of permitted substances stored, disposed of, discharged or emitted, including whether there has been an increase or decrease in the substance since the last permit action for the facility;

(d) Location and description of documents relied upon in preparing the draft permit action;

(e) Other permits required by the ~~Department~~ department;

(f) Date of previous permit action;

(g) Opportunity for public comment, whether in writing or in person;

(h) Compliance, enforcement and complaint history along with resolution of the same; and

(i) A summary of the discretionary decisions made by the ~~Department~~department in drafting the permit.

(5) The ~~Department~~department will provide the notice, as required under section (2) of this rule, to the applicant, those requesting notice of the permitting action, local news media, and other interested persons as identified by the ~~Department~~department.

Stat. Auth.: ORS 459.005 – ORS 459.418, ORS 459A.100 – ORS 459A.120

Stats. Implemented: ORS 459.245

Hist.: DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90; DEQ 5-1993, f. & cert. ef. 3-10-93;

Renumbered from 340-061-0024; DEQ 15-2000, f. & cert. ef. 10-11-00

340-093-0105

Categories for Permit Actions

(1) Category 1:

~~(a) Composting facility registration under 340-096-0024(1).~~

~~(b) Assignment to a composting facility general permit under 340-096-0024(2).~~

~~(e)~~ Waste Tire Carrier Permit under 340-064-0055.

~~(d)~~ Letter Authorization under 340-093-0060.

~~(c)~~ Modification to a permit that is administrative in nature or does not alter permit conditions.

(2) Category 2:

(a) Renewal of a construction and demolition debris landfill permit under 340-093-0070.

(b) Renewal of an industrial waste landfill permit under 340-093-0070.

~~(a)~~ (c) Renewal of Closure-a closure permit under 340-094-0100 and 340-095-0500.

~~(b)~~ (d) Renewal of a transfer station permit under 340-096-0040.

~~(e)~~ (e) Renewal of a material recovery facility permit under 340-096-0040.

(f) Renewal of a solid waste treatment facility permit under 340-093-0070.

~~(d)~~ (g) Renewal of a waste tire storage site permit under 340-064-0015.

(h) Renewal of a solid waste composting permit under 340-093-0070.

(i) New composting registration issued under OAR 340-096-0100.

(j) Renewal of a composting facility registration under 340-096-0100.

~~(ek)~~ All other modifications not listed under category 1.

(3) Category 3:

(a) New captive industrial facility permit as defined in 340-097-0120(1)(c).

(b) New transfer station or material recovery facility permit under 340-096-0040.

~~(c) New Composting facility permit issued under 340-096-0110,0024~~

~~(d) New Closure permit under 340-094-0100 and 340-095-0500.~~

~~(e) Issuance of a composting facility general permit under 340-096-0024.~~

~~(fe)~~ New construction and demolition landfill permit under 340-095-0001.

~~(gf)~~ New solid waste treatment facility permit under 340-096-0050.

~~(hg)~~ New off-site industrial facility permit under 340-097-0120(2)(a).

~~(ih)~~ New sludge disposal facility permit under 340-096-0030.

~~(i) New waste tire storage facility permit under 340-064-0015.~~

~~(kj) Renewal of a municipal landfill permit under 340-093-0070.~~

~~(k) Renewal of an incinerator or energy recovery facility permit under 340-093-0070.~~

(4) Category 4:

(a) New municipal solid waste landfill facility permit under 340-094-0001.

~~(b) New waste tire storage site under 340-064-0015.~~

~~(eb)~~ New incinerator permit under 340-096-0010.

~~(dc)~~ New energy recovery facility permit under 340-097-0120(2)(a).

Stat.Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.245

Hist.: DEQ 15-2000, f. & cert. ef. 10-11-00

340-093-0130

Site Characterization Report(s)

The purpose of the site characterization report(s) required by OAR 340-093-0070(4)(e) is to demonstrate that the proposed facility will be located in a suitable site and will use appropriate technology in design, construction and operation. The site characterization report(s) ~~shall~~must describe existing site conditions and a conceptual engineering proposal in sufficient detail to determine whether the facility is feasible and protects the environment. Except as provided in OAR 340-093-0070(4), ~~the~~ site characterization report(s) ~~shall~~must include, but not be limited to, the following:

- (1) Information on site location and existing site conditions, including:
 - (a) A site location description, including a location map and list of adjacent landowners;
 - (b) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site; and
 - (c) Identification of any siting limitations and how those limitations will be addressed.
- (2) A description of the scope, magnitude, type, and purpose of the proposed facility, including but not limited to the following:
 - (a) Estimated capacity and projected life of the site;
 - (b) Identification of the communities, industries and/or markets to be served;
 - (c) Anticipated types and quantities of solid wastes to be received, disposed of and/or processed by the facility;
 - (d) Summary of general design criteria and submittal of conceptual engineering plans;
 - (e) Description of how the proposed technology compares to current technological practices, or to similar proven technology, including references to where similar technology has been effectively implemented;
 - (f) Demonstration that the proposed facility is compatible with the local solid waste management plan and the state solid waste management plan;
 - (g) Planned future use of the disposal site after closure;
 - (h) Key assumptions used to calculate the economic viability of the proposed facility; and
 - (i) The public involvement process that has been and will be implemented.

(3) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

(4) For a landfill, the following ~~shall~~must be included:

(a) A detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report ~~shall~~must include consideration of surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material, climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations);

(b) Information on soil borings to a minimum depth of 20 feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within 20 feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres ~~shall~~must be provided. Soil boring data ~~shall~~must include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance;

(c) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use ~~shall~~must be identified;

(d) Background groundwater quality ~~shall~~must be determined by laboratory analysis and ~~shall~~must include at least each of the constituents specified by the ~~Department~~department.

(5) Any other information the ~~Department~~department may deem necessary to determine whether the proposed disposal site is feasible and will comply with all applicable rules of the ~~Department~~department.

Stat. Auth.: ORS 459

Stats. Implemented: ORS 459.015 & ORS 459.205(1)

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0030; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97

340-093-0140

Detailed Plans and Specifications Required

Except as provided in OAR 340-093-0070~~(5)~~(4):

(1) Any person applying for a Solid Waste Disposal Permit ~~shall~~must submit plans and specifications conforming with current technological practices, and sufficiently detailed and complete so that the ~~Department~~department may evaluate all relevant criteria before issuing a permit. The plans and specifications ~~shall~~must follow the organizational format, and include the level of information detail, as required by the ~~Department~~department. The ~~Department~~department may refuse to accept plans and specifications that are incomplete and may request such additional information as it deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the ~~Department~~department.

(2) Engineering plans and specifications submitted to the ~~Department~~department ~~shall~~must be prepared and stamped by a professional engineer with current Oregon registration.

(3) If in the course of facility construction any person desires to deviate significantly from the approved plans, the permittee ~~shall~~must submit a detailed description of the proposed change to the ~~Department~~department for review and approval prior to implementation. If the ~~Department~~department deems it necessary, a permit modification ~~shall~~must be initiated to incorporate the proposed change.

Stat. Auth.: ORS 459

Stats. Implemented: ORS 459.015 & ORS 459.205(1)

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81;; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0035; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97

340-093-0150

Construction Certification

Except as provided in OAR 340-093-0070~~(54)~~:

(1) The ~~Department~~department may require, upon completion of major or critical construction at a disposal site, that the permittee submit to the ~~Department~~department a final project report signed by the project engineer or manager as appropriate. The report ~~shall~~must certify that construction has been completed in accordance with the approved plans including any approved amendments thereto.

(2) If any major or critical construction has been scheduled in the plans for phase development subsequent to the initial operation, the ~~Department~~department may require that the permittee submit additional certification for each phase when construction of that phase is completed.

(3) Solid waste ~~shall~~may not be disposed of in any new waste management unit (such as a landfill cell) of a land disposal site unless/until the permittee has received prior written approval from the ~~Department~~department of the required engineering design, construction, Construction Quality Assurance, operations, and monitoring plans. Only after the ~~Department~~department has accepted a construction certification report prepared by an independent party, certifying to the

~~Department-department~~ that the unit was constructed in accordance with the approved plans, may waste be placed in the unit. If the ~~Department-department~~ does not respond to a certified construction certification report within 30 days of its receipt, the permittee may proceed to use the unit for disposal of the intended solid waste.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.015 & ORS 459.205 – ORS 459.245

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0036; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

**The Oregon Administrative Rules contain OARs filed through May 15,
2009**

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 96

**SOLID WASTE: SPECIAL RULES FOR
SELECTED SOLID WASTE DISPOSAL SITES**

340-096-0001

Applicability

OAR Chapter 340, Division 96 applies to energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service, composting facilities, sludge disposal sites, land application disposal sites, transfer stations, material recovery facilities and solid waste treatment facilities. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Division 93, financial assurance requirements as set forth in Division 95 at OAR 340-095-0090 and OAR 340-095-0095, and Division 97. The department may tailor the financial assurance requirements to the nature of the facility and may exempt low risk facilities. For purposes of these Division 96 rules, a low risk facility is one the department determines is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure.

Stat. Auth.: ORS 459.005 - ORS 459.418 & ORS 459A.100 - ORS 459A.120

Stats. Implemented: ORS 459.015 & ORS 459.045

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93

340-096-0010

Special Rules Pertaining to Incineration

(1) Applicability. This rule applies to all energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service. ~~Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Division 93 and applicable provisions in OAR Chapter 340, Divisions 95 and 97.~~

(2) Detailed Plans and Specifications:

(a) All incineration equipment and air pollution control appurtenances thereto ~~shall~~must comply with air pollution control rules and regulations and emission standards of this ~~Department~~ department or the regional air pollution control authority having jurisdiction;

(b) Detailed plans and specifications for incinerator disposal sites ~~shall~~must include, but not be limited to, the location and physical features of the site, such as contours, drainage control, landscaping, fencing, access and on-site roads, solid waste handling facilities, truck washing facilities, ash and residue disposal and design and performance specifications of incineration equipment and provisions for testing emissions therefrom.

(3) Incinerator Design and Construction:

(a) Ash and Residue Disposal. Incinerator ash and residues ~~shall~~must be disposed in an approved landfill unless handled otherwise in accordance with a plan approved in writing by the ~~Department~~ department;

(b) Waste Water Discharges. There ~~shall~~must be no discharge of waste water to public waters except in accordance with a permit from the ~~Department~~ department, issued under ORS 468B.050;

(c) Access Roads. All weather roads ~~shall~~must be provided from the public highways or roads, to and within the disposal site and ~~shall~~must be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(d) Drainage. An incinerator site ~~shall~~must be designed such that surface drainage will be diverted around or away from the operational area of the site;

(e) Fire Protection. Fire protection ~~shall~~must be provided in accordance with plans approved in writing by the ~~Department~~ department and in compliance with pertinent state and local fire regulations;

(f) Fences. Access to the incinerator site ~~shall~~must be controlled by means of a complete perimeter fence and gates which may be locked;

(g) Sewage Disposal. Sanitary waste disposal ~~shall~~must be accomplished in a manner approved by the ~~Department~~ department or state or local health agency having jurisdiction;

(h) Truck Washing Facilities. Truck washing areas, if provided, ~~shall~~must be hard surfaced and all wash waters ~~shall~~must be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Incinerator Operations:

(a) Storage:

- | (A) All solid waste deposited at the site ~~shall~~must be confined to the designated dumping area;
- | (B) Accumulation of solid wastes and undisposed ash residues ~~shall~~must be kept to minimum practical quantities.

(b) Salvage:

- | (A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the ~~Department~~department in the facility's operations plan;
- | (B) Salvaging ~~shall~~must be controlled so as not to interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;
- | (C) All salvaged material ~~shall~~must be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(c) Nuisance Conditions:

- | (A) Blowing debris ~~shall~~must be controlled such that the entire disposal site is maintained free of litter;
- | (B) Dust, malodors and noise ~~shall~~must be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.
- | (d) Health Hazards. Rodent and insect control measures ~~shall~~must be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals ~~shall~~must be controlled;
- | (e) Air Quality. The incinerator ~~shall~~must be operated in compliance with applicable air quality rules (OAR 340-025-0850 through 340-025-0905);
- | (f) Records. The ~~Department~~department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.015 & ORS 459.205

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered

from 340-061-0045; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0020

Special Rules Pertaining to Composting: Applicability

Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-093-0050(3)(d) and (e). Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable. Composting facilities commencing operation prior to January 31, 1999 shall submit an application to the Department for a composting facility registration or permit within 18 months of the effective date of these rules. Following that date, composting facilities must apply for and receive a permit or registration prior to commencement of operation.

[NOTE: Portions of 340-096-0020 have moved to 340-096-0024 and 340-096-0028.]

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0050; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0024

Special Rules Pertaining to Composting: Types of Composting Facilities

Composting facilities are categorized by the following criteria and shall meet the portions of this rule as listed in (1)(c), (2)(c), or (3) below:

(1) Composting facility registration: For facilities utilizing as feedstocks for composting:

(a) More than 20 tons and less than or equal to 2,000 tons of green feedstocks in a calendar year; or

(b) More than 20 tons and less than or equal to 5,000 tons of feedstocks which are exclusively yard debris and wood waste in a calendar year;

(c) Composting facilities receiving a registration shall comply with only the following items of OAR 340-096-0028: (1)(d), (2)(c), (3)(a), (3)(b), (3)(e), and (4) and are not subject to the remaining requirements of OAR 340-096-0028;

(d) Persons applying for a composting facility registration shall submit to DEQ items listed in OAR 340-093-0070(4)(a), (b), (c), and (d) prior to receiving their registration. These facilities are subject to the procedures and requirements of OAR 340-093-0070 (1),

~~(6), and (7), (application processing, public hearings, registration renewal), but are exempted from the remaining requirements of OAR 340-093-0070;~~

~~(e) A composting facility registration will be treated as a permit only for purposes of OAR 340-018-0030 and not for other purposes;~~

~~(f) Upon determination by the Department that a registered facility is adversely affecting human health or the environment, a registered facility may be required to apply for and meet the requirements of a composting facility general permit.~~

~~(2) Composting facility general permit: For facilities utilizing as feedstocks for composting:~~

~~(a) More than 2,000 tons of green feedstocks in a calendar year; or~~

~~(b) More than 5,000 tons of green feedstocks which are exclusively yard debris and wood waste in a calendar year;~~

~~(c) Persons receiving a composting facility general permit shall comply with all items of OAR 340-096-0028 except (2)(b), (3)(g), and (3)(i). In order to meet these requirements, composters shall have procedures in place and written documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met;~~

~~(d) Persons applying for a composting facility general permit shall comply with the requirements of "General Permit," pursuant to OAR 340-093-0070(3);~~

~~(e) Upon determination by the Department that a facility with a composting facility general permit is adversely affecting human health or the environment, that facility may be required to apply for and meet the requirements of a composting facility full permit.~~

~~(3) Composting facility full permit: For facilities utilizing as feedstocks for composting more than 20 tons of feedstocks during a calendar year that includes any amount of non-green feedstocks. Persons applying for a composting facility full permit shall comply with all items of OAR 340-096-0028. In order to meet these requirements, these persons must submit written documents to the Department for review and approval prior to receiving their permit, as described in OAR 340-093-0050 and OAR 340-093-0070.~~

~~(4) Composting facilities exempted from requirements to obtain a permit are listed in OAR 340-093-0050(3)(d).~~

~~(5) The Director may issue a different level of composting regulation to a facility upon receipt of a request and justification regarding special conditions based on the amount and type of unique feedstocks which do not justify scrutiny of a higher level of regulation. Justification must be substantiated by results from testing, documentation of operational procedures or other methods. Applications shall be processed in accordance~~

with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340, division 093.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 17 1997, f. & cert. ef. 8-14-97; DEQ 27 1998, f. & cert. ef. 11-13-98; DEQ 15 2000, f. & cert. ef. 10-11-00

340-096-0028

Special Rules Pertaining to Composting: Conditions

(1) Feasibility Study Report shall include but not be limited to:

(a) Location and design of the physical features of the site and composting plant, surface drainage control, wastewater facilities, fences, residue disposal, controls to prevent adverse health and environmental impacts, and design and performance specifications for major composting equipment and detailed descriptions of methods to be used. Agricultural composting operations need only provide information regarding surface drainage control and wastewater facilities as required by ORS 468B.050(1)(b), administered by the Oregon Department of Agriculture;

(b) A proposed plan for utilization of the processed compost or other evidence of assured utilization of composted feedstocks;

(c) A proposed facility closure plan of a conceptual "worst case" scenario to dispose of unused feedstocks, partially processed residues and finished compost, unless exempted from this requirement by the Department pursuant to OAR 340-095-0090(2). The plan will include a method for disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes. The facility closure plan shall also include evidence of financial assurance, pursuant to OAR 340-095-0090(1), for all composting facility full permits;

(d) A mass balance calculation showing all feedstocks and amendments and all products produced. For facilities applying for a composting facility full permit, the mass balance calculation shall be detailed and utilize a unit weight throughout.

(2) Composting Facility Plan Design and Construction shall include but not be limited to:

(a) Scale drawings of the facility, including the location and size of feedstock and finished storage area(s), composting processing areas, fixed equipment, and appurtenant facilities (scales, surface water control systems, wells, offices and others). Upon determination by the Department that engineered drawings are necessary, drawings will be produced under the supervision of a licensed engineer with current registration;

~~(b) Lining system design: If leachate is present, composter must provide a protective layer beneath compost processing and feedstock areas, leachate sumps and storage basins to prevent release of leachate to surface water or ground water. The lining system required would be dependent on leachate characteristics, climatic conditions and size of facility and shall be capable of resisting damage from movement of mobile operating equipment and weight of stored piles. Facility operators shall monitor all water releases and document no release to ground water. A construction quality assurance plan shall be included detailing monitoring and testing to assure effectiveness of liner system;~~

~~(c) Water Quality: Composting facilities shall have no discharge of leachate, wastewater, or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with permit(s) from the Water Quality Program of the Department issued under ORS 468B.050. Agricultural composters must meet water quality requirements pursuant to ORS 468B.050 (1)(b), administered by the Oregon Department of Agriculture;~~

~~(d) Access Roads: When necessary to provide public access, all-weather roads shall be provided from the public highway or roads to and within the compost operation and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;~~

~~(e) Fire Protection: Fire protection shall be provided in compliance with pertinent state and local fire regulations;~~

~~(f) Control of access to the site: Effective barriers to unauthorized entry and dumping shall be provided (such as fences, gates and lock(s));~~

~~(g) Control of noise, vectors, dust and litter: Effective methods to reduce or avoid noise, vectors, dust and litter shall be provided.~~

~~(3) Composting Facility Operations Plan shall include:~~

~~(a) Operations and Maintenance Manual which describes normal facility operations and includes procedures to address upset conditions and operating problems. The manual shall include monitoring of compost processing parameters including: feedstocks (C:N ratio), moisture content, aeration, pH and temperature;~~

~~(b) Odor Minimization Plan shall be developed to address odor within the confines of the composting site and include methods to address:~~

~~(A) A management plan for malodorous loads;~~

~~(B) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problems at the facility;~~

- ~~(C) Additional odor minimizing measures, which may include the following:~~
 - ~~(i) Avoidance of anaerobic conditions in the composting material;~~
 - ~~(ii) Use of mixing for favorable composting conditions;~~
 - ~~(iii) Formation of windrow or other piles into a size and shape favorable to minimizing odors; and~~
 - ~~(iv) Use of end product compost as cover to act as a filter during early stages of composting.~~
- ~~(D) Specification of a readily available supply of bulking agents, additives or odor control agents;~~
- ~~(E) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions;~~
- ~~(F) Methods for taking into consideration the following factors prior to turning or moving composted material:~~
 - ~~(i) Time of day;~~
 - ~~(ii) Wind direction;~~
 - ~~(iii) Percent moisture;~~
 - ~~(iv) Estimated odor potential; and~~
 - ~~(v) Degree of maturity.~~
- ~~(c) Methods for measuring and keeping records of incoming feedstocks;~~
- ~~(d) Removal of Compost: Other than for compost used on-site at an agronomic rate, compost shall be removed from the composting facility as frequently as possible, but not later than two years after processing is completed;~~
- ~~(e) Incorporation of feedstock(s): Feedstocks shall be incorporated into active compost piles within a reasonable time;~~
- ~~(f) Use of Composted Solid Waste: Composted solid waste offered for use by the public shall be relatively odor free and shall not endanger public health or safety;~~
- ~~(g) Pathogen reduction: Composting facilities accepting any amount of non-green feedstocks shall document and implement a pathogen reduction plan that addresses~~

requirements of the Code of Federal Regulations, ~~40 CFR Part 503~~. The plan shall include a Process to Further Reduce Pathogen (PFRP), pursuant to ~~40 CFR Part 503 Appendix B~~, item (B)(1), dated February 19, 1993, that shall include:

~~(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for three days;~~

~~(B) Using the windrow composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five turnings of the windrow; or~~

~~(C) An alternative method that can be demonstrated by permittee to achieve an equivalent reduction of human pathogens.~~

~~(h) Storage:~~

~~(A) All feedstocks deposited at the site shall be confined to the designated dumping area;~~

~~(B) Accumulation of feedstocks shall not exceed one month's production capacity and undisposed residues shall be kept to minimum practical quantities;~~

~~(C) Facilities and procedures shall be provided for handling, recycling or disposing of feedstocks that are non-biodegradable by composting;~~

~~(i) Salvage:~~

~~(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the composting facility only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;~~

~~(B) Salvaging shall be controlled so as not to interfere with optimum composting operation and not create unsightly conditions or vector harborage.~~

~~(j) Methods to minimize vector attraction (such as rats, birds, flies) shall be used in order to prevent nuisance conditions or propagation of human pathogens in the active or finished compost.~~

~~(4) Records: Annual reporting of the weight of feedstocks utilized for composting is required on a form provided by the Department. The Department may also require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a registration or permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years.~~

~~Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020~~
~~Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205~~
~~Hist.: DEQ 17 1997, f. & cert. ef. 8-14-97; DEQ 27 1998, f. & cert. ef. 11-13-98~~

340-096-0050

Solid Waste Treatment Facilities

(1) Applicability. This rule applies to all solid waste treatment facilities. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95, and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a solid waste treatment facility ~~shall~~must include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Air Quality. A permittee ~~shall~~must ensure that all solid waste treatment facilities comply with air pollution control rules and regulations and emission standards of this Department or the regional air pollution control authority having jurisdiction.

(4) Bioremediation Facilities. Facilities that propose to biologically treat petroleum contaminated soil must design the operation to prevent contamination of the area and minimize the possibility of contaminants leaching to groundwater. Such facilities ~~shall~~must in general comply with regulations in OAR Chapter 340, Division 95, "Land Disposal Sites Other Than Municipal Solid Waste Landfills," for location restrictions, operating criteria and design criteria. The following requirements also apply:

(a) To prevent leaching, design criteria must include either:

(A) A landfill-type liner with a leachate removal system. A concrete slab is not considered a liner. An applicant must demonstrate that the proposed liner is compatible with the waste; or

(B) A vadose zone monitoring system, pursuant to **40 CFR 264, Subpart M**.

(b) Groundwater. The ~~d~~Department may require groundwater monitoring depending on the facility's cover, run-on controls and irrigation;

(c) Operating criteria:

(A) Each permittee ~~shall~~must ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters;

(B) The permittee must ensure that the facility is operated in a manner such that the liner is not damaged;

(C) The permittee must provide a monitoring plan to demonstrate completion of the biodegradation process.

(d) Financial assurance. An application for a bioremediation solid waste treatment facility shall ~~must~~ include a financial assurance plan sufficient to cover costs for a third party to remove the waste to a thermal desorption facility if it is deemed necessary by the ~~D~~department.

(5) Records. The ~~D~~department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.:ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0060

Special Rules Pertaining to Composting: Applicability

(1) No person may construct or operate a composting facility except as provided in this rule.

(2) All composting facilities must comply with 340-096-0070: *Performance Standards*.

(3) All composting facilities, except those composting facilities exempt under (3)(a) of this rule, must comply with OAR 340-096-0080: *Screening*.

(a) The following composting facilities are exempt from the requirements of OAR 340-096-0080: *Screening*, OAR 340-096-100: *Registration*, and OAR 340-096-0110 *Composting Permit* unless the department determines the composting facility may adversely affect human health or the environment:

(A) Any composting facility composting less than 100 tons of Type 1 feedstock, Type 2 feedstock, or both during any calendar year;

(B) Any composting facility composting less than 20 tons of Type 3 feedstock during any calendar year;

(C) Any composting facility composting less than 40 tons of Type 3 feedstock in any calendar year when conducting in-vessel composting in containers designed to prohibit vector attraction and prevent nuisance and odor generation;

(D) Any composting facility that produces silage on a farm for animal feed; and

(E) Any home composting facility.

(F) Any Confined Animal Feeding Operation operating under a Confined Animal Feeding Operation permit issued by the Oregon Department of Agriculture and operating a composting facility, in conjunction with the Confined Animal Feeding Operation, in compliance with a composting facility management plan approved by the Oregon Department of Agriculture that meets the requirements of OAR 340-096-0090 and for which the Oregon Department of Agriculture is providing oversight under an agreement with the department. The Oregon Department of Agriculture may require that a facility subject to this section (3)(a)(F) comply with OAR 340-096-0080: *Screening*.

(4) All composting facilities that are determined by the department to present a risk to human health or the environment under OAR 340-096-0080(3)(b): *Screening*, or under (3)(a) of this rule, must comply with OAR 340-096-0090: *Operations Plan Approval* and OAR 340-096-0110: *Composting Permit*.

(5) All composting facilities that are not exempt under this rule, including but not limited to all facilities operating under a solid waste composting facility individual permit, general permit, or registration issued by the department prior to the effective date of this rule, must submit the materials required by OAR 340-096-0080: *Screening* within 180 days after the effective date of this rule. Any composting facility in operation before the effective date of these rules may continue in operation pending a determination by the department under OAR 340-096-0080: *Screening* and issuance by the department of a Registration under OAR 340-096-0100: *Registration* or a Composting Permit under OAR 340-096-0110: *Composting Permit*.

(6) Any person proposing to begin operation of a new composting facility or to substantially modify an existing facility, where such a facility is not exempt under section (3) of this rule, must comply with OAR 340-096-0080: *Screening* and provide to the department the information required by OAR 340-096-0080(1) at least 180 days before the facility is proposed to begin operation.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0050; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0070 Special Rules Pertaining to Composting: Performance Standards

(1) All composting facilities must be designed, constructed, and operated in a manner that does not cause a discharge of leachate or stormwater from the facility to surface water, except:

(a) Leachate from a composting facility may be discharged to surface water only in compliance with a discharge permit issued by the department.

(b) Stormwater from a composting facility may be discharged to surface water only in compliance with a discharge permit issued by the department.

(2) All composting facilities that collect and dispose of leachate or stormwater in engineered structures must comply with the applicable requirements of OAR 340-096-0130: *Leachate Collection Design and Operating Requirements*.

(3) All composting facilities must be designed, constructed, and operated in a manner that does not cause a likely adverse impact to groundwater under OAR 340 Division 40. All composting facilities proposing to use infiltration in soil as a method for managing leachate or stormwater must comply with OAR 340-096-0120: *Groundwater Protection*.

(4) All composting facilities must be designed, constructed, and operated in a manner that, to the greatest extent practicable, consistent with proper facility design and operation, controls and minimizes odors that are likely to cause adverse impacts outside the boundaries of the facility.

(5) All composting facilities must be designed, constructed, and operated in a manner that achieves human pathogen reduction as required by OAR 340-096-0140: *Pathogen Reduction*.

(6) All composting facilities must be designed, constructed, and operated in a manner that controls or prevents propagation, harborage, or attraction of vectors, including but not limited to rats, birds, and flies.

(7) All composting facilities must comply with all other applicable laws and regulations.

340-096-0080 Special Rules Pertaining to Composting: Screening

(1) All composting facilities not exempted by OAR 340-96-0060(3)(a) will be screened by the department under this rule to determine whether the facility poses a risk to human health or the environment. All facilities subject to this rule must provide to the department the information described below. The department may require any additional information the department considers necessary to evaluate the potential environmental risks posed by a facility. All information must be submitted on application forms provided by the department and include the screening fee required by OAR 340-097-0120(3). The application must be accompanied by all required exhibits using paper with

recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the department, and be signed by the property owner or person in control of the premises.

(a) Physical information, including:

(A) The location and site schematic, including areas for management of leachate and stormwater, of the existing or proposed composting facility by latitude and longitude, identified on a map;

(B) The location of the facility on a tax lot map;

(C) The location of and distance to surface water in the drainage area of the composting facility, and all drainage channels, ditches and any other water conveyances leading from the composting facility to surface water, identified on a map;

(D) Distance to the uppermost groundwater aquifer and other known aquifers at the location of the composting facility and in any areas proposed for infiltration of leachate or stormwater from the composting facility;

(E) Soil type or types, and permeability if known or available, at the location of the composting facility and in any areas proposed for infiltration of leachate or stormwater;

(F) The location and well logs of all wells on the property where the composting facility is located; the location and well logs of any wells within ¼ mile of the composting facility; and, if known, the location of any proposed wells within ¼ mile of the composting facility;

(G) The locations of all commercial and residential structures within a one mile radius of the composting facility, identified on a map or photograph;

(H) The prevailing wind direction, by season, identified on a map, and any other climactic information related to wind and air movement;

(b) Operational information, including:

(A) A description of the composting operation including feedstock types, volumes and sources, any grinding or other preparation of feedstocks, composting methods, and uses of composted material;

(B) A description of any leachate and stormwater produced at the facility, including information about the chemical composition of leachate;

(C) A description of all existing or planned structures and features for managing leachate and stormwater, including but not limited to information about any detention or infiltration basins, and any infiltration structures such as filter strips and bioswales;

(D) If the facility is subject to the pathogen reduction requirements of OAR 340-096-0070(5), a description of the methods the facility will use to achieve such pathogen reduction;

(E) A description of the methods the facility will use to achieve vector control;

(F) Any seasonal variances in the operation of the facility;

(G) Contact information including the composting facility operator, composting facility owner, and property owner; and

(H) Operational and compliance history of the facility.

(c) Information regarding other permits, including any other known or anticipated permits from the department or other governmental agencies. If previously applied for, include a copy of such permit application and, if granted, a copy of such permit.

(d) A Land Use Compatibility Statement pursuant to OAR 340 Division 18 and a statement that the facility is compatible with the solid waste management plan for the jurisdiction.

(2) To conduct the evaluation under section (3) of this rule, the department may require a composting facility to conduct groundwater sampling or monitoring and provide analytical results to the department.

(3) Based on information provided by the composting operator, and any other information available to the department, the department will evaluate the current and likely future impact of the composting facility to human health and the environment. The department will evaluate the degree to which a composting facility may present a risk of adverse effects to surface water and groundwater, and the likelihood the facility will create unacceptable odor problems.

(a) All composting facilities the department determines present a low environmental risk must comply with OAR 340-096-0100: *Registration*. Any requirements the department determines are necessary for a facility to operate in compliance with OAR 340-096-0070: *Performance Standards* will be incorporated into the registration Approval Conditions under OAR 340-096-0100. Approval Conditions may include any of the matters addressed in OAR 340-096-0090: *Operations Plan Approval*. The department will consider a composting facility a "low risk" facility if, based on the information provided under (1) and (2) of this rule, the specific location of the facility, the feedstocks used, and the operational and compliance history of the facility, the department determines:

(A) The facility is not likely to cause discharge of leachate or leachate-contaminated stormwater to surface water;

(B) Infiltration of leachate or stormwater from the facility will not cause a likely adverse impact to soil, groundwater quality, or indirectly to surface water quality; and

(C) The facility is not likely to cause odor problems beyond the boundaries of the facility.

(b) All composting facilities the department determines present a risk of potential adverse effects to surface water, groundwater, or soil, or may create odor problems beyond the boundaries of the facility, must comply with OAR 340-096-0090: *Operations Plan Approval*. The department will consider a composting facility to present a “risk of potential adverse effects” if, based on the information provided under (1) and (2) of this rule, including but not limited to the location of the facility; the design, structures, and operational requirements necessary to meet the requirements of OAR 340-096-0070; the feedstocks used, and the operational and compliance history of the facility, the department determines:

(A) The composting facility presents a risk of unpermitted releases of leachate or stormwater to surface water;

(B) The facility presents a risk of causing a likely adverse impact to surface water or groundwater;

(C) The facility presents a risk of causing an unacceptable adverse impact to soil; or

(D) The facility presents a risk of causing odor problems beyond the boundaries of the facility.

(4) The department may at any time reevaluate a composting facility under this rule and may assign a facility to a different category under section (3) of this rule.

340-096-0090 Special Rules Relating to Composting: Operations Plan Approval

(1) All composting facilities subject to this rule must prepare a composting facility operations plan for review and approval by the department that describes how the composting facility will be designed and operated to meet the performance standards set out in OAR 340-096-0070. The Operations Plan Approval fee required by OAR 340-097-0120(4) and, if applicable, the Engineering review fee required by OAR 340-097-0120(5), must be submitted to the department with the proposed plan.

(2) Except as provided in OAR 340-096-0060(5), a composting facility subject to this rule may not begin or continue operation until the department approves the facility Operations Plan. All composting facilities subject to this rule must operate in compliance with the Operations Plan approved by the department. Any significant changes in the Operations Plan must be approved by the department.

(3) If the department determines that an approved Operations Plan is incomplete, inadequate, or otherwise fails to provide the necessary information and assurances that

the composting facility will comply with OAR 340-096-0070: *Performance Measures* or with section (6) of this rule, the department may require the composting facility to revise the Operations Plan.

(4) After receiving a proposed Operations Plan, the department will provide the composting facility operator with an opportunity to meet with the department and discuss the composting facility, the proposed Operations Plan, and any department concerns or issues related to the facility and the plan. Upon final department approval of an Operations Plan, the composting facility must comply with OAR 340-096-0110: *Composting Permit*.

(5) All Operations Plans subject to this rule must address the elements set out in sections (5)(a) through (f) of this rule.

(a) Feedstocks. The Operations Plan must describe the types and volumes of feedstocks the facility will accept, the methods the facility will use to produce compost, and the proposed uses of the compost.

(b) Protection of Surface Water. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0070(1) and (2) by describing the operational procedures and any structures the facility will use to manage any leachate and any stormwater generated at the facility. Any facility that manages leachate or stormwater in an engineered structure must submit detailed plans and specifications for any such structures and comply with OAR 340-096-0130: *Leachate and Stormwater Collection Design and Management Requirements*.

(c) Protection of groundwater. The Operations Plan must describe how the facility will be designed and operated to comply with OAR 340-096-0070(3). Any facility that manages leachate or stormwater through infiltration into soil must comply with OAR 340-096-0120: *Groundwater*.

(d) Odor control. The Operations Plan must describe the methods and procedures the facility will use to comply with OAR 340-096-0070(4) and with OAR 340-096-0150: *Odors*.

(e) Pathogen reduction. Unless the facility is exempt from pathogen reduction under OAR 340-096-0140(1), the Operations Plan must describe methods the facility will use to comply with OAR 340-096-0140: *Pathogen Reduction*, including:

(A) Methods the facility will use to comply with OAR 340-096-0070(5) to achieve the pathogen reduction standards set out in OAR 340-096-0140(2);

(B) Methods the facility will use for sampling and testing of composted material to assure that the required human pathogen reduction is being achieved; and

(C) Procedures the facility will use for handling composted material that does not meet pathogen reduction standards.

(f) Vector attraction. The Operations Plan must describe methods the composting operation will use to comply with OAR 340-096-0070(6) to minimize the attraction of vectors such as rats, birds, flies.

(g) Closure. The Operations Plan must include a Closure Plan that must address:

(A) Removal of equipment and materials used to operate and maintain the facility;

(B) Disposal of unused feedstocks, partially processed residues and finished compost;

(C) Disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes; and

(D) Abandonment of treatment facilities, including ponds and lagoons, and removal of residues, including a preliminary evaluation of potential impacts to soil and groundwater below ponds and treatment facilities.

(h) Post Closure. The Operations Plan must include a Post-Closure Plan to address groundwater and surface water issues after the facility is closed.

(i) Recordkeeping. The Operations Plan must describe the methods the facility will use for keeping records of:

(A) Weight and volumes of incoming feedstocks;

(B) Pathogen testing conducted under 5(e) of this rule;

(C) Complaints and actions taken to address complaints; and

(D) Any upsets or violations of the Operations Plan.

(6) As part of the Operations Plan approval process, the department will review with the composting facility the matters in (6)(a) through (l) of this rule. The department may require, either in its initial Operations Plan review or under section (3) of this rule, that an Operations Plan include any of the matters in sections (6)(a) through (l) of this rule if the department determines that such measures are necessary for the facility to meet the requirements of OAR 340-096-0070: *Performance Standards*, to comply with any other laws or regulations, or when required to correct other unacceptable conditions at a facility.

(a) Process controls. When required by the department, an Operations Plan must:

(A) Describe how the facility will monitor and record compost processing parameters including nutrient balance (C:N ratio), moisture content, aeration, pH and temperature and compost retention time; and

(B) Include a mass balance calculation showing all feedstocks and amendments and all products produced. The mass balance calculation must be detailed and use a standard unit of measurement throughout.

(b) Material management. When required by the department, an Operations Plan must:

(A) Describe how the facility will handle feedstocks and composted material to prevent pathogen regrowth and cross contamination of piles.

(B) Describe how the facility will manage and dispose of composted material that due to concentrations of contaminants cannot be marketed or used for beneficial purposes.

(c) Removal of composted material. When required by the department, an Operations Plan must provide for removal of composted material from the facility as frequently as possible, but not later than two years after processing is completed.

(d) Incorporation of feedstocks. When required by the department, the Operations Plan must include a schedule for incorporating feedstocks into active compost piles.

(e) Storage of feedstocks. When required by the department, the Operations Plan must:

(A) Identify designated areas where all feedstocks deposited at the site will be confined;

(B) Provide that accumulation of feedstocks does not create odor or vector problems, or create other nuisance conditions;

(C) Provide that undisposed residues must be kept to minimum practical quantities; and

(D) Provide for facilities and procedures for handling, recycling or disposing of feedstocks that are non-biodegradable by composting.

(f) Salvage. When required by the department, the Operations Plan must provide procedures for recovery of materials such as metal, paper and glass so that recovery does not interfere with composting operations, or create unsightly conditions or vector harborage.

(g) Access Roads. When required by the department, the Operations Plan must:

(A) Provide for all-weather roads from the public highway or roads to and within the compost operation that are designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution.

(B) Provide for effective barriers to unauthorized entry and dumping, such as fences, gates and locks.

(h) Fire Protection. When required by the department, the Operations Plan must provide for fire protection in compliance with applicable state and local fire regulations.

(i) Noise, dust and litter. When required by the department, the plan must provide for effective methods to reduce or avoid noise, dust, and litter, and to prevent tracking of mud or other materials off the facility;

(j) Containers. When required by the department, the operations plan must describe how the facility will clean and manage all containers at the facility.

(k) Vehicles. When required by the department, the Operations Plan must describe how all vehicles and devices operated by facility will be maintained and operated to prevent leaking, or spilling of feedstocks or finished compost while in transit.

(l) Truck Covers. When required by the department, the Operations Plan must describe how the facility will notify all incoming feedstock haulers that trucks must be covered or suitably cross-tied to prevent any load loss during shipment.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

340-096-0100

Special Rules Relating to Composting: Registration

(1) All composting facilities required to register with the department by OAR 340-096-0080(3)(a) must comply with this rule. Except as provided in OAR 340-096-0060(5), all facilities subject to this rule must complete registration before a facility may operate.

(2) After a facility has completed the requirements of OAR 340-093-0100 with respect to public notice and comment, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will register the facility. The registration is a permit for purposes of OAR Chapter 340, Division 18 and OAR Chapter 340 Divisions 93, 96, and 97, except the following: OAR 340-093-0070 (3); OAR 340-093-0130; and OAR 340-093-0140.

(3) All composting facilities registered under this rule must comply with the following:

(a) For facilities with department Conditions of Approval for operation of the facility, comply with all conditions;

- (b) If required by the department, submit an annual report of the weight of feedstocks used for composting on a form provided by the department;
- (c) If a composting facility discharges leachate or stormwater under a permit issued by the department, submit an annual report to the department with the sampling data required by the permit or permits;
- (d) Immediately notify the department of any violation of the facility Conditions of Approval or OAR 340-096-0070: *Performance Standards*;
- (e) Immediately notify the department of any significant change of status of the composting facility, including any change in the ownership or operation of the facility, the location of the composting operation, the type or volume of feedstocks used, and the composting process used by the facility;
- (f) Keep all required records. If required by the department, maintain records for a minimum of ten years. In the case of a change in ownership of the composting facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required ten years;
- (g) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, divisions 93, 96, and 97; and
- (h) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if, based on the information submitted under OAR 340-096-0070, an Operations Plan approved under OAR 340-0096-0090, and any other information available to the department, the department determines that the facility is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure; and
- (i) If required, pay the Engineering Review fee under OAR 340-097-0120(5).

340-096-0110

Special Rules Pertaining to Composting: Composting Permit

- (1) All composting facilities required by OAR 340-096-0060 to operate under a Composting Permit must comply with this rule. Except as provided in OAR 340-096-0060(5), all facilities subject to this rule must receive a Composting Permit before a facility may operate.
- (2) After a facility has completed OAR 340-096-0090: *Operations Plan Approval* and the department has approved the facility Operations Plan, to receive a Composting Permit, the facility must:

- (a) Pay the plan approval fee required by OAR 340-097-0120(4); and
- (b) If required, pay the Engineering Review fee under OAR 340-097-0120(5).
- (3) After a facility has completed the requirements of section (2) of this rule, and after completing the requirements of OAR 340-093-0100 with respect to public notice and comment, if the department determines that the facility has met all of the requirements of OAR Divisions 93, 96, 97, and all other applicable statutes and regulations, the department will issue a Compost Permit for the facility. The Compost Permit is a permit for purposes of OAR Chapter 340, Division 18 and OAR Chapter 340 Divisions 93, 96, and 97, except the following: OAR 340-093-0070 (3); OAR 340-093-0130; and OAR 340-093-0140.
- (4) All composting facilities permitted under this rule must comply with the following:
 - (a) Comply with OAR 340-096-0700: *Performance Standards*;
 - (b) Comply with all requirements of the facility Operations Plan;
 - (c) If required by the department, submit an annual report of the weight of feedstocks used for composting on a form provided by the department;
 - (d) If a composting facility discharges leachate or stormwater under a permit issued by the department, submit an annual report to the department with the sampling data required by the permit or permits;
 - (e) Immediately notify the department of any violation of the facility Operations Plan, Conditions of Approval, or OAR 340-096-0070: *Performance Standards*;
 - (f) Immediately notify the department of any significant change of status of the compost operation, including any change in the ownership or operation of the facility, the location of the facility, type or volume of feedstocks used, and the composting process used by the facility;
 - (g) Keep all required records. If required by the department, maintain records for a minimum of five years. In the case of a change in ownership of the composting facility, the owner is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years;
 - (h) Comply with OAR 340-097-0120(6)(c) with respect to fees;
 - (i) At the request of the department, submit any records or reports the department may require to ensure compliance with conditions of OAR chapter 340, divisions 93, 96, and 97; and

(j) If required by the department, demonstrate financial assurance as provided in OAR 340-096-0001. The department may tailor the financial assurance requirements to the nature of the facility and may exempt a facility if the department determines, based on the information submitted under OAR 340-096-0070, an Operations Plan approved under OAR 340-0096-0090, and any other information available to the department, the facility is not likely to generate significant amounts of residual waste materials or contamination from the operation of the facility that will remain at closure.

340-096-0120 Special Rules Pertaining to Composting: Groundwater Protection

(1) All composting facilities using or proposing to use infiltration in soil as a method for managing leachate or stormwater must comply with this rule.

(2) Methods of soil infiltration that are subject to this rule include, but are not limited to:

(a) Conducting any composting operations, including grinding, chipping, storing feedstocks, or composting feedstocks on surfaces that do not meet the requirements of OAR 340-096-0130: *Leachate Collection Design and Management Requirements*;

(b) Discharging any liquids from the composting facility, including leachate, leachate contaminated stormwater, or stormwater, to filter strips, bioswales, or other similar features; and

(c) Discharging any liquids from the composting facility, including leachate, leachate contaminated stormwater, or stormwater, to fields, pastures, cropland, or ditches.

(3) All composting facilities subject to this rule must provide to the department the information described in OAR 340-096-0080(1) and (2), and any other information required by the department to evaluate to proposed use of infiltration in soil.

(4) The department will evaluate the proposed infiltration methods to determine whether the proposed infiltration may cause likely adverse impacts to groundwater under OAR 340 Division 40.

(5) The department may approve, disapprove, restrict, require modifications to, and attach conditions to proposed infiltration methods and procedures. When approved by the department, the proposed infiltration methods and procedures, and any limitations, restrictions, and conditions required by the department as part of its approval, must be incorporated into the facility Operations Plan under OAR 340-096-0090. For "low risk" facilities exempt from OAR 340-096-0090 under OAR 340-096-0080(3)(a), any limitations, restrictions, and conditions required by the department will be incorporated into the facility Conditions of Approval under OAR 340-096-0100.

(6) As part of its approval under this rule, the department may require the facility to conduct groundwater sampling and monitoring, and submit analytical results to the department.

(7) The department may prohibit the use of infiltration to soil as a method for managing leachate or stormwater, for some or all actions, in some or all areas of a composting facility, if based on the factors in OAR 340-096-0080 and any other information available to the department, the department determines that infiltration at a facility is likely to cause an adverse impact to groundwater under OAR 340 Division 40. The department may require the facility to conduct operations on protective surfaces to prevent such impacts. Any such protective surface must comply with OAR 340-096-0130(8).

(8) Any infiltration method that is an Underground Injection Control, as defined in OAR Chapter 340, Division 44, must comply with that Division.

340-096-0130 Special Rules Pertaining to Composting: Leachate Collection Design and Management Requirements

(1) All composting facilities that collect leachate or stormwater in engineered structures must comply with this rule.

(2) If required by the department, a person proposing to construct a new composting facility that is subject to this rule must prepare and submit to the department a Facility Design and Construction Plan, stamped by a registered professional engineer, as part of the Operations Plan approval under OAR 340-096-0090. The Plan must include site layout, lining and leachate collection/management system, and stormwater and process water collection and treatment facilities.

(3) If required by the department, any person subject to this rule must submit site design and engineering plans for any new facility construction such as site modifications, compost liners/pads, closure of existing composting areas/systems, and/or other ancillary facilities.

(4) All construction subject to this rule must be performed in accordance with the approved plans and specifications, including all conditions of approval. Any amendments to those plans and specifications must be approved in writing by the department.

(5) If required by the department, prior to initiating construction, a facility subject to this rule must submit and receive written department approval of complete construction documents for the project to be constructed. The construction documents submitted must:

(a) Define the construction project team;

(b) Include construction contract documents specifying material and workmanship, and requirements to guide how the Constructor is to furnish products and execute work; and

(c) Include a Construction Quality Assurance (CQA) plan describing the measures that will be taken to monitor and ensure that the quality of materials and the work performed by the Constructor complies with project specifications and contract requirements.

(6) If required by the department, within 90 days of completing construction, a facility subject to this rule must submit to the department a Construction Certification Report, prepared by a qualified independent party, to document and certify that all required components and structures have been constructed in compliance with the permit requirements and approved design specifications. This submittal shall include "as constructed" facility plans which note any changes from the original approved plans.

(7) For a facility subject to section (6) of this rule, the facility must not accept feedstocks for storage, processing or composting in newly constructed facilities or areas until the department has accepted the Construction Certification Report. If the department does not respond in writing to the Construction Certification Report within 30 days of its receipt, the facility may accept feedstock at the facility in the newly constructed facilities or areas.

(8) Protective surface requirements. If a protective surface is required by the department under OAR 340-096-0120 for feedstock storing, mixing, grinding, or active processing areas, the surfaces must be designed to prevent release of leachate to surface water or groundwater from such areas. The surface must:

(a) Consist of at least two (2) feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-6} cm/sec or an equivalent protection of groundwater;

(b) Be capable of resisting damage from movement of mobile operating equipment and weight of stored piles;

(c) Prevent ponding; and

(d) Direct all collected leachate and stormwater to collection devices.

(9) Leachate storage design must assure collection of any leachate generated from areas of feedstock collection and preparation and active composting areas and convey the leachate to a storage basin, tank or other containment structure that has:

(a) Adequate capacity to collect and convey the amount of leachate generated. Volume calculations must be based on facility design, monthly water balance and precipitation data;

(b) A geomembrane liner or alternative design approved by the department that is equivalent to at least two (2) feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-6} cm/sec;

(c) Secondary containment for tanks used to store leachate; and

(d) Underground tanks must have a monitoring system to identify releases.

(e) If part of the site design, dikes or slopes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling or precipitation.

(10) Any leachate collection system subject to this rule must describe the methods the facility will use to beneficially reuse or properly dispose of all collected leachate.

(11) The department may approve alternative methods of compliance with this rule if the department determines that the proposed alternative methods will achieve the same level of protection. Proposed design alternatives to subsections (2) and (3) of this rule must be accompanied by engineered specifications for department review and approval.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

340-096-0140

Special Rules Pertaining to Composting: Pathogen Reduction:

(1) All composting facilities must comply with this rule, except that agricultural operations as defined by ORS 467.120(2)(a) producing composted material for on-farm use are not subject to the requirements of this rule. The department may require that an agricultural operation comply with this rule if the department determines that such compliance is necessary to protect human health or the environment.

(2) All composted material must meet the following limits:

(a) For composted material produced from Type 1 or Type 3 feedstock, or a mix of Type 1 and 3 feedstocks, analysis must be performed for salmonella or fecal coliform and meet the following limits:

(A) Salmonella analysis must result in less than 3 Most Probable Number per 4 grams of total solids (dry weight).

(B) Fecal coliform analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(b) For composted material produced from Type 1 or Type 3 feedstock with less than 50% by volume of Type 2 feedstock, analysis must be performed for salmonella or fecal coliform and meet the following limits:

(A) Salmonella analysis must result in less than 3 Most Probable Number per 4 grams of total solids (dry weight).

(B) Fecal coliform analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(c) For composted material produced from feedstock containing more than 50% volume of Type 2 feedstock in the initial pile, analysis must be performed for fecal coliform and meet the following limits:

(A) Analysis must result in less than 1,000 Most Probable Number per gram of total solids (dry weight).

(3) Methods of Pathogen Reduction. All composting facilities subject to this rule must document and implement a pathogen reduction plan that addresses requirements of the Code of Federal Regulations, 40 CFR Part 503. The plan must include a Process to Further Reduce Pathogen (PFRP), pursuant to 40 CFR Part 503 Appendix B, item (B)(1), dated February 19, 1993, that must include one of the following elements:

(a) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile must be maintained at 55 degrees Celsius or higher for three days;

(b) Using the windrow composting method, the temperature of the active compost pile must be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there must be a minimum of five turnings of the windrow; or

(c) An alternative method that permittee can demonstrate achieves an equivalent reduction of human pathogens.

(4) Testing compost for pathogen reduction. All composting facilities subject to this rule must test composted material with the following frequency:

(a) If less than 2,500 tons of composted material from Type 1 and 2 feedstocks are produced per year, testing must be conducted once a year.

(b) If more than 2,500 tons of composted material from Type 1 and 2 feedstock are produced per year, testing must be conducted every 5,000 tons of feedstock used or a maximum of once every three months.

(c) If less than 2,500 tons of composted material from Type 3 feedstocks are produced per year, testing must be conducted once every four months.

(d) If more than 2,500 tons of composted material from Type 3 are produced per year, testing must be conducted every 5,000 tons of feedstock used or monthly.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS & ORS 468.020

Stats. Implemented: ORS Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

340-096-0150

Special Rules Pertaining to Composting: Unacceptable Odors

(1) The department recognizes that the microbial metabolic activity in compost piles causes odors, and that composting facilities cannot completely eliminate all odors. All composting facilities must be designed, constructed, and operated in manner that, to the greatest extent practicable consistent with proper facility design and operation, controls and minimizes odors that are likely to cause adverse impacts outside the boundaries of the facility.

(2) The department may require a facility to prepare an Odor Minimization Plan under section (5) of this rule, and may further require the facility to modify operations and otherwise implement all reasonable and practicable measures determined necessary by the department to control and minimize adverse impacts of odors outside the boundaries of the facility. In deciding whether to require an Odor Management Plan, the department will consider the frequency, duration, strength and intensity of odors; the number and frequency of complaints; and the number of people impacted.

(3) When a composting facility receives a complaint about odor, the facility must:

(a) Contact the complainant within 24 hours to discuss the complaint;

(b) Keep a record of the complaint; the name and telephone number of the complainant, when available; the date the complaint was received; and

(c) Immediately initiate procedures at the facility as appropriate to reduce or eliminate the odor identified by the complainant; and

(d) Initiate procedures as appropriate to prevent the release of odors in the future.

(4) A facility must notify the department :

(a) If a facility receives complaints from five or more individuals about a given event, or

(b) If an odor event lasts for more than 24 hours without resolution or mitigation of the problem creating the odor event.

(5) Odor Minimization Plan. If required by the department under OAR 340-096-0090 or this rule, the compost facility must develop an Odor Minimization Plan to minimize odors. The plan must include:

(a) A management plan for malodorous loads;

(b) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problems at the facility;

(c) Additional odor-minimizing measures, which may include the following:

(A) Avoidance of anaerobic conditions in the composting material;

(B) Use of mixing for favorable composting conditions;

(C) Formation of windrow or other piles into a size and shape favorable to minimizing odors;

(D) Use of end-product compost as cover to act as a filter during early stages of composting;

(E) Specification of a readily available supply of bulking agents, additives or odor control agents;

(F) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions; and

(G) Methods for taking into consideration the following factors prior to turning or moving composted material:

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential; and

(v) Degree of maturity.

Stat. Auth.: ORS 468, ORS 468A.010 & ORS 468A.025 Stats. Implemented: ORS 468A.010 & ORS 468A.025

Hist.: DEQ 2-2001, f. & cert. ef. 2-5-01

**The Oregon Administrative Rules contain OARs filed through May 15,
2009**

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 97

SOLID WASTE: PERMIT FEES

340-097-0110

Solid Waste Permit and Disposal Fees

- (1) Each person required to have a Solid Waste Disposal Permit ~~shall~~is be subject to the following fees:
 - (a) An application processing fee for new facilities which ~~shall~~must be submitted with the application for a new permit ~~or registration~~ as specified in OAR 340-097-0120(2);
 - (b) A solid waste permit ~~or registration~~ compliance fee as listed in OAR 340-097-0120(3); and
 - (c) The 1991 Recycling Act permit fee as listed in OAR 340-097-0120(4).
- (2) Each disposal site receiving domestic solid waste ~~shall~~will be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-097-0120(5).
- (3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state ~~shall~~must pay a per-ton solid waste disposal fee as specified in OAR 340-097-0120(5).
- (4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-097-0120(5):
 - (a) For purposes of this rule and OAR 340-097-0120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

(A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;

(B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;

(C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;

(D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or

(E) A person who transports infectious waste.

(b) Notification requirement:

(A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person ~~shall~~must notify the ~~D~~department in writing on a form provided by the ~~D~~department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement;

(B) The notification ~~shall~~must include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person ~~shall~~must re-notify the ~~D~~department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.

(c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.

(5) Fees. The solid waste permit ~~or registration~~-compliance fee must be paid for each year a disposal site is in operation or under permit. The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:

(a) New sites:

(A) Any new disposal site ~~shall~~will owe a solid waste permit ~~or registration~~-compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (C) or (D) of this rule;

(B) For a new disposal site receiving less than 1,000 tons of solid waste a year. For the first year's operation, the entire permit compliance fee ~~shall~~will apply if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 ~~shall~~will not owe a permit compliance fee until the following January

31. An application for a new disposal site receiving less than 1,000 tons of solid waste a year ~~shall~~must include the applicable permit compliance fee for the first year of operation;

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities ~~shall~~will owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) For a new transfer station, material recovery facility or composting facility. For the first fiscal year's operation, the entire permit compliance fee ~~shall~~will apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 ~~shall~~will not owe a permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station, material recovery facility or composting facility ~~shall~~must include the applicable permit ~~or registration~~ compliance fee for the first year of operation.

(b) Existing permitted sites. Any existing disposal site that is in operation, is permitted to receive or receives solid waste in a calendar year must pay the solid waste permit ~~or registration~~ compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-097-0120(3)(a), (b), (c) and (4). A facility ~~shall~~will be deemed to be an "existing permitted site" from the time of permit issuance;

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee ~~shall~~must pay the solid waste permit ~~or registration~~ compliance fee for the "year of closure" as specified in OAR 340-097-0120(3)(d)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee ~~shall~~must pay the solid waste permit compliance fee for closed sites as specified in OAR 340-097-0120(3)(d);

(d) The Director may alter the due date for the solid waste permit ~~or registration~~ compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. The permit ~~or registration~~ compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, ~~shall~~must be submitted together with a form approved by the Department. Information reported ~~shall~~must include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnage. Permittees and registrants are responsible for accurate calculation of solid waste tonnage. For purposes of determining appropriate fees under OAR 340-097-0120(3) through (5), annual tonnage of solid waste received shall must be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including construction and demolition sites and municipal solid waste composting facilities, receiving 50,000 or more tons annually shall must be based on weight from certified scales. When certified scales are required, all solid waste received at the facility for disposal shall must be weighed at the facility's scales, except as otherwise approved by the Department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility shall must either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required, estimated annual tonnage for municipal solid waste, including that at municipal solid waste composting facilities will be based upon 300 pounds per cubic yard of uncompacted waste received, and 700 pounds per cubic yard of compacted waste received. If yardage is not known, the solid waste facility may use one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall must be used;

(b) Industrial facilities. Annual tonnage of solid waste received at industrial facilities receiving 50,000 or more tons annually shall must be based on weight from certified scales. When certified scales are required, all solid waste received at the facility shall must be weighed at the facility's scales, except as otherwise approved by the Department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility shall must either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required, industrial sites shall must use the following conversion factors to determine tonnage of solid waste disposed. Composting facilities shall must use the following conversion factors for those materials appropriate for composting:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste:

(i) Wood waste, mixed, including log sort waste (as defined in OAR 340-093-0030(94)): 1,200 pounds per cubic yard;

(ii) Wood waste including scrap lumber, pallets, wood from construction and demolition activities: 250 pounds per cubic yard;

(iii) Wood chips, green: 473 pounds per cubic yard;

~~(iii)~~ (iv) Wood chips, dry: 243 pounds per cubic yard;

~~(iv)~~ (v) Sawdust, wet: 530 pounds per cubic yard;

(vi) Sawdust, bone dry: 275 pounds per cubic yard.

(E) Yard debris:

(i) Grass clippings: 950 pounds per cubic yard;

(ii) Leaves: 375 pounds per cubic yard;

(iii) Compacted yard debris: 640 pounds per cubic yard; and

(iv) Uncompacted yard debris: 250 pounds per cubic yard.

(F) ~~Food waste, manure, sludge, septage, grits, screenings and other wet wastes:~~ 1,600 pounds per cubic yard;

(G) Food waste: 700 pounds per cubic yard

(GH) Ash and slag: 2,000 pounds per cubic yard;

(HI) Contaminated soils: 2,400 pounds per cubic yard;

(IJ) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

(JK) For wastes other than the above, the permittee or registrant shall ~~shall~~ must determine the density of the wastes subject to approval by the ~~D~~department in writing;

(KL) As an alternative to the above conversion factors, the permittee or registrant may determine the density of their own waste, subject to approval by the ~~D~~department in writing.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the ~~D~~department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The ~~D~~department determines that no permit ~~or registration~~ will be required;

(b) The applicant withdraws the application before the ~~D~~department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the ~~D~~department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils ~~shall~~will be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466; and

(B) The ~~D~~department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the ~~D~~department for oversight of the cleanup and for processing of the Letter Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) All fees shall be made payable to the Department of Environmental Quality.

(11) Submittal schedule:

(a) The solid waste permit ~~or registration~~ compliance fee ~~shall~~will be billed by the ~~D~~department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period ~~shall~~ be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee ~~shall~~will be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (11)(a) of this rule, the solid waste permit ~~or registration~~ compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the ~~D~~department. These fees ~~shall~~must be self-reported by the permittee to the ~~D~~department, pursuant to sections (5) and (6) of this rule. The fee period ~~shall~~will be either the calendar quarter or the calendar year, and the fees are due to the ~~D~~department as follows:

(A) For municipal solid waste disposal sites (including incinerators and energy recovery facilities) and construction and demolition landfills: on the same schedule as specified in subsection (11)(c) of this rule;

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: annually, on the 31st day of January beginning on January 31, 1995;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnage and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year.

(d) The fees on Oregon solid waste disposed of out of state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-097-0120(5)(e)(C). The fees ~~shall~~ must be submitted together with a form approved by the Department, which ~~shall~~ must include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS 459.045, ORS 459.235, ORS 459.236, ORS 459A.025, ORS 459A.110, ORS 459A.115 & ORS 468.065

Stats. Implemented: ORS 459.235, ORS 459.236, ORS 459A.110 & ORS 459A.115

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0115; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

340-097-0120

Permit/Registration Categories and Fee Schedule

(1) For purposes of OAR Chapter 340, Division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial facility";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. Except as provided in sections (3), (4), and (5) of this rule with respect to composting facilities, An application processing fee shall must be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-093-0090. The amount of the fee ~~shall~~ will depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: \$10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000.

(b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: \$500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200;

(C) Receiving less than 10,000 tons of solid waste per year: \$100.

(d) Letter Authorization (pursuant to OAR 340-093-0060):

(A) New site: \$500;

(B) Renewal: \$500.

~~(e) A new composting facility (pursuant to OAR 340-096-0024):~~

~~(A) Composting facility registration: \$100;~~

~~(B) Composting facility general permit: \$500;~~

~~(C) Composting facility full permit. For facilities utilizing feedstocks for composting:~~

~~(i) Over 20 tons and less than or equal to 7,500 tons per year: \$1,000;~~

~~(ii) More than 7,500 tons per year: \$5,000.~~

~~(e) Permit Exemption Determination (pursuant to OAR 340-093-0080(2)): \$500.~~

(3) Composting Facility Screening Fee. Every composting facility that is required to comply with OAR 340-096-0080: Screening must pay a screening fee of \$150. The fee must be submitted with the application for screening, as provided in OAR 340-096-0080(1).

(4) Composting Facility Plan Review and Approval Fee. Every composting facility that is required to comply with OAR 340-096-0090: Operations Plan Approval must pay a fee as provided below. The fee must be submitted with the proposed Operations Plan, as provided in OAR 340-096-0090(1). Agricultural composting facilities for which the Oregon Department of Agriculture is providing facility plan review and approval are not required to pay this fee.

(a) For facilities composting over 100 tons and less than or equal to 3,500 tons of feedstocks per year: \$500;

(b) For facilities composting over 3,500 tons and less than or equal to 7,500 of feedstocks tons per year: \$750;

(c) For facilities composting over 7,500 tons and less than or equal to 10,000 tons per year: \$1000;

(d) For facilities composting over 10,000 tons and less than or equal to 50,000 tons per year: \$2,000;

(e) For facilities composting over 50,000 tons per year: \$5,000.

(5) Composting Facility Engineering Review Fee. Every composting facility that requires department review of engineering plans and specifications under OAR 340-096-0130 must pay a fee of \$500. This fee is in addition to the fee required by (4) of this rule. Agricultural composting facilities for which the Oregon Department of Agriculture provides review of engineering plans and specifications are not required to pay this fee.

(6) ~~Solid Waste Permit and Registration Compliance Fee.~~ The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the Department may use the base per-ton ~~rates,~~ rates or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee ~~shall~~ must pay only the highest fee):

(a) All facilities accepting or permitted to accept solid waste except transfer stations, material recovery facilities and composting facilities:

(A) \$200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, construction and demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: \$.21 per ton;

(ii) Captive industrial facilities: \$.21 per ton;

(iii) Energy recovery facilities. \$.13 per ton.

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: \$1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: \$500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: \$50.

(c) Composting facilities with a Composting Permit, except agricultural composting facilities for which the Oregon Department of Agriculture is providing facility oversight:

~~(A) Facilities with a registration: \$100;~~

~~(B) Facilities with a general permit:~~

~~(i) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;~~

~~(ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,000;~~

~~(iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: \$500.~~

~~(C) Facilities with a full permit:~~

~~(i)(A) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;~~

~~(ii)(B) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,500 \$1,000~~

~~(iii)(C) Utilizing over 3,500 and less than or equal to 7,500 tons of feedstocks for composting per year: \$500.~~

(D) Utilizing over 100 tons and less than or equal to 3,500 tons of feedstocks for composting per year: \$100.

(d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department ~~shall~~will determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection;

(B) Each land disposal site which closes after July 1, 1984: \$150; or the average tonnage of solid waste received in the three most active years of site operation multiplied by \$.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed \$2,500.

(7) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee ~~shall~~must be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit

fee as \$.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The \$.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(8) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-097-0110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

(a) A per-ton fee of 50 cents;

(b) An additional per-ton fee of 31 cents;

(c) Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account;

(d) Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on January 31. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fees shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) As used in this rule and in OAR 340-097-0110, the term "domestic solid waste" does not include source separated recyclable material, or material recovered at the disposal site;

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil ~~shall~~will not be subject to the per-ton solid waste fees in this section, provided that:

(A) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;

(B) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final approval from the ~~Department~~ department for use as daily cover; and

(C) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

(g) For solid waste delivered to disposal facilities owned or operated by a Metropolitan Service District, the fees established in this section ~~shall~~will be levied on the district, not on the disposal site.

Stat. Auth.: ORS 459.045, ORS 459.235 & ORS 468.065

Stats. Implemented: ORS 459.235, ORS 459.236, ORS 459A.110 & ORS 459A.115

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

Summary of Public Comment and Agency Response

Title of Rulemaking: Composting Facility Rulemaking

Prepared by: Charles Landman

Date: June 30, 2009

Comment period

The public comment period opened April 1, 2009 and closed April 30, 2009. DEQ held public hearings April 23 in Eugene, where eleven people attended and no one testified; April 28 in Bend, where nine people attended and two testified; and April 28th in Portland where five people attended and three people testified. Nineteen people submitted written comments for a total of twenty-four commenters.

Organization of comments and responses

Summaries of individual comments and DEQ's responses are provided below. The persons who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.

<i>Summary of Comments and Agency Responses</i>	
<i>Comment 1</i>	Support proposed 100 ton exemption, important for small farms. Would prefer that it be larger, perhaps 200 tons. (1)
<i>Response</i>	<i>The proposed 100 ton exemption is based on DEQ's determination that composting operations below that size are unlikely to cause significant environmental problems. Many composting facilities above that size may not cause environmental problems, in which case the screening provided for in the rules will allow those facilities an easy path through the regulatory process.</i>
<i>Comment 2</i>	Allow farms that have multiple composting facilities to count them as separate facilities. (1)
<i>Response</i>	<i>Individual composting facilities are regulated independently as separate facilities, whether or not they are owned and operated by the same person or entity. DEQ will consider the degree of physical separation and possibility of additive or cumulative impacts in determining whether multiple composting sites on the same farm are separate facilities for purposes of the proposed rules.</i>
<i>Comment 3</i>	Small farm operations want to do the right thing environmentally. DEQ's regulatory efforts would be better spent on larger composting operations. (1)
<i>Response</i>	<i>The proposed rules are designed so that DEQ can easily identify facilities that are not causing or likely to cause environmental problems. Once that initial screening has been completed, DEQ will focus its efforts on facilities that are likely to cause environmental problems, whether they are agricultural or commercial operations.</i>

Comment 4	Unfair to those farmers who are composting; they come under the rules but those who let piles of manure sit are not subject to the rules. These manure piles are a greater threat to the environment than composting operations.(1)(2)
Response	<i>The proposed rules, as with the existing rules, address facilities that are actively composting. Other facilities that store solid waste but do not produce compost are not covered by the rules. Such facilities are subject to DEQ's general solid waste authorities and, if they are agricultural, may be subject to the water quality authorities of the Oregon Department of Agriculture).</i>
Comment 5	Support the case-by-case approach of the rules. (3)
Response	<i>No response required.</i>
Comment 6	Support \$150 screening fee because is good for 10 years. (3)
Response	<i>No response required.</i>
Comment 7	Fees and fear of regulation may cause many farmers to "fly under the radar." (3)
Response	<i>DEQ appreciates the concern of farmers and will work with ODA and OSU Extension service to provide outreach to agricultural composters.</i>
Comment 8	Need a compost facility near Portland where all residents and business can compost food scraps, etc. with ease. Make it easier for composters to start up. (4)
Response	<i>DEQ supports composting and has been discussing this matter with the city of Portland and Metro. It appears that the most significant roadblocks to siting a food waste composting facility near Portland are land use issues, not DEQ regulatory issues.</i>
Comment 9	Will require significant financial investment to meet the 1200 CP requirements. (5)
Response	<i>The proposed rules do not include the 1200 CP permit that was proposed in an earlier version.</i>
Comment 10	Requiring an impervious surface may have negative impacts on nursery operators. (5)
Response	<i>The proposed rules do not require that all composting be conducted on an impervious surface. Some facilities may have such a requirement, to protect groundwater, but the decisions will be made on a site-specific basis.</i>
Comment 11	Would like to offer grinding services to nurseries, but it may not be affordable for some nurseries. (5)
Response	<i>The proposed rules don't address this issue, other than that any grinding at a composting facility must not cause dust, noise, or other problems. Please note that grinding a large enough volume of wood or other waste may trigger the need for an AQ permit.</i>

Comment 12	Would like to offer drop box services to nurseries, but Clackamas County code requires hauling at no cost for the service. (5)
Response	<i>The proposed rules will not affect local government regulations. Suggest this to the county.</i>
Comment 13	Provide low cost loans to assist with compliance developments. (5)
Response	<i>DEQ does not have financial resources available or a program in place for such loans. The Oregon Economic and Community Development Department may be able to assist with loans for qualifying facilities.</i>
Comment 14	Assist composters that help nursery industry in getting environmental tax credits. (5)
Response	<i>The pollution control tax credit program sunset in 2007. DEQ ceased accepting tax credit applications December 31, 2008. DEQ is not aware of other environmental tax programs that may apply to composting facilities.</i>
Comment 15	Glad rules are being implemented. Believe they are necessary to ensure the health of our environment, rivers, water table. (6)
Response	<i>No response necessary.</i>
Comment 16	ODA will use DEQ criteria to review plans from CAFOs. Believe CAFO program will meet the goals of the rules. (7)
Response	<i>DEQ looks forward to continued collaboration with ODA on ODA-regulated facilities that include composting operations.</i>
Comment 17	ODA has authority to regulate water pollution from agricultural activities. May in the future enter into an agreement for implementation of composting rules for agricultural operations. (7)
Response	<i>DEQ looks forward to opportunities to work with ODA in the future to implement the composting rules.</i>
Comment 18	093-0030(31) definition of "disposal site" exempts facilities subject to the permit requirements of ORS 468B.050. 093-0050 has a similar exemption. Are permitted CAFO sites disposal sites? (7) Similar comment and question with respect to wastewater treatment plants and biosolids. (15)
Response	<i>All facilities that meet the definition of "disposal site" are disposal sites, and disposal sites that discharge stormwater under a DEQ-issued permit continue to be disposal sites. Whether such facilities also require a solid waste permit, such as a composting permit, depends upon the particular circumstances at each facility. To the extent a facility's operations are included in and regulated by a stormwater permit, that portion of the facility operations would not require a solid waste permit, although such operations must meet all substantive requirements of the relevant solid waste rules. To the extent a facility's operations are not covered by the stormwater permit, the facility</i>

	<i>must have the appropriate solid waste permit for that portion of its operations. Stormwater permits do not address many aspects of a composting operation, including management and discharge of leachate, protection of groundwater, prevention of odors, pathogen reduction and others. Those aspects of the facility would require a composting permit under the proposed rules.</i>
Comment 19	Technical and stylistic comments (7)
Response	<i>DEQ will review and make changes as appropriate.</i>
Comment 20	Delete 340-096-0140(5). ODA does not have requirements for composting animal mortality. (7)
Response	<i>Agreed.</i>
Comment 21	Need to reduce organic component of waste to meet recovery goals. (8)
Response	<i>Agreed.</i>
Comment 22	Establish a better balance between soil quality and water quality in the rules. Rules protect water but increase costs for composters, which may cause less composting, hurting soil quality. (8)
Response	<i>DEQ designed the proposed rules to focus on composting facilities that are now, or have the likelihood of, causing environmental problems, particularly water quality problems. Only those facilities that are or might cause problems will be required to make changes. All others will continue to operate as they do now. In addition, the rules provide flexibility for operators to implement the most cost-effective solutions for each facility. DEQ designed the rules with features to provide opportunities to address current problems and avoid future environmental problems while allowing the composting industry to grow. DEQ understands that responsible environmental management and good business practices go hand in hand. DEQ cannot avoid responding to facilities that are or likely to cause significant water quality or other environmental problems.</i>
Comment 23	Concern about cost of compliance. Make adoption of rules contingent on DEQ or Metro grants to cover cost of upgrades for composters. DEQ should designate waste reduction grants for composters. (8)
Response	<i>The costs of compliance for any particular facility will depend upon the nature of the environmental problems, if any that are currently being caused or are likely to be caused in the future, by the facility. These will likely vary widely depending upon the location of the facility, the current condition of the facility, its nature of operation, etc. DEQ will work with all facilities to find reasonable and cost effective solutions for any environmental problems. However, DEQ cannot delay responding to facilities that are or likely to cause significant environmental problems.</i>

	<i>Upgrade costs may be eligible for a DEQ Solid Waste Recycling grant but must be applied for through a partnership with a local government or non-profit eligible to receive the funds. Grants are awarded on a competitive basis and the DEQ's grant funding is limited. Note that Solid Waste Recycling grants cannot be used to bring a facility into compliance with a permit or rule requirements.</i>
Comment 24	Raise the tonnage figure for screening from proposed 100 tons to 250 tons. Small composters under 250 tons should be exempt because land use regulations can be a hurdle that many potential composters have not been able to overcome. (8)
Response	<i>See response to Comment 1.</i>
Comment 25	Sponsor research on low-cost ways to compost without having runoff that could damage water quality. Based on the research, select some standard designs that could be used to screen out composters. (8)
Response	<i>This is a good idea, but in many cases, a design that is good for one facility might not necessarily be a good match for a different operation, in a different location, with different feedstocks, using different methods. DEQ will review the results of the initial risk screenings to see if there are some commonly used composting facility designs that we could highlight for existing or proposed operators.</i>
Comment 26	Change wording of 096-0080(1)(F) to require more research into future water use, such as wells proposed but not yet constructed. (9)
Response	<i>Good suggestion. DEQ will consider how to implement this idea through changes to the rules or the Screening Internal Management Directive.</i>
Comment 27	Wind is local and variable. Amend 096-0080(1)(H) to require more research on the wind history at the specific site. (9)
Response	<i>Good suggestion. DEQ will consider how to implement this idea through changes to the rules or the Screening Internal Management Directive.</i>
Comment 28	Commenter's odor problems with PRC facility . (9)
Response	<i>DEQ regional staff will follow up on this problem.</i>
Comment 29	Look at more than just prevailing wind. (9)
Response	<i>Good suggestion. DEQ will consider how to implement this idea through changes to the rules or the Screening Internal Management Directive.</i>
Comment 30	096-0150(3)(a) requirement of a 24 hour response: if a complaint is made at 5 p.m. Saturday , must the response call be by 5 p.m. Sunday? (9)
Response	<i>Yes. However, if a complaint is received on a day the facility is not operating and no personnel are on-site, the facility operator must contact the complainant as quickly as possible on the first day back in operation.</i>

Comment 31	096-0150 (3)(c): how quick is immediately? (9)
Response	<i>Immediately means as soon as possible to identify if an odor problem is occurring and to take steps to reduce or eliminate the problem. Normally problem identification should be initiated as soon as the complaint is received. This is the first step. If an odor problem is identified, then the facility should formulate a plan and implement it to minimize the odor. DEQ expects actions to be taken once the permittee is aware of the complaint and have formulated a plan to correct it.</i>
Comment 32	096-0150(3)(d): supports this rule, requires a response to problems. (9)
Response	<i>No response required.</i>
Comment 33	096-0150(4): what if significant odor events but there are fewer than five people complaining? Would prefer some scientific or quantitative measurement, perhaps two odor events lasting more than four hours would need to be reported to DEQ. (9)
Response	<i>DEQ agrees that a more realistic and quantifiable approach would be to focus on the length of time of the event and length of time for resolution and not on the number of complainants. DEQ will consider changing this section to address these concerns.</i>
Comment 34	096-0150(5): does "load" refer to a load on a truck or a stockpile? (9)
Response	<i>Load refers to malodorous incoming vehicle loads, such as springtime deliveries of ripe grass clippings or loads of days-old, vegetative waste. These loads can be a significant source of facility odor, which, can appropriately managed to control the odor.</i>
Comment 35	Do the rules provide any recourse for noise that begins at 4 a.m. and goes on all day long? (9)
Response	<i>Noise issues are generally not addressed as part of a solid waste permit, including a composting facility permit. Noise issues are generally addressed by local government ordinances, and many local governments have requirements for hours of operation. DEQ suggests checking with the local government code enforcement officer for noise concerns about a specific facility.</i>
Comment 36	Not sure where a proposed surface water pond would fit in the rules. (9)
Response	<i>Where a proposed surface water pond fits in the rules or in the screening process would depend on the answer to the following questions, among others:</i> <ol style="list-style-type: none"> <i>1) Is the proposed pond intended to be part of the composting facility? That is, will the proposed pond be receiving clean water, stormwater, or wastewater (i.e., leachate)?</i> <i>2) Does the pond have a discharge point?</i> <i>3) If there is no discharge point and the proposed pond will receive</i>

	<p><i>leachate, will the pond pose a potentially significant impact on groundwater beneficial uses in the vicinity of the pond?</i></p> <p><i>Ponds containing clean water only (e.g., a stream feeds the pond and no leachate mixes with the pond water) and has a discharge point, DEQ will evaluate the potential for leachate to reach the pond and/or surface water resources receiving water from the pond. Stormwater detention ponds receiving no leachate will be evaluated similarly, but if there is a discharge point, it may require a separate DEQ stormwater permit. If there is no discharge point and the proposed pond will receive leachate, DEQ will evaluate whether the pond could pose a potentially significant impact on groundwater beneficial uses in the vicinity of the pond.</i></p> <p><i>A proposed surface water pond may require an NPDES or water pollution control permit and/or Oregon Division of State Lands and US Army Corps of Engineers permits. DEQ solid waste staff may be able to advise an applicant on options available and regulatory requirements that may apply to a surface water pond.</i></p>
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Comment 37	Two typos. (10)
Response	<i>Agreed, they will be corrected in the final rules.</i>

Comment 38	Support general approach of rules providing flexible, case by case approach with same standards for agricultural and commercial composters. (11)
Response	<i>No response required.</i>

Comment 39	Does DEQ have resources to implement the rules? If not, consider entering into agreements with agencies like Metro that already conduct frequent inspections. (11)
Response	<i>The proposed rules are designed to provide a more efficient and focused regulatory program for DEQ and composting facilities. After the initial risk screening and plan approval steps, DEQ anticipates that a good portion of facilities will need much less regulatory oversight, allowing DEQ to assist the other facilities with measures necessary to meet their environmental responsibilities. DEQ agrees that coordination with local governments is needed to best utilize limited resources. DEQ inspectors often are able to best address environmental impacts that affect water, air or land in ways that a local government may not be able to. DEQ inspectors do work closely with Metro staff or other local government code officers where jurisdictions overlap.</i>

Comment 40	There are no enforcement mechanisms or penalties associated with the rules. How will DEQ ensure compliance? (11)
Response	<i>DEQ will rely on a combination of technical assistance, informal enforcement, and, if necessary, civil penalties to assure that composting facilities meet their environmental obligations. DEQ's Division 12 civil</i>

	<i>penalty rules apply to composting facilities and DEQ revised those rules as part of this rulemaking to specifically address composting facilities.</i>
Comment 41	093-0030(19) uses the terms “organic material” but the term is not defined. (11)
Response	<i>The proposed rules will be revised to use the term “feedstocks” rather than “organic material.” See also the response to Comment 61.</i>
Comment 42	96-0060 exempts certain facilities from screening and permitting. How will DEQ know those facilities are meeting the performance standards? (11)
Response	<i>The facilities exempt under OAR 340-096-0060(3)(a) are facilities that DEQ believes have a low potential to cause environmental harm. DEQ will rely on information gathered from other sources (e.g. ODA visits) and complaints to assess these facilities. If DEQ determines an otherwise exempt facility might adversely affect human health and the environment, DEQ may require the facility go through screening and permitting.</i>
Comment 43	The mention of home composting in the exemptions is confusing. It makes it seem as though home composters must also meet performance standards. (11)
Response	<i>Home composting facilities are exempt from screening and permitting, unless DEQ determines the site may cause environmental problem. However, home composting facilities must meet the same environmental protection standards as all other composting facilities.</i>
Comment 44	How will DEQ ensure access to sites for inspections? Doesn’t seem to be provided for in the rules. How will DEQ access sites that do not have permits? (11)
Response	<i>Providing access to DEQ for inspections will be a condition of all registrations and permits. For the composting operations that are exempt from registration and permit requirements, DEQ will use its general statutory access authority in ORS 465.385.</i>
Comment 45	96-0080(1)(b)(D) should refer directly to the actual pathogen reduction requirements in 096-0140. (11)
Response	<i>The purpose of this requirement in the screening section is for the operator of a facility that is subject to those requirements, and not all facilities are, to tell DEQ how that operator will meet the pathogen reduction requirements. The performance standards for facilities subject to the requirement point directly to the pathogen reduction rule, 096-0140.</i>
Comment 46	096-0080(3)(a) is confusing. Will DEQ determine which performance standards a facility must meet? (11)
Response	<i>All composting facilities, including all facilities determined to be low risk, must meet all of the performance standards. 096-0080(3)(a) is intended to refer to any measures the facility may propose (e.g., only seasonal</i>

	<i>composting; moving the location every year) to meet the performance standards. These approval conditions would become part of the registration. DEQ will consider revising this section to make the meaning clear.</i>
Comment 47	In 096-0090, recommend that DEQ add requirements to report the source of feedstocks. (11)
Response	<i>At this time, DEQ does not see any reason to require this information.</i>
Comment 48	Has DEQ considered some degree of end product testing or standards in addition to pathogen reduction? High levels of nutrients, salts, etc. could affect soil and water quality where the finished compost is used. (11)
Response	<i>DEQ's advisory group considered the issue of standards and decided that DEQ should not require that finished compost be required to meet any particular standards, in part because there is such a variety of compost products being produced. However, nothing in the proposed rules would prevent operators from testing their products and making that information available to consumers.</i>
Comment 49	096-0140: why are agricultural operators exempt from pathogen reduction rules? Does not seem to create a level playing field. Agricultural operations compost manure and materials that produce fecal coliform and salmonella that can easily be transmitted to humans. Pathogen reduction should be required for all composting operators. (11)
Response	<i>The rule provides that only agricultural operations producing compost for on-farm use are exempt from the pathogen reduction requirements. The use of finished compost on farmland does not expose the public to potential human pathogens, and DEQ understands that such pathogens rather quickly expire after compost is applied into the environment.</i>
Comment 50	096-0140: why test for fecal coliform or salmonella and not both? (11)
Response	<i>Pathogens are disease causing organisms including, bacteria, viruses, fungi, helminths, and protozoa that may be present in raw wastes or by-products. Plant, animal and human pathogens are found in living organisms and are present at some background levels in the environment. Therefore, the composting process must eliminate or reduce pathogens to a level that is below the threshold where the danger of transmitting diseases will occur. Testing finished compost for the presence of an indicator pathogen, such as fecal coliform or salmonella, is an effective means to demonstrate pathogen reduction. The presence of either fecal coliform or salmonella is a good indication of pathogen destruction and it is not necessary to test for both. Laboratory analytical capabilities may be the limiting factor in the type of test conducted.</i>
Comment 51	096-0140: why must facilities that accept more than 50 percent manure as initial feedstock only test for fecal coliform not salmonella as well? (11)
Response	<i>Fecal coliform occurs in large numbers in animal manures and salmonella to</i>

	<i>a much lesser degree. Testing for the presence of fecal coliform in compost produced from animal manures is a good indicator of the level of pathogen reduction.</i>
Comment 52	096-0140 (5) seems arbitrary. Why don't these facilities have to meet the same requirements as others? And what are the ODA requirements? (11)
Response	<i>This section was unclear, but was intended to require that such facilities meet ODA animal mortality requirements in addition to all other requirements of the pathogen reduction rule. However, because ODA has no animal mortality requirements (see Comment 20), DEQ is proposing to delete this section from the final rule.</i>
Comment 53	096-0150(1): revise paragraph, does not make sense as written. (11)(12)
Response	<i>Agree the sentence is confusing. It will be rewritten in the final rules. TDEQ recognizes that compost piles will always produce odor due to the metabolic activity of compost microorganisms. While odor cannot be eliminated, the amount of odor can be controlled through proper facility design and operation. Therefore, all composting facilities must be designed, constructed, and operated in a manner that minimizes odors that are likely to cause adverse impacts outside the boundaries of the facility.</i>
Comment 54	State should discuss whether it makes sense to continue categorizing composting facilities as solid waste disposal sites. Important for how we view composting and in light of state's climate change initiatives. (11)
Response	<i>DEQ agrees that composting reuses valuable resources and that the terminology "solid waste disposal site" is not a good fit. However, our existing statutory structure and authority are all tied to that definition. Changing those would require a change in the underlying statutes.</i>
Comment 55	In pathogen reduction rule, in the federal rule, Class A biosolids must meet only one of the requirements, so why must composters meet both? (12)
Response	<i>Assuming this comment refers to 096-0140(3) Methods of Pathogen Reduction, the last sentence of this section should read: "The plan must include a Process to Further Reduce Pathogen (PFRP), pursuant to 40 CFR Part 503 Appendix B, item(B)(1), dated February 19, 1993, that must include, at minimum <i>one of the following element. Composters must meet one or the other unless they take > 50 percent Type 2, in which case they must meet fecal coliform criteria. DEQ will make the change in the proposed rules.</i></i>
Comment 56	Suggest adding more detail on windrow turning to meet pathogen reduction from White House Document dealing with biosolids. (12)
Response	<i>DEQ staff will provide operational technical assistance to permittees. The guidance document referenced can be made available.</i>
Comment 57	Strongly object to proposed change to not regulate facilities composting less than 20 tons/year of meat waste or animal carcasses. Creates numerous

	environmental problems. DEQ should protect everybody. ODA will not control the piles of dead carcasses. (13)
Response	<i>All facilities that are Confined Animal Feeding Operations, including the facility referred to in the comment, are permitted and regulated by ODA. DEQ has referred this matter to ODA. Facilities that compost animal mortality that are not regulated by ODA will be regulated by DEQ. All facilities that compost over 100 tons of feedstock (and 20 tons of animal mortality and other Type III feedstocks) per year will go through the screening and permitting processes. Smaller facilities must still meet all of the environmental performance measures, and may be inspected and regulated by DEQ if DEQ receives complaints or learns through other sources that a facility may not be meeting its environmental obligations.</i>
Comment 58	096-0140(4)(c) is not practical. Testing should occur prior to application and/or removal from the site. Multiple testing of the same product would be redundant. Once pathogen reduction is accomplished and verified thorough testing, subsequent testing should not be necessary. (14)
Response	<i>DEQ expects new, finished compost to be tested. The four month standard is for new composted material, not for material already tested. If no new composted material is produced, then no tests are necessary.</i>
Comment 59	The exemption from the definition of solid waste in 093-0030(81)(b) should clearly reflect existing DEQ policy that materials are exempt when they are applied, but not during collection and processing, as was proposed in the earlier version of the rules. (15) (16)
Response	<i>DEQ will continue to interpret and apply this rule and the underlying statute as we have in the past. However, we are not proposing to amend the rule at this time.</i>
Comment 60	Definitions of “solid waste”, “feedstock”, “composting” and “disposal site” need to be consistent with each other and with 093-0050. Use of “organic material” in the definition of composting is problematic. (15)
Response	<i>The definition of “disposal site” in the proposed rules includes composting facilities. The rules assume that composting facilities compost solid wastes; however, we recognize the rules aren’t specific on that issue. We will adjust the definitions of “feedstock”, “composting”, and “composting facility” to make that clear, and to be consistent with each other.</i>
Comment 61	How would the proposed rules address leaves that are stored until spring and then applied as a soil amendment? How does DEQ policy on storage and speculative accumulation fit with the proposed rules? Suggest creating an additional section of Div 96 that addresses storage of feedstocks. (15)
Response	<i>The proposed rules, as with the existing rules, address facilities that are actively composting. Other facilities that store solid waste but do not produce compost are not covered by the rules. Such facilities are subject to DEQ’s general solid waste authorities, including DEQ’s policy on storage and</i>

	<i>speculative accumulation. If such facilities are agricultural, they also may be subject to the water quality authorities of the Oregon Department of Agriculture. At this time, DEQ is not proposing to adopt additional rules related to facilities that store but do not compost solid wastes.</i>
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Comment 62	See site-specific flexibility as both an advantage and a potential problem. Industry is used to standards and measurable goals that are the same wherever a facility is built. Could result in uneven regulation of similar facilities, creating competitive disadvantages. (16)
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Response	<i>The goal of these rules is to require that a particular facility implement measures or take other actions only as required to address the environmental conditions at that particular facility. The rules require that all facilities meet the same environmental protection standards, regardless of where a facility may be located. All similarly situated facilities will be treated the same. So for example, facilities that pose similar threats to surface water based on factors such as annual rainfall, proximity to streams, etc. will be required to address those concerns. But the rules specifically acknowledge that not all applicants are the same. A facility in a different location, for example one with much less rainfall, or located much farther from a water body, will present a different set of environmental conditions. DEQ sees no reason to require measures or actions at facilities that do not present environmental risks, or to require the same measures from facilities that present different risks, or that may be able to adopt different solutions. See also response to comments 67, 71, and 72.</i>
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Comment 63	Terms used in Div 96 such as “likely to discharge”, “potential adverse impact”, etc. are vague and make it hard for business to make investment decisions. Concerned that regulations will be based on subjective judgment of DEQ staff reviewing the site, which could create inconsistencies. How will DEQ insure consistency in the screening process? (16)
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Response	<i>The proposed rules are designed with the expectation that a person proposing to construct a new composting facility or make significant changes to an existing composting facility will meet with DEQ before making any significant investment decisions. For new facilities, DEQ will use its screening tools to evaluate a proposed location or locations, discuss potential environmental concerns with the facility developer, and review and approve a proposed facility plan. This can all occur before any significant investment decisions are made and, if the developer engages DEQ early on, can even occur before a developer selects a final location for the facility. This is not very different from DEQ’s current procedure, and will provide certainty to the developer that the design, construction, and operation of the facility will meet the operator’s environmental responsibilities.</i> <i>DEQ would expect that any significant modifications to an existing facility would go through the same process: the facility operator would meet with</i>
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	<i>DEQ to discuss the proposed changes, and work with DEQ staff on design and any plan and/or permit modifications before the operator made any significant investment decisions.</i>
Comment 64	Facility A is currently operating a composting facility. How would the rules affect that facility today? Will Facility A be screened and by whom? At what point will Facility A know what it needs to do to comply with the rule, in particular surface water, ground water and odor issues? (16)
Response	<i>The proposed rules provide that all existing facilities must submit screening information to DEQ within 180 days of the effective date of the rules. Assuming the rules are effective about September 1, 2009, screening information would be due to DEQ March 1, 2010. DEQ will then screen the facilities. DEQ intends to conduct the screening using a panel that includes a hydrogeologist and a solid waste staff person from each DEQ regional office. This panel will screen all facilities statewide to insure consistency. At the conclusion of the screening process, DEQ will make a determination about current and potential environmental risks at a facility. It will then be the responsibility of the facility to decide how that facility will address those issues. The facility will work with DEQ on solutions, which, after final DEQ approval, will be included in a facility plan and permit.</i>
Comment 65	Facility B is sited three years after the rules take effect. How will that facility be reviewed and permitted in three years? When facility B is screened, will the same group that reviewed Facility A also review Facility B? (16)
Response	<i>Future composting facilities will be screened, evaluated, and permitted in the same manner as existing facilities. After the initial screenings of existing facilities, screening of new facilities will be done by regional solid waste staff relying in part on earlier screening decisions. The proposed rules (096-0060(6)) require that new facilities coordinate with DEQ at least 180 days before the facility is proposed to begin operation. This will allow DEQ and the facility to discuss potential environmental issues related to the specific location and work to resolve those issues in a timely manner at the facility planning and design stage. See also response to comment 81.</i>
Comment 66	What happens in the Metro region, where Metro has taken over some of DEQ's enforcement responsibilities? Will DEQ or Metro have the screening and review authority? (16)
Response	<i>DEQ will screen all composting facilities statewide, including those in the Portland Metro region. DEQ and Metro had an intergovernmental agreement that expired December 31, 2007 where Metro issued some of the permits and conducted inspections at composters. However, Metro has never carried out DEQ enforcement actions. For any facilities that require plan review and approval, DEQ will provide that review and approval. See also response to comment 87.</i>

Comment 67	What are the timelines for implementing the screening results? Will the department show flexibility in its expectations of when and how facilities will meet these new requirements? (16)
Response	<i>The schedule for addressing any environmental issues identified in a screening decision will depend upon the nature of the problem and the proposed response. Some problems reasonably may be addressed quickly; other may take longer. DEQ will work with each existing facility operator to identify a schedule for implementing any necessary improvements.</i>

Comment 68	Strongly disagree with raising the tonnage exemption from 20 to 100. Not a good approach to regulate the smaller sites only on a complaint basis. The other exemptions create additional unfairness in the compost system. (16)
Response	<i>The proposed 100 ton exemption is based on DEQ's determination that composting operations below that size using specific feedstocks are unlikely to cause significant environmental problems. However, the proposed rules give DEQ the authority to require a facility of any size to go through the screening process, and through plan approval and permitting if necessary to address environmental problems caused by smaller facilities. DEQ will rely on information gathered from other sources (e.g. ODA visits) and complaints to identify any smaller facilities that may be causing problems that need DEQ attention.</i>

Comment 69	Does 096-0060(5) refer to the screening requirements at 096-0080 or the performance standards at 096-0070? (16)
Response	<i>The proposed rules will be effective upon adoption by the Environmental Quality Commission and filing by the Secretary of State. 096-0060(5) provides timing for screening (180 days to provide screening information to DEQ) and also allows facilities to continue to operate under existing permits until screening decisions have been made, any plans approved, and registrations or permits issued. The performance standards in 0070 will be effective when the rules are adopted. However, except in situations where there are continuing and significant environmental problems, DEQ expects that any environmental problems will be addressed through implementation of plans after the plans have been approved and permits issued. See also response to comment 67.</i>

Comment 70	Concerned that performance standards seem to require a subjective decision about what is "likely" or "not likely." What does "adverse" mean? How can DEQ institute practices that will insure consistency in this process? (16)
Response	<i>The two performance standards in question, those relating to groundwater and odor (096-0070(3) and (4)), are designed with the understanding that many composting facilities may operate with minimal, environmentally acceptable impacts to groundwater or cause minimal offsite odor impacts. The two performance standards acknowledge that there may be minimal impacts and at the same time prevent more significant impacts. Contrast this with the standard for surface water, which is no discharge, unless in</i>

	<p><i>compliance with a permit. The NPDES discharge permits allow discharge of a minimal, acceptable amount of pollution. The levels in those permits are based on a judgment by DEQ that releases of pollutants at those levels are not likely to cause adverse impacts to beneficial uses in the receiving water body.</i></p> <p><i>In the two performance standards in question, those relating to groundwater and odor (096-0070(3) and (4)), whether an occurrence is “likely” or “not likely” is not a subjective decision, but is instead a conclusion based on an evaluation of a variety of objective criteria. Those factors are identified in 096-0080 and the Screening Internal Management Directive guidance document. DEQ believes that the factors will place many facilities firmly into one category or the other. For facilities where there is some question,, e.g. concerning possible groundwater impacts, DEQ may require - or the facility may choose to conduct - groundwater sampling or monitoring for some period of time to determine whether the facility is impacting groundwater.</i></p> <p><i>In 096-0070(3), relating to groundwater, “adverse impact” means an impact to groundwater that interferes with a beneficial use such as human consumption. In 096-0070(4), relating to odor, “adverse impact” is an impact to business or residences outside the boundaries of the facilities. DEQ understands that composting unavoidably produces some odors. The rules require composting facilities to perform in a manner that minimizes such impacts.</i></p>
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<p>Comment 71</p>	<p>The discretion left to DEQ in the operations plan section could lead to inconsistent enforcement. If an operations plan is required, the elements should be consistent. (16)</p>
<p>Response</p>	<p><i>As described in the response to comment 67, the goal of these rules is to require that a particular facility implement measures or take other actions only as required to address the environmental conditions at that particular facility. All similarly situated facilities will be treated the same, but the rules specifically acknowledge that not all facilities are the same.</i></p> <p><i>In 096-0090, Operations Plan Approval, all facilities will be required to have certain elements in an operations plan. Those elements are described in section (5), and are closely related to the environmental performance measures in 096-0070 that all facilities must meet.</i></p> <p><i>The items described in section (6) may not be present at all facilities or present problems at all facilities. DEQ sees no reason for DEQ rules to address issues such as material management and storage of feedstocks if those do not create potential environmental problems at a facility. Similarly, not all composting operations are open to the public. In that case, issues such as access roads, fences, gates, salvage, etc. may not be problems at those facilities. Not all facilities may have incoming feedstock haulers and may not</i></p>

	<p><i>haul finished compost away, in which case vehicles and truck covers may not be issues.</i></p> <p><i>In this context, as in others identified in the proposed rules, treating all applicants the same would in fact result in unfairness to applicants whose sites are very different from those of other applicants.</i></p>
Comment 72	In 096-0100 and 0110, delete “if required by the department” and treat all applicants the same. (16)
Response	<p><i>As described in the responses to comments 67 and 71, the goal of these rules is to require that a particular facility implement measures or take other actions only as required to address the environmental conditions at that particular facility. All similarly situated applications will be treated the same, but the rules specifically acknowledge that not all applicants are the same.</i></p> <p><i>Under 096-0100(3)(h) and 096-0110(4)(j), only those facilities that DEQ determines meet the criteria of 096-0001 will be required to provide financial assurance. DEQ sees no reason to require financial assurance from facilities that would present no significant environmental risks if they unexpectedly closed down. In this context, as in others identified in the proposed rules, treating all applicants the same would in fact result in unfairness to applicants whose sites are very different from those of other applicants.</i></p>
Comment 73	In 096-0120, concerned there are no standards to judge the operator’s compliance and reduce risk to the operator. (16)
Response	<i>Similar to the response to comment 63, DEQ expects that a facility proposing to use infiltration to soil to manage leachate or stormwater will consult with DEQ before designing and constructing any new facilities or modifications to an existing facility. DEQ’s approval will identify the compliance points and standards for the proposed groundwater infiltration actions at that facility, so the operator will have a clear statement from DEQ with which to judge compliance.</i>
Comment 74	In 096-0130, how will a facility know if its decisions about a leachate treatment system will meet the standard? In addition, delete “if required by the department” and treat all applicants the same. (16)
Response	<p><i>Assuming a facility intends to discharge treated leachate, the treatment system must provide treatment to a level that will meet the standards set in the discharge permit. In addition, the rule identifies standards that must be met for leachate storage (see 096-0130(9)). Similar to the response to Comment 73, DEQ expects that a facility proposing to construct a leachate treatment system will consult with DEQ before designing and constructing any new facilities or modifications to an existing facility.</i></p> <p><i>The rules are drafted to take into account the many different leachate and</i></p>

	<i>stormwater storage and treatment systems that may be proposed. These may range from very simple ponds to very elaborate engineered facilities. These different levels of complexity should receive different levels of attention from DEQ. In this context, as in others identified in the proposed rules, treating all applicants the same would in fact result in unfairness to applicants whose sites and proposed facilities are very different from those of other applicants.</i>
Comment 75	Clarify 096-0150(3)(a): if the operator speaks to the complainant on the original call, is the operator required to call the complainant again within 24 hours? (16)
Response	<i>No. This section is intended to ensure attentiveness and responsiveness to neighbor complaints by compost operators. If the operator has contacted the complainant, the 24 hour timeframe has been satisfied. DEQ would expect that at a minimum, the facility operator would follow-up with the complainant after action has been taken to summarize activities and close out the complaint.</i>
Comment 76	Suggest revising definition of “composting facility” in 093-0030(20) to include the “storing” of feedstocks. Facilities that store feedstocks should also be subject to regulation. (16)
Response	<i>See response to comment 61.</i>
Comment 77	Concerned about possible inconsistent application of definition of “feedstock” in 093-0030(35) in determination of risk. (16)
Response	<i>The determination of the relative risk of a feedstock from hazardous substances, physical contaminants and human pathogens will be based on an evaluation of the presence and amounts of those substances in the proposed feedstocks, the harm such substances could cause, the ability of the composting process to eliminate or reduce the effectiveness of those substances, and the pathways for such substances to cause human or ecological effects.</i>
Comment 78	Concerns about compostable containers, possibility of contamination of feedstocks, possible labeling requirements. (16)
Response	<i>See comments 82-85.</i>
Comment 79	The definition of “low risk disposal site” in 093-0030(55) is circular and does not refer to a standard. (16)
Response	<i>The standard referred to in the rule is “unlikely to adversely impact the waters of the State or public health.” DEQ will determine whether a particular facility meets that standard based on an evaluation of the specific factors at a specific facility. See response to comment 70.</i>
Comment 80	In 093-0105, why are permit categories unrelated to composting being revised and have affected parties been given sufficient notice? How does DEQ determine new versus existing facilities? If an existing facility takes a new

	<p>feedstock type, does that make it a new facility for permit purposes? (16)</p>
<p>Response</p>	<p><i>This was primarily a housekeeping rule change. DEQ was trying to better list all possible permit actions in each permit category as some are not listed in the rule currently. Most renewals are category 2 permit actions and most new permits are category 3. These proposed changes are consistent with how DEQ actually implements this section of the rules so there was no stakeholder involvement other than the normal public comment period including three hearings.</i></p> <p><i>The only policy change proposed here is that DEQ is proposing that the issuance of a new waste tire storage permit be reduced from a category 4 to a category 3 permit action. Based on the most recent waste tire storage permit applications, DEQ does not feel that this type of permit warrants an initial public hearing prior to drafting the permit and a second hearing once the permit is drafted. Recent waste tire storage permit applications have proposed environmentally sound practices, such as storing the tires in trailers and not in the open, which reduce the risk of fire and vector harborage dramatically. OAR 340 -093-0100(3) allows DEQ to move a permit action to a higher category based on considerations such as anticipated public interest and potential for significant environmental or public harm due to location or type of facility. This discretion would be exercised if DEQ felt it was warranted.</i></p> <p><i>DEQ issues new permits to facilities that have not previously held a permit for a specific activity. In some cases, a facility may hold multiple permits such as a transfer station and compost permit. Each is considered a new permit when it is issued. A change in feedstock type at a compost facility will usually require a modification of the operations plan. Under the proposed rules, DEQ will evaluate the addition of that feedstock for any increased risk to the environment or public health from the composting operation. That evaluation could require a modification to the registration or the compost permit. It could also, in some cases, move a facility from a registration to a compost permit. In that case, the existing compost facility that is registered would have to get a new compost permit.</i></p>

<p>Comment 81</p>	<p>Request DEQ implement procedures to provide uniformity and consistency in screening and review of facilities, including:</p> <ol style="list-style-type: none"> 1. Establish a permanent DEQ screening group; 2. Establish an appeal process for screening decisions; 3. Review and add more FAQ to the internal management directive using existing composting facilities, with detail so facilities will know what "likely adverse impact" etc. might mean; 4. Perform an annual internal evaluation of the rules. Use as a way to build a set of standard operating procedures that DEQ can use regardless of changes in staff. Share this with interested parties and allow them to comment as well. (16)
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Response	<p><i>DEQ believes these are all good suggestions and we intend to implement these – and other similar measures - in some form, as staffing and resources allow.</i></p> <p><i>For (1), to ensure consistency, we will screen all existing sites using the same group of DEQ staff. At the end of that round of screening, we will have developed a “bank” of screening decisions that future screening decisions can look to and rely on. Whether we will bring together the original screening group will depend in part on resources and in part on our confidence that we have developed a procedure that will provide consistent decisions without needing a group involved.</i></p> <p><i>For (2), DEQ expects that there will be communication between DEQ and the facility owner before DEQ makes a final screening decision. For facilities that disagree with a screening decision, DEQ will provide an opportunity for the facility to meet informally with DEQ staff and the regional solid waste manager to discuss the facility and the decision. Because screening decisions will result in plan and permit requirements, those decisions would be appealable as provided in OAR 340-093-0110.</i></p> <p><i>For (3), DEQ expects to make its screening decisions publicly available, to provide guidance and information to other facilities and developers considering locations for new facilities.</i></p> <p><i>For (4), this seems like a good suggestion, but may depend upon staffing and budget resources. We would like to explore this with stakeholders after adoption of the rules.</i></p>
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Comment 82	<p>Rules contain ambiguity regarding compostable products. Successful composting programs require independently verifiable and scientifically based standards, and labeling of compostable products by a third party certifier. (17) (3H)</p>
Response	<p><i>The issues raised by compostable products were not considered by DEQ and its advisory group during development of the proposed rules. These are important issues and will require thorough discussion with all interested parties, including composters, composting product producers, and local governments, before DEQ would be prepared to propose rules addressing these matters.</i></p> <p><i>DEQ does support the use of independently verifiable, science-based standards to determine the compostability of products, and appropriate labeling of products that meet such standards. One such standard is the Biodegradable Products Institute compostable standard, which references ASTM D6400 and ASTM D6868 specifications for compostable plastics and biodegradable plastic coatings on paper and other compostable substrates, respectively. However, it is our understanding from conversations with the city of Portland that not all products meeting the BPI standard are successfully composted under the Portland Composts! program. This particular standard appears to be creating, rather than reducing, confusion in the marketplace. Until DEQ has better confidence that the BPI standard</i></p>

	<i>(and/or ASTM specifications) adequately protects the compost industry from physical contaminants in feedstocks, or a better standard is developed, we're not prepared to incorporate a specific standard into rule. Regardless, the proposed rules allow the use compostable products as feedstocks provided DEQ and a composting facility determine the products are acceptable feedstocks.</i>
Comment 83	Suggest adding a rule that commercial composting facilities only accept compostable products that meet ASTM standards. (17)(3H)
Response	<i>See comment 82.</i>
Comment 84	Suggest requiring labeling by a third party certifier such as BPI. This is required by some municipalities in California and Canada. (17)(3H)
Response	<i>See comment 82.</i>
Comment 85	Suggest expanding the definition of feedstock to include compostable products. (17)(3H)
Response	<i>See comment 82.</i>
Comment 86	DEQ should delay implementation of the proposed rules until the earlier-proposed 1200 CP stormwater permit is ready for adoption. (18)
Response	<i>The proposed rules are separate from and do not rely on the earlier-proposed 1200 CP stormwater permit. The proposed rules address many issues in addition to stormwater, including groundwater, odor, and pathogen reduction. Facilities that operate under the existing 1200 Z stormwater permit may continue to do so. When the new 1200 Z is adopted, tentatively planned for two years from now, those operators may register and operate under that permit. At that time, DEQ in consultation with stakeholders will decide whether to propose adoption of a stormwater permit specifically for composting facilities. In any case, operators should understand that the discharge benchmarks in the 1200 Z and any proposed 1200 CP likely will be more stringent than existing benchmarks, and may be adopted as permit limits. Operators should begin planning now for that likelihood.</i>
Comment 87	Overlapping regulatory agencies is a problem (DEQ, Metro, Clean Water Services). All regulation should be done by one agency. (18)
Response	<i>DEQ authorized Metro to implement DEQ composting regulations through an intergovernmental agreement from 1998 through December 2007. In September 2007, DEQ and Metro sent letters to permitted compost facilities within Metro's jurisdiction providing notification that the agreement was set to expire on December 31, 2007 and an explanation about the impending changes.</i> <i>Compost facilities are now regulated by both DEQ and Metro in a similar manner as other solid waste facilities (such as transfer stations and material recovery facilities) located within Metro's jurisdiction. DEQ frequently</i>

	<p><i>communicates with Metro in an effort to provide consistent regulatory oversight to solid waste facilities. DEQ corresponds with Metro about plan reviews, permits, enforcements actions and inspections. Based upon the current overlapping regulation of solid waste facilities within Metro's jurisdiction, DEQ does not anticipate that the overlapping regulation of compost facilities will generate problems.</i></p> <p><i>DEQ agrees that coordination with local governments including Metro is needed. DEQ inspectors often are able to best address environmental impacts that affect water, air or land in ways that a local government may not be able to. DEQ inspectors do work closely with Metro staff or other local government code officers where jurisdictions overlap.</i></p>
Comment 88	The proposed rules were developed without adequate input from industry. (18)
Response	<i>DEQ engaged industry stakeholders throughout the rulemaking process. Industry representatives were part of the external advisory group that formulated the earlier proposed rules. And beginning last summer, DEQ met several times with industry representatives, including the director of ORRA and individual composting facility operators, to discuss proposed changes to the rules. In February, before offering the currently proposed rules for public comment, DEQ again convened the external workgroup, which included industry representatives.</i>
Comment 89	Proposed rules may require significant capital expenditures. DEQ should grandfather in existing facilities with good records, provide grant money to assist with compliance, or postpone implementation of the regulations. Forcing composters out of business is not good for the composting industry or the environment. (18)
Response	<i>The proposed rules are designed so that only facilities currently causing environmental problems, or likely to cause such problems in the future, will need to make changes to their facilities or operations. Facilities that are not causing problems or not likely to in the future will not be required to make changes. In addition, for facilities that do have environmental problems, the rules are designed to give each operator the flexibility to select measures to address environmental problems that are the best for each facility. This will allow operators the ability to select the most cost-effective solutions to environmental problems. DEQ heard from many operators and local governments that the proposed rules should be finalized to give current and future operators clear guidance on requirements for facility construction and expansion. See response to comment 23 regarding grant funding.</i>
Comment 90	The proposed regulations place composting industry at a competitive disadvantage with respect to other industries, such as co-generation facilities, which handle the same material. This creates an uneven playing field and discourages composting. (18)

Response	<i>The proposed rules are intended to address only facilities that compost. Because co-generation plants and other hogged fuel processing facilities do not compost, they are not addressed by the changes in this rulemaking. Such facilities may be subject to solid waste, air quality and water quality permit requirements.</i>
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Comment 91	DEQ needs to enforce existing regulations with respect to illegal dumping and non-permitted facilities before undertaking anything new. (18)
Response	<i>DEQ frequently works with a local government code enforcement officer to respond to complaints about illegal dumping as the local government often has codes that can be used to clean up illegal dumping. DEQ prioritizes complaints depending on the perceived environmental concerns associated with the complaint. Where DEQ identifies a facility that is operating as a disposal site without a permit, DEQ gives the facility the option to stop its operations that would require a permit or requires that the facility apply for a solid waste permit within a specific timeframe. If the facility does neither, DEQ refers the violations to our enforcement staff in the Office of Compliance and Enforcement for penalty determinations.</i>

Comment 92	Existing rules do not classify composting facilities as disposal sites and do not require financial assurance. Imposing financial assurance requirements on composting facilities is not justified, will increase costs, and is not based on any particular problems or need. (19)
Response	<i>Under existing rules, compost facilities are considered disposal sites as defined in OAR 340-093-0030(30). They can be subject to financial assurance requirements outlined in OAR 340-095-0090 although few ever have been. DEQ added proposed language to OAR 340-096-0001 to clearly state that.</i>

Comment 93	Unclear how DEQ will apply the exemptions in the proposed financial assurance rule. Vagueness creates uncertainty, uneven application, unfair regulations. Lack of objective criteria invite decisions that are political not scientific. DEQ has few staff with skills or time to make these decisions. (19)
Response	<i>OAR 340-096-0001 states that DEQ may exempt low risk facilities from financial assurance requirements. The rule further defines low risk facilities. In addition, OAR 340-095-0090(2) includes other exemptions. All of the exemption criteria can be addressed during the financial assurance risk screening.</i>

Comment 94	Concern about how proposed rules will affect vermicomposting, in particular you can't heat worms to accomplish pathogen reduction. (4H)
Response	<i>Heating is one but not the only pathogen reduction measure allowed by the proposed rules. The proposed rules allow a composting facility to achieve pathogen reduction by alternative means that accomplish the pathogen reduction standards.</i>

Comment 95	Concerned regulations will require concrete containment when any runoff sits on the ground and evaporates. (4H)
Response	<i>The rules evaluate the risk of impacts to surface water and groundwater based on the specific conditions of each facility and location. A facility that has a low potential to cause environmental problems would not be required to implement significant protective measures such as concrete containment.</i>
Comment 96	Suggest a standard for compost tea, it's very advantageous and the quality of the tea is very important. (5H)
Response	<i>DEQ appreciates the efforts of operators in developing high quality compost products, including compost tea. DEQ's advisory group considered the issue of standards and decided that DEQ should not require that finished compost be required to meet any particular standards, in part because there is such a variety of compost products being produced. However, nothing in the proposed rules would prevent operators from testing their products and making that information available to consumers.</i>
Comment 97	Concerned about groundwater at his property near a proposed composting facility. Suggest the regulations require protection up front rather than waiting until a problem occurs. (1H)
Response	<i>The goal of these rules is to require that a particular facility implement measures or take other actions only as required to address the environmental conditions at that particular facility. The rules require that all facilities meet the same environmental protection standards, regardless of where a facility may be located. See response to comment 62</i>
Comment 98	Support composting but want DEQ to make sure that quality of living is protected, groundwater, and quality and beauty of surrounding area. (2H)
Response	<i>The proposed rules are intended to meet DEQ's statutory obligations to protect human health and the environment, in a manner that supports and encourages composting.</i>

Inventory of Public Commenters and Comment Format on Compost Rule Amendments, Closed on April 30, 2009

Part 1: Written Public Commenters

Ref. No.	Name	Organization	Address, Contact Info	Comment Format	Date Received
1	Wali Via	Winter Green Farm	Noti, OR 541-935-7676 walivia@wintergreenfarm.com	Email, one page comments and questions	3/30/2009
2	Wali Via	Winter Green Farm	Noti, OR 541-935-7676 walivia@wintergreenfarm.com	Email, one page comment, addendum	3/30/2009
3	Wali Via	Winter Green Farm	Noti, OR 541-935-7676 walivia@wintergreenfarm.com	Email, one page comments	4/3/2009
4	Amaranth Wilson	People, Planet, Profit Initiatives	306-906-4426 amaranthw@burgerville.com	Email, one page	4/20/2009
5	Kathleen McFarlane	McFarlanes Bark	13345 SE Johnson Rd. Milwaukie, OR 97222 KMcfarlane@mcfarlanesbark.com 503-659-4240	Emailed two page letter - from Feb. 25 2008 comments	4/23/2009
6	Laura Baldschun		8770 SW Birchwood Road, Portland, OR 97225 971-255-9159 Laurab83@aol.com	Emailed two-sentence comment	4/29/2009
7	Ray Jaindl	Oregon Dept. of Agriculture	ODA, Natural Resources Division, rjaindl@oda.state.or.us , 503-986-4713	Emailed two pages of comments	4/29/2009
8	Jeanne Roy	Center for Earth Leadership	2420 SW Boundary St., Portland, OR 97239	Mailed two page letter	4/29/2009
9	John Dinnis	Red Barn Farm	30129 Camp Adair Road, Monmouth, OR 97361 jdinnis@2farmconnect.net	Mailed three page letter	4/29/2009
10	Raghu Namburi		Comments sent through Bob Barrows	Email, one page	4/29/2009
11	Jennifer	METRO	600 NE Grand Ave.	Emailed	4/29/2009

	Erickson		Portland, OR 97232-2736 Jennifer.Erickson@oregonmetro.gov	three page letter	
12	Larry Brown	DEQ	Eastern Region DEQ, The Dalles Brown.larry@deq.state.or.us	Emailed two pages	4/29/2009
13	Jeff & Cheryl Hollabaugh		PO Box 336 St. Paul, OR 97137 holabah@hotmail.com	Emailed one page letter and 20 photographs, posted online	4/30/2009
14	Ross & Kelly McGarva	Lakeview Lockers, LLC	lakeviewlockers@centurytel.net , 541-947-3789	Emailed one page letter	4/30/2009
15	Roger Dilts	Clean Water Services	DiltsR@CleanWaterServices.org ; 503-681-4467	Emailed five page letter	4/30/2009
16	Kristan Mitchell	Oregon Refuse & Recycling Association	PO Box 2186 Salem, Or 97308 kristanm@orra.net	Emailed seven page letter	4/30/2009
17	Jessica Repa	Blue Tree Strategies	Jessica@bluetreestrategies.com 415-465-0415	Emailed two page letter, 19 page position paper, two page Organics Recycling letter to retailers	4/30/2009
18	Jeff Grimm	Grimm's Fuel Co.	18850 SW Cipole Rd., Tualatin, OR 97062	Mailed two page letter	4/30/2009
19	Mark P. Reeve	Reeve Kearns PC	610 SW Alder St., Ste 910 Portland, OR 97205	Faxed and emailed a three page letter	4/30/2009

Part 2: Oral Public Commenters

Ref. No.	Name	Organization	Address, Contact Info	Comment Format	Date Received
*H		NO ORAL COMMENTS RECEIVED		Eugene Public Hearing	4/23/2009
1H	Richard Porter		3525 NE Dogwood Ln. Madras, OR 97741 541-475-4233 dickporter@hughes.net	Bend Public Hearing	4/28/2009
2H	Michael Goss		PO Box 1020 Madras, OR 97741 541-475-3864 m_d_goss@hotmail.com	Bend Public Hearing	4/28/2009
3H	Jessica Repa	Blue Tree Strategies	jessica@bluetreestrategies.com 415-465-0415 www.bluetreestrategies.com	Portland Public Hearing	4/28/2009
4H	Dave Bergin	Columbia Gorge Organics & Pest Management Systems	herifs@otcb.com Bugman-munk@yahoo.com	Portland Public Hearing	4/28/2009
5H	Rick Trumbull	Quality Compost	53377 Robin Lane Milton-Freewater, OR 97865	Portland Public Hearing	4/28/2009
			*H = oral public hearing comment		

Compost Rule Work Group Members

Nick Andrews Metro Area Small Farms Extension Agent Oregon State University - OSU Extension Service North Willamette Research and Extension Center
Roy Brower Regulatory Affairs Administrator, Metro Regulatory Affairs Program
Keith Emerson Director of East Valley Orchards, Environmental Programs
Lee Fortier Operations Manager, Dry Creek Landfill Rogue Waste Systems
Russ Halvorsen Operations Manager, Compost, Inc.
Del McGill Organix
Matt Stern Recycling Manager, Western Oregon Waste, NW Greenlands Composting
Rick Winterhalter Waste Reduction Coordinator, Clackamas County
Glenn Zimmerman Pacific Land Clearing, Inc./Wood Waste, Inc.
Bob Barrows Project Manager/Waste Reduction Analyst, DEQ - Regional Environmental Solutions
Stephanie Rawson Solid Waste Compliance Specialist, DEQ
Charles Landman Legal Policy Advisor, DEQ
Pat Vernon Compost Projects Coordinator, DEQ - Solid Waste Policy and Program Develop Section
Duane Altig Solid Waste Technical Assistant, DEQ

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: April 24, 2009

To: Solid Waste - Composting Facility
Proposed Rulemaking Public Hearing File

From: Julie M. Berndt; Solid Waste Analyst

Subject: Presiding Officer's Report for Public Hearing
Hearing Date and Time: April 23, 2009, 7:10 p.m.
Hearing Location: DEQ Office Conference Room - Eugene, Oregon

Proposals: Proposed Compost Facility Rulemaking

The public hearing on the above proposal was convened at 7:10 p.m. after the conclusion of an informational presentation from about 6 to 7 pm. on Apr. 23, 2009. Bob Barrows of the DEQ presented information on the proposed compost facility rule changes. He explained the specific proposals, the reason for the proposed rule changes, and responded to questions from the audience.

Julie Berndt of DEQ was the presiding officer. Ms. Berndt asked those attending the hearing to sign the attendance sheet and to sign witness registration forms if they wished to present testimony. Ms. Berndt informed the audience about the purpose of the hearing and explained that the hearing would be being recorded.

Eleven people attended the hearing. No one signed up to give testimony.

Summary of Questions During DEQ Presentation

The concerns and questions included, but were not limited to the following:

- Concern that new rules won't address piled yard debris, under 100 tons, that isn't being "composted," such as landscapers storing waste on the "back-40." They won't pay fees and are not managing the waste. Want to make sure they are addressed.
- Jeff Grimm wondered how DEQ and Metro regulation will work in the future.
- Lots of discussion about the screening process. We walked through a number of scenarios, mostly farm-related and some commercial composter related.

- One question about how the screening process deals with flood plain designations
- Questions about the permitting process – such as “Do the permits go out for public notice?” and “Will we have to get a new LUCS if we already have one?”
- Pathogen reduction questions – “What are the criteria for pathogen testing?” and “What’s the frequency of testing?”
- “How will farm folks know whether they fall into the category of being regulated if they do not currently have a permit?”
- Several people wanted us to know (the permitted composters) that it’s time to finalize the rules so that investments can be made into composting sites and they can move forward with site improvements. They need to know the ground rules before they can proceed. They are in complete support of these rules sticking to the proposed timeline of EQC adoption in August. They do not want any more delays.

Written Testimony

Bob Barrows provided information about how to submit written comments via e-mail, postal mail, fax and a blog. No written comments were received at the hearing.

There was no testimony and the hearing was closed at 7:12 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: May 5, 2009

To: Solid Waste – Composting Facility
Proposed Rulemaking Public Hearing File

From: Lawrence Brown; Solid Waste Technical Assistant

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: April 28, 2009; 6:55 p.m.
Hearing Location: DEQ Office Conference Room – Bend, Oregon

After the conclusion of an informational presentation provided by Lissa Druback of the DEQ the public hearing on the proposed compost facility rulemaking started at 6:55 p.m. and closed at 7:01 p.m. During the informational presentation Lissa presented information on the proposed compost facility rule changes and explained the specific proposals, the reason for the proposed rule changes and responded to questions from the audience.

Lawrence Brown of DEQ was the presiding officer of the hearing. He requested that those who attended the hearing sign the attendance sheet, and to sign witness registration forms if they wished to present testimony, and explained that the hearing was being recorded.

Seven people attended the hearing, two of them by phone. Two persons were present but did not sign the attendance sheet. Kelly McGarva was on the phone representing Lakeview Lockers, Lake County, and Bruce Lumper from DEQ attended by phone from The Dalles.

Two provided verbal testimony. One was concerned with why impermeable surfaces were not pursued as part of the rule package. This person mentioned that the area has fractured basalt soils, which are highly permeable, and he had concerns about a compost facility that might be located uphill from him. He wanted to be assured that groundwater would be protected. The other person who testified was concerned about how DEQ approves siting of compost facilities and that he wanted DEQ to be protective of their quality of life.

Summary of Questions During Lissa's Presentation:

The major issue of those attending dealt with a proposed compost facility to be located in Jefferson County, near Madras. They raised environmental issues, wanting DEQ to be proactive rather than reactive regarding groundwater protection, air pollution and pathogen reduction.

Another person questioned how DEQ was going to get the rule change information out to the agricultural community.

Written Testimony:

Lissa Druback provided information about how to submit written comments. Lawrence Brown also provided this information during the hearing. No written comments were received at the hearing.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: June 10, 2009

To: Environmental Quality Commission

From: Loretta Pickerell, Solid Waste Manager

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Amending Composting Facility Rules
Hearing Date and Time: April 28, 2009, 6 p.m
Hearing Location: DEQ Headquarters Office, Room EQC A,
811 SW 6th Ave., Portland, OR

DEQ convened an information session followed by a rulemaking hearing to accept comments on proposed amendments to the state's composting facility rules on Apr. 28, 2009, at 6 p.m. at the DEQ's headquarters in downtown Portland. During the information session, Charlie Landman, DEQ's project lead for this rulemaking, explained the rulemaking proposal and answered questions from those attending.

The hearing opened to accept comments at 7 p.m. and closed at 7:35 p.m. Hearing organizers advised attendees of hearing procedures, including the recording of the hearing, and asked them to sign a registration form if they wished to present comments.

Five people attended the information session and hearing; no one participated via a teleconference line. Three testified and no one submitted written comments at the hearing.

The following is a summary of the comments received at the hearing. DEQ will include these comments in the summary of comments and agency responses for this rulemaking.

- Jessica Repa, representing Blue Tree Strategies and Stalk Market Products in Portland, asked that the rules address compostable products such as beverage containers and packaging, including specific reference as a feedstock and a requirement that compostable products be third party certified as meeting specific ASTM performance standards.
- Dave Bergin, a consultant in the organics industry, requested the proposed rules address vermicomposting more specifically, including the lower temperatures requirements and tolerances for worm composting. He also noted a concern that the proposed rules would force him to install concrete containment for runoff that poses little environmental risk.
- Rick Trumbull, representing Quality Compost in Milton-Freewater, asked DEQ to consider setting a standard for compost tea.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

COMPOSTING FACILITY RULEMAKING

Amends Oregon's Solid Waste Composting facility rules to provide greater environmental protection, flexibility and efficiency.

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

There are no applicable federal requirements for the regulation of solid waste composting facilities. This is a state-only regulatory program.

Composting is a managed biological process through which organic materials such as manure, leaves, yard debris, and food wastes are converted into a more homogeneous, fine-particle material called compost. Composting can be an efficient method for recycling organic materials that might otherwise be disposed of in a landfill, and by avoiding anaerobic decomposition, it prevents the release of methane, a significant component of greenhouse gas. The use of compost offers numerous benefits: when incorporated into soil, it can improve soil tilth and fertility; it can provide a more stable form of nitrogen less susceptible to leaching into water supplies; on heavy soils, compost helps reduce compaction and increases infiltration.

DEQ supports and encourages composting. At the same time, DEQ is aware that, if not conducted in the proper manner, or if conducted at an improper location, composting presents potential environmental problems, most notably to surface water and groundwater. The proposed rules include performance standards that all composting facilities must meet. These standards protect surface water and groundwater, require control of offensive odors and vectors, and require testing of finished compost to make sure human pathogens have been reduced to safe levels.

Individual composting facilities may need to make changes to their facilities or operations to meet these standards. However, the proposed rules do not mandate any particular changes. Instead, the rules recognize that each facility will have unique problems depending upon the

location and nature of the facility, and so each facility will need a different solution to those problems. The proposed rules give each operator the flexibility and responsibility to address facility issues in a manner that best suits that facility.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

If not conducted in the proper manner, or if conducted at an improper location, composting presents potential environmental problems, including potential pollution of surface water or groundwater, release of offensive odors, harboring of vectors, and production of human pathogens. The proposed rules are designed to address those potential environmental and public health problems.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

DEQ considered several alternatives during the course of this rulemaking to address the environmental threats listed above. For surface water, DEQ developed a compost-specific stormwater discharge permit. That alternative was not pursued because DEQ's stormwater permitting program is currently in litigation on the validity of its permits. For groundwater, DEQ considered requiring all composting facilities to operate only on impermeable surfaces. That alternative was not pursued because it was determined not to be necessary at all facilities, it would have imposed significant costs on some operators, and it could have created unintended environmental problems by requiring capture, storage and disposal of large volumes of process water. For odor, DEQ considered using a nuisance-based regulatory approach. That alternative was not pursued because it was determined to be impractical and would have involved DEQ in land use issues outside our purview.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Amend solid waste composting facility rules for composting facilities. Clarify financial assurance requirements for solid waste disposal facilities and public notice requirements for renewal of several solid waste permits.

Title of Proposed Rulemaking	Composting Facility Solid Waste Regulations
Stat. Authority or Legal Authority	ORS 459.045, 459.205, 459.215, 459.225, 459.235, 459A.025,
Stat. Implemented	ORS 459.005, 459.015, 459.205, 459.215, 459.245, 459.248, 459.272 – 273, 459A,
Need for the Rule(s)	The rule changes are needed to amend, update, and clarify requirements for composting facilities to promote composting and ensure protection of public health, groundwater, and surface water.
Documents Relied Upon for Rulemaking	<ol style="list-style-type: none"> 1. CH2MHill. "Commercial Composting Water Quality Permit Development." April 2004. Evaluates best management practices for composting facilities and their estimated costs. 2. Tetra Tech. "DEQ Commercial Food Waste Composting Study." October 2002. Examines the reliability of low technological compost methods to meet regulatory requirements when composting mixed food waste, animal parts and yard debris. 3. DEQ Water Quality. "DEQ Leachate and Stormwater Sampling Study." March 2006. Identifies pollutants in leachate and runoff from composting facilities. 4. DEQ Solid Waste. "DEQ Compost Survey." May 2004. Assesses best management practices currently in use for water quality protection. 5. Bartlett, Jerry. "Stormwater Treatment Options at Composting Facilities." <u>BioCycle</u> February 2006, 23-29. Reviews potential costs for implementing best management practices in Oregon. 6. Allen and Bakz. "Increasing Feedstock Throughput on a Smaller Footprint." <u>BioCycle</u> September 2006, 32-37. Analyzes composting capacity of aerated piles at various depths. 7. Kennedy/Jenks. "Literature Review of Compost Leachate." October 2007. Reviews studies evaluating the impact of compost leachate on groundwater. <p>These documents are available on line at http://www.deq.state.or.us/lq/sw/compost/rulemaking.htm, or in hard copy by request.</p>
Request for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.
Overview	Composting facilities are operations that process certain organic feedstocks into a finished product called compost. The most commonly used feedstocks for composting are yard debris, wood waste, manure, and food waste. Composting can be an efficient

method for recycling organic materials that might otherwise be disposed of in a landfill, and by avoiding anaerobic decomposition, it prevents the release of methane, a significant component of greenhouse gas. The use of compost offers numerous benefits: when incorporated into soil, it can improve soil tilth and fertility; it can provide a more stable form of nitrogen less susceptible to leaching into water supplies; and on heavy soils, compost helps reduce compaction and increases infiltration.

Composting also contributes to achieving the state's solid waste recovery goal of 50% by 2009. In 2006, 41 permitted composting facilities in the state composted over 591,000 tons of feedstock, which accounted for 15% of all solid waste diverted from landfills.

DEQ supports and encourages composting. At the same time, we are aware that, if not conducted in the proper manner, or if conducted at an improper location, composting presents potential environmental problems, most notably to surface water and groundwater. For this reason, composting facilities require a solid waste facility permit unless specifically exempt from permit requirements.

DEQ has determined that the existing solid waste rules for composting facilities need to be revised to ensure protection of public health and the environment while allowing Oregon's composting industry to grow.

The proposed rules include a number of significant new features:

- (1) The proposed rules establish clear, objective performance standards that all composting facilities must meet.
- (2) Under the proposed rules, the level of DEQ involvement with a composting facility will be proportional to the environmental risk presented by the facility. DEQ will assess the level of risk through a screening process, with an accompanying screening fee.
- (3) The proposed rules provide clear requirements for operations plans for facilities that must have one.
- (4) The proposed rules provide for a Plan Review and Approval Fee.
- (5) The proposed rules provide for a special engineering review fee for facilities with complex engineered water management systems.
- (6) The proposed rules eliminate existing application fees
- (7) The proposed rules modify permit types and compliance fees.
- (8) The proposed rules adjust the existing size exemption to exempt more small facilities.
- (9) The proposed rules eliminate the agricultural exemptions and limitations.
- (10) The proposed rules eliminate the current exemption for institutional composting facilities.
- (11) The proposed rules provide clear requirements for groundwater protection
- (12) The proposed rules clarify the requirement for financial assurance to ensure environmentally safe closure of a composting facility and other solid waste disposal facilities.

	<p>The combined fiscal impact of these changes on any particular composting facility will depend upon facility-specific factors, most importantly: the size of the facility, location of the facility, whether the facility presents environmental risks that are not currently being addressed, and, especially, the measures necessary to address those risks.</p>
<p>Summary of Rule Changes</p>	<p><u>Solid Waste Rules Changes</u></p> <p>1. Performance Standards. The proposed rules require that all composting facilities, regardless of size, location, permit category, etc, must operate in a manner that meets DEQ’s environmental goals for protection of surface water and groundwater, prevention of unacceptable odors and vectors, and reduction of pathogens in finished compost. These are not new requirements; rather, in the proposed rules they are gathered in one place and stated clearly. Because these are not new requirements, except for the groundwater protection standard, this rule change will not have a fiscal impact. The fiscal impact of the proposed groundwater protection standard is discussed below.</p> <p>2. Environmental Risk Screening. The proposed rules require that all existing composting facilities that process over 100 tons of feedstocks per year, and any new facilities over 100 tons, must provide DEQ basic information that will allow DEQ to evaluate the environmental risk presented by the facility. This is a new requirement. However, many facilities already have this information, and much of it is readily accessible on-line. Based on information provided by compost operators, DEQ estimates that it will cost between \$1000 and \$5000 for an average facility to gather this information and submit it to DEQ. Every facility will also pay a one-time screening fee of \$150. There are currently 42 commercial composting facilities and an estimated 30 farm-based composting facilities that will pay this fee. The estimated fiscal impact of this proposed change is between \$1150 and \$5150 per facility.</p> <p>3. Operations Plans. The proposed rules require that every facility that DEQ determines presents an environmental risk must submit an operations plan, for DEQ approval, that describes how the facility will operate to meet its environmental responsibilities. This is a new requirement that will apply to the composting facilities that DEQ determines present environmental risk. DEQ estimates that 50 percent, 21 of the existing 42 commercial composting operations, will be determined to present environmental risk and will be required to provide an operations plan to DEQ. All currently operating commercial composting operations have operations plans. DEQ estimates that 50 percent of the 21 facilities that will be required to get plan approval from DEQ have plans that comply with the proposed rules. DEQ estimates that 11 facilities will be required to update their plans to describe how the facility will be operated with respect to the environmental risk or risk identified by DEQ. DEQ estimates that the cost for updating a plan will cost between \$5000 and \$10,000 per facility.</p> <p>Farm based composting facilities will submit a plan for approval by the Oregon Department of Agriculture (ODA). DEQ, ODA, the Oregon State University Extension Service will work together to provide a basic composting plan template for farm-based composting operations, and ODA and OSU will provide assistance to these operators in completing</p>

their plans. **DEQ estimates that, with ODA and OSU assistance, it will cost an average farm based composting facility between \$1000 and \$5000 to prepare a basic composting plan.**

4. Plan Review and Approval Fee. Each of the estimated 21 facilities that require plan review and approval will pay a one-time Plan Review and Approval fee to DEQ. The amount of the fee will depend upon the size of the facility. Farm-based composting facilities will be working with ODA and OSU, and therefore will not be required to pay this fee. The fee schedule is set out in Table 1 below.

TABLE 1: Plan Review and Approval Fees

Tons Processed per Year	One Time Plan Review and Approval Fee	Estimated Number of Facilities
>100 and <3,500	\$500	10
> 3,500 ≤ 7,500	\$750	2
> 7,500 and ≤ 10,000	\$1,000	0
>10,000 and <50,000	\$2,000	6
> 50,000	\$5,000	2

5. Engineering Review Fee. The proposed rules provide for a one-time fee of \$500 for facilities that have or propose more complex water management systems that will require review by a DEQ engineer. **DEQ estimates that 5 of the larger facilities might require such review and would incur the \$500 fee.**

6. Elimination of Application Fees. The proposed rules will eliminate the existing permit application fees for new composting facilities. In their place, all new composting facilities will pay the screening fee, as discussed above; facilities that require a composting plan will pay the Plan Review and Approval Fee, also discussed above. The existing application fees that will be eliminated are: the \$100 fee for registration permits; the \$500 fee for general permits; and the tonnage-based fees of \$1000 (up to 7,500 tons/year) and \$5,000 (over 7,500 tons/year) for individual permits. **This will be cost neutral for facilities that would have applied for a registration and will provide a one-time savings of \$400 for facilities that would have applied for a general permit under existing rules.** For facilities that would have applied for an individual permit, the financial impact will depend upon the size of the facility, as present in Table 2 below. **The proposed fees will provide a cost savings for new facilities that go through the plan review and approval process.**

TABLE 2: Financial Impact From Elimination of Individual Permit Application Fees for New Facilities That will Pay The Plan Review And Approval Fee

Tons Processed per Year	Eliminated Application Fee	Proposed Plan Review and Approval Fee	One Time Fiscal Impact for New Facilities
>100 and <3,500	\$1,000	\$500	(\$500)
3,500 ≤ 7,500	\$1,000	\$750	(\$250)
> 7,500 and ≤ 10,000	\$5,000	\$1,000	(\$4,000)
>10,000 and <50,000	\$5,000	\$2,000	(\$2,000)
> 50,000	\$5,000	\$5,000	\$0

7. Modify Permit Types and Compliance Fees. Existing rules provide three permit types: registration permits, general permits, and individual permits. The general permit has expired and will not be readopted by the new rules. The registration permits will continue, as will the individual permits, although under the name “composting permit.” As discussed above, facilities that DEQ determines present a low environmental risk will be issued a registration permit and pay a one time screening fee. Facilities that DEQ determines present environmental risk will prepare an operations plan, receive a composting permit, and pay an annual compliance fee.

The fee impacts from this shift for existing facilities will depend upon the kind of permit the facility is currently operating under and the kind of permit the facility will receive under the proposed rules. **As described below, DEQ estimates these changes will either have no fiscal impact or will result in reduced compliance fees for existing composting facilities.**

The proposed rules modify the existing compliance fees for both registration permits and individual permits (renamed compost permits.). The existing annual compliance fee for registration permits is \$100. There will be no compliance fee for registration permits under the new rules. The existing general permit compliance fees that will be eliminated are shown in Table 3.

Table 3: Existing Compliance Fees for General Permits (to be eliminated)

<i>Permit Type</i>	Tons Processed per Year	Annual Compliance Fee
General Permit	> 20	\$500
	≤ 7,500	
	> 7,500 and ≤ 50,000	\$1,000
	> 50,000	\$5,000

Proposed annual compliance fee changes for individual permits (to be renamed composting permits) are shown in Table 5.

Table 4: Existing Fees for Individual Permits

Tons Processed per Year	Annual Compliance Fee
≤ 7,500	\$500
> 7,500 and ≤ 50,000	\$1,500
> 50,000	\$5,000

Table 5: Proposed Fees for Composting Permits

Tons Processed per Year	Annual Compliance Fee
≤ 100	\$0
> 100 and ≤ 3,500	\$100
> 3,500 and ≤ 7,500	\$500
> 7,500 and ≤ 50,000	\$1,000
> 50,000	\$5,000

The fiscal impact of these changes on existing composting operations will depend upon the current permit the facility operates under, the permit the facility will move to, and the size of the facility.

Of the 41 composting facilities currently permitted, 39 have registration or general permits. DEQ assumes that half of those will move to registration permits and half to compost permits. The two facilities with individual permits are not currently in operation.

Table 6: Estimated Fiscal Impacts of Registration, General Permit, and Compost Permit Fee Changes

Tons Processed per Year	Annual Fiscal impact - Registration to Registration	Annual Fiscal impact - Registration to Compost Permit	Annual Fiscal Impact - General Permit to Registration	Annual Fiscal Impact - General Permit to Compost Permit
> 100 and ≤ 3,500	(\$50)	\$0	(\$500)	(\$400)
> 3,500 and ≤ 7,500	NA*	NA	(\$500)	\$0
> 7,500 and ≤ 50,000	NA	NA	(\$1000)	\$0
> 50,000	NA	NA	(\$5000)	\$0

* No existing facilities meet these criteria.

8. Adjust Size Exemptions. The proposed rules increase from 20 to 100 tons the amount of Type 1 and Type 2 feedstocks that a facility may compost annually without a permit. They add a new exemption allowing 40 tons of Type 3 feedstock to be composted annually without a permit if composting takes place in a vessel designed to prohibit vector attraction and odor. These changes in permit exemptions will allow more small facilities to compost without a solid waste registration or composting permit. As described above, all composting facilities regardless of size will be required to meet performance standards in the new rules. Currently there are no commercial composting operations under 100 tons. **Therefore, DEQ estimates this change will have no fiscal impact on existing commercial composting facilities. This change may exempt many smaller farm based and institutional composting facilities.**

9. Eliminate Agricultural Exemptions and Limitations. Agricultural composters are generally subject to some existing solid waste composting facility rules, but are not required to apply for and receive a permit from DEQ. Current rules limit the amount of off-site feedstocks composted without a permit to the amounts needed to supplement (enable) composting of feedstocks generated on site. Agricultural composting facilities that took extra “supplemental” feedstocks from off the farm, and facilities that sent finished compost off the farm, were required to operate under an Agricultural Compost Management Plan (ACMP) administered by the Oregon Department of Agriculture.

The proposed rules eliminate all restrictions on the amount or sources of feedstocks that may be used by a farm based composting facilities. These facilities will go through the same screening process as all other composting facilities and pay the one-time screening fee of \$150. This will be a new fee for the estimated 30 farm based compost facilities. Farm based composting facilities that are determined to be low risk facilities will register with DEQ. As discussed above, there is no separate registration fee under the proposed rules. **For farm based facilities, the fiscal impact of the proposed rules will be \$150.**

As discussed above, ODA will address farm based facilities that DEQ and ODA determine will need an operations plan and composting permit. Because ODA will provide this oversight, those facilities will not pay the DEQ plan review and approval fee or annual compliance fees for a composting permit. Therefore, this proposed change will have no other fiscal impact on farm based facilities.

10. Eliminate Exemption for Institutional Composting Facilities. The proposed rules eliminate the existing exemption for institutional composting facilities. Institutional facilities that are larger than 100 tons will go through the same screening process as all other composting facilities and pay the one-time screening fee of \$150. Facilities that are determined to be low risk facilities will register with DEQ. As discussed above, there is no separate registration fee under the proposed rules. Institutional facilities that are determined to present environmental risk will go through the plan approval process and receive a compost permit as will all other composting facilities. Facilities no longer exempt from permit requirements will incur costs including plan review and annual compliance fees and may incur additional costs to comply with permit requirements. DEQ estimates there are approximately 25 institutional composting facilities that are larger than 100 tons, DEQ estimates that almost all of those facilities will be determined to be low risk facilities, and that the average fiscal impact of this proposed change will be \$150.

11. Groundwater protection standard. The proposed rules include a specific performance standard requiring all composting facilities to protect groundwater. However, the groundwater protection requirement will not be a new requirement. The existing composting rules prohibit all composting facilities from discharging leachate or other wastewater to groundwater or surface water without a water quality permit. Similarly, DEQ's Groundwater Protection rules (OAR 340 Division 40) prohibit causing an unacceptable adverse impact to groundwater.

DEQ will determine during the screening process (discussed above) whether each existing composting facility is operating in a manner that protects groundwater, and whether the proposed operations of a new facility will protect groundwater. Many composting facilities already have some management practices in place to provide such protection. For facilities that DEQ determines pose a risk to groundwater, the proposed rules provide the operators with the flexibility and responsibility to select the methods, practices, or improvements that will provide groundwater protection for their facility. DEQ will review the proposed approach as part of the facility operations plan review.

Several factors affect the groundwater protection measures any particular facility may choose including: the types of composting methods used, the amounts and types of feedstock composted, the amounts of leachate and stormwater generated, and the methods used to manage those waste streams. Climate, site conditions, existing measures, and other factors will further affect the measures selected and the costs to construct and implement them. For example, composting facilities in areas with heavy rainfall are more likely to need measures to protect groundwater than facilities in drier areas.

Such measures may range from simple measures such as covering a pile during the wet months, to creating filter strips, bioswales, or other passive features to manage water from the composting operation. Some facilities may find it advisable to move the composting operation to a different part of the property. Facilities that are in areas DEQ considers especially vulnerable for groundwater contamination may need to provide a protective surface beneath the composting processing and feedstock areas, and manage any water collected from those areas.

The measures and costs will depend upon factors specific to each facility and will be selected by the facility operator (with DEQ approval.) DEQ estimates that half of all existing facilities will be determined not to pose a threat to groundwater. DEQ further estimates that most of the remaining facilities will be able to provide the necessary groundwater protection through measures such as filter strips and bioswales, at a cost of less than \$5,000 per facility. For facilities that may choose to, or are required to, implement much more complex and extensive measures, the estimated costs for two such measures are provided in Appendix A. DEQ cannot estimate whether any facility will be required to or will in fact implement those measures.

12. Clarify Financial Assurance Requirements. Financial assurance requires planning for a composting facility's closure, post-closure maintenance and any corrective action that may be needed and assurances that the amount of financial resources necessary to carry out those plans will be available when needed. The proposed rules clarify those requirements for composting facilities, and allow DEQ to require financial assurance if DEQ determines that such assurance is necessary. The rules provide that DEQ may exempt low risk facilities from the financial assurance requirements, and DEQ estimates that most facilities will be exempted from the requirement.

For facilities that will be required to provide financial assurance, the costs would vary considerably depending on a number of variables such as the costs to load and transport material off-site; the costs of disposal at another composting facility, farm or disposal site; and the financial assurance mechanisms used (e.g., trust, insurance, letter of credit or another DEQ-approved alternative.) One composting facility that was operating under an individual permit (no longer in operation), estimated the costs to close the facility at \$2/ton x the maximum amount of feedstock and composted material on-site at any time and established a trust fund to cover the \$213,200 in estimated closure costs. Note this was a very large facility with more than 100,000 tons of feedstocks and composted material on site at one time. There are fewer than five such facilities currently operating in Oregon.

The proposed rules also clarify that all solid waste facilities permitted under OAR 340, Division 96 (transfer stations and material recovery facilities, incinerators, sludge and land application disposal sites and solid waste treatment facilities) are subject to financial assurance requirements, and that these facilities may be exempt from the requirements if the department determines they are low risk. This proposed clarification reflects standard practice and will not pose new fiscal or economic impacts on facilities.

<p>Summary of Other Potential Fiscal Impacts</p>	<p>1. Tip Fees. Composting facilities charge a tip fee (disposal fee) for incoming feedstocks, and may increase the tip fees to recoup all or part of the costs of implementing the proposed rules. DEQ estimates tip fees would be increased, if at all, only for facilities that need to implement the more expensive groundwater protection measures discussed in Appendix A. Composting facility tip fees across Oregon for uncompacted yard debris range from \$10 per ton to \$26 per ton. These tip fees could increase between an estimated \$1.61 and \$9.10 per ton for yard debris or other organic feedstocks if composting facility operators recover all or most of their costs to implement the most expensive groundwater protection measures by increasing tip fees.</p> <p>2. Sale price of compost product. As an alternative to passing costs on through higher tip fees, a facility operator may choose to pass the costs of compliance to the consumer through the sale price of finished product. The price of finished compost may increase by an estimated \$1.53 - \$6.50 per ton if facilities implemented the most expensive measures described in Appendix A and passed those costs on in the form of increased prices.</p> <p>3. Collection rates: Many local governments provide yard debris (and potentially other organics) pick up at residences and commercial businesses by franchising solid waste hauling and recycling services. Local governments approve collection rates after consideration of costs to provide the service, an allowable profit margin, and third party auditor review. Information from the City of Portland, Clackamas County and Marion County residential yard debris collection programs was used to estimate the potential increase in collection rates given the estimated range of tip fee increases in # 1 above. Some jurisdictions do not anticipate changing collection rates specifically for tip fee increases resulting from this rulemaking. If collection rates are changed to address tip fee increases resulting from this rulemaking, monthly residential collection rates may increase between \$.01 and \$.45.</p>
<p>Small Businesses</p>	<p>All but two of the existing composting facilities are small businesses. The fiscal impact of the proposed rules on these facilities includes, potentially, all of those described above. The exact impact on any particular facility will depend upon whether DEQ determines the facility presents and environmental risk and, if so, the measures necessary for the facility to properly manage those risks.</p>
<p>Large Business</p>	<p>Currently, two composting facilities are large businesses with over 50 employees. Depending upon site-specific factors, composting facilities that are large businesses will incur the same fiscal and economic impacts as those that are small businesses.</p> <p>Haulers that are large businesses face the same tip fee and other fiscal and economic impacts as the general public, described above.</p>
<p>General Public</p>	<p>The general public may be indirectly affected by increased costs of compliance with the proposed rule changes that are passed on through tip fees or the price of finished compost, as discussed above</p>

Businesses Involved in the Rulemaking	Three commercial composting businesses and three agricultural composting facilities represented their respective businesses on DEQ's Composting Facility Rulemaking Work Group. These and several other composting facilities participated in the rulemaking process by attending meetings or staying current with the process via DEQ's website. A group of composting facility operators provided assistance in developing the BMP cost estimates in Tables 7 and 8.
Local and Regional Government	<p>Many municipalities (mostly in metropolitan areas) and counties throughout the state that serve rural populations have yard debris collection programs. Local governments franchise with haulers to collect compostable wastes at the curbside. If composting facilities choose to pass increased costs onto the tip fee, haulers may request local governments to increase the collection rate to cover the tip fee increase. Local government may have provisions to increase collection rates without a rate review in such cases, or may need to perform a rate review.</p> <p>Potential collection rate increases are estimated to range between \$.01 and \$.45 per month, as described in #1 above.</p> <p>If a composting facility closes, cities or counties could be faced with redirecting feedstocks to other facilities, which might increase the tip fee to cover increases in transportation or disposal costs</p> <p>Metro licenses composting facilities to regulate operations and ensure proper waste management. There is no fiscal or economic impact for Metro.</p>
State Agencies	<p>Oregon Department of Agriculture (ODA) staff provides oversight of agricultural composting operations. ODA does not expect to require additional FTE to implement the proposed rules.</p> <p>State institutions such as the universities and prisons that compost may incur the same fiscal and economic impacts to comply with the proposed rules as other composting facilities, described for small businesses above.</p>
DEQ	Existing FTE are sufficient to manage the solid waste composting facility workload in the long term.
Other Agencies	Other agencies that compost or generate feedstocks or purchase finished product may incur the same fiscal and economic impacts described above for small businesses and the general public.
Housing Costs	The department has determined that this proposed rulemaking will have no measurable effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single-family dwelling on that parcel.
Administrative Rule Advisory Committee	A Composting Facility Rulemaking Work Group consisting of composting facility operators, local and regional governments, Compost Council of Oregon representative, agricultural composters and other interested parties met more than fifteen times between February 2004 and October 2007 to develop the proposed rules. In addition, DEQ

conducted a survey of composting facility operators in October 2005, contacting 75% of the permittees. Of those surveyed, only two were unaware that DEQ was conducting this rulemaking process. Twenty-seven reported that they were involved in the process and attended meetings or followed the process by viewing the minutes on DEQ's website.

In the fall of 2008, DEQ met with representatives of commercial composters and local government to discuss the proposed rules, and held a workshop for farm based composting facilities on the proposed rules. In February 2009, DEQ provided the external workgroup with copies of the rulemaking documents for their review and comment, and met with the group to discuss the rules.

APPENDIX A

<p>Analysis of Costs to Implement Best Management Practices</p>	<p>Potential costs to construct and operate certain BMPs to Protect groundwater</p> <p>This section evaluates potential costs to construct and operate best management practices (BMPs) to protect groundwater. As noted above, DEQ will determine through its screening process whether a facility will need to implement groundwater protection measures, or other or additional measures, to meet the groundwater protection performance standard. The facility will then include measures in its operations plan that it believes will meet the performance standard. DEQ will review the proposed measures and will approve them if it determines the measures will be protective.</p> <p>The BMPs discussed below would be necessary only at facilities that are unable to demonstrate to DEQ that alternative methods will protect groundwater and surface water. It is uncertain whether any facilities would be required to or would implement these measures.</p> <p>This analysis uses two hypothetical composting operations to illustrate potential costs to implement BMPs at a facility. Both hypothetical operations use an aerated windrow method of composting, but one manages leachate and stormwater on site and the other discharges them to a sewer. The suite of BMPs selected for each varies accordingly. Other assumptions needed to evaluate the costs for implementing the selected BMPs are the same for both facilities and are described below. Table 4 summarizes the costs for implementing BMPs at the facility treating leachate and stormwater on site. Table 5 summarizes those costs for the facility discharging to a sewer.</p> <p><i>Other assumptions for hypothetical composting facilities:</i></p> <ul style="list-style-type: none"> • The facilities are located in Western Oregon with high average rainfall.* • The sites receive up to one million gallons of rainwater per acre annually. • The facilities are 5 acres and process 18,000 to 41,000 tons of feedstock annually. • The 5 acre site needs an additional 2½ acres of protective surface. ** • The facilities using a negative or positive forced air method will produce much less leachate than a turner or excavator. <p>* The average annual rainfall for facilities located in Western Oregon is 38 inches. ** DEQ surveyed 75% of the permitted composting facilities. The survey showed that 42% have a protective surface on 50-100% of the site, while 21% have a protective surface on 25-49% of the site. However, this analysis assumed that a facility would pave an additional 2½ acres.</p>

Table 7: BMP Costs – New Construction to Manage Leachate On-site.

A	B	C	D	E	F
Best Management Practice	Capital Cost	Annual Capital Cost (10 year amortization, no interest)	Annual Operating Costs	Total Annual BMP Costs (Col C + Col D)	Comments
Grading facility areas	\$22,000	\$2,200	\$6,000	\$8,200	May not be needed if site already paved
Paving	\$381,000	\$38,100		\$38,100	Based on \$3.50/sq. ft. for 2.5 acres. Includes compacted rock base and paving. Not needed if site already paved.
Sediment basins solid separator	\$26,000	\$2,600	\$800	\$3,400	
Bio-swale or grassy areas	\$7,000	\$700	\$700	\$1,400	Estimated for construction and operation cost.
Oil and water separator	\$20,000	\$2,000	\$2,000	\$4,000	Includes purchase, site preparation and installation.
Leachate pump	\$4,000	\$400	\$1,000	\$1,400	Based on 15 horsepower at 1,230 hrs per year.
Holding pond or detention facility	\$146,000	\$14,600	\$9,000	\$23,600	Includes lined ponds, excavation, aerators, and leachate pump.
Wet pond	\$20,000	\$2,000	\$1,000	\$3,000	Based on unlined pond. 200,000 gallon
Sweeper truck			\$31,000	\$31,000	Based on \$600 bi-weekly rental.
Totals	\$626,000	\$ 62,600	\$51,500	\$114,100	

Table 8: BMP Costs – New Construction for Disposing Leachate to Sewer.

A	B	C	D	E	F
Best Management Practice	Capital Cost	Annual Capital Cost <small>(10 year amortization, no interest)</small>	Annual Operating Costs	Total BMP Costs <small>(Col C + Col D)</small>	Comments
Grading Facility Areas	\$22,000	\$2,200	\$6,000	\$8,200	May not be needed.
Paving	\$381,000	\$38,100		\$38,100	Based on \$3.50 sq. ft. for 2.5 acres. Includes compacted rock base and paving.
Sediment Basins Solid Separator	\$26,000	\$2,600	\$800	\$3,400	
Oil and Water Separator	\$20,000	\$2,000	\$2,000	\$4,000	Includes purchase, site preparation and installation.
Holding pond or detention facility	\$146,000	\$14,600	\$9,000	\$23,600	Includes lined ponds, excavation, aerators, and leachate pump.
System Development Fee	\$36,000	\$3,600		\$3,600	Estimates varied from \$11,000 to \$61,000.
Direct connect to sanitary sewer			\$7,000	\$7,000	Estimate was based on 2 additional acres or 2 million gallons on a five-acre site.
Total fixed cost	\$630,650	\$63,065	\$24,800	\$87,900	

Note: Assuming a composting facility that chooses to haul leachate to a sewer treatment facility travels 20 miles round trip, estimated average annual hauling costs would be \$95,000 (using the average of a wide range of estimated hauling costs.)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

Composting Facilities

Amend solid waste composting facility rules. Clarify financial assurance requirements for solid waste disposal facilities and public notice requirements for renewal of several solid waste permits.

1. Explain the purpose of the proposed rules.

This rulemaking modifies permit exemptions for composting facilities; creates performance requirements for all composting facilities to protect surface water, groundwater, prevent odors and vectors, and ensure pathogen reduction; creates an environmental risk screening process; describes registration and permit requirements; clarifies operating and maintenance requirements; and modifies the compost facility registration, application, and compliance fee schedules.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes No

a. If yes, identify existing program/rule/activity

Issuance of Solid Waste permit.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

c. If no, apply the following criteria to the proposed rules.

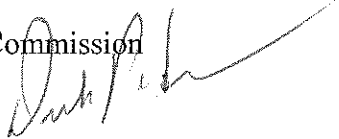
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

3. If the proposed rules have been determined a land use program under 2 above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

N/A

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item I, Discussion Item: Climate Change Symposium
August 20-21, 2009 EQC Meeting

Purpose of Item The purpose of this agenda item is to discuss a proposed DEQ climate change symposium, and gather feedback on issues and topics of interest to the Environmental Quality Commission.

Background DEQ is committed to protecting, enhancing and maintaining Oregon's air, land and water. Part of this commitment is staying informed of new or innovative solutions to environmental problems. Recognizing the experience and diverse interests of the commission, DEQ would like to hold a climate change symposium this fall or early winter with the EQC presiding.

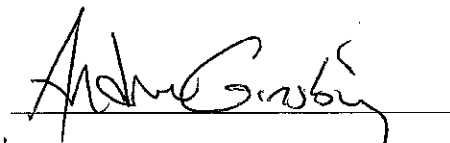
The symposium would cover a variety of topics related to climate change, including the national context shaping state action, recent state legislation, current DEQ projects, and promising directions in research and policy. DEQ staff would be available along with expert guest presenters on specific topics. The symposium would last one day, with opportunities for formal and informal conversation with presenters, staff and invited guests.

EQC Involvement The EQC will host the climate change symposium as a special meeting, and incorporate the information presented into future rulemakings and policy decisions. A draft agenda of the symposium will be presented at the August 20-21, 2009 EQC meeting for review and discussion.

Attachments None

Approved:

Division:



Report Prepared By: Wendy Simons
Phone: (503) 229-5388

Agenda Item I, Discussion Item: Climate Change Symposium
August 20-21, 2009 EQC Meeting

Questions for Discussion by EQC members:

1. What are EQC members' objectives for a special meeting or informational session on climate change? What do members hope to get out of such a meeting?

2. What specific topics would EQC members like to hear about?
 - Current state of science on global warming and impacts, Oregon ecology & impacts
 - Public health impacts
 - Agriculture and forestry in Oregon: impacts, opportunities
 - Adaptation issues: water quality and quantity, infrastructure
 - What has Oregon already done, what is already on the books (special focus on authority of the EQC)
 - What's happening in Washington, DC with cap and trade & energy bills – what will it mean for Oregon and the states in general
 - California's Global Warming Solutions Act of 2006 (AB 32) – impacts on other states
 - What's happening in international negotiations leading up to Copenhagen meeting
 - Current status of Western Climate Initiative: current work in progress, future prospects; cap and trade, complementary policies
 - Results of 2009 regular Legislative session: HB 2186, Transportation bills
 - Possibilities for 2009 special session and February 2010 session
 - State and federal roles, e.g. auto emissions standards, renewable fuels
 - Cutting edge research in Oregon University System
 - How will climate change affect DEQ's traditional work: e.g. impact of snowpack losses on water quality, implementation of new water storage programs to compensate, impacts on existing wastewater treatment facilities
 - Recent lifecycle analysis on emissions from Oregon's consumption

3. Who would you like to hear from?

Possible presenters:

 - Region 10 EPA
 - Governor's office
 - Oregon Environmental Council, environmental groups
 - Pew Center for Climate Change (experts on federal legislation)
 - David Allaway on lifecycle analysis
 - Renewable energy experts – ODOE, PUC
 - Ken Williamson & OUS technology/science experts
 - Dr. Phil Mote, Oregon Climate Change Research Institute

- Tribal representatives
- Ecological/habitat expert
- California ARB (James Goldstene, Mary Nichols, Eileen Tutt)
- Bill Bradbury
- Jeremiah Baumann or someone from Sen. Wyden's office
- State legislators

4. Given those objectives, what is the best format?

- Individual presentations
- Panel presentations
- EQC as host or audience

TOWN HALL MEETING

Environmental Quality Commission Meeting
Newport, Oregon
August 20, 2009

Name Affiliation or Interest Phone or Email Receive agendas by email?

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Background Information for the EQC Meeting in Newport August 20 - 21, 2009

- **Georgia-Pacific Toledo NPDES Permit**

DEQ issued the permit on July 14, 2006. On September 8, 2006, DEQ received a petition for reconsideration. The petitioners included Northwest Environmental Defense Center, Surfrider Foundation, Oregon Shores Conservation Coalition, Friends of Yaquina Bay and Lincoln County Citizens for Clean Water. Petitioners requested the reconsideration based on assertions that the permit was inconsistent with state and federal regulations designed to protect water quality and beneficial uses. DEQ made the following changes to the GP Toledo Permit in response to the petition:

1. Additional monitoring required to update information on the impact of their discharge on the marine environment; and
2. Specific prohibition included to prevent GP from accepting and discharging any waste stream other than their own, such as the leachate from Marion County Landfill.

The permit was re-issued on March 9, 2009. A public meeting will be held in fall to discuss the changes to the permit.

The city of Newport and GP Toledo are evaluating GP's easement to use the Newport's right-of-way for the discharge pipe to the ocean outfall. The Newport city council recently adopted an agreement and presented it to GP. One of the sticking points for GP is the section that allows the city to collect a fine any time GP violates their permit. GP could decide to stop using the pipeline because it has another discharge pipe travelling through the city that has a permanent easement.

- **GP Toledo Air Quality Permit**

The GP plant has complied with the two air toxics rules and standards applicable to them. Compliance has reduced emissions of air toxics from the pulping and chemical recovery operations by approximately 50 percent from 1995 estimated levels. Future air toxics rules will also likely reduce emissions from the hog fuel boiler at the facility.

Concerned Citizens for Clean Air - Maxine Centala belongs to a community group called Concerned Citizens for Clean Air. Ms. Centala and the community group have expressed concern regarding various emissions from the facility for a number of years. One of their concerns involves the facility's practice of burning plastic in the hog fuel boiler. The plastic comes from reject material associated with recycling old cardboard containers. The old cardboard containers are pulped up and the plastics are separated from the "good" pulp that is reused in the manufacturing process. The "bad" pulp contains considerable cardboard pulp along with the plastics; this material is known as OCC rejects. The OCC rejects have fuel value and are sent to the hog fuel boiler where they are mixed with regular wood waste and bark.

Concerns were raised during air quality permitting actions in 2008 regarding potential dioxin emissions resulting from burning OCC rejects in the hog fuel boiler. In order to address these concerns, Georgia-Pacific's Title V permit requires that they sample the boiler's feed stream to determine the percentage of plastics it contains and the chloride content of the plastics. The permit also requires them to test for dioxins if the plastics are more than one percent of the feed stream. The first four months of plastics/chloride sampling indicate that the waste stream is approximately 9.5 percent plastics, which is 16.4 tons per day, and triggers the permit condition requiring a source test. Coincidentally, the facility received a letter from the US EPA requiring them to conduct dioxin testing as part of the Boiler/CISWI MACT promulgation process. We will have actual dioxin emission information within the next three to four months.

Ms. Centala, on behalf of the citizens group, has requested a meeting with DEQ staff to discuss the Lincoln County NATA data. We believe that they are concerned about air emissions from open burning and woodstoves. The meeting is scheduled for August 12th in the Salem DEQ office.

- **Nye Beach**

DEQ has received complaints from citizen about sewage discharges at Nye Beach in 2008. The high bacteria counts found at Nye Beach are attributable to the drain that discharges from the seawall, and to sewage spills. The storm drain is actually the outlet for Nye Creek, and an overflow for spills.

Jennifer Ketterman, from the DHS Beach Program, and DEQ met with the Newport city manager to discuss the situation. The city did some smoke tests and found seven direct raw sewage connections to the creek in a triangular area that was overlooked in earlier improvements. They plan to do additional investigative work, and have permanent warning signs on the seawall.

There have also been several sewage discharges that resulted from pump failures at a lift station at Nye Beach. Newport's old sewage treatment plant was located at Nye Beach. The new plant is south of Yaquina Bay, but the effluent travels through a pipe back to the original Nye Beach ocean outfall.

- **Port of Newport International Terminal**

The Port of Newport's International Terminal is located along the northern coast of Yaquina Bay in Newport. The terminal is used for both cargo and fishing operations. The existing terminal was constructed by a private corporation in 1948 by scuttling two former US Navy 1940s-era concrete ships. The two ships, the Pasley and the Hennebique were sunk bow to bow and a dock was built on top them. In November 2006, the Port of Newport secured a \$15 million bond to remove hazardous substances (bunker C oil, metals, and asbestos) and build a new dock facility. The port also received \$3.3 million from ODOT's Connect Oregon fund.

The Port of Newport submitted an application for the proposed project of building a new dock by encapsulating the two vessels in October 2008. The application was deemed incomplete and revised by the port in January 2009. The revised application was not

submitted because there was an opportunity to apply for National NOAA Restoration grant to remove the ships. The port received notice in June that they did not receive grant funding.

Due to the lack of funding the port must scale back the project. They are currently evaluating removal of the Pasley and replacing the dock facility. The port is planning on submitting a new application as soon as possible.

DEQ's Cleanup Program has provided technical support on the evaluating the extent of residual contamination on the Pasley and Hennebique. The environmental work is being conducted with OBDD Brownfield State Revolving Funds. DEQ's 401 Water Quality Certification Program submitted comments on the October 2008 application.

- **Port of Newport NOAA Pacific Fleet Proposal**

The Port of Newport has put in a proposal to become the home of NOAA's Pacific Fleet. The Port of Newport is currently a finalist and should hear about the award in August. DEQ's 401 program will be working with state and federal agency to permit the construction of Pacific Fleet facility in Yaquina Bay next to OSU's Hatfield Marine Science Center.

- **EPA Air Quality Monitoring in Toledo**

As part of an initiative to understand whether outdoor toxic air pollution poses health concerns to schoolchildren, the US EPA has decided to perform short term monitoring for air toxics at 62 schools nationwide, including the Toledo Elementary. Air monitoring is planned for the end of July and first part of August.

- **King Salvage in Toledo**

EPA conducted a Time Critical Removal at King Salvage May 7 through May 12, using Oil Pollution Act funds. EPA removed approximately 500 tons of petroleum-contaminated soil from the site as well as 50 drums of used oil, which was threatening Beaver Creek. Approximately 10,000 tires remain on the site. About 230 light ballasts remain on site, which likely do not contain PCBs but because of poor labeling, EPA placed them in a secure area for later disposal. Several piles of debris, mostly solid waste associated with automobiles and motor homes, remain on site and may contain small amounts of hazardous substances associated with auto recycling.

DEQ's Solid Waste, Hazardous Waste and Cleanup Programs, as well as the Water Quality Division have been involved with the site since 2000. Before the removal, the Cleanup Program and EPA coordinated with the other programs in an attempt to provide a multi-jurisdictional approach to the removal and to try to provide a solution to the other program's interests. Because of the funding mechanism, work was limited to removing petroleum-related contaminants.

- **The U.S. Highway 20: Pioneer Mountain**

An Eddyville construction project will replace the existing highway with a new section built to modern safety and design standards. Several public agencies, including the Oregon Department of Transportation, are covered by a 1200-CA Construction Stormwater Permit for their construction activities that will have storm water discharges. DEQ is responsible for

issuing permit coverage and assuring ODOT maintains compliance with the permit conditions. Specifically, the permit requires that an erosion and sediment control plan be developed and implemented to prevent the discharge of significant amounts of sediment to surface waters of the state.

Current Compliance Status - During the previous fiscal year, DEQ conducted site visits on five occasions to assure that the project has adequately installed and maintained the erosion and sediment control measures. The project complied with permit conditions on all five occasions. DEQ will do additional site visits throughout the rainy season during the current fiscal year, including a September 22, 2009 tour through the site.

Historical Compliance Status - DEQ issued a \$240,000 state penalty against California-based Granite Construction Co. for numerous water quality violations that occurred during the company's work on the project in 2006 and 2007. DEQ issued a \$90,000 penalty against ODOT for violations of its stormwater discharge permit during the same timeframe. DEQ noted lack of erosion controls to prevent the discharge of sediment to waters of the state and a total of 61 individual water quality violations. The penalties were not contested by either party, and a mutual agreement and order was signed. The money from the penalties was dedicated to supplemental environmental projects for stream and habitat restoration projects in Lincoln County.

- **Mid-Coast TMDL Status**

DEQ is working with local water quality monitoring groups to gather the data needed for the TMDLs. The Yachats Water Quality Monitoring Group, the Salmon-Drift Watershed Council water quality monitoring team, the Siuslaw Watershed Council, the Surfrider Foundation, the Oregon Coast Aquarium, the Ports of Toledo and Alsea, Confederated Tribes of the Siletz Indians, and the Devils Lake Water Improvement District are all participating. Efforts were coordinated by the Lincoln SWCD. DEQ, with advice from a local technical team, is preparing the watershed management plans for the Mid-Coast Basin. After public review, the plans will become final in 2010. Once final, the area plan and rules will be reviewed to add any provisions needed to make sure that the plans will be achieved on agricultural lands. Currently there have been extensive discussions on sediment assessment methodology and how to address the sediment management plans in the Mid-Coast with disagreements between the timber industry and DEQ.

- **Former Valsetz Clean-up Site Proposed for Water Supply Reservoir Project**

In 2008, Polk County received a \$112,664 Water Conservation, Reuse and Storage Grant from Oregon Water Resources Department. The grant is for a feasibility study for a storage reservoir at the former Boise Cascade mill site in Valsetz, which is intended to meet water needs through 2050 for municipal water providers and agricultural users in Lincoln and Polk counties. The proposed project could have potential environmental impacts in both the Siletz and Luckiamute watersheds. Polk County's study must address a number of key elements outlined in Senate Bill 1069, including analysis of environmental harm and impact, evaluation of flows and project impacts to flows and a comparative analysis of alternative means of supplying water. The next quarterly project report was due to the Water Resources Department on July 30, 2009.

The proposed reservoir site is located at a former DEQ Cleanup Program site (ESCI #15). DEQ's investigations of the site in the late 1980s and early 1990s found low levels of pentachlorophenol. Site documentation does not mention sampling for dioxins, which wasn't routinely done in the early 1990s. As documented in a recent letter to a concerned resident, Western Region Cleanup Manager Max Rosenberg states that dioxins "are often present as an impurity in pentachlorophenol, and it is possible that dioxins may be present in soil or sediment at the site. Should dioxins be present, they could potentially pose an environmental problem if the site were redeveloped, or if a reservoir were built over the area."

Project Contacts for Further Information:

- Bob Rice (Oregon Water Resources Department): (503) 986-0927
- Austin McGuigan (Polk County Planning Director): (503) 623-9237

Other entities known to have an interest in project outcome:

- Confederated Tribes of Siletz
- Midcoast Watershed Council
- Friends of Polk County
- WaterWatch

- **Lincoln County Ongoing Solid Waste Complaints**

There have been several complaints from Lincoln County regarding the mismanagement of contractor waste. Some of the local haulers have been concerned about contractors disposing of construction and demolition materials and landscaping debris illegally. DEQ has sent out several letters to local contractors about what is considered to be solid waste and how to manage these materials properly. In addition, the DEQ Solid Waste Program has sent letters to the county, city, sheriff department, police department and fire department describing what type of materials are considered to be solid waste, where to dispose of them and proper collection of evidence if they suspected illegal dumping. DEQ will probably provide training for these departments.

Example of ongoing complaint - A local hauler has complained numerous times about James Drayton Trucking and Excavation. This site has had many complaints and a few minor violations in the past. At least half of the complaints have turned out to be not valid. James Drayton is a contractor that is approved to take clean wood waste to his property and chip it up and use it for hog fuel or mulch. These materials come most from demolition jobs in the county. He also has large piles of clean fill (dirt, rock, concrete and old asphalt) on his property that DEQ doesn't regulate.

The two main complaints we received are that Mr. Drayton is taking materials to his site that he should not and is illegally disposing of them. The other complaint is that site is too small for the amount of material he has on site and on a few occasions materials (mostly wood waste and chips) have slid down into a wetlands area. His property is small and on a high ledge. In the past when materials have slid down the hill, DEQ has made him remove the material.

The most recent incident happened in January 2009 when a very large landslide took out a huge portion of his property and slid into the wetland below. The sheriff's office and Department of State Lands were involved with this case. Since the landslide was a natural act, the material involved was clean fill, and it was not intentional, DEQ and the Department of State Lands have not taken action on this issue. The sheriff's office is arguing that there was solid waste in the slide material and DEQ should be involved. DEQ has asked the sheriff's office for photos and evidence, but we have not received the evidence to date.

News Release

For release: March 9, 2009

Contact:
Steve Schnurbusch, Water Quality Division, Salem, 503-378-8306

DEQ Re-Issues GP Toledo Water Quality Permit

The permit is re-issued after responding to a reconsideration request; DEQ will invite interested public to meeting that is being arranged

The Oregon Department of Environmental Quality (DEQ) has issued the water quality permit for Georgia Pacific's facility in Toledo. The permit was signed on March 9, 2009. DEQ initially issued the water quality permit renewal for the pulp and paper facility on July 14, 2006. After the permit was issued, DEQ received a petition to reconsider the permit on September 8, 2006.

The petitioners included Northwest Environmental Defense Center, Surfrider Foundation, Oregon Shores Conservation Coalition, Friends of Yaquina Bay, and Lincoln County Citizens for Clean Water. Petitioners requested the reconsideration based on assertions that the permit was inconsistent with state and federal regulations designed to protect water quality and beneficial uses.

DEQ considered all the comments made by the petitioners, and responded to each.

The DEQ response can be found at:

<http://www.deq.state.or.us/wr/permits/GPToledoResponseReconsideration.pdf>

The permit can be found at:

<http://www.deq.state.or.us/wr/permits/GPToledoPermit2009Reissue.pdf>

After completing the evaluation, DEQ made two changes to the permit in response to the petition.

1. GP Toledo will be required to conduct an ocean monitoring study to assess any potential impacts from their discharge on human health and aquatic life.
2. In the past, leachate from the Marion County Landfill was accepted and sent through GP's wastewater treatment system. The permit now contains specific prohibitions to prevent GP from accepting and discharging any waste stream other than their own.

DEQ is confident the permit complies with all water quality standards and is protective of human health and the environment.

The public will be invited to attend a meeting to discuss the results of the

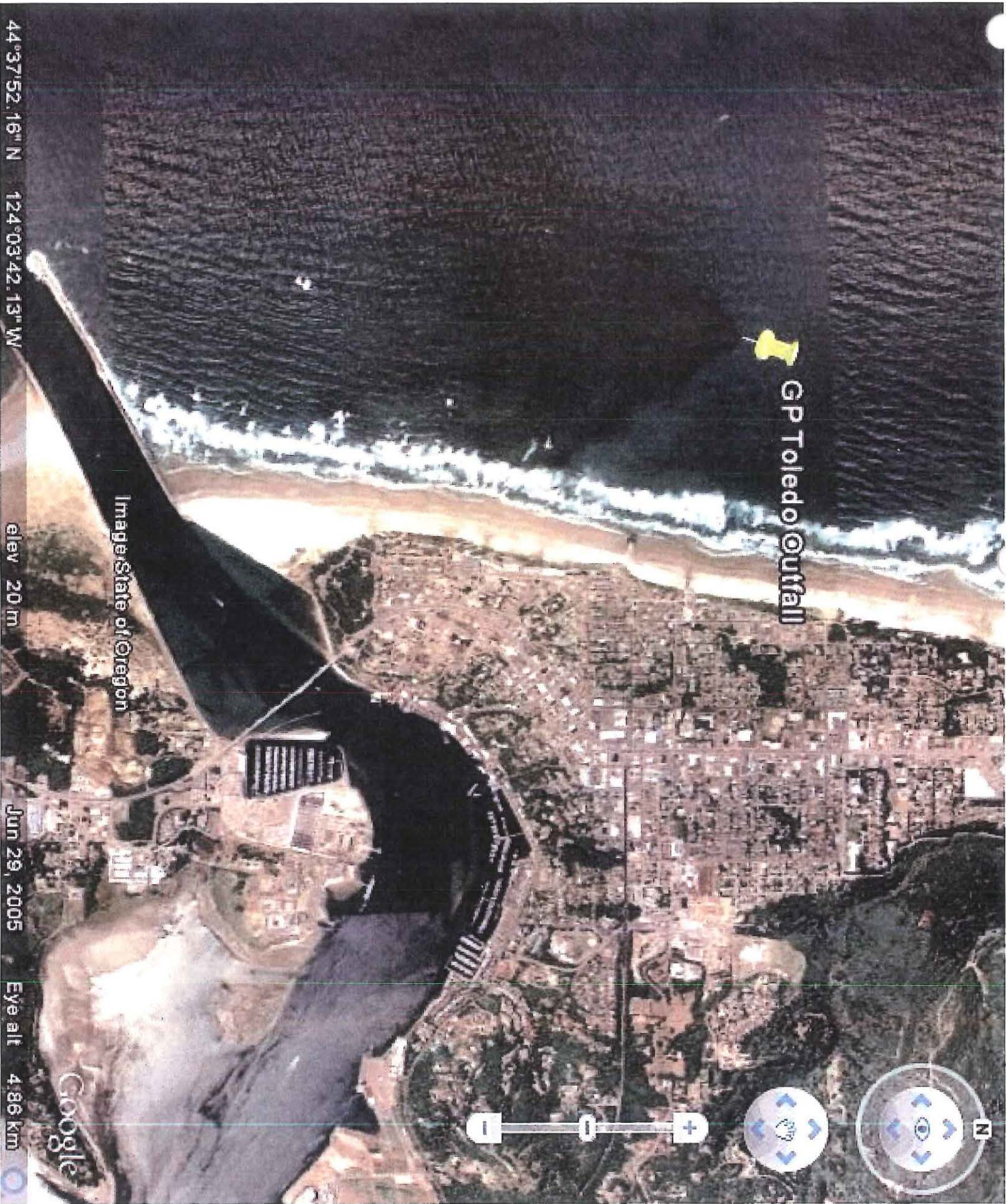


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Fax: (503) 229-6762

reconsideration. DEQ is currently working with parties involved in the reconsideration to arrange the meeting. When the details of the meeting are set, that information will be publicized.

###



GP Toledo Outfall

Image State of Oregon

44°37'52.16" N 124°03'42.13" W

elev 20 m

Jun 29, 2005

Eye alt 4.86 km

Google

The Oregon Beach Monitoring Program (OBMP)

Overview:

In October 2000 Congress passed the Beaches Environmental Assessment and Coastal Health Act (BEACH Act). Under the act eligible states are provided funding to monitor beaches and implement programs to inform the public about the risk of exposure for bacterial contamination disease-causing microorganisms in the waters at the nation's beaches. The Beach monitoring program is mandatory, if the state chooses not to implement it EPA must.

Oregon's beach monitoring program is implemented through a cooperative agreement between the Oregon Department of Human Services (DHS), the Oregon Department of Environmental Quality (DEQ), and State Parks. DEQ monitors beaches along the coast and provides DHS with the information they need to post advisories. DHS notifies stakeholders of advisories, conducts public outreach, maintains web-based information on the program and submits data to the EPA. The State Parks help to post advisories when bacteria counts exceed the criteria for human contact.

1. Monitoring Overview:

- During the summers of 2008-09 we are monitoring 72 locations at 22 different beaches along the Oregon Coast.
- Sites are sampled weekly or twice monthly depending on the location.
- Winter sampling occurs at fewer locations (n=13) with less frequency because of relatively less beach use during winter months.
- The five beach locations with the **most bacteria exceedances** in 2008-09 are as follows:
 - **Nye Beach**
 - **Cannon Beach**
 - **Harris Beach**
 - **Mill Beach**
 - **Sunset Bay**
- There have been no marine water exceedances at Nye, Cannon and Mill beach so far in 2009. However, high bacteria counts tend to be highly variable in occurrence.

2. Follow up activities:

- **Nye Beach**- In 2007 the City began conducting smoke and dye testing to investigate the storm water basin and discovered several misconnections. Seven properties were discharging directly to the storm water system instead of the city sewer. These cross-connections have since been rectified. There have been

fewer exceedances from the marine samples taken at the mixing zone but the samples from the pipe still show high results.

- **Cannon Beach** -The pipe at Ecola Court has had high sample results in 2009. OBMP has been sampling this site since October 2007. People use the pipe runoff to wash off sand when leaving the beach. A few high results over 500MPN and one over 1500MPN have pushed the average up. There were higher results more often in 2008. DHS has been in contact with stakeholders to find the source of the pollution. The runoff to the beach is not connected at the surface at low flow in the summer. So the high results do not always affect the marine results and do not usually initiate advisories
- **Harris Beach** -In 2008 the OBMP took samples upstream, in, and downstream of the bird pool. The sample results from the pool were usually higher than the surrounding sample results and all but one was over the standard in 2008. One sample was taken from the pool during the summer 2009 season and it was over the standard. Frank Burris at the OSU extension in Gold Beach has done some research on the watershed. The outflow of Eiler Creek just south of Harris creek has also had exceedances during the 2009 season.
- **Mill Beach** - In November 2008 a contractor found cross connections from sewer lines coming from Kalmiopsis Elementary School that eventually drained in to Macklyn Creek. The OBMP had been reporting results over the standard and some of the results were very high. The cross connection were repaired and the number of exceedances did drop off. But Macklyn Creek still gets occasional high results.
- **Sunset Bay** -Work by Steve Rumrill and others at the South Slough National Estuarine Research Reserve in Charleston suggests that Big Creek is a likely source of pollution that leads to elevated results at the south monitoring site and water contact advisories.

✚ **Take home message:**

- Most advisories appear to be associated with runoff via a creek or storm water outfall pipe from developed areas discharging on to the beach.
- Most advisories are associated with rainfall events.
- Some monitoring locations may have naturally high bacteria levels due to wildlife (Harris Beach).

Port of Newport International Terminal

The Port of Newport's International Terminal is located along the northern coast of Yaquina Bay in Newport. The terminal was used for both cargo and fishing operations. The existing terminal was constructed by a private corporation in 1948 by scuttling two former US Navy 1940s-era concrete ships. The two ships, the Pasley and the Hennebique were sunk bow to bow and a dock was built on top them. In November 2006, the Port of Newport secured a \$15 million bond to remove hazardous substances (bunker C oil, metals, and asbestos) and build a new dock facility. The Port also received \$3.3 million from ODOT's Connect Oregon fund.



In October 2008 the Port of Newport submitted DSL/ACOE joint application (JPA) for the proposed project of building a new dock by encapsulating the two vessels and removing the original dock, dock pilings, and office building. The application was deemed incomplete and revised by the Port in January 2009. The revised JPA was not submitted because there was an opportunity to apply for National Oceanic and Atmospheric Administration (NOAA) Restoration grant to remove the ships. The Port received notice in June that they did not receive grant funding.

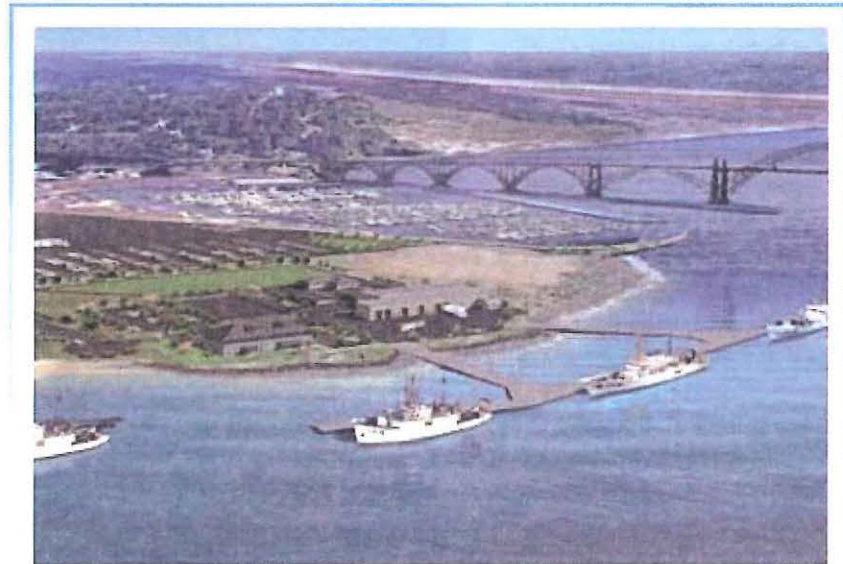
Due to the lack of funding the Port must scale back the project. They are currently evaluating removal of the Pasley and replacing the dock facility. The Port is planning on submitting a new JPA in the fall of 2009.

Several DEQ programs are working with the Port. The Cleanup Program is working with the Oregon Business Development Department (OBDD) and EPA on potential grant or loan assistance through the federal brownfield program. The Cleanup Program has provided technical assistance to the Port since October 2006 by reviewing work plans and summary reports. The Water Quality Program will be reviewing the joint permit application for the in-water construction work. The Air Quality Program will provide oversight for asbestos removal. The Port is responsible for completing an Asbestos Survey and notifying DEQ prior to asbestos removal by certified asbestos contractor. The Solid Waste Program will review a solid waste letter of authorization permit application if the Port decides to remove the sediment-fill material inside the ships and dispose of material upland. The Spill Program requested that the Port to develop a Spill Response Plan in October 2006.



Port of Newport NOAA Marine Operations Center-Pacific Fleet

On August 4, 2009 the National Oceanic and Atmospheric Administration (NOAA) selected the Port of Newport as the new home of NOAA's Marine Operations Center-Pacific beginning in 2011. NOAA signed a 20 year lease with the Port of Newport. A new facility will be built across the Yaquina Bay from the International Terminal. Port of Newport will be meeting with State agencies discuss project needs at the end of August.



Architectural rendering of the proposed NOAA site provided by gLAS Architects, LLC. of Eugene, OR



Port & Starboard August 2009 Volume 14, Issue 8

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Ron Smith,
Terminal Manager
Phone 541-265-9651
Fax 541-574-1053

PORT MEETING SCHEDULE

**Combined Work Session &
Regular Meeting**, August 25, 6:00 p.m.
Yaquina Bay Yacht Club
750 SE Bay Blvd. Newport, OR

www.portofnewport.com

(The Port's new website is live!)

Newport is Successful in its Bid for NOAA MOC-P

The Port of Newport received word from the National Oceanic and Atmospheric Administration on August 4, 2009, that it was successful in its bid to bring NOAA's Marine Operations Center-Pacific to Yaquina Bay beginning in 2011.

"This is stunning news," said Port Commission President Ginny Goblirsch. "We knew we had a strong proposal and that Newport was the perfect location. Our success is the result of a tremendous community effort. Having NOAA MOC-P based in Newport will be pivotal in our history as we continue to evolve as the major center for marine research and education and one of the top US fishing ports. One of our unique strengths is the leadership our fleet has shown as research partners with scientists. This is a gift beyond measure to our community and the State of Oregon."

In its offer, the Port touted the collaborative work among scientific agencies at the Hatfield Marine Science Center, commercial fishermen, vessel owners, state and federal regulatory agencies, and the Oregon Coast Aquarium. It also emphasized that Yaquina Bay offers central, close-up access to high value marine environments, which would reduce fuel consumption and carbon footprints from NOAA's research vessels.

"NOAA is committed to providing the highest level of science, service, and value to the nation," said Rear Adm. Jonathan W. Bailey, director of the NOAA Office of Marine and Aviation Operations and the NOAA Corps. "We look forward to reuniting NOAA's West Coast research ships and support personnel at one facility and being an active part of the community."

Home porting NOAA's Pacific fleet in Newport enjoys widespread community support, the support of the state legislature, US Congressman Kurt Schrader, and US Senators Ron Wyden and Jeff Merkley.

The Port of Newport commission met in special session on August 5, 2009, to act on the 20-year lease with NOAA.

International Terminal Project Update

The Port is working with its consulting engineers on a budget, plan, and timeline for removing the Pasley and moving the dock face closer to shore to create mitigation. The Hennebique would be remediated and left in place for later removal as funds become available. The revised renovation plan includes the removal of the top layer of the bow and stern of the Hennebique in order to level out the final dock elevation. The Port will work closely with ODFW and its environmental consultants on the Joint Permit Application and will schedule an all-agency meeting after the budget is finalized and the engineers have completed a more complex, refined, and detailed construction plan, probably by mid-September. For more information, contact General Manager Don Mann at 541-265-7758.

SCHEDULE OF EVENTS

08/05—"Fishing for Energy" Media Event, International Terminal, 11:00 a.m.
 08/05—Special Meeting, 12:00 p.m., Port office
 08/05—Full Moon
 08/8-9—Bridge-to-Bridge (Astoria-Newport) Sail Boat Race
 08/12—Fishermen's Forum 8:30-9:30 a.m., Port Office
 08/15-16—Wooden Boat Show , Port of Toledo
 08/25—Regular Port Commission Meeting, 6:00 p.m. YBYC Club House
 08/28—SDAO Board Training, Best Western Agate Beach Inn, 8:30 a.m.-5:00 p.m.



Commissioner JoAnn Barton reading Resolution 5-2009 authorizing signing the NOAA lease

Report From The Shipping Terminal

There were 108 fishing vessels at the terminal during the month of July. Some of the distant water fleet has gone north for a season that opened last month. J. Lamb Marine Electric has been working on the boats that did not go north, and Northern Refrigeration has been working on F/V Patricia Lee, an Alaska crab boat. Foulweather Trawl is repairing bottom nets and building new ones.



F/V Progress and F/V Patricia Lee at the terminal dock
 (Photo by Patty Benjamin)

F/V Noah's Ark and F/V Miss Julie were chartered for a National Marine Fisheries Service research project. The project will start again in mid-August and F/V Raven and F/V Excalibur will participate.

As part of the "Fishing for Energy" partnership, a collection bin has been placed at the terminal to provide a cost-free solution for fishermen to dispose of old, derelict, unusable fishing gear. The gear will subsequently be converted into clean, renewable energy at the Covanta Marion Energy-From-Waste facility in Brooks, OR.

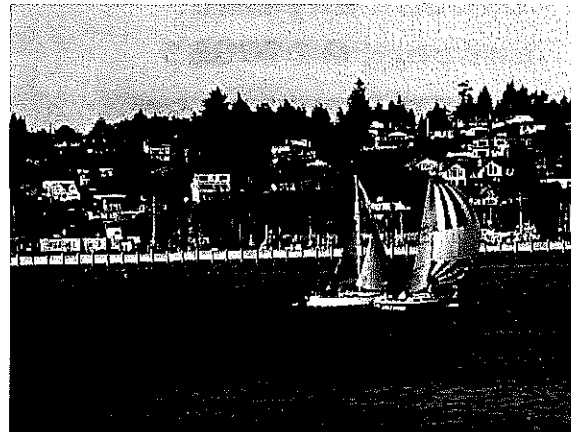
The South Side

The Fourth of July weekend came and went with no real problems. The wind was out of the south so most of the fireworks went off over the bay and not in the parking lot.

The H-dock project is ongoing, though it is a challenge for the crew to find time to work on it during the busy season. The Port had budgeted loan revenue for the dock renovation but has been able to fund the repairs from working capital without using the loan capacity for this project.

The Oregon Tuna Classic Fishing Tournament went well. The event brought approximately 400 people into town. Sixty boats were registered and the sixty 4-man teams caught 210 tuna, resulting in a donation of 4,200 pounds of fresh albacore to Food Share. South Beach Harbormaster Chris Urbach and his crew worked hard to get the old boat ramp and docks ready to go, and Walter Chuck did a great job of coordinating the local event. The tournament is gaining momentum and there is talk of filming parts of it for outdoor shows.

The Astoria to Newport Bridge-to-Bridge race is scheduled for August 8, so there will likely be 8-10 sail boats arriving in port on August 9.



(Photo by MaryLou Moore)

The North Side

The whiting season went well and the commercial docks were not overcrowded with boats; then tuna season got underway and the wind piped up, and there was no room at the docks. The hoist dock is busy as the local fleet offloads tuna to the fish buyers, and many boats are selling their catch directly from their vessels. Port of Newport General Manager Don Mann attended the city council meeting on July 6 and requested an amendment to the city's sign ordinance to expand the Bay Boulevard boundary to include the Port dock 7 area, which it does not at this time. The council was receptive to the request and forwarded the recommended change on to staff and the planning commission. The planning commission met on July 13. The request is considered a land use regulation and the city is obligated to prove 45-days notice to the state prior to the first hearing, which will occur on August 24, followed by city council action in September. In the meantime, the fishermen can legally place their signs on Port easements or rights of way over the next couple of months.

Election of Officers

At the regular monthly meeting on July 28, 2009, Commission President Ginny Goblirsch administered Oaths of Office for Commissioner Don Mathews, Position 4, and Commissioner David Jincks, Position 2. Mathews and Jincks won seats on the Port of Newport Board of Commissioner in the May 19, 2009 Special Election. On a motion approved unanimously, the Port Commission will retain the same slate of officers for the next year.

- Ginny Goblirsch, President
- Dean Fleck, Vice-President
- JoAnn Barton, Secretary
- Don Mathews, Treasurer
- David Jincks, Assistant Secretary-Treasurer

THE PORT OF NEWPORT

600 S.E. Bay Blvd.

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www.portofnewport.com

(The Port's new website is live!)



Dredge Yaquina
(Photo by Patty Benjamin)

Wooden Boat Show Port of Toledo

The Port of Toledo will host the Fifth Annual Wooden Boat Show August 15-16, 2009. The weekend event will feature new and vintage wooden boats on display, the Yaquina Run-Off (choose between a 3 or 9 mile course), a 6-mile Poker Paddle, and a family boat building event. There will be food and craft vendors and Rogue Ales will offer a beer garden. Live music on Saturday will range from folk to jazz to rock & roll, along with the Mamidou Thioud African Drum Troupe, and swamp music by Kelly Thibodeaux of Etouffee. The Wooden Boat Show is located just a block away from Toledo's main street. For registration forms and more information, visit www.portoftoledo.org. Admission to the Wooden Boat Show is free.

Wooden Boat Show
Port of Toledo, Oregon Aug. 15 - 16, 2009

"Passing on Traditions"
Boat Displays • Family Boat Building • Boat Races • Poker Paddle • Beer Garden
Log Rolling • Food • Live Music • All Weekend Free Public Workshops
Children's Activities • Artisan & Vendor • Maritime Artistry Table
Fun for the Whole Family

ROGUE TOLEDO

Total Maximum Daily Loads (TMDLs) in Oregon

Background

Oregon's rivers, streams, lakes and wetlands are an invaluable resource for our State. Not only do they provide great natural beauty but they also supply drinking water, aquatic life habitat, recreational opportunities, and industrial and agricultural services. With these demands in mind, the Oregon Department of Environmental Quality (DEQ) uses a comprehensive approach to maintaining and improving water quality.

Using a comprehensive approach

Water quality problems in Oregon's waterways are nothing new. In 1938, the State Sanitary Authority (now known as the DEQ) was created to clean up pollution in the Willamette River with a focus on regulating end-of-pipe or "point source" discharges from cities and industry. This focus continued with passage of the federal Clean Water Act in 1972. Over the last 37 years, as point source discharges have come under stricter regulations, monitoring data suggests that there are pollution sources other than pipes. These "nonpoint" sources come from diffuse runoff and habitat destruction, and originate both in urban and rural areas.

When water quality problems are identified, DEQ collects data on the cumulative effect of all pollution sources in a watershed and determine their impact on overall water quality. To solve water quality problems in a stream, river, lake or estuary, DEQ under a comprehensive strategy considers upstream sources of pollution, as well as input from wetlands and groundwater.

Total Maximum Daily Loads (TMDLs)

Under this comprehensive strategy to address water quality problems, DEQ looks at the water quality of the entire river and watershed rather than an individual point source. DEQ calculates pollution load limits, known as Total Maximum Daily Loads, or TMDLs, for each pollutant entering a body of water. TMDLs describe the amount of each pollutant a waterway can receive and still meet water quality standards. TMDLs take into account the pollution from all sources, including discharges from industry and sewage treatment facilities; runoff from farms, forests and urban areas; and natural sources. TMDLs also include a safety margin for uncertainty and reserve capacity for growth that allows for future discharges to a river or stream without exceeding water quality standards.

The process for establishing a TMDL to improve water quality begins when the waterbody appears on DEQ's 303(d) list, which identifies waterbodies that do not meet water quality standards.

Developing TMDLs

Federal law requires that streams, rivers, lakes and estuaries that appear on the 303(d) list be managed to meet state water quality standards. The list is compiled using data collected by DEQ monitoring staff, Watershed Councils and other state agencies. In most cases, rivers and streams receive discharges from both point and nonpoint sources of pollution.

DEQ's comprehensive watershed approach for protecting water quality includes developing TMDLs for both point and nonpoint sources. DEQ is committed to having federally approved

TMDLs for waterbodies listed on the 303(d) list. This planning effort incorporates the urgent need to save declining salmon runs, the need of landowners to begin working on restoration efforts, and the desire of communities to safeguard their drinking water and recreation sources.



Sediment from eroding banks is carried downstream and can impact fish habitat, water conveyance systems, and source water for drinking water.

When developing a TMDL, DEQ:

- Reviews existing data and collects additional data as needed to determine what pollutant is causing water quality problems and is the quantity entering the water. The review and monitoring also attempts to determine how much of the pollution comes from point sources, nonpoint pollution, such as surface runoff, and how much occurs naturally.
- Uses mathematical models to determine what effect pollution has on the stream or river, and how much of the pollutant can be discharged without exceeding water quality criteria throughout the watershed.
- Uses this information to establish permit limits on the amount of pollutant each point source can discharge and limits on nonpoint sources that are controlled through various water quality management programs.
- Develop a Water Quality Management Plan (WQMP) to describe strategies to achieve allocations identified in the TMDL to attain water quality standards.
- DEQ submits the TMDL and WQMP to the U.S. Environmental Protection Agency (EPA).

Once TMDLs and WQMPs are submitted, EPA has the responsibility for approving the TMDLs. This comprehensive approach focuses on watershed plans developed locally.

Not all basins will have TMDLs developed at once. DEQ is developing TMDLs in Oregon according to a schedule established in a consent decree resulting from settlement of a lawsuit (NEDC v USEPA, 2000). To meet this schedule, DEQ has prioritized the order in which TMDLs will be developed in watersheds around the state through the year 2010.

Implementing TMDLs

DEQ works with point sources such as wastewater treatment facilities and to ensure permit limits and waste load allocations are met. DEQ also works with Designated Management Agencies (DMAs) that are federal, state and local governments and agencies, including cities, counties, and special districts because they have authority to manage and regulate sources of pollutants.

In order to restore streams and rivers to achieve pollution targets identified in the TMDL and attain water quality standards, plans and programs will be developed and implemented by DMAs in cooperation with landowners.

- Oregon Department of Agriculture works with Soil and Water Conservation Districts and landowners in the watershed to revise and implement Agricultural Water Quality Management Area plans and rules.
- For commercial forest activities on non-federal lands, Oregon Department of Forestry revises and implements the Forest Practices Act.
- Federal agencies (such the U.S. Forest Service or the Bureau of Land Management) develop and implement Water Quality Restoration Plans.
- In urban and rural areas not covered by other state or federal agencies, cities and counties develop and implement TMDL implementation plans, working closely with local watershed councils.

DEQ coordinates and tracks implementation efforts by these DMAs and others persons named in the TMDL to ensure that progress is made toward attaining waste load allocations and load allocations.

Protecting our future

Through continued monitoring and through such approaches as the Total Maximum Daily Load, we can address pollution today to restore and maintain the quality of Oregon's waterways for the future.



Board of Commissioners

Courthouse, Room 110
225 W. Olive Street
Newport, Oregon 97365
(541) 265-4100
FAX (541) 265-4176

August 18, 2009

Oregon Environmental Quality Commission
811 Sixth Ave.
Portland, OR 97204-1390

Subject: Request for Ambient Air Monitoring in Lincoln County

Dear Environmental Quality Commissioners:

The Lincoln County Board of Commissioners appreciates the work of the Department of Environmental Quality (DEQ) in preserving and enhancing Oregon's air quality and supporting healthy, clean air for all Oregonians.

Our population and motor vehicle traffic have grown significantly and is concentrated especially along a narrow coastal strip. Yet our residents and visitors do not receive the benefit of DEQ Air Pollution Advisories nor can we refer to an Air Quality Index as the majority of people in the U.S. can.

The reason: DEQ is not monitoring the ambient air anywhere on the Oregon Coast, so there is no data for air pollution advisories or an index.

While we sometimes have the clean sea breezes people associate with the Coast, we also have many calm days, temperature inversions, smoke from slash burning and home heating, industrial pollution and diesel exhaust that can affect the health of our residents.

- Lincoln County has some of the highest cancer rates in the state, according to the Oregon Cancer Registry.
- DEQ has received testimony at public hearings over a period of years that residents have experienced adverse health effects from air pollution.
- One of our schools was rated in only the 9th percentile nationally in USA Today's study of toxic air near schools. The same school was one of only 62 schools around the country selected by the EPA for special air testing for toxic pollutants.
- Smoke from slash burns in industrial forestlands is often directed toward the coast and away from higher population centers in the Willamette Valley.
- Knowledge has grown tremendously about the link between fine particulate pollution and premature deaths, in addition to heart attacks and other serious health problems.

I believe that residents on the Coast deserve the benefit of the same air quality advisories and indices as most other people in the nation already have. Please consider providing ambient air monitoring in Lincoln County. I would be happy to participate in a discussion of the types of monitoring available.

Sincerely,

Bill Hall
Lincoln County Commissioner





EHRA
ENVIRONMENT AND
HUMAN RIGHTS
ADVISORY

PO Box 927 Yachats, OR 97498
www.environmentandhumanrights.org
ehra@environmentandhumanrights.org

To Environmental Quality Commission

August 21, 2009

Commissioners:

I'm Dr Tom Kerns, board member of Concerned Citizens for Clean Air, board member of Oregon Toxics Alliance and executive director of Environment and Human Rights Advisory, an NGO which provides information and analysis services to government agencies, private firms and environmental organizations about the human rights dimensions of their work.

Human rights norms lay down basic minimum standards for what citizens can expect from their governments, and the fundamental moral obligations that governments owe to their citizens. These universal standards, articulated in international treaties and conventions – such as the UDHR, CRC, CESC – have been agreed to and signed by most nations in the world, including the US. The rights to security of person, of women and children to special protections, the right to not be discriminated against, and the right to informed consent are all articulated in these instruments.

According to one of these treaties, the Aarhus Convention, “Every person has the right to live in an environment adequate to his or her health and well-being...”

What a human right is, is a justified claim to the most basic requirements for human dignity, and the right to clean, nontoxic air is one of the most fundamental of those rights.

Air is unique. Individuals cannot control their air. They can often choose their foods, they can usually avoid toxic household and personal care products, they can sometimes even filter their water, but when it comes to breathing, they *have* to breathe the air that's there.

It is sometimes assumed that the air here on the coast is clean, but we have large industrial forests immediately adjacent to our east, with their large-scale aerial herbicide sprays and heavily particulated smoke from slash burns; we have a rural culture of heating with wood stoves and of poorly regulated trash burning; we have herbicide sprays on our state and county roads, an asphalt plant right in Newport and a paper mill that emits ten million pounds of pollutants into the public airspace every year. And, as you'll hear a little later, we learned from DEQ a few months ago that this mill burns, as fuel, 18.9 tons of plastics every single



EHRA ENVIRONMENT AND HUMAN RIGHTS ADVISORY

PO Box 927 Yachats, OR 97498 | www.environmentandhumanrights.org | ehra@environmentandhumanrights.org

day. It is illegal for an individual to burn a plastic bag, but Georgia Pacific burns 37,000 lbs of plastics every day, 1,500 lbs every hour, of every day, of every year. And the toxicants from that burning go out into the public airspace where everyone – male and female, adults, children, elderly, young, pregnant, awake, asleep, sick, well, mill worker or not – is forced to breathe them.

DEQ does not currently know what kinds of plastics are being burned or what the combustion byproducts are, and, because they don't monitor the ambient air on the coast, have no idea what toxic byproducts people here on the coast are actually breathing.

I teach courses in Bioethics, and have written books on public health ethics, including the ethics of environmentally induced illnesses, where the most fundamental human rights standard is the right to informed consent. This is the right to not have things done to, or put into, your body without being fully informed about it and then being asked if you wish to give or withhold consent.

Governments have the moral obligation to protect that right. Private corporations certainly won't protect it. Individuals don't have the power to protect it. The state does have both the power and the moral obligation to protect it.

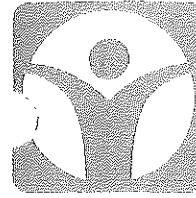
So what we're asking, urging, is that you would please direct DEQ to establish a station here on the central coast to monitor the actual air that's there that people have to breathe, whether they want to or not, whether they know what's in it or not, so that their right to informed consent can begin to be respected.

Thank you.

EHRA
ENVIRONMENT AND
HUMAN RIGHTS ADVISORY

Thomas A. Kerns, PhD

PO Box 927 Yachats, OR 97498
541-547-3700
www.environmentandhumanrights.org
ehra@environmentandhumanrights.org



EHRA
ENVIRONMENT AND
HUMAN RIGHTS
ADVISORY

Providing human rights information and analysis services to environmental organizations

“All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.”

—Draft Declaration of Human Rights and the Environment

Some rights of concern for environmental issues

- Right to life, liberty and security of person
- Right to privacy and home
 - The family's right to protection
- Right to property
- Right to work
- Right to safe and healthy working conditions
- Motherhood and childhood's right to special care
- Right of the child to the highest standard of health
- Right to a healthy environment
- Right to know
- Right to participate in decision-making in environmental issues
- Right to freedom from discrimination
- Right to informed consent

4

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or
Topic of Presentation Comment on Proposed Permanent Rule
and Proposed Temporary Rule

Milo Mechan
Name (Please print clearly)

LCOG 859 Willamette St. Suite 500 Eugene OR 97401
Address

City of Coberg mmechan@lco.org 541-682-4823
Affiliation Email (optional) Phone (optional)

3

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or
Topic of Presentation AIR QUALITY

MAXINE CENTALA
Name (Please print clearly)

PO BOX 375 SEAL ROCK 97374
Address

CONCERNED CITIZENS FOR CLEAN AIR
Affiliation Email (optional) Phone (optional)

2

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item _____ or

Topic of Presentation HUMAN RIGHTS

TOM KERNS

Name (Please print clearly)

YACHTS, OR 97498

Address

CONCERNED CITIZENS FOR CLEAN AIR

Affiliation

Email (optional)

Phone (optional)

1

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item _____ or

Topic of Presentation Letter From Commissioner Bill Hall

DIANA PURDY

Name (Please print clearly)

PO BOX 264 SEAL ROCK, OR 97376

Address

Concerned Citizens For Clean Air

541-563-6672

Affiliation

Email (optional)

Phone (optional)

Oregon Environmental Quality Commission

Public Forum Request to Present Information

Agenda Item ____ or
Topic of Presentation Georgia Pacific Outfall Permit

Charlie Plybon
Name (Please print clearly)

11770 SE Acacia St., P.O. Box 719, South Beach, OR 9731
Address

Surfrider Foundation cplybon@surfrider.org (541) 867-3982
Affiliation Email (optional) Phone (optional)

Maxine Centala

Thank you for the opportunity to make comments this morning. I also thank the Commission and Director for holding the Town Hall Meeting last night.

Ambient air monitoring is one of the most important things that DEQ can do for the people in this area, for all the reasons already stated. Relying on modeled estimates that were never verified under local conditions is simply not adequate to protect our health. The burning of plastics at the Georgia Pacific pulp mill in Toledo is a compelling reason for the air to be monitored.

Several years ago, our group, Concerned Citizens for Clean Air, began asking what happens to the tape on cardboard boxes being recycled at the mill. Eventually DEQ heard us and required the mill to quantify the amount of plastics in the recycling waste.

The result was higher than expected: over 10% of the material going into the boiler consisted of plastics of unknown types, containing varying amounts of chloride.

When we asked the DEQ office in Salem how many tons of plastic were being burned each day, they originally said 16.4 tons, based on 4 months of sampling.

Yesterday they informed us that the amount is even higher: 18.9 tons of plastic being burned every day, based on a full 6 months of sampling. The chloride content of the monthly samples ranged from 436 to 2,920 mg/kg. We were told that waste from recycling cardboard makes up about 39 % of the material burned in the hog fuel boiler.

This is a huge amount of plastic. Can all of it come from tape on cardboard boxes or is there an additional source? We'd like to know.

We asked DEQ if they had sampled the plastics *before* the cardboard was recycled, to see what kinds of plastics were included and where they originated. They hadn't.

The permit writer said there were no rules covering plastics burned at pulp mills. We know that it's illegal for residents to burn plastic in their burn

barrels or wood stoves. But there's no rule about 18.9 tons of plastic per day being burned in the town of Toledo. Oregon needs a rule.

Our group had suggested some time ago that the mill be required to test the air for dioxins. DEQ considered this but made the testing optional as long as certain levels of plastic content weren't exceeded, after managers at the mill objected to testing.

There was a positive aspect to the plastic incident. To their credit DEQ eventually listened on this question and found a way to respond. We need more response of this sort. Right now we need action on testing the air we breathe and on quickly reducing or eliminating the burning of plastic.

I'd like to mention a few additional observations from seven years of asking DEQ to improve the local air quality.

First, DEQ lost some of the public trust in this area in the past because it wasn't responsive enough to the complaints of adverse health effects from air pollution, both at the mill and at Newport's asphalt plant, where we are told the businesses are in compliance yet people still report adverse health effects and some actually move away because of them. We appreciate the Commission's willingness to hear about the issues last night.

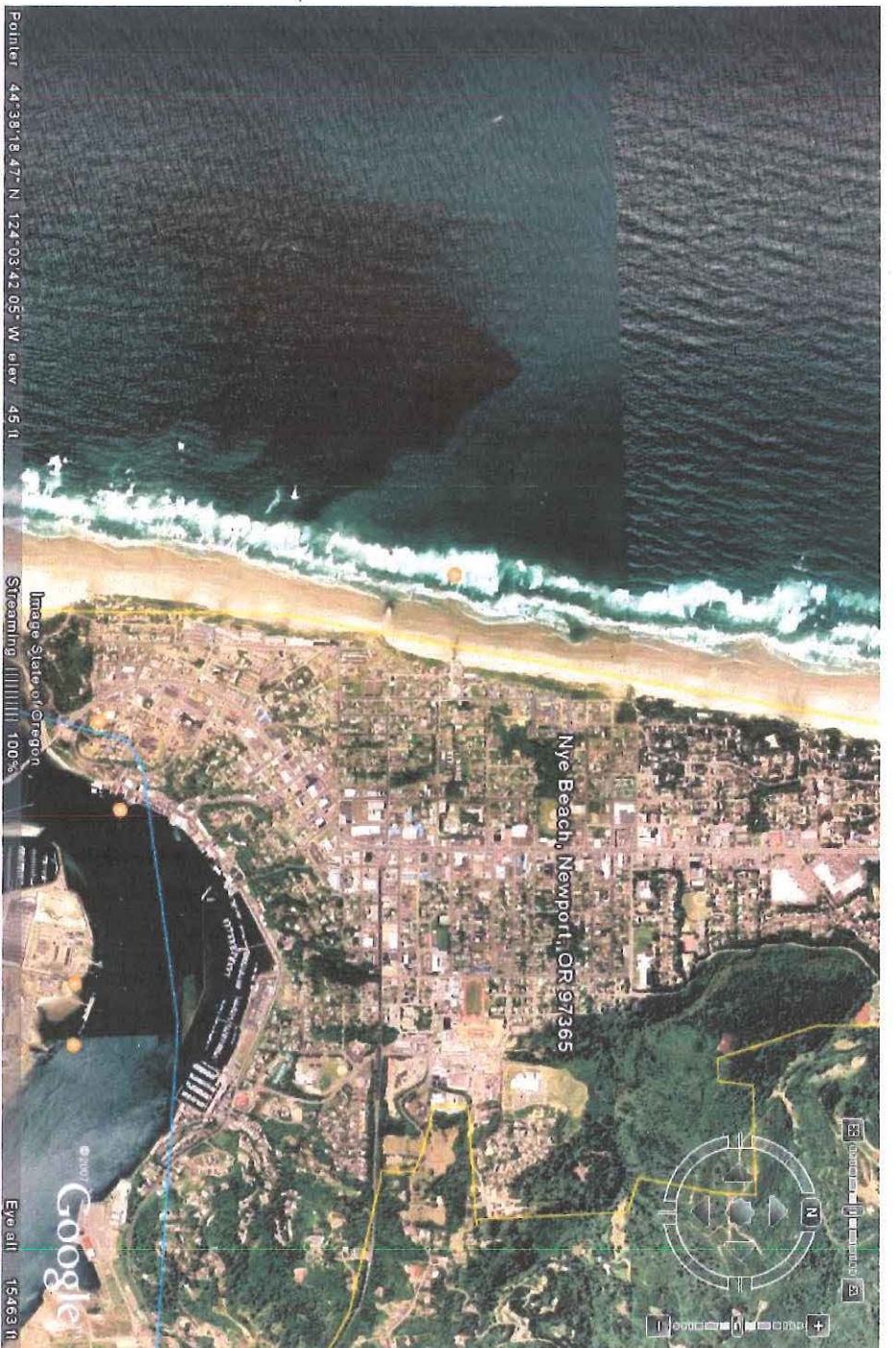
It was mentioned that sometimes DEQ can do nothing to change a problem and that there are always budget constraints, but acknowledging situations and helping residents find alternate ways to address the problems will help DEQ regain trust. A shift from licensing businesses to pollute to protecting public health and human rights will also help. And, of course, providing ambient air monitoring, so people know what's in the air they're breathing.

We've also noticed that even when DEQ has some flexibility in the way permits are written, DEQ personnel sometimes said they didn't have authority, or were extremely reluctant to use it. As an organization DEQ appears to protect businesses instead of people. I observed DEQ personnel minimize complaints and try to attribute them to sources other than the polluting industry, though I think this type of response is not as true now as it was several years ago. Still, when discussing health complaints, DEQ personnel like to shift attention to automobile pollution. When a person is being sickened by mill emissions or asphalt fumes, this is not at all helpful.

We need DEQ to address complaints and help find solutions, not defend the polluting industries.

My last point is that Federal air quality regulations always seem to lag behind research that relates air pollution levels to health effects. In other words, the regulations are not sufficient to protect public health. People are aware of this. The State of Oregon could recognize this and implement stricter rules for air quality than the Federal rules. Other states such as California do. But Oregon doesn't.

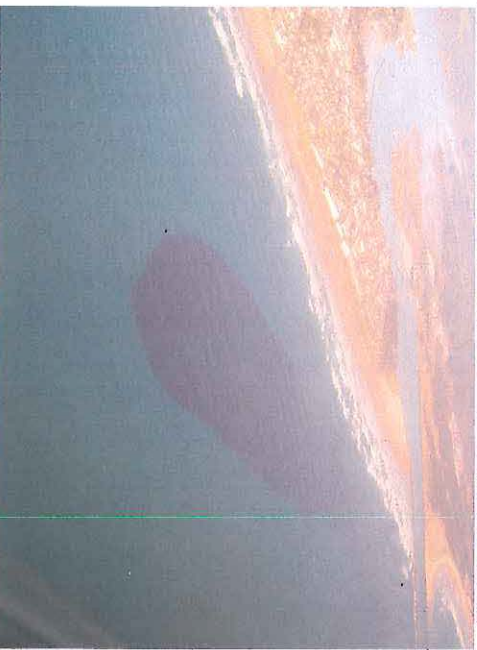
I encourage the Commission to implement rules and policies to the utmost of your legal authority to keep our air clean so that it will truly protect public health. The cost of reducing pollution is far less than the costs that result from air pollution.



Pointer 44°38'18.47" N 124°03'42.05" W elev 45 ft

Image State of Oregon Streaming 100%

Eye all 15,463 ft





Charlie Plybon
Surfrider Foundation
PO Box 719
South Beach, OR 07366

August 21, 2009

Chair ██████████
Environmental Quality Commission
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland 97204-1390

Respectful Members of the Commission

My name is Charlie Plybon and I'm the Oregon Field Coordinator for Surfrider Foundation. The Surfrider Foundation is a 501(c)3 non-profit environmental organization dedicated to the protection of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. As a grassroots organization, we depend upon our over 50,000 members nationwide and many more volunteers across the country through our community-based chapter network.

On behalf of our over 600 members in Oregon, I thank you for the opportunity to provide public comments during your Newport meeting and visit. Our members and volunteers are particularly appreciative that you have selected Newport as one of your destinations for meeting as one of our greatest efforts to improve our nearshore water quality for the benefit of the public and local ocean users lies right here in our backyard. The Georgia-Pacific mill releases an average of 11 million gallons a day of treated wastewater through an outfall located 3,800 feet off Nye Beach in Newport, one of the largest industrial ocean outfalls on the coast of North America.

The area surrounding the outfall provides a number of 'beneficial uses' to local residents and visitors including ocean recreation, commercial and recreational fishing, and beach-going. In addition, the historic Nye Beach area is an important tourist destination that can significantly benefit from a healthy and clean nearshore environment. Yet in all of our constructive and community based efforts since 2006, the Department has allowed the black plume of uncertainty to linger on, aesthetically displeasing and with potential detriment to the public's health and the environment.

The work of Surfrider Foundation volunteers and the concerned citizens of Newport on this issue has a long history dating back to the permit renewal in 2006. Attached to these comments is a one page timeline reviewing of the details that have occurred along the way. In September of that year, the Newport Chapter of Surfrider Foundation along with other groups filed a petition to reconsider the permit on 7 primary principles of concern with NPDES regulation. After 2 years of no response from the Department, the chapter convened an environmental issues team, including some of the top research scientists from here in Oregon. On April 1st, 2008, the Newport Chapter of Surfrider Foundation

submitted a report to the Oregon Department of Environmental Quality (DEQ) with formal recommendations for strengthening the wastewater permit of the Georgia Pacific Pulp Mill in Toledo. The report intended to support DEQ's ongoing reconsideration of the Georgia Pacific permit, and bring the agency closer to compliance with state and federal laws that protect water quality. In March of 2009, DEQ reissued the permit in response to the reconsideration. The Newport Chapter was excited for some of the Schedule D changes that occurred through the reconsideration process. Changes in the permit included an ocean survey and the determination that Marion County leachate and other outside waste streams were inappropriate. On the other hand, Surfrider members were very disappointed in the lack of scientific findings and poor science used in evaluating discharge compliance and addressing the regulatory mixing zone, particularly the snapshot ocean survey rather than an ongoing monitoring program.

A concurrent process to address these local concerns began when Georgia Pacific's license agreement with the city of Newport for the effluent lines right of way expired. Public hearings prompted the Mayor to appoint a task force which ultimately made recommendations for a license agreement document conditioning an ongoing nearshore monitoring plan to be put in place with license agreement fees. In an interview with the Newport Times on July 31st 2009, City Attorney Penelope McCarthy stated: "The pipelines we believe are currently occupied by GP (the 'north' and 'south' pipelines) are used without appropriate governmental protections and authorizations in place. This is not an acceptable situation to the council."

In the best interest of this community and our members concerns, we must now face another permit renewal cycle, scheduled to expire in 2010 to address these local concerns. We'll be following this permit renewal closely and we respectfully request your support for strengthening the NPDES wastewater permit of the Georgia-Pacific Pulp Mill in Toledo to better address the concerns we outlined in our report and petition. We understand the budget and resource shortfalls DEQ often faces, and we've constructively provided resources, reports and recommendations to genuinely support many of these burdens throughout the process. We would also respectfully request the timely effort to notify the public and begin the 2010 NPDES permitting process with an eye toward improving the evaluation and monitoring of the nearshore mixing zone.

As a group of business owners, scientists, ocean stakeholders, and community leaders, we respectfully submit these comments in the interest of promoting public health, sustainable fisheries, and tourism-based economies.

Sincerely,

Charlie Plybon
Oregon Field Coordinator
Surfrider Foundation



Fact Sheet

Prepared by: Surfrider Foundation

August 18, 2009

NPDES Wastewater Permit #101409 Georgia Pacific Pulp Mill: Toledo, OR

The Georgia Pacific Pulp and Paper Mill, Toledo, OR

The Georgia-Pacific pulp and paper mill in Toledo, Oregon was constructed in the mid-1950's. The mill is located along Yaquina Bay at about river mile 12.3. Treated effluent is pumped via two pipelines from the mill through the City of Newport to a single pipeline at Nye Beach. The primary outfall pipe runs 3800 feet offshore from Nye Beach, discharging an average of 11 million gallons of effluent (wastewater) per day into the Pacific Ocean. A second outfall discharges storm overflow into the Yaquina River during extreme storm events.

Georgia Pacific's NPDES Permit Renewal Caused Public Concern

Georgia Pacific's water quality permit (NPDES permit) expired on July 31, 2001. Although the company timely applied for renewal, DEQ did not issue the renewed permit until July 14, 2006. During the renewal process, many individuals and organizations expressed concerns with the proposed renewal during the public comment process. Nonetheless, DEQ issued the permit without adequately addressing public concerns. Several organizations, including Surfrider Foundation, subsequently filed a Petition for Reconsideration, requesting that the agency reconsider a variety of issues in Georgia Pacific's renewed NPDES permit. DEQ accepted the Petition and is currently in the reconsideration process. After meeting with DEQ in January 2008 to discuss next steps, Surfrider produced this report to address remaining concerns.

The "Petition for Reconsideration" - Filed September 9, 2006

A Petition for Reconsideration is not a lawsuit, but is a formal administrative request by the groups that Oregon DEQ revise the permit to ensure it is consistent with state and federal legal requirements. Within the past two years, citizens and groups have filed comments and attended a public hearing. While DEQ provided a response to public comments, the permit itself completely fails to address and correct many of the significant questions and problems raised during this public comment period. The Petition was filed on September 9, 2006 and can be requested by emailing pstauffer@surfrider.org.

The Report: Recommendations to Meet State and Federal Requirements

On April 1st, 2008, the Newport Chapter of Surfrider Foundation submitted a report to the Oregon Department of Environmental Quality (DEQ) with formal recommendations for strengthening the wastewater permit of the Georgia Pacific Pulp Mill in Toledo. The

report was intended to support DEQ's ongoing reconsideration of the Georgia Pacific permit, and bring the agency closer to compliance with state and federal laws that protect water quality.

The report includes recommendations for enhanced monitoring and improved scientific assessment related to turbidity, bacteria, dissolved oxygen, and mixing zones. Surfrider provides information on additional science-based resources, recommends that DEQ consider other sources of monitoring and background data for the Pacific Ocean near the outfall site, and advocates for specific monitoring and evaluative studies. In total, 11 specific recommendations were developed and provided to DEQ. Some of these recommendations address:

Addressing inappropriate waste streams (Marion County Leachate)

Establishing a monitoring program for water, sediments, and organisms adjacent to the ocean discharge to evaluate pollution impacts and compliance with the Clean Water Act.

Describing recreational uses in the vicinity of the ocean discharge and assessing the extent to which these may be impacted by degraded water quality.

Establishing discharge limits on bacteria without a mixing zone allowance to protect human health and ensure compliance with water quality standards.

Using available data on turbidity and low-oxygen hypoxic waters for (i) the permit's water quality evaluations and limits and (ii) determining additional monitoring needs.

Verifying the ocean 'mixing zone' boundaries through *in situ* measurements and additional analyses that consider the full range of ocean conditions.

Conducting Antidegradation Reviews for the new mixing zones at outfalls 001 and 003 to ensure protection of all existing 'beneficial uses'.

Surfrider Foundation remains committed to providing constructive input to support the reconsideration process. Providing for an NPDES permit that is based on the best science and consistent with state and federal law is in the best interests of public health, sustainable fisheries, and tourism-related economies.

December 2008 – City of Newport Mayor's Task Force for Georgia Pacific License Agreement Renewal

Throughout the course of 2009, several hearings were held through Newport City Council to address the License Agreement for Georgia Pacific's right-of-way for the effluent line which had expired by some 5 years. Because of the many economic, health and environmental safety concerns raised in the reissuing of the license agreement, which allows for GP to run their effluent lines from Toledo through the City of Newport, the Newport City Council founded the task force, appointing members from Georgia Pacific's engineers to environmental, scientific, economic and local business stakeholders. The task force concluded in the spring of 2009 with 2 formal recommendations for the City Council, a draft license agreement which includes an ongoing nearshore monitoring program, and allocation of license fee dollars to support the future monitoring task force and program. The City Council unanimously supported two motions in support of the task force recommendations.

March 2009 – DEQ releases response to petition

The Newport Chapter was excited for some of the Schedule D changes that occurred via the petition. Changes in the permit included an ocean monitoring study and the

determination that Marion County leachate and other outside waste streams were inappropriate. On the other hand, Surfrider members were very disappointed in the lack of scientific findings and poor science used in evaluating discharge compliance and addressing the regulatory mixing zone. Particularly, drawing such conclusions about nearshore impacts from only 2 survey events verses and ongoing monitoring program is inadequate and is not grounded in good science. Surfrider Foundation and our members are not alone in these concerns that affect the general welfare of ocean users, beachgoers, tourists and the citizens of Newport. In an interview with the Newport Times on July 31st 2009, City Attorney Penelope McCarthy stated: "The pipelines we believe are currently occupied by GP (the 'north' and 'south' pipelines) are used without appropriate governmental protections and authorizations in place. This is not an acceptable situation to the council."

Who should I contact for more information?

For any documents referenced in the above document such as the Scientific Recommendations Report, feel free to contact:

Charlie Plybon
Oregon Field Coordinator
Surfrider Foundation
(541) 961-8143
cplybon@surfrider.org



CITY OF GRESHAM

Department of Environmental Services
1333 N.W. Eastman Parkway
Gresham, OR 97030-3813
(503) 618-2525
FAX (503) 661-5927
GreshamOregon.gov

To: Environmental Quality Commission
Care of: DEQ Director's Office

August 18, 2009

Dear Chairman Blosser and Members of the EQC:

The City of Gresham supports the Department's proposed temporary rule revision, put forth as Action Item P on the EQC agenda for Friday, August 21.

This item requests adoption of a temporary rule related to use of the 2010 State Revolving Loan Funds. Through use of zero-interest loans, the Department's proposal will stimulate the Oregon economy while facilitating a number of capital improvement projects that were judged to best enhance the quality of Oregon's surface and ground waters.

The City believes that the creative approach proposed by the Department to reach communities in addition to those who benefited from the federal stimulus (ARRA) funds is laudable and urges you to adopt the proposed temporary rule revisions.

Sincerely,

Steve Fancher
Watershed Division Manager

David S. Rouse
Director

*Transportation & Development
Services Division*

John Dorst
Deputy Director

Office of Community Relations

Tam Driscoll
Manager

*Parks & Recreation
Division*

Randy Shannon
Interim Manager

*Watershed Management
Division*

Steve Fancher
Manager

Wastewater Services Division

Paul Eckley
Manager

Water Division

Brian Stahl
Manager

*Recycling & Solid Waste
Program*

Dan Blue
Manager



Working with more than 90 community wastewater treatment agencies to protect Oregon's water

537 SE Ash, Suite 12
Portland, Oregon 97214
(503) 236-6722 Fax (503) 236-6719
www.oracwa.org

19 August 09

Environmental Quality Commission

Chair Bill Blosser

811 SW Sixth Avenue

Portland, OR 97204

Re: Public Comment

Temporary Rule Adoption – Clean Water State Revolving Fund Rules, OAR 340-54

Dear Chairman Blosser:

The Oregon Association of Clean Water Agencies (ACWA) supports the temporary rule revisions to the Clean Water State Revolving Fund rules before the Commission at its meeting August 21, 2009. The need for investment in Oregon's wastewater treatment infrastructure is high. Many ACWA members worked quickly to apply for federal American Recovery and Reinvestment Act funding when it became available. That need is illustrated by the 160 applications requesting about \$718 million in water quality project improvements that DEQ received in the last opening of the fund. Unfortunately, funding was available for only 13 projects.

ACWA supports the temporary rule to fund a 2010 Special Reserve of \$24.25 million to continue to invest in high priority water quality projects proposed by local communities.

We look forward to continuing to work with the Commission and the DEQ to improve the State Revolving Fund program and its accessibility by all communities in the state that are interested in utilizing it.

Please let me know if you have any questions -- I can be reached by phone at 503 236 6722 or by e-mail at gillaspie@oracwa.org.

Very Truly Yours,


Janet A. Gillaspie

Executive Director

Charlie Logue, Chair


Ron Bittler, Vice Chair

Peter Ruffier, Secretary/Treasurer

Cc: Dick Pedersen, DEQ Director
Neil Mullane/Judy Johndohl, DEQ Water Quality Division
ACWA Board
ACWA Finance Committee

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item M, Informational Item: Developing Oregon's Integrated Water Resources Strategy
August 20-21, 2009 EQC Meeting

Purpose of Item The purpose of this agenda item is to provide the EQC with an overview of the plans and ideas for developing an integrated water resources strategy for Oregon.

Background Oregon is currently one of two western states without a formal water supply strategy. It, like many other states, also lacks an integrated strategy that takes into account water quantity, water quality and ecosystem needs. Oregon needs an integrated water resources strategy to ensure livability and economic viability for future generations supported by adequate quality water supplies.

The Water Resources Commission has been working on the foundation for an integrated water resources strategy for the past several years, and the 2009 Legislature passed HB 3369 that, among other items, requires the Water Resources Department to work with DEQ and the Department of Fish and Wildlife to develop an integrated water resources strategy for Oregon. The bill requires the Water Resource Department to submit a report to the Legislature by Feb. 1, 2011 that includes an update on whether the agency expects to complete the strategy by December 2012.

The Water Resources Commission has begun to develop a series of white papers and has established the following goals:

- To include stakeholders at all levels of decision making;
- To use the best available scientific data;
- To focus on long-lasting common agreements; and
- To complete Oregon's first integrated water resources strategy by December 2012.

One of the white papers will be about water quality and DEQ will help develop it.

Key Issues There is a high level of interest in this work from tribal nations, stakeholders, other agencies and the public. It is imperative that the process used to develop the integrated water resources strategy is transparent and allows for opportunities for input by those interested. Developing the process and ensuring a high level of communication throughout implementation of the strategy will take time.

Since the progress report is due to the Legislature in approximately 18 months, work on the strategy and the public participation elements needs to begin right away. The Water Quality Division expects to prioritize this planning process and strategy development, which will delay some other work in the program.

The Water Resource Commission plans to build on the water roundtables that Senator Dingfelder organized at the end of 2008 and host Town Hall-style meetings around the state beginning fall 2009. These meetings will provide an opportunity for those interested to provide feedback to Water Resource Commission, the Water Resources Department and DEQ on the topics and issues that should be included in the strategy. It is important to ensure the Town Hall meetings are held in various locations around the state at times to encourage the maximum public participation possible. Other mechanisms such as opportunities to provide feedback via the Internet, email and hard copy will need to be included in the process to develop the strategy.

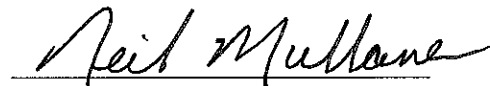
Next Steps DEQ will work closely with the Water Resources Department and the Water Resource Commission to develop the process work plan for development of the strategy.

EQC Involvement The Water Resource Commission will invite members of the EQC and DEQ to the next commission meeting on September 10, 2009 from 1 to 3 p.m. The Water Resource Commission will also request EQC commissioners to co-host the Town Hall meetings that occur in each commissioner's region.

Attachments None

Approved:

Division:



Report Prepared By: Christine Svetkovich
Phone: (503) 229-5046

Issue Statement for WRC Integrated Water Resource Strategy

“A problem well stated is a problem half solved.”

Charles F. Kettering



Issue #1. The need for an integrated water resources strategy.

Oregon is currently one of two western states without a formal water management strategy. And, it is one of many without an integrated strategy that takes into account water quantity, water quality, and ecosystem needs. An integrated water resources strategy is needed, as we develop a vision of what Oregon’s livability and economic viability will look like for future generations based upon adequate high quality water supplies. While no two basins are identical, they all have similar hydrologic elements, such as river systems, aquifers, springs, ecosystems and human settlement patterns. They have other similarities too, including a need to coordinate with neighbors, a need for local solutions to local challenges, and a need for funding. An integrated strategy should provide relevant and consistent guidance to each of the basins, despite their differing characteristics. Implementation of such a strategy should consistently move Oregon toward the preservation, restoration, and development that is necessary to achieve the desired vision of healthy water supplies from all available sources.

A Limited Supply of Clean and Abundant Water. While water supply is renewable, it is also limited, and should be managed on a sustainable-use basis. The water cycle is scientifically accepted and verifies that no additional or “new” water can be found or produced. Water is a finite resource, much like gold, coal, oil and natural gas, and pundits have begun to characterize water as the “new oil.” There are many gripping examples of water scarcity throughout the United States and around the world.

Although the state of Oregon, in general, is not in a state of immediate water crisis, it does not have an endless amount of water to serve all demands as they increase.

There are gaps between water availability and water demand, resulting in water shortages in some areas of the state. Many Oregon communities and economies, along with Oregon's fish and wildlife, face water scarcity today. Most of the state's surface waters are fully allocated during summer months, and there are several areas that have been designated as "critical groundwater areas," or "ground water limited areas." These pressures will likely be intensified, given the projected increase in Oregon's population growth, and change in the form and timing of precipitation forecast by climate change researchers.

The degradation of ground water and surface water quality also decreases the volume of fresh water available to consumers, and to replenish streams and aquifers. Freshwater bodies have limited capacity to process the pollutant load from expanding urban, industrial, and agricultural uses. Water quality degradation can be a contributing cause of water scarcity.

Without planning our future use of water in balanced and judicious ways, Oregonians will likely cross a water scarcity boundary without even knowing it.

The Value of a Strategy. An integrated strategy would provide a blueprint for the state to follow as it prepares to meet Oregon's water needs: instream and out-of-stream; above ground and below ground; now and in the future.

An integrated water resources strategy will need to recognize the inextricable link between water quantity and water quality by addressing economic and environmental needs. Water is the backbone of a healthy economy, and Oregon's economy is closely tied to its water resources and its economic needs come from industry and commerce, agriculture, recreation, tourism, electric power, and residential development. Oregon's ecological needs come from the fish and wildlife that depend on clean and abundant

water and healthy habitat found in watersheds (drainage basins), rivers and their tributaries, wetlands, floodplains, aquifers, lakes, estuaries, and the ocean.

An integrated plan or strategy serves several purposes:

- Encourages planning and management on a natural water systems basis; gains a higher level of commitment through a dynamic process that adapts to changing conditions;
- Balances competing uses of water through efficient allocation that addresses social values, cost effectiveness, and environmental benefits and costs;
- Promotes water conservation, reuse, source protection, and supply development to enhance water quality and quantity;
- Encourages participation of all units of government and stakeholders in decision-making through a process of coordination and conflict resolution;
- Fosters public health, safety, and community goodwill; and
- Addresses the institutional barriers that exist which reduce the ability to effectively manage water resources.

Building on a Foundation of Data. The public and private sectors in Oregon have produced a plethora of plans and studies focused on water quantity, water quality, and other water-related issues from environmental, business, socio-economic, hydrological, and geological perspectives. The Water Resources Department has begun to pull this collection of data into a centralized, usable format, through its on-line inventory of potential storage sites, potential conservation programs, and its 50-year water demand forecast. An integrated water resources strategy would continue to build upon this collection of existing studies, along with new information as the basis for developing “what if” scenarios, partnerships, and tools that help state and local policymakers determine how to meet Oregon’s long-term water needs.

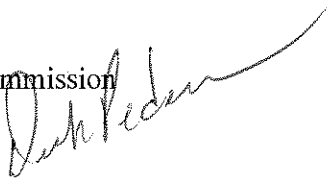
Developing a Strategy through Collaboration. The Water Resources Commission has the statutory authority to develop an integrated water resources strategy, with the Department as the implementing agency. But another essential part

of an integrated water resources strategy is the collaborative process of building the plan. Water is a subject in which everyone is a stakeholder and must be given an opportunity to participate in and shape the process. A participatory approach is an effective means for achieving consensus and long-lasting agreement. Real collaboration takes place only when stakeholders and the interested public are part of the decision-making process. Incorporating the views of a wide variety of governmental agencies, special interest groups, and the public will be a challenge, but is key to the success of such a strategy.

Conclusion. A successful integrated water resources strategy would result in a persuasive visualization of what Oregon's water and landscape should look like and be like for future generations. Such a strategy should have as a starting point, clear and compelling goals and a vision. It should develop tools with statewide relevance, and options for local implementation.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda Item N, Action Item: Petition to Amend Temporary Rules OAR 340-054-0102 and OAR 340-054-0104 August 20-21, 2009 EQC Meeting

Why this is Important The EQC adopted temporary rules for Oregon's Clean Water State Revolving Fund loan program in April 2009 to ensure effective and timely implementation of requirements under the American Recovery and Reinvestment Act of 2009. In June 2009, DEQ received a petition from the city of Coburg requesting the EQC to amend two of the temporary rules. The EQC must either initiate rulemaking as requested in the petition or deny the petition no later than Sept. 2, 2009.

DEQ Recommendation The Department of Environmental Quality recommends that EQC deny the petition and authorize the DEQ director to issue an order documenting the decision on EQC's behalf. DEQ also recommends that EQC provide an opportunity for the public to provide oral comments on the petition during the public forum at the EQC meeting in Newport, Oregon on Aug. 21, 2009.

Petition Milo Mecham, attorney for the city of Coburg, submitted a petition on June 2, 2009. A copy of the full petition is provided as attachment A. The petitioner is requesting the EQC to amend Oregon's Clean Water State Revolving Fund rules OAR 340-054-0102 and OAR 340-054-0104 in three ways:

1. Include "and as provided in OAR 340-054-0104" under project eligibility in OAR 340-054-0102(1).
2. Include "portion of the" project as not being eligible under use of funds for an existing loan agreement in OAR 340-054-0104(3).
3. Include "For projects in which the total project cost exceeds the amount of the loan agreement executed prior to October 1, 2008, a borrower that is otherwise qualified may receive a separate loan agreement for funding under the Act, provided that no funds received under the Act may be used to refinance, reconstruct or repay the loan executed prior to October 1, 2008, and that the

separate loans be accounted for separately” under use of funds for an existing loan agreement in OAR 340-054-0104(3).

Background

DEQ executed two Clean Water State Revolving Fund loan agreements with the city of Coburg on March 29, 2002, and Aug. 31, 2005, in the amounts of \$3,500,000 and \$2,710,690, respectively. The August 2005 loan was increased by about \$4 million on Oct. 9, 2008. The loans are for planning, design and construction of a new collection, treatment, and effluent disposal system for the un-served community. The total estimated cost of the project is approximately \$24 million. DEQ disbursements of the first loan to Coburg began in December 2002, and disbursements of the second loan began in October 2005. These disbursements were made principally for design work and, to date, total about \$2.4 million. Construction work on the collection system has started although disbursements for this work have not been made. Coburg has secured other financing from the United States Department of Agriculture Rural Development and the Oregon Business Development Department totaling approximately \$16 million.

After the Act was signed on Feb. 17, 2009, DEQ proceeded with a temporary rulemaking to amend specific requirements within Oregon’s Clean Water State Revolving Fund loan program rules to ensure effective and timely implementation of the Act. DEQ made policy decisions in developing the temporary rules to meet the intent of the Act. These temporary rules were adopted by the EQC at the Apr. 17, 2009 EQC meeting.

DEQ’s temporary rules state that a borrower with a loan agreement executed prior to Oct. 1, 2008 is not eligible for Act funding for the project funded with that existing loan. U.S. EPA legal counsel for the Clean Water State Revolving Fund program has advised DEQ that it is within the state’s discretion to provide Act funding to projects that did not initially receive funding prior to Oct.1, 2008. EPA also clarified to DEQ that the Act’s purpose was not to provide a better deal to communities for existing projects, but rather to fund new projects and provide and create new jobs. Since the city of Coburg is a borrower and has two loan agreements signed prior to Oct. 1, 2008, Coburg is not eligible for Act funding.

Key Issues

The petitioner proposes that EQC amend two rules so the petitioner can be considered eligible to apply for Act funding. DEQ determined if EQC amended the rules, 18 other borrowers with existing Clean Water State Revolving Fund loans would also be eligible for additional funding under the Act. DEQ would have to ensure that DEQ gives these borrowers an opportunity to apply for Act funding.

Additional applications received by DEQ would have to be scored and ranked, and included in the Clean Water State Revolving Fund Intended Use Plan. DEQ would then have to amend the plan and provide opportunity for public comment. These actions would delay DEQ's ability to allocate the \$44.3 million capitalization grant awarded to DEQ under the Act, and would put borrowers at risk to comply with the Act requirements in a timely manner. If a borrower's project is not under contract or construction by February 17, 2010, DEQ is obligated to return the loan amount back to EPA. The temporary rules as adopted by the EQC allowed DEQ to receive the grant and meet the requirements of the Act.

Public comments On July 20, 2009, DEQ issued a request for public comment on the proposed petition. Interested parties could submit comments until Aug. 3, 2009, and DEQ would like to provide the opportunity for public comment on this issue at the August 2009 EQC meeting. DEQ will provide a summary of written public comments at the August 2009 EQC meeting.

EQC Action Alternatives The city of Coburg submitted the petition under ORS 183.390 and OAR 137-001-0070, which requires the EQC to initiate rulemaking or deny the petition within 90 days of submittal, no later than Sept. 2, 2009. OAR 137-001-0070 provides the EQC two alternatives for responding to the rulemaking petition: deny the petition or initiate rulemaking proceedings as proposed in the petition.

The Department of Justice has also advised that the EQC may either grant the petition in part and deny it in part, or deny the petition and direct DEQ to consider other rulemaking approaches.

Attachments

- A. Petition to Amend Temporary Rules OAR 340-054-0102 and OAR 340-054-0104, submitted June 2, 2009, by Milo Mecham, attorney for the city of Coburg.
- B. Copy of DEQ notice requesting public comment on "Petition for Amendment of Oregon Rules Related to the Clean Water State Revolving Fund Loan Program" issued July 20, 2009.

Available Upon Request

- 1. EPA Guidance document on awarding capitalization grants under the Act.
- 2. EQC staff report: Temporary Rule Adoption: Amend the Clean Water State Revolving Fund Rules, OAR Chapter 340, Division 54, Agenda Item F, April 17, 2009 EQC meeting.

Approved:

Section:

Judy Johndohl

Division:

Neil Mullane

Report Prepared By: Judy Johndohl
Phone: (503) 229-6896

LCOG

LANE COUNCIL OF GOVERNMENTS

June 2, 2009

Oregon DEQ,
Rick Watters
Judy Johndohl
811 SW Sixth Ave.
Portland, OR 97204-1390

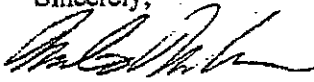
Dear Rick or Judy:

Enclosed please find a petition to amend two of the temporary rules concerning the development of the Intended Use Plan for distribution of the Act funds. I was not sure to whom this petition should be addressed, and I was concerned that, if it were not addressed to a specific person, it would be lost.

Therefore please route this petition to the appropriate person or persons. The city of Coburg requests that this matter be put on the Commission's agenda as soon as practical. The city of Coburg feels confident that the same rationale that supported adoption of the original temporary rules can be used to expedite consideration of this proposed amendment.

Thank you for your consideration in this matter.

Sincerely,



Milo Mecham

Received

JUN 4 2009

DEQ-Accounting

Department of Environmental Quality

In the Matter of)
)
The Amendment of Temporary Rule) PETITION TO AMEND
OAR 340-054-0104 and OAR) Temporary Rule OAR 340-054-0104
340-054-0102) (Use of Funds, Intended Use Plan
) under the Act) and
) Temporary Rule OAR 340-054-0102
) (Project Eligibility under the Act)

1. Petitioner's name is the City of Coburg, P.O. Box 8316, Coburg, Oregon 97408.
2. Petitioner was an applicant for an award of project funds under the American Recovery and Reinvestment Act of 2009 allocation of funds (ACT funds) to the Department of Environmental Quality's Clean Water State Revolving Fund (CWSRF).
3. Under the terms of the temporary rule OAR 340-054-0104 as interpreted and applied by the Department, Petitioner is not eligible for an award of CWSRF Act funds because Petitioner has a loan agreement with the Department executed prior to October 1, 2008.
4. Petitioner asserts that the temporary rule as adopted by the Department is inappropriate, in that, for the reasons set forth in the supporting argument, the temporary rule does not accurately reflect the Congressional intent of the Act, nor does it accurately reflect the understanding or expectations of the Environmental Protection Agency, and it wrongfully excludes applicants such as Petitioner who would otherwise be eligible for Act funding.
5. Petitioner proposes that temporary rule OAR 340-054-0104 be amended to add additional wording to one paragraph that would bring the rule more closely in line with the EPA guidelines, and make Petitioner an eligible applicant, and that Temporary Rule OAR 340-054-0102 be amended to make it consistent with DEQ intent.
6. Temporary Rules OAR 340-054-0102 and OAR 340-054-0104 should be amended as indicated by the underlined section to read as follows:

340-054-0102 Project Eligibility under the Act

(1) Eligibility for funding under the Act is the same as in OAR 340-054-0015(1) except for planning as defined in OAR 340-054-0010(38), and as provided in OAR 340-054-0104.

340-054-0104 Use of Funds, Intended Use Plan under the Act

(1) Funding purpose. Notwithstanding OAR 340-054-0020, funding provided under the Act may be used only for the following CWSRF purposes:

(a) To make loans, or purchase bonds.

(b) To pay CWSRF program administration costs to the extent allowed by federal law.

(c) To earn interest on fund accounts.

(2) Loan increases. Notwithstanding OAR 340-054-0025(6)(c), funds from the Act may not be used to increase a loan executed prior to February 17, 2009.

(3) Existing loan agreement. A borrower with a loan agreement executed prior to October 1,

2008 is not eligible to receive funding under the Act for the portion of the project funded with that existing loan. For projects in which the total project cost exceeds the amount of the loan agreement executed prior to October 1, 2008, a borrower that is otherwise qualified may receive a separate loan agreement for funding under the Act, provided that no funds received under the Act may be used to refinance, reconstruct or repay the loan executed prior to October 1, 2008, and that the separate loans be accounted for separately.

(4) Loan reserve. Notwithstanding OAR 340-054-0065(2)(c)(B), the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan (IUP):

(a) A project must be listed in the Intended Use Plan to be eligible for funding under the Act.

(b) Notwithstanding OAR 340-054-0025(5)(d), the department must provide at least 14 days for public comments on the draft Intended Use Plan.

7. Petitioner has no knowledge of any person other than Petitioner who may have a particular interest in the proposed amendment of OAR 340-054-0104 or OAR 340-054-0102.

8. The reasons for the adoption of the proposed amendment are more fully set forth in the attached Statement of Facts and Arguments in support of the Petition. The existing Temporary Rule

- Improperly deviates from the intent of the Act;
- Incorrectly interprets the EPA guidelines on the use of Act funds;
- Was not adopted in accordance with the requirements of ORS 183.335(5); and
- Is internally inconsistent and contradictory.

Adoption of the proposed amendment to temporary rule OAR 340-054-0104 will only have the effect of bringing the Department in alignment with the intent of the Act and of the EPA, by making applicants such as Petitioner eligible for Act funding.

9. Adoption of the proposed amendment will further the overall intent of the existing temporary rule. The existing rule improperly excludes otherwise eligible applicants in contravention of the purpose of the Act. The existing rule and the proposed amendment have no direct effect on businesses, in that they concern the provision of funds to public entities. Because the proposed temporary rule will make more applicants eligible for Act funding, thus helping assure compliance with the Act's goal of economic stimulus, adoption of the proposed amendment will have a positive effect on businesses. The existing rule is not overly complex, but it conflicts with the EPA guidelines on the use of CWSRF funds as a part of the Act funding. No factors have changed since the Agency adoption of the temporary rule except that the Petitioner has been improperly deemed to not eligible for Act funding..


10. The proposed amendment to the temporary rule OAR 340-054-0104 and OAR 340-054-0102 can and should be adopted by the Department without additional notice. The Department made the necessary determinations for adoption of the temporary rule. As set forth in the Statement of Facts and Arguments, the Department erred in its decision to provide no hearing, because that prevented parties from placing in the record the accurate representation of the EPA intent with regard to existing loans. Consideration of and adoption of the proposed amendment will correct the error in the Departments adoption of the temporary rule. For all other reasons

related to the need for prompt adoption of the rule, the Department should adopt the proposed amendment as a temporary rule with the same guidelines for final action as adopted for the original temporary rules.

11. The proposed amendment should be adopted as a temporary rule with limited prior notice to interested parties because there will be serious prejudice to the public interest without adoption of the proposed temporary rule. Without adoption of an appropriately worded temporary rule the Department will not be able to comply with the Act's goal of expeditiously funding eligible projects that will preserve and create jobs and promote economic recovery. The proposed amendment addresses the Act's goal by defining what projects are eligible more accurately than the existing temporary rule, by indicating how funds under the act are to be accounted for by project and what financial terms will be established. It is necessary for DEQ to adopt the proposed amendment to the temporary rule without further public comment to make sure that Oregon's eligibility for the additional capitalization grant under the Act is maintained. The proposed amendment is based on all the determinations of need and statements of statutory and other legal authority cited by the DEQ in its April 17, 2009 adoption of the temporary rules, with the additional authority of the EPA publication "ARRA and SRF Questions and Answers, volume 1" and other authorities cited and quoted in the attached Statement of Facts and Arguments.

Wherefore, petitioner requests the Department of Environmental Quality adopt the proposed amendment to OAR 340-054-0104 and OAR 340-054-0102 as a temporary rule.

Dated June 2, 2009


Milo Mecham,
Attorney for the City of Coburg

Department of Environmental Quality

In the Matter of)
)
The Amendment of Temporary Rule)
OAR 340-054-0104 and Temporary)
Rule OAR 340-054-0102)
)

STATEMENT OF FACTS AND ARGUMENTS IN SUPPORT OF PETITION

Petitioner the City of Coburg seeks an amendment to DEQ Temporary Rule OAR 340-054-0104 and OAR 340-054-0102 to correct the error made in the adoption of the original Temporary Rule. The original Temporary Rule was improperly adopted, and departed from the legal standards applicable to the Temporary Rule.

1. Temporary Rule OAR 340-054-0104 was Adopted in Violation of ORS 183.335(5)

Oregon Revised Statute 183.335(5) provides that an agency may adopt "without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable" a temporary rule. The law requires that the agency provide a statement of its findings concerning the need for prompt action. In the case of the original Temporary Rule OAR 340-054-0104 the DEQ cited the reasons for prompt adoption of the Temporary Rule, but did not give consideration to the possibility of an abbreviated notice and hearing.

The DEQ was able to give some advanced notice, and did receive some public statements in support of the rule. The city of Coburg also appeared and proposed an amendment to the proposed Temporary Rule OAR 340-054-0104. Because, however, the DEQ had not allowed for an abbreviated hearing, the City of Coburg was not able to offer its proposed amendment as a part of the rule making process. For that reason the DEQ was able to ignore the City's petition rather than providing the formal consideration of the proposed amendment that would have been appropriate in an abbreviated hearing. This failure to provide an abbreviated hearing substantially prejudiced the city of Coburg and resulted in an error on the part of the DEQ.

None of the reasons provided by the DEQ to justify the adoption of the original Temporary Rule OAR 340-054-0104, show any reason why an abbreviated notice and hearing could not have been provided. The notice that was provided was sufficient to inform Coburg of the importance of the hearing. An abbreviated hearing restricted to the Commission's time given to consideration of the Rule would have allowed the interested parties who had received notice to appear. Properly structured, the Commission would have been able to hold a hearing, hear from interested parties, and still adopt an appropriate temporary rule within the time constraints that the DEQ had set for itself.

The DEQ should adopt the proposed amended Temporary Rule OAR 340-054-0104 immediately, subject to the same findings and justification that were used to justify the adoption of the original temporary rule. Adopting the proposed amendment as a temporary rule with limited duration will not prejudice any party or deprive any party of an opportunity to participate in the development of the Intended Use Plan adopted by the DEQ. Any party, including the City of Coburg that has applied for CWSRF monies and who, like the City of Coburg, has had its application removed from the IUP because of the improperly adopted Temporary Rule OAR 340-054-0104 will have its application reinstated. Further, any other applicant who may in the future seek inclusion on the IUP will have a better understanding of eligibility for inclusion.

2. Adopted Temporary Rule OAR 340-054-0104 Departs from the Intent of the ARRA

The DEQ promulgated Temporary Rule OAR 340-054-0104 and the associated other temporary rules ostensibly to comply with the provisions of the American Recovery and Reinvestment Act (ARRA) which, in Title VII, provided funds to capitalize the Clean Water State Revolving Funds. The ARRA made funds available to the DEQ for certain purposes and subject to certain restrictions.

The ARRA made funds available with the proviso that priority be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of the ARRA. The relevant portions of the ARRA also provided that "notwithstanding section 603(d)(2) of the Federal Water Pollution Control Act and section 1452(f)(2) of the Safe Drinking Water Act, funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008."

The DEQ incorrectly interpreted this last provision of the ARRA to mean that no municipality that had a loan agreement for CWSRF funds that predated October 1, 2008, could be eligible to receive additional ARRA funds. This is directly contradictory to the language and the intent of the ARRA. The ARRA does not say that prior recipients of funds cannot receive more funds. It says that funds cannot be used to buy, refinance or restructure a preexisting debt obligation. The ARRA funds are designed to be used to assist construction of projects that are ready to go. To allow the funds to be used to refinance or restructure existing debt would not direct the funds to projects that are ready to go.

The DEQ suggested that, because a project that had an existing obligation could seek additional CWSRF funds, seeking ARRA funds would be the equivalent of buying, restructuring or refinancing existing debt. This is too great an assumption. First, no existing borrower is guaranteed access to future funds. OAR 340-054-0025(6) does allow for applicants on the project priority list to receive a portion of funds as reported in the initial IUP for the year. But if there are no funds, then there will be no additional allocation to a project, and a project is not guaranteed a place on the IUP forever. An applicant that is awarded a loan under the DEQ's usual CWSRF process is not awarded an unlimited debt. The obligation is quite specific as to amount, and contains no automatic upward adjustment provision. While the rules allow for the possibility of an annual increase, the debt obligation does not provide any such guarantee.

In regarding the award of ARRA funds as being a continuation of the standard IUP process, the DEQ overlooked the unique aspects of ARRA funds. The ARRA specifically provides that these funds are to be treated differently than prior allocations of funds.

The DEQ should have analyzed the ARRA language the way it was intended; the DEQ should have applied commonly understood terms as they are commonly understood when setting up its proposed Temporary Rule OAR 340-054-0104. When the ARRA says that its funds cannot be used to buy a debt obligation if the debt was incurred prior to October 1, 2008, it means that a recipient cannot apply for funds from the ARRA to purchase an existing debt. Similarly the restriction on refinancing means that an applicant would could not seek to use ARRA funds to substitute for an existing obligation. The restriction on restructuring means that an applicant cannot seek to use an award of ARRA funds to change the interest rate or the repayment schedule of an existing agreement.

The ARRA does not say that an applicant cannot use ARRA funds instead of a possible future award of CWSRF funds because, of course, that is what the ARRA intended. The funds were put into the CWSRF so that applicants who received the money for which they were otherwise qualified would not have to seek CWSRF funds at a later time.

The error of interpretation can be seen in the DEQ's erroneous decision that applicants such as the City of Coburg are not eligible for ARRA funds. Coburg has a wastewater project that is ready to start construction. It has an existing design and construction loan from the DEQ CWSRF that will finance a portion of the project. The project is projected to cost \$24 million. Even with the allowed increases in the amount of the loan, the CWSRF funds will not be adequate to finance the construction of the project. Coburg has an existing obligation of approximately \$7 million in CWSRF funds. If Coburg were to receive an award of ARRA funds it would not alter the obligation that Coburg has with the DEQ. An award of ARRA funds would necessarily be a separate loan agreement between the DEQ and the City of Coburg. Such an award would further the purpose of the ARRA, in that it would be providing support to a project that can be started within a year of the award of funds.

By excluding a potential applicant for ARRA funds such as the City of Coburg from eligibility because a different applicant is precluded by the express language of the ARRA, the DEQ has thwarted the purpose of the ARRA and is acting contrary to the express language of the ARRA. Adoption of the proposed amendment to Temporary Rule OAR 340-054-0104 will resolve this violation of the ARRA.

3. Temporary Rule OAR 340-054-0104 is contrary to the directions of the EPA

The DEQ offered the explanation that Temporary Rule OAR 340-054-0104 was being promulgated to comply with the requirements of the Environmental Protection Agency concerning the ARRA. The DEQ did not cite or direct the public's attention to any particular EPA rule or statement that could support their development of the Temporary Rule OAR 340-054-0104. The truncated rulemaking process prevented the City of Coburg from providing the DEQ with proof that the EPA actually interprets the ARRA in a manner similar to the interpretation offered here.

The EPA has released a number of documents concerning the ARRA. These documents can be found by reference to the EPA website, <http://www.epa.gov/water/eparecovery/>. Located at that site is a document with the title "ARRA and SRF Questions and Answers volume 1. http://www.epa.gov/water/eparecovery/docs/04-23-2009_ARRA_and_SRF_Q&As_Vol.1.pdf This document, presented in the form of a series of questions and answers, is the EPA's position on answers to questions about the ARRA posed by States and other parties. It is dated March 17, 2009, suggesting that it was available to the DEQ prior to the adoption of the temporary rule.

Located towards the end of the document (page 17) are two questions and answers which speak directly to the DEQ's error in excluding applicants such as Coburg who have existing loans but who also need additional funding without regard to alteration of existing loans.

- *Can projects be split funded between the base SRF and the ARRA program?*

Yes, as long as the funding from each source is separately tracked and reported according to the requirements applicable to each source.

- *How can we have a loan with ARRA & regular SRF money? Would it have two loan agreements?*

Some states may make loans now that include federal and non-federal funding. The agreement would have to lay out the requirements associated with the assistance. A state may want to do two separate agreements if the work could be easily broken up in order to apply different requirements to each segment, but this is not required. However, the funding from each source must be separately tracked and reported according to the requirements applicable to each source. This is consistent with OMB's February 18, 2009 guidance, which states the following, "Federal agencies must instruct recipients covered by these reporting requirements that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and this Guidance."

Earlier, on page 16 of the document the EPA explained that, while ARRA funds are limited to obligations created after October 1, 2008, other SRF funds can be used for obligations incurred prior to October 1, 2008.

- *The refinancing limitation is for projects initiated after 10/1/2008. Does that mean that projects that begin construction after that date may be refinanced or does it include design and engineering expenses as well?*

EPA is reading the provision as applying to any costs under debt incurred on or after that date. Costs incurred prior to that date could be refinanced using normal SRF loans.

The proposed amendment to Temporary Rule OAR 340-054-0104 captures the EPA analysis of how ARRA funds can be used. Adoption of the proposed amendment will bring the DEQ rules into alignment with the governing directives of the EPA.


4. The current Temporary Rule is internally inconsistent and contradictory

Temporary Rule 340-054-0102(1) states that "eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015(1) * * *." But the Temporary Rule OAR 340-054-0104(3) imposes a new, restrictive eligibility requirement inconsistent with the prescriptions of OAR

340-054-0015(1). This internal contradiction makes all decisions about eligibility for ARRA funds questionable, and certainly calls into question any eligibility decision regarding the implementation of Temporary Rule OAR 340-054-0104.

For all of the above reasons, the city of Coburg petitions the DEQ for an immediate decision to amend the Temporary Rules adopted April 17, 2009 by adopting the proposed amended temporary rules as set forth in the Petition to Amend.

Dated June 2, 2009



Milo Mecham,
Attorney for the City of Coburg

Request for Comments

Petition for Amendment of Oregon Rules Related to the Clean Water State Revolving Fund Loan Program

The purpose of this notice is to invite you to provide written comments on a petition submitted to the Oregon Department of Environmental Quality (DEQ) from the City of Coburg. The petition requests the Environmental Quality Commission (EQC) to amend two temporary rules related to the Clean Water State Revolving Fund loan program.

DEQ's Role:

DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes. The EQC is a five-member citizen panel appointed by the governor to serve as DEQ's policy and rulemaking board. The EQC adopts rules, establishes policies, issues orders, and judges appeals of fines and other DEQ actions.

Comments due:

Written comments due: 5 p.m., August 4, 2009.

Opportunity for oral comments:

An opportunity to present oral comments will be provided to members of the public during the public forum at the August 21, 2009 EQC meeting in Newport, Oregon at the Best Western Agate Beach Inn, 3019 North Coast Highway. The public forum will begin at approximately 11:30 am.

Where can I send my comments?

Judy Johndohl
811 S.W. Sixth Ave.
Portland, OR 97204-1390
(503) 229-6896 or toll free at (800) 452-4011
Fax: (503) 229-6037
EQCpetition@deq.state.or.us

Where can I get technical information?

Judy Johndohl
(503) 229-6896 or toll free at (800) 452-4011
811 S.W. Sixth Ave.
Portland, OR 97204-1390
Fax: (503) 229-6037
johndohl.judy@deq.state.or.us

Who is the petitioner?

A full copy of the rule amendment petition and the statement to support the petition submitted by Milo Mecham, Attorney for the City of Coburg is available at:

<http://www.deq.state.or.us/wq/loans/loans.htm>
or by contacting Judy Johndohl as listed above.

Who is the petitioner?

This petition for proposed rule amendments was submitted on June 2, 2009, by Milo Mecham, Attorney for the City of Coburg.

What rule amendments are requested?

The petitioner is requesting the EQC to amend Oregon's CWSRF loan program rules, Oregon Administrative Rules (OAR) 340-054-0102 and OAR 340-054-0104 as follows (new text is **underlined and bold**):

1. Include in Project Eligibility under the Act, OAR 340-054-0102(1) Eligibility for funding under the Act is the same as in OAR 340-054-0015(1) except for planning as defined in OAR 340-054-0010(38), **and as provided in OAR 340-054-0104.**
2. Include in Use of Funds, Intended Use Plan under the Act, OAR 340-054-0104(3) Existing Loan Agreement. A borrower with a loan agreement executed prior to October 1, 2008 is not eligible to receive funding under the Act for the **portion of the project funded with that existing loan. For projects in which the total project cost exceeds the amount of the loan agreement executed prior to October 1, 2008, a borrower that is otherwise qualified may receive a separate loan agreement for funding under the Act, provided that no funds received under the Act may be used to refinance, reconstruct or repay the loan executed prior to October 1, 2008, and that the separate loans be accounted for separately.**

Who might have an interest?

Public agencies who are interested in applying for a loan under DEQ's CWSRF loan program.



State of Oregon
Department of
Environmental
Quality

Water Quality Division Clean Water State Revolving Fund Loan Program

811 SW Sixth Ave.
Portland, OR 97204-1390
Phone: (503) 229-6896
(800) 452-4011
Fax: (503) 229-6037

Contact: Judy Johndohl
E-mail:
johndohl.judy@deq.state.or.us

www.oregon.gov/DEQ

If you received a hard copy of this notice in the mail, please consider receiving updates via e-mail instead. Send your request to:
subscriptions@deq.state.or.us

Please include your full name, e-mail address and mailing address so that we can purge you from our print mailing list, thus saving trees and taxpayer dollars.

Notice Issued: 07/20/09
By: Judy Johndohl

Item N 000014

What legal requirements apply?

OR 137-001-0070 allows any interested person to "petition an agency to adopt, amend or repeal a rule." OR 137-001-0070 also identifies the information that must be included in the petition and dictates that "... before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses." Finally, OR 137-001-0070 dictates that the agency "shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceeding." OR 340-011-0046 clarifies that the EQC will generally serve as the decision maker for petitions submitted in accordance with OR 137-001-0070.

What happens next?

The allowed 90-day window for an EQC decision on the petition expires on September 2, 2009. DEQ will review the petition and prepare a staff report to be presented to the EQC at its August 21, 2009 meeting in Newport, Oregon. The staff report will include discussion of potential impacts of the proposed amendments and the DEQ's recommendation to the EQC regarding action on the petition. DEQ will also provide the EQC a summary and discussion of written comments received during the comment period. EQC will provide a final opportunity for members of the public to provide oral comments at their August 21, 2009 meeting before making a decision on the petition.

DEQ's staff report will be made available for public review before the August meeting of the EQC. The EQC agenda for the August meeting and the DEQ's staff report will be posted on the DEQ website when it is available:
<http://www.oregon.gov/DEQ/EQC/index.shtml>

Accessibility information

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

People with hearing impairments may call DEQ's TTY number, (503) 229-6993.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda Item O, Action Item: Pollution Control Tax Credit Considerations
August 20-21, 2009 EQC Meeting

Why This is Important

The Environmental Quality Commission approves or denies the certification of a pollution control facility.

Background

The EQC certification entitles an Oregon taxpayer to subtract up to 35 percent of the certified facility cost from its Oregon tax liability. The taxpayer may take the tax credit in equal parts over the remaining useful life of the facility, but for no more than ten years. Oregon law permits certificate holders to begin using the tax credit in their tax year that coincides with the year in which the EQC certified the facility.

The Pollution Control Facilities Tax Credit regulations direct the EQC to "certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, if the commission finds that the facility qualifies as a pollution control facility." ORS 468.170 (4)(a).

Department Recommendation

The Department of Environmental Quality recommends the EQC:

- Approve Pollution Control Facilities Tax Credit applications summarized in Attachment A and detailed in Attachment B.
- Transfer certificates summarized in Attachment A and presented in Attachment C.

EQC Action Alternatives

The EQC may postpone an application to a future meeting if the EQC:

- Requires additional information from DEQ or the applicant;
or
- Makes a determination different from DEQ that may have an adverse effect on the applicant.

- Attachments**
- A. Summary of Recommendations
 - B. Background and References for Final Certification
 - C. Certificate Administration
 - D. Tax Expenditure Liability Report

Available Upon Request ORS 468.150 to 468.190 and OAR 340-016-0005 to 340-016-0080

Approved:

Section:



Division:



Report Prepared By: Maggie Vandehey
Phone: (503) 229-6878

Attachment A

Summary of Recommendations

From Attachment B: Recommended for Approval

Tab	App #	Applicant	Claimed	Certified	Difference	% Allocable	Max Percent	Tax Credit	EQC Action
Air	7959	Lanz Cabinet Shop, Inc.	\$311,196	\$242,924	\$68,272	100%	35%	\$85,023	
Air	7980	Intel Corporation and Subsidiaries	\$1,595,239	\$1,595,239	\$0	100%	35%	\$558,334	
Air	7982	Oregon Metallurgical Corporation	\$27,551	\$32,251	\$4,700	100%	35%	\$11,288	
Mat Rec	7983	Sunset Refuse & Recycling	\$449,428	\$449,428	\$0	100%	35%	\$157,300	
Air	7985	Roseburg Forest Products Company	\$1,021,504	\$862,562	(\$158,942)	100%	35%	\$301,897	
Air	7986	Roseburg Forest Products Company	\$327,992	\$327,992	\$0	100%	35%	\$114,797	
Alt FB	7987	Daniel D. & Stephen C. Sandau	\$84,045	\$84,045	\$0	100%	35%	\$29,416	
NPS	7988	Daniel D. & Stephen C. Sandau	\$39,228	\$39,228	\$0	100%	35%	\$13,730	
Water	7989	Thomas D Pollard	\$710	\$710	\$0	100%	35%	\$249	
Air	7990	Diamond RB. LLC	\$35,000	\$35,000	\$0	100%	35%	\$12,250	
Mat Rec	7992	Western Oregon Waste-Valley	\$60,329	\$67,128	\$6,799	100%	35%	\$23,495	
Water	7994	Norm Poole Oil, Inc.	\$147,698	\$147,698	\$0	100%	35%	\$51,694	
Water	7995	Parisa Sepehri	\$1,064	\$1,064	\$0	100%	35%	\$372	
Mat Rec	7997	Umpqua Bank Leasing	\$113,755	\$113,755	\$0	100%	35%	\$39,814	
Mat Rec	7998	Pride Disposal Company	\$366,720	\$366,720	\$0	100%	35%	\$128,352	
Mat Rec	7999	Waste Connections of Oregon, Inc.	\$222,720	\$222,720	\$0	100%	35%	\$77,952	
NPS	8001	Nash Contracting LLC	\$110,000	\$110,000	\$0	100%	35%	\$38,500	

17 Applications

Sum	\$ 4,914,179	\$ 4,698,464	\$ 1,644,462
Average	\$ 289,069	\$ 276,380	\$ 96,733
Minimum	\$ 710	\$ 710	\$ 249
Maximum	\$ 1,595,239	\$ 1,595,239	\$ 558,334

From Attachment C: Certificate Administration

Action	Cert #	Transaction	From	To
Transfer	10354	Sold Hillsboro Preprint Includes Far West Fibers	Weyerhaeuser PO Box 9777	International Paper 6400 Poplar Avenue
	10357	Sold Albany Container Mill Includes Albany Paper Mill	Federal Way, WA	Memphis, TN
	10676	Sold Albany Container Mill		
	11315	Sold Company	Landscape East & West 8850 SE 76th Drive Portland, OR	No address change Taxpayer ID change

Attachment B

Background and References for Final Certifications

Recommendation

The Department of Environmental Quality recommends that the Environmental Quality Commission approve **\$1,644,462** in tax credits to **17** pollution control and material recovery facilities summarized in Attachment A and detailed in this attachment.

To make its recommendation, DEQ relied on the application records, the Pollution Control Facilities Tax Credit regulations, pertinent legal advice, and previous EQC decisions and directions.

Organization of Application Reviews

DEQ organized the application reviews in application ascending order behind the tabs for the following categories.

Tax Credit	Type	Tab
1.	Air Pollution Controls	<i>Air</i>
2.	Alternatives to Field Burning	<i>Alt FB</i>
3.	Material Recovery	<i>Mat Rec</i>
4.	Nonpoint Source Pollution Controls	<i>NPS</i>
5.	Water Pollution Controls	<i>Water</i>

Each tab includes three sections:

1. Recommendation and Eligibility Criteria
2. Reviews
3. References

Each tab includes the eligibility criteria and the decisions required for certifying a pollution control or material recovery facility and for determining the amount of the tax credit. Each tab and the reviews behind the tab provide DEQ's analysis regarding the:

- Facility's qualifications for certification as a pollution control facility
- Eligible facility cost
- Percentage of the tax credit attributed to pollution control
- Maximum allowable tax credit.

DEQ will use the information in this attachment to:

- Notify the applicants of the EQC's certification
- Develop the Pollution Control Facility Tax Credit Certificate
- Develop the taxpayer's Department of Revenue form for claiming the credit on the Oregon Tax Return, and
- Develop reports for the EQC, agency management, the Department of Revenue, the Governor's Office, Legislators and other interested parties

Pollution Control Facility Certification Authority

ORS 468.170(4)(a) provides the EQC its authority to certify pollution control facilities.

Regulation	Department Interpretation
468.170 ¹ (4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the commission finds that the facility:	The applicant filed a valid application.
(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1);	The applicant constructed the facility after effective date of authorizing legislation.
(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and	The facility meets the definition of a pollution control facility.
(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468, 468A and 468B and rules thereunder.	The facility is necessary to satisfy DEQ administered regulations.

¹ ORS 468.170 Action on application; rejection; appeal; issuance of certificate; certification.

ORS 468.170(1) provides EQC with the authority to certify the facility cost and the portion of the cost allocable to pollution control. ORS 468.170(10) provides authority to certify the applicable percentage (Maximum Allowable Percentage) of the certified cost of the facility eligible for tax credit.

Regulation	Department Interpretation
<p>468.170 (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.</p>	<p>The certified facility cost represents the actual cost.</p> <p>The claimed items control pollution, solid or hazardous waste, or recycle.</p>
<p>The actual cost or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion of the facility. Each certificate shall bear a separate serial number for each such facility.</p>	<p>The cost represents the applicant's investment.</p>
<p>468.170 (10) If the construction or installation of a facility is commenced after December 31, 2005, the facility may be certified only if the facility or applicant is described in ORS 468.173 (3). A facility described in ORS 468.173 (2) for which construction or installation is commenced after December 31, 2005, may not be certified under this section.</p>	<p>The applicant, the facility or the location of the facility qualifies for a maximum percentage above zero (0) percent.</p>

Air Pollution Controls

Recommendations and Eligibility Criteria

DEQ recommends the EQC approve **\$1,083,589** in tax credits to **six** applicants for air- cleaning devices (facilities) used to reduce air pollution. Each facility is eligible for a tax credit because it meets the criteria in:

- ORS 468.155 (1)(a) and OAR 340-016-0060 (2)(a) - The principal purpose of the facility is to reduce air pollution in response to a DEQ, federal EPA or a regional air pollution authority imposed condition, or the sole purpose of the facility is to reduce a substantial quantity of air pollution.
- ORS 468.155 (1)(b)(B) – The facility accomplishes the prevention, control or reduction by disposal or elimination of air pollution, air contaminants or air contamination source and the use of an air cleaning device defined in ORS 468A.005.
- ORS.468.170 (4)(a) - The facility satisfies the intents and purposes of ORS chapter 468A - Air Pollution.
- ORS 468.155(3), ORS 468.170(1) and OAR 340-016-0070 - The facility cost recommended for certification represents the actual pollution control cost of the installation and does not exceed the taxpayer's (applicant) own cash investment in the facility.
- ORS 468.190 (3) for facilities that cost less than \$50,001, ORS 468.170(1) and ORS 468.190(1) for facilities that cost over \$50,000 - The applicant accurately determined and DEQ verified the percentage of the facility cost allocable to air pollution control.
- ORS 468.173(3)(h) - The maximum tax credit is 35 percent because the applicant submitted applications between January 1, 2002, and December 31, 2008, inclusively, and the certified cost would not exceed \$200,000, or the facility is located in an enterprise zone or economically distressed area at the time of certification.

Reviews

7959

Lanz Cabinet Shop, Inc.	Facility Cost		\$242,924
S Corp 93-0581543	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$85,023

Description

A Carothers & Sons, LTD baghouse system, serial number 3820

Lanz Cabinet Shop, Inc manufactures wood cabinets. The manufacturing process includes sawing, sanding, gluing, coating and assembling parts prior to shipping the finished cabinets.

The applicant claims a baghouse system to control particulate matter (PM) emissions from the woodworking operations on a new production line. The baghouse system includes one 50,000 cubic feet per minute (cfm) baghouse containing 330 bags and a 30,000 cfm baghouse containing 225 bags. The 16 ounce polyester bags are 6 inches by 12 feet.

The principal purpose of the facility is to prevent approximately 40 tons per year of PM and PM10 from being emitted to atmosphere. The baghouse system emits less than one ton per year of PM and PM10.

The baghouse system purges through a dump system that collects the particulate and dumps it through an airlock into trucks. The dump system recovers approximately 2,178 tons of wood fiber each year.

DEQ subtrated \$106,882 for interior ductwork and added \$38,610 which is the eligible but unclaimed engineering cost prorated to the eligible facility cost. The cabinet shop qualifies for the 35 percent tax credit because it is located in the West Eugene enterprise zone.

The EQC has issued 8 certificates to the applicant at this location. The previously certified facilities are still in operation; therefore, the claimed facility is not a replacement.

Applicant Address
3025 West 7th Place
Eugene, OR 97402

Facility Address
Same as the applicant's address.

7980

Intel Corporation and Subsidiaries	Facility Cost		\$1,595,239
C Corp 94-1672743	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$558,334

Description

One Munters model IZS-DS2900-TH Zeolite Rotor Concentrator

Intel's Aloha campus uses various chemical and mechanical processes to develop semiconductor features on semiconductor wafers initiated at other Intel facilities. Organic chemicals (propylene glycol monomethyl ether, cyclohexanone, ethanol, and propylene glycol methyl ether acetate) used in the process emit volatile organic compound (VOC) vapors.

The applicant claims a Munters Corporation unit containing the zeolite concentrator followed by the thermal oxidation component to meet DEQ's air contaminant discharge permit (ACDP). The claimed facility prevents approximately 20 tons of regulated Hazardous Air Pollutants (HAPs) from release to atmosphere each year.

The state issued 24 certificates to Intel Corporation – 13 to the Aloha campus and 11 to other locations. The applicant qualifies for the 35 percent certification because they are ISO 14001 certified. The applicant constructed the claimed facility to meet increased production; therefore, the facility is not a replacement to a previously certified facility. Awarded commercial bid summaries, purchase orders, change orders and project documentation established the actual cost of the claimed facility. The applicant accurately excluded project costs unassociated with pollution control including interior ductwork according to EQC direction.

Applicant Address
2200 Mission College Drive, SC4-26
Santa Clara, CA 95052

Facility Address
Intel Aloha Campus
3585 SW 198th Street
Aloha, Oregon 97007

7982

Oregon Metallurgical Corporation	Facility Cost		\$32,251
C Corp 95-2316679	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$11,288

Description

One 48" diameter by 13' 6" tall filter tank

The Allvac Albany Facility produces, refines and forms titanium metal and titanium metal alloys. The major raw materials are titanium tetrachloride, magnesium metal, and recycled titanium chips. To produce ingots, the company uses recycled titanium chips or titanium sponge formed from reacted titanium tetrachloride and magnesium metal. The company then fabricates the ingots into billets or other stock to meet customer specifications.

The company uses the Plasma Arc Furnace in titanium processing. The gas in the furnace produces particulate. The applicant claims a filter tank that contains water in the lower part and three-feet of glass-filled polypylene packing material in the upper part. Spray nozzles keep the packing moist. The sole purpose of the water filter is to capture about 0.5 ton of particulate emissions each year. The plant's wastewater treatment system removes the particulate from the water.

A project cost summary, an invoice and cancelled check document the claimed cost. Claimed labor costs equal the actual employee rate times hours worked on the project as documented by labor records. DEQ added the cost of eligible tank modifications.

The State of Oregon issued 11 Pollution Control Facilities Tax Credits to Oregon Metallurgical Corporation and ORMET, both known as Allvac. Additionally, the state issued 141 certificates to TDY Industries, Inc and Telydyne Wah Chang Albany. The claimed facility does not replace a previously certified facility.

Applicant Address
530 34th Avenue SW
Albany, OR 97321

Facility Address
Same as the applicant's address.

7985

Roseburg Forest Products Company	Facility Cost		\$862,562
C Corp 93-1240670	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$301,897

Description

One Geoenergy Geocat single regenerative catalytic oxidizer (RCO)

Roseburg Forest Products Company in Coquille is a wood products manufacturing complex that manufactures finished plywood.

The plywood manufacturing process begins by steaming the logs prior to cutting the veneer. The company dries the veneer prior to assembling it into plywood. Pollutants from the process includes particulate matter (PM, PM10, and volatile organic compounds (VOCs) from the veneer dryers and carbon monoxide (CO) and nitrogen oxide (NOx) from the combustion of the natural gas used to fuel the dryers.

The applicant claims an RCO to capture VOCs from the veneer drying process. The principal purpose of the RCO is to meet the conditions of the applicant's Title V Operating Permit #06-0010. The RCO has a rated control efficiency of 95% for VOCs and emits approximately 68.3 tons per year. The old scrubber emitted 123.1 tons per year.

The state issued 26 Pollution Control Facilities Tax Credits to the applicant and 4 to the Coquille Complex. The new RCO replaced three Burley Wet Scrubbers installed on veneer dryer # 5. In 1998, the state certified one of the replaced scrubber as a pollution control facility. The applicant claimed \$1,021,504 in facility cost but did not consider the like-for-like replacement of the previously certified facility. Two thirds of the cost (\$681,003) is eligible for the full credit and one third is eligible for the difference between the cost the new facility and the like-for-like replacement cost of the original facility. DEQ calculated inflationary factor shown below using the Consumer Price Index (CPI) - All Urban Consumers as published by the Bureau of Labor Statistics consistent with ORS 468.155(3)(e)(A), OAR 340-016-0010(6) 6) and approved guidelines.

$$208.556 = \text{CPI in 2007 when the replacement RCO was placed in service}$$
$$110.9 = \text{CPI in 1987 when the replaced scrubber was placed in service}$$
$$\text{Inflationary factor} = ((208.556 - 110.9) \div 110.9) + 1 = 1.88$$

Action Item: Pollution Control Tax Credit Consideration
August 20-21, 2009 EQC Meeting

To determine the eligible facility, DEQ used the inflationary factor to calculate the like-for-like replacement cost then subtracted one-third the RCO cost.

Certified replaced scrubber cost (1987)	\$96,574
Inflationary factor based on CPI	X <u>1.88</u>
Like-for-like replacement cost	\$181,559
One-third RCO cost	<u>(\$340,501)</u>
Ineligible replacement cost	(\$158,942)

Applicant Address

PO Box 1088
Roseburg, OR 97470

Facility Address

Roseburg Forest Products Company
Cedar Point Road
Coquille, OR 97423

7986

Roseburg Forest Products Company	Facility Cost		\$327,992
C Corp 93-1240670	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$114,797

Description

Two model RF 484-10 Donaldson baghouses, IDs M-23 BH8 and M-23 BH9
One model RF 232-10 Donaldson baghouse, ID M-23 BH10

Roseburg Forest Products Company in Dillard is a wood products manufacturing complex that manufactures lumber, plywood and particleboard from whole logs and furnish.

The lumber and sawmill operations debark whole logs and cut them to size. The company sells the rough-cut material as-is or planes and kiln dries it. The company uses the residual material to fuel the mill's steam generators or turbines.

The applicant claims three baghouses to capture particulate matter (PM) and PM10 from the existing studline planer, 14' planer, and trim saw and chipper, and the new trim saw. The principal purpose of the baghouses is to meet the conditions of the applicant's Title V Operating Permit #10-0025.

The baghouses have a rated control efficiency of 99.98%. The emissions from the new baghouses are approximately .17 tons of PM per year. The claimed facility prevents approximately 7.37 tons of additional PM from emission to atmosphere each year.

The applicant accurately subtracted the present value of the Business Energy Tax Credit (\$346,971) and the Energy Trust grant (\$346,971) from the facility cost. The state issued 26 Pollution Control Facilities Tax Credits to the applicant and 17 to the Dillard Complex. The state did not issue certificates for the cyclones previously installed on the existing equipment.

Applicant Address
PO Box 1088
Roseburg, OR 97470

Facility Address
Roseburg Forest Products Company
10500 Old 99 South
Dillard, OR 97432

Action Item: Pollution Control Tax Credit Consideration
August 20-21, 2009 EQC Meeting

7990

Diamond RB, LLC
LLC 47-0864020

Facility Cost		\$35,000
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		\$12,250

Description

One Carouthers and Sons, Ltd. HEI Series Baghouse, model CSL130TR10

Diamond RB, LLC cleans and packages grass seed for domestic and international sale. The seed cleaning process separates dust, chaff and weeds from the grass seed using screens and air. During this process, dirt and dust becomes suspended in the air. The applicant claims an 18,000-20,000 cfm (cubic feet per minute) baghouse to capture particulate matter. The sole purpose of the baghouse is to prevent approximately 35 tons of particulate matter from release to atmosphere each year.

The applicant accurately excluded the internal ductwork costs from the application. EQC has issued three certificates to members of the LLC; two to Richard D Baker and one to Richard D Baker and Russell Baker. The claimed facility is not a replacement of any previously certified facility.

Applicant Address
32351 Diamond Hill
Harrisburg, OR 97446

Facility Address
Same as the applicant's address.

References

ORS 468.155²

(1)(a) As used in ORS 468.155 to 468.190 and 468.962, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

- (A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the Department of Environmental Quality, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air...pollution...; or
- (B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air...pollution...

(1)(b) Such prevention, control or reduction required by this subsection shall be accomplished by:...(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;...

ORS 468A.005 provides the following definitions.

Air contamination is dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Air pollution is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such areas of the state as shall be affected thereby.

² Definitions for ORS 468.155 to 468.190 and 468.962

Air contamination source is any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

An air cleaning device is any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

OAR 340-016-0060³

- (4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:...(a) Air contamination by use of air cleaning devices as defined in ORS 468A.005 or through equipment designed to prevent, reduce or eliminate air contaminants prior to discharge to the outdoor atmosphere;...

³ Eligibility

Alternatives to Open Field Burning

Recommendations and Eligibility Criteria

DEQ recommends the Commission approve **\$29,416** in tax credits to **one** grass-seed grower who invested in alternatives to field burning. The facility is eligible for a tax credit because it meets the criteria in:

- ORS 468.155 (1)(a)(A) and OAR 340-016-0060 (2)(a) – The principal purpose of the facility is to reduce the maximum acreage to be open burned in compliance with OAR 340-266-0060 - Acreage Limitations, Allocations.
- ORS 468.150 and OAR 340-016-0060 (4)(b) – The grower invested in an eligible method for reducing the number of grass seed acres requiring open field burning.
- ORS.468.170 (4)(a) – The facility satisfies the intents and purposes of ORS chapter 468A – Air Pollution.
- ORS 468.155(3), ORS 468.170(1) and OAR 340-016-0070 – The facility cost recommended for certification represents the actual pollution control cost of the installation and does not exceed the taxpayer's (applicant) own cash investment in the facility.
- ORS 468.190 (3) for facilities that cost less than \$50,001, ORS 468.170(1) and ORS 468.190(1) for facilities that cost over \$50,000 – The applicant accurately determined and DEQ verified the percentage of the facility cost allocable to air pollution control.
- ORS 468.173(3)(f) – The maximum tax credit is 35 percent because the applicant submitted their applications between January 1, 2002, and December 31, 2008, inclusively, and the certified facility cost does not exceed \$200,000 or the facility is located in an economically distressed area.

Reviews

7987

Daniel D. Sandau (50%) and Stephen C. Sandau (50%) LLC 20-2396650	Facility Cost		\$84,045
	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$29,416

Description

Drainage tile system: 76,519' of 4" pipe, 1,129' of 6" pipe, 2,260' of 8" pipe, fittings, 1 catch basin and 1 outlet

Daniel D. Sandau and Stephen C. Sandau own 862 acres and lease an additional 569 acres. One thousand two hundred eighty nine acres are under perennial grass seed cultivation. The co-applicants open field burned an average 439 of acres from 2005 to 2007.

The co-applicants claim drainage tile installed on tax lots R23700, R23705, R21751, R21753, R23735, R29147, R29790-93. The principal purpose of the claimed facility is to prevent air pollution by removing 115 acres from open field burning to plant alternative crops (berry and grape) that do not require burning.

The EQC issued five certificates to the co-applicants and one to Sandau Ent. Inc. Paid invoices and cancelled checks accurately document the facility cost. The facility is not a replacement to a previously of any previously certified facility.

Applicant Address
775 78th Avenue NE
Salem, OR 97301

Facility Address
677 78TH Avenue NE
Salem, OR 97317

References

ORS 468.150⁴

After alternative methods for field sanitation and straw utilization and disposal are approved by the Department of Environmental Quality, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190 and 468.962. [1975 c.559 §15; 1999 c.59 §136]

Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OAR 340-016-0060⁵

- (4) Eligible Activities... (b) Alternatives to Open Field Burning. The facility shall reduce or eliminate:
- (A) Open field burning and may include equipment, facilities, and land for gathering, densifying, handling, storing, transporting and incorporating grass straw or straw based products;
 - (B) Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or
 - (C) Grass seed acreage that requires open field burning. The facility may include:
 - (i) Production of alternative crops that do not require open field burning;
 - (ii) Production of rotation crops that support grass seed production without open field burning; or
 - (iii) Drainage tile installations and new crop processing facilities.

⁴ Field sanitation, and straw utilization and disposal methods as "pollution control facilities"

⁵ Eligibility

Material Recovery

Recommendations and Eligibility Criteria

DEQ recommends that the EQC approve **\$426,913** in tax credits to **5** applicants who invested in recycling containers and truck (facilities) used in a material recovery process. Each facility is eligible for a tax credit because it meets the criteria in:

- ORS 468.155 (1)(a) and OAR 340-016-0060 (2)(a) – The sole purpose of the facility is to prevent, control, or reduce a substantial quantity of solid waste.
- ORS 468.155 (1)(b)(D), OAR 340-016-0010(7) and OAR 340-016-0060(4)(e) – The facility prevents, controls, or reduces waste material by using a material recovery process. The process obtains useful material from material that would otherwise be solid waste.
- ORS.468.170 (4)(a) – The facility satisfies the intents and purposes of ORS chapter 459A – Refuse and Recycling.
- ORS 468.155(3), ORS 468.170(1) and OAR 340-016-0070 – The facility cost recommended for certification represents the actual material recovery cost and does not exceed the taxpayer's (applicant) own cash investment in the facility.
- ORS 468.190 (3) for facilities that cost less than \$50,001, ORS 468.170(1) and ORS 468.190(1) for facilities that cost over \$50,000 – The applicant accurately determined and DEQ verified the percentage of the facility cost allocable to material recovery.
- ORS 468.173(3)(d) – The maximum tax credit is 35 percent because the applicants submitted their applications between January 1, 2002, and December 31, 2008, inclusively, and the applicant uses the certified facility in a material recovery process or for recycling.

Reviews

7983

Sunset Refuse & Recycling	Facility Cost		\$449,428
C Corp 93-1131527	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$157,300

Description

9,172 96-gallon roll carts with lids, serial numbers C9206151 through C9215322

Western Oregon Waste, operating as Sunset Refuse & Recycling in Clatsop County, is a solid waste and recycling collection company that serves 13,719 customers. The company claims roll carts placed with residential customers to accumulate commingled recyclable materials. The company collects and delivers the material to their plant to remove any contaminants. The company then delivers the material to a sorting facility where the material is processed for delivery to end markets for recycling into new products.

The sole purpose of the carts is to remove approximately 2,300 tons of recyclable materials from landfill disposal each year.

Paid invoices, purchase orders and a check summary documented the claimed facility cost. The applicant and DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control. The EQC issued nine certificates to Western Oregon Waste; three of those to Sunset Refuse & Recycling. The claimed facility provides a new commingled recycling program and does not replace previously certified facilities.

Applicant Address
PO Box 509
McMinnville, OR 97128

Facility Address
Western Oregon Waste - Coast Operations
2320 SE 12th Place
Warrenton, OR 97128

7992

Western Oregon Waste-Valley	Facility Cost		\$67,128
C Corp 93-0724867	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$23,495

Description

1,272 95-gallon recycling carts, serial numbers C921693 through C9218234

Western Oregon Waste is a solid waste and recycling collection company serving its 18,399 customers in Yamhill County. The company claims carts placed with residential and commercial customer to accumulate recyclable materials.

The carts are part of a recovery process that removes approximately 2,769 tons of recyclable materials from landfill disposal each year.

DEQ added \$4,800 in eligible freight costs and \$1,999 to correct a calculation error. Paid invoices, purchase orders and a check summary documented the claimed facility cost. The applicant and DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control. The EQC has issued nine certificates to Western Oregon Waste; four were for the Valley Operations. The carts do not replace previously certified facilities.

Applicant Address
PO Box 509
McMinnville, OR 97128

Facility Address
1850 NE Lafayette Avenue
McMinnville, OR 97128

7997

Umpqua Bank Leasing	Facility Cost		\$113,755
C Corp 93-1261319	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$39,814

Description

2,300 65-gallon recycling roll carts with lids manufactured by Rehrig Pacific Company, serial numbers DEI001000 - DEI003299

Umpqua Bank Leasing (lessor) is a commercial bank that purchased recycling carts leased to Mel Deines Sanitary Service, Inc. (lessee). The lessee is a residential (2,320 customers) and commercial (51 customers) solid waste and recycling collector in unincorporated Clackamas County and the City of Milwaukie. The recycling carts will accumulate recyclable materials from residential customers.

The sole purpose of the recycling carts is prevent approximately 204 tons of recyclable materials from disposal in a landfill each year. The lessee delivers the recyclable materials to K.B. Recycling in Clackamas, Oregon for additional processing. K.B. Recycling then sells the material to the appropriate mills to use in the manufacture of new products.

Paid invoices documented the claimed facility cost. The applicant and DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control. The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates to Umpqua Bank, two for facilities leased to the lessor and one issued directly to Mel Deines Sanitary Service, Inc. certifying 65-gallon yard debris carts. The carts do not replace a previously certified facility; therefore, the claimed facility is not a replacement facility.

Applicant Address
6400 SW Corbett Avenue
Portland, OR 97239-3558

Facility Address
Mel Deines Sanitary Service, Inc.
9301 SE Stanley Avenue
Milwaukie, OR 97222

7998

Pride Disposal Company	Facility Cost		\$366,720
C Corp 91-1328599	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$128,352

Description

7,580 95-gallon recycling carts with lids manufactured by Otto Environmental Systems, serial numbers T23734 through 731414

Pride Disposal Company is a refuse and recycling collection company in Sherwood, King City, Durham, Beaverton, Tigard and parts of unincorporated Washington County; serving 7,471 residential and 7,650 commercial customers.

The applicant claims carts placed with residential customers in parts of unincorporated Washington County to accumulate recyclable materials. The sole purpose of the carts is to prevent approximately 2,463 tons of recyclable materials from landfill disposal each year. The company collects and delivers material from the carts to a third-party processor. After separation, the processor sells the materials to mills to use in manufacturing new products.

The EQC has issued five Pollution Control Facilities certificates to Umpqua Bank Leasing for facilities leased to Pride Disposal Company but none to the applicant for placement in unincorporated Washington County; therefore, the claimed facility is not a replacement to a previously certified facility. Paid invoices and cancelled checks documented the claimed facility cost. The applicant and DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control.

Applicant Address
PO Box 820
Sherwood, OR 97140

Facility Address
980 SW Tualatin Sherwood Road
Sherwood, OR 97140

7999

Waste Connections of Oregon, Inc.	Facility Cost		\$222,720
93-0599115	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$77,952

Description

2008 Peterbilt 320 Truck, vehicle identification number 3BPZL00X18F718116, with Labrie Expert a 29-cubic-yard Side Loader, serial # EX07103IDS

Waste Connections of Oregon, Inc. provides solid waste collection and disposal services to residential, commercial and multi-family dwellings.

The applicant claims a truck used to collect yard debris from 6,500 residential customers in the City of Portland. The company delivers the materials to a third-party composting facility for additional processing and manufacture into new products.

The sole purpose of the truck is to remove approximately 1,234 tons of yard debris from the waste stream and landfill disposal each year.

The EQC issued 61 certificates to the applicant and 21 certificates to Oregon Paper Fiber; however, the truck does not replace a previously certified facility. Paid invoices, purchase orders and a check summary documented the claimed facility cost. The applicant and DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control.

Applicant Address
35 Iron Point Circle, Suite 200
Folsom, CA 95630

Facility Address
Oregon Paper Fiber
12820 NE Marx
Portland, OR 95630

References

ORS 468.155⁶

Such prevention, control or reduction required by this subsection shall be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 459A.555. ORS 459.005 provides the following definition of solid waste.

Solid Waste: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. ORS 459.005(24).

OAR 340-016-0060⁷

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate hazardous waste, solid waste and used oil. The facility shall eliminate or obtain useful material from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 468.850. The facility shall produce an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility shall produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.

⁶ Definitions for ORS 468.155 to 468.190 and 468.962

⁷ Eligibility

Nonpoint Source Pollution Controls

Recommendations and Eligibility Criteria

DEQ recommends the Commission approve **\$52,230** in tax credits to **two** applicants who claim nonpoint source (NPS) pollution control facilities. The facilities are eligible for a tax credit because they meet the criteria in:

- ORS 468.155 (1)(a)(B), OAR 340-016-0060 (2)(a) and OAR 340-041-0006(17) – The sole purpose of the facility is to reduce a substantial quantity of NPS.
- ORS 468.155 (2)(b), OAR 340-016-0060 (4)(h)(B)(i) – The applicant invested in a method the EQC determined to reduce significant amounts of nonpoint source pollution supported by DEQ, or United States Department of Agriculture or Oregon State University research.
- ORS.468.170 (4)(a) – The facility satisfies the intents and purposes of ORS chapters 468A and 468B – Air and Water Pollution.
- ORS 468.155(3), ORS 468.170(1) and OAR 340-016-0070 – The facility cost recommended for certification represents the actual pollution control cost of the installation and does not exceed the taxpayer's (applicant) own cash investment in the facility.
- ORS 468.190 (3) for facilities that cost less than \$50,001, ORS 468.170(1) and ORS 468.190(1) for facilities that cost over \$50,000 – The applicant accurately determined and DEQ verified the percentage of the facility cost allocable to NPS pollution control.
- ORS 468.173(3)(c) – The maximum tax credit is 35 percent because the applicant submitted the application between January 1, 2002, and December 31, 2008, inclusively, and the certified facility is a NPS pollution control.

Reviews

7988

**Daniel D. Sandau (50%) and
Stephen C. Sandau (50%)**
LLC 20-2396650

Facility Cost		\$39,228
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		\$13,730

Description

One John Deere model 1590N No-Till Drill, serial number 1590X725513

Daniel D. Sandau and Stephen C. Sandau farm on 1,289 acres. They own 862 acres and lease an additional 569 acres.

The co-applicants claim a no-till drill to benefit water quality as described in the attached letter from the United States Department of Agriculture, Natural Resource Conservation Service. Oregon State University, OSU Extension Service, states this type of equipment reduces the potential for nonpoint source pollution.

The EQC issued five certificates to the co-applicants and one to Sandau Ent. Inc. A purchase order and a cancelled check accurately document the facility cost. The facility is not a replacement to a previously certified facility.

Applicant Address
775 78th Avenue NE
Salem, OR 97301

Facility Address
677 78th Avenue NE
Salem, OR 97317

United States Department of Agriculture



Natural Resources Conservation Service
650 Hawthorne Ave SE Ste 130
Salem, OR 97301-5894
503-399-5746

1/14/08

Re: Dan Sandau and Residue Management, No-till practices

Ms. Vandehey,

As a Conservation Planner for the Natural Resources Conservation Service working with Mr. Sandau, he asked that I get a letter to you discussing the benefits of No-till management of crops and the many ways this management practice benefits water quality.

No-till practices have proven to reduce the movement of soil particles in wet winter months which reduces the negative effects of sheet and rill erosion. As chemicals bond readily to soil particles, erosion control becomes an important factor in maintaining water quality.

No-till practices help maintain soil structure by not breaking "peds" (clod of soil of a given size) apart like conventional tillage, nor does it invert the soil. Reducing the depth (1-3 inches), and frequency, at which deep tillage occurs keeps peds intact. Maintaining soil structure reduces compaction. This reduction preserves the porosity which in turn improves water infiltration rates.

No till practices improve soil organic matter content by retaining vegetative matter in the soil. High organic matter content benefits water holding capacity, nutrient availability and overall soil tilth and health.

Jeremy Baker

Soil Conservation Technician
Natural Resource Conservation Service
503-399-5741 ext.117
503-399-5799 (fax)

8001

Nash Contracting LLC
LLC 93-1252331

Facility Cost		\$110,000
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		\$38,500

Description

One Morebark model 23 flail wood chipper, serial number 3027

Nash Contracting LLC, operates a poplar logging company in Eastern Oregon. The applicant claims a wood chipper to reduce openly burned woody debris.

A Bill-of-Sale and a cancelled check accurately document the facility cost. DEQ used the standard method in OAR 340-016-0075 (3) for determining the percentage of the facility cost allocable to pollution control. The EQC has not issued any certificates to the applicant or for the wood chipper. The facility is not a replacement to a previously certified facility.

Applicant Address
33358 Stage Gulch Road
Stanfield, OR 97875

Facility Address
73967 Homestead Lane
Boardman, OR 97818

References

ORS 468.155⁸

- (2)(a) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes a nonpoint source pollution control facility.
- (b) As used in this subsection, “nonpoint source pollution control facility” means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution.

OAR 340-016-0010⁹

Nonpoint Source Pollution means pollution that comes from numerous, diverse, or widely scattered sources of pollution that together have an adverse effect on the environment. The meaning includes:

- (a) The definition provided in OAR 340-041-0006(17); or
- (b) Any sources of air pollution that are:
- (A) Mobile sources that can move on or off roads; or
 - (B) Area sources.

⁸ Definitions for ORS 468.155 to 468.190 and 468.962

⁹ Definitions

OAR 340-016-0060¹⁰

- (4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate: ... (h) Nonpoint Source Pollution. Pursuant to ORS 468.155(2)(b), the EQC has determined that the following facilities reduce or control significant amounts of nonpoint source pollution:
- (A) Any facility that implements a plan, project, or strategy to reduce or control nonpoint source pollution as documented:
 - (i) By one or more partners listed in the Oregon Nonpoint Source Control Program Plan; or
 - (ii) In a federal Clean Air Act State Implementation Plan for Oregon; or
 - (B) Any facility effective in reducing nonpoint source pollution as documented in supporting research by:
 - (i) Oregon State University, Agricultural Experiment Station; or
 - (ii) The United States Department of Agriculture, Agriculture Research Service; or
 - (iii) The Oregon Department of Agriculture; or
 - (C) Wood chippers used to reduce openly burned woody debris; or
 - (D) The retrofit of diesel engines with a diesel emission control device, certified by the U.S. Environmental Protection Agency.

¹⁰ Eligibility

Water Pollution Controls

Recommendations and Eligibility Criteria

DEQ recommends the EQC approve **\$52,314** in tax credits to **3** applicants that claim amalgam separators, and wastewater or storm water controls. Each facility is eligible for a tax credit because it meets the criteria in:

- ORS 468.155 (1)(a) and OAR 340-016-0060 (2)(a) – The principal purpose of the facility is to reduce water pollution in response to a DEQ or federal EPA imposed condition or the sole purpose of the facility is to reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(B) – The facility accomplishes the prevention, control or reduction by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste defined in ORS 468B.005.
- ORS.468.170 (4)(a) – The facility satisfies the intents and purposes of ORS chapter 468B – Water Pollution.
- ORS 468.155(3), ORS 468.170(1) and OAR 340-016-0070 – The facility cost recommended for certification represents the actual pollution control cost of the installation and does not exceed the taxpayer's (applicant) own cash investment in the facility.
- ORS 468.190 (3) for facilities that cost less than \$50,001, ORS 468.170(1) and ORS 468.190(1) for facilities that cost over \$50,000 – The applicant accurately determined and DEQ verified the percentage of the facility cost allocable to water pollution control.
- ORS 468.173(3)(h) - The maximum tax credit is 35 percent because the applicant submitted applications between January 1, 2002, and December 31, 2008, inclusively, and the certified cost would not exceed \$200,000, or the facility is located in an enterprise zone or economically distressed area at the time of certification.

Reviews

7989

Thomas D Pollard	Facility Cost		\$ 710
	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$ 249

Description

One Ramvac HG5 Amalgam Separator, serial number RVK-18415

Thomas D Pollard, DMD, operates a dental practice that generate amalgam waste particles. The applicant installed a separator to remove the particles.

The sole purpose of the separator is to control a substantial quantity of water pollution from discharge to sanitary sewer. Amalgam contains mercury, an alloy of silver, tin and copper. If the separator did not remove amalgam waste, it could contaminate rivers and streams where fish absorb it. The primary environmental route of human exposure to mercury is from eating contaminated fish.

The EQC has not issued any tax credits to the applicant; therefore, the facility is not a replacement facility.

Applicant Address
419 NW 23rd Avenue #201
Portland, OR 97210

Facility Address
Same as the applicant's address.

7994

Norm Poole Oil, Inc.	Facility Cost		\$147,698
S Corp 93-0771574	Percentage Allocable	X	100%
	Maximum Percentage	X	35%
	Tax Credit		\$51,694

Description

EPA underground storage tank upgrades

The applicant operates a new cardlock fueling facility that dispenses petroleum products to commercial customers. The applicant claims the components of the installation that protect the environment. The applicant installed three double-wall fiberglass tanks with interstitial monitoring. A Veeder-Root automatic tank monitoring system continuously monitors the tanks and fuel lines. The 400 feet of fuel lines are double-wall flexible piping with no fittings between sumps located at the tanks and sumps at each island fuel dispenser. The tanks have stage I vapor recovery equipment installed on the filling and venting components. The site has an oil/water separator to collect and pretreat runoff from the fuel islands and surrounding concrete drive slabs to remove any petroleum prior to discharge to the City of Ontario sanitary sewer system.

The principal purpose of the claimed components is to meet EPA standard to detect, deter and prevent spills or unauthorized releases of petroleum and petroleum vapors.

The EQC has issued three certificates to the applicant but none to this location; therefore, the claimed facility is not a replacement facility.

Applicant Address
PO Box 309
Ontario, OR 97914

Facility Address
Same as the applicant's address.

Action Item: Pollution Control Tax Credit Consideration
August 20-21, 2009 EQC Meeting

7995

Parisa Sepehri
S Corp 93-1326151

Facility Cost		\$1,064
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		\$ 372

Description

One Reach In-line amalgam separator, serial number 2669

Parisa Sepehri, DMD, operates a dental practice that generate amalgam waste particles. The applicant installed a separator to remove the particles.

The sole purpose of the separator is to control a substantial quantity of water pollution from discharge to sanitary sewer. Amalgam contains mercury, an alloy of silver, tin and copper. If the separator did not remove amalgam waste, it could contaminate rivers and streams where fish absorb it. The primary environmental route of human exposure to mercury is from eating contaminated fish.

The EQC has not issued any tax credits to the applicant; therefore, the facility is not a replacement facility.

Applicant Address
8930 SW Hall Boulevard
Portland, OR 97223

Facility Address
Same as the applicant's address.

References

ORS 468.155¹¹

(1)(a) As used in ORS 468.155 to 468.190 and 468.962, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the Department of Environmental Quality, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce...water ...pollution...; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of...water...pollution...

(1)(b) Such prevention, control or reduction required by this subsection shall be accomplished by:... (B) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005 ...

ORS 468B.005 provides the following pertinent definitions.

Industrial waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

Treatment works means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Wastes means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances that will or may cause pollution or tend to cause pollution of any waters of the state.

¹¹ Definitions for ORS 468.155 to 468.190 and 468.962

Water pollution means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

OAR 340-016-0060(4)¹²

Eligible Activities. The facility shall prevent, reduce, control, or eliminate industrial waste. The facility shall dispose of, eliminate or be redesigned to eliminate industrial waste and the use of treatment works for industrial wastewater as defined in ORS 468B.005.

For underground storage tank systems,

(g) Spills or Unauthorized Releases. The facility shall be used to detect, defer or prevent spills or unauthorized releases. This does not include any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred...

¹² Eligibility

Attachment C

Certificate Administration

Weyerhaeuser requested transfer of the attached certificates numbered 10354, 10357 and 10676 to International Paper. The transferred certificates will reflect the new owner's name, address and Taxpayer ID. The new owner will continue to operate the claimed facility as certified.

The owner of Landscape East & West requested the transfer of the attached certificate number 11315 to the new business owner. The transferred certificate will reflect the same business name and address with the new owner's Taxpayer ID. The new owner will continue to operate the claimed facility as certified.

Certificate Administration References

315.304 Pollution control facilities.

(8) Upon any sale, exchange or other disposition of a facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition. Notwithstanding ORS 468.170 (4)(c), the transferee may apply for a new certificate under ORS 468.170, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

ORS 468.155 (e)(B)

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

...

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility;

468.185 Procedure to revoke certification; reinstatement.

- (1) Pursuant to the procedures for a contested case under ORS chapter 183, the Environmental Quality Commission may order the revocation of the certification issued under ORS 468.170 of any pollution control or solid waste, hazardous wastes or used oil facility, if it finds that:
 - (a) The certification was obtained by fraud or misrepresentation; or
 - (b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as specified in such certificate.
- (2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.
- (3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and 315.304.

Action Item: Pollution Control Tax Credit Consideration
August 20-21, 2009 EQC Meeting

- (4) Except as provided in subsection (5) of this section, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405 or 315.304 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.
- (5) The commission may reinstate a tax credit certification revoked under subsection (1)(b) of this section if the commission finds the facility has been brought into compliance. If the commission reinstates certification under this subsection, the commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation as determined by the commission. [Formerly 449.645; 1975 c.496 §7; 1977 c.795 §7; 1979 c.802 §7; 1987 c.596 §6]

Pollution Control Facility Certificate No. 10354



State of Oregon
Department of
Environmental
Quality

811 SW Sixth Ave.
Portland, OR 97204
1 (800) 452-4011
www.deq.state.or.us

Certificate Holder Willamette Industries, Inc.
Weyerhaeuser Company
Tax Department CH 1C28/PO Box 9777
Federal Way, WA 98063

Operating as: C Corp
Taxpayer ID No:

Certified Cost & Percentages

Facility Location

Far West Fibers
6440 SE Alexander Street
Hillsboro, OR 97123

Facility Cost		\$2,883,819
Percentage Allocable	X	100%
Maximum Percentage	X	50%
Tax Credit		<u>\$1,441,910</u>

Facility Description

Material Recovery Building and Land

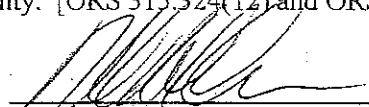
The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number 5781.

The EQC certifies that:

- The facility was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165; and
- The facility was designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing **Material Recovery** pollution; and
- The facility is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, the EQC issues this Pollution Control Facility Certificate on this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality, and the following special conditions.

1. The certificate holder shall:
 - Continuously operate the facility at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above;
 - Immediately notify the Department of Environmental Quality of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose; and
 - Promptly provide any reports or monitoring data that the Department of Environmental Quality may request.
2. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility. [ORS 315.324(12) and ORS 315.356(3) and (4)]


Mark Reeve, Chair
Environmental Quality Commission

Issued on 5/9/2003

Please use the worksheet on the reverse side to calculate your yearly allowable credit.

Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Willamette Industries, Inc. may claim the credit beginning in the 2003 tax year. The applicant placed the facility into service on 1999, claiming the facility has a 10-year useful life.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$240,318	\$240,318	\$240,318	\$240,318	\$240,318	\$240,320	\$ 0	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]



Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Willamette Industries, Inc. may claim the credit beginning in the 2003 tax year. The applicant placed the facility into service on 1999, claiming the facility has a 10-year useful life.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$240,318	\$240,318	\$240,318	\$240,318	\$240,318	\$240,320	\$ 0	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to **three** years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]



State of Oregon
Department of
Environmental
Quality

811 SW Sixth Ave.
Portland, OR 97204
1 (800) 452-4011
www.deq.state.or.us

Pollution Control Facility Certificate No. 10357

Certificate Holder Willamette Industries, Inc.
Weyerhaeuser Company
Tax Department CH 1C28/PO Box 9777
Federal Way, WA 98063

Operating as: C Corp
Taxpayer ID No:

Certified Cost & Percentages

Facility Location

Albany Paper Mill
3251 Old Salem Road
Albany, OR 97321

Facility Cost		\$369,984
Percentage Allocable	X	100%
Maximum Percentage	X	50%
Tax Credit		<u>\$184,992</u>

Facility Description

Recovery Boiler Spill Containment

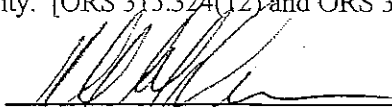
The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number 5856.

The EQC certifies that:

- The facility was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165; and
- The facility was designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing Water pollution; and
- The facility is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, the EQC issues this Pollution Control-Facility Certificate on this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality, and the following special conditions.

1. The certificate holder shall:
 - Continuously operate the facility at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above;
 - Immediately notify the Department of Environmental Quality of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose; and
 - Promptly provide any reports or monitoring data that the Department of Environmental Quality may request.
2. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility. [ORS 315.324(12) and ORS 315.356(3) and (4)]


Mark Reeve, Chair Issued on 5/9/2003
Environmental Quality Commission

Please use the worksheet on the reverse side to calculate your yearly allowable credit.



Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Willamette Industries, Inc. may claim the credit beginning in the 2003 tax year. The applicant placed the facility into service on 2000, claiming the facility has a 10-year useful life.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$26,427	\$26,427	\$26,427	\$26,427	\$26,427	\$26,427	\$26,430	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]

7/2006

Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Willamette Industries, Inc. may claim the credit beginning in the 2003 tax year. The applicant placed the facility into service on 2000, claiming the facility has a 10-year useful life.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$26,427	\$26,427	\$26,427	\$26,427	\$26,427	\$26,427	\$26,430	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to **three** years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]



State of Oregon
Department of
Environmental
Quality

811 SW Sixth Ave.
Portland, OR 97204
1 (800) 452-4011
www.deq.state.or.us

Pollution Control Facility Certificate No. 10676

Certificate Holder Weyerhaeuser Company
Tax Department CH1C28
PO Box 9777
Federal Way, WA 98063-9777

Operating as:
Taxpayer ID No: _____

Facility Location

3251 Old Salem Road
Albany, OR 97321

Certified Cost & Percentages

Facility Cost		\$451,135
Percentage Allocable	X	100%
Maximum Percentage	X	50%
Tax Credit		<u>\$225,568</u>

Facility Description

ASB Wastewater Effluent Screen Installation:

- One - Suboscreen Model S78/78 manufactured by Andritz-Ruthner rotating screen
- One - Andritz-Ruthner, Model AS-300 conveyor/compactor
- One - ABB Automation pond level monitoring system

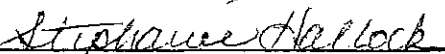
The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number 6643.

The EQC certifies that:

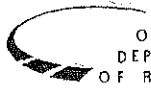
- The facility was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165; and
- The facility was designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing Water pollution; and
- The facility is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, the EQC issues this Pollution Control Facility Certificate on this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality, and the following special conditions.

1. The certificate holder shall:
 - Continuously operate the facility at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above;
 - Immediately notify the Department of Environmental Quality of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose; and
 - Promptly provide any reports or monitoring data that the Department of Environmental Quality may request.
2. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility. [ORS 315.324(12) and ORS 315.356(3) and (4)]


Stephanie Hallock, Director
Environmental Quality Commission

Issued on 5/21/2004



Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Weyerhaeuser Company may claim the credit beginning in the 2004 tax year. The applicant placed the facility into service on 2001, claiming the facility has a 10-year useful life.

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]



State of Oregon
 Department of Revenue
 1-800-356-4222
 www.dor.state.or.us

Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Weyerhaeuser Company may claim the credit beginning in the 2004 tax year. The applicant placed the facility into service on 2001, claiming the facility has a 10-year useful life.

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$32,224	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to **three** years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- **Shareholders in an S corporation** can find information on claiming the credit in ORS 314.752.
- **Partners in a partnership** may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]



Pollution Control Facility Certificate No. 11315

Certificate Holder Landscape East & West
8850 SE 76th Drive
Portland, OR 97206

State of Oregon
Department of
Environmental
Quality

811 SW Sixth Ave.
Portland, OR 97204
1 (800) 452-4011
www.deq.state.or.us

Operating as: S Corp
Taxpayer ID No:

Facility Location

Same as the applicant's address.

Certified Cost & Percentages

Facility Cost		\$29,121
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		\$10,192

Facility Description

One - Model BIO-25R-1M10 Biological Recycling System

The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number 7275.

The EQC certifies that:

- The facility was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165; and
- The facility was designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing pollution; and
- The facility is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, the EQC issues this Pollution Control Facility Certificate on this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality, and the following special conditions.

1. The certificate holder shall:
 - Continuously operate the facility at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above;
 - Immediately notify the Department of Environmental Quality of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose; and
 - Promptly provide any reports or monitoring data that the Department of Environmental Quality may request.
2. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility. [ORS 315.324(12) and ORS 315.356(3) and (4)]

Paul Slyman, Deputy Director
Environmental Quality Commission

Issued on 12/14/2006

Please use the worksheet on the reverse side to calculate your yearly allowable credit.

Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Landscape East & West may claim the credit beginning in the 2006 tax year. The applicant placed the facility into service on 2006, claiming the facility has a 12-year useful life.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,021
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]

Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Landscape East & West may claim the credit beginning in the 2006 tax year. The applicant placed the facility into service on 2006, claiming the facility has a 12-year useful life.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,019	\$1,021
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
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Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]

Attachment D

Tax Expenditure Liability Report

When the Environmental Quality Commission issues a Pollution Control Facilities Tax Credit (PCTC) Certificate, the State of Oregon incurs a tax expenditure liability. The Tax Expenditure Liability Report shows the maximum potential fiscal impact from certifying facilities presented in this staff report,

The amount listed under each year is the maximum potential credit that taxpayers with certificates may use to reduce their Oregon taxes in any one year. This annual limitation is equal to the tax credit divided by the remaining useful life of the facility but no more than ten years. The remaining useful life is the useful life of the facility less the expired period between the date the applicant placed the facility into operation and the Commission approved certification.

Attachment D

Tax Expenditure Liability Report

App #	Tax Credit	Placed in Operation	UL	Remaining UL	2009	2010	2011	2012	2013	2014	2015	2016	\$ 2,017	\$ 2,018
7959	\$85,023	2007	10	8	\$ 10,628	\$ 10,628	\$ 10,628	\$ 10,628	\$ 10,628	\$ 10,628	\$ 10,628	\$ 10,627	\$ -	\$ -
7980	\$558,334	2007	10	8	69,792	69,792	69,792	69,792	69,792	69,792	69,792	69,790	0	0
7982	\$11,288	2007	10	8	1,411	1,411	1,411	1,411	1,411	1,411	1,411	1,411	0	0
7983	\$157,300	2008	7	6	26,217	26,217	26,217	26,217	26,217	26,215	0	0	0	0
7985	\$301,897	2007	10	8	37,737	37,737	37,737	37,737	37,737	37,737	37,737	37,738	0	0
7986	\$114,797	2007	10	8	14,350	14,350	14,350	14,350	14,350	14,350	14,350	14,347	0	0
7987	\$29,416	2007	20	10	2,942	2,942	2,942	2,942	2,942	2,942	2,942	2,942	2,942	2,938
7988	\$13,730	2008	5	4	3,432	3,432	3,432	3,434	0	0	0	0	0	0
7989	\$249	2007	1	1	249	0	0	0	0	0	0	0	0	0
7990	\$12,250	2007	10	8	1,531	1,531	1,531	1,531	1,531	1,531	1,531	1,533	0	0
7992	\$23,495	2007	7	5	4,699	4,699	4,699	4,699	4,699	0	0	0	0	0
7994	\$51,694	2007	20	10	5,169	5,169	5,169	5,169	5,169	5,169	5,169	5,169	5,169	5,173
7995	\$372	2007	1	1	372	0	0	0	0	0	0	0	0	0
7997	\$39,814	2007	7	5	7,963	7,963	7,963	7,963	7,962	0	0	0	0	0
7998	\$128,352	2007	5	3	42,784	42,784	42,784	0	0	0	0	0	0	0
7999	\$77,952	2007	5	3	25,984	25,984	25,984	0	0	0	0	0	0	0
8001	\$38,500	2007	3	1	38,500	0	0	0	0	0	0	0	0	0
July '09	1,644,464				293,760	254,639	254,639	185,873	182,438	169,775	143,560	143,557	8,111	8,111

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 5, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda Item P, Temporary Rule Adoption: Amend the Clean Water State Revolving Fund Rules, OAR Chapter 340, Division 54 August 20-21, 2009 EQC Meeting

Why this is Important

In February, the U.S. Congress passed the American Recovery and Reinvestment Act of 2009. The act provided about \$44.3 million in stimulus funding to Oregon's Clean Water State Revolving Fund loan program. DEQ solicited projects for the stimulus funding and received 160 applications. To ensure effective and timely implementation of requirements under the act, DEQ expedited the allocation of the funding to 13 applicants. Consequently, several priority projects did not receive funding. DEQ wants to supplement the stimulus funding by making a portion of the state fiscal year 2010 program funds available for these projects. To accomplish this, a temporary rulemaking is needed to allow the use of state fiscal year 2010 program funds for new priority projects.

DEQ Recommendation

The Department of Environmental Quality recommends that EQC adopt the proposed temporary rule revisions to OAR Chapter 340, Division 54, as presented in Attachment A and the findings in Attachment B.

Background and Need for Rulemaking

DEQ administers Oregon's Clean Water State Revolving Fund loan program through support of an annual capitalization grant from the U.S. Environmental Protection Agency and from loan repayments through the program's general fund. DEQ recognized the objective of ARRA to expeditiously fund eligible projects during the current nationwide recession and allocated stimulus funding on July 10, 2009, when EPA approved DEQ's Intended Use Plan. Due to DEQ's expedited process for allocating stimulus funding and the amount of funding available, several priority projects were not funded.

The proposed rule revisions will allow DEQ to set aside a portion of the state fiscal year 2010 funds available under the CWSRF program fund for a special reserve. This reserve will provide funding for new projects that have completed all CWSRF loan application requirements and also provide a financial incentive during the economic downturn. The current rules direct DEQ to provide

increases to existing loans before funding new projects. Typically, funds available during a fiscal year are adequate to fund only a few new projects as there is a continual demand for loan increases to existing projects.

DEQ proposes the creation of a special reserve only for the current state fiscal year, July 1, 2009 to June 30, 2010. To ensure the program's financial integrity, DEQ proposes to set aside 50 percent of the program funds, excluding EPA capitalization grants, for the 2010 special reserve. The amount of program funds available is about \$48.5 million. Therefore, \$24.25 million would be moved to the 2010 special reserve. The reserve will address the CWSRF program short-term goals by continuing to provide financial assistance to communities and making the program more accessible to a wider range of water quality improvement projects.

Effect of Rule	The temporary rulemaking will establish rules in OAR 340-054-0110 through OAR 340-054-0118 (Attachment A). These rules will govern the use of funds under a special reserve with the Clean Water State Revolving Fund loan program for the current state fiscal year 2010, and will define the use of the special reserve, allocation of funds, financial terms, and the Intended Use Plan.
Commission Authority	The EQC has authority to take this action under Oregon Revised Statutes 468.020 and 468.423 – 468.440.
Stakeholder Involvement	Beginning in December 2008, DEQ has worked closely with project applicants and various organizations including the Oregon Association of Clean Water Agencies, the League of Oregon Cities, Oregon Water Resources Congress, Association of Oregon Counties, Special Districts Association of Oregon and the Oregon Association of Conservation Districts to provide information on stimulus funding.
Public comment	Public comment is not required for a temporary rulemaking and did not occur for this rulemaking. It was necessary for DEQ to proceed with temporary rulemaking without public comment to ensure timely use of the program funds available for state fiscal year 2010.
Key Issues	DEQ received 160 application requests, totaling about \$718 million, for stimulus funding under the American Recovery and Reinvestment Act of 2009. From the \$44.3 million received under ARRA, DEQ was able to only fund 13 applicants based on the amount of funding allowed in the program rules that could be allocated to an eligible applicant. There are currently 13 additional priority projects that did not receive stimulus funding due to the need to expedite the allocation of the act funds.

DEQ reviewed the financial status of the CWSRF program for state fiscal year 2010 and determined there is about \$48.5 million available under the program fund, excluding EPA capitalization grants. To provide economic stimulus for communities that may not be able to afford necessary water quality infrastructure improvements, DEQ determined that providing a financial incentive of zero percent interest would not impact the financial integrity of the program. In an effort to provide new loans to several communities, a \$5 million limit is set for each borrower. The reserve will not be used to provide loan increases.

The \$44.3 million capitalization grant DEQ received under the Act will provide about \$19.25 million in additional loan repayments to the CWSRF program fund. This additional funding will in turn be available for loan increases to existing projects or funding of new projects.

Offering about \$24.25 million in loans at zero percent interest from the 2010 program fund would result in about \$8.6 million less in loan repayments to the fund over a 20-year period based on the current interest rate of 3.07%. Therefore the loan repayments under the Act funding would make up the loss in interest payment for the 2010 special reserve.

Next Steps

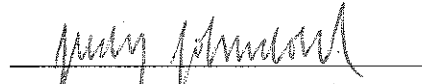
If adopted at the August 20 – 21, 2009 commission meeting, these temporary rules will be filed with the Secretary of State's Office and Legislative Council in late August. DEQ will publish and accept public comment on its Clean Water State Revolving Fund Intended Use Plan that will outline how the 2010 special reserve and general fund will be used. After the public comment period, DEQ will address any comments and the funds will then be available for new loans.

Attachments

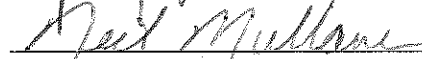
- A. Redlined Version of Proposed Rule Revisions
- B. Statement of Need and Justification

Approved:

Section:



Division:



Report Prepared By: Judy Johndohl
Phone: (503) 229-6896

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

Funding under the State Fiscal Year 2010 Special Reserve

340-054-0110

Purpose and Applicability

- (1) OAR 340-054-0110 through OAR 340-054-0118 govern the use of funds under a special reserve through the Clean Water State Revolving Fund (CWSRF) program for the state fiscal year 2010 (July 1, 2009 to June 30, 2010).
- (2) All requirements for projects funded under the special reserve not specifically addressed in OAR 340-054-0110 through OAR 340-054-0118 are subject to OAR 340-054-0001 through OAR 340-054-0065.

Stat. Auth.: ORS 468.020, ORS 468.440

Stat. Implemented: ORS 468.423 to 468.440

340-054-0112

Use of the Special Reserve

- (1) The department will establish a special reserve for the state fiscal year 2010 in an amount equal to 50 percent of the total funds available for the state fiscal year 2010, excluding any fiscal year 2010 capitalization grant. This reserve is in addition to the reserves established under OAR 340-054-0025(6), except as provided in section (5) of this rule.
- (2) Funds available under the special reserve may not be used for planning loans.
- (3) Loans made from the special reserve will only be used for new projects included in the state fiscal year 2010 Intended Use Plan.
- (4) Notwithstanding OAR 340-054-0025(6)(c), funds from the special reserve will not be used for increases to existing CWSRF loans.
- (5) During the time that OAR 340-054-0110 through OAR 340-054-0118 is effective, the expedited reserve established under OAR 340-054-0025(6)(c)(A) in the amount of \$2 million will be moved to the CWSRF general fund.

340-054-0114

Allocation of Funds

- (1) The department will determine the amount of funding to be provided to an applicant, but the loan amount allocated to any one borrower under the special reserve may not exceed \$5 million.
- (2) A borrower who receives funding under the special reserve may also receive funding from the CWSRF general fund, subject to the requirement of OAR 340-054-0025(6)(a), or from the CWSRF Small Communities reserve established under OAR 340-054-0025(6)(c)(B).

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440

340-054-0116

Financial Terms

Notwithstanding OAR 340-054-0065(5), the interest rate on a loan funded from the special reserve will be zero percent, regardless of the term of repayment.

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440

340-054-0118

Intended Use Plan

Notwithstanding OAR 340-054-0025(5)(d), the department will provide at least 14 days for public comment on the proposed Intended Use Plan.

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440



State of Oregon
Department of Environmental Quality Memorandum

State of Oregon
Department of
Environmental
Quality

Date: August 17, 2009
To: Environmental Quality Commission
Through: Neil Mullane, Administrator *Neil Mullane*
Water Quality Division
From: Judy Johndohl, Manager *Judy Johndohl*
Water Quality Community and Program Assistance

Subject: Summary of Public Comments and DEQ Responses to the Petition for Amendment of Oregon Rules Related to the Clean Water State Revolving Fund Loan Program

DEQ received and reviewed the comments submitted during the public comment period on the City of Coburg's petition that requests the EQC to amend two temporary rules related to the Clean Water State Revolving Fund (CWSRF) loan program. The rules were adopted in April 2009 by the EQC to ensure effective and timely implementation of requirements under the American Recovery and Reinvestment Act of 2009.

The public comment period for written comments opened on July 20, 2009, and closed at 5:00 p.m. on August 5, 2009. An opportunity to present oral comments will be provided to members of the public during the public forum at the EQC meeting in Newport, Oregon on August 21, 2009.

The following summarizes the three comments received and DEQ's response to those comments. The individual providing the comments is also listed.

Comment #1 (Scott Olson, P.E., Branch Engineering, Inc.)

Loan eligibility - Support's the City of Coburg's petition for the rule amendment that would allow loan eligibility for the unfunded portions of projects that have been previously partially loan funded.

Project priority - The City of Coburg should be EQC's highest priority for ARRA funding. With the economic downturn and impacts to the Coburg community and the viability of the desired wastewater system, it would be a disappointment to see Coburg losing out on the opportunity to move forward.

Department Response

Loan eligibility - DEQ made policy decisions in developing temporary rules to meet the intent of ARRA. Many Oregon communities are impacted by the economic downturn and to address this, DEQ determined to provide ARRA funding to new projects that did not initially receive funding prior to October 1, 2008, and thus new job opportunities would be created.

Project priority - All CWSRF funding awarded by DEQ to applicants is based on a project priority list in DEQ's Intended Use Plan. This plan lists projects eligible for funding and how funds will be used for those projects. DEQ determined that the City of Coburg's initial project application submitted August 2001 was a priority project and subsequently the City received two CWSRF loans from DEQ in March 2002 and August 2005. The City of Coburg has also secured financing from the U.S. Department of Agriculture Rural Development and the Oregon Business Development Department that will substantially fund the new collection, treatment, and effluent disposal system.

Comment #2 (Jim Hough, City Manager, City of Banks)

Funding for existing projects - The City of Coburg identified a clear weakness in the two rules and postulated an appropriate change to the temporary rules regarding the intended and actual use for the CWSRF loan program. Allowing ARRA funds to be added to the overall cost of an infrastructure project, without being used as a financing tool, hastens the use of the funds while maintaining the integrity of the intent of ARRA.

Clarify the intended use of ARRA funding - The temporary rules were created to rapidly implement the intent of Congress to stimulate the economy, and therefore the rules should be proactively revised in order to clarify the intended use of the funds in connection with the CWSRF program. The stimulus funding should be made available to complete projects as well as to quickly begin projects. Adjusting the temporary rules will permit cities like Coburg to do both. The City of Banks strongly supports the City of Coburg's petition and recommends the EQC amend the two temporary rules.

Department Response

Funding for existing projects - DEQ made policy decisions in developing temporary rules to meet the intent of ARRA, and therefore DEQ strongly believes the intent of ARRA funding was to start new projects and provide immediate job opportunities. Under the current CWSRF program rules, existing projects are given priority for loan increases so these projects have continual access to funding as needed to complete the project.

Clarify the intended use of ARRA funding - The temporary rules were adopted in April 2009 by the EQC to ensure effective and timely implementation of requirements under ARRA. DEQ believes the rules are clear with regards to the intended use of ARRA funding including project eligibility, the use and allocation of ARRA funds, and financial terms. The rules have allowed DEQ to move forward with allocating funds to ensure communities can meet the requirements of ARRA. If the rules were to be amended, this would seriously impact the CWSRF loan program's ability to administer the funds under ARRA, and would jeopardize a borrower's obligation to have a project under contract or construction by February 17, 2010. If a borrower does not meet their obligations under ARRA, DEQ must return those funds to EPA.

Comment #3 (Terrence O'Connor, City Manager, City of Coquille)

Intent of ARRA funding - Coquille has been caught in the same "Catch 22" as the City of Coburg with respect to how DEQ implemented ARRA funding, and supports the City of Coburg's petition to amend the CWSRF loan program regulations to bring DEQ's regulations and rules in keeping with the intent and spirit of current ARRA funding and potential future federal grant funds. The proposed amendments would equitably address the loop-hole of current regulations and rules with respect to EPA requirements under ARRA and other EPA programs.

Department Response

Intent of ARRA funding - DEQ made policy decisions in developing temporary rules to meet the intent of ARRA and believes these rules effectively address the requirements of ARRA as stated in the response above to Comment #2.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality, Water Quality Division
Agency and Division

OAR Chapter 340
Administrative Rules Chapter Number

Rule Caption: Amend the Clean Water State Revolving Fund Rules

In the Matter of: Clean Water State Revolving Fund program, Chapter 340, Division 54

Statutory Authority: ORS 468.020, ORS 468.440

Other Authority: Not applicable

Statutes Implemented: ORS 468.423 to 468.440

Need for the Temporary Rule(s):

DEQ received 160 application requests for stimulus funding under the American Recovery and Reinvestment Act of 2009. The application requests for funding of water quality improvement projects totaled about \$718 million. DEQ was able to only fund 13 of those applicants. The federal capitalization grant provided by the act will result in an additional \$19 million in loan repayments to DEQ's Clean Water State Revolving Fund. At the same time, several priority projects currently remain unfunded.

The proposed rule revisions will allow DEQ to set aside a portion of the state fiscal year 2010 funds available under the CWSRF program fund for a special reserve. This reserve will provide funding for new projects and also provide a financial incentive during the economic downturn. The current rules direct DEQ to provide increases to existing loans first. Typically, funds available during a fiscal year are adequate to fund only a few new projects as there is a continual demand for loan increases to existing projects. The proposed rules will ensure funding from the proposed special reserve is also available to new projects, rather than exclusively funding increases to existing projects.

A temporary rule is necessary to allow DEQ to use this proposed funding immediately for new projects in state fiscal year 2010.

Documents Relied Upon:

The following documents are available from the DEQ Water Quality Division, 811 SW Sixth Avenue, Portland Oregon. To make arrangements to review these documents call (503) 229-6412. These documents are also available online at <http://www.deq.state.or.us/wq/loans/loans.htm>

- Oregon Administrative Rules, Chapter 340, Division 54
- Amended Final Intended Use Plan - Update #3 State Fiscal Year 2009 and Final Intended Use Plan – State Fiscal Year 2010 (PDF)

Justification of Temporary Rule(s):

The Commission finds that failure to adopt the temporary rule will result in serious prejudice to the public interest because it will have the following consequences:

To ensure effective and timely implementation of requirements under the act, DEQ expedited the allocation of funding, which resulted in several priority projects not being funded. DEQ reviewed the financial status of the CWSRF program for state fiscal year 2010 and determined there is about \$48.5 million available under the program fund, excluding EPA capitalization grants. To provide economic stimulus for communities that may not be able to afford necessary water quality infrastructure improvements, DEQ determined that providing a financial incentive of zero percent interest for one half of the state fiscal year 2010 funds would not impact the financial integrity of the program and would substantially serve the public interest. A temporary rulemaking is needed to fund new priority projects and modify the financial terms for the special reserve fund.

Housing Cost Impacts:

DEQ has determined that this proposed rulemaking will have no measurable impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

Dick Pedersen, Director
(On Behalf of the Commission)

Date Signed



Clean Water State Revolving Fund Temporary Rulemaking

Environmental Quality Commission Meeting

August 21, 2009
Newport, Oregon

Neil Mullane and Judy Johndohl



Clean Water State Revolving Fund Temporary Rulemaking

Why This Rulemaking is Needed

- The CWSRF program received 160 applications (totaling about \$718 million) for stimulus funding and not all priority projects that are ready to proceed received funding
- DEQ expedited allocation of funds under ARRA to 13 applicants to ensure meeting requirements of ARRA
- Current rules direct DEQ to provide base program funds for increases to existing loans first before funding new projects
- Supplement stimulus funding with a portion of state fiscal year (SFY) 2010 program funds



Objectives of a SFY 2010 Special Reserve

- **Maintain the financial integrity of the program**
- **Make CWSRF program funds more accessible to a wider range of new water quality improvement projects**
- **Maintain a sustainable loan program**



Proposed SFY 2010 Special Reserve

- **Offer 50%, or about \$24.25 million, of the SFY 2010 program funds to projects ready to proceed**
- **Direct to new projects**
- **Limit the maximum amount to each borrower at \$5 million**
- **Provide loans at zero percent interest**



SFY 2010 CWSRF Program Funds

- DEQ's current SFY 2010 program funds (excluding EPA capitalization grants) available are about \$48.5 million
- ARRA capitalization grant award is about \$44.3 million
- SFY 2010 capitalization grant from EPA could range from about \$8 - \$30 million



Financial Impacts of Special Reserve to the CWSRF program

- ARRA grant award of \$44.3 million will provide about \$19.25 million in additional loan repayments to the program
- Use of \$24.25 million at zero percent interest results in about \$8.6 million less in loan repayments over 20-year period at 3.07% interest rate
- The net loan repayments would result in about \$10.65 million back into the program



Comparison of Base Program Funds with a Special Reserve

Loan Type	Principal	Interest	Fees (annual fee of 0.50%)	Total loan payment (back into the program)
Standard loan at 3.07% interest	\$48,500,000	\$19,322,839	\$2,733,184	\$69,566,023
PROPOSED ALLOCATION OF SFY 2010 BASE PROGRAM FUNDS				
2010 Special Reserve at 0% interest	\$24,253,421	\$0	\$1,243,763	\$25,497,184
Net base program fund at 3.07% interest	\$13,977,395	\$4,967,156	\$783,834	\$19,728,385
Standard Reserves (Planning, Small Comm., Expedited Loans)	\$10,276,026	\$3,330,951	\$520,184	\$14,127,161
TOTAL	\$48,506,842	\$8,298,107	\$2,647,781	\$69,352,730



What's Next?

DEQ will:

- **Public notice and finalize the SFY 2010 Intended Use Plan in September**
- **Allocate SFY 2010 funds based on project priority list (projects ready to proceed) in the Intended Use Plan**
- **Begin rulemaking process for the CWSRF loan program**

Issue Statement for WRC Integrated Water Resource Strategy

“A problem well stated is a problem half solved.”

Charles F. Kettering



Issue #1. The need for an integrated water resources strategy.

Oregon is currently one of two western states without a formal water management strategy. And, it is one of many without an integrated strategy that takes into account water quantity, water quality, and ecosystem needs. An integrated water resources strategy is needed, as we develop a vision of what Oregon’s livability and economic viability will look like for future generations based upon adequate high quality water supplies. While no two basins are identical, they all have similar hydrologic elements, such as river systems, aquifers, springs, ecosystems and human settlement patterns. They have other similarities too, including a need to coordinate with neighbors, a need for local solutions to local challenges, and a need for funding. An integrated strategy should provide relevant and consistent guidance to each of the basins, despite their differing characteristics. Implementation of such a strategy should consistently move Oregon toward the preservation, restoration, and development that is necessary to achieve the desired vision of healthy water supplies from all available sources.

A Limited Supply of Clean and Abundant Water. While water supply is renewable, it is also limited, and should be managed on a sustainable-use basis. The water cycle is scientifically accepted and verifies that no additional or “new” water can be found or produced. Water is a finite resource, much like gold, coal, oil and natural gas, and pundits have begun to characterize water as the “new oil.” There are many gripping examples of water scarcity throughout the United States and around the world.

Although the state of Oregon, in general, is not in a state of immediate water crisis, it does not have an endless amount of water to serve all demands as they increase.

There are gaps between water availability and water demand, resulting in water shortages in some areas of the state. Many Oregon communities and economies, along with Oregon's fish and wildlife, face water scarcity today. Most of the state's surface waters are fully allocated during summer months, and there are several areas that have been designated as "critical groundwater areas," or "ground water limited areas." These pressures will likely be intensified, given the projected increase in Oregon's population growth, and change in the form and timing of precipitation forecast by climate change researchers.

The degradation of ground water and surface water quality also decreases the volume of fresh water available to consumers, and to replenish streams and aquifers. Freshwater bodies have limited capacity to process the pollutant load from expanding urban, industrial, and agricultural uses. Water quality degradation can be a contributing cause of water scarcity.

Without planning our future use of water in balanced and judicious ways, Oregonians will likely cross a water scarcity boundary without even knowing it.

The Value of a Strategy. An integrated strategy would provide a blueprint for the state to follow as it prepares to meet Oregon's water needs: instream and out-of-stream; above ground and below ground; now and in the future.

An integrated water resources strategy will need to recognize the inextricable link between water quantity and water quality by addressing economic and environmental needs. Water is the backbone of a healthy economy, and Oregon's economy is closely tied to its water resources and its economic needs come from industry and commerce, agriculture, recreation, tourism, electric power, and residential development. Oregon's ecological needs come from the fish and wildlife that depend on clean and abundant

water and healthy habitat found in watersheds (drainage basins), rivers and their tributaries, wetlands, floodplains, aquifers, lakes, estuaries, and the ocean.

An integrated plan or strategy serves several purposes:

- Encourages planning and management on a natural water systems basis; gains a higher level of commitment through a dynamic process that adapts to changing conditions;
- Balances competing uses of water through efficient allocation that addresses social values, cost effectiveness, and environmental benefits and costs;
- Promotes water conservation, reuse, source protection, and supply development to enhance water quality and quantity;
- Encourages participation of all units of government and stakeholders in decision-making through a process of coordination and conflict resolution;
- Fosters public health, safety, and community goodwill; and
- Addresses the institutional barriers that exist which reduce the ability to effectively manage water resources.

Building on a Foundation of Data. The public and private sectors in Oregon have produced a plethora of plans and studies focused on water quantity, water quality, and other water-related issues from environmental, business, socio-economic, hydrological, and geological perspectives. The Water Resources Department has begun to pull this collection of data into a centralized, usable format, through its on-line inventory of potential storage sites, potential conservation programs, and its 50-year water demand forecast. An integrated water resources strategy would continue to build upon this collection of existing studies, along with new information as the basis for developing “what if” scenarios, partnerships, and tools that help state and local policymakers determine how to meet Oregon’s long-term water needs.

Developing a Strategy through Collaboration. The Water Resources Commission has the statutory authority to develop an integrated water resources strategy, with the Department as the implementing agency. But another essential part

of an integrated water resources strategy is the collaborative process of building the plan. Water is a subject in which everyone is a stakeholder and must be given an opportunity to participate in and shape the process. A participatory approach is an effective means for achieving consensus and long-lasting agreement. Real collaboration takes place only when stakeholders and the interested public are part of the decision-making process. Incorporating the views of a wide variety of governmental agencies, special interest groups, and the public will be a challenge, but is key to the success of such a strategy.

Conclusion. A successful integrated water resources strategy would result in a persuasive visualization of what Oregon's water and landscape should look like and be like for future generations. Such a strategy should have as a starting point, clear and compelling goals and a vision. It should develop tools with statewide relevance, and options for local implementation.