Secretary of State

Certificate and Order for Filing

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [June 16, 2011] by the

Date prior to or same as filing date

Oregon Department of Environmental Quality, Water Quality Division 340

Agency and Division Administrative Rules Chapter Number

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to become effective [ upon filing]. Rulemaking Notice was published in the [January 2011] Oregon Bulletin.\*\*

Date upon filing or later Month and Year

**RULE CAPTION**

Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies

**Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT**: 340-041-0059, 340-045-0105

**AMEND**: 340-041-0007, 340-041-0009, 340-041-0033, 340-041-0061, 340-042-0080, 340-042-0040

**REPEAL**:

**RENUMBER**:

**AMEND & RENUMBER**:

# Stat. Auth.: ORS 468B.010, ORS 468B.020, ORS 468B.035, ORS 468B.110, and ORS 468.020

Other Auth.:

# Stats. Implemented: ORS 468B.048

**RULE 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.

Amended Rules:

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

**Deletion of existing variance language** (340-041-0061): Deleted existing variance regulatory language in 340-041-0061(2) and adopted a new variance provision in OAR 340-041-0059.

**Typographical error** (340-041-0061): Corrected a typographical error at 340-041-0061(9)(a)(e) discovered during the public comment period that incorrectly cross-referenced the antidegradation policy. The cross-reference should be to 340-041-0004(9), addressing exceptions to the rule, not 340-041-0004(7), the water quality limited waters policy.

**Bacteria** (340-041-0009): Revised a citation in section (10) due to a numbering revision in 340-041-0061(12).

**Human health toxics criteria and establishing site-specific background pollutant 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 applicable upon approval by the Environmental Protection Agency. In addition, a site-specific background pollutant provisionallows a limited increase in the concentration of toxic 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.

**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.

Adopted Rules:

**Variance provision** (OAR 340-041-0059): Revised rule replaces the variance provision in 340-041-0061(2). This provision 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. The rule also specifies that the new criteria become applicable upon approval by the Environmental Protection Agency.

**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.

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 final rules, adopted by the Environmental Quality Commission on June 16, 2011, 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.

Maggie Vandehey July 7, 2011

Authorized Signer Printed name Date

**\***With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **\*\***The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005