

Item D, Rulemaking: Total Maximum Daily Load 2022 Division 42 rulemaking

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Presenting manager: Gene Foster

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Environmental Quality Commission meeting

Feb. 3, 2022

Portland, Oregon

Total Maximum Daily Loads (TMDLs)

TMDLs are science based clean water plans used for cleaning up polluted water to meet water quality standards.

TMDLs are developed for each water body on the state polluted waters list known as the 303(d) list; the Clean Water Act section for listing impaired and threatened waters.

Division 42 TMDL rulemaking schedule



Rulemaking website: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/tmdl2022.aspx>

Division 42 TMDL reasons for rule changes

Reasons for this rulemaking:

- Align the administrative rules with the statute to allow TMDLs by rule and order.
- Predictable and transparent administrative procedures associated with rulemakings
- Policy considerations will result in those issues being considered by the Environmental Quality Commission, DEQ's policy-making body

Division 42 TMDL proposed changes, overview

1. Allow TMDLs to be adopted by rule by the Environmental Quality Commission, consistent to what is currently authorized in ORS 468B.110, in addition to issuing TMDLs by Department order.
2. Add companion rule language addressing circumstance when EPA establishes a TMDL for Oregon waters to specify that the EQC can issue a Water Quality Management Plan by rule to implement EPA's TMDL in addition to Director's authority to issue the WQMP by order.
3. This proposed rulemaking will also include minor changes to update the following rule language to reflect current EPA requirements established by case law:
 1. Clarifying that "daily load is required" to the TMDL definition
 2. Clarifying language to reasonable assurances of implementation

Division 42 TMDL summary of comments

1. Preference to continue Total Maximum Daily Loads and Water Quality Management Plans by department order.
2. Ability to have meaningful judicial review if TMDLs are adopted by rule; it may be more difficult to challenge the TMDL under the proposed draft rule.
3. Discussion regarding the clarity of the draft rule language to clarify that DEQ is doing the work on the behalf of the commission.
4. Preference and clarification in rule that a rule advisory committee will be utilized when future TMDLs are adopted through rulemaking.
5. If doing TMDLs by rule, ensure a robust fiscal impact analysis.

Division 42 TMDL questions?



Crooked River, Oregon

Recommendation

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340, division 42 of the Oregon Administrative Rules.

“I move that the commission adopt the proposed rule amendments in Attachment A as part of Chapter 340, division 42 of the Oregon Administrative Rules.”



Crooked River, Oregon

Thank you



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Rulemaking webpage:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/tmdl2022.aspx>