small black and white deq logo.TIF**Human Health Water Quality Criteria for Toxics Rulemaking**

Work Plan Summary

**Purpose**

This work plan has been developed in response to the direction DEQ received from the Environmental Quality Commission (EQC) at its meeting on February 18, 2010. As a result of DEQ’s presentation, statements made by interested parties and discussion with the commission members, the commission directed DEQ to extend its timeframe for rule adoption until mid-2011 to assure that the rulemaking to revise human health water quality standards for toxic pollutants fully addresses the direction of the commission to address both NPDES and non-NPDES rule elements.

**EQC Directives**

On October 23, 2008, the Oregon Environmental Quality Commission gave DEQ unanimous direction to pursue rule revisions that would set new water quality standards for toxic pollutants in Oregon. The new standards would be based on a higher fish consumption rate which is much more protective of human health than the existing rate.  Specifically, the EQC directed DEQ to:

* 1. Revise Oregon’s toxics criteria for human health based on a fish consumption rate of 175 grams per person per day;
  2. Propose rule language that will allow DEQ to implement the standards in National Pollutant Discharge Elimination System (NPDES) permits and other Clean Water Act programs in an environmentally meaningful and cost-effective manner;
  3. Propose rule language or develop other implementation strategies to reduce the adverse impacts of toxic substances in Oregon’s waters that are the result of non-point source (not via a pipe) discharges or other sources not subject to section 402 of the Clean Water Act;
  4. Develop a proposed rule and implementation methods that carefully consider the costs and benefits of the fish consumption rate and the data and scientific analysis already compiled or that is developed as part of the rulemaking proceeding.

**Structure and Function of Work Groups**

DEQ has been working with two stakeholder work groups that were formed to provide input to the Department in this rulemaking. The Rulemaking Work Group (RWG), which began meeting in December of 2008, has primarily focused on evaluating implementation tools targeted toward entities which receive an individual National Pollutant Discharge Elimination System (NPDES) permit. The group has considered tools that would enable these industrial and municipal entities to comply with the anticipated lower toxics criteria. DEQ has also met with the non-NPDES Rulemaking Work Group, formed in November 2009, to evaluate implementation approaches to address sources of toxic pollutants from nonpoint sources. Members of the NPDES Rulemaking Work Group also belong to the non-NPDES Work Group; however, the non-NPDES Work Group has additional members representing agricultural and forestry interests, given the broader application of the proposed rulemaking action items.

DEQ will continue to meet with these groups to solicit their input and feedback on the development of the rulemaking package. DEQ will be standardizing its approach to holding stakeholder workgroup meetings—meetings will be held once a month over the next 8-9 months to allow for substantive, focused discussions on topics, including the following ideas DEQ has discussed with its stakeholder groups and presented to EQC as part of its presentation:

* Develop revised variance regulations
* Explore other NPDES implementation tools
* Develop TMDLs for nonpoint source load allocations that are “implementation-ready”
* Revise water quality standards provisions to facilitate the reduction of transport of toxics attached to sediment into streams
* Evaluate Toxic Release Inventory (TRI) data in the development of permits across DEQ
* Develop rules, as necessary, to develop a state program to address indirect discharges of toxic pollutants to municipal collection systems
* Develop antidegradation policy rule modifications to clarify and facilitate its application to non-NPDES sources
* Develop a new division in the ORS that addresses DEQ’s toxics reduction strategy

The nonpoint source-related topics listed above include the concepts and proposals DEQ highlighted for the EQC at its February meeting and are currently under development by DEQ. DEQ will be discussing these items further with the relevant workgroup and will be finalizing the scope of the rulemaking package by the end of April 2010. Please refer to Table 2 for the proposed monthly work group agenda items and anticipated dates for group discussion on these topics. Topics and anticipated dates may be adjusted based on discussion and exploration of work groups. Table 1 gives a major milestone overview for the entire rulemaking to meet EQC adoption by June 2011.

Members of the Rulemaking Work Group are also members of the Non-NPDES Rulemaking Work Group. To reduce travel and time commitments associated with these meetings, DEQ will schedule meetings of the work groups on the same day and will split the time to accommodate two half-day meetings. Meetings are scheduled for the following dates:

**March 31 June 30 September 22**

**April 27 July 15 October 27 (if needed)**

**May 20 August 17 November 18 (if needed)**

The function of the rulemaking work groups is to advise the Department on policy considerations for its rulemaking proposals. To assist the work groups in its policy deliberations, the Department will provide the work group members technical information developed by DEQ staff, EPA staff, or other work group members to evaluate policy options and draft regulatory language associated with each proposed rulemaking action.

Some of the issues likely to be addressed by work group members will be controversial. For example, factors such as, environmental and economic interests, lack of clear guidance from EPA, lack of sufficient data to definitively determine a cause and effect, or implementing procedures which are new to the Department may all contribute to lack of consensus among group members. Although the goal of the Department will be to work towards consensus, it is very unlikely this will occur for all of the issues DEQ anticipates discussing, given the diverse membership of the work groups, and rulemaking time constraints. To account for this disparity, the Department will capture views expressed by work group members as part of an Issue Paper which will be developed for each rulemaking component. To keep commission members updated on rulemaking progress, DEQ will provide updates at each EQC meeting until this rule is adopted.

**Development of Products**

The Department will develop technical support documents, option proposals, and draft rule language for work group review. The Department will carefully consider input from stakeholders as it develops final language and policy decisions. Issue Papers will capture information, such as: description of rulemaking action, policy issues and evaluation, work group member views, proposed rule language, applicability, authority and precedence, and other supporting information. At a minimum, Issue Papers will be developed and used to facilitate work group discussions on:

* Specific criteria (e.g., arsenic, iron, manganese)
* Variances
* Implementation tools to address background pollutants
* Intake Credits
* Pretreatment programs
* Implementation-Ready TMDLs
* Sediment and toxics
* Antidegradation policies

Draft Internal Management Directives (IMD) which describe how DEQ will implement new or revised regulations and policies will be developed before rules go out for public comment. Although stakeholders will not be substantially involved with the development of these documents, IMDs will augment stakeholder knowledge of how regulatory language translates to actual implementation. Typically, IMDs are developed after rules become effective.

The Department anticipates that work group meetings will be substantively completed by September, in order to meet DEQ internal review time frames and submit the final rule package to the Secretary of State by December 15. Both work groups will also need to review and provide input to the Statement of Need and Fiscal and Economic Impact developed by DEQ.

**Table 1: Major Milestones in Rulemaking Timeline**

**2010 2011**

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|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **March 31** | **April 27** | **May 20** | **June 30** | **July 15** | **Aug 17** | **Sept 22** | **Oct** | **Nov** | **Dec.** |
| **RWG** | No meeting | Multiple Discharger Variance (MDV) | Variances | Variances | If needed | Review Fiscal Impact | **Review Total Draft Package** | 10/27 mtg, if needed | 11/18 mtg, if needed |  |
| MDV |
|  | De Minimus | De Minimus |  |  |  |  |  |  |  |
|  | General Permit |  |  |  |  |  |  |  |  |
|  | Restoration Standards |  | Delayed Implemen. |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| **Non-NPDES** | Implem. Ready TMDLs |  | Implem. Ready TMDLs |  | Implem. Ready TMDLs | Review Fiscal Impact | **Review Total Draft Package** | 10/27 mtg, if needed | 11/18 mtg, if needed |  |
| State Pre-Treatment Program | State Pre-Treatment Program | State Pre-Treatment Program |  | State Pre-Treatment Program |  |  |  |  |  |
|  | Anti-degradation | Anti-degradation |  |  |  |  |  |  |  |
| Sediment & Toxics | Sediment & Toxics |  | Sediment & Toxics | Sediment & Toxics |  |  |  |  |  |
| **Other**  **Milestones** |  | EQC April 29-30 |  | EQC  June 16-17 |  | EQC  Aug. 18-19 |  | EQC  Oct. 21-22 | Draft Rule Package for SOS | **Final Rule Package for SOS** |
|  | Scope of rulemaking finalized |  |  |  |  |  |  |  |  |

**\***Adjustments to the agenda topics may occur based on work group discussions and DEQ rulemaking milestones. Agenda items listed above have not been assigned specific time frames for each meeting.