



State of Oregon Department of Environmental Quality

# Notice of Proposed Rulemaking

August 12, 2025

Three Basin Rule 2025

This package contains the following documents:

- Notice of Rulemaking
- Draft rules – edits highlighted
- Draft rules – edits included (final clean version)

Note for readers:

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# Table of contents

Introduction .....	3
Request for other options .....	3
Overview .....	3
Procedural summary .....	3
Statement of need.....	5
Federal relationship .....	6
Rules affected, authorities, supporting documents .....	7
Documents relied on for rulemaking .....	8
Rules summary .....	8
Fee analysis.....	8
Statement of fiscal and economic impact .....	9
Housing cost .....	14
Racial equity .....	15
Environmental justice considerations .....	15
EQC prior involvement.....	17
Advisory committee.....	17
Public engagement .....	19
Non-discrimination statement.....	20
Supporting documents .....	20
Draft rules – edits shown.....	21
Draft rules – edits incorporated .....	26

# Introduction

The Oregon Department of Environmental Quality invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

## Request for other options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

## Overview

DEQ is accepting public comment on amendments to the Three Basin Rule at OAR 340-041-0350. DEQ is updating the rule at the direction of the Environmental Quality Commission in response to a 2024 rulemaking petition submitted by Marion County. Proposed rule amendments allow DEQ to issue new National Pollution Discharge Elimination System, or NPDES, permits to domestic sewage treatment facilities in the Clackamas, McKenzie and North Santiam Basins, which is currently not allowed by the rule. Amendments are needed to be consistent with the Supreme Court's *Maui* decision. If DEQ determines that a discharge for a domestic wastewater treatment facility is likely to be a functional equivalent to a direct discharge based on the Supreme Court's test in the *Maui* decision, the rule will allow DEQ to issue an NPDES permit. The rule provides special conditions for an NPDES permit that are more protective than in the rest of Oregon.

DEQ also is proposing amendments to streamline the Water Pollution Control Facility, or WPCF, permitting process for onsite septic systems in the three basins. Under the current Three Basin Rule, some existing facilities served by onsite septic systems that only wish to repair their failing septic systems must get EQC approval. The proposed rule revision will help move necessary onsite repairs and replacements forward more efficiently.

## Procedural summary

### More information

Information about this rulemaking is on the [Three Basin Rule 2025 web page](#).

### Virtual public hearing

DEQ plans to hold one public hearing. Anyone can attend the hearing by webinar or teleconference.

Date: Monday, Sept. 15, 2025  
Start time: 4 p.m.

[Join via Zoom](#)

**Join by phone:**

Dial In: 833 928 4610 US Toll-free

Meeting ID: 875 9014 8963

[View Instructions for joining the webinar or teleconference](#)

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rule amendments. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, mail or at the public hearing.

- **Email:** Send comments by email to: [threebasin.2025@deq.oregon.gov](mailto:threebasin.2025@deq.oregon.gov)
- **Postal mail:** Oregon DEQ, Attn: Aron Borok, 700 NE Multnomah St., Room 600, Portland, OR 97232-4100
- At public hearing: 4 p.m., Monday, Sept. 15 2025

## Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by **5 p.m., on Sept. 21, 2025**.

## Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

## Sign up for rulemaking notices

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- Signing up through [GovDelivery](#).
- Signing up on the [rulemaking website](#).

## What will happen next?

DEQ will include a written response to comments in a staff report that DEQ will submit to the EQC. DEQ may modify the rule proposal based on public comments.

Proposed rules only become effective if the EQC adopts them. DEQ intends to submit the proposed rule changes to the commission in November 2025.

# **Statement of need**

## **Functional equivalency**

### **What need would the proposed rule address?**

The proposed rule would address the tension between the Three Basin Rule, which prohibits new NPDES permits in the Clackamas, North Santiam and McKenzie basins and the Supreme Court's *Maui* decision, which requires NPDES permits for discharges of wastewater to the ground that are the "functional equivalent" of a direct discharge.

### **How would the proposed rule address the need?**

The proposed rule allows DEQ to issue NPDES permits for discharges from domestic sewage treatment facilities in the three basins if DEQ determines that those discharges are likely to be a functional equivalent to a direct discharge based on DEQ's guidance developed since the *Maui* decision.

### **How will DEQ know the rule addressed the need?**

DEQ will know the rule addressed the need if it is able to issue NPDES permits to protect the water quality in the three basins for discharges it determines are likely to be functionally equivalent.

## **Water quality protection**

### **What need would the proposed rule address?**

The proposed rule will continue to protect high quality waters of the Clackamas, North Santiam and McKenzie basins.

### **How would the proposed rule address the need?**

The rule requires that NPDES permits meet groundwater protection rules at Division 340, Chapter 40 and that the permits result in no measurable lowering of surface water quality for high quality waters in the three basins. The rule defines no measurable lowering of water quality more stringently than similar requirements that apply to the rest of the state. The rule revision only applies to domestic sewage treatment facilities.

### **How will DEQ know the rule addressed the need?**

DEQ will know if the rule addresses the need when DEQ includes conditions in water quality permits that result in no measurable lowering of water quality. In addition, DEQ will know that the rule addresses the need if monitoring data indicate that there is no measurable lowering of surface water quality associated with NPDES permits it issues under the rule.

## **Onsite provisions**

### **What need would the proposed rule address?**

The proposed rule will streamline the process for existing facilities served by onsite wastewater systems to obtain permits where only proposing to repair or replace a failing onsite system(s).

### **How would the proposed rule address the need?**

The rule adds a sentence to the definition of “new permits” in OAR 340-041-0350(3)(d) that exempts existing onsite systems undergoing repairs or replacements as long as there is no increase in flow or waste strength. Under the existing rule, a new WPCF permit must obtain EQC approval. By exempting these systems, EQC approval will not be required for straightforward repairs or replacements of existing systems serving existing facilities, which typically result in higher levels of treatment and protection.

### **How will DEQ know the rule addressed the need?**

DEQ will know if the rule addresses the need if it can issue WPCF-Onsite permits for existing facilities served by systems undergoing straightforward repairs or replacements without having to obtain EQC approval first. This can further be assessed by looking at the amount of time it takes to issue a permit for these facilities, which should be significantly decreased due to not needing EQC approval first. The proposed rule revision will help move necessary onsite repair and replacement project more efficiently.

## **Federal relationship**

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules will impose requirements that will be different from or in addition to federal requirements. The rules provide additional protection to the waters of the Clackamas, North Santiam, and McKenzie basins than are typically afforded under DEQ’s antidegradation rules, which are required components of water quality standards under the Clean Water Act.

### **What are the scientific, economic, technological, administrative and other reasons for exceeding applicable federal requirements?**

The Three Basin Rule was adopted as part of DEQ’s initial Water Quality Management Plan specifically to provide greater protection to surface waters in the three basins because they serve as drinking water supplies for approximately 600,000 residents in the Willamette basin. In November 2024, EQC directed DEQ to amend the rule to allow NPDES permits in certain circumstances consistent with the stated objectives of the rule. DEQ interpreted that direction to ensure that the high-quality waters of the three basins continue to receive greater protection than are typically required under Oregon’s antidegradation policy.

## What alternatives did DEQ consider and why are you not pursuing them?

DEQ considered the following alternatives:

- Allowing DEQ to issue new NPDES permits with no lowering of water quality.
- Allowing DEQ to issue new NPDES permits with no detectable lowering of water quality.
- Allowing DEQ to issue new NPDES permits for direct discharges if they are more protective of beneficial uses than a discharge to the ground.
- Allowing DEQ to authorize a mass load increase for existing NPDES permits subject to certain limitations.

DEQ did not pursue the “no lowering of water quality” alternative because doing so may have been infeasible for dischargers that need to obtain NPDES permits because their discharges are likely to be a functional equivalent to a direct discharge. DEQ did not pursue the “no detectable lowering of water quality” because the term “detectable” is imprecise because of differences in detection limits among laboratories and over time as analytical methods change.

DEQ did not pursue allowing a direct discharge or a mass load increase for existing discharges due to concerns from members of its advisory committee that allowing such discharges would not protect water quality. In addition, it was not clear that DEQ would have the need to issue NPDES permits for direct discharges, nor to allow mass load increases for existing NPDES permits in the future. As a result, DEQ did not pursue these alternatives.

## Rules affected, authorities, supporting documents

### Lead division

Division 41

### Program or activity

Water Quality Standards

### Chapter 340 action

Amend				
340-041-0350				

Statutory Authority - ORS				
468.020	468B.030	468B.035	468B.048	

Statutes Implemented - ORS				
468B.030	468B.035	468B.048		

## Documents relied on for rulemaking

Document title	Document location
Oregon Environmental Quality Commission. Approved Minutes: 434th Regular Meeting, Nov. 21-22, 2024.	<a href="https://ormswd2.synergydcs.com/HPRMWebDrawer/Record/6868472/File/document">https://ormswd2.synergydcs.com/HPRMWebDrawer/Record/6868472/File/document</a>
U.S. Supreme Court, 18-260, County of Maui, Hawaii v. Hawaii Wildlife Fund et al.	<a href="https://www.supremecourt.gov/opinions/19pdf/18-260_jifl.pdf">https://www.supremecourt.gov/opinions/19pdf/18-260_jifl.pdf</a>
U.S. Environmental Protection Agency, EPA Water Quality Standards Handbook, Chapter 4, Antidegradation	<a href="https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter4.pdf">https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter4.pdf</a>
DEQ, IMD for Functionally Equivalent Discharges: Determining if a WPCF permit should be a NPDES permit under the Maui Supreme Court Decision	<a href="https://www.oregon.gov/deq/wq/Documents/wqp-161-GUIDE-IMDDirectDischarge.pdf">https://www.oregon.gov/deq/wq/Documents/wqp-161-GUIDE-IMDDirectDischarge.pdf</a>

## Rules summary

As OAR 166-500-0030(1)(e) requires, the following are included to provide a brief summary of the proposed new rules and existing rules affected by this rulemaking.

### OAR chapter 340, division 41

Rule Number	Rule Title	Explanation
0350	Three Basin Rule	Amending rule to allow DEQ to issue NPDES permits for domestic sewage treatment facilities that are likely to be functional equivalent discharges, while ensuring that permits protect the high-quality waters in the three basins. In addition, amending rule to allow DEQ to issue WPCF-Onsite permits for repairs or replacements to onsite systems in the three basins without EQC approval with certain limitations.

## Fee analysis

This rulemaking does not involve fees.



# Statement of fiscal and economic impact

## Fiscal and economic impact

The proposed rules will amend the Three Basin Rule to allow DEQ to issue NPDES permits for domestic sewage treatment plants under limited circumstances, while still preserving or improving the high-quality water. Under the current rules, DEQ is not allowed to issue new NPDES permits in the Clackamas, North Santiam and McKenzie River Basins. Due to the Supreme Court decision in *the County of Maui v. The Hawaii Wildlife Fund*, known as the Maui Decision, DEQ must issue NPDES permits to domestic sewage treatment facilities if DEQ finds that discharges from these facilities in the Three Basin area are “functionally equivalent” to direct discharges.

The primary impact of the proposed rule amendments is they would allow DEQ to issue an NPDES permit when it determines that a discharge of wastewater to the ground or groundwater is a functional equivalent to a direct discharge. DEQ developed an [Internal Management Directive](#) following the *Maui* decision to guide its evaluation. Prior to the Maui decision, such discharges typically received a WPCF permit, which is for discharges to the ground or groundwater that are not a functional equivalent to a direct discharge. Without the revisions, domestic sewage treatment facilities would either be required to find a discharge option that is not a functional equivalent, which may be technically or financially infeasible, or would not have an option to treat and discharge wastewater. DEQ would not have a way to permit such discharges, even if doing so would benefit water quality compared to current operations.

Costs to local governments and businesses that operate domestic sewage treatment facilities may increase if they have been operating under a WPCF permit and must get an NPDES permit. NPDES permits may require more influent and effluent monitoring than WPCF permits. NPDES permits may also require receiving water monitoring, which WPCF permits may not require. There may be a need to do groundwater flow and fate and transport monitoring as a part of an NPDES permit application, which will require wastewater treatment facilities to obtain support from a consultant. In addition, permit application fees are slightly higher for NPDES permits than for WPCF permits. NPDES permits are renewed on a five-year basis instead of a 10-year basis for WPCF permits, which increase the frequency and cost of permit application fees to local governments and businesses that may be impacted by rule amendments.

Without the proposed rule amendments, costs to local governments and businesses that operate domestic sewage treatment facilities could be much higher, as they would need to find an option to dispose of treated wastewater in a way that would not result in discharging to surface waters, which requires an NPDES permit. A facility seeking to replace or upgrade a current treatment system or construct a new system might need to acquire land further away from a receiving water to construct a facility, apply treated wastewater to land, if available, transport treated wastewater offsite, or pump wastewater to another treatment facility. Such options are likely more expensive and may not be affordable or infeasible to communities and businesses that are subject to the rule. These costs likely outweigh increased monitoring and application costs resulting from proposed rule amendments.

DEQ is also proposing a minor revision to the Three Basin Rule that will allow existing facilities served by onsite septic systems to repair or upgrade their systems without EQC approval, as long as the system does not increase flow or waste strength. The current rule requires EQC approval for DEQ to issue such permits, even for straightforward repairs or replacement that result in improved pollutant removal. These revisions will lessen administrative burden of DEQ

staff, and the communities and small businesses served by these systems, saving money and time and ensuring that onsite system repairs or replacements can be done sooner.

DEQ also is making minor non-substantive edits to improve clarity of certain Three Basin Rule provisions. These revisions will have no fiscal impact.

## **Statement of cost of compliance**

### **State agencies**

#### **DEQ**

The proposed rule amendments will impact DEQ by increasing the amount of time needed to issue permits to facilities that will require an NPDES permit rather than a WPCF permit. The NPDES permit issuance process is more complex than a WPCF permit. Moreover, the proposed rules have additional requirements for issuing NPDES permits in the Clackamas, North Santiam and McKenzie River Basins than in other parts of the state. These impacts include the following:

- WPCF permits typically have limits to ensure the discharge meets Groundwater Protection Requirements at OAR 340, Division 40. NPDES permits issued under the revised rules would have these limits, as well as limits that protect beneficial uses in the surface water. Development of such limits will require additional time for DEQ staff, particularly due to the indirect nature of impacts from a subsurface discharge. DEQ may need input from staff with expertise in hydrogeology to develop such limits. For most NPDES permits where treated wastewater is discharged directly to surface water, such expertise would not be needed.
- The proposed rule amendments state that NPDES permits cannot result in more than a measurable lowering of water quality. DEQ will need to assess the impact of a proposed discharge on water quality. This assessment is very similar to what DEQ already does as part of antidegradation analysis for permits in other parts of the state but will have more stringent requirements under the proposed rule amendments. Thus, the impact of this requirement on the workload of DEQ water quality permitting staff will be minimal.

The proposed rule amendments related to the Onsite Program would reduce the amount of time needed to issue WPCF-Onsite permits for existing facilities subject to the Three Basin Rule currently. The revisions would remove the requirement to obtain EQC approval when a facility proposes to repair or replace an existing onsite system with an improved system with no increase in flow or waste strength. Resources necessary to issue new WPCF-Onsite permits for existing facilities currently subject to the Three Basin Rule would be decreased, thus reducing time and cost associated with the permitting process, both for DEQ and for small businesses and local governments.

Non-substantive edits made for clarity and consistency will not impact DEQ's cost for implementing the Three Basin Rule.

### **Other state agencies**

The proposed rules may require DEQ to coordinate with other state agencies on a project specific basis, to ensure that decisions related to permitting do not impact resources or

programs under their jurisdiction. The extent to which the rules would require additional coordination will be project-specific and can only be quantified at a specific project level.

## Local governments

Five local government entities currently have a WPCF or WPCF-Onsite permit in the three basins to operate a domestic sewage treatment facility. Currently, these facilities do not have discharges that are the functional equivalent of a surface water discharge. If the conditions surrounding the discharge of any of the facilities changed, such that DEQ determines that a domestic sewage treatment's discharge is a functional equivalent to a direct discharge, the proposed rule would require local governments to obtain an NPDES permit. Without the rule change, local governments may need to find a way to treat and discharge wastewater in a way that is not a functional equivalent to a direct discharge, which may be more expensive and may not be affordable, particularly to smaller communities that are subject to the Three Basin Rule. The exact costs are difficult to quantify, as they will vary case by case, but will likely be millions of dollars.

If any of these facilities altered their discharge such that DEQ determines a discharge from a sewage treatment facility is likely to be a functional equivalent to a direct discharge, the facility will need to switch from a WPCF permit to a NPDES permit. An NPDES permit may require more monitoring than a WPCF permit, which will result in higher monitoring costs for the facility. However, these higher monitoring costs are much less compared to the costs of finding a treatment option that is not a functional equivalent.

DEQ's analysis of additional monitoring costs is based on experience for a few facilities that have needed to switch from a WPCF to NPDES permit since DEQ developed its functional equivalence guidance. In some cases, the NPDES required the same monitoring as the WPCF permit, which was monthly monitoring of biological oxygen demand, total suspended solids, pH, bacteria, and ammonia. In another instance, more frequent sampling was required for these parameters. Based on DEQ's monitoring matrix for NPDES permits, monitoring frequency for these parameters may be as high as twice weekly for these parameters for a minor facility with a flow greater than 100,000 gallon per day but less than one million gallons per day.

The following is an estimate of additional monitoring costs that may be associated with switching from a WPCF to an NPDES permit. Based on quotes from commercial laboratories, analyses for a full suite of BOD<sub>5</sub>, TSS, bacteria, and ammonia and alkalinity ranges from \$260 to \$324 per sample. The cost of paying an employee to collect and document the sample, as well as to receive and report sampling results is assumed to be equal to the analytical cost. Switching from a WPCF to an NPDES permit may increase influent and effluent sampling from monthly to a maximum of twice weekly for a minor facility with greater than 100,000 gallons per day but less than one million gallons per day, an addition of 92 samples per year.<sup>1</sup> In some cases, as noted, monitoring and reporting costs will not increase. Based on twice weekly sampling for one influent and one effluent sample, annual monitoring costs under an NPDES permit as compared to a WPCF permit would be expected to increase by a maximum of \$96,000 to \$120,000 per year. If DEQ requires less frequent monitoring, cost increases would be less.

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<sup>1</sup> DEQ does not anticipate that any facility that may be affected by proposed revisions will have a design flow greater than one million gallons per day.

If there is evidence that metals or other toxic compounds are present in the permittee's discharge and are pollutants of concern, additional monitoring may be required for these analytes as well as whole effluent toxicity testing. At this time, DEQ does not expect any facilities in the three basins to have permits with routine monitoring for metals, toxic compounds (other than ammonia, alkalinity and nitrate, which are routinely required) not already listed, or whole effluent toxicity testing since monitoring for these analytes is typically only required for major facilities.

In addition, DEQ expects that any facility that needs to obtain an NPDES permit will need to hire a consultant to conduct groundwater contaminant fate and transport modeling to provide information for the functional equivalency analysis and development of permit limits during permit development. Such costs will vary case by case.

The rule also may benefit local governments by allowing them to move forward on treatment upgrades that will remove additional pollutants in comparison to current treatment. Such upgrades may allow additional development in some communities subject to the rule while still protecting or improving water quality in comparison to the current treatment facility.

Proposed revisions to the rule related to issuance of WPCF-Onsite permits would benefit local governments that need to repair or replace existing systems without increasing flow or waste strength. These revisions would allow such dischargers to obtain permits without EQC approval first, saving administrative costs for the facility.

Non-substantive editorial revisions to the rule will have no fiscal impact on local governments.

## **Public**

DEQ expects that the rule revisions will benefit the public. All other things being equal, it may be more expensive to comply with an NPDES than a WPCF permit. These costs would be transferred to the public through rate increases. However, such costs may be borne irrespective of rule revisions and may be even greater if DEQ did not adopt rule revisions due to the increased costs associated with treatment alternatives since a new NPDES permit would not be allowed. As a result, DEQ expects that proposed rule revisions will benefit the public as compared to the current rule, by allowing greater flexibility to wastewater treatment facilities to find a feasible treatment option that may enhance and protect high quality water in the Clackamas, North Santiam and McKenzie basins.

## **Large businesses - businesses with more than 50 employees**

Based on the best available information, three large businesses have permits to operate domestic sewage treatment systems in the area subject to the Three Basin Rule. These businesses may or may not be impacted by proposed rule revisions if DEQ determines that the discharge from their domestic sewage treatment is likely to be a functional equivalent, thus requiring an NPDES permit. These impacts are similar to the impacts that would be borne by local governments; refer to the "Local Government" section above.

## **Small businesses – businesses with 50 or fewer employees**

### **ORS 183.336 Cost of Compliance Effect on Small Businesses**

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

DEQ estimates that there are currently 28 small businesses that operate wastewater treatment facilities that may be subject to the proposed revisions, including revisions that allow DEQ to issue NPDES permits and revisions to the Onsite provisions. Several of these facilities are mobile home or RV parks in the area that have WPCF or WPCF-Onsite permits. It also includes private businesses and non-profit organizations that operate domestic sewage treatment facilities, such as operators of wilderness camps or other small manufacturing operations. The proposed rules are intended to reduce burden to these small businesses. To the extent that any entities would require an NPDES permit, fiscal impacts would be similar to that of local governments that may require an NPDES permit.

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

If DEQ were to determine that a small business needs an NPDES permit, compliance with the rule would require increased monitoring, and reporting and recordkeeping activities associated with an NPDES permit. Some small businesses who must get an NPDES permit may require a contractor to conduct groundwater modeling and collect and ship samples to a lab for analysis, and report sampling results to DEQ.

For small businesses that are repairing or replacing onsite systems that would no longer require EQC action, administrative costs related to coordinating with DEQ on the EQC process would decrease.

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

As noted, the proposed rule may require increased administration associated with implementation of an NPDES permit rather than a WPCF permit. Additional sample collection and reporting will require increased labor and potentially increased supplies associated with sampling. The proposed rule may or may not require additional projected equipment; small businesses seeking to upgrade their wastewater treatment systems may need to do so irrespective of the type of permit issued.

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

The advisory committee convened for this rulemaking included members from two groups that represent small businesses, including Oregon Business and Industry and the Oregon Onsite Wastewater Association. These groups were included to provide input from small businesses that might be impacted by the rule.

## Documents relied on for fiscal and economic impact

Document title	Document location
Water Quality Permitting Program Monitoring Matrix	Oregon DEQ 700 NE Multnomah St. Portland, OR 97232
Domestic NPDES and WPCF Individual Permits: Application, Annual and Modification Fees	<a href="#">OAR 340-045-0075, Table 70C</a>
Personal communication, Zach Mander to Aron Borok re: Analytical Cost Estimates for Three Basin Rule Fiscal Impact Statement, 6/27/2025	On request from DEQ

## Advisory committee fiscal review

DEQ convened an advisory committee.

As ORS 183.333 requires, 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 adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

DEQ sent the draft fiscal and economic impact statement to the RAC ahead of the third RAC meeting and presented the draft fiscal impact statement at the RAC meeting on July 14, 2025. The committee reviewed the draft fiscal and economic impact statement, and DEQ documented the RAC's comments in the meeting summary.

Agency advisors assisting the RAC noted that the proposed rule amendments are intended to reduce the burden on small businesses, particularly related to onsite provisions. Members of the committee noted that there is a clear link between public utilities and housing costs and that the "Housing cost" statement should be revised. DEQ incorporated those comments into the statement. A committee member noted that the cost of converting a permit from a WPCF permit to an NPDES permit likely also will result in treatment changes, which may increase compliance costs to local governments and small businesses. Other recommendations were editorial in nature and were incorporated into the fiscal impact statement.

## Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an 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.

This rule does not have a direct impact on housing costs. The rule may indirectly impact the costs of developing housing by allowing communities to move forward with developing or improving wastewater treatment systems. The rule may indirectly increase, decrease, or have no impact on development costs depending on the situation.

If the rule allowed a community to move forward with improved wastewater treatment that otherwise would be infeasible, the cost of such systems could be included in a system

development charge included as part of development costs. On the other hand, without the rule, communities may need to find more expensive options for improving wastewater treatment systems. Alternatively, if there is no other feasible alternative, communities may rely on smaller treatment systems that are less expensive but may not accommodate community growth or any development whatsoever.

Revisions related to WPCF-Onsite permits will not impact housing cost, as single-family dwellings are not subject to a WPCF-Onsite permit.

## Racial equity

ORS 183.335(2)(a)(F) as amended by House Bill 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal of the proposed rules will affect racial equity in the state.

The proposed rules allow DEQ to issue an NPDES permit when necessary if a discharge from a domestic sewage treatment plant is functional equivalent based on the factors listed in the Supreme Court's *Maui* decision. In many cases, because the rule will allow wastewater treatment system improvements, pollution levels will decrease compared to current levels. Without the authority to issue NPDES permits when necessary, certain communities will have no means to treat and discharge treated wastewater, or will have to find a means to do so that may be much more expensive. Overall, the proposed rules would likely have an overall benefit to community members by paving the way for wastewater treatment system improvements, while continuing to protect drinking water supplies for downstream populations.

At this time, DEQ has not identified any specific actions or outcomes from these proposed rules that would substantially burden any person or community based on the racial demographics of that person or community. DEQ evaluated if the rule revision could impact racially diverse communities in the Willamette Valley that could be impacted if there may be increased costs associated with treating drinking water. However, the rules are designed to ensure that high quality waters continue to meet levels needed to protect domestic water supplies. As a result, DEQ does not anticipate such impacts to occur to any communities.

## Environmental justice considerations

DEQ took the following steps during rulemaking in consideration of environmental justice. Public meetings and hearings were held in a virtual or hybrid setting so that members of the public could attend. DEQ appointed members to the rulemaking advisory committee who might have insight from an environmental justice perspective.

Overall, these draft rules ensure that rural communities in the Clackamas, North Santiam and McKenzie basins are able to obtain the appropriate permit to treat and discharge wastewater. These permits will ensure that there is no more than a measurable lowering of surface water quality. In some cases, the rule may pave the way to economic development, because it will allow smaller communities to get improved wastewater treatment systems, which will remove more pollution than those currently in place. As a result, these communities can engage in economic development while not increasing pollutant levels in surface water compared to current levels by more than a measurable amount and still ensuring that receiving waters continue to protect public water supplies, aquatic life and recreation.

## Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

## Determination

### **Rule amendments associated with NPDES permit issuance**

DEQ determined that the proposed rule amendments related to issuing NPDES permits affects programs or activities that the DEQ State Agency Coordination Program considers a land use program. Specifically, the proposed rule may allow communities to move forward with constructing wastewater treatment facilities.

DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rule amendments. Specifically, the statewide goal compliance procedures require approval of engineering reports and construction plans prior to the construction, installation or modification of disposal systems and sewage works. Proposed construction plans must include a Land Use Compatibility Statement which involves a determination of the project compatibility with the local comprehensive plan.

### **Rule amendments associated with WPCF-Onsite permit issuance**

DEQ determined that the proposed rule affects programs or activities that the DEQ State Agency Coordination Program considers a land-use program.



DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. WPCF permits are activities identified as affecting land use in OAR 340-018-0030(5)(d) and a Land Use Compatibility Statement is a required exhibit for this activity.

## EQC prior involvement

Marion County submitted a rulemaking petition to EQC and DEQ on Aug. 30, 2024 requesting amendments to the Three Basin Rule (OAR 340-041-0350). Marion County submitted the petition with the objective of obtaining an NPDES permit for a proposed new wastewater treatment plant in Mill City. Because of a recent Supreme Court ruling, a discharge to the ground that will eventually reach surface water will require a NPDES permit. The current Three Basin Rule does not allow DEQ to issue new NPDES permits. In November 2024, EQC directed DEQ to initiate rulemaking proceedings to amend the rule to allow NPDES permits in limited circumstances consistent with the stated objectives of the rule.

DEQ also will share information about the rulemaking through an informational item on the September 2025 EQC agenda.

## Advisory committee

DEQ convened the Three Basin Rule advisory committee. The committee included representatives from counties and cities located in the three basins; drinking water providers; local and regional environmental groups; the Confederated Tribes of Grand Ronde; wastewater treatment providers; Onsite septic system providers; and a group representing Oregon businesses. Several state and federal government agencies served as agency advisors. The RAC met three times. DEQ also held an informational seminar for the RAC to ensure there was common understanding about DEQ's water quality permitting processes and its functional equivalency determination process. Agendas, materials and meeting summaries are posted on the [Three Basin Rule 2025 web page](#).

The committee members were:

Name	Representing
Jason Pulley	City of Salem (primary)
Lacey Goeres-Priest	City of Salem (alternate)
Tyler Deems	City of Sandy (primary)
Jeff Aprati	City of Sandy (alternate)
Ron Wierenga	Clackamas Environmental Services, representing Oregon Association of Clean Water Agencies (primary)
Mary Logalbo	Clackamas River Basin Council (primary)
Amy Barton	Clackamas River Basin Council (alternate)
Kimberly Swan	Clackamas Water Providers (primary)
Jesse Main	Compass Concrete Construction, representing Oregon Onsite Wastewater Association (primary)

Name	Representing
Keri Handaly	Confederated Tribes of Grand Ronde (primary)
Susan Fricke	Eugene Water and Electric Board (primary)
Nancy Toth	Eugene Water and Electric Board (alternate)
Dan Hurley	Lane County (primary)
Steve Adams	Lane County (alternate)
Chris Einmo	Marion County (primary)
Brian Nicholas	Marion County (alternate)
Mary Stites	Northwest Environmental Defense Center, representing Willamette Riverkeeper (primary)
Lindsey Hutchinson	Willamette Riverkeeper (alternate)
Jason Green	Oregon Association of Water Utilities (primary)
Monty Norris	Oregon Association of Water Utilities (alternate)
Sharla Moffett	Oregon Business and Industry (primary)
<b>Non-member Government Advisors</b>	
Rick Cowlshaw	Oregon Department of Agriculture (primary)
Becky Anthony	Oregon Department of Fish and Wildlife (primary)
Kelly Reis	Oregon Department of Fish and Wildlife (alternate)
Danielle Gonzalez	Oregon Water Resources Department (primary)
Alyssa Mucken	Oregon Water Resources Department (alternate)
Shawn Stevenson	Oregon Health Authority (primary)
Michelle Maier	U.S. Environmental Protection Agency (primary)

## Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  - Rulemaking
  - Water Quality Standards
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

## Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee provided input on rule revisions and how the rule would be implemented. RAC members generally supported allowing DEQ to issue NPDES permits to ensure consistency with the *Maui* decision. Discussions centered around the level of water quality protection that would be afforded under NPDES permits, specifically related to whether NPDES permits would allow no lowering of water quality, no detectable lowering of water quality, or no measurable lowering of water quality. Some concerns were raised regarding how DEQ would calculate the impacts of a ground discharge to surface water given the uncertainty

related to travel time, attenuation, and other factors. DEQ permitting staff have developed internal methods to do such calculations.

A few RAC members expressed concern about how NPDES-permitted discharges would impact aquatic life. DEQ noted that permits have water quality based permit limits that protect aquatic life and other beneficial uses of the waterbody, in addition to other requirements that will serve to reduce pollution in effluent. In addition, a few RAC members expressed concern that required monitoring in NPDES permits may not capture all contaminants of concern, especially emerging contaminants such as per- and polyfluoroalkyl substances, or PFAS.

DEQ asked the RAC to consider rule language that would allow mass load increases for the six domestic sewage treatment facilities that had NPDES permits prior to the establishment of the Three Basin Rule. There was some support among RAC members for this rule concept. However, several RAC members expressed concern that allowing a mass load increase may not protect the water quality. DEQ also considered rule revisions to allow a direct discharge when it may be more protective than an indirect discharge. However, there was concern among a broad range of RAC members that allowing a direct discharge would not be protective of the water quality in the three basins.

DEQ also walked RAC members through the process flow chart that is included in the attached Technical Support Document. RAC members provided valuable input that helped DEQ improve the flow chart for clarity and consistency.

## Public engagement

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Aug. 12, 2025, filing notice with the Oregon Secretary of State for publication in the September Oregon Bulletin;
- Notifying the EPA by mail;
- Posting the notice, invitation to comment and draft rules on the [rulemaking web page](#).
- Emailing approximately 22,431 interested parties on the following DEQ lists through GovDelivery:
  - DEQ Public Notices
  - Rulemaking
  - Water Quality Standards
  - Water Quality Permits
- Emailing the following key legislators required under [ORS 183.335](#):
  - Rep. John Lively, Chair, Interim House Committee on Climate, Energy, and Environment
  - Rep. Mark Gamba, Vice-Chair, Interim House Committee on Climate, Energy, and Environment
  - Rep. Bobby Levy, Vice-Chair, Interim House Committee on Climate, Energy, and Environment
  - Rep. Ken Helm, Co-chair, Interim House Committee on Agriculture, Land Use, Natural Resources, and Water
  - Rep. Mark Owens, Co-chair, Interim House Committee on Agriculture, Land Use, Natural Resources, and Water

- Sen. Jeff Gloden, Chair, Interim Senate Committee on Natural Resources and Wildfire
  - Sen. Todd Nash, Vice Chair, Interim Senate Committee on Natural Resources and Wildfire
- Emailing advisory committee members,
- Posting on the [DEQ event calendar](#)

## Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).

## Supporting documents

The Technical Support document can be found linked on the [Three Basin Rule 2025 rulemaking webpage](#).

# Draft rules – edits shown

## Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

### DIVISION 41 WATER QUALITY STANDARDS: BENEFICIAL USES, POLICIES, AND CRITERIA FOR OREGON

#### 340-041-0350

#### The Three Basin Rule: Clackamas, McKenzie (above RM 15) & the North Santiam

(1) In order to preserve or improve the existing ~~high-quality~~high-quality water for municipal water supplies, recreation, and preservation of aquatic life, new or increased waste discharges must be prohibited, except as provided by this rule, to the waters of:

(a) The Clackamas River Subbasin;

(b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);

(c) The North Santiam River Subbasin.

(2) Except as otherwise provided for in this rule, this rule becomes effective and applies to all permits pending or applied for after the date of filing with the Secretary of State.

(3) Special Definitions. The following special definitions apply to this rule:

(a) "Waste Discharges" are defined to mean any discharge that requires ~~and~~ NPDES permit, WPCF permit, or 401 Certification. Individual on-site sewage disposal systems subject to issuance of a construction-installation permit; domestic sewage facilities that discharge less than 5,000 gallons per day under WPCF permit; biosolids land applied within agronomic loading rates pursuant to OAR 340-050; and reclaimed domestic waste water land applied at agronomic rates pursuant to OAR 340-055 are excluded from this definition.

(b) "Existing Discharges" are defined as those discharges from point sources which existed prior to January 28, 1994;

(c) "Existing Facilities" are defined as those for which construction started prior to January 28, 1994 and facilities permitted under section (8)(d). Where existing facilities are exempted from requirements placed on new facilities, the exemption applies only to the specific permit(s) addressed in the subsection which allows the exemption;

(d) "New" NPDES and WPCF permits are defined to include permits for potential or existing discharges which did not previously have a NPDES or WPCF permit, had an individual WPCF permit but now require an NPDES permit under (8)(d) of this rule, and existing discharges which have a ~~permit~~, but request an increased load limitation. A

permitted onsite sewage disposal system that is not proposing to expand or increase flow or waste strength and is required to obtain a new WPCF-Onsite permit as a result of a system failure or necessary repairs, is not a "New" permit for purposes of this rule;

(e) "Agronomic Loading Rate" means the application of biosolids or reclaimed effluent to the land at a rate which is designed to:

(A) Provide the quantity of plant nutrients, usually nitrogen, needed by a food crop, feed crop, fiber crop, cover crop or other vegetation grown on the land; and

(B) Minimize the quantity of nitrogen or other nutrients from land applied materials that pass below the root zone of the crop or vegetation grown on the land to groundwater.

(f) "Biosolids" means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemical stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application;

(g) "Reclaimed Wastewater" means treated effluent from a domestic wastewater treatment system which, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.

(h) "No measurable lowering of water quality" means:

(A) For temperature, insignificant temperature increases authorized under OAR 340-041-0028(11) and (12)

(B) For dissolved oxygen, up to 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach so long as there are no adverse effects on aquatic life;

(C) For other pollutants, use of no more than 1.0% of assimilative capacity per discharge and no more than 2.5% of assimilative capacity cumulatively for multiple discharges;

(4) To respond to emergencies or to otherwise avoid imminent serious danger to public health or welfare, the Director or designee may allow lower water quality on a short-term basis.

(5) The Director or a designee may renew or transfer NPDES and WPCF permits for existing facilities. Existing facilities with NPDES permits may not be granted increases in their permitted mass load limitations. The following restrictions and exceptions apply:

(a) The Department may conduct an inspection prior to permit renewal. Existing sources with general permits that are found not to qualify for a general permit, and who wish to continue discharging, must apply for an individual permit;

(b) Fish hatcheries (General Permit 300) and log ponds (General Permit 400) are required to apply for an individual permit at the time of permit renewal;

(c) Additional industrial, confined animal feeding operations, or domestic waste loads that are irrigated on land at agronomic rates or that otherwise meet the conditions of section (7) of this rule ~~is not be~~are not considered to be an increase in the permitted wasteload.

(6) The Director or a designee may issue the following General Permits or Certifications subject to the conditions of the Permit or Certification:

(a) Stormwater construction activities (General Permits 1200C and 1200CA);

(b) Underground storage tank cleanups using best available treatment technology (General Permit 1500);

(c) Non-contact cooling water (General Permit 100);

(d) Filter backwash (General Permit 200);

(e) Boiler blowdown water (General Permit 500);

(f) Suction dredging (General Permit 700) only in portions of the basins that are not designated as Scenic Waterways under ORS 390.805 to 390.925;

(g) Federal Clean Water Act Section 401 water quality certifications.

(7) Long-term general and individual stormwater permits may be allowed as required by State and/or Federal law. The following requirements apply:

(a) New stormwater discharge permit holders must maintain a monitoring and water quality evaluation program that is effective in evaluation of the in-stream water quality impacts of the discharge; and

(b) When sufficient data is available to do so, the Department will assess the water quality impacts of stormwater discharges. Within a subbasin, if the proportion of total degradation that is contributed by the stormwater is determined to be significant compared to that of other permitted sources, or if the Department determines that reducing degradation due to stormwater is cost-effective when compared to other available pollution control options, the Department may institute regulatory mechanisms or modify permit conditions to require control technologies and/or practices that result in protection that is greater than that required Statewide.

(8) Industrial waste discharge sources, confined animal feeding operations, and domestic sewage treatment facilities must meet the following conditions:

(a) No new NPDES permits for ~~new~~ industrial or ~~new~~ confined animal feeding operation waste discharges, or ~~new~~ domestic sewage treatment facilities may be issued, except as allowed under sections ~~(3)~~, (4), (5), ~~and~~ (6), and (8)(d) of this rule;

(b) The Department may issue a new WPCF permits for an new industrial or confined animal feeding operation waste discharges provided:

(A) There is no waste discharge to surface water; and

(B) All groundwater quality protection requirements of OAR 340-040-0030 are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held prior to Commission action on the request.

(c) The Department may issue a new WPCF permits for a new domestic sewage treatment ~~facilities~~ facility provided there is no waste discharge to surface water and provided:

(A) All groundwater quality protection requirements of OAR 340-040-0030 are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held and the permit application will be evaluated according to paragraphs (B) and (C) of this subsection;

(B) The Commission finds that the proposed new domestic sewage treatment facility provides a preferable means of sewage collection, treatment and disposal as compared to individual on-site sewage disposal systems. To be preferable, the Commission must find that one of the following criteria applies:

(i) The new sewage treatment facility will eliminate a significant number of failing individual on-site sewage disposal systems that cannot be otherwise reliably and cost-effectively repaired; or

(ii) The new sewage treatment facility will treat domestic sewage that would otherwise be treated by individual on-site sewage disposal systems, from which the cumulative impact to groundwater is projected to be greater than that from the new facility; or

(iii) If an individual on-site sewage disposal system, or several such systems, would not normally be utilized, a new sewage treatment facility may be allowed if the Commission finds that the social and economic benefits of the discharge outweigh the possible environmental impacts.

(C) Applicants for domestic wastewater WPCF permits must meet the following requirements:



(i) Application must be for an individual permit; and

(ii) The proposed discharge must not include wastes that incapacitate the treatment system; and

(iii) The facility must be operated or supervised by a certified wastewater treatment plant operator as required in OAR 340-049-0015, except as exempted by ORS 448.430; and

(iv) An annual written certification of proper treatment and disposal system operation must be obtained from a qualified Registered Sanitarian, Professional Engineer, or certified wastewater treatment system operator.

(d) If DEQ determines that the operation of a new or existing domestic sewage treatment facility is likely to result in the functional equivalent of a direct discharge, DEQ may issue a new NPDES permit for that discharge, provided:

(A) the permit includes necessary conditions to comply with groundwater quality protection rules in OAR chapter 340 division 040;

(B) The discharge will result in no measurable lowering of water quality unless the facility demonstrates and the Commission concurs that the action is necessary to accommodate important economic or social development.

(9) The Environmental Quality Commission may investigate, together with any other affected State agencies, the means of maintaining at least existing minimum flow during the summer low flow period.

**Statutory/Other Authority:** ORS 468.020, 468B.030, 468B.035 & 468B.048

**Statutes/Other Implemented:** ORS 468B.030, 468B.035 & 468B.048

**History:**

DEQ 2-2007, f. & cert. ef. 3-15-07

DEQ 17-2003, f. & cert. ef. 12-9-03

# Draft rules – edits incorporated

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(d) If DEQ determines that the operation of a new or existing domestic sewage treatment facility is likely to result in the functional equivalent of a direct discharge, DEQ may issue a new NPDES permit for that discharge, provided:

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