Oregon Department of Environmental Quality

Onsite 2024 Meeting Minutes Rulemaking Advisory Committee #2

Jan. 14, 2025 – Zoom

This rulemaking advisory committee meeting was convened to address sewer availability and ADU issues prompted by bills enacted by the 2023 Legislature, and to generally modernize, clarify and improve onsite program rule language, including enhancing environmental protection in high-risk areas.

Meeting minutes

DEQ attendees

- Kyle Nelson (Onsite Rulemaking Specialist)
- Corby Eden (Program Analyst)
- Sean Rochette (Onsite Wastewater Program Manager)
- Randy Trox (Onsite Program Coordinator)
- Kiley Clamons (Training & Natural Disaster Preparedness Specialist)

Rulemaking advisory committee members

- Brian Rabe (Elkhorn Consulting)
- Todd Cleveland (Deschutes County)
- Kevin Riddle (Sweet Water Sanitation representing Oregon Onsite Wastewater Association)
- Sheryl Ervin (Infiltrator Water Technologies)
- Peggy Lynch (League of Women Voters of Oregon)
- Lucas Marshall (Clatsop County)
- Nicholas Peasley (Oregon Association of Realtors)
- Michelle Miranda (City of Eugene Representing League of Oregon Cities)
- Jerry Linder (Oregon ACWA Executive Director, alternate for Amy Pepper)

Public attendees

- Julie Lancaster
- Brittany May
- Suzanne Richardson
- Emma Colburn
- Michael Martin
- Patrick Henderson
- Erin O'Connell (Presenter)

Absent rulemaking advisory committee members

- Lisa Rogers (Casa of Oregon)

Translations or other formats

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Welcome and introductions (1 – 1:10 p.m.)

- Facilitator: Kyle Nelson
- Welcomed attendees, introduced the purpose of the meeting, and provided Zoom etiquette guidelines.
- Introduction of our alternate RAC member (Jerry Linder)
- Shared the importance of the fiscal impact statement in the rulemaking process.
- Gave guidance on what type of input is required and requested of RAC members.

RAC 1 meeting minutes and agenda (1:10 – 1:15 p.m.)

- Facilitator: Kyle Nelson
- RAC members did not have any suggested edits to the meeting minutes from the RAC #1 meeting on 12/3/2024.
- Brief overview on meeting agenda.

Sewer availability amendments (1:15 – 1:45 p.m.)

- Presenter: Randy Trox
- Facilitator: Corby Eden
- Key points and discussions
  - Peggy Lynch expressed concern that SB 122 requires a plan from urban service providers but does not consider annexation in the rule change.
    - Randy Trox clarified that DEQ does not want annexation to be a consideration to not extend sewer to the property, but it could be a requirement after it was decided to extend sewer. There is a court case, Jeld-Wen vs. EQC that supports this position.
    - Sean Rochette suggested adjusting the rule language to make it clearer.
  - Brian Rabe requested DEQ and the RAC consider his proposed changes to sewer availability he sent via email, highlighting the concern over the requirement to connect to sewer most often occurs on developed properties and prevents repair permits, causing significant financial hardship for existing single-family dwellings. New development within urban growth boundaries or city limits can evaluate the connection to sewer in their financial analysis. There should be more space for exceptions for existing single-family dwellings.
    - Peggy Lynch raised concerns about allowing repairs to occur in areas that may be redeveloping or adding ADUs and sewer is needed. She doesn't want to see a hopscotching sewer scenario where House A gets a septic repair permit and House B has to connect to sewer because they are adding development.
    - Randy Trox responded that by allowing minor repairs near sewer connections could backfire because sometimes no one looks at the failure before applying for a minor repair permit and it actually ends up being a major repair, compared to eliminating the existing distance requirement.
  - Brian Rabe noted that property owners that prompt sewer expansion end up with the burden of cost for not only their connection but future connection because municipalities must size sewer lines for future use. There is no mechanism for them to recoup the cost of expansion that benefits their neighbors.
    - Jerry Linder responded that Clean Water Services would charge the property owner for the size of pipe they would need. If any upsizing was required for future use, Clean Water Services would cover the additional cost. Local improvement districts allow for financing options. He urged future rules to encourage sewer connections due to the negative environmental impacts of failing septic systems.
  - Sean Rochette acknowledged the concerns being brought up but stated they are concerns that should be handled at the municipality level, not as septic permitting issues.
  - Nicholas Peasley questioned how the proposed rules are addressing the considerations requested in SB 391. He expressed concern that by putting the decision-making authority on the municipalities, we assume the municipality will act in the best interest of the property owners.

        - Randy Trox explained that after talking with county agents, it seems municipalities are already making the determinations of whether or not sewer is available.
        - Peggy Lynch noted that both counties and cities have a role in sewer availability.
        - Jerry Linder expressed concern that handing over decision-making to local officials may allow for special interests to prevail instead of what is best for the environment and the community.
        - Sean Rochette responded that DEQ relies on the municipalities to decide what is legally available. Municipalities have the ability to waive connections. DEQ has nothing to do with the cost of sewer connection. DEQ can only decide whether or not to issue a septic permit, so the onus of these considerations doesn't belong in onsite rules. There may be a need for statewide regulations regarding sewer availability, but it feels misplaced in the onsite rules.
    - Randy Trox wanted to know from local jurisdictions if annexation is required for sewer connection or if lots have to be contiguous to be annexed because these requirements may override the 300 ft rule. He acknowledged that no matter what rule DEQ comes up with someone is going to walk away feeling like they got the short end of the stick. One thing that seems fair is that if you are located in a city or urban growth boundary, you should expect urbanization to occur.
        - Jerry Linder responded that ACWA has the ability to provide outreach and survey jurisdictions.
    - Todd Cleveland noted that the intention behind the rule is to provide orderly connection to sewer. His concern as a county agent is that if cost has to be considered, it makes septic permitting very complicated instead of the orderly process it should be. A physical distance is a good conversation starter, but legal availability is important too.
        - Jerry Linder advocated for a physical distance rule to allow for certainty and orderly development.

Accessory dwelling unit amendments (1:45 – 2:15 p.m.)

- Presenter: Kiley Clamons
- Facilitator: Corby Eden
- Key points and discussions
    - Peggy Lynch expressed concern about how SB 391 would interact with city lots that have ADUs. She recommended creating two separate rules: one for rural/residential and one for cities.
        - Sean Rochette responded that we rely on the local planning jurisdiction to provide us with a land use compatibility statement. The absence of a 900 square feet specification in our rules does not mean that local planning jurisdictions would disregard SB 391 requirements, including the 900 square feet rule.
        - Kiley Clamons clarified that the 900 square feet rule is not specific to onsite systems; it is part of the rural/residential ADUs statute. County Planning Departments will need to verify that the proposal is 900 square feet or less before approving a septic application.
    - Todd Cleveland pointed out that any definition enacted would be problematic due to the differing ways cities define ADUs.
        - Sean Rochette stated that the plan is to provide guidance on implementation to accompany the rules.
    - Peggy Lynch suggested that, for clarity, a term like "see the land use code for square footage" should be included.
        - Sean Rochette indicated the potential to add a term similar to "and may not exceed 900 square feet in areas zoned rural/residential".
    - Todd Cleveland emphasized that a land use compatibility statement is required for every authorization notice or construction installation permit.
    - Jerry Linder expressed support for clarity in guidance but prefers rule changes for effectiveness.
    - Brian Rabe inquired whether the two-bedroom limit would conflict with local definitions of ADU.

        - Kiley Clamons clarified that DEQ proposed rules for ADUs will set a 2-bedroom limit. If a jurisdiction considered an ADU to have three or more bedrooms, DEQ would treat it as a separate single-family dwelling and size it accordingly.

Break (2:15 – 2:26 p.m.)

Variance presentation and group discussion (2:26 – 3 p.m.)

- Presenter: Sean Rochette
- Facilitator: Corby Eden
- Key points and discussions
    - Peggy Lynch asked why hardship variances weren't included in 0415(3)(c) and who determines what is unreasonable, burdensome or impractical.
        - Sean Rochette acknowledged the vagueness of the language but noted the language was in statute and would require legislative action to change.
    - Todd Cleveland expressed appreciation of the minimum criteria and ongoing sampling sections established in the rule change.
    - Brian Rabe questioned whether ongoing sampling for variance approvals would be necessary and suggested to be able to waive that requirement if the technology used in the variance became out-right approved in the future.
        - Sean Rochette explained that other states have operating permits for advanced systems and predicted that such permits could be implemented in the future as technologies evolve.
    - Sheryl Ervin raised concerns about the undefined term "may include", asking for clarification on who is responsible for paying for the sampling. She suggested adding "the responsibility of the property owner" regarding sampling.
        - Sean Rochette responded that the language is open-ended because variances fall outside prescriptive standards. The property owner is responsible for the sampling cost as they are responsible for maintaining a service contract for the life of the system.
    - Peggy Lynch recommended that the fiscal impact statement should address the positive impacts of this rule change.
        - Sean Rochette appreciated the suggestion to add a positive perspective to the fiscal impact statement.
    - Jerry Linder requested clarity for 0440(2), suggesting that only either (a) or (b) should apply, not both cases simultaneously.
        - Sean Rochette agreed and stated the formatting will be revised based on DOJ review.

Nitrate loading presentation and group discussion (3 – 3:40 p.m.)

- Presenter: Sean Rochette
- Facilitator: Corby Eden
- Key points and discussions
    - Peggy Lynch emphasized the need for consistency in the phrase "in the judgment of the agent" and recommended uniform training to ensure adherence to the parameters.
        - Sean Rochette responded that DEQ is mirroring language that already exists in rule for several other sections, but he acknowledged the concern and stated that solutions would be explored.
        - Sheryl Ervin reiterated that "in the judgment of the agent" is problematic for 0220(1)(k) and recommended including a baseline definition.
    - Sheryl Ervin pointed out the lack of a standard for fecal coliform reduction in proposed rule change 0324(8)(c).
        - Sean Rochette responded that NSF 245 specifies 50% reduction in total nitrogen. Treatment standard 2 includes both a fecal coliform and nitrogen component that

treatment standard 1 does not. However, manufacturers could still apply for treatment standard 1 and submit data for total nitrogen reduction.

- Todd Cleveland supported the rule change, noting its potential to address groundwater concerns. He noted the need for additional treatment system to reduce nitrogen.
- Jerry Linder suggested adding the phrase "the agent determines, using the best available science that…" in reference to 0220(1)(k).
  - Sean Rochette response: we will look into solutions.

Break (3:40 – 3:50 p.m.)

O and M presentation and discussion (3:50 – 4:55 p.m.)

- Presenter: Kiley Clamons and Erin O'Connell
- Facilitator: Corby Eden
- Key points and discussions
  - Nicholas Peasley raised concerns that service contract timelines needed refinement in the cases of service termination. He recommended setting a reasonable timeframe for property owners to reestablish a service provider to remain in compliance.
    - Kiley Clamons responded that, in practice, most jurisdictions provide a 30-day or longer grace period. She thought it was a good idea to consider this in rule. Currently and as proposed, the maintenance providers have 30 days to notify the agent when the contract is terminated.
    - Todd Cleveland added that Deschutes County sends non-compliance letters to property owners with an expired contract. It's the property owners that refuse to get in compliance once they have been notified that take up the most resources.
  - Sheryl Ervin suggested in section 0260, if the property owner does not allow the maintenance provider on the property, the maintenance provider should not be penalized.
    - Peggy Lynch emphasized this point.
    - Kiley Clamons explained that ideally, this would be considered cause for termination in the maintenance contract. However, if it happened at the end of the year and was insufficient time to process the termination, the proposed rules would not penalize the maintenance provider.
    - Erin O'Connell agreed with Kiley and noted that the rules were drafted with maintenance providers in mind and could be used as a tool for keeping property owners under contract and in compliance.
  - Peggy Lynch suggested that DEQ should be protected to enter a property for inspections if there is no longer a contract in place.
    - Todd Cleveland responded that he has never conducted a periodic inspection for that reason and has pursued an enforcement process in lieu of conducting the periodic inspection; however, enforcement processes are not feasible the larger the program is due to the extraordinary number of resources needed per case from onsite staff, code enforcement, and legal. He appreciates the compliance recovery fees.
  - Todd Cleveland expressed appreciation for the rule change that would reduce time-intensive work for County agents. He pointed out that putting all the rules in one place is great and has been needed for a long time.
  - Kevin Riddle acknowledged that the rules are great as proposed. He pointed out the challenge of ensuring the property owners know the rules and the type of system installed on their property. He suggested better information transfer during property sales would be beneficial for property owners and maintenance providers alike.
  - Kily Clamons explained that the Task Force was aware that real estate transactions can be a pinch point in this process. They are advocating for more resources for assessor's office so they can regularly provide up-to-date information about real estate transactions.
  - Kevin Riddle suggested that the maintenance provider be notified when the Certificate of Satisfactory Completion is issued.

        - Kiley Clamons responded that one of the rule changes she did not present will require start-up inspections that can be done by the maintenance provider to be conducted before the Certificate of Satisfactory Completion is issued as a way to engage the maintenance provider when the system is ready to be used.
        - Erin O'Connell reiterated that the Task Force is working on comprehensive changes to the O&M Program. If a challenge is not addressed in the proposed rules, it will be addressed in other ways.
    - Peggy Lynch noted that the new legislative session includes a bill on well testing. She saw this as an opportunity to add a requirement that real estate transactions include septic information for the buyer.
    - Sheryl Ervin raised concerns that manufacturer service requirements vary greatly between companies. Some manufacturers provide recommendations, not necessarily requirements, and she worried that requiring minimum maintenance "requirements" could exclude manufacturers that only had recommendations.
        - Brian Rabe commented that manufacturers should have minimum service guidelines for their systems to enable performance standards. The state should not be the ones creating these requirements.
    - Peggy Lynch and Sheryl Ervin brought up concerns about contracts being "in perpetuity".
        - Jerry suggested working with DOJ on "forever" contracts.
        - Kiley Clamons clarified that the property owner could cancel a contract at any time. The intention was to avoid requiring homeowners to sign a new contract every year or two.
        - Nicholas Peasley confirmed that perpetuity contracts are typically not recognized in courts, but it was possible to require a homeowner to be under contract for the life the system.

Public comment (4:55 – 5 p.m.)

- Presenter: Kyle Nelson
- Zoom recording ended before informal public comment period.
- Gave directions on how to make public comments.
- Public comments made by Erin O'Connell and Brittany May both felt that there should be a distance to sewer maintained in the rules. Less than 300 feet is fine with them, but there should be a distance.

Meeting adjourned at 5 p.m.

- RAC reminded of the next meeting time of Feb. 13, 1 to 4 p.m. with the potential of extending the time until 5 p.m.
- A formal meeting notice, including relevant details, will be sent out two weeks in advance.

Action items:

- DEQ to refine draft rules based on feedback received.
- RAC members to review meeting materials for the next session.
- DEQ to circulate a formal notice for the February meeting.