



Memorandum

Date: Sept. 2, 2025

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item D, informational item: Three Basin Rule 2025
Sept. 11-12, 2025, EQC meeting

Purpose and importance of item

The Oregon Department of Environmental Quality will provide an update on the rulemaking to revise the Three Basin Rule, a regulation containing provisions specific to the Clackamas, North Santiam and McKenzie watersheds. This rulemaking is designed to protect drinking water and other beneficial uses. DEQ is updating the rule at the Environmental Quality Commission's direction in response to Marion County's 2024 rulemaking petition. The objective of the rulemaking is to allow DEQ to issue new National Pollution Discharge Elimination System permits to domestic sewage treatment facilities in limited circumstances, which is currently not allowed by the Three Basin Rule. Proposed amendments ensure that the Three Basin Rule is consistent with the Supreme Court's *Maui* decision, which concluded NPDES permits are necessary when there are discharges to the ground that are the functional equivalent of direct discharges to surface water. The rule amendments will allow domestic sewage facilities to obtain NPDES permits to ensure that the discharges protect the high-quality water of the three basins.

Prior EQC 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 to obtain an NPDES permit for a proposed new wastewater treatment plant in Mill City, which is currently prohibited by the regulation. In November 2024, exercising its authority, EQC directed DEQ to initiate rulemaking proceedings to amend the Three Basin Rule to allow NPDES permits in limited circumstances consistent with the stated objectives of the rule.

Background

The EQC adopted the Three Basin Rule in 1976 to protect drinking water supplies for downstream communities by prohibiting any new waste discharges into the three basins. The current rule only allows DEQ to issue Water Pollution Control Facility permits for new domestic sewage treatment facilities. WPCF permits do not allow discharges to surface water.

Due to a recent U.S. Supreme Court ruling (*County of Maui v. Hawaii Wildlife Fund et al.*, also referred to as the *Maui* Decision), any groundwater discharge that is a "functional equivalent" to a surface water discharge must be issued an NPDES permit. Because the Three Basin Rule does not currently allow new NPDES permits, any new or existing WPCF facilities that are likely to be a functional equivalent to a surface water discharge may not have a path to treat and discharge wastewater. DEQ's proposed rule amendments

Translation or other formats



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provide a pathway for these facilities to obtain an NPDES permit if DEQ determines that the discharge is likely to be a functional equivalent to a direct discharge to surface waters.

Rulemaking advisory committee

Following EQC's decision to direct DEQ to amend the Three Basin Rule, DEQ convened a rulemaking advisory committee representing: 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.

RAC members provided invaluable input to DEQ on proposed rule concepts and language, as well as on the draft fiscal impact statement. This input is reflected in the public notice package that is currently available as part of the open public comment period.

Key issues

Functional equivalency

The proposed rule amendments serve the purpose of allowing DEQ to issue an NPDES permit for a functional equivalent to a direct discharge for domestic sewage treatment facilities. The proposed rule will allow NPDES permits for domestic sewage treatment facilities if DEQ determines that a discharge to the ground is likely to be a functional equivalent to a direct discharge, thereby ensuring protection of water quality.

Conditions for issuing an NPDES permit

Proposed rules require that all NPDES permits contain requirements that meet Groundwater Protection Rules at OAR Chapter 340 Division 40. These requirements ensure that any new discharge to the ground does not increase pollutant levels in groundwater above background concentrations.

The primary policy consideration during the rulemaking was the level of surface water quality protection allowed under the rule. DEQ is proposing to enable the issuance of NPDES permits with "no measurable lowering" of water quality. This level of protection is more stringent than DEQ's protection of high-quality water throughout Oregon, but it uses a similar calculation. As a result, high-quality waters in the three basins receive greater protection than the rest of Oregon and provide an approach for the water quality permitting program to be able to implement this provision consistently.

Some RAC members expressed a preference for the rules to allow "no lowering" of water quality. In considering these two approaches, DEQ included "no measurable lowering" in the draft rules for public comment because DEQ anticipates that other conditions typically in an NPDES permit, including technology-based limits, water quality-based limits that protect beneficial uses, and conditions to meet groundwater protection rules, will protect or improve the current water quality. Moreover, the rules allow communities to install more modern treatment, which removes more pollutants than existing systems.

Other potential rule revisions

DEQ considered rule language that would allow mass load increases for the six domestic sewage treatment facilities that had NPDES permits before 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 did not include such a provision in the draft rules and could consider incorporating this rule concept during a future rulemaking, if needed. DEQ also considered rule revisions to allow a direct discharge when a direct discharge is found to be more protective than an indirect discharge. However, there was concern among a broad range of RAC members

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that allowing a direct discharge would not be protective of the water quality in the three basins. DEQ did not include such a provision in the draft rules.

Onsite revisions

DEQ is also proposing to streamline the onsite WPCF permitting process in the three basins. Under the current rule, some existing onsite facilities that wish to repair their failing septic systems must get EQC approval. The EQC process requires additional time and resources for straightforward system repairs that are more protective than current systems. The proposed rule revision will help move necessary onsite repairs and replacements forward more efficiently.

EQC involvement

DEQ intends to bring a rule proposal for commission action at the November 2025 EQC meeting.

Supporting materials

- A. [Notice of Proposed Rulemaking](#)
- B. [Technical Support Document](#)

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