



FACT SHEET

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## Oregon Water Quality Standards

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EPA is proposing federal water quality standards for the State of Oregon, that include:

- use designations for critical life stages of certain salmon, trout, and other cold water fish species ("salmonids") in Oregon waters;
- temperature water quality criteria for the protection of salmonids in Oregon waters, except for the Columbia River;
- an intergravel dissolved oxygen water quality criterion to protect salmonid spawning wherever salmonid spawning is the designated use;
- methods to implement Oregon's existing antidegradation policy;
- a provision addressing the addition of heat from anthropogenic sources to impaired waters; and
- a process for federal agencies responsible for federally owned or operated dams to request that EPA modify its federally-promulgated water quality standards for Oregon.

EPA is making this proposal pursuant to a court order to take such action by October 1, 2003.

### Background

EPA's water quality standards regulations require states to designate uses for all water bodies within their jurisdiction. Designated uses determine what water quality criteria apply to specific water bodies. The Clean Water Act (CWA) sets an interim national goal of "...water quality which provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water ..." EPA regulations interpret that goal by requiring that water quality standards provide for "fishable/swimmable" uses unless a use attainability analysis (UAA) shows such uses are unattainable. When the Agency disapproves a state or tribal water quality standard, and the state or tribe does not make appropriate changes, EPA's Administrator must propose and promulgate revised standards.

In July 1996, the State of Oregon submitted revisions to its water quality standards to EPA for review. In July 1999, EPA approved all but one of the standards submitted by Oregon, including the new and revised temperature, pH, dissolved oxygen, and bacteria standards. EPA disapproved the 20°C/68°F numeric criterion for salmonid rearing in the lower Willamette River because the State's submission did not justify how 20°C/68°F alone would protect salmonid rearing in view of scientific information to the contrary. As a result of EPA's Endangered Species Act (ESA) consultation with the Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) on EPA's action, EPA, its federal partners, and the State of Oregon agreed to develop temperature criteria recommendations protective of all life stages of salmonids in the Pacific Northwest. This effort culminated in April 2003 with the publication of the *EPA Region 10 Temperature Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards* (available on the Internet at <http://yosemite.epa.gov/R10/WATER.NSF/>)

In 2001, Northwest Environmental Advocates filed suit in the U.S. District Court for Oregon against EPA and NOAA Fisheries. The suit challenged EPA's 1999 approval of certain water quality standards adopted by Oregon. The suit also charged that NOAA Fisheries' determination that the revised water quality standards would not jeopardize ESA-listed species was arbitrary and capricious.

In March 2003, the court determined that EPA violated the CWA and ESA when EPA approved Oregon's temperature standards because they did not specify when and where the temperature criterion would apply. The court also directed EPA to rescind its approval of the State's intergravel dissolved oxygen criterion for salmonid spawning and ordered EPA to promulgate a new criterion. The court ordered EPA to promulgate methods to implement Oregon's existing antidegradation policy. At the same time, the court vacated NOAA Fisheries' biological opinion stating that EPA had violated the ESA by relying on NOAA Fisheries' arbitrary "no-jeopardy" biological opinion when EPA approved Oregon's revised water quality standards.

### **About this Regulation**

This rule proposes use designations and temperature water quality criteria for the protection of salmonids in Oregon waters, except in the Columbia River. This rule also proposes an intergravel dissolved oxygen water quality criterion to protect salmonid spawning wherever that is the designated use. This rule also proposes methods to implement Oregon's existing antidegradation policy.

On August 15, 2003, the Oregon Department of Environmental Quality (ODEQ) published proposed revisions to its water quality standards. If ODEQ's revised standards address the court's order and EPA approves them before March 2004, EPA will not need to finalize this rule.

### **How to Get Additional Information or to Submit Comments**

For more information about this proposed rule, please contact Mary Lou Soscia, U.S. EPA Region 10, 811 S.W. Sixth Avenue, Portland, Oregon 97204; phone: 503-326-3250; email: [soscia.marylou@epa.gov](mailto:soscia.marylou@epa.gov). For more information, you may also contact Cara Lalley, U.S. EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460; phone: 202-566-0057; e-mail: [lalley.cara@epa.gov](mailto:lalley.cara@epa.gov). To submit comments, please send them by mail or hand delivery/courier to Valerie Badon, ORC-158, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101; or by electronic mail (e-mail) to [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov) Attention Docket ID No. OW-2003-0068.

You can find the *Federal Register* notice that describes this action on the Internet at <http://www.epa.gov/waterscience/standards/>. The *Federal Register* notice tells you how to get more information, how to submit comments, and how to review the complete administrative record. You can use EPA's E-DOCKETS at <http://www.epa.gov/edocket/> to submit or view public comments. Refer to the *Federal Register* notice for instructions on submitting comments. You can also get more information on the proposed rule on EPA Region 10 website: [www.epa.gov/r10earth/federaloregonwqs.htm](http://www.epa.gov/r10earth/federaloregonwqs.htm).

You can view the material in the official public docket from 8:00 a.m. to 4:00 p.m., Monday through Friday, at EPA Region 10 Oregon Operations Office, 3<sup>rd</sup> Floor, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Please call Tom Townsend, 503-326-3250, for appointments to view the docket.

EPA will hold three public hearings on this proposed rulemaking:

- Wednesday, October 22, 2003 from 5:00 p.m. to 9:00 p.m. in Portland, Oregon at 800 NE Oregon Street (State of Oregon Building).
- Thursday, October 23, 2003 from 2:00 p.m. to 6:00 p.m. in Eugene, Oregon at 100 W 10<sup>th</sup> Avenue (Eugene Public Library).
- Friday, October 24, 2003 from 10:00 a.m. to 1:00 p.m. in Bend, Oregon at 1036 NE 5<sup>th</sup> Street (Bend Community Center).