



# Oregon Department of Environmental Quality

**Dec. 11-12, 2013**

**Oregon Environmental Quality Commission meeting  
Rulemaking, Action item: Q**

## **Corrections and Clarifications to Toxics Water Quality Standards**

### **DEQ recommendation to EQC**

#### **DEQ recommends that the Oregon Environmental Quality Commission:**

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

### **Overview**

#### Short summary

DEQ proposes revisions to the water quality standards rules for toxic substances to correct and clarify the standards. Revisions to water quality standards require EPA approval before revisions become effective for Clean Water Act programs.

#### The proposed rules:

- Correct several toxic pollutant criteria that EPA recently disapproved and address other minor revisions to the Toxic Substances rule. EPA disapproved criteria for 11 pesticides based on potentially conflicting information about how the frequency and duration components of these criteria are expressed. DEQ expects that clarifying this aspect of the criteria will lead to EPA approval of 36 pesticide criteria values associated with 11 pesticides.
- Correct an error in the expression of freshwater selenium criteria.
- Re-propose freshwater and saltwater arsenic criteria and chromium VI saltwater criteria that were inadvertently left off the criteria table during a 2007 rulemaking.
- Correct typographical errors made during the 2011 Human Health Toxics rulemaking.
- Move all effective aquatic life criteria from Tables 20, 33A and 33B into a new aquatic life criteria table, Table 30, and to refer to the new table in the Toxic Substances rule language. Tables 20, 33A and 33B are no longer needed and would be repealed under this proposal.
- Delete aluminum from the new Table 30 to reflect EPA's disapproval of the freshwater criteria for aluminum. There are no other criteria for aluminum. DEQ



anticipates adopting revised freshwater criteria for aluminum in a future rulemaking process.

Not all of these rule revisions will require EPA action in order to become effective under state and federal law, since some of the revisions are not considered water quality standard revisions. EPA will determine which water quality standards it must formally approve or disapprove. DEQ anticipates that EPA will take action on the following water quality standard revisions proposed in this rulemaking:

- Revisions to pesticides and selenium criteria
- Reinstatement of arsenic and chromium VI criteria and the associated conversion factors
- Deletion of aluminum criteria
- Revisions to the Toxic Substances rule in OAR 340-041-0033. EPA will likely take an action on the editorial and formatting changes, but not on the associated numeric toxics criteria that were previously approved.

#### Brief history

On Jan. 31, 2013, EPA took action on Oregon's aquatic life toxics criteria that the Oregon Environmental Quality Commission adopted and submitted to EPA in 2004. In that action, EPA approved some of the standards and disapproved others as detailed below. The federal Clean Water Act requires that DEQ revise or fix standards disapproved by EPA. DEQ proposed these water quality criteria, which EPA recommended, to protect aquatic organisms such as fish, shellfish, and aquatic insects. The aquatic life toxics criteria for each pollutant typically have four values: acute (short-term) and chronic (long-term) values for freshwater protection, and acute and chronic values for saltwater protection.

EPA approved 38 criteria values associated with 14 toxic pollutants and disapproved 45 criteria values associated with 16 toxic pollutants. EPA disapproved the freshwater acute criterion for cadmium based on findings in the National Marine Fisheries Service's August 2012 Biological Opinion. EPA disapproved the ammonia criteria because new toxicity data showed that the criteria were not protective of mollusks. EPA also disapproved criteria associated with 14 other pollutants, including 11 pesticides, copper, selenium and aluminum, due to inconsistencies associated with EPA's nationally recommended criteria.

The Clean Water Act requires Oregon to fix the deficiencies identified in EPA's disapproval action. If Oregon does not make these revisions, EPA is required to put in place its own regulations addressing the deficiencies. This rulemaking does not address the disapproval of the freshwater criteria for aluminum, ammonia, copper, and cadmium (acute criterion only). DEQ expects to address these issues in a future rulemaking.

#### Regulated parties

Regulated parties possibly affected by this rulemaking include industrial and municipal dischargers to waters of the state. Specifically, regulated parties include those industrial dischargers categorized as "primary dischargers" by the federal permitting regulations and required to monitor for toxic pollutants, and generally major municipal dischargers,



those with an average dry weather design flow of more than one million gallons per day. Agricultural and forest activities are subject to Agricultural Water Quality Management Area Plans and Rules and the Forest Practices Act, respectively. Those laws require these nonpoint sources to meet all water quality standards. DEQ does not expect regulated parties to incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics water quality standards rules.

## Statement of need

Proposed Rule or Topic	Discussion
<b>340-041-0033(1-5): Toxic Substances Rule</b>	
What problem is DEQ trying to solve?	<p>Currently, Oregon's water quality criteria for the protection of aquatic life reside in three tables: Table 20, Table 33A and Table 33B. In 2004, EQC adopted Tables 33A and 33B:</p> <ul style="list-style-type: none"> <li>• Table 33A contains criteria more stringent or remained the same as previous criteria and became effective for NPDES permitting Feb. 15, 2005.</li> <li>• Table 33B contains criteria less stringent than previous criteria and therefore, would only be effective after EPA approval.</li> <li>• Table 20 contains criteria effective before the 2004 rulemaking and remained effective for all CWA programs, such as reporting to EPA on the condition of Oregon's waters (i.e. sections 303(d) and 305(b)).</li> </ul> <p>On Jan. 31, 2013, EPA took action on the 2004 criteria, thereby determining which new or revised criteria in Tables 33A and 33B are now effective under CWA authorities. Criteria that EPA disapproved automatically reverted back to any previously effective criteria contained in Table 20. Now that it is clear which criteria are effective, multiple tables are no longer needed. DEQ proposes combining these effective aquatic life criteria into one table—Table 30—and delete Tables 20, 33A, and 33B. Proposed revisions to the Toxic Substances rule replace references to Tables 20, 33A, and 33B with references to Table 30. Other proposed changes to the Toxic Substance Rule are for clarification purposes.</p> <p>In addition, the proposed Table 30 contains changes to correct problems that EPA identified in its January 2013 disapproval of 11 pesticides and the freshwater criteria for selenium. Specifically, DEQ proposes adding introductory text to Table 30 to more clearly state the alternate frequency and duration components of the pesticide aquatic life criteria (the basis for EPA's disapproval) for 11 pesticides. DEQ proposes additional edits to the footnote associated with the pesticides for better clarity. To address EPA's disapproval of the freshwater criteria for selenium, DEQ applied the conversion factors to convert selenium criteria expressed as total recoverable to a dissolved expression as intended in the 2004 rulemaking.</p>



Proposed Rule or Topic	Discussion
	<p>DEQ also proposes reinstating freshwater and saltwater criteria for arsenic and saltwater criteria for chromium VI. DEQ inadvertently omitted the criteria from Table 33B during a 2007 water quality standards rulemaking. The arsenic and chromium VI criteria re-proposed here as part of this rulemaking are the same criteria that the commission adopted in 2004. These criteria underwent Endangered Species Act consultation by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and were not found to create jeopardy for any ESA-listed species. EPA did not take action on these criteria as part of its Jan. 31, 2013 action, but noted that the omitted criteria are consistent with EPA's 304(a) recommendations and recommended that Oregon re-adopt these criteria.</p> <p>The proposed footnotes and introductory language to Table 30 provide additional clarification to the criteria and definitions.</p> <p>There are additional proposed minor clarifications to Table 40, which contains toxics criteria for the protection of human health.</p> <p>DEQ proposes revisions to Table 33C, which contains water quality guidance values for toxic pollutants, to be consistent with agency table formatting guidelines. Other revisions would rename Table 33C as Table 31 and remove arsenic guidance values which are unnecessary because Oregon has aquatic life criteria for arsenic. In addition, DEQ proposes a correction in a reference made in the table to Oregon's Narrative Toxic Substances Standard. The correct reference is OAR 340-041-0033(2).</p> <p>The Secretary of State Bulletin now allows tables to be attached to the Oregon Administrative Rules. Therefore, proposed changes found at the end of the Toxic Substances rule state that Tables 30, 31, and 40 will be attached as PDF documents.</p> <p>These proposed changes do not become effective until after EQC adoption and EPA approval. Upon EPA approval, the amendments become applicable for Clean Water Act purposes on April 18, 2014.</p>
How would the proposed rule solve the problem?	<p>Combining the aquatic life toxics criteria into one table will make it easier for DEQ staff, the public and the regulated community to determine which criteria are effective.</p> <p>In addition, the proposed changes to Table 30 reinstate the erroneously omitted arsenic and chromium VI criteria and respond to EPA's disapproval of 11 pesticides and the freshwater criteria for selenium. Upon EQC adoption of the proposed revisions, DEQ anticipates that EPA will be able to promptly approve these criteria.</p>
How will DEQ know the problem has been solved?	<p>DEQ will know if the problems described above have been solved based on outcomes such as: the rules clearly identify and define Oregon's aquatic life toxics criteria; there are fewer inquiries to DEQ staff to determine which aquatic life toxics criteria are effective or how to interpret the criteria; and EPA promptly approves the rule revisions it identifies as water quality standards.</p>



Proposed Rule or Topic	Discussion
<b>340-041-0033(7) Arsenic Reduction Policy Rule</b>	
What problem is DEQ trying to solve?	The Arsenic Reduction Policy rule adopted by EQC in June 2011 has several reference errors. The rule incorrectly references the Arsenic Reduction Policy as section 4, rather than section 7. This error occurred during preparation of the final rule when the Arsenic Reduction Policy was moved from section 4 in the proposed rule to section 7 in the final toxics rule. DEQ also corrected another reference error in 340-041-0033(7)(f).
How would the proposed rule solve the problem?	This proposal would correct references and provide clarification to the public and DEQ.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
<b>340-041-0009 Bacteria Rule</b>	
What problem is DEQ trying to solve?	The Bacteria Rule references Table 20. This proposal would delete references to Table 20 because DEQ proposes to remove Table 20 from the Toxic Substances rule.
How would the proposed rule solve the problem?	This proposal would reference the Toxic Substances rule in general to reduce future citation corrections if the table name changes again.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
<b>340-040-0020 Groundwater Quality Protection</b>	
What problem is DEQ trying to solve?	<p>The Groundwater Quality Protection rules reference Table 20. This proposal would delete references to Table 20 because DEQ proposes to remove Table 20 from the Toxic Substances rule.</p> <p>Additionally, there is a citation to Division 41 that no longer exists. The correct reference is to the same antidegradation policy described and referenced in OAR 340-040-0020; therefore DEQ proposes to delete the citation.</p>
How would the proposed rule solve the problem?	This proposal would reference the Toxic Substances rule in general to reduce future citation corrections if the table name changes again. This proposal would also correct the citation error and provide clarification to the public and DEQ.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.
<b>340-040-0080 Numerical Groundwater Quality Reference Levels and Guidance Levels</b>	
What problem is DEQ trying to solve?	The Numerical Groundwater Quality Reference Levels and Guidance Levels rules reference Table 20. This proposal would delete references to Table 20 because DEQ proposes to remove Table 20 from the Toxic Substances rule.



Proposed Rule or Topic	Discussion
How would the proposed rule solve the problem?	This proposal would reference the Toxic Substances rule in general to reduce future citation corrections if the table name changes again.
How will DEQ know the problem has been solved?	Not applicable. The proposed changes only correct or clarify reference errors.

#### Request for other options

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

## 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..."*

#### Relationship to federal requirements

The proposed rules are not "different from or in addition to federal requirements" and impose stringency equivalent to 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. The standards must be based on substantial evidence. DEQ must submit the proposed standards to EPA for approval after they are adopted by the EQC. DEQ has concluded that the proposed standards revisions meet federal requirements. DEQ has worked with EPA through the development of the proposed rules and we expect that EPA will approve the new and revised rules. Other revisions propose to correct errors or provide additional clarifications to the Toxic Substances Rule.

#### What alternatives did DEQ consider, if any?

The alternative to not pursuing these proposed amendments is that EPA would be required to put in place its own regulations addressing the deficiencies related to its Jan. 31, 2013, action on Oregon's aquatic life toxics criteria submitted to EPA in 2004. In addition, the errors from past rulemakings would continue to persist in DEQ rules and complicate implementation of the toxics criteria.



DEQ considered addressing EPA's disapproval of the aquatic life toxics criteria associated with aluminum, ammonia, cadmium and copper as part of this rulemaking. However, the potential remedies to address EPA's disapproval are more complex and will involve in-depth conversations with EPA, the National Marine Fisheries Service, interested stakeholders, and DEQ staff. DEQ did not want to delay and potentially confuse these complex issues with the straightforward corrections proposed in this rulemaking.

## Rules affected, authorities, supporting documents

### Lead division

Water Quality

### Program or activity

Water Quality Standards and Assessment

### Chapter 340 action

Recommendation	Division	Rule	Title	SIP/Land use*
amend	041	0033	Toxic Substances Rule	Land use
amend	041	0009	Bacteria Rule	Land use
amend	040	0020	Groundwater Quality Protection	Land use
amend	040	0080	Numerical Groundwater Quality	Land use

\* SIP – This rule is part of the State Implementation Plan.

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

### Statutory authority

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

### Statute implemented

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

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

Document title	Document location
EPA Jan. 31, 2013, action letter on OR's 2004 aquatic life criteria and associated documents	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, Oregon Electronic versions may be found at: <a href="http://www.deq.state.or.us/wq/standards/toxics.htm#links">http://www.deq.state.or.us/wq/standards/toxics.htm#links</a>
DEQ response letter to EPA's Jan. 31, 2013, action letter on OR's 2004 aquatic life criteria	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, Oregon Electronic versions may be found at: <a href="http://www.deq.state.or.us/wq/standards/docs/toxics/ResponseLetterEPA.pdf">http://www.deq.state.or.us/wq/standards/docs/toxics/ResponseLetterEPA.pdf</a>
OAR 340-041-0033	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth



OAR 340-041-0009 OAR 340-040-0020 OAR 340-040-0080	Ave., Portland, Oregon Electronic versions may be found at: <a href="http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_tofc.html">http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_tofc.html</a>
Tables 20, 33A, 33B, 33C, 40	Hardcopies may be found at: DEQ Headquarters Office, 811 SW Sixth Ave., Portland, Oregon Electronic versions may be found at: <a href="http://www.deq.state.or.us/wq/standards/toxics.htm">http://www.deq.state.or.us/wq/standards/toxics.htm</a>

## Statement of fiscal and economic impact

ORS 183.335 (2)(b)(E)

### Statement of Cost of Compliance

#### Introduction

The revisions proposed in the rulemaking correct typographical errors associated with the aquatic life criteria and human health criteria that EQC adopted in 2004, 2007 and 2011, and are intended to address some of the issues identified by EPA in its Jan. 31, 2013, disapproval action.

The 2004 rulemaking was comprised of a number of actions, including revising toxics criteria for aquatic life and human health. In 2007, DEQ proposed a number of corrections and clarifications, one which included revising Tables 33A and 33B to correctly show which of the toxic pollutants criteria could and could not be used for permitting until EPA approval. The 2011 rulemaking consisted of revising human health criteria based on a higher fish consumption rate, and also included the development of several permitting implementation tools. The corrections to address various errors from these past rulemakings do not result in any fiscal or economic impact.

The proposed rules address the pesticide criteria disapprovals by clarifying the frequency and duration components of the criteria; revisions to the associated numeric values were not required. The proposed rules include a slightly more stringent criteria for selenium (change from a total recoverable form to the dissolved form), but the fiscal impacts of that change were covered in the 2004 rulemaking.

This proposal would also readopt freshwater and saltwater criteria for arsenic and saltwater criteria for chromium VI originally adopted by EQC in 2004. DEQ inadvertently omitted these criteria in Table 33B during the 2007 water quality standards rulemaking. Despite this omission, these re-proposed criteria are not considered new water quality criteria for the protection of aquatic life and do not need to undergo an economic analysis because these criteria, like the selenium criteria revisions, were accounted for as part of the 2004 fiscal analysis. For information on the fiscal and economic impact of revising toxics criteria in 2004, see Attachment F for Agenda Item B, Rule Adoption: Water Quality Standards, including Toxics Criteria May 20-21, 2004 EQC meeting at: <http://www.deq.state.or.us/about/eqc/EQCagendasArchive.htm>.

DEQ has determined that these clarifications and corrections are straight-forward and will result in minimal fiscal or economic impacts, if any. DEQ expects prompt EPA approval.



DEQ anticipates these changes will provide a benefit to DEQ, the public and to entities subject to toxics water quality criteria by reducing confusion about which criteria are effective and by consolidating all effective aquatic life toxics criteria into one table, rather than in the current three tables. Correcting errors that occurred in 2004, 2007 and 2011 rulemakings will also provide greater clarification to users.

1. Impacts on general public

DEQ does not expect that the general public will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics water quality standards rules.

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

DEQ does not expect many small businesses to be affected by these rule revisions. Few small businesses are directly subject to toxics water quality criteria because most small businesses do not discharge wastewater. For small businesses that do discharge to a waterbody and have toxics monitoring requirements (i.e. identified as “primary industries” by federal permitting regulations), or are subject to pretreatment requirements where the business discharges to a municipal wastewater facility, the proposed changes in this rulemaking do not impose new requirements.

Some small businesses may need to conduct minor recordkeeping activities to correctly reference the effective aquatic life toxics criteria, generally in discharge monitoring reports, if EQC adopts the proposed rules. DEQ expects the economic impact to be minimal.

Many farms, ranches and small timber operations are small businesses. Agricultural and forest activities are subject to Agricultural Water Quality Management Area Plans and rules and the Forest Practices Act, respectively, which require these nonpoint sources to meet water quality standards. These plans and rules already require and provide the mechanism for agriculture and small forest land owners to meet water quality standards and TMDL load allocations. This rulemaking does not change requirements in these plans and rules. Because this rulemaking only proposes clarifications and corrections to toxics regulations and tables, DEQ does not anticipate that this proposed rulemaking will have direct or indirect fiscal impacts or effects on small farms, ranches and small forest land owners.

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

As part of its recordkeeping, DEQ does not track whether any of the entities subject to the proposed rule revisions are small businesses, therefore it is difficult to estimate businesses potentially affected.

The types of small businesses/industries holding wastewater permits and may be required to monitor for toxics include, but are not limited to: smelting/refining operations,



timber processing, wood products manufacturing, pulp and paper, retail operations, circuit boards, and petroleum hydrocarbon clean-up operations.

The Oregon Farm Bureau estimates that 97 percent of Oregon farms and ranches fall under the category of small businesses based on the definition of small businesses being fifty or fewer employees. Other types of businesses that could be subject to this rulemaking include nurseries, dairy and beef producers, fruit growers, and other food producers, industrial, and small forest land owners.

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

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

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

The proposed rules do not require additional equipment or administration requirements.

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

DEQ included the Association of Oregon Industries as part of the advisory committee that advised DEQ on the cost of compliance for this rulemaking for small businesses. AOI's membership includes large and small companies from all business classifications in Oregon. The Oregon Farm Bureau was part of the advisory committee and represented many farms and ranches that are small businesses. DEQ discussed this statement of fiscal and economic impact and solicited input from the Oregon Farm Bureau during one workgroup meeting on July 11, 2013. The representative from AOI did not attend. DEQ incorporated the input into this analysis.

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

The Clean Water Act regulates large businesses that discharge to waterbodies. Such businesses are generally subject to toxics monitoring requirements. However, DEQ does



not expect large businesses, such as pulp and paper or electronic processing types of industry, to incur measurable direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics water quality standards rule. Some large businesses may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

#### 4. Impact on other government entities other than DEQ

Generally, DEQ does not expect local governments, such as those operating wastewater treatment facilities, to incur measurable direct or indirect fiscal or economic impacts as a result of the proposed revisions. Most, if not all, major wastewater treatment facilities must comply with toxic pollutant monitoring requirements. Generally, minor wastewater treatment facilities with an average dry weather design flow of less than one million gallons per day, have fewer monitoring and permitting requirements than major domestic sources. Some wastewater treatment facilities may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

#### 5. Impact on DEQ

DEQ does not expect that it will incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule. Although many DEQ programs use water quality criteria for toxics in various water quality programs, this rulemaking does not propose new water quality criteria for protection of aquatic life or human health.

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

#### Advisory committee

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

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

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



DEQ considered the committee's comments on the fiscal and economic impact statement. The committee agreed that the fiscal and economic impact to the regulated community, including small businesses, was minimal, if any. This rulemaking focuses on addressing EPA disapproval of pesticide and freshwater selenium criteria, and other corrections and clarifications to the toxics rules. This rulemaking does not propose new toxics criteria or other requirements. For more information about the advisory committee discussion, see the [meeting minutes](#).

Documents relied on for fiscal and economic impact  
None.

Housing cost

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

## Fees

These proposed rules do not involve fees.



## 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.”*

OAR340-018-0010

### Land-use considerations

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

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

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

### Determination

DEQ determined that the proposed rules identified under the 'Chapter 340 Action' section above **may affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program. However, while the water quality standards program in general could affect land uses, the proposed rule amendments do not.

These rule amendments propose to correct or clarify errors associated with past rulemakings, or provide additional clarifications, but the beneficial uses of Oregon's waters will not be changed and the water quality standards will continue to protect those uses. The proposed changes are adequately covered by the existing statewide goals.



## Stakeholder and public involvement

### Advisory committee

DEQ met with an advisory committee and considered the committee's recommendations on the fiscal and economic impact statement. The table below lists the members of the advisory committee.

### Roster

Name	Representing	Contact Information
1. Curtis Barton	Clackamas Water Environment Services	<a href="mailto:curtisb@co.clackamas.or.us">curtisb@co.clackamas.or.us</a> (503) 742-4615
2. Dianne Barton	Columbia River Inter-Tribal Fish Commission	<a href="mailto:bard@critfc.org">bard@critfc.org</a> (503) 731-1259
3. Kathleen Collins	U.S. Environmental Protection Agency	<a href="mailto:collins.kathleen@epa.gov">collins.kathleen@epa.gov</a> (206) 553-2108
4. Heath Curtiss	Oregon Forest Industries Council	<a href="mailto:Heath@ofic.com">Heath@ofic.com</a> (503) 877-3225
5. Mike Freese	Oregon Farm Bureau	<a href="mailto:Mike@oregonfb.org">Mike@oregonfb.org</a> (503) 399-1701 x308
6. John Ledger	Associated Oregon Industries	<a href="mailto:johnledger@aoi.org">johnledger@aoi.org</a> (503) 227-5636
7. Andrea Matzke	OR Dept. of Environmental Quality	<a href="mailto:matzke.andrea@deq.state.or.us">matzke.andrea@deq.state.or.us</a> (503) 229-5384
8. Kathryn VanNatta	NW Pulp and Paper Association	<a href="mailto:kathryn@nwpulpandpaper.org">kathryn@nwpulpandpaper.org</a> (503) 844-9540
9. Jennifer Wigal	OR Dept. of Environmental Quality	<a href="mailto:wigal.jennifer@deq.state.or.us">wigal.jennifer@deq.state.or.us</a> (505) 229-5323
10. Travis Williams	Willamette Riverkeeper	<a href="mailto:travis@willametteriverkeeper.org">travis@willametteriverkeeper.org</a> (503) 223-6418

### EQC prior involvement

DEQ shared information about this rulemaking through a Director's Dialogue at the EQC meeting June 19-20, 2013. EQC members declined to participate in this rulemaking.

### Public notice

The Sept. 1, 2013, *Oregon Bulletin* published the Notice of Proposed Rulemaking with Hearing for this proposed rulemaking. DEQ also:



- Posted notice on DEQ's webpage  
<http://www.deq.state.or.us/regulations/proposedrules.htm> Aug. 14, 2013.
- E-mailed notice Aug. 19, 2013, to:
  - 3,900 interested parties through GovDelivery
  - Key legislators required under [ORS 183.335](#). Key legislators included:
    - Senator Jackie Dingfelder, Chair, Senate Committee on Environment and Natural Resources
    - Representative Jules Bailey, Chair, House Committee on Energy and Environment
  - Members of the advisory committee, including EPA

#### Public hearings and comment

DEQ held one public hearing in Portland. The comment period closed Sept. 30, 2013, at 5 p.m. DEQ received two public comments that were submitted through DEQ's online comment form, which allows the public to view all comments submitted online. The summary of comments and DEQ responses section below addresses each public comment.

#### Presiding Officers' Record

The presiding officer convened the hearing listed in the table below. There were no attendees and DEQ adjourned the hearing at 6:30 p.m.

Hearing	
<b>Date</b>	Sept. 18, 2013
<b>Time Convened</b>	6 p.m.
<b>Time Adjourned</b>	6:30 p.m.
<b>Address</b>	811 SW 6 <sup>th</sup> Ave.
<b>City</b>	Portland
<b>Presiding Officer</b>	Aron Borok
<b>Staff Presenter</b>	Andrea Matzke
<b>Attendees in person</b>	0
<b>Oral Comments</b>	0
<b>Written Comments</b>	0

#### Close of public comment period

The comment period closed Sept. 30, 2013, at 5 p.m.

### Summary of comments and DEQ responses

DEQ received two public comments by the close of the public comment period. Both comments were supportive. DEQ's response follows each comment.



- 1 **Comment** EPA supports the proposed changes to the rules and indicated that the revisions will address EPA's disapproval of the aquatic life criteria for 11 pesticides and selenium. EPA did not have any other suggested edits or concerns.

**DEQ Response** DEQ acknowledges and appreciates EPA's support and technical assistance during the development of this rulemaking.

- 2 **Comment** The representative from NW Pulp and Paper Association supports the rule amendments based on their understanding that there are no new substantive water quality criteria changes in the proposal.

**DEQ Response** DEQ acknowledges and appreciates NWPPA's support and participation during the development of this rulemaking.

## Commenters

Comments received by close of public comment period

The table below lists two organizations that submitted comments on the proposed rules. Given the brevity of comments, the original letters are included below.

Commenter	Affiliation	Date Received
1. Kathleen Collins	U.S. Environmental Protection Agency	9/19/2013
2. Kathryn VanNatta	NW Pulp and Paper Association	9/20/2013

Comments received after close of public comment period

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





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
WATER AND WATERSHEDS

September 18, 2013

Ms. Andrea Matzke  
Oregon Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, Oregon 97204-1390

Re: EPA Comments on Oregon's Proposed Corrections and Clarifications to Toxic Water Quality Standards

Dear Ms. Matzke:

Thank you for notifying the U.S. Environmental Protection Agency that proposed revisions to the Oregon's water quality standards are available for public review. We appreciate the opportunity to review and comment on the proposed rulemaking.

If adopted, this rulemaking will address the EPA's January 2013 disapproval of the aquatic life criteria for 11 pesticides and selenium. Additionally, this rulemaking re-proposes the aquatic life criteria for arsenic and chromium VI that were inadvertently omitted during a 2007 rulemaking, consolidates the aquatic life criteria in tables 20, 33A and 33B into one new table, and makes minor corrections and clarifications to the water quality standards.

We have reviewed the proposal and have no comments to offer on this rulemaking. We greatly appreciate all the work that went into putting this rule together, and support finalizing the rule. If you have any questions, please feel free to contact me at (206) 553-2108.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Collins".

Kathleen Collins  
Water Quality Standards Coordinator





Northwest Pulp & Paper  
ASSOCIATION

Northwest Pulp & Paper Association • 212 Union Avenue SE, Suite 103 • Olympia, WA 98501-1302  
360.529.8038 • Fax: 360.529.8946 • [www.nwppa.net](http://www.nwppa.net)

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September 20, 2013

Oregon DEQ  
Attn: Ms. Andrea Matzke  
811 SW 6th Ave.  
Portland, OR 97204

RE: OAR Chapter 340 – Corrections and Clarifications to Toxic Water Quality Standards

Dear Ms. Matzke:

Formed in 1954, the Northwest Pulp & Paper Association (NWPPA) represents 13 member companies and 17 paper mills in Washington, Oregon and Idaho. NWPPA members produce nearly eight million tons of paper products providing family wage jobs.

NWPPA members have six pulp and/or paper mills in Oregon and are permitted to operate and regulated by the Department of Environmental Quality (DEQ). On behalf of NWPPA, I work with the DEQ and the U.S. Environmental Protection Agency (EPA) on environmental policy and regulatory issues of interest to our members in Oregon. I work extensively on water quality issues in DEQ policy advisory committees and the Oregon Legislature.

On behalf of NWPPA, I participated in the DEQ's original 1999-2003 Policy Advisory Committee developing revisions to Oregon's aquatic life water quality standard rules and also in the 2013 advisory groups on corrections and clarifications to the toxics standards. I have reviewed the rule package and offer the following comments for your consideration.

NWPPA supports adoption of the corrections and clarifications of the toxics water quality standards rule package as written. It is NWPPA's understanding that there are no new substantive numeric water quality criteria or narrative standards in the proposal – only corrections and clarifications based on EPA Region 10 action on Oregon aquatic life toxic criteria on January 31, 2013 and other items that have previously been accidentally omitted or unintentional incorrect cross-references in narrative standards. These rule proposals address EPA approval actions and also consolidate Oregon rules for clarification purposes. Please inform NWPPA promptly if our understanding is incorrect – or if EPA signals a future water quality criteria approval action of a substantive nature – that would have the effect of altering numeric or narrative criteria.

Thank you for the opportunity to participate in the rulemaking process and comment on the rule package.

Sincerely,

Kathryn VanNatta

Director of Government and Regulatory Affairs  
Northwest Pulp and Paper Association



## Implementation

### Notification

If adopted by the commission and subsequently approved by EPA, the proposed rules would become effective April 18, 2014. DEQ would notify:

- Advisory committee members
- Interested parties through GovDelivery
  - Using the water quality standards and human health toxics rulemaking lists used during the public notice period
  - And the water quality permits list
- DEQ regional and water quality program staff and clean-up program staff

### Systems

- DEQ will update the rulemaking and toxics Web page with all applicable information such as the revised toxics tables.

## Five-year review

### Requirement ORS 183.405

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

The following APA exemption from the five-year rule review applies to all of these proposed rule amendments:

Amendments or repeal of a rule. ORS 183.405 (4)