Secretary of State

## NOTICE OF PROPOSED RULEMAKING HEARING\*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Environmental Quality 340

Agency and Division Administrative Rules Chapter Number

Maggie Vandehey 811 SW Sixth Avenue, Portland, OR 97204-1390 (503) 229-6878

Rules Coordinator Address Telephone

**Revised Water Quality Standards for Human Health Toxic Pollutants and Revised**

**Water Quality Standards Implementation Policies**

This notice of proposed rulemaking was first published in the January 2011 Secretary of State bulletin. It is being re-published to provide the following updates:

1) the public hearing in Ontario, Oregon will begin at 2:30 pm Mountain Time;

2) there will be a public hearing before the Environmental Quality Commission on February 16, 2011; and

3) the deadline for public comment has been extended to February 23, 2011.

See below for additional information.

February 1, 2011 1:00 pm Oregon Department of Transportation 63055 N. Highway 97

Bend, OR 97701 DEQ Staff

Hearing Date Time Location Hearings Officer

February 2, 2011 9:00 am DEQ Eugene Office

165 East 7th Ave., Suite 100

Eugene, OR 97401 DEQ Staff

Hearing Date Time Location Hearings Officer

February 2, 2011 6:00 pm DEQ Medford Office

221 Stewart Ave., Suite 201

Medford, OR 97501 DEQ Staff

Hearing Date Time Location Hearings Officer

February 3, 2011 1:30 pm City Hall, Council Chambers

500 Central Ave.

Coos Bay, OR 97420 DEQ Staff

Hearing Date Time Location Hearings Officer

February 7, 2011 2:30 pm Ontario City Hall

444 SW 4th St.

Ontario, OR 97914 DEQ Staff

Hearing Date Time Location Hearings Officer

February 8, 2011 2:00 pm St. Anthony’s Hospital

1601 SE Court Ave.

Pendleton, OR 97801 DEQ Staff

Hearing Date Time Location Hearings Officer

February 10, 2011 6:00 pm DEQ Headquarters, Rm. EQC A

811 SW 6th Ave.

Portland, OR 97204 DEQ Staff

Hearing Date Time Location Hearings Officer

February 16, 2011 1:30 pm DEQ Headquarters, Rm. EQC A Environmental Quality

811 SW 6th Ave. Commission Chair

Portland, OR 97204 Bill Blosser

Hearing Date Time Location Hearings Officer

***Auxiliary aids for persons with disabilities are available upon advance request.***

**RULEMAKING ACTION**

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

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

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

**REPEAL**:

**RENUMBER**:

**AMEND & RENUMBER**: OAR 340-041-0061(2) to be amended and renumbered as OAR 340-041-0059

# 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.

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](mailto:ToxicsRuleMaking@deq.state.or.us) *(if you do not receive an auto response to your emailed comments, contact staff listed above).*

DEQ requests public comment on whether to consider other options for achieving the rule’s substantive goals while reducing the negative economic impact of the rule on business.

February 23, 2011, 5:00 pm PST

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Maggie Vandehey January 14, 2011

Signature Printed name Date

\*Hearing Notices published in the Oregon Bulletin 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, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005