**-EXCERPT-**

**Oregon Bulletin**

**January 1, 2011**

**NOTICES OF PROPOSED RULEMAKING AND
PROPOSED RULEMAKING HEARINGS**

**Department of Environmental Quality
Chapter 340**

**Rule Caption:** Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies.

**Date: Time: Location:**

2-1-11 1 p.m. Oregon Dept. of Transportation
 63055 N. Hwy. 97
 Bend, OR 97701

2-2-11 9 a.m. DEQ Eugene Office
 165 East 7th Ave., Suite 100
 Eugene, OR 97401

2-2-11 6 p.m. DEQ Medford Office
 221 Stewart Ave., Suite 201
 Medford, OR 97501

2-3-11 1:30 p.m. City Hall, Council Chambers
 500 Central Ave.
 Coos Bay, OR 97420

2-7-11 3:30 p.m. Ontario City Hall
 444 SW 4th St.
 Ontario, OR 97914

2-8-11 2 p.m. St. Anthony’s Hospital
 1601 SE Court Ave.
 Pendleton, OR 97801

2-10-11 6 p.m. DEQ Headquarters, Rm. EQC A
 811 SW 6th Ave.
 Portland, OR 97204

**Hearing Officer:** Eric Nigg, Bobbie Lindberg, Bill Meyer/Jon Gasik, Pam Blake, Debra Sturdevant, Joanie Stevens-Schwenger

**Stat. Auth.:** ORS 468B.010, 468B.020, 468B.035, 468B.110, & 468.020

**Stats. Implemented:** ORS 468B.048

**Proposed Adoptions:** 340-041-0059, 340-045-0105

**Proposed Amendments:** 340-041-0007, 340-041-0033, 340-041-0061, 340-042-0040, 340-042-0080

**Last Date for Comment:** 2-18-11, 5 p.m. PST

**Summary:** DEQ uses Oregon’s water quality standards to implement Clean Water Act programs, which includes assessing Oregon’s water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily loads and water quality certifications. The proposed rules amend Oregon’s water quality standards for toxic pollutants and other water quality standards and policies related to the application and implementation of the water quality standards in Clean Water Act and state nonpoint source control programs.

 Proposed rule amendments:

 **Human health toxics criteria** (OAR 340-041-0033): Revised numeric criteria based on an increased fish consumption rate of 175 grams per day. Criteria that are not based on a fish ingestion method are not revised. Additional criteria revisions incorporate EPA’s 2002 criteria recommendations, which include added pollutants and revisions to other variables (such as toxicity factors) used to derive some criteria. The rule also specifies that the new criteria become effective upon approval by the Environmental Protection Agency.

 **Variance provision** (OAR 340-041-0061(2) being moved to OAR 340-041-0059): Revised rule specifies procedures and requirements, including a pollutant reduction plan, to obtain a variance from water quality standards. A variance establishes alternate requirements for a discharger when it demonstrates that permit limits based on water quality standards cannot be met based on one of six justification factors. Variances require EPA approval.

 **Nonpoint source pollution** (OAR 340-041-0007 and 340-041-0061): Revised water quality standards implementation rules pertaining to agriculture and forestry are proposed to make DEQ’s rules consistent with state statutes affecting nonpoint sources of pollution.

 **Total maximum daily loads (TMDLs)** (OAR 340-042-0040 and 340-042-0080): Makes DEQ’s rules consistent with state statutes to allocate load limits to air and land sources of pollutants in establishing TMDLs.

 Proposed new rules:

 **Intake credits** (OAR 340-045-0105): New permitting provision that allows DEQ to account for background pollutants that are present in a discharger’s intake water and pass through the facility as long as the discharge does not increase the mass or concentration of the pollutant.

 **Background pollutant allowance** (OAR 340-041- 0033): New provision in the toxic substances water quality standards that allows a limited increase in the concentration of pollutants present in a discharger’s intake water as long as the facility does not discharge added mass load of the pollutant and the ambient water body concentration does not exceed a 10-4 (1 in 10,000) risk level value.

 In October, 2008, the Environmental Quality Commission directed DEQ to pursue rulemaking to set new water quality standards for toxic pollutants in Oregon based upon on an increased fish consumption rate of 175 grams per day. The commission also directed DEQ to propose rule language or develop other implementation strategies to: 1) reduce the adverse impacts of toxic substances in Oregon’s waters that are the result of nonpoint source discharges or other sources not subject to permitting, and 2) allow DEQ to implement the standards in an environmentally meaningful and cost-effective manner. The proposed rules respond to these EQC directives. The proposed human health toxics criteria revisions correct deficiencies identified by the Environmental Protection Agency in their June 2010 disapproval of the human health criteria adopted by the EQC in June, 2004.

 For additional information regarding this rulemaking, please contact: Andrea Matzke at the Department of Environmental Quality, call toll free in Oregon 800-452-4011 or 503-229-5384, or visit DEQ’s public notices webpage http://www.deq.state.or.us/news/publicnotices/PN.asp

 To comment on this rulemaking, submit your comments to: Andrea Matzke, Oregon Department of Environmental Quality, 811 SW 6th Ave, Portland, Oregon, 97204, or by fax to 503-229-6037, or by email to ToxicsRuleMaking@deq.state.or.us *(if you do not receive an auto response to your emailed comments, contact staff listed above).*

**Rules Coordinator:** Maggie Vandehey

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**Telephone:** (503) 229-6878

**Notes**

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