**Oregon’s Water Quality Standards Review Project**

**Rulemaking Workgroup**

**June 4, 2009 Meeting**

**DRAFT Facilitator’s Summary**

The following notes are a summary of issues discussed and issues that may need further discussion at upcoming meetings.

**Present for all or part of the meeting:**

Workgroup Members: Nina Bell (NW Environmental Associates), Michael Campbell (Industrial Dischargers), Rich Garber (Association of Oregon Industries), Charles Logue (ACWA), Mark Riskedahl (on phone, NEDC), Peter Ruffier (on phone, League of Oregon Cities), Ryan Sudbury (CTUIR), Kathryn Van Natta (Northwest Pulp and Paper)

Other Representatives: Marganne Allen (on phone, ODF), Kathleen Feehan (CTUIR), Summer Goodwin (EPA), Ellen Hammond (on phone, ODA) Jannine Jennings (EPA), Annette Liebe (DEQ), Melinda McCoy (EPA), Mary Lou Soscia (EPA), Debra Sturdevant (DEQ), Jennifer Wigal (DEQ)

Also Present: Donna Silverberg and Erin Halton, DS Consulting Facilitation Team.

**Welcome/Updates/Scheduling**

Facilitator Donna Silverberg welcomed everyone to the meeting and conducted a round of introductions. Silverberg noted a change to the agenda: the manganese discussion will be on the agenda for the next meeting. This will allow DEQ to pull together as much data as possible before bringing a proposal to the Rulemaking Group. The following updates/scheduling dates were discussed as well:

* The next Toxics Stakeholder meeting will be held on 6/17.
* DEQ representatives said they would make every effort to send documents that are in a format that can be opened by everyone.
* No further edits to the notes from the 4/22 meeting were made during the meeting; however, as a few workgroup members said they need more time to review the revised draft, comments on the notes may be submitted to DS Consulting through 6/12.
* The group scheduled the following dates for upcoming Rulemaking group meetings: July 13th, August 6th and September 15th.
	+ The agenda for the 7/13 meeting will include manganese, anthropogenic sources (arsenic), implementation issues (variances, trading, etc.) and overall timeline/process updates.
* The October EQC meeting dates have been set for 10/22-23.

**Iron Discussion**

Debra Sturdevant, DEQ, referred the group to a handout that described three potential options for iron and DEQ’s proposed approach, which is to withdraw the 300 µg/l iron criterion for human health and rely on the aquatic life criterion of 1000 µg/l iron to protect public water supply. Sturdevant noted that iron is naturally occurring and the current criteria are based on taste in drinking water and laundry staining. She reviewed DEQ’s rationale for the proposal and said it follows suit to criterion adopted by West Virginia and Missouri that was approved by EPA. Rulemaking workgroup members were asked to weigh in on the proposal:

* Suggest withdraw the human health criterion altogether; object to explicit reliance on aquatic life criterion and suggest that a criterion that “slides between two uses” would complicate ESA provisions and policies.
* Comment: agree with the above suggestion, as a consistent criterion is more defensible.
* Question: regarding 303d listings, what can we expect – how many river miles would be excluded? Answer: most would not be applied, as aquatic life is dissolved.
	+ **Action:** DEQ offered to provide a list of what would drop off the list.
* Suggest refining the #3 option on the handout: shorten to say “withdraw the 300 µg/l iron criterion for human health.”
* **Action:** The Rulemaking Group supported the refinement to option #3.

**Arsenic Discussion**

Debra Sturdevant, DEQ, referred the group to a handout on DEQ’s proposed approach to arsenic; she recalled the discussion at the 4/22 meeting and said that since then, DEQ has learned that EPA plans to increase the cancer slope factor (possibly by a factor of 10 to 20 times the current value.) As a result, DEQ performed additional calculation analysis to show what the criteria would be if the CSF were increased to 25. DEQ’s recommended approach was to use a criterion of 2.7 for organism only and water + organism. Sturdevant clarified the rationale for the proposal, noting that for organism only, 2.7 is still within the 10-4 boundary; for water + organism, 2.7 is lower than the MCL established to protect drinking water under the SDWA. Rulemaking workgroup members were asked to weigh in on the proposal:

* Support the approach and do want to keep naturally occurring levels as low as possible, wherever possible (as opposed to allowing naturally levels to creep up toward maximum criteria.)
* Agree with adding language to address antidegradation; suggest could add language referring to a process that will identify where there are human contributions, to control those to the extent possible, and to keep arsenic levels as low was possible and protect drinking water.
* Agree with the above, and suggest that would want to keep language as broad as possible, as the EPA standards would not cover those natural sources that were not “antidegradation.”
* Suggest clearer definition of scope for “all feasible actions.”

There was some group discussion around whether it would be worthwhile to consider criteria based on an MCL or to consider an alternative FCR, and the likelihood of EPA adopting a new cancer slope factor before the end of this year. Jannine Jennings, EPA, reported that the new arsenic data may be published by EPA later this year; the group briefly discussed the potential impacts that changes to policies on a national level could have on the arsenic criteria set in Oregon. As the conversation on arsenic wrapped up, the following actions/next steps were identified:

**Action/Next Steps:**

* The stakeholder group supports DEQ’s approach for arsenic and has suggest a few refinements that will describe the desire to keep arsenic levels as low as possible wherever possible.
	+ DEQ staff will work on refinements to rationale language between now and the next meeting on 7/13.
	+ Several Rulemaking group members (Rich, Ryan, Nina, Michael and Kathryn) offered to work with Debra on anthropogenic source language between now and the next meeting on 7/13. Melinda McCoy, EPA, offered to assist as well.
* Jannine Jennings, EPA, will continue to communicate EPA policy developments as time progresses.

**Background Pollutants**

Debra Sturdevant, DEQ, referred the group to a background pollutants update handout. She clarified that coordination with EPA, DEQ permitting offices and headquarters is ongoing and that no policy decision has yet been made with regard to background pollutants. Sturdevant said that given workgroup member responses to the draft problem statement/desired outcomes, DEQ suggests that this issue may need to be revisited after time and energy is spent discussing other important regulatory issues. Group members discussed the importance of circling back to background pollutants before too much time passes, as there is a strong desire to present as complete a package as possible to the EQC in October. They also discussed strategies that might best highlight the background pollutant issue, such as including water column data and cost analysis data from the FIIAC process. One workgroup member added that variances and tools do have costs associated with them and the tools that provide the most desired outcomes on the most systematic level are the ones that that will garner support from the state agencies.

The group also reviewed the matrix of workgroup topics and also the flow chart that was developed by the FIIAC committee. The group recalled additional documents and summaries that could provide a good base of language to build on (such as watershed permitting language.) The following next steps were identified during the meeting:

**Action/Next Steps:**

* DEQ will distribute the final FIIAC memo/matrix
* Charles Logue will distribute a summary and fact sheet from a prior watershed permitting process.
* Annette and Michael will work to refine background pollutant data while the broader workgroup tackles other permitting issues.
* The draft agenda for the next meeting will be shared with group members as soon as it is available.
	+ Goals for this next meeting will be to introduce the next set of implementation issues, needs and potential tools, and to provide an overview of how variances have or could be used, including streamlined individual variances, multi-discharge variances for municipalities for mercury and possibly water body variances.

The next WQS Rulemaking meeting will be: **July 13th, from 10 am – 5 pm**.

*Other Announcements:* a PCB workshop will be held in Portland on July 30th. Mary Lou Soscia will provide details on the event as we draw closer to the date. Also, Mary Lou announced that EPA has approved continued funding for DS Consulting’s facilitation services through March 2010.