

«GreetingLine»

On Aug. 8, 2013, the U.S. Environmental Protection Agency (EPA) disapproved a key component of Oregon's water quality standard for temperature. EPA was required by court order to revise its previous approval of the "natural conditions criterion" in a manner consistent with the judge's February 2012 opinion. Under the natural conditions criterion, when DEQ (Department of Environmental Quality) determined that a water body under natural conditions and without human impacts could not meet the numeric criteria in the temperature standard, the natural temperatures became the goal for the waterbody.

Upon EPA's disapproval, the natural condition criterion for temperature is no longer an effective water quality criterion for federal Clean Water Act purposes in Oregon. The criterion will not be used as the basis for development or renewal of wastewater discharge permits (NPDES permits), water quality improvement plans known as Total Maximum Daily Loads (TMDLs), or implementation of other DEQ water quality programs. For Clean Water Act purposes, until such time as the Environmental Quality Commission adopts a revised standard for temperature and that revised standard is approved by EPA, the effective temperature standard includes those portions not disapproved by EPA: the biologically-based numeric criteria, the human use allowance, and the cold water protection criteria.

How could EPA's action affect your city?

WPCF Permits: It is important to note wastewater facilities that do not directly discharge treated wastewater to rivers or streams are not affected by this EPA action. WPCF permits are state issued permits and not subject to direct EPA oversight.

NPDES Permits: NPDES permits for existing sources that discharge to surface waters are not immediately affected by this decision. If necessary, permits will be revised upon renewal to reflect changes in Oregon water quality standards. NPDES permits are scheduled for renewal on a five-year interval, so it will be several years before all permits are evaluated and revised based on changes to water quality standards for temperature.

DEQ will focus its water quality program work in the near future on wastewater permits, total maximum daily load development and other actions that can meet the biologically-based numeric criteria. DEQ expects that many NPDES permits due for renewal will be able to meet the biologically-based numeric criteria provisions of the temperature standard and DEQ will renew these permits based on an annual permit issuance plan. For sources that cannot meet permit limits based on the biologically-based numeric criteria upon permit issuance, DEQ will use options such as compliance schedules to give a reasonable amount of time to come into compliance using reasonably available methods. Variances will also be considered; particularly where renewing the permit will enable other water quality improvements such as lower instream nutrient concentrations. Water quality trading will be an important mechanism for achieving permit compliance for some permittees.

DEQ expects that the Environmental Quality Commission will revise the temperature standard in the future once more is known about pending legal and federal actions. DEQ will work with stakeholders and identify feasible options for revising the temperature standard with the objectives of protecting native cold-water aquatic communities and providing the basis for workable implementation of the temperature standard in permits, TMDLs, water quality assessment and other Clean Water Act programs.

The timeline for initiating a rulemaking process will be influenced by developments in pending litigation on DEQ's temperature TMDLs and by the results of Endangered Species Act consultation on the temperature standard.

Additional information about Oregon's temperature standards and EPA's decision can be found at: www.deq.state.or.us/wq/standards/standards.htm or visit DEQ's website and type "Temperature Standard" in the search box in the top right corner.

If you have further questions about how EPA's actions may affect your permit please contact:

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Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis Ades".

Dennis Ades
Surface Water Management
Water Quality Division