

AGENDA COVER MEMO

Memorandum Date: February 27, 2009

Order Date: March 18, 2009

TO: Board of County Commissioners

DEPARTMENT: Public Works / Engineering & Construction Services Division

PRESENTED BY: Bill Morgan

AGENDA ITEM TITLE: ORDER IN THE MATTER OF AUTHORIZING LANE COUNTY STAFF TO APPLY FOR A WATER POLLUTION CONTROL FACILITY (WPCF) PERMIT WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR MANAGING LANE COUNTY'S UNDERGROUND INJECTION CONTROLS (UICs).

I. MOTION

MOVE APPROVAL OF ORDER IN THE MATTER OF AUTHORIZING LANE COUNTY STAFF TO APPLY FOR A WATER POLLUTION CONTROL FACILITY (WPCF) PERMIT WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR MANAGING LANE COUNTY'S UNDERGROUND INJECTION CONTROLS (UICs).

II. AGENDA ITEM SUMMARY

The Board is being asked to authorize Lane County's Public Works Department to apply for a Water Pollution Control Facility (WPCF) Permit with the Department of Environmental Quality (DEQ) for Managing Lane County's Underground Injection Controls (UICs).

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Underground Injection Controls (UICs) are defined by the Department of Environmental Quality (DEQ) as "any man-made design, structure or activity which discharges water below the ground or subsurface." UICs are commonly referred to as "drywells." They have historically been used for stormwater drainage in areas that do not have piped stormwater drainage systems. Lane County is known to own approximately 79 UICs in the River Road / Santa Clara area and another 12 in the County-owned area inside the Springfield UGB.

In the Fall of 2008, Lane County received notice from DEQ to comply with UIC

regulations and UIC program fees by December 31, 2008. Lane County has registered all known County-owned UICs. However, the County has not yet applied for a permit or paid fees to request authorization as required by DEQ regulations. Lane County has requested, and received approval from DEQ, to extend the permit application deadline to **March 30, 2009**.

B. Policy Issues

Congress enacted UIC rules in 1974 under the federal Safe Drinking Water Act (SDWA) and modified the rules in 1999. The U.S. Environmental Protection Agency (EPA) administers these rules under Title 40 of the Code of Federal Regulations (CFR) Parts 144 -148. In Oregon, EPA has delegated the regulation of UICs to DEQ. DEQ regulates this program for the EPA under the Oregon Administrative Rules (OAR) Chapter 340, Division 44. The intent of the program is to protect groundwater resources from contamination. All aquifers, irrespective of current use, are considered suitable as drinking water and are, therefore, protected by regulation. All classes and types of UICs are required to be registered with DEQ and approved either through Rule Authorization or permit, or be decommissioned.

EPA regulations specify a required minimum of 10 feet of separation between the bottom of the drywell and seasonal high groundwater. Due to high groundwater in the River Road / Santa Clara area, most of the UICs in this area do not meet the necessary separation criteria and cannot, therefore, be Rule Authorized. Lane County will need a Water Pollution Control Facility (WPCF) permit issued by DEQ to manage the County-owned UICs until they can be decommissioned.

C. Board Goals

State and Federal UIC regulations are intended to protect groundwater resources from contamination. Adherence to these regulations is aligned with Lane County strategic goals for ensuring public safety and maintaining a healthy environment.

D. Financial and/or Resource Considerations

Permitting:

Fees must accompany the WPCF permit application in the amount of \$11,388. The permit will also require an annual compliance fee in the amount of \$1,943.

Decommissioning:

Since 2001, Lane County has been working with the City of Eugene and consultants from the URS Corporation to complete a Stormwater Master Plan for the River Road / Santa Clara Basin. This Stormwater Master Plan is expected to be completed in the next 90 days. The plan identifies Capital Improvement Projects (CIPs) for flood protection and decommissioning solutions for managing stormwater following removal of all City and County UIC clusters. Depending on the location of the UICs, the decommissioning solution is to either pipe the flow into the existing stormwater infrastructure, or to construct "Raingardens" to collect the stormwater into drainage swales which will provide slower

infiltration to groundwater coupled with treatment through biofiltration. Costs associated with decommissioning all of Lane County's UICs is estimated to be in the range of \$5 to \$10 million, although the final report has not yet been completed, reviewed and presented to the Board.

Sampling:

During the permitting process, DEQ will determine the percentage of UICs that must be sampled annually. Lane County will likely be required to sample 3-5 UICs five times annually. This sampling cost is estimated to be in the range of \$40,000 to \$50,000 annually. Additional sampling is required during decommissioning of individual UICs. This sampling would be approximately \$1,200 per UIC decommissioned.

E. Analysis

Applying for a WPCF permit will allow Lane County to stay in compliance with DEQ with regard to its UIC regulatory program. However, the County currently lacks a funding mechanism to pay for the additional staff time and related costs associated with UIC permitting, sampling, reporting, and decommissioning. These costs will be manageable with Road Fund money in the short term (less than \$50,000 over the next three to five years as DEQ finalizes the WPCF permit), but will not be manageable with Road Fund money in the long term when UICs will be required to be decommissioned. Given the declining outlook of the Road Fund, new funding mechanisms should be considered to enable funding the Capital Improvement Projects associated with mandatory decommissioning of County UICs.

F. Alternatives/Options

Option 1:

Move approval of the attached Board Order authorizing Lane County Public Works staff to apply for a WPCF permit with DEQ for managing Lane County's UICs. This option will keep Lane County in regulatory compliance, but will incur costs associated with permitting, sampling, and future decommissioning.

Option 2:

The Board may decline to authorize Lane County Public Works staff to apply for a WPCF permit with DEQ. This action will cause the County to fall out of compliance with State and Federal UIC regulations. If the County is not compliant with DEQ regulations, DEQ can assess penalties up to \$2,500 per UIC per day.

IV. RECOMMENDATION

The recommendation of Public Works Department staff is:

Option 1:

Move approval of the attached Board Order authorizing Lane County Public Works staff to apply for a WPCF permit with the DEQ for managing Lane County's UICs.

V. TIMING/IMPLEMENTATION

To remain in compliance with the DEQ, Lane County must submit a WPCF permit application by March 30, 2009.

VI. FOLLOW-UP

If the attached Board Order is approved, Public Works staff will complete the WPCF application and submit to DEQ prior to the March 30, 2009 deadline.

VII. ATTATCHMENTS

Proposed Board Order

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. _____

IN THE MATTER OF AUTHORIZING LANE COUNTY STAFF TO APPLY FOR A WATER POLLUTION CONTROL FACILITY (WPCF) PERMIT WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR MANAGING LANE COUNTY'S UNDERGROUND INJECTION CONTROLS (UICs).

WHEREAS, Lane County owns approximately 91 Underground Injection Controls (UICs), commonly referred to as "drywells," which are used for management of stormwater and are concentrated primarily in the River Road / Santa Clara area, and

WHEREAS, UICs are regulated by the U.S. Environmental Protection Agency (EPA) under the federal Safe Drinking Water Act, and the EPA has delegated this responsibility to the Oregon Department of Environmental Quality (DEQ), which regulates UICs under Oregon Administrative Rules Chapter 340, Division 44, and

WHEREAS, the DEQ has directed Lane County to register all County-owned UICs, apply for a Water Pollution Control Facility (WPCF) permit or request authorization by rule, and pay all applicable fees by March 30, 2009;

NOW THEREFORE, BE IT HEREBY ORDERED, that Lane County staff is authorized to apply for a WPCF permit with the DEQ for managing Lane County's UICs and to pay all applicable fees associated with the permit application.

Adopted this _____ day of March, 2009.

APPROVED AS TO FORM
Date 3/5/09 Lane County

OFFICE OF LEGAL COUNSEL

Chair, Lane County Board of Commissioner