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September 14, 2005

James J. Nicita
Attorney at Law
One Jefferson Parkway, #289
Lake Oswego, OR 97305

Re: Petition for Public Records Disclosure Order:
Oregon Department of Environmental Quality Records

Dear Mr. Nicita:

This letter is the Attorney General's Order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on September 13, 2005, asks the Attorney General to direct the Department of Environmental Quality (DEQ) to produce records, namely specified land use compatibility statements and DEQ notices, requested within an April 6, 2005, comment letter from your client, Barbara Kemper.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for their inspection or copying in the office of the custodian. ORS 192.430. If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450(1).

Your petition explains that Ms. Kemper's records request was part of her public comment on the proposed renewal of municipal separate storm sewer system (or MS4) permits and states that DEQ denied her request in its general response to all comments received by the agency on the renewal of those permits.

We have spoken with Kevin Masterson at DEQ about your petition. He told us that DEQ does not possess the requested records. According to Mr. Masterson, DEQ did not receive land use compatibility statements in association with the MS4 permitting process in 1994 and 1995. He also told us that, because the requested notices to DLCD are required only for new land use

programs and MS4 permits are merely one type of NPDES permit and a part of DEQ's larger, existing NPDES permit program, the agency had no reason or obligation to prepare the requested notices.

Because the requested records do not exist, we deny your petition.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

c: Kevin Masterson, DEQ
PDS/gvk:AGS16255