



State of Oregon
Department of
Environmental
Quality

Water Quality
Division
Community &
Program Asst.

Rulemaking Plan for Graywater Treatment, Disposal, and Reuse OAR Chapter 340 Division 053

Disclaimer

This Rulemaking Plan for OAR Chapter 340, Division 053 describes how rulemaking will be developed, adopted, communicated, and implemented. This plan has been approved by the Department's Internal Rulemaking Team (IRT) and the Water Quality Division Rules Coordinator (DRC). The IRT and DRC recognize that revisions to this plan may need to occur during the rulemaking process and that this plan should not be construed as a final document.

This plan is not meant to limit the rulemaking process and the Department anticipates revising this plan as needed to address additional issues or clarify the rulemaking process.

PROPOSED RULEMAKING

Title of Rulemaking

Graywater Treatment, Disposal, and Reuse - OAR Chapter 340 Division 053.

Scope of Rulemaking

This rulemaking will develop new rules that:

- Satisfy the requirements of HB2080 (2009)
 - Establish a policy that promotes the appropriate reuse of graywater for beneficial uses
 - Identify appropriate beneficial uses and conditions for graywater reuse
 - Describe requirements for graywater treatment, disposal, and reuse systems
 - Prescribe requirements that allow for separate systems for the treatment, disposal, or reuse of graywater
 - Establish appropriate conditions on graywater treatment, disposal, and reuse systems that protect public health and the environment
 - Consider and clarify the requirements of other regulatory programs, including but not limited to: On-site (Division 71), Underground Injection Control (Division 44), and Groundwater (Division 41)
 - Clarify regulatory jurisdiction with other graywater reuse programs, such as indoor graywater reuse
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RULEMAKING TEAM

Team members and representation

Member - Representing	Est. Time	Duration
Lead Administrator: <i>Neil Mullane</i> - Water Quality Division	20 hrs tot.	24 mos.
Lead Manager: <i>Judy Johndohl</i> – Water Quality, Community & Program Assistance	12 hrs/mo. 0.35 FTE	24 mos.
Rulemaking Project Lead: <i>Ron Doughten</i> – Water Quality, Community & Program Assistance	4 hrs/mo.	18 mos.
ODAM/representative:		
<ul style="list-style-type: none"> • <i>Keith Andersen & Nina DeConcini/Mike Kucinski</i> - Western Region & Northwest Region, Water Quality • <i>Mitch Wolgamott/Eric Nigg</i> - Eastern Region, Water Quality • <i>Joni Hammond</i> - Office of the Director • <i>Leah Koss/Les Carlough</i> - Office of Compliance & Enforcement 	4 hrs/mo.	18 mos.
ODAM side agreement participants/representatives:		
<ul style="list-style-type: none"> • <i>Kerry Nelson/Jim Roys</i> - Management Services Division 	4 hrs/mo.	18 mos.
Other:		
<ul style="list-style-type: none"> • <i>Robert Baggett</i> - Eastern Region, Water Quality-onsite • <i>Randall Trox</i> - Western Region, Water Quality-onsite 		

Team roles and responsibilities

Key Team Roles

- Ensure rulemaking complies with legal requirements and policies.
- Complete data collection, stakeholder involvement, consultations, analyses, and options development.
- Review staff reports, rules, supporting documents, and plans. This includes the review of a comprehensive Implementation Plan and Communication Plan for the rule.
- Help determine the number and location of public hearings for rulemaking.
- Follow rulemaking process.

Responsibilities of Team Participants including Project Lead

- Attend meetings regularly or ensure a qualified alternate attends to support positions they take (use of alternates should be minimized).
- Prepare for meetings and consult with management (represented EMT member, PMT, RMT) before meetings and keep them informed of issues and rulemaking progress.
- Represent their programs’ or regions’ interests on issues.
- Discuss with their respective program and region staff and management any issues that were noted during the meetings and solicit their input on those issues and achieve concurrence.
- Discuss with rulemaking team any issues and proposed resolutions that may have been discussed with program and/or region staff.
- Raise issues in a timely manner and ensure issues are documented and resolved as soon as possible.
- Work for consensus in addressing issues, but elevate issues when necessary.

Graywater Rulemaking Plan

- Seek external assistance when the rulemaking team lacks critical information.
- Ensure work products meet agency quality standards.
- Contribute a meaningful amount of work to the rulemaking and complete assignments (role is not simply to monitor or critique others' work).
- Determine additional roles that Advisory Committee and others might have during rulemaking process.
- Review issues identified by stakeholders and ascertain ways to address concerns.
- Identify additional issues and ways to address the issues.

Additional Responsibilities of Project Lead

- Coordinate meetings with Advisory Committee and other stakeholders.
- Consult with Advisory Committee and other stakeholders as needed.
- Facilitate a responsive group process that encourages members to raise issues, and provides for open discussion and resolution.
- Give early notice of rulemaking process to Adam Coutu (fee increases), Yongkie Hurd (fee increases), Stephanie Brandon (web), Art Knight (database), Brian White (communication plan).
- Draft and coordinate development of Rulemaking Plan.
- Oversee implementation of Rulemaking Plan.
- Coordinate development of notice and final rulemaking packages.
- Raise issues beyond the scope of a rulemaking to lead Administrator.
- Coordinate involvement of participating ODAM members.
- Coordinate rulemaking team closure and signature and review processes.
- Discuss proposed rules and *Statement of Need and Fiscal Impact and Economic Impact* with Graywater Advisory Committee prior to public comment.

Other DEQ staff involvement

	Est. Time	Duration
Budget Office – determining fee increases; surcharge amounts; development and approval of Fiscal Impact Statement (<i>Adam Coutu, Yongkie Hurd, Lu Garza</i>)	10 hrs.	24 mos.
Office of Communications and Outreach – Communication plan development (<i>Brian White</i>)	10 hrs.	2 mos.
Water Quality Division – Organizational development (<i>Stephanie Brandon</i>)	120 hrs.	2 mos.

PUBLIC INVOLVEMENT

Advisory Committee Process

Time frame *August 2009* - Solicit stakeholders for Graywater Advisory Committee participants
October 2009 - Select Graywater Rulemaking Advisory Committee
December 2009 - September 2010 - Meet with Advisory Committee 9 to 12 times for 4 to 5 hours (approximately monthly)

Role of Advisory Committee & Stakeholders

The Advisory Committee will consider various technical, public health, environmental, and policy considerations regarding graywater treatment, disposal, and reuse, such as:

- Urban vs. rural environments
- New structures vs. existing structures
- Climatic and environmental implications on graywater use and pathogen survival
- Public exposure considerations
- Groundwater and surface water impacts
- Graywater treatment and storage systems
- Graywater reuse systems
- Permitting requirements

The Advisory Committee will provide recommendations to DEQ on rule contents. The recommendations are advisory only and DEQ will review and make final decisions regarding the proposed rule contents.

The Advisory Committee will review the draft rules as proposed by DEQ prior to publication of notice for public comment.

The Advisory Committee will provide comment on the *Statement of Need and Fiscal and Economic Impact*.

Technical Assistance and Outreach

Contacts and purpose

Larry Knudsen - Department of Justice (DOJ): Legal issues and rule review.

Senator Jackie Dingfelder - State Legislature: Outreach

Senator Brian Boquist - State Legislature: Outreach

Representative Ben Cannon - State Legislature: Outreach

Lynn Schneider - Washington State Department of Health: Technical Assistance

Michelle Robertson - Arizona Dept. of Environmental Quality: Technical Assistance

Communications Plan

Develop Communication Plan

- Work with DEQ's Office of Communication and Outreach (Brian White) to develop plan.
 - Meet with Brian on **4 November 2009** to start developing communication plan.
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Public outreach

- During the course of the rulemaking process discuss issues and proposed rule language with stakeholders involved in the rulemaking process.
 - Use the public notice and comment processes described below to communicate with the public.
 - Include key external constituencies or interested persons list for this rulemaking.
 - Conduct presentations at/participate in stakeholder meetings as necessary.
 - Contact legislators, as determined by DEQ Regional Division Administrators, by mail or email to inform them about any proposed fee changes and surcharge.
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Internal staff

- Communicate with DEQ regional water quality permit staff to solicit input on issues that are noted during rulemaking, and keep staff informed on implementation issues and timeline.
 - Provide updates on rulemaking as necessary to the PMT.
 - Give presentation/training and updates on rulemaking at DEQ staff meetings and workshops as needed.
 - Provide the EQC with an information update on the rulemaking process (Informational Item).
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FEES

Approval of Fees

Fees and fee structure will not be determined until the rules have adopted and the appropriate permits developed during the implementation phase. New fees or increases in existing fees are approved either through the legislature or through DAS. If proposed fees were not approved by the legislature, then DAS approval will be required. DAS requires 30 days for review of proposed fees. DAS approval is required before the start of the public comment period. Fee information sent to DAS: **To Be Determined**.

IMPLEMENTATION PLAN

- Implementation plan** *Target date: March - September 2010*
- Complete a rule implementation plan that addresses both programmatic and regional considerations of rule implementation. Plan will include communication, education, outreach, and web updates needed for implementation.
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DEVELOP NOTICE OF PROPOSED RULEMAKING PACKAGE

Schedule hearings and public comment *Start scheduling: 1 October 2010. The public comment period is scheduled to take place 1 February - 15 March 2011. The public hearings will be approx. 1 March 2011 (Portland), 2 March 2011 (Corvallis/Eugene), 8 March 2011 (Medford/Ashland), and 9 March 2011 (Bend/Redmond).*

- Schedule hearings at least 28 days after DEQ mails notice of the proposed rulemaking and at least 14 days after publication in the SOS's *Bulletin*. First date hearings can start for this rulemaking will be 15 February 2011.
 - Schedule close of comment period at least 3 business days after the last hearing and at least 30 days after notice is mailed, if possible.
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Prepare notice documents *Target date: August - December 2010*

Prepare the following documents:

- Notice of Proposed Rulemaking Hearing
 - Statement of Need and Fiscal and Economic Impact (due **September 2010**). Obtain input from Advisory Committee and consult with department budget office; Neil to review before it goes to stakeholders.
 - Land Use Evaluation Statement
 - Relationship to Federal Requirements Questions
 - Rulemaking Announcement for Notice Package
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Graywater Rulemaking Plan

Update EQC on proposed rules (Informational Item)

Target date: 9 - 27 August 2010

- Prepare draft staff report on the Graywater Rulemaking as an Information Item for the EQC.

Target date: Monday, 30 August 2010

Submit draft Staff report to Project Lead Manager for review.

Target date: Monday, 6 September 2010

Obtain lead Administrator's authorization to submit EQC Staff Report to the Director.

Deadline: Monday, 13 September 2010 by 5:00 p.m. (not negotiable)

Submit Final Staff report package to the Director's Office for the Director's approval and signature. E-mail and submit one hard copy of the EQC Staff Report signed by the program.

Deadline: responsibility of the Director's Office

If approved, the Director's Office will send the EQC Staff Report with attachments to the EQC (without Rule Implementation Plan and other documents available upon request).

Deadline: Thursday, 21 October 2010

Update EQC on proposed rules.

PUBLISH NOTICE OF PROPOSED RULEMAKING PACKAGE

Complete concurrence review for final Notice of Proposed Rulemaking package

Target date: Wednesday, 17 November 2010

Compile and route draft Notice package for Manager's review (1 week):

- Rulemaking Announcement for Notice Package
- Notice of Proposed Rulemaking Hearing
- Statement of Need and Fiscal and Economic Impact
- Land Use Evaluation Statement
- Relationship to Federal Requirements Questions
- Rule Implementation Plan Checklist and Rule Implementation Plan
- Rules - strikeout/underline version of the rule amendments (to selected reviewers)
- Other supporting document needed

Deadline: Wednesday, 24 November 2010

E-mail Notice package to rulemaking team and the following reviewers (3 weeks).

Edit and use Draft Notice Package Routing Memo:

- Project Lead's Manager: *Judy Johndohl* - Community and Program Assistance
- Participating EMT members (full or through side agreements specifying review):
- Lead Administrator: *Neil Mullane* - Water Quality Division (contact Neil's Executive Assistant to get review space on Neil's calendar)
- Agency Rules Coordinator: *Maggie Vandehey*

- DOJ Program Attorney: *Larry Knudsen*

Deadline: Wednesday, 15 December 2010

Obtain comments from reviewers. Revise the draft Notice package as needed; have until Wednesday, **22 December 2010** (1 week) to complete revisions.

- Respond to comments on significant issues and as requested.
- Keep participating EMT members and others informed/elevate issues as needed.
- Route second draft to selected reviewers as useful prior to concurrence review.

Deadline: Wednesday, 27 December 2010

Have Neil Mullane review Notice Package and give approval for publishing Notice in *SOS Bulletin*. Work with Neil's Executive Assistant to get review time on Neil's calendar. Final approval by Neil completed by: Wednesday, 12 January 2011.

**Publish notice
in SOS's
Bulletin**

Deadline: Friday, 14 January 2011 by 4:30 p.m. (*not negotiable*)

Fax Notice of Proposed Rulemaking and Fiscal Impact Statement to SOS at 1-503-378-4118. This must be at least 14 days before first hearing and 21 days before effective date of rules (use EQC adoption for effective date), not counting date of hearing or EQC meeting. **SOS Bulletin publication date is 1 February 2011.**

Signatures required:

Fiscal Impact Statement – Budget Office & Project Lead
Notice of Proposed Rulemaking – Agency Rules Coordinator

**Email and Mail
notice to
interested
persons and
legislators**

Target date: 1-21 January 2011

- Prepare notice package for mailing:
 - Rulemaking Announcement
 - Notice of Proposed Rulemaking
 - Statement of Need and Fiscal and Economic Impact
 - Land Use Evaluation Statement
 - Relationship to Federal Requirements Questions
 - [Rules - strikeout/underline version of the rule amendments (to selected reviewers)] or [Omit rule amendments (explain in cover memo how a copy of the rules can be obtained and any other supporting document needed.)]

Note: Do not include the Rule Implementation Checklist or Plan.

- Have Division Legislative Coordinator (*Christine Svetkovitch*) review cover letter for the notice packages for legislators.

Target date: 17-21 January 2011

Identify, review and supplement the mailing lists to receive notice of proposed rulemaking. Send notice to the following:

- DEQ's "WQ All Rules" mailing list (OD maintains)
 - All persons who have requested in writing to be notified of all DEQ rulemaking
 - All affected permit holders
 - Selected legislators (House Speaker, Senate President, chair or co-chairs of interim or session committees with authority over subject matter of

Graywater Rulemaking Plan

- DEQ rulemaking) [check with Christine]
- Legislative Counsel
- Department of Land Conservation and Development (on all rules list)
- Energy Facility Siting Council
- EQC members
- Other DEQ additions
- Mailing lists for Water Quality (Gov Delivery/GovDocs/WQ Rules list/WQ Onsite list)
 - All persons who have requested in writing to be notified of all program or particular rule division rulemaking (see Martha for other lists)
 - Other persons added by the program, Division, or Offices
- List of interested persons for this rulemaking

Target date: 17-21 January 2011

Coordinate with mailroom and support staff to prepare for copying and mailing the notice package. Merge and review mailing lists to avoid mailing multiple copies to anyone unintentionally (*coordinate with Art Knight*).

Target date: Monday, 24 January 2011

- Mail notice to the mailing lists:
 - At least 21 days before first hearing date and 28 days before effective date (use EQC adoption date).
 - At least 49 days before effective date for legislators (do not count date of hearing or EQC adoption date).
- Have the person depositing the mailing in U.S. Postal Service mail complete a Certificate of Mailing for the Notice package, and attach a copy of the materials mailed and a list of the recipients. Put the Certificate with attachments in the rulemaking record.
- Have the person sending the email notice to GovDocs send you the receipt email, the group(s) used, and the list of emails that it went to.

Publish Notice on DEQ's website

Target date: Tuesday, 17 - 21 January 2011

Publish notice documents on DEQ's and Water Quality's websites:

Program website

<http://www.oregon.gov/DEQ/WQ/index.shtml>

Proposed rulemakings

<http://www.deq.state.or.us/regulations/proposedrules.htm>

Public notices

<http://www.deq.state.or.us/news/publicnotices/PN.asp>

Send news release to media

Target date: 17-21 January 2011

Prepare news releases. Consult with OCO staff. Mail to media. Retain a copy of the news release and list of media to whom it was mailed in the rulemaking record.

Graywater Rulemaking Plan

Verify publications

Target date: Tuesday, 1 February 2011

Review publications to verify that notice was accurately published in the SOS *Bulletin* and newspapers, and on DEQ's and Water Quality's website. The *Bulletin* is on the SOS website at: <http://arcweb.sos.state.or.us/banners/rules.htm>. Contact DRC if publication is inaccurate. Print a copy for rulemaking record.

Conduct hearings and receive comment

Target date: 1-11 March 2011

Conduct hearings and receive comment (Presiding Officer). Public Comment deadline is **Wednesday, 15 March 2011**.

Target date: Friday, 15 April 2011

Prepare Presiding Officer's (PO) report for the final rulemaking package (PO prepares).

Target date: Friday, 15 April 2011 (comments due 15 March 2011)

- Compile and evaluate all oral and written comments, data, exhibits and other information received during the comment period. Prepare responses in a Summary of Comments and Agency Responses.
 - Place originals of all comments, data, exhibits and other written materials received and the recording of oral testimony presented at the hearings in the rulemaking record. Include printed e-mail comments.
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Revise rules in response to comment

Target date: 16 March - 15 April 2011

- Revise rules in response to comments.
 - Respond to comments on significant issues and as requested.
 - Consult, keep participating EMT members and others informed and elevate issues as needed.
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ADOPT RULES

Final Rulemaking package

Deadline: Wednesday, 18 May 2011

- Draft EQC staff report
- Update the Rule Implementation Plan Checklist and Rulemaking Plan
- Compile the draft Final Rulemaking Package:
 - EQC Staff Report
 - Attachments:
 - Proposed rule revisions - strikeout/underline (“accepted changes” optional)
 - Summary of Public Comments and Agency Responses
 - Presiding Officer’s Report
 - Statement of Need and Fiscal and Economic Impact (from Notice package)
 - Land Use Evaluation Statement (from Notice package)
 - Relationship to Federal Requirements Questions (from Notice package)
 - Advisory Committee Membership and Report
 - Rule Implementation Plan Checklist and Rulemaking Plan
 - Other documents as useful

Target date: Monday, 23 May 2011

Submit draft Notice package to Project Lead Manager and DRC for review before routing to other reviewers.

Target date: Monday, 30 May 2011

E-mail Final Rulemaking package with the Concurrence Review for Final Rulemaking Package to rulemaking team and the following reviewers:

- Project Lead Manager: *Judy Johndohl*
- Lead Administrator: *Neil Mullane*
- Participating EMT Members:
 - *Keith Andersen, WR*
 - *Nina DeConcini, NWR*
 - *Mitch Wolgamott, ER*
 - *Joni Hammond, OD*
 - *Leah Koss, OCE*
- Division Rules Coordinator: *Chris Clipper* - Surface Water Management
- Agency Rules Coordinator: *Maggie Vandehey*
- DOJ Program Attorney: *Larry Knudsen*
- Legislative Coordinator: *Christine Svetkovich*

Target date: Monday, 20 June 2011

Obtain concurrence reviews (3 weeks) on the Final Rulemaking package and provide to lead Administrator.

Target date: Monday, 25 July 2011

Obtain lead Administrator’s authorization to submit Final Rulemaking package to the Director

Submit Final Rulemaking package to the Director's Office

Target date: Monday, 12 September 2011 by 5:00 p.m. (not negotiable)

Submit Final Rulemaking package to the Director's Office for the Director's approval and signature on the EQC Staff Report. E-mail the package and submit one hard copy, with the EQC Staff Report signed by the program.

Target date: responsibility of the Director's Office

If approved, the Director's Office will send the EQC Staff Report with attachments to the EQC (without Rule Implementation Plan and other documents available upon request).

Distribute Final Rulemaking package

Target date: Monday, 29 September 2011

E-mail approved EQC Staff Report with attachments to rulemaking team (without Rule Implementation Plan and other documents available upon request). Be sure Neil has the documents.

Target date: Monday, 29 September 2011

Mail the approved EQC Staff Report with attachments to persons who provided oral or written comment during the comment period, and do not have an email address on file with DEQ. Have the person depositing the mailing in U.S. Postal mail complete a Certificate of Mailing and attach a copy of the materials mailed and the lists of recipients. Put the Certificate with attachments in the rulemaking record. For persons who provided oral or written comment during the comment period, and do have an email address on file with DEQ, DEQ may email a website link of the approved EQC Staff Report with attachments to these persons.

Present proposed rules to EQC for adoption

Target date: 3-10 October 2011

Present a dry run of the presentation to the lead Administrator and others (optional, but strongly recommended). (contact Neil's executive assistant to schedule 2 dry-run presentation times).

Date: Thursday, 20 October 2011

Present the proposed rules to the EQC.

File rules with the SOS and Legislative Counsel

- Prepare the filing packages for the SOS and Legislative Counsel and submit them to DRC (DRC may assist in preparing).

Target date: Wednesday, 26 October 2011

The filing package for the SOS must include:

- Cover letter for filing permanent rules or cover letter for filing temporary rules, to be signed by the ARC - original.
- Certificate of Filing Permanent Rules or Certificate for Filing Temporary Rules, to be signed by the ARC - original (ARC will add two signed copies).
- Statement of Need and Justification (for temporary rules only), signed by the Director - original and two copies.
- Hard copy of the adopted rules (no changes shown) properly formatted with margin notations of formatting - original and one copy (formatting

- requirements are in Formatting for SOS filing).
- Diskette with electronic copies of the rules as adopted, properly formatted and labeled. Each diskette should include two separate files for each Division revised, one in Word and one as text only.
- Return envelope addressed to the ARC.

Target date: Wednesday, 26 October 2011

The filing package for Legislative Counsel must include:

- Copy of the cover letter sent to SOS (ARC will provide signed copy).
- Copy of the Certificate and Order (ARC will provide signed copy).
- Hard copy of the rules showing changes (strikeout/underline) - one copy.

For ARC:

- Diskette with two electronic copies of the adopted rules, one showing changes and one with changes accepted.
- DRC will submit the filing package to ARC for signature and filing with SOS and Legislative Counsel.
- ARC files rules with SOS and Legislative Counsel. Rules are effective upon filing or a later date required by statute or specified in the rules.

Publish adopted rules on DEQ's website

This will be done automatically through rule revision on the SOS website.

Announce rule adoption

Target date: Monday, 7 November 2011

E-mail an announcement of the rule adoption to appropriate persons.

This is optional and meant for internal purposes only. Information to include: date of rule adoption, date rule becomes affective with SOS, and date rule becomes available on SOS website.

Verify accuracy of SOS publication

Target date: Following publication date of 1 December 2011

Verify accuracy of SOS published adopted rules in the Bulletin and on its website, both at <http://arcweb.sos.state.or.us/banners/rules.htm>. Inform the DRC that publication is accurate and ask for assistance if mistakes need to be corrected.

Note: The SOS normally publishes rules filed by the 15th of the month in the Bulletin on the 1st of the next month, but may require additional time for voluminous rules. The SOS often publishes rules on its website before publication in the Bulletin.

Submit the official rulemaking record

Timeline: Friday, 16 December 2011

- Complete the Rulemaking Record Checklist to compile the record for the rulemaking and submit it to the DRC for review. Retain a copy of the record as required by the Division or Office procedures.
- Submit the record to the ARC (DRC submits).

Implement the rules

Carry out the Rule Implementation Plan, including distribution of adopted rules. Periodically revisit Implementation Plan “follow-up list” to determine necessary revisions and issues associated with rulemaking.