

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

**Rules Establishing Trigger Levels for Pollutants on the
Priority Persistent Pollutant List**

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| Title of Proposed Rulemaking | Identification of Pollutants Requiring Toxic Reduction Plans. |
| Statutory Authority or other Legal Authority | The Department and the EQC have the statutory authority to address this issue under ORS 468.020 and 468B.141. |
| Statutes Implemented | These rules implement Senate Bill 737 passed by the 2007 State Legislature, and codified in ORS 468B.138 - 468B.144. |
| Need for the Rule(s) | <p>These rules are needed to implement Senate Bill 737, passed into law in 2007. This legislation requires monitoring of municipal wastewater effluent to determine if any of the listed priority persistent pollutants occur in concentrations greater than those established by this rule. For each pollutant that occurs in effluent above these “trigger levels”, a toxics reduction plan will be developed and implemented by the municipality. There are currently 52 municipal wastewater treatment facilities that meet the definition for inclusion as specified in the law. These rules apply to these facilities and will apply to any others that meet the criteria in the future.</p> <p>These rules are an important element that will enable DEQ to carry out the program envisioned by the legislation to address toxic pollutants in Oregon’s waters. The legislation recognizes that it is the goal of the State to protect, maintain, and improve the quality of waters of the State. The legislation also recognized that Oregon did not have a comprehensive approach addressing such pollutants and their sources or an economically feasible alternative for reducing these pollutants, and that persistent, bioaccumulative and toxic pollutants can pose a threat to the health and well-being of humans, fish and wildlife, especially aquatic species. This rulemaking will help support the Department’s overall efforts in these areas.</p> |
| Documents Relied Upon for Rulemaking | Documents relied upon for this rulemaking include: <i>“Selection of Trigger Levels for Oregon’s Priority Persistent Pollutants”</i> (Hope, Bruce K., 30 September 2009). This document includes the reference materials that were used to develop the selection process. |
| Requests for Other Options | Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing negative economic impact of the rule on business. |
| Fiscal and Economic Impact, Statement of Cost Compliance | |
| Overview | <p>Adoption of the trigger levels themselves will have only limited direct fiscal or economic impacts. The direct impacts are limited to the municipal wastewater treatment facilities defined in Senate Bill 737 based on dry weather design flow capacity of one million gallons per day or more. Currently, there are 52 municipal facilities that meet this criteria. Impacts to these entities could result from an increase in monitoring costs due to the costs associated with sampling or the use of laboratory methods capable of detecting particular pollutants at lower levels.</p> <p>If trigger levels are exceeded for individual pollutants, municipal wastewater treatment facilities could incur additional indirect impacts as they develop and implement their required toxic reduction plans. Indirect fiscal and economic impacts could also occur for any business or individual that uses the sewer services provided by a municipality that has been required to develop reduction plans. Municipalities</p> |

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| | <p>may pass on additional costs to rate payers using those systems.</p> <p>Indirect impacts to specific businesses that may contribute listed pollutants to a municipal waste stream could derive from the costs associated with pollution prevention strategies development and implementation. These impacts could come in the form of increased production costs, pollution control costs, and costs of alternative materials; any or all of which could be mandated by the affected municipality. The potential magnitude of these additional costs cannot be quantified at this time. Although they are nearly impossible to predict at this time, DEQ acknowledges the potential for these types of fiscal and economic impacts.</p> | |
| <p>Impacts on the General Public</p> | <p>Indirect impacts could occur for the general public that use one of the qualified municipal sewer systems affected by Senate Bill 737. The municipality may pass any potential increase in costs on to rate payers, or the municipality may develop and implement a toxics reduction plan that has unknown costs but where it's associated costs could also be passed through to rate payers.</p> | |
| <p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p> | <p>The only costs directly attributable to this rulemaking are related to potential new analysis or laboratory methods to detect pollutants at lower levels than are currently applied. These activities could be required by an affected municipality with any associated costs passed through to small businesses served by that system.</p> <p>Other costs are indirect, attributable only to other requirements from the legislation, not the trigger levels specifically. Potential indirect cost impacts could occur for small businesses that are served by one of the qualified municipalities if sewer rates are increased as a result. In general, small businesses served by relatively smaller municipalities may have a higher disproportionate cost increase because any fixed cost increases are spread across a smaller pool of rate payers.</p> | |
| <p>Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))</p> | <p>a) Estimated number of small businesses subject to the proposed rule</p> | <p>There are no small businesses directly subjected to the trigger levels themselves.</p> <p>Small businesses could be indirectly subjected through the implementation of toxics reduction plans by an affected municipality. The potential number of small businesses subjected to the proposed rule cannot be quantified at this time due to the number of variables associated with implementation.</p> |
| | <p>b) Types of businesses and industries with small businesses subject to the proposed rule</p> | <p>None directly subjected.</p> <p>Subjected indirectly for small businesses that manufacture, process, recover, distribute, or otherwise rely on any of the 118 listed pollutants in their business.</p> |
| | <p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p> | <p>Potential direct and indirect impacts to specific businesses that may contribute listed pollutants to a municipal waste stream could derive from the costs associated with:</p> <ul style="list-style-type: none"> - pollution prevention strategies implemented by the affected municipality, - changes in business practices that require additional expertise for compliance assurance, - additional costs relative to reporting requirements mandated by an affected municipality, - developing prevention plans at the business or site level, and - applicable monitoring & testing of discharges to the treatment facility. <p>The potential magnitude of these additional costs cannot be quantified at this time.</p> |
| | <p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the</p> | <p>Potential direct and indirect impacts to specific businesses could derive from the costs associated with toxics reduction strategies implemented by the municipality. For small businesses this would likely come in the form of:</p> |

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| | <p>proposed rule</p> | <ul style="list-style-type: none"> - increased labor costs to develop any required reports relating to pollutant use or disposal, - new equipment as part of the toxics reduction plan, - increased production costs due to additional labor to administer oversight, - supplies required by pollution control mandates, and - costs of alternative materials. <p>Any or all of these could be mandated by the affected municipality. The potential magnitude of these additional costs cannot be quantified at this time.</p> |
| | <p>e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking</p> | <p>No small businesses were directly involved in this rulemaking.</p> |
| <p>Impacts on Large Business (all businesses that are not “small businesses” under ORS183.310(10))</p> | <p>The only costs directly attributable to this rulemaking are related to analysis of listed pollutants. Other costs are indirect, attributable only to other requirements from the legislation and not the trigger levels specifically. Potential indirect cost impacts could occur for large businesses that are served by one of the qualified municipalities if they increase their sewer rates.</p> <p>Additional indirect impacts could come from changes in materials used, and manufacturing or utilization processes. Potential impacts could occur to large businesses that may be required (by the affected municipality) to implement their own on-site pre-treatment or pre-screening process to remove or recover pollutants before they are released into the waste stream of the receiving municipal wastewater facility.</p> | |
| <p>Impacts on Local Government</p> | <p>Adoption of the trigger levels will have only limited direct fiscal or economic impacts. The direct impacts are limited to the municipalities specifically addressed in Senate Bill 737. Their impacts would come in the form of increased costs for sampling and testing effluent samples. These specific additional costs are estimated to be \$8,000 for each municipality to sample and analyze for all 118 pollutants on the priority list. Depending on lab analysis results, they could incur additional direct impacts as they develop and then implement required toxic reduction plans. The potential magnitude of these specific costs cannot be quantified at this time. Many of the pollutants are not routinely monitored by municipal wastewater treatment plants. As a result, DEQ cannot estimate what pollutants will be found or what activities and actions municipalities will include as part of their toxics reduction plans.</p> <p>If a municipality’s effluent exceeds trigger levels for a small number of pollutants and the associated toxics reduction plan does not require the development of new programs, DEQ estimates that the development costs would be approximately \$10,000 (DEQ expects these costs to be predominantly for human resources; hours or staff hours). If a significant number of pollutants are found above the trigger levels, development of a toxic reduction plan for a municipality may become more complex. For this high end cost scenario, DEQ estimates the development costs of the toxics reduction plan to be approximately \$50,000, to \$75,000 per municipality. These costs would be primarily attributable to staff hours spent developing the plan.</p> | |
| <p>Impacts on State Agencies other than DEQ</p> | <p>No direct or indirect fiscal or economic impacts are anticipated.</p> | |
| <p>Impacts on DEQ</p> | <p>Adopting trigger levels as administrative rules will impact DEQ revenues, expenses and FTE. There are currently 52 municipal wastewater treatment facilities that meet the definition for inclusion as specified in SB 737. DEQ’s estimate of the total resources required to sample and analyze for all 118 pollutants on the priority list is \$364,000. This is based on a cost estimate of \$7,000 per each of the 52 municipal wastewater treatment facilities. DEQ anticipates needing approximately .875 FTE of a limited duration Chemist 3, .25 FTE of a temporary Chemist 1, and .25 FTE of a temporary Chemist 2 to complete the work anticipated. This FTE and limitation is not currently in DEQ’s 09-11 Biennial budget. DEQ’s expenses would be reimbursed via an inter-governmental agreement with participating municipalities.</p> | |

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| | <p>Implementation of toxics reduction plans could possibly increase the workload of Oregon's Water Quality Permitting Program, which will ultimately incorporate any toxics reduction plans into the facility's NPDES or WPCF permit by reference when those permits are reissued. We are not presently estimating any impacts at this time.</p> |
| Assumptions | <p>DEQ's primary assumption is that any future fiscal and economic impacts to its resources will result from the development and implementation of toxic reduction plans by the municipal wastewater treatment facilities. These impacts do not derive from adopting trigger levels as administrative rules. The Department will perform fiscal and economic impact analysis as needed for any future proposed action under the Oregon Water Quality Permitting Program.</p> |
| Housing Costs | <p>DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.</p> |
| Administrative Rule Advisory Committee | <p>DEQ utilized two (2) advisory committees in developing this rule.</p> <p>DEQ used a Science Peer-Review Panel to select the proposed trigger levels. DEQ held a meeting with the Panel to discuss the proposed process for selecting the trigger levels on September 30, 2009, in Portland. This meeting was open to the public. DEQ also offered any interested party the opportunity to review and provide input on the proposed process for selecting trigger levels. DEQ evaluated this input in selecting the proposed trigger levels.</p> <p>All supporting documents for this rulemaking, including the report, "<i>Selection of Trigger Levels for Oregon's Priority Persistent Pollutants</i>" are available on the project website at: http://www.deq.state.or.us/wq/SB737</p> <p>The Peer-Review Panel did not directly develop this Fiscal and Economic Impact Statement. They did however, apply economic considerations when discussing the process for developing the proposed trigger levels. These are documented in the final report.</p> <p>DEQ used a Fiscal & Economic Impact Advisory committee to review and comment on a draft of this document. This committee was formed from the stakeholders group associated with this project. A period of 20 days was made available for interested committee members to review and provide written comments addressing the draft. DEQ hosted a conference call on November 19, 2009, to clarify the purpose of the review, provide an overview of the trigger level selection process, present assumptions used in developing this document, and respond to any questions.</p> |

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