5/9/11

Hi Gil,

I just wanted to get back to you on your other two comments—see below….  Thanks again for reviewing the rules and coming to the meeting!

Andrea

From Gil Wistar on 5/4/11

Hi Andrea,

For what it’s worth, here are a few comments on the Proposed New and Amended Rule Language document. I realize that most sections have been through a lot of changes and now reflect results from the public review/comment period, so I apologize in advance if any of my comments have already been discussed at length and the language decided on.

Page 9, (6)(a)

(A) “Background pollutant concentration” means the ambient waterbody concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or result from upstream human activity.

I would suggest ending the sentence after the word “discharge” (i.e., eliminating the phrase beginning with “regardless.”)  This change would give us more discretion in determining what an appropriate background concentration is and where/when a sample of immediately upstream water is taken. The “result from upstream human activity” phrase could, for example, provide cover for a source to sample upstream of its facility exactly when it knows that a another upstream source with similar permitted discharges is most active and therefore not truly representative of background conditions. Alternatively, the source could choose to sample for background conditions during the time when a short-term, upstream discharge is occurring (whether permitted or not) and causing a brief spike in “background conditions” as defined under the current language.

The intent of saying “Upstream human activity” is really to allow background pollutant concentrations that are anthropogenic in origin, so I don’t think that in most cases the discharger would be able to identify a specific discharger of that pollutant.  However, we did change the language to hopefully make that more clear:

(A) “Background pollutant concentration” means the ambient waterbody concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or ~~result from upstream human activity.~~anthropogenic in origin.

Page 10, (6)(D)(II)(iii)

(iii) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

This item seems vague; what comparison criteria would DEQ use to determine whether intake and receiving waters are similar? Temperatures within 0.1 C? pH no more than 0.1 units apart?  Unless the language is more specific (and I admit I would not know how to do this), this item might create more problems than it solves. If this is an important criterion, perhaps the rule language could remain subjective and refer to guidance to be developed, with a title such as *defining background levels of a contaminant in immediately upstream waters*.

Yes, I agree it’s a bit vague…. As we touched on at the meeting, we tried to mirror some of the language in the intake credit rule that was mirrored after an intake rule in the Great Lakes area that has already been vetted by EPA, so we’re hesitant in providing greater detail.  It will need to get worked out in the IMD for the background pollutant allowance.

Page 14, item (g)

(g)  It is the policy of the Commission that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the State or to a location where such material could readily migrate into waters of the State.

Just curious about the inclusion of “Commission policy” in rule. Does this elevate policy to rule? (Perhaps they are the same thing anyway, so it’s no big deal.) Also, is it DEQ’s role (rather than ODA’s) to monitor best conservation practices for pesticides/fertilizers on ag. lands?

Hi Gil,   This is a policy statement, not a requirement that DEQ would enforce.  It does not shift any roles between DEQ and ODA, so no, DEQ does not monitor BMPs on ag lands, ODA does that.  I think it is something we would expect ODA to consider and include in their SB1010 plans.

I’m cc’ing some of the other WQ staff in case they have anything to add.

Debra

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Debra Sturdevant

WQ Standards Program Lead   
Oregon DEQ   
(503) 229-6691   
[sturdevant.debra@deq.state.or.us](mailto:sturdevant.debra@deq.state.or.us)

Those are all the comments I have. I scanned the staff report, and that is one well written document – my hat’s off to the writers!

Gil