

# Oregon Environmental Quality Commission Meeting

Dec. 2, 2025

## Rulemaking Action Item B Three Basin Rule

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# DEQ recommendation to the EQC

DEQ recommends the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

## Language of proposed EQC motion:

*"I move that the Environmental Quality Commission adopt the proposed rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules."*

## Introduction

DEQ is proposing 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 U.S. Supreme Court's 2020 *County of Maui v Hawaii Wildlife Fund* (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 NPDES permits that are more stringent than for high-quality waters in the rest of Oregon.

DEQ is also 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.

# Statement of need

## Functional equivalency

### What need would the proposed rule address?

The proposed rule would address the tension between the Three Basin Rule and the Supreme Court's *Maui* decision. The *Maui* decision requires discharges of wastewater to the ground that are the "functional equivalent" of a direct discharge require an NPDES permit. The Three Basin Rule prohibits new NPDES permits in the Clackamas, North Santiam and McKenzie basins. If DEQ determines that a wastewater discharge to the ground is a functional equivalent, DEQ will have no means of permitting that 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 from domestic sewage treatment facilities it determines are likely to be functionally equivalent of a direct discharge.

## 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 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 high quality waters in 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 only proposing to repair or replace a failing onsite system.

### **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 from 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 results 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 if the EQC’s pre-approval is not required. The proposed rule revision will help move necessary onsite repair and replacement projects 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 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 to the surface water 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 if the discharges are 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 unclear if DEQ would have the need to issue NPDES permits for direct discharges. With respect to allowing mass load increases for existing NPDES permits, DEQ’s evaluation indicated that Three Basin Rule restrictions didn’t seem to be the primary limiting factor. 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>

## **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. Before 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 must either find a discharge option that is not a functional equivalent, which may be prove technically or financially infeasible, or they would lack the option to treat and discharge wastewater. DEQ would not have a path 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. These increased costs are not a result of rule amendments themselves. They are simply the costs of operating under an NPDES permit rather than a WPCF permit. NPDES permits frequently require more influent and effluent monitoring than WPCF permits. NPDES permits may also require monitoring of receiving water, 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. DEQ renews NPDES permits on a five-year basis instead of a 10-year basis for WPCF permits, which increases the frequency and cost of permit application fees for local governments and businesses affected 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 a NPDES permit. A facility seeking to replace or upgrade a current treatment system or build 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. These options are likely more costly and may be unaffordable or impractical for communities and businesses affected by the rule. The expenses likely outweigh the increased costs of monitoring and implementing the proposed rule changes.



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 replacements 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 include 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 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. These higher costs are not the result of the rule amendments, but simply the result of switching from a WPCF permit to an NPDES permit. 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 samples for 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

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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.

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.

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 other local governments that 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. As already noted, this is not the result of the rule amendments, but the reality of operating under a NPDES permit instead of a WPCF 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 for 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, implementation of the proposed rule may result in increased administration associated with operating under an NPDES permit rather than a WPCF permit. This is not the result of the rule amendments, but the reality of operating under 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.

# 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

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 statewide 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 shared information about the rulemaking through an informational item at the September 2025 EQC meeting.

# 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)
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)

Non-member Government Advisors (cont.)	
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. 11, 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 22,431 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - Water Quality Standards
- 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](#)

# Public hearing

DEQ held a public hearing on Sept. 15, 2025. DEQ received one oral comment at the hearing. Later sections of this document include a summary of the 16 comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

## Presiding officers' record

### Hearing 1

Date	Sept. 15, 2025
Place	Virtual via Zoom
Start Time	4 p.m.
End Time	4:59 p.m.
Presiding Officer	Kaegan Scully-Engelmeyer

### Presiding officer:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments.

Ten people attended by webinar. One person commented orally. No one submitted written comments at the hearing.

# Summary of public comments and DEQ responses

## Public comment period

DEQ accepted public comment on the proposed rulemaking from Aug. 12, 2025, until 5 p.m. on Sept. 21, 2025.

For public comments received by the close of the public comment period, the following table organizes comments into 16 topic categories with cross references to the commenter number. DEQ's response follows each comment summary. Original comments are on file with DEQ.

DEQ carefully evaluated each comment received by the close of the public comment period and decided to not change the proposed rules.

## List of Commenters

#	Name	Organization	Comment Number	Hearing #
1	John Borden		2, 3	
2	Jerry Linder	Oregon Association of Clean Water Agencies	4	
3	Mayor Brian Quigley	City of Stayton	1	
4	Roger Nyquist, William Tucker, Sherrie Sprenger	Linn County	1	
5	Mayor Timothy L. Kirsch Council President Janet Zeyen-Hall Councilor Dawn Plotts Councilor Misty Strasser Councilor Mike Van Atta Councilor Steve Winn City Recorder Stacie Cook Public Works Supervisor Rustin Foltz	City of Mill City	1	
6	Keri Morin Handaly	Confederated Tribes of Grand Ronde	5, 6, 7, 8, 9	
7	Mary Logalbo	Clackamas River Basin Council	5, 8, 10	1
8	Mary Stites  Lindsey Hutchison	Northwest Environmental Defense Center  Willamette Riverkeeper	11, 12, 13, 14, 15	



#	Name	Organization	Comment Number	Hearing #
9	Danielle Bethell Colm Willis Kevin Cameron	Marion County Board of Commissioners	1	
10	Krishna Namburi	City of Salem	1	
11	AJ Thorne, PE	City of Sandy	4	
12	Ken Woodward		1	
13	Steven A. Anderson	West Salem Neighborhood Association	1, 8, 16	
14	Dale Weisse		1	
15	Mike Masters	Eugene Water and Electric Board	1, 5	
16	Brian Nicholas	Marion County Public Works	1, 5	

### Comment Topic #1. Statement of support

DEQ received comments in this category from commenters 3, 4, 5, 9, 10, 12, 13, 14, 15, 16

DEQ should adopt the rules as proposed. Comments in support discussed the following:

- Noted that proposed changes resolve conflicts between state and federal requirements (i.e., with the *Maui* decision) (Commenters 3, 4, 5, 9, 16).
- Proposed changes will allow wastewater projects to move forward with strong water quality protections (3, 4, 5, 9, 10, 12, 14, 15, 16).
- Current rules make it challenging for upgrades to be completed that improve quality of discharges to the river, which impacts drinking water (3).
- Flexible regulations allow communities to invest in treatment facilities that protect public health and ecosystems and allow communities to thrive (3, 9).
- Rule revisions will allow recovery from 2020 Wildfire (4, 5, 9, 15).
- The future of communities in the North Santiam Canyon is dependent upon EQC approval of the Three Basin Rule amendments (5).
- The Oregon Legislature supported wastewater improvements by passing House Bill 1189 and providing infrastructure funding (9).
- The amendments will protect state investments in water infrastructure (9).
- DEQ kept the scope of the rulemaking narrow (15).
- Rule continues to prohibit discharge from mining, confined animal feeding operations and industrial activities (16).
- Rule continues to prohibit increases pollutant loading (16).

- Rule continues to require stringent groundwater protection requirements (16).
- Amendments apply solely to municipal wastewater treatment systems (16).
- The permitting pathway that draft rule language allows provide compliance standards more stringent than the current pathway (16).

## **Response**

DEQ appreciates the support of the commenters on the proposed Three Basin Rule amendments.

## **Comment Topic #2. Accommodation for important economic or social development**

DEQ received comments in this category from commenters 1 and 7.

The proposed provision allowing for a measurable lowering of water quality if EQC deems it necessary for important social and economic development provides a loophole. DEQ should try to anticipate potential future events and applications under that provision. The provision inadvertently favors upstream development needs over the long-term need to provide clean cool water for downstream populations.

## **Response**

DEQ appreciates the commenters' concern regarding this provision. In response, DEQ notes the following:

- The referenced provision is similar to and consistent with the existing Three Basin Rule provision at OAR 340-041-0350(8)(c)(B)(iii) that allows a Water Pollution Control Facility for a new sewage treatment facility if the EQC finds that the social and economic benefits of the discharge outweigh the possible environmental impacts.
- Federal antidegradation requirements, which are similar to the proposed provision, are intended to accommodate new discharges, as long as there is a robust public process to determine whether a lowering of water quality is necessary. This process is similar to what is outlined in [DEQ's Antidegradation Internal Management Directive](#) and would include a public comment period to seek local input and intergovernmental coordination before the EQC makes its decision.
- Any NPDES permit issued under the proposed rule amendments will have limits that meet water quality standards to ensure that beneficial uses, such as drinking water, are protected in the receiving water and downstream waters. Additionally, any NPDES permit will need to meet current antidegradation requirements to protect High Quality Waters.
- Additional requirements that will be included in any NPDES permit issued under provision (8)(d) of the proposed rule will further protect water quality, including groundwater protection requirements and technology-based effluent limits. Moreover, by only allowing NPDES permits for discharges to the ground that are the functional equivalent to direct discharges, DEQ is ensuring that beneficial uses are protected after further attenuation of pollutants before it reaches the surface water.

## **Comment Topic #3. Rule amendments should anticipate future events and applications**

DEQ received comments in this category from commenter 1.

DEQ should try to anticipate potential future events and applications that will require amendments to the Three Basin Rule.

## **Response**

DEQ limited its amendments to the Three Basin Rule to allow DEQ to issue NPDES permits for discharges that DEQ finds to be functionally equivalent to a direct discharge. DEQ focused its amendments on that topic in part to be consistent with EQC's directive to DEQ in November 2024 to amend the Three Basin Rule to allow NPDES permits in limited circumstances consistent with the objectives of the rule. DEQ considered other potential rule options during the rulemaking process and vetted these options with the rule advisory committee, which consisted of environmental groups, the Confederated Tribes of Grand Ronde, municipalities, drinking water providers, business interests and wastewater treatment operators. DEQ heard from many rule advisory committee members that this approach was reasonable. See the response to Comment #4.

## **Comment Topic #4. Revise prohibition on mass load increases for existing facilities**

DEQ received comments in this category from commenters 2 and 11.

DEQ should consider proposed rule language that allows new mass load limits for existing facilities (those constructed prior to 1994) as long as they undergo antidegradation analysis. Such amendments will provide regulatory relief to certain communities in the three basins that are needed to accommodate growth and provide infrastructure solutions that these communities can afford. The Three Basin Rule requires communities to meet mass load limits that were established decades ago and cannot accommodate growth that has occurred.

Commenter 2 provided proposed rule language to OAR 340-041-0350(5) that would remove the prohibition on mass load increases and allow such increases if they meet groundwater protection requirements, are consistent with DEQ's antidegradation policy and implementation guidance and would meet water quality standards; commenter #11 supported this language in their comments.

Commenter 11 provided additional details regarding the need to allow mass load increases for the City of Sandy.

## **Response**

During the rule advisory committee process, DEQ considered an option to allow mass load increases for existing facilities, as long as there was no measurable lowering of water quality. DEQ's evaluation indicates Three Basin Rule restrictions were not the primary limiting factor in addressing the circumstances at these facilities. Other factors such as dissolved oxygen impairment and low receiving stream flows for some facilities would limit DEQ's ability to allow mass load increases regardless of any amendments made to the Three Basin Rule. As a result, DEQ decided not to revise the provision prohibiting mass load increases for existing facilities in proposed rule language. DEQ may evaluate the option to revise the rule to allow mass load increases if the need arises in the future.

### **Comment Topic #5. Direct discharges, additional treatment and mass load increases**

DEQ received comments in this category from commenter 6, 7, 15, 16.

Commenters support that DEQ did not move forward with rule revisions that would have allowed direct discharges to rivers or mass load increases in existing NPDES permits. Commenter 6 also supports that DEQ's proposed rules require additional filtration treatment before reaching the river.

#### **Response**

DEQ appreciates the support from commenters regarding these issues.

### **Comment Topic #6. Antidegradation**

DEQ received comments in this category from commenter 6.

Commenter appreciates that DEQ is creating a new antidegradation policy tier with additional protections for the relatively pristine headwaters of many Oregon waterways and desires this protection be afforded to all waterways in relatively pristine condition, (Tier 2.5).

#### **Response**

DEQ appreciates the commenter's support. DEQ would like to clarify that the level of protection DEQ is proposing for the three basins under the rule amendments is similar to what other states include as a Tier 2.5 policy. DEQ does not currently have, and is not creating, a new Tier 2.5 level of protection under Oregon's antidegradation policy. This level of protection is specific to the waters within the three basins subject to this rule.

### **Comment Topic #7. Land application rules**

DEQ received comments in this category from commenter 6.

Commenter requests DEQ include classification of effluent approved for use in Three Basin Rule section 5(c) regarding land application of industrial, confined animal feeding and domestic waste.

#### **Response**

DEQ is not addressing section 5(c) of the Three Basin Rule in this rulemaking. Classification of effluent for land application is outside the scope of the EQC's direction to DEQ at its November 2024 meeting, which was only to amend the rule to allow NPDES permits under limited circumstances consistent with the objectives of the rule. Land application requirements are described in Oregon Administrative Rules [Chapter 340, Division 50](#).

### **Comment Topic #8. Emerging contaminants of concern**

DEQ received comments in this category from commenter 6, 7, 13.

Commenters encourage DEQ to monitor for broader spectrum of contaminants than currently required including emerging contaminants of concern, or ECOCs. Commenter 6 offered proposed rule amendments that would require DEQ or a potential permit holder to take upstream and downstream background measurements of emerging contaminants of concern.

Commenter 6 requested the Three Basin Rule acknowledge DEQ's authority to require technology that remove ECOCs.

Commenter 6 proposed rule language amendments to proposed rules at OAR 340-041-0350(8)(d). The suggested rule language would require DEQ to conduct an annual risk assessment to review and provide feedback regarding permit conditions and pollutant management strategies that may require adaptive management or use of technology. The commenter also suggested language that would require the permit holder to monitor upstream and downstream of the discharge location that includes ECOCs, and to compare instream monitoring results to the effluent discharged from the facility for potential to cause adverse impacts to aquatic organisms. Finally, the commenter proposed rule language at OAR 340-041-350(8)(E) stating that DEQ may institute regulatory mechanisms or modify permit conditions to require additional treatment technologies or practices when data indicate the effluent may cause harm to state or federal listed species of concern.

Commenter 6 also requested that DEQ work with the Governor's Office to manage discharges from a basin perspective and model ECOCs as total maximum daily loads.

Commenter 13 supported DEQ's proposed rule amendments, but requested the rule require no discharge of perfluoroalkyl substances, or PFAS, also called forever chemicals, to protect downstream drinking systems.

## **Response**

DEQ appreciates the comments and suggested rule amendments provided by Commenter 6. DEQ understands the ongoing concern about ECOCs. DEQ considered a number of factors in the process of developing the proposed rule amendments that should control discharge of ECOCs from any domestic sewage treatment facility that is subject to the proposed rule amendments. DEQ also has multiple ongoing efforts to address ECOCs as the science on emerging contaminants continues to evolve.

Any NPDES permit issued under proposed rule amendments will have multiple controls that could reduce ECOCs prior to any treated effluent reaching surface water. First, NPDES permits are subject to technology-based controls. Specifically, in the Willamette Basin, technology-based limits are more stringent than they are in the rest of Oregon and most of the rest of the United States. These limits are outlined in the "Minimum Design Criteria" in the [basin-specific water quality standards for the Willamette Basin](#). Second, by only allowing NPDES permits for discharges to the ground that are functionally equivalent to direct discharges, there will be attenuation of contaminants before treated effluent eventually reaches surface water. Additionally, the proposed rule amendment only allows indirect discharges for domestic sewage treatment facilities. DEQ did not move forward with rule revisions that would have allowed direct discharges to surface water or mass load increases in existing NPDES permits.

DEQ has a number of efforts related to ECOCs statewide. These efforts include a [PFAS Strategic Plan](#), which was published in June 2025 and the agency-wide [Toxics Reduction Strategy](#), published in 2018. In addition, drinking water providers are working with Oregon

Health Authority and DEQ to monitor and identify PFAS contamination in drinking water sources around the state.

### **Comment Topic #9. Pollution Control Technology**

DEQ received comments in this category from commenter 6.

Commenter encourages DEQ to examine modern technological requirements in NPDES permits to remove persistent, bioaccumulative and toxic contaminants, and to create a savings plan to finance installation of such technology throughout the state.

#### **Response**

DEQ appreciates the suggestion for managing discharges of toxic substances through technological requirements in the comment. The suggestion to examine modern technological requirements in NPDES permits and to create a savings plan to finance installation of technology appears to be a general suggestion statewide, which is outside the scope of revisions to the Three Basin Rule.

### **Comment Topic #10. Proposed amendments lessen current protections**

DEQ received comments in this category from commenter 7.

Commenter is concerned that aspects of the rule amendment will lessen current protections and negatively impact drinking water sources. The commenter requested that DEQ keep the rule as is or conduct further investigation to ensure waters are protected in the future.

#### **Response**

DEQ is revising the Three Basin Rule at the direction of EQC in November 2024. The amended rule will continue to protect high quality waters of the three basins by allowing wastewater dischargers to obtain NPDES permits if DEQ finds that a discharge to the ground is a functional equivalent to a direct discharge. As noted in response to comment #1, any NPDES permit issued under the amendments in Section (8)(d) of the rule will have conditions that protect and may enhance water quality by allowing communities to move forward with wastewater treatment improvements. These conditions include:

- Limits that meet water quality standards to ensure that beneficial uses, such as drinking water, are protected in the receiving water and downstream waters.
- Groundwater protection requirements.
- Technology-based effluent limits.
- Only allowing NPDES permits for discharges to the ground, to ensure there will be attenuation of contamination before it reaches the surface water.
- NPDES permit requirements provide more robust oversight and range of potential remedies than a WPCF permit.
- Limits that ensure there is “no measurable lowering of water quality,” which is more stringent than requirements to protect high quality waters in other areas of the state.

#### **Comment Topic #11. Three Basin Rule is not at odds with the *Maui* decision.**

DEQ received comments in this category from commenter 8.

Commenter suggests the Three Basin Rule is not at odds with the Supreme Court's holding in the *Maui* decision. The commenter suggests that as long as a new facility is not constructed in proximity to the waters of the three basins, there is no need for an NPDES permit. The commenter suggests that any new WPCF-permitted facility can either (1) treat their wastewater in a manner that does not result in any new or additional pollutant loading and/or (2) not place their wastewater treatment systems in a location that would serve as a "functional equivalent" of a discharge to a water of the United States within the three subbasins. Commenter notes that the *Maui* decision should not be used as the reason behind degrading the Three Basin Rule.

#### **Response**

The *Maui* decision provided clarity that an NPDES permit would be required under certain factual scenarios that may not have previously been considered a surface water discharge. The Three Basin Rule prohibits new NPDES permits. Finding alternate locations for a wastewater treatment discharge that would allow DEQ to issue a WPCF permit may not be feasible in some circumstances due to land use requirements, access, cost, geology or other reasons and it is for these policy reasons that this change is proposed. Under the existing rule, if DEQ finds a discharge covered under an existing WPCF permit is functionally equivalent, there would be no pathway to allow such a discharge to continue. As a result, the facility would not be permittable unless and until a non-functionally equivalent discharge was available. As already noted, multiple circumstances could make changing the discharge infeasible. By allowing an NPDES permit for functionally equivalent discharges, DEQ will be able to provide limits that protect designated uses and ensure protection of water within the three basins and further downstream.

#### **Comment Topic #12. New sewer systems allowed under existing permits as long as the pollutant load does not increase.**

DEQ received comments in this category from commenter 8.

Commenter suggests that existing facilities that have concerns they may be functionally discharging into surface waters have multiple ways they can upgrade their wastewater treatment plants while complying with the Three Basin Rule. Commenter notes that treatment upgrades should be made when necessary and recognize that higher levels of treatment should be made when necessary.

#### **Response**

See response to Comment 11. The commenter does not provide clarity on how an existing facility with a functionally equivalent discharge could upgrade wastewater treatment and continue to be permitted through a WPCF permit.

#### **Comment Topic #13. Rule amendments based on hypothetical conflicts that do not currently exist**

DEQ received comments in this category from commenter 8.

Commenter disputes DEQ's claim that the rule is needed in case DEQ finds that existing WPCF facilities are functional equivalents to direct discharges. Commenter notes that because of modern advances in technology, changed circumstances should not result in new direct or functionally equivalent discharges. Commenter notes that while changes cost money, they will protect waters in the future. Commenter claims that the current rule already allows for improving wastewater treatment systems and that allowing a measurable lowering of water quality is in opposition of the rule. Commenter also notes that it is not known whether businesses are functionally discharging and if NPDES permits are needed.

## **Response**

DEQ wishes to clarify two points related to this comment. First, the proposed rule does not allow for any direct discharge. DEQ considered rule amendments that would have allowed for direct discharges in certain circumstances, but did not move forward with these amendments because of input from the RAC that they were undesirable. Moreover, it was not clear that they were necessary.

Secondly, the proposed rule only allows NPDES permits for functionally equivalent indirect discharges from municipal sewage treatment systems, not from industrial sewage treatment systems. Thus, businesses are not eligible for NPDES permits under the proposed amendments.

Please see responses to comments #11 and 12 for DEQ's rationale of why the rule changes are needed.

## **Comment Topic #14. Proposed definition of "no measurable lowering of water quality" allows for a measurable lowering of water quality and violates Oregon's antidegradation policy and the Clean Water Act**

DEQ received comments in this category from commenter 8.

Commenter suggests that an allowance for "no measurable lowering of water quality" would allow the North Santiam River to be further impaired for temperature and dissolved oxygen. Commenter notes that sections (A) and (B) in the definition of that term are consistent with the state's antidegradation policy, but that (C) is not. Commenter requested clarity on several questions related to the definition of "no measurable lowering of water quality." The commenter requests clarity on whether "2.5% of assimilative capacity cumulatively for multiple discharges" is for all discharges on the system or just from one entity. The commenter notes that DEQ is asking the public to consent to added pollution without quantifying the type and magnitude of that pollution. The commenter notes that DEQ is unclear on how it will address contaminants of existing concern. Commenter requests that the definition of "no measurable lowering of water quality" be removed.

## **Response**

DEQ agrees that if a waterbody is already impaired for any pollutant, any NPDES permit cannot result in further degradation to the waterbody. As this concern is something that is required for any NPDES permit regardless of location, it is not addressed directly in the Three Basin Rule. Any NPDES permit issued under the proposed amendments to the Three Basin Rule will ensure there is no further degradation for pollutants listed as impaired in the receiving water.



DEQ notes that implementation of “no measurable lowering of water quality” for temperature and dissolved oxygen is consistent with [DEQ’s Antidegradation Internal Management Directive](#).

Implementation of “no measurable lowering of water quality” for other pollutants will be similar to [how DEQ implements its antidegradation policy for de minimis lowering of water quality](#), but with more stringent requirements as to what constitutes a *de minimis* lowering of water quality. As is consistent with that policy, cumulative impacts are measured for all sources to a waterbody.

Provisions for allowing “no measurable change” are referred to in the existing Three Basin Rule OAR 340-041-0350 (8)(b) and 340-041-0350 (8)(c) but are undefined. By including a practical definition of how DEQ will determine “no measurable lowering of water quality,” consistent with the Antidegradation Policy Implementation guidance, DEQ is providing consistency and increased transparency as to how it plans to implement NPDES permits under proposed rule amendments.

**Comment Topic #15.Support for revision related to repairs and upgrades of septic systems without EQC approval.**

DEQ received comments in this category from commenter 8.

Commenter supports the proposed revision allowing repairs or upgrades of onsite septic systems without EQC approval.

**Response**

DEQ appreciates this comment of support.

**Comment Topic #16. Require spill containment basin for NPDES permit holders**

DEQ received comments in this category from commenter 13.

Commenter requests that the rule include a requirement for a spill capture containment basin to ensure there is no direct discharge to the North Santiam River during normal or emergency conditions.

**Response**

DEQ appreciates the comment. DEQ’s current standard NPDES permit conditions already prohibit upsets that would result in direct discharges to receiving waters.

# Implementation

## Notification

The proposed rules would become effective upon filing on approximately Dec. 3, 2025. DEQ would notify affected parties by:

- Posting on DEQ's website
- Email to interested parties on the following DEQ lists through GovDelivery:
  - Water Quality Standards
  - Rulemaking
  - DEQ public notices
  - Water Quality Permits
- Email to all DEQ water quality program staff
- Email to the Three Basin Rule Advisory Committee and Interested Party list

## Compliance and enforcement

Affected parties - operators of domestic sewage treatment facilities in the Clackamas, North Santiam and McKenzie Basins. The proposed rule could require some existing WPCF permittees or new applicants to apply for and obtain NPDES permits. The permittees remain responsible for meeting their current permit requirements and any applicable revisions will be incorporated upon permit renewal or issuance.

DEQ staff - In general, the proposed rule will not impact DEQ staff.

## Measuring, sampling, monitoring and reporting

Affected parties - The proposed rule amendments do not generate additional measuring, sampling, monitoring and reporting requirements for new NPDES permit holders. The proposed rule amendments may generate additional measuring, sampling, monitoring, and reporting requirements for existing WPCF permit holders which must apply for and obtain an NPDES permit.

DEQ staff - The proposed rule amendments do not generate additional measuring, sampling, monitoring and reporting requirements for DEQ staff.

## Systems

The proposed rule amendments do not require changes to DEQ systems.

## Training

Affected parties - The proposed rule amendments do not require additional training for affected parties.

DEQ staff - The proposed rule amendments do not require additional training for DEQ staff.

# Five-year review

## Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).

## 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](#).