



Onsite 2024 Meeting Minutes Rulemaking Advisory Committee #3

Feb. 13, 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)
- Brock Nation (Oregon Association of Realtors)
- Michelle Miranda (City of Eugene Representing League of Oregon Cities)
- Amy Pepper (City of Wilsonville)

Public attendees

- Charlie S
- Jerry Linder
- Lindsey Reschke

Absent rulemaking advisory committee members

- Lisa Rogers (Casa of Oregon)

Welcome (1 – 1:10 p.m.)

- Facilitator: Kyle Nelson
- Welcomed attendees, introduced the purpose of the meeting, and provided Zoom etiquette guidelines.

Translations or other formats

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- Introduction of our alternate RAC member (Brock Nation)
- 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 2 Meeting Minutes and RAC 3 Agenda (1:10 – 1:15 p.m.)

- Facilitator: Kyle Nelson
- RAC members gave edits to RAC #2 meeting minutes
 - Amy Pepper noted that there is a mistake in the acronym “ACWA” which was corrected.
- Brief overview on meeting agenda.

Housekeeping proposed rule changes and discussion (1:15 – 1:30 p.m.)

- Presenter: Kiley Clamons
- Facilitator: Corby Eden
- Key points and discussion
 - Brian Rabe highlighted in section 0025(7)(a) “P.V.C.” should be corrected to “PVC”. In section 0060 HDPE pipe specifications should be SDR-11 where it is a pressure rated pipe. In the time dosing definition, we should not limit it to “daily” or “weekly” based on surge tank metering situations. Brian wanted clarification on whether he is accurately interpreting the difference between design flow and projected daily sewage flow.
 - Sean Rochette confirms Brian’s interpretation of design flow vs. projected daily sewage flow based on his example.
 - Brian Rabe responded that it should still be clear that the system size should include a safety factor, with the actual flows generally about 50% of flow the system was designed for.

Prior topic updates – variances and nutrient loading (1:30 – 1:40 p.m.)

- Presenter: Sean Rochette
- Facilitator: Corby Eden
- Key points and discussions
 - Peggy Lynch asked if the term “based on the best available science” can be understood by the public.
 - Sean Rochette responds that we deliberated on this topic whether we should spell out the definition for this term. In practice decisions are made based on local knowledge. We are trying to pair that local knowledge with something that is scientifically sound. We are open to suggestions on how to define this phrase, but we intend to keep the definition general to try and capture most situations.
 - Peggy Lynch would like the record to reflect her concerns that the general process guidelines remain consistent state-wide even when factoring in unique local circumstances. She is also concerned about the knowledge of new agents having the same degree of consistency compared to more senior agents.
 - Sean Rochette responded that this is a great point, and he believes that some of the consistency comes from DEQ being the overarching umbrella to provide regional technical assistance.
 - Brian Rabe highlighted an example of how consistency has been a long-standing issue amongst practitioners. Rule interpretations can vary between jurisdictions.
 - Todd Cleveland states his County (Deschutes) has an area with groundwater contamination issues. They have used DEQ and USGS data to cite them in reports. They have created an annual groundwater protection report which documents the history associated with this contamination.

- Brian Rabe asked if section 5 from the hardship variances section can be amended to eliminate many of the commas. This could be interpreted in a confusing way.
 - Sean Rochette responds that the DOJ and the comms team will help to clarify language.

Prior topic updates – O&M and ADU's (1:40 – 1:50 p.m.)

- Presenter: Kiley Clamons
- Facilitator: Corby Eden
- Key points and discussions
 - Sheryl Ervin had a question about contract terms for service contracts. Can we have a service contract without a time period?
 - Kiley Clamons responds that we will ask DOJ to review during the DOJ review period to verify that the wording is not in conflict with other state laws.
 - Peggy Lynch would like to see a section that includes protection that DEQ would get to make sure periodic inspections happen, and they have an ability to get on the property safely.
 - Kiley Clamons responds that this particular change is not addressing that subject specifically. The language in the periodic inspection may be changed to include that an agent can have a certified maintenance provider conduct the inspection in lieu of the agent doing the inspection themselves.
 - Sean Rochette adds that we could consider changing the rules so that the service contract has a clause included to access the property for the life of the system.
 - Todd Cleveland states that this could be done when filing an application that allows agents to access the property.
 - Todd Cleveland met with O&M providers that had comments about clause termination process that they need help with because problems are being created. They like the idea of not renewing the contracts because its time consuming on staff and creates enforcement complications.
 - Brock Nation comments on the contract term question from Sheryl Ervin. He proposes a term like “A continuous agreement that remains in effect for the duration of the operation of the system.”
 - Sheryl Ervin adds that she has seen language that states there must be a contract in place for the life of the system. Because different systems have different life spans.
 - Brian Rabe agrees that the term “life of the system” would solve concerns by replacing the term “in perpetuity”.
 - Kevin Riddle interprets the rules as having the system owners have a contract with the maintenance providers in perpetuity until the system is deactivated. He understands the importance to have DEQ notified of when a contract expires.
 - Sean Rochette asks Kevin if he is implying contracts themselves should include the rule language?
 - Kevin Riddle answers yes.
 - Kiley Clamons notifies the group that this week we have released an O&M fact sheet available on the DEQ website. This uses plain language describing the responsibilities of the property owners and the maintenance providers.
 - Brock Nation asks why we are not deferring to the statutory definition for “accessory dwelling unit”
 - Kiley Clamons responds that the first part of the sentence is the statutory definition and that we are adding the second section to the existing definition.
 - Brock Nation is concerned that the size limitation established by the state or local land use regulations. There is a number of ADUs that were built prior to state laws being passed. He is concerned if we put in this language, we may prevent necessary maintenance and upkeep when it no longer meets the legal definition of ADU but it was legally compliant when permitted and constructed.
 - Brian Rabe has a statement in relation to the authorization notice process. The physical inspection of the system should be done by the agent because there is a stronger public health impact assessment that needs to be completed than simply having an ESER being done that would not meet the same standard of an environmental health expert based on their

background. There is not a need to consult a manufacturer for the authorization notice process that involves an ATT, because flow increases beyond ATT approved design capabilities are not allowed.

- Peggy Lynch states the difference between 931 rural residential areas and cities in relation to ADUs. We may need to have two sets of rules to make sure that we are covering two different things. She also clarifies that the new bill simply allows for the opportunity to have one system sharing the house and the ADU.
 - Kiley Clamons responds that we consulted with DOJ and confirmed that two systems could be allowed under our statutory authority.
- Sheryl Ervin wants clarification on the current rule that relates to the 1000-gallon minimum septic tank size. How does this rule apply to the ADUs when two separate systems are in place?
 - Sean Rochette responds that our existing rules already address this concern. Separate systems will have their own 1000-gallon tanks at minimum. For combined systems we will look at the combined sewage flow and determine the appropriate tank size.
 - Sheryl Ervin states that there are some systems that are designed for a one-bedroom home that would not need the 1000-gallon septic tank.
 - Sean Rochette responds that this potential change is not in the scope of this rulemaking.

Sewer availability update and discussion (1:50 – 2:35 p.m.)

- Presenter: Randy Trox
- Facilitator: Corby Eden
- Key points and discussions
 - Peggy Lynch states within a municipality or special district we have some unincorporated areas around the state that may have a sewer system but is not a municipality.
 - Kiley Clamons responds that it is the intention of our rules to reflect this.
 - Brock Nation highlights physical availability. Under 0160(4)(f)(A)(I)-(II) this 300-foot distance may not be in alignment with SB 391 from 2023.
 - Sean Rochette respond that this bill had a sunset date at the beginning of January, 2025.
 - Brock Nation believes getting clarification on intent from Senator Meek is ideal.
 - Brock Nation has a question on repair and alteration permits vs. construction or installation permits. Does construction and installation only apply to new systems that are being put in where there was not system previously?
 - Sean Rochette responds typically construction/installation is a new permit. A repair permit typically applies to replacing a failed system.
 - Brock Nation responds it may be a good idea to add “or replacement” into section (ii)
 - Brock Nation recommends the word “may” is removed from section (B) under legal availability. He also recommends adding language that would factor in the cost of connection and cost of repair under section (B).
 - DEQ has considered including these factors. There is a lot of difficulty in this topic like accurate pricing between installers.
 - Amy Pepper introduced an overview of her changes to this sewer availability section. Amy stated she made some redline edits and would share after the meeting. DEQ will share with the RAC after we receive them.
 - Brock Nation is concerned with the term “measured from the closest structure to be served” under 0160(4)(f)(A)(ii). Complications could occur if there is a large property with a structure located far away from the connection point on the property boundary. He proposes language like “from any point on the footprint on the property”.
 - Amy Pepper responds that an issue for a municipality is that we are looking to intensify development within city and urban growth boundaries.

Break (2:35 – 2:45 p.m.)

Fiscal impact statement review and discussion (2:45 – 3:20 p.m.)

- Presenter: Kiley Clamons
- Facilitator: Corby Eden
- Key points and discussions
 - Peggy Lynch would like to make sure both Brock and Amy are comfortable with this fiscal statement regarding sewer availability.
 - Amy Pepper has a question on adding the sewer availability statement. Is DEQ planning on updating forms to make this a template? There may be impact if left up to municipalities.
 - Amy Pepper had a statement regarding sewer availability. Anything that reduces the distance that's currently in statute could potentially increase the cost to the future property owner as sewer gets extended. If we delay the inevitable, in the future it will cost more.
 - Brock Nation agrees with Amy Peppers statement on sewer availability.
 - Peggy Lynch had a question for the group if they are comfortable with the summary statement made for adding inspection requirements including start-up inspections in the O&M section.
 - Kevin Riddle believes that this should be a requirement, and he agrees with the summary statement provided.
 - Kiley Clamons responds that this is common practice for maintenance providers, and it is not clear how many are not already doing this.
 - Brian Rabe adds if service providers are not already doing this, there will be a potential reduced overall cost.

Public Comment (3:20 – 3:30 p.m.)

- Presenter: Kyle Nelson
- Zoom recording ended before informal public comment period.
- Gave directions on how to make public comments.
- No public comments were made

Meeting Adjourned at 3:30 p.m.

- RAC reminded of the next meeting time of Feb. 26, 2025, a.m. to 12 p.m.
- A formal meeting notice, including relevant details, will be sent out in advance.

Action Items:

- DEQ to consider changes to draft rules and fiscal impact statement based on feedback received.
- RAC members to review meeting materials for the next session.