

State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** January 31, 2011  
**To:** Environmental Quality Commission  
**From:** Dick Pedersen, Director  
**Subject:** Agenda Item X, Rule Adoption: Ballast Water Management, OAR Chapter 340, Division 143  
February 17-18 EQC Meeting

**Why this is Important** The Legislature passed statutory amendments to the Ballast Water Management law in 2003, 2005, 2007 and 2009. DEQ's proposal brings OAR chapter 340, division 143 into alignment with statutory amendments and further enhances the agency's ability to protect state waters from aquatic invasive species.

**Department Recommendation and EQC Motion** DEQ recommends that the Environmental Quality Commission adopt the proposed rules, as presented in Attachment A.

**Background and Need for Rulemaking** Non-indigenous species pose a biological pollution threat to native ecosystems and protection measures are needed to prevent their entry into Oregon's environment. These non-indigenous species may establish reproducing populations and proliferate in the environment, thereby becoming invasive and causing harmful ecological, economic and human health consequences. The Oregon Task Force on the Shipping Transport of Aquatic Invasive Species has studied ballast water management practices as a means to reduce invasion risk to state waterways, and in accordance with 2009 legislation, HB 2714, has provided guidance for the state ballast water management program and this rulemaking package. This rulemaking aligns the rules with the statute and further reduces the risk of introducing aquatic invasive species to Oregon waterways.

There are three primary issues that have motivated the proposal to adopt new ballast water management rules. First, since rules were enacted in 2002, management has been dependent upon ballast water exchange practices, wherein higher risk ballast water sourced from inland ports is replaced with open ocean waters. When properly implemented this management practice significantly reduces the risk of introducing non-indigenous species to Oregon waterways, yet it has been widely regarded as a stop-gap measure until more effective methods become practical and feasible. Neighboring states and other jurisdictions are developing or have implemented more protective ballast water discharge standards

that will likely require the implementation of treatment technology. In Oregon, HB 2714 explicitly granted authority to the commission to implement discharge standards for Oregon waters via rulemaking.

The second issue concerns regulations that allow for safety exemptions to protect vessels and their crew from potential hazards associated with conducting ballast water exchange in hazardous sea conditions, or circumstances involving equipment failure. Under current rules, a safety exemption vessel may discharge high-risk ballast water, for example ballast water from an area known to be infested with aquatic invasive species, without providing state officials with reasonable advance notice and without implementing alternative management strategies. To more effectively protect state waterways from the discharge of unexchanged or untreated high-risk ballast water, DEQ is proposing a new administrative rule (OAR 340-143-0050) that requires safety exemption vessels to obtain DEQ authorization before discharging ballast water. This proposed rule allows DEQ to review specific conditions of the proposed discharge and determine whether alternative management strategies are warranted and practical.

Lastly, the 2009 Legislature clarified the legal authority for DEQ to board and inspect regulated vessels for ballast water management compliance verification purposes (codified at ORS 783.640). One of the proposed new rules (at OAR 340-143-0030) establishes the conditions, purpose and scope of vessel boarding.

**Effect of Rule**

The proposed rules align applicable definitions and discharge exemptions with current statutes (Attachment A), revise language for greater clarity, increase efficiency and efficacy of ballast water reporting, and improve aquatic invasive species prevention capabilities. Specifically, the proposed rules:

- Provide detailed description of conditions, purpose, and scope of vessel inspections and compliance verification sampling (OAR 340-143-0030).
- Require safety exemption vessels to obtain department authorization prior to discharge of ballast water. (OAR 340-143-0040). This new requirement allows DEQ to review the conditions and pollution risks associated with a proposed discharge, and if necessary, require emergency management alternatives for high-risk circumstances.
- Establish a framework to allow the use of ballast water treatment technology in place of ballast water exchange management practices (OAR 340-143-0050).
- Establish restrictions on the management and disposal of sediments and associated living organisms that accumulate at the bottom of ballast tanks (OAR 340-143-0060).

**Commission Authority**

The commission has authority to take this action under ORS 783.620 through 783.992, Ballast Water Management.

**Stakeholder Involvement**

DEQ worked with affected parties during the development of the proposed rules, by

facilitating and providing staff support to the Shipping Transport of Aquatic Invasive Species Task Force. In addition to studying ballast water management issues and making legislative recommendations, the task force served as an advisory committee for the development of the proposed rules. Draft rule language was developed via consensus agreement and received unanimous support from participating members.

**Public Comment** A public comment period extended from Dec. 1<sup>st</sup>, 2010 to December 22<sup>nd</sup>, 2010. Public hearings were not deemed necessary for this rulemaking. Results of public input are provided in Attachment B.

**Key Issues** Key issues were:

1. **Timeframes for safety exemption risk and alternative management assessments.** Given staff resource limitations and vessel operation schedules, what timeframe is reasonable for a DEQ review of safety exemption risk assessments and alternative management opportunities, before it allows a vessel to discharge?

*Recommendation:* In order to effectively analyze case-specific ballast management safety exemptions, limited existing staff must have sufficient time to assess the degree of risk presented by the proposed discharge, and if necessary, explore the feasibility of alternative management strategies that could be employed to protect state waters from the discharge of untreated or unexchanged ballast water. On the other hand, it is important to recognize that under some voyage characteristics vessels declaring safety exemption discharge may provide less than two-day notice prior to scheduled cargo loading and ballast discharge. Also, some representatives on the advisory committee were particularly concerned about unmanned tug and barge operators that must routinely declare a safety exemption for their ballast discharge due to equipment limitations that do not allow for open ocean or coastal exchange. In order to balance these interests in a manner that reduces the likelihood of causing operational delays for vessel operators, yet also ensures sufficient time for limited staff to conduct an effective assessment, DEQ recommends adopting a 10 day safety exemption case review timeline for all regulated vessels except unmanned barges. The proposed rule [OAR 340-143-0040 (2)] provides unmanned barge operators with an exemption from case review and discharge authorization unless otherwise notified by DEQ.

2. **Adoption of state-specific standards.** Should the commission adopt discharge standards and an implementation timeline that phases in the use of treatment technology in place of open-sea exchange practices?

*Recommendation:* Rather than adopt state-specific discharge standards at a time when federal regulations are pending, and neighboring states are poised to implement regulations that may not be consistent, DEQ recommends establishing a framework for implementing ballast water

treatment technology use in Oregon waters (i.e. based on discharge standards developed by federal authorities (pending) or under emergency alternative management scenarios, such as safety exemption discharge of high-risk ballast water), and reserve specific standards and implementation timelines for future rulemaking efforts. If federal authorities fail to enact discharge standards that are sufficiently protective of Oregon waters, DEQ, in consultation with the Shipping Transport of Aquatic Invasive Species Task Force, will propose to amend OAR 340-143-0050 to establish standards consistent with our neighboring states.

**Next Steps**

If adopted, the proposed rules become effective upon filing with the Secretary of State. Upon adoption, staff will communicate with local shipping agents about the newly adopted rules and provide training on the rule package at a monthly meeting of the Columbia River Steamship Operators Association. In addition, ballast water management program staff at DEQ headquarters will incorporate administrative rule outreach and education as part of routine correspondence with local agents and during vessel boarding and inspections.

The rule implementation plan is available upon request.

**Attachments**

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses
- C. Advisory Committee Membership
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

**Available Upon Request**

- 1. Legal Notice of Proposed Rulemaking (no public hearing)
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received
- 4. Rule Implementation Plan
- 5. STAIS Task Force Meeting Minutes and rule language versions
- 6. Ballast Water Management Act (ORS 783.620 – 783.992)

Approved:

Section: \_\_\_\_\_

Division: \_\_\_\_\_

Report Prepared By: Rian Hooff

Phone: (503) 229-6865