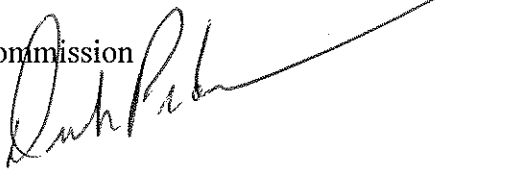


State of Oregon
Department of Environmental Quality

Memorandum

Date: Jan. 16, 2013
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda item A, Action item: Petition to initiate rulemaking for onsite wastewater treatment systems
Jan. 22, 2013, EQC special meeting

Why this is important The Environmental Quality Commission received a petition Oct. 26, 2012. The petition requests several amendments to the statewide onsite wastewater treatment system program rules. The commission is required by state law to take action on a petition for rulemaking within 90 days of receiving a petition.

DEQ recommendation and commission motion DEQ recommends that the Oregon Environmental Quality Commission deny the petition to initiate rulemaking. DEQ also recommends that the commission direct DEQ's onsite program staff to:

- Continue working with the current South Deschutes and Northern Klamath Counties Groundwater Protection Project Steering Committee to finalize its recommendations to DEQ.
- Evaluate the feasibility of a Geographic Area of Special Consideration as authorized by ORS 454.615(1) for a specific area of concern in and near La Pine, and report back to the commission.

Background The Oregon Environmental Quality Commission received a petition requesting modification of certain portions of the statewide onsite wastewater treatment rules on Oct. 26, 2012. Ellen Currie presented the petition, which was accompanied by approximately 430 signatures in support of the petition. The first page of the petition is attachment A, and the full collection of signature pages is available by request.

The rule that the petitioners propose to change, OAR 340-071-0130, currently states:

“An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant

with a written statement of the specific reasons why more stringent requirements are necessary.”

The stated purpose of the onsite rules and the statute authorizing those rules is to protect public health and safety and the quality of state waters. The petition’s proposed rule amendments would limit DEQ’s ability to carry out these purposes.

There are three main elements to the proposed rule changes:

- 1) The proposed rule change would prevent the agent from requiring an alternative treatment technology, or ATT, system if its cost was more than 10 percent in excess of a standard system otherwise appropriate for a given site, or if requiring an ATT would “harm small business.”

DEQ notes that all ATT systems cost more than 110 percent of a standard onsite system, so this proposed amendment would require the agent to choose between permitting a standard system even when, in the agent’s judgment, it may “pollute public waters,” which DEQ cannot allow, or to deny a permit for the site. By denying a permit for a site, the agent may limit the development opportunities, meaning no homes could be built on a property, for example, at that site.

Permit application fees for a standard system are approximately \$1070 and construction costs for standard systems are between \$4500 and \$9000. Permit application fees for an ATT system are approximately \$1300 and construction costs for ATT systems are between \$10,000 and \$20,000, with the least effective nitrogen removal ATT systems at the lower end of this range. The current rules allow permit applicants to seek a variance in cases where it would be unreasonably burdensome to require strict adherence to the rules. That process is outlined in the rules governing the program, [OAR 340-071](#)

- 2) The proposed rule would also state that “[a] properly approved and permitted standard subsurface onsite waste treatment system is not considered a source of pollution unless the agent can demonstrate by well test data...that there is a pattern demonstrating chemical or organic pollutants equal or greater than the maximum allowable levels established by the United States Environmental Protection Agency for public drinking water.”

DEQ notes that the proposed rule amendment does not define “pattern,” and it is not clear if the pattern would have to demonstrate frequent and localized or geographically widespread pollution to be applicable.

Currently, DEQ and agents use well test data to ensure that a system will not impact a nearby well, given all the considerations of the site. It is not clear from the proposed rule what would happen if the requisite well test data does not exist. The proposed rule change might inadvertently require that test wells be installed to identify a pattern, which would take more time and make any determination more expensive.

- 3) “Nothing in this rule shall prevent repairs to a previously approved and permitted onsite...system unless the landowner has altered the property in such a way that the original permitted system is no longer appropriate.”

DEQ notes that this proposed rule amendment would prevent DEQ or an agent from requiring a homeowner to upgrade an onsite system when the system fails, is at the end of its normal life or when substantial system modifications are required by other rule sections. The intent of the existing rule is to have a process for modernizing systems at the least cost over the life of the home.

Oregon’s Onsite Wastewater Program

Oregon’s Legislature declared it the public policy of the state “to encourage improvements to, maintenance of and innovative technology for subsurface and alternative sewage disposal systems and nonwater-carried sewage disposal facilities consistent with the protection of the public health and safety and quality of the waters of this state.” ([ORS 454.607](#)) The Legislature required EQC to adopt rules prescribing minimum requirements for the design and construction of onsite systems. These requirements may vary in different areas or regions of the state. ([ORS 454.615\(1\) and \(2\)](#))

These rules are included in Oregon Administrative Rules [Chapter 340 Divisions 071 and 073](#) and “... establish requirements for the construction, alteration, repair, operation, and maintenance of onsite wastewater treatment systems. Their purpose is to restore and maintain the quality of public waters and to protect the public health and general welfare of the people of the State of Oregon.” Onsite disposal of wastewater relies on a combination of technological treatment and natural treatment in native or engineered soils as wastewater effluent is dispersed over a wide area just below the ground surface.

Onsite systems are most commonly used for single-family and small multifamily residential housing, and by small businesses outside of areas with centralized sanitary sewer service. Approximately one-third of households in Oregon rely on these treatment systems. State statute requires that anyone constructing or repairing an onsite system must obtain a permit from either DEQ or a county agent. If an onsite system is failing, the owner must repair it

immediately.

The design of a system is determined in part by technology standards and in part by conditions at the site of installation. Some of the elements that an onsite professional must consider are soil type and depth, setbacks from surface waters, such as streams, distance between the ground surface and groundwater below and volume of sewage to be treated. These rules are based on scientific standards of soil absorption capacities, groundwater hydrology, and environmental health epidemiology. Once installed, an onsite system may remain in service for two or more decades before being repaired or replaced.

Professional requirements

Oregon rules require onsite wastewater system inspectors to meet specific educational, on-the-job training and experience qualifications and to pass an exam administered by the Oregon Health Licensing Agency. These requirements are specified in [Oregon Revised Statute Chapter 700 — Environmental Health Specialists; Waste Water Specialists](#).

Site conditions, such as soil, topography and groundwater, vary widely around the state and may require special consideration to prevent groundwater contamination. Existing rules require onsite inspectors to make professional judgments about appropriate system design for a given site.

DEQ onsite staff and county agents are generally either Registered Environmental Health Specialists or Wastewater Specialists. In either case, they are required to have education in soil science, geology, geomorphology and wastewater treatment, as well as professional experience. They are also required to take regular continuing education classes to maintain their registrations. In the current rules, agents are required to provide permit applicants specific reasons, in writing, when requiring an ATT system. The rules provide the opportunity for permit applicants to appeal permitting decisions. In addition, the rules allow the opportunity for permit applicants to seek a variance from strict adherence to the rules in cases where it would be “inappropriate,” or whether “special physical conditions render strict compliance unreasonable, burdensome, or impractical.” ([OAR 340-071- 0415](#))

Local considerations

Residents of south Deschutes County face challenging wastewater disposal conditions. Soils in that area drain rapidly and groundwater is near the surface in many locations. As an example, groundwater contamination in the downtown core of La Pine became so severe in the early 1980s that the city constructed a sewer system providing better treatment and land disposal of wastewater in order to reduce nitrogen concentrations in drinking water supplies. The

operation of this sewer system has resulted in markedly improved groundwater quality in that downtown core. Monitoring wells for the wastewater treatment plant have demonstrated steadily improving groundwater conditions following improved treatment and disposal. This historical contamination is both evidence of the vulnerability of the groundwater aquifer and a cause for concern throughout the area. The soil and groundwater conditions in La Pine are similar to those throughout much of southern Deschutes and northern Klamath Counties.

Studies of groundwater contamination, hydrology and nitrates were conducted in southern Deschutes County beginning in the late 1970s. The early well monitoring and analysis in the City of La Pine described above was performed in response to very high nitrate concentrations in drinking water. Nitrate concentrations in drinking water wells commonly exceeded the drinking water standard of 10mg/L nitrate and were elevated as high as 42mg/L. EPA set a maximum contaminant level of 10 parts per million for nitrate, as NO₃-N, for drinking water. DEQ must use the established standards and levels when developing its standards and rules.

A survey of groundwater data in 1993 and mathematical modeling in 1995 by DEQ indicated elevated nitrate concentrations and concern for future aquifer-wide increases. This concern translated into a desire for a more comprehensive understanding of the aquifer. A Regional Problem Solving project recommended more sophisticated modeling of the aquifer and pollutant sources. The U.S. Geological Survey completed a La Pine National Demonstration Project and Mathematical Modeling survey in 2007. The demonstration project was designed to test innovative treatment technologies that could reduce nitrogen loading to groundwater from onsite systems. USGS produced a three-dimensional mathematical model to estimate nitrates in the shallow aquifer of a large area in southern Deschutes and northern Klamath Counties. These studies generally reached the conclusion that the groundwater aquifer is vulnerable to increasing concentrations of nitrates and other contaminants associated with domestic sewage. The USGS study predicted nitrate concentrations increasing above the federally adopted drinking water standards throughout the area over time.

DEQ and Deschutes County have been working cooperatively for more than a decade to find an appropriate solution to this growing concern. In 2008, the county adopted ordinances effectively requiring ATT systems to reduce nitrate concentrations in wastewater. These ordinances were repealed by the county in 2011 as the result of a successful citizens' referendum in 2009. In October 2009, Deschutes County Commissioners requested that DEQ take over the effort to find appropriate solutions to the concerns about increasing groundwater

contamination. Since that time, DEQ has engaged a steering committee comprised of Deschutes and Klamath County residents to consider local circumstances and make recommendations for a long-term solution. DEQ anticipates final recommendations from the committee by spring 2013.

Alternatives for commission action

State law allows the commission several alternatives in responding to a rulemaking petition. The commission may:

1. Approve the petition as presented, which would obligate DEQ to begin a rulemaking process based on the proposed rules as stated in the petition. The commission may ultimately decide not to adopt the rules or to adopt rule language that has been amended in response to public comment.
2. Deny the petition and take no further action.
3. Deny the petition and direct DEQ to take some other action at the commission's discretion.

Procedural requirements

The procedures to submit a rulemaking petition to the commission and the procedures for the commission's response are found in [ORS 183.390](#), [OAR 340-011-0046](#) and [OAR 137-001-0070](#).

The commission must seek public comment and formally act on a petition to adopt, amend or repeal a rule within 90 days of receiving the petition. The commission is not required by the Administrative Procedures Act or its implementing rules to take action on the non-rulemaking requests in the petition.

A petition requesting the amendment or repeal of an existing rule must contain comment on the following:

- a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;
- b) The continued need for the existing rule;
- c) The complexity of the existing rule;
- d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and
- e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

Summary of petition requests

The petition, as seen in attachment A, requests that the commission amend the statewide onsite wastewater treatment system rules. The proposed amendments would:

1. Prohibit DEQ, or an agent working on behalf of DEQ, from requiring an alternative treatment technology system for onsite wastewater in instances when the alternative system would cost more than 10 percent

- more than a standard system.
2. Limit the ability of DEQ, or an agent working on behalf of DEQ, to find that an existing system is a source of pollution except under specific circumstances.
 3. Allow the owner of an onsite system to make repairs without regard to the requirements that would otherwise apply to such repairs.

Key issues on the petition for rulemaking

Public and environmental health

DEQ is committed to protecting public health and the environment for all Oregonians. One way DEQ accomplishes these goals is by administering the onsite wastewater treatment program. The onsite program rules are designed to prevent pollution from entering Oregon's ground and surface waters. The rule amendments proposed in the petition would change DEQ's rules to be substantially less protective of human health and the environment and may no longer accomplish the objectives, goals and regulatory responsibilities of the program.

Economic considerations

Economic consequences of the proposed rule change are unknown and would vary depending on the outcomes. If the rule resulted in fewer ATT systems being required, individual property owners would pay less for the permitting and installation of standard systems in lieu of the more expensive ATT systems.

If the rule resulted in less protection of groundwater, resulting in contamination of drinking water, it could require costly area-wide remedies such as deeper residential drinking water wells or construction of public drinking water systems in the future.

Commission authority

The commission has authority to take this action under [ORS 183.335](#) and [468.020](#).

Public comment

DEQ sought public comment from Nov. 28 to Dec. 14, 2012, and held three public hearings in La Pine during that comment period. The Presiding Officer's Report describes these hearings and is provided as attachment B. A summary of comments is provided as attachment C.

DEQ received written and oral comments from 41 individuals. Public comment was divided between support of and opposition to the commission's approval of the petition.

General summary of comments supporting the petition:

- Deschutes County and DEQ are using the existing onsite rule arbitrarily or subjectively to make onsite system requirement decisions. The rule

needs specific criteria or parameters for determinations rather than by judgment of an agent.

- Advanced Treatment Technology Systems cost too much, don't work, and won't treat for future concerns and contaminants.
- No financial impacts or cost-benefit/feasibility analysis was done in requiring ATTs, which has negatively impacted small businesses and housing costs in the area.
- Deschutes County and DEQ required ATTs in the area without a public rule development or approval process.
- The requirement for installation of ATTs now and possible connection to a centralized sewer in the future put homeowners in a double jeopardy situation.
- DEQ and agents failed to inform clients about hardship waivers.
- U.S. Geological Survey study/report is not good science, in part because peer reviews were not offered up for public review.
- There is no evidence that nitrates are impacting groundwater in south Deschutes County.
- Nitrate is not a concern; the real concern is the other contaminants associated with household wastewater.
- The groundwater concern is being used as an anti-development and land-use tool. A zone change or Goal 11 exception is needed as part of the overall solution to the issue, and is necessary to allow use of cluster onsite systems or sewers.

General summary of comments opposing the petition:

- The petition impacts a statewide rule. DEQ should adopt a geographic or basin-specific rule for the area including south Deschutes and north Klamath Counties to account for local conditions and needs.
- The petition as written would hamper DEQ and other agencies in protecting waters of the state, statewide.
- Agents cannot base decisions primarily on costs; that would limit their ability to protect public health and groundwater.
- The proposed rule changes would inhibit an agent's ability to protect public health and undermines the purpose of DEQ's Onsite Wastewater Treatment Program and DEQ's overall mission statement.
- Systems needing repair may have been polluting groundwater for years and need to be upgraded.
- The proposed language would require agents to deny a permit for property that would otherwise be approvable under existing rule language.

Next steps Based on the commission's action at the Jan. 22, 2013, special meeting, DEQ will prepare a commission order for Chair Blosser's signature. DEQ will send the order to Ellen Currie, the representative of the signatories on the petition and person who submitted the original petition, as notification of the commission's decision, as required.

If the commission denies the petition, DEQ will continue its work to protect public health and water quality through the onsite wastewater treatment system program.


If the commission denies the petition and directs DEQ to take specific action, DEQ will develop and implement a project plan for those directed actions.

If the commission grants the petition to initiate a rulemaking process on the proposed rules, DEQ will develop a project plan for that process, determine a reasonable timeframe, seek public comment on the proposed rules, evaluate the rules in depth and make recommendations to the commission about final proposed rule language.

Attachments A. Petition language and submitted documents (initial page only)
B. Presiding Officer's report for public hearings
C. Summary of public comments

Available upon request 1. Full text of comments received
2. Full scan of signed petition pages
3. Studies referenced in this document
a) Century West Engineering, 1982, La Pine aquifer management plan: Bend, Oregon, Century West Engineering, 597 p.
b) DEQ. 2006. Groundwater Quality Report for the Deschutes Basin. Prepared by David Cole. 59pp.
c) Morgan, D.S., Hinkle, S.R., and Weick, R.J., 2007, Evaluation of approaches for managing nitrate loading from on-site wastewater systems near La Pine, Oregon: U.S. Geological Survey Scientific Investigations Report 2007-5237, 64 p.; also available online at <http://pubs.usgs.gov/sir/2007/5237/>, last accessed November 9, 2007

Approved:

Division: 

Report prepared by: Eric Nigg

Petition to amend or repeal rules pertaining to Oregon's Onsite Wastewater Treatment Systems (Division 71)

On Oct. 26, 2012, a resident of La Pine hand-delivered a petition to the commission asking for amendments to specific rule language within Oregon Administrative Rule 340-071-0130, which pertains to protection of human health and the environment from inadequate onsite wastewater treatment systems. The petitioner recommended the addition of specific language as new sub-parts of the existing rule, as seen below. A scan of the materials submitted to the commission is attached below the proposed changes. The scan includes one signature page and two pages of petition-specific language. Some personally-identifying information on the scan has been obscured by DEQ for privacy concerns.

Proposed changes (***bold and italicized***) to OAR 340-071-0130:

(1) Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary.

(a) If the agent requires an alternative treatment technology (ATT) onsite waste treatment system, the agent must:

(i) demonstrate that requiring an ATT system, when a standard system is designed for the same application, does not exceed the cost of a standard system, meeting minimum standards, by no more than 10%, and

(ii) that the requirement does not harm small businesses.

(b) A properly approved and permitted standard subsurface onsite waste treatment system is not considered a source of pollution unless the agent can demonstrate by well test data,

(i) taken a minimum of 100 feet setback from septic drain fields or septic tanks

(ii) that there is a pattern demonstrating chemical or organic pollutants equal or greater than the maximum allowable levels as established by the United State Environmental Protection Agency for public drinking water.

(c) Nothing in this rule shall prevent repairs to a previously approved and permitted onsite subsurface waste treatment system unless the landowner has altered the property in such a way that the original permitted system is no longer appropriate.

PETITION TO PROMULGATE, AMEND OR REPEAL RULE

If keeping with the requirements of OAR 137-001-0070, this is a petition to promulgate, amend or repeal select rules within Division 71, Onsite Wastewater Treatment Systems, under the jurisdiction of the Oregon Department of Environmental Quality. The proposed changes are attached or printed on the back of this petition. An interested person may sign this petition.

I have read and agree with proposed changes to the rule/s.

Signature	Date Signed (mm/dd/yy)	Print Name	Residence Address
1 <i>Timothy J. Currie</i>	6/30/12		
2 <i>Ronald J. Wimbush</i>	6/30/12		
3 <i>Patricia A. Kuyler</i>	6/30/12		
4 <i>Deborah A. Shultz</i>	6/30/12		
5 <i>Mary E. Sider</i>	6/30/12		
6 <i>Thomas J. Shew</i>	6/30/12		
7 <i>Amelia Cosms</i>	6/30/12		
8 <i>Timber</i>	6/30/12		
9 <i>Janette M. Tucker</i>	6/30/12		
10 <i>Stephen Paul Smith</i>	6/30/12		

PROPOSED PROMULGATION, AMENDMENT OR DELETION OF RULE¹

All propositions of law to be asserted by petitioner.

1. Requirements are met as set out by the ORDOJ in OAR 137-001-0040, addressing:
 - 1.1. The existing OARs have a limiting affect on small business (OAR 137-001-0018).
 - 1.2. The existing OAR's create ad hoc rule without public input according to OAR 137-001-0007.

Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule:

1. The existing rules are vague, allowing excessive judgement by DEQ staff or agent, creating ad hoc public policy without input from the public.
2. The existing rules cause harm to local businesses by causing confusion and uncertainty resulting in lowered home sales, home valuation, home remodel and home construction.
3. The existing rules allow the imposition of alternative treatment technology (ATT) subsurface onsite wastewater treatment systems (septic systems) without a cost-benefit analysis.

Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses:

1. Amending the OAR as proposed:
 - 1.1. Establishes measurable criteria to protect public water and public health,
 - 1.2. Prevents harm to those with limited financial means,
 - 1.3. Reduces negative impacts on small business, namely real estate sales, home construction, remodel and septic system servicing or repair,
 - 1.4. Requires cost-benefit analysis when alternative treatment technology is required.

The continued need for the existing rule:

1. Except where promulgated, amended or deleted, the existing rule is needed to protect public waters, public health and set standards for onsite wastewater treatment systems.

The complexity of the existing rule;

1. The existing rule is vague, allowing excessive judgement by DEQ staff or agent.

The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations:

1. None noted.

The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

1. The poverty level of one affected area, the La Pine Basin, ranges as high as 22.4% (2010 census block group), the national average is 13.8% and the State of Oregon poverty level is 14.0% (2010 U.S. Census).
2. The current, ad hoc approach contributes to the economic depression of areas, such as the La Pine Basin, by introducing excessive construction and repair costs and harming small businesses.

¹ Additions, changes or deletions to administrative rule are indicated by ***bold italic text*** and deletions by strikethrough.

If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

1. The petitioners request that the Oregon Department of Environmental Quality invite public comment upon OAR 340-071-0130 in the La Pine Basin region.

The agency:

- (a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;
- (b) May schedule oral presentations;
- (c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Proposed changes:

340-071-0130

General Standards, Prohibitions and Requirements

(1) Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary.

- (a) *If the agent requires an alternative treatment technology (ATT) onsite waste treatment system, the agent must:*
 - (i) *demonstrate that requiring an ATT system, when a standard system is designed for the same application, does not exceed the cost of a standard system, meeting minimum standards, by no more than 10%, and*
 - (ii) *that the requirement does not harm small business.*
- (b) *A properly approved and permitted standard subsurface onsite waste treatment system is not considered a source of pollution unless the agent can demonstrate by well test data,*
 - (i) *taken a minimum of 100 feet setback from septic drain fields or septic tanks,*
 - (ii) *that there is a pattern demonstrating chemical or organic pollutants equal or greater than the maximum allowable levels as established by the United States Environmental Protection Agency for public drinking water.*
- (c) *Nothing in this rule shall prevent repairs to a previously approved and permitted onsite subsurface waste treatment system unless the landowner has altered the property in such a way that the original permitted system is no longer appropriate.*

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Jan. 11, 2013

To: Environmental Quality Commission

From: Eric Nigg, Manager, DEQ Water Quality Division - Eastern Region

Subject: Presiding officer's report for public hearing regarding petition to change Onsite Wastewater Program Rules

Location, dates and times: La Pine Senior Activity Center
16450 Victory Way
La Pine, Oregon
Nov. 28, 2012, beginning at 3 p.m.
Nov. 28, 2012, beginning at 6 p.m.
Dec. 12, 2012, beginning at 6 p.m.

The Environmental Quality Commission received a petition during the public forum session of its Oct. 26, 2012, regular meeting in Bend, Oregon. The petition seeks modification of certain rules regulating onsite wastewater treatment system installation. The commission must act on the petition for rulemaking within 90 days from receipt of the petition. DEQ held three public hearings to accept comment on this petition during a public comment period that extended from Nov. 15 through Dec. 14, 2012. DEQ held two hearings on Nov. 28, 2012 – one in the afternoon and one in the evening - to allow the greatest possible participation. Due to concerns from individuals that DEQ had not provided sufficient notice for these hearings, DEQ held an additional public hearing on the evening of Dec. 12, 2012. All hearings were held in La Pine, in recognition that most or all signatories to the petition are from southern Deschutes County.

DEQ staff asked attendees at all of the hearings to sign in and to submit a form if they wanted to testify. DEQ informed attendees that the information session and hearing were being recorded. Eric Nigg, Eastern Region Water Quality Manager, was the presiding officer for each of the hearings and Robert Baggett, Onsite Sewage Disposal System Specialist, provided staff support.

DEQ convened the first hearing at approximately 3 p.m. and the second at approximately 6 p.m. on Nov. 28, 2012. Following introductory remarks, the first hearing began at 3:18 p.m. and adjourned at 3:53 p.m. The second hearing began at 6:05 p.m. and adjourned at 6:17 p.m. Based on registration, 30 people attended the two hearings on the 28th and eight people provided oral testimony. All testimony at these hearings was in favor of the petition. Many of the people at the first hearing also attended the second hearing.

DEQ convened the third hearing on Dec. 12, 2012, at approximately 6 p.m. The hearing was opened at 6:11 p.m. and was adjourned at 8:10 p.m. Based on registration, 39 people attended the hearing and 20

provided oral testimony. All of the testimony was in favor of the petition. Many of the people at this hearing had also attended one or both of the earlier hearings and some provided testimony at more than one hearing.

Overall, 51 people attended the three hearings and 21 people provided oral testimony. Some of these provided their testimony in writing as well. The table below provides a list of commentators and indicates at which hearings they provided oral testimony. DEQ has prepared a detailed summary of comments, available upon request, including all comments received during the comment period. Digital recordings of the hearing proceedings are available.

Commentors	Hearing 1 Nov. 28, 2012 3-5 p.m.	Hearing 2 Nov. 28, 2012 6-8 p.m.	Hearing 3 Dece. 12, 2012 6-8 p.m.	Written and verbal testimony provided
Martha Bauman			X	
Thomas Bradler			X	X
Pam Cosmo			X	X
Jerry Criss			X	X
James Ed Criss			X	
Timothy S. Currie	X		X	X
Ellen Currie			X	X
Karen Duncan			X	X
Jay Duncan			X	X
Wendell Evers	X		X	X
Judy Forsythe	X		X	X
Robert D. Gillette		X	X	
Anne Gregersen	X		X	
John Huddle		X	X	X
Patrick Murphy			X	X
Kathy Phillips			X	
Robert Ray		X	X	
Ron Sharbaugh	X			
Diane Shufelberger			X	
Marilyn Waggoner			X	X
Mike Waggoner			X	X

Summary of comments

DEQ held three public hearings in La Pine, Oregon: two on Nov. 28, 2012, one in the afternoon and one in the evening, and one on Dec. 12, 2012, as part of a 30-day comment period to solicit public comments on a citizens' petition asking the Environmental Quality Commission to commence rulemaking to make specified changes to OAR 340-071-130. DEQ received comments from approximately 40 individuals or organizations. The comments were roughly split in favor or opposed, with a slightly higher number of comments in support of the petition's requests. The comments are summarized below, with a count of how many people shared that view. The full text of comments is available upon request.

Comments	Count
Individuals in support of the petition	22
Individuals not in support of the petition	17
Comments generally in support of the petition requests	
OAR 340-071-0130 is being used by Deschutes County and DEQ in making arbitrary and subjective decisions about treatment system requirements. The rule needs specific criteria or parameters for determinations, not simply the judgment of the agent.	19
No financial impacts or cost-benefit analysis or feasibility study is done when requiring Advanced Treatment Technology systems.	9
Well test data needs to support that a source of pollution exists at or above standards set by the United States Environmental Protection Agency (Maximum Contaminant Levels).	6
Onsite rules should specify detailed conditions when requiring other than a standard treatment and disposal system, rather than simply relying on an agent's judgment.	5
Requiring ATTs has negatively impacted small businesses and housing values have declined in the area.	4
Onsite staff and agents are inconsistent in deciding parameters of onsite treatment and installation and system authorizations.	4
DEQ should declare a moratorium on use of Advanced Treatment Technology systems until a comprehensive plan for addressing wastewater treatment and discharge issues is established.	4
Deschutes County & DEQ are requiring installation of Advanced Treatment Technology systems for wastewater treatment in a broad area without a public rule-making process.	1
This petition request is not intended to deny or invalidate the need for protection of public health or environmental laws.	1
Comments generally opposed to the petition requests	
The petition impacts a statewide rule. DEQ should adopt a Geographic or Basin Rule for the area including S. Deschutes and North Klamath Counties to account for local conditions and needs.	12

The petition would lessen the ability of DEQ and other agencies in protecting waters of the state.	11
The proposed rule changes would inhibit an agent's ability to protect public health and undermines the purpose of the DEQ's Onsite Wastewater Program and overall Mission Statement.	9
Onsite wastewater treatment systems that need repair may have been polluting groundwater for years and need to be upgraded to appropriate standards of the time.	4
Agents cannot base decisions on costs. That would impair their ability to protect groundwater quality and public health.	3
The proposed language would require agents to deny permits that would otherwise be approvable under existing rule language.	3
OAR 340-071-0130 should not be changed as it is necessary as written for the protection of public health.	2
Well testing alone does not always predict or demonstrate groundwater contamination. Existing wells may not be appropriate to indicate shallow groundwater conditions. What will the agent do if there is no well data available?	2
It is appropriate to run the onsite program proactively to prevent contamination and protect public health.	1
If contaminants are allowed to reach Environmental Protection Agency [MCL] limits, it is too late to protect public health.	1
Comments regarding onsite rules but not specific to the petition requests	
Advanced Treatment Technology systems cost too much, do not work, and will not treat wastewater to remove other contaminants that may become a concern in the future.	8
USGS study/report is not good science. Peer reviews have not been made available for public review.	5
Until a long-term solution is found, requiring Advanced Treatment Technology systems may result in double Jeopardy; if other treatment systems or sewer construction is necessary later, the current systems will have to be replaced at the landowner's expense.	5
DEQ and Agents have failed to inform landowners about hardship waivers available under some conditions. Agencies should routinely inform anyone applying for a repair permit or new system.	5
There is no evidence that nitrates are impacting groundwater in S. Deschutes County.	4
Nitrate is not a valid concern. The real concern is the other household waste contaminants that are in residential wastewater.	3
DEQ needs to protect groundwater and rivers in the area.	3
Contamination is accumulating slowly enough that we have time to work together in addressing the issue with a long-term solution.	3
Area solutions to groundwater protection need to include other low cost options, including cluster systems, and possible extension of sewers.	3

There is evidence that nitrates are not impacting groundwater in S. Deschutes County.	2
There is nitrate getting into groundwater, but not to the extent that it creates a health concern.	2
Concern over groundwater contamination is being used to facilitate other land use objectives in the area.	2
Regarding DEQ's association with O2WA, it is inappropriate for DEQ to be an Ex-Officio voting member of an industry association's committee.	2
Citizens wanted entire onsite program given to DEQ. That didn't happen. Deschutes County is not the best to have as the Agent.	2
DEQ has relied on inappropriate data for determining impacts to groundwater by including well sampling data from commercial and residential properties.	1
Nitrates are not a health concern; in fact, they are good for you.	1
The Ponderosa Pines Development has its own protected drinking water source and does not need Advanced Treatment Technology systems. Groundwater beneath the subdivision will not spread to other areas.	1
Statistical analysis shows no elevated nitrate levels. Documentation of analysis was provided during testimony.	1
Standard onsite systems are causing increased nitrates in area groundwater.	1
Nitrate in groundwater is a health and environmental concern.	1
A new Sanitary Authority for the area is not a desired solution.	1
The land-use zoning of the area should be changed or a Goal 11 Exception should be granted for the area, allowing extension of sewer service or treatment through cluster systems. This is not allowed under current land use rules.	1