

 Oregon Department of Environmental Quality

 Enter EQC DATE Jan. 7-8, 2015

 Oregon Environmental Quality Commission Meeting

Rulemaking Action Item Enter L

**Water Quality Standards Revisions for Freshwater Ammonia Criteria**

How to hide instructions and examples

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Administrative Procedures Act Requirements

All DEQ public writing for rulemaking must be clear and simple to meet requirements of the Administrative Procedures Act.

ORS 183.750 Readability of Public Writings

Article Content

183.750 State agency required to prepare public writings in readable form.

(1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) “Public writing” means any rule, form, license or notice prepared by a state agency.

(b) “State agency” means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

What DEQ says in the staff report is important. This report becomes part of the administrative history of the rule and the court may look at it for guidance when deciding how to interpret an ambiguous rule section. Be thorough and accurate when discussing the potential scope of the rule.

Plain Language

When you write this document, and all other public rulemaking documents, your publication reviewers will follow plain language guidelines. We, your reviewers recommend the following resources for anyone who has not taken a plain language course or who needs a refresher.

FAA Plain Language Course. [[LINK](http://www.faa.gov/about/initiatives/plain_language/basic_course/)] It will take about an hour. It has some quirkiness and a few shots of humor.

For more details in an online or printable format, use the Federal Plain Language Guidelines. [[LINK](http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/TOC.cfm)]

Agency Communications on Q-Net offers the DEQ-centric Style and writing resources [[LINK]](http://deq05/intranet/communication/index.htm)

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| DEQ recommendation to the EQC  |

## DEQ recommends that the Environmental Quality Commission:

Select recommendation from list

Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

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|  **Overview** |

## Short summary

The proposed rules would:

* Adopt U.S. Environmental Protection Agency's latest 2013 national recommendations for freshwater ammonia criteria that are:
	+ Less stringent than Oregon's current chronic criteria for ammonia,
	+ Generally more stringent than Oregon’s acute criteria for ammonia, and
	+ Account for mussel and snail sensitivity to ammonia.
* Likely address EPA's Jan. 31, 2013, disapproval of Oregon's ammonia criteria, which the EQC adopted in 2004.

The National Marine Fisheries Service’s Biological Opinion indicated that Oregon’s 2004 adopted ammonia criteria would cause jeopardy to threatened and endangered species. EPA and NMFS are evaluating how EPA’s latest 2013 recommendations are consistent with the Reasonable and Prudent Alternatives in NMFS’s jeopardy opinion. If NMFS determines that EPA’s criteria derivation method generally followed the Reasonable and Prudent Alternatives, then NMFS can conclude that EPA’s 2013 ammonia criteria protect threatened and endangered species in Oregon, thus satisfying Endangered Species Act consultation requirements. A “no jeopardy” decision from NMFS would likely lead to EPA approval of Oregon’s proposed ammonia criteria.

* Correct an error in the stated applicability of the pH standard for the main stem Snake River.
* Amend the Umatilla Basin-specific standards and uses and remove a term from the definitions section to be consistent with EPA’s partial disapproval of DEQ’s site-specific criteria and use designations for the West Division Main Canal.
* Incorporate plain language into the amended rules consistent with the Oregon Administrative Procedures Act.

DEQ proposes adding a note below two rule sections to notify the reader that EPA disapproved the statewide natural conditions criterion in OAR 340-041-0007(2) and the natural conditions criterion for temperature in OAR-340-041-0028(8), and, therefore, that these provisions may not be applied for Clean Water Act purposes, such as wastewater discharge permits or total maximum daily loads. DEQ will not accept public comments on the notes because they only provide information and do not amend the rule.

## Brief history

[**OPTIONAL** – DO NOT REPEAT INFORMATION ABOVE OR REQUIRED IN THE STATEMENT OF NEED SECTION BELOW. IF THE BACKGROUND IS VERY SHORT, IT MAY BE INCLUDED IN THE SUMMARY ABOVE. THE STATEMENT OF NEED SECTION INCLUDES DIFFERENT METHODS FOR PRESENTING NUMEROUS, DISPARATE ISSUES.]

Currently, Oregon’s ammonia criteria are based on 1985 EPA recommendations. In 2004, Oregon adopted revised ammonia criteria based on updated EPA recommendations from 1999, but these adopted criteria have never been effective because EPA did not approve the revisions. In August 2012, the National Marine Fisheries Service, as part of Endangered Species Act consultation requirements, determined that the 1999 EPA ammonia criteria that Oregon adopted would cause jeopardy to threatened and endangered fish. Based on National Marine Fisheries Service’s determination and updated toxicity data indicating that mussels are the most sensitive species to ammonia, EPA disapproved Oregon's criteria on Jan. 31, 2013.

## Regulated parties

Regulated parties include facilities that discharge to Oregon waterbodies and either have ammonia monitoring requirements or have permit limits for ammonia. These facilities include municipal wastewater discharge plants and industrial facilities.

## Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules’ substantive goals while reducing negative economic impact of the rule on business. This document includes a summary of comments and DEQ responses.

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|  **Statement of need** |

## What need would the proposed rule address?

On Jan. 31, 2013, the U.S. Environmental Protection Agency disapproved Oregon's 2004 adoption of ammonia criteria. If Oregon fails to revise its ammonia criteria in a timely manner, federal regulations require EPA to develop criteria for Oregon or risk a third-party lawsuit.

Oregon’s current criteria for ammonia do not reflect current science. EPA’s latest criteria recommendations for ammonia take into account the sensitivity of freshwater mussels and snails to ammonia toxicity. Many Oregon watersheds have freshwater mussels and snails.

Uncertainty about what ammonia criteria will ultimately become effective makes facility planning difficult for dischargers that may need to adjust existing treatment options, design flows or other modifications to a facility based on revisions to the ammonia criteria. Ammonia is a common pollutant of concern in National Pollutant Discharge Elimination SystemNational Pollutant Discharge Elimination System (NPDES) discharge permits. Dischargers have been implementing ammonia criteria based on EPA’s 1985 recommendations; however, subsequent EPA ammonia recommendations in 1999, 2009 and most recently 2013, were more or less stringent than the 1985 recommendations.

*pH amendment*

Current rules have an error in the pH standard for the main stem Snake River in Oregon. The current standard incorrectly identifies the river miles for the main stem Snake River as 260-335. The error occurred during reformatting of OAR Division 041 in 2003. Prior to that error, the pH standard of 7.0 to 9.0 applied to the full extent of the main stem of the Snake River bordering Oregon from river miles 176 to 409. However, the 2003 rule split the pH standard for the Snake River into basin-specific rules for the tributary subbasins, including the Grand Ronde, Powder, Malheur and Owyhee Rivers. DEQ established a separate rule section in OAR 340-041-0124 for the main stem Snake River during reformatting and intended to transfer the existing pH standards to this new section. DEQ only transferred the river miles indicated for the Snake River segment located in the Powder Basin to the revised rules, rather than the entire mainstem of the Snake River as intended.

*Statewide and temperature natural conditions criterion notes*

On Aug. 8, 2013, EPA disapproved rule sections OAR 340-041-0007(2) and OAR 340-041-0028(8) because of a March 2012 U.S. District Court decision that was based on Northwest Environmental Advocate litigation. Readers would not know about the disapproval when reading rule sections for statewide narrative natural conditions criteria and the natural conditions criterion for temperature. These sections are no longer effective for Clean Water Act purposes and Oregon cannot use these criteria for Clean Water Act purposes, such as issuing certifications under CWA Section 401, wastewater discharge permits under CWA Section 402, or total maximum daily loads under CWA section 303(d).

*Umatilla Basin clarifications*

In April 2012, EQC amended the Water Quality Standards and Policies for the Umatilla Basin in OAR 340-041-0315 to correct the designated uses in Table 310A and establish site-specific water quality criteria for the West Division Main Canal in Table 315. EPA disapproved some of the amendments. This created inconsistencies between designated uses and criteria that are effective and applicable for federal Clean Water Act purposes and the Oregon rules. EPA’s disapproval affected the following amendments in whole or in part:

* Removal of the “Fish and Aquatic Life” and “Fishing” uses for the “overflow channels” segment of the West Division Main Canal only
* Addition of the “modified aquatic habitat” use for the “overflow channels” segment of the West Division Main Canal and the definition of that use in OAR 340-041-0002
* Application of the criteria in Table 315 for the “overflow channels” segment of the West Division Main Canal only because fish and aquatic life and fishing uses still apply to that segment
* The statement in the narrative toxics criterion noting that presence of substances at naturally occurring levels would not be considered harmful to the designated uses
* Application of the warm water dissolved oxygen criteria in OAR 340-041-0016(4) to the “overflow channels” segment of the West Division Main Canal to protect the new “modified aquatic habitat” use

## How would the proposed rule address the need?

THIS SECTION SHOULD ALIGH WITH PROBLEM STATEMENTS ABOVE.

The proposed rule would adopt ammonia criteria that protect mussels, snails and other sensitive aquatic life species found in Oregon freshwaters. Once EQC adopts the revised criteria and EPA subsequently approves the adopted criteria, the new ammonia criteria become effective for all Clean Water Act programs, including the National Pollutant Discharge Elimination System permitting program. Final criteria would provide dischargers a known target for planning and compliance purposes.

*pH Amendment*

The proposed rule would remove reference to river miles to clarify that the pH criterion applies to the entire main stem of the Snake River in Oregon.

*Statewide and temperature natural conditions criterion notes*

DEQ proposes to add a note following the rules to notify the reader that 340-041-0007(2) and 340-041-0028(8) are not effective for Clean Water Act purposes.

*Umatilla Basin clarifications*

The proposed rule would remove those portions of the rule that EPA disapproved and clarifies those portions of the rule that EPA approved only for the “constructed channel” segment of the West Division Main Canal, but not for the “overflow channels” segment. The remaining rule language will remain effective and applicable under federal and state law.

## How will DEQ know the rule has addressed the need?

DEQ will know the proposed rules addressed the needs described above if the rules clearly identify and define Oregon’s revised criteria for ammonia and EPA promptly approves the ammonia rule revisions.

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|  Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Environmental Solutions Division Water Quality Standards and Assessment

Chapter 340 action

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| --- | --- |
| Adopt | ORS 340-041-8033  |
| Amend | ORS 340-041-0002, 340-041-0007, 340-041-0028, 340-041-0033, 340-041-0124, 340-041-0310, 340-041-0315 |
| Repeal |   |
| Renumber |   |
| Amend and Renumber |   |

Statutory authority

ORS 468.020, 468B.030, 468B.035, 468.065, 468B.048

Other authority

 No other authorities

Statute implemented

ORS 468B.030, 468B.035 & 468B.048

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.oregonlaws.org/ors/183.335)

[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.]

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| --- | --- |
| **Document title** | **Document location** |
| OAR 340-041-0002, 340-041-0007, 340-041-0028, 340-041-0033, 340-041-0124, 340-041-0315 | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_tofc.html>DEQ headquarters 811 SW 6th Ave. Portland OR 97204  |
| Table 30: Aquatic Life Water Quality Criteria for Toxic Pollutants | <http://www.deq.state.or.us/wq/standards/docs/tables303140.pdf>DEQ headquarters   |
| Environmental Protection Agency, Region 10. EPA Clean Water Act 303(c) Determinations On Oregon’s New and Revised Aquatic Life Toxic Criteria Submitted on July 8, 2004, and as Amended by Oregon’s April 23, 2007 and July 21, 2011 Submissions. Jan. 30, 2013EPA Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013. Office of Water EPA 822-R-13-001. April 2013.Other relevant EPA ammonia documents | <http://www.deq.state.or.us/wq/standards/toxicsEPAaction.htm><http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/ammonia/upload/AQUATIC-LIFE-AMBIENT-WATER-QUALITY-CRITERIA-FOR-AMMONIA-FRESHWATER-2013.pdf><http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/ammonia/index.cfm>DEQ headquarters   |
| National Marine Fisheries Service. *Jeopardy and Destruction or Adverse Modification of Critical Habitat Endangered Species Act Biological Opinion for Environmental Protection Agency’s Proposed Approval of Certain Oregon Administrative Rules Related to Revised Water Quality Criteria for Toxic Pollutants.* National Marine Fisheries Service Consultation Number: 2008/00148. Aug. 14, 2012. | DEQ headquarters   |
| Table 310A: Designated Beneficial Uses, Umatilla Basin (340-041-0310) | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/_340_tables/340-041-0310.pdf> |
| Table 315: Water Quality Criteria, West Division Main Canal, Umatilla Basin | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/_340_tables/340-041-0315.pdf> |
| Environmental Protection Agency, Region 10. *Technical Support Document for EPA’s Action on the State of Oregon’s Revised Water Quality Standards for the West Division Main Canal*. Nov. 15, 2013. | <http://www.deq.state.or.us/wq/standards/docs/EPAtechSupport.pdf> |
| Environmental Protection Agency, Region 10. *Disapproval of Oregon’s Water Quality Standards: Natural Conditions Criteria for Temperature OAR 340-041-0028(8); Statewide Narrative Natural Conditions Criteria OAR 340-041-0007(2).* Aug. 8, 2013. | <http://www.deq.state.or.us/wq/standards/docs/DisapprovalLetter.pdf> |

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|  Fee Analysis  |

This rulemaking does not involve fees.

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|  Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.oregonlaws.org/ors/183.335) |

Fiscal and Economic Impact

***Ammonia Criteria Revisions***

Though the proposed ammonia criteria would affect DEQ and the regulated community, DEQ does not expect the impact to be significant. The proposed chronic criteria are less stringent than Oregon’s current chronic criteria for ammonia and the proposed acute criteria are generally more stringent than Oregon’s current criteria. DEQ expects EPA will likely approve the criteria because DEQ based the proposed ammonia criteria revisions on EPA’s latest recommendations.

***Other Clarifications***

The following proposed amendments do not create a positive or negative impact:

* OAR 340-041-0124 corrects an error that occurred during a previous rulemaking, but DEQ applied the standard throughout the Snake River. The pH standard in the current rule incorrectly identifies the river miles of only a portion of the Snake River and DEQ proposes removing the errant river miles.
* OAR 340-041-0002 and 340-041-0315 clarify or correct rules that the U.S. Environmental Protection Agency disapproved and are not currently effective under the Clean Water Act. Notes added to 340-041-0007 and 340-041-0028 inform the reader that the sections are no longer effective due to EPA disapproval.

Statement of Cost of Compliance—Ammonia Criteria Revisions[FOR EACH ENTITY BELOW, CONSIDER BOTH THE POSITIVE AND NEGATIVE IMPACT WHILE DESCRIBING THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS TO COMPLY WITH THE PROPOSED RULES. IF THERE IS NO IMPACT, DESCRIBE WHY THERE IS NO IMPACT − IT IS NOT ENOUGH TO SAY, “THERE IS NO FISCAL IMPACT.” IF UNABLE TO ESTIMATE OR QUANTIFY THE IMPACT, SAY SOMETHING LIKE “DEQ IS UNABLE TO QAUNTIFY THE IMPACT AT THIS TIME BECAUSE…” THEN EXPLAIN WHY WE CANNOT ESTIMATE OR QUANTIFY THE IMPACT. RATHER THAN REPEAT IDENTICAL IMPACTS TO VARIOUS ENTITIES, IT IS OK TO REFERENCE THE DESCRIPTION UNDER ANOTHER ENTITY SUCH AS, “For DEQ, the cost to comply with the proposed rules is identical to costs described under 1. State agencies above. THE LIST ORDER BELOW ALIGNS WITH ELECTRONIC FILING WITH SECRETARY OF STATE.]

1. State agencies

Revising the ammonia criteria would require DEQ to incorporate new criteria into Clean Water Act programs, such as permitting, assessing state waters and developing Total Maximum Daily Loads. This would take DEQ staff additional time to account for differences between the proposed criteria and the current criteria.

DEQ NPDES Permitting Program

*Individual Permits*

In the near term, transitioning from the current to proposed ammonia criteria would require additional DEQ permitting staff time to administer the NPDES permitting program for individual permits (permits that directly discharge to a water body)National Pollutant Discharge Elimination System permitting program for individual permits (permits that directly discharge to a water body) in the near term for the transition from current to proposed criteria.

Direct Impacts The proposed rules would require DEQ permitting staff:

* To update existing guidance and water quality models to reflect changes to the criteria
* To provide general technical assistance to approximately 47 industrial and domestic facilities currently permitted with ammonia effluent limits in their transition to the new ammonia criteria.
* To spend additional time administering permit renewals to account for changes in the ammonia criteria. Generally, this would be a one-time occurrence for each NPDES permit.
* To account for potential differences in ammonia compliance monitoring reviews for dischargers with ammonia effluent limits.

Indirect Impacts—none identified.

*General Permits*

Implementation of the proposed water quality criteria would not have a direct or indirect affect on DEQ general permitting staff because general permits do not have ammonia limit requirements.

*Stormwater Permits*

DEQ issues three different types of stormwater permits:

1. Individual Municipal Separate Storm Sewer System (MS4) permits,
2. Construction stormwater permits, and
3. Industrial stormwater permits (1200 Z).

Because stormwater discharges are intermittent, DEQ uses the aquatic life criteria as the basis for stormwater permit requirements.

Direct Impacts

The revised ammonia criteria may affect 1200Z permits. There is an ammonia reference limit of 10 mg/L for the industrial stormwater permit, but this reference is based on an EPA limit, rather than state water quality standards. In the situation where a 1200Z permit is discharging to a stream impaired for ammonia, DEQ would base the benchmark on the state water quality standard. DEQ staff may need to evaluate options in developing an appropriate ammonia benchmark for discharges to ammonia-impaired waterbodies, given that the ammonia criteria are dependent on pH and temperature.

It is not likely that changing the ammonia criteria would affect DEQ staff that administers MS4 and construction permits because these permits do not require ammonia monitoring.

Indirect Impacts—none identified

*401 Certification Program*

Generally, the proposed ammonia criteria would not affect issuing Clean Water Act section 401 certifications either directly or indirectly. Water quality parameters of interest in 401 activities, such as fill and removal projects in a stream or hydropower projects are typically conventional pollutants, such as dissolved oxygen, turbidity, and temperature—not ammonia.

Other State Permitting Agencies

DEQ does not anticipate the proposed rules would have a direct or indirect affect on other state agencies or change their involvement or the general permits they administer. DEQ and other state agencies, such as Oregon Department of Geology and Mineral Industries and Department of Agriculture, have roles and responsibilities in administering general permits. Generally, DEQ is responsible for administering the NPDES program, which regulates waste discharges to waters of the state.

DEQ Integrated Report Program

Direct Impacts

The proposed ammonia criteria may affect current 303(d) listings for ammonia and DEQ staff who develop the Integrated Report. Based on the 2010 Integrated Report there are 15 waterbodies impaired for ammonia, five need Total Maximum Daily Loads and ten have approved TMDLs or other control measures in place. DEQ’s Integrated Report staff use the chronic criteria for ammonia to evaluate whether waterbodies are meeting state water quality standards. DEQ expects the proposed chronic criteria to be less stringent than Oregon’s current chronic criteria for ammonia; therefore, DEQ may propose delisting waterbodies where data shows that waterbodies meet the revised ammonia criteria. DEQ will reassess waterbodies using the new approved ammonia criteria in the next cycle of the Integrated Report.

Revising state criteria for a pollutant, particularly when DEQ must calculate criteria using an equation that accounts for different pH and temperature variables requires additional staff time to incorporate those changes into the assessment.

Indirect Impacts—none identified

DEQ Total Maximum Daily Load Program

Direct Impacts

Revised ammonia criteria would likely increase DEQ staff time by approximately 10 to 50 percent to analyze the chronic and acute criteria when establishing waste load allocations.

There are several waterbodies where DEQ must develop TMDLs for ammonia listings. There are also a number of waterbodies where DEQ has already developed TMDLs to address ammonia impairments. Following adoption and subsequent EPA approval of the proposed ammonia criteria, it is likely that DEQ will need to re-assess waste load and load allocations that DEQ developed for existing ammonia TMDLs to evaluate whether the existing pollutant allocations are still appropriate. For example, it is not yet clear whether waste load allocations would be based on the chronic 30-day rolling average, the 2.5 times the chronic criterion four-day average within the 30-day rolling average, or even the acute criteria duration based on a one-hour average. DEQ may need to base waste load allocations on both, with different compliance averaging periods. For example, DEQ could base one waste load allocation on a maximum monthly four-day average and the other on a maximum one-day average.

Indirect Impacts—none identified.

1. Local governments

DEQ anticipates adoption of the new ammonia criteria could affect municipal wastewater treatment plants.

Direct Impacts

* The proposed rules could require facilities with a discharge greater than 1.0 million gallons per day to either update their mixing zone studies to reflect the appropriate design flow in conducting reasonable potential analyses, or collect additional water quality data to demonstrate protection of the receiving waterbody.

DEQ has the option to use design flows 30Q5 or 30Q10 to determine compliance with the proposed chronic criteria. If DEQ used the 30Q5 design flow, the lowest 30-day average flow based on a five-year return interval, which it currently uses to determine compliance with non-carcinogenic human health toxics criteria, most dischargers would typically not need to revise mixing zone analyses. Dischargers would also need to demonstrate that a 7Q10 design flow is protective at 2.5 times the chronic criterion.

* The proposed rules could require facilities that discharge less than 1.0 million gallons a day to develop revised mixing zone studies to reflect design flows for chronic criteria described above. Historically, DEQ has not required many of these facilities to characterize their effluent for human health criteria, so their mixing zone studies may not include dilutions for 30Q5 flow.
* The proposed rules could require facilities to collect more monitoring data to adequately characterize the effluent and allow for averaging within a 30-day period. Additional data points would better characterize the discharge, minimize statistical error associated with the reasonable potential analysis, and help identify outliers. Where DEQ established an ammonia effluent limit, DEQ may require additional compliance monitoring to demonstrate that “no four-day average concentrations should exceed 2.5 times the chronic criterion.”
* The proposed rules would not result in a significant increase in the number of wastewater treatment plants with effluent limits for chronic ammonia criteria because the chronic criteria proposed are generally less stringent than Oregon’s current chronic criteria for ammonia. Due to anti-backsliding rules, in cases where the proposed ammonia criteria result in effluent limits that are less stringent than the current limits, DEQ would typically preserve the more stringent limits. There are some exceptions, including where EPA has approved a Total Maximum Daily Load and the waste load allocations specified in the TMDL contain less stringent effluent limitations than the permittee’s current effluent limits. The Environmental Quality Commission could approve a pollutant load increase if it is consistent with Clean Water Act 303(d)(4) or it meets one of the exceptions in CWA 402(o)(2).
* The proposed rules could result in more effluent limits for the acute criteria because the proposed criteria are generally more stringent than Oregon’s current criteria.
* The proposed rules could result in revised TMDL waste load allocations for facilities located in watersheds where DEQ has already developed TMDLs for ammonia. Depending on how DEQ determines the allocations, permit limits may become either more or less stringent. See the discussion in section *1. State agencies* above for more information.
* The proposed rules could result in DEQ removing waterbodies off the 303(d) list of impaired waterbodies for ammonia. If DEQ de-lists waterbodies, dischargers may be able to assess compliance with an ammonia permit limit by using a mixing zone rather than meeting ammonia criteria “at the end of pipe”, which is otherwise generally required when discharging a pollutant of concern to a stream impaired for that pollutant.
* The proposed rules would not affect wastewater treatment plants until EPA approves the revised ammonia criteria. At the time of permit renewal, DEQ would evaluate whether the discharger needs new effluent limits to meet revised criteria for ammonia.

Indirect Impacts

A MS4 permit could be affected indirectly in waterbodies where there is an ammonia TMDL if DEQ determines that a MS4 permit must have an ammonia waste load allocation to meet a TMDL. If a MS4 permit holder needs a waste load allocation, DEQ does not anticipate a change in ammonia criteria would significantly affect a permittee’s workload when compared to the currently effective ammonia criteria.

1. Public

DEQ does not expect the public to incur direct or indirect fiscal or economic impacts from the proposed rules. DEQ does not directly regulate individuals and it is unlikely that affected parties would increase sewer rates or costs for goods or services based on these proposed rules.

1. Large businesses - businesses with more than 50 employees

*Industrial dischargers*

DEQ requires many businesses to monitor and evaluate their effluent for ammonia if they discharge to a waterbody. Although there are some differences in ammonia monitoring requirements between industrial dischargers and wastewater treatment plants, the direct and indirect impacts associated with wastewater treatment plants in section *2. Local governments* above would generally apply to large businesses.

*Pretreatment Program: Industrial dischargers with local limits for ammonia*

DEQ does not expect the proposed amendments to the ammonia criteria would affect the pretreatment program either directly or indirectly. When an industrial facility discharges to a wastewater treatment plant rather than a waterbody, the wastewater treatment plant may require those facilities to have local limits to reduce certain pollutants through pretreatment measures before discharging to the plant’s treatment system.

On June 20, 2014, DEQ staff sent an email asking industrial facilities that discharge effluent to wastewater treatment plants whether they had any local limits for ammonia. None of the facilities indicated they have local limits for ammonia.

1. Small businesses – businesses with 50 or fewer employees [ORS 183.336](http://www.oregonlaws.org/?search=ORS+183.336)

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| a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.  | DEQ cross-referenced a list of current permit holders and a list of small businesses from the Oregon Department of Employment. The analysis indicates approximately five small businesses have ammonia effluent limits. These businesses are in the forest products, aerospace, technology and agriculture industries.*Small Business Impacts to Entities Covered Under Industrial Stormwater 1200Z Permits*Revising the state’s ammonia criteria may affect 1200Z permit holders that discharge to waterbodies currently impaired for ammonia or where DEQ adds additional waterbodies to the state’s impaired waterbody list in the future. See potential impacts in section *1. State agencies* above. DEQ does not track how many of the approximately 770 facilities holding industrial stormwater permits are small businesses. |
| b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | Small facilities that currently have a low monitoring burden could experience an increase in monitoring requirements and associated analytical costs to account for differences between the current and proposed chronic duration exposure. Small businesses might have to update their mixing zone analysis or conduct an additional environmental impact analysis typically requiring the services of an environmental consultant. In cases where DEQ requires ammonia effluent limits, there could be additional compliance monitoring, administrative and treatment costs. DEQ does not expect these costs would be significantly more than complying with the current ammonia criteria. |
| c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | For most facilities that currently monitor for ammonia, the proposed rules would not require additional equipment or supplies. Labor needed to comply would depend on monitoring requirements and the need for effluent limits and subsequent treatment.  |
| d. Describe how DEQ involved small businesses in developing this proposed rule. | DEQ did not involve small businesses because DEQ does not expect the proposed rules would significantly affect small businesses.  |

Documents relied on for fiscal and economic impact

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| **Document title** | **Document location** |
| DEQ Discharge Monitoring System data system[[1]](#footnote-1) | DEQ headquarters 811 SW 6th Ave. Portland OR 97204 |
| Oregon Department of Employment4th quarter 2013 data |  Employment Department875 Union Street NESalem OR 97311 |

Advisory committee

DEQ did not appoint an advisory committee on the fiscal and economic impact of this proposal because DEQ does not expect the rule amendments to be significant or controversial.

Housing cost

To comply with [ORS 183.534](http://www.oregonlaws.org/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. The proposed rules would generally affect facilities that discharge to waters of the state and applicable Clean Water Act programs.

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|  **Federal relationship**  |

*"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..."* [ORS 183.332](http://www.oregonlaws.org/ors/183.332)

Relationship to federal requirements

This section complies with [OAR 340-011-0029](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html) and [ORS 468A.327](http://www.oregonlaws.org/ors/468A.327) to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rules would implement a federal requirement. The federal Clean Water Act requires states to adopt water quality standards to protect beneficial uses of the nation’s waters. States must base standards on substantial evidence. DEQ must submit the proposed standards to EPA for approval after EQC adoption. DEQ determined the proposed ammonia standards revisions meet federal requirements. DEQ worked with EPA while developing the proposed rules and DEQ expects EPA will likely approve these proposed rules.

Other rule amendments and rule notes would correct errors, provide additional clarifications and align with plain English requirements.

What alternatives did DEQ consider if any?

DEQ analyzed what would happen if it took no action. This alternative would force EPA to impose its own regulations to address the deficiencies related to its Jan. 31, 2013 action disapproving Oregon’s ammonia criteria. In addition, the errors or corrections from past rulemakings would persist in DEQ rules and complicate implementation.

DEQ considered addressing EPA’s disapproval of the other aquatic life toxics criteria that EPA disapproved in its January 2013 action on aluminum, cadmium and copper as part of this rulemaking. However, the potential remedies to address EPA’s disapproval for these pollutants are more complex and will involve additional work with EPA, the National Marine Fisheries Service, interested stakeholders and DEQ staff. Instead, DEQ proposes to amend only the ammonia criteria because the proposed rules would wholly adopt EPA’s latest criteria without any modifications based on Oregon circumstances. Before DEQ began this rulemaking, stakeholders indicated that EPA’s criteria were appropriate for Oregon and encouraged DEQ to pursue adoption of these criteria as soon as possible.

|  |
| --- |
|  Land use  |

*“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.”*  [OAR 340-018-0010](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html)

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](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) 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](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* 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

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules.

The water quality standards program in general could affect land uses, but the proposed rules do not. The proposed rules would revise Oregon’s freshwater criteria for ammonia and provide minor corrections, but do not change the beneficial uses of state waters and the water quality standards that protect those uses.

|  |
| --- |
|   Summary of comments and DEQ responses |

**How to hide instructions and examples**

All cobalt blue text and EXAMPLES are in the Font Effects | Hidden. Word identifies hidden text by underlining it with dots. You may use one of the following methods to show/hide hidden text:

1. Press paragraph symbol displayed in Paragraph grouping.



1. Press [Ctrl] [Shift] [8] keys simultaneously

To find and delete all hidden text before publishing, press [Ctrl] [F] keys, press Format button, and select the Font | Effects | Hidden box and press OK button. On the Replace tab, place cursor in Replace with: box and press Delete key then press Replace All button.



**Administrative Procedures Act Requirements**

All DEQ public writing for rulemaking must be clear and simple to meet requirements of the Administrative Procedures Act.

**ORS 183.750** Readability of Public Writings

Article Content

183.750 State agency required to prepare public writings in readable form.

(1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) “Public writing” means any rule, form, license or notice prepared by a state agency.

(b) “State agency” means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**ORS 183.335**

Notice

(2)(a) The notice required by subsection (1) of this section must include:

…(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the persons interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

For public comments received by the close of the public comment period, the following table organizes comments into Enter number of categories categories with cross references to the commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

Select one option below

1. **Comment** Enter a summary of this comment category. AmmoniaAquatic life freshwater ammonia criteria revisions

DEQ received Enter the number of comments received for this category. comments in this category from commenters 1, 2, 3 and 4 Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##. listed in the *Commenter* section below. OPTION 1 DEQ did not change the proposed rules in response to comments.

EPA supports the proposed revisions to Oregon’s aquatic life freshwater criteria for ammonia. EPA remains hopeful that its current ammonia recommendations will address the concerns raised in the National Marine Fisheries Service Biological Opinion (NMFS).

The Association of Clean Water Agencies supports the ammonia revisions, and acknowledges that there will be costs for increased treatment and TMDL development.

Since NMFS has not yet made a determination on the protectiveness of EPA's latest ammonia criteria, NWEA can neither endorse nor reject DEQ's proposed revisions and believes it is unfair to ask the public to provide comment on the revisions without the benefit of NMFS fishery experts.

Northwest Pulp and Paper Association neither endorsed nor opposed the ammonia criteria revisions, but asked to work with DEQ on implementation.

ResponseEnter DEQ’s response to this category of comments. DEQ appreciates EPA’s and ACWA’s support of the ammonia revisions. EPA’s latest 2013 criteria recommendations are based on a very large dataset and are the result of 27 years worth of toxicity data. The dataset includes threatened and endangered species found in Oregon, such as Coho salmon, Rainbow trout (OR-steelhead), Chinook salmon, Lost River sucker, Lahontan cutthroat trout, and Sockeye salmon. Oregon’s current criteria are based on prior EPA recommendations from 1985 which are no longer based on the most recent toxicological effects of ammonia on aquatic life, including effects to other sensitive species found in Oregon, such as mussels and snails. Because of the nine year time period between EQC’s 2004 adoption of revised ammonia criteria based on EPA’s 1999 recommendations and EPA’s action on the criteria in January 2013, Oregon dischargers have been unable to plan for any potential pollution control investments because of the uncertainty of which ammonia criteria would ultimately be approved by EPA.

 DEQ acknowledges that it is uncertain whether the National Marine Fisheries Service (NMFS) will find that EPA’s latest recommendations are protective of threatened and endangered salmonid species residing in Oregon. This uncertainty is mainly attributed to the acute criteria. EPA has been working closely with NMFS to conduct the needed analyses based on processes specifically outlined in Reasonable and Prudent Alternatives in the Biological Opinion. EPA has given DEQ reasonable assurance that the latest 2013 ammonia criteria will be protective of threatened and endangered salmonid species in Oregon.

EQC’s adoption of revised criteria must go to EPA for approval before the criteria become effective for CWA purposes. DEQ submission requires EPA to respond to DEQ’s adoption within 90 days. Therefore, it is in DEQ’s best interest for EPA to continue working with NMFS in a timely manner. In addition, according to CWA regulations, DEQ is required to address EPA disapprovals within 90 days of receiving EPA’s action. Delaying EQC adoption may put DEQ at risk for third party lawsuits. For these reasons, DEQ believes it is prudent to adopt these ammonia revisions now, rather than waiting until NMFS has made a final decision. In the event that NMFS determines the criteria are not protective of threatened and endangered salmonids, DEQ will work with EPA and NMFS to develop mutually acceptable remedies.

 Lastly, DEQ will work closely with the regulated community on any implementation issues that are identified following EPA approval.

1. **Comment** Enter a summary of this comment category. Addition of disapproval notes to the statewide natural conditions criterion in OAR 340-041-0007(2) and the natural conditions criterion for temperature in OAR 340-041-0028(8) based on EPA disapproval.

DEQ received Enter the number of comments received for this category. comments in this category from commenters 3, 4, and 5 Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##. listed in the *Commenter* section below. OPTION 1 DEQ did not change the proposed rules in response to comments.

Northwest Pulp and Paper Association supports the disapproval notes and opposes any additional changes to the notes and asks DEQ to clarify that these notes were based on NWEA litigation.

Oregon Forest Industries Council supports the disapproval notes and would oppose removing these criteria all together, since they believe the natural conditions criteria remain important elements of Oregon’s clean water program.

Northwest Environmental Advocates believe the disapproval note is ambiguous; therefore, DEQ should remove the disapproved language entirely because they are now disapproved standards.

ResponseEnter DEQ’s response to this category of comments. DEQ did not remove the disapproved portions of the statewide natural conditions criterion and the natural conditions criterion for temperature because the agency is beginning a process to address EPA’s disapproval of these conditions.  DEQ does not foresee how the disapproved policies can be used for purposes outside the Clean Water Act; however, the EQC has not yet had the opportunity to consider how to address these disapprovals. As a result, they are still part of EQC’s policy, even if they are not effective for Clean Water Act purposes. As part of the process of addressing EPA’s disapprovals of these criteria, DEQ will provide opportunity to comment on the temperature standard.

 DEQ added clarifying language under the Statement of Need section in this report that the disapproval of these policies was based on Northwest Environmental Advocates litigation.

1. **Comment** Enter a summary of this comment category. Plain English revisions

DEQ received Enter the number of comments received for this category. comments in this category from commenters 3 and 5 Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##. listed in the *Commenter* section below. OPTION 1 DEQ did not change the proposed rules in response to comments.

Both Northwest Pulp and Paper Association and the Oregon Forest Industries Council were supportive of plain English revisions as long as no substantive changes were made. They would oppose any additional edits for readability as a result of public comment.

ResponseEnter DEQ’s response to this category of comments. It is DEQ’s intention to only clarify existing rule language in Division 41 to be consistent with the Administrative Procedures Act. DEQ does not believe these changes were substantive. DEQ did not receive any comments on proposed plain English revisions or additional suggestions for other clarifications based on public comment. Therefore, the amendments that went out for public comment are the same amendments that are proposed for EQC adoption.

1. **Comment** Enter a summary of this comment category. DEQ’s use of mixing zones for ammonia

DEQ received Enter the number of comments received for this category. comments in this category from commenter 4 Cross reference to commenter number or numbers submitted in this category using format ##, ##, ## and ##. listed in the *Commenter* section below. OPTION 1 DEQ did not change the proposed rules in response to comments.

Northwest Environmental Advocates opposes the use of mixing zones for ammonia because mussels cannot escape from higher concentrations of ammonia in a mixing zone. Therefore, these criteria should be met at the end-of-pipe. Absent the adoption of specific rules to eliminate or limit the use of mixing zones for ammonia, permit writers will continue to issue NPDES discharge permits without regard to its effect on freshwater mussels. At a minimum, DEQ should require the collection and address evidence of localized extirpations of freshwater mussels.

ResponseEnter DEQ’s response to this category of comments. This rulemaking proposes to revise freshwater ammonia criteria based on the most current data. It is not DEQ’s intention to revise its mixing zone policy as part of this rulemaking. DEQ generally addresses the concern of mixing zone impacts upon non-mobile shellfish communities by limiting the size and extant of the mixing zones. DEQ's current guidance indicates that diffusers should be designed in “preventing shore and bottom-hugging plumes to protect salmonid spawning area, littoral zones, and shellfish growing and benthic habitat.” (Page 18 of the Regulated Mixing Zone IMD Vol. 1). This guidance, in conjunction with limitations to the cross sectional area of a stream (OAR 340-041-0053(2)(c)(B)) or river that a mixing zone may occupy, should minimize any impacts to shellfish communities and their propagation.

In practicality, most modern diffusers use ports that angle upwards and with appropriate velocity controls to ensure rapid mixing to minimize the potential for a plume to either hug the bottom or the shoreline of the stream. Accordingly, DEQ will review the configuration of the diffuser and alignment of the mixing zone at the individual permit level to ensure that shellfish communities are adequately protected.

In regards to the commenter’s suggestion to collect and address evidence of localized extirpations of freshwater mussels, DEQ does not believe this is necessary. DEQ’s proposed amendments to the ammonia criteria are based on the assumption that mussels are already present in all freshwater systems. Therefore, the criteria should protect most mussels and snails that are present or could be present in the future. If a third party wished to support site-specific criteria based on the justification that mussels are not present at a site, DEQ would require a rigorous mussel survey, including evidence indicating that mussels were likely never present at a site.

Add more comments by copying and pasting additional comment sections here.

|  |
| --- |
|  Commenters |

DEQ complies with Oregon Revised Statute 192.501(29) to protect addresses for students who attend a public university or Oregon Health and Science University. DEQ established the Comment\_CodeName accounts for students to comment on this proposal. Save student comment emails as *STUDENT.COMMENT.pdf*. and store on [\\deqhq1\Rule\_Development\Currrent Plan](file://deqhq1/Rule_Development/Currrent%20Plan) in folder 5.PublicCommentAnd Testimony for this rulemaking. Sometimes organizations may use this account to robo-comment. Collect and save these comments as ROBO.COMMENT.pdf and store in the same folder 5.

## Comments received by close of public comment period

The table below lists Enter the number of commenters. people and organizations that submitted public comments about the proposed rules by the deadline on October 30, 2014Enter the date and time for comment closure. Example Feb. 14, 2014 at 5 p.m.. Original comments are on file with DEQ.

1. **Commenter** Enter name Kathleen Collins

AffiliationEnter name of party that this person represents.U.S. Environmental Protection Agency, Region 10

This commenter submitted comments under category 1 Cross reference to comment category using ##, ##, ##, and ## formatin the *Summary of comments and DEQ responses* section above.

1. **Commenter** Enter name Janet Gillaspie

AffiliationEnter name of party that this person represents.Oregon Association of Clean Water Agencies

This commenter submitted comments under category 1 Cross reference to comment category using ##, ##, ##, and ## formatin the *Summary of comments and DEQ responses* section above.

1. **Commenter** Enter name Kathryn VanNatta

AffiliationEnter name of party that this person represents.Northwest Pulp and Paper Association

This commenter submitted comments under categories 1, 2 and 3 Cross reference to comment category using ##, ##, ##, and ## formatin the *Summary of comments and DEQ responses* section above.

1. **Commenter** Enter name Nina Bell

AffiliationEnter name of party that this person represents.Northwest Environmental Advocates

This commenter submitted comments under categories 1, 2 and 4Cross reference to comment category using ##, ##, ##, and ## format in the *Summary of comments and DEQ responses* section above.

1. **Commenter** Enter name Heath Curtiss

AffiliationEnter name of party that this person represents.Oregon Forest Industries Council

This commenter submitted comments under categories 2 and 3Cross reference to comment category using ##, ##, ##, and ## format in the *Summary of comments and DEQ responses* section above.

## Comments received after close of public comment period

No comments were received after the close of the public comment period.

Add more delinquent commenters by copying and pasting additional commenter sections here.

|  |
| --- |
|   Stakeholder and public involvement |

 Advisory committee

DEQ did not convene an advisory committee. DEQ does not anticipate the proposed rules would have a significant fiscal or economic impact or would be controversial. DEQ considered:

* The proposed acute criteria for ammonia are generally more stringent than the current acute criteria for Oregon.
* The proposed chronic criteria are less stringent than what Oregon is currently implementing. Typically, these criteria are more stringent than the acute criteria.
* DEQ proposes to adopt EPA’s criteria wholly, rather than modify any parts of the criteria based on particular state circumstances.

Prior to initiating rulemaking, DEQ sent an invitation to Oregon tribes and to a wide range of stakeholders to discuss and provide input to DEQ on rulemaking priorities to address EPA disapproved criteria for aluminum, ammonia, cadmium (acute) and copper. During these meetings, DEQ also shared information about EPA’s updated criteria for freshwater copper and ammonia. Some stakeholders indicated that they did not believe forming an advisory committee was necessary. Other stakeholders did not specifically indicate whether forming an advisory committee was necessary. Generally, their interest was in adopting EPA’s criteria as soon as possible. The table below lists the groups DEQ met with prior to initiating rulemaking for ammonia.

 Table 1: List of Stakeholder Groups

|  |  |
| --- | --- |
| Stakeholder Group | Date |
| 1. Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians | Jan. 30, 2014 |
| 2. Cow Creek Band of Umpqua Tribe of Indians | Jan. 30, 2014 |
| 3. Pesticide Management Team (select members) | Jan. 30, 2014 |
| 4. Industrial Stormwater Dischargers | Jan. 31, 2014 |
| 5. Conservation/Fisheries Groups | Feb. 5, 2014 |
| 6. Association of Clean Water Agencies | Feb. 18, 2014 |
| 7. Associated Oregon Industries | Feb. 21, 2014 |

On June 3, 2014, DEQ e-mailed 3,383 people who signed up for water quality standards information through the free Gov Delivery subscription service. The email informed interested persons that DEQ was initiating rulemaking to revise freshwater criteria for ammonia and provided a link to more information.

DEQ conducted a public webinar Sept. 10, 2014, prior to the public comment period where DEQ staff provided information about the rulemaking. DEQ did not record the webinar or accept any public comment. DEQ sent a webinar announcement through Gov Delivery to the same distribution list indicated above and posted the announcement to the Water Quality Standards ammonia webpage: <http://www.oregon.gov/deq/WQ/Pages/Standards/ammonia.aspx>.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director’s Report. DEQ did not present additional information to EQC about these proposed rules.

Public notice

DEQ provided Notice of Proposed Rulemaking with Hearing for this rulemaking. DEQ submitted notice to:

* Secretary of State for publication in the October 2014 [*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html) on Sept. 15, 2014.
* The Ammonia Web page: <http://www.oregon.gov/deq/WQ/Pages/Standards/ammonia.aspx> on Sept. 16, 2014.
* The Rulemaking Web page: <http://www.oregon.gov/deq/RulesandRegulations/Pages/proposedrule.aspx> on Sept. 16, 2014.
* 3,383 interested parties on the water quality standards list through Gov Delivery on Sept. 16, 2014.
* EPA on Sept. 17, 2014.
* The following key legislators required under [ORS 183.335(15)](http://www.oregonlaws.org/ors/183.335) on Sept. 17, 2014:
* Senator Michael Dembrow, Chair, Senate Committee on Environment and Natural Resources
* Representative Paul Holvey, Chair, House Committee on Energy and Environment

SMOKE MANAGEMENT PLAN RECOMMENDATION

 DEQ recommends that the Environmental Quality Commission:

1. Approve the Oregon Smoke Management Plan under ORS 477.013 as part of chapter 340 of the Oregon Administrative Rules;
2. Adopt the proposed amendment to OAR 340-200-0040 in Attachment A to incorporate the proposed rules into the Oregon Clean Air Act State Implementation Plan; and
3. Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval

Insert the following sections from published NOTICE after the Recommendation section. Also, add a message box to each section of these sections similar to the grey message box below.

* Overview – include *Request for Other Options.* May include a message box if there were no changes
* Statement of need – may have a message box if no changes as a result of public comment
* Freeform title –may have a message box if there were no changes
* Federal relationships– needs a message box
* Rules affected, authorities, supporting documents - may have a message box if no changes
* Statement of fiscal and economic impact – may have a message box if no changes as a result of public comment
* Fees – needs a message box
* Land use – needs a message box

MESSAGE BOX

**REVIEWERS do not edit or modify this section**

[LIST KEY REVIEWERS such as program staff and managers, OCO, EPA, DOJ, the advisory committee, DAS, division and agency rules coordinators] reviewed this section prior to publishing it in the public notice. Do not modify it except to correct typographical errors. The program manager and the division administrator reviewed and approved this section at that time.

|  |
| --- |
|  Stakeholder and public involvement |

Insert information from NOTICE here

* Advisory committee
* EQC involvement
* Public notice

CHANGE FROM FUTURE TO PAST TENSE

## Public hearings and comment

DEQ held ##one public hearing. DEQ received ##public comments. The following is a summary of comments DEQ received during the public comment period with cross reference to commenter number. DEQ’s response follows the summary. Original comments are on file with DEQ.

## Presiding Officers’ Record

### Hearing 1

Location: Portland

Date: Oct. 15, 2014

Time: Convened 6:10 p.m. Closed 7:00 p.m.

Presiding Officer: Debra Sturdevant, Manager, WQ Standards and Assessment Section

One person from the public attended the hearing. This person did not make any oral comments or submit written comments. DEQ staff presenters were Andrea Matzke, Aron Borok and Spencer Bohaboy.

According to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), the presiding officer summarized the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html). DEQ offered to review the presentation with the attendee, but this offer was declined, since she had attended a previous webinar on the rulemaking proposal. Instead she preferred to ask DEQ staff specific questions about the rulemaking and implementation of the new criteria. The presiding officer closed the hearing at 7 p.m. following the question and answer session.

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| Implementation  |

## Notification

The proposed rules would become effective upon EPA approvalmmm, dd, yyyy. DEQ will notify affected parties by:

* Sending out a Gov Delivery notice to 3,383 interested parties on the water quality standards list
* Posting notification on the Water Quality Standards website, including links to rulemaking documents: <http://www.deq.state.or.us/wq/standards/standards.htm>
* Regional permitting staff email communication to individual NPDES permittees, Jennifer?

 Describe Notification

Include information about the application of the rule. Be thorough and accurate. Without speculation, describe the implementation elements that DEQ has already decided to do. Use the example elements below as an example of how to develop elements that apply to this proposal. Delete them if they do not apply. Remember, this staff report becomes part of the administrative history of the rules and the court may look to it for guidance on deciding how to interpret an ambiguous section of the rule.

## Compliance and enforcement

* Affected parties – No changes in implementation anticipated.
* DEQ staff – No changes in implementation anticipated

## Measuring, sampling, monitoring and reporting

* Affected parties – Dischargers will need to assess current monitoring, sampling and reporting requirements and determine whether changes will need to occur in order to comply with the revised ammonia criteria requirements.
* DEQ staff – Permitting staff may develop internal and external monitoring and sampling guidance documents, including revisions to the Reasonable Potential Analysis workbook, to assure that the revised ammonia criteria are correctly implemented.

## Systems

* Website – DEQ will post notification on the Water Quality Standards website, including links to rulemaking documents: <http://www.deq.state.or.us/wq/standards/standards.htm>
* Database – No implementation actions related to water quality databases, such as the Discharge Monitoring System are needed.
* Invoicing – Not applicable.

Training

* Affected parties – It is unlikely that DEQ will need to conduct specific discharger training based on revised ammonia criteria. However, if the need arises, DEQ will consider providing any needed training.
* DEQ staff – It is likely that DEQ will provide general training and assistance to permitting staff to assure that the revised ammonia criteria are correctly implemented.

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| Five-year review ORS 183.405 |

Requirement

The state Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based its analysis on current law.

## Exemption from five-year rule review

OPTION 1 The Administrative Procedures Act exempts Choose an item. of the proposed rules from the five-year rule review because the proposed rules would:

* Choose an item.
* Choose an item.
* Choose an item.

OPTION 2 Exemption from the five-year rule review under ORS 183.405(4) and 183.405 (5) of the Administrative Procedures Act do not apply to these proposed rules.

Delete the following if all proposed rules are exempt .

## Five-year rule review required

No later than Enter the date that that is 5 years from EQC meeting date in Mmm dd, yyyy format. Example Sept. 6, 2012. DEQ will review the newly adopted rules required under ORS 183.405 (1) to determine whether:

* The rule has had the intended effect
* The anticipated fiscal impact of the rule was underestimated or overestimated
* Subsequent changes in the law require that the rule be repealed or amended
* There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

1. DMS a SQL Server database system is with an ASP.NET application interface that allows electronic entry, storage, and retrieval of self-reported Discharge Monitoring Reports that Permittees submit monthly on approved, certified paper forms. Data in DMS ranges from January 2004 – present. [↑](#footnote-ref-1)