

Source Control Small Group Issue Paper

Prepared for the Water Quality Standards for Human Health Rulemaking

Final Draft

August 9, 2010

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Introduction

This paper is the product of work by the Source Control Small Group and was written by the Department of Environmental Quality (DEQ) staff person to that group. The group was an advisory that was a subgroup of the larger stakeholder group established for the Water Quality Standards for Human Health Rulemaking.

The Source Control Small Group was created to craft specific ideas for the Water Quality Standards for Human Health Rulemaking that reduce toxics from Publicly Owned Treatment Works (POTWs, also known as sewage treatment plants), in order to meet the Environmental Quality Commission's (EQC) directive to DEQ to control pollution from non-NPDES sources. The Source Control Small Group is an advisory committee to the non-NPDES Rulemaking Workgroup. DEQ uses two workgroups to provide stakeholders with opportunities to participate in the rulemaking process: the NPDES group, which focuses on the NPDES permit itself and the policies DEQ uses to issue them; and the Non-NPDES group, which focuses on all the other ideas. Prior to the formation of the Source Control Small Group, the issue of expanding the scope of a federal program called Pretreatment was addressed in two stakeholder issue papers. These issue papers initiated the Small Group's work.

What is Pretreatment? Pretreatment is a regulatory framework established by the federal Clean Water Act to control discharges of pollutants to POTWs from some industries. The United States Environmental Protection Agency (EPA) requires states to either develop a program to authorize POTWs to issue permits to covered industries or EPA can work directly with the POTWs. The states identify POTWs to participate in the program based on the types of industries that discharge to their sewer collection systems and whether the POTW itself meets certain minimum criteria established in state and federal regulations. Oregon has had authority from EPA to administer and oversee the implementation of Pretreatment Programs since 1981. DEQ includes implementing a Pretreatment program as a condition in the NPDES permit of POTWs when those POTWs are determined to need a program. The DEQ Pretreatment Coordinator reviews the documents that a POTW creates for its program. Once approved by DEQ, the POTW has the authority to issue permits or other control mechanisms (such as Memorandums of Agreement) to industries that discharge to their sewer collection system. The federal regulations are focused on controlling discharges from specific types and sizes of industrial sources but allow for controlling discharges from other industries if those discharges could cause the pass through of pollutants or an upset to the POTW's system.

What is Source Control? Some POTWs that are required to have Pretreatment Programs go beyond the focus on controlling discharges from significant industrial users and also control discharges from other businesses and provide education to residents. Examples of this kind of non-required source control activity are municipalities' working with dentists in the POTWs' service area to see that required amalgam separators (amalgam is the metal mixture used to fill cavities and it contains mercury) are properly installed or participating in drug take back events collecting pharmaceuticals from residents to prevent them from being flushed down the drain. Because the Small Group's charge was to look at ideas that go beyond the federal Pretreatment program, we called ourselves the Source Control Small Group.

Audience

This paper was created to present ideas to the Rulemaking Workgroup on DEQ's Water Quality Standards for Human Health rulemaking. Through the rulemaking process, it was expected that the EQC would see this paper in whole or in part. Staff working on DEQ's Toxics Reduction Strategy and the implementation of Senate Bill 737 are also intended audiences. The paper is also intended to be a source of information for the Pretreatment Coordinator and other DEQ staff and will be available through DEQ for other audiences.

Content of this Paper

This paper considers four types of approaches to Source Control: 1) rulemaking proposals; 2) voluntary actions; 3) DEQ projects that would enhance source control; and 4) recommendations to the Commission. The group had decided to share with the readers of the paper a statement of full group support for those ideas everyone supported and to note when an idea received some support but not full support. This was done because the group did not have time to develop the ideas to point where consensus on the ideas could be reached. These statements of full support or not full support are not qualified and were gathered anonymously. They are provided simply to provide the reader with the opinions of group members. DEQ staff participated in and supported the work of the Small Group but as this group is advisory to DEQ, the agency has not taken a position on any of the ideas presented in this paper at this time and DEQ staff opinions are not reflected in the statements of full support or not full support. In Appendix 1, ideas that were rejected by the Group are listed for reference. To aid in putting these ideas in the larger context of other initiatives happening at DEQ, such the Toxics Reduction Strategy and the implementation of Senate Bill 737 (the P3 list and pollutant minimization plans), the Group has chosen to note where a proposal supports the goals of those initiatives. All of the ideas presented were compared to evaluation criteria created by DEQ to aid in determining if the ideas could be accomplished as part of the human health criteria rulemaking. The DEQ's evaluation of the Small Group's ideas against the criteria is included in the body of the paper and in Appendix 2 of this paper.

Description of the problem: Meeting the new toxics criteria that will be established by the Water Quality Standards for Human Health will be difficult if not impossible if currently unregulated or under-regulated sources of pollution are not required or encouraged to reduce their contribution to Oregon's waters. The Environmental Quality Commission directed DEQ to look at the implementation of controls on non-NPDES sources in order that these new Water Quality Standards may be attained in the future. The Source Control Small Group was formed in order to propose ideas that would apply to POTWs.

Process

The Source Control Small Group comprised Nina Bell (Northwest Environmental Advocates), Lauren Goldberg (Columbia Riverkeepers), Duke DeClue (City of Eugene Pretreatment and Oregon Association of Clean Water Agencies (ACWA)), Clayton Brown (Clean Water Services and ACWA), Rick Williams (City of McMinnville and ACWA), Curtis Barton (Water Environment Services and ACWA), Steve Starnier (City of Silverton), Rich Garber (Boise Inc and Association of Oregon Industries), Ross Edginton (Eastside Plating), and Myron Burr (Siltronics), and was supported by the following DEQ staff: Karen Whisler (Senate Bill 737 Coordinator for DEQ's Water Quality Program), Annette Liebe (Surface Water Management Section Manager for DEQ's Water Quality Program), Scott Latham (RCRA Policy Analyst for DEQ's Hazardous Waste Program), and Tiffany Yelton Bram (Pretreatment Coordinator for DEQ's Water Quality Program). Ralph Lane Jr. of Odell Sanitary District participated in a few meetings before

needing to withdraw. Kathleen Feehan and Ryan Sudbury of the Consolidated Tribes of the Umatilla Indian Reservation, Dave Wilkinson of the Oregon Department of Agriculture, and Emily Ackland of the Association of Oregon Counties were updated at points in the process.

Ideas Proposed by the Source Control Small Group

These ideas are grouped into three categories: voluntary activities, regulatory changes that would be required, and recommendations. Within those three categories, the ideas are further grouped by the issues that they address.

Voluntary activities

Some Group members believe DEQ should provide a package of voluntary options for POTWs to select from that helps them build a program that fits the pollution reduction needs of their community. These measures are also proposed as voluntary because there are challenges to creating rules that can be done in conjunction with the Water Quality Standards Rulemaking.

Regulatory activities

Some Group members believe that DEQ should require certain activities through rule because municipalities have the authority to control pollutants that may or may not be regulated at the end of their sewage treatment plant discharge pipe(s) through POTWs' NPDES permits. Many of the new criteria are not currently or reliably measurable at the level at which they pose a threat to human health so it makes sense to require pollution controls to reduce discharge levels.

Recommendations

Some ideas from the Group involve requesting action for others or setting priorities. These were titled recommendations and the Group asks the larger Rulemaking Workgroup and DEQ to forward these to the EQC and DEQ for action.

Voluntary Ideas

Problem addressed: The following is a voluntary idea that would encourage POTWs and municipalities to establish the basic legal authority to control discharges from the businesses that they serve. Without this specific authority, control activities may not be implementable or enforceable.

- 1) DEQ can encourage POTWs to adopt a Sewer Use Ordinance (SUO), selecting from the Local Source Control model SUO prepared by Oregon Association of Clean Water Agencies (ACWA). POTWs can use the SUO as a template and select the clauses that fit their needs. This can be done through providing the ACWA Local Source Control SUO to all POTWs and including it in the permit application materials for POTWs. This may also be done through presentations and technical assistance visits.

Who would this impact? Could impact all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking?

Since this is a recommendation, not additional rule language, this recommendation could be included in this rule making without changing the current rulemaking process and timeline.

Does this proposal support other initiatives? Legal authority to control discharges is the foundation from which control of discharges under Pretreatment, the Agency's Toxics Reduction Strategy or pollutants on the P3 list could be pursued.

What level of support does this proposal have from the Group? This proposal does not have full support.

This idea partners well with all other ideas as it forms the basis for a POTW to control discharges.

Problem Addressed: the following ideas encourage the POTWs to expand their legal authority to address certain types of business or certain products that contribute pollutants.

- 2) Encourage POTWs to select from the Local Program Implementation Tools provided by ACWA to develop a source control program that goes beyond the requirements of the federal Pretreatment Program. The POTWs can select the programs that fit their needs. This can be done through providing the ACWA model SUO to all POTWs and including it in the permit application materials for POTWs. This may also be done through presentations and technical assistance visits.

Who would this impact? As written, all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking?

Since this is a recommendation, not additional rule language, this recommendation could be included in this rule making without changing the current rulemaking process and timeline.

Does this proposal support other initiatives? Yes, local programs can be used to target other pollutants, like those on the P3 list.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with ideas #1 and #3.

- 3) Encourage POTWs to use of a set of best management practices that prevent pollution provided by ACWA. The POTWs can select the best management practices that best fit their needs. This can be done through providing the ACWA model to all POTWs and including it in the permit application materials for POTWs. This may also be done through presentations and technical assistance visits.

Who would this impact? As written, all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking?

Since this is a recommendation, not additional rule language, this recommendation could be included in this rule making without changing the current rulemaking process and timeline.

Does this proposal support other initiatives? Yes, local program can be used to target other pollutants, like those on the P3 list.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with ideas #1 and #2.

Regulatory Ideas

Problem addressed: The following are regulatory ideas that would provide POTWs and municipalities with the basic legal authority to control discharges from the businesses that they serve to control pollutants. Without this specific authority, control activities may not be implementable or enforceable.

4) Rule Proposal: “Major municipalitiesⁱ must adopt a sewer use ordinance that contains at least the authorities listed in 40CFR403.8 (f)(1)(i-vii) by (date to be determined). The ordinances would be reviewed and approved by DEQ.” This would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, “Other Requirements”. The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who does it impact? POTWs with a design capacity of one million gallons a day or greater. This would include 23 POTWs with current Pretreatment Programs and 29 others which currently do not have a Pretreatment Program.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? A SUO that provides authority to control discharges would support actions to control or prohibit discharges to the sewer that contain pollutants on the P3 list, Toxics Reduction Strategy list and other emerging pollutants.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with all other ideas presented in this paper as it forms the basic authority to control discharges.

5) Rule Proposal: “Non-major municipalitiesⁱⁱ adopt a sewer use ordinance that contains at least the authorities listed in 40CFR403.8 (f)(1) (i-vii) by (date to be determined).” This would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, “Other Requirements”. The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who does this impact? Non-major POTWs (see proposed definition in endnote).

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance. In addition, DEQ and possibly stakeholders would need to determine the definition of “non-major POTWs” to be used in the rule language.

Does this proposal support other initiatives? A SUO that provides authority to control discharges would support actions to control or prohibit discharges to the sewer that contain pollutants on the P3 list, Toxics Reduction Strategy list and other emerging pollutants.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with all other ideas presented in this paper as it forms the basic authority to control discharges.

6) Rule Proposal: "All municipalities that contract to have their sewage treated by other municipalities must adopt sewer use ordinances or accept coverage under the ordinance used by the jurisdiction that treats their waste by (date to be determined). The ordinance must contain at least the authorities listed in 40CFR403.8 (f)(1)(i-vii). The ordinances would be reviewed and approved by DEQ." This would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, "Other Requirements". The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who does this impact? Any municipality that operates a sewer conveyance system but does not operate a sewage treatment plant. Some communities simply operate the collection systems (pipes and pumps) for sewage and convey it another jurisdiction for treatment. Any municipality currently contracting with a POTW that has a state approved Pretreatment Program must allow that POTW to extend the jurisdiction of its ordinance and Pretreatment Program into the service area covered by the contract under the federal regulations. These have to be approved by DEQ's Pretreatment Coordinator.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? No. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? A SUO that provides authority to control discharges would support actions to control or prohibit discharges to the sewer that contain pollutants on the P3 list, Toxics Reduction Strategy list and other emerging pollutants.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with all other ideas presented in this paper as it forms the basic authority to control discharges.

7) Rule Proposal: POTWs must adopt a Sewer Use Ordinance (SUO), selecting from the Local Source Control model SUO prepared by ACWA. POTWs can use the SUO as a template and select the clauses that fit their needs. This can be done through providing the ACWA Local Source Control SUO to all POTWs and including it in the permit application materials for POTWs. This may also be done through presentations and technical assistance visits. This would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, "Other Requirements". The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who would this impact? As written, all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation

criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? A SUO that provides authority to control discharges would support actions to control or prohibit discharges to the sewer that contain pollutants on the P3 list, Toxics Reduction Strategy list and other emerging pollutants.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with all other ideas presented in this paper as it forms the basic authority to control discharges.

Problem Addressed: the following ideas expand the legal authority of the POTW to address certain types of business or certain products that contribute pollutants.

8) Rule Proposal: "Major municipalities to include in their sewer use ordinance, by (date to be determined), the following restrictions:

- Local ordinances and education programs to control disposal of pharmaceuticals from sources not required to register under the federal Controlled Substances Act. Non-registrants may include: Coroner's offices, elementary and secondary schools, long-term care facilities, veterinarians and households.
- Increase regulation of federal pretreatment "categorical discharges" by: (1) regulating pollutants that are unregulated through the federal program; (2) regulating those without EPA-issued limits; (3) evaluate existing limits for categorical dischargers in the following sectors: electroplating, metal finishing, metal molding and casting, coil coating, aluminum forming, copper forming, electrical and electronic components.
- Regulation of industrial discharges not deemed to be "significant" or "categorical" under the federal pretreatment program but which discharge toxics on the following lists: (DEQ would be charged with establishing a priority pollutant list and/or priority source list to focus controls on pollutants of greatest concern and/or sources contributing greatest loads. DEQ would update these lists later to expand the program).
- Regulation of commercial facilities such as radiator shops, car washes, hospitals, laundries, and photo processors that are known sources of pollutants."

This language would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, "Other Requirements". The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who does this impact? All POTWs with a design capacity of one million gallons a day or greater. This would include POTWs with current Pretreatment Programs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. This proposal would create new state Pretreatment standards. DEQ would need further resources to develop a problem statement, develop stakeholder involvement and conduct a rulemaking. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and

implement the ordinance. If rules were created, DEQ would need resources to review and approve the ordinances.

Does this proposal support other initiatives? Adding these areas to regulation could control many of the pollutants on the P3 and Toxics Reduction Strategy list.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with the rule proposals to have POTWS have a sewer use ordinances.

9) Rule Proposal: "Major municipalities must include bans on products or prohibit activities by local ordinances if a pollutant in the product or generated by the activity causes the following:

- a. The POTW's receiving water violates CWA 304(a) criteria, including tissue and sediment levels not just ambient water;
- b. The POTW's effluent contains measurable levels of 304 (a) criteria; or
- c. The pollutant in the POTW's effluent is below quantitation limits."

This would be a change to Oregon Administrative Rules Chapter 340, Division 45, section 0065, "Other Requirements". The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who does this impact? POTWs with a design capacity of one million gallons a day or greater. This would include POTWs with current Pretreatment Programs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? Yes, bans and prohibitions on certain activities could have a direct impact on the discharge of P3 pollutants and pollutants identified in the Toxics Reduction Strategy.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with ideas to establish a sewer use ordinance.

10) Rule Proposal: "POTWs must select Local Program Implementation Tools provided by ACWA to develop a source control program that goes beyond the requirements of the federal Pretreatment Program. The POTWs can select the programs that fit their customer base and pollutants of concern." This would be a change to Oregon Administrative Code Chapter 340, Division 45, section 0065, "Other Requirements". The intent is to have this apply to all POTWs whether they get a NPDES or WPCF permit and it is not conditioned on the POTW meeting the requirements of a Pretreatment program.

Who would this impact? As written, all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs

would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? Yes, local programs can be used to target other pollutants, like those on the P3 list.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with establishing a sewer use ordinance and other controls on discharges.

11) Rule Proposal: POTWs must adopt and require the use of a set of best management practices that prevent pollution provided by ACWA. The POTWs can select the best management practices that best fit their needs. This can be done through providing the ACWA model to all POTWs and including it in the permit application materials for POTWs. This may also be done through presentations and technical assistance visits.

Who would this impact? As written, all POTWs.

Can this rule proposal be considered as part of the Water Quality Standards Rulemaking? DEQ has determined that this proposal does not meet the evaluation criteria. The exact rule language for this proposal needs further work. If rules were created, DEQ would need resources to review and approve the ordinances. The POTWs would need resources to develop the ordinance, complete the ordinance adoption process and implement the ordinance.

Does this proposal support other initiatives? Using best management practices has the potential to control P3 pollutants and pollutants identified in the Toxics Reduction Strategy.

What level of support does this proposal have from the Group? This idea does not have full support.

This idea partners well with establishing a sewer use ordinance and adopting other local controls.

Recommendations

Recommendations to the EQC:

12) Endorse a statewide sewer charge to fund legislative creation of a non-profit group that would provide source control services to smaller municipalities. Services could include developing and revising ordinances, issuing permits to dischargers, conducting inspections and technical assistance visits. Examples of non-profits set up by the legislature to provide services are the Energy Trust of Oregon and the Climate Trust.

Why? Establishing and staffing a Pretreatment Program results in a commitment of time, money and resources that smaller POTWs may not have and requires expertise in inspection, industrial processes and public education.

What is the problem this proposal addresses? Some POTWs may face a greater need for source control activities than their resources can support. Since water is a shared resource, this proposal proposes a shared cost.

Who does this impact? All users of publically owned treatment Works (POTWs).

Does this proposal support other initiatives? Expanding the provision of source control to POTWs without programs will likely lead to the reduction of pollutants from all sectors, thereby decreasing the pollutants not only in the Water Quality Standards but also those on the P3 list and Toxics Reduction Strategy list.

What level of support does this proposal have from the Group? This idea does not have full support.

- 13) Ask the EQC to request that the Legislature authorize state agencies to ban products that are known to be sources of pollutants that cannot be treated at POTWs. Agencies should work together to create the list of products, support and implement the bans.

Why? Some pollutants simply cannot be treated by POTWs and they are used in ways where they are very likely to be discharged to the POTW.

What is the problem this proposal addresses? Bans could prevent pollutants from entering the POTW system when it is known that the POTW cannot treat the pollutant and the pollutant would get into wastewater as a result of its normal use. Bans would be useful when the pollutant cannot be easily measured but the negative impacts occur at low levels of concentration in water. An example of a product that could be banned is Triclosan. This antibacterial agent is used in many soaps. The use of the product contributes to water contamination; it is a possible endocrine disruptor and it can contribute to the drug resistance of bacteria.ⁱⁱⁱ

Who would this impact? State agencies such as DEQ, the Department of Agriculture, etc.

Does this proposal support other initiatives? Banning products is one way to target products that contain the P3 pollutants and the Toxics Reduction Strategy list pollutants.

What level of support does this proposal have from the Group? This idea does not have full support.

Recommendation to EQC to direct action by DEQ:

- 14) When prioritizing the implementation of new rules, DEQ can create an implementation strategy that requires the existing state-approved Pretreatment Programs to do more and go first, while giving POTWS without Pretreatment Programs more time, and possibly, a reduced set of requirements.

Why? The POTWs with currently approved Pretreatment programs serve just over half of Oregon's population. So changes to those programs impact a significant portion of sewer users. These POTWs are in a better position to expand regulatory programs, to demonstrate how to do it to others and to develop applicable requirements for businesses that they permit.

What is the problem this proposal addresses? The lack of experience with source control program that some POTWs have could be alleviated by having more experienced POTWs set examples for them.

Who does this impact? DEQ staff and the POTWs with currently approved Pretreatment Programs.

Does this proposal support other initiatives? Not determined.

What level of support does this proposal have from the Group? This idea does not have full support.

Recommended projects for DEQ:

- 15) DEQ should work with industrial suppliers and associations that represent industries to make alternative products available to industry, reducing the pollution from specific processes that discharge to the sewer or directly to waters of the state.

Why? Some pollutants simply cannot be treated by POTWs and they are used in ways where they are very likely to be discharged to the POTW. To make sure that industrial processes can continue, alternative products need to be available.

What is the problem this proposal addresses? This proposal would help make alternative products available to prevent negative impacts to industries if the products they originally used are controlled to prevent pollution.

Who would this impact? DEQ, industries and industrial supply companies.

Can this recommendation be considered as part of the Water Quality Standards Rulemaking? Since this is a recommendation, not additional rule language, this recommendation could be included in this rule making without changing the current rulemaking process and timeline.

Does this proposal support other initiatives? Yes, it could control pollutants on the P3 list and the Toxics Reduction Strategy

What level of support does this proposal have from the Group? This idea does not have full support.

- 16) Have DEQ analyze where the bulk of discharges of toxics are coming from related to sources discharging to POTWs.

Why? Currently, DEQ does not have data that specifically correlates the toxic pollutants in the proposed Water Quality Standards to sources that discharge to POTWs. This makes more specific problem statements and solutions difficult to create.

What is the problem this proposal addresses? Specific data would help DEQ and POTWs be more accurate in determining what types of sources to focus on.

Who would this impact? DEQ

Does this proposal support other initiatives? This could provide data needed for other initiatives.

What level of support does this proposal have from the Group? **FULL SUPPORT**

- 17) Have DEQ fully support its role and responsibility as the Approval Authority and Control Authority under the federal Pretreatment rules. This includes assessing all POTWs to see if they meet the criteria for a Pretreatment Program and entering into compliance agreements with POTWs to create Pretreatment Programs.

Why? DEQ's current state program and legal authority allow DEQ to have a bigger presence in Pretreatment than it currently does. The current level of funding and staffing is adequate to meet EPA's delegation agreement with DEQ, which focuses on regulating the existing Pretreatment POTWS, but doesn't allow for additional surveying of POTWs and industries on a regular basis to bring new POTWs and industries under regulation.

What is the problem this proposal addresses? Expanding the Pretreatment Program through active review and recruitment of POTWs under the current, existing legal authority.

Who would this impact? DEQ.

Does this proposal support other initiatives? Bringing more POTWs into Pretreatment would give them the basic tools (ordinance, permitting, sampling) to track and control additional pollutants, such as P3 pollutants the Toxics Reduction Strategy list.

What level of support does this proposal have from the Group? This idea does not have full support.

- 18) Have DEQ review how landfill leachate is regulated across programs. Provide a summary of this regulation and available information that characterizes the leachate to POTWs and other interested parties. This information can then be used by POTWs for determining how to structure their regulatory controls on the leachate they accept.

Why? Many POTWs accept landfill leachate for currently operating or closed landfills. This leachate is only regulated for certain pollutants, depending upon the permit limits in the POTW's permit. But landfill leachate has the potential to have a multitude of pollutants in it that are not currently regulated. Further, the landfill itself can cause the pollutants to transform when they mix, are in an anaerobic environment or degrade.

What is the problem this proposal addresses? It is unclear how best to assure that data about landfill leachate is shared between regulatory agencies. If the regulatory picture was clearer, then existing data could be used more efficiently and any missing data could be identified.

Who would this impact? To complete the project, it would impact DEQ. If the data from the project is used, then it would impact POTWs and Landfills that discharge to them.

Does this proposal support other initiatives? P3 pollutants and Toxics Reduction Strategy pollutants are very likely found in landfill leachate.

What level of support does this proposal have from the Group? This idea does not have full support.

- 19) Have DEQ review how landscaping activities are regulated across programs. Provide a summary of this regulation and available information on the pollutants generated by landscaping activities and the best management practices to avoid pollution to POTWs and other interested parties. This information could be used to provide consistent messages to landscapers.

Why? Landscaping activities can be regulated by different agencies for different reasons, depending upon the size and location of the project.

What is the problem this proposal addresses? If there are impacts to water that goes to a POTW from landscaping activities, the control of that discharge needs to happen in context with other regulation. This project would provide that context.

Who would this impact? To complete the project, it would impact DEQ. If the data from the project is used, then it would impact landscaping activities and POTWs.

Does this proposal support other initiatives? Some pollutants associated with landscaping, such as pesticides, are on the P3 list and the Toxics Reduction Strategy list.

What level of support does this proposal have from the Group? **FULL SUPPORT**

20) Recommendation to the Association of Oregon Counties: Ask AOC to partner with the POTWs on initiatives that support source control programs. Examples include: supporting product bans, participating in pharmaceutical collections and household hazardous waste collection, sharing resources to provide consistent messages to residents/customers.

Why? POTWs alone can only reach so many of their customers. Partnering with other entities, especially entities like counties who cover large areas and have a role in public health can help get a consistent and frequent message out to the sewer user.

What is the problem this proposal addresses? This proposal identifies the improvement in messaging when public agencies partner together. Working together extends resources and prevents confusion.

Who would this impact? County governments and POTWs.

Does this proposal support other initiatives? Bans, collection events and public education could control the P3 pollutants and Toxics Reduction Strategy pollutants in household products.

What level of support does this proposal have from the Group? This idea does not have full support.

21) Recommendation to the Oregon Board of Dentistry: Ask the Board to follow up on ORS 679.520 and ORS 679.525 (below) requiring the installation of amalgam separators and the use of best management practices created by the Oregon Dental Association. The Board of Dentistry has the authority to seek compliance with this law. The request is to determine if there are currently dentists out of compliance with the law.

Why? Since 2008, any dentist working with amalgam has contain and properly dispose of any waste containing that amalgam in order to keep the mercury containing waste from entering water. Some POTWs have followed up on compliance with this law and their results show that there may be dentists who are out of compliance.

What is the problem this proposal addresses? POTWs are not able to treat mercury so it passes through into the water or the solids.

Who would this impact? The Oregon Board of Dentistry and dentists.

Does this proposal support other initiatives? Possibly the Toxics Reduction Strategy.

What level of support does this proposal have from the Group? This idea does not have full support.

Text of Dental Amalgam Law

679.520 Treatment of dental waste materials containing mercury. (1) A dentist who places in or removes from the human oral cavity dental materials containing mercury shall:

(a) Implement and maintain best management practices of dental wastes as developed by the Oregon Dental Association to prevent amalgam waste and mercury from entering the air, sewage systems, waterways and garbage;

(b) Have an amalgam separator installed on a wastewater drain in a dental facility where the dentist practices if dental materials containing amalgam pass through the wastewater drain. The amalgam separator must be verified by the manufacturer to remove at least 95 percent of the amalgam that passes through the drain on which it is installed;

(c) Maintain an amalgam separator installed as required by this subsection in accordance with the manufacturer's recommendations; and

(d) Place all dental waste materials containing mercury in a vapor-proof container that is clearly labeled as containing mercury and dispose of the materials in accordance with best management practices of dental wastes recommended by the Oregon Dental Association. Disposal may not be by incineration that would result in the release of mercury into the air.

(2) Each dental office shall keep proof of installation of an amalgam separator and maintain an amalgam separator maintenance log that the office shall make available for inspection by the Oregon Board of Dentistry. The board may inspect maintenance logs from a period of up to three years prior to the date of inspection. [2007 c.517 §2]

679.525 Amalgam separators required in certain dental facilities. Each dental facility constructed on or after January 1, 2008, shall have amalgam separators that meet the requirements of ORS 679.520 (1)(b). [2007 c.517 §3]

ⁱ A major municipal POTW is one designed to process one million gallons a day or more.

ⁱⁱ For the purposes of this proposal, a non-major municipal POTW is one that discharges to a water quality limited stream or has known industrial dischargers not already subject to Pretreatment standards discharging to the POTW or have known sources of toxics included in the Water Quality Standards Rulemaking for human health discharged to the POTW by commercial businesses

ⁱⁱⁱ http://markey.house.gov/docs/triclosan_information_final.pdf

Ideas not put forward

- Ask ACWA to provide assistance and Sewer Use Ordinance models for municipalities to adopt.

This idea was incorporated into more specific ideas about Sewer Use Ordinances for municipalities.

- Recommend to the EQC to recommend to the Legislature to expand SB 737 to more or all municipal POTWs.

Because this idea is a suggestion to expand a program that is not directly tied to the Water Quality Standards rulemaking, this idea was not put forward here but was shared with DEQ staff working on implementing SB 737.

- Other references to SB 737

There were some ideas that included the Priority Persistent Pollutant (P3) List created under SB 737 as a criterion for when to apply an idea. References to this list or SB 737 were deleted because DEQ felt that including those references would expand the scope of SB 737 and was not under the responsibility of the Water Quality Standards for Human Health rulemaking.

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
1) DEQ can encourage POTWs to adopt a Sewer Use Ordinance (SUO), selecting from the Local Source Control model SUO prepared by Oregon Association of Clean Water Agencies (ACWA).	Yes	Yes	Project	Yes	Yes	No	Yes. Forms the foundation for regulation	Six POTW members participated	Yes, for DEQ to take the action and for the POTWs who adopt an ordinance to develop it and implement it	Need to know if the scope would be limited to a subset of POTWs and need to know how many would need revision	The cost of legal counsel for ordinance development and ordinance process, resources to carry out the action the ordinance would require	Staff time
2)Encourage POTWs to select from the Local Program Implementation Tools provided by ACWA to develop a source control program that goes beyond the requirements of the federal Pretreatment Program.	Yes	Yes	Project	Yes	Yes	No	Yes. Would expand outreach to industrial and commercial sources of pollutants	Six POTW members participated	Yes, for DEQ to take the action and for the POTWs who adopt an ordinance to develop it and implement it	Need to know if the scope would be limited to a subset of POTWs and need to know how POTWs would participate	resources to carry out the action	Staff time
3)Encourage POTWs to use of a set of best management practices that prevent pollution provided by ACWA. The POTWs can select the best management practices that best fit their needs.	Yes	Yes	Project	Yes	Yes	No	Yes. Would expand outreach further to industrial and commercial sources of pollutants and possibly reach residents	Six POTW members participated	Yes, for DEQ to take the action and for the POTWs who adopt an ordinance to develop it and implement it	Need to know if the scope would be limited to a subset of POTWs and need to know how POTWs would participate	resources to carry out the action	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			

4) Rule Proposal: “Major municipalities must adopt a sewer use ordinance that contains at least the authorities listed in 40CFR403.8 (f)(1)(i-vii) by (date to be determined). The ordinances would be reviewed and approved by DEQ.”	Yes	Yes	Rule	No. Many tasks could not be completed in time: Settling on rule language, seeking stakeholder review, determining impact on DEQ and POTW resources by August 17	Biggest issue is working with the stakeholder community	Yes	Yes, sets a foundation for regulation of discharges	A subset of majors represented by ACWA participated. Of the 52 major POTWs, we know that 23 have ordinances that meet these conditions. We do not know how many of the 29 other majors would have to create this kind of ordinance.	Reviewing the ordinances from as many as 29 communities would take staff time currently not budgeted. Depending upon the rule language proposed, there may be a need for DEQ to review periodic changes to the ordinances and to provide technical assistance during the development of the ordinances.	Need to know if the other major municipalities have ordinances now and how many would need revision to contain the minimum requirements.	The cost of legal counsel for ordinance development and ordinance process, resources to carry out the action the ordinance would require	Staff time.
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Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
5) Rule Proposal: “Non-major municipalities adopt a sewer use ordinance that contains at least the authorities listed in 40CFR403.8 (f)(1) (i-vii) by (date to be determined).”	Yes	Yes	Rule	Not possible to complete due to much larger scope—the number of impacted POTWs could be in the hundreds	Biggest issue is working with the stakeholder community	Yes	Yes, sets a foundation for regulation	No	Reviewing the ordinances from many communities would take staff time currently not budgeted. Depending upon the rule language proposed, there may be a need for DEQ to review periodic changes to the radiances and to provide technical assistance during the development of the ordinances.	Need to know the status of ordinances at the non-major municipalities and the resources needed to act on those ordinances	The cost of legal counsel for ordinance development and ordinance process, resources to carry out the action the ordinance would require	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
6) Rule Proposal: "All municipalities that contract to have their sewage treated by other municipalities must adopt sewer use ordinances or accept coverage under the ordinance used by the jurisdiction that treats their waste by (date to be determined). The ordinance must contain at least the authorities listed in 40CFR403.8 (f)(1)(i-vii). The ordinances would be reviewed and approved by DEQ."	Yes	Yes Note: pretreatment POTWs are already required have any municipality that they get sewage from allow them to implement their ordinance in the affected service area.	Rule	Tasks: Settle on rule language, seek stakeholder review, determine impact on DEQ resources by determining impact on regulated community by August 17 Not possible due to much larger scope—the number of impacted POTWs could be in the hundreds	Biggest issue is working with the stakeholder community	Yes	Yes, sets a foundation for regulation	No	Reviewing the ordinances from many communities would take staff time currently not budgeted. Depending upon the rule language proposed, there may be a need for DEQ to review periodic changes to the ordinances and to provide technical assistance during the development of the ordinances.	Need to know the status of ordinances at the municipalities and the resources needed to act on those ordinances	The cost of legal counsel for ordinance development and ordinance process, resources to carry out the action the ordinance would require	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
7) Rule Proposal: POTWs must adopt a Sewer Use Ordinance (SUO), selecting from the Local Source Control model SUO prepared by ACWA. POTWs can use the SUO as a template and select the clauses that fit their needs.	Yes	Yes	rule	Tasks: Settle on rule language, seek stakeholder review, determine impact on DEQ resources by determining impact on regulated community Not possible due to much larger scope—the number of impacted POTWs could be in the hundreds	Biggest issue is working with the stakeholder community	Yes	Sets a foundation for regulation	A small subset of POTWs participated	IF DEQ is expected to educate the POTWs and review the ordinance, that would take resources currently not in the budget.	yes	The cost of developing the ordinance and implementing it	Staff time
8) Rule Proposal: "Major	Yes	Yes	Rule	Time	Yes but not	Yes	Yes because it	Some	If DEQ is	This proposal	The cost of	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
municipalities to include in their sewer use ordinance, by (date to be determined), the following restrictions: (see issue paper for details)				needed to refine rule language and work with stakeholders	within the timeframe and resources available		targets discharges currently not focused on by all POTWs		expected to educate the POTWs and review the ordinance, that would take resources currently not in the budget.	involves determining some interactions with other agencies and that was not done	developing the ordinance and implementing it	
9) Rule Proposal: "Major municipalities must include bans on products or prohibit activities by local ordinances if a pollutant in the product or generated by the activity causes the following: (see issue paper for details)	Unknown	Unknown	Rule	No. It needs to be determined if a rule requiring a municipality to institute a ban is legally possible	Not within the timeframe	Unknown	Yes because a ban would prevent the pollutant from entering the water	Some	If DEQ is expected to educate the POTWs and review the ordinance, that would take resources currently not in the budget.	This proposal involves researching how a ban could be implemented by a municipality and that was not done	The cost of developing the ordinance and implementing it	Staff time
10) Rule Proposal: "POTWs must select Local Program Implementation Tools provided by ACWA to develop a source control program that goes beyond the requirements of the federal Pretreatment Program. The POTWs can select the programs that fit	Yes	Yes	Rule	Time to work with affected stakeholders would go beyond the timeframe	Yes but not within the timeframe and resources available	Yes	Yes because the ordinance would create a program to control discharges.	some	If DEQ is expected to educate the POTWs and review the ordinance, that would take resources	Not determined	The cost of developing the ordinance and implementing it	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
their customer base and pollutants of concern.”										currently not in the budget.		
11) Rule Proposal: POTWs must adopt and require the use of a set of best management practices that prevent pollution provided by ACWA. The POTWs can select the best management practices that best fit their needs.	Yes	Yes	Rule	Time to work with affected stakeholders would go beyond the timeframe	Yes but not within the timeframe and resources available	Yes	Yes because the ordinance would create a program to control discharges.	some	If DEQ is expected to educate the POTWs and review the ordinance, that would take resources currently not in the budget.	Not determined	The cost of developing the ordinance and implementing it	Staff time
12)Endorse a statewide sewer charge to fund legislative creation of a non-profit group that would provide source control services to smaller municipalities. Services could include developing and revising ordinances, issuing permits to dischargers, conducting inspections and technical assistance visits. Examples of non-profits set up by the legislature to provide services are the Energy Trust of Oregon and the Climate Trust.	Unknown	N/A	Project	Need to more fully describe the concept	No	No	Yes, could help smaller communities reach more customers w/o adding staff	No	Yes	No. We don't know how this type of non-profit is set up and we don't have any estimates of the cost for setting one up and how that cost would be borne by the sewer users.	The sewer charge	Possible staff time to provide technical assistance
13)Ask the EQC to request	No	No	Initiative	yes	yes	no	Yes. Preventing	no	yes	Not Applicable	Staff time to	Not

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
that the Legislature authorize state agencies to ban products that are known to be sources of pollutants that cannot be treated at POTWs. Agencies should work together to create the list of products, support and implement the bans.							the use and disposal of some products would prevent them from going into the water				implement the ban	applicable
14)When prioritizing the implementation of new rules, DEQ can create an implementation strategy that requires the existing state-approved Pretreatment Programs to do more and go first, while giving POTWS without Pretreatment Programs more time, and possibly, a reduced set of requirements.			Appropriate as a recommendation from EQC to DEQ for prioritization	Yes	Yes	No	The 23 Pretreatment POTWs cover 54% of the population so anything that they do has a significant impact	A subset of majors represented by ACWA are at the table		Question whether there are other POTWs that need the attention that would not get as much attention if focus in on existing POTWs	Cost of implementation	This is a workload prioritization recommendation and may not lead to increased DEQ costs
15)DEQ should work with industrial suppliers and associations that represent industries to make alternative products available to industry, reducing the pollution from specific processes that discharge to the sewer or directly to waters of the state.	Yes	Yes	Project	Yes	Need to determine which other entities to work with	No	Unknown	No, there were not industrial suppliers in the work group	DEQ staff time	Not determined	Not determined	Staff time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
16)Have DEQ analyze where the bulk of discharges of toxics are coming from related to sources discharging to POTWs.	Yes	Yes	Project	Scoping this problem is possible within the timeframe . Researching the answers is not	Not determined	No	No	A subset	DEQ Staff Time	Not determined	Not applicable	Staff time
17)Have DEQ fully support its role and responsibility as the Approval Authority and Control Authority under the federal Pretreatment rules. This includes assessing all POTWs to see if they meet the criteria for a Pretreatment Program and entering into compliance agreements with POTWs to create Pretreatment Programs.	Yes	Yes	initiative	Yes	Yes	No	Possibly if new POTWs join the program	A subset	DEQ Staff Time	Not Applicable	For POTWs that start Pretreatment Programs, the cost of program development and implementation	Staff Time
18)Have DEQ review how landfill leachate is regulated across programs. Provide a summary of this regulation and available information that characterizes the leachate to POTWs and other interested parties. This information can then be used by POTWs for	Yes	Yes	Project	Scoping the project could be done. Doing the research would take	Yes	No	Possibly	No landfill owners nor anyone from the Solid Waste Program was involved in the Workgroup	DEQ Staff Time	Not applicable	Not determined	Staff Time

Ideas for evaluation	EQC authority to adopt?	DEQ authority in statutes or rule?	Appropriate as rule or better as IMD, initiative, project or program?	Consider in this rulemaking?						Critical information available for timely evaluation and action by DEQ?	Fiscal Impact: What are the regulated communities cost?	Fiscal Impact: What are the costs to DEQ to make this happen?
				Within timeline?	Can scope and issues be addressed?	Is it a WQ rule?	Would action significantly reduce toxics?	Are affected stakeholders involved in the process?	Significant new funding /resources to implement?			
determining how to structure their regulatory controls on the leachate they accept.				longer								
19)Have DEQ review how landscaping activities are regulated across programs. Provide a summary of this regulation and available information on the pollutants generated by landscaping activities and the best management practices to avoid pollution to POTWs and other interested parties. This information could be used to provide consistent messages to landscapers.	Yes	Yes	Project	Scoping the project could be done. Doing the research would take longer	Yes	No	Possibly	No members of the landscape industry were involved in the Workgroup	DEQ Staff Time	Not applicable	Not determined	Staff Time

MEMORANDUM

To: Tiffany Yelton, Pretreatment Coordinator, DEQ HQ
From: Jane Hickman, Legal Policy Advisor, DEQ HQ
Re: Legal Authority to Expand Pretreatment Requirements
Date: June 7, 2010

Question One: Can DEQ require a Pretreatment Program of a WPCF permittee if that permittee meets the federal requirements for a Pretreatment Program?

Answer: Yes. Pursuant to ORS 468B.048(3), if we reasonably think a pretreatment program is necessary for a POTW to comply with water quality standards, we can require a program, regardless of whether the POTW is a NPDES or WPCF permittee.

Question Two: For smaller POTW NPDES permittees and WPCF permittees not required by federal rules to adopt a pretreatment program, does DEQ have the authority to require these permittees to adopt a pretreatment plan?

Answer: Yes. Oregon Revised Statute (ORS) 454.020 grants DEQ the authority to require “each user of a municipal treatment works to comply with the toxic and pretreatment effluent standards and inspection, monitoring and entry requirements” of the Clean Water Act. The statute doesn’t limit applicability to any certain users but rather applies to all users. ORS 454.010(2) does include a definition for “industrial user,” so the legislature clearly would have limited the scope of pretreatment requirements to industrial users if that was the intent.

Another statute giving DEQ the authority to include permit conditions DEQ considered necessary for the permittee’s compliance with water quality standards is ORS 468B.048(3), which states that, “*Subject to the approval of the Department of Environmental Quality, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards.*” DEQ may ensure that users comply with DEQ’s water quality standards by requiring that all owners of treatment works impose pretreatment-like conditions on their dischargers who might otherwise contribute to violation of a water quality standard.

Question Three: Could DEQ use the WPCF permit to require a POTW with a NPDES permit to implement a pretreatment program or other controls, if the POTW does not meet the requirements for a Pretreatment Program?

Answer: This would not be necessary. OAR 340-045-0015(4)(a) states that the owner of a sewerage system is responsible for controlling and treating the wastes the owner allows to be discharged into the system. The rule applies to all systems owners, even those with WPCF permits. OAR 340-045-0015(4) states that “A person discharging wastes into a sewerage system is not required to obtain a WPCF or NPDES permit if the owner of such sewerage system has a valid WPCF or NPDES permit. The person discharging must comply with all other applicable

laws, rules, and regulations regarding water pollution.” Under our current rules, we cannot require the user of a sewerage system to obtain a WPCF permit as a way to impose pretreatment requirements. Instead, the statute and rules give authority to the NPDES or WPCF permit holder to impose requirements on its dischargers it deems necessary to prevent pollution to waters of the state, and authority to DEQ to require that POTWs adopt and enforce pretreatment requirements.

Question Four: Does DEQ need to change its statutory authority to require POTWs to go beyond the federal Pretreatment Program?

Answer: DEQ would not need to seek a change to the statute to impose pretreatment or toxic effluent standards above and beyond federal requirements, but it would be prudent for DEQ to adopt any such pretreatment standards in rule. DEQ’s rules (OAR 340-045-0063(1), (3) and (5)) currently refer to “applicable federal and state pretreatment standards” without specifying which standards are applicable to whom. DEQ should specify in rule which pretreatment standards apply to which POTWs and which dischargers. [Note that OAR 340-045-0063(5) states that “the owner of the sewerage system may impose more stringent pretreatment standards [than required by federal or state rules] if deemed necessary by the owner for the proper operation and maintenance of the sewerage system or disposability of the sewage sludge.”]

Question Five: How did Oregon adopt the Federal Pretreatment standards? Has Oregon developed state Pretreatment standards?

Answer: DEQ’s administrative rules do not specifically adopt or incorporate the federal pretreatment rules by reference. Oregon Administrative Rules refer to *applicable* federal and state pretreatment standards and requirements without citing to specific federal or state regulations. Oregon does not have state Pretreatment Standards at this time. DEQ rules anticipate the adoption of state pretreatment standards and requirements. In order for DEQ to implement pretreatment requirements or standards above and beyond the federal pretreatment requirements, DEQ must adopt rules with those specific requirements. As discussed earlier in the memorandum, DEQ has the statutory authority to adopt such rules. Oregon statute (ORS 454.020) gives DEQ the authority to impose requirements that industrial dischargers must comply with, though OAR 340-045-0063(5) states that the owner of the sewerage system is responsible for ensuring dischargers’ compliance. Following are the Oregon administrative rules that reference pretreatment requirements, in relevant part.

OAR 340-045-0015(4)(b) states that “Each user of the sewerage system must comply with applicable toxic and *pretreatment standards* and the recording, reporting, monitoring, entry, inspection, and sampling requirements *of the Commission and the Federal Act* and regulations and guidelines issued pursuant thereto.” (emphasis added)

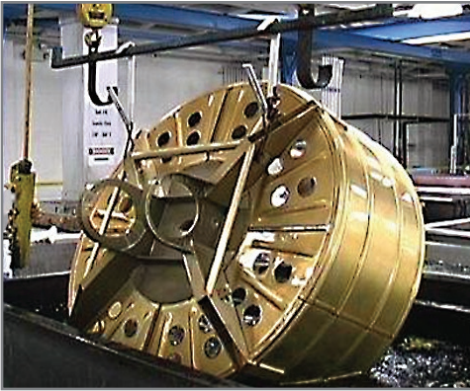
340-045-0063(1) All owners of sewerage systems which receive industrial waste *subject to federal or state pretreatment standards* will develop and implement a pretreatment program for controlling those industrial contributors. The program will be submitted to the Director for approval. Department approval is considered a Category III action as described in OAR 340-045-0027. (emphasis added)

(3) Both the owners of sewerage systems receiving industrial wastes and the industrial contributors will comply with *applicable pretreatment provisions of the federal Clean Water Act and the rules of the Department*. (emphasis added)

(5) The owner of a sewerage system receiving industrial waste is responsible for assuring that the industrial contributor meets the prohibited discharge or categorical *pretreatment standards established by the United State Environmental Protection Agency or the Department, whichever is most limiting*. The owner of the sewerage system may impose more stringent pretreatment standards if deemed necessary by the owner for the proper operation and maintenance of the sewerage system or disposability of the sewage sludge.

Summary of National and State Industrial Pretreatment Programs Fact Sheet

Oregon Association of Clean Water Agencies



The U.S. Congress created the national pretreatment program in 1972 as part of the Clean Water Act (CWA) to protect the nation's wastewater treatment plants and waterways from discharges of toxic and other pollutants. The term "**industrial pretreatment**" refers to the requirements that industries discharging excessive pollutants treat their wastewater before releasing it to local municipal sewer systems.

The objectives of the industrial pretreatment program are:

- To protect municipal wastewater treatment systems, referred to as Publicly Owned Treatment Works or POTWs, from interference caused by industrial wastes,
- To protect the nation's waters from industrial pollutants that pass through POTWs untreated, and
- To provide for the beneficial use of POTWs wastewater biosolids (solid material generated from wastewater treatment) as soil conditioners and fertilizers.

The Oregon Department of Environmental Quality (DEQ) received authority from the US Environmental Protection Agency (EPA) on March 12, 1981, to regulate pretreatment programs

in Oregon. DEQ, as the pretreatment program approval authority in Oregon, administers its pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. The Clean Water Act requires any wastewater discharged through a pipe to the nation's waters—such as discharges from manufacturing facilities or POTWs—to secure an NPDES permit.

Who is subject to these regulations?

All businesses, including industrial, commercial, and government establishments that discharge process wastewater (non-domestic wastewater) are subject to the requirements of the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). For most businesses, this means they must not discharge anything that will adversely affect the sewage system or its workers, or the sewage treatment process including the quality of biosolids generated from wastewater treatment.

For those businesses that discharge significant amounts of toxic pollutants, or other pollutants in amounts that could potentially be detrimental to the POTW, expanded regulations are necessary. The

Pretreatment Program classifies these businesses as **Significant Industrial Users (SIUs)** who are required to limit or treat discharges to environmentally acceptable levels. The types of tools used by municipal wastewater treatment plant utilities to limit industrial discharges can include:

- Business-specific industrial wastewater discharge permits with numeric discharge limitations including self-monitoring and reporting requirement; or
- Requiring the use of Best Management Practice (BMPs) to reduce pollution in lieu of numeric limitations.

What businesses are classified as SIUs?

The federal pretreatment regulations apply to all businesses who engage in operations identified as "categorical" processes by the EPA. These businesses are automatically considered SIUs. Examples of categorical process include electroplating, metal finishing, semiconductor manufacturing, battery manufacturing, and a number of other activities. EPA has established "categorical standards" for these

processes, which limit the quantities of various pollutants that can be discharged to the sanitary sewer system. Categorical standards are national standards, and all businesses in the U.S. engaged in the same categorical processes are subject to the same standards.

Other businesses that would also be classified as SIUs depending on the specifics of the wastewater utility that receives their wastewater include:

- A business or industry that discharges 25,000 gallons per day or more of process wastewater,
- A business or industry that contributes 5 percent or more of

the dry weather hydraulic or organic capacity of the treatment plant, or

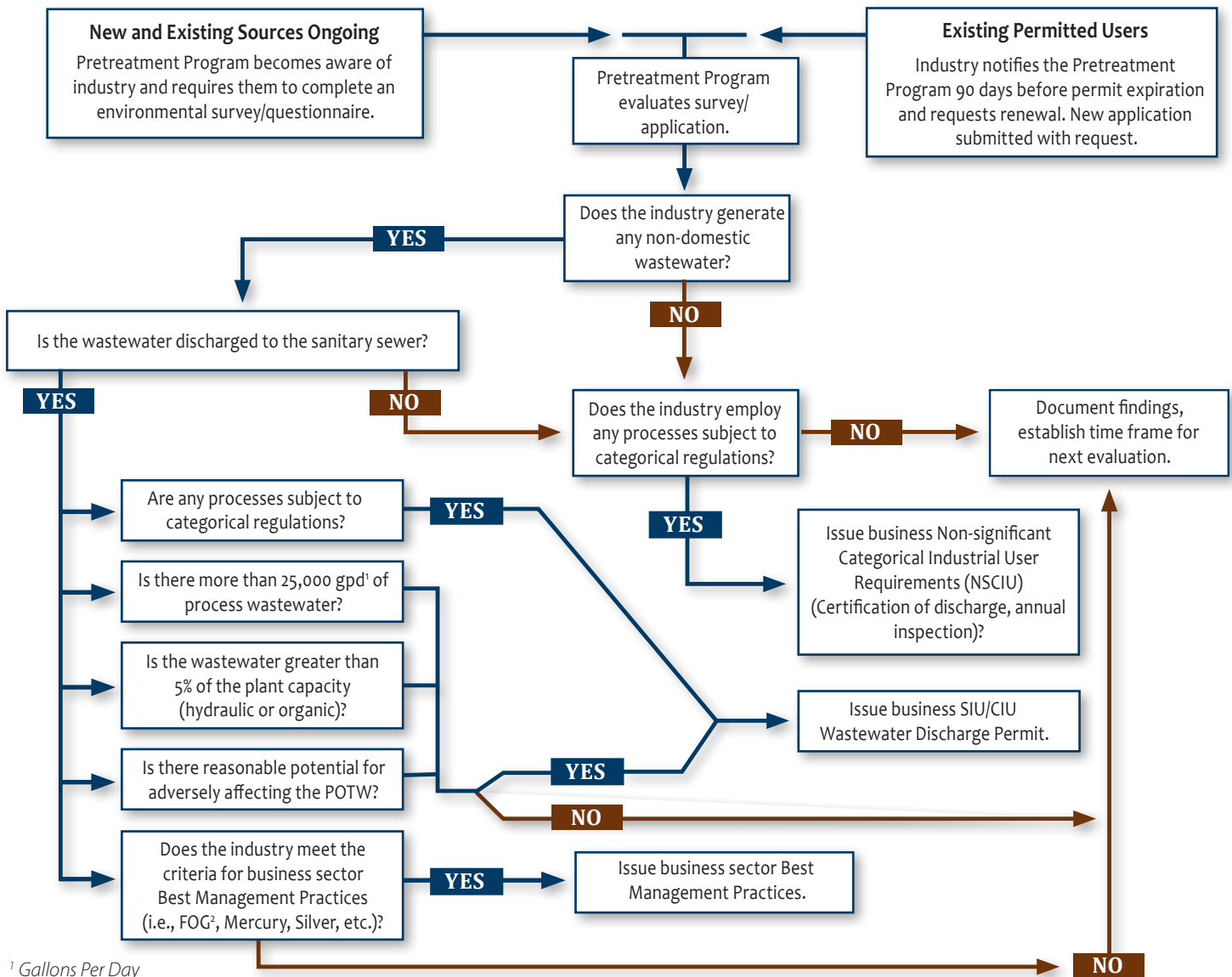
- Any business that has the reasonable potential to adversely affect the POTW's operation or for violating any pretreatment standard or requirement. Refer to Figure 1 for a visual description of industrial permitting evaluation.

In addition to Categorical Pretreatment Standards, local wastewater utilities have the authority to develop local limitations to address community - specific needs to protect the municipal treatment process, ensure high biosolids quality, and safeguard worker health and safety.

Local limits are technically-based, legally defensible, and enforceable just like national categorical pretreatment standards. Typically, these local limits apply to SIUs that discharge industrial process wastewater to local sewer systems. In some municipalities, local limits apply to all non-domestic discharges, and not limited to significant industries.

SIUs are required to install facilities to treat their wastewater prior to discharge to the sanitary sewer system in order to comply with applicable pretreatment standards. Typically, SIUs must conduct monitoring of their discharge and report

Flow Chart Evaluation for Permit Issuance



¹ Gallons Per Day
² Fats, Oil and Grease

these results to the POTW to prove compliance with applicable regulations. Local businesses and industries that fail to comply are subject to escalating enforcement with the possibility of monetary penalties, judicial enforcement actions, and termination of sewer service.

Oversight of the Pretreatment Program

Municipalities with approved Pretreatment Programs in Oregon provide legal oversight of industrial discharges, typically through a Pretreatment Ordinance (or Sewer Use Ordinance). The ordinance and approved pretreatment program manuals provide authority and procedures for a municipality to:

- Receive and evaluate waste discharges;
- Inspect facilities;
- Require control mechanisms (discharge permit, BMPs, etc.);
- Require monitoring;
- Require pretreatment devices;
- Require submission of slug discharge and other pollution prevention plans; and
- Enforce when noncompliance is found.

Successes of the Pretreatment Program

EPA's National Pretreatment Program has led the way to dramatically reduce or eliminate discharges of pollutants to sanitary sewer system and to the nation's water bodies. Along with other CWA initiatives, the National Pretreatment Program has helped create a partnership involving approximately

Approved Pretreatment Programs in the State of Oregon

City of Albany	Metropolitan Wastewater Management Commission – City of Springfield
City of Canby	City of Newberg
Clackamas Co. Service District #1 (Water Environment Services)	City of Portland
Clean Water Services (Durham, Forest Grove, Hillsboro, Rock Creek)	Roseburg Urban Sanitary Authority (RUSA)
City of Corvallis	City of Salem
City of Dallas	City of St. Helens
City of Grants Pass	City of The Dalles
City of Gresham	Tri-City Service District (Water Environment Services)
City of Klamath Falls	City of Troutdale
City of McMinnville	City of Wilsonville
City of Medford	City of Woodburn
Metropolitan Wastewater Management Commission – City of Eugene	

1,500 communities and 27,000 industrial facilities. This partnership is the model example of intergovernmental cooperation. These industries and their local communities are in partnership to cooperatively meet the following achievements:

- Maintaining and restoring watershed quality, at a much lower cost than upgrading treatment capabilities
- Encouraging pollution prevention, source reduction, and product substitution
- Increasing beneficial uses of biosolids as soil amendments and fertilizers
- Preventing formation of dangerous conditions such as toxic vapors and depleted oxygen levels within the POTW and the collection system
- Continuing to meet evermore restrictive municipal wastewater discharge standards
- Protecting the sewer infrastructure and water quality by instituting emergency-prevention measures such as accidental spill prevention plans
- Reducing sanitary sewer overflows caused by grease blockage through the implementation of Fats, Oils, and Grease (FOG) programs at restaurants and other food service entities
- Extending the life of the nation's wastewater infrastructure, which has an estimated funding gap of over \$6 billion per year, through controls on corrosives and pipe-damaging liquids



Oregon Association of Clean Water Agencies (ACWA) Members Receiving National Recognition

For the past 22 years, EPA has honored outstanding achievements in the wastewater and stormwater business through its Clean Water Act Recognition Awards. Oregon communities routinely compete well for these national awards. Past winners have included:

YEAR	COMMUNITY	PLACE
Operations & Maintenance Awards		
Large Advanced		
2007	Clean Water Services – Rock Creek	1st
2006	Clean Water Services – Rock Creek	1st
2005	Clean Water Services – Durham	1st
1992	City of Medford – Vernon Thorpe	2nd
Medium Advanced		
1994	Clean Water Services – Hillsboro	2nd
Operations & Maintenance Awards (continued)		
Small Secondary		
1990	Odell Sanitary District	1st
Exemplary Biosolids Management		
Large Operating Projects		
2004	Clean Water Services – Hillsboro	2nd
2000	Clean Water Services	2nd
1999	City of Portland	2nd
Small Operating Projects		
2002	City of Hood River (OMI)	1st
2001	City of Gresham	1st
Special Recognition		
1999	ACWA and Oregon State University	
Pretreatment		
21 – 50 SIUs*		
2001	Clean Water Services	1st
1998	Metropolitan Wastewater Management Commission/Cities of Eugene and Springfield	2nd
1996	City of Salem	1st
1995	Unified Sewerage Agency (Clean Water Services)	1st
6 – 20 SIUs		
2005	City of Wilsonville	1st
0 – 10 SIUs		
2006	City of Corvallis	1st
1999	City of Wilsonville	1st
Combined Sewer Overflow Management		
2000	City of Corvallis	2nd

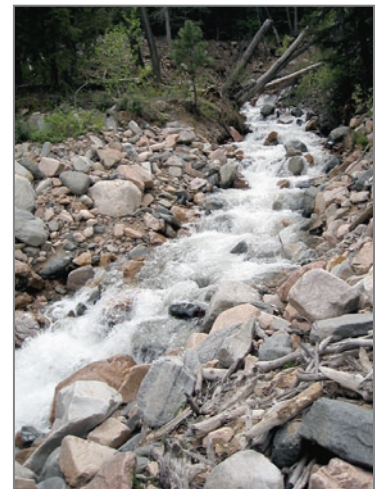
* Significant Industrial User.

Future Challenges

The Pretreatment Program must evolve to face tough new challenges in protecting public health and the environment. Some of these future challenges include:

- **Focusing on pollution prevention.** Local wastewater utilities are on the front line in working with businesses and industries to promote pollution prevention and product substitution for effective pollution treatment. More tools and technical assistance is needed - - especially from EPA - - on pollution prevention.
- **Addressing emerging industries and pollutants.** Every year, new industries and new pollutants of concern challenge POTWs. Challenges include EPA's ability to keep pace with the constant shifting industrial processes and the development of new industries and chemicals.
- **New effluent guidelines** to control highly variable and highly toxic waste streams from sources such as steam electric power generation or the health care industry.
- **Water conservation and reuse.** Industries and municipalities have a growing understanding of the economic benefits of using water more efficiently. Effluent waters from POTWs are increasingly used for irrigation and for cooling in power generation and industrial processes. The high quality waters needed for these uses emphasize how important pretreatment is to the growing area of water reuse and conservation.
- **Improving watershed quality through Total Maximum Daily Loads (TMDLs).** TMDLs are established to ensure that waters of the U.S. meet their intended uses, such providing recreation and as drinking water supplies. State and local pretreatment personnel are increasingly called upon to provide expertise in developing appropriate TMDLs and community-based strategies. These individuals are aware of the contributions from industrial pollutants within the local watershed and sewer-shed, and can share their knowledge of how to implement pollutant limits while pursuing complex watershed-based solutions.

Communities will rely on the leadership of the Pretreatment Program to meet these and other unanticipated challenges. While the Pretreatment Program has had many successes in the past 30 years, a firm commitment to the federal, state, and local partnerships established under the Pretreatment Program is critical to protecting public health and the environment in the future.



Oregon Association of Clean Water Agencies

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