

Proposed Rulemaking Announcement

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

Background

The Oregon Department of Environmental Quality proposes, through this rulemaking, to revise the water quality standards regulation to address the human health criteria for toxic pollutants. DEQ also proposes to adopt new and revised water quality standards rules on implementing water quality standards through various water quality control programs, including National Pollutant Discharge Elimination System (NPDES) permits and nonpoint source pollution programs.

Why Are Rule Changes Needed?

DEQ uses water quality standards as the basis to regulate the discharge of pollutants to Oregon water bodies, to evaluate whether water bodies support beneficial uses, such as fishing and household water supply, and to implement other programs to prevent and control water pollution from point (end-of-pipe) and nonpoint sources.

DEQ's currently effective human health toxics criteria are based on a fish consumption rate that does not provide adequate protection for the amount of fish and shellfish consumed by Oregonians. On June 1, 2010, the Environmental Protection Agency (EPA) disapproved human health toxics criteria which Oregon submitted for approval in 2004 and which were based on a fish consumption rate of 17.5 grams per day. EPA disapproved the human health toxics criteria because the fish consumption rate is not considered protective of many Oregonians. DEQ is addressing EPA's disapproval by proposing to use a higher fish consumption rate of 175 g/day to calculate more protective human health toxics criteria. If DEQ does not establish revised criteria, EPA must conduct rulemaking to develop human health toxics criteria for Oregon.

This rulemaking also proposes new rule language and revisions to existing rule language for various NPDES permit implementation tools developed to assist dischargers in complying with revised standards. Further, revisions to the water quality standards and Total Maximum Daily Load (TMDL) rules are intended to make DEQ's rules consistent with state statutes affecting nonpoint sources of pollution and for

DEQ to assign pollution load allocations to significant land and air sources in TMDLs.

What is the Objective of This Rulemaking?

The objective is to adopt water quality standards for Oregon that will protect people from adverse health effects as a result of consuming fish and water from Oregon streams and lakes. In addition, the objective of the rulemaking is to allow DEQ and other agencies to implement the water quality standards in a manner that is cost effective and achieves meaningful environmental results.

Who May Be Affected?

Cities and businesses that discharge to state waters will be affected by this rulemaking if their discharge contains one or more of the regulated pollutants. Forest and agricultural land managers, transportation and other construction projects and other parties subject to programs that control point and nonpoint sources of pollution could also be affected if their activity results in the transport of regulated toxic pollutants into surface waters. Tribal people and other Oregonians who eat fish and shellfish will benefit from the health protections provided.

How Was This Proposal Developed?

DEQ worked with several advisory committees throughout this process. In developing the revised fish consumption rate, DEQ worked with the *Human Health Focus Group*, a group of public health specialists and toxicologists who advised DEQ in its review of available fish consumption studies. DEQ also assembled the *Fiscal Impact and Implementation Advisory Committee*, a group of affected stakeholders and two economists, to provide input on the fish consumption rate development and on a cost analysis conducted for DEQ by an EPA contractor.

During the development of the revised human health criteria and the implementation tools, DEQ worked with a *Toxics Standards Rulemaking Workgroup* and a *Non-NPDES Workgroup*, both comprised of affected stakeholders. Agendas and meeting summaries for these two workgroups are available on DEQ's website at:

<http://www.deq.state.or.us/wq/standards/humanh>



State of Oregon
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Environmental
Quality

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www.oregon.gov/DEQ/

DEQ and the EQC have the statutory authority to address this issue under ORS 468B.010, 468B.020, 468B.035, 468B.110, and 468.020. These rules implement ORS 468B.048



[ealth.htm](#).

Rulemaking Materials Available

- Proposed Rule Changes
- Statement of Need and Fiscal Impact
- Land Use Evaluation Statement
- Relationship to Federal Requirements

The above documents are available for public comment and provide information about this proposed rulemaking. The documents can be viewed at:

<http://www.deq.state.or.us/regulations/rulemaking.htm>.

Additional Materials Available

Principal documents DEQ used to develop and support this rulemaking include a set of issue papers. DEQ has also developed draft Internal Management Directive (IMD) outlines for several implementation components of the proposed rulemaking. Other supporting documents include EPA criteria recommendations and the Human Health Focus Group report. These may be found on DEQ's website at:

<http://www.deq.state.or.us/wq/standards/toxics.htm>.

DEQ will post issue papers and draft IMD outlines to the above website by Monday, Jan. 3, 2011. These documents are not for public comment.

The public may review copies of the documents described above at DEQ's headquarters office at 811 S.W. 6th Ave. in Portland. Please contact Andrea Matzke at 503-229-5384, or toll-free in Oregon at 1-800-452-4011, ext. 5384 for times when the documents are available for review.

How to Comment

People may submit comments on the proposed rulemaking in writing via mail, fax or e-mail at any time prior to the comment deadline of 5 p.m. Friday, Feb. 18, 2011. Written and oral comments can be submitted during any of the public hearings specified below. It is not necessary to attend a hearing in order to comment. Written comments received prior to the deadline are treated equally with oral comments.

Mail written comments to Andrea Matzke, Oregon DEQ, Water Quality Division, 811 SW 6th Ave, Portland, OR 97204. Contact Andrea

Matzke at 503-229- 5384, or toll-free in Oregon at 1-800-452-4011, ext. 5384.

Fax comments to Andrea Matzke at 503-229-6037, or e-mail comments to:

ToxicsRuleMaking@deq.state.or.us .

(DEQ will acknowledge e-mail comments immediately. Limit comments and attachments to 10 MB. If you do not receive an automatic response, or your comments and attachments will exceed this limit, please contact Andrea Matzke at the number listed above.)

If there is a delay between servers, e-mails may not be received before the deadline.

Public Hearings

DEQ will hold public hearings in seven cities throughout the state in February. Each hearing will begin with a brief overview of the proposed rule changes, followed by the opportunity for members of the public to provide oral and written comment. DEQ will record and review all comments.

- **Bend**
1 p.m. Tuesday, Feb. 1, 2011
Oregon Department of Transportation
Office, Deschutes River Room
63055 N. Highway 97
Bend, OR 97701
- **Eugene**
9 a.m. Wednesday, Feb. 2, 2011
DEQ Eugene Office
Willamette Conference Room
165 East 7th Ave., Suite 100
Eugene, OR 97401
- **Medford**
6 p.m. Wednesday, Feb. 2, 2011
DEQ Medford Office
Large Conference Room
221 Stewart Ave., Suite 201
Medford, OR 97501
- **Coos Bay**
1:30 p.m. Thursday, Feb. 3, 2011
City Hall, Council Chambers
500 Central Ave.
Coos Bay, OR 97420
- **Ontario**
2:30 p.m. Mountain Standard Time
Monday, Feb. 7, 2011
Ontario City Hall
Council Chambers (2nd floor)
444 SW 4th St.

Ontario, OR 97914

- **Pendleton**
2 p.m., Tuesday, Feb. 8, 2011
St. Anthony's Hospital
Cascade Room (1st floor)
1601 SE Court Ave.
Pendleton, OR 97801
- **Portland**
6 p.m., Thursday, Feb.10, 2011
DEQ Headquarters, Rm EQC-A (10th
floor)
811 SW 6th Ave.
Portland, OR 97204

Comment Deadline is Feb.18, 2011

All comments are due to DEQ by 5 p.m. Friday Feb. 18, 2011. DEQ cannot consider comments from any party **received** after the deadline for public comment.

How Will Rules be Adopted?

DEQ will prepare a response to all comments received during the public hearing and comment period and may modify the proposed rules. DEQ plans to recommend that the Oregon Environmental Quality Commission adopt the rules at the commission's June 2011 meeting. DEQ will notify persons of the time and place for final EQC action if they submit comments during the hearing or comment period or request to be placed on DEQ's mailing list for this rulemaking.

Accessibility Information

DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach office, Portland, at 503-229-5696 or call toll-free in Oregon at 800- 452-4011, ext. 5696; fax to (503) 229-6762; or e-mail deqinfo@deq.state.or.us. People with hearing impairments may call 711.