

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

**CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES**

1. Explain the purpose of the proposed rules.

The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

The rulemaking will:

- Allow any party to a Department of Environmental Quality (DEQ) contested case proceeding to request that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC);
- Clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes ___ No X

a. If yes, identify existing program/rule/activity:

The proposed rules do not affect programs or activities considered land use programs. The changes being proposed in these rules may indirectly affect the process for enforcing such land use programs, but not the programs or activities themselves.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No (if no, explain):

c. If no, apply the following criteria to the proposed rules. N/A

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

N/A