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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE

109 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4400

July 23, 1982

Mr. Steven R. Schell
Attorney at Law
12th Floor
Bank of California Tower
Portland, OR 97205

Re: Fish and Wildlife Contested Case Proceedings
on Use of Sevin in Tillamook Bay

Dear Mr. Schell:

This letter constitutes the order of the Attorney General in response to your petition dated July 15, 1982, for an order allowing you to inspect public records.

You have petitioned, pursuant to ORS 192.450, from a denial by the Department of Fish and Wildlife to allow your request to inspect records relating to the application for a permit to release a toxic substance, carbaryl, in Tillamook Bay.

It is the opinion of the Attorney General that your request should be handled as follows:

1. Item #10, OSIS Report. I am advised that this item has already been released to you by the agency.

2. Item #7, State Police Report. Your request for release of this item is denied. This report includes investigatory information compiled for criminal law purposes and therefore is exempt from disclosure pursuant to ORS 192.500(1)(c).

3. Item #1, Staff Memo, July 8, 1982. In our opinion, the major portion of this document should be released. The document is an interagency communication of an advisory nature. Specifically, it includes staff recommendations preliminary to the final agency recommendation on this issue.

The document is the type of communication which qualifies as an exemption from the public records law under ORS 192.500(2)(a). However, in order to qualify as an exemption under ORS 192.500(2)(a), the public interest in encouraging frank communication between officials and employes of public agencies must clearly outweigh the public interest in disclosure. In our opinion, the public interest in disclosure is predominant with respect to the majority of this document and should be released. With respect to the deleted portions, we believe the public interest in encouraging frank interagency communication outweighs the public interest in disclosure and your request with respect to those portions is hereby denied.

The memo is prepared in the form of statements (questions, assertions and "facts"), each followed by a responsive answer. The next-to-last paired statement and answer is the portion to be deleted.

4. Item #2, Staff Memo July 7, 1982. In our opinion, your request for this document should be denied on the basis that the document is an interagency communication which qualifies for an exemption to the public records law pursuant to ORS 192.500(2)(a).

5. Item #3, Staff Memo June 29, 1982. In our opinion, the major portion of this document should be disclosed. However, the deleted portions of the document include staff opinions preliminary to the final agency action. In our judgment, with respect to the deleted portions of the report, the public interest in encouraging frank interagency communication prior to a decision outweighs the public interest in disclosure. ORS 192.500(2)(a).

   The deletions are as follows: On page 2, the second unnumbered paragraph after numbered paragraph 7, the seventh unnumbered paragraph and all material following on that page. On page 3, numbered paragraphs 3, 5, and 6.

6. Item #4, Staff Memo, June 23, 1982. In our opinion, the major portion of this document should be disclosed. However, the deleted portions of the document include staff opinions preliminary to the final agency action. In our judgment, with respect to the deleted portions of the report, the public interest in encouraging frank interagency communication prior to a decision outweighs the public interest in disclosure. ORS 192.500(2)(a).

The deletions are as follows: On page 1, the last two sentences of the second paragraph, and the numbered paragraph 8, including its continuation on the second page. On page 2, the last portion of the memorandum discussing alternatives to treatment, including the last sentence of the memorandum.

7. Items #5, 6, 8 and 9, Staff Memos, May 25, 1982; May 26, 1982; June 17, 1982; undated. In our opinion, these documents should be released.

Accordingly, your petition is granted in part and denied in part as described in the above discussion.

Yours very truly,

John A. Reuling, Jr.
Special Counsel to the
Attorney General

JAR:MJD:mb

cc: John Donaldson, Director, Dept. of Fish and Wildlife
Mary Deits, Assistant Attorney General