**Scoping Evaluation for non-NPDES Elements of Water Quality Toxics Rulemaking**

Many ideas have been generated to address the EQC directive to develop rules or other implementation strategies to reduce toxic pollution from sources not permitted under the Clean Water Act. In order for DEQ to adhere to our rulemaking timeline, we must decide on the scope of the water quality rulemaking package by April 30, 2010. Items that are not included in this rulemaking package will be considered under the agency’s cross-media Toxics Reduction Strategy. In addition, once the critical work of the Rulemaking Workgroup on the rule development is completed, the Workgroup could make recommendations to DEQ or to the EQC about further actions, such as future additional rulemakings, working with partner agencies, voluntary or incentive-based programs, etc.

The Department has evaluated the actions and policies identified by stakeholders as high priority to help us determine whether they will be included in the scope of the current rulemaking effort. The staff analysis and conclusions are provided below. Four questions were used to evaluate each suggested priority idea:

1. Is the proposed item one that the EQC has the authority to adopt or is there a statutory impediment to EQC adoption?

2. Does DEQ, ODA, or ODF already have authority in rule or statute for the proposed item? If yes, is implementation of the proposed item required or discretionary by the OAR or ORS?

3. Is the proposed action or policy something that is appropriate to adopt as an administrative rule? Does it need to be adopted as a rule, or could it be implemented through guidance, initiative or other project or program?

4. If the proposed action or policy is appropriate to adopt as an administrative rule, should it be included in the current rulemaking package? In order to answer this question, consider the following:

* The timeline of this project
* How controversial the proposal will be (which may indicate additional time would be needed)
* Is it appropriately a water quality program rule?
* Would the proposed action significantly reduce toxics in the environment?
* Are the affected stakeholders involved in the current process?
* Would it require significant new funding/resources to implement?

4. Is critical information about the proposed action or rule unavailable, making it difficult for DEQ to evaluate it or to proceed?