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December 29, 1993

Karl Anuta
Jolles, Sokil & Bernstein, P.C.
Attorneys at Law
721 SW Oak St.
Portland, OR 97205-3791

Re: Petition for Public Records Fee Waiver Order
Department of Environmental Quality

Dear Mr. Anuta:

This letter is the Attorney General's order on your petition[1/] under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received December 23, 1993, asks the Attorney General to order the Department of Environmental Quality (DEQ) to waive all fees for photocopying of documents relating to the Teledyne Wah Chang NPDES permit number 100522. For the reasons stated below, we respectfully deny your petition.

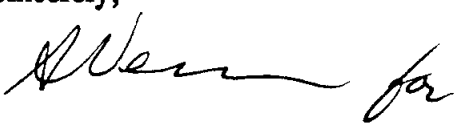
You attached to your petition various pieces of correspondence, including your request for fee waiver and a letter dated November 2, 1993, from Tim McFetridge, DEQ staff for the Willamette Valley, setting forth the agency's fee policy, which you construed as a denial of your request for a fee waiver. By its terms, it is not clear that Mr. McFetridge's letter is a denial of your fee waiver request. Furthermore, Mr. McFetridge informs us that by letter dated December 14, 1993, which was not included in your package, he sent you 1,659 pages of records that were marked for copying and advised you that a bill would be sent to NEDC from DEQ's Business Office. According to Mr. McFetridge, that letter also informed you that DEQ's regional staff lacked authority to approve your request for a fee waiver and that they were referring the fee waiver request to DEQ's headquarters.

[1/] Your petition was filed on behalf of your client, the Northwest Environmental Defense Center (NEDC), which originally requested the records and the fee waiver.

We have been informed by Hal Sawyer at DEQ's headquarters that the agency has not yet decided the matter of your fee waiver request. The agency has not sent you a bill for the copying, nor has it denied the fee waiver request.

Under the Public Records law, a person may petition the Attorney General to review an agency's denial of a request for a waiver of fees. ORS 192.440(5). However, we conclude that in this case there has been no such denial. Absent a denial by DEQ, the Attorney General does not have jurisdiction to order the agency to waive its photocopying fees for making requested records available to you. Your petition is premature and is, therefore, denied.

Sincerely,



ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA00F6C.W51
c: Harold Sawyer, DEQ Headquarters
Timothy McFetridge, DEQ, Willamette Valley Region
Michael Huston, DOJ