#### State of Oregon

Department of Environmental Quality Memorandum

**Date:** November 22, 2010

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda Item X, Rule Adoption: Amending Water Quality Standards for Iron and Manganese

December 9, 2010 EQC Meeting

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| **Why this is Important** | This rule amendment is important because it revises water quality standards that not needed to protect human health and therefore, meeting these standards is not a priority use of public and private resources. |
| **Department Recommendation and EQC Motion** | The Department of Environmental Quality (DEQ, Department) recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon’s water quality standards for iron and manganese as presented in Attachment A. |
| **Background and Need for Rulemaking** | DEQ adopted the current iron and manganese criteria in the late 1980s when the EQC adopted all of EPA’s recommended water quality criteria for toxics, for both priority and non-priority pollutants, as the Table 20 criteria. Iron and manganese are considered “non-priority” pollutants by EPA. In October 2008, the EQC directed DEQ to review the science behind the human health criteria for naturally occurring metals in response to public comment. DEQ’s review, summarized in Attachment Dled to this proposed rule amendment. DEQ also reviewed the human health criteria for arsenic, also a naturally occurring earth metal, and proposed revisions for public comment at the same time. However, DEQ is not proposing revisions to the arsenic criteria at this time. The Department needs additional time to consider and respond to the comments received on arsenic. We expect to continue that rulemaking process and propose revisions for EQC adoption in spring or summer of 2011.  Oregon’s current human health criteria for iron and manganese are not attainable in some Oregon waters due at least in part to natural sources. These criteria are not based on human health impacts, but rather on their potential to affect the taste of water or cause laundry staining when high levels of these metals are contained in domestic water supplies. Clean Water Act requirements for implementing standards will result in DEQ and regulated entities expending resources to address pollutants that are at least in part from natural sources and do not pose human health risk.  The proposed rule amendment will address these issues for iron and manganese by withdrawing criteria that are not needed to protect human health. Upon scientific review, DEQ finds that proposed criteria revisions are not likely to result in human health impacts (see Attachment D). The revisions will allow DEQ and regulated parties to focus their water quality protection efforts on activities that will result in greater environmental and human health benefit. DEQ expects that several NPDES discharge permits due for renewal in the near future will be positively affected by the proposed revisions. |
| **Effect of Rule** | The rule amendment will withdraw the ‘water and fish ingestion’ human health criteria for iron and manganese in Table 20. In addition, the rule amendment will withdraw the ‘fish consumption only’ human health criteria for manganese as it applies to freshwater, but leave the criterion in place as it applies to marine waters. These changes are shown in Attachment A. See the redline/strikeout changes to Table 20 for the iron and manganese criteria and the associated footnote. No changes to the toxics standards rule language at OAR 340-041-0033 are proposed. |
| **Commission Authority** | The Commission has authority to take this action under ORS 468.020, 468B.010 and 468B.035. |
| **Stakeholder Involvement** | During the review of the iron and manganese criteria DEQ informed and obtained input from the Toxics Standards Rulemaking Workgroup, a stakeholder committee that DEQ assembled to provide input on the fish consumption rate toxics standards rulemaking work underway. The membership of this group is provided in the issue paper in Attachment D. The issue paper findings and the Department recommendations were discussed with the Rulemaking Workgroup prior to the formal public comment period and the group supported DEQ’s recommendations. |
| **Public Comment** | A public comment period extended from August 25 to September 30, 2010 and included public hearings in Portland and Pendleton. A Summary and Response to public comment is provided in Attachment B and hearing officer reports are provided in Attachment C. DEQ received comments from nine individuals or organizations. Some of the comments supported the changes. A few commenters expressed opposition to allowing increased water pollution and a couple commenters had specific concerns related to other issues that DEQ does not believe will be affected by the proposed criteria changes. |
| **Key Issues** | A key issue in the water quality toxics standards work has been to meet the EQC goals and directives to adopt water quality standards that protect public health and to implement a water quality protection program that leads to the reduction of toxic pollutants of concern, meaningful environmental results for the costs expended. The proposed iron and manganese criteria revisions are an incremental step toward meeting this goal by removing criteria that are not necessary to protect human health but will cause the expenditure of public and private resources to meet if left in place.  Another key issue is simply to ensure that Oregon’s water quality criteria are based on the relevant and available science. While DEQ did not conduct an extensive scientific literature review, the readily available science and conclusions of EPA and other States support DEQ’s finding that the criteria are not necessary to protect human health in Oregon.  Finally, a key issue for this rulemaking is that the proposed rulemaking reflects an instance where DEQ was able to be responsive to public input that DEQ found had merit and to take corrective steps. |
| **Next Steps** | DEQ proposes that the criteria revisions be effective under state and federal law at the time they are approved by the Environmental Protection Agency. EPA approval is required before the criteria are effective under the federal Clean Water Act.  The rule change will be filed with the Secretary of State and submitted to EPA approval. Once EPA approves the changes and the criteria withdrawals are effective, an updated Table 20 will be posted on DEQ’s webpage and available to the public and DEQ staff. In addition, the standards program staff will notify all DEQ staff and managers that implement water quality standards and Clean Water Act programs of the rule change. No additional resources will be needed to implement the rule. The Rule Implementation Plan is available upon request. |
| **Attachments** | 1. Proposed Rule Revisions (redline version) 2. Summary of Public Comments and Agency Responses 3. Presiding Officer’s Report on Public Hearings 4. Issue Paper: Summary of rule development process including stakeholder workgroup membership and scientific review. 5. Relationship to Federal Requirements Questions 6. Statement of Need and Fiscal and Economic Impact 7. Land Use Evaluation Statement |
| **Available Upon Request** | 1. Legal Notice of Hearing 2. Cover Memorandum from Public Notice 3. Written Comment Received 4. Rule Implementation Plan |

Approved:

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