**Messages for 1/29 RWG Meeting**

**10:10 Setting the Stage**

***Main Messages: (Neil)***

General:

* It is important for the work of this group move toward completion—it’s been a long term committed effort, sharing environmental goals, confident that Commission will support this effort, etc.
  + DEQ’s WQS are out-of-date—the majority of criteria in place now dates back to the mid-80s
  + Number of changes to the criteria—improved science (some values will increase; others will decrease)
  + Key implementation tools—needed now under current permitting challenges
  + Can’t incorporate new criteria changes in permitting, 303(d) list—need 1 year lead time. Could incorporate in 2012 Report if meet current schedule.
  + It is important to move forward consistent with DEQ’s latest project timeline
* Acknowledge group’s effort
* Acknowledge having conversations w/ everyone and themes we’ve been hearing re: angst about process, content
* Tools that will work and are approvable by EPA.
* We want to pursue strategies and approaches that ultimately address all sources of the pollutants and achieve WQS—non-NPDES effort and Toxic Reduction Strategy
* [Jannine and Kathleen will give supporting statements for the timeline]

EPA’s messages (Jannine)

* General thoughts on how EPA thinks process is going so far—DEQ doing good work, etc.
* Reminder to RWG about why revising the WQS, including the revised human health criteria and implementation provisions is so important
* Describe how we plan to work with DEQ and the Tribe over the next year
* Identify EPA’s goals for today’s meeting

Setting Stage for Today’s Work (Neil)

* Schedule/Timeframe (rulemaking timeline handout)
  + Project timeline: Target adoption by EQC by October, not later than end of calendar year
  + Upcoming EQC meeting in February. Would like to include stakeholder panels.
  + Will have this meeting and one additional wrap-up meeting
* Objectives
  + Basic variance provision—tie up loose ends
  + Direction affirmation regarding background concentration issues
  + Are there any additional/different/augmented tools that should be added to our consideration

**10:45 Variances**

***Main Messages:***

* Statement(s) describing and validating EPA’s support for this implementation tool (i.e., legally defensible, one of the primary mechanisms available under CWA/current regulations, successfully implemented elsewhere)
* EPA will commit to approving variances in a timely manner so that permit issuance is not unduly delayed.
* Statement(s) describing how EPA will work with DEQ over the next few months to ensure that the variance rule language is approvable, protective, and supportive of making environmental progress

DEQ: (Jennifer)

* Critical component of tools that we are compiling to address permitting issues
* Need to improve upon this existing tool
  + The existing provision is inadequate
  + Doesn’t work with permit issuance process
  + Doesn’t provide framework for environmental improvement
* Want to separate issue between what we can do with improved variance provision and other issues people have with what they think missing from suite of tools
* MDV, background allowance…

Objective

* For today’s discussion, we are seeking RWG input on specific highlighted language in the variance proposed rule language and to respond to any remaining questions.

Workability of Variances

* DEQ believes variances can work and have worked in other states (i.e. no “fundamental flaws”). The proposed regulatory language provides further clarification in how variances will be implemented and streamlines the process by giving approval authority to the DEQ Director. The current regulatory language is fairly broad and is viewed as too administratively cumbersome to be useful.
* DEQ will work with EPA to assure the variance review, approval, and renewal process is transparent and as streamlined as possible.
* DEQ acknowledges that there may be unique compliance situations not yet identified by either the RWG or DEQ for which a facility would request a variance.  In these cases, DEQ will work with the facility and EPA to explore available options.
* DEQ is pursuing a MDV for facilities who use non-contact multiple pass cooling processes for certain human health criteria.  The Department recognizes that there could be other situations where a number of facilities could fall under another compliance umbrella, but no other current situation has been identified by the RWG or Department.  If such a situation arises in the future and the justification for a variance is made, DEQ will explore separate rulemaking to adopt an additional MDV.
* As with any new compliance tool, or tool that has not been used in Oregon, like variances, there will be some uncertainty in its implementation and ultimate usefulness. However, the overall process shouldn’t be paralyzed based on some of these unknowns.

Prompting Questions:

What could improve this tool/aspect of this tool?

***Statements to Have Handy for If/When Needed:***

* Statement(s) relative to Oregon’s reliance on the GLI for guidance in developing its own variance rule.
* Statements(s) relative to EPA’s current thinking on the following topics within a variance context:
  + Existing Uses/Tier I Antideg
  + BMP implementation
  + New facilities
  + Acceptable Duration
  + Triennial Review Reqts
  + Need for demonstration of reasonable progress
  + Acceptability of MDVs
  + Acceptability of Waterbody Variances (is this the same as a temporary standard?)

*(Note: we may not have all the answers for these yet, but I do think I can develop some main messages with respect to these topics.)*

**1:00 Implementation Tools**

***Main Messages:***

* Statement(s) to respond to anticipated comments from RWG like:
  + “these tools don’t address my problems” or “there isn’t enough on the table for implementation”
    - We would like to make sure we understand the issues that are most likely to be encountered. If there are issues that you are concerned about, please say what they are and what more is needed to address these issues.
  + “we were “promised” creative tools”
    - We are committed to finding tools for likely issues that can be addressed within what is allowed by the state and federal laws. We want to include tools that will work and are approvable by EPA. We want to make sure that that first and foremost the tools are workable and approvable. Creative in and of itself is not necessarily better.
* Permittees are only a small part of the “problem”
  + We want to pursue strategies and approaches that ultimately address all sources of the pollutants and achieve WQS. The CWA, unfortunately, does not explicitly contemplate the relative contribution of different sources. Sources are responsible for complying with the applicable regulations—where this would result in economic, social, or other implications, there are means to address, but addressing the relative contribution of a source as the sole reason for exempting or altering requirements is not allowed.
* “Nonpoint sources are the main sources of toxic pollutants”
  + For some pollutants this may be the case, for others it may not be the case. DEQ is working to address those situations where NPS are found to be significant sources.
  + Information not available across the board to support this broad conclusion. NPSs include a myriad of types of sources and delivery to surface waters, making conclusions, strategies difficult to identify broadly. Additional work underway to be more prescriptive.
* Say something about the boundaries established within the CWA and implementing regs…something to respond to proposals that we think have more legal uncertainty…

**DEQ:**

* The Department and RWG have explored a number of implementation tools.  Intake credits, compliance schedules and variances are the tools that will most likely be utilized by facilities unable to comply in the short term with revised human health toxics criteria.  Other tools discussed would most likely have a difficult path in getting EPA approval.  However, DEQ and EPA would like to hear of other compliance possibilities for this discussion to be sure we’ve explored every possibility available to us.

* Source reduction programs, trading and offsets may be common tools in place of or in addition to treatment. In many cases, when these are new activities, they may require a compliance schedule or variance to provide time for the programs to be put in place and take effect.
* There is uncertainty about how many dischargers will be subject to more stringent WQBELs based on the new criteria and not be able to comply with those limits. Quantitation limits (QL) will be used as the actual compliance measure where criteria are below the QL.

***Prompting Questions***

* **What is the alternative outcome you are looking for? (administrative outcome or environmental outcome)**
* **Why do you view that X will not achieve the desired outcome?**

***Statements to Have Handy for If/When Needed:***

* Statements(s) relative to EPA’s current thinking on the following implementation tool options that have been raised:
  + Intake Credits
  + Addressing Concentration Issue via a general WQS provision instead of through variances
  + Trading/offsets
  + Achieving compliance with NPDES permit via source reduction or other activities instead of via water quality based effluent limits (outside variance context)

(*Note: the list above may not include everything; Andrea recommended that I refer to the Implementation Tools table that DEQ shared at an earlier RWG meeting and for us to be prepared to respond to any places that indicate EPA reluctance for particular tools.*)