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OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 12/10/2009

State of Oregon
Department of Environmental Quality

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Please Sign In

Environmental Quality Commission Meeting
Portland, Oregon
December 10-11, 2009

Name	Affiliation or Interest	Phone or Email
KARL KINKADE	UMCDF	(541) 564-7066
Daniel Eisenbeis	LOC	503-540-6571
Jim Welsh	OR Gillnetters Assoc	541-554-8043
Kathey Burtess		503-871-5144

Please Sign In

Name	Affiliation or Interest	Phone or Email

Oregon Environmental Quality Commission Meeting
December 10-11, 2009
DEQ Headquarters, 10th floor, room EQC-A
Portland, OR

Thursday, December 10 — Regular meeting begins at 8:30 a.m.

A. Preliminary commission business: Adoption of minutes of the October 22-23, 2009 regular meeting
The Environmental Quality Commission will review, amend if necessary and approve draft minutes of the October 22-23, 2009 regular EQC meeting.

B. Action item: Tax credits approval
The Pollution Control Facilities Tax Credit regulations direct 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." EQC certification entitles an Oregon taxpayer to subtract up to 35 percent of a facility's cost from its Oregon tax liability.
Maggie Vandehey, Department of Environmental Quality

C. Informational item: Best available technology for the treatment of spent carbon at the Umatilla Chemical Agent Disposal Facility
DEQ must determine the best available technology for treatment of spent carbon, including spent sulfur-impregnated carbon used to capture mercury emissions, at the Umatilla Chemical Agent Disposal Facility. The commission will be asked to review and possibly approve the determination in early 2010.
Joni Hammond and Rich Duval, Department of Environmental Quality

D. Informational item: Oregon's Middle Columbia Steelhead Recovery Plan
Oregon finalized its the Conservation and Recovery Plan for Endangered Species Act-listed Middle Columbia Steelhead in September 2009, and this item will update the commissioners on the plan and DEQ's role to help implement this plan for recovery.
Suzanne Knapp, Governor's Office of Natural Resources

E. Action item: Update on the memorandum of understanding between EQC and the Oregon Department of Agriculture for CAFOs
The Oregon Department of Agriculture operates the confined animal feeding operations permit program under a memorandum of understanding between EQC and ODA. In order to continue the Oregon Department of Agriculture's authority for the CAFO permit program, a new memorandum of understanding must be in place before the current agreement expires on February 28, 2010.
Neil Mullane and Beth Moore, DEQ

F. Informational item: Annual Rulemaking Agenda
DEQ's rule coordinator will present the 2010-11 rulemaking agenda for commission review and discussion. DEQ prepares and updates biennial rulemaking plans on an annual basis, and submits the plans to EQC so that the

commissioners can identify rulemaking efforts that will benefit from additional EQC involvement and guidance.
Maggie Vandehey and division administrators, DEQ

Lunch and executive session
The commission will meet in executive session from approximately 12:15 to 1:45 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation against DEQ. Only representatives of the media may attend and media representatives may not report on any deliberations during the session. This executive session will be held pursuant to ORS 192.660(2)(f), (h). The public meeting will reconvene at 1:45 p.m.

G. Action item: Streamlining water quality permit adoptions
DEQ is proposing to revise a section of Oregon Administrative Rule 340-045-0033, which allows DEQ to issue general permits by department order to reduce permitting timeframes and costs. The revision provides for the transition of EQC-adopted permits as they are replaced by permits issued by department order. This rulemaking also includes several revisions to the text as matters of housekeeping.
Neil Mullane and Beth Moore, DEQ

H. Action item: Restoration of the Onsite Program
This proposed rulemaking increases fee revenue for administering DEQ's Onsite Wastewater Management Program. DEQ operates the program in 14 direct-service counties in Oregon, with the remaining 22 counties operating under contract with DEQ.
Neil Mullane, Mike Kucinski and Randy Trox, DEQ

I. This item has been removed from the meeting agenda.

J. This item has been removed from the meeting agenda.

Recess until Friday, Dec. 11, 2009

Friday, December 11 — Regular meeting begins at 9 a.m.

The commissioners meet in executive session from approximately 8 to 9 a.m., and will reconvene the public meeting at 9 a.m.

K. Public forum
At approximately 9 a.m., the EQC will provide members of the public an opportunity to speak to commission members on environmental issues. Individuals wishing to speak to the EQC must sign a request form at the meeting and limit presentations to five minutes. The EQC may discontinue public forum after a reasonable time if a large number of speakers wish to appear. In accordance with ORS 183.335(13), no comments may be presented on rule adoption items for which public comment periods have closed.

L. Informational item: DEQ bottled water study
DEQ periodically uses life cycle assessments to help determine the potential environmental impacts of products, processes or services through production, usage and disposal. Such assessments help DEQ estimate, for example,

possible impacts on emissions of greenhouse gases and toxic pollutants, and help provide useful information to both consumers and producers of goods. DEQ commissioned a study to assess the life cycle environmental impacts of drinking water delivery systems, and found that the results support DEQ's Strategic Directions and principle of reduction and reuse before recycling.
Wendy Wiles, Loretta Pickerell, David Allaway and Abby Bourdouris, DEQ

M. Informational item: Director's dialogue
Director Pedersen will update the commission on current and anticipated issues at DEQ.

N. Informational item: Upcoming legislative sessions and budget
Greg Aldrich, DEQ's government relations manager, will update the commission on the 2010 interim legislative session and initial planning for the 2011-2013 legislative session and budget.
Greg Aldrich, DEQ

Lunch and executive session
The commission will meet in executive session from approximately 12:30 to 2 p.m. to discuss the annual performance evaluation for Director Pedersen. This session is a confidential personnel discussion. The public meeting will reconvene at approximately 2 p.m.

O. This item has been removed from the meeting agenda

P. Action item: NESHAP rulemaking, phase two
These proposed rules are important to protect human health, ensure that Oregon implements federal programs that regulate hazardous air pollutants and new sources, and improve Oregon's implementation of these programs. The proposed rules include an update to Oregon's Clean Air Act State Implementation Plan, align DEQ rules with federal standards, establish simplified permit and registration requirements, improve compliance and correct and clarify errors in current rules.
Andy Ginsburg and Jerry Ebersole, DEQ

Q. Action item: Greenhouse gas fee rulemaking
The Environmental Quality Commission adopted greenhouse gas reporting rules in 2008. Recent legislation authorized EQC to establish fees to cover the anticipated costs of developing and implementing Oregon's reporting program. This temporary rulemaking proposes fees to cover DEQ's costs in 2010 for the greenhouse gas reporting program.
Andy Ginsburg and Andrea Curtis, DEQ

R. Commissioner reports
Commissioners will present information and updates not covered in the regular meeting agenda.

Adjourn

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February 18 and 19, 2010
April 29 and 30, 2010
June 16 and 17, 2010
August 18 and 19, 2010
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Agenda Notes

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Oregon Environmental Quality Commission Meeting
December 10-11, 2009
DEQ Headquarters, 10th floor, room EQC-A
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Note: a number of the agenda items for this meeting have been rescheduled or will be taken out of order. Please review the information below for the updated schedule

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Neil Mullane and Beth Moore, DEQ; Oregon Department of Agriculture staff

Updated 12/10/09

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Draft X
Approved ___
Approved with corrections ___

Minutes of the three hundred and fifty-second Oregon Environmental Quality Commission Meeting October 22-23, 2009

Mt. Scott room at the Oregon Institute of Technology Klamath Falls, OR

The following members of the Environmental Quality Commission were present: Chair Blosser, Vice chair Williamson, Commissioner Dodson, Commissioner O'Keeffe and Commissioner Uherbelau

Chair Blosser convened the meeting at 8:30 a.m. on Thursday, Oct. 22, 2009.

A. Preliminary Commission Business: Adoption of minutes of the August 20-21, 2009 regular meeting

The commission reviewed the minutes from the August 20-21, 2009, regular EQC meeting, and Commissioner Uherbelau noted one typographical error on page three.

Action: Approve the minutes with the correction as noted.
Move: Commissioner Uherbelau
Second: Commissioner Dodson
Passed unanimously

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

Joni Hammond, deputy director, and Rich Duval, chemical demilitarization program administrator, updated the commission on the status of the agent disposal program at the Umatilla Chemical Agent Disposal Facility. Duval and Hammond connected to the meeting via conference phone.

Duval explained that the facility had nine emission limit violations during the first stage of its mustard agent trial burn. He noted that the violations were due to mustard agent in ton containers boiling over when in the furnace. No people were exposed to the mustard agent. DEQ's Office of Compliance and Enforcement is reviewing the violations for formal enforcement action. The facility evaluated the incidents, and has since processed twenty one-ton containers without any mustard agent boiling over.

Duval explained that DEQ completed the public comment period for the facility's Title V air permit, and has sent the information to the U.S. EPA for review. Duval also explained that the facility would complete processing the mustard agent in Jan. 2011, pending approval of permits. He noted that a chemical demilitarization facility in Utah experienced the same malfunction of control equipment and subsequent mercury emissions. The cause of the bypass valve leak in Utah was the same as for Umatilla, and that facility was able to quickly diagnose and repair the issue and continue processing materials.

C. Item was postponed until December 2009

D. Informational item: DEQ's toxics reduction strategy

Director Pedersen introduced the item as the first comprehensive presentation to the EQC about the agency-wide toxics reduction strategy. Kevin Masterson, agency toxics coordinator, gave an overview of the agency-wide toxics reduction strategy, explained DEQ's seven strategic steps, and discussed elements of communications plans. Masterson explained that cross-program team of 16 DEQ staff have met since June 2009 to develop a strategy and worked with an external group to generate ideas and processes for the strategy. He stated that the groups will have a draft strategy by March 2010 and present to the commission for review and approval in April 2010.

Masterson described the process and products of the strategy. The commission discussed next steps and expected outcomes, as well as opportunities for potential rules and public involvement to strengthen the strategy. Director Pedersen commented that the most difficult work for DEQ is how to apply an agency approach to toxics and move beyond individual and program-based projects.

Jennifer Wigal, water quality manager, described work related to the 2007 Senate Bill 737. The bill directed DEQ to identify and reduce persistent or bioaccumulative pollutants found in the effluent of Oregon's 52 largest municipal wastewater treatment facilities. Wigal explained that DEQ submitted the final list of pollutants to the Legislature this week. The list contains nearly 120 pollutants, of which 50 are on the agency's cross-program toxics focus list. DEQ will now evaluate if the pollutants are present in Oregon's environment. Wigal stated that DEQ plans to bring proposed rulemaking before the commission in summer 2010 as part of the monitoring and reduction strategies. The commission discussed next steps for the project, and ways to expand the process of this work beyond the 52 largest municipal wastewater treatment facilities. Wigal noted that the project is based on specific legislative direction, but that the work could be integrated into many elements of the agency-wide toxics reduction strategy.

Gregg Lande, senior air quality planner, presented information on DEQ's Portland-area air toxics solutions project and its role in the agency-wide toxics reduction strategy. Lande discussed the project's goals, outreach, strategies and its process to date. Lande noted that the project is a geographic approach to toxics reduction, and staff members have engaged people from a broad selection of Portland-area businesses, neighborhoods, organizations and associations. The commission discussed next steps for the project and the ways in which it connects to the agency goals and strategies of toxics reductions.

Deb Sturdevant, water quality standards coordinator, presented on the connections between the water quality standards program and aquatic human health criteria development. She noted that the water quality standards program plans a full informational update on the rulemaking in progress for human health criteria related to fish consumption in February 2010. Sturdevant outlined the EQC directives and processes for the rulemaking and discussed some tools that would help implement the

human health criteria rules and water quality standards. She explained that some necessary tools are authorized in rule, and many of the tools in the strategy require new approaches. Sturdevant also noted the ongoing collaborations with state agencies and other government partners, and that next steps include an expansive public outreach campaign before DEQ brings proposed rules to the commission in fall 2010. The commissioners asked questions about authorities for DEQ to use some programs and tools more broadly in the toxics reduction strategy. Sturdevant clarified that DEQ is reviewing current authorities to identify opportunities for implementation and development.

Palmer Mason, land quality legislative analyst, discussed methods and management strategies for toxics. He noted that the Legislature usually gives DEQ specific authority to implement certain projects or actions, and DEQ has the most authority over the release or discharge of a pollutant. The commission discussed ways in which to apply that authority in a broad sense, and work to manage pollutants before they enter Oregon's environment. Mason noted that DEQ is working on these issues in a number of ways, including the development of authority to regulate pollutants and chemicals as necessary. The commissioners discussed ways to partner with other agencies and organizations to address the manufacturing and production causes of many pollutants.

Chair Blosser invited public comment on this issue and presentation, and four audience members submitted request to speak forms.

1. Charlie Logue, of the Oregon Association of Clean Water Agencies, and Peter Ruffier, from the city of Eugene, distributed a handout and gave testimony regarding the agency-wide toxics reduction strategy. Ruffier noted that he has worked with DEQ and recognizes the hard work of the agency to effectively coordinate on toxics. He agreed with DEQ that reduction is an effective way to control pollution and that it is very important to address point and nonpoint sources in this effort. Logue added that it is very important all DEQ programs participate in an integrated toxics reduction approach. He asked the commission to be comprehensive in its policies and rules, and to work with other boards and commissions to build support for this work. Logue stated that trigger levels established through Senate Bill 737 must be achievable and measurable with standard analytical methods, and the human health criteria for fish consumption rates must be technically and economically feasible. Logue asked the commission members to reaffirm their directive on this rulemaking, and to ensure that all parties understand the intent of the process.

2. Don Gentry, from the Klamath Tribes' natural resource department, welcomed the commission to the homeland of the tribes, and expressed his optimism for the work being done in the area. He noted the need for DEQ and the commission to continue their work with the tribes when developing the human health criteria and standards for fish consumption, and thanked the commission for its good work thus far.

3. Kathryn VanNatta, from the Northwest Pulp and Paper Association and a member of DEQ water quality advisory committees for 15 years, submitted a copy of her comments

for the official record and offered testimony regarding the human health criteria for fish consumption rates. VanNatta stated that NWPPA has participated in the advisory committee for this issue, and feels that the commission's directive, from October 2008, has not been effectively and appropriately implemented by the staff and committee. She stated that the agency has made little progress in developing implementation tools and the actions of the staff and advisory committee do not satisfy the intent of the rule and commission's directive. VanNatta asked the commission to evaluate the advisory committee's language and tools, and to reevaluate the compliance costs since they are not achievable as stated in the committee's work. VanNatta noted that the NWPPA wishes to advise the commission that it has serious problems continuing to participate in the advisory committee if committee progresses in its current direction. Director Pedersen and the commission discussed VanNatta's comments.

4. Rick George and Kathleen Feehan, of the Confederated Tribes of the Umatilla Indian Reservation commended the commission as a representative body of the citizens of the state of Oregon, and noted that the EQC engages in good conversation and discourse. George thanked Director Pedersen and his staff for representing the state very well, and that the tribe thinks highly of the work DEQ is doing on toxics. He stated that the Tribal Council shares the commission's concern for rulemaking and need for equitable solutions, effective implementation tools and the authority to achieve toxics reduction in food sources and drinking water. He stated that the tribe is committed to continue in direct collaboration with DEQ to move this issue forward, and will continue to provide technical assistance and outreach assistance. Feehan added that the tribe remains completely committed to helping DEQ and affected sources create a meaningful package on toxics reduction. She commended DEQ staff, and noted that their groundbreaking work has been a product of a challenging and productive advisory and partner group interaction . Feehan stated that DEQ may need new tools and expertise to engage in solutions for toxics reduction, and the tribes want to work on meaningful solutions and bring new resources to the table.

Lunch and Executive Session
The EQC met in executive session over lunch from approximately 12:20 to 1:35 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation against DEQ. This executive session was held pursuant to ORS 192.660(2)(f), (h).

E. Informational and Discussion Item: Oregon Toxics Report Year One
Greg Pettit, DEQ laboratory administrator, gave opening remarks, and stated the importance of monitoring and data for the agency-wide toxics reduction strategy. Pettit asked the commissioners to consider the best ways to communicate the report's information to the public and to help the EQC make the best policy decisions.

Dennis Ades, laboratory water quality monitoring manager, described the objectives for the project, the background for the draft report, processes used, first-year accomplishments and future plans to monitor other basins across Oregon. Ades noted that

this project required new methods and tools for analysis and has increased DEQ's technical skills and abilities to analyze water quality data.

Jim Coyle, Willamette toxics basin assessment coordinator, discussed the project's approach and analytical targets. Coyle explained that the assessment analyzed fish tissue and water samples to understand what pollutants were present in the water and fish and. described the methods for gathering samples. He stated that herbicides were the most commonly-found chemicals; there was fecal contamination at almost every site; and the basin has multiple low-level amounts of emerging contaminants. This information and other data informs DEQ plans, like the mercury water quality management plan for the basin, and as modeling elements to help DEQ better understand the results. Coyle stated that DEQ is working with state, federal and other government partners for the project, as well as environmental and resource conservation organizations. He asked the commission for feedback on the draft report, and stated that DEQ will finalize the report after receiving comments from partners and interested parties before starting a similar project in the Rogue Basin in 2010.

F. Informational and Discussion Item: Draft Willamette Rivers and Streams Assessment Report

Greg Pettit, DEQ laboratory administrator, introduced the item and noted that the draft report is the result of multi-year studies using many data sets and evaluating traditional indicators of watershed health. Aaron Borisenko, laboratory watershed assessment manager, noted that the draft report represents 14 years of cumulative experience doing this type of study and it is one of the best efforts like this nationwide. This report represents a new capacity for DEQ and others to analyze water quality in context with land use across a watershed.

Borisenko explained that the assessment evaluated data from over 15 surveys compiled by various governmental and non-governmental organizations that used the same methodology and processes. This analysis of 650 sites across the basin gave overall results of significant impairment of water quality in agricultural and urban settings, with temperature and streamside condition being major factors of water quality impairment.

Borisenko stated that the draft report shows that DEQ is working on the right kinds of management and protection plans, and that DEQ can improve how it implements projects and plans. The commissioners discussed the findings of the draft report, and provided feedback on outreach and communication opportunities for this information.

Director Pedersen stated that particular compliments should be paid to Greg Pettit, Aaron Borisenko, Dennis Ades, Jim Coyle, Joan Stevens-Schwenger and the communications staff for their work to create communication plans that allow people to react to the assessments and understand the data.

Item taken out of order

H. Action Item: Clean Water State Revolving Fund Rulemaking

Judy Johndohl, water quality community and program assistance manager, presented the proposed permanent rules for the Clean Water State Revolving Fund loan program. Johndohl reviewed the temporary rules that the commission approved in April, which are the basis for the proposed permanent rules. Johndohl explained that the temporary rules expire Oct. 28, 2009, and the commission must pass permanent rules in order to allow DEQ to administer the program with stimulus funding under the American Recovery and Reinvestment Act of 2009. Under this act, DEQ administered 13 loans, of which 11 have been executed and two remain in progress. Johndohl stated that key issues raised during the public comment period were the same as the temporary rulemaking, and addressed concerns with subsidization for loans and general project criteria.

Action: Adopt the proposed permanent rule revisions to OAR Chapter 340, Division 54, as presented in attachment A of this item.
Move: Vice chair Williamson
Second: Commissioner O'Keeffe
Passed unanimously

G. Informational Item: Air Quality Attainment Plan in Klamath Falls

Mitch Wolgamott, eastern region administrator, introduced the presenters and noted that this item represents a full-circle experience: he started with DEQ 25 years ago and attended a public hearing on air quality in Klamath Falls as one of his first duties with DEQ.. He stated that he can say with certainty that good work has been done in Klamath Falls and the community is looking at additional improvements based on more protective air quality standards for fine particulate matter.

Rachel Sakata, DEQ air quality planner, provided background information on the particulate matter standards and federal air quality attainment concerns in Klamath Falls. Larry Calkins, DEQ air quality specialist, recognized several audience members who have been working on air quality issues in the community. He also complimented Klamath Falls residents for their proactive efforts to take responsibility for air quality. Calkins explained that EPA has found Klamath Falls out of compliance with the fine particulate standard and therefore they must complete and implement an attainment plan by 2014.

Calkins explained contributors to nonattainment, as well as current reduction strategies in Klamath Falls. Sakata explained the proposed attainment timeline. John Elliot, Klamath County commissioner, presented information about the county's air quality ordinance and actions to improve air quality. Elliot asked the commission to be thoughtful when changing fine particulate matter standards, and urged them to consider changing the regulations for federal and state agencies that use burning techniques. He stated that while woodstoves and residential actions are a main factor in the daily air quality issues in Klamath Falls, forestry and agricultural burning contribute to the annual averages used to qualify nonattainment status for the area.

The commission discussed options for improvements to air quality in Klamath Falls, and ways to continue partnerships with the local community and county. Director Pedersen

noted that DEQ has an opportunity to collaborate with other state agencies for a coordinated response to air quality issues and planning for the best economic and social development for Oregon's communities.

I. Town hall meeting on local environmental issues.
The commission hosted a town hall-style meeting with residents, stakeholders, local officials and other interested persons to address issues of local concern. The town hall meeting is not a formal part of the commission agenda, and no minutes were taken. Notes from the discussion are available on DEQ's website or by request to the commission's assistant.

Recess until Friday, Oct. 23, 2009

Friday, October 23 — Commissioner tour began at 8:30 a.m., regular meeting began at 10:30 a.m.

J. Tour
The commissioners toured a brownfield redevelopment site in Klamath Falls, and learned about a technology to superheat soil in a way that removes simple contaminants like gasoline, diesel and oil. This technology, developed by Sisters-based Brady Environmental, is used domestically and internationally, and provides economic development through family-wage brownfield redevelopment jobs that were previously not possible due to technical limits and processes. The commissioners also learned about the geothermal heat and energy system at the Oregon Institute of Technology in Klamath Falls. The campus is the world's first university heated by geothermal energy, and a model of alternative energy development and education in Oregon. The tour lasted approximately two hours, and the regular meeting reconvened at 10:30 a.m.

K. Informational item: Director's dialogue
Director Pedersen updated the commission on current and anticipated issues at DEQ.

Director Pedersen and the commissioners discussed state and federal greenhouse gas reduction work, air quality concerns in Portland, the success of two recent high-volume days at Vehicle Inspection Program testing stations, the commission's role in agricultural field burning phase-down activities, asbestos at a housing subdivision in Klamath Falls, environmental cleanup activities at Alkali Lake, integrated water resource strategy planning, follow-up actions regarding an asphalt plant and odor issues in Newport, the status of stimulus funds at DEQ, and Pedersen's involvement with town hall events hosted by Attorney General John Kroger.

L. Public Forum
No members of the public submitted requests to speak at the forum.

Item taken out of order
N. Informational Item: Upcoming legislative sessions and budget
Greg Aldrich, government relations manager, discussed issues relating to the 2010 interim legislative session, 2011 regular session and the agency budget.

Aldrich explained that the legislative fiscal office requested a list of reduction options at a 10 percent cut level by November 13. Commissioner Uherbelau asked clarifying questions about the list, and Aldrich explained that the document is a starting point for the process in order to evaluate and prioritize reduction options. Aldrich explained that the reduction option list will be used during the special session, tentatively scheduled for February 2010. The legislature has not released details on the length of the session, but it is expected to last approximately four weeks. Aldrich noted that he will bring additional updates and information on the legislative session to the December commission meeting and keep the commission well-informed on the process and outcomes of the reduction options.

Aldrich explained that the budget development process for the 2011 legislative session starts in December and must be finalized in Feb. 2010. DEQ staff will evaluate what programs and work are affordable based on the approved budget, and will also create a new draft of reduction options across all funding types at a 10 percent cut level.

Director Pedersen added that budget development at DEQ is done in close partnership with stakeholders, and the transition to new representatives in 2011 will be eased by those relationships and conversations. Aldrich asked the commissioners to send feedback or requests for information in advance of the December 2009 commission meeting, and noted that he will present updates on the budget and legislative developments at each of the meetings in the winter and spring.

Item taken out of order

R. Commissioner reports

Vice chair Williamson discussed his role as the chair of a stormwater advisory committee at DEQ, and noted that committee staff will bring an information item to the commission in the late winter or spring 2010.

Commissioner Uherbelau asked for additional information on the actions of other states and agencies regarding pharmaceutical take-back programs. Director Pedersen stated that a sheriff's office in Clatsop County has agreed to operate a pilot program for prescription drug take-backs in Astoria, in partnership with the Association of Clean Water Agencies and based on the availability of program funding.

Lunch break

The commission recessed for lunch from approximately noon to 1 p.m. and held a government-to-government meeting with Larry Dunsmoor, tribal aquatic biologist for the Klamath Tribes.

During lunch, Deschutes County Commission Chair Tammy Baney presented public comment on the onsite program in Deschutes County. Her comments are not available on audio recording, but a copy of her comments is attached to this document.

M. Action item: Mills contested case

Larry Knudsen, EQC legal counsel, introduced the process and topic for the contested case. He also explained the commission's options for taking action on the matter and introduced Bryan Smith, DEQ environmental law specialist, Leah Koss, Office of Compliance and Enforcement manager, and S. Dennis Mills, the respondent in the contested case.

Mills, connecting by telephone conference call, presented his material in the contested case and stated that he believes DEQ is enforcing a double standard for requiring him to install an expensive septic filtration system or decommission the system when neighboring properties are allowed to install standard septic systems. Smith presented DEQ's material in the contested case and asked the commission to uphold Judge Webster's decision in the matter.

Mills and Smith then gave short rebuttals, as allowed under contested case procedure. Chair Blosser allowed Mills to add additional comment following Smith's rebuttal, and Mills clarified two points of information.

Chair Blosser closed testimony and asked the commission for any questions or discussion on the matter. Commissioners Dodson requested clarification on the fine for the violation, and asked if Mills could do a supplemental environmental project to reduce the total fine. Koss clarified that Mills can perform a supplemental environmental project, but would have to fund a project equal to the total fine so it does not reduce the amount he would be required to pay.

Action: Issue a final order to uphold Judge Webster's second amended proposed and final order.
Move: Commissioner O'Keeffe
Second: Vice chair Williamson
Passed with four votes in support and one abstention.
Support: Chair Blosser, Vice chair Williamson, Commissioners Dodson and O'Keeffe
Oppose: None
Abstain: Commissioner Uherbelau

Item taken out of order

P. Informational and Discussion Item: EQC retreat and Strategic Directions update

Joan Stevens-Schwenger, communications and outreach manager, and Greg Aldrich, government relations manager, presented the discussion on DEQ's strategic directions and proposed commission retreat. Stevens-Schwenger explained that the current strategic directions document expires in 2011, and that DEQ suggests a retreat during which commissioners can evaluate the agency's direction and update the agency's strategic directions in 2010. Aldrich noted that there are two approaches to updating the strategic directions, with small alterations possible now and a major reevaluation for the end of the six-year cycle in 2011. Director Pedersen explained that the proposed retreat is a great opportunity for the commission to evaluate DEQ's work and to translate that work into a

direction for the agency and address the needs of the state and concerns of the commission.

Vice chair Williamson noted that the commission needs to evaluate the paradigms within which DEQ operates, and find a way to balance the necessary daily tasks with a comprehensive approach to protect the environment and public health. Commissioner Dodson added that data and information are the drivers of DEQ's work, and that involving communities is imperative to make sure DEQ is operating collaboratively.

The commissioners discussed challenges and opportunities for the way DEQ operates, management in light of restricted funding sources, long-term approaches and direction for DEQ and best timing for the retreat. Director Pedersen stated that he values the commission's ability and role to set the direction for DEQ, and its part in setting the framework for a comprehensive approach to environmental work.

Chair Blosser and vice chair Williamson will form a subcommittee and work with DEQ staff to plan the proposed retreat. Stevens-Schwenger and Aldrich stated that they will take the information from today's meeting and work with staff and the commission to develop timelines and content for the retreat and bring updates to the December 2009 and February 2010 commission meetings.

Note: Commissioner O'Keeffe left the meeting at 2:10 p.m.

O. Informational and Discussion item: Key performance measures report
DEQ is required to submit an annual key performance measure report to the Legislature, and the EQC is responsible for one of the sixteen key measures. Greg Aldrich, government relations manager, introduced the item and opened the floor for discussion on the commission's performance measure. The commissioners agreed that training and collaboration with relevant agencies and organizations are two areas for improvement. The commissioners also discussed the general findings from their self-evaluation, stated some changes to wording, clarified some of the issues and gave steps for the evaluation processes.

Note: Commissioner Uherbelau left the meeting at 2:35 p.m.

Q. Informational item: Annual performance evaluation for DEQ director – file 17
Joan Stevens-Schwenger, communications and outreach manager, presented this item and explained that an annual review of the director is part of the commission's measures and best practices. Stevens-Schwenger explained the process and intent for the review, and asked the commissioners for their feedback or suggestions on the content and timeline of the review. Commissioners Dodson and O'Keeffe may form a subcommittee to lead the evaluation.

Chair Blosser adjourned the meeting at approximately 3:30 p.m. on Friday, Oct. 23, 2009.

State of Oregon
Department of Environmental Quality — Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item B, action item: Pollution control facility certificate administration
December 10-11, 2009 EQC meeting

Why this is important

EQC issues tax credit certificates to qualifying pollution control facilities. If a certificate holder sells a certified facility, EQC is the authority that transfers the certificate to the new owner.

Background

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 from the date of original certification but for no more than ten years. If the taxpayer sells a certified facility within the ten-year period, the new owner is entitled to any unused tax credit available to the facility.

On Sept. 29, 2009, Carlton Holdings, Inc. notified DEQ of the sale of the certified facility shown in attachment A to Blount, Inc. The Department of Revenue requires this notification under ORS 315.304. DEQ found that Blount, Inc. continues to operate the facility according to the EQC's original conditions of certification.

Under ORS 468.170 and ORS 468.185, EQC may issue, revoke and reinstate certificates. When the commission transfers a certificate, the action includes revoking the original certificate and reissuing the certificate in the name of the new owner.

DEQ recommendation and EQC motion

DEQ recommends that the EQC transfer certificate number 11561 shown in attachment A:

From:
Carlton Company
3901 SE Naef Road
Milwaukie, OR 97267
93-1263217

To:
Blount, Inc.
4909 SE International Way
Portland, OR 97222
63-0593908

EQC action alternatives The commission may postpone the transfer to a future meeting if it requires additional information from DEQ or the certificate holder.

Attachments A. Pollution Control Facility Certificate No. 11561

Available upon request ORS 468.150 to 468.190 and OAR 340-016-0005 to 340-016-0080

Approved:

Section: Gregory K. Abdow

Division:

Report prepared by: Maggie Vandehey
Phone: (503) 229-6878

Attachment A

Pollution Control Facility Certificate No. 11561

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
Carlton Company
3901 SE Naef Road
Milwaukie, OR 97267

Operating as: C Corp
Taxpayer ID No: 93-12632-17

Facility Location
Same as applicant address

Certified Cost & Percentages

Facility Cost		$530,083
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$185,529**

Facility Description

Beckart Wastewater Pretreatment System that includes a PLC (Programmable Logic Controller) Batch Filter Press, serial number SN-06015

The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number **7532**.

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)]

Dick Pederson, Interim Director Issued on December 13, 2007

Please use the worksheet on the reverse side to calculate your yearly allowable credit.

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item C, informational item: Best available technology for the treatment of spent carbon at the Umatilla Chemical Agent Disposal Facility
December 10-11, 2009 EQC meeting

Purpose of item This item provides information describing the Department of Environmental Quality's activities to determine the best available technology for treatment of spent carbon, including spent sulfur-impregnated carbon used to capture mercury emissions, at the Umatilla Chemical Agent Disposal Facility. The commission will be asked to make this determination in early 2010.

Background Oregon state law requires the Umatilla Chemical Agent Disposal Facility to use disposal methods that are the best available technology. To do so, EQC must determine that any proposed method is the best available technology to meet all regulatory criteria and protective of public health and the environment. In 1997, DEQ determined that the best available technology for disposal of chemical agent and munitions at the Umatilla facility was the Army's baseline incineration system, which met all applicable regulatory criteria. Following DEQ's determination, the EQC found that incineration was the best available technology.

In the final judgment in GASP, *et al*, v. EQC, *et al*, Case No. 9708-06159, known as GASP IV, the judge remanded to the EQC three findings on the best available technology for the Umatilla facility. One of the remanded determinations is "the destruction of hazardous waste originally intended for the dunnage incinerator." The Umatilla facility's hazardous waste permit requires on-site treatment of all agent-contaminated wastes.

In evaluating the determination for the destruction of hazardous waste originally intended for the dunnage incinerator, EQC determined, in September 2007, that the best available technology for treatment of secondary wastes was incineration in the metal parts furnace and deactivation furnace system with micronization for treatment of spent carbon. In September 2008, the commission determined that mercury-contaminated spent carbon must remain in storage at the Umatilla Chemical Agent Disposal Facility until a best available technology determination addresses its disposition.

The use of the deactivation furnace system, along with a pretreatment

micronization process, was determined to be the best available technology for agent-contaminated spent carbon. As the chemical demilitarization program has matured, new evidence indicates that DEQ and EQC should reevaluate the best available technology for agent-contaminated carbon.

Four factors prompt reconsideration of BAT for spent carbon:

1. The quantities of agent-contaminated carbon requiring treatment are projected to be much less than originally estimated, lessening the need for a large-capacity treatment operation. Of the 720,000 pounds of spent carbon to be generated over the life of the facility, only 48,000 pounds are expected to be agent-contaminated and require treatment.

2. Operational experience at Johnston Atoll Chemical Agent Disposal System has revealed significant drawbacks associated with the micronization system, such as the risk of explosion due to the creation of carbon dust.

3. New information indicates that transport of secondary waste to offsite commercial facilities can be achieved safely.

4. New technologies for treatment of secondary wastes have been developed and tested.

Based on these factors, DEQ reevaluated the disposal technologies for agent-contaminated carbon. Much of the spent carbon generated at the Umatilla facility is expected to meet permit compliance concentration limits that establish levels at which the spent carbon is considered agent-free. No on-site treatment is required for agent-free spent carbon; therefore, no best available technology determination is required.

DEQ has not addressed sulfur-impregnated carbon, a subcategory of agent-free spent carbon, in a best available technology determination. The sulfur-impregnated carbon filters are in the pollution abatement system filter system, where no agent contamination is expected. The Army will sample the filters to verify they are not contaminated, and compare the sampling results to the permit compliance concentration limits. The filters, however, may contain mercury at levels requiring treatment, consistent with Resource Conservation and Recovery Act criteria, prior to disposal as hazardous waste. If the filters are agent-free, they may be shipped offsite as routine hazardous waste.

Key issues

There are two key issues:

1. What is the best available technology for treatment of agent-contaminated spent carbon? DEQ is proposing a reevaluation of the secondary waste best available technology determination for spent carbon.

   Based on the limited amount of agent-contaminated carbon requiring on-

site treatment, and additional information obtained on treatment technologies, DEQ will ask EQC during its February 2010 meeting to reconsider the best available technology for agent-contaminated spent carbon. In order to determine the best available technology for the agent-contaminated spent carbon, DEQ is exploring five demonstrated technologies:

- Offsite disposal in a commercial Resource Conservation and Recovery Act-permitted incinerator.
- Deactivation furnace system with carbon micronization, a treatment process in which the carbon is pulverized to a powdery consistency prior to being fed to the furnace.
- Metal parts furnace, a three-zone incinerator that uses a conveyor to transport waste through the zones and which is currently used to treat mustard ton containers and secondary waste.
- Autoclave, a treatment apparatus that uses high-pressure steam at an elevated temperature to destroy agent.
- Plasma energy pyrolysis system, a process that uses high-temperature plasma induced by electrical discharge to convert organic materials to a gas, resulting in the decomposition of the organic materials into elemental components.

2. What is the appropriate disposition of agent-free, mercury-contaminated spent carbon? DEQ is not investigating technologies for this material, because the waste should be free of agent contamination. DEQ is proposing that, upon confirmation of agent-free status, this waste stream is managed as routine hazardous waste and transported offsite, for treatment of mercury as needed, and then disposal.

Next steps DEQ will hold a public comment period to solicit information and opinions on the available treatment technologies. DEQ will present its recommendation as an action item at the February 2010 EQC meeting for a determination on the best available technology for treatment of agent-contaminated spent carbon and mercury-contaminated spent carbon.

Attachments A. GASP IV, Case No. 9708-06159, Judgment (DEQ Item No. 07- 227)

B. EQC, September 4, 2008, "Final Order Determining Best Available Technology for Mustard Agent Containing Higher than Anticipated Levels of Mercury" (DEQ Item 08-0994)

Available upon request

1. US Army Chemical Materials Agency (CMA), 2009, "Umatilla Chemical Agent Disposal Facility, Best Available Technology Evaluation for Agent Contaminated Carbon, Final Draft," dated August 24, 2009 (DEQ Item 09-0893)

2. CMA, 2008, "Bounding Transportation Risk Assessment for >1 Vapor

Screening Level (VSL) Waste," September (DEQ Item 09-1117) CMA, 2008, "Addendum to the Bounding TRA: Assessment of Risk from Offsite Shipment of Spent Carbon," Final, June (DEQ Item 09-1119)

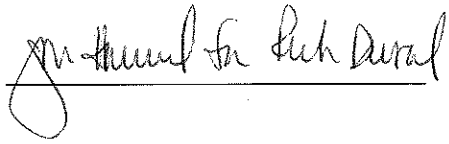
3. National Research Council, Committee to Examine the Disposal of Activated Carbon from the Heating, Ventilation, and Air Conditioning Systems at Chemical Agent Disposal Facilities, 2009, "Disposal of Activated Carbon from Chemical Agent Disposal Facilities," Washington, D.C. (DEQ Item 09-1040)

4. URS, 2009, "Carbon Treatability Study Report, Umatilla Chemical Agent Disposal Facility," February 16 (DEQ Item 09-1064)

5. Continental Research and Engineering, LLC, 2008, "Autoclave Evaluation Test Report," April 21 (DEQ Item 09-1120)

6. CMA, 2005, "Secondary & Closure Waste Treatment—Evaluation of Plasma Energy Pyrolysis System (PEPS)," June, Draft (redacted to remove financial information) (DEQ Item 09-1121)

Approved:

Division: 

Report prepared by: M.J. Davis, Senior Compliance Inspector
Phone: 541-567-8297, ext. 229

07-1227

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

GASP, *et al*

Petitioners,

v

ENVIRONMENTAL QUALITY COMMISSION, *et al* ,

Respondents,

and

UNITED STATES ARMY, and WASHINGTON DEMILITARIZATION COMPANY,

Intervenor-Respondents.

Case No. 9708-06159

STIPULATED GENERAL JUDGMENT

Received
JUN 13 2007
Department of Justice - Trial Division

Petitioners have brought a Petition for Review against the State of Oregon Environmental Quality Commission ("EQC") and the State of Oregon Department of Environmental Quality ("DEQ") to require that Air Contaminant Discharge Permit #25-004 ("ACDP") issued by DEQ and Hazardous Waste Permit I.D. No. OR6 213 820 817 ("HWP") issued by EQC be reversed and or remanded; and

The United States Army ("Army") and Washington Demilitarization Company ("WDC"), both named permitees on these permits, having intervened as intervenor-respondents and joined the state in opposing the Petition for Review; and

This Court having dismissed the petition for review as to the ACDP by Order dated June

Warren & Watkins
838 SW 1st Avenue, Suite 500
Portland, OR 97206
Voice 503 228 6655 / Fax
503 228 7019

901-70

14, 2006; and

This Court having issued its Opinion and Order dated April 17, 2007 granting in part and denying in part the petition as to the HWP;

It is ADJUDGED that the OREGON EQC'S determinations made pursuant to ORS 466.055 as to whether the Umatilla Chemical Agency Disposal Facility uses the best available technology and has no major adverse impact on public health or the environment in regard to (a) destruction of any mustard in any ton container that contains significantly higher mercury levels than previously reported; (b) the destruction of hazardous waste originally intended for the dunnage incinerator; and (c) the role of PFS carbon filters; are remanded to the State of Oregon Environmental Quality Commission for consideration and further proceedings consistent with the court's opinion of April 17, 2007.

The petition regarding the HWP is granted in regard to the above referenced findings that are remanded to the EQC. The petition regarding the HWP is otherwise denied.

DATED this ____ day of June, 2007.

Michael H. Marcus
Circuit Court Judge

Submitted by: Stuart A. Sugarman
Of Attorneys for Petitioners GASP *et al*

Marc Abrams
Senior Assistant Attorney General
Of Attorneys for Respondents DEQ and EQC

Warren & Watkins
838 SW 1st Avenue, Suite 500
Portland, OR 97206
Voice 503 228 6655 / Fax
503 228 7019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Stipulated General Judgment was served on the following parties, this 11th day of June, 2007, by electronic mail, and no later than the 12th day of June, 2007 by first class mail:

TOM E. LINDLEY
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209
Attorney for Intervenor
Washington Demilitarization Company

Marc Abrams
Sr. Assistant Attorney General
1162 Court St. NE
Salem, OR 97301
Attorney for Respondents

ROBERT H. FOSTER
U.S. Department of Justice
Environmental Defense Section
1961 Stout Street 8th Floor
Denver, CO 80294
Attorney for Intervenor
United States Army

Stuart A. Sugarman

08-0994

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of	)	Final Order Determining
Umatilla Chemical Demilitarization	)	Best Available Technology
Facility Hazardous Waste	)	For Mustard Agent Containing
Permit No. ORQ 000 009 431	)	Higher than Anticipated
		Levels Of Mercury

1. This matter came before the Environmental Quality Commission (EQC) on August 21, 2008.

2. In an Opinion And Order dated April 17, 2007 Judge Michael Marcus of the Multnomah County Circuit Court remanded the EQC's original Order issuing the hazardous waste treatment facility permit for destruction of chemical agent, UMCDF ORQ 000 009 431, for further proceedings regarding statutorily required Best Available Technology (BAT) and No Major Adverse Effect determinations. GASP et al v. Environmental Quality et al case No. 9708-06159, April 17, 2007 (GASP IV).

3. Judgment was entered in GASP IV on June 12, 2007.

4. The Court Judgment directed the EQC to reassess BAT and No Major Adverse Effect determinations in light of certain changes in facility design and new evidence. In particular, the Court directed the EQC to reassess BAT for certain secondary wastes and mustard agent containing mercury at higher levels than anticipated. And the Court required the EQC to determine the role of the carbon pollution filter system (PFS) in relation to BAT.

5. This EQC Order issued today constitutes the EQC's final BAT Order pertaining to Mustard containing higher than anticipated levels of mercury as required by the Court.

6. In making its specific findings below, the EQC incorporates the analysis and recommendations in the Staff Report, agenda Item D, dated August 19, 2008. The EQC has reviewed the record, including the Department's responses to public comments.

FINDINGS

1. The EQC finds that incineration in the liquid incinerator (LIC) and metal parts furnace (MPF) with the addition of sulfur impregnated carbon filters to the pollution filtration system of the MPF is the best available technology (BAT) for treatment of mustard agent containing mercury in ton containers.

2. The EQC finds that incineration of mustard agent containing mercury in the UMCDF furnaces in accordance with permit conditions to be specified by the Department will not produce a major adverse impact to health or the surrounding environment.

3. The EQC finds that alternative technologies as described and evaluated in the August 19, 2008 Department staff report have not been demonstrated as viable for effective treatment of mustard containing mercury in ton containers.

4. The EQC finds that neutralization technology would generate effluent and residue that would not meet RCRA land disposal restrictions and would likely require additional treatment by incineration.

5. The EQC finds that the DAVINCH process has not been demonstrated in application for ton containers containing heterogeneous materials.

6. The EQC finds that, assuming either or both of the alternative mustard treatment processes evaluated could eventually be determined safe and effective, a substantial delay in destroying mustard agent, with no increased benefit to public health or the environment, would be necessary before either a neutralization or DAVINCH system could be demonstrated and brought on line at Umatilla.

7. The EQC finds that processing of mustard containing mercury in the LIC and MPF will result in generation of a mercury contaminated spent carbon secondary waste stream. The EQC will require that the spent carbon be stored at Umatilla until such time as the EQC issues a further BAT determination for ultimate treatment or disposal of the spent carbon.

Dated this 4th day of September, 2008.

Authorized for William R. Blosser

William R. Blosser, Chairman
On behalf of the
Environmental Quality Commission

State of Oregon
Department of
Environmental
Quality

Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
December 10, 2009

UMCDF Chemical Demilitarization Program News

The GASP VI lawsuit was competed with summary judgment issued in favor of the Environmental Quality Commission except as to the timeliness of issuance of the Title V air quality permit. However, the Title V permit for UMCD was issued October 30, 2009, and the court found that petitioners were not entitled to relief on that basis either.

DEQ issued the Washington Demilitarization Company a civil penalty of $111,000 for exceeding air emission limits for carbon monoxide from the metal parts furnace, exceeding one heel size feed limit to the metal parts furnace, failing to completely characterize hazardous brine prior to management off-site and failing to update the contingency plan in a timely manner to reflect personnel changes.

Agent Processing at the Umatilla Chemical Agent Disposal Facility

As of November 18, 2009, 218,128 munitions have been destroyed. This represents 99 percent of all Umatilla munitions and bulk containers and 41 percent of the original Umatilla stockpile by agent weight.

Mustard operations

The mustard campaign began June 4, 2009, with the receipt of the first mustard ton container from facility storage. There are 2,635 mustard ton containers in the facility stockpile. This represents one percent of all facility munitions and bulk containers and 63 percent, by agent weight, of the original stockpile. As of November 18, 2009, 159 ton containers, containing 141 tons of mustard agent, have been treated.

The facility completed the characterization sampling of the initial 60 ton containers required by the permit. Based on issues identified during this period, particularly the carbon monoxide emission limit violations and comments received, the facility is reevaluating the mustard trial burn plan.

Sarin operations

The facility completed sarin munitions and bulk items processing in July 2007. 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% of the original Umatilla stockpile by agent weight.

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

VX nerve agent operations

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

Except for carbon, the facility has treated all VX nerve agent-related wastes previously stored in J-Block igloos, and is treating all secondary wastes produced during changeover as they are generated.

UMCDF Permitting Activity

September 29, 2009, through November 30, 2009:

SUBMITTALS		
PMR/TAR#	**Title**	**Submitted**
UMCDF-09-025-MPF(2TA)	Metal Parts Furnace (MPF) Discharge Airlock (DAL) Water Cooling and Request for Temporary Authorization (TAR)	10/12/09
UMCDF-09-021-MISC(1N)	Redline Annual Update for General, PAS, and MISC Systems	10/13/09
UMCDF-09-012-WAP(2)	Spent Carbon Waste Determination	10/28/09

APPROVALS/ACCEPTANCES			
PMR#	**Title**	**Received**	**Decn**
UMCDF-09-020-DMIL(1R)	Change in Bulk Drain Station Weight Instrument Operating Range	07/01/09	10/05/09

IN PROCESS: The following permit modification notices and permit modification requests are under DEQ review *(includes 09-012, 09-021, and 09-025, which were also submitted during this period)*

PMR#	Title	Received	Public Comment Period Close	Target Decision/ Review Date
Requests				
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-09-003-MISC(3)	Resubmittal of HD ATBP	02/26/09	08/12/09[3]	10/15/09
UMCDF-09-006-CLOS(2)	Amend Closure Plan	09/25/09	11/24/09[1]	12/24/09
UMCDF-09-025-MPF(2TA)	MPF DAL Water Cooling and TAR	10/12/2009	12/14/09[1]	01/11/10
UMCDF-09-012-WAP(2)	Spent Carbon Waste Determination	10/28/2009	12/28/09[1]	01/23/10

IN PROCESS: The following permit modification notices and permit modification requests are under DEQ review *(includes 09-012, 09-021, and 09-025, which were also submitted during this period)*				
PMR#	**Title**	**Received**	**Public Comment Period Close**	**Target Decision/ Review Date**
Notices				
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-09-010-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	TBD
UMCDF-09-016-MISC(1N)	Redline Annual Update for CHB, HVAC, and MISC Systems	05/22/09	N/A	TBD
UMCDF-09-017-MISC(1N)	Redline Annual Update for DMIL, MDB, and MISC Systems	08/06/09	N/A	TBD
UMCDF-09-021-MISC(1N)	Redline Annual Update for General, PAS, and MISC Systems	10/13/09	N/A	TBD

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

Permitting Activity: None for the period September 29 through November 30, 2009.

Significant Events at Other Demilitarization Facilities

As of November 15, 2009, 68.4 percent of the national chemical agent stockpile tonnage has been destroyed.

Anniston Chemical Agent Disposal Facility, Alabama

The Anniston facility began processing 4.2 inch mortars of HD and HT mustard agent July 2, 2009. As of November 11, 2009, the facility has destroyed 52,642 mortars. Its mustard campaign may end in early 2012.

The facility experienced a small fire and a liquid leak October 20, 2009. Robotic equipment was removing a mortar fuse and burster in an explosive containment room. The fire and leak did not cause any injuries or damages. The munition was returned to storage for later demilitarization, and the systems contractor is conducting an analysis of the cause of the fire and leak.

Pine Bluff Chemical Agent Disposal Facility, Arkansas

The Pine Bluff facility started mustard processing December 7, 2008, and has processed 1,612 HT and 12 HD ton containers as of November 16, 2009. On November 7, 2009, the facility surpassed its milestone of destruction of over 50 percent of the chemical agent in its stockpile by agent weight.

Demolition of the former BZ disposal building began October 31, 2009, and is expected to continue through December 2009.

Tooele Chemical Agent Disposal Facility, Utah
The Tooele facility is treating mustard ton containers, and, as of November 15, 2009, has treated 4,410 containers.

The facility began using its new pollution abatement system carbon filter system October 14, 2009. The three sulfur-impregnated carbon filters, nearly 60 feet long and weighing more than 35 tons, were installed 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 mustard mortars and ton containers.

The facility has exceeded the one-hour carbon monoxide limits several times during its operations, the most recent of which November 19, 2009. Exceeding the federal carbon monoxide limit of 100 parts per million as a one-hour rolling average is an indication of incomplete combustion.

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. The final waste was shipped offsite October 22, 2009, to the Veolia facility in Port Arthur, Texas. Closure activities will occur over an 18- to 24-month period. Currently, demolition of the filter farm and utility buildings are underway.

Pueblo Chemical Agent Destruction Pilot Plant, Colorado
The Pueblo facility will use neutralization followed by biotreatment to destroy the 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 startup target date has been changed from 2014 to January 2015, with a December 2017 completion date.

Based on the U.S. Army's commitment to treat all agent-contaminated secondary wastes onsite, versus offsite shipment as was done at Newport, 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 appealed the order and the court found for the Army. The permit issued by the state October 17, 2008, allows the project to build the remainder of the plant.

Blue Grass Chemical Agent Destruction Pilot Plant, Kentucky

The Blue Grass pilot plant 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 2017 and to be completed by 2023.

The design work is 95 percent complete and should be final in May 2010. The plant's first structural steel for the control and support building was placed September 17, 2009.

The metal parts treater, a specialty item for the plant, is being fabricated at the Parsons facility in Pasco, Washington. Testing of this and other plant-specific equipment will be conducted over a six-month period.

Three sarin ton containers, part of Operation Swift Solution and representing 0.2 percent of the stockpile, have been neutralized. When the campaign is completed, the operational facilities will close and the temporary structures and equipment will be shipped back to Aberdeen Proving Grounds in Maryland.

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

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

Department of Environmental Quality

Best Available Technology Determination Treatment of Spent Activated Carbon

Umatilla Chemical Agent Disposal Facility

Department of Environmental Quality

Best Available Technology Process

Today: Information Briefing to the EQC

Next Few Weeks: Public Input

February 2010: DEQ Recommendation to the EQC

Purpose

Consider reevaluating the best available technology for treatment of spent activated carbon, specifically:

1. What is the best available technology for treatment of agent-contaminated spent carbon?
2. What is the appropriate disposition of agent-free, mercury-contaminated sulfur-impregnated carbon?

Department of Environmental Quality

Sources of Carbon at the UMCDF

- Heating, ventilation, and air conditioning (HVAC) filters for the Munitions Demilitarization Building
- Pollution Abatement System Filtration System for each incinerator (includes sulfur-impregnated carbon)
- Other sources: Glovebox filters, M40 mask cartridges, laboratory filters

1. What is the best available technology for treatment of agent-contaminated spent carbon?

Background

Secondary Waste BAT Determination (June 2008):

- Addressed spent activated carbon as a general class
- Determined that BAT is the Deactivation Furnace System, with use of a pretreatment Carbon Micronization System

Why Reconsider the BAT Determination?

A number of recent developments prompted reconsideration:

- Analytical method to determine agent concentrations in carbon medium
- Reduced amount of carbon requiring treatment
- National Research Council review of disposal options for agent-contaminated carbon
- Offsite disposal has been demonstrated as a safe option
- New technologies have been developed and tested

Development: Analytical method to determine agent concentrations in carbon medium

- Existing analytical methods for detecting agent were not effective for carbon medium
- New method now under review by EPA and DEQ laboratory
- If approved, will provide a means to verify agent-free status and quantify agent concentrations in carbon

Development: Reduced Quantities of Carbon Requiring Treatment

- For the secondary waste BAT, it was estimated that 97,000 pounds of spent carbon would require treatment
- Current estimates project only 48,000 pounds
- Smaller quantities allow consideration of other technologies

Development: National Research Council review of disposal options for agent-contaminated carbon

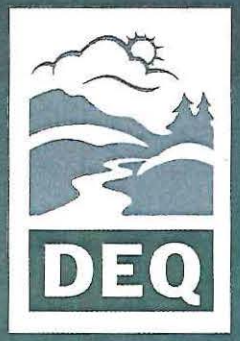
- Documents the sources of carbon at chemical agent facilities that are expected to be agent-free
- Endorses the use of offsite disposal for agent-contaminated carbon that meets specified standards for transportation
- Recommends not using carbon micronization system as a pretreatment for carbon, due to safety issues

Development: Offsite disposal has been demonstrated as a safe option

- Army prepared a transportation risk assessment, which sets limits for agent concentrations
- An addendum to the risk assessment specifically addresses carbon filters
- Aberdeen and Newport Chemical Agent Disposal Facilities have used offsite treatment for agent-contaminated carbon and other secondary wastes

Evaluation of Technologies

- Best available technology will apply only to agent-contaminated carbon (approximately 48,000 pounds of a total 720,000 pounds of spent carbon)
- Estimates of production times and costs were provided by the Army



Technologies Identified for Treatment of Agent-Contaminated Carbon

- Offsite disposal in a commercial incinerator permitted under the Resource Conservation and Recovery Act (RCRA)
- Deactivation Furnace System with Carbon Micronization System
- Metal Parts Furnace
- Autoclave
- Plasma Energy Pyrolysis System

Option: Offsite disposal in a commercial RCRA-permitted incinerator

- Would apply to spent carbon contaminated with low concentrations of agent
- The UMCDF Permit currently prohibits secondary waste from being shipped offsite unless permit compliance concentration (agent-free) limits are met
- Most efficient and cost-effective option
- Possible opposition by members of the public and stakeholders

Option: Deactivation Furnace System with Carbon Micronization System

- Furnace is in place at the UMCDF; micronization system would require construction and permitting
- Currently identified as best available technology
- National Research Council recommended not using carbon micronization system, due to safety issues
- Shortest operating time to dispose of carbon (8 days), but most costly option

Option: Metal Parts Furnace

- In place and operational at the UMCDF, and currently used to treat all other solid secondary wastes
- No design or operating changes would be necessary
- Treatability study conducted in November 2008
- Operating time estimated to be 45 days
- Least costly of all onsite options

Option: Autoclave

- High-pressure vessel using steam hydrolysis to treat agent
- Currently in use at the Tooele Chemical Agent Disposal Facility for treatment of some secondary wastes, but not spent carbon
- Start-up process (permitting, procurement, installation, systemization, demonstration) would take up to 14 months
- Adequacy of treatment would have to be demonstrated

Option: Plasma Energy Pyrolysis System

- Uses high-temperature plasma induced by electrical discharge to convert organic materials to a gas; organic materials then decompose into elemental components
- Army owns PEPS, a mobile unit
- Start-up process (permitting, procurement, installation, systemization, demonstration) would take up to 27 months
- Unit has not been used with actual chemical agents
- Operational challenges (high-voltage power, very high temperatures, molten slag)

2. What is the appropriate disposition of agent-free, mercury-contaminated sulfur-impregnated carbon?

Background

BAT Determination for Mustard Containing Higher-than-Anticipated Levels of Mercury (September 2008):

- Addressed mercury-contaminated spent carbon
- Requires storage at Umatilla until a further BAT determination is issued

Mercury-Contaminated Spent Carbon

- Because this waste should be free of agent contamination, the DEQ is not investigating onsite technologies.
- Upon confirmation of agent-free status, waste stream may be managed as routine hazardous waste and transported offsite, for treatment of mercury as needed, and then disposal.

Public Involvement

- A public comment period is underway through January 4, 2010
- A public meeting and hearing will be held December 15, 2009

DEQ's Recommendation

- Department recommendation will be presented at February 2010 meeting
- Will recommend the best available technology for treatment of agent-contaminated carbon and for disposition of mercury-contaminated sulfur-impregnated carbon
- Will consider input from the public and other stakeholders

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Suzanne Knapp, Governor's Natural Resources Office

Subject: Agenda item D, informational item: Oregon's Middle Columbia River Steelhead Conservation and Recovery Plan
December 10-11, 2009 EQC meeting

Purpose This item will inform the Environmental Quality Commission about the Conservation and Recovery Plan for Endangered Species Act-listed Middle Columbia Steelhead, and the supportive role of the Department of Environmental Quality to help implement this plan for recovery.

Background The State of Oregon has completed its Middle Columbia River Steelhead Conservation and Recovery Plan, as required by the federal Endangered Species Act and the State's Native Fish Conservation Policy. While the Oregon Fish and Wildlife Commission still needs to approve Oregon's Conservation and Recovery Plan, NOAA Fisheries adopted the full bi-state plan in late September 2009. The Middle Columbia steelhead "distinct population segment" was first listed as threatened under the Endangered Species Act in 1999 and reaffirmed in January 2006.

The Conservation and Recovery Plan serves as a blueprint for the recovery of ten Middle Columbia steelhead populations that occupy Oregon tributaries to the Columbia River, which include Fifteenmile Creek, Deschutes, John Day, Umatilla and Walla Walla river basins. The plan seeks to remove or minimize threats to long-term persistence of these populations and improve their viability to levels that will allow removal of the steelhead distinct population segment from the threatened and endangered species list. Oregon's long-term and higher goal, termed broad sense recovery, is to recover these populations and their habitats to levels that provide sustainable fisheries and other ecological, cultural, social, and economic benefits for current and future generations.

Strategies and actions to achieve viability and broad sense recovery focus primarily on addressing threats to the populations posed by tributary habitat degradation, out-of- distinct population segment hatchery strays, and hydrosystem development and operations – considered the main obstacles to recovery. These threats affect the full life cycle of steelhead from egg to adult. Improvement of overall tributary habitat conditions will require many years of passive and active measures to protect the highest quality habitats, maintain existing unimpaired

habitats and ecosystem function, and restore healthy habitat conditions. Research, monitoring and evaluation will provide status and trend information, assess effectiveness of actions, and clarify uncertainties to support adaptive management and allow managers to make sound decisions.

Discussion

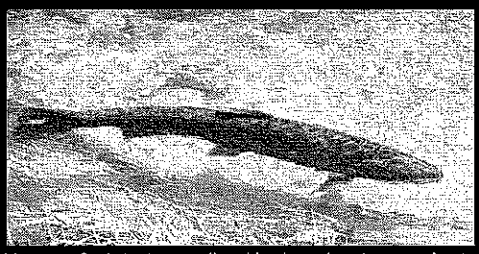
The Department of Environmental Quality will play an important role in helping to address the limiting factors associated with degraded and impaired water quality, including high temperatures, low dissolved oxygen, nutrients, suspended fine sediment, pesticides, herbicides, heavy metals and other toxic pollutants. Degraded water quality affects egg-to-smolt survival, smolt migration, adult migration, and pre-spawning viability. DEQ has many programs that support strategies for habitat management and improvement. Implementation of TMDLs, for example, is an important component to improving water quality in the various watersheds. Effective implementation of these programs and associated monitoring will be critical to addressing limiting factors, tracking changes, and significantly improving the quality of water in the Mid-Columbia river basins in the years ahead.

Under the Oregon Plan for Salmon and Watersheds, the State of Oregon is reliant on the actions and programs of many natural resource agencies synergistically working together to improve watershed and water quality conditions. Rebuilding natural, healthy, and diverse steelhead populations in the middle Columbia River basin is a priority for the State of Oregon, with the belief that citizens value and enjoy the substantial benefits productive and abundant populations of steelhead provide.

EQC Involvement

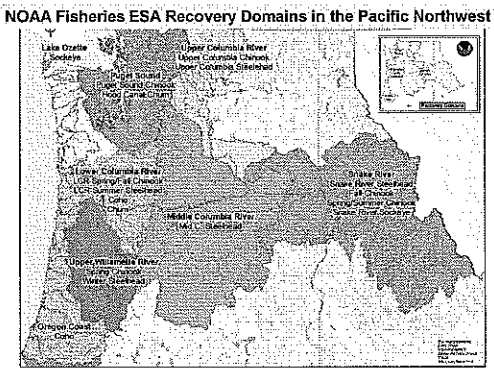
This informational item is an opportunity for the EQC to learn about the Middle Columbia River Steelhead Conservation and Recovery Plan that will require DEQ action and support.

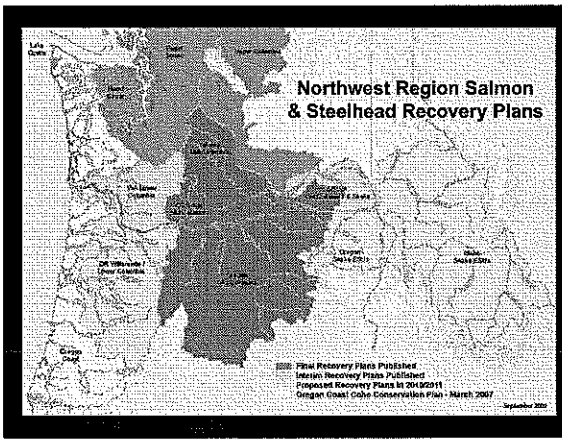
Recovery and Conservation Plan for Middle Columbia River Steelhead



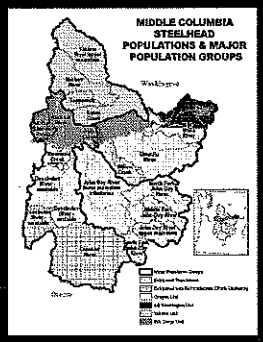
A blueprint for bringing steelhead back to abundant, productive, and diverse levels to provide ecologic, economic, social and cultural benefits

NOAA Fisheries ESA Recovery Domains in the Pacific Northwest



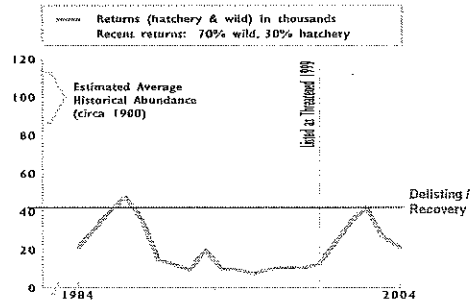


Mid-Columbia Steelhead Domain



- Listed as threatened in 1999
- Parts of two states
- 17 listed populations
- 10 listed populations in Oregon
- Washington and Oregon prepared local recovery plans; NOAA prepared a bi-state recovery plan, released on 9/28/09

Middle Columbia River Steelhead DPS



Recovery Plan Basics

What they are...

- Required by Federal ESA and Oregon's Native Fish Conservation Policy
- Based on best available science
- Are a central organizing tool for an ecosystem approach to recovery - a roadmap
- Establish biological goals and goals to address threats
- Establish priority actions in all stages of life cycle
- Secure the economic, social and cultural benefits of healthy watersheds
- Recovery plans are not regulatory, but will rely on regulations currently in place, government programs, and voluntary actions

What's in this Recovery Plan?

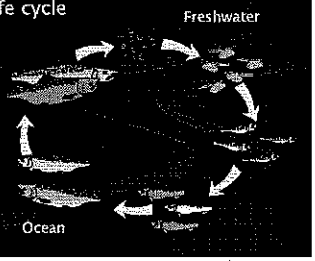
- Explanation of steelhead biology
- Recovery goals & criteria (biological viability & threats)
- Assessment of current status (extinction risk), limiting factors & threats
- Recovery strategies & site-specific actions
- Estimates of time & costs to implement actions
- Research, monitoring & evaluation to track progress

Mid-C Recovery Plan was developed...

- Collaboratively
- Based on existing work and solid science
- Supported by a broad base of stakeholders
- Considered the full life cycle

And involved:

- Sounding Board
- Planning Team
- Watershed Teams
- Oversight Team
- Technical Team



Recovery Plan Goals

- ESA Delisting without ESA protections
  - Biological Criteria: abundance, productivity, spatial structure, diversity
  - Threats Criteria
- Broad Sense Recovery – Oregon's Goal

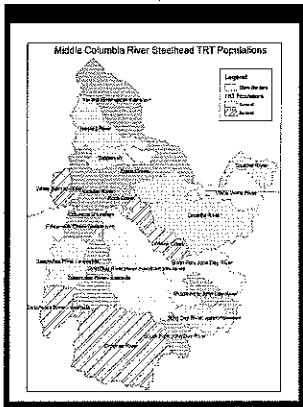
Oregon's Mid-Columbia River natural steelhead populations are sufficiently abundant, productive, and diverse (in terms of life histories and geographic distribution) so that they provide significant ecological, social, cultural, and economic benefits.

Biological Delisting Criteria

- All four major population groups at viable (low risk) status
- Representation of all the major life history strategies historically present
- Representation of abundance, productivity, spatial structure & diversity attributes required for long-term persistence

Threats Delisting Criteria: Managing the underlying causes of decline

- Habitat
- Over-utilization
- Disease or predation
- Inadequacy of existing regulatory mechanisms
- Other natural or manmade factors



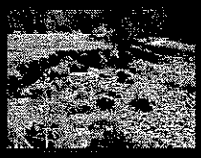
Oregon Major Population Groups

Cascade Eastern Slope MPGs
Fifteenmile Creek (Intermediate)
Deschutes R. Eastside (Intermediate)
Deschutes R. Westside (Large)

John Day River MPGs
Lower Mainstem (Very Large)
Upper Mainstem (Intermediate)
North Fork (Large)
Middle Fork (Intermediate)
South Fork (Basic)

Umatilla/Walla MPGs
Umatilla River (Large)
Walla Walla River (Intermediate)

Major Factors for Decline



- Degraded tributary habitat
- Hydro dam operations and impaired fish passage

- Hatchery-related effects
- Predation/Competition /Disease

Strategies for Tributary Habitat

- Strategy 1: Protect and conserve natural ecological processes
- Strategy 2: Restore passage and connectivity to habitats
- Strategy 3: Restore floodplain connectivity and function
- Strategy 4: Restore degraded channel structure and complexity
- Strategy 5: Restore riparian condition and large woody debris recruitment
- Strategy 6: Restore natural hydrograph to provide sufficient flow
- Strategy 7: Improve degraded water quality
- Strategy 8: Restore degraded upland processes
- All Strategies: Maintain unimpaired conditions

DEQ Programs: Improve degraded water quality

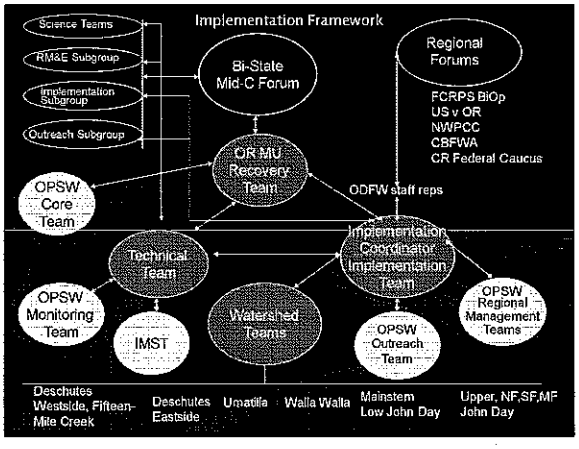
- 401 dredge and fill certification
- 401 hydroelectric recertification
- Environmental cleanups
- TMDLs
- Non-point source program
- Point source permits
- Storm water permits
- Hazardous waste management

DEQ Management Actions

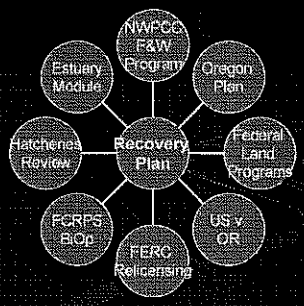
- Manage irrigation return flow to reduce temps
- Minimize unnatural factors that lead to fluctuations in DO
- Reduce chemical pollution and nutrient inputs
- Continue TMDL monitoring
- Permit and enforce actions that could affect water quality
- Address contamination from mine related discharge
- Implement pest management plans for fruit growers
- Implement water quality management plans
- Address point sources of water pollution

Research, Monitoring and Evaluation

- Status and Trend Monitoring
- Implementation and Compliance Monitoring
- Action Effectiveness Monitoring
- Uncertainties Research



Supporting Programs and Processes



Challenges Ahead

- Full Action Implementation and Funding
- Climate Change
- Population Growth and Development
- Changing Society and Values
- Implementation over a 25 to 50-year Time Period

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item E, action item: Memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture for the confined animal feeding operation permit program December 10011, 2009 EQC meeting

Why this is important

In order to continue the Oregon Department of Agriculture's authority for the confined animal feeding operations permit program, a new memorandum of understanding must be in place before the current agreement expires on February 28, 2010.

DEQ recommendation And EQC motion

The Department of Environmental Quality recommends that EQC approve a new memorandum of understanding between DEQ and the Oregon Department of Agriculture, as proposed in attachment A of this item, to take effect December 2009.

Key information

The EQC granted an extension of the agreement on June 19, 2009 so DEQ could update it to include the roles and responsibilities associated with new permit program requirements. The extension expires February 28, 2010. The agreement authorizes the Oregon Department of Agriculture to perform the CAFO-related functions of DEQ and the EQC. It replaces the October 2002 agreement, and will remain in place for five years (e.g. December 2014) unless delegation authority from EPA to DEQ is modified. If delegation authority from EPA to DEQ is modified, the responsibilities in the agreement would be changed to reflect the modification.

The roles and responsibilities established for both agencies in the prior agreement are still appropriate, and it will continue the current level of environmental protection offered under the program. The new agreement includes new public notice requirements and permit program database reporting requirements. The agreement has minor revisions for clarification, and to reference new definitions, statutes and regulations.

Brief overview of the agreement

The Oregon Department of Agriculture is responsible for the oversight of the program, development and implementation of the program, and permit compliance activities including inspections,

complaint response and enforcement. DEQ and the Oregon Department of Agriculture will continue to jointly issue national pollutant discharge elimination system permits until EPA delegates that authority to the Oregon Department of Agriculture.

The Oregon Department of Agriculture is responsible for actions associated with providing new public notice requirements, and will determine when a change requires a public notice and then conduct the public notice process. EPA's November 2008 final rule for CAFOs includes additional public notice requirements of animal waste management plans. Public notice is also required with permit registration. DEQ maintains a web link from DEQ's water quality public notice web site to the Oregon Department of Agriculture's CAFO public notice web site.

DEQ's role is to provide assistance and guidance to the Oregon Department of Agriculture. DEQ will continue to assist on surface and groundwater issues associated with CAFOs, review plans when requested and conduct inspection and enforcement activities in cooperation with the Oregon Department of Agriculture. DEQ is responsible for the statewide permit program database. The Oregon Department of Agriculture will continue to develop and maintain a program database on all permit activities and will provide permit program data to DEQ and EPA. DEQ will provide technical assistance to the Oregon Department of Agriculture for the purpose of creating methods of providing data to DEQ and EPA.

Background information

What is a CAFO? CAFOs are the confined feeding or holding of animals in buildings, pens or lots where the surface is prepared to support animals in wet weather or where there are wastewater treatment facilities. Typical CAFOs in Oregon include dairies, beef feedlots, poultry, swine, horse and other animal farms that land apply their wastewater and manure at rates to meet crop needs while avoiding over applications that could lead to water quality impairment. CAFOs generate manure, silage pit drainage, wash down waters, contaminated runoff and milk wastewater.

Summary of the CAFO permit program. DEQ issued the first water pollution control facilities CAFO general permit #800 July 28, 1987. Initially, DEQ issued all general and individual permits to CAFOs statewide. The first national pollutant discharge elimination system permit jointly issued by the Oregon Department of Agriculture and DEQ was the 2003 CAFO NPDES general permit #01, which expired July 31, 2008. DEQ and the Oregon Department of Agriculture issued the renewal for this general permit on June 29, 2009. The 2009 CAFO NPDES General Permit #01 includes the new

public notice requirements under EPA's 2008 final rules for concentrated animal feeding operations animal waste management plans. The Oregon Department of Agriculture is providing public notice for those applicants requesting renewal or new coverage under the 2009 CAFO NPDES general permit.

Memorandum of understanding overview. The Oregon Department of Agriculture and DEQ have had agreements to address CAFO regulation since the late 1980s. The agreements have changed over time to reflect the type of permitting program in place, and new regulations and responsibilities assigned by the Oregon Legislature. In 1993, the Legislature directed EQC and Oregon Department of Agriculture to transition the CAFO permit program from DEQ to the Oregon Department of Agriculture. In 2001, the Oregon Legislature authorized and directed the transfer of the federal Clean Water Act NPDES permit program for CAFOs from DEQ to the Oregon Department of Agriculture, subject to approval from EPA.

The proposed agreement recognizes the directive of the 2001 Legislature that allows for the transfer of the federal clean water act permit program. The Oregon Department of Agriculture is discussing the merits of seeking this authorization with its stakeholders and partner agencies. DEQ does not anticipate the delegation to change over the term of this proposed five-year agreement.

EQC action alternatives

The October 2002 memorandum of understanding will remain in effect until February 28, 2010. DEQ recommends EQC approve proposed attached memorandum of understanding to take effect December 2009.

Attachments

A. Proposed memorandum of understanding
B. Redline version of the proposed memorandum of understanding
C. June 2009 extension of the memorandum of understanding
D. June 2007 extension of the memorandum of understanding
E. October 2002 memorandum of understanding

Available upon request

1. CAFO program update memo, May 2009
2. Oregon Department of Agriculture Natural Resources Division Confined Animal Feeding Operations (CAFO) Program 2007 Annual Report.
3. CAFO NPDES General Permit #01-2009 and related permit documents.

Approved:

Section: Christine M Saltkovich

Division: Neil Mullane

Report prepared by: Beth Moore
Phone: (503) 229-6402

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Program
(December 2009)

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA).

II. Purpose

This Memorandum of Understanding (MOU) replaces the MOU dated October 2002 between ODA and EQC. The MOU authorizes ODA to perform the CAFO related functions of DEQ and the EQC. It replaces the October 2002 MOU and DEQ and ODA expect that it will be in place until December 2014, unless the delegation agreement with federal Environmental Protection Agency (EPA) is modified in the interim, in which case, it is likely that the MOU will need to be modified to recognize the change in responsibilities.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until December 31, 2014 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority

The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217 and 2001 Oregon Laws Chapter 248.

V. Definition of Terms

Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33USC §§1251), 40 Code of Federal Regulation (CFR) §122, and 412, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Divisions 40, 41,44, 45 and; 51; OAR 603, Division 74.

A. *"Confined Animal Feeding Operation(CAFO)"* as defined in OAR 603-074-0010(3) and 340-051-0010(2) means
   1. The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
      (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
      (ii) That have wastewater treatment works; or
      (iii) That discharge any wastes into waters of the state; or
   2. An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.

B. *"Injection System"* or *"Underground Injection System"*, as defined in OAR 340-044-0005(24) means a well, improved sinkhole, sewage drain hole, subsurface fluid distribution system or other system or groundwater point source used for the subsurface emplacement or discharge of fluids.

C. *General Permit* as defined in OAR 340-045-0010(8) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits for every source.

D. *National Pollutant Discharge Elimination System (NPDES) Permit* means a waste discharge permit issued in accordance with Section 402 of the federal Clean Water Act, 33 USC §1251-1387. The EPA has delegated NPDES authority to the Department of Environmental Quality (DEQ). NPDES permits are issued pursuant to ORS 468B.035 and 050 and in accordance with procedures set forth in OAR 340-045.

E. *Substantial Change* is defined as the following types of changes to an animal waste management plan (AWMP):

1. For small or medium confined animal feeding operations:
   (i) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
   (ii) An increase in maximum allowed animal numbers such that the operation becomes defined as a large concentrated animal feeding operation.
2. For small, medium or large concentrated animal feeding operations:
   (i) Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process waste water on the newly added land application area is in accordance with that existing NPDES permit.
   (ii) Any changes to the field-specific maximum annual rates for land application.
   (iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
   (iv) Addition of any crop or other uses not included in the AWMP and corresponding field-specific rates of application.
   (v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
   (vi) Any changes that are likely to increase the risk of nitrogen and phosphorus transport to surface waters or groundwaters.

F. *Water Pollution Control Facilities (WPCF) permit* means a permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued pursuant to ORS 468B.050 by the Director of DEQ or ODA in accordance with procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.

G. *NPDES* General Permit*#01- 2009* means the NPDES general permit issued June 29, 2009 in accordance with the procedures of OAR 340-045-0033 for confined animal feeding operations.

VI. Background

A. The Oregon Legislature established a special regulatory program for CAFOs in 1989, with an effective date of January 1, 1990, 1989 Oregon Laws Chapter 847. The

legislation required DEQ to develop and issue CAFO permits pursuant to its WPCF permit program and it directed ODA to inspect CAFOs to ensure permit compliance.

B. From the outset, ODA and DEQ worked cooperatively on water quality issues associated with CAFOs. This cooperation was encouraged by the governor and legislature and in 1993 the CAFO statutes were amended to direct the EQC and ODA to enter into a formal memorandum of understanding providing for ODA to run the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ so long as the delegation is consistent with the MOU.

C. In 2001, the legislature again amended the CAFO statutes. 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA at such time as the transfer is approved by EPA.

D. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO general permit #01, which expired on July 31, 2008. In 2005, the legislature provided DEQ and ODA the authority to issue general permits by department order, ORS 468B.050(2). DEQ and ODA renewed NPDES CAFO general permit #01-2009 on June 29, 2009. The CAFO general permit includes the additional requirements for public notice of animal waste management plans under EPA's November 20, 2008 Concentrated Animal Feeding Operation final rule and the public notice of permit applications with animal waste management plans.

E. Electronic data reporting for the DEQ statewide program and the EPA database for NPDES permits will be required in the future. Preparation for electronic data reporting is included in this MOU.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the delegation agreement between the state and EPA, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

A. All functions authorized by ORS 468.035 *Functions of department (1)(j) and (k),* 468.065 *Issuance of Permits; Content; Fees; Use, 468.073 Expedited or Enhanced Regulatory Process; Payment; Disposition of Payments, 468.095 Investigatory Authority; Entry on Premises; Status of Records,* 468.100 *Enforcement procedures; powers of regional authorities; status of procedure and 468.120 Public Hearings; subpoenas, Oaths, Depositions.*

B. All functions authorized by ORS 468B.020 *Prevention of Pollution,* 468B.032 *Alternative Enforcement Proceedings; Request; Public Notice; Fees,* 468B.035 *Implementation of Federal Water Pollution Control Act;Rules,* 468B.053 *Alternatives to Obtaining Water Quality Permit;Rules,* 468B.055 *Plans and Specifications for Disposal,Treatment, And Sewage Systems* , 468B.095 *Use of Sludge on Agricultural, Horticultural or Silvicultural Land;Rules,* and 468B.200 et seq *Animal Waste Control.*

C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions 45 *Regulations pertaining to NPDES and WPCF Permit* and 51 *Confined Animal Feeding or Holding Operations of Chapter 340.*

VIII. ODA Roles and Responsibilities

A. Prior to EPA Approval of NPDES Program Delegation to ODA, ODA will:

Technical Assistance

1. To the extent possible, conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste management systems.

2. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing and implementing appropriate BMPs for animal waste management systems.

NPDES Program Development

3. Develop and implement administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Work with DEQ to develop and issue NPDES individual and general permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate a NPDES program for CAFOS.

NPDES and WPCF Permit Program Implementation

5. Consult with DEQ on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act.
6. Receive and review permit applications for existing or proposed CAFOs.
7. Provide public notice of permit applications and their animal waste management plans and the opportunity for public hearings.
   (i) Review and respond to public comments.
   (ii) Let the applicant know if further changes are required before being assigned permit coverage.
8. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing NPDES General Permit #01-2009 or future general permits, or issue an individual WPCF or NPDES permit if necessary.
   (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection* , Division 41 *Water Pollution State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon* and wasteload allocations assigned to point sources under Division 42 *Total Maximum Daily Loads* (TMDLs).
   (ii) ODA will refer CAFOs discharging to injection systems regulated by OAR 340-044 *Construction and use of Waste Disposal Wells or Other Underground Injection Activities* to DEQ for registration and permitting.
   (iii) ODA will continue to rely on EQC or DEQ to grant groundwater concentration limit variances [OAR 340-040-0030(4)] and other exceptions or approvals as detailed in OAR 340-041-0004 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0004(6)].
9. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-051 design criteria. ODA may develop its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications. Prior to plan approval and when appropriate:
   (i) ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.
   (ii) ODA may request that DEQ review plans and specifications for CAFO systems not covered by Division 51, including but not limited to mechanical treatment systems or experimental treatment systems.
10. Review for approval or rejection proposed substantial changes to an animal waste management plan. Prior to approval, ODA will provide public notice of the proposed changes and an opportunity for public hearing.

Compliance Activities

11. Conduct periodic inspections of all permitted CAFOs. Inspections will include an evaluation of animal waste collection, treatment, handling, disposal and management procedures for compliance with the Clean Water Act, Oregon water quality law, and permit conditions.
12. Respond promptly to citizen complaints pertaining to the operation of CAFOs. ODA has primary responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits or water quality standards associated with CAFO facilities. ODA will ensure that persons calling with complaints during regular business hours will be able to speak to or leave a message with an appropriate person on ODA staff.
13. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
14. Impose civil penalties, when appropriate, on the owner or operator of a CAFO for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230 and in 2001 Oregon Laws Chapter 248 (HB 2156).
15. Notify DEQ when a discharge violation threatens public health or safety.

Permit Program Data

16. Develop and maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
17. ODA will associate an EPA system common key identifier ("OR Number") and an Oregon (DEQ) system compatible permit number key with each CAFO covered under a permit in the CAFO program database.
18. ODA will develop the capability to maintain and provide an electronic inventory of CAFOs covered under a permit. The inventory will include the common key identifier above and at least these data elements: facility names, facility location, facility contact information, type of permit and SIC code.
19. ODA will work with DEQ to develop database extracts or similar mechanisms to provide input into the Oregon (DEQ) statewide permits database and the Permit Compliance System (PCS) EPA's current permit system of record. ODA and DEQ will work to accomplish this by the March 31, 2011.
    (i) An inventory of applicable data elements currently reported to and stored in DEQ's Water Quality Source Information System (WQ-SIS), the Oregon administrative water quality permit data system, is included as Attachment I. This applies to all Oregon permits.
    (ii) Required elements for federal data reporting (Water Enforcement National DataBase elements, or WENDB elements) are defined in EPA's 1985 PCS policy statement. EPA's 1985 PCS Policy statement is included as Attachment II. This applies to NPDES permits only, and is for use with PCS, the current EPA system of record. Required data elements will also include any future modifications to EPA's 1985 PCS policy statement.
20. Reporting to ICIS (Integrated Compliance Information System, the successor system to PCS, and EPA's future system of record) will begin when Oregon converts to

statewide ICIS use. Changes in both required data elements and handling mechanisms may be necessary at that time

B. After EPA approval of NPDES permit program delegation to ODA, ODA will:
1. Work with DEQ to draft an amended MOU to address the changes resulting from such delegation
2. Work with DEQ to address CAFO permitting issues in groundwater management areas and water quality limited streams.
3. Work with DEQ to maintain the State of Oregon's delegated authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

A. Prior to EPA approval of NPDES Program Delegation to ODA, DEQ/EQC will:

Permit Program Assistance

1. Provide advice, assistance, training, and program guidance relative to surface and groundwater quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
2. Work with ODA to develop and issue NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate an NPDES program for CAFOs.
3. Assist ODA in developing administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Review plans as requested by ODA.
5. Provide public access to the ODA CAFO public notice website from the DEQ public notice website.
6. Assist ODA with response to comments.

Compliance Activities

7. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up. DEQ will refer to ODA website for an accurate list of area contacts.
8. Conduct inspections only when requested by ODA; however, in situations where DEQ reasonably suspects that operations related to a CAFO may present an imminent and substantial danger to human health or the environment, DEQ may exercise agency discretion and conduct the inspection after notifying ODA.
9. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.
10. Participate in annual reviews with ODA and work cooperatively with ODA to achieve the objectives of this agreement. The annual review may include file reviews as well as inspection of a small, agreed-upon number of animal feeding operations not under ODA jurisdiction across the state by a team representing ODA and DEQ.

Permit Program Data

11. Provide technical assistance to ODA to develop method(s) of providing data to DEQ and EPA database systems.

12. DEQ's Operations and Information Services will work with ODA to identify a DEQ compatible system permit number key.
13. DEQ will consult with ODA in the preparation and planning for the Oregon state-wide switch from PCS to ICIS.

B. After EPA approval of NPDES Permit Program Delegation to ODA, DEQ/EQC will:
1. Work with ODA to draft an amended MOU to address the changes resulting from such delegation.
2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
3. Work with ODA to maintain the State of Oregon's delegated authority to enforce the CWA.

X. No Third Party Rights

Nothing in this MOU constitutes of creates a defense on behalf of a regulated party.

XI. Resolution of Disagreements Regarding the Interpretation and Application of this MOU

In the event of a disagreement regarding the interpretation and application of this MOU, agency staff will direct the disagreement to designated supervisors or other managers for resolution.

A. In the case of ODA, the director or her designee has authority to resolve disputes.
B. In the case of DEQ, the director or his designee has authority to resolve disputes.

XII. Modification of the MOU

This MOU may be modified at any time by written agreement of the parties.

XIII. Termination of the MOU

This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the Director of the State Department of Agriculture on behalf of ODA.

Dick Pedersen Director of DEQ on Behalf of the Environmental Quality Commission	Katy Coba Director of ODA
Date	Date

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Program
(~~October 2002~~December 2009)

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA).

II. Purpose

This Memorandum of Understanding (MOU) replaces the ~~prior~~ MOU~~s~~ dated ~~May 1995~~ October 2002 between ODA and EQC. The MOU authorizes ODA to perform the CAFO related functions of DEQ and the EQC. It replaces the October 2002 MOU and DEQ and ODA expect that it will be in place until December 2014, unless the delegation agreement with federal Environmental Protection Agency (EPA) is modified in the interim, in which case, it is likely that the MOU will need to be modified to recognize the change in responsibilities. ~~The prior MOU needed to be amended to address the roles and responsibilities of the agencies prior to, during and after the transfer of the NPDES program.~~

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until ~~June 30~~December 31, ~~2007~~2014 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority

The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217 and 2001 Oregon Laws Chapter 248.

V. Definition of Terms

Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33USC §§1251), 40 Code of Federal Regulation (CFR) §122, and 412, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Divisions 40, 41,44, ~~and~~ 45 and; 51; OAR 603, Division 74.

A. *"Confined Animal Feeding Operation(CAFO)"* as defined in OAR 603-074-0010(3) and 340-051-0010(2) means
   1. The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
      (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
      (ii) That have wastewater treatment works; or
      (iii) That discharge any wastes into waters of the state; or
   2. An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.

B. *"Injection System"* or *"Underground Injection System"*, as defined in OAR 340-044-0005(24) means a well, improved sinkhole, sewage drain hole, subsurface fluid

distribution system or other system or groundwater point source used for the subsurface emplacement or discharge of fluids.

C. *General Permit* as defined in OAR 340-045-0010(~~7~~8) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits ~~being issued to each source~~for every source.

D. *National Pollutant Discharge Elimination System (NPDES) Permit* means a waste discharge permit issued in accordance with Section 402 of the federal Clean Water Act, 33 USC §1251-1387. The ~~federal Environmental Protection Agency (~~EPA~~)~~ has delegated NPDES authority to the Department of Environmental Quality (DEQ). NPDES permits are issued pursuant to ORS 468B.035 and 050 and in accordance with procedures set forth in OAR 340-045.

E. *Substantial Change* is defined as the following types of changes to an animal waste management plan (AWMP):

1. For small or medium confined animal feeding operations:
   (i) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
   (ii) An increase in maximum allowed animal numbers such that the operation becomes defined as a large concentrated animal feeding operation.
2. For small, medium or large concentrated animal feeding operations:
   (i) Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process waste water on the newly added land application area is in accordance with that existing NPDES permit.
   (ii) Any changes to the field-specific maximum annual rates for land application.
   (iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
   (iv) Addition of any crop or other uses not included in the AWMP and corresponding field-specific rates of application.
   (v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
   (vi) Any changes that are likely to increase the risk of nitrogen and phosphorus transport to surface waters or groundwaters.

~~D.~~F. *Water Pollution Control Facilities (WPCF) permit* means a permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued pursuant to ORS 468B.050 by the Director of DEQ or ODA in accordance with procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.

~~E.~~G. *NPDES* General Permit#~~800-01-2009~~ means the ~~WPCF~~ NPDES general permit issued June 29, 2009 in accordance with the procedures of OAR 340-045-0033 for confined animal feeding operations.

VI. Background

A. The Oregon Legislature established a special regulatory program for CAFOs in 1989, with an effective date of January 1, 1990, 1989 Oregon Laws Chapter 847. The

legislation required DEQ to develop and issue CAFO permits pursuant to its WPCF permit program and it directed ODA to inspect CAFOs to ensure permit compliance.

B. From the outset, ODA and DEQ worked cooperatively on water quality issues associated with CAFOs. This cooperation was encouraged by the governor and legislature and in 1993 the CAFO statutes were amended to direct the EQC and ODA to enter into a formal memorandum of understanding providing for ODA to run the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ so long as the delegation is consistent with the MOU.

C. In 2001, the legislature again amended the CAFO statutes. 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA at such time as the transfer is approved by EPA.

D. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO general permit #01, which expired on July 31, 2008. In 2005, the legislature provided DEQ and ODA the authority to issue general permits by department order, ORS 468B.050(2). DEQ and ODA renewed NPDES CAFO general permit #01-2009 on June 29, 2009. The CAFO general permit includes the additional requirements for public notice of animal waste management plans under EPA's November 20, 2008 Concentrated Animal Feeding Operation final rule and the public notice of permit applications with animal waste management plans.

~~C.~~E. Electronic data reporting for the DEQ statewide program and the EPA database for NPDES permits will be required in the future. Preparation for electronic data reporting is included in this MOU.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the delegation agreement between the state and EPA, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

A. All functions authorized by ORS 468.035 *Functions of department (1)(j) and (k),* 468.065 *Issuance of Permits; Content; Fees; Use, 468.073 Expedited or Enhanced Regulatory Process; Payment; Disposition of Payments, -468.095 Investigatory Authority; Entry on Premises; Status of Records,* 468.100 *Enforcement procedures; powers of regional authorities; status of procedure-and 468.120 Public Hearings; subpoenas, Oaths, Depositions.*

B. All functions authorized by ORS 468B.020 *Prevention of Pollution,* 468B.032 *Alternative Enforcement Proceedings; Request; Public Notice; Fees,* 468B.035 *Implementation of Federal Water Pollution Control Act; Rules,* 468B.053 *Alternatives to Obtaining Water Quality Permit; Rules,* 468B.055 ~~*Plan Approval Required; Exemptions; Rules*~~*Plans and Specifications for Disposal, Treatment, And Sewage Systems* , 468B.095 *Use of Sludge on Agricultural, Horticultural or Silvicultural Land; Rules,* and 468B.200 et seq *Animal Waste Control.*

C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions 45 *Regulations pertaining to NPDES and WPCF Permit* and 51 *Confined Animal Feeding or Holding Operations of Chapter 340.*

VIII. ODA Roles and Responsibilities

A. Prior to EPA Approval of NPDES Program Delegation to ODA, ODA will:

Technical Assistance

1. To the extent possible, conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste management systems.
2. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing and implementing appropriate BMPs for animal waste management systems.

NPDES Program Development

3. Develop and implement administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Work with DEQ to ~~develop and implement a method of issuing~~ develop and issue NPDES individual and general permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate a NPDES program for CAFOS.
5. ~~Promulgate a new CAFO NPDES general permit through joint rulemaking with DEQ for use by new and existing operators.~~

NPDES and WPCF Permit Program Implementation

5. Consult with DEQ on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act.
6. Receive and review permit applications for existing or proposed CAFOs.
7. Provide public notice of permit applications and their animal waste management plans and the opportunity for public hearings.
   (i) Review and respond to public comments.
   (ii) Let the applicant know if further changes are required before being assigned permit coverage.

~~6.~~8. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing ~~WPCF General Permit #800~~NPDES General Permit #01-2009 or future ~~WPCF or NPDES~~ general permits, or issue an individual WPCF or NPDES permit if necessary.

   (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection* ~~and~~, Division 41 *Water Pollution State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon* and wasteload allocations assigned to point sources under Division 42 *Total Maximum Daily Loads* (TMDLs).
   (ii) ODA will refer CAFOs discharging to injection systems regulated by OAR 340-044 *Construction and use of Waste Disposal Wells or Other Underground Injection Activities* to DEQ for registration and permitting.
   (iii) ODA will continue to rely on EQC or DEQ to grant groundwater concentration limit variances [OAR 340-~~041~~040-0030(4)] and other exceptions or approvals as detailed in OAR 340-041-0004 [e.g., approval to lower water quality in high quality waters, OAR 340-041-~~0026(1)(A)~~0004(6)].

~~7.~~9. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-051 design criteria. ODA may develop its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications. Prior to plan approval and when appropriate:

(i) ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.

(ii) ODA may request that DEQ review plans and specifications for CAFO systems not covered by Division 51, including but not limited to ~~such as~~ mechanical treatment systems or experimental treatment systems.~~subsurface disposal systems.~~

~~1.~~10. Review for approval or rejection proposed substantial changes to an animal waste management plan. Prior to approval, ODA will provide public notice of the proposed changes and an opportunity for public hearing.

Compliance Activities

~~8.~~11. Conduct periodic inspections of all permitted CAFOs. Inspections will include an evaluation of animal waste collection, treatment, handling, disposal and management procedures for compliance with the Clean Water Act, Oregon water quality law, and permit conditions.

~~9.~~12. Respond promptly to citizen complaints pertaining to the operation of CAFOs. ODA has primary responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits or water quality standards associated with CAFO facilities. ODA will ensure that persons calling with complaints during regular business hours will be able to speak to or leave a message with an appropriate person on ODA staff.

~~10.~~13. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.

14. Impose civil penalties, when appropriate, on the owner or operator of a CAFO for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230 and in 2001 Oregon Laws Chapter 248 (HB 2156).

~~11.~~15. Notify DEQ when a discharge violation threatens public health or safety.

Permit Program Data

16. Develop and maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.

17. ODA will associate an EPA system common key identifier ("OR Number") and an Oregon (DEQ) system compatible permit number key with each CAFO covered under a permit in the CAFO program database.

18. ODA will develop the capability to maintain and provide an electronic inventory of CAFOs covered under a permit. The inventory will include the common key identifier above and at least these data elements: facility names, facility location, facility contact information, type of permit and SIC code.

19. ODA will work with DEQ to develop database extracts or similar mechanisms to provide input into the Oregon (DEQ) statewide permits database and the Permit Compliance System (PCS) EPA's current permit system of record. ODA and DEQ will work to accomplish this by the March 31, 2011.

(i) An inventory of applicable data elements currently reported to and stored in DEQ's Water Quality Source Information System (WQ-SIS), the Oregon administrative water quality permit data system, is included as Attachment I. This applies to all Oregon permits.

(ii) Required elements for federal data reporting (Water Enforcement National DataBase elements, or WENDB elements) are defined in EPA's 1985 PCS policy statement. EPA's 1985 PCS Policy statement is included as Attachment II. This applies to NPDES permits only, and is for use with PCS, the current EPA system of record. Required data elements will also include any future modifications to EPA's 1985 PCS policy statement.

20. Reporting to ICIS (Integrated Compliance Information System, the successor system to PCS, and EPA's future system of record) will begin when Oregon converts to statewide ICIS use. Changes in both required data elements and handling mechanisms may be necessary at that time

~~Notify DEQ when a discharge violation threatens public health or safety.~~

B. After EPA approval of NPDES pPermit pProgram dDelegation to ODA, ODA will:
   1. Work with DEQ to draft an amended MOU to address the changes resulting from such delegation
   2. Work with DEQ to address CAFO permitting issues in groundwater management areas and water quality limited streams.
   3. Work with DEQ to maintain the State of Oregon's delegated authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

A. Prior to EPA approval of NPDES Program Delegation to ODA, DEQ/EQC will:

Permit Program Assistance

1. Provide advice, assistance, training, and program guidance relative to surface and groundwater quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
2. Work with ODA to ~~develop and implement a method of issuing~~ develop and issue NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate an NPDES program for CAFOs.
3. Assist ODA in developing administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Review plans as requested by ODA.
5. Provide public access to the ODA CAFO public notice website from the DEQ public notice website.
6. Assist ODA with response to comments.

Compliance Activities

7. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up. DEQ will refer to ODA website for an accurate list of area contacts.

~~5.~~8. ~~Consistent with existing law, c~~Conduct inspections only when requested by ODA; however, ~~or,~~ in situations where DEQ reasonably suspects that operations related to a CAFO may present an imminent and substantial danger to human health or the environment, DEQ may exercise agency discretion and conduct the inspection after notifying ODA. ~~if the situation is known by DEQ to be related to a CAFO.~~

~~6.~~9. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.

10. Participate in annual reviews with ODA and work cooperatively with ODA to achieve the objectives of this agreement. The annual review may include file reviews as well as inspection of a small, agreed-upon number of animal feeding operations not under ODA jurisdiction across the state by a team representing ODA and DEQ.

Permit Program Data

11. Provide technical assistance to ODA to develop method(s) of providing data to DEQ and EPA database systems.
12. DEQ's Operations and Information Services will work with ODA to identify a DEQ compatible system permit number key.
13. DEQ will consult with ODA in the preparation and planning for the Oregon state-wide switch from PCS to ICIS.

B. After EPA approval of NPDES Permit Program Delegation to ODA, DEQ/EQC will:
1. Work with ODA to draft an amended MOU to address the changes resulting from such delegation.
2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
3. Work with ODA to maintain the State of Oregon's delegated authority to enforce the CWA.

X. No Third Party Rights

Nothing in this MOU constitutes of creates a defense on behalf of a regulated party.

XI. Resolution of Disagreements Regarding the Interpretation and Application of this MOU

In the event of a disagreement regarding the interpretation and application of this MOU, agency staff will direct the disagreement to designated supervisors or other managers for resolution.

A. In the case of ODA, the director or ~~his~~ her designee has authority to resolve disputes.
B. In the case of DEQ, the director or ~~her~~ his designee has authority to resolve disputes.

XII. Modification of the MOU

This MOU may be modified at any time by written agreement of the parties.

XIII. Termination of the MOU

This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the Director of the State Department of Agriculture on behalf of ODA.

Dick Pedersen Director of DEQ on Behalf of the Environmental Quality Commission	Katy Coba Director of ODA
Date	Date

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Amendment
(June 2009)

The Environmental Quality Commission and the Oregon Department of Agriculture hereby amend Article III of the Memorandum of Understanding dated October 2002 as amended in June 2007, to extend the effective period from June 30, 2009 to February 28, 2010.

Dick Pedersen
Director of DEQ on Behalf of the
Environmental Quality Commission

30 June, 2009
Date

Katy Coba
Director of ODA

6.30.09
Date

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Amendment
(June 2007)

The Environmental Quality Commission and the Oregon Department of Agriculture hereby amend Article III of the MOU dated October 2002, and extend the effective period from June 30, 2007 to June 30, 2009.

Stephanie Hallock
Director of DEQ on behalf of the
Environmental Quality Commission

7-9-07
Date

Katy Coba
Director of ODA

7-12-07
Date

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to Confined Animal Feeding Operations
(October 2002)

I. Parties
The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA).

II. Purpose
This Memorandum of Understanding (MOU) replaces the prior MOU dated May 1995 between ODA and EQC. The prior MOU needed to be amended to address the roles and responsibilities of the agencies prior to, during and after the transfer of the NPDES program.

III. Effective Date
The MOU is effective on the date it is signed by both parties and it will remain effective until June 30, 2007 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority
The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217 and 2001 Oregon Laws Chapter 248.

V. Definition of Terms
Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33 USC §§1251), 40 Code of Federal Regulation (CFR) §122, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Divisions 40, 41, 44 and 45; and OAR 603, Division 74.

A. *Confined Animal Feeding Operation (CAFO)* as defined in OAR 603-074-0010(3) means
   1. The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
      (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
      (ii) That have wastewater treatment works; or
      (iii) That discharge any wastes into waters of the state; or
   2. An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.

B. *Injection System or Underground Injection System* as defined in OAR 340-044-0005(24) means a well, improved sinkhole, sewage drain hole, subsurface fluid distribution system or other system or groundwater point source used for the subsurface emplacement or discharge of fluids.

C. *General Permit* as defined in OAR 340-045-0010(7) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits being issued to each source.

D. *National Pollutant Discharge Elimination System (NPDES) Permit* means a waste discharge permit issued in accordance with Section 402 of the federal Clean Water Act, 33 USC §1251-1387. The federal Environmental Protection Agency (EPA) has delegated NPDES authority to the Department of Environmental Quality (DEQ). NPDES permits are issued pursuant to ORS 468B.035 and 050 and in accordance with procedures set forth in OAR 340-045.

E. *Water Pollution Control Facilities (WPCF) permit* means a permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued pursuant to ORS 468B.050 by the Director of DEQ or ODA in accordance with the procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.

F. *WPCF General Permit #800* means the WPCF general permit issued in accordance with the procedures of OAR 340-045-0033 for confined animal feeding operations.

VI. Background

A. The Oregon Legislature established a special regulatory program for CAFOs in 1989, with an effective date of January 1, 1990. 1989 Oregon Laws Chapter 847. The legislation required DEQ to develop and issue CAFO permits pursuant to its WPCF permit program and it directed ODA to inspect CAFOs to ensure permit compliance.

B. From the outset, ODA and DEQ worked cooperatively on water quality issues associated with CAFOs. This cooperation was encouraged by the governor and legislature and in 1993 the CAFO statutes were amended to direct the EQC and ODA to enter into a formal memorandum of understanding providing for ODA to run the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ so long as the delegation is consistent with the MOU.

C. In 2001, the legislature again amended the CAFO statutes. 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA at such time as the transfer is approved by the EPA.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the delegation agreement between the state and EPA, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

A. All functions authorized by ORS 468.065 *Issuance of Permits; Content; Fees; Use*, 468.073 *Expedited or Enhanced Regulatory Process; Payment; Disposition of Payments*, 468.095 *Investigatory Authority; Entry on Premises; Status of Records*, and 468.120 *Public Hearings; Subpoenas, Oaths, Depositions*.

B. All functions authorized by ORS 468B.020 *Prevention of Pollution*, 468B.032 *Alternative Enforcement Proceedings; Request; Public Notice; Fees*, 468B.035 *Implementation of Federal Water Pollution Control Act*, 468B.053 *Alternatives to Obtaining Water Quality Permit*, 468B.055 *Plan Approval Required; Exemptions; Rules*, 468B.095 *Use of Sludge on Agricultural, Horticultural or Silvicultural Land; Rules*, and 468B.200 et seq *Animal Waste Control*.

C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions 45 *Regulations pertaining to NPDES and WPCF Permit* and 51 *Confined Animal Feeding or Holding Operations of Chapter 340*.

VIII. ODA Roles and Responsibilities

A. Prior to EPA Approval of NPDES Program Delegation to ODA, ODA will:

Technical Assistance

1. To the extent possible, conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste management systems.
2. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing, and implementing appropriate BMPs for animal waste management systems.

NPDES Program Development

3. Develop and implement administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Work with DEQ to develop and implement a method of issuing NPDES individual and general permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate a NPDES program for CAFOs.
5. Promulgate a new CAFO NPDES general permit through joint rulemaking with DEQ for use by new and existing operators.

NPDES and WPCF Permit Program Implementation

6. Receive and review permit applications for existing or proposed CAFOs.
7. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing WPCF General Permit #800 or future WPCF or NPDES general permits, or issue an individual permit if necessary.

(i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection* and 41 *State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon.*

(ii) ODA will refer CAFOs discharging to injection systems regulated by OAR 340-044 *Construction and use of Waste Disposal Wells or Other Underground Injection Activities* to DEQ for registration and permitting.

(iii) ODA will continue to rely on EQC or DEQ to grant groundwater concentration limit variances [OAR 340-041-0030(4)] and other exceptions or approvals as detailed in OAR 340-041 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0026(1)(A)].

8. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-051 design criteria. ODA may develop its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications. Prior to plan approval and when appropriate:

(i) ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.

(ii) ODA may request that DEQ review plans and specifications for CAFO systems not covered by Division 51, such as mechanical treatment systems or subsurface disposal systems.

Compliance Activities

9. Conduct periodic inspections of all permitted CAFOs. Inspections will include an evaluation of animal waste collection, treatment, handling, disposal and management procedures for compliance with the Clean Water Act, Oregon water quality law, and permit conditions.

10. Respond promptly to citizen complaints pertaining to the operation of CAFOs. ODA has primary responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits, or water quality standards associated with CAFO facilities.

11. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.

12. Impose civil penalties, when appropriate, on the owner or operator of a CAFO for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230 and in 2001 Oregon Laws Chapter 248 (HB 2156).

13. Develop and maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
14. Notify DEQ when a discharge violation threatens public health or safety.

B. After EPA Approval of NPDES Permit Program Delegation to ODA, ODA will:
1. Work with DEQ to draft an amended MOU to address the changes resulting from such delegation.
2. Work with DEQ to address CAFO permitting issues in groundwater management areas and water quality limited streams.
3. Work with DEQ to maintain the State of Oregon's delegated authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

A. Prior to EPA Approval of NPDES Program Delegation to ODA, DEQ/EQC will:

Permit Program Assistance

1. Provide advice, assistance, training, and program guidance relative to surface and groundwater quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
2. Work with ODA to develop and implement a method of issuing NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate an NPDES program for CAFOs.
3. Assist ODA in developing administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Review plans as requested by ODA.

Compliance Activities

5. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up.
6. Consistent with existing law, conduct inspections only when requested by ODA or, in situations that present an imminent and substantial danger to human health or the environment, after notifying ODA if the situation is known by DEQ to be related to a CAFO.
7. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.
8. Participate in annual reviews with ODA and work cooperatively with ODA to achieve the objectives of this agreement. The annual review may include file reviews as well as inspection of a small, agreed-upon number of animal feeding operations not under ODA jurisdiction across the state by a team representing ODA and DEQ.

B. After EPA Approval of NPDES Permit Program Delegation to ODA, DEQ/EQC will:
   1. Work with ODA to draft an amended MOU to address the changes resulting from such delegation.
   2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
   3. Work with ODA to maintain the State of Oregon's delegated authority to enforce the CWA.

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Nothing in this MOU constitutes or creates a defense on behalf of a regulated party.

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In the event of disagreement regarding the interpretation and application of this MOU, agency staff will direct the disagreement to designated supervisors or other managers for resolution.

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B. In the case of DEQ, the director or her designee has authority to resolve disputes.

XII. Modification of the MOU

This MOU may be modified at any time by written agreement of the parties.

XIII. Termination of the MOU

This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the director of the State Department of Agriculture on behalf of ODA.

Stephanie Hallock
Director of DEQ on behalf of the Environmental Quality Commission

11-4-02
Date

Phil Ward
Director of ODA

10/15/02
Date

Oregon Department of Agriculture Agricultural Water Quality Programs ODA / DEQ (EQC) 2009 CAFO Program MOU

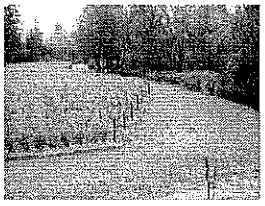
Ray Jaindl, Administrator, NRD
Wym Matthews, CAFO Program Manager

ODA Agricultural Water Quality Programs in the Natural Resources Division

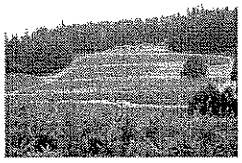
- Agricultural Water Quality Program
- Confined (and Concentrated) Animal Feeding Operations (CAFO) Program

Ag Water Quality Program

- Outcome-based
- Non-prescriptive
- Watershed-based
- Voluntary / regulatory



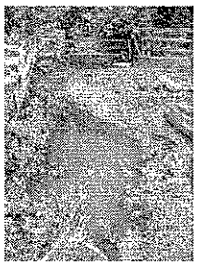
Ag Water Quality Plans



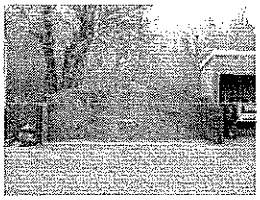
- Ag activities & soil erosion
- Prevent and control water pollution
- Achieve water quality standards

Ag Water Quality Rules

- Compliance is required
- HOW landowners comply is up to them
- Tailored to specific area
- Address, at a minimum:
  - ORS 468B.025 and 468B.050
  - Riparian conditions



ORS 468B.025 and 468B.050



- Prohibit:
  - Pollution
  - Placing of wastes where they may cause pollution
- Specify conditions when permit is required

Riparian Rules

- Allow vegetation to develop & establish
- Consistent with capability of site
- Vegetation should provide certain functions
  - Stabilize streambanks
  - Shade/moderate solar heating

Riparian Conditions

Ag WQ Program Status

- **Outreach/education**
- **Technical Assistance**
- **Monitoring**
- **Biennial Reviews**
- **Compliance**

Compliance Log 2008

- 61 cases
- About 60% from Willamette Valley
- Horses topped the list (24)
- **29** - Letters of Compliance
- **12** - Water Quality Advisories
- **13** - Letters of Warning
- **2** – Notices of Noncompliance

CAFOs in Oregon

- Confined Animal Feeding Operation as defined in OAR 603-074-0010(3)
  - The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
    - In buildings or in pens where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
    - That have wastewater treatment works; or
    - That discharge any wastes into waters of the state; or
  - An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR 122.23

CAFOs in Oregon

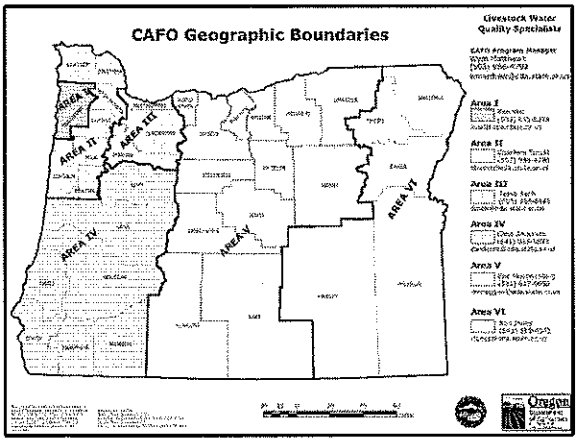
- 1000 or more beef animals, confined for 45 days or more.
  -Large Concentrated CAFO
- 300 to 999 beef animals, confined for 45 days or more, with a system that stores, transfers or treats manure and contaminated runoff, **and** the facility is discharging to surface or ground waters of the state.
  -Medium Concentrated CAFO
- 300 to 999 beef animals, confined for 4 months or more, with a wet or dry manure system.
  -Medium Confined CAFO
- <300 beef animals, confined for 4 months or more that have any type of wet manure or storm water storage facility **or** is discharging to surface or ground waters of the state.
  -Small Confined CAFO

CAFO's in Oregon

- 500 or more horses, confined for 45 days or more.
  -Large Concentrated CAFO
- 150 to 499 horses, confined for 45 days or more, with a system that stores, transfers or treats manure and contaminated runoff, **and** the facility is discharging to surface or ground waters of the state.
  -Medium Concentrated CAFO
- 150 to 499 horses, confined for 4 months or more that have any type of wet manure or storm water storage facility **or** are discharging to surface or ground waters of the state.
  -Medium Confined CAFO
- <150 horses, confined for 4 months or more that have any type of wet manure or storm water storage facility **or** are discharging to surface or ground waters of the state.
  -Small Confined CAFO

CAFOs in Oregon

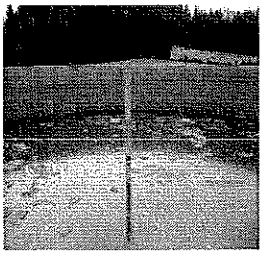
- Who needs a CAFO Permit in Oregon today?
- ODA offers Educational Review opportunities to assist producers in determining if CAFO Permit coverage is required.
- This is THE BEST WAY to answer the Permit question.



Compliance Program

- 100% of staff time
- Assist permittees with compliance
- Many tools to assist with
- NPDES Permit 'fit'
- Performance-based
- Permit more than EPA requires

Permit Requirements



- AWMP = ELG for NPDES Permit
- AWMP site-specific for each registrant, and all elements in AWMP are Permit conditions
- AWMP contains structural and management practices

2009 (to date) Statistics

- 562 Registrations
  - At least 1 routine inspection / year
  - Civil Penalties (17)
  - 113 Large Concentrated CAFOs
  - 245 Medium Concentrated/Confined CAFOs
  - 204 Small Confined CAFOs
  - 4 Ind. Permits

Memorandum of Understanding between the EQC and Oregon Department of Agriculture for the Confined Animal Feeding Operation Permit Program

Memorandum of Understanding.

- Background
- Proposed MOU
- Next Steps

Memorandum of Understanding
Background

MOU establishes roles and responsibilities for permitting and regulating CAFOs

- 1988 first agreement between ODA and DEQ
- 1993 received direction from the Legislature to transition the CAFO state permit program from DEQ to ODA

Memorandum of Understanding
Background

- 2001 received direction from the Legislature to transfer the federal Clean Water Act permit program for CAFOs from DEQ to ODA
- MOU is extended in 2007 to June 30, 2009

Memorandum of Understanding
Background

- June 2009 EQC approved an extension to February 28, 2010 to complete the CAFO NPDES General Permit Renewal
- MOU continues the collaboration between two agencies

Memorandum of Understanding
Proposed

- Up-dated to cover new activities
  - Public notice for Animal Waste Management Plans
  - Database capture and reporting

Memorandum of Understanding
Proposed

- Continues Current ODA Responsibilities
  - Assigns permit coverage to CAFOs
  - Animal waste management plan review
  - Inspections
  - Enforcement
  - Maintains a database
  - Reports on CAFOs

Memorandum of Understanding
Proposed

- Continues Current DEQ responsibilities.
  - When requested assists in plan review
  - Refers complaints to ODA
  - When requested conduct inspections
  - Provide technical assistance, training and program guidance

Memorandum of Understanding
Proposed

- Updated to cover public notice requirements
  - ODA
    - Provides public notice of permit applications with animal waste management plans and the opportunity for a public hearing
    - Substantial changes to animal waste management plans
    - Reviews and responds to comments
    - Consult with DEQ on significant determinations

Memorandum of Understanding
Proposed

- Updated to cover public notice requirements
  - DEQ
    - DEQ's public notice web site contains a link to ODA public notice web site
    - For Confined Animal Feeding Operation (CAFO) Public Notices, see:
    - Assist ODA with response to comments

Memorandum of Understanding
Proposed

- Updated to add Electronic Reporting Data Requirements
  - ODA
    - Electronic data inventory with minimum data elements
    - ODA will work with DEQ to develop a way to get the data to DEQ by March 31, 2011.

Memorandum of Understanding
Proposed

- Updated to add electronic data reporting requirements
  - DEQ
    - Responsible for the statewide database
    - Work with ODA to provide data to DEQ and EPA database
- Other Clarifying changes

Memorandum of Understanding

Next Steps

- The MOU is expected to stay in effect for 5 years. Depending upon EQC approval it will have a specified date.
  - e.g. December 31, 2014
- DEQ requests EQC's approval of the MOU

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item F, action item: Annual EQC designation of involvement in the DEQ 2010-2011rulemaking agenda
December 10-11, 2009 EQC Meeting

Why this is important

The annual rulemaking agenda is an opportunity for commissioners to indicate how they want to engage in upcoming 2010-11 rulemaking proceedings before the Environmental Quality Commission amends, adopts or repeals the rule.

Background

The Department of Environmental Quality uses Oregon Administrative Rules under EQC's jurisdiction to implement Oregon laws. When Oregon Administrative Rules no longer meet evolving needs, DEQ proposes changes. EQC is DEQ's policy and rulemaking board that considers the proposal before making a final decision.

Attachment A provides a short description of the 32 potential rule changes on the DEQ 2010-2011 rulemaking agenda, which is arranged by program. The program administrator or manager will provide additional information about each item during the EQC presentation. Attachment C is a worksheet for commissioners to designate their involvement in eight rulemakings new to the agenda and reaffirm their 2008 designations.

DEQ recommendation

DEQ recommends EQC members complete attachment C during the staff presentation for each potential rulemaking and give completed worksheets to the EQC assistant at the close of this agenda item.

Key issues

There are no key issues.

Attachments

A. Potential 2010-2011 DEQ rulemakings
B. Estimated schedule for rulemaking proceedings
C. EQC worksheet for designating 2010-2011 rulemaking involvement

Approved:

Section:

Division:

Report prepared by: Maggie Vandehey
Phone: (503) 229-6878

Air Quality Program

Approved to start the rulemaking process

AQ 1 Transportation Conformity

Provide procedures or requirements to link transportation and air quality planning, align Oregon's outdated transportation conformity rules with current federal requirements and repeal duplicates, allow transportation planners to apply new features in federal conformity rules as EPA approves them, and reduce the need for future DEQ updates to Oregon conformity rules.

BACKGROUND: EQC adopts transportation conformity rules, but the Federal Highway Administration implements and enforces the rules in consultation with EPA. DEQ will consult with EPA, FHWA, Oregon Department of Transportation and local transportation planning organizations on how the rules are applied.

AQ 2 Title V Consumer Price Index Increase - Permanent

Increase fees by the Consumer Price Index and a one-time increase in base permit fees as authorized in state law.

BACKGROUND: Federal and state law requires Title V program be entirely funded by permit fees.

AQ 3 Greenhouse Gas Reporting - Permanent

Implement 2009 legislation to collect more comprehensive emissions data, establish fees to generate revenue sufficient to cover program costs, and align Oregon's reporting program with regional and federal initiatives.

BACKGROUND: Senate Bill 38 (2009) authorizes EQC to expand greenhouse gas reporting requirements to power importers and fuel distributors. Senate Bill 103 (2009) authorizes EQC to establish fees for existing reporting sources. This rulemaking requires resources to develop and implement the rule, develop a greenhouse-gas reporting database and account for the new fees. An increase in the number of sources subject to the rules could increase enforcement events.

AQ 4 Clean Air Act Infrastructure State Implementation Plan

Update and align Oregon's air quality standards for particulate matter, lead and ozone with the revised federal National Ambient Air Quality Standards.

BACKGROUND: This rule would update the state implementation plan to maintain Oregon's authority to implement the federal Clean Air Act. This rulemaking requires existing resources to develop rules.

AQ 5 Field Burning Phase Down

Implement 2009 legislation, establish criteria for evaluating emergency burning requests due to disease outbreaks and insect infestations (2,000 acres/year maximum), define critical non-burn areas throughout the state and set burning fees to support the program.

BACKGROUND: Senate Bill 528 (2009) eliminates most field burning and related burning in the Willamette Valley. It authorizes EQC to adopt implementation rules, set fees and hear emergency burning requests. The Oregon Department of Agriculture retains authority to implement the field burning program. As the number of acres burned decreases, DEQ's work on the field burning monitoring network will also decrease.

AQ 6 Low Carbon Fuel Standard

Establish a low carbon fuel standard program that reduces greenhouse gas emissions from gasoline, diesel, and their substitutes while considering the carbon emissions attributed to a fuel throughout its lifecycle, including the fuel production, storage, transport and use, and changes in land use associated with the fuel.

BACKGROUND: House Bill 2186 (2009) directs EQC to adopt low carbon fuel standards that:

a) Include program deferrals to ensure an adequate fuel supply,

b) Identify specific indicators for triggering a deferral of the standard,

c) Prevent large increases to fuel costs for the consumers,

d) Do not mandate the use of any specific fuel, and

e) Allow regulated parties to meet the standard through biofuel and alternative fuels.

Not yet approved to start the rulemaking process

AQ 7 Update Ambient Benchmark Concentrations

Update current ambient benchmark concentrations to align with new scientific determinations about air pollutant toxicities.

BACKGROUND: New air quality ambient benchmark concentrations may require improvements in air sampling and analysis to measure lower concentrations. New ambient benchmark concentrations may require regional staff to gather new information from air emissions sources as part of the permitting process.

AQ 8 Heat Smart

Implement 2009 legislation that requires removal of any uncertified woodstoves upon home sale, set emission standards for uncontrolled wood burning devices, establish timeframes and clarify responsible parties for removal and destruction of outdated woodstoves, establish qualifying destruction procedures and notification and confirmation procedures for completed removal and destruction.

BACKGROUND: Senate Bill 102 (2009) requires removal of uncertified woodstove upon home sale, authorizes EQC to close loopholes in the EPA woodstove certification program and allows EQC to establish emission standards for woodstoves. This rule would establish implementation rules for woodstove removal and close loopholes in the EPA certification program. It will not address setting Oregon emission standards, since EPA will likely soon update their standards. Implementation requires outreach to homeowners and realtors about the woodstove removal program.

AQ 9 Lane Regional Air Protection Agency Rule Adoption

Align Lane Regional Air Protection Agency rules with state rules including any rule revisions pertaining to open burning, permit streamlining, air toxics, enforcement and area source National Emission Standards for Hazardous Air Pollutants rules.

BACKGROUND: EPA and Oregon statute require aligning local air agency rules to state rules. DEQ must review and EQC must approve Lane Regional Air Protection Agency rulemakings related to the state implementation plan.

AQ 10 Portland Air Toxics Solutions

Update current ambient benchmark concentrations of toxic air pollutants to be consistent with new scientific data.

BACKGROUND: The Portland Air Toxics Solutions advisory committee must recommend emissions reduction strategies for air toxics of concern. This requires having the best available pollutant toxicity benchmarks for comparison to monitored and modeled ambient air concentrations.

AQ 11 Klamath Falls Fine Particulate Attainment Plan

Develop an attainment plan with emission reduction strategies to bring air quality in Klamath Falls back into compliance with federal air quality standards for fine particulate (PM2.5).

BACKGROUND: This rulemaking requires DEQ to work with EPA and community leaders in Klamath Falls to co-develop the plan.

AQ 12 Oregon Low Emissions Vehicles – California Update

Align Oregon's low emission vehicle rules with revised California rules for cars and light duty trucks.

BACKGROUND: The federal Clean Air Act requires states that have chosen California's vehicle emission standards to adopt those standards identically. EQC adopted Oregon's low emission vehicle rules in June 2006, and this rule would incorporate new California changes emphasizing the use of battery-electric and plug-in hybrid vehicles. Fees paid by auto manufacturers would fund rule development and implement.

AQ 13 Federal Air Quality Regulations - Phase III

Adopt by reference new federal National Emission Standards for Hazardous Air Pollutants applicable to non-major or area sources including chemical preparation, prepared feed manufacturing, asphalt processing and asphalt roof manufacturing, paints and allied products manufacturing, and chemical manufacturing.

BACKGROUND: DEQ rules are required to align with federal rules to maintain Title V approval. Adding new sources increases work for air quality permitting staff, compliance and enforcement activities, and accounting for an increased volume in permit fees.

AQ 14 Fine Particulate and Greenhouse Gas Permitting Requirements

Implement federal rules for fine particulate and greenhouse gas emissions in Oregon's Air Quality permits.

BACKGROUND: EPA adopted new rules for fine particulate and is proposing rules for greenhouse gas emissions. DEQ must implement the rules for industrial emissions sources through changes to its New Source Review and Prevention of Significant Deterioration programs.

Land Quality Program

Approved to start the rulemaking process

LQ 1 Beneficial Use of Solid Waste

Provide a standing beneficial use list for certain solid wastes and develop a process for reviewing case-specific beneficial uses as an alternative to solid waste disposal.

BACKGROUND: Requests for DEQ approval to use industrial solid wastes are increasing as converting waste into a resource becomes more valuable. This rulemaking would streamline approval for the beneficial use of certain wastes, outline the criteria and process DEQ would follow to review beneficial use proposals, and authorize DEQ to issue beneficial use determinations rather than permits for appropriate uses of solid waste.

LQ 2 Spill Contingency Planning

Align oil spill contingency planning and fees rules to fee structure adopted in ORS 468B.045.

BACKGROUND: Senate Bill 105 (2007) established fees that conflict with OAR 340-141-0010. This rulemaking would align the fee structure in the rules with those currently paid under the statute. It would eliminate the need to amend the rules in the future if fees are changed.

Not yet approved to start the rulemaking process

LQ 3 Portland Harbor Industrial Stormwater General Permit

Establish a geographic stormwater permit for sites discharging into the Willamette River within the Portland Harbor superfund site.

BACKGROUND: Stormwater is a source of contamination to Portland Harbor. The proposed permit would help prevent recontamination of Portland Harbor sediments following cleanup, and ensure that future stormwater management meets remedial objectives for the harbor and federal Clean Water Act requirements.

LQ 4 Dry Cleaner Program

Align dry cleaner rules with current statutes.

BACKGROUND: Oregon amended the dry cleaner statutes (ORS 465.200 and 465.500 through 465.992) in 2003 after EQC adopted the dry cleaner rules. This rulemaking would update the dry cleaner rules consistent with the statute changes, including changes to fee collection, requirements to pursue insurance coverage and expedite enforcement.

LQ 5 Ballast Water Exchange Requirements

Align Oregon's ballast water rules to 2007 and 2009 statutes, amend reporting requirements, establish additional notification and authorization requirements prior to discharge of ballast water due to safety exempt circumstances, and revise violations and enforcement guidance.

BACKGROUND: Senate Bill 643 (2007) expanded the ballast water exchange requirements to include cargo vessels that are not self-propelled, such as barges. House Bill 2625 (2009) clarified DEQ's legal authority to inspect and collect ballast water samples from vessels to verify regulatory compliance. House Bill 2714 (2009) established broader EQC rulemaking authority to reduce the risk of introducing aquatic invasive species from shipping transport. This rulemaking will engage the Shipping Transport of Aquatic Invasive Species Task Force as an advisory group.

LQ 6 Electronics Waste Product Stewardship

Establish rules to implement House Bill 2626 (2007) by setting electronic waste environmental management standards, and clarifying requirements for manufacturers, recyclers and enforcement activities.

BACKGROUND: The 2007 Legislature established the E-waste program and provided for immediate implementation with rule adoption to meet programs needs to occur later.

LQ 7 Solid Waste Conversion Technology Permits

Define and establish a new conversion technology category of solid waste disposal facilities that includes permit requirements and an appropriate fee schedule.

BACKGROUND: DEQ currently permits emerging technologies, including conversion technologies, as treatment facilities. However, the current treatment facility requirements

and fee structure are not always a good fit for this type of facility. This rulemaking will tailor permit requirements and a fee schedule to conversion technologies. The rulemaking will coordinate with other programs as needed.

LQ 8 Financial Assurance - Solid Waste Disposal Facilities
Amend financial assurance requirements for solid waste disposal facilities to make their application more logical and efficient for businesses, local governments and DEQ, and ensure adequate funding is available to protect public health and the environment.

BACKGROUND: Financial assurance rules need updating to meet current needs. Updates would include revising outdated inflation and discount rates, clarifying requirements for corrective action and required funding, and providing language for insurance policies.

Water Quality Program

Approved to start the rulemaking process

WQ 1 Human Health Criteria Standards and Revisions
Revise criteria in Oregon's water quality standards to be based on a fish consumption rate of 175 grams per day to protect a larger portion of Oregonians from health risks associated with contaminants in surface waters and fish tissue.

BACKGROUND: The federal Clean Water Act requires DEQ set water quality standards to protect beneficial uses of the states waters. Oregon bases the criteria to protect human health on the EPA-recommended national default fish consumption rate. This proposal addresses concerns for Oregon Tribal populations that eat greater amounts of fish than the national default. Additionally, this rulemaking may include:

- Provisions that support EQC's directive to look at tools and approaches for implementing the standards in an environmentally meaningful and cost effective manner.
- Revisions to foster the reduction of toxic pollutants from nonpoint sources and other sources not permitted under the federal Clean Water Act.

WQ 2 Graywater Treatment, Disposal and Reuse
Implement 2009 legislation to establish the Oregon requirements for permitting graywater treatment, disposal and reuse systems.

BACKGROUND: House Bill 2080 (2009) legalized the use of graywater and directed EQC to adopt new rules on graywater permitting. The rules will create a new EQC policy establishing graywater reuse as an appropriate water conservation practice when managed to protect public health and the environment. These rules will also establish the criteria for permitting graywater treatment, disposal, and reuse systems.

WQ 3 2010 Water Quality Permit Fee Increase
Adopt a water quality permits fee increase to address increased permit program costs.

BACKGROUND: The 2005 Legislature authorized EQC to increase water quality permit fees every year in an amount not to exceed the anticipated increase in the cost of administering the permit program, or by three percent, whichever is lower. EQC approved a three percent annual fee increase in 2007 and 2008. DEQ did not to pursue a 2009 fee increase due to uncertainties about the agency budget and union contract.

WQ 4 Identification of Pollutants Requiring Toxic Reduction Plans

Establish numeric concentration values or trigger levels for each of the 118 listed priority persistent pollutants for which no maximum concentration level has been adopted.

BACKGROUND: Senate Bill 737 (2007) requires municipal wastewater facilities that meet specified flow rate criteria to include toxics reduction plans for listed priority persistent pollutants found in the effluent above the trigger levels set by this rule.

Not yet approved to start the rulemaking process

WQ 5 State Revolving Fund Program Revisions

Update and clarify program rules to address implementation issues on how and what water quality improvement projects the program funds, including evaluation of the project ranking criteria.

BACKGROUND: The program will need to address anticipated federal reauthorization requirements that include funding for green projects.

WQ 6 Underground Injection Control

Maintain federal program delegation, expand program to adopt federal rules on carbon sequestration, clarify program fees established by the 2007 Legislature, link water quality provisions in the groundwater rules with the underground injection control program.

BACKGROUND: DEQ expects EPA to adopt new underground injection control program rules in 2009 that establish Class VI wells. DEQ will need to respond to the expected EPA two-year timeline for new rule adoption.

WQ 7 Turbidity Standards

Review scientific information and propose revisions to Oregon water quality standards for turbidity to ensure that the revised standards protect aquatic life uses and are implementable under federal Clean Water Act regulations and programs.

BACKGROUND: Oregon's current turbidity standard is difficult to implement. A review of the science related to how the criteria protect aquatic life and clarifications of how Oregon would apply the standards is necessary. DEQ will respond to scientific questions raised by the Independent Multidisciplinary Science Team on draft turbidity standard revisions that DEQ released for public comment in October 2005. DEQ will review this standard as part of the periodic or triennial review of water quality standards required under the Clean Water Act.

WQ 8 2011 WQ Permit Fee Increase

Adopt a water quality permits fee increase to address increased permit program costs.

BACKGROUND: The 2005 Legislature authorized EQC to increase water quality permit fees every year in an amount not to exceed the anticipated increase in the cost of administering the permit program, or by three percent, whichever is lower. EQC approved a three percent annual fee increase in 2007 and 2008. DEQ did not to pursue a 2009 fee increase due to uncertainties about the agency budget and union contract.

Cross Program

Approved to start the rulemaking process

Management Services Division

MSD 1Sub-delegate Tax Credit Certificate Administration

Sub-delegate pollution control tax credit certification administration to DEQ.

BACKGROUND: Oregon law directs EQC to issue new pollution control tax credit certificates and to transfer or revoke certificates if a facility changes ownership or ceases to operate. This program has expired, and any actions related to its operation will be minor administrative tasks. This rulemaking will allow DEQ, rather than EQC, to administer the program and ensure the most efficient use of resources.

Office of Compliance and Enforcement

OCE 1Penalty Matrix Update

Implement new penalty maximums established by 2009 Legislature.

BACKGROUND: This rule would revise base penalties in accordance with Senate Bill 105A (2009), which increased the statutory caps on penalties. DEQ will involve an advisory committee in revising base penalties in accordance with the new legislation. DEQ does not anticipate implementation of the revised penalty rules to substantially effect staff time or other resources.

Attachment B

Estimated Schedule for EQC Rulemaking Proceedings

Air Quality Program

AQ 1 Transportation Conformity

AQ 2 Title V Consumer Price Index Increase - Permanent

AQ 3 Greenhouse Gas Reporting - Permanent

AQ 4 Clean Air Act Infrastructure State Implementation Plan

AQ 5 Field Burning Phase Down

AQ 6 Low Carbon Fuel Standard

AQ 7 Update Ambient Benchmark Concentrations

AQ 8 Heat Smart

AQ 9 Lane Regional Air Protection Agency Rule Adoption

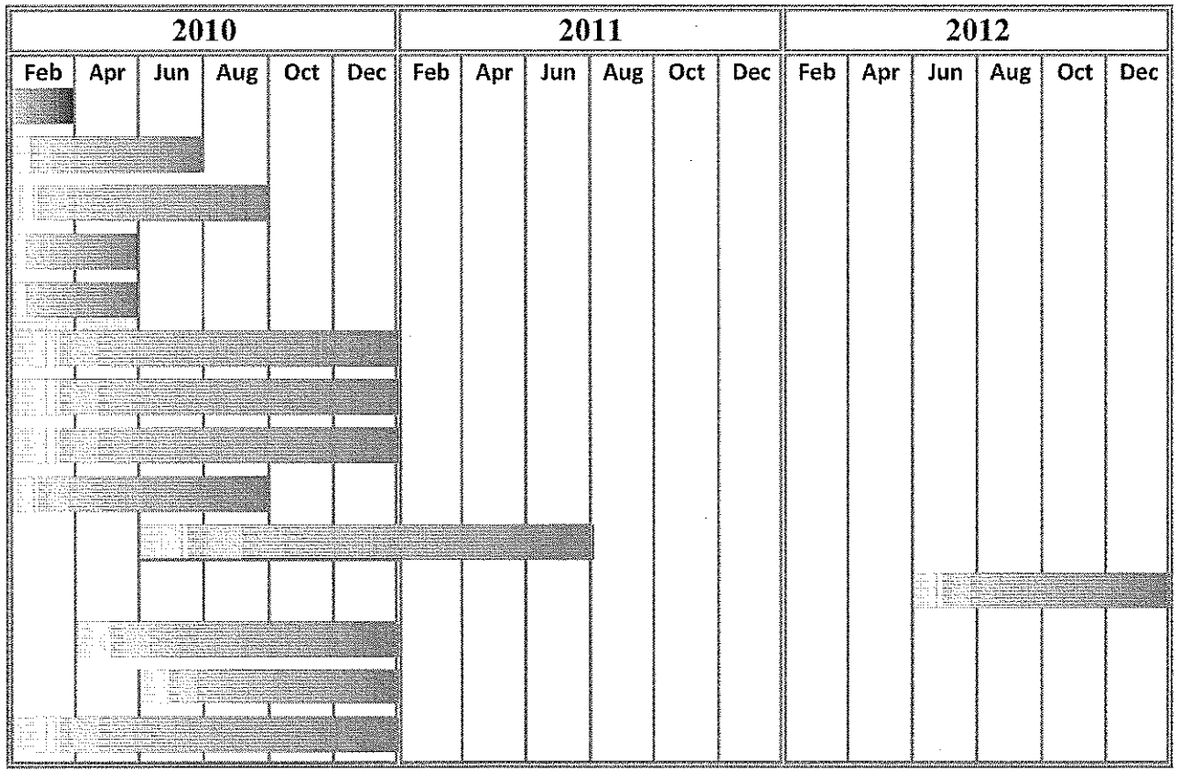
AQ 10 Portland Air Toxics Solutions

AQ 11 Klamath Falls Fine Particulate Attainment Plan

AQ 12 Oregon Low Emissions Vehicles - California Update

AQ 13 Federal Air Quality Regulations - Phase III

AQ 14 Fine Particulate and Greenhouse Gas Permitting Requirements



Land Quality Program

LQ 1 Beneficial Use of Solid Waste

LQ 2 Spill Contingency Planning

LQ 3 Portland Harbor Industrial Stormwater General Permit

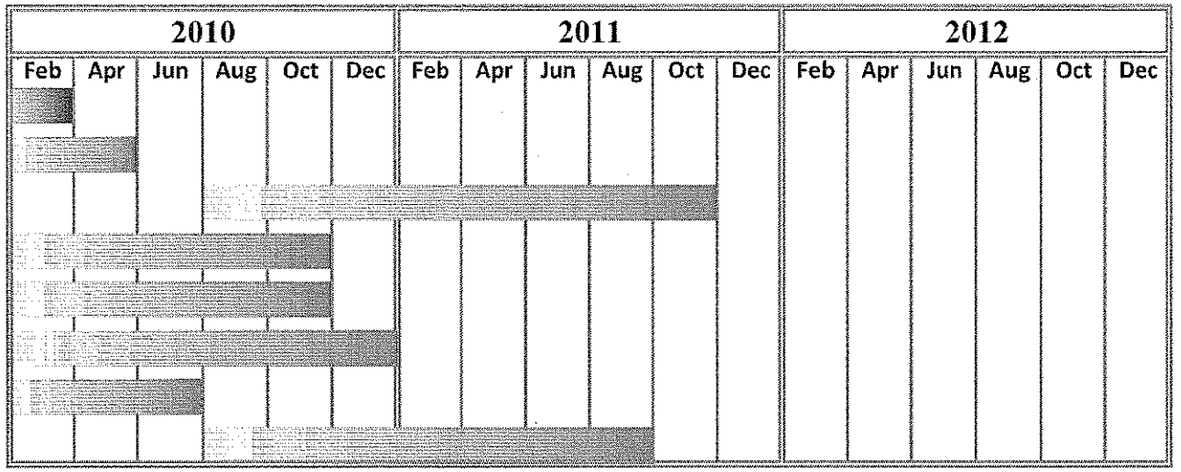
LQ 4 Dry Cleaner Program

LQ 5 Ballast Water Exchange Requirements

LQ 6 Electronic Waste Product Stewardship

LQ 7 Solid Waste Conversion Technology Permits

LQ 8 Financial Assurance - Solid Waste Disposal Facilities



Water Quality Program

WQ 1 Human Health Criteria Standards and Revisions

WQ 2 Graywater Treatment, Disposal and Reuse

WQ 3 2010 WQ Permit Fee Increase

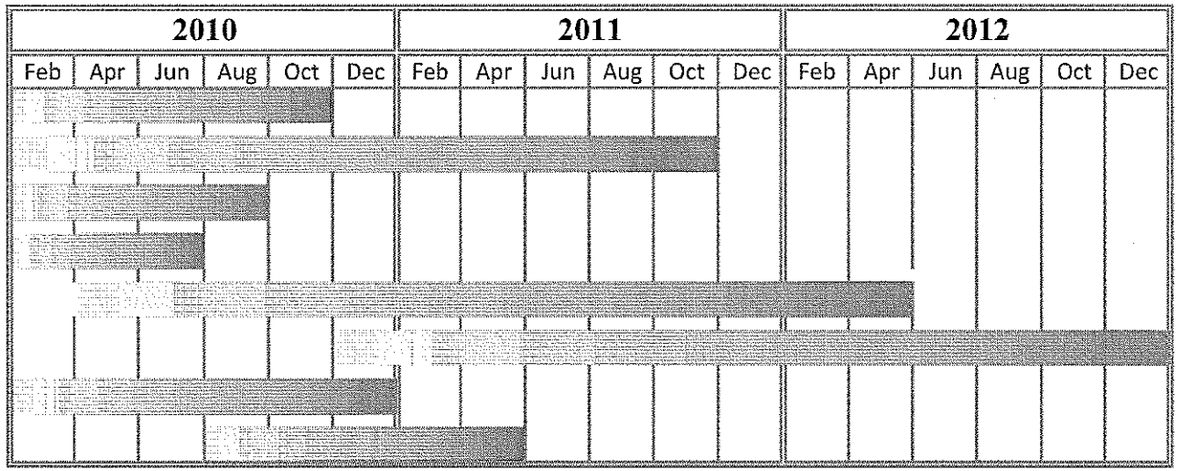
WQ 4 Identification of Pollutants Requiring Toxic Reduction Plans

WQ 5 State Revolving Fund Program Revisions

WQ 6 Underground Injection Control

WQ 7 Turbidity Standards

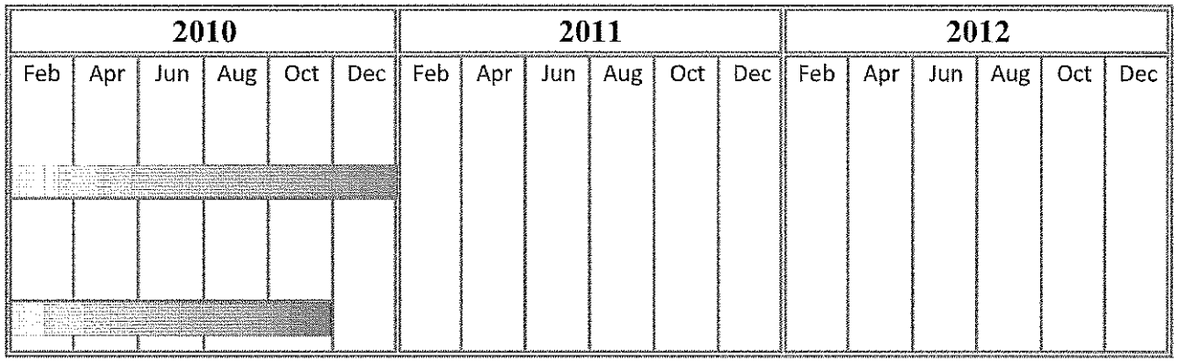
WQ 8 2011 WQ Permit Fee Increase



Cross Program

Management Services
MSD 1 Sub-delegate Tax Credit Certificate Administration

Office of Compliance and Enforcement
OCE 1 Penalty Matrix Update



Total on EQC Agenda by Month

2010						2011						2012					
Feb	Apr	Jun	Aug	Oct	Dec	Feb	Apr	Jun	Aug	Oct	Dec	Feb	Apr	Jun	Aug	Oct	Dec
2	3	3	3	4	9	0	1	1	1	2	0	0	1	0	0	0	2

Attachment C

EQC Worksheet for Designating 2010-2011 Rulemaking Involvement

Air Quality Program	No Involvement before EQC hears rule	Information Item on EQC Agenda	Provide on-going information (Director's Dialogue)	Individual member to attend hearing	EQC facilitated hearing	Involve Individual Member	Notes
AQ 1 Transportation Conformity Align/link transportation conformity rules with current federal requirements.	08						
AQ 2 Title V CPI Increase - Permanent Increase fees authorized by state law.	08						
AQ 3 Greenhouse Gas Reporting - Permanent Implement 2009 legislation.			08		08	08 JU,BB,KW JO	
AQ 4 Clean Air Act Infrastructure State Implementation Plan Update/align Oregon air quality standards with revised federal standards.							New 2010-2011
AQ 5 Field Burning Phase Down Implement 2009 legislation.			08			08 JU,JO	
AQ 6 Low Carbon Fuel Standard Implement 2009 legislation to sstablish a low carbon fuel standard program.	08						
AQ 7 Update AQ Ambient Benchmark Concentrations Update/align with new scientific determinations about air pollutant toxicities.		08					
AQ 8 Heat Smart Implement 2009 legislation to remove uncertified woodstoves upon home sale.		08				08 JU	
AQ 9 Lane Regional Air Protection Agency Rule Adoption Align LRAPA rules with state rules.	08						
AQ 10 Portland Air Toxics Solutions Align ABCs of toxic air pollutants to new scientific data.		08					
AQ 11 Klamath Falls Fine Particulate Attainment Plan Develop an attainment plan.			08				
AQ 12 Oregon Low Emissions Vehicles - California Update Align Oregon rules to California rules for cars and light duty trucks.	08						
AQ 13 Federal Air Quality Regulations - Phase III Adopt new federal National Emission Standards for Hazardous Air Pollutants							New 2010-2011
AQ 14 Fine Particulate and Greenhouse Gas Permitting Requirements Implement federal rules for fine particulate and greenhouse gas emissions.							New 2010-2011

Land Quality Program	No Involvement before EQC hears rule	Information Item on EQC Agenda	Provide on-going information (Director's Dialogue)	Individual member to attend hearing	EQC facilitated hearing	Involve Individual Member	Notes
LQ 1 Beneficial Use of Solid Waste Provide a standing list of beneficial uses for certain solid wastes.		08					
LQ 2 Spill Contingency Planning Align oil spill contingency planning and fees.	08						
LQ 3 Portland Harbor Industrial Stormwater General Permit Establish stormwater permit for sites wihhin Portland Harbor Superfund site.		08					
LQ 4 Dry Cleaner Program Align dry cleaner rules with current statutes.		08					
LQ 5 Ballast Water Exchange Requirements Align Oregon's ballast water rules to 2007 and 2009 statute changes.		08					
LQ 6 Electronic Waste Product Stewardship Set electronic waste environmental management standards.		08					
LQ 7 Solid Waste Conversion Technology Permits Establish conversion technology as a solid waste disposal facility permit category.							New 2010-2011
LQ 8 Financial Assurance - Solid Waste Disposal Facilities Amend financial assurance requirements for solid waste disposal facilities.							New 2010-2011

Water Quality Program	No Involvement before EQC hears rule	Information Item on EQC Agenda	Provide on-going information (Director's Dialogue)	Individual member to attend hearing	EQC facilitated hearing	Involve Individual Member	Notes
WQ 1 Human Health Criteria Standards and Revisions Base criteria in water quality standards on a fish consumption rate of 175 g/d .		08	08	08 JU/BB		08 JU,BB,KW JO,DD	
WQ 2 Graywater Treatment, Disposal and Reuse Establish permit requirements for graywater systems.		08	08			JU	
WQ 3 2010 WQ Permit Fee Increase Adopt a water quality permit fee increases.							New 2010-2011
WQ 4 Identification of Pollutants Requiring Toxic Reduction Plans Establish numeric concentration values for 118 listed priority persistent pollutants.		08	08				
WQ 5 State Revolving Fund Program Revisions Update critieria for funding SRF water quality improvement projects.							
WQ 6 Underground Injection Control Maintain federal program delegation; adopt federal rules on carbon sequestration		08	08				
WQ 7 Turbidity Standards Ensure water quality standards for turbidity protect aquatic life uses.		08	08			08 JU	
WQ 8 2011 WQ Permit Fee Increase Adopt a water quality permit fee increase to address permit program cost increases.							New 2010-2011

Cross Program	No Involvement before EQC hears rule	Information Item on EQC Agenda	Provide on-going information (Director's Dialogue)	Individual member to attend hearing	EQC facilitated hearing	Involve Individual Member	Notes
Management Services							
MSD 1 Sub-delegate Tax Credit Certificate Administration Sub-delegate tac credit certification administration to DEQ.	08						
Office of Compliance and Enforcement							
OCE 1 Penalty Matrix Update Implement new penalty maximums established by 2009 legislature.							New 2010-2011

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item G, rule adoption: Streamlining water quality general permit adoption December 10–11, 2009 EQC Meeting

Why this is important

DEQ is proposing to revise a section of Oregon Administrative Rule 340-045-0033, which allows DEQ to issue general permits by department order to reduce permitting timeframes and costs. The revision provides for the transition of EQC-adopted permits as they are replaced by permits issued by department order. This rulemaking also includes several revisions to the text as matters of housekeeping.

DEQ recommendation and EQC motion

DEQ recommends that the Environmental Quality Commission adopt the proposed revisions to OAR 349-045-0033(1), (5), (6) and (11), as presented here in attachment A, to clarify the process of replacing a permit adopted by rule with a general permit adopted by a department order.

Background and need for rulemaking

The rule change will continue to implement the Blue Ribbon Committee's recommendation in Senate Bill 45 (ORS 468B.050(2)) to adopt general permits by department order rather than by rule. This proposed revision will streamline the permitting process. It is necessary to include the provision in OAR 340-045 to clarify that DEQ has the authority to supersede rule authorized general permits with a subsequent permit adopted by department order.

Effects of rule

The revision to OAR 340-045-0033(1) clarifies that DEQ has the authority to terminate a general permit adopted by EQC rule when a general permit covering the same activity has been adopted by department order.

The revision to OAR 340-045-0033(5) is a housekeeping revision that updates the current notification practices.

The revision to OAR 340-045-0033(6) is a housekeeping revision that consolidates a list of permit coverage options under one paragraph.

The revision to OAR 340-045-0033(11) removes eight of the listed permits because they have expired and were replaced by a permit issued by department order.

Commission authority

The commission has authority to take this action under ORS 468.020, 468B.020 and 468B.035.

Stakeholder involvement

The Blue Ribbon Committee is a group whose members represent industrial and municipal wastewater dischargers, technical and engineering consultants and environmental and community interests from across the state. The Blue Ribbon Committee reviewed the fiscal impact statement prior to public notice of the proposed rule revision.

Public comment

DEQ held a public comment period Aug. 11, 2009 to Sept. 18, 2009, which included a public hearing in Portland. A summary of public comments and agency responses is included as attachment B

Key issues

One public comment suggested that the proposed language for OAR 340-045-0033(1) would create a burden on DEQ to anticipate and avoid all ambiguities and that a general permit may unintentionally be terminated. DEQ changed the final proposed rule to address this comment, and the full response is provided in attachment B.

Next steps

The proposed rule revisions would become effective upon filing with the Secretary of State. DEQ would implement this rule through the general permitting process, and no additional training or resources are required to implement the proposed revisions.

Attachments

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

Available upon request

1. Written comments received during the public comment period.

Approved:

Section: Christine M Svetkovich

Division: Neil Mullane

Report Prepared By: Beth Moore
Phone: (503) 229-6402

340-045-0033

General Permits

(1) General permits may be adopted by a rule of the Environmental Quality Commission or by order issued by the Director. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for termination of the earlier permit.

(2) General permits may be developed for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(3) General permits issued after the effective date of this rule will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.

(b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(4) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(5) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027 and 340-045-0035(3). If the general permit is to be adopted into rule, the Department will also follow ORS 183.325 to 183.410. In addition the Department will make ~~a~~ reasonable efforts to ~~mail notices of pending actions to~~

~~those persons known by the Department who are likely to be covered by the general permit~~notify potentially interested persons.

(6) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to subsection (3)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit, or a person makes an application for an individual permit pursuant to subsection (9) of this rule. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed. A person who fails to submit an application in accordance with the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(7) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(8) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern until such time as it is canceled or expires.

(9) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(10) The Director may refuse to authorize or renew coverage or may revoke existing coverage under a general permit as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

(a) The procedures for denial of a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.

(b) Any interested person may petition the Director to take action under this section.

(c) The grounds for requiring an individual permit include the following:

(A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;

(B) The permittee failed to comply or is not currently in compliance with the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;

(C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

(D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;

(E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

(F) Any other relevant factors.

(11) The following general permits are adopted by reference in this rule and available for review at the Department:

(a) NPDES 200-J, Filter backwash (issued August 29, 1997);

(b) NPDES 500-J, Boiler blowdown (issued August 29, 1997);

~~(c) WPCF 600, Offstream placer mining (issued April 9, 1997);~~

(~~d~~c) NPDES 700-PM, Suction dredges (issued July 5, 2005);

~~(e) WPCF 800, Confined animal feeding operations (issued August 8, 1990);~~

~~(f) NPDES 900-J, Seafood processing (issued June 7, 1999);~~

~~(g) WPCF 1000, Gravel mining (issued July 26, 2002);~~

(~~h~~d) NPDES 1200-A, Storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from sand, gravel & non-metallic quarrying and mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR ¦122.26(g); see permit for details. (issued July 26, 2002);

(~~i~~e) NPDES 1200-A, Storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from sand, gravel & non-metallic quarrying and mining in SIC 14, asphalt mix batch plants and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities

and materials to storm water pursuant to 40 CFR ¦122.26(g); see permit for details. (issued July 1, 2007);

(~~j~~f) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs one or more acres, and may discharge to surface waters or conveyance systems leading to surface waters. Also included are activities that will disturb less than one acre if such activities are part of a larger common plan of development that will disturb one or more acres over time (issued December 28, 2005)

(~~k~~g) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001);

(~~l~~h) NPDES 1200-COLS, Storm water runoff that may discharge to surface waters in the Columbia Slough watershed or conveyance systems leading to surface waters in the Columbia Slough watershed from industrial activities; see Sources Covered section of the permit for list of specific activities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR ¦122.26(g); see permit for details. (issued September,1, 2006);

(~~m~~i) NPDES 1200-Z, Storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from industrial activities; see Sources Covered section of permit for a specific list of activities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR ¦122.26(g); see permit for details. (issued July 26, 2002);

(~~n~~j) NPDES 1200-Z, Storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from industrial activities; see Sources Covered section of permit for a specific list of activities covered. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR ¦122.26(g); see permit for details. (issued July 1, 2007);

~~(o) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000);~~

~~(p) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000);~~

(~~q~~k) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000);

~~(r) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000);~~

(~~sl~~) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998);

~~(t) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998);~~

(~~um~~) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997).;

(~~vn~~) NPDES 01, Confined animal feeding operations (issued October 1, 2003).

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035
Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050
Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 13-2001, f. & cert. ef. 10-16-01; DEQ 8-2002, f. & cert. ef. 8-9-02; DEQ 14-2002, f. & cert. ef. 10-16-02; DEQ 12-2003, f. & cert. ef. 9-2-03; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2005, f. & cert. ef. 12-28-05; DEQ 10-2006, f. 8-15-06, cert. ef. 9-1-06

Summary of Public Comment and Agency Response

Title of Rulemaking: Streamlining Water Quality General Permit Adoption
Prepared by: Beth Moore **Date: September 21, 2009**

Comment period

The public comment period opened Aug. 11, 2009 and closed at 5 p.m. Sept.18, 2009. DEQ held a public hearing on Sept. 15, 2009 at 6 p.m. at the DEQ Portland Office 811 SW 6th Ave., in room EQC-A. One person attended the informational part of the hearing; no one provided comments at the hearing. DEQ received three written comments during the public comment period.

Organization of comments and responses

Summaries of individual comments and DEQ's responses are provided below. Those who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.

Summary of Comments and Agency Responses	
Comment 1	Keep the Confined Animal Feeding Operations (CAFO) general permit listed in the rule until all active permittees are transitioned to the CAFO general permit that was recently renewed and issued by department order on June 29, 2009. The Oregon Department of Agriculture (ODA) has renewed coverage for a majority of the permittees; however at this time it is anticipated that in December when this rulemaking goes before the EQC, there will still be active permittees assigned under the CAFO general permit that was issued by rule. Another option is to wait on the rule adoption.
Response	The CAFO general permit issued Oct. 1, 2003 will be retained in the rule under OAR 340-045-0033(11)(n) until the permittees are assigned to the new permit. ODA will continue to administer this process until all permittees are assigned to the DEQ/ODA department ordered permit.

Comment 2	The proposed change would allow DEQ to adopt a new permit without allowing the regulated community an opportunity to comment.
Response	OAR 340-045-0027 addresses the public notice and participation requirements for permitting actions. Specifically 340-045-0027(1)(c) and (2)(c)(C) provide for the public notice of a general permit. Under this part of the regulation, when a new or renewed general permit is proposed there is a minimum of 35 days for the public to provide written comment. If there is a public hearing scheduled, then this rule provides a minimum of 30 days notice of the date, time and location for the opportunity to provide oral comments. The public notice requirements in OAR 340-045-0027 are not changed by this rulemaking.

Comment 3	The proposed language in OAR 340-045-0033(1) places a burden on DEQ to

	anticipate and avoid ambiguities that might cause unintended terminations of existing general permits. It would be better and simpler for the rule to provide that an order adopting a general permit may terminate a general permit adopted by rule that covers the same activity. The following language was suggested: an order that adopts a general permit may terminate, under conditions specified in the order, a general permit adopted by rule that covers the same activities.
Response	In the proposed rulemaking, DEQ's suggested language for 340-045-0033(1) is as follows: General permits may be adopted by a rule of the Environmental Quality Commission or by order issued by the director. A permit adopted by rule will terminate when a permit covering the same activity is adopted by a subsequent order, unless the order expressly provides that the earlier permit remains effective. DEQ has the discretion to terminate, reassign or assign permittees to a particular group. DEQ needs to anticipate and address what existing permits might be affected when preparing to issue a permit by department order. The revised proposed language will incorporate the suggested change in 340-045-0033(1) as follows: General permits may be adopted by a rule of the Environmental Quality Commission or by order issued by the director. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for termination of the earlier permit.

List of those who commented and reference numbers

Reference number	Name	Organization	Address	Date on comments
1	William Matthews	Oregon Department of Agriculture	635 Capitol Street NE Salem OR 97301	9/1/2009
2	John Ledger	Association of Oregon Industries	1149 Court Street NE Salem, OR 97301-4030	9/18/2009
3	Michael R. Campbell	Stoel Rives LLP	900 S.W. Fifth Avenue, Suite 2600 Portland, OR 97204	9/18/2009

Attachment C
December 10-11, 2009 EQC meeting

State of Oregon
Department of Environmental Quality **Memorandum**

Presiding Officer's Report

Date: Sept. 18, 2009

To: Environmental Quality Commission

From: Beth Moore, General Permit Coordinator, Surface Water Management

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Streamlining water quality general permit adoption
Hearing Date and Time: Sept. 15, 2009 at 6 p.m.
Hearing Location: DEQ Office, 811 SW 6th Ave., Portland in room EQC-A

DEQ convened the information session for the rulemaking hearing on the proposal referenced above followed by the public hearing at 6 p.m. Before taking comments, the rulemaking proposal and procedures for the hearing were explained. People were asked to sign registration forms if they wished to present comments. People were also advised that the comment portion of the hearing would be recorded.

One person attended the information session; there was no oral comment provided. There were no written or oral comments received at the hearing. DEQ closed the public hearing at 6:30 p.m.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Streamlining Water Quality General Permit Adoption

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?

This rulemaking is in addition to the federal requirements because it clarifies the administrative process for adopting general permits by department order under Oregon's general permit program. The federal rule 40 CFR §123.25 *Requirements for permitting* requires that states have the legal authority to implement program provisions which includes a general permits program under 40 CFR §122.28 *General permits.*

The amendment to OAR 340-045-0033 will clarify the department has the authority to supersede general permits adopted by rule with permits subsequently adopted by department order. As a result, a general permit that was adopted by rule will no longer be in effect because it will be replaced by the general permit that was adopted by department order.

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).

The amendment is in addition to the applicable federal requirements because the federal requirements do not specifically address the administrative processes that are of concern in Oregon. The proposed amendments to OAR 340-045-0033 are the result of recommendations made in 2004 by the Blue Ribbon Committee convened by the department to work on permit program issues. The 2005 Oregon Legislature explicitly granted the authority to issue general permits by department order in Senate Bill 45 (Oregon Revised Statute 468B.050 (2)).

3. If the proposal differs from, or is in addition to, applicable federal requirements, did the Department consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

DEQ has two alternatives in place for adopting general permits: general permits can either be adopted by rule by the Environmental Quality Commission or by an order issued by the director. This rulemaking provides further clarifications on the administrative process for adopting general permits by department order. A general permit adopted by rule will be superseded when it is subsequently adopted by a department order.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

The amendment to Oregon Administrative Rule 340-045-0033 as proposed, allows NPDES and WPCF General Permits that were adopted by rule to be superseded by general permits adopted by department order.

Title of Proposed Rulemaking	Streamlining Water Quality General Permit Adoption
Statutory Authority or other Legal Authority	Oregon Revised Statutes 468.020, 468B.020 & 468B.035
Statutes Implemented	Oregon Revised Statutes 468.065, 468B.015, 468B.035 & 468B.050
Need for the Rule(s)	This rulemaking will amend Oregon Administrative Rule (OAR 340-045-0033) to implement that portion of Senate Bill 45 which includes the Blue Ribbon Committee recommendation to adopt general permits by department order rather than the more resource-intensive Environmental Quality Commission (EQC) rulemaking process. Under State Law (ORS 468B.050(2)) a general permit may be issued by department order or by the EQC adoption of a rule. It is necessary to adopt this provision in Oregon Administrative Rule 340-045-0033 to clarify that general permits that have been adopted by rule will be superseded when they are subsequently re-issued by department order. The department will provide better service to the regulated community and affected stakeholders by reducing the time associated with developing new and renewed general permits.
Documents Relied Upon for Rulemaking	Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program. (August 10, 2004) Water Quality General Permit Program Rule Amendments (August 31, 2001) DEQ's water quality permit database US Census Bureau Economic Census Oregon: 2002 Manufacturing (Issued September 2005) Oregon Revised Statutes 468B.050(2).
Requests for Other Options	**Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.**
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	The proposed amendment to Oregon Administrative Rule OAR 340-045-0033 establishes that general permits adopted by the EQC by rule will be superseded with the general permits subsequently adopted by department order. The department will provide better service to the regulated community and stakeholders because the time associated with issuing general permits will be reduced. The savings will contribute to reducing the backlog of the nine expired general permits. The administrative time it takes to process a typical general permit will be shortened by about 3 months with an associated savings of approximately $30,000 per permit. The general permit rules apply to individuals, small businesses or communities who are

	required to obtain general permits; however, the department is proposing to clarify the administrative process for issuing permits and not the specific permit or permit requirements themselves. There will not be any changes in costs, additional fees, or additional costs associated with this rulemaking.	
Impacts on the General Public	There will be no changes in cost or additional fees associated with proposed rulemaking that will be passed on to the general public.	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	There is no change in fees or additional fees or costs for a general permit. There is no change in the cost of compliance with a general permit or obligation associated with the proposed rulemaking.	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	There are roughly 3600 general permits assigned to businesses and approximately 75% of these general permits are assigned to small businesses.
	b) Types of businesses and industries with small businesses subject to the proposed rule	These are small businesses such as, seafood processors, food processors, wineries, fish hatcheries, dairies, manufacturers that have some form of cooling water or boiler blowdown, wood product manufacturers with log ponds, businesses that wash vehicles, pressure washing operations, recreational facilities with pools or suppliers of drinking water that have filter backwash, storm water runoff from construction or industrial sites, and small petroleum hydrocarbon clean up operations.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	The proposed rule amendment does not require additional reporting, recordkeeping or administrative requirements.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	The proposed rule amendment does not require additional equipment, supplies, labor or additional administrative requirements.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	The proposal to adopt general permits by department order rather than through the rulemaking process was recommended by the Blue Ribbon Committee. Members of the committee include representatives of small businesses, such as, Oregon Associated Industries, Northwest Food Processors Association, and Oregon Building Industry Association.
Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))	There are roughly 3600 general permits assigned to businesses. There are approximately 25% of these general permits assigned to large businesses. There will be no change in cost or additional fees associated with the proposed rulemaking for general permits.	
Impacts on Local Government	There are roughly 350 general permits assigned to local governments. There are agreements with local governments who act as agents for the department in administering the stormwater general permits. There will be no changes in cost or additional fees associated with the proposed rulemaking for general permits.	
Impacts on State Agencies other than DEQ	There are roughly 74 general permits assigned to state agencies approximately 36% of these general permits are assigned to state agencies other than the department. The department has an agreement with the Department of Agriculture to administer the Confined Animal Feeding Operation general permit #01. The department has an agreement with the Department of Geology and Mineral Industries to administer the stormwater general permit and	

<table>
<tr><td></td><td>water pollution control permit general permit for gravel mining. There will be no changes in cost or additional fees associated with the proposed rulemaking for other agencies.</td></tr>
<tr><td>Impacts on DEQ</td><td>The proposed rule making does not require additional actions on the part of DEQ. The time associated with issuing general permits will be reduced. The estimated time savings for a typical general permit is 3 months and the savings associated with that is about $30,000.

<table>
<tr><td colspan="2">Breakdown of estimated savings for 3 months</td></tr>
<tr><td>Fund Type</td><td>Dollars</td></tr>
<tr><td>Personal Service</td><td>20,522</td></tr>
<tr><td>Other Supplies &Service</td><td>3,250</td></tr>
<tr><td>General Fund and Government Transfer</td><td>4,105</td></tr>
<tr><td></td><td></td></tr>
<tr><td>Grand Total</td><td>27,877</td></tr>
</table>

General permits that were adopted by rulemaking required an additional workload which was met through reallocation and reprioritization of existing staff time. The adoption of general permits though a department order is less resource intensive. The DEQ will not be adding additional personnel, receiving additional revenue or increasing expenditures or raising fees to implement the proposed rule making for general permits. The time savings will be used to reduce the backlog in the expired general permits.</td></tr>
<tr><td>Assumptions</td><td>The amendment establishes the administrative process for the adoption of general permits and contains a couple of general housekeeping corrections. The proposed rule revision is not affecting a specific permit or permit requirements themselves. There will not be any changes or additional fees, costs or requirements associated with this proposed rulemaking. What is in place now will not be changed by the proposed rulemaking.</td></tr>
<tr><td>Housing Costs</td><td>The department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.</td></tr>
<tr><td>Administrative Rule Advisory Committee</td><td>In 2002 the department convened a Blue Ribbon Committee to recommend improvements to the state's wastewater permitting program. The Blue Ribbon Committee members represent industrial and municipal wastewater dischargers, technical/engineering consultants, and environmental and community interests from across the state. The Blue Ribbon Committee recommended that the department adopt general permits by department order rather than the more resource-intensive rulemaking process (Report on Key Enhancements to the Oregon Wastewater Permitting Program, August 10, 2004). The Blue Ribbon Committee has reviewed this fiscal impact statement.</td></tr>
</table>

Beth Moore	Beth Moore	6 Aug 2009
Prepared by	Printed name	Date
[signature]	Jim Roys	8/6/09
Approved by DEQ Budget Office	Printed name	Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Use Evaluation Statement

Rulemaking Proposal

for
OAR 340-045-0033

Streamlining Water Quality General Permit Adoption

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1. Explain the purpose of the proposed rules.

The proposed rule amendment explains that general permits adopted by rule in OAR 340-045-0033 may be superseded by the general permits adopted by department order. Adopting permits by department order is a process improvement that was recommended in 2004 by the Blue Ribbon Committee, which is a group that was convened to assist in recommending improvements to permit processes. In the 2005 legislative session Senate Bill 45 (ORS 468B.050(2)) gave the department the authority to adopt permits by department order.

There are 22 NPDES and WPCF general permits that were adopted by rule in OAR 340-045 that cover discharges such as stormwater, washwater, suction dredges and seafood processing. Nine of the permits that are listed there will be removed from OAR 340-045 because they expired and have been superseded by a new permit. The remaining permits may be superseded in the future with a permit adopted by department order. There are also minor amendments to clarify wording in parts of the rule.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No__

a. If yes, identify existing program/rule/activity:

The following water quality permit programs are identified under OAR 340-018-0030(5)(e) as DEQ programs and actions determined to have significant effects on land use: National Pollutant Discharge Elimination System permits issued pursuant to federal and state

regulations and Water Pollution Control Facilities permits issued pursuant to state regulations.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X **No___ (if no, explain):**

A land use compatibility statement signed by the local land use authority is required from the applicant prior to authorizing discharges under a National Pollutant Discharge Elimination System Permit or Water Pollution Control Facilities.

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.

Not applicable.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not Applicable.

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item H, rule adoption: Onsite program fee increase
December 10-11, 2009 EQC meeting

Why this is important

This proposed rulemaking increases fee revenue for administering the Department of Environmental Quality's Onsite Wastewater Management Program.

DEQ recommendation and EQC motion

DEQ recommends that the Environmental Quality Commission adopt proposed rule amendments to Oregon Administrative Rules 340-071-0140(2), (3), (5) and (6) to increase the onsite program's fees, as presented in attachment A2.

Background and need for rulemaking

DEQ regulates siting and installation of onsite septic systems, and administers the program in 14 direct-service counties. The remaining 22 counties in Oregon administer the program under contract with DEQ.

The purpose of the program is to ensure that septic systems are sited, designed, constructed, operated and maintained in a manner that restores and maintains the quality of public waters and that is protective of public health of Oregonians.

The program is reliant solely on fees, which have remained the same since 1999. Costs to operate the program have increased by over 40 percent during that time and DEQ expects these costs to rise. This proposed fee increase takes into account rising costs through 2015.

Effect of rule

If adopted, DEQ will implement amendments specific to fee tables 9B and 9C in two phases to lessen the impact of the fee increase by spreading it out over a two-year period. Approximately half of the total fee increase in tables 9B and 9C will be effective January 4, 2010 through January 2, 2011 and the remaining half of the total fee increase will be effective January 3, 2011. This is reflected by two 9B tables and two 9C tables in the proposed rule amendments. DEQ will remove the duplicate tables through a future rulemaking after they expire, leaving one table 9B and one table 9C.

Most fees will increase by 60 percent; however, some fees will decrease, remain the same or increase by smaller amounts. DEQ will create a new fee category for construction-installation permits to better align those fees with the work required to process those permits.

Commission authority

The commission has authority to take this action under ORS 454.745.

Stakeholder involvement

DEQ worked with stakeholders through the Oregon Onsite Wastewater Association prior to receiving legislative approval in the 2009 session. As part of the rulewriting process, DEQ convened an external advisory committee to discuss the onsite program's reliance on fees for service and to make recommendations for the future direction of the program. The committee supported the fee increase, with the understanding that DEQ will reevaluate the fees once alternative funding sources are implemented or in 2015, whichever comes first.

DEQ met with the Technical Review Committee, an ongoing external committee of onsite wastewater treatment experts provided for in OAR 340-071-0115, to discuss the fee increases, and the committee supported the fee increase with two provisions. The committee asked DEQ to evaluate how to make the program more efficient than it currently is and asked DEQ to consider a strategy where fees can be raised in smaller increments as program costs rise, rather than one large fee increase after a number of years of cost increases. One of the functions of the external advisory committee was to aid DEQ in focusing the program on best implementation strategies for DEQ's mission to be an active leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Public comment

DEQ held a public comment period Aug. 21, 2009, to Oct. 9, 2009, and convened public hearings in Astoria, Baker City, Burns, Grants Pass, North Bend and Pendleton. Attachment B is a summary of the public comments received and DEQ's responses to those comments.

Key issues

DEQ faces three major issues for the onsite program and consideration of fee increases. Program costs have increased over 40 percent during the last 11 years while fees have remained constant. The program is dependent on fees for service. Timing of the increase is unfortunate, with the southwestern part of the state particularly stressed by economic downturns in the housing sector. Onsite system customers in this region may have more difficulty paying for the program's services. DEQ will try to accommodate the public by considering credit cards as a method of payment, and has an interest in developing e-permitting.

Next steps

If approved, DEQ will update its fee tables and website to reflect the changes. Staff will inform interested persons of the proposed changes to the fees through a mass mailing, news release, the Oregon Onsite Wastewater Association newsletter, and DEQ's online subscription service and program website.

Attachments

A. Proposed rule revisions
   1. Summary of rule revisions
   2. Proposed rule revisions
B. Summary of public comments and DEQ responses
C. Advisory committee membership and any written recommendation

D. Presiding Officer's reports on public hearings
E. Relationship to federal requirements questions
F. Statement of need and fiscal and economic impact
G. Land use evaluation statement
H. DEQ and contract county fee comparison

Available upon request

I. Written comments received
J. Oral testimony provided

Approved:

Section: Michael E. Kucinski

Division: Neil Mullane

Report prepared by: Randy Trox
Phone: (541) 687-7338

Summary of Proposed Rule Revisions

Onsite Program Fee Increase

Environmental Quality Commission Meeting

December 10 and 11, 2009

Initial fee increase proposal:
DEQ initially proposed to increase all permit-related fees by 60 percent except for hardship renewals and repair permits for single family dwellings. Those fees were proposed to be increased by 40 percent and 55 percent, respectively. The fee increase was proposed to take effect on Jan. 4, 2010.

Current Proposal after Public Comment Period:
In response to the comments received about the initial proposal, DEQ has made the following changes to the proposal:

1. **Do not increase hardship renewal fees.**
   These fees are proposed to remain at their current amount because they would have a minor effect on the program's budget and these applicants are often the least able to afford the fees.

2. **Decrease reinspection fees by 43 percent effective Jan. 4, 2010.**
   This fee is proposed to be reduced from the current amount of $235 to $100 because the intent is to provide an additional incentive to the property owner to make sure construction deficiencies are promptly corrected. Most inspectors have found that even the current fee of $235 is too punitive and because the fee is assessed at the inspector's discretion, it is rarely used. A lower fee will allow the inspector to better assess this fee as it is intended.

3. **Increase annual report evaluation fees by 20 percent effective Jan. 3, 2011**
   Most fees have not been increased in over 11 years. The annual report evaluation fee categories were created in 2005 so the need for the increase is less than the 60 percent initially proposed. Service providers will also need additional time to adjust their service contracts to reflect the increase.

4. **Increase the following fees by 60 percent effective Jan. 4, 2010:**
   - Site evaluation
   - Site evaluation report review
   - Existing system evaluation report
   - Permit denial review
   - Authorization notice denial review
   - Variance from onsite system rules
   - Innovative or alternative technology review
   - Material plan review

   Site evaluations often result in multiple visits to the property, particularly if a suitable site cannot be found on the first visit. This can lead to excessive costs for DEQ, especially if the site is a long distance from the office.

Reviews and variances are time intensive and carry potential long-term costs due to a potential appeal or contested case, depending on the outcome.

Existing system evaluation report applications are rarely submitted, primarily because private consultants are also able to do this work.

Innovative or alternative technology reviews and material plan reviews are time intensive as there is typically a lot of correspondence between DEQ and the manufacturer. Most manufacturers are willing to pay a higher fee if it means that progress will be made on their application.

For these reasons we are proposing to maintain the 60 percent fee increase as proposed.

5. **Create an additional fee category for the following construction-installation permits:**
   - Alternative treatment technology systems
   - Capping fill systems
   - Pressurized distribution systems
   - Tile dewatering systems

   Permit fees can generally be placed into three categories depending on the number of inspections that would be typically required. Standard and similar systems typically require one inspection, Alternative treatment technologies and similar systems typically require two inspections and recirculating gravel filter and similar systems typically require three or more inspections. The new fee category will better align the fee with the amount of work required.

6. **Increase fees in tables 9B and 9C that are not listed above in two phases, the first to take place on Jan. 4, 2010 and the second to take place on Jan. 3, 2011.**
   These fees will be increase by approximately half of the proposed fee increase on Jan. 4, 2010 and then again by remaining half of the proposed fee on Jan. 3, 2011. For example, a construction-installation permit for a standard system with a design flow of 450 gallons per day is currently $630. On Jan. 4, 2010 it will increase to $819. On Jan. 3, 2011 it will increase again to $1,008.

   See tables below for additional detail:

Table 9B: Permitting fees for systems not subject to WPCF permits. Effective January 4, 2010 to January 2, 2011							
		Gray water waste disposal sumps	Holding tanks	Standard subsurface, Absorption trenches in saprolite, Evapotranspiration-absorption, Redundant, Seepage trench, Steep slope	Alternative treatment technologies, Capping fill, Pressurized distribution, Tile dewatering	Recirculating gravel filter, Sand filter (commercial or residential),	Plan Review fees for commercial facility systems.
Construction-Installation Permit fees.							
For systems with a design capacity of less than 600 gpd		~~$280~~ $364	~~$540~~ $702	~~$630~~ $819	~~$950~~ $1,027	~~$950~~ $1,235	$0
For systems with a design capacity of 600 gpd but not more than 1,000 gpd		~~$280~~ $364	~~$540~~ $702	~~$630~~ $819	~~$950~~ $1,027	~~$950~~ $1,235	~~$230~~ $299
For systems with a design capacity of 1,001-1,500 gpd		~~$340~~ $442	~~$600~~ $780	~~$690~~ $897	~~$1,010~~ $1,105	~~$1,010~~ $1,313	~~$270~~ $351
For systems with a design capacity of 1,501-2,000 gpd		~~$400~~ $520	~~$660~~ $858	~~$750~~ $975	~~$1,070~~ $1,183	~~$1,070~~ $1,391	~~$310~~ $403
For systems with a design capacity of 2,001-2,500 gpd		~~$460~~ $598	~~$720~~ $936	~~$810~~ $1,053	~~$1,130~~ $1,261	~~$1,130~~ $1,469	~~$350~~ $455
Reinspection fee	~~$235~~ $100						
Pump Evaluation fee. For all permits that specify the use of a pump or dosing siphon except for sand filter, Alternative treatment technologies, Recirculating gravel filter, and pressurized distribution systems	~~$40~~ $52						

Table 9B: Permitting fees for systems not subject to WPCF permits. Effective January 3, 2011							
		Gray water waste disposal sumps	Holding tanks	Standard subsurface, Absorption trenches in saprolite, Evapotranspiration-absorption, Redundant, Seepage trench, Steep slope	Alternative treatment technologies, Capping fill, Pressurized distribution, Tile dewatering	Recirculating gravel filter, Sand filter (commercial or residential),	Plan Review fees for commercial facility systems.
Construction-Installation Permit fees.							
For systems with a design capacity of less than 600 gpd		~~$280~~ $448	~~$540~~ $864	~~$630~~ $1,008	~~$950~~ $1,235	~~$950~~ $1,520	$0
For systems with a design capacity of 600 gpd but not more than 1,000 gpd		~~$280~~ $448	~~$540~~ $864	~~$630~~ $1,008	~~$950~~ $1,235	~~$950~~ $1,520	~~$230~~ $368
For systems with a design capacity of 1,001-1,500 gpd		~~$340~~ $544	~~$600~~ $960	~~$690~~ $1,104	~~$1,010~~ $1,313	~~$1,010~~ $1,660	~~$270~~ $432
For systems with a design capacity of 1,501-2,000 gpd		~~$400~~ $640	~~$660~~ $1,056	~~$750~~ $1,200	~~$1,070~~ $1,391	~~$1,070~~ $1,712	~~$310~~ $496
For systems with a design capacity of 2,001-2,500 gpd		~~$460~~ $736	~~$720~~ $1,152	~~$810~~ $1,296	~~$1,130~~ $1,469	~~$1,130~~ $1,808	~~$350~~ $560
Reinspection fee	~~$235~~ $100						
Pump Evaluation fee. For all permits that specify the use of a pump or dosing siphon except for sand filter, Alternative treatment technologies, Recirculating gravel filter, and pressurized distribution systems	~~$40~~ $64						

Table 9C: Other permitting fees for systems not subject to WPCF permits. Effective January 4, 2010 to January 2, 2011			
		Field Visit required	No Field Visit required
Minor Alteration Permit	~~$165~~ $215		
Major Alteration Permit	~~$245~~ $449		
Minor Repair Permit - Single Family Dwelling	~~$165~~ $215		
Major Repair Permit - Single Family Dwelling	~~$345~~ $449		
Minor Repair Permit - Commercial Facility	~~$290~~ $377		
Major Repair Permit - Commercial Facility	~~$630~~ $819 or the applicable fee in Table 9B, whichever is lower.		
Permit Denial Review	~~$220~~ $352		
Permit Transfer, Reinstatement, or Renewal		~~$325~~ $423	~~$95~~ $124
Authorization Notice		~~$390~~ $507	~~$100~~ $130
Authorization Notice Denial Review	~~$400~~ $640		
Renewal of hardship authorization for temporary dwelling		$330	$100
Alternative system inspection - Holding tanks	~~$240~~ $312		
Alternative system inspection - Other alternative systems listed in Table 9B	~~$330~~ $429		
Annual report evaluation - Holding tanks	$25		
Annual report evaluation - Commercial sand filters, recirculating gravel filters, and alternative treatment technology	$50		
Variance from onsite system rules	~~$1,500~~ $2,080		

Table 9C: Other permitting fees for systems not subject to WPCF permits. Effective January 3, 2011			
		Field Visit required	No Field Visit required
Minor Alteration Permit	~~$165~~ $264		
Major Alteration Permit	~~$345~~ $552		
Minor Repair Permit - Single Family Dwelling	~~$165~~ $256		
Major Repair Permit - Single Family Dwelling	~~$345~~ $535		
Minor Repair Permit - Commercial Facility	~~$290~~ $464		
Major Repair Permit - Commercial Facility	~~$630~~ $1,008 or the applicable fee in Table 9B, whichever is lower.		
Permit Denial Review	~~$220~~ $352		
Permit Transfer, Reinstatement, or Renewal		~~$325~~ $520	~~$95~~ $152
Authorization Notice		~~$390~~ $624	~~$100~~ $160
Authorization Notice Denial Review	~~$400~~ $640		
Renewal of hardship authorization for temporary dwelling		$330	$100
Alternative system inspection - Holding tanks	~~$240~~ $384		
Alternative system inspection - Other alternative systems listed in Table 9B	~~$330~~ $528		
Annual report evaluation - Holding tanks	~~$25~~ $30		
Annual report evaluation - Commercial sand filters, recirculating gravel filters, and alternative treatment technology	~~$50~~ $60		
Variance from onsite system rules	~~$1,500~~ $2,080		

340-071-0140: Onsite System Fee Schedule

Table 9A: Site evaluation and existing system evaluation fees.	
New Site Evaluation fees. Fees in this section apply to each system for which site suitability is evaluated.	
Single family dwelling - First lot	~~$425~~ $680
Single family dwelling - Each additional lot evaluated during initial visit	~~$425~~ $680
Commercial facility with a design capacity of 1,000 gpd or less	~~$425~~ $680
Commercial facility with a design capacity of 1,001-1,500 gpd	~~$535~~ $856
Commercial facility with a design capacity of 1,501-2,000 gpd	~~$645~~ $1,032
Commercial facility with a design capacity of 2,001-2,500 gpd	~~$755~~ $1,208
Commercial facility s with a design capacity of 2,501-3,000 gpd	~~$865~~ $1,384
Commercial facility with a design capacity of 3,001-3,500 gpd	~~$975~~ $1,560
Commercial facility with a design capacity of 3,501-4,000 gpd	~~$1,085~~ $1,736
Commercial facility with a design capacity of 4,001-4,500 gpd	~~$1,195~~ $1.912
Commercial facility with a design capacity of 4,501-5,000 gpd	~~$1,305~~ $2,088
Commercial facility with a design flow greater than 5,000 gpd	~~$1,440~~ $2,304
Site Evaluation Report Review fee	~~$400~~ $640
Existing System Evaluation Report fee	~~$400~~ $640

Table 9B: Permitting fees for systems not subject to WPCF permits. Effective January 4, 2010 to January 2, 2011							
		Gray water waste disposal sumps	Holding tanks	Standard subsurface, Absorption trenches in saprolite, Evapotranspiration-absorption, Redundant, Seepage trench, Steep slope	Alternative treatment technologies, Capping fill, Pressurized distribution, Tile dewatering	Recirculating gravel filter, Sand filter (commercial or residential),	Plan Review fees for commercial facility systems.
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Pump Evaluation fee. For all permits that specify the use of a pump or dosing siphon except for sand filter, Alternative treatment technologies, Recirculating gravel filter, and pressurized distribution systems	~~$40~~ $52						

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Alternative system inspection - Other alternative systems listed in Table 9B	~~$330~~ $528		
Annual report evaluation - Holding tanks	~~$25~~ $30		
Annual report evaluation - Commercial sand filters, recirculating gravel filters, and alternative treatment technology	~~$50~~ $60		
Variance from onsite system rules	~~$1,300~~ $2,080		

Table 9D: WPCF permit fees.						
		Application filing fee (all systems)	Permit processing fees for onsite systems with a design capacity of 1,200 gpd or less.	Permit processing fees for onsite systems with a design capacity over 1,200 gpd:	Plan Review fee.	Annual Compliance Determination fee.
New application		$65	$518	$2,592		
Permit renewal (involving request for effluent limit modifications)		$65	$259	$1,296		
Permit renewal (without request for effluent limit modifications)		$65	$130	$648		
Permit modification (involving increase in effluent limitations)		$65	$259	$1,296		
Permit modification (not involving an increase in effluent limits)		$65	$194	$648		
For commercial facilities with a design capacity less than 600 gpd					$0	
For commercial facilities with a design capacity of 600 - 1,000 gpd					$248	
For commercial facilities with a design capacity of 1,001 - 1,500 gpd					$292	
For commercial facilities with a design capacity of 1,501 - 2,000 gpd					$335	
For commercial facilities with a design capacity of 2,001 - 2,500 gpd					$378	
For commercial facilities with a design capacity of 2,501 - 3,000 gpd					$443	
For commercial facilities with a design capacity of 3,001 - 3,500 gpd					$486	
For commercial facilities with a design capacity of 3,501 - 4,000 gpd					$529	
For commercial facilities with a design capacity of 4,001 - 4,500 gpd					$572	
For commercial facilities with a design capacity of 4,501 - 5,000 gpd					$616	
Commercial facilities with a design capacity greater than 5,000 gpd					$648	
Single family dwelling					$130	
Onsite sewage lagoon with no discharge						$778
Treatment Standard 1 or better systems with design capacities less than 2,500 gpd						$324
Treatment Standard 1 or better systems with design capacities of 2,501 - 20,000 gpd						$648
Holding tanks, if owners do not comply with subparagraph (vi) of this section						$259
Holding tanks, if by the date specified by the department, the owner submits written certification to the department that the holding tank has been operated the previous calendar year in full compliance with the permit and that the previous year's service						$27
Other systems with design capacities less than 20,000 gpd						$324
Other systems with design capacities greater than 20,000 gpd						$648
Site Evaluation Confirmation	$420					

Table 9E: Sewage Disposal Service License and Truck Inspection fees.	
New 3-year business license	$355 per year
Renewal of business license	$320 per year
Transfer of or amendments to license	$200
Reinstatement of suspended license	$250
Pumper truck inspections - First vehicle, each inspection	$100
Pumper truck inspections - Each additional vehicle, each inspection	$50

Table 9F: Other Fees	
Innovative or Alternative Technology or Material Review	~~$1,000~~ $1,600
Material Plan Review	~~$300~~ $480
Department surcharge.	$60

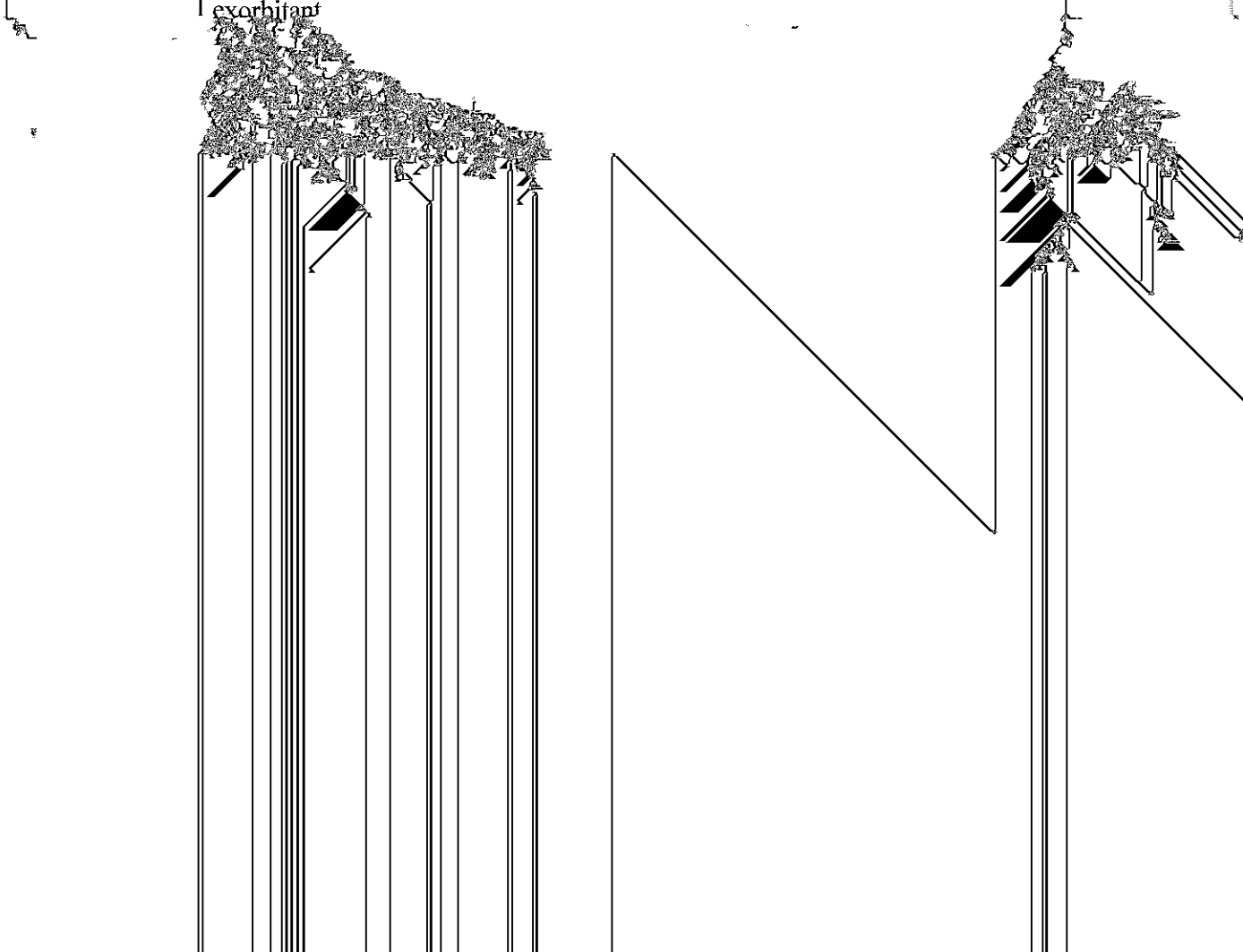
	New construction-based fee increases and authorization notice fee increases makes sense and should have occurred three years ago. Also reconsider ATT reporting fees: contracts are in place and service providers do all the work so this will be difficult for everyone.

Comment 13 ***Commenter M***	The unemployment rate is now at 15 percent how can the DEQ even think about raising the fees to 40 or 60 percent. Please, the DEQ could raise it a little each year not all at once.

Comment 14 ***Commenter N***	60 percent is too much when our unemployment is 16 percent. Maybe a modest 3 percent.

Comment 15 ***Commenter O***	Understands DEQ's position and have no strong objections as long as the level of service and convenience (keeping Warrenton office intact) stays the same. Servicing rural areas is expensive and sees the need from that standpoint.

Comment 16 ***Commenter P***	I am not opposed to the 60 percent fee increase for the siting, construction, and inspection of septic tanks IF we're talking only about new ones, not the inspection of existing systems. I understand that this fee increase will take into account rising costs through 2015. If not, then I think the fee increase is exorbitant



	Dissatisfied with the State at this time with the way the revenue, what little they have, currently is run; it put us all in a hard situation. A solution needs to start at the top. People need to start looking at what is or isn't cost effective. This is a cost inefficient program over on the east side, it better be looked at and brought back into focus and it should be said that locally they can do the job. DEQ has to do certain things by law. That isn't in the game anymore. You have to do what you can do with the revenue streams you are provided, and you can't have the encumbrances of a bunch of ridiculous regulations that doesn't suit the purpose.
Comment 19 ***Commenter R***	Harney County opposes fee increase and would like DEQ to either find an alternative to a fee increase or consider contracting with Lake County to provide onsite services in both Lake County and Harney County.

Comment 20 ***Commenter R***	It is difficult to both convince and discuss with both customers and contactors that what they are paying for is valuable. Now with the budget reductions about half of the final inspections are being performed and with this in mind, it makes it extremely difficult having to explain what the customers are paying DEQ for. It is going to be really hard to then explain to them, that with a 60 percent fee increase, all the inspections will be done. Can't make that connection. There is a disconnect between the permitting process, separate process with site evaluations and permits. Understands that the site evaluation sometimes is done years before the permit and system is installed. However, the process needs to be streamlined so there aren't nine different steps in the overall development process which in turn would be more cost effective.

Comment 21 ***Commenter S***	Reconsider repair permit fees. If there is a site evaluation in the file there is a designated repair already set aside so there shouldn't be much required. With the bad economy, the cost of the repair and the permit is difficult for people to afford. This will encourage unpermitted systems to be installed and endanger our groundwater and surface waters. Maybe DEQ can collect fines from onsite violations and use that money in the program instead of sending them to the general fund. Also, applicants cannot pay with a credit card, perhaps accepting credit cards will make it easier to pay for permits.

Comment 22 ***Commenter T***	Home Builders Association of Josephine County expresses concern over the level of the proposed fee increase. Most of our local jurisdictions have recognized the impact of increasing fees and are doing their part to try and

	help jumpstart our industry. For example, our local building departments have lowered their permit fees. When necessary, fee increases are always more easily absorbed by any industry when applied incrementally. Once construction recovers, such a large increase may not be as necessary since fees will actually be collected and accumulating. We are sympathetic to the fact that DEQ has not raised fees in more than a decade, but feel that this increase is too large at a critical time.

Comment 23 Commenter U	Proposed fee increase will further discourage development in our community and will encourage non-compliance. The proposed fee increase is a redundant fee to pay for DEQ staff in which Counties have already employed. Lake County along with Harney County has proposed to Mike Kucinski to assume or contract the DEQ services at the Lake County office in Lakeview. Based on Lake County's fees that are similar, based on the inspections and time involved, the DEQ fee increase is not necessary. Given the overall cost of development in Lake and Harney Counties, the cost of permits is getting close to the cost of the land being developed. With the Governor's objective to streamline process in Oregon in order to encourage development in the State, this is an opportunity to do exactly that. Increase in fee for a state agency that only services in effect 14 counties is a broken wheel and would be more effective if the counties took on the program themselves.
Comment 24 Commenter U	Lake County opposes fee increase and would like DEQ to either find an alternative to a fee increase or consider contracting with Lake County to provide onsite services in both Lake County and Harney County.

Comment 25 Commenter V	Please, no fee increases in this struggling industry!!

Comment 26 Commenter W	I have been part of the onsite program for the past 18 years as a County Agent, installer, consultant, maintenance provider and equipment supplier. The fact that these increases only affect a few counties served directly by DEQ staff is misleading. With these increases, counties will see the opportunity to raise their fees. I would understand if the fee increases of 60 percent were to establish new programs that would bring the program back into the forefront of onsite technologies but that is apparently not the case.

	Some of the proposed increases are simply unfair. For example, the fee to hold a file for an ATT system was set at $50. ATT service providers were instructed to collect this annual fee. This amount has been enshrined in contracts and should not be changed. There is no increased cost to hold those files so what can justify raising the fee? I believe increases in the cost of variance applications are justified and support that increase because the amount of effort is much greater than reflected in the current fee.

Comment 27 ***Commenter X***	The DEQ doesn't realize SQUAT! You're the problem! GET OUT OF OUR BUSINESS AND STAY OUT! We need LESS government, and that means YOU!

Comment 28 ***Commenter Y***	Fees are getting to be over half the material cost of systems. Really has had a hard time, and is going to have an even a harder time telling people what the fees are in relation for what their new system will cost. Feels the fee increase will either discourage individuals from installing a system, from having me install systems, or cause more individuals to put their own systems in, which might not be the best of systems to be put in, and more illegal systems will go in. There is a need for DEQ to monitor what goes on in the State, not necessarily a need for the DEQ to be inspecting systems in Lake County and Harney County and some of the other counties. The contract counties, those with larger populations, they're not paying the DEQ. The rural counties are the ones paying the bill to keep DEQ staff going. Rate Increase of 60 percent at this time, especially with the economy as it is with no houses being built or no one moving to Oregon or into Lake County is just a little too much of an increase. Some increase would be fine, but a 60 percent increase at this time is outrageous. I can't increase the cost of my systems 60 percent; as then I wouldn't be putting any systems in. I think DEQ needs to do a better job of announcing these hearings too.

Comment 29 ***Commenter Z***	The fee increase will stymie growth. Half installations done in Christmas Valley are on properties that someone bought and someday later someone will build and will move onto them.

	Individuals have installed septic systems without planning on building homes because it's been inexpensive, but if the fees increase this will stop them from putting systems in. Fees collected in Lake County will go down if fees are increased because individuals will not pay the higher fee and will choose to put illegal systems in.

DEQ Response	The proposed rulemaking is solely to increase fees and as such the nature of the comments received relate to the need and the amount of the fee increase. DEQ received six oral comments in the Burns public hearing and 24 written comments during the public comment period. Many commenters were concerned about the timing of the fee increase due to the economy, the amount of the fee increase (60 percent at once instead of gradual increases over time), and the program should seek to become more efficient instead of simply raising fees. A few commenters expressed concern that this proposed fee increase will further result in illegal installations of septic systems. A few commenters supported some or all of the fee increases proposed. **Why now?** The timing of the fee increase was a concern that ten of commenters had. The Onsite Program is 100 percent fee supported and the fees are intended to not only cover the services rendered, but also work that is critical to the program on the local level. That 'unfunded' work is most importantly protecting public health and the environment. This is primarily responding to sewage complaints and enforcement actions to prevent sewage from discharging to the ground surface, contaminating groundwater, drinking water wells or surface water bodies. **Can DEQ be more efficient instead of raising fees?** Currently there are 3.1 FTE to cover the 14 DEQ-operated onsite counties. These counties are not all contiguous and the sites often require extensive travel. There are rules and statutes that require certain applications be responded to in a timely manner. These applications require that DEQ have staff to respond to those applications. Even with that minimal staffing level the revenues currently are not covering the costs. There is 0.2 FTE available for enforcement so complaints and violations are unable to be responded to. Failing to raise fees will hamper the program from fulfilling minimum requirements. The fee increase was not due to the economy but that did accelerate some of the challenges we are currently facing. **Increased fees will result in a decrease in overall development?** Ten commenters stated that they felt the increased fees will further reduce the development of property and exacerbate the housing slump. This scene is playing out in permitting agencies throughout the state and country. Fees need to cover the cost of the work that needs to be done. Developers yield most of the benefits of property development so over the years the cost of permits, is

	paid by the developer. This may impact the overall cost of development and in conjunction with other costs make developing property more difficult. There were efficiencies in the busy cycle of the program that were lost in the economic downturn. When there were more applications coming in the travel time costs were borne by more applications, for example, an agent may visit three sites in close proximity to one another instead of one, as often is the case now. The housing market is currently very slow after a brisk period and many development projects throughout the state have stalled or stopped, regardless of the fees. It is also important to note that DEQ's fees are currently below many contract county fees and when the economy was bustling those fees did not deter development. There is also no evidence to support the notion that DEQ had more applications than counties with higher fees. Typically, DEQ runs the local onsite program in areas of development that require more travel time than many contract counties. This increases the costs of service. Because it's a state program, a county that has an onsite program under contract may elect to return the program to the state for any reason, as Jackson County did earlier this year. **Why hasn't DEQ gradually increased fees over time instead of a drastic fee increase?** Seven commenters stated a preference to DEQ implementing gradual fee increases over time rather than infrequent sharp increases. The Onsite Program is a small program and has a small budget. The process of increasing fees costs money, as doing so requires not only seeking Legislative approval but also public input and rulemaking. If the Onsite Program undertook gradual fee increases as costs increased, the program would spend most of the additional revenue on the next rulemaking and updating the rules. There is no guarantee that a fee increase would be approved by either the Legislature or in the rulemaking process. The program may seek Legislative approval in the future to increase fees as the costs increase which would eliminate the need to seek Legislative approval every biennium which would in turn save the state money. The public process would remain. **Increase in illegal systems?** Three commenters felt that increasing fees will discourage people from getting required permits or hiring licensed contractors and further challenge DEQ and licensed contractors. The fees were carefully reviewed and we felt that we had to increase our repair permit fees 55 percent and even then our fees do not fully recoup our costs. The illegal (i.e. unpermitted) systems in repair situations are an ongoing struggle. There are many variables for illegal installations of septic systems, including: people are unaware of the requirement that a permit is required, they fear that DEQ or its agent will require an expensive system, and are deterred by fees charged by DEQ for a permit. With no new sources of revenue outside of fees, the DEQ has no option but to raise fees. Two commenters requested DEQ use

onsite violation civil penalty money towards repair permit fees instead of to the state general fund and not increase the fees. Making that change would require a statute change and the soonest that could likely occur is in 2012 and the program needs the fee increase now. An external advisory committee that met through 2009 will be recommending that DEQ make that change and we will be looking at that option.

The other side of the equation for illegal systems is if DEQ has inadequate resources to respond to complaints of illegal septic installations and knowing there is no consequence to being unlicensed or not obtaining a permit is a disincentive to getting a permit. It is important to note that with new construction, there are planning and building permitting requirements that make illegal septic installations rare. However unlike new construction, septic system replacement/repairs without permits are relatively easy as there are typically no checks and balances of other departments. Over the past 12 years, the state has seen more plastic tanks and drainfield products being sold which makes illegal system installation easier and quicker to do as they are simple for the homeowner to transport and install. These illegal installations are a concern for many reasons. Septic systems may be installed too close to wells, too close or across property lines, too close to groundwater or surface water. These factors directly affect public health. DEQ needs sufficient resources (through sufficient fees) to respond to complaints and enforce on violators who fail to comply.

How can DEQ try to minimize the impact of the higher fees? DEQ recognizes there is never a good time for a fee increase. The intent of the fee increase is to maintain the minimum service level needed for an effective program at the lowest cost possible. When the Legislature approved the fee increase it was with the understanding that DEQ would not seek another fee increase until 2015, at the earliest. The current rulemaking must take this into account.

After receiving public comments, DEQ reviewed the revenue and cost projections and felt that implementing the fee increase in two steps over two years would reduce the burden on the fee payers as well as the builders and land developers while still providing a minimal staffing, provided application projections are met. Below are the specific categories and how the increase will take effect.

- **Site evaluation** rules allow for multiple visits to sites under a single fee and DEQ is proposing to maintain that fee increase as proposed in the rulemaking announcement. The fee for a single family residence is proposed to increase from $425 to $680. All fees listed here and below do not include the state surcharge of $60 which is used to offset a portion of the administrative and oversight costs of the statewide program.

	• **Permit fees:** 1) Create a third fee category for system permits more complex than standard systems and less complex than sand filter and recirculating gravel filter systems. The new fee category would be higher than standard systems and lower than sand filters to better reflect the time required to do the work. 2) DEQ is proposing to do the fee increase in two steps instead of one. The first increase would be approximately 30 percent for all permit fees and take effect on Jan. 4, 2010. The second fee increase would bring the total fee increase to 60 percent and take effect Jan. 3, 2011. The fee increase was intended to anticipate the rising costs in the program through 2015. The cuts the program has already made has made it possible to do a two-step increase instead of one, if our application projections continue to be accurate. Nine commenters requested we postpone or greatly reduce the fee increases due to the current struggles going on in the housing industry. This is not possible due to the program being fully fee-supported, including complaint response and enforcement. This is the minimum DEQ can do and still be able to fulfill its mission. The cuts we made and are currently operating at are not conducive to an effective program, as many pre-cover inspections are being waived and enforcement cases are not going forward as the program cannot afford to do otherwise. If projections of application submittals hold true, the intent is to gradually restore the required program functions, including complaint response, enforcement, timely product reviews, and reduce the number of waived inspections. • **Repair permit fees** Repair permit fees are intentionally set low to encourage people to apply for a permit and effect a reasonable repair. DEQ is proposing to maintain the 55 percent increase as proposed in the rulemaking announcement. The fee for a minor residential repair permit will increase from $165 to $256 and a major residential repair permit will increase from $345 to $535. • **Authorization notice/alteration permits** are proposed to remain at a 60 percent increase, as proposed in the rulemaking announcement. The fees are currently $390 for an authorization notice with a site visit and will increase to $624 and $345 for a major alteration permit will increase to $552. The septic system needs to be inspected to make sure the existing septic system is sized appropriately and operating satisfactorily. Alteration permits often are required when a part of a system needs to be enlarged or moved. The amount of work varies widely by the site. For example, when there is no permit or record of the system on file, then portions of the system may need to be exposed and may require multiple visits to verify performance. If the system is substandard or found to be failing then a repair permit/alteration permit may be required and there are no additional fees for this work.

	• **Renewal of Hardship Authorization Notices** The proposed fee increase for this was reduced from 40 percent to zero percent because it would have a minor effect on the program's budget and these applicants are often the least able to afford the fees. The fee is proposed to remain at $330. • **Variances** These applications are time intensive and carry potential long term costs due to a potential appeal or contested case, depending on the outcome of the variance. DEQ is proposing to maintain the 60 percent fee increase as proposed in the rulemaking announcement. We did receive a comment in support of the fee increase for variances. The fee is currently $1300 and proposed to increase to $2080. • **ATT reporting fee** Two commenters requested the fees not be increased at all because they say they have the current $50 fee written into the system owner maintenance contract. Most fees have not been increased in over 11 years. The Alternative Treatment Technology annual report fee was created in 2005 so the need for the increase is less than 60 percent requested. DEQ is proposing to reduce the proposed fee increase from $80 to $60 and delay the increase until Jan. 3, 2011, to allow service providers to re-write their maintenance contracts to reflect the increase. • **Product reviews** cost DEQ more than the current fee and DEQ is proposing to maintain the 60 percent increase for these fees, as proposed in the rulemaking announcement. The material plan review is currently $300 and is proposed to increase to $480. The Innovative or Alternative Treatment Technology fee is currently $1000 and is currently proposed to increase to $1600. • **Credit cards:** The Onsite Program will also be exploring the use of credit cards with making application. This could allow people to spread the cost over several months instead of paying for the entire permit fee up front. There are issues that need to be resolved and there is a cost associated with credit cards that needs to be explored. **County Contracting:** Two commenters from Lake and Harney Counties commented that the fees were too much for their citizens and are interested in contracting with DEQ to run the program. DEQ is willing to discuss the option of a county operating the program and DEQ feels that the phased in fee increases should allow for this discussion and to evaluate if that transfer is best for all parties, including the public.

List of Commenters and Reference Numbers				
Reference Number	**Name**	**Organization**	**Address**	**Date on comments**
A	Brian Allen		bmallen@centurytel.net Astoria	9/30/09
B	David Anderson	David Anderson Excavating	3835 Lakeshore Drive Selma, OR 97538	9/24/09
C	Helen Scott		346 Bickford Dr. Grants pass, OR 97527 Hscott@uci.net	9/21/09
D	Kathleen Harris	(Silverton Planning Commish)	Kathleen Harris 640 Lone Oak Loop Silverton Oregon 97381 justplainkathleen@gmail.com	9/21/09
E	Bob Hart	Bob Hart Consulting, LLC	Hart@terragon.com Rogue River	9/21/09
F	Nancy Mills		nmills@ushio.com	9/22/09
G	Jean Sweat		glaspar@oigp.net	9/21/09
H	Sandy Schmitz		slschmitz1@msn.com	9/21/09
I	Hackett Family		mjhackett@charter.net	9/22/09
J	Cliff Combs	Covered Bridge Realty	8770 East Evans Cr. Rd. Rogue River, OR 97537 Cliff@CoveredBridgeRealty.com	9/21/09
K	Deb Burtley		liqquest@yahoo.com	9/21/09
L	Perry Dunlap	Dunlap Septic Exc.	dunlap@uci.net	9/24/09
M	Darlene Mavity	Century 21 Harris & Taylor	C-21 Harris & Taylor 541 NE E St. Grants Pass, Oregon 97526 darlenem@internetcds.com	9/24/09
N	Jon Jordan	Josephine Chamber of Commerce	Chamber of Commerce 1995 NW Vine St. PO Box 970 Grants Pass, OR 97528 jjordan@grantspasschamber.org	9/28/09
O	Mike McEwan	DEQ Installer	mmcewan3569@charter.net	9/8/09
P	Linda Cruze		5208 Fish Hatchery Road, Grants Pass OR 97527	10/1/09

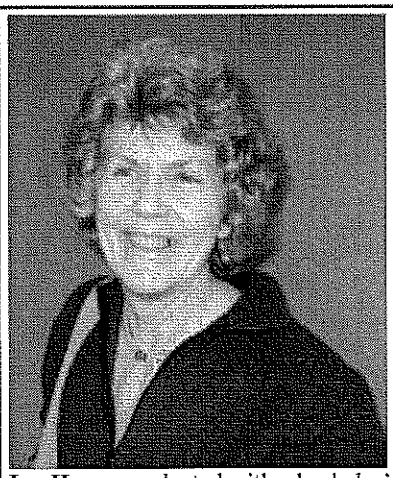
List of Commenters and Reference Numbers				
Reference Number	**Name**	**Organization**	**Address**	**Date on comments**
Q	Sandi Cassanelli	JoCo Commish	SCASSANELLI@co.josephine.or.us	10/7/09
R	Judge Steve Grasty, Harney Co Commissioners Don Nickles & Jack Drinkwater Planning Director Brandon McMullen	Harney County	Harney County Courthouse 450 Buena Vista Burns OR 97720	9/16/09 (oral) 10/7/09 (written)
S	Ed Ownbey & Les Harris	Mr Ed's Advanced Septic, LLC	mredsadvancedseptic@charter.net	10/9/09
T	Karen Zimmer	Homebuilders Assoc of JoCo	223 NE 'B' Street, Ste B Grants Pass, OR 97526	10/6/09
U	Commissioners Bradley J Winters, Dan Shoun, Ken Kestner, Building Official Tony West	Lake County Commissioners	Lake County 513 Center Street Lakeview, OR 97630	9/16/09 (oral) 10/7/09 (written)
V	Joella Jacobson	Re/Max Ideal Brokers, Inc.	joella.jacobson@gmail.com	9/21/09
W	Robert vanCreveld	Edgewater NW	POB 130 Newport, OR 97365	10/8/09
X	Dorrie		Yehudi3@q.com	9/21/09
Y	Gary McCleese	Lake County Installer	14904 Highway 395, Lakeview, OR 97630	9/16/09 (oral)
Z	George Schmidt	Outback Excavating Inc.	PO Box 926, Christmas Valley, OR 97641	9/16/09 (oral)

2009 Onsite Advisory Committee Members

Stephanie Hallock (Chair) is the Urban/Rural Connections Program Manager at the National Policy Consensus Center (NPCC) at Portland State University. She joined the NPCC in February of 2008. She is currently facilitating a collaborative process among landowners, conservation groups and government agencies for river restoration in the Lower John Day (Sherman, Wheeler and Gilliam counties). She is also leading a community group in The Dalles to help develop a business plan to attract support and funding for the Columbia Gorge Discovery Center and Wasco County Museum.

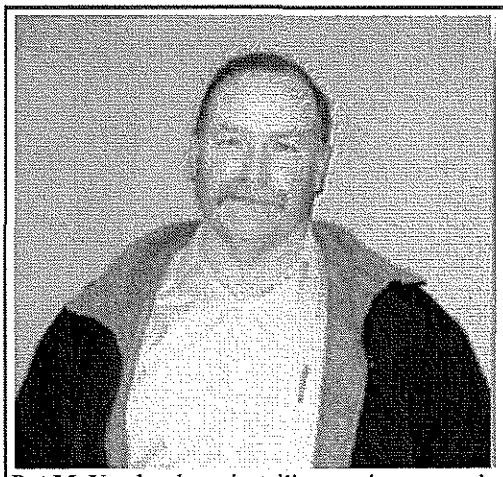
Stephanie became Director of the Oregon DEQ in 2000 and retired from that position at the end of 2007. Prior to that, she held several positions at DEQ, including six years in charge of all programs on east side of the Oregon Cascades, and she also spent year on special assignment as a policy advisor to former Governor John Kitzhaber. While serving as DEQ Director, she was also an officer in the National Environmental Council of the States, ultimately serving as president of that association.

Upon completion of her Masters of Public Administration, Stephanie received a Presidential Management Internship and worked for several years at the federal Environmental Protection Agency (EPA) in the San Francisco regional office.



Jan Heron graduated with a bachelor's degree in 1968 and master's in Education from Oregon State University in 1969. She began her career working in 1970 for the Benton County Health Department as a health inspector until 1973 and again from 1985 to 1987. In 1974 through 1985 she took a hiatus from full time employment to raise 2 children but did work temporary assignments with Benton County, Linn County and part time onsite system consultant work with Cascade Earth Sciences. From 1987 through to the present, she is employed by the Linn County Environmental Health Department primarily in the Onsite Program.

Jan has served on DEQ's Onsite Technical Review Committee and has served on several Onsite Program Advisory Committees over her onsite career. She resides in Corvallis.



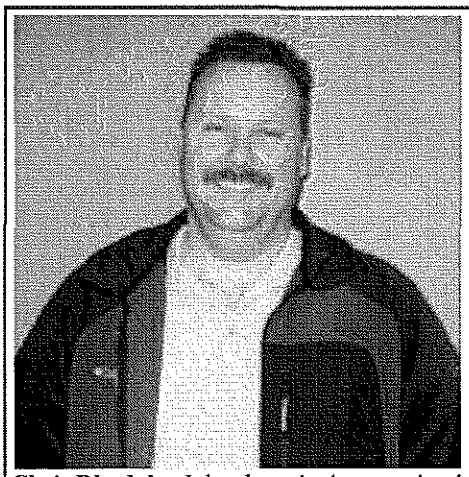
Pat McVay has been installing septic systems in Curry County for 22 years. He became a certified maintenance provider in 2006. He also raises cattle.

Pat resides in Harbor in southwestern Oregon.

Alex Mauck is the Owner/President of Goodman Sanitation Inc, a third generation family owned and operated full service septic company, serving Oregon since 1948. He is also the Owner/President of ASM Consulting which specializes in onsite product approvals and related issues in the Northwest. Alex is the founder of EEEZZZ Lay Drain Company (EZ Flow). He worked with DEQ on changing the product approval process in 2000, which led to an improved approach on how DEQ does product approvals and other related business.

Alex is a Licensed Oregon Real Estate Broker. He is an acknowledged contributor to the EPA Onsite Wastewater Treatment Systems Manual (2002). He is also the founding Director of Oregon Onsite Wastewater Association (O2WA) and a current member. Alex is the past Director of Washington Onsite Wastewater Association (WOSSA) and a current member. He is a Certified National Association of Wastewater Transporters (NAWT) Existing System Evaluation/Inspection instructor, evaluator and member. Alex was appointed to the DEQ Technical Review Committee in 2008 and is a DEQ Installer initial certification instructor.

Alex's hobbies include raising and breeding world class Hall of Fame Field Trial English Setters.

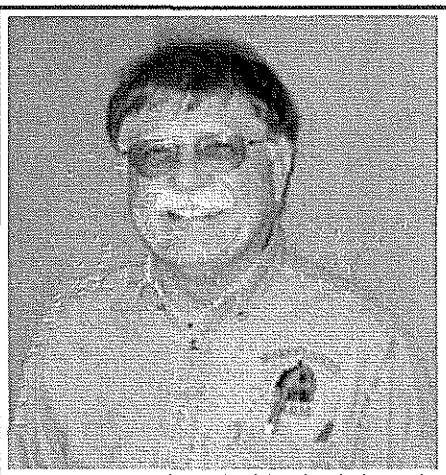


Chris Rhodaback has been in the pumping industry for the last 29 years. Chris started in 1980 working at his family owned business Best Pots, Inc.

Chris's desire to continue his education and growth in the industry, he added a Limited Electrical License and CCB License to his list of credentials in the year 2000. Chris worked from 2003 to 2004 to start and complete construction of their own Solid Waste pretreatment facility known as Eco-Flo Environmental Services. Eco-Flow Environmental Services has designed, built and now operates its own disposal pre-treatment facility.

The National Association of Wastewater Transporters (NAWT) certified Chris in 2004 to do inspection on all types of Onsite Waste Water Treatment Systems. Chris has been a certified Maintenance Provider since 2007 to meet with new DEQ rules. At this time, Chris and his staff maintain over 300 septic systems in and around (and outside!)the Willamette Valley. Chris also serves on the Oregon Onsite Wastewater Association (O2WA) board.

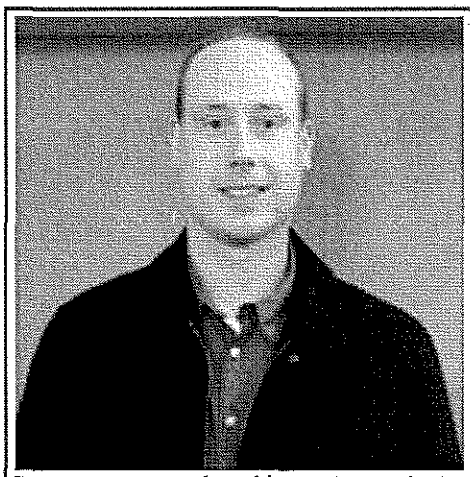
Chris resides in Linn County.



Steve Wert graduated with a bachelor's degree in Agronomy from Ohio State University in 1966 and worked in their soils lab while going to school. He went for and received his master's degree in 1969 from Oregon State University. His thesis topic was how Willamette Valley soils treat septic tank effluent. He began his career working as a soil scientist for the BLM from 1969 until 1978. He eventually started a private soil consulting business, Wert & Associates, designing wastewater systems, conducting soil surveys, working on land use issues, and evaluating soils for wine grape production.

Steve was a founding member of Oregon Onsite Wastewater Association (O2WA). He has served on numerous Onsite advisory committees for DEQ since 1979 and was involved with DEQ's Experimental Program that concluded in 1982 and was involved with the LaPine National Demonstration Project that concluded in 2005.

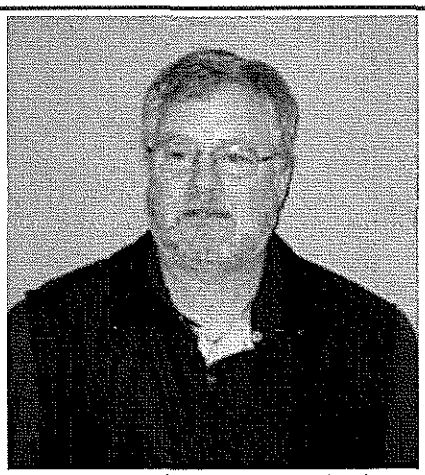
Steve divides his time between Milton-Freewater and Bend.



Sam Carter started working at Orenco in April 2001, but his experience with the onsite industry and Orenco products goes back to 1999. After graduating with a bachelor's degree in crop and soil science from Oregon State University, Sam worked as a sanitarian for the Linn County Environmental Health Department. He did site evaluations, permitted septic systems, and performed inspections for the county, while becoming familiar with Orenco's treatment packages and control panels.

At Orenco, Sam served as a sales rep for two years, handling orders and inquiries. In 2003, he set up Orenco's regulatory relations department and now serves as Orenco's Government Relations Manager.

He and his wife Kathy have two children, Madison and Makaela. In his spare time, Sam enjoys golf, hunting, and fly-fishing.



Zan Ewing graduated from Portland State University in 1973 and began his career 35 years ago with the Linn County Environmental Health Department where he worked until 1979. He has worked for consultants, worked for the UN over a two year period on refugee camp sanitation issues in Thailand, worked as a licensed installer and in consulting until 1997 when he was hired as a Sanitarian in Marion County where he worked until 2004. Since then, he has returned to onsite system consulting (Sani-Tech Systems, Inc) and been providing continuing education for installers and service providers (SaniTech Training Services).

Zan has served on the board of Oregon Onsite Wastewater Association (O2WA), including the position of president and vice president. He has provided initial training to many of the current certified installers through classes with Chemeketa Community College and is a certified trainer for the National Existing System Inspector Certification Course through National Association of Waste Transporters. Zan has written articles featured in O2WA's newsletter in addition to the national publication, Onsite Installer.

Zan resides in West Salem.

2009 Onsite Advisory Committee Recommendation

The committee sees DEQ's need for a fee increase. But they are also concerned that the fees will be too high to be sustainable. They feel that once other fees come on line from their recommendations the fees should be looked at and possibly lowered. The committee stated, "Our committee supports the DEQ fee increase with the understanding that DEQ will re-evaluate the fees when the alternative funding sources recommended by the external advisory committee are implemented but no later than 2015."

Onsite Technical Review Committee Members

1. Dan Haldeman, EHS, Deschutes County
2. David H. Couch, Esq., Attorney At Law
3. James Van Domelen
4. Brian Rabe, CPSSc, WWS, Cascade Earth Sciences
5. Terry Bounds, PE, Orenco Systems, Inc.
6. Mike Ebeling, EHS, City of Portland
7. Dan Bush, EHS, Septech
8. Sherman Olson, EHS, On-Site Treatment Systems Consultant
9. Alex Mauck, Goodman Sanitation

Onsite Technical Review Committee Recommendation

The Technical Review Committee understands DEQ's budget situation and unanimously supported DEQ rulemaking with two qualifiers: 1) look at how the program can be made more efficient than it currently is and 2) look at working towards a strategy where fees can be raised in smaller increments as program costs rise.

State of Oregon
Department of Environmental Quality Memorandum

To: Michael Kucinski **Date:** Oct. 27, 2009

From: Connie Schrandt

Section: Water Quality/Northwest Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept.14, 2009, 6 p.m.

Hearing Location: Comfort Suites, 3420 Leif Ericson Drive, Astoria

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 14, 2009 at 6 p.m. There were no attendees. The hearing started on time and closed at 7:18 p.m.

State of Oregon
Department of Environmental Quality Memorandum

To: Michael Kucinski **Date:** Oct. 27, 2009

From: Duane Smith

Section: Water Quality/Eastern Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept. 14, 2009, 6 p.m.

Hearing Location: State Office Building, 700 SE Emigrant Ave., Pendleton

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 14, 2009 at 6 p.m. There were no attendees. The hearing started on time and closed at 6:30 p.m.

State of Oregon
Department of Environmental Quality — Memorandum

To: Michael Kucinski **Date:** Oct. 28, 2009

From: Chuck Costanzo

Section: Water Quality/Western Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept. 15, 2009, 6 p.m.

Hearing Location: North Bend Library, 1800 Sherman Ave., North Bend

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 15, 2009 at 6 p.m. There were no attendees. The hearing started on time and closed at 7:05 p.m.

State of Oregon
Department of Environmental Quality — Memorandum

To: Michael Kucinski **Date:** Oct. 29, 2009

From: Pat Vernon

Section: Water Quality/Eastern Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept. 15, 2009, 6 p.m.

Hearing Location: Baker City Hall, 1655 First St., Baker City

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 15, 2009 at 6 p.m. There were no attendees. The hearing started on time and closed at 6:30 p.m.

State of Oregon
Department of Environmental Quality Memorandum

To: Michael Kucinski **Date:** Oct. 28, 2009

From: Chuck Costanzo

Section: Water Quality/Western Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept. 16, 2009, 6 p.m.

Hearing Location: Tally Media Group Building, 109 NW C St., Grants Pass

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 16, 2009 at 6 p.m. Five people attended the hearing. The hearing started with a brief overview of the proposed rule revisions by Mike Kucinski followed by an informational question and answer session between the public audience and DEQ staff. No public testimony was given. The hearing closed at 7:24 p.m.

State of Oregon
Department of Environmental Quality Memorandum

To: Michael Kucinski **Date:** Oct. 27, 2009

From: Robert Baggett

Section: Water Quality/Eastern Region

Subject: Presiding Officer's Report for Public Hearing

Hearing Date and Time: Sept. 16, 2009, 6 p.m.

Hearing Location: Burns City Hall, 242 South Broadway Ave., Burns

Title of Proposal: Onsite Program Fee Increase

The public hearing on the proposed fee increase was scheduled for Sept. 16, 2009 at 6 p.m. Eight people attended the hearing. The hearing started with a brief overview of the proposed rule revisions by Randy Trox followed by an informational question and answer session between the public audience and DEQ staff. Seven people gave public testimony. Recording of the public testimony began at 7:30 p.m. The hearing closed at 7:50 p.m.

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the summary of comments and agency responses for this rulemaking.

Tony West – Lake County Building Official

Proposed fee increase will further discourage development in our community and will encourage non-compliance.

The proposed fee increase is a redundant fee to pay for DEQ staff in which Counties have already employed.

The 3.1 inspectors to the 7.0 remainder of overhead staff is a redundant charge.

Lake Co. along with Harney Co. has proposed to Mike Kucinski to assume or contract the DEQ services as the Lake Co. /Lakeview office.

Based on their (Lake Co.'s) fees that are similar, based on the inspections and time involved, the DEQ fee increase is not necessary.

The current DEQ fee is more than adequate to cover the service that is provided to their jurisdiction.

Given the overall cost of development in Lake and Harney Co's, the cost of permits is getting close to the cost of the land being developed.

With the Governor's objective to streamline process in Oregon in order to encourage development in the State, this is an opportunity to do exactly that.

One job in Lake Co. is equivalent to 100 jobs in Portland. So one individual working for the County who does the inspections as far as evaluations and construction would be an economic boost to their community.

Believes that this fee increase is not necessary, that we have other avenues to address service equivalent to or better than what is being received by the DEQ at this time.

George Schmidt – Lake Co. Licensed Installer – Christmas Valley Area

Agrees with Mr. West that the fee increase will stymie growth.

Half installations done in Christmas Valley are on properties that someone bought and someday later someone will build and will move onto them.

He doesn't know if people will even be able to find them (systems) once they decide to build a home.

Individuals have done this because it's been inexpensive, but if the fees increase this will stop putting systems in.

He feels fees collected in Lake Co. will overall go down if fees are increased because individuals will not pay the higher fee and will choose to put illegal systems in.

Ken Kestner – Lake County Commissioner

Pretty much reiterates what Mr. West and Mr. Schmidt said.
Increase in fee for a state agency that only services in effect 14 counties is a broken wheel and would be more effective if the counties took on the program themselves.

Gary McCleese - Lake Co. Licensed Installer – Lakeview Area

Fees are getting to be over half the material cost of systems.
Really has had a hard time, and is going to have an even a harder time telling people what the fees are in relation for what their new system will cost.

Feels the fee increase will either discourage individuals from installing a system, from having him install systems, or cause more individuals to put their own systems in, which might not be the best of systems to be put in. Thinks more illegal systems will go in.

He thinks there is a need for DEQ to monitor what goes on in the State, not necessarily a need

for the DEQ to be inspecting systems in Lake County and Harney County and some of the other counties.

The contract counties, those with larger populations, they're not paying the DEQ. The rural counties are the ones paying the bill to keep DEQ staff going.

Rate Increase of 60% at this time, especially with the economy as it is with no housing being built or no one moving to Oregon or into Lake Co. is just a little too much of an increase. Some increase would be fine, but a 60 % increase at this time is outrageous.

He can't increase the cost of his systems 60 %; as then he wouldn't be putting any systems in. Thinks we need to do a better job of announcing these hearings too.

Dan Nichols – Harney County Commissioner

All this is not his forte and he appreciates the particular comments and expertise of the others speaking. Will address issue from a different angle.

Fee increase is not going to be beneficiary to the eastern Oregon counties and will create more non-compliance.

It is frustrating being an eastern Oregon County and being one of 14 rural counties paying for DEQ staff and services.

Just learned today of the proposal to combine contract service between Lake and Harney counties to conduct the DEQ services within the two counties. Feels that the two counties can be much more effective at running the program and that DEQ is between a rock and a hard spot in trying to run an efficient program, which is impossible for DEQ to do.

The rural Counties should not be the ones to bear the burden of it, especially when DEQ offers other services to the contract counties out of the fees we pay to the DEQ. This is not right and is unfair. This is not the right thing to do to the 14 rural counties.

He has a lot of dissatisfaction with the State at this time with the way the revenue, what little they have, currently is run; it put us all in a hard situation. A solution needs to start at the top. The legislature needs to start bucking up and doing what they need to be doing. People need to start looking at what is or isn't cost effective.

If this was a private enterprise, with this scenario presented tonight, you guys (DEQ staff present) wouldn't have a job, he'd pull the plug and something different would be done. The situation in this country, this state, and our county, where there is no more money and people are sick and tired of being nickel and dimes to death with fees increases which are subversive taxes for things that we don't necessarily have to have in the first place.

DEQ is put in the position of having to do because of Federal and State laws. We need to back up and look at what is or isn't cost effective, and have guts enough and courage enough to do

what needs to go on. He knows this is a whole different tact from what we wanted to hear, but to him this is the basis of the problem.

This is a cost inefficient program over on the east side, it better be looked at and brought back into focus and it should be said that locally they can do the job. They can provide the service, protect the citizen, do it in a cost effective manner, and leverage things, they are real good at leveraging things which DEQ can't do.

DEQ has to do certain things by law. That isn't in the game anymore. You have to do what you can do with the revenue streams you are provided, and you can't have the encumbrances of a bunch of ridiculous regulations that doesn't suit the purpose.

Brandon McMullen – Harney County Planning Director

It is difficult to both convince and discuss with both customers and contactors that what they are paying for is valuable. Now with the budget reductions about half of the final inspection are being performed and he is not to keen on this in light of having to explain what the customers is paying DEQ for. It is going to be really hard to then explain to them, that with a 60% fee increase, all the inspections will be done. He can't make that connection.

There is a dis-connect between the permitting process, separate process with site evaluations and permits. Understands that the site evaluation sometimes is done years before the permit and system is installed. However, he feels that the process needs to be streamlined so there aren't nine different steps in the overall development process which in turn would be more cost effective.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Onsite Program Fee Increase

This proposal increases the Onsite Program's permit-related fees by up to 60 percent.

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the 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?

The Onsite Program is a state program and currently there are no federal requirements.

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).

Not applicable.

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.

Not applicable.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Onsite program application fee increase

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking	Onsite System Fee Schedule
Statutory Authority or other Legal Authority	ORS 454.625, 468.020 & 468.065(2)
Statutes Implemented	ORS 454.745, 468.065 & 468B.050
Need for the Rule(s)	Onsite program costs have increased an average of 3.89% over the past 9 years while these fees have remained the same. The fee increase is needed to restore 2.5 staff positions that are currently unaffordable. The fee increase takes into account rising costs through 2015 and provides year-round operating reserves. The 2.5 staff positions are needed to ensure timely and accurate implementation of the onsite program requirements as well as the enforcement of onsite violations. Timely response to permit applications is vital for the regulated community who are often under short time frames to develop their property. Accurate siting and permitting of septic systems and the enforcement of violations are necessary to ensure that sewage is treated and disposed in a manner that is protective of public health and the environment and that the regulated community is being treated fairly across the state.
Documents Relied Upon for Rulemaking	• 2009-11 Legislatively Approved Budget • Historical Onsite program revenue/expenditure reports • Onsite program database reports • Contract county fee schedules These documents are available and can be reviewed in the DEQ Eugene office by contacting Randy Trox at (800) 844-8467 ext. 7338.
Requests for Other Options	**Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.** DEQ will be receiving feedback and recommendations from an Onsite Advisory Committee on August 11th, 2009 and from an Onsite Technical Review Committee on September 8th, 2009. DEQ has been conducting outreach and will be requesting official public comment via public hearings that will be scheduled for September 14th, 15th and 16th, 2009.
Fiscal and Economic Impact Statement of Cost Compliance	
Overview	Attachment #1 details the fee increases. The fee increase will impact an estimated 2,500 applications annually, which is based on application data obtained from the Onsite program database in addition to forecasted data for the 2009-11 biennium.
Impacts on the General Public	The fee increase will mainly impact applicants for site evaluations, permits and other reports associated with the development or re-development of properties that utilize septic systems in counties where DEQ administers the onsite program directly (currently 14 of the 36 counties in Oregon). DEQ is trying to minimize the impact to applicants for existing hardship situations and existing system repairs by proposing to increase those fees by a smaller percentage (40% and 55%,

	respectively) than the other fees being increased that are typically associated with new development.	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	Small businesses will be impacted by experiencing a 60% increase in the cost for obtaining a septic system permit. Manufacturers of products for use in septic systems in Oregon will be affected by experiencing a 60% increase in product approval applications.	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	DEQ estimates that less than 5% of the 2,500 applications per year are submitted by small businesses.
	b) Types of businesses and industries with small businesses subject to the proposed rule	Small businesses submitting these applications typically operate small commercial shops and office buildings.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	The proposed rules do not require additional reporting requirements.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	The proposed rules do not require additional equipment or administration requirements.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ met with the Oregon Onsite Wastewater Association (O2WA) during a board of directors meeting in October, 2008 to discuss this topic. DEQ also presented this topic at the O2WA annual conference in January, 2009 that accommodated approximately 300 attendees including many small businesses such as installers, maintenance providers, manufacturers and system designers. Additional outreach has been done through discussions with individual installers, maintenance providers, manufacturers and system designers.
Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))	Large businesses will be impacted by experiencing a 60% increase in the cost for obtaining a septic system permit. Manufacturers of products for use in septic systems in Oregon will be affected by experiencing a 60% increase in product approval applications. DEQ estimates that relatively few, if any, of the 2,500 applications per year are submitted by large business. Most septic system permits are for single family dwellings.	
Impacts on Local Government	As Applicants: Local government will be impacted by experiencing a 60% increase in the cost for obtaining a septic system permit. DEQ estimates that relatively few, if any, of the 2,500 applications per year are submitted by local government. Most septic system permits are for single family dwellings. As Regulators: The collective costs associated with property development for planning, building and sanitation may be a factor for local governments that may also be proposing fee increases.	
Impacts on State Agencies other than DEQ	As Applicants: Other state agencies will be impacted by experiencing a 60% increase in the cost for obtaining a septic system permit. DEQ estimates that relatively few, if any, of the 2,500 applications per year are submitted by	

	other state agencies. Most septic system permits are for single family dwellings.
Impacts on DEQ	The proposed fee increase will raise approximately $1,041,442 over the 2009-11 biennium to support 2.5 staff positions that are currently unaffordable. As Regulators: The collective costs associated with property development for planning, building and sanitation may be a factor for other state agencies that may also be proposing fee increases.
Assumptions	DEQ assumes that for most applicants, the cost of obtaining a permit is small compared to the overall cost of property development.
Housing Costs	DEQ has determined that this proposed rulemaking will have the following effects 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. - $625 to $825 increase in permitting costs for a new septic system.
Administrative Rule Advisory Committee	DEQ presented the proposed fee increase to an External Advisory Committee on July 14th, 2009. The Committee was not pleased with the amount of the fee increase proposed but understood that costs have gone up over the past 9 years while the fees have remained the same. The Committee also believed that the Onsite program needed this funding to support the 2.5 staff positions that are currently unaffordable. The Committee was adamant about the need for other funding sources to support the Onsite program instead of relying solely on fees. The Committee will be providing DEQ final recommendations on several issues affecting the long-term funding and structure of the program in September, 2009. These recommendations will be considered for future implementation. The Committee will be discussing this fee increase in more detail at a meeting on August, 11th, 2009 where DEQ will be seeking additional feedback. DEQ will also present this topic to a Technical Review Committee on September 8th, 2009 where DEQ will be seeking feedback. The feedback received from both of these Committees will be considered throughout the rulemaking process.

Prepared by	Michael Kucinski Printed name	August 10, 2009 Date
Approved by DEQ Budget Office	Jim Roys Printed name	8/12/09 Date

8/12/09

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Supplement to Statement of Need and Fiscal and Economic Impact

Onsite Program Fee Increase

The previous Statement of Need and Fiscal and Economic Impact was based on one proposed fee increase of 60 percent for all septic system permit-related fees except for hardship renewals and repair permits which were proposed to be increased by 40 percent and 55 percent, respectively.

During the public comment period, we received several comments concerning the large fee increase and several suggestions for making the fee increase less onerous on the regulated community given the current economic climate. In response to those comments and suggestions we have changed our proposal, which is in most cases less onerous than the original proposal and in some cases, the same as the original proposal.

Attachment A1 of the staff report provides a summary of the new proposal.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Use Evaluation Statement

Rulemaking Proposal
for
Onsite Program Fee Increase

This proposal increases most onsite permit-related fees by 60 percent

1. **Explain the purpose of the proposed rules.**

   The 2009 Legislature authorized DEQ to increase fees up to 60 percent in order to maintain minimum service levels in the Onsite Septic System Program. This is the first permit-related fee increase in over 10 years and the fee increase will cover the program's rising costs through 2015. Most fees will increase by 60 percent; however, some fees will decrease, remain the same or increase by smaller amounts (20 – 55 percent). A new fee category for construction-installation permits will be created to better align the fee with the work required to process these permits. Fees for sewage disposal service licenses, the surcharge fee, WPCF-Onsite permit fees and contract county fee schedules will not be affected.

   DEQ operates the onsite program in 14 of 36 counties.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination Program?**

   Yes X No_

   a. **If yes, identify existing program/rule/activity:**

   The proposed rules affect Oregon's Onsite Wastewater Treatment System Rules (Chapter 340, Division 071), which regulate onsite wastewater treatment from small commercial facilities and single-family dwellings.

   b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?**

   Yes X No_____ (if no, explain):

DEQ will implement the proposed rules through its Onsite Wastewater Management Program. An approved land use compatibility statement is required from local government before issuance of a construction-installation permit.

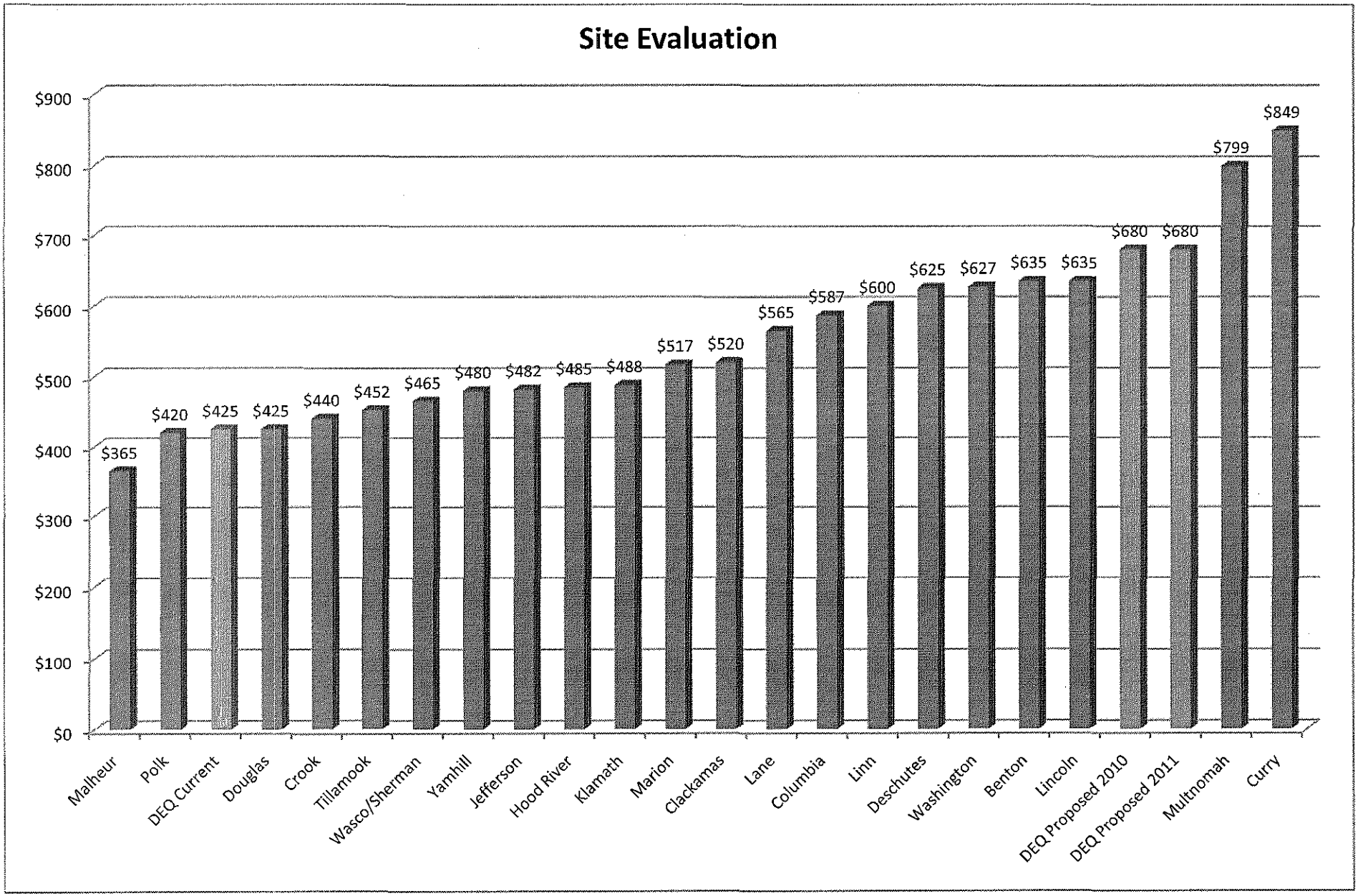
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The State Agency Coordination Program Rules, OAR 340-018-0030(5)(c), identify issuing construction-installation permits as having a significant effect on land use pursuant to ORS 197.180 and OAR 660-030-0075.

The Onsite Program establishes criteria for siting and constructing onsite wastewater treatment systems (i.e. septic systems). In order to construct a septic system on a lot, a favorable land use compatibility statement must be submitted prior to permit issuance that verifies the land is approved for the use the proposed septic system will serve.

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 DEQ will use to ensure compliance and compatibility.**

The rulemaking is proposing only to increase fees; therefore no new procedures are needed.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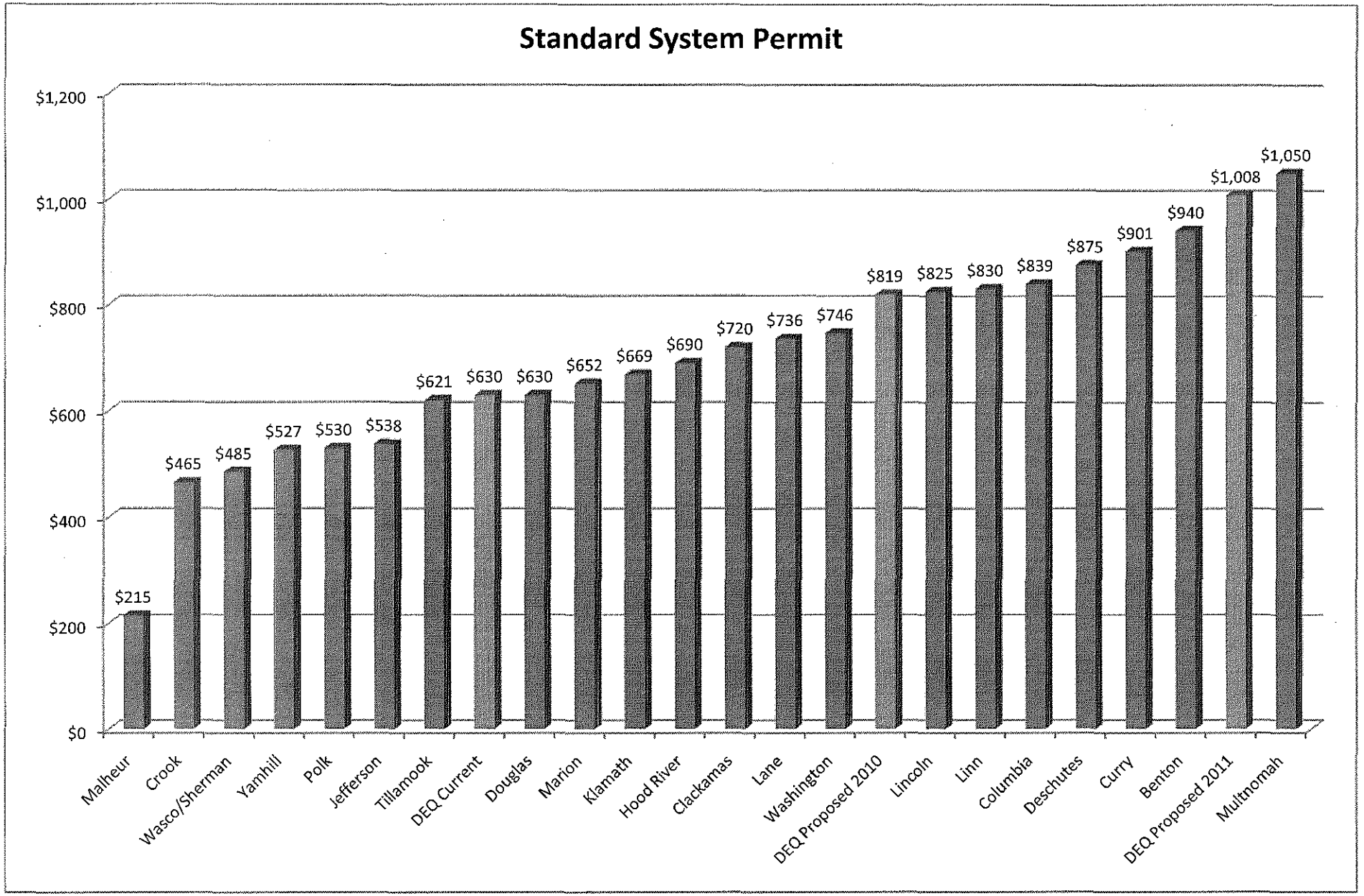
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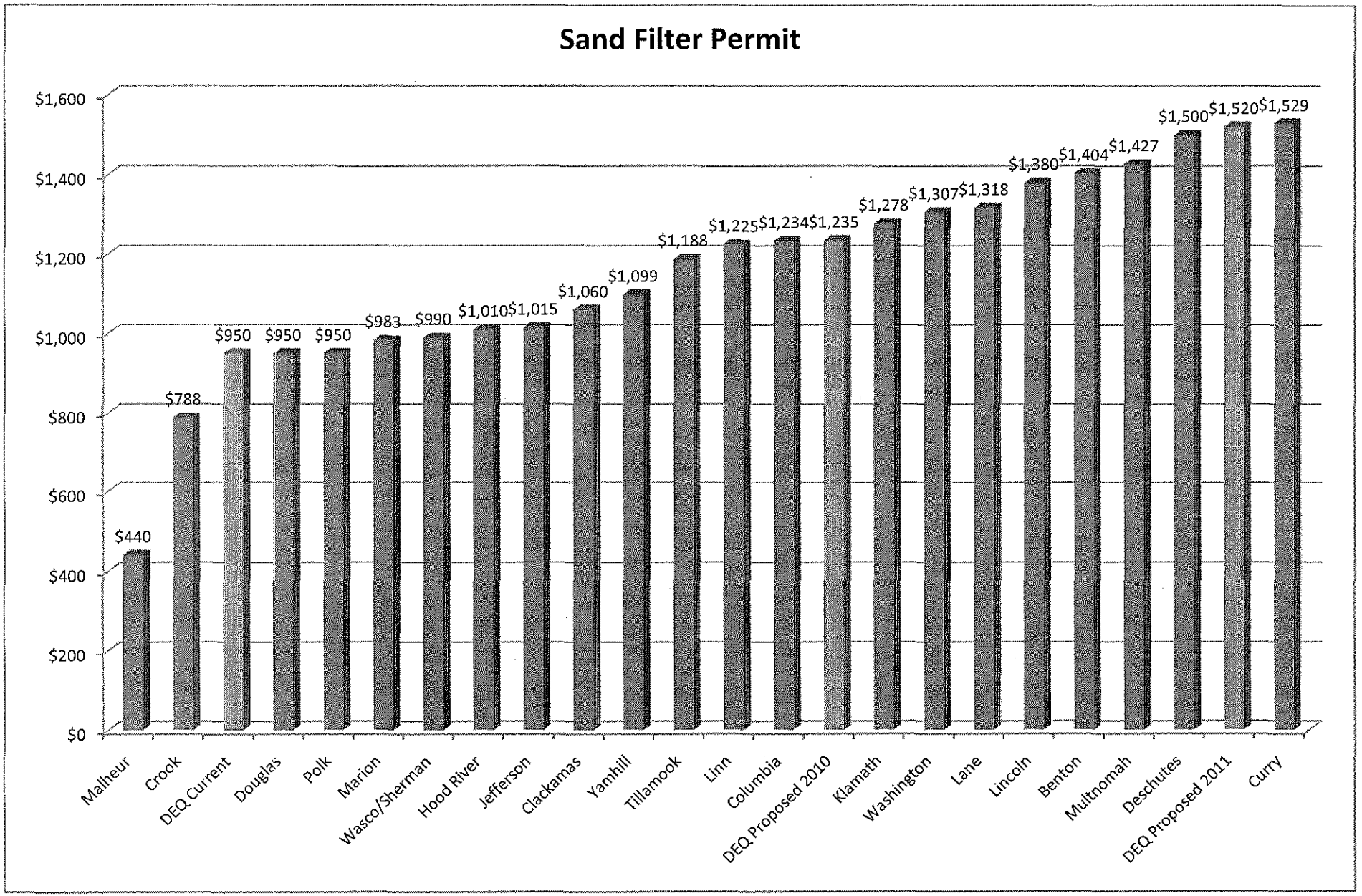
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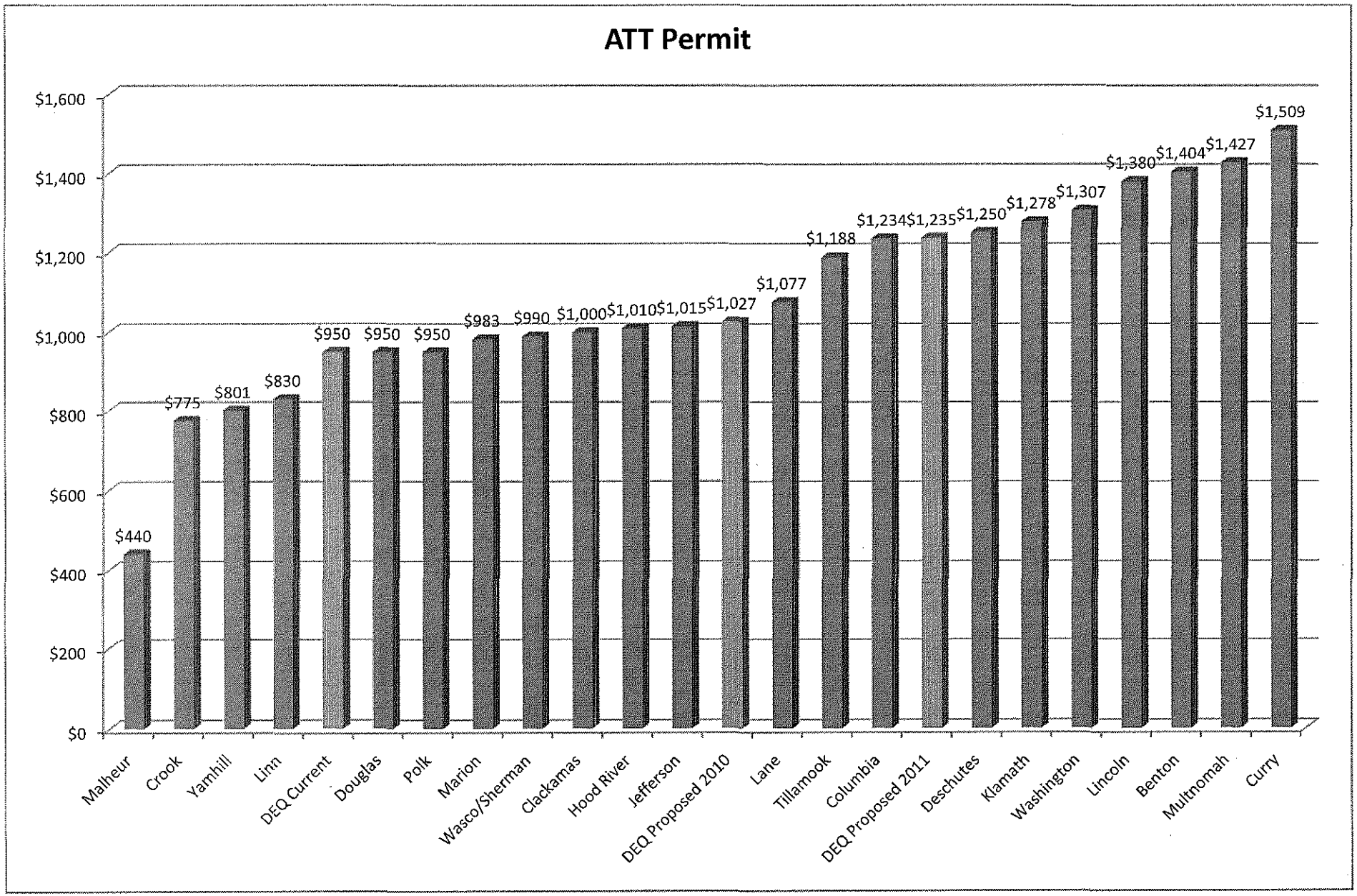
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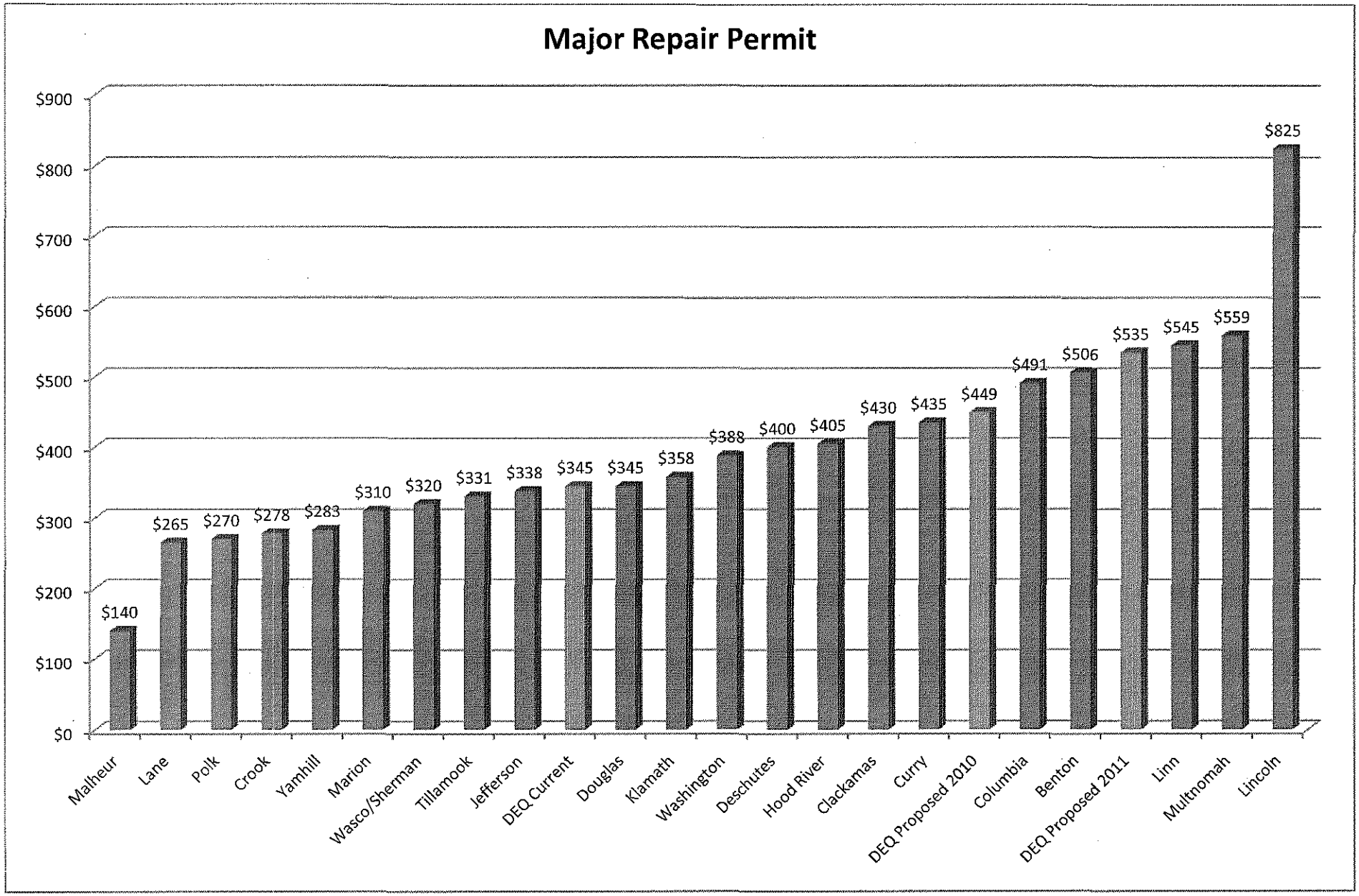
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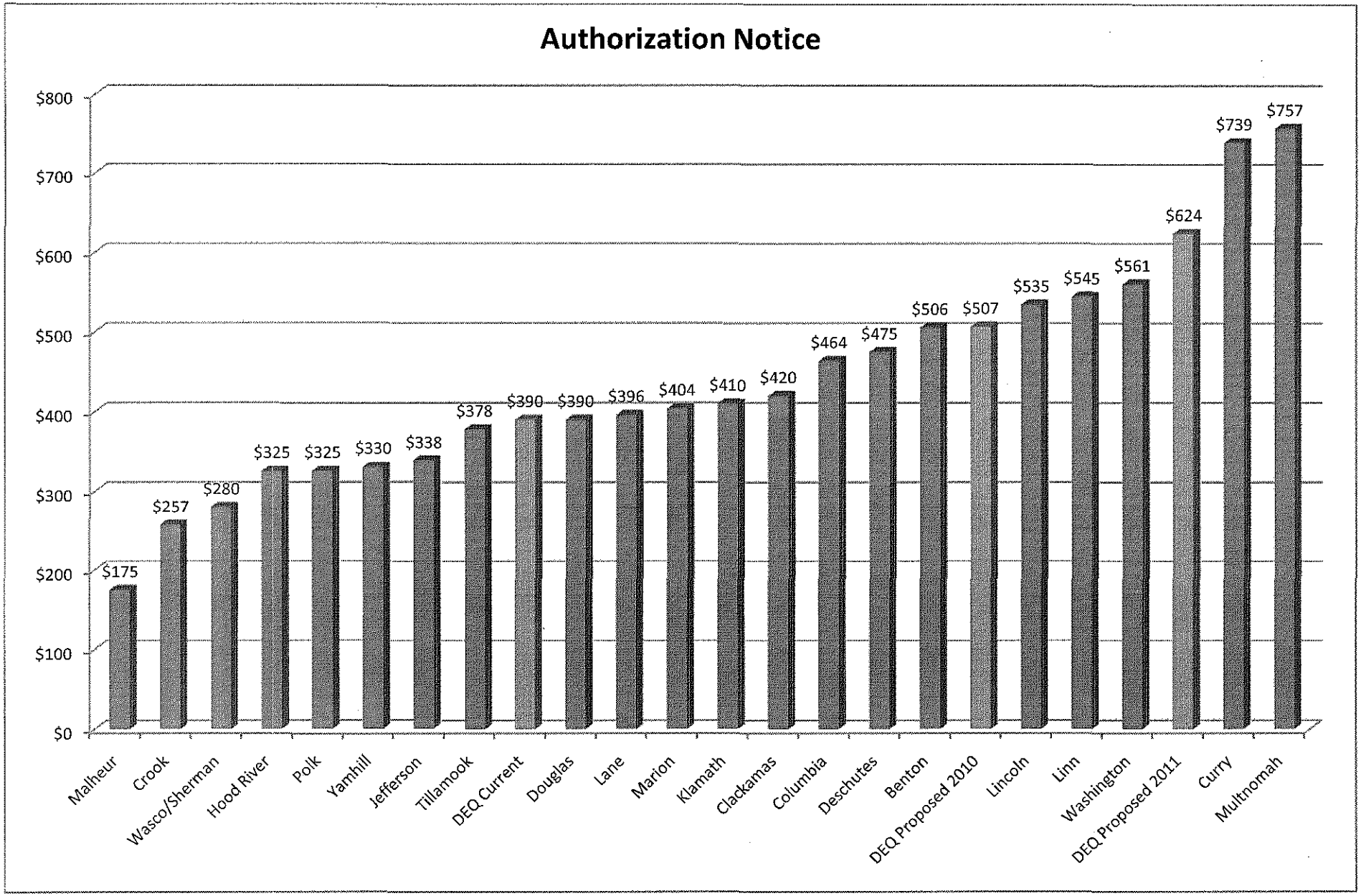
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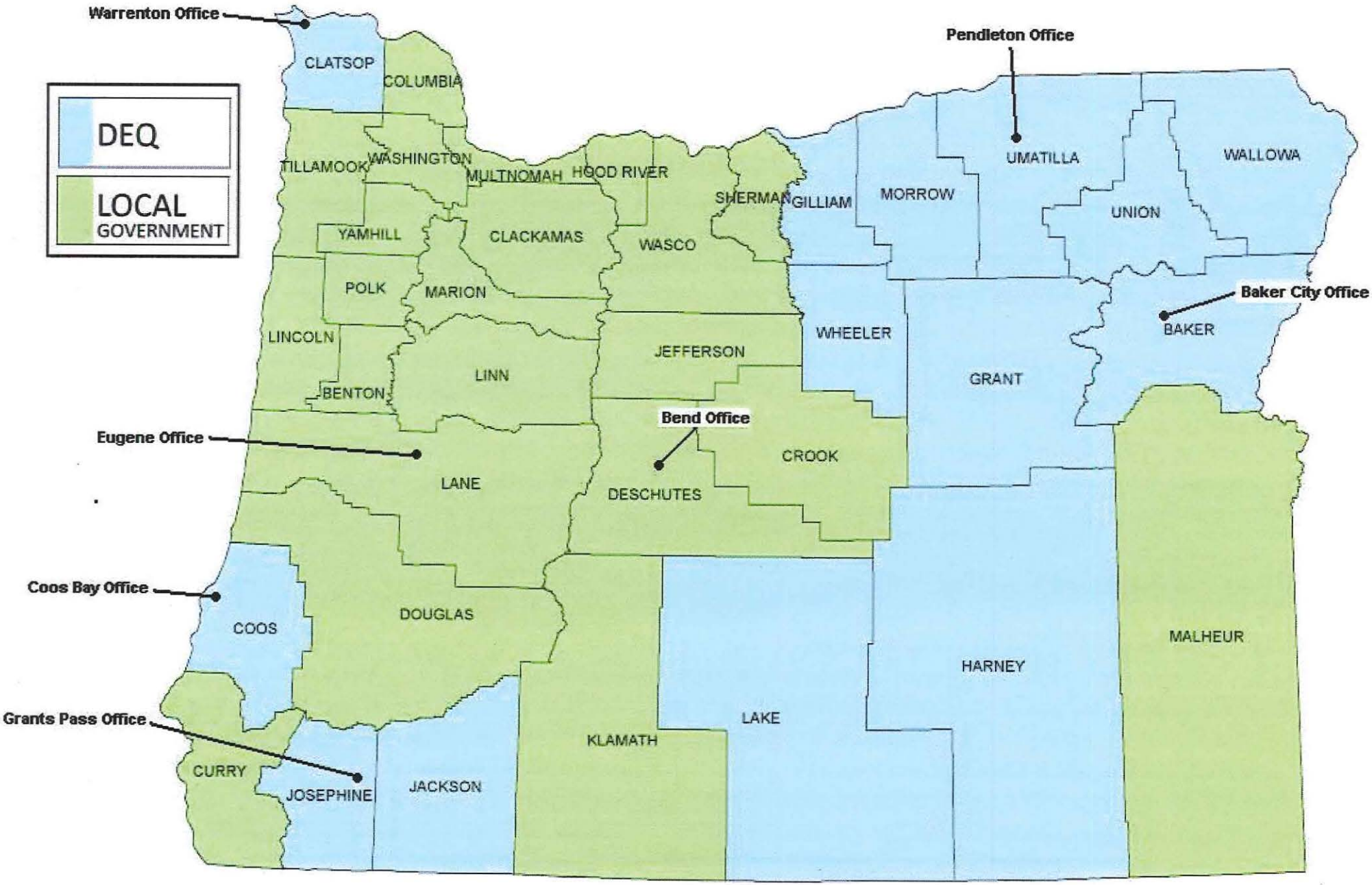
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DEQ
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MORROW
UMATILLA
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UNION
YAMHILL
CLACKAMAS
WASCO
POLK
MARION
Baker City Office
BAKER
LINCOLN
WHEELER
JEFFERSON
LINN
GRANT
BENTON
Bend Office
Eugene Office
CROOK
LANE
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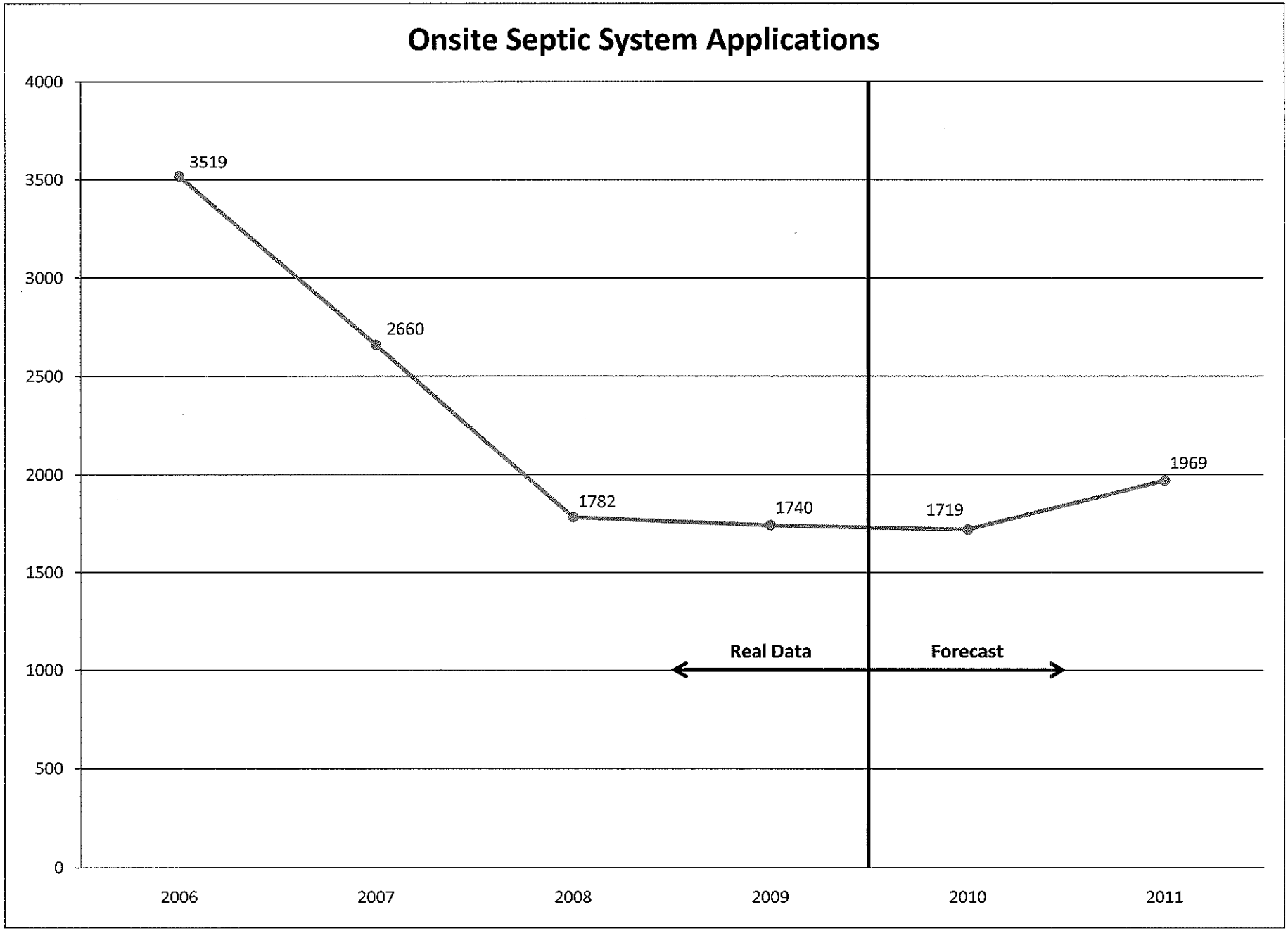
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1740
1719
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Real Data
Forecast
2006
2007
2008
2009
2010
2011

(1)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Grange
Ben NW
Or Cattlemen

Agenda Item ____ **or**
Topic of Presentation Water Quality

Jim Welsh
Name (Please print clearly)

PO Box 458 Elmira, OR 97437
Address

OR Cattlemen's Assoc. / OR State Grange 503-361-8941
Affiliation Email (optional) Phone (optional)

(4)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ **or**
Topic of Presentation GHG Program

Kathryn VanNatta
Name (Please print clearly)

2191 SE Oak Crest DR Hillsboro OR 97123
Address

~~Hillsboro~~ NW Pulp & Paper Assn.
Affiliation Email (optional) Phone (optional)

2

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item P or
Topic of Presentation _____

Kathey Butters
Name (Please print clearly)

803 NW 21st Ave Portland OR 97209
Address

Oregon Dry Cleaners
Affiliation Email (optional) Phone (optional)

(3)

Friends of Family Farmers
P.O. Box 1286 - 103 S. Molalla Ave., Molalla OR 97038
Phone: (503) 759-3276 / Fax (503) 829-6204
www.friendsoffamilyfarmers.org

Public Comment of Kendra Kimbirauskas

Before the Environmental Quality Commission
Portland, Oregon - December 9, 2009

My name is Kendra Kimbirauskas and I am submitting these comments on behalf of Friends of Family Farmers. Our address is PO Box 1286, Molalla, OR 97038.

Friends of Family Farmers is a grassroots organization promoting sensible policies, programs, and regulations that protect and expand the ability of Oregon's family farmers to run a successful land-based enterprise while providing safe and nutritious food for all Oregonians. Through education, advocacy, and community organizing, Friends of Family Farmers supports socially and environmentally responsible family-scale agriculture and citizens working to shape healthy rural communities. We are building a strong and united voice for Oregon's independent family farmers, food advocates, and concerned citizens who are working to foster an approach to agriculture that respects the land, treats animals humanely, sustains local communities, and provides a viable livelihood for family farmers.

I am here today to speak to the Memorandum of Understanding (MOU) between the Oregon Department of Environmental Quality (DEQ) and the Oregon Department of Agriculture (ODA). I was made aware that the Commission acted to reauthorize the MOU yesterday, despite the item on the agenda being listed as "informational."

It was brought to my attention that the MOU between DEQ and ODA is procedural and is not required to be noticed to the public. However, the Commission could have asked for public input on the issue and it is unfortunate that it did not. Had the Commission asked the public to weigh in, you would have likely heard from a number of individuals and organizations, who feel that the MOU should not have been reauthorized and that the ODA is the wrong agency to oversee the Confined Animal Feeding Operation (CAFO) program.

First and foremost, DEQ's own documents make clear that the MOU between DEQ and the ODA should never have been approved without express approval from the Environmental Protection Agency (EPA). EPA granted authority over the National Pollutant Discharge Elimination System (NPDES) program to DEQ, not ODA, and the DEQ has yet to obtain EPA's approval to transfer that authority.

According to 2001 Oregon Laws Chapter 248 Section 1. (1) The State Department of Agriculture and the Department of Environmental Quality are directed to pursue United States Environmental Protection Agency approval of the transfer of the permitting program implemented pursuant to 33 U.S.C 1342, as it relates to confined animal feeding operations from the Department of Environmental Quality to the State Department of Agriculture. I

would submit that working in concert with EPA officials in drafting the MOU is not "Environmental Protection Agency approval" as outlined by the Oregon Laws Chapter 248. DEQ itself stated that it does not yet have EPA approval, in the Staff Report for this Commission action. However, rather than wait for actual approval to transfer the program, DEQ has been gaming the system by retaining token authority over ODA's administration of the CAFO program, while in actuality it has effectively transferred all authority for the program to ODA.

Further, it is my belief that it is inappropriate and an inherent conflict of interest for an agency that is mandated to promote agriculture to be regulating it. If the Commission were to have accepted public comment on the MOU, it would have most likely heard from a number of downstream neighbors who believe that the ODA is not adequately protecting the resources of the state because of this conflict. Stories of continual pollution would have come before the Commission and you would have likely heard neighbors describe that they feel marginalized because of the ODA is more interested in protecting the industry than the waters of the state. Indeed, ODA's agency mandate *requires* it to prioritize the industry over the waters of the state.

This week, I reviewed a file for a local dairy that had had numerous Notices of Non-Compliance/Plans of Correction issued since 1999. Despite all the violations, in the file I came across a letter, which was sent to the operators of the dairy from an Administrator at ODA. The letter accompanied a draft of the latest Consent Order and provided the attorney for the dairy an opportunity to edit the Consent Order before the final version was signed and mailed. In comparing the draft to the final version of the Consent Order, it appears that the attorney successfully removed the requirement for the second year regular monitoring at an operation that is a known frequent and repeated violator. This type of action severely undermines any remaining public trust that the ODA is truly protecting the waters of state from agricultural pollution instead of protecting the interests and pocket books of the agribusiness industry.

Finally, I would like to express that I believe ODA lacks the expertise and experience necessary to adequately issue and enforce NPDES permits. In reviewing the same file mentioned previously, I came across an Animal Waste Management Plan (AWMP) that was approved and accepted by the ODA. One of the most obvious problems in this file was that the ODA approved an Animal Waste Management Plan containing mathematical errors and inaccuracies in the amount of manure that is generated at the operation. This is not surprising: ODA was simply not created to draft and enforce complex Clean Water Act permits. DEQ has the institutional knowledge and expertise to run this program, which is why EPA delegated DEQ, and not ODA, authority over the program.

Some of the inaccuracies in a single permit include:

- The incorrect statement that Dairy cows are grazed 50% of the time for six months out of the year. This result is less manure produced on paper than what is actually being generated on the ground, and a resulting threat to water quality.
- A gross underestimate of the amount of manure that is produced at a facility for the number of cows on site. This particular AWMP had a difference of 157,826 cubic feet of manure/year between what the permit was written for and the amount actually generated on the ground. This is not an insignificant mathematical error.

- Annual reports submitted by the operators and accepted by the ODA, which demonstrated that despite an increase in cows, the amount of manure generated remained the same.

In Conclusion, I believe that the MOU between DEQ and ODA violates the letter and the spirit of the DEQ's agreement with EPA, presents an insurmountable conflict of interest, and the ODA has neither the expertise of the experience to adequately protect Oregon's waters from the pollution generated by CAFOs.

Thank you.

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item L, informational item: Life cycle study of water delivery systems
December 10-11, 2009 EQC Meeting

Why this is Important

DEQ periodically uses life cycle assessments to help determine the potential environmental impacts of products, processes or services through production, usage and disposal. Such assessments help DEQ estimate, for example, possible impacts on emissions of greenhouse gases and toxic pollutants, and help provide useful information to both consumers and producers of goods.

Background

DEQ commissioned a study to assess the life cycle environmental impacts of drinking water delivery systems, and found that the results support DEQ's Strategic Directions and principle of reduction and reuse before recycling. The study compares 48 different scenarios and examines a range of environmental effects across the entire life cycle of single-use, five-gallon reusable and tap water delivery methods. The life cycle includes extracting raw materials from the earth, such as coal, oil and minerals; producing energy resources and packaging materials; water treatment; bottling; transportation, consumer transport; dishwasher use; and disposal, recycling and composting.

This study was conducted as part of DEQ's Waste Prevention Strategy, which focuses on reducing waste generation (the "reduce, reuse" part of "reduce, reuse, recycle"). DEQ has observed that many Oregonians express the belief that recycling products makes the purchase of such products environmentally benign. DEQ commissioned the study in part to evaluate and communicate the environmental benefits of recycling over disposal, but more importantly, reduction over recycling.

Key findings

The study, "Life Cycle Assessment of Drinking Water Delivery Systems: Bottled Water, Tap Water and Home/Office Delivery Water," concludes that drinking tap water in refillable bottles or dishware is the more environmentally friendly action when compared to other forms of obtaining and consuming drinking water, including buying water in bottles and recycling the bottles.

Other key findings from the study include:

- The majority of the environmental effects from bottled water occur from manufacturing and, for water shipped long distances, transportation. This means that the method used by consumers to obtain drinking water (tap vs.

bottle) has a greater environmental impact than whether single-use bottles are recycled or not.

- Recycling water bottles offers moderate environmental benefits, and consumers who choose to drink from single-serve bottles should continue to recycle. Purchasing and recycling a typical water bottle reduces energy consumption by 24 percent and greenhouse gas emissions by 16 percent over the entire life cycle, compared against purchasing and disposing of the same water bottle in the garbage.
- Consuming the same quantity of water from the tap in an average reusable bottle, even if washed frequently in a high water and energy using dishwasher, reduces energy consumption by 85 percent and greenhouse gases by 79 percent, again compared against purchasing bottled water and disposing of each bottle in the garbage.
- Even the best performing bottled water scenario, which uses and recycles a lightweight bottle not yet available in Oregon, has global warming impacts 46 times greater than the best performing tap water in the study.
- For individuals drinking water from the tap, environmental impacts are typically small and dominated by the energy used to heat water for washing reusable bottles or cups. Using energy-efficient appliances, washing less often, and running the dishwasher only when full are the most environmentally significant behaviors for these individuals.
- If bottled water must be purchased, DEQ recommends using the thinnest bottles and purchasing water that is bottled locally. Impacts of driving to the store can also be large, so avoiding extra shopping trips helps, as does recycling when the single-use bottles are emptied.
- Degradable plastics may worsen global warming by contributing to the production of methane in municipal solid waste landfills.

The study also contains information that producers can use to make their packaging less harmful to the environment. A key finding is that many of the environmental effects result from resin manufacturing, and making bottles thinner is one of the most important options for bottlers. Using recycled content and supporting increases in recycling helps too, but these benefits are generally smaller.

Next steps

The study's results were released November 18, and DEQ staff will present the information to a number of stakeholders, partners and interested parties throughout late 2009 and early 2010. DEQ staff are focusing outreach on the message "reduce first, then recycle."

Attachments

A. Life cycle Assessment of Drinking Water Systems: Bottled Water, Tap Water, and Home/Office Delivery Water Executive Summary

Available online or upon request

1. Life cycle Assessment of Drinking Water Systems: Bottled Water, Tap Water, and Home/Office Delivery Water Final Report with Appendices
http://www.deq.state.or.us/lq/pubs/docs/sw/LifeCycleAssessmentDrinkingWaterFullReport.pdf

2. Supplemental Report: Comparing Prevention, Recycling, and Disposal.
http://www.deq.state.or.us/lq/pubs/docs/sw/LifeCycleAssessmentDrinkingWaterSupplement.pdf

Approved:

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EXECUTIVE SUMMARY

INTRODUCTION

Bottled water offers consumers a clean, portable supply of drinking water for consumption at home or away from home. Some disposable water bottles are recyclable, and lightweighting of bottles and bottled water packaging have reduced the amount of packaging waste associated with bottled water consumption. However, bottled water is frequently consumed at away from home locations where access to container recycling may be limited. In addition, while recycling of postconsumer bottles and packaging reduces consumption of virgin material resources, other resources are used and wastes created when packaging is manufactured and bottled water is transported.

Consumers have other drinking water options that do not involve disposable containers. These include consumption of tap water from a container that can be washed and reused many times, or consumption of water from a home/office delivery system with the water dispensed into a reusable drinking container. However, while reusable systems require less use and disposal of material, these systems require washing of containers between uses, and in the case of HOD systems, transportation of the containers to and from the filler. These processes incur environmental burdens that may be higher or lower than the burdens for disposable container systems.

Life Cycle Assessment (LCA) has been recognized as a scientific method for making comprehensive, quantified evaluations of the environmental benefits and tradeoffs for the entire life cycle of a product system, beginning with raw material extraction and continuing through disposition at the end of its useful life. This LCA evaluates the environmental burdens for disposable and reusable systems for delivering drinking water.

PURPOSE OF THE STUDY

This LCA was commissioned by the Oregon Department of Environmental Quality (OR DEQ) to evaluate the environmental implications of various systems for delivery and consumption of drinking water, including bottled water, tap water consumed from reusable containers, and home/office delivery (HOD) water consumed from reusable containers. The analysis includes water processing, production of containers and packaging materials, filling, transport, and end-of-life management of containers and packaging. The analysis also looks at transportation of bottled water imported from several foreign locations.

This study uses container weight and packaging data obtained by weighing purchased samples of various brands of bottled water and reusable drinking containers,[1]

[1] Supplemented with information from a published article about bottle weight trends: Bauerlein, Valerie. "Pepsi to Pare Plastic for Bottled Water." Wall Street Journal. March 25, 2009.

and import distances are estimated based on the locations of several countries where popular brands of imported water are bottled. The companies producing these brands of bottled water did not participate directly in this study, and their specific operations may be significantly different from the data sets and modeling assumptions used in this report. **The results presented in this report are not intended to be used to represent specific brands of bottled water or reusable containers available in the marketplace.** For example, a scenario shown for water imported from Fiji is one of several import scenarios developed using purchased container weights and estimates of transportation distances from bottling location to Oregon; however, the results for this scenario are **not** intended to be used to represent the specific products or operations of FIJI Water Company LLC, since no data from FIJI were collected for this study.

INTENDED USE

The primary intended use of the study results is to inform DEQ about the environmental burdens and tradeoffs associated with various options for providing drinking water to consumers and behavioral choices of consumers. DEQ is also interested in better understanding the environmental burdens and tradeoffs of end-of-life management options (recycling, composting, landfilling, etc.).

This analysis contains comparative statements about the drinking water subscenarios analyzed. These statements are supported by the data presented in this report and apply to the systems analyzed in this study. Because DEQ will make the results of this study, including comparative statements, publicly available, this report is being peer reviewed in accordance with ISO standards for life cycle assessment.[2]

SYSTEMS STUDIED

The following types of drinking water systems are analyzed in this study:

- Bottled water packaged in and consumed from individual disposable bottles:
  - Virgin polyethylene terephthalate (PET) bottles (16.9 ounce, 8 ounce, and one liter)
  - PET bottles with a mix of virgin and recycled content (16.9 ounce)
  - Bottles made of virgin polylactide (PLA) resin derived from corn (16.9 ounce)
  - Glass bottles with a mix of virgin and recycled content (12 ounce)
- Tap water consumed from reusable containers:
  - Virgin aluminum bottle with plastic closure (20 ounce)
  - Virgin steel bottle with plastic closure (27 ounce)
  - Virgin plastic bottle with plastic closure (32 ounce)

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2 International Standards Organization. ISO 14040:2006 Environmental management—Life cycle assessment—Principles and framework, ISO 14044:2006, Environmental management – Life cycle assessment – Requirements and guidelines.

  - Drinking glass with a mix of virgin and recycled content (16 ounce)
- Home/office delivery (HOD) water consumed from reusable containers
  - Virgin polycarbonate bottles
  - Virgin PET bottles
  - Same reusable containers listed under the Tap system.

Within these three general drinking water scenarios, a number of subscenarios were analyzed to evaluate the results for variations in container sizes, weights, transportation distances, recycled content and recycling rates, and many other variables. Forty-eight subscenarios were evaluated in all: 25 bottled water subscenarios (20 for PET bottles, 4 for PLA, 1 for glass), 12 subscenarios for tap water consumption using a variety of reusable drinking containers, and 11 subscenarios for HOD water consumed from reusable containers. Of the bottled water subscenarios, 5 evaluated long-distance transport of water from another country or the Eastern U.S. to Oregon.

FUNCTIONAL UNIT

In a life cycle study, systems are evaluated on the basis of providing a defined function (called the **functional unit**). The function of each system analyzed in this report is to deliver drinking water to consumers. The functional unit selected for this analysis is delivering 1,000 gallons of drinking water to a consumer, including use of a bottle or reusable drinking container, and end-of-life management of the containers and packaging. To provide some perspective, 1,000 gallons is the amount of water a person would consume in about 5.5 years if they drank eight 8-ounce servings of water a day.

The functional equivalence is based on delivering drinking water that meets water quality standards set by the Food and Drug Administration (FDA), EPA, and state governments. The scope of the analysis does not include evaluating other differences in the quality of the water (e.g., taste, fluoride or mineral content, etc.) or temperature of the water, or any potential health impacts that may be associated with the use of specific water container materials. Each subscenario evaluated clearly indicates whether the results included chilling of the water, and if so, the chilling method used. No carbonated or flavored waters were evaluated.

SCOPE AND BOUNDARIES

This study is a complete life cycle assessment (LCA) as defined in the ISO standards 14040 and 14044. As such, the study includes definition of goal and scope, life cycle inventory (LCI), life cycle impact assessment (LCIA), and interpretation of results.

The analysis includes all steps in the production of each drinking water container system, from extraction of raw materials through production of the materials used in the containers, fabrication of finished containers and closures, and transport to filling locations. Treatment of municipal drinking water and additional processing steps used to purify bottled municipal water and natural water such as spring water are included in the

analysis. Bottle filling and washing operations are included, as is production of secondary packaging used for shipment of filled containers, distribution of filled containers, washing of reusable containers, and end-of-life management of containers and associated packaging components. Various options for chilling water are also included in the model, including home refrigeration, use of ice, and HOD chiller units.

All washing of reusable personal drinking containers in this study is modeled based on use of a residential dishwasher, which is expected to be the most common method used by consumers for washing of these containers. Containers may also be hand-washed; however, water and detergent use for hand washing can vary widely based on the practices of individual consumers. As a result, hand washing of containers can be either more or less burdensome than machine washing.

The scope of the study did not include analysis of scenarios for HOD and tap water consumed from disposable cups, nor did the study include any scenarios in which disposable drinking water bottles sold filled with water were refilled by consumers and used as a reusable drinking container. Additional at-home purification of tap water, such as use of tap water filters, was not included in the scope of the analysis. The scope of the analysis did not include greenhouse gas effects of direct and indirect land use changes that may be associated with corn growing for PLA production.

In Oregon, municipal solid waste (MSW) that is not recovered for recycling or composting is managed 93 percent by weight to landfill (LF), 6 percent by weight to waste-to-energy (WTE) combustion, and 1 percent by combustion without energy recovery, as documented in Appendix J. An energy credit is given for material that is managed by WTE combustion, based on the amount of each material burned, its heating value, and the efficiency of converting the gross heat of combustion to useful energy.

The end-of-life emissions results take into account the effects of combustion, decomposition, and energy recovery, including estimates of release of carbon dioxide from combustion of materials and methane from decomposition of degradable landfilled material, emission credits for avoided grid electricity displaced by electricity generated from WTE operation and from landfill gas combustion, and carbon sequestration in landfilled biomass-derived material that does not decompose. The end-of-life modeling and recycling methodologies are described in Chapter 1. The LCI results are presented in Chapter 2.

In the scoping phase of this study, the U.S. EPA's TRACI methodology was selected as the impact assessment methodology to be used, since it was developed to represent U.S. conditions (e.g., for fate and transport of chemical releases). Details of the LCIA are presented in Chapter 3.

DATA

Detailed descriptions of the data and assumptions used in the life cycle assessment are provided in the Appendices, a separate document. Wherever possible the study used Oregon-specific data and assumptions, including the following:

- Mix of fuels to produce electricity used for processes that occur in Oregon, including processing and filling operations for bottled water processed in Oregon; operation of pumps to deliver municipal tap water to Oregon homes or to pump well water; molding of plastic water bottles produced in Oregon; operation of home dishwashers used to clean reusable containers between uses, electricity use in washing operations for HOD bottles that are filled and circulated in Oregon;
- Transportation distances for bottled water;
- Mix of residential water from wells and municipal water supplies;
- Recycling rates for PET bottles, glass bottles, and corrugated packaging;
- Percentages of landfilling, waste-to-energy combustion, and combustion without energy recovery for municipal solid waste management of containers that are not recycled;
- Modes and distances for transport of postconsumer solid waste to landfill and combustion facilities;
- Management of landfill gas.

MAIN CONTRIBUTING FACTORS FOR EACH SYSTEM

The primary factors contributing to the results for the bottled water system include the following:

- Production of bottles accounts for the majority of energy consumption for all subscenarios except those involving long-distance transport. Scenarios for trucking water cross-country showed higher energy requirements than scenarios where water was transported longer distances by ocean and a shorter distance by truck.
- The energy requirements for bottled water delivered in the 8-ounce bottle (scenario 5) are higher than the energy to deliver water in larger bottles because the smaller bottle has a higher ratio of bottle weight to weight of water in the bottle.
- In addition to the bottles themselves, the bottle lids and secondary packaging make significant contributions to the energy results. On average across all subscenarios, production of caps and secondary packaging each accounted for 12 percent of total energy.
- The choice of recycling allocation methodology for LCI analysis also can have a significant effect on the results. Use of an open-loop recycling allocation divides the burdens for material production and disposal between the product uses of the material, while alternative "cut-off" recycling allocations assign material production and disposal burdens to

either the system first using the virgin material or to the system using the recycled material.

For tap water consumed from reusable containers, results are driven by washing of the container (including energy use for heating the water) and variations in the use of the container that affect the frequency of washing.

- The number of drinking container washings per thousand gallons of water consumed varies inversely with the size of the containers, the number of times the container is filled before washing, and the number of days the container is used before washing. The drinking glass system (scenario 18) has the lowest energy use for container manufacture but has the highest washing requirements because it is smaller than the other reusable containers so that the container must be filled (and washed) more times per 1,000 gallons consumed.
- Doubling the number of container fills between washings or washing the container every other day instead of daily reduces the washing requirements by half.
- Efficient use of the dishwasher is also important. The highest results for the tap water system are for the scenario in which containers are washed daily in a dishwasher with a high water consumption rate that is run when it is half full.

For HOD water consumed from reusable containers, the three life cycle stages that consistently making the largest contributions to overall energy use are transportation of HOD containers (delivery of filled HOD containers and backhauling of empty containers to be washed and refilled), home washing of the reusable drinking containers, and chilling of the HOD water using a chilling base unit.

- Distribution of HOD containers includes transportation of filled containers from bottler to HOD distributor, dropping off filled bottles and picking up empties on delivery route, and backhauling empties to filling location for refilling. Distribution accounts for about 25 percent of total energy requirements for the subscenarios evaluated.
- Observations for washing of the reusable drinking container are the same as described above for the tap water system. Industrial washing of the HOD bottles makes a much smaller contribution to the overall results than does home washing of the individual drinking container.
- Chilling of drinking water is not required in order to maintain the quality of drinking water. While chilling of bottled water and tap water is done at the discretion of the consumer, HOD water is most commonly dispensed from a base unit that chills the water, so chilling energy use was included in all the HOD scenarios. This is a difference from the modeling of the bottled water and tap water scenarios, where most of the subscenarios did not include chilling. Energy for chilling of HOD water ranges from 20 to 40 percent of total energy for HOD systems and accounts for around 30

percent of total energy for most HOD subscenarios. Chilling results are shown separately in the results tables so that results for HOD systems without chilling can be compared to results for unchilled bottled and tap water.

OBSERVATIONS AND CONCLUSIONS

Some general observations and conclusions can be made based on the results for the full range of subscenarios evaluated, which include combinations of parameters selected to represent "best" and "worst" cases for each system. It should be noted that the "best" and "worst" case subscenarios include future lightweighting and increased recycling scenarios. The full range of results also includes some subscenarios that account for a small percentage of total Oregon bottled water consumption (e.g., imported water packaged in glass bottles). The reader is encouraged to refer to the figures in Chapters 2 and 3 for results for individual scenarios for each system and the figures in Chapter 4 for the ranges of results for individual impacts across all subscenarios evaluated.

Energy Results

Energy comparisons between the different drinking water systems can be summarized as follows:

- All tap and HOD scenarios show lower energy than all long-haul water scenarios.
- The "best case" results for Oregon bottled water (excluding long-haul water) are for a future lightweighted bottle not currently in the marketplace, combined with 100% bottle recycling. When *existing* Oregon bottled water subscenarios are compared to tap subscenarios, the energy for tap subscenarios is lower in all cases.
- When existing Oregon bottled water subscenarios are compared to HOD subscenarios, there is overlap in many cases so that neither system can generally be considered to have lower energy results.
- Assuming a consumer's container washing practices are not influenced by the type of water served in the container, tap water systems have lower energy requirements than HOD water systems.

Solid Waste Results

As would be expected, the HOD and tap water systems do not produce much solid waste compared to the majority of the bottled water scenarios, since the tap and HOD systems utilize drinking water containers that are used many times over their useful life. The HOD bottles are also refilled and reused multiple times before they are retired from service and recycled; however, the solid waste results for the HOD systems do include the weight of disposed HOD plastic caps that are assumed to be replaced after each use cycle of an HOD bottle.

The choice of recycling allocation method has a significant influence on the solid waste weight and solid waste volume comparisons. The majority of subscenarios used an open-loop recycling methodology (designated method 1), in which half of the disposal burdens for the recycled bottles are allocated to the bottle system and half to the next system using the recycled material. The other recycling methods evaluated (designated methods 2 and 3) allocate *all* disposal burdens for recycled material to the next system using the recycled material, so the subscenarios using methods 2 and 3 show lower solid waste results than the subscenarios using method 1. A detailed description of the recycling methodologies can be found in the Postconsumer Recycling Methodology section of Chapter 1.

The following solid waste observations can be made:

- In nearly all solid waste comparisons, both the tap and HOD systems have lower solid waste than the bottled water systems (long-haul and Oregon bottled water), although there are a few exceptions. The HOD worst case scenario overlaps with several Oregon bottled water solid waste subscenarios. Excluding the HOD worst case, the only other comparisons where bottled water solid wastes are lower than tap and HOD solid wastes are for the PLA bottle at 100% composting and the future lightweighted PET bottle at 100% recycling.
- Assuming a consumer's container washing practices are not influenced by the type of water served in the container, tap water systems have lower solid waste requirements than all HOD subscenarios except when compared to the HOD best case scenario.

Impact Categories

Rather than describing each impact category individually, this section describes general trends observed in the impact figures in Chapter 4. The reader is encouraged to refer to Chapter 4 to view results for individual impact categories. Environmental impact results can be summarized as follows:

Comparison of Long-haul Bottled Water and Oregon Bottled Water Systems. Within the bottled water subscenarios evaluated, the ranges of impact results for long-haul bottled water and Oregon bottled water overlap or show small gaps for most impact categories. It should be noted that differences in impacts for long-haul and Oregon bottled water are due not only to differences in transportation but also to differences in the types and weights of bottles used for domestic and imported water.

Comparison of Tap and Bottled Water Systems. For the subscenarios evaluated in this study, all tap subscenario results are lower in all impact categories compared to all long-haul bottle subscenarios. When comparing tap system results to Oregon bottled water results, the tap system subscenarios evaluated all have lower impacts than *existing* Oregon bottled water scenarios. The *future* lightweighted PET

bottle combined with very high bottle recycling rates has the potential to compare favorably with tap scenarios with inefficient container washing practices.

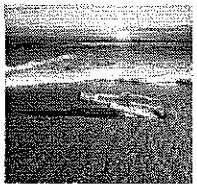
Comparison of HOD and Bottled Water Systems. For the subscenarios evaluated in this study, all HOD subscenario results are lower in all impact categories compared to the long-haul bottle subscenarios. When comparing HOD subscenario results and the Oregon bottled water subscenario results, there are many subscenarios where there is overlap between HOD and Oregon bottled water results, even when the best and worst case scenarios are excluded for each system. Therefore, no general statements can be made about which of these systems has lower environmental impacts.

Message in a Bottle: What Delivery of Drinking Water Tells Us About Waste Prevention, Reuse, and Recycling

Abby Boudouris and David Allaway

Presentation to the Oregon Environmental Quality Commission

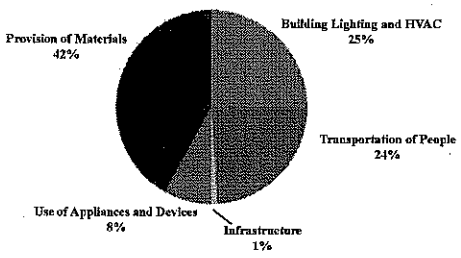
December 11, 2009



Reduce, Reuse, *then* Recycle

- "Waste prevention" includes "reduce" and "reuse" (but not recycling)
  - "Waste prevention" reduces "waste generation" (total discards)
- State law:
  - Waste generation (prevention) goals
  - A hierarchy of preferences (reduce first, then reuse, then recycle)
- DEQ's Waste Prevention Strategy (2008 – 2017)
  - Goal: To provide leadership in Oregon that will protect the environment and human health through prevention of solid waste generation and associated "upstream" and "downstream" impacts.

Systems-Based View of U.S. Greenhouse Gas Emissions (2006)



Source: US EPA (2009)

DEQ Waste Prevention Strategy – Current Major Projects

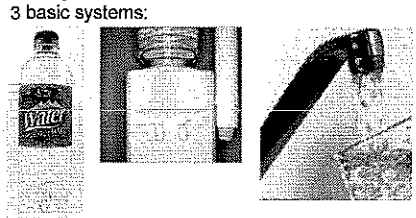
- Drinking water LCA
- Waste prevention in green building
- Consumption-based greenhouse gas emissions inventory
- Grants to local governments
- Technical assistance (Wal-Mart Packaging Sustainable Value Network)

Why this study?

- Provide information that consumers and producers can use to reduce their environmental impacts
  - Widespread belief: recycling negates the environmental impacts of consumption
    - "I recycle my bottles . . . Isn't that enough?"
    - Is recycling enabling environmentally harmful consumption?
  - Lots of important packaging questions
- Water is ubiquitous
- Existing water studies aren't specific to North America, lack transparency, and/or aren't comprehensive

DEQ's Life Cycle Analysis of Water Delivery

- 3 basic systems:



- The "life cycle" includes energy production, packaging production, water treatment, bottling, all transport steps, washing, wastewater treatment and waste management.

Oregon DEQ: Message in a Bottle

Life Cycle Analysis

- Inventory analysis: accounting of energy and material flows over the entire life cycle
- Impact analysis: conversion of those flows into "impact categories"
  - Acidification
  - Ecotoxicity
  - Eutrophication
  - Global warming
  - Ozone depletion
  - Smog
  - Human Health
    - Cancer
    - Non-cancer
    - Respiratory effects

Oregon DEQ: Message in a Bottle

Variables: single-use water bottles

- Bottle material (PET, PLA, glass) and recycled content
- Bottle weight (mass) and volume
- Bottle molding energy
- Cap, corrugated, film packaging weight
- Water source type and treatment technologies
- Distances (molding to filling, filling to retail, retail to home) and modes of transport
- Chilling (at home)
- Recycling rate and allocation method
- PLA composting and landfill decomposition

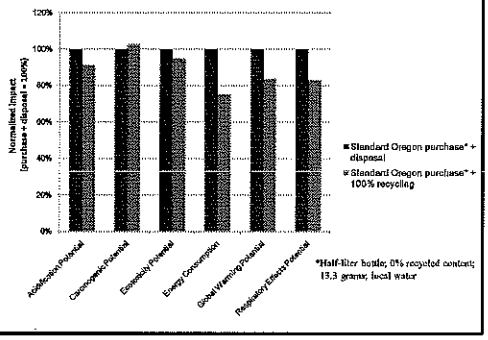
Oregon DEQ: Message in a Bottle

Variables: tap water

- Type of reusable container (aluminum, PET, steel, glass)
- Container volume
- Lifetime of reusable container
- Recycling of reusable container
- Recycling allocation method
- Chilling
- Container fillings/day and days used between washings
- Dishwasher energy/water use
- Detergents

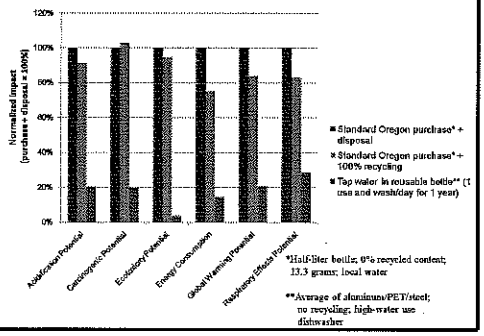
Oregon DEQ: Message in a Bottle

Disposal vs. Recycling



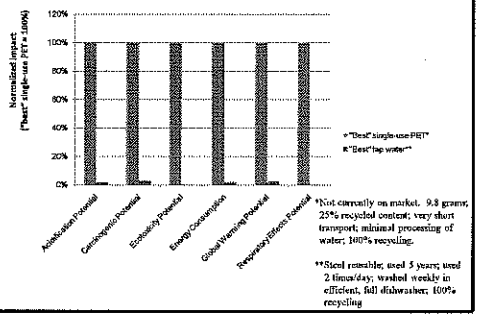
Oregon DEQ: Message in a Bottle

Disposal vs. Recycling vs. Prevention



Oregon DEQ: Message in a Bottle

Best Case Recycling vs. Best Case Prevention



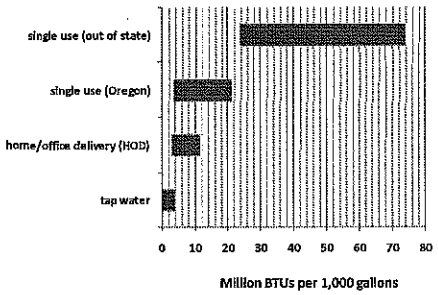
Oregon DEQ: Message in a Bottle

Subscenarios

- "Water bottles" (single-use)
  - 25 subscenarios
    - 21 from local sources (<150 miles to retail)
    - 4 "imports" (Maine, France, South Pacific)
- "Home office delivery" ("HOD")
  - 11 subscenarios
- Tap water
  - 12 subscenarios
- Subscenarios include "best" and "worst" cases for each system

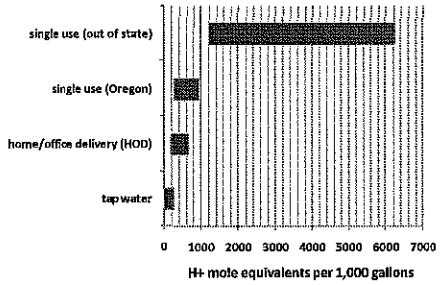
Oregon DEQ: Message in a Bottle

Life Cycle Energy Consumption



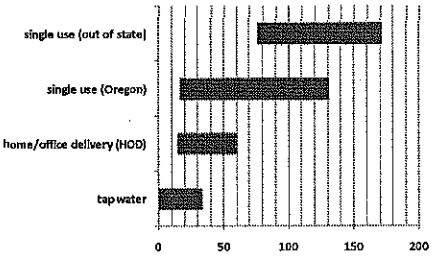
Oregon DEQ: Message in a Bottle

Life Cycle Acidification Potential



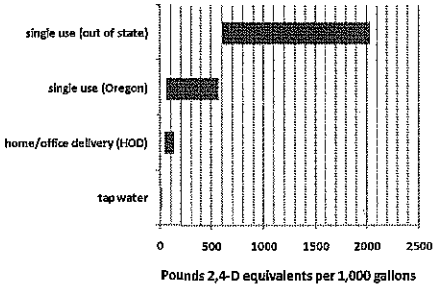
Oregon DEQ: Message in a Bottle

Life Cycle Carcinogenic Potential



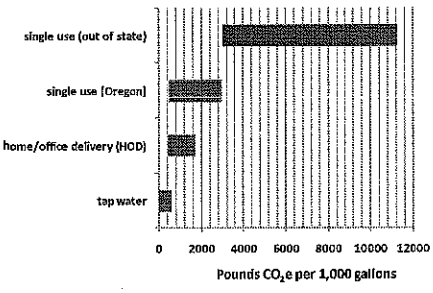
Oregon DEQ: Message in a Bottle

Life Cycle Ecotoxicity Potential

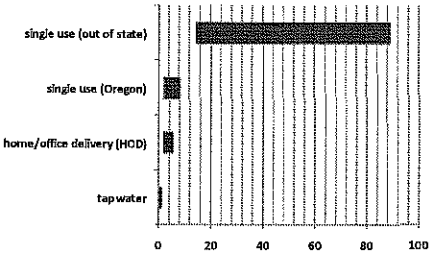


Oregon DEQ: Message in a Bottle

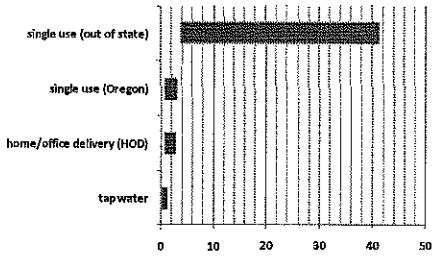
Life Cycle Global Warming Potential



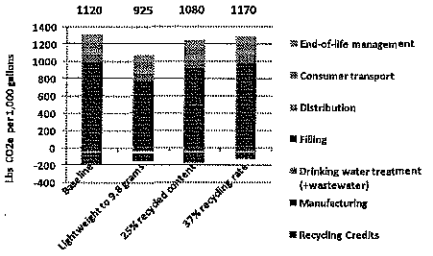
Life Cycle Smog Potential



Life Cycle Respiratory Effects Potential



Sample Contribution Analysis (GHGs): Single-Use Bottles



"Baseline" = PET, half-liter, 13.3 g, 0% recycled content, on-site molding, purified municipal water (reverse osmosis, ozone and uv), 50 miles to retail, 5 miles home-to-retail, co-purchase w/24 other products, no chilling, 62% recycling.

Variables: Single-Use Bottles

Relatively Higher Importance (GHGs):

- Transport distance (bottler to retail)
- Consumer driving/shopping behavior
- Bottle mass (lightweighting)
- Volume
- Material choice (PET, PLA, glass)

Moderate Importance (GHGs):

- Recycling rate (but less so for recycled content)

Relatively Lower Importance (GHGs):

- Water treatment
- On- vs. off-site molding
- Filling
- Secondary packaging
- At-home chilling

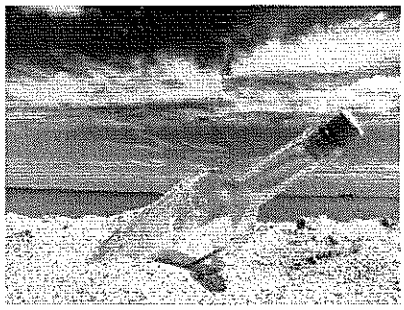
Variables: Tap Water

Relatively Higher Importance (GHGs):

- Frequency of bottle/vessel washing
  - Uses per day
  - Days per wash
- Fullness of dishwasher
- Energy/water use by dishwasher

Relatively Lower Importance (GHGs):

- Bottle/vessel material
- Length of use
- Recycling
- Chilling/ice



Oregon DEQ: Message in a Bottle

Use of Results

- DEQ's priority message: reduce first, then recycle
  - Media coverage
  - Outreach by local governments
  - Outreach by others
- Environmental improvements by bottlers
- Answering environmental questions, providing technical assistance
- Shifting focus in waste programs from "landfill avoidance" to "environmental improvement" and sustainability

State of Oregon

Department of Environmental Quality Memorandum

Date: December 4, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda Item M, Informational Item: Director's Dialogue
December 10-11, 2009 EQC meeting

Sustainability and the Natural Step at DEQ

In August 2008, DEQ's Executive Management Team adopted the Natural Step Framework. The Natural Step is a non-profit organization founded in Sweden in 1989. The Natural Step Framework is a widely used approach for helping organizations become more sustainable. Since adopting the Natural Step Framework, DEQ has provided training to managers, held planning sessions to identify our vision, goals and actions, trained DEQ staff to be internal trainers and developed a comprehensive draft sustainability plan. The internal trainers have developed a training curriculum for all staff, which will be available starting in January 2010. DEQ plans to train all staff in the fundamentals of the Natural Step through 2010 and have a draft sustainability plan. Trainers will integrate the plan into all sessions, and hope to engage staff to develop additional action items for near-term goals and help refine longer-term goals and objectives. DEQ would like EQC to remain involved in the development and implementation of a sustainability plan at DEQ, and will bring a full informational item on this topic to the February EQC meeting.

Lower Umatilla Basin groundwater management area

The end of December marks 12 years of implementation of a groundwater nitrates action plan in parts of Umatilla and Morrow Counties. The action plan, developed by a local advisory committee, requires a quantitative evaluation of program effectiveness at the end of 12 years. DEQ plans to complete this evaluation in spring 2010. This will be the first evaluation based on an area wide water quality trend analysis, and will likely show steady or worsening levels of nitrates in groundwater. The plan states that if DEQ determines that the voluntary nature of the program is not effective that additional controls, including potential mandatory regulatory controls, may be necessary. In that situation, DEQ and the Oregon Department of Agriculture will work with the local advisory committee to develop and implement the additional controls. On December 2, Phil Richerson and Mitch Wolgamott presented at the annual Hermiston Farm Fair, one of the largest gatherings of the agricultural community in the area. Their presentation noted that stating that in 2010 DEQ will likely need to begin discussing additional controls, and, because irrigated agriculture is by far the largest contributor of nitrogen, these controls will need

to address nitrogen application by agriculture. Other successful programs for reducing nitrates were discussed at the presentation, and the audience engaged in positive discussion on ways to identify potential reduction measures in Umatilla and Morrow Counties. DEQ expects to complete the trend analysis by spring 2010, and can bring that information to the commission for feedback before drafting the final report.

Liquefied natural gas projects: Bradwood Landing, Jordan Cove and Warrenton

The proposed Bradwood Landing liquid natural gas project would be located on the Columbia River between Astoria and Clatskanie. The Federal Energy Regulatory Commission has approved the project, but challenges to Clatsop County's land use approvals for the project are ongoing. DEQ continues to gather information on the potential environmental impacts of the project for use in processing air and water discharge permits for the facility. DEQ and the National Marine Fisheries Service have requested additional data collection and analysis to complete each agency's regulatory process. In early 2010, DEQ may hold a local public information meeting to share information, answer questions and provide an opportunity for the people to give us information to consider in developing the draft permits and certificate. DEQ will not issue the draft permits and certificate for public comment until all information requested from the project has been received and analyzed.

The proposed Jordan Cove terminal would be located on the north spit of Coos Bay and the 234-mile pipeline would originate at the facility and travel through Coos to Douglas, Jackson, and Klamath Counties, terminating in Malin, Oregon. FERC published a draft environmental impact statement for the project in August 2008. Because of the coordination complexities among the project's three applicants, the US Army Corps of Engineers published a joint permit application for public comment in August 2009. The Corps and DEQ section 401 water quality certification public notices are currently open for comment with an extended deadline of December 27, 2009. Copies of all project materials received to date are available to the public at DEQ offices in Portland, Coos Bay and Medford. Water quality and several Western Region staff have been coordinating with other state and federal agencies and the applicants. The applicants have not yet filed air or water discharge permit applications with DEQ, but they have been working with DEQ's air quality program to prepare the model for the Title V permit. Depending on applicant responses to information requests, DEQ may hold a public meeting in Coos Bay in spring or summer of 2010.

In October 2008, Oregon LNG filed an application with FERC to build a facility in Warrenton. DEQ received an application for an air emissions permit at that time, but the accompanying land use compatibility statement was not adequate for issuing an air permit. Recently, Oregon LNG shared initial information with DEQ related to the water discharge permit application and the company has stated intent to submit the application soon. The 401 water quality certification process has not yet begun on this project. If applications and permitting for the project move

forward, DEQ will begin planning for public meetings in Warrenton to share information with community members and hear local perspectives and concerns.

Portland municipal wastewater permit

On January 29, 2009, DEQ sent copies of municipal wastewater permits to EPA Region 10 for consideration. The permit holders include the city of Portland, city of Tillamook, US Forest Service for Multnomah Falls Lodge, city of Warrenton, Shoreline Sanitary District and Sundown Sanitary District.

In March 2009, EPA sent a letter to DEQ that outlined general objections to certain conditions in the permits, and followed with a letter in May 2009 with more detailed objections to the permits. The bulk of EPA's objections were common to all seven permits and centered around permit provisions that allowed infrequent sanitary sewer overflows during large storm events. DEQ worked with EPA and the permit holders to resolve the sanitary sewer overflow permit language for these particular permits and, with the exception of the Portland permit, EPA lifted its objections in late August 2009. DEQ renewed the six permits in November 2009 and continues to work with EPA and the city of Portland to resolve EPA's objections to the Portland permit.

EPA's objections to the Portland permit center on what EPA considers to be combined sewer overflow related bypasses at Portland's Columbia Boulevard wastewater treatment facility. In order to resolve the remaining issues with the Portland permit, the city will submit a "no feasible alternatives analysis" that, if approved by DEQ, will address EPA's remaining objections. This analysis was submitted December 4, and DEQ will review the analysis in concert with EPA over the next several weeks.

Dan Desler and Western States Land Reliance Trust: Asbestos abatement and solid waste removal in Sweet Home

In mid-November, EPA completed a month-long removal of asbestos-containing debris from an old sawmill at 2210 Tamarack Street in Sweet Home, currently owned by the Western States Land Reliance Trust and managed by trustee, Dan Desler. EPA, along with construction contractor Environmental Quality Management and asbestos abatement sub-contractor ATEZ, removed more than four million pounds of asbestos-containing debris from the 153-acre site. Ecology & Environment, a technical support contractor, performed all of the air, water and meteorological sampling, analysis and collection.

E&E had eight air monitoring stations set up, with four along the fence line across the street from residences on Tamarack Street. Air monitoring analysis was performed daily. Of the approximately 280 air samples that were taken during the cleanup process, only two had any type of elevated levels and they were minor. All of the asbestos-containing waste material was

wrapped in "burritos" the size of a dumpster each, and taken to the Coffin Butte Landfill. More than 200 burritos were removed from the site.

Demolition of the site by Dan Desler originally began in December 2007 and piles of mostly uncovered materials remained within yards of nearby houses until the EPA cleanup. The cleanup costs totaled approximately $1.1 million, with about $700,000 in cleanup costs and $300,000 in sampling analysis costs. EPA bore the cost through Superfund monies and will seek reimbursement from Western States Land Reliance Trust.

Criminal charges against Desler relating to asbestos contamination remain unsettled. Desler was arrested in May after a months-long investigation by the Oregon State Police and EPA, and was charged with felony and misdemeanor counts of unlawful air pollution and reckless endangerment of a contractor.

Washington-based Weyerhaeuser Co., through Eugene's Lane Forest Products and Sweet Home Sanitation, has volunteered to clean up two massive illegal industrial solid waste dumps, one on Western States Land Reliance Trust's former mill property in Sweet Home, the other on Desler-owned land about four miles northwest of Sweet Home. The Sweet Home mill site contains 37,000 cubic yards of fiber and plastic waste and other contaminants, while the site on the Santiam Highway to the northwest of Sweet Home contains 47,000 cubic yards of waste pulp and shredded mixed plastics.

Desler and a former business partner were paid by Weyerhaeuser to transport many hundreds of tons of waste plastic and pulp to licensed landfills. Instead of taking the waste to the landfills, Desler and his partner dumped the garbage on the Sweet Home properties that Desler controls. Even with hauling away 30 truckloads a day, six days a week, the cleanup will take about four months. The waste is going to a Corvallis landfill. Weyerhaeuser's cleanup removes the waste from the sites, but Desler is still liable for the $192,343 in fines DEQ issued to Desler and his companies last December.

DEQ penalizes Bandon Pacific Inc. $208,554 for wastewater discharge permit violations at its facility in Bandon

Last week, DEQ issued $208,554 in penalties to Bandon Pacific Inc., which operates a seafood processing and retail sales facility in Bandon, for numerous water quality permit violations between 2004 and 2009. The bulk of the violations centered on failure to monitor wastewater discharges into the Coquille River and failure to provide results of the monitoring to the state.

The Bandon Pacific facility, a subsidiary of Pacific Coast Seafood, operates under a National Pollutant Discharge Elimination System general permit at 250 SW First St. in Bandon. That permit allows the facility to discharge wastewater from its fish processing operations.

DEQ's investigation found the following violations by Bandon Pacific:

- Failing to monitor its wastewater and report the results of its monitoring to DEQ on more than 2,800 occasions from Jan. 1, 2004 through Jan. 31, 2009, as required by its permit ($174,766 penalty)
- Discharging wastes (fish carcasses) into the Coquille River on nearly 1,000 occasions between 2004 and 2009 without a permit. ($18,000 penalty)
- Failing to pass its wastewater through a 40-mesh screen or equivalent control device prior to discharge to the Coquille River ($15,788 penalty)

Toxics reduction workshop

DEQ held a toxics reduction opportunities workshop November 17 to generate strategies for reducing toxics in Oregon's environment. Over 150 people participated in the workshop, with a very diverse range of interests represented including neighborhood advocates, manufacturing industries, environmental and public health advocacy groups, tribes, agriculture and forest industries, state agencies and local governments. Chair Blosser, Vice chair Williamson and Senator Jackie Dingfelder participated in the workshop. In addition to hearing from local experts who have experience with successful toxics reduction programs, a long list of potential future reduction actions was produced at the gathering. DEQ is reviewing and evaluating these ideas for inclusion in the agency's toxics reduction strategy and Senate Bill 737 report to the legislature. An update on the strategy will be provided at the February EQC meeting.

Senate Bill 737

DEQ will issue a proposed rulemaking for trigger levels in January. A trigger level is the concentration of a pollutant in municipal wastewater treatment plant or water pollution control facility effluent, which, if exceeded, "triggers" the preparation, by the facility, of a persistent pollutant reduction plan for that pollutant. DEQ will hold hearings across the state on the rulemaking in January, as noted below:

- January 19, 5 p.m., Eugene DEQ Eugene Office, Willamette Conference Room
- January 20, 5 p.m., Medford, City Hall, Room 330
- January 26, 5 p.m., Pendleton, City Hall, Community Room
- January 28, 5 p.m., Portland, DEQ headquarters, 10th Floor, room EQC-A

This rulemaking is on schedule and DEQ expects to bring the final rule to the EQC for consideration at the June 2010 meeting.

Update on human health water quality standards rule revisions

DEQ is continuing to meet with its advisory rulemaking work group to discuss changes to water quality regulations to implement the revised toxic criteria for human health. As part of the EQC directive to the DEQ, DEQ's water quality program added stakeholders with agricultural, forestry, and county interests to its existing work group. DEQ held a meeting with this group on

November 18 to initiate specific discussions about what water quality regulatory changes or actions could be made in order to improve the ability of non-NPDES sources to implement toxic pollutant reduction measures that would lead to positive environmental impacts. DEQ's initial charge to this work group is to assist DEQ with identifying short-term, high priority items that are appropriate to include in the current water quality standards toxics rulemaking. DEQ working with the workgroup to finish up work developing various NPDES permit implementation tools related to proposed toxic criteria for human health. The group will meet in January and February, and DEQ will present an informational item to EQC in February to describe the group's work and progress.

E-Cycles

The Oregon E-Cycles program has surpassed the minimum annual collection goal of 12.2 million pounds. The program collected 14.3 million pounds of televisions, computers and monitors for recycling and reuse during the first three quarters of 2009 – which is approximately 52,000 pounds of computers, monitors and TVs *each day*. These recycling efforts have kept nearly one million pounds of lead out of landfills and incinerators and prevented the release of greenhouse gases equivalent to the annual emissions of more than 28,000 cars. A total of 25,198 units have been diverted for reuse. In addition to operating the program, DEQ, industry and local governments are preparing for the upcoming January 1, 2010 disposal ban of computers, monitors and televisions.

Willamette Valley field burning rule revisions

DEQ and the Oregon Department of Agriculture are developing rule revisions to implement Senate Bill 528, which was adopted by the 2009 Oregon Legislature. This bill reduced Willamette Valley field burning from 40,000 to 20,000 acres in 2009 and, with some exceptions, eliminates Willamette Valley field burning in 2010. The exceptions include 15,000 acres per year for fire-dependent identified species and burning on steep terrain, and a provision for 2,000 acres per year for emergency burning. Shortly after the bill was adopted, ODA conducted temporary rulemaking to incorporate the new acreage limitations into their rules prior to the 2009 field burning season. Although operation of the field burning program has been delegated to ODA, both agencies are required to have permanent field burning rules to implement Senate Bill 528. DEQ's rulemaking will address the emergency burning provision, which allows the commission to approve burning for disease and pest control reasons. The rulemaking will implement provisions of Senate Bill 528 that prohibit field burning in critical nonburn areas, such as areas under power transmission lines, double registration and burn fees for the remaining burning, and phase-out propane flaming and stack burning by 2013. Both ODA and DEQ will be using an advisory committee, scheduled to meet December 15, 2009 in Salem, and will hold a public comment period for the proposed rules in February 2010. DEQ will bring proposed rules for commission consideration at the June 2010 meeting.

EPA's Enforcement and Compliance History (ECHO) website

On Friday, November 6, 2009, EPA released a new Clean Air Act and Resource Conservation and Recovery Act website aimed at increasing transparency of EPA programs and actions. The website, called ECHO, contains performance data and includes state inspections and enforcement actions. DEQ reviewed the website and found significant problems with the air quality data. Of 45 Oregon facilities listed in ECHO as having Clean Air Act violations during the last three years, only 11 actually had periods of noncompliance and most of these were resolved more quickly than shown in ECHO. As a result, DEQ sent an addendum to EPA with corrected information. EPA posted state addendums, including Oregon's, on their website at http://www.epa-echo.gov/echo/trends/state_data_corrections.html. DEQ is working to improve communication between DEQ and EPA databases to prevent these data issues in the future.

National Ambient Air Quality Standard for sulfur dioxide

EPA is proposing a more stringent primary sulfur dioxide National Ambient Air Quality Standard to protect public health. The proposal is for an hourly average standard between 50 and 100 parts per billion, to replace the existing standards of 140 parts per billion 24-hour average and 30 parts per billion annual average. Initial determinations of attainment will be made in June 2012 using existing monitored data. DEQ expects Oregon to be well below the proposed range of 50 to 100 parts per billion based on past monitoring in Portland, Hermiston and Toledo.

Oregon will be required to add one or two monitoring sites by January 1, 2013, and report both the one-hour averages and maximum five-minute averages in each hour of the day. Nationally, this new monitoring is expected to cost over $13 million per year, and EPA has not yet identified a source of funding for this work. EPA is currently accepting comments on the proposal, and expects to issue a final rule by June 2010.

Federal climate change legislation

On November 5, the Senate Environment and Public Works Committee passed the Clean Energy Jobs and American Power Act, also known as the Kerry-Boxer bill, by an 11-1 vote, which included no Republican members of the committee. Since the Republicans on the committee boycotted markup sessions on the bill, senators were not able to vote on any amendments to the bill due to committee rules. The bill is now in the Senate Finance Committee, with at least four additional committees planning to consider the bill. Senate Majority Harry Reid announced recently that he plans to take the bill to the Senate Floor in early 2010. Senators John Kerry, Joe Lieberman and Lindsey Graham have announced that they are holding conversations with administration officials and other legislators in an effort to broaden support for a climate bill by adding provisions from a recently passed energy bill, among other changes.

DEQ is participating in multi-state efforts to ensure that federal legislation addresses key concerns of states, and that states will participate fully and effectively in administering any

resulting federal programs to reduce emissions. Oregon, along with other states, wants to ensure that federal legislation does not reduce the amount of resources available for state energy efficiency programs, nor preempt state and local emissions reduction efforts. Both the House and Senate versions of the bill preempt states from running cap and trade programs for five or six years. Oregon also wants to ensure that allowance distribution formulas do not penalize states with relatively aggressive emissions-reduction programs, nor nullify their efforts by freeing up additional allowances for less-aggressive states.

Federal greenhouse gas regulations

EPA released an endangerment finding for greenhouse gas in April 2009, and has announced that it plans to take action soon on this finding. EPA will also soon issue regulations under the Clean Air Act to control greenhouse gas emissions from light duty vehicles. Once EPA takes these actions, greenhouse gas will become a regulated pollutant under the Clean Air Act, and will automatically trigger federal permitting requirements under the Title V and construction approval programs. Title V permits regulate operation of major sources while construction approval programs require best available control technology for new and expanding major sources. Applying these programs to greenhouse gas emissions using the default definition of major source would affect a large number of small sources and create an unmanageable permitting workload for state and local air agencies.

To address this problem, EPA announced on September 30 a proposal to set new thresholds for triggering the Title V and construction approval permits for greenhouse gas emissions. The proposed thresholds are known as the greenhouse gas tailoring rule because they would tailor the permit programs to limit the number of facilities that would be required to obtain permits for their greenhouse gas emissions. Without the tailoring rule, the default thresholds under these programs would be 100 and 250 tons per year, while the proposed tailoring rule would set the threshold at 25,000 tons per year for greenhouse gas. Those thresholds would include larger sources like power plants, industrial boilers and cement plants, and ensure that office buildings, restaurants, small farms and other types of small businesses are not affected.

Nationally, even with the tailoring rule, permitting agencies expect the new requirements to double or triple the number of sources subject to permitting. DEQ has begun scoping the tasks needed to implement the new requirements. EPA is currently taking public comment on the proposal.

Greenhouse gas reporting

The greenhouse gas reporting advisory committee has held three meetings, which have focused on options for year-one reporting fees and information related to including more types of emission sources in greenhouse gas reporting. The committee reviewed a number of fee options and recommended setting the fees based on a percentage of a source's current permit fee. As

proposed in DEQ's temporary rulemaking, the fee would be 15 percent of a source's permit fee, with a cap of $6,000. If adopted by the commission, 2010 greenhouse gas reporters would be invoiced for this reporting fee in January 2010. The committee will continue to meet in early 2010 to discuss recommendations for a permanent rulemaking that would address future years' fees and expand greenhouse gas reporting requirements to include electricity importers and fuel suppliers as authorized by Senate Bill 38.

DEQ is working to finalize emission quantification methods to be used for reporting 2009 emissions. DEQ originally planned to uses methods developed by the Western Climate Initiative, but on September 22, 2009, EPA finalized federal rules and emission quantification methods for greenhouse gas reporting. The federal rule requires reporting beginning with 2010 greenhouse gas emissions from sources that emit 25,000 tons per year or more, as compared to 2,500 tons per year or more under Oregon's program. On October 9, 2009, DEQ proposed to use the new federal methods instead of the WCI methods. DEQ sought comments on whether facilities have collected the data needed to comply with the proposed methods for 2009 reporting. Those comments were due November 9, and DEQ received comments from 32 facilities and organizations. The vast majority of commenters indicated that they could use the EPA methods in some form for 2009 reporting, while a few companies submitted alternative calculation methodologies. The most common request was for an exemption to the fuel meter calibration requirements in the EPA methods, which is not required under Oregon's rules. One organization, the NW Pulp and Paper Association, requested exclusion of greenhouse gas from biomass combustion as part of determining whether a source is over the reporting threshold. Inclusion of biomass is required by Oregon's reporting rule, so this cannot be changed at this time.

DEQ will address the comments submitted and formally approve the list of emission quantification methods for sources to use for their 2009 greenhouse gas emission reports. The reports are due to DEQ due by March 2010, or another date established by a facility's permit. DEQ plans to hold training sessions across the state in January to help prepare sources for calculating and reporting their greenhouse gas emissions.

Air Toxics Science Advisory Committee appointments

The air toxics rules adopted by the commission in October 2003 established a standing technical committee, called the Air Toxics Science Advisory Committee. This committee has provided valuable scientific advice on the air toxics program, specifically on the ambient air quality goals, called ambient benchmark concentrations. The committee will be considering DEQ's recommendation to amend the current benchmarks for manganese and mercury at its next meeting December 14, 2009.

By rule, committee members are selected with experience in specific disciplines relevant to air toxics: toxicology; environmental science or engineering; risk assessment; epidemiology or

biostatistics; public health medicine; and air pollution modeling, monitoring meteorology or engineering. DEQ is requesting commission concurrence on my re-appointments to three-year terms for the current members of the Air Toxics Science Advisory Committee. DEQ is also requesting commission concurrence on appointments of two new members, Dr. David Farrer and Ms. Laurel Peterson, to three-year terms as well. Members' areas of expertise are noted in the brief bio-sketches attached to the end of this document.

The public had an opportunity to comment on the new appointments through an announcement to our air toxics interested persons mailing list and information provided on the air toxics website: http://www.deq.state.or.us/aq/toxics/atsacform.htm. No comments were received.

Air Quality Air Toxics Science Advisory Committee member biographies

Current Members

Brian Patterson, Ph.D.

Dr. Patterson is currently employed as an environmental consultant with Golder Associates Incorporated in Lake Oswego, Oregon. He has served as a member of the ATSAC since its inception in 2005 and was elected Chair of the Committee in May 2008. He holds a bachelor's degree in Chemistry and a doctorate degree in Physical Chemistry. His areas of expertise include risk assessment, air dispersion modeling, air receptor modeling, environmental regulatory review and air quality permitting. Over his 19 year career as an environmental consultant, Dr. Patterson has completed numerous air quality risk assessments in accordance with U.S. EPA guidance for plywood and composite wood products manufacturing facilities, human health risk assessments under the California AB2588 program, multi-media contaminated site human health risk assessments, and a two-year comprehensive human health risk assessment for the Lawrence Berkeley National Laboratory to meet California Environmental Quality Act requirements.

William Lambert, Ph.D.

Dr. Lambert has served as a member of the ATSAC since its inception. He is an Associate Professor in the Department of Public Health and Preventive Medicine at Oregon Health and Science University (OHSU). From 1987-2000, he held faculty and research positions at the University of New Mexico School of Medicine. He received his Ph.D. from the Department of Epidemiology and Environmental Analysis at the University of California, Irvine and a BA degree from the Department of Biology at the University of California, Los Angeles.
His areas of expertise are air pollution epidemiology, exposure assessment, toxicology, and biostatistics. He has served on a number of advisory/regulatory committees, including Chair of the City of Albuquerque/Bernalillo County Air Quality Control Board, a principal author of state of the science reviews for the American Thoracic Society's Environmental Health Committee, and as member of the Childhood Lead Poisoning Taskforce, Children's Environmental Improvement Project, and Turning Point Environmental Health Initiative, in New Mexico. Currently, he is Chair of the Board of Directors for the Josiah Hill III Clinic in Portland. His community service has been recognized by several organizations, including the Clean Air Award of the American Lung Association of New Mexico and the Lifesaver Award of the New Mexico Chapter of the American Cancer Society.

Kent Norville, Ph.D.

Dr. Norville is an Associate Atmospheric Scientist and project manager at Air Sciences Inc. in Portland, Oregon. He also is an original member of the ATSAC. He specializes in air quality dispersion modeling, data analysis, and model development. He has considerable experience with a wide variety of models for a number of different public and private sector modeling applications. Applications include regulatory permit modeling, risk assessments, and

environmental impact statements; dust fall and deposition studies; accidental release dispersion modeling; visibility modeling; water vapor cloud assessments; odor assessments; transportation conformity and hot spots dispersion modeling; meteorological data processing and assessments; specialized modeling; and custom model development. He has provided modeling assistance to a number of industrial clients, including aluminum producers, wood product facilities, pulp and paper facilities, metal processors, cement plants, mining operations, food producers, electric power producers, composting facilities, and waste treatment facilities.
Dr. Norville is experienced with risk assessment methods and applications and has worked on a variety of different risk and toxics projects, including EPA superfund sites, public municipalities, and private industries across the United States. He holds a Ph.D. degree in geophysics from the University of Washington and a B.S. degree in physics from the California Polytechnic University, San Luis Obispo.

Natalia Kreitzer, P.E.
Ms. Kreitzer received a B.S. degree in chemical engineering from Oregon State University and has been employed as an air quality engineer, first as a consultant and more recently as an air quality regulator. She is also an original ATSAC member. Her relevant engineering experience includes knowledge of sources of toxic emissions to the air, emission control strategies and current and future EPA regulations affecting toxics air emissions.
For the past six years she has worked for the Southwest Clean Air Agency (SWCAA) in Vancouver, Washington and has been the air toxics coordinator at SWCAA since 2000. In addition, her duties include writing Air Discharge Permits for industrial facilities, inspecting industrial facilities and determining compliance with all applicable air regulations including Washington's toxic rule "Controls for New Sources of Toxic Air Pollutants." In 2002, she participated as a member of Washington's Mercury Chemical Action Plan Advisory Committee and assisted in the development of a plan to reduce mercury in the state of Washington.

Dean Atkinson, Ph.D.
Dean B. Atkinson is an Associate Professor of Chemistry at Portland State University in Portland, OR. He received his Ph.D. in Physical Chemistry from the University of Arizona in Tucson in 1995, where he studied the low-temperature kinetics of atmospherically relevant reactions (primarily involving OH radicals) with Dr. Mark A. Smith. He had a two year NRC Postdoctoral Research Assistantship at NIST in Gaithersburg, MD, where he worked with Dr. Jeffrey W. Hudgens on methods for measuring reaction kinetics of free radical reactions, predominantly using pulsed laser photolysis/cavity ring-down spectroscopy. After starting at PSU, he built on that work and became one of the acknowledged experts in the application of the cavity ring-down method, particularly as applied to environmentally related measurements. Since much of his work at PSU has centered on atmospheric chemistry and physics, he has developed some expertise in this area, particularly in methods used to measure atmospheric species (e.g.,

trace gases, radicals, particulate matter.) He is familiar with the methods used to model the atmosphere, although his research has not involved the application of those methods to date.

The Atkinson group is currently funded by NOAA to produce a new type of airborne cavity ring-down instrument for measuring the optical properties of the aerosol aloft. The measurements made possible by this instrument should help to clarify both the direct and indirect radiative forcings associated with particulate matter, currently the largest single unknown in the estimation of global climate change. A prototype of the instrument was used for an EPA funded field study in Portland investigating the ambient aerosol optical properties and whether they can be used as a "signature" for diesel PM. This instrument was also used in the TRAMP (TexAQS II Radical and Aerosol Monitoring Project) portion of the TexAQS II field intensive during the summer of 2006. Current research projects focus on the use of the cavity ring-down technique to investigate air quality and climate change in the context of aerosol effects and the measurement of ambient atmospheric benzene levels in Portland.

New Appointments

David G. Farrer, Ph.D.

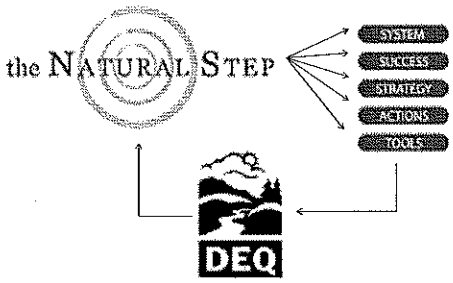
Dave Farrer is a public health toxicologist for the Oregon Department of Human Resources where he has worked for two years on human health risk assessment, risk communication, and production of public health assessment documents for the general public, with a special focus on Superfund and other hazardous waste sites. Much of that work has been providing assistance to Oregon DEQ and EPA. He received his BS degree from Brigham Young and his MS and PhD in Toxicology from the University of Rochester and has authored several peer-reviewed and numerous government publications. He has been an Associate Member of the Society of Toxicology since 2002.

Laurel Peterson

Ms. Peterson is currently employed as an associate engineer with Hoefler Consulting Group, located in Salem. She holds a bachelor's degree in Chemical Engineering from Lafayette College. She has six years of relevant experience which includes air permitting, regulatory compliance, emission control strategies, and knowledge of Federal Reference source testing methods. She has been an active member of the Air and Waste Management Association, recently as Vice Chair of the Oregon Chapter and Secretary of the Pacific Northwest International Section. Starting in 2010, Ms. Peterson will serve a three year term as a Director on the Air and Waste Management Association's Board of Directors.

The Natural Step at DEQ

Director's dialogue: Dec. 11, 2009

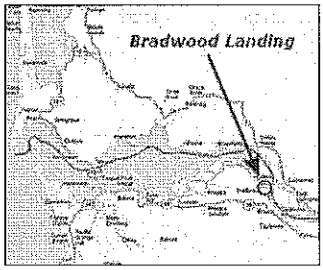


Lower Umatilla Basin groundwater management area

Director's dialogue: Dec. 11, 2009

Liquefied natural gas: Bradwood Landing

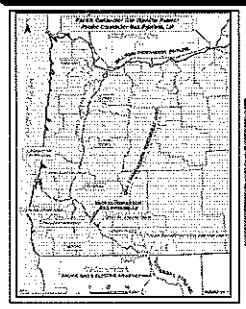
Director's dialogue: Dec. 11, 2009



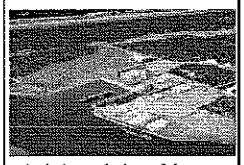
Proposed project site, between Astoria and Clatskanie

Liquefied natural gas: Jordan Cove

Director's dialogue: Dec. 11, 2009



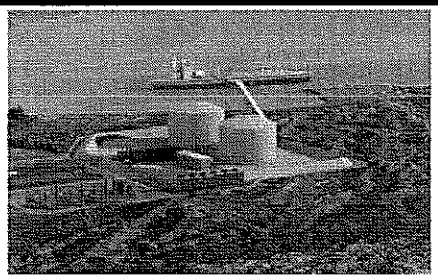
Planned pipeline route



Artist's rendering of the proposed facility in Coos Bay

Liquefied natural gas: Warrenton

Director's dialogue: Dec. 11, 2009



Artist's rendering of the proposed Oregon LNG facility

Portland municipal wastewater permit

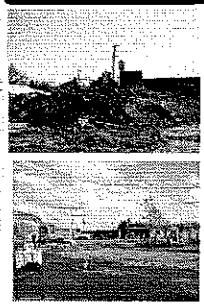
Director's dialogue. Dec. 11, 2009

DEQ staff Rodney Weick, Mer Wiren and Mike Pinney inside the big pipe

Asbestos abatement and solid waste removal in Sweet Home

Director's dialogue: Dec. 11, 2009

Project site, before and after



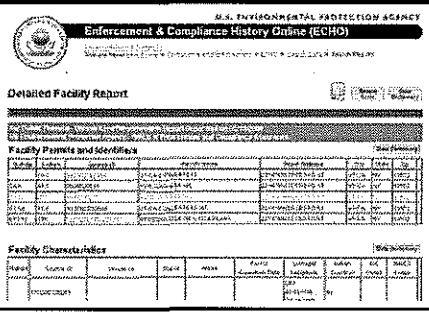
Project site and nearby homes

Toxics reduction workshop

Director's dialogue: Dec. 11, 2009

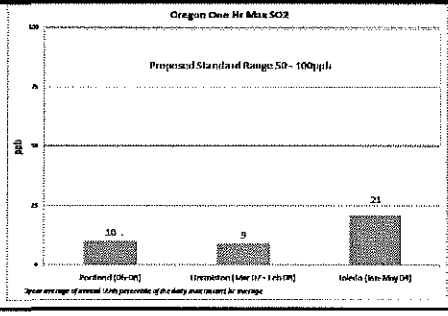
EPA's ECHO website

Director's dialogue: Dec. 11, 2009



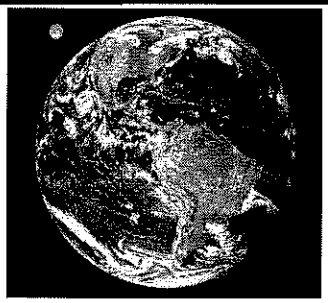
Standards for sulfur dioxide

Director's dialogue: Dec. 11, 2009



Federal and local climate change updates

Director's dialogue: Dec. 11, 2009



Air Toxics Science Advisory Committee appointments

Director's dialogue: Dec. 11, 2009

- Renew three-year appointments for existing members
- Add two new members

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item N, informational item: 2011 budget and legislative agenda update December 10-11, 2009 EQC Meeting

Purpose of item

This item updates the Environmental Quality Commission on the status of the Department of Environmental Quality's 2011-13 legislative agenda that includes the base budget, ten percent reduction options, budget policy packages that make up the Agency Request Budget and DEQ's legislative concepts, which, if approved for drafting and pre-session filing, will become draft bills for legislative consideration. This informational item informs the commission of ideas DEQ is considering for legislative concepts and budget policy packages that will have more definition in early 2010 and provides an update on recently developed ten percent reduction options for general and lottery fund work. These reduction options will be available at the December meeting.

Background

Every two years, state agencies must develop legislative concepts and budget policy packages as part of the legislative and budget development process. This discussion is a continuation of a conversation on the 2011 legislative agenda from the October 2009 EQC meeting. The development process will continue into and throughout 2010 in preparation for the 2011 legislative session.

Key deadlines in this process include:

- April 2010: DEQ must submit draft legislative concepts to the Department of Administrative Services
- September 2010: DEQ must submit its Agency Request Budget to the Department of Administrative Services and the governor's office on Sept. 1, 2010. This budget submittal includes the base budget, ten percent reduction options and the budget policy packages.

The Legislative Fiscal Office requested a list of budget reduction options at a ten percent cut level for general and lottery funds in anticipation of the special legislative session in Feb. 2010. DEQ, and all state agencies, will submit this list Nov. 30, 2009.

DEQ's 2011-13 Legislative Agenda Development Timeline

June 2009
- DEQ's 2009-11 Budget was adopted

October 2009
- 22-23 - EQC Meeting – Discuss 2011 Legislative Agenda Timeline

December 2009
- **10-11 - EQC meeting to share preliminary concepts for the legislative agenda**

Late 2009 through February 2010
- **Development begins on 2011-13 Budget**
  - **Determine cost of currently approved programs adjusting for 2011-13 costs**
  - **Estimate future revenues**
  - **Determine "restorations" needed to cover future costs**
  - **Develop budget reduction options**
  - **Develop budget package proposals for new work that DEQ anticipates doing**
  - **Develop legislative concepts**

February 2010
- Supplemental Legislative Session
- EQC Meeting – focus on draft legislative concepts and budget policy packages

March 2010
- 1 – Budget and Legislative Concept Instructions are released by DAS (may be sooner)
- Ongoing legislative concept and budget policy package proposal development

April 2010
- Stakeholder Outreach
- Ongoing legislative concept and budget policy package proposal development
- 2 – Legislative concepts are due to DAS (estimated date)
- EQC Meeting – focus on budget development

May 2010
- Ongoing budget development

June 2010
- DAS submits approved legislative concepts to Legislative Counsel
- EQC Meeting – update on legislative agenda; approve budget submittal for DAS audit
- Budget request submitted to DAS for audit

July 2010
- Budget narrative development
- 14 – Last day to modify legislative concepts (estimated date)

August 2010
- Budget narrative development
- EQC Meeting – legislative agenda update and Chair signs the Budget Certification Form (part of the agency of budget request document)

September 2010

- 1 – Agency Request Budget due to DAS and Governor

Fall 2010

- DEQ works with Legislative Counsel on draft bills (legislative concepts)
- DAS and Governor review DEQ budget request
- Governor's Recommended Budget submitted to the Legislature
- Governor pre-session files approved bills

January 2011

- 2010 – 2011 Legislative Session begins

DEQ's 2009-11 Legislative Agenda
December 10, 2009 EQC Talking Points

Brief Presentation Outline

- Purpose:
  - 2010 Special Session Issues
    - Possible reductions to the 2009-11 budget
    - Session details
  - Preparing for 2011 Session
    - Reviewing timelines
    - Initial Ideas for leg concepts and budget policy packages

2010 Special Session:

- Potential Budget Issues
  - January 26 referendum on tax measures
  - February 9 GF / LF revenue forecast
  - 10% Reduction Options for General Fund and Lottery Funds
    - See handout (Bate stamp pages N7- N9)
  - Review of Other Fund ending balances
    - "Swept" $6.6M in Feb 2009
    - Lower balances now due to lower fee revenues & "Sweeps"
    - Less likely to take money

- Session Details
  - Details are being released
    - 1/8 last day to file House member bills (posting on 1/11)
    - 1/15 last day to file Senate bills (posting on 1/19)
  - No executive branch bills
  - More legislator bills – perhaps 200-300
    - Likely environmental bills
  - Starts on February 1
    - Could go full month
      - 2/2 – possible first committee hearings
      - 2/22 – tentative last day for committee action
      - Weekend (S / S) floor Sessions possible through 2/28
      - President's Day – floor Sessions and committee meetings

Preparing for the 2011 Session:

- Review of 2011-13 legislative agenda development
  - Review timeline (attachment) – key dates (Bate stamp page N 3)
    - Legislative concept development
    - Agency Request Budget development
      - Base budget request – for affordable ongoing work
      - Reduction packages – what current work will not be affordable in 2011-13
      - Budget Policy Packages – new work or positions; new funding
      - Reduction Options
        - All fund types
        - What might be taken in the Feb. Session?
  - Three themes – toxics, climate change, water
  - Ideas for packages
    - Initial ideas from DEQ
      - Leg concepts and budget packages under consideration
    - Commission ideas?
      - Are there any statutory or budget considerations that you want DEQ to consider?

Next Steps:

Next EQC meeting – February 18-19, 2010

- Update on 2010 Special Session
- Review of draft budget and legislative concepts for 2011 Session
- Annual financial report

Moving Forward / EQC Involvement

1. What additional information would you like to keep you informed about the DEQ legislative agenda (changes to statutes; budget requests)

2. Would any Commissioner like a special briefing or materials before the February 18-19 meeting? If so, what would be useful?

3. Given the brief nature of the February Session, is there any special information you'd like as the Session progresses?

Questions?

10% General Fund Reduction Options - LFO

Oregon Department of Environmental Quality

2009 - 2011 Biennium — Agency Number: 34000

Detail of 10% Reduction to 2009-11 Legislative Adopted Budget Level

1	2	3	4	5	6	7	8	9	10	11	12	13	14	16
Priority (ranked with lowest priority first)		**Dept. Initials**	**Prgm. or Activity Initials**	**Program Unit/Activity Description**	**GF**	**LF**	**OF**	**NL-OF**	**FF**	**NL-FF**	**TOTAL FUNDS**	**Pos.**	**FTE**	**Impact of Reduction on Services and Outcomes**
Dept	**Prgm/ Div**													
1		DEQ	AQ	Laboratory Rent	171,121						$ 171,121	0	0.00	The updated DEQ Laboratory lease agreement with DAS has lowered the 2009-11 rent payments below the level specified in the 2009-11 LAB budget. This adjustment, and a parallel adjustment on GF, lowers the Laboratory rent to the new agreement rate.
			WQ		13,787						$ 13,787	0	0.00	
			LQ		20,067						$ 20,067	0	0.00	
2	1	DEQ	AQ	Air Quality Local Government Outreach	25,906						$ 25,906	0	0.00	Reduces funding for local government fine particulate reduction outreach. DEQ support for these former non-attainment areas is a federal requirement of the State Implementation Plan (SIP). Work includes: daily air quality advisories, voluntary woodstove curtailment programs and conducting wood smoke public education activities to reduce emissions. May result in higher fine particulate emissions or in some communities violation of the federal fine particulate standard.
3	1	DEQ	WQ	State Water Quality Permitting (WPCF)	457,971						$ 457,971	2	2.00	Reduces inspections, technical assistance and timely permit renewals for permittees that land apply their effluent.
4	2	DEQ	AQ	Carbon Monoxide (CO) and Particulate Monitoring	183,213						$ 183,213	2	1.07	Eliminates carbon monoxide sites in Medford and Portland, and four PM10 sites (Klamath Falls, Medford, Grants Pass, and Pendleton). The loss of the CO sites would eliminate the last two CO monitoring sites in the state. CO is a good indicator of vehicle emissions, including benzene. The four PM10 sites are in former non-attainment areas, and are an important component of the current plans to maintain air quality in those areas.
5	3	DEQ	AQ	Air Toxics Outreach	68,250						$ 68,250	1	0.31	Cuts outreach work to reduce benzene and PAH emissions, two of the most significant toxic air pollutants. Reduction efforts target dry cleaners, gas stations and development of community burn ban and woodstove ordinances.
6	1	DEQ	LQ	Hazardous Waste Data Management & Development	234,368						$ 234,368	1	1.00	This would eliminate the position responsible for the HW program's data systems development and improvement. It would severely impact the program's ability to: ▪ collect and analyze generator and waste data necessary to evaluate program progress; ▪ identify improvements; ▪ respond to EPA's requests for information; and ▪ fix database problems, compromising data quality. To cover minimum data management functions, we would need to reduce resources devoted to program improvements, policy development, and related activities.
7	2	DEQ	WQ	Wastewater Permitting (WQ)	469,108						$ 469,108	3	2.53	DEQ would not be able to meet the commitments made for the Stormwater program. Specifically, DEQ would: • Reduce inspections in the stormwater program by 50 percent. • Reduce permit issuance. This means that all stormwater permit issuance will be delayed. • Eliminate work to develop approaches for eliminating dual regulation (DEQ and municipalities) of stormwater from construction sites.
8	4	DEQ	AQ	Lane Regional Air Protection Agency (LRAPA)	36,184						$ 36,184	0	0.00	Because LRAPA has already received cuts in local dues and general fund, this cut would result in an across the board reduction through a furlough (6days) or other mechanism. It would reduce the amount of inspections, air monitoring/reporting/forecasting, complaint responses, permits issued, enforcement actions, grant applications, open office hours,
9	5	DEQ	AQ	State Air Permitting - Air Contaminant Discharge Permit - (ACDP)	351,698						$ 351,698	3	1.56	Eliminate most of remaining GF from ACDP, leaving only 1 non-fee funded FTE in the program. Will delay permit issuance, which negatively impacts businesses expanding or modifying their operations. Will also reduce facility inspections and compliance oversight, eliminate coordinated inspector training and delay or eliminate outreach materials for new sources.

10% General Fund Reduction Options - LFO

Oregon Department of Environmental Quality

2009 - 2011 Biennium — **Agency Number: 34000**

Detail of 10% Reduction to 2009-11 Legislative Adopted Budget Level

1	2	3	4	5	6	7	8	9	10	11	12	13	14	16
Priority (ranked with lowest priority first)		**Dept. Initials**	**Prgm. or Activity Initials**	**Program Unit/Activity Description**	**GF**	**LF**	**OF**	**NL-OF**	**FF**	**NL-FF**	**TOTAL FUNDS**	**Pos.**	**FTE**	**Impact of Reduction on Services and Outcomes**
10	6	DEQ	AQ	Eliminate Second Air Toxic Monitoring site	169,962						$ 169,962	2	0.81	This would cut an air toxics monitor in Salem or a monitor in Medford. This, together with cuts already taken, would significantly undermine DEQ's air toxics monitoring effort. The monitors in Medford and Salem were added in the 2007 budget in reponse to substantial public interest, and removing the monitors will undercut expectations.
11	3	DEQ	WQ	WQ Toxics Monitoring Support	207,675						$ 207,675	2	1.50	The water quality toxics monitoring program will not have administrative support to do database work. preparation of documents for publication, copying, filing, mailings, and scheduling. This means that existing staff will have less administrative support and may not be able to fully focus on technical work.
12	4	DEQ	WQ	Willamette TMDL Implementation	622,986						$ 622,986	4	2.50	Reduces implementation work associated with the Willamette TMDL. This work includes: • Providing technical assistance to local communities, watershed councils, local governments, other state agencies, federal agencies, businesses, citizens, and other groups in the Willamette Basin for implementing watershed restoration and pollution reduction activities. • Collecting and analyzing mercury data to ensure DEQ, communities and other stakeholders can better understand how mercury affects the environment and make cost-effective decisions about mercury reduction strategies. This reduction option package includes a manager position.
13	7	DEQ	AQ	Air Quality Emission Inventory	126,560						$ 126,560	1	0.63	Delays air toxics and PM2.5 planning work. Emission inventory is the scientific underpinning of air quality planning, including identification of sources, determining baseline emission levels, evaluating the benefits of proposed emission reduction strategies, and meeting federal technical requirements. With fewer resources, DEQ will have to delay planning efforts to reduce air quality health impacts.
14	5	DEQ	WQ	Eliminate Groundwater Protection Program Monitoring	174,157						$ 174,157	1	0.87	DEQ would no longer conduct any groundwater monitoring. This means that there will not be any new monitoring data for the Groundwater Management Areas (GWMAs) that are located in the Lower Umatilla Basin, Northern Malheur County, and in the Southern Willamette Valley. This information is used to identify actions to improve the groundwater in areas where the water quality has been degraded, beneficial uses are seriously impaired, and public health may be at risk in part from nonpoint source groundwater pollution.
					3,333,013	-	-	-	-	-	$ 3,333,013	22	14.78	

Positive numbers are reductions to the 2009-11 budget, negative numbers are limitation increases

Target	$ 3,333,013
Difference	$ -

10% General Fund Reduction Options - LFO

Oregon Department of Environmental Quality

2009 - 2011 Biennium — **Agency Number: 34000**

Detail of 10% Reduction to 2009-11 Legislative Adopted Budget Level

1	2	3	4	5	6	7	8	9	10	11	12	13	14	16
Priority (ranked with lowest priority first)		**Dept. Initials**	**Prgm. or Activity Initials**	**Program Unit/Activity Description**	**GF**	**LF**	**OF**	**NL-OF**	**FF**	**NL-FF**	**TOTAL FUNDS**	**Pos.**	**FTE**	**Impact of Reduction on Services and Outcomes**
Dept	**Prgm/ Div**													
1	1	DEQ	WQ	Reduction in Laboratory Rent		119,933					$ 119,933	0	0.00	The updated DEQ Laboratory lease agreement with DAS has lowered the 2009-11 rent payments below the level specified in the 2009-11 LAB budget. This adjustment, and a parallel adjustment on GF, lowers the Laboratory rent to the new agreement rate.
2	2	DEQ	WQ	Reduce TMDL Development		422,679					$ 422,679	2	1.56	DEQ's preliminary monitoring work would be delayed for the Willamette Basin TMDL that is scheduled to be reviewed in 2011. This work is scheduled to begin in 2010. In addition, TMDL implementation and nonpoint source pollution technical assistance would be reduced for local communities, watershed councils, local governments, other state agencies, federal agencies, businesses, and citizens in Eastern Oregon.
					-	542,612	-	-	-	-	$ 542,612	2	1.56	

Target	$	542,612
Difference	$	0

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item P, rule adoption: Adoption of federal air quality regulations
December 10-11, 2009 EQC meeting

Why this is important

These proposed rules are important to protect human health, ensure that Oregon implements federal programs that regulate hazardous air pollutants and new sources, and improve Oregon's implementation of these programs.

DEQ recommendation and EQC motion

The Department of Environmental Quality recommends that the Environmental Quality Commission adopt proposed rule amendments to OAR chapter 340, divisions 200, 209, 210, 216, 228, 238 and 244 as presented in attachment A. DEQ also recommends that the EQC amend the Clean Air Act implementation plan (OAR 340-200-0040) to include the amendments made to OAR 340-244-0238 through 0246 and the amendments made to OAR 340 Divisions 200, 210 and 216 and authorize DEQ to submit these amendments to the state implementation plan to EPA for approval.

Background and need for rulemaking

The proposed rules align DEQ rules with federal standards, establish simplified permit and registration requirements, improve compliance and correct and clarify errors in current rules.

The Clean Air Act required EPA to identify 30 hazardous air pollutants that pose the greatest threat to public health in urban areas and also directs EPA to regulate categories of area sources to ensure 90 percent of these pollutants are subject to national emission standards for hazardous air pollutants. EPA recently adopted several area source standards affecting:

- Aluminum, copper, and other nonferrous foundries
- Ferroalloy production
- Metal fabrication and finishing
- Paint stripping and miscellaneous surface coating operations
- Plating and polishing operations

The proposed rules adopt federal standards for these five new area source categories. While Oregon sources must comply with the area source standards whether or not the EQC adopts the federal standards, adoption by EQC allows DEQ to implement the program and ensures state compliance with the federal program.

The proposed rules provide for effective compliance assurance while streamlining and reducing costs for many air contaminant discharge permit holders. The proposed rules add the new area source standards to the list of source categories that are eligible to obtain a simple or general air contaminant discharge permit rather than a more costly standard air contaminant discharge permit. The proposed rules also provide a lower cost alternative to permitting for some area source categories. The proposed rules assign each new area source category to an annual fee class and propose a new general air contaminant discharge permit fee category for sources with limited requirements and where DEQ can leverage resources to reduce the overall cost of implementing the area source standards.

DEQ is also requesting the option to defer the deadline for sources to obtain a permit by up to one year, in order to allow time for DEQ to issue new and amended general air contaminant discharge permits.

Adopting permits by DEQ order. The proposed rules would allow DEQ to issue general air contaminant discharge permits by order, rather than EQC rule. While the rulemaking process takes up to 18 months, adopting permits by order would allow DEQ to quickly respond to necessary permit adjustments or changes. EQC would still adopt source categories and fees for these permits by rule, but DEQ would issue the general permits by order following a public comment period, as is done for other permit types.

General permit attachments and fees. The proposed rules would allow DEQ to issue general air contaminant discharge permit attachments to allow businesses eligible for multiple general air contaminant discharge permits to be assigned to one general permit and one or more general permit attachments. Each general permit attachment would be a streamlined version of the corresponding general permit, with most general conditions removed. The proposed rules include a reduced fee for these attachments, which would fund DEQ's oversight of the standards contained in the attachments. The proposed rules allow DEQ to charge businesses the full annual fee for one general air contaminant discharge permit and a reduced annual fee for each permit attachment rather than issuing a business multiple general permits and collecting multiple permit fees.

Registration as an alternative to permitting. DEQ is proposing registration and registration fees as an alternative to permitting and permit fees for auto body shops and dry cleaners certified through an approved environmental certification program. These businesses must meet standards above minimum regulatory requirements and are exempt from permitting if they complete and maintain certification. Oregon's small business advisory panel recommended this solution as a way to reduce DEQ's administrative burden and recognize small businesses that commit to exemplary environmental practices. The annual registration fees would fund DEQ's cost for developing and implementing the registration program

and ensuring compliance with applicable standards.

Aligning state and federal rules. DEQ must adopt amended federal standards to align Oregon's rules with EPA's to maintain federal delegation and implement the standards. When implemented by DEQ, these regulations will improve air quality for Oregonians. Industry will also benefit through quicker permitting and approval of permitting alternatives. EPA has amended several standards since July 1, 2008, which affect cellulose production, chemical manufacturing, coating manufacturing, combustion turbines, dry cleaning, gasoline distribution, hazardous waste combustion, internal combustion engines, mineral processing plants, natural gas transmission and storage, oil and natural gas production, organic liquid distribution, petroleum refineries, pharmaceutical production, polymer and resin manufacturing, publicly-owned treatment works, semiconductor manufacturing, site remediation, steam generating units and steelmaking facilities. The proposed rules would adopt changes made to the federal standards through July 1, 2009.

Exempting electric power generating units. EPA's standards for new electric power generating units trigger permitting of sources with emergency generators or extremely small engines. The proposed rules propose an exemption for emergency generators and small electric power generating units to reduce the regulatory burden on these sources.

Correcting errors and clarifying topping off ban. The proposed rules amend the gasoline dispensing facility rules to correct referencing errors and add clarity to the vehicle fuel "topping off" ban. Corrections include an error made when DEQ merged the gasoline dispensing rules in OAR 340 Divisions 232 and 242 with the federal gasoline dispensing standards, which resulted in DEQ inadvertently excluding boats and aircraft from the definition of gasoline dispensing facilities in OAR 340 Division 244. This rulemaking would restore the definition and retain the stringency of the gasoline dispensing rules included in Oregon's state implementation plan.

Amending the utility mercury rule. The proposed rules would amend Oregon's utility mercury rule to add material sampling provisions vacated by a federal court ruling, correct errors, and allow DEQ to approve alternative calibration gases when other gases are not available.

Effect of rule

The proposed rules align Oregon's rules with the federal rules, streamline issuance of general air contaminant discharge permits, reduce the need for sources to obtain multiple permits, and reduce the administrative burden of implementing the new area source standards on businesses. The proposed rules would result in improved air quality by enabling DEQ to ensure compliance with the federal regulations.

Commission authority

The commission has authority to take this action under ORS 468.020, 468A.025, 468A.035, 468A.040, 468A.050 and 468A.310.

Stakeholder involvement

DEQ met with various groups representing auto body shops, dry cleaners, and other small businesses to discuss DEQ's implementation strategy for the new area source standards. DEQ did not convene an advisory committee for this rulemaking because the rulemaking primarily adopts federal regulations by reference.

Public comment

DEQ held a public comment period from July 15, 2009 to August 26, 2009 and convened public hearings in Bend, Medford and Portland. DEQ notified the public of these hearings through local media and alerted key stakeholders. In addition, DEQ sent emails or postcards directly to 2,743 sources potentially affected by the rules. No individuals testified at the Bend hearing, one individual testified at the Medford hearing, and one individual testified at the Portland hearing. Eight individuals submitted comments, attachment B provides summaries of the public comments and DEQ's responses.

Key issues

Many of the comments discussed the potential hardship on affected sources, such as dry cleaners and small metal fabrication operations, based on new fees under the proposed rules. The issues most often stated were concern about the cost of a new fee-based permitting program for dry cleaners, fees for smaller producers, the federal standards for auto body shops and the initial permit application fee. As the delegated authority for the federal standards, Oregon is not allowed to be less stringent than the federal standards and is required to fund an effective program that ensures compliance with the federal standards. See attachment B for a summary of public comments and DEQ's responses.

Next steps

DEQ will continue to provide outreach and compliance assistance to sources affected by the new area source standards and will submit delegation requests to EPA in February 2010. DEQ will also submit the gasoline dispensing, permitting and registration rules to EPA as a revision to Oregon's state implementation plan, which is a requirement of the Clean Air Act. DEQ will update Title V and air contaminant discharge permits in accordance with the new federal standards and develop and issue the new general permits authorized by this rulemaking.

Attachments

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

Available upon request

1. Legal Notice of Hearing
2. Cover Memorandum from Public Notice
3. Rule Implementation Plan

Approved:

Section:

Division:

Report prepared by: Jerry Ebersole
Phone: (503) 229-6974

The Oregon Administrative Rules contain OARs filed through January 15, 2009

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

340-200-0040
State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, **42 U.S.C.A 7401 to 7671q**.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~June 19~~December 11, 2009.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035
Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-

1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09

DIVISION 209

PUBLIC PARTICIPATION

340-209-0030
Public Notice Categories and Timing

(1) The Department categorizes permit actions according to potential environmental and public health significance and the degree to which the Department has discretion for implementing the applicable regulations. Category I is for permit actions with low environmental and public health significance so they have less public notice and opportunity for public participation. Category IV is for permit actions with potentially high environmental and public health significance so they have the greatest level of public notice and opportunity for participation.

(2) Permit actions are assigned to specific categories in OAR 340, divisions 216 and 218. If a permit action is uncategorized, the permit action will be processed under Category III.

(3) The following describes the public notice or participation requirements for each category:

(a) Category I -- No prior public notice or opportunity for participation. However, the Department will maintain a list of all permit actions processed under Category I and make the list available for public review.

(b) Category II -- The Department will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.
(c) Category III -- The Department will provide notice of the proposed permit action and a minimum of 35 days to submit written comments. The Department will provided a minimum of 30 days notice for a hearing, if one is scheduled. The Department will schedule a hearing to allow interested persons to submit oral or written comments if:
(A) The Department determines that a hearing is necessary; or
(B) Within 35 days of the mailing of the public notice, the Department receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing.
(d) Category IV -- Once an application is considered complete under OAR 340-216-0040, the Department will:
(A) Provide notice of the completed application and requested permit action;
(B) Schedule an informational meeting within the community where the facility will be or is located and provide public notice of the meeting;
(C) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments; and
(D) Schedule a public hearing to allow interested persons to submit oral or written comments and provide a minimum of 30 days public notice for the hearing.
(4) Except for title V permit actions, the Department may move a permit action to a higher category under section (3) 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; or
(c) Potential for significant environmental or public harm due to location or type of facility.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 210

STATIONARY SOURCE NOTIFICATION REQUIREMENTS

Registration

340-210-0100
Registration in General
(1) Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340 division 218, must register with the Department upon request pursuant to 340-210-0110 through 340-210-0120.
(2) The following air contaminant sources that are certified through a Department approved environmental certification program and subject to an Area Source NESHAP may register with the Department pursuant to 340-210-0110 through 340-210-0120 in lieu of obtaining a permit in accordance with OAR 340-216-0020, unless the Department determines that the source has not complied with the requirements of the environmental certification program.
(a) Motor vehicle surface coating operations.

(b) Dry cleaners using perchloroethylene.
(3) Approved environmental certification program. To be approved, the environmental certification program must, at a minimum, require certified air contaminant sources to comply with all applicable state and federal rules and regulations and require additional measures to increase environmental protection.
(4) Fees. In order to obtain and maintain registration, owners and operators of air contaminant sources registered pursuant to section (2) of this rule must pay the following annual fees by March 1 of each year:
(a) Motor vehicle surface coating operations -- $240.00.
(b) Dry cleaners using perchloroethylene -- $180.00.
(c) Late fees.
(A) 30 days late: 5% of annual fee.
(B) 31-60 days late: 10% of annual fee.
(C) 61 or more days late: 20% of annual fee.
(d) Failure to pay fees. Registration is automatically terminated upon failure to pay annual fees within 90 days of invoice by the Department, unless prior arrangements for payment have been approved in writing by the Department.
(5) Recordkeeping. In order to maintain registration, owners and operators of air contaminant sources registered pursuant to section (2) of this rule must maintain records required by the approved environmental performance program under section (3) of this rule. The records must be kept on site and in a form suitable and readily available for expeditious inspection and review.
(6) Revocation. The Department may revoke a registration if a source fails to meet any requirement in OAR 340-210-0110.
[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020, ORS 468A.050 and ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0005; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0500; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-210-0110
Registration Requirements
(1) Registration must be completed within 30 days following the mailing date of the request by the Department.
(2) Registration must be made on forms furnished by the Department and completed by the owner, lessee of the source, or agent.
(3) In order to obtain registration pursuant to OAR 340-210-0100(1), ~~T~~the following information must be reported by registrants:
(a) Name, address, and nature of business;
(b) Name of local person responsible for compliance with these rules;
(c) Name of person authorized to receive requests for data and information;
(d) A description of the production processes and a related flow chart;
(e) A plot plan showing the location and height of all air contaminant sources. The plot plan must also indicate the nearest residential or commercial property;
(f) Type and quantity of fuels used;

(g) Amount, nature, and duration of air contaminant emissions;
(h) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
(i) Any other information requested by the Department.
(4) In order to obtain registration pursuant to OAR 340-210-0100(2), a source must submit the information in section (3)(a), (b), (c), and (i) of this rule and the following:
(a) Information demonstrating that the air contaminant source is operating in compliance with all applicable state and federal rules and regulations, as requested by the Department.
(b) Information demonstrating that the source is certified through an approved environmental certification program.
(c) A signed statement that the submitted information is true, accurate, and complete. This signed statement shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020, ORS 468A.050 and ~~&~~ ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0010; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0510; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-210-0120
Re-Registration
(1) In order to re-register or maintain registration, ~~Once a year upon the annual date of registration,~~ a person responsible for an air contaminant source must reaffirm in writing, by March 1 of each year, the correctness and current status of the information furnished to the Department.
(2) Any change in any of the factual data reported under OAR 340-210-0110(3) or (4) must be reported to the Department, at which time re-registration may be required on forms furnished by the Department.
(3) In order to re-register, a person must not have had their registration terminated or revoked within the last 3 years, unless the air contaminant source has changed ownership since termination or revocation.
[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020, ORS 468A.050 and ~~&~~ ORS 468A.310
Stats. Implemented: ORS 468 & ORS 468A
Renumbered from 340-028-0520; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 216

AIR CONTAMINANT DISCHARGE PERMITS

340-216-0020
Applicability
This division applies to all sources referred to in **Table 1**. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010. Sources referred to in Table 1 are subject to fees as set forth in **Table 2.**

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) or (d) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.
(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.
(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.
(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, the Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.
(d) Gasoline dispensing facilities are not required to submit an application for an ACDP or ACDP Attachment until May 1, 2010 or obtain an ACDP or ACDP attachment until June 1, 2010. The Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.
(e) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.
(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.
(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.
(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.
(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A
Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-

2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef 12-31-08

340-216-0060
General Air Contaminant Discharge Permits
(1) Applicability.
(a) The ~~Commission~~Department may issue a General ACDP under the following circumstances:
(A) There are several sources that involve the same or substantially similar types of operations;
(B) All requirements applicable to the ~~source~~ covered operations can be contained in a General ACDP;
(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all ~~sources~~operations covered by the General ACDP; and
(D) The pollutants emitted are of the same type for all covered operations~~sources~~.
(b) Permit content. Each General ACDP must include the following:
(A) All relevant requirements for the operations covered by the General ACDP;
(B) Generic PSELs for all pollutants emitted at more than the deminimis level in accordance with OAR 340, division 222;
(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and
(D) A permit expiration date~~duration~~ not to exceed 10 years from the date of issuance.
(c) Permit issuance procedures: A new General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category III permit actions~~ORS 183.325 to 183.410~~. A reissued General ACDP or a modification to a General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDPs are on file and available for review at the Department's headquarters.
(2) Source assignment:
(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.
(b) Fees. Applicants must pay the fees set forth in Table 2 of OAR 340-216-0020. The fee class for each General ACDP is as follows:~~.~~
(A) Hard chrome platers – Fee Class Three;
(B) Decorative chrome platers – Fee Class Two;
(C) Halogenated solvent degreasers -- batch cold – Fee Class Two;
(D) Halogenated solvent degreasers -- batch vapor and in-line – Fee Class Two;
(E) Halogenated solvent degreasers -- batch cold, batch vapor, and in-line – Fee Class Two;
(F) Perchloroethylene dry cleaners – Fee Class Six;
(G) Asphalt plants – Fee Class Three;
(H) Rock crushers – Fee Class Two;
(I) Ready-mix concrete – Fee Class One;
(J) Sawmills, planing mills, millwork, plywood manufacturing and veneer drying – Fee Class Three;
(K) Boilers – Fee Class Two;
(L) Crematories – Fee Class Two;
(M) Grain elevators – Fee Class One;
(N) Prepared feeds, flour, and cereal – Fee Class One;
(O) Seed cleaning – Fee Class One;

(P) Coffee roasters – Fee Class One;
(Q) Bulk gasoline plants – Fee Class One;
(R) Electric power generators – Fee Class Two;
(S) Clay ceramics – Fee Class One;
(T) Hospital sterilizers – Fee Class Four;
(U) Secondary nonferrous metals – Fee Class One;
(V) Gasoline dispensing facilities -- stage I – Fee Class Five;
(W) Gasoline dispensing facilities -- stage II – Fee Class Four;
(X) Wood preserving – Fee Class Four;
(Y) Metal fabrication and finishing – Fee Class Two;
(Z) Plating and polishing – Fee Class One;
(AA) Miscellaneous surface coating operations – Fee Class One;
(BB) Paint stripping – Fee Class One;
(CC) Motor vehicle and mobile equipment surface coating operations – Fee Class One;
(DD) Aluminum, copper, and nonferrous foundries – Fee Class Two;
(EE) Any General ACDP not listed above – Fee Class One.[1]

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until the Department assigns the General ACDP to the person.

(C) Assignments to General ACDPs and attachment(s) terminate when the General ACDP or attachment expires or is modified, terminated or revoked.

(D) Once a source has been assigned to a General ACDP, if the assigned General ACDP does not cover all requirements applicable to the source, the other applicable requirements must be covered by assignment to one or more General ACDP Attachments in accordance with OAR 340-216-0062, otherwise the source must obtain a Simple or Standard ACDP.

(E) A source requesting to be assigned to a General ACDP Attachment, in accordance with OAR 340-216-0062, for a source category in a higher annual fee class than the General ACDP the source is currently assigned to, must be reassigned to the General ACDP for the source category in the higher annual fee class.

(3) Department~~Commission~~ Initiated Modification. If the Department~~Commission~~ determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Department~~Commission~~ may issue a new General ACDP for that category and ~~the Department may~~ assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), the Department may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to ~~the~~a source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the Department will place the source on a Simple or Standard ACDP. The Department may also revoke a General ACDP or attachment or both if conditions, standards or rules have changed so the permit or attachment no longer meets the requirements of this rule.

~~(5) General ACDPs adopted by reference. The following General ACDPs are adopted by this reference and incorporated herein:~~

[1] Note: (A) through (X) are not new but were moved from section (5) and appear as underlined text.

~~(a) AQGP-001, Hard chrome platers (February 3, 2006)[3];~~
~~(b) AQGP-002, Decorative chrome platers (February 3, 2006)[2];~~
~~(c) AQGP-003, Halogenated solvent degreasers -- batch cold (August 10, 2001)[2];~~
~~(d) AQGP-004, Halogenated solvent degreasers -- batch vapor and in-line (December 12, 2008)[2];~~
~~(e) AQGP-005, Halogenated solvent degreasers -- batch cold, batch vapor, and in-line (December 12, 2008)[2];~~
~~(f) AQGP-006, Dry cleaners (August 10, 2001)[1];~~
~~(g) AQGP-007, Asphalt plants (October 17, 2007)[3];~~
~~(h) AQGP-008, Rock crushers (October 17, 2007)[2];~~
~~(i) AQGP-009, Ready mix concrete (October 17, 2007)[1];~~
~~(j) AQGP-010, Sawmills, planing mills, millwork, plywood manufacturing and veneer drying (October 17, 2007)[3];~~
~~(k) AQGP-011, Boilers (October 17, 2007)[2];~~
~~(l) AQGP-012, Crematories (October 17, 2007)[2];~~
~~(m) AQGP-013, Grain elevators (August 10, 2001)[1];~~
~~(n) AQGP-014, Prepared feeds, flour, and cereal (August 10, 2001)[1];~~
~~(o) AQGP-015, Seed cleaning (August 10, 2001)[1];~~
~~(p) AQGP-016, Coffee roasters (August 10, 2001)[1];~~
~~(q) AQGP-017, Bulk gasoline plants (December 12, 2008)[1];~~
~~(r) AQGP-018, Electric power generators (August 10, 2001)[2];~~
~~(s) AQGP-019, Clay ceramics (December 12, 2008)[1];~~
~~(t) AQGP-020, Hospital sterilizers (December 12, 2008)[4];~~
~~(u) AQGP-021, Secondary nonferrous metals (December 12, 2008)[1];~~
~~(v) AQGP-022, Gasoline dispensing facilities -- stage I (December 12, 2008)[5];~~
~~(w) AQGP-023, Gasoline dispensing facilities -- stage II (December 12, 2008)[4];~~
~~(z) AQGP-024, Wood preserving -- (December 12, 2008)[4].~~
~~**NOTES:** [1] The referenced General ACDPs specify that they are Fee Class One under OAR 340-216-0020, Table 2. [2] The referenced General ACDPs specify that they are Fee Class Two under OAR 340-216-0020, Table 2. [3] The referenced General ACDPs specify that they are Fee Class Three under OAR 340-216-0020, Table 2.~~

NOTE: ~~Except for OAR 340-216-0060(5), t~~This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.
[ED. NOTE: Tables referenced in this rule are available from the agency.]
Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468.020 & 468A.025
Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef 12-31-08

340-216-0062
General ACDP Attachments
(1) Purpose. This rule allows a source to be assigned to one General ACDP and one or more General ACDP Attachments, as long as the General ACDP and General ACDP Attachment(s) contain all requirements applicable to the source. This would allow a source to avoid having to obtain a more costly

Simple or Standard ACDP if there are no General ACDPs that contain all requirements applicable to the source.
(2) Applicability.
(a) The Department may issue a General ACDP Attachment under the following circumstances:
(A) There are several sources that involve the same or substantially similar types of operations;
(B) All requirements applicable to the covered operations can be contained in a General ACDP Attachment;
(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP Attachment;
(D) The pollutants emitted are of the same type for all covered operations. If a General ACDP and a General ACDP Attachment(s) cannot address all activities at a source, the owner or operator of the source must apply for Simple or Standard ACDP in accordance with this Division.
(b) Attachment content. Each General ACDP Attachment must include the following:
(A) All relevant requirements for the operations covered by the General ACDP Attachment;
(B) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the applicable emissions limits and standards; and
(C) An attachment expiration date not to exceed 10 years from the date of issuance.
(c) Attachment issuance procedures: A General ACDP Attachment requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDP Attachments will be on file and available for review at the Department's headquarters.
(3) Source assignment:
(a) Application requirements. Any person requesting to be assigned to a General ACDP Attachment must submit a written application for each requested General ACDP Attachment that specifies the requested General ACDP Attachment and shows that the source qualifies for the requested General ACDP Attachment.
(b) Fees. Permittees must pay an annual fee of $120 for each assigned General ACDP Attachment.
(c) Assignment procedures:
(A) Assignment to a General ACDP Attachment is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.
(B) A person is not a permittee under the General ACDP Attachment until the Department assigns the General ACDP Attachment to the person.
(C) Assignments to a General ACDP Attachments terminate when the General ACDP Attachment expires or is modified, terminated or revoked.
(D) A source may not be assigned to a General ACDP Attachment for a source category in a higher annual fee class than the General ACDP the source is currently assigned to. Instead a source must be reassigned to the General ACDP for the source category in the higher annual fee class in accordance with OAR 340-216-0060(2)(c)(E) and may be assigned to one or more General ACDP Attachments associated with source categories in an equal or lower annual fee class.
(d) If all activities at a source cannot be addressed by a General ACDP and General ACDP Attachments, the owner or operator of the source must apply for a Simple or Standards ACDP in accordance with this Division.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.
Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468.020 & 468A.025

340-216-0064
Simple ACDP
(1) Applicability.
(a) Sources and activities listed in Table 1, Part B of OAR 340-216-0020 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.
(b) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.
(c) The Department may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:
(A) The nature, extent, and toxicity of the source's emissions;
(B) The complexity of the source and the rules applicable to that source;
(C) The complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;
(D) The location of the source; and
(E) The compliance history of the source.
(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application in accordance with OAR 340-216-0040.
(3) Fees. Applicants for a new, modified, or renewed Simple ACDP must pay the fees set forth in Table 2 of 340-216-0020. Annual fees for Simple ACDPs will be assessed based on the following:
(a) Low Fee -- A Source may qualify for the Low Fee if:
(A) the source is, or will be, permitted under only one of the following categories from OAR 340-216-0020 Table 1, Part B (category 25. Electric Power Generation, may be included with any category listed below):
(i) Category 7~~6~~. Asphalt felt and coatings;
(ii) Category 13~~2~~. Boilers and other fuel burning equipment;
(iii) Category 34~~0~~. Galvanizing & Pipe coating;
(iv) Category 40~~36~~. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified);
(v) Category 41~~37~~. Gypsum products;
(vi) Category 46~~1~~. Liquid Storage Tanks subject to OAR Division 232;
(vii) Category 57~~0~~. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged;
(viii) Category 58~~1~~. Organic or Inorganic Industrial Chemical Manufacturing;
(ix) Category 61. Perchloroethylene Dry Cleaning;
(~~ix~~) Category ~~6~~73. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals; or
(xi) Category ~~7~~85. All Other Sources not listed in Table 1 which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM_{10} if located in a PM_{10} non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state; and
(B) The actual emissions from the 12 months immediately preceding the invoice date, and future projected emissions are less than 5 tons/yr. PM_{10} in a PM_{10} nonattainment or maintenance area, and less than 10 tons/yr. for each criteria pollutant; and
(C) The source is not considered an air quality problem or nuisance source by the Department.
(b) High Fee -- Any source required to have a Simple ACDP (OAR 340-216-0020 Table 1 Part B) that does not qualify for the Low Fee will be assessed the High Fee.
(c) If the Department determines that a source was invoiced for the Low Annual Fee but does not meet the Low Fee criteria outlined above, the source will be required to pay the difference between the Low

and High Fees, plus applicable late fees in accordance with OAR 340-216-0020 Table 2. Late fees start upon issuance of the initial invoice. In this case, the Department will issue a new invoice specifying applicable fees.
(4) Permit Content.
(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;
(b) Generic PSELs for all pollutants emitted at more than the deminimis level in accordance with OAR 340 division 222;
(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and
(d) A permit duration not to exceed 5 years
(5) Permit issuance procedures:
(a) Issuance of a new or renewed Simple ACDP requires public notice in accordance with OAR 340 division 209 for Category II permit actions.
(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:
(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice in accordance with OAR 340, division 209 for Category I permit actions; or
(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.
[ED. NOTE: Tables referenced in this rule are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A
Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02

DIVISION 216

OAR 340-216-0020

AIR CONTAMINANT DISCHARGE PERMITS

Table 1

Part A: Activities and Sources
The following commercial and industrial sources must obtain a Basic ACDP under the procedures set forth in 340-216-0056 unless the source is required to obtain a different form of ACDP by Part B or C hereof: (Production and emission parameters are based on the latest consecutive 12 month period, or future projected operation, whichever is higher. Emission cutoffs are based on actual emissions.)

1. ** Autobody Repair or Painting Shops painting more than 25 automobiles in a year.
2. Concrete Manufacturing including Redimix and CTB more than 5,000 but less than 25,000 cubic yards per year output.
3. Crematory and Pathological Waste Incinerators with less than 20 tons/yr. material input.
4. Natural gas and propane fired boilers (with or without #2 diesel oil back-up**** ~~(a)~~) of 10 or more MMBTU but less than 30 MMBTU/hr heat input constructed after June 9, 1989.

5. Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/yr. but less than 10,000 tons per year throughput.
6. Rock, Concrete or Asphalt Crushing both portable and stationary more than 5,000 tons/yr. but less than 25,000 tons/yr. crushed.
7. Surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month, excluding sources that exclusively use non-VOC and non-HAP containing coatings (e.g. powder coating operations).

Part B Activities and Sources

The following commercial and industrial sources must obtain either:

- a General ACDP, if one is available for the source classification and the source qualifies for a General ACDP under the procedures set forth in 340-216-0060;
- a Simple ACDP under the procedures set forth in 340-216-0064; or
- a Standard ACDP under the procedures set forth in 340-216-0066 if the source fits one of the criteria of Part C hereof.

1. Aerospace or Aerospace Parts Manufacturing
2. Aluminum, Copper, and Other Nonferrous Foundries subject to an Area Source NESHAP
~~2.~~3. Aluminum Production - Primary
~~3.~~4. Ammonia Manufacturing
~~4.~~5. Animal Rendering and Animal Reduction Facilities
~~5.~~6. Asphalt Blowing Plants
~~6.~~7. Asphalt Felts or Coating
~~7.~~8. Asphaltic Concrete Paving Plants both stationary and portable
~~8.~~9. Bakeries, Commercial over 10 tons of VOC emissions per year
~~9.~~10. Battery Separator Manufacturing
~~10.~~11. Battery Manufacturing and Re-manufacturing
~~11.~~12. Beet Sugar Manufacturing
~~12.~~13. Boilers and other Fuel Burning Equipment over 10 MMBTU/hr. heat input, except exclusively Natural Gas and Propane fired units (with or without #2 diesel backup) under 30 MMBTU/hr. heat input
~~13.~~14. Building paper and Buildingboard Mills
~~14.~~15. Calcium Carbide Manufacturing
~~15.~~16. *** Can or Drum Coating
~~16.~~17. Cement Manufacturing
~~17.~~18. * Cereal Preparations and Associated Grain Elevators 10,000 or more tons/yr. throughput
~~18.~~19. Charcoal Manufacturing
~~19.~~20. Chlorine and Alkalies Manufacturing
~~20.~~21. Chrome Plating
~~21.~~22. Clay Ceramics Manufacturing subject to an Area Source NESHAP
~~22.~~23. Coffee Roasting (roasting 30 or more tons per year)
~~23.~~24. Concrete Manufacturing including Redimix and CTB 25,000 or more cubic yards per year output
~~24.~~25. Crematory and Pathological Waste Incinerators 20 or more tons/yr. material input
~~25.~~26. Degreasers (halogenated solvents subject to a NESHAP)
~~26.~~27. Electrical Power Generation from combustion (excluding units used exclusively as emergency generators and units less than 500 kW)
~~27.~~28. Ethylene Oxide Sterilization
29. Ferroalloy Production Facilities subject to an Area Source NESHAP
~~28.~~30. *** Flatwood Coating regulated by Division 232
~~29.~~31. *** Flexographic or Rotogravure Printing subject to RACT

~~30.~~32. * Flour, Blended and/or Prepared and Associated Grain Elevators 10,000 or more tons/yr. throughput
~~31.~~33. Galvanizing and Pipe Coating (except galvanizing operations that use less than 100 tons of zinc/yr.)
~~32.~~34. Gasoline Bulk Plants, Bulk Terminals, and Pipeline Facilities
~~33.~~35. Gasoline dispensing facilities, excluding gasoline dispensing facilities with exclusively above ground tanks, provided the gasoline dispensing facility has monthly throughput of less than 10,000 gallons of gasoline per month and does not sell gasoline for use in motor vehicles
~~34.~~36. Glass and Glass Container Manufacturing
~~35.~~37. * Grain Elevators used for intermediate storage 10,000 or more tons/yr. throughput
~~36.~~38. Grain terminal elevators
~~37.~~39. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified)
~~38.~~40. Gypsum Products Manufacturing
~~39.~~41. Hardboard Manufacturing (including fiberboard)
~~40.~~42. ~~*****~~Hospital sterilization operations subject to an Area Source NESHAP.
~~41.~~43. Incinerators with two or more ton per day capacity
~~42.~~44. Lime Manufacturing
~~43.~~45. *** Liquid Storage Tanks subject to OAR Division 232
~~44.~~46. Magnetic Tape Manufacturing
~~45.~~47. Manufactured and Mobile Home Manufacturing
~~46.~~48. Marine Vessel Petroleum Loading and Unloading
49. Metal Fabrication and Finishing Operations subject to an Area Source NESHAP
~~47.~~50. Millwork (including kitchen cabinets and structural wood members) 25,000 or more bd. ft./maximum 8 hr. input
~~48.~~51. Molded Container
~~49.~~52. Motor Coach Manufacturing
53. Motor Vehicle and Mobile Equipment Surface Coating Operations subject to an Area Source NESHAP, excluding motor vehicle surface coating operations painting less than 10 vehicles per year or using less than 20 gallons of coating per year and motor vehicle surface coating operations registered pursuant to OAR 340-210-0100(2)
~~50.~~54. Natural Gas and Oil Production and Processing and associated fuel burning equipment
~~51.~~55. Nitric Acid Manufacturing
~~52.~~56. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged
~~53.~~57. Organic or Inorganic Chemical Manufacturing and Distribution with ½ or more tons per year emissions of any one criteria pollutant (sources in this category with less than ½ ton/yr. of each criteria pollutant are not required to have an ACDP)
58. Paint Stripping and Miscellaneous Surface Coating Operations subject to an Area Source NESHAP
~~54.~~59. *** Paper or other Substrate Coating
~~55.~~60. Particleboard Manufacturing (including strandboard, flakeboard, and waferboard)
~~56.~~61. Perchloroethylene ~~d~~Dry ~~c~~Cleaning Operations subject to an Area Source NESHAP, excluding perchloroethylene dry cleaning operations registered pursuant to OAR 340-210-0100(2)~~ers that do not submit a complete Dry Cleaner Annual Hazardous Waste and Air Compliance Report by June 1 of any given year~~
~~57.~~62. Pesticide Manufacturing 5,000 or more tons/yr. annual production
~~58.~~63. Petroleum Refining and Re-refining of Lubricating Oils and Greases including Asphalt Production by Distillation and the reprocessing of oils and/or solvents for fuels
64. Plating and Polishing Operations subject to an Area Source NESHAP
~~59.~~65. Plywood Manufacturing and/or Veneer Drying

~~60.~~66. Prepared feeds for animals and fowl and associated grain elevators 10,000 or more tons per year throughput
~~61.~~67. Primary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
~~62.~~68. Pulp, Paper and Paperboard Mills
~~63.~~69. Rock, Concrete or Asphalt Crushing both portable and stationary 25,000 or more tons/yr. crushed
~~64.~~70. Sawmills and/or Planing Mills 25,000 or more bd. ft./maximum 8 hr. finished product
~~65.~~71. Secondary Nonferrous Metals Processing subject to an Area Source NESHAP
~~66.~~72. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
~~67.~~73. * Seed Cleaning and Associated Grain Elevators 5,000 or more tons/yr. throughput
~~68.~~74. Sewage Treatment Facilities employing internal combustion for digester gasses
~~69.~~75. Soil Remediation Facilities stationary or portable
~~70.~~76. Steel Works, Rolling and Finishing Mills
~~71.~~77. *** Surface Coating in Manufacturing subject to RACT
~~72.~~78. Surface Coating Operations with actual emissions of VOCs before add on controls of 10 or more tons/yr.
~~73.~~79. Synthetic Resin Manufacturing
~~74.~~80. Tire Manufacturing
~~75.~~81. Wood Furniture and Fixtures 25,000 or more bd. ft./maximum 8 hr. input
~~76.~~82. Wood Preserving (excluding waterborne)
~~77.~~83. All Other Sources not listed herein that the Department determines an air quality concern exists or one which would emit significant malodorous emissions
~~78.~~84. All Other Sources not listed herein which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM10 if located in a PM10 non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state

Part C: Activities and Sources
The following sources must obtain a Standard ACDP under the procedures set forth in 340-216-0066:

1. Incinerators for PCBs and / or other hazardous wastes
2. All Sources that the Department determines have emissions that constitute a nuisance
3. All Sources electing to maintain the source's baseline emission rate, or netting basis
4. All Sources subject to a RACT, BACT, LAER, NESHAP adopted in OAR 340-244-0220, NSPS, State MACT, or other significant Air Quality regulation(s), except:
   a. Source categories for which a General ACDP has been issued.~~, and~~
   b. Sources with less than 10 tons/yr. actual emissions that are subject to RACT, NSPS or a NESHAP adopted in OAR 340-244-0220 which qualify for a Simple ACDP.
   c. Sources ~~categories~~ registered pursuant to OAR 340-210-0100(2).
   d. Electrical power generation units used exclusively as emergency generators and units less than 500 kW.
   e. Gasoline dispensing facilities with exclusively above ground tanks, provided the gasoline dispensing facility has monthly throughput of less than 10,000 gallons of gasoline per month and does not sell gasoline for use in motor vehicles
   ~~b.~~f. Motor vehicle surface coating operations painting less than 10 vehicles per year or using less than 20 gallons of coating per year.
5. All Sources having the Potential to Emit more than 100 tons of any regulated air contaminant in a year
6. All Sources having the Potential to Emit more than 10 tons of a single hazardous air pollutant in a year
7. All Sources having the Potential to Emit more than 25 tons of all hazardous air pollutants combined in a year

Notes:
* Applies only to Special Control Areas
** Portland AQMA only
*** Portland AQMA, Medford-Ashland AQMA or Salem SKATS only
~~**** Gasoline dispensing facilities are not required to obtain an ACDP prior to January 1, 2010. Gasoline dispensing facilities with exclusively above ground tanks are required to obtain an ACDP only if they have monthly throughput of 10,000 gallons of gasoline per month or more or sell gasoline for use in motor vehicles.~~
****~~(a)~~ "back-up" means less than 10,000 gallons of fuel per year

DIVISION 216
OAR 340-216-0020

AIR CONTAMINANT DISCHARGE PERMITS

Table 2

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a. Short Term Activity ACDP		$3,000.00
b. Basic ACDP		$120.00
c. Assignment to General ACDP		$1,200.00*
d. Simple ACDP		$6,000.00
e. Construction ACDP		$9,600.00
f. Standard ACDP		$12,000.00
g. Standard ACDP (PSD/NSR)		$42,000.00

*DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.

Part 2. Annual Fees: (Due 12/1* for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		$NA
b. Basic ACDP		$360.00
c. General ACDP	(A) Fee Class One	$720.00
	(B) Fee Class Two	$1,296.00
	(C) Fee Class Three	$1,872.00
	(D) Fee Class Four	$360.00
	(E) Fee Class Five	$120.00
	(F) Fee Class Six	$240.00
d. Simple ACDP	(A) Low Fee	$1,920.00
	(B) High Fee	$3,840.00
e. Standard ACDP		$7,680.00

*If the Department issues an invoice for Dry Cleaners or Gasoline Dispensing Facilities that combines fees from other Divisions on a single invoice the payment due may be extended by the Department until March 1st.

Part 3. Specific Activity Fees:

a. Non-Technical Permit Modification (1)	$360.00
b. Non-PSD/NSR Basic Technical Permit Modification (2)	$360.00
c. Non-PSD/NSR Simple Technical Permit Modification(3)	$1,200.00
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	$6,000.00
e. Non-PSD/NSR Complex Technical Permit Modification (5)	$12,000.00
f. PSD/NSR Modification	$42,000.00
g. Modeling Review (outside PSD/NSR)	$6,000.00
h. Public Hearing at Source's Request	$2,400.00
i. State MACT Determination	$6,000.00
j. Compliance Order Monitoring (6)	$120.00/month

Part 4. Late Fees:

a. 8-30 days late 5% of annual fee
b. 31-60 days late 10% of annual fee
c. 61 or more days late 20% of annual fee

1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.
2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.
3. Simple Technical Modifications include, but are not limited to, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.
4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.
5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgment by the Department, and similar changes.
6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the

Department and is based on the number of months the Department will have to oversee the Order.

DIVISION 228

Mercury Rules for Coal-Fired Power Plants

Utility Mercury Rule

General Provisions

340-228-0606
Hg Emission Standards

(1) Mercury reduction plan. By July 1, 2009 or 1-year prior to commencement of commercial operation, whichever is later, the owner or operator of each coal-fired electric generating unit must develop and submit for Department approval a mercury reduction plan for each coal-fired electric generating unit. The plan must propose a control strategy for mercury that is most likely to result in the capture of at least 90 percent of the mercury emitted from the unit or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input. The owner or operator must demonstrate that the plan reflects technology that could reasonably be expected to meet the limits in this section if the technology operates as anticipated by the manufacturer. The plan must provide a timeframe for implementation of the selected control strategy including major milestones, installation and operation requirements, and work practice standards for the selected technology. The owner and operator of the coal-fired electric generating unit may proceed with the plan within 60 days of submittal unless, within the 60 day period, the Department notifies the owner or operator of the coal-fired electric generating unit that the plan must be revised.
(2) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial startup, whichever is later, except as allowed under section (3) of this rule, each coal-fired electric generating unit must have implemented the approved control strategy projected to achieve at least 90 percent mercury capture or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input.
(3) Compliance extension. Up to a 2-year extension of the requirement to implement the approved control strategy may be granted by the Department if the owner or operator of a coal-fired electric generating unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations, ESP fly ash contamination, or other extenuating circumstances that are beyond the control of the owner or operator.
(4) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (3) of this rule, whichever is later, each coal-fired electric generating unit must thereafter demonstrate compliance with one of the standards in subsections (4)(a) or (4)(b) of this rule for each compliance period, except as allowed under sections (5) and (6) of this rule. A compliance period consists of twelve months. Each month commencing with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (3) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.
(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg mass emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input as determined according to 40 CFR part 75, appendix F (procedure 5); or
(b) A minimum 90 percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as specified in subparagraph (4)(b)(A)(i) or (4)(b)(A)(ii) of this rule:
(i) Coal sampling and analysis. To demonstrate compliance by coal sampling and analysis, the owner or operator of a coal-fired electric generating unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of ~~40 CFR 63.7521~~OAR 340-228-0639.
(ii) Hg mass emissions prior to any control device(s). To demonstrate compliance by measuring Hg mass emissions, the owner or operator of a coal-fired electric generating unit must measure mercury emissions prior to any control device(s) using a Hg CEMS or sorbent trap.
(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (4)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (4)(b)(A)(ii) of this rule and a calculation methodology approved by the Department.
(5) Temporary compliance alternative. If the owner or operator of a coal-fired electric generating unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:
(a) The owner or operator must notify the Department of the failure within 30 days of the end of the initial compliance period; and
(b) The owner or operator must file an application with the Department for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the coal-fired electric generating unit.
(c) The Department may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that the Department determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.
(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions
(e) If the owner or operator files an application under subsection (5)(b) of this rule, the coal-fired electric generating unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until the Department either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (2) of this rule.
(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later.
(6) Permanent compliance alternative. If the owner or operator of a coal-fired electric generating unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later, despite properly implementing the continual program of mercury progression required in section (5) of this rule:
(a) The owner or operator of the coal-fired electric generating unit may file an application with the Department for a permit modification in accordance with OAR 340 division 216 to establish a

permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.
(b) The Department may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that the Department determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.
(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.
(d) If the owner or operator files an application under subsection (6)(a) of this rule, the coal-fired electric generating unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until the Department either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.
(7) Emission Caps. Beginning in calendar year 2018, the following coal-fired electric generating unit specific emission caps shall apply.
(a) Existing Boardman coal-fired electric generating unit cap. The existing coal-fired electric generating unit in Boardman shall emit no more than:
(A) 60 pounds of mercury in any calendar year in which there are no new coal-fired electric generating units operated in Oregon.
(B) 35 pounds of mercury in any calendar year in which there are new coal-fired electric generating units operated in Oregon.
(b) New coal-fired electric generating unit cap:
(A) New coal-fired electric generating units, in aggregate, shall emit no more than:
(i) 25 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is operated.
(ii) 60 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is not operated.
(B) The owner or operator of each new coal-fired electric generating unit must submit to the Department a request, in a format specified by the Department, to receive a portion of the new coal-fired electric generating unit cap. The request may not be submitted until the new coal-fired electric generating unit has received its Site Certification from the Facility Siting Council, or if the new coal-fired electric generating unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.
(C) The Department will allocate the new coal-fired electric generating unit cap in order of receipt of requests and, once allocated, the new coal-fired electric generating unit shall be entitled to receive an equal allocation in future years unless the new coal-fired electric generating unit permanently ceases operations.
(D) Each individual new coal-fired electric generating unit shall emit no more than the lesser of:
(i) An amount of mercury determined by multiplying the design heat input in TBtu of such coal-fired electric generating unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or
(ii) The amount of the emission cap under (7)(b) less the amount of the emission cap under (7)(b) that has been allocated to other new coal-fired electric generating units.
(c) Compliance demonstration. Each coal-fired electric generating unit must demonstrate compliance with the applicable calendar year emission cap in subsection (7)(a) or (7)(b) of this rule using a mercury CEMS or sorbent trap monitoring system.

~~(5) Recordkeeping and reporting requirements.~~
~~(a) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Department or the Administrator.~~
~~(A) The certificate of representation under OAR 340-228-0618 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents are retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under OAR 340-228-0618 changing the Hg designated representative.~~
~~(B) All emissions monitoring information, in accordance with OAR 340-228-0658 through 0670, provided that to the extent that OAR 340-228-0658 through 0670 provides for a 3-year period for recordkeeping, the 3-year period applies.~~
~~(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.~~
~~(D) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.~~
~~(b) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source must submit the reports required under the Hg Budget Trading Program, including those under OAR 340-228-0658 through 0670.~~
~~(6) Liability.~~
~~(a) Each Hg Budget source and each Hg Budget unit must meet the requirements of the Hg Budget Trading Program for the control periods of 2010 through 2017.~~
~~(b) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source also applies to the owners and operators of such source and of the Hg Budget units at the source.~~
~~(c) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit also applies to the owners and operators of such unit.~~
~~(7) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under OAR 340-228-0605 must be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.~~
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09

Monitoring Certification

340-228-0621
Initial Certification and Recertification Procedures

(1) The owner or operator of a coal-fired electric generating unit shall be exempt from the initial certification requirements of this rule for a monitoring system under OAR 340-228-0609(1)(a) if the following conditions are met:
(a) The monitoring system has been previously certified; and
(b) The applicable quality-assurance and quality-control requirements are fully met for the certified monitoring system described in subsection (1)(a) of this rule.
(2) The recertification provisions of this rule shall apply to a monitoring system under OAR 340-228-0609(1)(a) exempt from initial certification requirements under section (1) of this rule.
(3) Initial certification and recertification procedures. Except as provided in section (1) of this rule, the owner or operator of a coal-fired electric generating unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system or sorbent trap monitoring system). The owner or operator must meet any additional requirements for Hg concentration monitoring systems, sorbent trap monitoring systems (as defined in OAR 340-228-0602(36)), flow monitors, CO2 monitors, O2 monitors, or moisture monitors, as set forth under OAR 340-228-0613, under the common stack provisions in OAR 340-228-0615. The owner or operator of a unit that qualifies to use an alternative monitoring system must comply with the procedures in section (4) of this rule.
(a) Requirements for initial certification. The owner or operator must ensure that each monitoring system under OAR 340-228-0609(1)(a) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing by the applicable deadline in OAR 340-228-0609(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification is required.
(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system or sorbent trap monitoring system that may significantly affect the ability of the system to accurately measure or record the CO2 concentration, stack gas volumetric flow rate, Hg concentration, Hg mass emissions, percent moisture, or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21, OAR 340-228-0623, or appendix B to 40 CFR part 75, the owner or operator must recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator must recertify each continuous emission monitoring system or sorbent trap monitoring system, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.
(c) Approval process for initial certification and recertification. Paragraphs (3)(c)(A) through (D) of this rule apply to both initial certification and recertification of a continuous monitoring system under OAR 340-228-0609(1)(a). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in paragraph (3)(c)(E) of this rule.
(A) Notification of certification. The owner or operator must submit to the Department written notice of the dates of certification testing, in accordance with 40 CFR 75.61.

(B) Certification application. The owner or operator must submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR 75.63.
(C) Provisional certification date. The provisional certification date for a monitoring system must be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system under paragraph (3)(c)(B) of this rule. Data measured and recorded by the provisionally certified monitoring system will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Department.
(D) Certification application approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (3)(c)(B) of this rule. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements and is included in the certification application will be deemed certified for use.
(i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.
(ii) Incomplete application notice. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the owner or operator must submit the additional information required to complete the certification application. If the owner or operator does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under subparagraph (3)(c)(D)(iii) of this rule. The 120-day review period must not begin before receipt of a complete certification application.
(iii) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements or if the certification application is incomplete and the requirement for disapproval under subparagraph (3)(c)(D)(ii) of this rule is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system must not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph (3)(c)(E) of this rule for each monitoring system that is disapproved for initial certification.
(iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with OAR 340-228-0629(2).
(E) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (3)(c)(D)(iii) of this rule or a notice of disapproval of certification status under subparagraph (3)(c)(D)(iv) of this rule, then:
(i) The owner or operator must substitute the following values, as applicable, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.21(e) and continuing until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in 40 CFR 75.20(b)(3)(ii) through (ix) are

used, until a probationary calibration error test is passed following corrective actions in accordance with 40 CFR 75.20(b)(3)(ii)):
(I) For a disapproved Hg pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75; and
(II) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO2 concentration or the minimum potential O2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR part 75.
(III) For a disapproved sorbent trap monitoring system and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75.
(ii) The owner or operator must submit a notification of certification retest dates as specified in 40 CFR 75.61(a)(1)(ii) and a new certification application in accordance with paragraphs (3)(c)(A) and (B) of this rule.
(iii) The owner or operator must repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
(d) For each Hg concentration monitoring system, the owner or operator must perform the following tests for initial certification or recertification of a Hg continuous emission system:
(A) A 7-day calibration error test in accordance with section 6.3 of appendix A to 40 CFR part 75. The owner or operator may perform this test using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the Department. The calibration error of a Hg concentration monitor must not deviate from the reference value of either the zero or upscale calibration gas by more than 5.0 percent of the span value, as calculated using Equation A–5 of appendix A to 40 CFR part 75. Alternatively, if the span value is 10 µg/m3, the calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, |R–A| in Equation A–5 of appendix A to 40 CFR part 75, is ≤ 1.0 µg/m3. If moisture is added to the calibration gas, the added moisture must be accounted for and the dry-basis concentration of the calibration gas must be used to calculate the calibration error.
(B) A linearity check in accordance with section 6.2 of appendix A to 40 CFR part 75. Design and equip each mercury monitor to permit the introduction of known concentrations of elemental Hg and HgCl2 separately, at a point immediately preceding the sample extraction filtration system, such that the entire measurement system can be checked. If the Hg monitor does not have a converter, the HgCl2 injection capability is not required. Follow the applicable procedures in section 6.2 of appendix A to 40 CFR part 75 when performing the 3-level system integrity checks described in paragraph (3)(d)(F) of this rule. Perform the linearity check using NIST-traceable elemental Hg standards and the 3-level system integrity checks using NIST-traceable source of oxidized Hg or other ~~NIST-traceable~~ standards subject to the approval of the Department. If moisture is added to the calibration gas during the required linearity checks or system integrity checks, the moisture content of the calibration gas must be accounted for. Under these circumstances, the dry basis concentration of the calibration gas must be used to calculate the linearity error or measurement error (as applicable).
(C) A relative accuracy test audit (RATA) in accordance with section 6.5 of appendix A to 40 CFR part 75 and as follows:
(i) The RATA must be performed on a µg/m3 basis and while the unit is combusting coal.

(ii) Calculate the relative accuracy, in accordance with section 7.3 or 7.4 of appendix A to 40 CFR part 75, as applicable.
(iii) The relative accuracy shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0 ~~(~~µg/m3, the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 µg/m3, in cases where the relative accuracy specification of 20.0 percent is not achieved.
(iv) For the RATA of a Hg CEMS using the Ontario Hydro Method, or for the RATA of a sorbent trap system (irrespective of the reference method used), the time per run must be long enough to collect a sufficient mass of Hg to analyze. For the RATA of a sorbent trap monitoring system, use the same-size trap that is used for daily operation of the monitoring system. Spike the third section of each sorbent trap with elemental Hg, as described in OAR 340-228-0627(7)(a)(B). Install a new pair of sorbent traps prior to each test run. For each run, the sorbent trap data must be validated according to the quality assurance criteria in OAR 340-228-0627(8).
(v) Use the same basic approach for traverse point selection that is used for other gas monitoring system RATAs, except that the stratification test provisions in sections 8.1.3 through 8.1.3.5 of Method 30A shall apply, rather than the provisions of section 6.5.6.1 through 6.5.6.3 of appendix A to 40 CFR part 75.
(vi) Up to 336 consecutive unit or stack operating hours may be taken to complete the RATA of a Hg monitoring system, when the Ontario Hydro Method or Method 29 is used as the reference method.
(D) A bias test in accordance with section 7.6 of appendix A to 40 CFR part 75 and as follows:
(i) To calculate bias for a Hg monitoring system when using the Ontario Hydro Method or Method 29, "d" is, for each data point, the difference between the average Hg concentration value (in µg/m3) from the paired Ontario Hydro or Method 29 sampling trains and the concentration measured by the monitoring system. For sorbent trap systems, use the average Hg concentration measured by the paired traps in calculation of "d".
(ii) For single-load RATAs of Hg concentration monitoring systems, and sorbent trap monitoring systems, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A-12.
(iii) For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of appendix A to 40 CFR part 75.
(iv) Mercury concentration monitoring systems and sorbent trap monitoring systems shall not be biased low.
(v) For Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is < 5.0 µg/dscm, if the monitoring system meets the normal or the alternative relative accuracy specification in subparagraph (3)(d)(C)(iii) of this rule but fails the bias test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A-12 appendix A to 40 CFR part 75 and in accordance with sections 7.6.4 and 7.6.5 of appendix A to 40 CFR part 75, using the data from the relative accuracy test audits, or may use a default BAF of 1.250 for reporting purposes.
(vi) Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.

(E) A cycle time test in accordance to section 6.4 of appendix A to 40 CFR part 75. For Hg monitors, the calibration gas used for this test may either be the elemental or oxidized form of Hg. As an alternative, the reading is considered stable if it changes by no more than 0.5 µg/m3 for two minutes.
(F) A 3-level system integrity check, using a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the Department. This test is not required for an Hg monitor that does not have a converter. The system measurement error must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e., |R–A| in equation A-4 of appendix A to 40 CFR part 75, does not exceed 0.8 ug/m3.
(4) Certification/recertification procedures for alternative monitoring systems. The owner or operator of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Department must comply with the applicable notification and application procedures of 40 CFR 75.20(f).
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

Monitoring Quality Assurance/Quality Control

340-228-0623
Quality Assurance and Quality Control Requirements
(1) For units that use continuous emission monitoring systems to account for Hg mass emissions, the owner or operator must meet the applicable quality assurance and quality control requirements in 40 CFR 75.21, appendix B to 40 CFR part 75, and as follows, for the flow monitoring systems, Hg concentration monitoring systems, moisture monitoring systems, and diluent monitors required under OAR 340-228-0613. Units using sorbent trap monitoring systems must meet the applicable quality assurance requirements in OAR 340-228-0617, 340-228-0627, and as follows.
(a) Calibration Error Test. Except as provided in section 2.1.1.2 of appendix B to 40 CFR part 75, perform the daily calibration error test of each Hg monitoring system according to the procedures in OAR 340-228-0621(3)(d)(A). For Hg monitors, the daily assessments may be made using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the Department.
(b) Data Validation. For a Hg monitor, an out-of-control period occurs when the calibration error exceeds 5.0% of the span value. Notwithstanding, the Hg monitor shall not be considered out-of-control if |R–A| in Equation A–6 of appendix A to 40 CFR part 75 does not exceed 1.0 ug/m3.
(c) Linearity Check. Unless a particular monitor (or monitoring range) is exempted under this subsection or under section 6.2 of appendix A to 40 CFR part 75, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to 40 CFR part 75, for each primary and redundant backup Hg at least once during each QA operating quarter, as defined in 40 CFR 72.2. For Hg monitors, perform the linearity checks using NIST-traceable elemental Hg standards, or other ~~NIST-traceable~~ standards subject to the approval of the Department. Alternatively, the owner or operator may perform 3-level system integrity checks at the same three calibration gas levels (i.e., low, mid, and high), using a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the

Department. If choosing this option, the performance specification in paragraph (1)(i)(B) of this rule must be met at each gas level. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operating quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable.
(d) Standard RATA Frequencies. For each primary and redundant backup Hg concentration monitoring system and each sorbent trap monitoring system, RATAs must be performed annually, i.e., once every four successive QA operating quarters (as defined in 40 CFR 72.2).
(e) RATA Load (or Operating) Levels and Additional RATA Requirements. For Hg concentration monitoring systems and sorbent trap monitoring systems, the required semiannual or annual RATA tests must be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to 40 CFR part 75. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).
(f) Data Validation. Each time that a hands-off RATA of a Hg concentration monitoring system or a sorbent trap monitoring system is passed, perform a bias test in accordance with section 7.6.4 of appendix A to 40 CFR part 75. Apply the appropriate bias adjustment factor to the reported Hg data, in accordance with subsection (1)(g) of this rule.
(g) Bias Adjustment Factor. Except as otherwise specified in section 7.6.5 of appendix A to 40 CFR part 75, if an Hg concentration monitoring system or sorbent trap monitoring system fails the bias test, use the bias adjustment factor given in Equations A-11 and A-12 of appendix A to 40 CFR part 75, or a default bias adjustment factor of 1.250, to adjust the monitored data.
(h) Bias Adjusted Values. Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.
(i) System Integrity Checks for Hg Monitors. For each Hg concentration monitoring system (except for a Hg monitor that does not have a converter), perform a single-point system integrity check weekly, i.e., at least once every 168 unit or stack operating hours, using a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the Department. Perform this check as follows using a mid- or high-level gas concentration, as defined in section 5.2 of appendix A to 40 CFR part 75.
(A) The performance specification in paragraph (1)(i)(B) must be met, otherwise the monitoring system is considered out-of-control, from the hour of the failed check until a subsequent system integrity check is passed. If a required system integrity check is not performed and passed within 168 unit or stack operating hours of last successful check, the monitoring system shall also be considered out of control, beginning with the 169th unit of stack operating hour after the last successful check, and continuing until a subsequent system integrity check is passed. This weekly check is not required if the daily calibration assessments in subsection (1)(a) of this rule are performed using a NIST-traceable source of oxidized Hg, or other ~~NIST-traceable~~ standards subject to the approval of the Department.
(B) The measurement error for the linearity check must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e., |R–A| in equation A–4 of appendix A to 40 CFR part 75, does not exceed 0.8 μg/m3.

(2) Missing data procedures. Except as provided in OAR 340-228-0617(11) and 340-228-0631(2), the owner or operator must provide substitute data from monitoring systems required under OAR 340-228-0613 for each affected unit as follows:
(a) For an owner or operator using an Hg concentration monitoring system, substitute for missing data in accordance with the applicable missing data procedures in 40 CFR 75.31 through 75.37 and OAR 340-228-0631 and 0633 whenever the unit combusts fuel and:
(A) A valid, quality-assured hour of Hg concentration data (in μg/m3) has not been measured and recorded, either by a certified Hg concentration monitoring system, by an appropriate reference method under OAR 340-228-0602(33) or 40 CFR 75.22, or by an approved alternative monitoring method under 40 CFR part 75 subpart E; or
(B) A valid, quality-assured hour of flow rate data (in scfh) has not been measured and recorded for a unit either by a certified flow monitor, by an appropriate EPA reference method under 40 CFR 75.22, or by an approved alternative monitoring system under 40 CFR part 75 subpart E; or
(C) A valid, quality-assured hour of moisture data (in percent H2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system, by an appropriate EPA reference method under 40 CFR 75.22, or an approved alternative monitoring method under 40 CFR part 75 subpart E. This requirement does not apply when a default percent moisture value, as provided in 40 CFR 75.11(b), is used to account for the hourly moisture content of the stack gas, or when correction of the Hg concentration for moisture is not necessary; or
(D) A valid, quality-assured hour of heat input rate data (in MMBtu/hr) has not been measured and recorded for a unit, either by certified flow rate and diluent (CO2 or O2) monitors, by appropriate EPA reference methods under 40 CFR 75.22, or by approved alternative monitoring systems under 40 CFR part 75 subpart E.
(b) For an owner or operator using a sorbent trap monitoring system to quantify Hg mass emissions, substitute for missing data in accordance with the missing data procedures in OAR 340-228-0633.
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

CEMS Performance Specifications

340-228-0625
Specifications and Test Procedures for Total Vapor Phase Mercury CEMS
(1) Analyte. Mercury (Hg), CAS No. 7439-97-6.
(2) Applicability.
(a) This specification is for evaluating the acceptability of total vapor phase Hg CEMS installed on the exit gases from fossil fuel fired boilers at the time of or soon after installation and whenever specified in the regulations. The Hg CEMS must be capable of measuring the total concentration in μg/m3 (regardless of speciation) of vapor phase Hg, and recording that concentration on a wet or dry basis.
(b) Particle bound Hg is not included in the measurements.
(c) This specification is not designed to evaluate an installed CEMS's performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS's performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly.
(d) The Department may require the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance.

(e) The owner or operator must conduct the performance evaluation of the Hg CEMS according to OAR 340-228-0621(3)(d) and the following procedures:
(3) Summary of Performance Specification. Procedures for measuring CEMS relative accuracy, measurement error and drift are outlined. CEMS installation and measurement location specifications, and data reduction procedures are included. Conformance of the CEMS with the Performance Specification is determined.
(4) Definitions.
(a) "Continuous Emission Monitoring System (CEMS)" means the total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:
(A) "Sample Interface" means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.
(B) "Hg Analyzer" means that portion of the Hg CEMS that measures the total vapor phase Hg mass concentration and generates a proportional output.
(C) "Data Recorder" means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.
(b) "Span Value" means the upper limit of the intended Hg concentration measurement range. The span value is a value equal to two times the emission standard. Alternatively, the Hg span value(s) may be determined as follows:
(A) For each Hg monitor, determine a high span value, by rounding the maximum potential Hg concentration value from OAR 340-228-0602(25) upward to the next highest multiple of 10 μg/m3.
(B) For an affected unit equipped with an FGD system or a unit with add-on Hg emission controls, if the maximum expected Hg concentration value from OAR 340-228-0602(24) is less than 20 percent of the high span value from paragraph (4)(b)(A) of this rule, and if the high span value is 20 μg/m3 or greater, define a second, low span value of 10 μg/m3.
(C) If only a high span value is required, set the full-scale range of the Hg analyzer to be greater than or equal to the span value.
(D) If two span values are required, the owner or operator may either:
(i) Use two separate (high and low) measurement scales, setting the range of each scale to be greater than or equal to the high or low span value, as appropriate; or
(ii) Quality-assure two segments of a single measurement scale.
(c) "Measurement Error (ME)" means the absolute value of the difference between the concentration indicated by the Hg analyzer and the known concentration generated by a reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged. An ME test procedure is performed to document the accuracy and linearity of the Hg CEMS at several points over the measurement range.
(d) "Upscale Drift (UD)" means the absolute value of the difference between the CEMS output response and an upscale Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.
(e) "Zero Drift (ZD)" means the absolute value of the difference between the CEMS output response and a zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.
(f) "Relative Accuracy (RA)" means the absolute mean difference between the pollutant concentration(s) determined by the CEMS and the value determined by the reference method (RM) plus

the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for low concentration sources, the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.
(5) Safety. The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the RM should be consulted for specific precautions to be taken.
(6) Equipment and Supplies.
(a) CEMS Equipment Specifications.
(A) Data Recorder Scale. The Hg CEMS data recorder output range must include zero and a high level value. The high level value must be approximately two times the Hg concentration corresponding to the emission standard level for the stack gas under the circumstances existing as the stack gas is sampled. A lower high level value may be used, provided that the measured values do not exceed 95 percent of the high level value. Alternatively, the owner or operator may set the full-scale range(s) of the Hg analyzer according to subsection (4)(b) of this rule.
(B) The CEMS design should also provide for the determination of calibration drift at a zero value (zero to 20 percent of the span value) and at an upscale value (between 50 and 100 percent of the high-level value).
(b) Reference Gas Delivery System. The reference gas delivery system must be designed so that the flowrate of reference gas introduced to the CEMS is the same at all three challenge levels specified in subsection (7)(a) of this rule and at all times exceeds the flow requirements of the CEMS.
(c) Other equipment and supplies, as needed by the applicable reference method used. See paragraph (8)(f)(B) of this rule.
(7) Reagents and Standards.
(a) Reference Gases. Reference gas standards are required for both elemental and oxidized Hg (Hg and mercuric chloride, HgCl2). The use of National Institute of Standards and Technology (NIST)-certified or NIST-traceable standards and reagents is required. However, other standards approved by the Department may be used if NIST-certified or traceable standards are not available. The following gas concentrations are required.
(A) Zero-level. 0 to 20 percent of the span value.
(B) Mid-level. 50 to 60 percent of the span value.
(C) High-level. 80 to 100 percent of the span value.
(b) Reference gas standards may also be required for the reference methods. See paragraph (8)(f)(B) of this rule.
(8) Performance Specification (PS) Test Procedure.
(a) Installation and Measurement Location Specifications.
(A) CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment. Since the Hg CEMS sample system normally extracts gas from a single point in the stack, use a location that has been shown to be free of stratification for SO2 and NOX through concentration measurement traverses for those gases. If the cause of failure to meet the RA test requirement is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

(B) Measurement Location. The measurement location should be (1) at least two equivalent diameters downstream of the nearest control device, point of pollutant generation or other point at which a change of pollutant concentration may occur, and (2) at least half an equivalent diameter upstream from the effluent exhaust. The equivalent duct diameter is calculated as per appendix A to 40 CFR part 60, Method 1.
(C) Hg CEMS Sample Extraction Point. Use a sample extraction point (1) no less than 1.0 meter from the stack or duct wall, or (2) within the centroidal velocity traverse area of the stack or duct cross section.
(b) RM Measurement Location and Traverse Points. Refer to PS 2 of appendix B to 40 CFR part 60. The RM and CEMS locations need not be immediately adjacent.
(c) ME Test Procedure. The Hg CEMS must be constructed to permit the introduction of known concentrations of Hg and HgCl2 separately into the sampling system of the CEMS immediately preceding the sample extraction filtration system such that the entire CEMS can be challenged. Sequentially inject each of the three reference gases (zero, mid-level, and high level) for each Hg species. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For each reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.
(d) UD Test Procedure.
(A) UD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the UD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(d)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either Hg0 or HgCl2 standards for this test.
(B) The purpose of the UD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the UD test immediately before these adjustments, or conduct it in such a way that the UD can be determined.
(C) Conduct the UD test at either the mid-level or high-level point specified in subsection (7)(a) of this rule. Introduce the reference gas to the CEMS. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For the reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.
(e) ZD Test Procedure.
(A) ZD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the ZD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(e)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either nitrogen, air, Hg0, or HgCl2 standards for this test.
(B) The purpose of the ZD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct

the ZD test immediately before these adjustments, or conduct it in such a way that the ZD can be determined.
(C) Conduct the ZD test at the zero level specified in subsection (7)(a) of this rule. Introduce the zero gas to the CEMS. Record the CEMS response and subtract the zero value from the CEMS value and express the absolute value of the difference as a percentage of the span value. For the zero gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.
(f) RA Test Procedure.
(A) RA Test Period. Conduct the RA test according to the procedure given in paragraphs (8)(f)(B) through (F) of this rule while the affected facility is operating at normal full load, or as specified in an applicable subpart. The RA test may be conducted during the ZD and UD test period.
(B) RM. Use one of the reference methods specified in OAR 340-228-0602(33). Do not include the filterable portion of the sample when making comparisons to the CEMS results. When Method 29 or ASTM D6784–02 is used, conduct the RM test runs with paired or duplicate sampling systems. When an approved instrumental method is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A to 40 CFR part 60 must also be obtained during the RA test.
(C) Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data. It is preferable to conduct moisture measurements (if needed) and Hg measurements simultaneously, although moisture measurements that are taken within an hour of the Hg measurements may be used to adjust the Hg concentrations to a consistent moisture basis. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period for each paired RM run (including the exact time of day) on the CEMS chart recordings or other permanent record of output.
(D) Number and length of RM Tests. Conduct a minimum of nine RM test runs. When Method 29 or ASTM D6784–02 is used, only test runs for which the data from the paired RM trains meet the relative deviation (RD) criteria of this PS must be used in the RA calculations. In addition, for Method 29 and ASTM D 6784–02, use a minimum sample run time of 2 hours. Note: More than nine sets of RM tests may be performed. If this option is chosen, paired RM test results may be excluded so long as the total number of paired RM test results used to determine the CEMS RA is greater than or equal to nine. However, all data must be reported, including the excluded data.
(E) Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29 or ASTM D6784–02 is used, compare each CEMS value against the corresponding average of the paired RM values.
(F) Paired RM Outliers.
(i) When Method 29 or ASTM D6784–02 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet this criteria should be flagged as a data quality problem. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for two paired data points as follows:

$$RD=100 \times |(Ca-Cb)|/(Ca+-Cb)$$

where Ca and Cb are concentration values determined from each of the two samples respectively.
(ii) A minimum performance criteria for RM Hg data is that RD for any data pair must be ≤ 10 percent as long as the mean Hg concentration is greater than 1.0 μg/m3. If the mean Hg concentration is less than or equal to 1.0 μg/m3, the RD must be ≤ 20 percent. Pairs of RM data exceeding these RD criteria should be eliminated from the data set used to develop a Hg CEMS correlation or to assess CEMS RA.
(G) Calculate the mean difference between the RM and CEMS values in the units of micrograms per cubic meter (μg/m3), the standard deviation, the confidence coefficient, and the RA according to the procedures in section (10) of this rule.
(g) Reporting. At a minimum (check with the Department for additional requirements, if any), summarize in tabular form the results of the RD tests and the RA tests or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), reference gas concentration certifications, and any other information necessary to confirm that the performance of the CEMS meets the performance criteria.
(9) Analytical Procedure. Sample collection and analysis are concurrent for this PS (see section (8) of this rule). Refer to the RM employed for specific analytical procedures.
(10) Calculations and Data Analysis. Summarize the results on a data sheet similar to that shown in Figure 2–2 for PS 2.
(a) Consistent Basis. All data from the RM and CEMS must be compared in units of μg/m3, on a consistent and identified moisture and volumetric basis (STP = 20oC, 760 millimeters (mm) Hg).
(b) Moisture Correction (as applicable). If the RM and CEMS measure Hg on a different moisture basis, using the following equation to make the appropriate corrections to the Hg concentrations.
Concentration(dry) = Concentration(wet)/(1−Bws)
In the above equation, Bws is the moisture content of the flue gas from Method 4, expressed as a decimal fraction (e.g., for 8.0 percent H2O, Bws = 0.08).
(c) Arithmetic Mean. Calculate the arithmetic mean of the difference, d, of a data set using equation 2 to this division.
(d) Standard Deviation. Calculate the standard deviation, Sd, using equation 3 to this division.
(e) Confidence Coefficient (CC). Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, using equation 4 to this division.
(f) RA. Calculate the RA of a set of data using equation 5 to this division.
(11) Performance Specifications.
(a) ME. ME is assessed at zero-level, mid-level and high-level values as given below using standards for both Hg0 and HgCl2. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard must be no greater than 5 percent of the span value.
(b) UD. The UD must not exceed 5 percent of the span value on any of the 7 days of the UD test.
(c) ZD. The ZD must not exceed 5 percent of the span value on any of the 7 days of the ZD test.
(d) RA. The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of μg/m3. Alternatively, if the mean RM is less than 5.0 μg/m3, the results are acceptable if the absolute value of the difference between the mean RM and CEMS values does not exceed 1.0 μg/m3.
(12) Bibliography.
(a) 40 CFR part 60, appendix B, ''Performance Specification 2 -- Specifications and Test Procedures for SO2 and NOX Continuous Emission Monitoring Systems in Stationary Sources.''
(b) 40 CFR part 60, appendix A, ''Method 29 -- Determination of Metals Emissions from Stationary Sources.''

(c) ASTM Method D6784-02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)."
(13) The following values are already corrected for n–1 degrees of freedom. Use n equal to the number of individual values.
(a) For n = 2, t0.975 = 12.706.
(b) For n = 3, t0.975 = 4.303.
(c) For n = 4, t0.975 = 3.182.
(d) For n = 5, t0.975 = 2.776.
(e) For n = 6, t0.975 = 2.571.
(f) For n = 7, t0.975 = 2.447.
(g) For n = 8, t0.975 = 2.365.
(h) For n = 9, t0.975 = 2.306.
(i) For n = 10, t0.975 = 2.262.
(j) For n = 11, t0.975 = 2.228.
(k) For n = 12, t0.975 = 2.201.
(l) For n = 13, t0.975 = 2.179.
(m) For n = 14, t0.975 = 2.160.
(n) For n = 15, t0.975 = 2.145.
(o) For n = 16, t0.975 = 2.131.
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

Sorbent Trap Sampling Procedures

340-228-0627
Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems
(1) Scope and Application. This rule specifies sampling, and analytical, and quality-assurance criteria and procedures for the performance-based monitoring of vapor-phase mercury (Hg) emissions in combustion flue gas streams, using a sorbent trap monitoring system (as defined in OAR 340-228-0602). The principle employed is continuous sampling using in-stack sorbent media coupled with analysis of the integrated samples. The performance-based approach of this rule allows for use of various suitable sampling and analytical technologies while maintaining a specified and documented level of data quality through performance criteria. Persons using this rule should have a thorough working knowledge of Methods 1, 2, 3, 4 and 5 in appendices A–1 through A–3 to 40 CFR part 60, as well as the determinative technique selected for analysis.
(a) Analytes. The analyte measured by these procedures and specifications is total vapor-phase Hg in the flue gas, which represents the sum of elemental Hg (Hg0, CAS Number 7439-97-6) and oxidized forms of Hg, in mass concentration units of micrograms per dry standard cubic meter (µg/dscm).
(b) Applicability. These performance criteria and procedures are applicable to monitoring of vapor-phase Hg emissions under relatively low-dust conditions (i.e., sampling in the stack after all pollution control devices), from coal-fired electric utility steam generators. Individual sample collection times can range from 30 minutes to several days in duration, depending on the Hg concentration in the stack. The monitoring system must achieve the performance criteria specified in section (8) of this rule and the sorbent media capture ability must not be exceeded. The sampling rate must be maintained at a constant

proportion to the total stack flowrate to ensure representativeness of the sample collected. Failure to achieve certain performance criteria will result in invalid Hg emissions monitoring data.
(2) Principle. Known volumes of flue gas are extracted from a stack or duct through paired, in-stack, pre-spiked sorbent media traps at an appropriate nominal flow rate. Collection of Hg on the sorbent media in the stack mitigates potential loss of Hg during transport through a probe/sample line. Paired train sampling is required to determine measurement precision and verify acceptability of the measured emissions data. The sorbent traps are recovered from the sampling system, prepared for analysis, as needed, and analyzed by any suitable determinative technique that can meet the performance criteria. A section of each sorbent trap is spiked with Hg0 prior to sampling. This section is analyzed separately and the recovery value is used to correct the individual Hg sample for measurement bias.
(3) Clean Handling and Contamination. To avoid Hg contamination of the samples, special attention should be paid to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the sorbent cartridges. Collection and analysis of blank samples (field, trip, lab) is useful in verifying the absence of contaminant Hg.
(4) Safety.
(a) Site hazards. Site hazards must be thoroughly considered in advance of applying these procedures/specifications in the field; advance coordination with the site is critical to understand the conditions and applicable safety policies. At a minimum, portions of the sampling system will be hot, requiring appropriate gloves, long sleeves, and caution in handling this equipment.
(b) Laboratory safety policies. Laboratory safety policies should be in place to minimize risk of chemical exposure and to properly handle waste disposal. Personnel must wear appropriate laboratory attire according to a Chemical Hygiene Plan established by the laboratory.
(c) Toxicity or carcinogenicity. The toxicity or carcinogenicity of any reagents used must be considered. Depending upon the sampling and analytical technologies selected, this measurement may involve hazardous materials, operations, and equipment and this rule does not address all of the safety problems associated with implementing this approach. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performance. Any chemical should be regarded as a potential health hazard and exposure to these compounds should be minimized. Chemists should refer to the Material Safety Data Sheet (MSDS) for each chemical used.
(d) Wastes. Any wastes generated by this procedure must be disposed of according to a hazardous materials management plan that details and tracks various waste streams and disposal procedures.
(5) Equipment and Supplies. The following list is presented as an example of key equipment and supplies likely required to perform vapor-phase Hg monitoring using a sorbent trap monitoring system. It is recognized that additional equipment and supplies may be needed. Collection of paired samples is required. Also required are a certified stack gas volumetric flow monitor that meets the requirements of 40 CFR 75.10 and an acceptable means of correcting for the stack gas moisture content, i.e., either by using data from a certified continuous moisture monitoring system or by using an approved default moisture value (see 40 CFR 75.11(b)).
(a) Sorbent Trap Monitoring System. The monitoring system must include the following components:
(A) Sorbent Traps. The sorbent media used to collect Hg must be configured in a trap with three distinct and identical segments or sections, connected in series, that are amenable to separate analyses. Section 1 is designated for primary capture of gaseous Hg. Section 2 is designated as a backup section for determination of vapor-phase Hg breakthrough. Section 3 is designated for QA/QC purposes where this section must be spiked with a known amount of gaseous Hg0 prior to sampling and later analyzed to determine recovery efficiency. The sorbent media may be any collection material (e.g., carbon, chemically-treated filter, etc.) capable of quantitatively capturing and recovering for subsequent

analysis, all gaseous forms of Hg for the intended application. Selection of the sorbent media must be based on the material's ability to achieve the performance criteria contained in section (8) of this rule as well as the sorbent's vapor phase Hg capture efficiency for the emissions matrix and the expected sampling duration at the test site. The sorbent media must be obtained from a source that can demonstrate the quality assurance and control necessary to ensure consistent reliability. The paired sorbent traps are supported on a probe (or probes) and inserted directly into the flue gas stream.
(B) Sampling Probe Assembly. Each probe assembly must have a leak-free attachment to the sorbent trap(s). Each sorbent trap must be mounted at the entrance of or within the probe such that the gas sampled enters the trap directly. Each probe/sorbent trap assembly must be heated to a temperature sufficient to prevent liquid condensation in the sorbent trap(s). Auxiliary heating is required only where the stack temperature is too low to prevent condensation. Use a calibrated thermocouple to monitor the stack temperature. A single probe capable of operating the paired sorbent traps may be used. Alternatively, individual probe/sorbent trap assemblies may be used, provided that the individual sorbent traps are co-located to ensure representative Hg monitoring and are sufficiently separated to prevent aerodynamic interference.
(C) Moisture Removal Device. A robust moisture removal device or system, suitable for continuous duty (such as a Peltier cooler), must be used to remove water vapor from the gas stream prior to entering the dry gas meter.
(D) Vacuum Pump. Use a leak-tight, vacuum pump capable of operating within the candidate system's flow range.
(E) Dry Gas Meter. A dry gas meter must be used to determine total sample volume. The meter must be sufficiently accurate to measure the total sample volume within 2 percent, must be calibrated at the selected flow rate and conditions actually encountered during sampling, and must be equipped with a temperature sensor capable of measuring typical meter temperatures accurately to within 3oC for correcting final sample volume.
(F) Sample Flow Rate Meter and Controller. Use a flow rate indicator and controller for maintaining necessary sampling flow rates.
(G) Temperature Sensor. Same as Section 6.1.1.7 of Method 5 in appendix A–3 to 40 CFR part 60.
(H) Barometer. Same as Section 6.1.2 of Method 5 in appendix A–3 to 40 CFR part 60.
(I) Data Logger (Optional). Device for recording associated and necessary ancillary information (e.g., temperatures, pressures, flow, time, etc.).
(b) Gaseous Hg0 Sorbent Trap Spiking System. A known mass of gaseous Hg0 must be spiked onto section 3 of each sorbent trap prior to sampling. Any approach capable of quantitatively delivering known masses of Hg0 onto sorbent traps is acceptable. Several technologies or devices are available to meet this objective. Their practicality is a function of Hg mass spike levels. For low levels, NIST-certified or NIST-traceable gas generators or tanks may be suitable, but will likely require long preparation times. A more practical, alternative system, capable of delivering almost any mass required, makes use of NIST-certified or NIST-traceable Hg salt solutions (e.g., Hg(NO3)2). With this system, an aliquot of known volume and concentration is added to a reaction vessel containing a reducing agent (e.g., stannous chloride); the Hg salt solution is reduced to Hg0 and purged onto section 3 of the sorbent trap using an impinger sparging system.
(c) Sample Analysis Equipment. Any analytical system capable of quantitatively recovering and quantifying total gaseous Hg from sorbent media is acceptable provided that the analysis can meet the performance criteria in section (8) of this rule. Candidate recovery techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic

fluorescence (UV AF); ultraviolet atomic absorption (UV AA), with and without gold trapping; and in situ X-ray fluorescence (XRF) analysis.
(6) Reagents and Standards. Only NIST-certified or NIST-traceable calibration gas standards and reagents (or other standards approved by the Department, if NIST-certified or traceable standards are not available) must be used for the tests and procedures required under this rule.
(7) Sample Collection and Transport.
(a) Pre-Test Procedures.
(A) Selection of Sampling Site. Sampling site information should be obtained in accordance with Method 1 in appendix A–1 to 40 CFR part 60. Identify a monitoring location representative of source Hg emissions. Locations shown to be free of stratification through measurement traverses for gases such as SO2 and NOX may be one such approach. An estimation of the expected stack Hg concentration is required to establish a target sample flow rate, total gas sample volume, and the mass of Hg0 to be spiked onto section 3 of each sorbent trap.
(B) Pre-Sampling Spiking of Sorbent Traps. Based on the estimated Hg concentration in the stack, the target sample rate and the target sampling duration, calculate the expected mass loading for section 1 of each sorbent trap (for an example calculation, see subsection (12)(a) of this rule). The pre-sampling spike to be added to section 3 of each sorbent trap must be within ± 50 percent of the expected section 1 mass loading. Spike section 3 of each sorbent trap at this level, as described in subsection (5)(b) of this rule. For each sorbent trap, keep an official record of the mass of Hg0 added to section 3. This record must include, at a minimum, the ID number of the trap, the date and time of the spike, the name of the analyst performing the procedure, the mass of Hg0 added to section 3 of the trap (μg), and the supporting calculations. This record must be maintained in a format suitable for inspection and audit and must be made available to the regulatory agencies upon request.
(C) Pre-test Leak Check. Perform a leak check with the sorbent traps in place. Draw a vacuum in each sample train. Adjust the vacuum in the sample train to ± 15″ Hg. Using the dry gas meter, determine leak rate. The leakage rate must not exceed 4 percent of the target sampling rate. Once the leak check passes this criterion, carefully release the vacuum in the sample train then seal the sorbent trap inlet until the probe is ready for insertion into the stack or duct.
(D) Determination of Flue Gas Characteristics. Determine or measure the flue gas measurement environment characteristics (gas temperature, static pressure, gas velocity, stack moisture, etc.) in order to determine ancillary requirements such as probe heating requirements (if any), initial sample rate, proportional sampling conditions, moisture management, etc.
(b) Sample Collection.
(A) Remove the plug from the end of each sorbent trap and store each plug in a clean sorbent trap storage container. Remove the stack or duct port cap and insert the probe(s). Secure the probe(s) and ensure that no leakage occurs between the duct and environment.
(B) Record initial data including the sorbent trap ID, start time, starting dry gas meter readings, initial temperatures, setpoints, and any other appropriate information.
(C) Flow Rate Control. Set the initial sample flow rate at the target value from paragraph (7)(a)(A) of this rule. Record the initial dry gas meter reading, stack temperature, meter temperatures, etc. Then, for every operating hour during the sampling period, record the date and time, the sample flow rate, the gas meter reading, the stack temperature, the flow meter temperatures, temperatures of heated equipment such as the vacuum lines and the probes (if heated), and the sampling system vacuum readings. Also record the stack gas flow rate, as measured by the certified flow monitor, and the ratio of the stack gas flow rate to the sample flow rate. Adjust the sampling flow rate to maintain proportional sampling, i.e., keep the ratio of the stack gas flow rate to sample flow rate constant, to within ± 25 percent of the

reference ratio from the first hour of the data collection period (see section (11) of this rule). The sample flow rate through a sorbent trap monitoring system during any hour (or portion of an hour) in which the unit is not operating shall be zero.
(D) Stack Gas Moisture Determination. Determine stack gas moisture using a continuous moisture monitoring system, as described in 40 CFR 75.11(b). Alternatively, the owner or operator may use the appropriate fuel-specific moisture default value provided in 40 CFR 75.11, or a site specific moisture default value approved by petition under 40 CFR 75.66.
(E) Essential Operating Data. Obtain and record any essential operating data for the facility during the test period, e.g., the barometric pressure must be obtained for correcting sample volume to standard conditions. At the end of the data collection period, record the final dry gas meter reading and the final values of all other essential parameters.
(F) Post Test Leak Check. When sampling is completed, turn off the sample pump, remove the probe/sorbent trap from the port and carefully re-plug the end of each sorbent trap. Perform a leak check with the sorbent traps in place, at the maximum vacuum reached during the sampling period. Use the same general approach described in paragraph (7)(a)(C) of this rule. Record the leakage rate and vacuum. The leakage rate must not exceed 4 percent of the average sampling rate for the data collection period. Following the leak check, carefully release the vacuum in the sample train.
(G) Sample Recovery. Recover each sampled sorbent trap by removing it from the probe, sealing both ends. Wipe any deposited material from the outside of the sorbent trap. Place the sorbent trap into an appropriate sample storage container and store/preserve in appropriate manner.
(H) Sample Preservation, Storage, and Transport. While the performance criteria of this approach provide for verification of appropriate sample handling, it is still important that the user consider, determine, and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in ASTM D6911–03 ''Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis'' must be followed for all samples.
(I) Sample Custody. Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. The chain of custody procedures in ASTM D4840-99 (reapproved 2004) ''Standard Guide for Sample Chain-of-Custody Procedures'' must be followed for all samples (including field samples and blanks).
(8) Quality Assurance and Quality Control. The owner and operator using a sorbent trap monitoring system must develop and implement a quality assurance/quality control (QA/QC) program. At a minimum, include in each QA/QC program a written plan that describes in detail (or that refers to separate documents containing) complete, step-by-step procedures and operations. Upon request from the Department, the owner or operator must make all procedures, maintenance records, and ancillary supporting documentation from the manufacturer (e.g., software coefficients and troubleshooting diagrams) available for review during an audit. Electronic storage of the information in the QA/QC plan is permissible, provided that the information can be made available in hardcopy upon request during an audit. Table 2 to this division summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from sorbent trap monitoring systems, including the relative accuracy test audit (RATA) requirement (see section 6.5.7 of appendix A to 40 CFR part 75 and section 2.3 of appendix B to 40 CFR part 75, except that for sorbent trap monitoring systems, RATAs must be performed annually, i.e., once every four successive QA operating quarters). The RATA must meet the requirements in OAR 340-228-0621(3)(d)(C)(iii). Except as provided in OAR 340-228-0617(8) and as otherwise indicated in Table 2 to this division, failure to achieve these performance criteria will result in invalidation of Hg emissions data.

(9) Quality Assurance and Quality Control Plan Content. In addition to section 1 of Appendix B to 40 CFR part 75, the QA/QC plan must contain the following:
(a) Sorbent Trap Identification and Tracking. Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.
(b) Monitoring System Integrity and Data Quality. Explain the procedures used to perform the leak checks when a sorbent trap is placed in service and removed from service. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, dry gas meter calibrations, verification of moisture removal, and ensuring air-tight pump operation. In addition, the QA plan must include the data acceptance and quality control criteria in section (8) of this rule.
(c) Hg Analysis. Explain the chain of custody employed in packing, transporting, and analyzing the sorbent traps (see paragraphs (7)(b)(H) and (I) of this rule). Keep records of all Hg analyses. The analyses must be performed in accordance with the procedures described in section (11) of this rule.
(d) Laboratory Certification. The QA Plan must include documentation that the laboratory performing the analyses on the carbon sorbent traps is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 17025. Alternatively, if the laboratory performs the spike recovery study described in subsection (11)(c) of this rule and repeats that procedure annually, ISO certification is not required.
(10) Calibration and Standardization.
(a) Only NIST-certified and NIST-traceable calibration standards (i.e., calibration gases, solutions, etc.) (or other standards approved by the Department if NIST-certified or traceable standards are not available) must be used for the spiking and analytical procedures in this rule.
(b) Dry Gas Meter Calibration. Prior to its initial use, perform a full calibration of the metering system at three orifice settings to determine the average dry gas meter coefficient (Y), as described in section 10.3.1 of Method 5 in appendix A-3 to 40 CFR part 60. Thereafter, recalibrate the metering system quarterly at one intermediate orifice setting, as described in section 10.3.2 of Method 5 in appendix A-3 to 40 CFR part 60. If a quarterly recalibration shows that the value of Y has changed by more than 5 percent, repeat the full calibration of the metering system to determine a new value of Y.
(c) Thermocouples and Other Temperature Sensors. Use the procedures and criteria in section 10.3 of Method 2 in appendix A-1 to 40 CFR part 60 to calibrate in-stack temperature sensors and thermocouples. Dial thermometers must be calibrated against mercury-in-glass thermometers. Calibrations must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within $\pm$ 1.5 percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.
(d) Barometer. Calibrate against a mercury barometer. Calibration must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute pressure measured by the barometer must agree to within $\pm$ 10 mm Hg of the pressure measured by the mercury barometer, otherwise the barometer may not continue to be used.
(e) Other Sensors and Gauges. Calibrate all other sensors and gauges according to the procedures specified by the instrument manufacturer(s).
(f) Analytical System Calibration. See subsection (10)(a) of this rule.
(11) Analytical Procedures. The analysis of the Hg samples may be conducted using any instrument or technology capable of quantifying total Hg from the sorbent media and meeting the performance criteria in section (8) of this rule.

(a) Analyzer System Calibration. Perform a multipoint calibration of the analyzer at three or more upscale points over the desired quantitative range (multiple calibration ranges must be calibrated, if necessary). The field samples analyzed must fall within a calibrated, quantitative range and meet the necessary performance criteria. For samples that are suitable for aliquotting, a series of dilutions may be needed to ensure that the samples fall within a calibrated range. However, for sorbent media samples that are consumed during analysis (e.g., thermal desorption techniques), extra care must be taken to ensure that the analytical system is appropriately calibrated prior to sample analysis. The calibration curve range(s) should be determined based on the anticipated level of Hg mass on the sorbent media. Knowledge of estimated stack Hg concentrations and total sample volume may be required prior to analysis. The calibration curve for use with the various analytical techniques (e.g., UV AA, UV AF, and XRF) can be generated by directly introducing standard solutions into the analyzer or by spiking the standards onto the sorbent media and then introducing into the analyzer after preparing the sorbent/standard according to the particular analytical technique. For each calibration curve, the value of the square of the linear correlation coefficient, i.e., r2, must be ≥ 0.99, and the analyzer response must be within $\pm$ 10 percent of reference value at each upscale calibration point. Calibrations must be performed on the day of the analysis, before analyzing any of the samples. Following calibration, an independently prepared standard (not from same calibration stock solution) must be analyzed. The measured value of the independently prepared standard must be within $\pm$ 10 percent of the expected value.

(b) Sample Preparation. Carefully separate the three sections of each sorbent trap. Combine for analysis all materials associated with each section, i.e., any supporting substrate that the sample gas passes through prior to entering a media section (e.g., glass wool, polyurethane foam, etc.) must be analyzed with that segment.

(c) Spike Recovery Study. Before analyzing any field samples, the laboratory must demonstrate the ability to recover and quantify Hg from the sorbent media by performing the following spike recovery study for sorbent media traps spiked with elemental mercury. Using the procedures described in subsections (5)(b) and (11)(a) of this rule, spike the third section of nine sorbent traps with gaseous Hg0, i.e., three traps at each of three different mass loadings, representing the range of masses anticipated in the field samples. This will yield a 3 x 3 sample matrix. Prepare and analyze the third section of each spiked trap, using the techniques that will be used to prepare and analyze the field samples. The average recovery for each spike concentration must be between 85 and 115 percent. If multiple types of sorbent media are to be analyzed, a separate spike recovery study is required for each sorbent material. If multiple ranges are calibrated, a separate spike recovery study is required for each range.

(d) Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the spike recovery study. The three sections of the sorbent trap must be analyzed separately (i.e., section 1, then section 2, then section 3). Quantify the mass of total Hg for each section based on analytical system response and the calibration curve from subsection (10)(a) of this rule. Determine the spike recovery from sorbent trap section 3. Pre-sampling spike recoveries must be between 75 and 125 percent. To report final Hg mass, normalize the data for sections 1 and 2 based on the sample-specific spike recovery, and add the normalized masses together.

(12) Calculations and Data Analysis.

(a) Calculation of Pre-Sampling Spiking Level. Determine sorbent trap section 3 spiking level using estimates of the stack Hg concentration, the target sample flow rate, and the expected sample duration. First, calculate the expected Hg mass that will be collected in section 1 of the trap. The presampling spike must be within $\pm$ 50 percent of this mass. Example calculation: For an estimated stack Hg concentration of 5 µg/m3, a target sample rate of 0.30 L/min, and a sample duration of 5 days:
(0.30 L/min) (1440 min/day) (5 days) (10^{-3} m3/liter) (5 µg/m3) = 10.8 µg

A pre-sampling spike of 10.8 μg ± 50 percent is, therefore, appropriate.
(b) Calculations for Flow-Proportional Sampling. For the first hour of the data collection period, determine the reference ratio of the stack gas volumetric flow rate to the sample flow rate, as follows:
Rref = K x Qref / Fref
Where:
Rref = Reference ratio of hourly stack gas flow rate to hourly sample flow rate
Qref = Average stack gas volumetric flow rate for first hour of collection period, adjusted for bias, if necessary according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)
Fref = Average sample flow rate for first hour of the collection period, in appropriate units (e.g., liters/min, cc/min, dscm/min)
K = Power of ten multiplier, to keep the value of Rref between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate. Then, for each subsequent hour of the data collection period, calculate ratio of the stack gas flow rate to the sample flow rate using the following equation:
Rh = K x Qh / Fh
Where:
Rh = Ratio of hourly stack gas flow rate to hourly sample flow rate
Qh = Average stack gas volumetric flow rate for the hour, adjusted for bias, if necessary, according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)
Fh = Average sample flow rate for the hour, in appropriate units (e.g., liters/min, cc/min, dscm/min)
K = Power of ten multiplier, to keep the value of Rh between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate and the range of expected stack gas flow rates.
Maintain the value of Rh within ± 25 percent of Rref throughout the data collection period.
(c) Calculation of Spike Recovery. Calculate the percent recovery of each section 3 spike, as follows:
%R = (M3/Ms) x 100
Where:
%R = Percentage recovery of the presampling spike
M3 = Mass of Hg recovered from section 3 of the sorbent trap, (μg)
Ms = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, (μg)
(d) Calculation of Breakthrough. Calculate the percent breakthrough to the second section of the sorbent trap, as follows:
%B = (M2/M1) x 100
Where:
%B = Percent breakthrough
M2 = Mass of Hg recovered from section 2 of the sorbent trap, (μg)
M1 = Mass of Hg recovered from section 1 of the sorbent trap, (μg)
(e) Normalizing Measured Hg Mass for Section 3 Spike Recoveries. Based on the results of the spike recovery in subsection (12)(c) of this rule, normalize the Hg mass collected in sections 1 and 2 of the sorbent trap, as follows:
M* = ((M1+M2) x Ms) / M3
Where:
M* = Normalized total mass of Hg recovered from sections 1 and of the sorbent trap, (μg)
M1 = Mass of Hg recovered from section 1 of the sorbent trap, unadjusted, (μg)
M2 = Mass of Hg recovered from section 2 of the sorbent trap, unadjusted, (μg)
Ms = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, (μg)

M3 = Mass of Hg recovered from section 3 of the sorbent trap, (µg)
(f) Calculation of Hg Concentration. Calculate the Hg concentration for each sorbent trap, using the following equation:
C = M* / Vt
Where:
C = Concentration of Hg for the collection period, (µg/dscm)
M* = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, (µg)
Vt = Total volume of dry gas metered during the collection period, (dscm). For the purposes of this rule, standard temperature and pressure are defined as 20°C and 760 mm Hg, respectively.
(g) Calculation of Paired Trap Agreement. Calculate the relative deviation (RD) between the Hg concentrations measured with the paired sorbent traps as follows:
RD = (|Ca – Cb| / (Ca + Cb)) x 100
Where:
RD = Relative deviation between the Hg concentrations from traps "a" and "b" (percent)
Ca = Concentration of Hg for the collection period, for sorbent trap "a" (µg/dscm)
Cb = Concentration of Hg for the collection period, for sorbent trap "b" (µg/dscm)
(h) Calculation of Hg Mass Emissions. To calculate Hg mass emissions, follow the procedures in OAR 340-228-0619(1)(b). Use the average of the two Hg concentrations from the paired traps in the calculations, except as provided in OAR 340-228-0617(8) or in Table 2 to this division.
(13) Method Performance. These monitoring criteria and procedures have been applied to coal-fired utility boilers (including units with post-combustion emission controls), having vapor-phase Hg concentrations ranging from 0.03 µg/dscm to 100 µg/dscm.
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

340-228-0639
Fuel Analyses and Procedures
(1) The owner or operator must conduct fuel analyses according to the procedures in sections (2) through (5) of this rule and Table 4 to this division, as applicable.
(2) The owner or operator must develop and submit a site-specific fuel analysis plan to the Department for review and approval according to the following procedures and requirements in subsections (2)(a) and (b) of this rule.
(a) The owner or operator must submit the fuel analysis plan no later than 60 days before the date that the owner or operator intends to demonstrate compliance.
(b) The owner or operator must include the information contained in paragraphs (2)(b)(A) through (F) of this rule in the fuel analysis plan.
(A) The identification of all fuel types anticipated to be burned in each boiler or process heater.
(B) For each fuel type, the notification of whether the owner or operator or a fuel supplier will be conducting the fuel analysis.
(C) For each fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the composite samples if the procedures are different from section (3) or (4) of this rule. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types.
(D) For each fuel type, the analytical methods, with the expected minimum detection levels, to be used for the measurement of selected total metals, chlorine, or mercury.

(E) If requesting to use an alternative analytical method other than those required by Table 4 to this division, the owner or operator must also include a detailed description of the methods and procedures that will be used.
(F) If using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 4 to this division.
(3) At a minimum, the owner or operator must obtain three composite fuel samples for each fuel type according to the procedures in subsection (3)(a) or (b) of this rule.
(a) If sampling from a belt (or screw) feeder, collect fuel samples according to paragraphs (3)(a)(A) and (B) of this rule.
(A) Stop the belt and withdraw a 6-inch wide sample from the full cross-section of the stopped belt to obtain a minimum two pounds of sample. Collect all the material (fines and coarse) in the full cross-section. Transfer the sample to a clean plastic bag.
(B) Each composite sample will consist of a minimum of three samples collected at approximately equal intervals during the testing period.
(b) If sampling from a fuel pile or truck, collect fuel samples according to paragraphs (3)(b)(A) through (C) of this rule.
(A) For each composite sample, select a minimum of five sampling locations uniformly spaced over the surface of the pile.
(B) At each sampling site, dig into the pile to a depth of 18 inches. Insert a clean flat square shovel into the hole and withdraw a sample, making sure that large pieces do not fall off during sampling.
(C) Transfer all samples to a clean plastic bag for further processing.
(4) Prepare each composite sample according to the procedures in subsections (4)(a) through (f) of this rule.
(a) Thoroughly mix and pour the entire composite sample over a clean plastic sheet.
(b) Break sample pieces larger than 3 inches into smaller sizes.
(c) Make a pie shape with the entire composite sample and subdivide it into four equal parts.
(d) Separate one of the quarter samples as the first subset.
(e) Grind the sample in a mill.
(f) If the subset is too large for grinding, repeat the procedures in subsection (4)(c) of this rule to obtain a one-quarter subsample for analysis. If the quarter sample is too large, subdivide it further using the same procedure.
(5) Determine the concentration of pollutants in the fuel (mercury, chlorine, and/or total selected metals) in units of pounds per million Btu of each composite sample for each fuel type according to the procedures in Table 6 to this subpart.
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025

Table 4 (OAR 340-228-0639)

Fuel Analysis Requirements

The owner or operator must:	Using:

1. Collect fuel samples:	Procedures in OAR 340-228-0639(3) or ASTM D2234-00 or equivalent.
2. Composite fuel samples:	Procedures in OAR 340-228-0639(4) or equivalent.
3. Prepare composited fuel samples:	ASTM D2013-01 or equivalent.
4. Determine heat content of the fuel:	ASTM D5865-03a or equivalent.
5. Determine moisture content of the fuel type:	ASTM D3173-02 or ASTM E871-82 (1998) or equivalent.
6. Measure mercury concentration in fuel sample:	ASTM D3684-01.
7. Convert concentrations into units of pounds of pollutant per MMBtu of heat content:	

DIVISION 238

NEW SOURCE PERFORMANCE STANDARDS

340-238-0040
Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the DEQ's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in **Internal Revenue Service (IRS) Publication 534** and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2009~~8~~ edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or

modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.
(7) "Construction" means fabrication, erection, or installation of a facility.
(8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Protection Agency.
(9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
(10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.
(11) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
(12) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.
(13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.
(14) "Fixed capital cost" means the capital needed to provide all the depreciable components.
(15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.
(16) "Modification:"
(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;
(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.
(17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).
(18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.
(19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.
(20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:
(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and
(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60 .
(22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.
(23) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.
(24) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.
(25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.
(26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef 12-31-08

DIVISION 244

OREGON FEDERAL HAZARDOUS AIR POLLUTANT PROGRAM

General Provisions for Stationary Sources

340-244-0030
Definitions
The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.
(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.
(3) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.
(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.
(5) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2009~~8~~ edition.
(6) "Commission" means the Oregon Environmental Quality Commission.

(7) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:
(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;
(b) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).
(c) The Department determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;
(d) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;
(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and
(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.
(8) "Department" means the Department of Environmental Quality.
(9) "Director" means the Director of the Department or Regional Agency, and authorized deputies or officers.
(10) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.
(11) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.
(12) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
(13) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in paragraph (d) of this definition, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:
(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and
(B) The emissions from the emissions unit are quantifiable.
(b) Emissions units may be defined on a pollutant by pollutant basis where applicable;
(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA;
(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or OAR 340 division 210, or for determining the applicability of a New Source Performance Standard (NSPS).
(14) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.
(15) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.
(16) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.
(17) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
(18) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.
(19) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.
(20) "Gasoline dispensing facility (GDF)" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study area, "gasoline dispensing facility" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, boat, or airplane.
(21) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.
(22) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.
(23) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(24) "Monthly throughput" means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.
(25) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.
(26) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
(27) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.
(28) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.
(29) "Regional Agency" means Lane Regional Air Protection Agency.
(30) "Regulated Air Pollutant" as used in this Division means:
(a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230; or
(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.
(31) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:
(a) Emissions from ships and trains coming to or from a facility;
(b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.
(32) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.
(33) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.
(34) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.
(35) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(36) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.
(37) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.
(38) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.
(39) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.
(40) "Stationary Source":
(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;
(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:
(A) That belong to the same industrial group;
(B) That are located on one or more contiguous properties;
(C) That are under the control of the same person (or persons under common control); and
(D) From which an accidental release may occur.
(41) "Submerged filling" means, for the purposes of this subpart, the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0242(2) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.
(42) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.
(43) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.
(44) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.040
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef 12-31-08

340-244-0220
Federal Regulations Adopted by Reference
(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, and Y through FF and 40 CFR Part 63, Subparts A, F through ~~BBBBBB, DDDDDD through GGGGGG, and LLLLLL through~~ TTTTTT, and WWWWWW through ZZZZZZ** are adopted by reference and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "Department" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.
(3) 40 CFR Part 63 Subpart M -- Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.
(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:
(a) Subpart A -- General Provisions;
(b) Subpart C -- Beryllium;
(c) Subpart D -- Beryllium Rocket Motor Firing;
(d) Subpart E -- Mercury;
(e) Subpart F -- Vinyl Chloride;
(f) Subpart J -- Equipment Leaks (Fugitive Emission Sources) of Benzene;
(g) Subpart L -- Benzene Emissions from Coke By-Product Recovery Plants;
(h) Subpart N -- Inorganic Arsenic Emissions from Glass Manufacturing Plants;
(i) Subpart O -- Inorganic Arsenic Emissions from Primary Copper Smelters;
(j) Subpart P -- Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;
(k) Subpart V -- Equipment Leaks (Fugitive Emission Sources);
(l) Subpart Y -- Benzene Emissions from Benzene Storage Vessels;
(m) Subpart BB -- Benzene Emissions from Benzene Transfer Operations; and
(n) Subpart FF -- Benzene Waste Operations.
(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:
(a) Subpart A -- General Provisions;
(b) Subpart F -- SOCMI;
(c) Subpart G -- SOCMI -- Process Vents, Storage Vessels, Transfer Operations, and Wastewater;
(d) Subpart H -- SOCMI -- Equipment Leaks;
(e) Subpart I -- Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;
(f) Subpart J -- Polyvinyl Chloride and Copolymers Production;
(g) Subpart L -- Coke Oven Batteries;
(h) Subpart M -- Perchloroethylene Air Emission Standards for Dry Cleaning Facilities ~~(as codified in the July 1, 2006 CFR)~~;
(i) Subpart N -- Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
(j) Subpart O -- Ethylene Oxide Emissions Standards for Sterilization Facilities;
(k) Subpart Q -- Industrial Process Cooling Towers;
(l) Subpart R -- Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);
(m) Subpart S -- Pulp and Paper Industry;
(n) Subpart T -- Halogenated Solvent Cleaning;
(o) Subpart U -- Group I Polymers and Resins;
(p) Subpart W -- Epoxy Resins and Non-Nylon Polyamides Production;
(q) Subpart X -- Secondary Lead Smelting;
(r) Subpart Y -- Marine Tank Vessel Loading Operations;
(s) Subpart AA -- Phosphoric Acid Manufacturing Plants;
(t) Subpart BB -- Phosphate Fertilizer Production Plants;
(u) Subpart CC -- Petroleum Refineries;
(v) Subpart DD -- Off-Site Waste and Recovery Operations;
(w) Subpart EE -- Magnetic Tape Manufacturing Operations;

(x) Subpart GG -- Aerospace Manufacturing and Rework Facilities;
(y) Subpart HH -- Oil and Natural Gas Production Facilities;
(z) Subpart II -- Shipbuilding and Ship Repair (Surface Coating);
(aa) Subpart JJ -- Wood Furniture Manufacturing Operations;
(bb) Subpart KK -- Printing and Publishing Industry;
(cc) Subpart LL -- Primary Aluminum Reduction Plants;
(dd) Subpart MM -- Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;
(ee) Subpart OO -- Tanks -- Level 1;
(ff) Subpart PP -- Containers;
(gg) Subpart QQ -- Surface Impoundments;
(hh) Subpart RR -- Individual Drain Systems;
(ii) Subpart SS -- Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
(jj) Subpart TT -- Equipment Leaks -- Control Level 1;
(kk) Subpart UU -- Equipment Leaks -- Control Level 2;
(ll) Subpart VV -- Oil-Water Separators and Organic-Water Separators;
(mm) Subpart WW -- Storage Vessels (Tanks) -- Control Level 2;
(nn) Subpart XX -- Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;
(oo) Subpart YY -- Generic Maximum Achievable Control Technology Standards;
(pp) Subpart CCC -- Steel Pickling -- HCl Process Facilities and Hydrochloric Acid Regeneration Plants;
(qq) Subpart DDD -- Mineral Wool Production;
(rr) Subpart EEE -- Hazardous Waste Combustors;
(ss) Subpart GGG -- Pharmaceuticals Production;
(tt) Subpart HHH -- Natural Gas Transmission and Storage Facilities;
(uu) Subpart III -- Flexible Polyurethane Foam Production;
(vv) Subpart JJJ -- Group IV Polymers and Resins;
(ww) Subpart LLL -- Portland Cement Manufacturing Industry;
(xx) Subpart MMM -- Pesticide Active Ingredient Production;
(yy) Subpart NNN -- Wool Fiberglass Manufacturing;
(zz) Subpart OOO -- Manufacture of Amino/Phenolic Resins;
(aaa) Subpart PPP -- Polyether Polyols Production;
(bbb) Subpart QQQ -- Primary Copper Smelting;
(ccc) Subpart RRR -- Secondary Aluminum Production;
(ddd) Subpart TTT -- Primary Lead Smelting;
(eee) Subpart UUU -- Petroleum Refineries -- Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
(fff) Subpart VVV -- Publicly Owned Treatment Works;
(ggg) Subpart XXX -- Ferroalloys Production: Ferromanganese and Silicomanganese;
(hhh) Subpart AAAA -- Municipal Solid Waste Landfills;
(iii) Subpart CCCC -- Manufacturing of Nutritional Yeast;
(jjj) Subpart DDDD -- Plywood and Composite Wood Products;
(kkk) Subpart EEEE -- Organic Liquids Distribution (non-gasoline);
(lll) Subpart FFFF -- Miscellaneous Organic Chemical Manufacturing;

(mmm) Subpart GGGG -- Solvent Extraction for Vegetable Oil Production;
(nnn) Subpart HHHH -- Wet Formed Fiberglass Mat Production;
(ooo) Subpart IIII -- Surface Coating of Automobiles and Light-Duty Trucks;
(ppp) Subpart JJJJ -- Paper and Other Web Coating;
(qqq) Subpart KKKK -- Surface Coating of Metal Cans;
(rrr) Subpart MMMM -- Surface Coating of Miscellaneous Metal Parts and Products;
(sss) Subpart NNNN -- Surface Coating of Large Appliances;
(ttt) Subpart OOOO -- Printing, Coating, and Dyeing of Fabrics and Other Textiles;
(uuu) Subpart PPPP -- Surface Coating of Plastic Parts and Products;
(vvv) Subpart QQQQ -- Surface Coating of Wood Building Products;
(www) Subpart RRRR -- Surface Coating of Metal Furniture;
(xxx) Subpart SSSS -- Surface Coating of Metal Coil;
(yyy) Subpart TTTT -- Leather Finishing Operations;
(zzz) Subpart UUUU -- Cellulose Production Manufacturing;
(aaaa) Subpart VVVV -- Boat Manufacturing;
(bbbb) Subpart WWWW -- Reinforced Plastics Composites Production;
(cccc) Subpart XXXX -- Rubber Tire Manufacturing;
(dddd) Subpart YYYY -- Stationary Combustion Turbines;
(eeee) Subpart ZZZZ -- Reciprocating Internal Combustion Engines;
(ffff) Subpart AAAAA -- Lime Manufacturing;
(gggg) Subpart BBBBB -- Semiconductor Manufacturing;
(hhhh) Subpart CCCCC -- Coke Ovens: Pushing, Quenching & Battery Stacks;
(jjjj) Subpart EEEEE -- Iron and Steel Foundries;
(kkkk) Subpart FFFFF -- Integrated Iron and Steel Manufacturing Facilities;
(llll) Subpart GGGGG -- Site Remediation;
(mmmm) Subpart HHHHH -- Misc. Coating Manufacturing;
(nnnn) Subpart IIIII -- Mercury Cell Chlor-Alkali Plants;
(oooo) Subpart JJJJJ -- Brick and Structural Clay Products Manufacturing;
(pppp) Subpart KKKKK -- Clay Ceramics Manufacturing;
(qqqq) Subpart LLLLL -- Asphalt Processing & Asphalt Roofing Manufacturing;
(rrrr) Subpart MMMMM -- Flexible Polyurethane Foam Fabrication Operations;
(ssss) Subpart NNNNN -- Hydrochloric Acid Production;
(tttt) Subpart PPPPP -- Engine Tests Cells/Stands;
(uuuu) Subpart QQQQQ -- Friction Materials Manufacturing Facilities;
(vvvv) Subpart RRRRR -- Taconite Iron Ore Processing;
(wwww) Subpart SSSSS -- Refractory Products Manufacturing;
(xxxx) Subpart TTTTT -- Primary Magnesium Refining;
(yyyy) Subpart WWWWW -- Area Sources: Hospital Ethylene Oxide Sterilization;
(zzzz) Subpart YYYYY -- Area Sources: Electric Arc Furnace Steelmaking Facilities;
(aaaaa) Subpart ZZZZZ -- Area Sources: Iron and Steel Foundries;
(bbbbb) Subpart BBBBBB -- Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;
(ccccc) Subpart DDDDDD -- Area Sources: Polyvinyl Chloride and Copolymers Production;
(ddddd) Subpart EEEEEE -- Area Sources: Primary Copper Smelting;
(eeeee) Subpart FFFFFF -- Area Sources: Secondary Copper Smelting;

(fffff) Subpart GGGGGG -- Area Sources: Primary Nonferrous Metals -- Zinc, Cadmium, and Beryllium;
(ggggg) Subpart HHHHHH -- Area Sources: Paint Stripping and Miscellaneous Surface Coating Operations
(hhhhhggggg) Subpart LLLLLL -- Area Sources: Acrylic and Modacrylic Fibers Production;
(iiiiihhhhh) Subpart MMMMMM -- Area Sources: Carbon Black Production;
(jjjjjiiiii) Subpart NNNNNN -- Area Sources: Chemical Manufacturing: Chromium Compounds;
(kkkkkjjjjj) Subpart OOOOOO -- Area Sources: Flexible Polyurethane Foam Production;
(lllllkkkkk) Subpart PPPPPP -- Area Sources: Lead Acid Battery Manufacturing;
(mmmmmllll) Subpart QQQQQQ -- Area Sources: Wood Preserving;
(nnnnnmmmmm) Subpart RRRRRR -- Area Sources: Clay Ceramics Manufacturing;
(ooooonnnnn) Subpart SSSSSS -- Area Sources: Glass Manufacturing;
(pppppooooo) Subpart TTTTTT -- Area Sources: Secondary Nonferrous Metals Processing;
(qqqqq) Subpart WWWWWW -- Area Source: Plating and Polishing Operations;
(rrrrr) Subpart XXXXXX -- Area Source: Nine Metal Fabrication and Finishing Source Categories;
(sssss) Subpart YYYYYY -- Area Sources: Ferroalloys Production Facilities;
(ttttt) Subpart ZZZZZZ -- Area Sources: Aluminum, Copper, and Other Nonferrous Foundries.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef 12-31-08

340-244-0238
Compliance Dates
(1) For a new or reconstructed affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, no later than January 10, 2008 or upon startup, whichever is later, except as follows:
(a) The owner or operator of a new or reconstructed GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.
(b) For tanks located at a GDF with average monthly throughput less than 100,000 gallons of gasoline and not listed in OAR 340-244-0234(4)(a)(C) or (4)(b) must comply with OAR 340-244-0242, as applicable, no later than December 13, 2009 or upon startup, whichever is later.
(c) The owner or operator of a GDF subject to Table 4 of this division must comply no later than September 23, 2008 or upon startup, whichever is later.
(2) For an existing affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, by no later than January 10, 2011, except as follows:
(a) For tanks with a capacity between 1,500 and 40,000 gallons and located in the Portland AQMA, Medford AQMA, or Salem SATS, the owner or operator must comply with the standards in OAR 340-244-0240(32) and 0242 no later than December 13, 2008.
(b) For tanks located at an affected source located in Clackamas, Multnomah, or Washington County, whose annual throughput exceeds 120,000 gallons, the owner or operator must comply with the standards in OAR 340-244-0240(32) and 0242 no later than December 13, 2008.

(c) The owner or operator of an existing GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.
(3) For an existing affected source that becomes subject to the control requirements in this rule because of an increase in the average monthly throughput, as specified in OAR 340-244-0234(4), the owner or operator must comply with the standards in this rule no later than January 10, 2011 or within 2 years after the affected source becomes subject to the control requirements in this rule, whichever is later.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

340-244-0240
Work Practice and Submerged Fill Requirements
(1) The owner or operator of a GDF must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:
(a) Minimize gasoline spills;
(b) Do not top off or overfill vehicle tanks. If a person can confirm that a vehicle tank is not full after the nozzle clicks off (such as by checking the vehicle's fuel tank gauge), the person may continue to dispense fuel using best judgment and caution to prevent a spill;
(c) Post a sign at the GDF instructing ~~attendants~~a person filling up a motor vehicle to not ~~to~~ top off the vehicle tank~~s~~;
(d) Clean up spills as expeditiously as practicable;
(e) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;
(f) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.
(g) Ensure that cargo tanks unloading at the GDF comply with subsections (1)(a) through (e) of this rule.
(2) Any cargo tank unloading at a GDF equipped with a functional vapor balance system must connect to the vapor balance system whenever gasoline is being loaded.
(3) The owner or operator must only load gasoline into storage tanks at the facility by utilizing submerged filling, as defined in OAR 340-244-0030, and as specified in subsection (3~~2~~)(a) or (3~~2~~)(b) of this rule.
(a) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank.
(b) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.
(4) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the submerged fill requirements in section (3~~2~~) of this rule.
(5) The owner or operator must submit the applicable notifications as required under OAR 340-244-0246.
(6) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.
(7) The owner or operator must comply with the requirements of this rule by the applicable dates specified in OAR 340-244-0238.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

340-244-0242
Vapor Balance Requirements
(1) Except as provided in section (2) of this rule, the owner or operator of gasoline storage tank listed in OAR 340-244-0234(4), must meet the requirements in either subsection (1)(a) or (1)(b) of this rule.
(a) Each management practice in Table 4 of this division that applies to the GDF.
(b) If, prior to January 10, 2008, the owner or operator operates a vapor balance system at the GDF that meets the requirements of either paragraph (1~~2~~)(b)(A) or (1~~2~~)(b)(B) of this rule, the owner or operator will be deemed in compliance with this section.
(A) Achieves emissions reduction of at least 90 percent.
(B) Operates using management practices at least as stringent as those in Table 4 of this division.
(2) Gasoline storage tanks equipped with floating roofs or the equivalent are not required to comply with the control requirements in section (1) of this rule.
(3) Cargo tanks unloading at a GDF must comply with the requirements of OAR 340-244-0240(1) and management practices in Table 5 of this division.
(4) The owner or operator of a GDF subject to section (1) of this rule or having a gasoline storage tank equipped with a vapor balance system, must comply with the following requirements on and after the applicable compliance date in OAR 340-244-0238:
(a) When loading a gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded.
(b) Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order.
(c) In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, have the vapor balance equipment inspected on an annual basis to discover potential or actual equipment failures.
(d) Replace, repair or modify any worn or ineffective component or design element within 24 hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within 2 working days of detecting such a leak. Such repair parts must be installed within 5 working days after receipt.
(5) The owner or operator of a GDF subject to section (1) of this rule must also comply with the following requirements:
(a) The applicable testing requirements contained in OAR 340-244-0244.
(b) The applicable notification requirements under OAR 340-244-0246.
(c) The applicable recordkeeping and reporting requirements as specified in OAR 340-244-0248 and 0250.
(d) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

340-244-0246
Notifications

(1) Each owner or operator subject to the control requirements in OAR 340-244-0240(32) must comply with subsections (1)(a) through (c) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0240(32), unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Initial Notification must contain the information specified in paragraphs (1)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0240(1) through (3) that apply to the owner or operator.

(b) The owner or operator must submit a Notification of Compliance Status to EPA's Region 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238 unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements of OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (1)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (1)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator is operating in compliance with an enforceable State rule or permit that requires submerged fill as specified in OAR 340-244-0240(32), the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status under subsection (1)(a) or (b) of this rule.

(2) Each owner or operator subject to the control requirements in OAR 340-244-0242 must comply with subsections (2)(a) through (e) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0242. The Initial Notification must contain the information specified in paragraphs (2)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0242 that apply to the owner or operator.

(b) The owner or operator must submit a Notification of Compliance Status to EPA's Regional 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238. The Notification of Compliance Status must be signed by a responsible official who must certify

its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (2)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (2)(a) of this rule.
(c) If, prior to January 10, 2008, the owner or operator satisfies the requirements in both paragraphs (2)(c)(A) and (B) of this rule, the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status if the owner or operator operates a vapor balance system at the gasoline dispensing facility that meets the requirements of either paragraphs (2)(c)(A) or (B) of this rule.
(A) Achieves emissions reduction of at least 90 percent.
(B) Operates using management practices at least as stringent as those in Table 4 of this division.
(d) The owner or operator must submit a Notification of Performance Test, as specified in 40 CFR 63.9(e), prior to initiating testing required by OAR 340-244-0244(1) and (2).
(e) The owner or operator must submit additional notifications specified in 40 CFR 63.9, as applicable.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

TABLE 4 (OAR 340-244-0242)

MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES SUBJECT TO STAGE I VAPOR CONTROLS

If owning or operating	The owner or operator must
1. An existing GDF	~~The permittee must i~~Install and operate a vapor balance system on gasoline storage tanks that meets the design criteria in paragraphs (a) through (h). (a) All vapor connections and lines on the storage tank must be equipped with closures that seal upon disconnect. (b) The vapor line from the gasoline storage tank to the gasoline cargo tank must be vapor-tight, as defined in OAR 340-244-0030. (c) The vapor balance system must be designed such that the pressure in the tank truck does not exceed 18 inches water pressure or 5.9 inches water vacuum during product transfer. (d) The vapor recovery and product adaptors, and the method of connection with the delivery elbow, must be designed so as to prevent the over-tightening or loosening of fittings during normal delivery operations. (e) If a gauge well separate from the fill tube is used, it must be provided with a submerged drop tube that extends the same distance from the bottom of the storage tank as specified in OAR 340-244-0240(2). (f) Liquid fill connections for all systems must be equipped with vapor-tight caps. (g) Pressure/vacuum (PV) vent valves must be installed on the storage tank vent pipes. The pressure specifications for PV vent valves must be: a positive pressure setting of 2.5 to 6.0 inches of water and a negative pressure setting of 6.0 to 10.0 inches of

	water. The total leak rate of all PV vent valves at an affected facility, including connections, must not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.63 cubic foot per hour at a vacuum of 4 inches of water. (h) The vapor balance system must be capable of meeting the static pressure performance requirement of the following equation: $Pf = 2e^{-500.887/v}$ Where: Pf = Minimum allowable final pressure, inches of water. v = Total ullage affected by the test, gallons. e = Dimensionless constant equal to approximately 2.718. 2 = The initial pressure, inches water.
2. For a new or reconstructed GDF with monthly throughput of 100,000 gallons of gasoline or more, or a new storage tank(s) at an existing GDF with monthly throughput of 100,000 gallons of gasoline or more	~~The permittee must i~~Install and operate a dual-point vapor balance system, as defined in OAR 340-244-0030, on each affected gasoline storage tank and comply with the design criteria in item 1 of this Table.

Summary of Public Comment and Agency Response

Title of Rulemaking: Adoption of Federal Air Quality Regulations

Prepared by: Jerry Ebersole **Date:** Sept. 1, 2009

Comment period	DEQ held a public comment period July 15, 2009 to 5 p.m. Aug. 26, 2009. DEQ held the following public hearings: • August 17, 2009, 6 p.m. DEQ - Bend Regional Office 475 NE Bellevue Dr., Bend Three attended and zero testified. • August 18, 2009, 6 p.m. DEQ – Medford Regional Office 221 Stewart Ave, Medford Seven attended and one testified. • August 20, 2009, 6 p.m. DEQ Headquarters, Room EQC-A 811 S.W. Sixth Avenue, Portland Two attended and one testified. Eight commenters submitted comments by standard mail, fax, or e-mail and two verbal testimonies were given at public hearings.
Organization of comments and responses	Summaries of individual comments and the DEQ's responses are provided below. Comments are summarized in categories. The persons who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.
Explanation of acronyms used in this document	ACDP = Air Contaminant Discharge Permit ATSAC = Air Toxic Science Advisory Committee AQ = Air Quality CFR = Code of Federal Regulations DEQ = Department of Environmental Quality EPA = Environmental Protection Agency EQC = Environmental Quality Commission HAP = Hazardous Air Pollutant NESHAP = Nation Emission Standards for Hazardous Air Pollutants NSPS = New Source Performance Standards OTA = Oregon Toxics Alliance PATA = Portland Air Toxics Assessment PPRC = Pollution Prevention Resource Center SIP = State Implementation Plan

Summary of Comments/Responses	
Gasoline Dispensing Facilities	
1. Topping-Off Ban	• Comment 1: We are extremely pleased that DEQ and the EQC are implementing rules that go beyond the federal standards, both in requiring stage I vapor recovery at a lower threshold than that required by federal law, and in implementing the first "No Topping Off" regulation in the nation. (10) • • Response: DEQ appreciates your support for the lower stage I vapor control threshold and the "topping-off" ban. Benzene concentrations in many Oregon communities are above levels protective of human health. DEQ's intent for going beyond the gasoline dispensing NESHAP is to reduce benzene concentrations in Oregon. • • Comment 2: We look forward to partnering with DEQ on this "No Topping Off" project and on reducing unnecessary idling of vehicles. The combination of these provisions will go a long way towards reducing the level of benzene in our airshed and in our lungs. (10) • • Response: DEQ recognizes the difficulty of implementing a statewide "topping-off" ban. DEQ's goal is to implement the ban primarily through education and outreach and by ensuring that signage is posted at service stations. DEQ welcomes any assistance with these efforts.
Dry Cleaners	
2. Permitting	• Comment 1: When DEQ first approached industry about permitting, they stated that Oregon dry cleaners were not meeting the carbon adsorption requirement. Industry pointed out that dry cleaners were meeting that requirement. The inspections proved that the industry was right. (2) • *Response: One of the requirements in the 2006 NESHAP amendments is for newer dry cleaning machines to have a carbon adsorber. Currently DEQ is aware of approximately eight dry cleaning machines in Oregon that potentially fall under this requirement. Only one of the dry cleaning facilities with a newer machine was inspected during the recent inspection sweep. More inspections are necessary to determine if the carbon adsorption and other requirements are being met. Based on discussions with dry cleaning equipment suppliers and repair technicians, DEQ is concerned that some of the newer machines may not have the required carbon adsorber.* • Comment 2: For DEQ to decide now that EPA would not accept delegation of our current program without implementing a permit program, when in fact it has accepted it since the 2006 NESHAP amendments were published, is hard for the dry cleaning industry to accept. The industry requests DEQ to go for delegation with the existing

	Dry Cleaning Program. (2) • *Response: DEQ has not received delegation from EPA for the 2006 NESHAP and cannot until EQC adopts those amendments into state rule. This rulemaking would add the 2006 NESHAP amendments to state rules and DEQ would then submit a new delegation request to EPA in February, 2010. In order to renew delegation, DEQ must be able to establish an effective program to ensure compliance with federal rules. Our previous delegation (of the 1993 NESHAP) was granted based on the belief that a self-certification type program along with technical assistance would result in compliance with state and federal rules. After further review of the program, including a sweep of inspections, DEQ has determined that the current program has resulted in a low level of compliance. During a recent random inspections of 25 dry cleaning facilities, approximately 70 percent percent of the perchloroethylene dry cleaners inspected were found to be out of compliance with some state or federal requirements and 40 percent of dry cleaners were specifically violating the dry cleaning NESHAP. Federal law (40 CFR 63.96) requires adequate state enforcement and compliance monitoring activities. It also requires adequate funding, staff, and other resources to implement and enforce the State's approved program.* • Comment 3: EPA does not require a fee based permit program and supports other states self-certification programs. (2) • *Response: While EPA does not specifically require states to have a fee based permit program to implement the NESHAP, federal law (40 CFR 63.96) as noted above requires adequate State enforcement and compliance monitoring activities. Since DEQ does not receive state general fund for implementation of NESHAP programs, funding to support the program needs to be provided either through permitting or registration fees. See response to question two above for additional information about why DEQ is not proposing a self certification program.* • Comment 4: Why should an industry that has cleaned up historical practices and prevented further contamination be subjected to yet another layer of redundant regulation and bureaucracy? (2) • *Response: DEQ appreciates efforts made by the dry cleaning industry to be environmentally proactive and does not want to subject the dry cleaning industry to any unnecessary regulation or bureaucracy. DEQ does however need to have an effective program that ensures compliance with existing federal regulations designed to protect public health. To do this DEQ needs additional funding not provided through the existing dry cleaner program. The proposed funding mechanism would be a streamlined permit or registration process. As a result, dry cleaners will experience few changes other than receiving periodic compliance inspections, increased technical assistance and enforcement when necessary. DEQ's goal has been, and will continue to be, integrated implementation of the dry cleaning NESHAP and the Dry Cleaning Program. That goal includes combined inspections and reporting to minimize the cost of the program and avoid duplication.* • Comment 5: Permitting/registration will not improve compliance or reduce air pollution, only damage the mutual respect we have worked so hard to build. (2)

	• *Response: DEQ values the working relationship it has with the dry cleaning industry and has held a number of meetings to reach out to the dry cleaning industry and to gather input on how best to implement the NESHAP program. DEQ intends to continue working with the dry cleaning industry on the basis of mutual trust and respect.* • Comment 6: The Dry Cleaning Program is working. Sites are cleaned up and there are no high priority sites in the queue. All money spent on clean ups are from industry. Oregon dry cleaners meet or exceed all federal regulations. Therefore, the industry requests that DEQ remove this proposal. (2) • *Response: DEQ applauds the dry cleaning industry in Oregon for taking proactive steps to clean-up contaminated sites and reducing the number of new contaminated sites. However, recent inspections demonstrate that a high percentage of Oregon dry cleaners are potentially out of compliance. During the recent sweep of inspections, approximately 40 percent of dry cleaners were specifically violating the federal NESHAP regulations.The proposal would result in additional inspections and technical assistance to ensure a higher level of compliance.*
3. Permitting Fees	• Comment 1: There is a $1200 initial permitting fee. I understand that Air Quality does not plan to charge it. If your plan is not to charge it, why is it in the proposal? (1) • *Response: DEQ will revise Division 216, Table 2, Part 1.c to allow DEQ to exempt existing sources from the requirement to pay the General ACDP assignment fee. This exemption would be limited to those existing sources that are applying for assignment to a General ACDP because they are subject to a newly adopted area source NESHAP and apply within 90 days of notification by DEQ.* • Comment 2: As I understand it, Air Quality receives no funding from the State of Oregon. These fees and additional paperwork look like nothing more than a way to perpetuate jobs for DEQ and serve no real public service. (1) • *Response: DEQ has been responsible for implementing the original federal dry cleaning NESHAP through the Dry Cleaning Program for over 10 years. However, fees paid by dry cleaners to the Dry Cleaning Program are primarily intended for site cleanups and therefore not available to be used for NESHAP implementation. As a result, an inadequate number of dry cleaners have been inspected, which has lead to a high level of non-compliance. The purpose of the proposed permitting or registration requirement is to improve compliance with the 2006 NESHAP.* • Comment 3: Those dry cleaners that have followed the rules keep being penalized with new fees and the dry cleaners that are not following the

rules are suffering no consequences. (3)

- *Response: The proposed rules would level the playing field by keeping fees low for dry cleaners that are following the rules and by requiring higher fees and civil penalties for dry cleaners that are violating the rules. Dry cleaners that go above and beyond the area source NESHAP would be able to register with DEQ and pay an annual fee of $180. Dry cleaners that comply with the NESHAP would be required to obtain a General ACDP and pay an annual fee of $240. Those dry cleaners that have significant or repeated violations would be subject to civil penalties, be required to obtain a Simple ACDP, and pay an annual fee of $1920.*
- Comment 4: I understand the State of Oregon is short of money. However, I do not believe the 173 perchloroethylene dry cleaners should, would, or could provide enough money to make a dent in the deficit. (3)
- *Response: The purpose of the permitting/registration fee is to fund an effective program to ensure compliance and is not to balance Oregon's budget. All revenue received by the permitting/registration program is dedicated to the permitting/registration program. None of the revenue will go towards the state's budget deficit.*
- Comment 5: Under the Dry Cleaning Program, there is no cost to change basic information. Under this new program, it would cost the dry cleaner $360 to change this information. That amount is absurd anyway for a permit costing $240, but even more absurd is that a dry cleaner would have to contact both DEQ Land and DEQ Air. (2)
- *Response: The $360 fee for name change or changes in ownership is a onetime fee while the $240 fee is an annual fee. The $360 pays for permit reassignment, database and file updating, and technical assistance provided to the new owner. The fee for changes in ownership applies to all categories of sources permitted under the ACDP program, not just dry cleaners.*
- Comment 6: Perchloroethylene dry cleaners already pay an additional $500 just because they use perchloroethylene. (3)
- *Response: The purpose of the fees currently paid by dry cleaners is to create a cleanup fund paid for solely by the dry cleaning industry. Dry cleaners that participate in this fund benefit by receiving an exemption from cleanup liability. These fees are used to clean up contamination resulting from dry cleaning facilities, and are not meant to pay for the implementation of the dry cleaning NESHAP.*
- Comment 7: Why does DEQ feel an additional fee will change the compliance issue? (3)
- *Response: The additional fees would fund the program and allow for*

	additional inspections which we believe will increase the level of compliance in the program.
4. Need for More Inspections	• Comment 1: The industry believes that Oregon is already meeting the federal requirements for the Clean Air Act concerning perchloroethylene and our industry. In the recent inspections, the areas of concern were containment, paper work, and land quality and water quality issues, not air quality issues. (2,3) • *Response: Of the twenty-five dry cleaners inspected during the inspection sweep, ten were violating at least one air quality requirement. Four were violating the requirement to cover waste containers, five were violating the requirement to perform leak inspections, one had a perceptible leak during the inspection, five were violating the requirement to record condenser temperatures, and three were violating the requirement to keep leak detection logs.* • Comment 2: Those areas of concern that were air quality related were corrected on-site or within the timeframe allotted. (2) • *Response: It is true that many of the air quality related violations were corrected immediately or within the timeframe allotted in the warning letter. However, under the existing program, these violations would likely have gone undiscovered and uncorrected.* • Comment 3: The worst cited air quality concerns had already been picked up in the existing Dry Cleaning Program. The industry is not happy with the findings but believe that the issues can be addressed under the existing DEQ Dry Cleaning Program. (2) • *Response: The existing program requires submittal of an annual report. However, the information is typically not verified making it difficult to accurately assess compliance. The proposed rules would increase oversight to ensure that all air quality concerns are adequately addressed.* • Comment 4: You have always had the ability to inspect dry cleaners in Oregon. I would encourage you to do more, on all dry cleaners. (3) • *Response: The proposed registration and permitting fees would provide DEQ the funding needed to provide inspections.* • Comment 5: If there is a high degree of non-compliance, it appears to be the fault of DEQ, not the dry cleaners. (3) • *Response: Under state law, compliance with a NESHAP is the responsibility of the regulated source. Under the proposed rules, DEQ will provide adequate compliance assistance and compliance assurance.* • Comment 6: In the past air quality said, because of the unique relationship between dry cleaners and DEQ, dry cleaners did not need Air

	Quality oversight. Apparently, now we do. (1) • *Response: DEQ does believe oversight is needed to ensure compliance with air quality regulations. It appears that the lack of compliance inspections over the years has lead to a high level of non-compliance. The level of compliance should increase with more compliance inspections. There is also a high rate of ownership turnover within the dry cleaning industry. New owners should also benefit from the technical assistance that DEQ inspector would provide.* • Comment 7: The time has come when you say enough is enough. You have told them what to do, how to do it, and if they are still not doing it correctly, close them down. (3) • *Response: DEQ uses the legal authorities we have to resolve and deter violations of environmental rules. These are typically civil penalties, but in some cases may also include criminal charges against violators.* • Comment 8: Perchloroethylene usage has decreased because of newer generation equipment and closed loop solvent delivery, and as dry cleaners close or use an alternative solvent, this trend will continue. (3) • *Response: DEQ realizes that perchloroethylene use has decreased over time and better equipment has reduced environmental risks. However, EPA has determined that there is still a remaining risk from dry cleaners and as the delegated authority, DEQ is required to ensure compliance with the NESHAP.* • Comment 9: It is very important to ensure that dry cleaners are complying with the requirements, and adequate enforcement oversight is exercised by DEQ. OTA would encourage additional provisions to ensure that businesses are complying with the applicable requirements, as there have been compliance problems in the past. DEQ should implement sufficiently stringent recordkeeping and reporting requirements to ensure that this does not occur. (10) • *Response: DEQ is proposing to add a permitting/registration requirement for dry cleaners using perchloroethylene. Permitting/registration fees would fund the program allowing for increased inspections and an increase in the level of compliance assurance.*
5. Impact of Perchloroethylene Emissions	• Comment 1: Oregon's Air Toxics Science Advisory Committee (ATSAC) stated that, "based on new studies, it is unclear if perchloroethylene is a carcinogen in humans, and if it is a human carcinogen, its potency is very week". (2) • *Response: DEQ is aware that the data on the carcinogenicity of perchloroethylene are inconclusive. However, perchloroethylene causes*

	other adverse health effects in humans, including neurological, liver, and kidney effects following acute (short-term) and chronic (long-term) inhalation exposure. The EQC, based on the recommendation of ATSAC, has established an Ambient Benchmark Concentration for perchloroethylene based on these non-cancer effects. Perchloroethylene continues to be listed as a hazardous air pollutant under the federal hazardous air pollutant program and as an air toxic under the Oregon Air Toxics Program. Perchloroethylene is also listed by EPA as one of the 33 HAPs that pose the greatest potential health threat in urban areas. • Comment 2: ATSAC revised Air Quality's proposed ambient benchmark for perchloroethylene upwards. (2) • *Response: The EQC did revise the proposed ambient benchmark for perchloroethylene upwards.* • Comment 3: The Portland Air Toxics Assessment (PATA) was flawed. Even so, the perchloroethylene impact just barely exceeded the level of concern. If PATA were to be run today, the perchloroethylene impact would be below the level of concern. (2,3) • *Response: Portland Air Toxics Assessment was designed to model relative concentrations of toxics in an air shed. It was not intended to establish risks from individual sources. Any individual source that is out of compliance and leaking harmful chemicals into the environment poses acute and chronic risks, particularly to nearby residents. Ensuring that individual dry cleaners are complying with the perchloroethylene dry cleaning NESHAP will help minimize exposure levels.* • Comment 4: OTA appreciates the willingness of dry cleaners to use less toxic solvents, and the relevant rules that encourage this conversion. There is no necessity for ANY dry cleaner to be using perchloroethylene. Suitable alternatives exist that are much less injurious to public health. We understand that economic and other considerations make many dry cleaners hesitant to switch to these alternatives, but hope that in working together with the business owners we can progress towards this goal. (10) • *Response: The use of perchloroethylene has decreased significantly, as dry cleaners have complied with the applicable regulations, switched to alternative solvents, and replaced their dry cleaning systems with other systems. There is every indication that this trend will continue.*
6. Impact of New Fees on Dry Cleaners and the Public	• Comment 1: We are in Lane County, which means that LRAPA can set its own rules and fees. (1) • *Response: The proposed permitting/registration program and permitting fees would not apply to dry cleaning facilities in Lane County. However, LRAPA has indicated that it is likely they will propose the same program*

	and fees. • Comment 2: This program does not have a significant impact on small business? We cannot afford to buy another $60000 dry cleaning machine. (1) • *Response: Dry cleaners would not be required to install a new dry cleaning machine as a result of this rulemaking.* • Comment 3: Why are we being penalized for operating legally and safely? The shoddy operators will just switch to another drop-in solvent to get off the radar. (1) • *Response: Right now, perchloroethylene is the dry cleaner solvent that has been identified by EPA as a hazardous air pollutant and is regulated under federal law. In the future, other solvents may become regulated.* • Comment 4: This year alone our business is off $2000 per month. We now have to work 60 hours a week to break even. From 1994 until spring of 2008 we experienced a small amount of growth each year. Then fuel prices skyrocketed. We do not have the luxury of running a natural gas fired boiler, so we found ourselves paying almost $5.00 a gallon for home heating fuel to operate our new fuel-efficient boiler. The cost of fuel forced us to lay off the last of our employee's. (1) • *Response: DEQ sympathizes with the increasing costs associated with operating your business. DEQ has worked with the Dry Cleaning Program and the dry cleaning industry to leverage resources from the existing Dry Cleaning Program to the greatest extent possible to minimize the level of the new fee.* • Comment 5: We have been operating at a loss since September 2008. We are servicing an economically depressed retirement community. There are only 9 dry cleaners left on the entire Oregon Coast. The next closest dry cleaner on the Oregon Coast is 90 miles north. If this new program passes, we will be forced to close. That would send our customers from Reedsport, Yachats, Waldport, and Florence to Eugene. These people are not driving hybrids; they are driving giant SUV's and/or large 8-cylinder sedans. (1) • *Response: DEQ sympathizes with the increasing costs associated with operating your business and has done everything we can to minimize new fees. As a result, the cost of a permit would be equivalent to $20 per month or if registration were selected it would be equivalent to $15 per month.*
7. Relationship to Dry Cleaner Statute and the Dry Cleaning Program	• Comment 1: In 1995, dry cleaners proactively lobbied for the Oregon Dry Cleaner bill that requires all dry cleaners to implement waste minimization and hazardous waste management practices and cleanup historically contaminated sites. This was the first time in our State's

history that an industry group took such an aggressively pro-environment position and lobbied for more, not less, regulatory controls, as well as imposing an additional economic burden on itself. As a result, the amount of perchloroethylene purchased has gone from 18,000 gallons in 1999 to less than 6,000 gallons in 2008 and the annual average perchloroethylene usage per facility has gone from 60 gallons to slightly over 30. (1,2,3)

- *Response: DEQ applauds the efforts of the dry cleaning industry in Oregon for being environmentally proactive and reducing perchloroethylene usage.*
- Comment 2: A DEQ fact sheet states: "The Dry Cleaning Program has resulted in a unique, cooperative relationship between DEQ and the dry cleaner industry. As a result of this cooperative effort, the industry's use of perchloroethylene has declined 30 percent, and the safe disposal of perchloroethylene waste has improved dramatically." (2)
- *Response: A combination of economic, environmental, and regulatory factors have resulted in the decline of perchloroethylene usage in the dry cleaning industry.*
- Comment 3: The Dry Cleaning Program implemented practices for the industry almost 10 years prior to the EPA adopting the same practices. (2)
- *Response: The NESHAP was initially adopted in 1993 and required: refrigerated condensers on new dry cleaning machines and existing dry cleaning machines located at dry cleaners that use more than 140/200 gallons per year of perchloroethylene; new dry cleaning machines to be dry-to-dry machines; leak detection and repair program; and operation and maintenance standards. The Oregon Dry Cleaner Bill was passed in 1995 and addressed some of the gaps in the NESHAP by requiring refrigerated condensers on existing dry cleaning machines at dry cleaners that use less than 140/200 gallons per year of perchloroethylene and requiring all dry cleaning systems to be dry-to-dry. DEQ commends the dry cleaning industry for implementing the use of refrigerated condensers and supporting a ban on transfer machines prior to the NESHAP.*
- Comment 4: The bill and the rules it prescribed for Oregon dry cleaners were stricter than the NESHAP at the time. The new Federal NESHAP is now only equal to our law. (1,3)
- *Response: DEQ appreciates efforts made by the dry cleaning industry to adopt a number of standards before they were covered by the federal NESHAP. The Oregon Dry Cleaner bill adopted in 1995 was stricter than the NESHAP in some areas but not others. In the case of refrigerated condensers, the Dry Cleaner Bill was initially more*

	stringent, but as older machines are replaced with newer machines, the dry cleaner bill and the NESHAP are equivalent. In the case of transfer machines, the dry cleaner bill was initially more stringent, but as older machines are replaced with newer machines, again the dry cleaner bill and the NESHAP are equivalent. In the case of leak detection and repair, the NESHAP is more stringent. In the case of operation and maintenance requirements, the NESHAP was initially more stringent but the Dry Cleaning Program has adopted equivalent provisions. In 2006, EPA added a ban on perchloroethylene dry cleaning machines co-located in residential buildings and a requirement that newer machines have carbon adsorbers in addition to a refrigerated condenser. These new requirements are not addressed by the Dry Cleaner Bill.
Auto Body Shops	
8. Permitting Fees	• Comment 1: There should be a minimal usage level established, rather than just stating that if a shop has any one of these products in the building, they must pay $720 per year. (5) • *Response: The federal rule does not establish a threshold for minimal usage. If an auto body shop has any of the affected products, they could avoid the need to comply with the federal rule and obtain a permit by removing those products from the building and properly disposing of them. While DEQ is not able to control who is subject to the federal rule, we do have the ability to address the impact of permitting fees on smaller shops. Based on an evaluation of the impact of permitting fees on smaller auto body shops, DEQ will revise the proposed rules to exempt shops painting less than 10 cars per year or using less than 20 gallons of coating per year from the requirement to obtain a permit.* • Comment 2: The collection of fees will do nothing to reduce the usage, because we are using virtually nothing now. (5) • *Response: The purpose of collecting fees is to provide funding for DEQ to implement the requirements under the NESHAP. With that said, it is likely that some sources will switch to exempt coatings and non-chemical stripping processes to avoid the NESHAP and permitting fees.* • Comment 3: With the increased use of waterborne paints, this will all be moot soon anyway. Will the fee then be repealed? Probably not. (5) • *Response: DEQ fully expects that, at some point in the future, most coating suppliers will have a line of coatings that is NESHAP exempt. Those auto body shops that choose to use these coatings exclusively would be exempt from the NESHAP and therefore not subject to permitting or a permitting fee.*
9. NESHAP Requirements	• Comment 1: Nearly all products used for collision repair are free of toxic metals. Only four toners contain these metals. These toners are yellows/oranges and one red. The usage of these toners is so minimal,

	that when we looked at Mac Auto Supply's sales history from January 2009 to the present, we had not sold any. (5) • *Response: DEQ appreciates your input regarding toxic metals in collision repair products. DEQ fully expects that, at some point in the future, most coating suppliers will have a line of coatings that is NESHAP exempt.* • Comment 2: We have been in compliance with the federal VOC rule for years. (5) • *Response: DEQ appreciates your compliance with the federal and state VOC rules. However, the new federal NESHAP being proposed for adoption focuses on toxic metals and not VOCs.* • Comment 2: The use of chemical stripper is rare. There is no need for it. Repair procedures involve sanding/prepping the repair area, and painting over the existing finish. (5) • *Response: DEQ appreciates your input regarding the use of paint stripper. DEQ has heard from other suppliers that the use of chemical stripper is rare and unnecessary. If a source does not use chemical strippers or paints with metal HAPs they may petition DEQ to be exempt from the NESHAP.* • Comment 3: The only customers that use any quantity of stripper are in the aircraft industry, and I was surprised to discover that they are exempt from this rule. (5) • *Response: The paint stripping provisions in the federal regulation do apply to the aircraft industry.* • Comment 4: With regard to spray equipment, OSHA already covers everything you are asking for in this new rule. (5) • *Response: DEQ agrees that there is overlap between OSHA and NESHAP requirements for auto body shops. Both sets of requirements mandate the use of high efficiency spray equipment and spray booths. OSHA requires high efficiency spray equipment and a spray booth for the purpose of protecting employees from hazardous material exposure. The high efficiency spray equipment ensures that a high percentage of the coating is applied to the object being coated and the spray booth directs any overspray away from the painter. However, in protecting the painter from exposure to hazardous materials, the spray booth can expose the surrounding community to hazardous materials. To minimize exposure of the surrounding community, the NESHAP specifies that high efficiency filters be used in the spray booth. These filters are not addressed by OSHA standards.* • Comment 5: The training elements that are required in the NESHAP are

	all covered by training provided by the paint manufacturers. (5) • *Response: DEQ is aware that some paint manufacturers and paint suppliers are already offering painter training. However, training offered by paint suppliers is typically voluntary. The NESHAP makes painter training mandatory for all auto body shops subject to the NESHAP. If an auto body shop is already getting training that meets the NESHAP requirements, compliance with the NESHAP training requirement will be straightforward* • Comment 6: It appears that this rule adds another layer of recordkeeping that has no benefit. Small businesses cannot support paying someone to do nothing but duplicate paperwork for different government agencies. (5) • *Response: In adopting the federal rule, EPA noted that recordkeeping would be a burden on small businesses and limited it to those records that would provide a minimum level of information needed for an inspector to determine if a source is complying with the NESHAP. Recordkeeping is limited to painter certification records, spray booth filter efficiencies, spray gun manufacturer documentation (only if the source is using a spray gun other than the types listed in the NESHAP), usage of paint strippers containing MeCl, and deviations from the NESHAP.* • Comment 7: The rule does not apply to surface coating or paint stripping performed by individuals provided they coat no more than two vehicles per year. While I would prefer that number be increased, does DEQ's adoption of the federal rules retain the federal exemption? (7) • *Response: Yes, DEQ's adoption of the federal rules would retain the federal exemption of two vehicles per year.* • Comment 8: I would like to see DEQ consider and develop a different set of requirements between urban and non-urban areas for regulating auto body/coating shops. At a minimum, DEQ should develop a phase in approach, regulating and learning from experience in regulating shops within Oregon's urban areas first (where the greatest threat resides), and then, and only after a finding of necessity, apply rules and procedures to rural (or non-metropolitan) Oregon. (7) • *Response: The federal NESHAP already applies in urban and rural Oregon. In adopting rules to implement the federal NESHAP, DEQ cannot delay the implementation of the NESHAP in rural Oregon.*
Metal Fabrication	
10. Lower Fee for Smaller Producers	• Comment 1: I do not understand how a small company that might use a milling machine once a month and a company that uses one or multiple milling machines on a daily basis can be charged the same annual fee.

	(8) • *Response: The proposed fee level is based on the complexity of the NESHAP and therefore the cost of ensuring compliance with the NESHAP. The primary activities of ensuring compliance with the NESHAP are inspections and technical assistance. The inspection time should be similar for a business that uses a milling machine once a month and a business that uses a milling machine daily. In addition, it is expected that a business that uses a milling machine once a month may need a similar amount of technical assistance as a business that uses a milling machine daily.*
	Registration as an Alternative to Permitting
11. Need for Registration	• Comment 1: Every dry cleaner in the state is registered no matter what solvent they use. (3) • *Response: The current approach to implementing the dry cleaning NESHAP could be viewed as a registration program. However, it does not provide funding to implement the NESHAP and has resulted in a high level of non-compliance. The proposed permitting/registration program for dry cleaners would provide funding and increase the number of inspections and the level of compliance.* • Comment 2: We strongly support the registration option for businesses affected by the new NESHAPs. This option provides the greatest value for the participating businesses as well as DEQ, and will also produce the best results for Oregon's environment. (4) • *Response: DEQ agrees that registration provides the greatest value to participating businesses and the requirement that registered business go above and beyond will produce the best results for Oregon's environment.*
12. Registration Fees	• Comment 1: No place in the rules does it state there should be a fee for registration, only that there should be registration. (3) • *Response: Air Quality's registration rules currently do not contain fees, because DEQ did not have the authority to charge registration fees. Senate Bill 103, approved by the legislature and signed by the Governor in 2009, gives EQC the authority to establish registration fees. With the addition of fees, DEQ would be able to use registration as an alternative to permitting for NESHAP implementation.* • Comment 2: OTA also supports DEQ's decision to automatically terminate a registration for which fees are more than 90 days past due. If a business owner were unable to contact DEQ and arrange for alternative payment arrangements in a timely manner, one would suspect that there might be other compliance problems as well. (10) • *Response: Thank you for your support. These same standards apply to*

	our other air contaminant discharge permits. • Comment 3: It should be verified that a dry cleaner has indeed changed ownership, and is not merely changing the name of the business in order to avoid the three-year waiting period to re-register. (10) • *Response: DEQ will make an effort to verify that a change of ownership is valid and not an effort to get around the three-year waiting period to re-register.*
13. Funding of Environmental Performance Programs	• Comment 1: Pollution Prevention Resource Center (PPRC), a non-profit/non-regulatory organization dedicated to pollution prevention, can approach businesses in a non-threatening way. Businesses are often very willing to invite PPRC staff in to do a walk-through. (4) • *Response: DEQ appreciates the work that is done by the PPRC through the EcoBiz program.* • Comment 2: Since participation in EcoBiz offers benefits to companies, they are often pleased to become certified voluntarily. Benefits to companies include publicity in print advertising, press releases, web site coverage and occasional media events. Some shops document up to 20 percent new business through participation in environmental certification programs, as well as increased efficiency and cost savings. (4) • *Response: DEQ agrees that the EcoBiz program benefits participating businesses by increasing business, efficiency, and cost savings.* • Comment 3: The benefits of EcoBiz to the State of Oregon and the public are a cleaner environment and a third party standard they can rely upon as consumers. (4) • *Response: DEQ agrees that the EcoBiz program results in a cleaner environment for Oregonians.* • Comment 4: DEQ should work to fund certification programs for business sectors affected by the NESHAPs, especially in sectors that have a large number of small businesses. (4) • *Response: DEQ will work with the Pollution Prevention Resource Center (PPRC) to address resource issues once the proposed rules are finalized.* • Comment 5: Clean Water Services provided funding to PPRC to perform outreach and technical support to automotive shops within their service area. As a result, the number of certified shops in Washington County has increased by 30 percent in just eight months. It was less expensive for Clean Water Services to contract with PPRC than to hire staff to do the same work. (4)

	• *Response: As mentioned above, DEQ will work with the PPRC to address resource issues that may result from an increase in the number of certified shops.* • Comment 6: The average amount of outreach and technical support time to get one shop EcoBiz certified is nine hours. Currently DEQ does not have staff to do this work, and neither do any of the other EcoBiz team members. (4) • *Response: Revenue from the registration and permitting programs will be available for implementation of the autobody refinishing NESHAP. DEQ will work with PPRC to optimize the allocation of staff resources to compliance assurance work and EcoBiz, considering the number of new shops that opt to participate in EcoBiz.* • Comment 7: There are approximately 1600 auto body shops in Oregon. If a significant number of these opted for registration instead of permitting, the demand for support would be overwhelming. (4) • *Response: DEQ agrees that the demand for support could be significant. As mentioned above, DEQ will work with PPRC to address resource issues.*
Electric Power Generation and Emergency Generators	
14. Permit Exemption for Smaller Units and Emergency Generators	• Comment 1: DEQ should revise Division 216, Table 1, Part C.4, such that units used exclusively as emergency generators and combustion units less than 500 kW are exempt from the requirement to obtain a permit. DEQ has proposed the same exemption in Division 216, Table 1, Part B.27. This change would align both aforementioned sections of Division 216 so they are consistent. (6) • *Response: DEQ will add the following exemption to the proposed rules as Division 216, Table 1, Part C.4.d: "Electrical power generation units used exclusively as emergency generators and units less than 500 kW."*
General Comments	
15. Dust Problems	• Comment 1: A cement-loading yard in Bend is creating a dust cloud. After filing a complaint with DEQ, the cement company treated the lot. This year they are back to polluting our air. This can be easily solved by treating the lot on a yearly basis. This should be a rule and not take a complaint to be taken care of. (8) • *Response: There is a rule in place that should address this issue. OAR 340-208-0210 requires a source to take reasonable precaution to prevent particulate matter from becoming airborne and lists treating the lot as a potential precaution. In addition, concrete plants are required to have a permit if they produce more than 5,000 cubic yards of concrete per year. Sources are required to use water to minimize fugitive dust from the roads, clean off the trucks to prevent track out, and use water*

	sprays or filters to minimize dust when loading cement and aggregate into the trucks. DEQ conducts routine inspections of the facilities and investigates all complaints. There have been several complaints this year and the Eastern Region air quality staff have conducted several investigations including monitoring fugitive dust downwind from some of these sources.

List of People Submitting Comments (by Commenter Number)			
Number	**Name**	**Organization**	**Submit date**
1	Leslie Kettenhofen	Bob's Dry Cleaners & Laundry	8/25/2009
2	Kathey Butters	Korean American Dry Cleaners Association Oregon Dry Cleaners Association	8/20/2009
3	Clair Anchick	Towne & Country Cleaners & Laundry	8/18/2009
4	Debra Taevs	Pacific Northwest Pollution Prevention Resource Center	8/25/2009
5	Angie Frye	Paul's Woodburn Collision Repair, Inc	8/24/2009
6	Max Hueftle, P.E.	Lane Regional Air Protection Agency	8/20/2009
7	Kent Kelly		8/10/2009
8	Ruben Garmyn	Prudential High Desert Realty	7/28/2009
9	Judy A. Burcham-Howard	Zmation, Inc.	7/16/2009
10	Dona Marie Hippert	Oregon Toxics Alliance	8/26/2009

Attachment C1
December 10-11, 2009 EQC meeting

State of Oregon
Department of Environmental Quality **Memorandum**

Presiding Officer's Report

Date: Aug. 26, 2009

To: Environmental Quality Commission

From: Mark Fisher, Eastern Region, Bend Office

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of Proposal:	Adoption of Federal Air Quality Regulations
Hearing Date and Time:	August 17, 2009, beginning at 6 p.m.
Hearing Location:	DEQ - Bend Regional Office Conference Room 475 NE Bellevue Dr., Suite 110 Bend, OR 97702

DEQ convened the rulemaking hearing on the proposal referenced above at 6 p.m. and closed it at 6:30 p.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Three people attended the hearing; no one testified.

Before taking comments, Jerry Ebersole briefly explained the rulemaking proposal and I explained the procedures for the hearing.

No written or oral comments were received at the hearing.

State of Oregon
Department of Environmental Quality **Memorandum**

Presiding Officer's Report

Date: Aug. 26, 2009

To: Environmental Quality Commission

From: Steve Croucher, Western Region, Medford Office

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Adoption of Federal Air Quality Regulations
Hearing Date and Time: August 18, 2009, beginning at 6:00 p.m.
DEQ - Medford Regional Office
Conference Room
221 Stewart Ave, Suite 201
Medford, OR 97501

DEQ convened the rulemaking hearing on the proposal referenced above at 6 p.m. and closed it at 6:30 p.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Seven people attended the hearing; one person testified.

Before taking comments, Jerry Ebersole briefly explained the rulemaking proposal and I explained the procedures for the hearing.

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the summary of comments and agency responses for this rulemaking.

Oral Testimony

Clair Anchick, Towne & Country Cleaners & Laundry
My name is Claire Anchick and along with my husband Jack we own Towne & Country Cleaners LLC. Our plant is located in White City. We also have a drop store in Ashland. Our solvent of choice is perchloroethylene (perc).

In 1995 the Oregon Dry Cleaner bill, House Bill 3216 (ORS 465.500) was passed and went into effect January 1996. The Dry Cleaner Statute requires all dry cleaners to implement waste minimization and hazardous waste management practices designed to eliminate future releases of hazardous waste to the environment, in essence becoming a "zero release" industry. That bill and the rules it prescribed for the dry cleaners of Oregon

was stricter than the NESHAP at the time and the new Federal NESHAP's are still not as strict as our law. No place in the rules does it state there should be a fee for registration, only that there should be registration.

Every dry cleaner in the state is registered with DEQ no matter what solvent they use. Perc dry cleaners already pay an additional $500 just because they use perc.

Perc usage has been reduced first by the introduction of the new equipment 4th generation or better, closed loop solvent delivery, and as more cleaners close or choose an alternative solvent, usage will continue to be reduced.

When I moved to the valley in 1984, there were approximately 13 plants. Most were perc plants. Today there are six plants. One is hydrocarbon, the rest are perc. In Grants Pass there were four or five plants, now there are three. No perc, two hydrocarbon, one Greenearth.

I don't know when the last air quality report was done for this valley or where the perc percentage is but I do know that the last Portland area report was flawed, even so the perc percentage just barely made the list of concerned.

Compliance, compliance, compliance. That is air quality mantra. DEQ/air quality was disappointed in the inspection done recently in the Portland/Lane county area. Areas of concern were containment, paper work, and ground water issues, not air quality.

As with most rules and laws in our country, the honor system does not always work. We hire police officers to enforce our driving laws and IRS agents to enforce compliance with tax laws. Those are just two examples of enforcement. If you are not in compliance –not following the law- there are consequences. Fines, license removal, jail.

You have always had the ability to inspect the dry cleaners in Oregon. When you have and you found non-compliance, you sent a letter and/or in some cases, fines were levied. I have no problem with that fact. I would encourage you to do more inspections of all drycleaners. However, the time has come when you say enough is enough. You have told them what to do, you have shown them how to do it, and if they are still not doing it correctly, close them down. Again consequences.

If there is a high degree of non-compliance in the dry cleaners of Oregon, it appears to me that it is not the fault of the dry cleaners but the fault is yours.

Why do you feel that an additional fee to be either registered, licensed, or permitted will change the compliance issue?

You are playing to the lowest common denominator. Those cleaners that have been following the rules keep being penalized with new fees and the dry cleaners that are not following the rules are suffering no consequences.

I understand the State of Oregon is short of money, however, I do not believe the 173 perc cleaners should, would, or could, provide enough money to make a dent into the deficit.

State of Oregon
Department of Environmental Quality **Memorandum**

Presiding Officer's Report

Date: Aug. 26, 2009

To: Environmental Quality Commission

From: Gregg Dahmen, P.E., Air Quality Division, Program Operations Section

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of Proposal:	Adoption of Federal Air Quality Regulations
Hearing Date and Time:	August 20, 2008, beginning at 6 p.m.
Hearing Location:	DEQ Headquarters, EQCA 811 S.W. Sixth Avenue Portland

DEQ convened the rulemaking hearing on the proposal referenced above at 6:10 p.m. and closed it at 6:20 p.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing; one person testified.

Before taking comments, I explained the procedures for the hearing.

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the summary of comments and agency responses for this rulemaking.

Oral Testimony

Kathey Butters, Korean American Dry Cleaners Association, Oregon Dry Cleaners Association
My name is Kathey Butters, I have been in the dry cleaning industry 30 plus years as an employee, owner, and consultant. I currently manage Plaza Cleaners. I am an 11-year member of the DEQ Advisory Committee for the Oregon Dry Cleaner program. Tonight I am here to make public comment on behalf of the Korean American Dry Cleaners Association (KADCA) and the Oregon Dry Cleaners Association (ODCA), which represents most of the Oregon Dry Cleaners.

The proposed rule according to Oregon DEQ "Proposed Rulemaking Announcement"- is to meet the requirements of the Clean Air Act. I quote from that same announcement - "The Clean Air Act requires EPA to regulate enough area sources to ensure that 90

percent of the emissions of the 33 hazardous air pollutants are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP). The Clean Air Act also requires EPA to establish New Source Performance Standards (NSPS) for categories of sources that cause or contribute significantly to air pollution that endangers public health."

The 2006 NESHAP requirements that Oregon DEQ Air Quality is basing the need for dry cleaners to be included in this proposal have been in place in Oregon since 1995 with the implementation of the Oregon Dry Cleaner Program. The one exception was carbon absorption. When Air Quality first approached the industry about permitting it was stated that the Dry Cleaner program did not meet the NEHSAP requirement on Carbon Absorption, as there was no direct stipulation in the Dry Cleaner Program. The industry pointed out to Air Quality that the Dry Cleaner Program did meet that requirement based on the generation of machines required. The inspections proved that the industry was right and all cleaners met the carbon absorption requirements in the 2006 NESHAP.

Let's talk about the Portland Air Toxic Assessment (PATA) done in 2004/2005. The ambient benchmark for perc was 1 times higher, meaning that there was 1 more person out of a million potentially at risk for cancer. If the assessment were to be done today we believe perc would be below that benchmark. But let's look further into the PATA. The Air Toxics Science Advisory Committee (ATSAC) was formed in accordance with DEQ Division 246, Oregon State Air Toxics. It was proposed to the ATSAC by the DEQ Air Quality Division that perc be given a lower ambient benchmark. The Committee decided to revise the Air Quality proposed ambient benchmark and the risk assessment on perc not be upgraded (and I quote) "to reflect its non-cancer effects". The ATSAC also stated, "Based on new studies that have been done on the effects and health risks of perc, it is very unclear if PERC is a carcinogen in humans, and if it is a human carcinogen, its potency is very weak". (DEQ Air Toxics Program, ATSAC, Meeting #17, May 18, 2006 – Meeting Summary)

Moving on to the current DEQ Dry Cleaner Program. The Dry Cleaner Program implemented practices for the industry almost 10 years prior to the EPA adopting the same practices.

I quote from a Department of Environmental Quality fact sheet last updated 7/22/05. "Today, about 85 percent of dry cleaners in Oregon use perc. In the 1995 Oregon legislative session, DEQ and the dry cleaning industry partnered to create the Oregon Dry Cleaner Program. Through this program, DEQ oversees how dry cleaners handle perc. It requires dry cleaners to handle perc safely, and helps cleanup sites that are already contaminated. This program has resulted in a unique, cooperative relationship between DEQ and the dry cleaner industry. As a result of this cooperative effort, the industry's use of perc has declined by 30 percent, and the safe disposal of perc waste has improved dramatically".

In fact, by advocating for the Dry Cleaner Program with the state legislature, drycleaners proactively took steps to require all dry cleaners to become environmentally friendly

operations, and to facilitate the identification and clean-up of any historically contaminated sites. All this was accomplished without posing any burden on Oregon taxpayers outside the dry cleaning industry. This was the first time in our State's history that an industry group took such an aggressively pro-environment position and lobbied for more, not less, regulatory controls, as well as imposing an additional economic burden on itself.

This is 2009 and where is the dry cleaning industry in Oregon today? Since 2009 numbers are not yet available I will use 2008 numbers. There are 177 perc cleaners in Oregon almost half of what it was in 2001. The number of dry cleaners using solvents other than perc has increased from less than 20 to 84. The amount of perc purchased has gone from about 18,000 gallons in 1999 to less than 6,000 gallons in 2008. The average perc use per facility has gone from 60 gallons at the beginning of the program to slightly over 30 in 2008. This is a direct result of the fact that when the Dry Cleaning Program was implemented Dry Cleaners who did not meet the requirements invested in new, more efficient, more technologically advanced perc machines. This is no small investment. In addition, as more and more dry cleaners come to realize that despite the current scientific evidence that perc is a safe solvent the public perception of using perc is tainted, and they have opted to abandon perc and invest in alternative solvent technology, as evidenced above. We believe this trend will continue.

Based on all the information given to you at this point, the industry believes that Oregon is already meeting the federal requirements for the Clean Air Act concerning perc and our industry. For Oregon DEQ Air Quality to decide now that EPA would not accept their delegation of our current dry cleaning program without implementing a fee permit program, when in fact it has accepted it for the last 3 years since the 2006 NESAPS were published, is hard for the dry cleaning industry to accept. EPA does not require a fee based permit program and supports and promotes other states self certification programs. The industry requests DEQ to go for their delegation with the existing Oregon Dry Cleaner program.

The random inspections conducted by DEQ, and being used as a second reason for the need for this permitting program, need to be addressed. If you evaluated each inspection you will find that most cleaners out of compliance were land/hazardous waste issues, not air quality. Those that were air quality were mainly paperwork issues and corrected on site or within the time frame allotted. The worst cited in these inspections had already been picked up in the existing dry cleaning program. The current dry cleaning program initiates inspections based on the information received in the required annual reports. The industry is not happy with the findings but believe that the issues can be addressed under the existing DEQ dry Cleaner Program.

Why should an industry that has stepped up and with the help of the DEQ created a program that cleans up historically legal practices and prevents further contamination be subjected to yet another and redundant layer of governmental regulation? Especially when we are told that DEQ Land & DEQ Air Quality are unable to share databases,

therefore requiring dry cleaners to be subjected to more bureaucracy. A proven example – under the current dry cleaner program there is no cost to changing basic information, name, address, phone, etc. Under this new proposed program is would cost the cleaner $360.00. That amount is absurd anyway for a permit costing $240.00 but even more absurd is that a dry cleaner would have to contact both DEQ land and DEQ Air!

Oregon's Dry Cleaning industry and the Department of Environmental Quality have an excellent working relationship. A relationship built on mutual trust and respect. Implementing Air Quality Permits/Registration and adding yet another layer of redundant regulations will not improve compliance or reduce air pollution; it will only damage the mutual respect we have worked so hard to build since the dry cleaner program's inception.

The Oregon Dry Cleaner program is working. Sites are being cleaned up. There are currently no high priority sites in the queue. All money being spent on clean ups are from the industry. Oregon Dry Cleaners met or exceeded all federal regulations. Therefore the industry requests that dry cleaners be removed from this proposal and the issues of concern be addressed under the current DEQ Dry Cleaner Program.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Adoption of Federal Air Quality Regulations

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the 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?

For the most part, this rulemaking proposes to adopt federal air quality requirements by reference. This rulemaking does not add new substantive requirements that are different or in addition to federal. However, this rulemaking does make minor amendments to existing rules that are different and/or in addition to the federal requirements for gasoline dispensing facilities and coal-fired power plants.

Gasoline Dispensing Facilities
The gasoline dispensing facility rules implement the federal air quality requirements for gasoline dispensing facilities. The gasoline dispensing facility rules are different from the federal requirements because they have a lower applicability threshold for stage I emissions controls. The gasoline dispensing facility rules are also in addition to the federal requirements because they ban the practice of "topping off".

DEQ is not proposing any new requirements for gasoline dispensing facilities. The proposed changes would correct errors in the current rules and clarify the "topping off" ban.

Coal-Fired Power Plants
Currently, there are no federal air quality requirements for mercury emissions from coal-fired power plants. Therefore, the mercury rules for coal-fired power plants are different from the federal requirements.

DEQ is not proposing any new requirements for coal-fired power plants. The proposed changes would add material sampling provisions which are referenced by the current rules and were vacated with the Boiler and Process Heater NESHAP. The proposed changes would also correct errors and allow the Department to approve alternative calibration gases.

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).

Gasoline Dispensing Facilities
DEQ is not proposing any new requirements for gasoline dispensing facilities. DEQ is proposing to clarify the existing "topping off" ban, which is in addition to the applicable federal requirement. The reason for clarifying the "topping off" ban is that the current rules do not define "topping off" or place any parameters on the ban.

Coal-Fired Power Plants
DEQ is not proposing any new requirements for coal-fired power plants, but is modifying rules that are in addition to federal requirements. The modification would add material sampling provisions vacated by a federal court ruling and correcting errors.

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.

Gasoline Dispensing Facilities
The proposed changes would define "topping off" as, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off. If an attendant can confirm that a vehicle tank is not full after the nozzle clicks off, the attendant would be allowed to continue to dispense fuel using best judgment and caution to prevent a spill.

DEQ considered allowing continued dispensing to the nearest dollar. This alternative was not pursued because continuing to fill a vehicle's tank, that may already be full, can cause overfilling and spillage. The extra gasoline may also damage the vehicle's vapor collection system and/or the facility's vapor recovery system, causing them to operate improperly and causing increased emissions and benzene exposures.

DEQ also considered not allowing continued dispensing once the nozzle has clicked off. DEQ did not pursue this alternative to allow for flexibility when it is clear the tank is not full or the equipment has malfunctioned.

Coal-Fired Power Plants
The proposed changes would add material sampling provisions which are referenced by the current rules and were vacated with the Boiler and Process Heater NESHAP. DEQ considered not adding these provisions. DEQ did not pursue this alternative because not adding these provisions would leave in place a situation in which there are no requirements in place on how a source is to collect material samples.

The proposed changes would also allow the Department to approve alternative calibration gases. This change is needed because the calibration gases specified in the rule are difficult to obtain. DEQ considered not allowing DEQ to approve alternative

calibration gases. DEQ did not pursue this alternative because it could create a situation in which monitoring system certification is nearly impossible.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking	**Adoption of Federal Air Quality Regulations** Amended OARs: 340-200-0040, **State of Oregon Clean Air Act Implementation Plan** 340-209-0030, **Public Notice Categories and Timing** 340-210-0100, **Registration in General** 340-210-0110, **Registration Requirements** 340-210-0120, **Re-Registration** 340-216-0020, **Applicability** 340-216-0060, **General Air Contaminant Discharge Permits** 340-216-0064, **Simple ACDP** 340-216, **Table 1** 340-228-0606, **Hg Emission Standards** 340-228-0621, **Initial Certification and Recertification Procedures** 340-228-0623, **Quality Assurance and Quality Control Requirements** 340-228-0625, **Specifications and Test Procedures for Total Vapor Phase Mercury CEMS** 340-228-0627, **Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems** 340-238-0040, **Definitions** 340-244-0030, **Definitions** 340-244-0220, **Federal Regulations Adopted by Reference** 340-244-0238, **Compliance Dates** 340-244-0240, **Work Practice and Submerged Fill Requirements** 340-244-0242, **Vapor Balance Requirements** 340-244-0246, **Notifications** 340-244, **Table 4** New OARs: 340-216-0062, **General ACDP Attachments** 340-228-0639, **Fuel Analyses and Procedures** 340-228, **Table 4**
Statutory Authority or other Legal Authority	ORS 468.020, 468A.035, 468A.040, 468A.050 & 468A.310
Statutes Implemented	ORS 468A.025
Need for the Rule(s)	Adopting new and amended federal NSPS and NESHAP standards align Oregon's rules with EPA's so that DEQ can keep federal delegation and implement these regulations. This benefits industry through quicker approval of applicability determination requests and alternative compliance demonstration requests. The public will also benefit from improved air quality resulting from DEQ's implementation of these regulations. General ACDP adoption is currently done through the rulemaking process. This process makes it difficult and time consuming to make corrections or other changes to general ACDPs. This rulemaking would still require the Commission to adopt a general ACDP source category by rule, but would allow general ACDP issuance by DEQ order following a public comment period,

	as is done for other permit types. With the adoption of numerous area source NESHAPs, it is difficult to include all requirements that apply to a category of businesses into a single general ACDP. It would also be burdensome to issue a single business multiple permits. This rulemaking would allow a business to be assigned to one general ACDP and one or more general ACDP attachments. Affected businesses would be charged the full annual fee for one general ACDP and a reduced annual fee for each general ACDP attachment. Oregon's Small Business Compliance Advisory Panel asked DEQ to reduce the administrative burden of implementing the new area source NESHAPs. The panel recommended that DEQ establish a registration program as an alternative to permitting for small businesses that voluntarily participate in an environmental certification program. This rulemaking would allow DEQ to exempt certified businesses from permitting if they register with DEQ and pay annual registration fees (see page 3 of Attachment D). Registration would ensure that businesses comply with the new area source NESHAPs and encourage them to adopt sustainable practices to achieve greater environmental benefits. The proposed registration fee would pay DEQ's cost for developing and implementing the registration program and ensuring compliance with the applicable standards.
Documents Relied Upon for Rulemaking	DEQ relied primarily on the Federal Register, the Code of Federal Regulations, and the Oregon Revised Statutes, in developing this rulemaking proposal. Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at DEQ's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Jerry Ebersole for times when the documents are available for review.
Requests for Other Options	**Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.**
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	This rulemaking would: • Adopt by reference five new area source NESHAPs; • Add the new area source NESHAPs to the list of business categories eligible to obtain a Simple or General ACDP; • Adopt a new annual fee class for applicable new General ACDPs; • Assign each new General ACDP to an annual fee class; • Adopt a requirement that dry cleaners using perchloroethylene obtain an ACDP; • Change the requirement that the Environmental Quality Commission (EQC) issue General ACDPs by rule to a requirement that DEQ issue General ACDPs by order; • Allow businesses eligible for multiple General ACDPs to be assigned to one General ACDP and one or more General ACDP Attachments; • Adopt an annual fee for General ACDP Attachments; • Allow registration as an alternative to permitting for auto body shops and dry cleaners that voluntarily participate in an environmental certification program; • Adopt annual fees for registration; update previously adopted NESHAP and NSPS rules to keep them consistent with federal amendments; • Correct referencing errors in the gasoline dispensing rule and add clarity to the "topping off" ban; and • Modify Oregon's Utility Mercury Rule (UMR) by adding material sampling provisions vacated by a federal court ruling. <u>Area Source NESHAPs:</u> This rulemaking proposes to adopt by reference new NESHAPs applicable to non-major or area sources including: aluminum, copper, and other nonferrous foundries; chemical

manufacturing; ferroalloy production; metal fabrication and finishing; paint stripping and miscellaneous surface coating operations; and plating and polishing operations.

DEQ anticipates that there will be no negative fiscal and economic impacts as a result of adopting the new area source NESHAPs because any negative fiscal and economic impacts occurred when EPA adopted the rules, and because the rules applied in Oregon upon EPA's adoption. Therefore, if the EQC adopts the proposed rules listed above, which are substantively identical to their federal counterparts, there will be no substantive change to the requirements already applicable in Oregon today. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations.

Area Source NESHAP Permitting:
The proposed adoption of new area source NESHAPs would trigger a requirement that affected businesses obtain a Standard ACDP and pay permitting fees.

DEQ anticipates that permitting fees would have negative fiscal and economic impact on affected businesses. To mitigate the fiscal and economic impact on affected businesses, many of which are small businesses, this rulemaking proposes to add the new area source NESHAPs to the list of business categories eligible to obtain a Simple or General ACDP. General ACDP fees are significantly less than Standard ACDP fees. In addition, this rulemaking proposes to allow businesses in certain categories to register with DEQ in lieu of obtaining a General ACDP. Registered businesses would be required to pay registration fees that are equal to or less than the corresponding General ACDP fees.

General ACDP Attachments:
To simplify cases where a business is subject to multiple area source NESHAPs and/or multiple General ACDPs, this rulemaking would allow a business to be assigned to one General ACDP and one or more General ACDP Attachments. Affected businesses would be charged the full annual fee for one General ACDP and a reduced annual fee for each General ACDP Attachment.

General ACDP Attachments would benefit businesses required to obtain a Simple ACDP because there are no General ACDPs that contain all requirements applicable to that business. General ACDP Attachments could also negatively impact small businesses in cases where DEQ chooses to use a General ACDP Attachment in lieu of adding a regulation to a General ACDP. However, the General ACDP Attachment would likely cost less than having to get multiple General ACDPs or a Simple ACDP.

Registration:
This rulemaking would allow DEQ to use registration as an alternative to permitting for businesses that participate in an environmental certification program. Registered businesses would be required to pay an annual registration fee that is equal to or less than the corresponding annual permitting fee. Registration would ensure that businesses comply with the new area source NESHAPs and encourage them to adopt sustainable practices to achieve greater environmental benefits. The proposed registration fee would pay DEQ's cost for developing and implementing the registration program and ensuring compliance with the applicable standards.

DEQ anticipates that registration will have a positive fiscal and economic impact because the registration fee will be equal to or less than the corresponding permitting fee.

Other Federal Air Quality Regulations:
This rulemaking proposes to match changes in federal law by updating DEQ's adoption by reference of federal NESHAPs and NSPSs.

DEQ anticipates that there will be no negative fiscal and economic impacts as a result of these

	proposed rules because any negative fiscal and economic impacts occurred when the EPA adopted the rules, and because the rules applied in Oregon upon EPA's adoption. Therefore, if the EQC adopts the proposed rules listed above, which are substantively identical to their federal counterparts, there will be no substantive change to the requirements already applicable in Oregon today. EPA has evaluated the fiscal and economic effects of their rules and lists those effects in the preambles to their regulations. A list of the federal NESHAP and NSPS rules can be found in Attachments E and F, and the EPA regulations can be found by going to EPA's website http://www.epa.gov/ttn/atw/eparules.html. Gasoline Dispensing Facilities (GDF): This rulemaking proposes to clarify the "topping off" ban as, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off. However, if an attendant can confirm that a vehicle tank is not full after the nozzle clicks off, the attendant would be allowed to continue to dispense fuel using best judgment and caution to prevent a spill. DEQ anticipates that there will be no negative fiscal and economic impacts as a result of the proposed rules because they clarify an already applicable requirement. Utility Mercury Rule: This rulemaking proposes to add material sampling provisions which are referenced by the current rules and were vacated with the Boiler and Process Heater NESHAP. DEQ anticipates that there will be no negative fiscal and economic impacts as a result of the proposed rules because they adopt already applicable requirements.
Impacts on the General Public	Direct Impacts: DEQ does not anticipate any direct fiscal or economic impacts from this proposed rulemaking on the general public. Indirect Impacts: • Area Source NESHAPs: The proposed adoption of the new federal area source NESHAPs would not indirectly impact the general public because any negative fiscal and economic impacts occurred when the EPA adopted the rules, and because the rules applied in Oregon upon EPA's adoption. • Area Source NESHAP Permitting. The requirement that sources affected by a new federal area source NESHAP obtain an ACDP permit could indirectly impact the general public if the associated permitting fees are passed on in the form of higher prices for goods and services. • General ACDP Attachments: Allowing a business to be assigned to one General ACDP and one or more General ACDP Attachments would positively impact the general public because it would help some businesses avoid the requirement to obtain a more costly Simple ACDP. General ACDP Attachments could also negatively impact the general public in cases where DEQ chooses to use a General ACDP Attachment in lieu of adding a regulation to a General ACDP. However, the General ACDP Attachment would likely cost less than having to get multiple General ACDPs or a Simple ACDP. • Registration: Registration could positively impact the general public because registration applies to businesses that would otherwise be required to obtain a permit and the registration fee will be equal to or less than the corresponding permitting fee. • Gasoline Dispensing Facility Rules: The proposed adoption of changes to the gasoline dispensing facility rules would not indirectly impact the general public because they clarify an already applicable requirement. • Utility Mercury Rule: The proposed adoption of material sampling provisions would not indirectly impact the general public because the provisions already apply. • Public Health Benefits. Air pollution creates public health problems that can have negative economic impacts. DEQ anticipates that the proposed rule will reduce air pollution, and as a result, may benefit public health and welfare. It may also reduce public health costs

	associated with air pollution.	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	Direct Impacts: • Area Source NESHAPs: The proposed adoption of the new federal area source NESHAPs would not directly impact small businesses because any negative fiscal and economic impacts occurred when the EPA adopted the rules, and because the rules applied in Oregon upon EPA's adoption. • Area Source NESHAP Permitting. The proposed adoption of new area source NESHAPs would trigger a requirement that affected businesses obtain a Standard ACDP and pay permitting fees. Standard ACDP permitting fees would have a negative fiscal and economic impact on affected businesses, many of which are small businesses. To mitigate this impact, this rulemaking proposes to add businesses affected by the new area source NESHAPs to the list of businesses that are eligible to obtain a Simple or General ACDP in lieu of a Standard ACDP. General ACDPs cost between $120/year to $1,872/year, Simple ACDPs cost between $1,920/year and $3,840/year, and Standard ACDPs cost $7,680/year. Adding these businesses to the list of businesses that are eligible to obtain a Simple or General ACDP would save affected businesses up to $7,560/year (98%). In addition, this rulemaking proposes to allow businesses in certain categories to register with DEQ in lieu of obtaining a General ACDP. Registered businesses would be required to pay registration fees that are equal to or less than the corresponding General ACDP fees. • General ACDP Attachments: Allowing a business to be assigned to one General ACDP and one or more General ACDP Attachments would positively impact small businesses because it would allow some businesses to avoid the requirement to obtain multiple general permits or a more costly Simple ACDP. General ACDP Attachments could also negatively impact small businesses in cases where DEQ chooses to use a General ACDP Attachment in lieu of adding a regulation to a General ACDP. However, the General ACDP Attachment would likely cost less than having to get multiple General ACDPs or a Simple ACDP. • Registration: Registration would positively impact small businesses because registration applies to businesses that would otherwise be required to obtain a permit and the registration fee will be equal to or less than the corresponding permitting fee. • Gasoline Dispensing Facility Rules: The proposed adoption of changes to the gasoline dispensing facility rules would not directly impact small businesses because they clarify an already applicable requirement. • Utility Mercury Rule: The proposed adoption of material sampling provisions would not indirectly impact the general public because they already apply. Indirect Impacts: • Area Source NESHAP Permitting. The requirement that sources affected by a new federal area source NESHAP obtain an ACDP permit could indirectly impact small businesses if the associated permitting fees are passed on in the form of higher prices for goods and services.	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	Area Source NESHAP Permitting DEQ estimates that as many as 3,512 small businesses in Oregon are potentially affected by the new area source NESHAPs and/or the requirement to have a permit.
	b) Types of businesses and industries with small businesses subject to the proposed rule	Area Source NESHAP Permitting The 3,512 small businesses are in the following industries: paint stripping and miscellaneous surface coating (2,800); metal fabrication (180); plating and polishing (200); ferroalloy production (6); aluminum, copper, and other nonferrous foundries (14); chemical manufacturing (110); and dry cleaners (202).
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance	The adoption by reference of the new area source NESHAPs do not add any new reporting, recordkeeping and other administrative activities other than those already required by the new area source NESHAPs. The requirement that businesses affected by the new NESHAPs obtain a permit may increase the

	with the proposed rule, including costs of professional services	administrative activities or costs of professional services on small businesses. To mitigate the impact, this rulemaking proposes to allow businesses to register with DEQ in lieu of obtaining a permit.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	The adoption by reference of the new area source NESHAPs would not require small businesses to add any equipment, supplies, labor or administration because the NESHAPs applied in Oregon upon EPA's adoption. The requirement that businesses affected by the new area source NESHAPs obtain a permit may require small businesses to add equipment, supplies, labor or administration. To mitigate the burden on small businesses, this rulemaking proposes to allow businesses to register with DEQ in lieu of obtaining a permit.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ did not hold an official advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference. However, DEQ did meet with various groups representing auto body shops, dry cleaners, and other small businesses to discuss DEQ's implementation strategy for the new area source NESHAPs. DEQ will also continue to meet with impacted business associations such as the Northwest Automotive Trades Association and the Oregon Collision Repair Specialists Association to discuss DEQ's proposed implementation of the NESHAP. DEQ will also hold information sessions with stakeholders to discuss the new area source NESHAPs and DEQ's rulemaking.
Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))	The fiscal and economic impacts on large businesses are expected to be the same as those estimated for small businesses.	
Impacts on Local Government	The fiscal and economic impacts on local government are expected to be the same as those estimated for small businesses.	
Impacts on State Agencies other than DEQ	The fiscal and economic impacts on State Agencies other than DEQ are expected to be the same as those estimated for small businesses.	
Impacts on DEQ	To implement the new Area Source NESHAPs, DEQ requested nine new positions (6 FTE) for consideration by the Governor and 2009 Legislature. The positions will be phased-in as DEQ receives new permit applications and fees. Eight of the positions will work on permitting and inspection activities and provide technical assistance to sources. One half-time position will be added to DEQ's Office of Compliance and Enforcement staff to issue formal enforcement actions against violators. The cost of the new positions will be funded by revenue generated by new General ACDPs and registration fees. The remaining cost impacts on DEQ are expected to be the same as those estimated for small businesses.	
Assumptions	None.	
Housing Costs	DEQ has determined that the proposed requirement that businesses affected by the new area source NESHAPs obtain a permit 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. The negative impact could occur if permitting fees are passed through by permit holders providing products and services for such development and construction. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the available information does not indicate whether the permit fees would be passed on to consumers and any such estimate would be speculative.	
Administrative Rule Advisory Committee	DEQ did not hold an official advisory committee for this rulemaking because the rulemaking would primarily adopt federal regulations by reference. However, DEQ did meet with various	

	groups representing auto body shops, dry cleaners, and other small businesses to discuss DEQ's implementation strategy for the new area source NESHAPs.

Prepared by	Printed name	Date
Approved by DEQ Budget Office	Printed name	Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Use Evaluation Statement

Rulemaking Proposal
for
Adoption of Federal Air Quality Regulations

1. Explain the purpose of the proposed rules.

The Environmental Protection Agency (EPA) has adopted several new National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to non-major or area sources and changes to older NESHAP and New Source Performance Standards.

Adopting these changes will make Oregon's rules consistent with EPA's so that the Department can implement and keep its delegation of these regulations, which benefits industrial sources. These benefits include quicker approval of applicability determination requests and alternative testing, monitoring, recordkeeping, and reporting requests. In addition, adopting these standards benefits the public by allowing the Department to ensure that the required emission reductions are achieved in Oregon.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No____

a. If yes, identify existing program/rule/activity:

The Department's issuance of air permits is an action determined to have effects on land use. The Department will implement the proposed standards for major source categories through the Department's Title V Operating Permit Program and the standards for non-major source categories through the Department's Air Contaminant Discharge Permit (ACDP) Program.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No____ (if no, explain):

The Department will implement these rules through the ACDP and Title V permitting programs. Currently, cities and counties must provide a Land Use Compatibility

Statement approval before the Department issues these permits or approves a Notice of Construction.

c. If no, apply the following criteria to the proposed rules.

Not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Not applicable.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: Nov. 4, 2009

To: Environmental Quality Commission

From: Jerry Ebersole

Subject: Written Comments
Title of Proposal: Adoption of Federal Air Quality Regulations

The public notice period for this rulemaking opened July 15, 2009 and closed August 26, 2009.

Ten people submitted written comment.

My name is Leslie Kettenhofen and along with my husband, Bob, we own Bob's Dry Cleaners & Laundry in Florence Oregon. Our solvent of choice is Perchloroethylene, (perc). We have a generation V machine and we purchase 15 gallons of perc a year.

We purchased our cleaners in 1994. The next year the Oregon Dry Cleaner bill went into effect. That bill and the rules it prescribed for the drycleaners of Oregon was stricter than the NESHAPS at the time. The new Federal NESHAPS are now only equal to our law. We are the 4th owners and it's been in the same location since 1960. We've had the luxury of meeting with the original owner (Neil), who recommended we go to school at IFI, (now DLI), and the 3rd owner, who only owned it for 17 months but explained to us how the new rules protected our investment as well as the environment.

From 1994 until spring of 2008 we always experienced a small amount of growth each year. Then fuel prices skyrocketed. We don't have the luxury of running a natural gas fired boiler, so we found ourselves paying almost 5.00 a gallon for home heating fuel to operate our new fuel efficient boiler which we replaced in 2001. That cost of fuel forced us to lay off the last of our employee's.

Then in September 2008 you all know what happened, we have been operating at a loss since. We are also in Lane County, which means that LRAPA can set its own rules and fees. We are servicing a retirement community and the average age of a Florence resident is 62. We lost 40 million dollars out of this community to a ponzi scheme. Meanwhile, a bunch of our snowbirds had to make a choice, or were forced to make a choice, of where to live. Ummm...12 months a year in Palm Desert with air conditioning or 12 months a year in Florence. Then there are the foreclosures, from the Register Guard 8/12/2009: *"In Lane County alone, 221 foreclosure notices were given to homeowners in July, up 64 percent from the same period last year. The county's unemployment rate hit 13.2 percent in June, more than double the 5.8 percent recorded in the previous June."*

Several times a week in the summer we get customers from the Bandon golf course, (70 miles from Florence). They just can't figure out why they are paying $300.00 for a round of golf at all these exclusive resorts but can't get their clothes cleaned. We then have to advise them that the next closest opportunity is Salishan, 90 miles north of Florence.

Bandon Cleaners closed in 2000. (2001?) Newport Cleaners closed in 2008. For those of you without a map, that leaves Florence 60 miles to the nearest cleaners in Eugene, and there are only 9 of us left on the entire Oregon Coast. This year alone our business is off 2000.00 per month. We had to pay our fees to the dry cleaner program with a credit card. We now have to work 60 hours a week to break even. If this new program passes we will be one more cleaners closing. So that puts our customers from Reedsport (21 miles), Yachats (25 miles) Waldport (30 miles) and all of our Florence on the Road to Eugene.

And these people aren't driving hybrids. They are driving giant SUV's and/or large 8 cylinder sedans.

Oh yeah, that's right this program doesn't have any significant impact on small business. We can't afford to buy another $60,000 dry cleaning machine. We'll take out a loan on our house and pay off our lease a year early, as we can no longer to continue to operate at a loss. Why are we are being penalized for operating legally and safely? The shoddy operators will just switch to another drop-in solvent to get off the Radar. And how many cleaners in the Greater Portland/Salem area have disappeared in the middle of the night this year?

As I understand it, DEQ Air Quality receives no funding from the State of Oregon. These fees and additional paperwork look like nothing more than a way to perpetuate jobs for you and serve no real public service. I remember Jill Inahara speaking at an Oregon Dry Cleaners Association convention in 1999. She said that because of our unique relationship with DEQ we didn't need oversite by Air Quality. Apparently, now we do.

Oh and by the way, I saw where there was a $1200.00 first time fee. I asked my industry association about it and they replied that Air Quality does not plan on charging it. So if your plan is not to charge it – **why is it in this proposal?**

Leslie Kettenhofen – Bob's Dry Cleaners & Laundry
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Leslie@bobsdrycleaners.com
8/25/2009

My name is Kathey Butters, I have been in the dry cleaning industry 30+ years as an employee, owner, and consultant. I currently manage Plaza Cleaners. I am an 11 year member of the DEQ Advisory Committee for the Oregon Dry Cleaner program. Tonight I am here to make public comment on behalf of the Korean American Dry Cleaners Association (KADCA) and the Oregon Dry Cleaners Association (ODCA), which represents most of the Oregon Dry Cleaners.

The proposed rule according to Oregon DEQ "Proposed Rulemaking Announcement"- is to meet the requirements of the Clean Air Act. I quote from that same announcement -"The Clean Air Act requires EPA to regulate enough area sources to ensure that 90 percent of the emissions of the 33 hazardous air pollutants are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP). The Clean Air Act also requires EPA to establish New Source Performance Standards (NSPS) for categories of sources that cause or contribute significantly to air pollution that endangers public health."

The 2006 NESHAP requirements that Oregon DEQ Air Quality is basing the need for dry cleaners to be included in this proposal, have been in place in Oregon since 1995 with the implementation of the Oregon Dry Cleaner Program. The one exception was carbon absorption. When Air Quality first approached the industry about permitting it was stated that the Dry Cleaner program did not meet the NEHSAP requirement on Carbon Absorption, as there was no direct stipulation in the Dry Cleaner Program. The industry pointed out to Air Quality that the Dry Cleaner Program did meet that requirement based on the generation of machines required. The inspections proved that the industry was right and all cleaners met the carbon absorption requirements in the 2006 NESHAP.

Let's talk about the Portland Air Toxic Assessment (PATA) done in 2004/2005. The ambient benchmark for perc was 1 times higher, meaning that there was 1

more person out of a million potentially at risk for cancer. If the assessment were to be done today we believe perc would be below that benchmark. But let's look further into the PATA. DEQ Division 246, Oregon State Air Toxics – The Air Toxics Science Advisory Committee (ATSAC) was formed. It was proposed to the ATSAC by the DEQ Air Quality Division that perc be given a lower ambient benchmark. The Committee decided to revise the Air Quality proposed ambient benchmark and the risk assessment on perc not be upgraded (and I quote) "to reflect its non-cancer effects". The ATSAC also stated, "Based on new studies that have been done on the effects and health risks of perc, it is very unclear if PERC is a carcinogen in humans, and if it is a human carcinogen, its potency is very week". (DEQ Air Toxics Program, ATSAC, Meeting #17, May 18, 2006 – Meeting Summary)

Moving on to the current DEQ Dry Cleaner Program. The Dry Cleaner Program implemented practices for the industry almost 10 years prior to the EPA adopting the same practices.

I quote from a Department of Environmental Quality fact sheet last updated 7/22/05. "Today, about 85 percent of dry cleaners in Oregon use perc. In the 1995 Oregon legislative session DEQ and the dry cleaning industry partnered to create the Oregon Dry Cleaner Program. Through this program DEQ oversees how dry cleaners handle perc. It requires dry cleaners to handle perc safely, and helps clean up sites that are already contaminated. This program has resulted in, unique, cooperative relationship between DEQ and the dry cleaner industry. As a result of this cooperative effort, the industry's use of perc has declined by 30 percent, and the safe disposal of perc waste has improved dramatically".

In fact, by advocating for the Dry Cleaner Program with the state legislature, drycleaners proactively took steps to require all dry cleaners to become

environmentally friendly operations, and to facilitate the identification and clean-up of any historically contaminated sites. All this was accomplished without posing any burden on Oregon taxpayers outside the dry cleaning industry. This was the first time in our State's history that an industry group took such an aggressively pro-environment position and lobbied for more, not less, regulatory controls, as well as imposing an additional economic burden on itself.

This is 2009 and where is the dry cleaning industry in Oregon today? Since 2009 numbers are not yet available I will use 2008 numbers. There are 177 perc cleaners in Oregon almost half of what it was in 2001. The number of dry cleaners using solvents other than perc has increased from less than 20 to 84. The amount of perc purchased has gone from about 18,000 gallons in 1999 to less than 6,000 gallons in 2008. The average perc use per facility has gone from 60 gallons at the beginning of the program to slightly over 30 in 2008. This is a direct result of the fact that when the Dry Cleaning Program was implemented Dry Cleaners who did not meet the requirements invested in new, more efficient, more technologically advanced perc machines. This is no small investment. In addition, as more and more dry cleaners come to realize that despite the current scientific evidence that perc is a safe solvent the public perception of using perc is tainted, and they have opted to abandon perc and invest in alternative solvent technology, as evidenced above. We believe this trend will continue.

Based on all the information given to you at this point, the industry believes that Oregon is already meeting the federal requirements for the Clean Air Act concerning perc and our industry. For Oregon DEQ Air Quality to decide now that EPA would not accept their delegation of our current dry cleaning program without implementing a fee permit program, when in fact it has accepted it for the last 3 years since the 2006 NESAPS were published, is hard for the dry cleaning industry to accept. EPA does not require a fee based permit program and supports and promotes other states self certification programs. The industry

requests DEQ to go for their delegation with the existing Oregon Dry Cleaner program.

The random inspections conducted by DEQ and being used as a second reason for the need for this permitting program need to be addressed. If you evaluated each inspection you will find that most cleaners out of compliance were land/hazardous waste issues, not air quality. Those that were air quality were mainly paperwork issues and corrected on site or within the time frame allotted. The worst cited in these inspections had already been picked up in the existing dry cleaning program. The current dry cleaning program initiates inspections based on the information received in the required annual reports. The industry is not happy with the findings but believe that the issues can be addressed under the existing DEQ dry Cleaner Program.

Why should an industry that has stepped up and with the help of the DEQ created a program that cleans up historically legal practices and prevents further contamination be subjected to yet another and redundant layer of governmental regulation? Especially when we are told that DEQ Land & DEQ Air Quality are unable to share databases, therefore requiring dry cleaners to be subjected to more bureaucracy. A proven example – under the current dry cleaner program there is no cost to changing basic information, name, address, phone, etc. Under this new proposed program is would cost the cleaner $360.00. That amount is absurd anyway for a permit costing $240.00 but even more absurd is that a dry cleaner would have to contact both DEQ land and DEQ Air!

Oregon's Dry Cleaning Industry and the Department of Environmental Quality have an excellent working relationship. A relationship built on mutual trust and respect. Implementing Air Quality Permits/Registration and adding yet another

layer of redundant regulations will not improve compliance or reduce air pollution; it will only damage the mutual respect we have worked so hard to build since the dry cleaner program's inception.

The Oregon Dry Cleaner program is working. Sites are being cleaned up. There are currently no high priority sites in the queue. All money being spent on clean ups are from the industry. Oregon Dry Cleaners met or exceeded all federal regulations. Therefore the industry requests that dry cleaners be removed from this proposal.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR TOXICS PROGRAM
AIR TOXICS SCIENCE ADVISORY COMMITTEE

MEETING #17
May 18, 2006 ~ Meeting Summary

Committee Administration
Members Attending: Bill Lambert, Natalia Kreitzer, Candee Hatch, Kent Norville, Brian Patterson. DEQ Staff: Bruce Hope and Svetlana Lazarev.

The Committee accepted the notes from their May 8, 2006 meeting with a few minor corrections.

Bill welcomed Dr. Dean Atkinson (associate professor of chemistry at PSU) to the meeting as a guest. He will be replacing Dr. Staci Simonich in June if his appointment is approved by the Director and concurred with by the Environmental Quality Commission. In June the Committee will return to the discussion of implementation guidance. Bill thanked Dean for volunteering to serve.

Process for Establishing / Revising Benchmarks
In February, Bruce had prepared, and the Committee had reviewed, a memorandum outlining a 6-step process for identifying air toxics which might require benchmarks. This memorandum was revised, based on comments made at the May 8th ATSAC meeting, to include a process for revising existing benchmarks. Although, by rule, benchmarks need to be reviewed every 5 years, the point was raised that it would be good if, once benchmarks are either established or revised, they be usable as quickly as possible. Bruce shared the memorandum with Paul Logan at the Oregon Department of Justice to see if there were ways to expedite using new or revised benchmarks. Paul's answer was that benchmarks cannot be used until they go through rulemaking (including a public comment / hearing opportunity) and become administrative rules. Bill suggested that we explore the possibility of using an ATSAC meeting, with appropriate public notices, a comment period, and a hearings officer, as a vehicle for expediting the rulemaking process. Bruce will explore this possibility with Paul Logan. Some changes were suggested to the present draft of the memorandum (*Bruce made these changes and sent a revised version to Committee members shortly after the meeting*).

Arsenic
The benchmark for arsenic was reviewed in response to a comment received during the public comment period. It was suggested that the ATSAC use the 1997 USEPA IRIS URE of 4.3×10^{-3} $(\mu g\ m^{-3})^{-1}$ to calculate a benchmark for elemental arsenic, rather than the California OEHHA URE of 3.3×10^{-3} $(\mu g\ m^{-3})^{-1}$ which is older (1990). Both result in a similar benchmark concentration of 0.0002 - 0.0003 $\mu g\ m^{-3}$. After a short discussion, it was the consensus of the Committee to base the benchmark for elemental arsenic on the USEPA IRIS URE to yield an ABC of 0.0002 $\mu g\ m^{-3}$ because of the preference for using IRIS data and because the evaluation was more recent.

Cadmium
The benchmark for cadmium was reviewed in response to comments received during the public comment period. Several comments were received from the International Cadmium

Association. One suggested that the presently recommended benchmark of 0.0006 μg m^{-3} is lower than a typical background value. Another comment assumed incorrectly that Oregon's acceptable cancer risk is 1:100,000 while it is, by rule, actually 1:1,000,000. Another comment was concerned about our use of old (1980) toxicological information as the basis for the benchmark and that the ATSAC should wait for the results from new studies. Despite these comments, DEQ recommended no change in the proposed benchmark. During its discussion of this air toxic, the Committee clarified that "cadmium" includes cadmium and cadmium fumes and that the benchmark was based on the 1998 USEPA IRIS URE of 1.8 x 10^{-3} μg m^{-3}. Bill noted that the International Cadmium Association had submitted no new information in support of a different benchmark nor was there any such information known to Committee members. He therefore recommended that the proposed benchmark remain unchanged. The Committee agreed to this unanimously and the 0.0006 μg m^{-3} benchmark was retained.

Nickel
The benchmark for nickel was reviewed in response to a comment received during the public comment period. The Nickel Producers Environmental Research Association had suggested that it be made clearer which form of nickel the benchmark was for and that the ATSAC consider an alternative value for "nickel and nickel compounds." The Association submitted additional technical information in support of their comments and suggestions. The presently proposed benchmark actually applies only to nickel refinery dust and not to a variety of nickel compounds. Bill noted that the comments from Wilmer Hill and the Producers Association were helpful in making the Committee think of nickel in a different way.

Candee noted that nickel refinery dust comes only from the refining process, whereas other nickel emissions are mainly from fuel combustion. She suggested retaining the benchmark for nickel refinery dust and adding a separate benchmark for nickel and soluble salts. Brian was concerned that the Committee might simply be subdividing nickel compounds and not adding anything new in response to the substantial evidence that the majority of nickel emissions, other than refinery dust, are the subsulfide, oxide, or soluble salts. The comment from the Producers Association suggested a speciation of nickel emissions into several (assumed) categories and adjustments on this basis to reduce the benchmark for "nickel and nickel compounds" to 0.03 μg m^{-3}, something more representative of a mixture. Brian indicated that he wouldn't choose to go this route and proposed an alternative with two categories: (a) carcinogenic: refinery dust, nickel sulfates, and nickel oxides with a benchmark of 0.004 μg m^{-3} and (b) non-carcinogenic: nickel metal and soluble salts with a benchmark of 0.05 μg m^{-3}. Candice agreed with Brian on not using the Producers suggested speciation methodology. It was then mentioned that California has additional categories for subsulfide and soluble Ni compounds. Brian then suggested combining nickel oxide with nickel refinery dust. Candee was not comfortable combining nickel oxides with refinery dust, as we cannot be sure what is coming out of combustion sources.

Kent asked how, from the monitoring point of view, do you distinguish between the different species of nickel? In short, the monitoring methods currently used by DEQ do not differentiate between the different forms of nickel. Candee noted that some information will have to be placed in guidance to make sure we know what is being measured.

Bill ultimately proposed three categories: (a) nickel refinery dust with a benchmark of 0.004 μg m^{-3} calculated with the USEPA IRIS URE, (b) nickel subsulfide with a benchmark of 0.002 μg m^{-3} calculated with the USEPA IRIS URE, (c) seven soluble nickel compounds with a benchmark of 0.05 μg m^{-3}, which is the OEHHA REL. It was decided that nickel oxides will be addressed in the guidance. These proposals were accepted by the Committee.

Tetrachloroethylene (PERC)
Bill opened the discussion by noting that several comments (from the Oregon Dry Cleaners Association, the National Drycleaners Association, and the Halogenated Solvents Industry Association) requested that the ATSAC reconsider the classification and treatment of PERC as carcinogen. All three organizations submitted substantial peer-reviewed literature in support of their request (this information was not available in early 2005 when the ATSAC first discussed this air toxic). As a result, the Department recommended that the ATSAC review PERC's designation and consider the possible use of the non-cancer reference concentration. Part of the new information is the fact that both Health Canada and the Ontario Ministry of the Environment no longer regulated PERC using a human cancer endpoint because it appears to be a very weak carcinogen in humans. While studies in rats showed increased levels of liver cancer, such evidence is not consistent in human studies. Bill said that this is a fundamental point and compelling new information. It is very unclear if PERC is a carcinogen in humans, and if it is a human carcinogen, its potency is very weak.

At Brian's request, Bill described some of the weaknesses and issues in the epidemiological studies that have tried to link human cancer occurrences to exposure to PERC. Confidence in findings is limited by low number of observations, and controlling for potential confounding factors is difficult. Often smoking and alcohol consumption are factors that have not been separated from the factor of working as a dry cleaner. The Mundt et al. 2002 review paper presents the range of risk estimates from available cohort and case-control studies of liver, lung and bladder cancers. Considerable heterogeneity has been observed in risk estimates. A new case-control study (Lynge et al. 2006) of Scandanavians employed in the dry cleaning industry in the 1970s controlled for exposure to smoking and alcohol, and failed to demonstrate increased risks of cancer of the gastric cardia, pancreas, liver, or with non-Hodgkin's lymphoma. The evidence for PERC's non-cancer effects is much stronger. The Committee decided to revise PERC's benchmark to reflect its non-cancer effects. This decision raised the previously proposed benchmark from 0.02 $\mu g\ m^{-3}$ to 35 $\mu g\ m^{-3}$, which is the 1991 OEHHA REL.

Review of Comment and Discussion Summaries for Rule Package
Bill indicated that Attachments B and C of the final rulemaking package need to be reviewed by the Committee to be sure they clearly express the rationale and choices the ATSAC made and to make sure each Committee member is comfortable with the language. Bruce needs any comments of corrections no later than Thursday, May 25th in order to stay on schedule.

Public Comments
None.

Next Meeting
June 15, 2006
DEQ Headquarters Office, 3A
811 S.W. Sixth Avenue
Portland

TOWNE & COUNTRY
CLEANERS & LAUNDRY • TUXEDOS

August 18, 2009

DEQ Air Quality
221 Stewart Ave Suite 201
Medford, Or 97501

My name is Claire Anchick and along with my husband Jack we own Towne & Country Cleaners LLC. Our plant is located in White City. We also have a drop store in Ashland. Our solvent of choice is Perchloroethylene. (perc)

In 1995 the Oregon Dry Cleaner bill House bill 3216 (ORS465.500) was passed and went into effect January 1996. "The Dry Cleaner statute requires all dry cleaners to implement waste minimization and hazardous waste management practices designed to eliminate future releases of hazardous waste to the environment, in essence becoming a "zero release" industry." That bill and the rules it prescribed for the drycleaners of Oregon was stricter than the NESHAP at the time and the new Federal NESHAP's are still not as strict as our law. No place in the rules does it state there should be a fee for registration only that there should be registration.

Every drycleaner in the state is registered with DEQ no matter what solvent they use. Perc drycleaners already pay an additional $500.00 just because they use perc.

Perc usage has been reduced first by the introduction of the new equipment 4th generation or better, closed loop solvent delivery and as more cleaners close or choose an alternative solvent usage will continue to be reduced.

When I moved to the valley in 1984 there were approximately 13 plants. Most were perc plants. Today there are 6 plants. One is hydrocarbon the rest are perc. In Grants Pass there were four or five plants now there are 3. No perc. 2 hydrocarbon 1 greenearth.

I don't know when the last air quality report was done for this valley or where the perc percentage is but I do know that the last Portland area report was flawed, even so the perc percentage just barely made the list of concerned.

Compliance, compliance, compliance! That is air qualities mantra. DEQ/Air quality was disappointed in the inspections done recently in the Portland/Lane county area. Areas of concern were containment, paper work and ground water issues not air quality.

As with most rules and laws in our country the honor system does not always work. We hire police officers to enforce our driving laws and IRS agents to enforce compliance with tax laws. Those are just two examples of enforcement. If you are not in compliance – not following the law- there are consequences. Fines, license removal, jail.

You have always had the ability to inspect the dry cleaners in Oregon. When you have and you found non compliance you sent a letter and/or in some cases fines were levied. I have no problem with that in fact I would encourage you to do more inspections.....of ALL drycleaners. However, the time has come when you say enough is enough! You have told them what to do, you have shown them how to do it, and if they are still not doing it correctly....CLOSE THEM DOWN! Again consequences.

If there is a high degree of non compliance in the drycleaners of Oregon it appears to me that it is not the fault of the drycleaners but the fault is yours.

My question to you is why do you feel that an additional fee to either be registered (already are), licensed, or permitted will change the compliance issue.

You are playing to the lowest common denominator. Those cleaners that have been following the rules keep being (penalized) slapped with new fee's and the cleaners that are not following the rules are suffering no consequences!

I understand the State of Oregon is short of money however I do not believe the 173 perc cleaners should, would or could provide enough money to make a dent into the deficit.

Thank you.

Sincerely,

Claire Anchick

Claire & Jack Anchick, Owners
2030 Antelope Road • White City, OR 97503
541-826-5484 • Fax: 541-826-9183 • www.townencountry.com
151 N. Pioneer • Ashland, OR 97520 • 541-488-4111

Pacific Northwest Pollution Prevention Resource Center
practical solutions for economic and environmental vitality

August 25, 2009

Jerry Ebersole
Oregon DEQ
Air Quality Division
811 SW Sixth Avenue
Portland, Oregon 97204
Submitted by e-mail to: federalrule@deq.state.or.us

Re: Subject: Comments on Federal Air Quality Regulations

Dear Mr. Ebersole:

PPRC is a non-profit organization that is the Northwest's leading source of high quality, unbiased pollution prevention (P2) information. PPRC works collaboratively to promote environmental protection through pollution prevention. PPRC believes that environmental and economic vitality go hand in hand, and that both are necessary to protect the high quality of life enjoyed in our region.

PPRC strongly supports the Federal Air Quality Regulations proposed. We are especially in support of the Registration option for businesses affected by the new National Emission Standards for Hazardous Air Pollutants (NESHAP). We feel that this option provides the greatest value for the participating businesses as well as Oregon Department of Environmental Quality (DEQ), and will also produce the best results for Oregon's environment.

To the extent possible, DEQ should work to fund certification programs for business sectors affected by the NESHAP, especially in sectors that have a large number of small businesses.

PPRC has provided outreach and technical assistance for the Automotive Ecological Business Certification (EcoBiz) in Washington County since November, 2008. This certification addresses the NESHAP requirements for body shops.

EcoBiz was developed over 15 years ago by the Metro Pollution Prevention Outreach Team (P2O Team). This team consists of representatives from Oregon Department of Environmental Quality (DEQ) , Washington County, Clean Water Services, City of Portland, Portland Metro, City of Troutdale, City of Gresham, and Clackamas County.

EcoBiz has proven to be a very effective method of educating small businesses about environmental regulatory requirements, and also showing them how to go above and beyond. The program delivers multi-media environmental results. Even businesses that don't get certified receive a shop specific checklist of what they need to do to meet regulations as well as to achieve the sector's Best Management Practices.

1402 Third Avenue, Suite 1420
Seattle Washington 98104
206-352-2050 Telephone
206-352-2049 Fax
www.pprc.org

Since participation in EcoBiz offers benefits to companies, they are often pleased to become certified voluntarily. Benefits to companies include publicity in print advertising, press releases, web site coverage and occasional media events. Some shops document up to 20% new business through participation in environmental certification programs, as well as increased efficiency and cost savings. These businesses set a new standard in the target sector and lead the way for many of their colleagues to follow. The benefits to the State of Oregon and the public are a cleaner environment and a third party standard they can rely upon as consumers.

Clean Water Services (CWS) provided funding to PPRC to perform outreach and technical support to automotive shops within their service area from November 2008 to the present. The number of certified shops in Washington County was increased by 30% in just eight months. This funding gave the program it's first dedicated staff (PPRC provided staff under contract) since the program's inception, and has allowed the program to expand rapidly, albeit only in Washington County.

PPRC, a non-profit/non-regulatory organization dedicated to pollution prevention, can approach businesses in a non-threatening way. Businesses are often very willing to invite PPRC staff in to do a walk-through. It was less expensive for CWS to contract with PPRC than to hire staff to do the same work. Even shops that don't get certified are educated about the NESHAP and other applicable regulations as well as best practices. This is done with site visits and packets of information left with the company. PPRC was able to achieve the following in Washington County within eight months;

- 11 certified shops,
- 31 checklist review and walkthrough visits,
- 114 total packets delivered containing program checklist

As a result, the auto body shops in Washington County are ahead of the game in terms of preparation for the new NESHAP Rule.

The average amount of outreach and technical support time to get one shop certified is 9 hours. Currently DEQ doesn't have staff to do this work, and neither do any of the other P2O Team members. There are approximately 1600 auto body shops in Oregon. If a significant number of these opted for Registration instead of permitting, the demand for support would be overwhelming.

With appropriate funding, Oregon will be able to achieve the desired results in taking delegation of the NESHAP and toxic area source pollutants in Oregon will be decreased accordingly.

Thank you,

Debra Taevs | deputy director
8040 SE 51st Ave | Portland, OR 97206
T 503.336.1256| C 503.889.6488|

EBERSOLE Gerald

From: afrye6@aol.com
Sent: Monday, August 24, 2009 12:20 PM
To: FederalRule
Subject: 40 CFR Subpart HHHHHH

Dear Mr. Ebersole;

My name is Angie Frye. I am a jobber representative with Mac Auto Supply in McMinnville, and my husband and I also own a small collision repair shop in Woodburn, Paul's Woodburn Collision Repair, Inc. I attended the Salem meeting with Rebecca in July, and I realized then that this rule assumes a lot, and has virtually no working knowledge of bodyshops. I would like the opportunity to explain some things from the industry side.

First, some background. I have been employed in the refinish field since 1982, and have worked for Mac Auto since 1987. Over the years I have sold nearly all aftermarket brands of refinish materials , but the last 15 years our main line has been PPG. In approximately 1990, PPG began working to remove chromium, lead, manganese, nickel and cadmium. They developed a complete line of products that are isocyanate free. We have been in compliance with the Federal VOC rule for years. In the 1980's thru the mid 1990's, we had problems with "peelers", vehicles that for several reasons had paint failure issues, and the recommended OEM repair included using strippers that were designed to remove only the color and clear, and left the factory primers untouched. Today, the use of any stripper is so rare, our reorder point for gallons is 1, and most body shops, if they have any at all, is in a corner covered with dust. There just is no need for it, as repair procedures involve sanding/prepping the repair area, and painting over the existing finish. The only customers that use any quantity of stripper is the aircraft industry, and I was surprised to discover from Rebecca that they are exempt from this rule. I requested a copy of the products that PPG manufactures the include chromium, lead, manganese, nickel and cadmium. Nearly all of the products used for collision repair are free of these metals, in fact, only 4 toners still have any in at all. These toners are yellows/oranges and 1 red. The usage of these toners is so minimal, that when we looked at Mac Auto Supply's sales history from January 2009 to the present, we had not sold *any.*

With regard to spray equipment, OSHA already covers everything you are asking for in this new rule. The training elements that are required in Subpart HHHHHH are all covered by training provided by the paint manufacturers, as well as ICAR certification. You see, from your perspective, these are things that need to be done for the environment, but in addition, they also must to be done to get the kind of professional finish that collision repair shops require. To do anything else results in runs, dry areas, bad color matches, and dull flat finishes. No painter will stay employed performing that kind of work.

Therefore, it appears that this rule overlaps existing rules, and adds another layer of recordkeeping that has no benefit. Small businesses cannot support an employee who is not producing, and paying someone to do nothing but duplicate paperwork for different government agencies is very difficult to justify. Therefore, I have a suggestion. I believe there should be a minimal usage level established, rather than just stating that if a shop has any one of these products in the building, they must pay $720.00 per year. The collection of the fee will do nothing to reduce the usage, because we are using virtually nothing now. And with the increased use of waterborne paints, this will all be moot soon anyway. Will the fee then be repealed? Probably not.

I would appreciate your thoughts on this, and look forward to hearing from you.

Sincerely,

Angie Frye
503-550-6535

EBERSOLE Gerald

From: HUEFTLE Max
Sent: Thursday, August 20, 2009 3:19 PM
To: FederalRule
Subject: Adoption of Federal Air Quality Regulations

LRAPA recommends that ODEQ revise Table 1 Part C.4 in Division 216 such that an exemption from the requirement to obtain a permit is provided for sources conducting activities under proposed Division 216, Table 1, B.26 – "Electrical Power Generation from combustion (excluding units used exclusively as emergency generators and units less than 500kW). Suggested language to be added (in red text) is as follows:

Division 216, Table 1, Part C.4

All Sources subject to a RACT, BACT, LAER, NESHAP adopted in OAR 340-244-0220, NSPS, State MACT, or other significant Air Quality regulation(s), except:

a: Source categories for which a General ACDP has been issued, ~~and~~
b. Sources with less than 10 tons/yr. actual emissions that are subject to RACT, NSPS or a NESHAP adopted in OAR 340-244-0220 which qualify for a Simple ACDP.
c. Source categories registered pursuant to OAR 340-210-0100(2), and
d. Source categories conducting activities as described in B.27 of this Table (Electrical Power Generation from combustion (excluding units used exclusively as emergency generators and units less than 500kW.

This is recommended because nearly all generators are now subject to the recently promulgated NSPS Subpart IIII and JJJJ for Reciprocating Internal Combustion Engines (RICE). The suggested language to be added would align both aforementioned sections of Division 216 so that they are consistent.

Sincerely,
Max Hueftle

Max Hueftle, P.E.
Environmental Engineer
Lane Regional Air Protection Agency
Direct: 541-736-1056, x. 231
Fax: 541-726-1205

EBERSOLE Gerald

From: Kent Kelly [KKelly@hk-law.com]
Sent: Monday, August 10, 2009 11:26 AM
To: FederalRule
Subject: Question on proposed Adoption of Federal Air Quality Regulation

Hello Jerry:

In reviewing the federal rules (Summary of Regulations Controlling Air Emissions (http://www.epa.gov/ttn/atw/area/paint_stripb.pdf) I note that the rule does not apply to:

Surface coating or paint stripping performed by individuals on their personal vehicles, property or possessions, either as a hobby or for maintenance of their personal vehicles, possessions, or property provided they coat no more than two vehicles per year.

While I would prefer that number be increased, does the Oregon adoption of the federal rules retain the federal exemption? How does Oregon proposed to handle this aspect?

Thanks!
Kent Kelly
Email: kkelly@hk-law.com

Kent Kelly

Att NO. 399 ry P. 1 Sole
fax 503-229-5675

From: Kent Kelly
Sent: Wednesday, August 26, 2009 4:13 PM
To: 'federalrule@deq.state.or.us'
Subject: RE: Air Quality Rule Changes - Auto body & paint shops

Dear Mr. Ebersole:

I would like to see the State consider and develop a different set of requirements between urban and non-urban areas for regulating auto body/coating shops. As the background to your announcement (http://www.deq.state.or.us/news/publicnotices/uploaded/090715_4014_PN-fedAQregs.pdf) states:

Background

To meet the requirements of the Clean Air Act, the Environmental Protection Agency identified 33 hazardous air pollutants, that when emitted by small and mid-sized commercial, institutional and industrial facilities, also known as "non-major" or "area" sources, pose the greatest threat to public health *in urban areas*. (Emphasis added)

At a minimum, the State should develop a phase in approach, regulating and learning from experience in regulating shops within Oregon's urban areas first (where the greatest threat resides), and then, and only after a finding of necessity, apply rules and procedures to rural (or non-metropolitan) Oregon.

I support your concept of adopting a certification program as an alternative to the permitting process for these types of shops.

Thank you for your consideration,

Kent Kelly
22543 S. Central Pt Rd
Oregon City, OR 97045

EBERSOLE Gerald

From: Ruben Garmyn [ruben@rgsold.com]
Sent: Tuesday, July 28, 2009 5:42 PM
To: FederalRule
Subject: Railroad Cement Processing Yard In Bend Oregon

Importance: High

There's a cement truck loading yard on 1st Street in Bend,OR. The yard is located in a densly populated area close to downtown and adjacent to the railroad tracks.
Trucks are loading cement and driving in and out the lot constantly, each time creating a dust cloud of a mix of cement and pumice from the lot. After filing a complaint with the agency one year the cement company treated (oiled?) the lot which made a huge difference. This year they're back to poluting our air, the dust is so bad that it clogs our air conditioning filters!!!
This can be easily solved by treating the lot on a yearly basis at the end of Spring, this should be a rule and not take a complaint to be taken care of.
Thank you.
Ruben Garmyn PC, CDPE, ABR, GRI, CRS, E-PRO
Certified Distressed Property Expert
Principal Broker \ Owner
Prudential High Desert Realty
Team Birtola-Garmyn
541- 312 - 9449
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www.linkedin.com/in/rubengarmyn
www.BendOregonRealEstate.com

EBERSOLE Gerald

From: Judy [judyabhoward@zmation.com]
Sent: Wednesday, July 15, 2009 4:30 PM
To: EBERSOLE Gerald
Subject: Proposed Adoption of Federal Air Quality Regulations

Hello Mr. Ebersole

In going through some of this documentation, I do not understand how a small company that might do minimal metal machining can be charged an annual fee the same amount as a machine shop. Is there a better way to differentiate a low and high producer? I do not understand how a company that might use a milling machine once a month to a company that uses one or multiple milling machines on a daily basis.

I appreciate any response you may have time for.
Judy

Judy A. Burcham-Howard
Zmation, Inc.
14811 NE Airport Way, Suite 200
Portland, OR 97230
503-253-8871 #101

Law Office of Dona Marie Hippert
11723 SW 47th Ave.
Portland, OR 97219

Phone: (503) 244-3415
dhippert@worldstar.com

August 26, 2009

Re: Adoption of Federal Air Quality Regulations

Mr. Gerald Ebersole
Oregon Department of Environmental Quality
Air Quality Division
811 SW 6th Ave.
Portland, OR 97204

Dear Mr. Ebersole,

I am pleased to submit these comments on behalf of Oregon Toxics Alliance (OTA) regarding the Adoption of Federal Air Quality Regulations. OTA commends DEQ on the new regulations in several respects.

As you know, OTA has conducted a long-running campaign to reduce benzene in our ambient air, and has worked with DEQ and other interested stakeholders during the course of this campaign. We are therefore extremely pleased that DEQ and the Environmental Quality Commission are implementing rules that go beyond the federal standards, both in requiring Stage I vapor recovery at a lower threshold than that required by federal law, and in implementing the first "No Topping Off" regulation in the nation. We look forward to partnering with DEQ on this "No Topping Off" project and on reducing unnecessary idling of vehicles. The combination of these provisions will go a long way towards reducing the level of benzene in our airshed and in our lungs.

OTA has only recently started to work with the Dry Cleaning Advisory Committee. We appreciate the willingness of some Dry Cleaners to use less toxic solvents than perchloroethylene, and the relevant rules that aim to encourage this conversion. OTA feels that there is no necessity for ANY Dry Cleaner to be using perchloroethylene, in view of the fact that suitable alternatives exist that are much less injurious to public health. We understand that economic and other considerations make many Dry Cleaners hesitant to switch to these alternatives, but hope that in working together with the business owners we can progress towards this goal.

With regard to the Dry Cleaner regulations, OTA feels that it is very important to ensure that Dry Cleaners are complying with the requirements, and adequate enforcement oversight is exercised by DEQ. Specifically, it should be verified that a Dry Cleaner has indeed changed ownership, and is not merely changing the name of the business in order to avoid the three year waiting period to re-register. OAR 340-210-0120(3). OTA also supports DEQ's decision to automatically terminate a registration for which fees are more than 90 days past due. OAR 340-210-0100(4)(d). The registered business will receive a pre-termination notice, and provisions are made in the rules for cases of financial

hardship to make alternative payment arrangements. If a business owner is unable to contact DEQ and arrange for alternative payment arrangements in a timely manner, one would suspect that there may be other compliance problems as well. OTA would encourage additional provisions to ensure that businesses are complying with the applicable requirements, as there have been compliance problems in the past. DEQ should implement sufficiently stringent recordkeeping and reporting requirements to ensure that this does not occur.

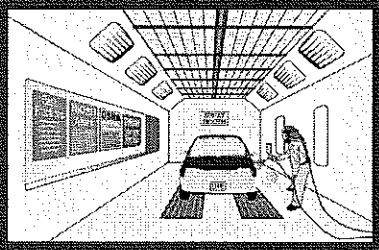
Thank you again for the opportunity to comment on these rule changes, and for going 'above and beyond' in adopting provisions more stringent than those that federal law mandates.

Respectfully yours,

Dona Marie Hippert
Board President, Oregon Toxics Alliance

Department of Environmental Quality

Proposed Adoption of Federal Air Quality Regulations



Jerry Ebersole
DEQ - AQ Division

Department of Environmental Quality

Definitions

- HAP:
  - Hazardous air pollutant
- NESHAP:
  - National emission standards for hazardous air pollutants
- Area source:
  - Has potential to emit:
    - <10 tons/year of a single HAP, and
    - <25 tons/year of all HAPs

Department of Environmental Quality

What is addressed by this rulemaking?

- New area source NESHAPs
- General ACDP issuance
- General ACDP attachments
- Registration as an alternative to permitting
- Permitting of dry cleaners
- Gasoline dispensing rules
- Utility mercury rule

Department of Environmental Quality

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- General ACDP attachments
- Registration as an alternative to permitting
- Permitting of dry cleaners
- Gasoline dispensing rules
- Utility mercury rule

Department of Environmental Quality

Questions?

State of Oregon
Department of Environmental Quality Memorandum

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item Q, temporary rule adoption: Adoption of greenhouse gas reporting fees
December 10-11, 2009 EQC meeting

Why this is important

Global warming poses a serious threat to Oregon's economy, environment and public health. Greenhouse gas reporting is crucial for Oregon to track and evaluate its greenhouse gas emissions. The Environmental Quality Commission adopted greenhouse gas reporting rules in 2008. Recent legislation authorized EQC to establish fees to cover the anticipated costs of developing and implementing Oregon's reporting program. This temporary rulemaking proposes fees to cover the Department of Environmental Quality program costs in 2010.

DEQ recommendation and EQC motion

DEQ recommends that EQC:

- Adopt proposed rule amendments as presented in attachment A[a] to create fees for sources subject to Oregon's greenhouse gas reporting rules, pursuant to ORS 468A.050(1)(4)(a), for the 2010 calendar year; and
- Adopt the justification for temporary rules as provided in attachment B.

[a] The proposed amendments to OAR 340-216-0020 Table 2 are in addition to, and are not intended to repeal, any amendments to Table 2 adopted by the EQC pursuant to agenda item P, rule adoption: Adoption of federal air quality regulations (December 10-11, 2009). A table showing the amendments proposed both in this item and in agenda item P is set out in attachment A1 to this staff report.

Background and need for rulemaking

The Oregon Legislature adopted House Bill 3543 in 2007 to create a Global Warming Commission and Climate Change Research Institute and to establish state greenhouse gas reduction goals. Oregon also joined the Western Climate Initiative in 2007. WCI is a collaboration of seven western states and four Canadian providences, through which Oregon committed to participate in a regional greenhouse gas reporting system known as The Climate Registry. Governor Kulongoski asked EQC to consider adopting greenhouse gas reporting rules.

Greenhouse gas reporting will help DEQ understand Oregon's overall emissions, which will better equip DEQ and EQC to evaluate progress toward state greenhouse gas reduction goals, pursue local policies and actions to reduce

emissions, and inform and shape national policies in ways that benefit Oregon residents and businesses. EPA recently finalized national reporting rules, and it is important to continue Oregon's reporting program. Oregon's program has a lower emissions threshold than the federal rule and will provide DEQ with more comprehensive information about Oregon's emissions than the federal program is able to do at this time.

EQC adopted rules in 2008 that require certain industrial sources, in-state power generators, landfills, wastewater treatment plants and electricity and natural gas transmission and distribution systems to report annual greenhouse gas emissions to DEQ. In 2009, the Legislature passed Senate Bill 103, seen in attachment C, authorizing the fees in this proposed temporary rule. The Legislature also passed DEQ's 2009-2011 budget, which included two staff positions and associated program costs supported by fees. In response to concerns about the economy, DEQ reduced the number of staff positions that it requested from the Legislature from four positions to two and requested that these positions be phased in over the 2009-2011 biennium. DEQ needs the revenue from the proposed fees to conduct rulemaking, establish reporting protocols, provide workshops and technical assistance to affected sources, audit reports, continue developing Oregon's greenhouse gas reporting database and prepare for information exchange with EPA.

DEQ needs the proposed temporary rules to implement the reporting program in early 2010 in order to prepare the reporting database, finalize reporting protocols and provide adequate assistance to affected sources before sources are required to report emissions to DEQ. Whether adopted by temporary or regular rules, sources subject to greenhouse gas reporting will be assessed the same fees because state law authorizes EQC to set fees at levels to cover anticipated costs of the program. The greenhouse gas reporting advisory committee recommended the proposed fee structure. DEQ plans to propose regular rules in 2010 with additional advisory committee process and public involvement.

Effect of rule

The proposed temporary rule amendments would establish fees for the 2010 calendar year for the sources subject to Oregon's greenhouse gas reporting rules that are required to obtain permits pursuant to ORS 468A.040, ORS 468A.155 or ORS 468A.310. DEQ estimates based on 2008 fuel use data that approximately 180 sources would be subject to the proposed temporary rule amendments. This includes a subset of sources that hold air contaminant discharge permits with DEQ, such as frozen food plants and asphalt pavement plants. This also includes a subset of sources that hold operating permits with DEQ under Title V of the federal Clean Air Act, such as pulp and paper mills and in-state power generators.

The proposed temporary rule amendments would establish fees that are equal to

fifteen percent of the permit fees currently paid by affected sources; however, DEQ will cap the proposed fees at $6,000 for any individual source. The table below describes the estimated numbers of affected sources by permit type, their current permit fees and the fees proposed by this rulemaking. Sources holding air contaminant discharge permits currently pay annual fees by permit type. Sources holding Title V operating permits currently pay annual fees correlated with their emissions of regulated air pollutants. DEQ would collect the proposed 2010 fees through a supplemental invoice. Revenue from the proposed fees would fund the greenhouse gas reporting program through 2010 and would be used only for program expenses.

Proposed fees and approximate numbers of sources by permit type and current fee levels:

Air contaminant discharge permit types:	**Number of sources**	**Current permit fee**	**Proposed greenhouse gas reporting fee**
Basic	1	$360	$54
General 1	5	$720	$108
General 2	31	$1,296	$194
General 3	10	$1,872	$281
Simple Low	4	$1,920	$288
Simple High	6	$3,840	$576
Standard	50	$7,680	$1,152
Title V permits	**Number of sources**	**Current permit fee (range)**	**Proposed greenhouse gas reporting fee**
	30	$7,100 - $24,999	15 percent ($1,065 - $3,749)
	28	$25,000 - $49,999	15 percent up to $6,000 ($3,750 - $6,000)
	14	$50,000 or more	$6,000

Commission authority

EQC has authority to take this action under ORS 468A.050.

Stakeholder involvement

DEQ worked with stakeholders in 2009 on the development and passage of Senate Bill 103, which authorized EQC to establish fees to fund the greenhouse gas reporting program.

DEQ developed the fee structure proposed in this rulemaking based on recommendations from Oregon's greenhouse gas reporting advisory committee. In September 2009, DEQ reconvened the committee that helped develop initial greenhouse gas reporting rules adopted by EQC in 2008. Attachment D shows advisory committee membership.

DEQ asked the committee to help establish a fee structure based on several options. The committee discussed this fee proposal at three meetings and made final recommendations in November 2009. Notes from the first two meetings are shown in Attachments E and F; however, DEQ did not have time to prepare notes for the November meeting as an attachment to this staff report. Although some members raised concern about the overall cost of the program and fee levels, the committee agreed that charging fees based on a percentage of a source's current permit fee with a cap is the best approach for structuring the fees. The committee made the following recommendations as part of its recommendation for the fee structure proposed in this rulemaking:

- The fee structure should apply to only the first year of the program and does not set a precedent for the structure of future years' fees.
- If additional reporters are subject to greenhouse gas reporting fees in future years, the fees should be readjusted so that year one fee payers are not unfairly penalized with covering the upfront costs of the reporting program.

The committee will continue to meet through early 2010 to discuss and provide recommendations for future years' fees and other updates to the greenhouse gas reporting program for planned regular rulemaking in 2010.

In September 2009, DEQ sent letters to potentially affected sources. The letters described the need to update the reporting program and DEQ's intent to propose this temporary rulemaking. The letters also described opportunities to comment on this proposal at the advisory committee meetings and the potential for a supplemental invoice. DEQ sent follow-up letters in November 2009 about this temporary rulemaking proposal, posted information about these topics on its program website and sent updates to sources and interested parties that provided e-mail contact information to DEQ.

Public comment

While no formal public comment period is required for adoption of temporary rules, DEQ accepted comments during development of this proposal through an informal process. Advisory committee meetings were open to the public and the committee accepted public comment at each meeting. Based on written comments submitted to DEQ, DEQ provided the committee additional time to evaluate fee options before making final recommendations on this proposal. DEQ will proceed with the required public notice and comment process when it conducts regular rulemaking in 2010.

Key issues

If EQC did not approve the temporary rules, but required DEQ to proceed with a regular rulemaking, the rulemaking would not be complete in time to provide funding for DEQ's work assisting sources to comply with the reporting rule. However, it is also possible that the new fees could create budgeting difficulties for affected sources. To help sources budget for the new fees, DEQ has communicated with affected sources about this proposal and the potential for supplemental invoices since September 2009.

Next steps

If EQC adopts the temporary rules, the fees will become effective Jan. 1, 2010. DEQ will issue invoices with the approved fees in January with payment due in February 2010. DEQ will propose a regular rulemaking in mid-2010 to make the new fee permanent. During the regular rulemaking, DEQ could propose fees for future years and make other updates to the program.

Attachments

A. Proposed Rule Revisions
A1. OAR 340-216-0020 Table 2 showing amendments proposed both in this item and in agenda item P.
B. Statement of need and justification
C. Senate Bill 103
D. Advisory committee membership
E. Advisory committee meeting notes from September 2009
F. Advisory committee meeting notes from October 2009

Available upon request

1. ORS 468A.050
2. 2009-2011 Legislatively Approved Budget
3. Fiscal year 2010 revenue forecast

Approved:

Section:

Division:

Report prepared by: Andrea Curtis
Phone: (503) 229-6866

Oregon Department of Environmental Quality

Proposed Rule Changes

DIVISION 215

GREENHOUSE GAS REPORTING REQUIREMENTS

340-215-0050

Greenhouse Gas Reporting Fees

(1) Any person required to register and report under OAR 340-215-0030(1)(a) must submit greenhouse gas reporting fees to the Department as specified in OAR 340-220-0050(4). The fees must be received by the Department within 30 days after the Department mails the fee invoice.

(2) Any person required to register and report under OAR 340-215-0030(1)(b)-(c) must submit greenhouse gas reporting fees to the Department as specified in OAR Chapter 340, Division 216, Table 2, Part 3. The fees must be received by the Department within 30 days after the Department mails the fee invoice.

Stat. Auth.: 468A.050
Stats. Implemented: ORS 468 & 468A

DIVISION 216

AIR CONTAMINANT DISCHARGE PERMITS

340-216-0020 Table 2

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a. Short Term Activity ACDP	$3,000.00
b. Basic ACDP	$120.00
c. Assignment to General ACDP	$1,200.00
d. Simple ACDP	$6,000.00
e. Construction ACDP	$9,600.00
f. Standard ACDP	$12,000.00
g. Standard ACDP (PSD/NSR)	$42,000.00

Part 2. Annual Fees: (Due 12/1 for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		$NA
b. Basic ACDP		$360.00
c. General ACDP	(A) Fee Class One	$720.00
	(B) Fee Class Two	$1,296.00
	(C) Fee Class Three	$1,872.00
	(D) Fee Class Four	$360.00
	(E) Fee Class Five	$120.00
d. Simple ACDP	(A) Low Fee	$1,920.00
	(B) High Fee	$3,840.00
e. Standard ACDP		$7,680.00

Part 3. Specific Activity Fees:

a. Non-Technical Permit Modification (1)	$360.00
b. Non-PSD/NSR Basic Technical Permit Modification (2)	$360.00
c. Non-PSD/NSR Simple Technical Permit Modification(3)	$1,200.00
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	$6,000.00
e. Non-PSD/NSR Complex Technical Permit Modification (5)	$12,000.00
f. PSD/NSR Modification	$42,000.00
g. Modeling Review (outside PSD/NSR)	$6,000.00
h. Public Hearing at Source's Request	$2,400.00
i. State MACT Determination	$6,000.00
j. Compliance Order Monitoring (6)	$120.00/month
k. Greenhouse Gas Reporting, as required by OAR 340-215-0050(2), due in Calendar Year 2010	15% of the applicable annual fee in Part 2

Part 4. Late Fees for annual fees and greenhouse gas reporting fees:

a. 8-30 days late 5% ~~of annual fee~~
b. 31-60 days late 10% ~~of annual fee~~
c. 61 or more days late 20% ~~of annual fee~~

1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.

2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.

3. Simple Technical Modifications include, but are not limited to, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test

dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.

4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.

5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgment by the Department, and similar changes.

6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

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 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.

(4) The Department will assess the following specific activity fee for an Oregon Title V Operating Permit program source for greenhouse gas reporting, as required by OAR 340-215-0050(1), due in calendar year 2010—Fifteen percent of the following, not to exceed $6,000:

(a) The applicable annual base fee paid for the period 11/15/2009 to 11/14/2010; and

(b) The applicable annual emission fee paid for emissions during calendar year 2008.

*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

Oregon Department of Environmental Quality

Amendments proposed in Agenda Items P and Q
(December 10-11, 2009)
to OAR 340-216-0020 Table 2

The amendments proposed in Agenda Item P affect Parts 1 and 2 of the Table. The amendments proposed in Agenda Item Q affect Parts 3 and 4 of the Table.

DIVISION 216

AIR CONTAMINANT DISCHARGE PERMITS

340-216-0020 Table 2

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a. Short Term Activity ACDP	$3,000.00
b. Basic ACDP	$120.00
c. Assignment to General ACDP	$1,200.00*
d. Simple ACDP	$6,000.00
e. Construction ACDP	$9,600.00
f. Standard ACDP	$12,000.00
g. Standard ACDP (PSD/NSR)	$42,000.00

*DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.

Part 2. Annual Fees: (Due 12/1* for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		$NA
b. Basic ACDP		$360.00
c. General ACDP	(A) Fee Class One	$720.00
	(B) Fee Class Two	$1,296.00
	(C) Fee Class Three	$1,872.00
	(D) Fee Class Four	$360.00
	(E) Fee Class Five	$120.00
	(F) Fee Class Six	$240.00
d. Simple ACDP	(A) Low Fee	$1,920.00
	(B) High Fee	$3,840.00
e. Standard ACDP		$7,680.00

*If the Department issues an invoice for Dry Cleaners or Gasoline Dispensing Facilities that combines fees from other Divisions on a single invoice the payment due may be extended by the Department until March 1st.

Part 3. Specific Activity Fees:

a. Non-Technical Permit Modification (1)	$360.00
b. Non-PSD/NSR Basic Technical Permit Modification (2)	$360.00
c. Non-PSD/NSR Simple Technical Permit Modification(3)	$1,200.00
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	$6,000.00
e. Non-PSD/NSR Complex Technical Permit Modification (5)	$12,000.00
f. PSD/NSR Modification	$42,000.00
g. Modeling Review (outside PSD/NSR)	$6,000.00
h. Public Hearing at Source's Request	$2,400.00
i. State MACT Determination	$6,000.00
j. Compliance Order Monitoring (6)	$120.00/month
k. Greenhouse Gas Reporting, as required by OAR 340-215-0050(2), due in Calendar Year 2010	15% of the applicable annual fee in Part 2

Part 4. Late Fees for annual fees and greenhouse gas reporting fees:

a. 8-30 days late 5% ~~of annual fee~~
b. 31-60 days late 10% ~~of annual fee~~
c. 61 or more days late 20% ~~of annual fee~~

1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.

2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.

3. Simple Technical Modifications include, but are not limited to, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.

4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by

the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.

5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgment by the Department, and similar changes.

6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

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 — Agency and Division
OAR Chapter 340 — Administrative Rules Chapter Number

Rule Caption: The proposed rule amendments would establish fees to fund Oregon's greenhouse gas reporting program.

In the Matter of: Temporary Rule Adoption: Adoption of Greenhouse Gas Reporting Fees, Divisions 215, 216 and 220

Statutory Authority: ORS 468A.050

Other Authority: N/A

Statutes Implemented: ORS 468 and 468A

Need for the Temporary Rule(s): Greenhouse gas reporting is crucial for Oregon to track and evaluate its greenhouse gas emissions. The Environmental Quality Commission adopted greenhouse gas reporting rules in 2008. Recent legislation authorized EQC to establish fees to cover the anticipated costs of developing and implementing Oregon's reporting program. This temporary rulemaking proposes fees to cover the Department of Environmental Quality program costs in 2010. DEQ needs the revenue from the proposed fees to conduct rulemaking, establish reporting protocols, provide workshops and technical assistance to affected sources, audit reports, continue developing Oregon's greenhouse gas reporting database and prepare for information exchange with EPA now that the federal government has finalized national reporting rules.

Documents Relied Upon: Documents relied upon are available by contacting DEQ or online as follows:

- Senate Bill 103 (2009) (a public law number is not yet available): http://www.leg.state.or.us/09reg/measures/sb0100.dir/sb0103.en.html
- ORS 468A: http://www.leg.state.or.us/ors/468a.html
- 2009-2011 Legislatively approved budget
- DEQ fiscal year 2010 revenue forecast

Justification of Temporary Rule(s): The Commission finds that failure to adopt the temporary rules will result in serious prejudice to the public interest because it will have the following consequences:

EQC adopted Oregon's greenhouse gas reporting rules in 2008. While DEQ did not have resources to implement the reporting rules at the time of EQC adoption, EQC and DEQ anticipated the passage of the 2009 legislation that authorized EQC to establish fees to fund the program; DEQ would not be able to implement Oregon's reporting rules without fee revenue.

DEQ needs the proposed temporary rules to implement the reporting program in early 2010 in order to prepare the reporting database, finalize reporting protocols and provide adequate assistance to affected sources before sources are required to report emissions to DEQ. DEQ was unable to propose the fees through a regular rulemaking after the legislative session ended in July 2009 and before DEQ needs to collect revenue to staff the program. If EQC did not approve the temporary rules, but required DEQ to proceed with a regular rulemaking, the rulemaking would not be complete in time to provide funding for DEQ's work assisting sources to comply with the reporting rule. Whether adopted by temporary or regular rules, sources subject to greenhouse gas reporting will be assessed the same fees because state law authorizes EQC to set fees at levels to cover anticipated costs of the program. The greenhouse gas

reporting advisory committee recommended the proposed fee structure. DEQ plans to propose regular rules in 2010 that would supplement the advisory committee process and public involvement that DEQ performed for this temporary rulemaking.

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 the new 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 Commission)

Date Signed

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled
Senate Bill 103

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession 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 fees for air contamination sources; creating new provisions; amending ORS 468A.050; and declaring an emergency.

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

SECTION 1. ORS 468A.050 is amended to read:

468A.050. (1) By rule the Environmental Quality Commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Department of Environmental Quality and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution.

(3) By rule the commission may establish a schedule of fees for the registration of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain a permit under ORS 468A.040 or 468A.155 but chooses instead to register if allowed by the commission by rule. The commission shall base the fees on the anticipated cost of developing and implementing programs related to the different classes, including but not limited to the cost of processing registrations, compliance inspections and enforcement. A registration must be accompanied by any fee specified by the commission by rule, and a subsequent annual registration fee is payable as prescribed by rule of the commission.

(4)(a) By rule the commission may establish a schedule of fees for reporting of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject to the federal operating permit program pursuant to ORS 468A.310.

(b) Before establishing fees pursuant to this subsection, the commission shall consider the total fees for each class of sources subject to reporting under this subsection and for which permits are required under ORS 468A.040 or 468A.155 or the federal operating permit program under ORS 468A.315.

(c) The commission shall limit the fees established under this subsection to the anticipated cost of developing and implementing reporting programs. Any fees collected under this subsection for any air contamination source issued a permit under ORS 468A.040 or 468A.155 or sources subject to the federal operating permit program under ORS 468A.310 must be collected as part of the fee for that specific permit.

SECTION 2. Except as provided in section 3 of this 2009 Act, the amendments to ORS 468A.050 by section 1 of this 2009 Act become operative on January 1, 2010.

SECTION 3. The Environmental Quality Commission may adopt rules before the operative date specified in section 2 of this 2009 Act or take any action before that date that is necessary to carry out the amendments to ORS 468A.050 by section 1 of this 2009 Act.

SECTION 4. The amendments to ORS 468A.050 by section 1 of this 2009 Act apply to classes of air contamination sources classified before, on or after the effective date of this 2009 Act.

SECTION 5. 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 April 28, 2009

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Secretary of Senate

.....
President of Senate

Passed by House June 1, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State

Attachment D
December 10-11, 2009 EQC meeting

Oregon Greenhouse Gas Reporting Advisory Committee
Member List

Name	Affiliation
Mark Reeve, Chair	Reeve Kearns PC
Michael Armstrong	City of Portland Office of Sustainable Development
Pam Barrow	Northwest Food Processors Association
Shanna Brownstein	The Climate Trust; The Offset Quality Initiative
Kyle Davis	PacifiCorp
Angus Duncan	Bonneville Environmental Foundation
Jim Edelson	Oregon Interfaith Global Warming Campaign
Ed Elliott	Northwest Propane Gas Association
Lee Fortier	Dry Creek Landfill
Janet Gillaspie	Oregon Association of Clean Water Agencies
Don Haagensen	Cable Huston et al./Waste Management
Brock Howell	Environment Oregon
Bob Jenks	Citizens' Utility Board of Oregon
Suzanne Lacampagne	Miller Nash LLP/Associated Oregon Industries
Brendan McCarthy	Portland General Electric
Holly Meyer	NW Natural
Tom O'Connor	Oregon Municipal Electric Utilities Association
Lynne Paretchan	Perkins Coie LLP
Danelle Romain	Oregon People's Utility District Association; Oregon Petroleum Association
Scott Stewart	Intel Corporation
Kathryn VanNatta	Northwest Pulp and Paper Association
Sandy Flicker	Oregon Rural Electric Cooperative Association
Tom Wood	Stoel Rives/Ash Grove Cement
Tom Zelenka	Schnitzer Steel/Cascade Steel Rolling Mills
Ex-officio members	
Andy Ginsburg	Oregon Department of Environmental Quality, Air Quality Division Administrator
Uri Papish	ODEQ, Air Quality Program Manager
Peter Cogswell	Bonneville Power Administration
Diana Enright	Oregon Department of Energy, Assistant Director
Merlyn Hough	Lane Regional Air Protection Agency, Director

Oregon Greenhouse Gas Reporting Advisory Committee

Meeting Notes

September 23, 2009
DEQ Northwest Region
9:00 a.m. – 4:00 p.m.

Overview

Oregon's greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon's greenhouse gas reporting rules. The committee plans to hold five meetings from September 2009 through January 2010. The following is a summary of the committee's discussion at its first meeting. Department of Environmental Quality responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting.

Attendance

Advisory committee members	Member substitutes/additional representation
Mark Reeve, Chair - Reeve Kearns PC	Bill Casey - Portland General Electric
Pam Barrow - Northwest Food Processors Association	Michele Crim - City of Portland Office of Sustainable Development
Kyle Davis - PacifiCorp	John Ledger - Associated Oregon Industries
Angus Duncan - Bonneville Environmental Foundation	Catriona McCracken - Citizens' Utility Board of Oregon
Ed Elliott - Northwest Propane Gas Association	Paul Romain - Oregon Petroleum Association
Lee Fortier - Dry Creek Landfill	Adam Turco - NW Natural
Janet Gillaspie - Oregon Association of Clean Water Agencies (ACWA)	
Don Haagensen - Cable Huston et al./Waste Management	Others in attendance
Brock Howell - Environment Oregon	Peter Cogswell - Bonneville Power Administration
Suzanne Lacampagne - Miller Nash LLP/Associated Oregon Industries	Andy Ginsburg - ODEQ
Brendan McCarthy - Portland General Electric	Uri Papish - ODEQ
Tom O'Connor - Oregon Municipal Electric Utilities Association	Matthew Lee - Lane Regional Air Protection Agency
Lynne Paretchan - Perkins Coie LLP	Vijay Satyal - Oregon Department of Energy
Danelle Romain - Oregon People's Utility District Association; Oregon Petroleum Association	Brandy Albertson - ODEQ
Scott Stewart - Intel Corporation	Andrea Curtis - ODEQ
Kathryn VanNatta - Northwest Pulp and Paper Association	Margaret Oliphant - ODEQ
Kevin Watkins - Oregon Rural Electric Cooperative Association	
Tom Wood - Stoel Rives/Ash Grove Cement	
Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills	

Welcome

Mr. Reeve gave an overview of the agenda (handout) and meeting formalities. Staff, committee members and the public introduced themselves.

Draft charter

Mr. Reeve gave an overview of the draft charter (handout) and explained the purpose, process, roles and expectations of committee members. The committee's first task is to address the first year of fees for sources subject to the existing rules to fund the program as authorized by SB 103 (2009). The committee would then address the substance of the reporting rules to implement SB 38 (2009), which authorized the Environmental Quality Commission to create reporting requirements for power importers and fuel distributors; future years' fees including possible legislation for fee authority over SB 38 reporters; and alignment of Oregon's rules with the federal rules and WCI. The public comment period during committee meetings is an important opportunity to provide public involvement to the committee.

Discussion highlights:

- The committee may not agree on recommendations. In those cases, DEQ will note the disagreement in its report to EQC.
- The committee should take legislation at face value and not argue policy choices made by the Legislature. A member asked whether the committee would review legislative history for context and raise that to the committee. *Response: Yes, if it applies to the committee's charge.*
- Members must portray draft documents as drafts in regards to communication and media coverage.
- Members asked whether it is within the committee's scope to address aligning Oregon's rules with the federal rules, including cases where the federal rules differ from WCI's essential elements. Members noted that WCI would need to reconcile its essential elements now that federal rules have been adopted. *Response: It's within the committee's scope to address these issues. DEQ needs to streamline its rules to avoid redundant requirements with the federal rule, but does not intend to revise the reporting threshold.*
- The committee requested the following revisions to the draft charter:
  - Fees should cover the costs of efficiently operating the reporting program (section 3.1.d).
  - People who wish to discuss the proposal are encouraged to contact project staff, not committee members (section 4).
  - Now that federal reporting rules have been adopted, reconciling Oregon's rules with the federal rules will be prioritized and distinct from reconciling Oregon's rules with WCI's essential elements.

Timeline

Mr. Reeve reviewed the committee's tentative timeline (handout). For EQC to adopt temporary rules for year one fees in December, the committee must make recommendations on fee options by October 19, 2009, the committee's next meeting. DEQ has internal deadlines to prepare and provide rulemaking materials for EQC in advance of the December EQC meeting. DEQ will remove discussion of WCI essential elements from the October meeting and incorporate discussion of the federal rules into a future meeting.

Discussion highlights:

- A member noted that reporters will be doing their 2010 budgets and the supplemental invoice for the new fees will be a rub. *Response: DEQ notified reporters about the fee proposal and the potential for a supplemental invoice.*
- A member noted there were timing issues with reviewing fiscal impacts in the previous advisory committee. *Response: We expect to be far enough along with components of the rules by January 2010 to review fiscal impacts; however, it's possible that the committee would need to delay the fiscal review.*
- It would be a waste of time for the regulated community to learn the WCI protocols when they will later learn the federal protocols. As a policy choice, we should move to the federal protocols now. A member requested the committee discuss 2009 protocols at the October meeting. *Response: DEQ didn't intend protocols to be a focus of this committee; however, DEQ is open to a discussion about substituting the federal protocols.*

Background information
Mr. Papish gave a presentation (PowerPoint and handout) on the greenhouse gas reporting program and the new reporters added by SB 38 section 2. DEQ originally planned to approve WCI protocols to be consistent with other states; however, it may re-notice with the federal protocols.

Discussion highlights:

- Several members suggested that comparing Oregon's direct emissions (for all things produced in state) to indirect emissions (for all things produced out of state for use in Oregon) would inform policy decisions. A member noted that this looks at consumption-based vs. generation-based inventories and that the role of committee is not to debate decisions made by the Legislature. Another member noted that electricity generation is straightforward and companies already report this data; we'd need to consider costs to industry and the state if we were to talk about other goods and products in an analogous way. *Response: DEQ is working on a consumption based greenhouse gas emissions inventory on goods and waste. The original legislation included importers of power and products, but products were removed.*
- A member suggested that while the largest emitters are mobile sources, the reporting requirements focus on small emitters. Removing out-of state emissions from the picture would show that transportation is a huge contributor of emissions. *Response: We're looking for ways to go upstream to get emissions information from the transportation sector and heating fuels sector. The original advisory committee recommended that Oregon rules not have a threshold, but that the reporting requirements apply to all permitted facilities. This would have cast the net broadly; however, we needed to balance reporting against the practicality of collecting data. While Oregon has authority to require reporting from all sources of greenhouse gas emissions in the state, including mobile sources, this would've been complicated and burdensome.*
- A member requested that Oregon look at emissions upstream, such as wholesalers of propane; going downstream is burdensome and onerous. *Response: One of the charges for the committee is to help determine who to get the data from.*
- A member suggested that the statute gives discretion to EQC. The committee should consider whether EQC should adopt rules at all. *Response: The committee can address this topic; however, statutory language is generally written this way to provide EQC sufficient time to adopt rules.*
- Members discussed duplicative reporting created by the state rule. The federal rule applies to other states and requires reporting from the power importer companies that would also be subject to Oregon's rules. There's concern about who has to compile the data, the implications and transaction costs for these companies, and the value to Oregon. A member asked if fuel suppliers would deduct quantities that they supply to other reporting entities to avoid double reporting. *Response: Emissions from power importers is covered under Oregon's statewide goal and will enable us to evaluate Oregon's carbon footprint and benefit public education programs among other things. There will be some double reporting, which we'll account for when looking at Oregon's overall emissions.*

2009 Legislative Session
Mr. Ginsburg gave a presentation (PowerPoint and handout) on SB 103, which authorized EQC to create fees for reporters. He also reviewed SB 38 section 3, which asks DEQ to evaluate whether fees should be assessed to the SB 38 reporters. Mr. Ginsburg outlined the reporting program staff positions that DEQ requested during the 2009 legislative session and the positions that the legislature approved.

Discussion highlights:

- Members asked whether there would be multiple invoices, resulting in multiple compliance requirements; and about the invoice schedules in other DEQ programs. *Response: With exception to the first year, DEQ would issue the new fees with the air quality invoices already issued to reporters. Other DEQ programs have different invoice schedules. While some fee payers would prefer to receive all invoices at once, others prefer their invoices be spread out over time.*
- A member suggested that we need legal analysis of the Legislature's authority to create fees for SB 38 reporters (e.g. California law suite regarding disproportionate fees). *Response: DEQ doesn't believe California's situation is analogous to Oregon's; however, this is something worth looking into.*

- A member asked whether the federal rules require federal agencies (e.g. Bonneville Power Administration) to report and if there are fees. *Response: Federal agencies are required to report. We don't know if BPA meets the reporting threshold. The federal rule doesn't include fees.*

2009 Legislature Approved Budget
Mrs. Oliphant gave a presentation outlining the greenhouse gas reporting program budget, including expenditures, the legislatively approved budget and fee revenue requirements.

Discussion highlights:

- A member asked whether the increases in expenditures are set or approved by the Legislature. *Response: The Department of Administrative Services determines the state budget cost increases and the actual increases largely depend on union contract negotiations. The increases DEQ presented are middle-ground estimates that avoid over or under estimating expenditures.*
- DEQ has included a 5-6 month ending balance in annual revenue requirements. Members asked whether the Legislature could sweep ending balances. *Response: Sweeps are very rare and typically aimed at larger pools of money. DEQ would evaluate lowering the fees if the program's ending balance got too high.*
- Members asked whether development of the database is included in expenditures, where DEQ would apply contract dollars and what funds DEQ already has for the project. Members noted concern about equity for reporters vs. fee payers, including whether year-one fee payers and contract dollars would subsidize the program for future reporters. A member suggested that the amount of revenue DEQ would collect from year-one fee payers is a policy question. *Response: DEQ has included contract dollars of $125,000 per year to help fund database work. While we expect to use all of the contract dollars on the database, any amount left over might go toward protocol development and into the program's budget, which could postpone future fee increases. DEQ received a grant from EPA and these funds were used to start the project. DEQ will provide a breakdown of the contract dollars at the October meeting. EQC is authorized to create fees only for the sources subject to the existing rules. One of the committee's tasks is to decide how to handle inequities, including whether there should be legislation to authorize fees for SB 38 reporters, which would spread the cost of the program over more reporters.*

Options for year one fee schedule
Ms. Curtis gave a presentation (PowerPoint) that outlined several fee options for 2010 and criteria that could inform committee recommendations. The example fee options included a flat fee for all reporters and tiered fees by emissions, permit type and both. Criteria included whether the new fees would result in incremental cost increases relative to reporters' current permit fees; whether the fees would be proportional to quantity of emissions; whether the fees would be administratively simple for DEQ to assess; and whether the fees would result in stabile revenue for DEQ and stable costs for individual fee payers. DEQ encouraged members to suggest additional options and criteria.

Discussion highlights:

- Members noted that a good program would overlap the criteria and principles important to DEQ and reporters. The regulated community considers its own costs and time spent reporting; it may want minimum subsidization, minimum documentation and no duplication with EPA documents. Members discussed whether the fees should be correlated with complexity of reporting and the staff time required to process reports: some facilities with large emissions have relatively simple reports that would require little staff time, while some facilities with lower emissions have very complex reports that would require more staff time. Some members suggested that we avoid a complex fee structure that would be costly to administer and require a lot of staff time. A member noted that the reporting revenue isn't very large. *Response: One of the tasks for the committee is to decide on optimal solutions. Administrative simplicity is a benefit to both DEQ and reporters because a complex approach would require more staff resources. While assessing fees on complexity of reporting could help prevent companies from subsidizing each other, it would not be administratively simple. We need to be careful of putting too large of a fee on any single source; or putting too large of a portion of the fees on small sources.*

- Members noted that Title V fees are based on emission quantities while ACDP fees, which are much lower, and based on complexity of permit. ACDP sources tend to be much smaller than Title V sources. Whether a source has a Title V or ACDP permit is not well correlated with quantities of greenhouse gas emissions. A member noted that, unlike the Title V program, the ACDP program is not fully funded by fee revenue and that ACDP fees would be higher if it were. *Response: The ACDP program relies less on general funds than when it originated. It was originally 60% fee funded, but is now 80-95% fee funded.*
- Members questioned whether Oregon would have a cost savings in getting data from EPA; Oregon's timeframe for getting this data since the lag in timing of data transfer will not create significant health risks; and the need for DEQ to spend staff resources on quality assurance / quality control of the data when EPA's QAQC may be adequate. *Response: DEQ will need to perform QAQC to verify emissions data; this assumption is based on encounters with similar programs and EPA's use of electronic verification. While DEQ's collection of data from EPA may not be time consuming, its analysis and verification of the data will be time consuming; the program still requires two FTE. Staff levels may be re-evaluated in the future.*
- A member asked whether sources subject to federal reporting would be exempt from the fee. *Response: That's not DEQ's intent. These larger sources are responsible for the majority of stationary emissions in Oregon.*
- Based on committee discussion, DEQ will prepare the following options for the committee to review: 1. The four-tiered emission fee scenario discussed during the legislative session. 2. Charge sources a percent of their current fees. 3. Charge sources a percent of their current fees on a sliding scale, where smaller sources would pay a larger percent and larger sources would pay a smaller percent.

Adjourn

Oregon Greenhouse Gas Reporting Advisory Committee

Meeting Notes

October 19, 2009
DEQ Headquarters
9:00 a.m. – 4:00 p.m.

Overview

Oregon's greenhouse gas reporting advisory committee convened to provide input on revisions to Oregon's greenhouse gas reporting rules. The committee plans to hold meetings from September 2009 through early 2010. The following is a summary of the committee's discussion at its second meeting. Department of Environmental Quality responses to questions and comments are shown in *italics*. These are the responses DEQ provided to the committee at the meeting.

Attendance

Advisory committee members	Member substitutes and additional representation
Mark Reeve, Chair - Reeve Kearns PC	Julie Flint - Oregon People's Utility District Association; Oregon Petroleum Association
Michael Armstrong - City of Portland Office of Sustainable Development	Steve Higgs - Perkins Coie LLP
Pam Barrow - Northwest Food Processors Association	Marv Lewellen - Associated Oregon Industries
Shanna Brownstein - The Climate Trust/The Offset Quality Initiative	Catriona McCracken - Citizens' Utility Board of Oregon
Kyle Davis - PacifiCorp	
Angus Duncan - Bonneville Environmental Foundation	Guest presenters:
Jim Edelson - Oregon Interfaith Global Warming Campaign	Neil Caudill – Washington Department of Ecology
Ed Elliott - Northwest Propane Gas Association	Peter Cogswell – Bonneville Power Administration
Lee Fortier - Dry Creek Landfill	Ken Corum – Northwest Power and Conservation Council
Janet Gillaspie - Oregon Association of Clean Water Agencies	Rick Wallace – Oregon Department of Energy
Don Haagensen - Cable Huston et al./Waste Management	
Brock Howell - Environment Oregon	Others in attendance
Bob Jenks - Citizens' Utility Board of Oregon	Brandy Albertson - ODEQ
Suzanne Lacampagne - Miller Nash LLP/Associated Oregon Industries	Andrea Curtis - ODEQ
Brendan McCarthy - Portland General Electric	Bill Drumheller - ODOE
Holly Meyer - NW Natural	Maury Galbraith – Public Utility Commission
Tom O'Connor - Oregon Municipal Electric Utilities Association	Merlyn Hough - Lane Regional Air Protection Agency
Scott Stewart - Intel Corporation	Margaret Oliphant - ODEQ
Kathryn VanNatta - Northwest Pulp and Paper Association	Uri Papish – ODEQ
Tom Wood - Stoel Rives/Ash Grove Cement	
Tom Zelenka - Schnitzer Steel/Cascade Steel Rolling Mills	

Welcome
Mr. Reeve gave an overview of the agenda (handout). Staff and committee members introduced themselves.

Approval of draft charter
Mr. Reeve requested comments and approval on the draft charter, which DEQ revised based on committee input at the September meeting. The committee approved the charter after confirming that it would address alignment of Oregon's reporting requirements with WCI only for the purposes of imported power. The WCI model rule contains reporting requirements for imported power while the federal rule does not.

Approval of draft meeting notes
Mr. Reeve requested comments and approval on the draft notes from the committee's September meeting. The committee approved the notes with a recommendation for the notes to explain that DEQ's responses are the responses DEQ provided to committee members at the meeting.

Recommendation on the structure for year one fees
Ms. Curtis gave a presentation (handout and PowerPoint) on fee options. The purpose of this agenda item was for the committee to make recommendations on the structure for year one fees.

DEQ estimates that 143 businesses are subject to the existing greenhouse gas reporting rules. These businesses hold state Air Contaminant Discharge Permits or federal Title V operating permits. Because DEQ estimated source emissions using previously reported fuel, the actual number of reporters may be larger or smaller.

Of the four fee options presented, the frameworks for options one, two and three were requested by the committee at its September meeting; DEQ developed option four as a hybrid of options one through three.

Options:
1. Charge reporters a percent of their air quality permit fees with a cap: 15% with a cap of $9,000
2. Charge reporters on a sliding scale where small sources pay a larger percent of their air quality permit fees than large sources: 15% (smaller sources) to 12% to 9% to 6% (larger sources) with a cap of $20,000. This option has a fairness problem for sources near the threshold of each tier.
3. The four-tiered emission fee scenario illustrated during the 2009 legislative session. This would be the most complex option for DEQ to implement and could result in large fee increases (e.g. 400%) relative to sources' current permit fees.
4. Charge smaller sources based on permit type (15%) and charge larger sources on a three-tiered emission fee scenario. This option limits the percent increase in permit fees paid by any source to 109%.

The committee appeared to reach a general consensus around option one. Before making this recommendation, the committee heard the two subsequent agenda items (additional budget information and public comment) and discussed requests that DEQ received outside of the meeting. DEQ received requests from interested parties that the committee delay its recommendations on year one fees. This would provide additional time for the committee and other stakeholders to evaluate the options and help ensure an informed decision is made. In response to the requests, DEQ emphasized the importance of public input and suggested that it accept the committee recommendations as tentative and asked that the committee finalize recommendations on fees at the next meeting. While some members felt a delay was unnecessary, others supported this action and requested that DEQ provide the draft rule language before the committee's next meeting.

Discussion points:
- Some members thought that the fees for year one should parallel how DEQ currently assesses permit fees to reduce the surpise of the new fee on permitted reporters. The framework for future years could

be structured differently since unpermitted facilities will come into the program. There was concern that changing the structure after year one would create administrative complexity and confusion for the regulated community.

- Some members like the idea of an emissions based fee structure, especially long term, and in some ways preferred option four to option three to avoid significant increases in sources' current fees. There was concern that some sources (e.g. landfills) would incur large emission fees because greenhouse gas emissions quantities are assessed on CO_2 equivalent. A member stated that the legislative intent was for a tiered emissions based fee structure so that all reporters share the costs of program, as opposed to only permitted facilities paying for program. A member noted a disparity in establishing the new fee based on a percent of current permit fees because existing ACDP fees don't pay for the entire cost of ACDP program, whereas Title V fees pay for the entire cost of the Title V program. Members recognized that it would be complicated for DEQ to implement a fee structure based on emissions in year one since DEQ does not yet have good emissions data.
- Some members thought that the fee should be correlated with DEQ's cost to process the emissions reports from reporters. Others felt that the fee is intended to cover program costs, which are not correlated with emissions or complexity of the emissions report.
- A member noted that efforts to achieve equity increase complexity and suggested that the amount of the fee is not a serious price signal for greenhouse gas emissions.
- Several members felt that no source should experience a new fee of greater than 100 percent of their current permit fees.
- Members preferred not putting too much revenue on small sources, especially when the numbers of small sources is undetermined. One member suggested that DEQ not collect fees from facilities that emit between 2,500 and 25,000 tons of greenhouse gas emissions because these sources account for a small percent of the total emissions.
- Many members supported option one for its simplicity, including the representatives of year one fee payers. Members asked that the fee sunset after year one and that the cap be established by rule.
- Several members who do not represent year one fee payers suggested that the opinions of fee payer representatives carry the most weight in the committee's recommendation on year one fees.
- Some members suggested that the fee structure reconcile the subsidization of the program by year one fee payers.
- Some members asked that program costs be reevaluated; that the ending balance is too high of a burden on year one fee payers and that it's questionable whether the program is the appropriate size. The committee Chair noted that the committee's task is to make recommendations on a fee structure that covers program costs, regardless of whether program costs were adjusted.

DEQ response:

- *DEQ is sensitive to a small business having a significant fees increase; but agrees that an emission-based structure is desirable because it could apply to the non-permitted facilities that will be subject to the program. DEQ believes option four addresses both of these issues and that this option seems equitable in that it prevents a Title V source that has low greenhouse gas emissions but which pays high Title V fees from having high greenhouse gas reporting fees. It takes a lot of effort for DEQ to bill on emissions in DEQ's Title V program, but this approach could be streamlined in the greenhouse gas reporting program.*
- *DEQ agreed that option one would be the most straight forward and easiest option to implement.*
- *While we could establish a different fee structure for future years' fees, ideally, the committee would determine a structure for year one that could be used long term.*
- *DEQ's largest costs are not in acquiring the data, but in what we do with the data (e.g. analysis, quality assurance, costs of rulemaking and seeking public input).*

- *DEQ recommended that the committee discuss options to reconcile subsidization when it addresses the structure for future years' fees. Unlike the private sector, state agencies can't borrow money to develop the reporting program and can't obligate money in a given biennium to a future biennium.*

Additional information on 2009 Legislature approved budget
Mrs. Oliphant gave a presentation (PowerPoint) on contract dollars budgeted for the greenhouse gas reporting program. This information was requested by the committee to supplement budget information presented at the previous meeting. DEQ will use contract dollars to complete its reporting database, prepare for information exchange with EPA and modify its permit database for tracking greenhouse gas reporters.

Discussion points:

- While some members felt that DEQ's budget for the database was appropriate, others suggested that DEQ re-evaluate the program budget and the cost and need for the database, if not now, then in the next biennium. A member advocated that DEQ develop a simpler program, suggesting that the budget is too large to collect information from a relatively small number of reporters (about 140 in 2010), DEQ doesn't yet know the quality of information it will receive from EPA and doesn't know if its system will serve Oregon's future policy needs. Since the large sources account for the majority of emissions from the year-one source universe and this information will come from EPA, some members are concerned about the appropriate infrastructure for obtaining information from smaller sources for a small percentage of emissions.
- A member suggested that, for simplicity, larger sources submit information in xml format, which DEQ would load directly to its database; or that DEQ consider using a host website for information exchange with reporters.
- The committee Chair noted that DEQ does not have new information that would significantly change the budget. The purpose of the committee is to look at fee structures to cover the existing program, not to concur with the scope of DEQ's work on the reporting database.

DEQ response: DEQ needs its system to collect the data needed to inform statewide policy decisions (e.g. statewide complimentary measures require that we know emissions from specific sectors). While DEQ would have developed an input program for larger sources (e.g. by spreadsheet), it anticipated that EPA would have a federal rule and planned for a conversion to exchange information from EPA. Adoption of the federal rule doesn't impact the cost of the database. An off-the-shelf database that would meet DEQ's needs doesn't exist and DEQ is using existing framework as much as possible to complete the database and has already developed data entry screens for large sources. Although DEQ will use the data exchange network for information exchange with EPA, DEQ needs to incorporate data transfer into the state permitting database.

Public Comment
Commenter Kate McCutchen (Blue Heron Paper Company) stated that the company has already done its budget for 2010 and has national and international competitors that aren't looking at a reporting fee in 2010. She is concerned about the unfairness of Oregon assessing the fee to only permitted businesses and that first year reporters would be paying DEQ's costs to design and troubleshoot the reporting system for future reporters. She recommends that Oregon assess fees based on portion of greenhouse gas emissions. If other states or users use Oregon's system to develop their own system, Oregon should seek compensation and then provide a rebate to first year payees. If the reporting program is a value to the state, DEQ should receive general funds to help pay for the program.

Sallie Schullinger-Krause (Oregon Environmental Council) wants to ensure Oregon has a firm infrastructure for greenhouse gas emissions. A large portion of greenhouse gas work is under DEQ's responsibility; the state needs to provide the information necessary for DEQ to meet those responsibilities. We need to ensure there's no confusion between EPA, state and potentially regional systems in terms of regulated entities. She suggests that maintaining staff positions in the program will require some general funding; it's important that staff be funded and that the number of staff positions increase in future years.

Overview of Washington State's Reporting Rules
Mr. Caudill gave a presentation (PowerPoint) on Washington's greenhouse gas reporting rule. He highlighted differences between Washington's rule and the federal rule and committee members noted differences between Washington's rule and Oregon's rule. Washington is looking at aligning its rule with the federal rule during the state's next legislation session. Washington reporters will continue to be subject to the existing state rule unless state legislation authorizes or requires amendments to the program. A committee member noted that Washington's alignment with the federal rule would include going from entity wide to facility wide reporting; requiring reporting of direct emissions only; and eliminating fleet reporting.

Washington has not yet established program funding, but has authority to create fees for reporters at levels necessary to cover anticipated program costs. Washington has not yet determined program costs, but intends to have three or four staff positions in the program and will develop a reporting database. Washington's tentative fee structure includes an annual base fee assessed to all reporters; a second additional annual fee for reporters that emit between 10,000 and 25,000 tons per year; and a third additional annual fee for reporters that emit 25,000 tons or more. Fees have not been established yet, but would likely range from about $100 and $2,500 annually for the 600 to 700 sources subject to the state rule.

Electricity Companies and Power Imports
Mr. Corum gave a presentation (PowerPoint) on electricity companies and power imports. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for imported power. Although identifying in-state power generation for Oregon load is straightforward, Mr. Corum highlighted several issues that complicate identifying emissions associated with power generation in the transmission distribution system:

- Although Oregon may have contracts for power with out-of-state suppliers, suppliers aren't always able to supply the quantities they intended to serve.
- System sales do not identify electricity generators. In addition, marketers sign contracts with utilities and suppliers to provide electricity to Oregon for a certain period (e.g. six months out); at the time of the contract, the marketer doesn't know where that energy will come from because marketing deals might change who the supplier is before the energy is delivered. While we could look at average emissions of all the electricity produced in a system or the Western interconnection, generation sources vary over the course of a day and across seasons. We could look at the service of marginal generators operating at a particular time of day or year or require that marketers declare where the energy they supply comes from.
- Some electricity is generated in Oregon for use outside of Oregon. Although this creates emissions in Oregon, Oregon load did not make those emissions necessary.
- The owner of electricity can be transferred. An entity may supply power to BPA and receive power from BPA at another time.
- Renewable energy credits may be separated from the power they originated from and be sold or purchased separately. We can't track these carbon signatures through the system.
- We may be able to make reasonable estimates on emissions by looking at power consumption or sales downstream; however, we'd need to account for losses during transmission and distribution.

Discussion points:

- A member suggested that in power exchange, the original owner maintains the carbon responsibility. Several members suggested that we attach carbon counts to electricity at generation. This would reduce complications associated with leakage and with power being sold multiple times before it is consumed.
- A member noted the difficulty in identifying the key players who bring power into Oregon because the electricity grid is not clear; it's difficult to identify spot-market transactions.
- A committee member suggested that renewable energy credits will not be an issue when a cap and trade system is implemented; however, another member suggested that the voluntary market could still consume the credits.

- A member suggested that Oregon design reporting requirements to achieve its key purposes: in anticipation of cap and trade and to support policy decisions. While reporting itself is not controversial, the structure of reporting and how this information will be used could be important in a developing cap and trade program. A member suggested that, while a national cap and trade program would not discount Oregon's interest in carbon counts, it would diminish the degree of precision needed in Oregon's count because state counts would not be economically significant. Complications for detail arise only when dealing with a state or regional based system.
- A member noted that system power is a small source for Oregon compared to other power.
- A member suggested that there are already straightforward protocols for identifying power, such as The Climate Registry and California Climate Action Registry. The political question is how to characterize emissions to unspecified power or null power.

Bonneville Power Administration and Consumer Owned Utilities
Mr. Cogswell gave a presentation (PowerPoint) on Bonneville Power Administration and its customers. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for imported power in regards to third party reporting by BPA for consumer owned utilities. BPA's Oregon customers include consumer owned utilities, some investor owned utilities and out-of-state customers. Consumer owned utilities purchase power under two contracts: 1. Slice contracts allow a customer to purchase a percent of electricity from BPA's system. 2. Load following customers obtain 100 percent of their power from BPA.

Third party reporting (authorized by Senate Bill 38) will be more efficient for the state and more cost effective for customers compared to customer reporting; customers have no control on BPA's system and do not have access to the system profile. Although BPA wants to help its customers with reporting, several issues complicate BPA's ability to identify emissions:

- Since BPA customers with slice contracts also purchase power from other sources, BPA doesn't have full information for these customers.
- BPA is moving to a tiered rates system that will allow consumer owned utilities to either put their load on BPA or elsewhere. As a result, BPA will no longer have full information for these customers.
- Five to ten percent of BPA's annual power is derived from unspecified market purchases. While BPA generates over ninety percent of the electricity it distributes, it must make market purchases to cover short term energy deficits.
- BPA has questions about biomass emissions that percolate from reservoirs.

Discussion points:

- Committee members noted that while the majority of BPA's customers are load following customers, the largest loads are provided to slice customers.
- A member suggested that an expert panel for The Climate Registry is addressing whether to develop protocols for reservoir biomass emissions.

Fuel Supply and Distribution in Oregon
Mr. Wallace gave a presentation (PowerPoint) on fuel distribution and supply in Oregon. The purpose of this presentation was to inform the committee and enhance future discussions on creating reporting requirements for fuel distribution. Mr. Wallace highlighted several gaps in the fuel information collected and tracked by ODOT (through gasoline tax reporting) and by the U.S. Department of Energy (through mandatory Energy Information Administration questionnaires). For example, gas tax reporting does not cover heating oil or industrial uses; and diesel is tracked differently from gasoline (at the pump and through a weight-mile tax system). There may be complications in tracking fuels at point of entry (pipelines, trucks and barges) because the supplier does not always know whether that fuel will be consumed in Oregon or how; for example, during transition between fuel types, pipelines sell fuel mixtures to other markets (trains).

Adjourn