**Draft Proposed “Background Pollutant Allowance” Rule**

Below are draft revisions to the “background pollutant allowance” rule in response to comments and discussion with the RWG. DEQ will also seek comment on these revisions from EPA and will work with EPA to word the provision such that it qualifies as a water quality standard. It is DEQ’s intent that this is a standards provision that would be approved by EPA in order to provide the regulatory certainty that it can be implemented in permits.

Revised DEQ recommendation

1. The provision applies only to human health criteria.
2. The criterion is exceeded or nearly exceeded (within 3%) in the receiving water body upstream of the discharge.
3. The facility does not increase the mass load of the pollutant in the receiving water. The mass load of the pollutant in the facility’s discharge does not exceed the mass load taken into the faciltiy from the receiving water.
4. The calculated increase in concentration below the discharge point as compared to the upstream ambient concentration is not greater than:
	1. 3% calculated using 100% of the harmonic mean flow of the receiving stream for carcinogenic pollutants and the 30Q5 flow of the receiving stream for non-carcinogens; or
	2. 3% for the Willamette and Columbia Rivers calculated using 25% of the dilution flows specified in (4) (a).
5. There is no technologically and economically feasible means to further reduce the pollutant concentration in the discharge.

Proposed rule language

OAR 340-041-0033 (3). An increase of 3% or less in the background pollutant concentration of a water body that approaches or exceeds an applicable human health criterion does not result in a significant change in human health protection and may be allowed if all the definitions and conditions in this rule section [OAR 340-041-0033(3) (a) through (e)] are true.

1. For the purpose of this section, “background pollutant concentration” means the ambient water body concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or result from upstream human activity.
2. For the purpose of this section, “approaches or exceeds an applicable human health criterion” means that the pollutant concentration is equal to or greater than the applicable numeric criterion or would equal or exceed the criterion if it were increased by 3%.
3. The mass of the pollutant in the discharge does not exceed the mass that is attributable to the pollutant in the facility's intake water from the receiving water body and therefore, does not increase the mass load of the pollutant in the receiving water body.
4. The 3% increase above the background pollutant concentration is calculated:
	1. For the Willamette and Columbia Rivers, using 25% of the:
		1. harmonic mean flow of the water body for pollutants that are carcinogens, or
		2. 30Q5 flow of the water body for pollutants that are non-carcinogens.
	2. For all other waters, using 100% of the:
		1. harmonic mean flow of the water body for pollutants that are carcinogens, or
		2. 30Q5 flow of the water body for pollutants that are non-carcinogens.
5. No other technologically and economically feasible means that would not have significant adverse environmental consequences are available to reduce the pollutant concentration in the discharge.