

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the request for)
)
 renewal of the Conditional Use)
 Permit for JNS EXCAVATION) **CONDITIONAL USE PERMIT**
) **NO. CUP 81-17**
 -----)

This matter came before Neil D. Smith, Hearings Officer for Klamath County, Oregon on 28 June, 26 July, 9 August, and 20 September 1991 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances. The purpose of these hearings is to determine if the above referenced Conditional Use Permit should be renewed.

The following Exhibits were received into the record:

A. Letter dated 27 July 1991 from JNS Disposal. That letter seems to admit apparent violations of the permit granted in 1986. It also applies for permission to construct another lagoon.

B. Copy of an inspection form with results of an inspection by Department of Environmental Quality representative Donald L. Bramhall, dated 26 June 1991. The report concludes that the operation in compliance with "All permit conditions"

C. Letter dated 27 June 1991 addressed to Mr. Bradford Aspell, Esq. from Mr. Donald Berger, expressing a desire for more time to allow more detailed and complete hearings into the merits of the extension. He also notes concern that the original installation was not properly made.

D. Photographs (Marked D-1 through D-11) dated 5/8/91 taken by Mr. Ken Wright showing material deposited on a roadway which Mr. Wright identified as that leading to the lagoons.

E. Letter dated 24 July 1991 from the Klamath County Department of Health Services containing five specific recommendations for continued operation of the facility.

F. A packet of information from materials alleged to be contained in the pit contents pumped from the plywood presses at Columbia Plywood which was placed upon the access road as a dust retardant. These documents were introduced by Mr. Lord Mytriea who questions the safety of exposing those materials to the open environ-

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ment and a possible hazard to human and animal populations.

G. Additional photographs taken by Mr. Ken Wright, these are marked as exhibits G-1 through G-27. They depict the area around the ponds, fencing, equipment, the ponds, and a general view of the topography toward the North-East.

H. A letter dated August 2, 1991 from the DEQ, Central Oregon office which discusses the material in exhibit "F". Mr. Mytriea, in his testimony on 20 September 1991 took issue with the conclusions reached by the Department to exhibit "G" and expressed the opinion that any information obtained from Columbia Plywood Corp. should be viewed with distrust.

I. A twenty-five (25) page document summarizing the results of water testing in six wells which had been previously tested in 1980, 1983, and 1984. The document compares the results of the previous tests with the results of a test conducted in the summer of 1991. The conclusion reached by Mr. Bob Baggett of the Klamath County Department of Health Services during his testimony on 20 September 1991, states that there is no appreciable increase in any harmful chemical or compound in any of the wells.

J. Undated newspaper clipping regarding recycling of oils used by small business and private individuals. This document is of questionable relevance to the matter before the hearings officer.

K. More photographs marked and received as exhibit K-1 through K-24, again taken by Mr. Wright. These again depict the access road and an area adjacent to a dike showing possible seepage.

L. Ten pages of testimony from Mr. Donald Berger received on 20 September 1991. This testimony expresses concerns set out in exhibit "C" and expands upon them by alleging that the site is not properly managed and monitored.

M. An 11 page letter from Mr. Brad Aspell dated 20 September 1991 setting forth the opponents' position regarding this renewal of their application and the rules under which this issue should be decided.

N. Letter dated August 9, 1991 from the applicant along with an attached letter dated 23 December 1980 to Mr. Wm. Ganong, the then hearings officer. This 1991 letter seems to express a desire to expand the scope of the renewal permit during these proceedings.

O. Another letter from the applicant requesting expansion of the operational permit beyond that already granted. This letter is dated 26 July 1991.

P. An Interoffice Memo From Bob Paeth which discusses the suitability of the site for an UNLINED lagoon dated

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Q. Memorandum from the Water Resources Department to DEQ discussing the geology and ground water conditions and concluding that the site is suitable for the purpose under consideration here.

R. Letter from Jonathan Chudnoff, Klamath County Planning Department Assistant Planner, to the applicant dated 6/9/81 which gives the opinion that the operation is not detrimental to the area.

S. Copy of undated document relating to the DEQ rules for road oiling under the Oregon Legislature's SB 166(1989) which sets forth the standards for testing oils for use on roadways and the toxic substances which must be avoided.

FINDINGS OF FACT

1. There were a total of four separate hearings held as above mentioned, each was attended by both the applicant and many interested parties including not only adjacent land owners but others from the general public.

2. Most of the testimony in opposition was addressed to the alleged violations of the conditions of the original grant of the CUP. There was also much discussion of the disposal of other substances than the septic tank contents which are permitted at the site.

3. There was some complaint about apparent odors emanating from the operation of the facility and some fears about ground water contamination.

4. The original CUP was granted in 1981 and the facility has been in operation continuously since that time, the most recent renewal being granted with additional conditions regulating operation and inspection in July 1986.

5. The present Land Development Code Article 12 B. covers the scope and compliance rules for the code. It clearly states, in part, ... "The provisions of this code are NOT retroactive in their effect on a use of land lawfully established on the date of adoption of this code..." (*emphases added*) Because of the long establishment and operation of this facility the RENEWAL does not require a review such as that required for a NEW application.

6. The issue before the hearings officer is simply that of the renewal of the existing CUP.

7. There have been several allegations of mismanagement and violations of the conditions of the original grant and the subsequent renewals.

8. There has been no showing of ANY appreciable dete-

rioration of the area or the environment outside the specific site of this operation.

9. There was testimony from a former County Commissioner that the operation was carefully studied and considered at the time of the original grant of the CUP.

There was also testimony that the operation, which is within sight of the former Commissioner's Mobile Home Park has done no damage and that wildlife flourishes in the immediate vicinity of the operation.

10. In contrast to that testimony was that of those who believe that the wildlife and ground water MAY be effected by this operation however, there was no objective evidence of those allegations.

CONCLUSIONS

The operation of this facility during the past decade has had no demonstrable effect upon the environment or the peaceable occupation of the surrounding properties.

There are numerous complaints of violations of the specific operational and monitoring requirements of the facility. Those concerns cannot and will not be ignored.

It is necessary that the conditions be more closely observed and that steps be taken to keep this facility in operation, consistent with the conditions of the use permit.

This facility in a necessary high impact operation which serves the very people who appeared in opposition to its location. Those people need protection and deserve the best possible assurances that this facility does not endanger their health or welfare.

ORDER

Based upon the findings herein the Conditional Use Permit No. 81-17 for JNS is renewed with the following conditions added or modified.

1. The specific and unambiguous section "L" of the order dated August 15, 1984 is renewed; violation of that provision will be considered cause for termination of the CUP.
2. The user will file with the Planning, Health, and DEQ Departments a SPECIFIC management plan which deals with the disposition of accumulated dried sludge. The plan so submitted must be approved by each agency. That plan must be submitted within 90 days of this order.
3. The site will be accessible at any time and without

notice to the operator for inspection by the Health Department or State DEQ personnel. During these inspections the inspectors may conduct any tests they deem appropriate and the results of those tests along with a specific report setting forth what inspections were made and the result of that examination will become part of this Planning Department file.

4. This Conditional Use Permit Shall be reviewed every Three (3) years unless specific hazards or violations are discovered during inspections.

5. The applicant shall have designed and approved plans for new lagoons which meet the engineering requirements for safe retention of liquid materials. The design shall be approved by an Engineer experienced and licensed by the State of Oregon for sanitary engineering projects.

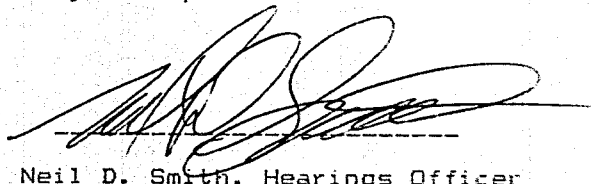
6. The applicant shall construct at least two and not more than three new lagoons which meet the criteria set forth above. The construction of those ponds shall be on a schedule approved by the Planning and Health Departments. The timetable for construction shall be submitted at least 30 days PRIOR to commencement of construction.

7. The placement of any hazardous Material as defined by current DEQ or Klamath County Health Services will be cause to revoke this permit unless there is prior approval of the method of disposal and the disposal is shown not to be potentially dangerous to the health and welfare of the people of Klamath County or the wildlife of the area.

8. The Klamath County Planning Department shall consult with the Health Department and the State DEQ and determine if citations for violation of the original CUP should issue for a show cause hearing before the Klamath County District Court.

9. The user must construct fencing which will deter ground mammals from getting access to the lagoons.

DATED this 13th day of Oct 1991



Neil D. Smith, Hearings Officer

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KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 2nd day of Oct. A.D., 19 91 at 10:11 o'clock A M., and duly recorded in Vol. M91 of Deeds on Page 20027.

FEE none

Evelyn Biehn, County Clerk

By Randee M. Mendenhall

Return: Commissioners Journal