



Oregon Department of Environmental Quality

SEPTEMBER 1, 2013
Notice of Proposed Rulemaking

Corrections and Clarifications to Toxics Water Quality Standards Rulemaking

Overview

Short summary

[ENTER A SHORT HIGHLEVEL SUMMARY OF THE PROPOSED RULES. THE PURPOSE IS TO HELP THE READER PICK UP THE GIST OF OUR PROPOSAL IN A SHORT PERIOD OF TIME.]

The *Corrections and Clarifications to Toxics Water Quality Standards Rulemaking* proposes revisions to the toxic water quality standards rules. These revisions are generally not substantive, but are intended to correct several toxic pollutant criteria EPA recently disapproved, as well as address other minor revisions to the Toxic Substances rule. For example, EPA disapproved criteria for 11 pesticides based on an unclear reading of the frequency and duration components of these criteria. DEQ expects that clarifying this aspect of the criteria will remedy the disapproval of 35 pesticide criteria values associated with 11 pesticides. DEQ also proposes to correct an error in the expression of freshwater selenium criteria (i.e. currently expressed as “total recoverable selenium” and is proposed to be expressed as “dissolved selenium”); is re-proposing freshwater and saltwater arsenic criteria and chromium VI saltwater criteria that were inadvertently left off during a 2007 rulemaking; and is correcting typographical errors associated with the Human Health Toxics Rulemaking that occurred in 2011. In addition, proposed changes to the Toxic Substances rule reflect the movement of the effective aquatic life criteria from Tables 20, 33A, and 33B into a new aquatic life criteria table, Table 30. As a result of this movement, Tables 20, 33A, and 33B are no longer needed and are proposed to be deleted. DEQ also proposes to delete aluminum from Table 30 to reflect EPA’s disapproval of the freshwater criteria for aluminum (EPA’s disapproval renders the criteria ineffective and there are no saltwater criteria for aluminum) and there are no criteria in Table 20 that were last approved by EPA.

Brief history

On Jan. 31, 2013, the EPA took action on Oregon’s aquatic life toxics criteria adopted by the Oregon Environmental Quality Commission and submitted to EPA in 2004. DEQ developed these water quality criteria to protect aquatic organisms such as fish, shellfish, and aquatic insects. EPA approved 38 criteria values associated with 14 toxic pollutants. EPA disapproved freshwater criteria associated with three pollutants—ammonia, cadmium and copper—based on findings in the National Marine Fisheries Service’s (NMFS) August 2012 Biological Opinion. EPA also disapproved criteria associated with 13 other pollutants (11 pesticides, selenium and aluminum) due to inconsistencies associated with EPA’s nationally recommended criteria. The Clean Water Act requires Oregon to fix the deficiencies identified in EPA’s disapproval action. If Oregon does not make these revisions, EPA is required to put in place its own regulations addressing the deficiencies. This rulemaking will not include remedies to address the disapproval of the freshwater criteria for aluminum, ammonia, copper, and cadmium (acute only). DEQ expects to conduct a separate, subsequent rulemaking(s) to address these pollutants. DEQ is separating

these rulemakings to help ensure that the straight-forward corrections as proposed in this rule are completed in a timely manner, and are not unnecessarily delayed by the more substantive issues DEQ anticipates arising from the other disapproved criteria.

Regulated parties

Regulated parties include industrial and municipal dischargers to waters of the state. Specifically, regulated parties include those industrial dischargers that are categorized as “primary dischargers” by the federal permitting regulations and required to monitor for toxic pollutants, and generally major municipal dischargers (average dry weather design flow of more than one million gallons per day (MGD)).

Agricultural and forest activities are subject to Agricultural Water Quality Management (AgWQM) Area Plans and Rules and the Forest Practices Act, which respectively, prohibit pollution (e.g. toxics affecting aquatic life and human health) to waters of the state.

Statement of need

Proposed Rule or Topic	Discussion
1. 340-041-0033(1-5): Toxic Substances Rule	
<p>What problem is DEQ trying to solve?</p>	<p>Currently, Oregon's water quality criteria for the protection of aquatic life reside in three tables: Table 20, Table 33A, and Table 33B. As part of the 2004 rulemaking, Table 33A contained criteria that were more stringent or remained the same and were effective for NPDES permitting. Table 33B contained criteria that were less stringent and were only effective after EPA approval. Table 20 contained criteria effective for all other CWA programs, such as reporting to EPA on the condition of Oregon's waters (i.e. sections 303(d) and 305(b)). In 2004, DEQ placed these criteria in separate tables to indicate which criteria would be effective until such time EPA approved or disapproved the criteria; however, this separation has added to the complexity of determining which criteria were effective for specific water programs over the subsequent years.</p> <p>On Jan. 31, 2013, EPA took action on the 2004 criteria, thereby determining which new or revised criteria in Tables 33A and 33B are now effective under CWA authorities. Criteria that EPA disapproved immediately reverted back to criteria (if they exist) last approved by the EPA contained in Table 20. The effective criteria now apply across all CWA programs. This rulemaking proposes to combine these effective aquatic life criteria into one table: Table 30. Proposed revisions to the Toxic Substances rule remove references to Tables 20, 33A, and 33B and instead, refer to Table 30. Other proposed changes are for clarification purposes.</p> <p>In addition, Table 30 contains proposed changes to correct EPA's disapproval of 11 pesticides and the freshwater criteria for selenium. It also proposes to re-adopt freshwater and saltwater criteria for arsenic and saltwater criteria for chromium VI that DEQ inadvertently removed from Table 33B as part of the 2007 water quality standards rulemaking. Other proposed changes provide additional clarification to footnotes or introductory language to Table 30.</p> <p>There are additional proposed minor clarifications to Table 40 which contains toxics criteria for the protection of human health.</p> <p>The Secretary of State Bulletin now allows tables to be attached to the Oregon Administrative Rules; therefore, proposed changes found at the end of the Toxic Substances rule state that</p>

Proposed Rule or Topic	Discussion
	<p>Tables 30, 33C, and 40 will be attached as PDF documents.</p> <p>These proposed changes do not become effective until after EQC adoption and EPA approval.</p>
How would the proposed rule solve the problem?	<p>Combining the aquatic life toxics criteria into one table will make it easier for DEQ staff, the public, and the regulated community to determine which criteria are effective. These criteria will also apply across CWA programs rather than being program specific.</p> <p>In addition, the proposed changes to Table 30 reinstate the arsenic and chromium VI criteria and respond to EPA's disapproval of 11 pesticides and the freshwater criteria for selenium. DEQ anticipates that EPA will be able to promptly approve these criteria.</p>
How will DEQ know the problem has been solved?	DEQ will know if the problems described above have been solved based on outcomes such as: aquatic life toxics criteria are consistently implemented in CWA programs; fewer inquiries to DEQ staff to determine which aquatic life toxics criteria are effective; and prompt EPA approval of rulemaking revisions it identifies as water quality standards.
2. 340-041-0033(7) Arsenic Reduction Policy Rule	
What problem is DEQ trying to solve?	The Arsenic Reduction Policy rule adopted by the EQC in June 2011 contains several reference errors. The rule incorrectly references the Arsenic Reduction Policy as section 4, rather than section 7. This error occurred during preparation of the final rule when the Arsenic Reduction Policy was moved from section 4 in the proposed rule to section 7 in the final toxics rule. DEQ also corrected another reference error in subsection f.
How would the proposed rule solve the problem?	The proposed rulemaking corrects the reference errors described above.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
3. 340-041-0009 Bacteria Rule	
What problem is DEQ trying to solve?	The Bacteria Rule references Table 20. Since DEQ will remove Table 20 from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule in general to reduce future citation corrections if the table name changes again.
How would the proposed rule solve the problem?	The proposed rulemaking corrects the reference error described above.

Proposed Rule or Topic	Discussion
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
4. 340-040-0020 Groundwater Quality Protection	
What problem is DEQ trying to solve?	<p>Table 20 is referenced in the Groundwater Quality Protection rules. Since DEQ will remove Table 20 from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule to reduce future citation corrections if the table name changes again.</p> <p>Additionally, there is a citation to Division 41 which no longer exists. The correct reference should be to the same antidegradation policy described and referenced in OAR 340-040-0020; therefore DEQ proposes to delete the citation.</p>
How would the proposed rule solve the problem?	The proposed rulemaking corrects the reference errors described above.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
5. 340-040-0080 Numerical Groundwater Quality Reference Levels and Guidance Levels	
What problem is DEQ trying to solve?	Table 20 is referenced in the Numerical Groundwater Quality Reference Levels and Guidance Levels rules. Since Table 20 will be removed from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule to reduce future citation corrections if the table name changes again.
How would the proposed rule solve the problem?	The proposed rulemaking corrects the reference error described above.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

Federal relationship (to be completed at time of public notice)

For proposals that address numerous issues, the rule design team may use one of the methods under the Statement of Need section if it clarifies how this section applies to the disparate elements of this rulemaking. Delete this box after the team has settled on a method.

"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."

Relationship to federal requirements

[OPTION 1 – verbatim or by reference]

The proposed rule adopts the federal requirement Choose an item.. [ENTER THE NAME OF THE REQUIREMENT, ITS CITATION AND A BRIEF DESCRIPTION.] Enter text here.

[OPTION 2– in addition to federal requirements]

DEQ determined this rule proposal is “in addition to federal requirements” as required under [ORS 468A.327\(1\)\(a\)](#) and [OAR 340-011-0029\(1\)\(a\)](#).

[EXPAND ON HOW AND WHY THE PROPOSED RULES ARE DIFFERENT FROM THE FEDERAL REQUIREMENTS.] [EXAMPLES: address science applicable to Oregon, incorporate technological advances, protect public health, protect environment, address administrative issues or address economic concerns] Enter text here

What alternatives did DEQ consider, if any?

[DESCRIBE WHY DEQ DID NOT PURSUE THESE ALTERNATIVES] Enter text here

Rules affected, authorities, supporting documents (to be completed at time of public notice)

Lead division

Enter text here

Program or activity

Enter text here

Chapter 340 action

Recommendation	Division	Rule	Title	SIP/Land use*
Choose an item.	000	0000	TEXT	Choose an item.
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* SIP – This rule is part of the State Implementation Plan.

* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

Statutory authority

ORS 468.020, 468.065, [ENTER CITATIONS] Enter here

Other authority▶

ORS [ENTER CITATIONS] Enter here

Statute implemented

Legislation

Year

ORS [ENTER CITATIONS] Enter here

[ENTER BILL #] Enter here

yyyy

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

[BRIEFLY DESCRIBE THE PRINCIPAL DOCUMENTS, REPORTS OR STUDIES RELIED ON TO DEVELOP THIS PROPOSAL. INCLUDE THE LOCATION WHERE THE DOCUMENTS ARE AVAILABLE FOR PUBLIC INSPECTION. THE LIST MAY BE ABBREVIATED IF THE TEAM IDENTIFIES THE LOCATION OF THE COMPLETE LIST.]

Document title	Document location
EPA action letter on OR's 2004 aquatic life criteria and associated	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, OR 97204 Electronic versions may be found at:

documents	http://www.deq.state.or.us/wq/standards/toxics.htm#links
DEQ response letter to EPA	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, OR 97204 Electronic versions may be found at: http://www.deq.state.or.us/wq/standards/docs/toxics/ResponseLetterEPA.pdf
OAR 340-041-0033 OAR 340-041-0009 OAR 340-040-0020 OAR 340-040-0080	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, OR 97204 Electronic versions may be found at: http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_tofc.html
Tables 20, 33A, 33B	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, OR 97204 Electronic versions may be found at: http://www.deq.state.or.us/wq/standards/toxics.htm

Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

Statement of Cost of Compliance

1. Impacts on general public

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON THE GENERAL PUBLIC.]

DEQ does not expect that the general public will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics water quality standards rules. The general public is not directly regulated under the Clean Water Act. The revisions proposed in this rulemaking correct typographical errors associated with the aquatic life criteria and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA's approval and disapproval actions associated with the 2004 aquatic life criteria.

DEQ anticipates the changes to the toxics rule will very likely provide a benefit to members of the public by clarifying which criteria are effective and combining effective aquatic life toxics criteria into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

2. Cost of compliance on small businesses (those with 50 or fewer employees). [ORS 183.336](#)

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON SMALL BUSINESSES. IT IS OK TO REFERENCE 1. ABOVE IF THE TEXT WOULD BE IDENTICAL.]

DEQ does not expect small businesses to be affected by these rule revisions. Few small businesses are directly subject to toxics water quality criteria because most small businesses do not directly discharge wastewater to a waterbody. For those businesses that do discharge to a waterbody and have toxics monitoring requirements (i.e. identified as “primary industries” by federal permitting regulations), or are subject to pretreatment requirements where the business discharges to a municipal wastewater facility, the proposed changes in this rulemaking do not impose new requirements associated with the water quality toxics criteria. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, the revisions proposed as part of this rulemaking provide corrections and clarifications to toxics regulations and tables and responds to the regulatory consequences of EPA disapproval and approval of aquatic life criteria submitted in 2004.

DEQ is proposing to re-adopt freshwater and saltwater criteria for arsenic and saltwater criteria for chromium VI originally adopted by the EQC in 2004. DEQ inadvertently left off these criteria in Table 33B during the 2007 water quality standards rulemaking. Despite this omission, these re-proposed criteria are not considered new water quality criteria for the protection of aquatic life and do not need to undergo an economic analysis. In addition, although the correction to the selenium criteria (i.e. expressed in the dissolved form) does result in slightly lower criteria, the expression of most metals to the dissolved form, including selenium, was accounted for as part of the 2004 rulemaking fiscal analysis.

However, some small businesses may need to conduct minor recordkeeping activities to correctly reference the effective aquatic life toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to small businesses subject to toxics water quality criteria by clarifying which criteria are effective and combining effective aquatic life toxics criteria into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

Many farms, ranches, and small timber operations fall under the category of small businesses. Agricultural and forest activities are subject to Agricultural Water Quality Management (AgWQM) Area Plans and Rules and the Forest Practices Act, which respectively, prohibit pollution (e.g. toxics affecting aquatic life and human health) to waters of the state. Because these plans and rules already require and provide the mechanism for agriculture and small forest land owners to meet water quality standards and TMDL load allocations, and moreover, this rulemaking only proposes clarifications and corrections to toxics regulations and tables, DEQ does not anticipate that this proposed rulemaking will have direct or indirect fiscal impacts or effects on small farms and ranches.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

As part of its recordkeeping, DEQ does not track whether any of the entities subject to the proposed rule revisions are small businesses, therefore it is difficult to estimate businesses potentially affected. The types of small businesses/industries holding wastewater permits and may be required to monitor for toxics include, but are not limited to: smelting/refining operations, timber processing, wood products manufacturing, pulp and paper, retail operations, circuit boards, and petroleum hydrocarbon clean-up operations.

According to the Oregon Farm Bureau, 97% (update if needed—this stat was from the human health toxics rulemaking) of Oregon farms and ranches fall under the category of small businesses based on the definition of small businesses being fifty or fewer employees. Other types of businesses that could be subject to this rulemaking include nurseries, dairy and beef producers, fruit growers, and other food producers, industrial, and small forest land owners.

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

No additional activities are required for compliance with the proposed revisions; however, some small businesses may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

No additional resources are required for compliance with the proposed rules.

d) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included the Association of Oregon Industries (AOI) as part of the advisory committee that advised DEQ on the cost of compliance for this rulemaking for small businesses. AOI's membership is comprised of large and small companies from all business classifications in Oregon. In addition, the Oregon Farm Bureau was also part of the advisory committee and represents many farms and ranches that are considered small businesses.

DEQ discussed the fiscal impact form and solicited input from these members during one workgroup meeting on July 11, 2013. This input was incorporated into DEQ's analysis.

3. Impact on large businesses (all businesses that are not small businesses under #2 above)

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON LARGE BUSINESSES. IT IS OK TO REFERENCE #1 OR #2 ABOVE IF THE TEXT WOULD BE IDENTICAL.]

Large businesses that discharge to waterbodies are regulated under the Clean Water Act and are subject to toxics monitoring requirements. However, DEQ does not expect large businesses, such as pulp and paper or electronic processing types of industry, to incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics water quality standards rule. This rulemaking does not propose new water quality criteria for protection of aquatic life or human health. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic

life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA's approval and disapproval actions associated with the 2004 aquatic life criteria. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking.

DEQ is proposing to re-adopt freshwater and saltwater criteria for arsenic and saltwater criteria for chromium VI originally adopted by the EQC in 2004. DEQ inadvertently left off these criteria in Table 33B during the 2007 water quality standards rulemaking. Despite this omission, these re-proposed criteria are not considered new water quality criteria for the protection of aquatic life and do not warrant undergoing an economic analysis. In addition, although the correction to the selenium criteria (i.e. expressed in the dissolved form) does result in slightly lower criteria, the expression of most metals to the dissolved form, including selenium, was accounted for as part of the 2004 rulemaking fiscal analysis.

Some large businesses may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to large businesses subject to requirements based on toxics criteria by clarifying which criteria are effective and combining effective aquatic life toxics criteria into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

4. Impact on local government other than DEQ

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON STATE AGENCIES. IT IS OK TO REFERENCE #1, 2 OR 3 ABOVE IF THE TEXT WOULD BE IDENTICAL.]

DEQ does not expect local governments, such as municipal wastewater treatment facilities (i.e. domestic facilities or Publicly Owned Treatment Works), to incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule. This rulemaking does not propose new water quality criteria for protection of aquatic life or human health. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA's approval and disapproval actions associated with the 2004 aquatic life criteria.

Most, if not all, major domestic sources are subject to toxic pollutant monitoring requirements. Generally, minor domestic sources (average dry weather design flow of less than one million gallons per day (MGD)) have much reduced monitoring and permitting requirements than major domestic sources.

The re-adoption of arsenic and chromium VI criteria and the expression of the freshwater selenium criteria to dissolved, as noted above under impacts to large businesses, does not require an economic analysis. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking.

Some wastewater treatment facilities may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to local governments subject to toxics criteria by clarifying which criteria are effective and combining effective aquatic life toxics criteria into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

5. Impact on DEQ

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON DEQ. IT IS OK TO REFERENCE 1, 2, 3 or 4 ABOVE IF THE TEXT WOULD BE IDENTICAL.]

DEQ does not expect that DEQ staff will incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule. Although many DEQ programs use water quality criteria for toxics in various water quality programs (e.g. water quality assessment, Total Maximum Daily Load program, NPDES permitting, groundwater rules, clean-up program, etc.), this rulemaking does not propose new water quality criteria for protection of aquatic life or human health. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA's approval and disapproval actions associated with the 2004 aquatic life criteria. However, some DEQ programs may need to conduct minor recordkeeping activities to correctly reference effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to DEQ staff by clarifying which criteria are effective and combining effective toxics aquatic life criteria into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

Documents relied on for fiscal and economic impact

None.

Housing cost

To comply with [ORS 183.534](#), DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached single-family dwelling on that parcel.

Fees

Not applicable.

Land use (to be completed at time of public notice)

For proposals that address numerous issues, the rule design team may use one of the methods under the Statement of Need section if it clarifies how this section applies to the disparate elements of this rulemaking. Delete this box after the team has settled on a method.

“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”

ORS 197.180, OAR 660-030

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial resources
19	Ocean Resources
- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
 - Comply with statewide land-use goals, and
 - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

[APPLIES TO THE PROPOSED RULES THAT **DO NOT AFFECT** LAND-USE PROGRAMS OR ACTIONS. ADJUST TO FIT SITUATION.]

DEQ determined that the proposed rules identified under the 'Chapter 340 Action' section above **do not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

[APPLIES TO THOSE PROPOSED RULES THAT **AFFECT** LAND-USE PROGRAMS OR ACTIONS. ADJUST TO FIT SITUATION.]

DEQ determined that the proposed rules identified under the 'Rules affected, authorities, supporting documents' section above **affect** [IDENTIFY EXISTING PROGRAM, RULE OR ACTIVITY], which is an existing rule, program or activity that is considered a land-use program in the DEQ State Agency Coordination Program.

[**OPTION 1**]DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. [DESCRIBE BRIEFLY WHY IT IS ADEQUATE.] [EXAMPLE 1: 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans] [EXAMPLE 2: 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.] Enter text here.

[**OPTION 2**]DEQ's statewide goal compliance and local plan compatibility procedures do not cover the proposed rules. [DESCRIBE CRITERIA AND RATIONALE USED TO DETERMINE THE PROPOSED RULES ARE LAND-USE RULES.] Enter text here.

[POTENTIAL TEXT] DEQ reasonably expects the program, rules or actions to have Choose an item. effect on resources, objectives or areas in the planning goals. [PLEASE EXPLAIN] Enter text here.

[**OPTION 3**]The proposed rules are not subject to existing compliance and local plan compatibility procedures. To ensure compliance and compatibility, DEQ will [EXPLAIN NEW PROCEDURES DEQ WILL USE TO ENSURE COMPLIANCE AND COMPATIBILITY] Enter text here.

Stakeholder and public involvement

Advisory committee

DEQ established an advisory committee in January 2013 to provide input to DEQ on any potential fiscal impacts, including benefits that may result from this rulemaking. The rulemaking was subsequently delayed and then re-initiated in May 2013. DEQ met with the advisory committee on June 25, 2013 and July 11, 2013. The committee includes eight members representing industrial, municipal, tribal and environmental organizations with an interest in actions related to developing or revising water quality standards for toxic pollutants. See the [Advisory Committee Charter](#) for more information.

DEQ sent the draft fiscal analysis to the committee on July 2, 2013 to prepare for the fiscal analysis discussion at the July 11, 2013 meeting. In compliance with [ORS 183.333](#), DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant impact on small businesses and compliance with [ORS 183.540](#).

DEQ considered the committee's recommendations on this fiscal and economic impact statement. The committee recommended that [SUMMARIZE RECOMMENDATION OR INVOLVEMENT AND LINK TO ANY FORMAL RECOMMENDATION.]

[To be completed after July 11 meeting].

Roster

Name	Representing	Contact Information
1. Curtis Barton	Clackamas Water Environment Services	curtisb@co.clackamas.or.us (503) 742-4615
2. Dianne Barton	Columbia River Inter-Tribal Fish Commission	bard@critfc.org (503) 731-1259
3. Kathleen Collins	U.S. Environmental Protection Agency	collins.kathleen@epa.gov (206) 553-2108
4. Heath Curtiss	Oregon Forest Industries Council	Heath@ofic.com (503) 877-3225
5. Mike Freese	Oregon Farm Bureau	Mike@oregonfb.org (503) 399-1701 x308
6. John Ledger	Associated Oregon Industries	johnledger@aoi.org

7. Andrea Matzke	OR Dept. of Environmental Quality	(503) 227-5636 matzke.andrea@deq.state.or.us
8. Kathryn VanNatta	NW Pulp and Paper Association	(503) 229-5384 kathryn@nwpulpaper.org
9. Jennifer Wigal	OR Dept. of Environmental Quality	(503) 844-9540 wigal.jennifer@deq.state.or.us
10. Travis Williams	Willamette Riverkeeper	(505) 229-5323 travis@willametteriverkeeper.org (503) 223-6418

EQC prior involvement

DEQ shared information about this rulemaking through a Director's Dialog at the EQC meeting June 19-20, 2013. EQC commissioners did not ask to participate in this rulemaking.

Public notice (to be completed at time of public notice)

[ADAPT TENSE. USE "PLANS" FOR FUTURE TENSE.] The Notice of Proposed Rulemaking with Hearing [WITHOUT HEARING] for this proposed rulemaking will publish in the mmm dd, yyyy *Oregon Bulletin*. DEQ also:

- Posted notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on mmm dd, yyyy.
- E-mailed notice to:
 - ##### interested parties through GovDelivery on mmm dd, yyyy.
 - ##### stakeholders on the [LIST OTHER MAILING LIST].
 - ## key legislators required under ORS 183.335 on mmm dd, yyyy. Key legislators included:
 - Name, Title, Committee
 - Name, Title, Committee
 - Name, Title, Committee
 - Members of the advisory committee on mmm dd, yyyy.
- Mailed the notice by U.S. Postal Service to ## interested parties on mmm dd, yyyy.
- Sent notice to EPA on mmm dd, yyyy.
- Other

Public hearings

DEQ plans to hold one public hearing. [OPTION]The hearing is accessible by:

Conference call: (###) ###-####

Webinar: (###) ###-#### Participant code: #####

Before taking public comment, DEQ will describe the rule proposal. The following table lists the public hearing location:

Public Hearings			
Hearing Date	Time	Location	Hearings Officer
Sept. 18, 2013 (tentative)	TBD	Portland, OR	DEQ Staff

Close of public comment period

The comment period will close on Sept. 30, 2013 at 5:00 p.m.