**340-041-0061**

**Other Implementation of Water Quality Criteria**

(1) A waste treatment and disposal facility may not be constructed or operated and wastes may not be discharged to public waters without a permit from the department in accordance with ORS 468B.050.

(2) Water quality variances. The commission may grant point source variances from the water quality standards in this Division where the following requirements are met.

(a) The water quality variance may apply only to the point source for which the variance is requested and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(b) A water quality standard variance may not be granted if:

(A) Standards will be attained by all point source dischargers implementing effluent limitations required under sections 301(b) and 306 of the federal Clean Water Act and by nonpoint sources implementing cost-effective and reasonable best management practices; or

(B) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(c) Before a variance is granted, the applicant must demonstrate that attaining the water quality standard is not feasible for one of the following reasons:

(A) Naturally occurring pollutant concentrations prevent the attainment of the use.

(B) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met without violating state water conservation requirements.

(C) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(D) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use.

(E) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and unrelated to water quality preclude attainment of aquatic life protection uses.

(F) Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact.

(d) Procedures. An applicant for a water quality standards variance must submit a request for a variance to the department. The application must include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate that the designated use is unattainable for one of the reasons specified in subsection (c) of this section. If the department preliminarily determines that grounds exist for granting a variance, it must provide public notice of the proposed variance and an opportunity for public comment.

(A) The department may condition the variance on the performance of additional studies, monitoring, management practices, and other controls deemed necessary. These terms and conditions will be incorporated into the applicant's NPDES permit or department order.

(B) A variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant does not comply with the conditions of the original variance or otherwise does not meet the requirements of this section.

(C) DEQ approval of a variance for a point source is not effective under the federal Clean Water Act until submitted to and approved by EPA.