

**DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION 045
REGULATIONS PERTAINING TO NPDES AND WPCF PERMITS**

340-045-0100

Initiation Level Rule

(1) **Definitions.** The definitions in ORS 468B.138 are adopted by reference. In addition, for purposes of this rule, the following definitions apply:

(a) “Persistent Pollutants” are substances that are toxic and that either persist in the environment or accumulate in the tissues of humans, fish, wildlife or plants, and are listed in Column 2 of Table A.

(b) “Permittee” means a municipality in possession of a National Pollutant Discharge Elimination System or water pollution control facility permit issued by the DEQ pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(c) “Initiation level” is the concentration of a persistent pollutant in a permittee’s effluent that, if exceeded, necessitates the preparation of a persistent pollutant reduction plan under ORS 468B.140.

(2) **Initiation levels.**

(a) Initiation levels for persistent pollutants are those values contained in Table A, or the analytical quantitation limit (concentration at which quantitative results can be reported with a high degree of confidence), whichever is higher.

(b) Initiation levels are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048 or the federal Clean Water Act.

(c) Except as specified in subsection (f), each permittee must measure the concentration of the persistent pollutants listed in Table A in its effluent, compare the results of these measurements to the initiation levels, determine whether any persistent pollutant exceeds its initiation level, and document this proposed determination in a report to ~~the Department~~ DEQ. For existing permittees, the report must be filed no later than 60 calendar days after receipt of laboratory results. For permittees that first become subject to this rule after its effective date, the report must be filed within 18 months after the permittee becomes subject to the rule, unless the permittee requests and is granted a longer period by DEQ.

(d) ~~The Department~~ DEQ will review this report to verify that the proposed determination is based on reliable information. If ~~the Department~~ DEQ finds that the proposed determination is not based on reliable information, ~~the Department~~ DEQ will make an independent determination of whether an initiation level has been exceeded.

(e) Except as specified in subsection (g), each permittee must prepare and submit to ~~the Department~~ DEQ a written persistent pollutant reduction plan in accordance with ORS 468B.140(1)(a) addressing persistent pollutants that exceed the initiation level. For existing permittees, the plan must be submitted no later than July 1, 2011. For permittees that first become subject to this rule after the effective date of this rule, the plan must be submitted to ~~the Department~~ DEQ within six months after the determination report required by subsection (c) is submitted, or, if ~~the Department~~ DEQ makes an independent determination, six months from the date of ~~the Department~~ DEQ’s independent determination or within a timeframe established by ~~the Department~~ DEQ.

- (f) ~~The Department~~ DEQ may suspend, by written order, the requirement to measure or develop a persistent pollutant reduction plan for a listed persistent pollutant under the following circumstances:
- (A) If the Department DEQ determines it is not technically practicable to measure the pollutant in effluent or if the Department DEQ removes a pollutant from the Priority Persistent Pollutant List; or
- (B) If, based on additional monitoring done pursuant to a persistent pollutant reduction plan, the Department DEQ determines that it is unlikely that a pollutant exists in a permittee's effluent; or, the Department may allow the permittee to withdraw the pollutant from inclusion in the persistent pollutant reduction plan;
- (C) If sampling of a permittee's effluent demonstrates that the pollutant concentration is lower than the initiation level; or
- (D) If DEQ determines that there are no available laboratories capable of performing the analysis for the pollutant; or
- (E) If a permittee is subject to duplicative or more stringent requirements addressing the same pollutant; or
- (F) For permittees that become subject to this rule after this effective date, if DEQ determines a pollutant is unlikely to be present in effluent based on a review of available effluent data at the facility or similar facilities in the state.
- (g) Permittees are not required to develop a persistent pollutant reduction plan to address cholesterol or coprostanol.

Table A

For the pollutants listed in italics below, the initiation level is the 2009 National Primary Drinking Water Standards Maximum Contaminant Level (MCL).

CASRN	Chemical Name	Initiation Level (µg/L)
120-12-7	Anthracene	0.01
7440-38-2	<i>Arsenic Compounds</i>	10
56-55-3	Benz(a)anthracene	0.02
50-32-8	<i>Benzo(a)pyrene</i>	0.2
205-99-2	Benzo(b)fluoranthene	0.5
191-24-2	Benzo(g,h,i)perylene	2
207-08-9	Benzo(k)fluoranthene	0.002
98-07-7	Benzotrichloride [trichloromethylbenzene]	0.03
82657-04-3	Bifenthrin	0.02
56-35-9	Bis (tributyltin) oxide [TBTO, hexabutyl-distannoxane]	0.008
7440-43-9	<i>Cadmium Compounds</i>	5
5103-71-9	<i>Chlordane, cis-</i>	2
5103-74-2	<i>Chlordane, trans-</i>	2
143-50-0	Chlordecone [Kepone]	0.5
2921-88-2	Chlorpyrifos	0.04
57-88-5	Cholesterol	0.06
218-01-9	Chrysene [benzo(a)phenanthrene]	2
360-68-9	Coprostanol	0.04
541-02-6	Cyclopentasiloxane, decamethyl- [D5]	16
556-67-2	Cyclotetrasiloxane, octamethyl- [D4]	7

CASRN	Chemical Name	Initiation Level (µg/L)
72-54-8	DDD, 4,4'-	0.1
72-55-9	DDE, 4,4'-	0.1
50-29-3	DDT, 4,4'-	0.001
434-90-2	Decafluorobiphenyl	18
52918-63-5	Deltamethrin [decamethrin]	0.0004
333-41-5	Diazinon	0.2
53-70-3	Dibenz(a,h)anthracene	0.04
115-32-2	Dicofol	6
60-57-1	Dieldrin	0.002
56-53-1	Diethylstilbestrol	87
88-85-7	<i>Dinoseb</i>	7
1746-01-6	<i>Dioxins/furans [as 2,3,7,8-TCDD TEQ]</i>	3×10^{-5}
1031-07-8	Endosulfan sulfate	0.1
72-20-8	<i>Endrin</i>	2
66230-04-4	Esfenvalerate	0.02
13356-08-6	Fenbutatin-oxide	0.5
120068-37-3	Fipronil	15
206-44-0	Fluoranthene [benzo(j,k)fluorine]	0.04
1222-05-5	Galaxolide [HHCB]	29
76-44-8	<i>Heptachlor</i>	0.4
1024-57-3	<i>Heptachlor epoxide</i>	0.2
32241-08-0	Heptachloronaphthalene	0.4
25637-99-4	Hexabromocyclododecane [HBCD]	7
118-74-1	<i>Hexachlorobenzene [HCB]</i>	1
319-84-6	Hexachlorocyclohexane, alpha-	0.006
319-85-7	Hexachlorocyclohexane, beta-	0.04
58-89-9	<i>Hexachlorocyclohexane, gamma- [Lindane]</i>	0.2
1335-87-1	Hexachloronaphthalene	1.4
70-30-4	Hexachlorophene	2
193-39-5	Indeno(1,2,3-cd)pyrene	0.5
465-73-6	Isodrin	0.6
91465-08-6	Lambda-cyhalothrin	0.01
7439-92-1	<i>Lead Compounds</i>	15
330-55-2	Linuron	0.09
22967-92-6	Methylmercury	0.004
832-69-9	Methylphenanthrene, 1-	0.7
2381-21-7	Methylpyrene, 1-	20
2385-85-5	Mirex	0.001

CASRN	Chemical Name	Initiation Level (µg/L)
15323-35-0	Musk indane	10
81-14-1	Musk ketone	30
145-39-1	Musk tibetene	4
81-15-2	Musk xylene	100
88671-89-0	Myclobutanil	200
5103-73-1	Nonachlor, cis-	2
39765-80-5	Nonachlor, trans-	2
29082-74-4	Octachlorostyrene	0.2
27304-13-8	Oxychlorthane, single isomer	0.4
42874-03-3	Oxyfluorfen	1.3
5436-43-1	PBDE-047 [2,2',4,4'-Tetrabromodiphenyl ether]	0.7
60348-60-9	PBDE-099 [2,2',4,4',5-Pentabromodiphenyl ether]	0.7
189084-64-8	PBDE-100 [2,2',4,4',6-Pentabromodiphenyl ether]	0.7
68631-49-2	PBDE-153 [2,2',4,4',5,5'-hexabromodiphenyl ether]	1
1163-19-5	PBDE-209 [decabromodiphenyl ether]	0.1
7012-37-5	PCB-028 [2,4,4'-trichlorobiphenyl]	0.5
35693-99-3	PCB-052 [2,2',5,5'-tetrachlorobiphenyl]	0.5
32598-13-3	PCB-077 [3,3',4,4'-tetrachlorobiphenyl]	0.5
70362-50-4	PCB-081 [3,4,4',5-tetrachlorobiphenyl]	0.5
37680-73-2	PCB-101 [2,2',4,5,5'-pentachlorobiphenyl]	0.5
32598-14-4	PCB-105 [2,3,3',4,4'-pentachlorobiphenyl]	0.5
74472-37-0	PCB-114 [2,3,4,4',5-pentachlorobiphenyl]	0.5
31508-00-6	PCB-118 [2,3',4,4',5-pentachlorobiphenyl]	0.5
65510-44-3	PCB-123 [2',3,4,4',5-pentachlorobiphenyl]	0.5
57465-28-8	PCB-126 [3,3',4,4',5-pentachlorobiphenyl]	0.5
35065-28-2	PCB-138 [2,2',3,4,4',5'-hexachlorobiphenyl]	0.5
35065-27-1	PCB-153 [2,2',4,4',5,5'-hexachlorobiphenyl]	0.5
38380-08-4	PCB-156 [2,3,3',4,4',5-hexachlorobiphenyl]	0.5
69782-90-7	PCB-157 [2,3,3',4,4',5'-hexachlorobiphenyl]	0.5
52663-72-6	PCB-167 [2,3',4,4',5,5'-hexachlorobiphenyl]	0.5
32774-16-6	PCB-169 [3,3',4,4',5,5'-hexachlorobiphenyl]	0.5
35065-29-3	PCB-180 [2,2',3,4,4',5,5'-heptachlorobiphenyl]	0.5
39635-31-9	PCB-189 [2,3,3',4,4',5,5'-heptachlorobiphenyl]	0.5
40487-42-1	Pendimethalin	6
1825-21-4	Pentachloroanisole [2,3,4,5,6-Pentachloroanisole]	35
608-93-5	Pentachlorobenzene	6
1321-64-8	Pentachloronaphthalene	4
82-68-8	Pentachloronitrobenzene	20

CASRN	Chemical Name	Initiation Level (µg/L)
375-85-9	Perfluoroheptanoic acid [PFHpA]	300
375-95-1	Perfluorononanoic acid [PFNA]	1
754-91-6	Perfluorooctane sulfonamide [PFOSA]	0.2
1763-23-1	Perfluorooctane sulfonic acid [PFOS]	300
335-67-1	Perfluorooctanoic acid [PFOA]	24
85-01-8	Phenanthrene	0.4
2062-78-4	Pimozide	3
67747-09-5	Prochloraz	2
129-00-0	Pyrene	0.03
80214-83-1	Roxithromycin	710
7782-49-2	<i>Selenium Compounds]</i>	50
83-45-4	Sitostanol, beta- [stigmastanol]	75
83-46-5	Sitosterol, beta-	25
92-94-4	Terphenyl, p-	11
79-94-7	Tetrabromobisphenol A [TBBPA]	980
1335-88-2	Tetrachloronaphthalene	14
1321-65-9	Trichloronaphthalene	43
95-95-4	Trichlorophenol, 2,4,5-	18
88-06-2	Trichlorophenol, 2,4,6-	2
3380-34-5	Triclosan [2,4,4'-trichloro-2'-hydroxydiphenyl ether]	70
1582-09-8	Trifluralin	1.1
732-26-3	Tris-(1,1-dimethylethyl)phenol, 2,4,6-	6

Stat. Auth.: ORS 468.020 & 468B.141

Stats. Implemented: ORS 468B.138 - 468B.144

Hist.: DEQ 6-2010, f. & cert. ef. 7-6-10; DEQ 3-2011(Temp), f. & cert. ef. 3-15-11 thru 9-11-11



State of Oregon
Department of
Environmental
Quality

Response to comments: Initiation Level Rule

August 2011



Last updated: 8/23/11
By: Robin Leferink

Item G 000012

This document prepared by:

Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204
1-800-452-4011
www.oregon.gov/deq

Contact:
Jennifer Wigal
503-229-5323

Executive Summary

The public comment period for the revised Initiation Level Rule was open June 1 to June 30, 2011. DEQ encouraged members of the public to provide comments via oral testimony or written comments submitted electronically or in hard copy. DEQ held one hearing in Portland, Oregon, June 15, 2011. One person attended the hearing and provided oral testimony, and DEQ received three letters with comments on the proposed changes to the rule language.

The oral testimony, given by Paul Eckley for the Oregon Association of Clean Water Agencies, contained specific suggestions for changes to the proposed rule, as did a letter submitted jointly from ACWA, League of Oregon Cities, and Special Districts Association of Oregon. Letters received from the Oregon Health Authority and the City of Portland Bureau of Environmental Services offered general support of DEQ's proposed revisions with no suggestions for changes.

Summary of comments and agency responses

Summaries of individual comments and DEQ's responses are provided below. The persons who provided each comment are referenced by number, and a list of commenters and their reference numbers follows the summary of comments and responses.

Comments with proposed changes to rule language	
Comment 1.1	Add clarifying language "that if any additional effluent sampling is conducted by the five affected wastewater treatment plants and find levels of priority persistent pollutants below the plan initiation level would remove the pollution prevention requirements from that municipality or district." (002)
Comment 1.2	<p>"Clarify that for affected permittees, additional sampling that demonstrates that the Priority Persistent Pollutant is below the Plan Initiation Level removes the pollution prevention plan requirement.</p> <p><i>(f) The Department <u>DEQ</u> may suspend, by written order, the requirement to measure or develop a persistent pollutant reduction plan for a listed persistent pollutant <u>under the following circumstances:</u></i></p> <p><i>(A) If the Department <u>DEQ</u> determines it is not technically practicable to measure the pollutant in effluent, or if the Department <u>DEQ</u> removes a pollutant from the Priority Persistent Pollutant List;</i></p> <p><i>(B) If, based on additional monitoring done pursuant to a persistent pollutant reduction plan, the Department <u>DEQ</u> determines that it is unlikely that a pollutant exists in a permittee's effluent <u>above the initiation level</u>; the Department may allow the permittee to withdraw the pollutant from inclusion in the persistent pollutant reduction plan; <u>or</u></i></p> <p><i>(C) If sampling of a permittee's effluent demonstrates that pollutant concentration is lower than the initiation level; <u>or</u></i></p> <p><i>(D) If a permittee becomes is subject to duplicative or more stringent requirements addressing the same pollutant, or..." (003)</i></p>
Response	<i>DEQ agrees with the proposed changes and has revised the proposed final rule language accordingly.</i>
Comment 2.1	"...for municipalities and districts that become subject to this rule in the future, [provide] clarification of when the 18-month planning process begins for them." (002)

Comment 2.2	<p>“Clarify that DEQ must notify permittees in writing when they become subject to these rules by incorporating these modifications:</p> <p>OAR 340-045-0100 (2) <i>(c) Except as specified in subsection (f), each permittee must measure...For permittees that first become subject to this rule after its effective date, the report must be filed within 18 months after the permittee <u>is notified in writing by the DEQ that it is becomes</u> subject to the rule...</i></p> <p>OAR 340-045-0100 (2) <i>(e) <u>Except as specified in subsection (g), each permittee must prepare...For permittees that first become subject to this rule after the effective date of this rule, the plan must be submitted to the Department DEQ within six months after the determination report is submitted, or if the Department DEQ makes an independent determination six months from the date of the Department DEQ’s independent determination and written notice to the permittee or within a timeframe established by the Department DEQ.</u> (003)</i></p>
Response	<p><i>While DEQ agrees that permittees should be made aware when they are newly subject to these requirements, DEQ does not conclude that such a requirement must be contained in the rule in order for this notification to occur. DEQ will communicate to permittees that they are subject to these rules as part of the permit application or renewal process with DEQ.</i></p>
Comment 3.1	<p>Limit “required sampling to those pollutants for which there are Oregon commercially-available analytical laboratories. This is important because Oregon municipalities and districts may not be able to rely on Oregon DEQ laboratory for analytical services in the future.” (002)</p>
Comment 3.2	<p>“Add an additional condition regarding the availability of commercially available laboratory services.</p> <p>If there is no commercially available laboratory service to conduct the necessary sampling analysis and should the Oregon DEQ laboratory not be available to municipalities and district for follow-up sampling efforts, no additional pollution prevention planning requirements should be imposed.” (003)</p>
Response	<p><i>The pollution prevention plan requirement will be removed if the DEQ Laboratory determines that there are no available laboratories capable of performing the analysis for the particular pollutant that would otherwise trigger the pollution prevention plan requirement. Subsection (f) of the proposed rule language was changed to include this provision.</i></p>
Comment 4	<p>“Simplify the rule making by removing the supporting statement and including them in the rule making documentation.</p> <p><i>(g) Permittees are not required to develop a persistent pollutant reduction plan to address cholesterol or coprostanol. based on the absence of municipal pollution prevention activities, as well as the absence of conclusive evidence in the scientific literature that these pollutants have documented harmful effects on the health and well being of humans, fish or wildlife, in accordance with ORS468B.139, and the absence of cost effective treatment options. “ (003)</i></p>

<i>Response</i>	<i>DEQ agrees with the proposed revision and has incorporated it into the proposed final rule language. The supporting statements are included in the rulemaking documentation.</i>
-----------------	---

General supporting comments	
Comment 5.1	“The Oregon Health Authority (OHA) supports DEQ’s proposed rule change eliminating the need for municipal water treatment facilities to develop pollutant reduction plans for cholesterol and coprostanol.” (001)
Comment 5.2	“ACWA supports the proposed permanent rulemaking that would remove the requirement to complete pollution prevention plans for cholesterol and coprostanol.” “We also support the clarifying language regarding additional sampling to confirm that effluent levels below the plan initiation levels would not require additional pollution prevention planning.” (002)
Comment 5.3	“Portland supports the change to rule language to suspend the requirement for municipalities to develop Persistent Pollutant Reduction Plans for naturally-occurring sterols and stanols.” (004)
<i>Response</i>	<i>DEQ acknowledges and appreciates the support of the OHA, ACWA, and City of Portland in this rulemaking.</i>

List of commenters and reference numbers

Reference Number	Name	Organization	Address (if provided)	Date
001	David Farrer	Oregon Health Authority	800 NE Oregon St., Ste. 640 Portland, Oregon	June 10, 2011
002	Paul Eckley	Oregon Association of Clean Water Agencies		June 15, 2011
003 (joint comments)	Janet A. Gillaspie	ACWA		June 24, 2011
	Chris Fick	League of Oregon Cities		
	Mark Landauer	Special Districts Association of Oregon		
004	Kim E. Cox	City of Portland	1120 SW 5 th Ave., Rm. 1000 Portland, Oregon	June 28, 2011

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Revised 'Initiation Level' Rule for Persistent Pollutants in Wastewater
This form accompanies a Notice of Proposed Rulemaking

Title of proposed rulemaking	Revised 'Initiation Level' Rule for Persistent Pollutants in Wastewater
Statutory authority or other legal authority	DEQ and EQC have statutory authority to address this issue under ORS 468.020 and 468B.141.
Statutes implemented	These rules implement Senate Bill 737 passed by the 2007 State Legislature, and codified in ORS 468B.138 - 468B.144.
Need for the rule(s)	<p>The Oregon Environmental Quality Commission passed the Initiation Level Rule in June 2010, establishing the concentration of a pollutant in municipal wastewater treatment plant or facility effluent, which, if exceeded, initiates the need for a persistent pollutant reduction plan. Oregon's 52 largest municipal wastewater treatment facilities sampled effluent twice, once in late fall and once in early spring, to determine whether any of 117 persistent pollutants were present above Plan Initiation Levels.</p> <p>In both sampling events, every location's sampled effluent exceeded the Plan Initiation Levels for cholesterol and coprostanol, two naturally occurring byproducts of human digestion. Several facilities exceeded the Plan Initiation Levels for other persistent pollutants. EQC passed a temporary rule in February 2011 to suspend the requirement for municipalities to address cholesterol and coprostanol in persistent pollutant reduction plans. While toxicity models concluded that these pollutants are toxic and persistent in aquatic ecosystems, and met criteria for inclusion on the P3 List, there is no conclusive information about their potential harmful effects on the well-being of humans, fish or wildlife. Further, there are no feasible municipal pollution prevention activities to reduce cholesterol and coprostanol. Also, there are no cost-effective treatment options to reduce these pollutants.</p> <p>The proposed revised Plan Initiation Level Rules would make the February 2011 temporary rule revisions permanent and add clarification regarding the circumstances under which a permittee has met the requirements and no longer needs to have a reduction plan in place.</p>
Documents relied upon for rulemaking	<ul style="list-style-type: none"> • Compiled Information about Persistent Pollutants Detected above Plan Initiation Level (located in DEQ's administrative record of this rulemaking) • Technical memo: Aquatic Toxicity of Sterols and Stanols (located in DEQ's administrative record of this rulemaking) • Technical memo: Treatment of Sterols and Stanols (located in DEQ's administrative record of this rulemaking)
Requests for other options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

Page 2 of 4

Fiscal and economic impact, statement of cost compliance		
Overview	<p>The proposed rule imposes fewer requirements for municipal wastewater treatment facilities subject to Senate Bill 737. Modification of this rule could potentially result in savings from the original cost of complying for municipal wastewater treatment facilities, because it suspends the requirement to develop a reduction plan for two common pollutants, and allows DEQ to focus the list of pollutants for which permittees that become subject to the rule in the future must monitor.</p> <p>Proposed revisions to the rule also provide clarity regarding the circumstances under which a permittee has met the requirements and no longer needs to have a reduction plan in place.</p>	
Impacts on the public	<p>Modest indirect savings could occur for rate payers within one of the communities with one of the qualified municipal sewer systems affected by Senate Bill 737 because it suspends the requirement to develop reduction plans for cholesterol and coprostanol. The rule revision allows DEQ to focus a list of persistent pollutants that must be sampled by a permittee newly subject to the rule.</p>	
Impacts on small business (50 or fewer employees – ORS183.310(10))	<p>There are no costs to small businesses. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to small businesses are lessened.</p>	
Cost of compliance on small business (50 or fewer employees –ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	There are no small businesses directly subject to the rule on initiation levels. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to small businesses are lessened.
	b) Types of businesses and industries with small businesses subject to the proposed rule	None are directly subjected. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to small businesses are lessened.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	None. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to small businesses are lessened.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the	None. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to small businesses are lessened.

	proposed rule	
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	No small businesses were directly involved in this rulemaking.
Impacts on large business (all businesses that are not "small businesses" under ORS183.310(10))	There are no large businesses directly subject to the proposed rule. Because the rule imposes fewer requirements for municipal wastewater treatment facilities, any potential indirect impacts to large businesses are lessened.	
Impacts on local government	<p>The proposed rule will result in savings for municipalities currently subject to SB 737 because it suspends the requirement to develop reduction plans for cholesterol and coprostanol. Proposed revisions to the rule may also result in savings because they clarify the circumstances under which a permittee has met the requirements and no longer needs to have a reduction plan in place. Modification of this rule could potentially result in savings for municipal wastewater treatment facilities that become subject to the rule in the future, because it suspends the requirement to develop a reduction plan for two common pollutants, and allows DEQ to focus the list of pollutants for which a permittee must monitor.</p> <p>The rule imposes fewer requirements for municipal wastewater treatment facilities subject to Senate Bill 737.</p>	
Impacts on state agencies other than DEQ	No direct or indirect fiscal or economic impacts are anticipated.	
Impacts on DEQ	<p>Adopting proposed rule revisions will not impact DEQ revenues. There are no revenues associated with this program. It will reduce DEQ expenses and use of FTE for this program. There are currently 5 municipal wastewater treatment facilities that must develop persistent pollutant reduction plans.</p> <p>Permittees that become subject to Senate Bill 737 in the future will monitor effluent for a more focused set of the priority persistent pollutant list.</p> <p>Implementation of toxics reduction plans may moderately increase the workload of Oregon's Water Quality Permitting Program, which will ultimately incorporate any toxics reduction plans into the facility's National Pollutant Discharge Elimination System or water pollution control facility permit by reference when those permits are reissued. Because there will not be as many reduction plans, and permittees newly subject to the rule will be monitoring for a more focused set of pollutants, DEQ is not estimating any impacts at this time.</p>	
Assumptions	DEQ's primary assumption is that any future fiscal and economic impacts to both DEQ and municipal resources will result from the development and implementation of toxic reduction plans by the municipal wastewater treatment facilities. These proposed revisions lead to fewer plans and reduce the number of pollutants addressed in a plan.	

Housing costs	DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Advisory committee process	DEQ used a fiscal and economic impact advisory committee to review and comment on a draft of this document. This committee was formed from the stakeholders group associated with this project. Committee members were given 12 days to review and provide written comments addressing the draft. DEQ hosted a meeting May 3, 2011, to clarify the purpose of the review, provide an overview of the proposed rule revision, present assumptions used in developing this document and respond to any questions.

Prepared by

Cheryl Grabham
Printed name

Date

Approved by DEQ Budget Office

Printed name

Date

Senate Bill 737 Stakeholder Sounding Board

Name	Organization
Bob Baumgartner	Clean Water Services
Brad Bogus	Consultant for City of Hermiston
Brett Hulstrom	City of Portland, Bureau of Environmental Services (BES)
Carol Murdock	Clackamas County, Water Environment Services (WES)
Chris Fick	League of Oregon Cities
Daniel Eisenbeis	City of Portland, Office of Government Relations
Janet Gillaspie	Oregon Association of Clean Water Agencies (ACWA)
Kim Cox	City of Portland, Bureau of Environmental Services (BES)
Lauren Goldberg	Columbia Riverkeepers
Mark Landauer	Special Districts Association of Oregon
Mark Milne	City of Pendleton
Mark Yeager	City of Albany
Myron Burr	Siltronic Corporation
Norman Eder	Representing Clackamas County WES
Ralph Saperstein	Representing Northwest Pulp and Paper
Renee Hackenmiller-Paradis	Oregon Environmental Council
Sue Marshall	Tualatin Riverkeepers
Theresa Huntsinger	Oregon Environmental Council
Tom Penpraze	City of Corvallis
Willie Tiffany	City of Hillsboro
cc	
Mike Sullivan	Association of Western Pulp and Paper Workers
Nina Bell	Northwest Environmental Associates
Rick George	Confederated Tribes of the Umatilla Indian Reservation

DEQ staff and managers

Name	Organization
Jennifer Wigal	Oregon DEQ, Manager
Cheryl Grabham	Oregon DEQ, Project Coordinator
Karen Whisler	Oregon DEQ, Project Coordinator (assignment concluded in November 2010)
Greg Geist	Oregon DEQ, Northwest Region Manager
Jess Brown	Oregon DEQ, Northwest Region

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Revised 'Initiation Level' Rule for Persistent Pollutants in Wastewater

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

The proposed rulemaking is different from applicable federal requirements. This proposed new rule does not have a current counterpart or contemporary rule in federal regulations or requirements. It is most closely associated with federal toxics reduction programs that occur across multiple programs at the federal level.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

The proposed rulemaking differs from federal requirements because the 2007 Oregon Legislature passed a state law addressing this issue in the absence of federal action. The Oregon Legislature passed this legislation in response to citizen concerns for human health and the aquatic environment. Persistent toxic pollutants are a priority for the State and this rulemaking and subsequent application of the initiation levels is a unique process. There are no federal examples to draw from in terms of references.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

The existing rule was mandated by the 2007 Oregon Legislature, per Senate Bill 737. DEQ did not have any other options or alternatives to consider as the state law did not provide for alternatives. This rulemaking aims to make minor revisions to the existing rule to provide more clarity for the future of the program.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Revised 'Initiation Level' Rule for Persistent Pollutants in Wastewater

RULE CAPTION

Revisions pertain to levels of persistent pollutants that initiate municipal pollution reduction plans (Oregon Adm. Rule 340-045-0100)

1. Explain the purpose of the proposed rules.

Oregon's municipal wastewater facilities with a dry-weather design flow capacity of one million gallons per day are subject to Senate Bill 737. To implement this legislation, the Environmental Quality Commission passed OAR 340-045-0100 in June 2010. DEQ proposed rule revisions after evaluating newly available information. The rule suspends the requirement for municipal wastewater treatment facilities to develop a reduction plan for cholesterol and coprostanol, and allows DEQ to focus the list of pollutants for which permittees that become subject to the rule in the future must monitor. Proposed revisions to the rule also provide clarity regarding the circumstances under which a permittee has met the requirements and no longer needs to have a reduction plan in place.

Reduction plans will be incorporated into subsequent permit renewals under either the National Pollutant Discharge Elimination System (NPDES) or the Water Pollution Control Facility (WCPF) program; whichever applies.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No

a. If yes, identify existing program/rule/activity:

The proposed rule affects existing rules and programs that are programs affecting land use, because this rule is being implemented via the permitting rules in Division 45, and water quality permits are programs affecting land use under OAR Division 18. Existing procedures are adequate.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No (if no, explain):

c. If no, apply the following criteria to the proposed rules.

This revised rule will apply to municipal wastewater treatment facilities in Oregon as defined in Senate Bill 737 (dry weather design flow capacity of one million gallons per day, or more).

The proposed rules are not reasonably expected to have significant impacts on resources, objectives, or areas identified in the statewide planning goals. There are no anticipated impacts to present or future land uses identified in acknowledged comprehensive plans.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Not Applicable.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not Applicable.