

Oregon's Toxics Standards Review Project
Rulemaking Workgroup Session #2

9 February 2009 12:30-5:00pm

DEQ Headquarters
811 SW 6th Avenue, 10th Floor
Portland, OR 97204

IN ATTENDANCE	
WORKGROUP MEMBERS	
Nina Bell	NW Environmental Associates
Michael Campbell	Industrial Dischargers
Rich Garber	Assn. of Oregon Industries
Lauren Goldberg	Columbia Riverkeepers
Charles Logue	ACWA
Mark Riskedahl	NEDC
Peter Ruffier	League of Oregon Cities
Ryan Sudbury	CTUIR
Kathryn VanNatta	Northwest Pulp and Paper
OTHER AGENCY REPRESENTATIVES	
Donna Silverberg	Workgroup Facilitator
Marganne Allen	ODF
Greg Geist	ODEQ
Cheryl Grabham	ODEQ
Kathleen Feehan	CTUIR
Gene Foster	ODEQ
Bruce Hope	ODEQ
Brandy Humphries*	Grande Ronde Tribe
Jannine Jennings	USEPA
Kevin Masterson	ODEQ
Melinda McCoy	USEPA
Mary Lou Soscia	USEPA
Deb Sturdevant	ODEQ
Michele Thompson	ODEQ
Jennifer Wigal	ODEQ

*via telephone

HANDOUTS	
▶	Meeting Agenda
▶	Notes from 01/14/09 Meeting
▶	Background Information: Oregon Human Health Criteria Under Review
▶	OAR Language and Water Quality Criteria Summary Tables
▶	DEQ Toxics Reduction and Assessment Programs (11/07/08)
▶	Draft – DEQ Toxics Projects
▶	Fact Sheet - Implementation of Senate Bill 737: Addressing Priority Persistent Toxics
▶	Draft Concept for DEQ Agency-Wide Toxics Reduction Strategy
▶	Preliminary Working Draft: Human Health Criteria Comparison Spreadsheet

12:45 Meeting Began

Donna Silverberg introduced herself as facilitator for the group and welcomed everyone. New member Mark Riskedahl and presenters were introduced. Donna provided an overview of the purpose and goal of today's meeting. DEQ passed out binders with all meeting handouts to date as a tool for managing the large amount of information and presentation material. Donna reviewed last meeting's revisions to the workgroup protocols and asked for concerns or objections (none noted). The final protocols are attached to these notes.

Topic: Update on Rulemaking Project Plan and Timeline

Presenter: Greg Geist | Handout: DEQ Toxics Process Chart

Greg led a discussion of the rulemaking timeline. The timeline has been a work in progress. Greg stated that originally, the DEQ envisioned that this would continue until May 2009. This has now been extended to August 2009. The summer of 2010 is now DEQ's estimated date for rule adoption. Jennifer mentioned that staff will be providing regular Director's Dialogue briefings to the EQC and will present information to the EQC before the proposed rules are published for public comment. October looks most likely for this informational presentation to the EQC.

Q: Where does the EQC directive #3, dealing with the broader toxics reductions, fit on the timeline? It doesn't look like that is a part of this effort.

A: The broader issues will be linked through the Toxic Reduction Strategy and SB 737 work that will be discussed in today's meeting—DEQ will be working to make all the linkages as they are identified by this group.

Topic: DEQ's Statewide Toxics Reduction Strategy

Presenter: Kevin Masterson | Handout: Draft Concept for DEQ Agency Wide Toxics Reduction Strategy

Kevin talked about the agency's efforts to be open about information gathering for effective input, looking at input from online sources, meetings, etc. The goal is to come up with a ranked list from across the agency. The list would be grouped into three tiers with roughly 25 toxics per tier.

The tasks for the Toxics Reduction Strategy are as follows:

- Task 1 – Identification of high priority toxic chemicals and pollutants.
- Task 2 – Description of toxics sources and pathways for contamination and exposure.
- Task 3 – Assessment of the effectiveness of DEQ's and other agencies' programs in reducing high priority toxics
- Task 4 – Recommendation of new or modified toxics reductions actions

Q. Will a draft list be available?

A. Yes, Cheryl will address this in her SB 737 update

Q. Is there an existing inventory?

A. Yes, for some areas—especially Air. Some of this is already done by Air Quality. For land and water, we don't have all the info, but we are gleaning information from local and national sources. We don't want to spend a lot of time hunting down 100% of the information. We want enough information to serve as a starting point. We want someone to be able to go online, get information and also contribute new information. This should be a flexible document.

Q. Are you looking for scientific data as opposed to anecdotal data- or both?

A. Yes. We want any scientific data we don't have and we want to be able to talk to people about methodology.

Q. Are you following any model for this effort from other state's or agencies or is this new?

A. Some of the strategy has been created from scratch. WA has one model of an approach but, in talking with staff there, they suggested a more comprehensive approach may be more effective. We want to have something fast. Example- emerging contaminants of concern – we want to think more broadly than just point sources (i.e. manufacture of consumer products/toys) and focus more on industry and consumer productions. That said, we are looking at what other states are doing.

One member of the group noted that Tier One looked like what Washington State came up with a few years ago.

Individual Concerns:

- It was noted that the timeline for the Strategy ends after the small rulemaking group is done. The end date extends beyond the rulemaking deadline which implies that the rulemaking process (and possibly others) is happening separate from the Strategy as opposed to side-by-side, which some hoped would occur.
- DEQ should not be afraid to tell other agencies what to do in those areas for which DEQ has authority. For example, the current policy is that if you comply with the Forest Practices Act, this meets DEQ standards. This is potentially a missed opportunity to use regulatory means to push for real environmental results.
 - The DEQ stated that they don't want to be writing implementation plans for other agencies. However, they are hoping to provide links and maximize both regulatory actions and voluntary partnerships.

- It's not a one-way communication process. We expect to create the mechanisms to implement the strategy. It's necessary to be a bit vague now as there are lots of unknowns about regulatory scope that we will be exploring.

Q. How are you planning to do the evaluation of effectiveness? Concerned that those programs with data will show to be more effective than those without—I hope you won't give up on programs that haven't collected/monitored data as rigorously as others.

A. We are gleaning info from many sources, through analysis, looking at outside sources, talking to other groups, and asking questions about what they are doing, how they are getting their information. We will be working to shore up those programs that aren't effective and need more monitoring. Each program should have an ability to assess this effectiveness.

Topic: Senate Bill 737

Presenter: Cheryl Grabham | Handouts: SB737 Fact Sheet, Presentation "Senate Bill 737 Implementation" Notes

Cheryl gave a presentation on what is covered by SB737, noting that there are over 80,000 chemicals in commerce today. In a nutshell, SB 727 requires: by June of '09 DEQ will have developed its list of priority pollutants; by June 2010 DEQ will have the sources and source reduction methods identified; and by 2011 municipalities will have toxics reduction plans developed for pollutants on the list being discharged above threshold levels.

Some were concerned that we would be facing a scenario where the list gets changed based on practicality (or impracticality) of implementation or reduction method. Jennifer stated that if there is no effective measurement or method, some items may go to the side, but likely will not come off the list. Currently, the list contains 184 pollutants, although it is likely to become shorter between now and June 2009 due to input from the science workgroup and public comments.

Bruce Hope said that the groups of chemicals are fairly stable. Not all in the subsets are measured, but rather a selection of chemicals are measured. He noted that pharmaceuticals and personal care products are the most problematic. The methods group will come after the public comment period. By the May meeting, we will have a list.

Q. What "personal care products" are we taking out?

A. Antibacterials, chemicals for laundry such as surfactants, detergents, fragrance, as well as antimicrobials. These are mostly toxic to fish not people, with some exceptions, i.e. DEET.

Q. How will the sources be identified?

A. These will be identified by a Source List Survey to be posted on the website through March and available to anyone who has information to provide. We have found that some individuals have a lot of information about a particular toxic they are studying, so we need to create this larger database of information to help our work at DEQ.

It was mentioned that in January USEPA released the Columbia River Toxics Report and will be planning workshops with local governments next year. There is an opportunity here for the EPA and states of Oregon, Idaho, and Washington to get together and share data.

One member stated that it will be up to municipalities to locate the source in their effluent. To this, the hope was expressed that the outcome of SB737 work will be the right pressure on municipalities to pass ordinances or resolutions that will serve to control sources. One gap is that some items get into waterways through manners uncontrolled by municipalities, e.g. lead.

BREAK

Discussion: Making Connections Outside of the NPDES Program

Discussion centered on the scope of the workgroups work, reach and authority, as well as changes to current policies and rules and how those changes will be implemented. There was the suggestion that there are two approaches that could be taken: 1) one rulemaking that points to other needed rules or 2) a mixed-media approach that focuses on everything at once. However, there was disagreement among the group about whether or not the EQC meant for the group to focus more broadly than just water in this rule making effort. It was noted that the group is not comprised of experts in the cross-media approach and others (e.g. air and land) would need to be part of the group if the broader focus is needed. At the very least, it was suggested that this group could craft language that urges tying the multiple media together to have a broader impact on water quality.

There was also discussion about the overlap between DEQ divisions in regard to the workgroup's task and specifically, overlap within the toxic's program.

The idea was put forward to make changes in the anti-deregulation policy/requirements that would tie in with permitted air pollution sources and tie in with water pollution rules.

Q: [From DEQ]: What would be the trigger?

A: When the permit is renewed, DEQ could look at Air Quality deposition and sources at same time.

Q. Isn't there a new holistic approach document in the TMDL development?

Q. How do these program results find their way back to Air Quality program?

A. We should be taking a holistic approach; it should be looked at and recommendation made.

From Greg: What would it look like in respect to rulemaking and submission to the EQC?
Should AQ rulemaking reference WQ in writing permits?

Another member: I think it answers EQC's charge. For depositional air problems we have been thinking in a TMDL context and now we can think of it in an anti-degradation context as well.

Q. (for Kevin) Going through the draft, is there a split between the effort to clarify what is and what is not within DEQ's authority?

A. I was thinking that this would be good to clarify for DEQ, as well as other agencies.

Another point was offered that the narrow set the group is looking at (e.g. NPDES permits) is going to occupy the time allotted for this work. The group can't take on the world, but instead it could look at what can realistically be taken on and revise the time table accordingly.

ACTION ITEM: DEQ staff will do what they can to clarify the EQC's direction for the work group:
Is it limited NPDES permit rules, broader or both?
Staff will also ask legal counsel to do a search for existing DEQ 'authority' and mechanisms that could be used to impact the broader work on toxics for both DEQ and other agency efforts.

Jennifer noted that if the group were to broaden its scope, what is the environmental rationale that provides us a compelling reason for change? What is the expected result we hope to achieve?

One member suggested there needs to be enabling language in the rule that includes the possibility of offsetting to other sources (point and non-point) to get more overall environmental bang for the buck. It was noted that this cross media approach has been talked about for years on the federal level. It may be the most feasible and economical and it makes sense for some of the nonpoint sources to step up to the plate.

The issue of fairness was raised: it should not just be point sources that should do the work and bear the brunt of water quality issues when they are not the major contributing source. The rule should be able to impact the changes that lead to environmental results.

Q: Is there a possibility of rule making flowing from the Toxics Reduction Strategy?

A: Yes, it is in the plan to utilize rules as necessary to achieve the desired environmental results. We still need a "why" for changing the language; we need to walk away with a good sense of why and how we need to expand to other programs.

Other ideas:

- Create a public education campaign on the SB737 pollutants that are of the most concern (combined, the pesticide/herbicide group and the pharmaceutical/personal care group make up 50% of the listed pollutants).
- Look at the State of the River report and do an analysis on what works and is successful for reduction. Potentially, this can be a model for toxics reduction.
- Change the anti-degradation policy/requirements to tie in with permitted air pollution requirements. This may be a likely place for linking air and water.
 - Would need air deposition info to work.
- TMDLs and air permits
 - Watershed approach language exists
 - Does it exist for air-link too?
- Environmental link: air to water to fish to HH

ACTION ITEM: Nina, Charles and Ryan will meet and prepare a memo/outline of additional ideas about how the rule might tie to the broader toxics reduction strategy and why it is needed. They will provide this memo to the work group one week prior to its 3/2 meeting.

Topic: Overview of Revised Criteria

Presenter: Deb Sturdevant | Handouts: 1) "Draft Background Information: Oregon Human Health Criteria Under Review," and 2) "Preliminary Working Draft: Human Health Criteria Comparison Spreadsheet"

Deb talked about revised Human Health Criteria based on 175 grams per person per day consumption rate and walked through the information provided in the 2 handouts.

Q. Is this recalculation based on the EPA's current measurement or the state?

Q. Is the arsenic figure based on the current standard or the federal standard?

A. EPA's arsenic criteria are less stringent than Oregon's currently effective Table 20 criteria. Oregon adopted the less stringent number in 2004, but it is not effective because it has not been approved. The EPA criteria are still below expected natural background levels of arsenic in Oregon.

One member stated that he would like to see detection limits.

From Deb: I can send a link to the Q/L and D/. We may need to bring in Spencer [Bohaby] and/or Annette [Liebe] in for a discussion of QLs at a future meeting.

Q. Will inorganic and organic arsenic be treated the same?

A. The current federal criteria and DEQ's 2004 criteria are for inorganic arsenic and DEQ expects that the criteria we proposed in this rulemaking will also be for inorganic arsenic.

At this point, Greg asked members to, when submitting items for consideration, provide a summary statement on why the item is being submitted, what is the take home point that the group should gain from the document.

Q. Members asked for information on whether there have been 303d listings and TMDLs for arsenic.

A. DEQ will gather that information.

Deb asked members to send DEQ any scientific information they would like DEQ to consider in our review of the arsenic HHC, particularly related to the BCF and percent of arsenic that is inorganic. Please send this information within one week from today's meeting to Deb, Greg, or Jennifer with the context for distribution.

ACTION: INFORMATION DISTRIBUTION

- Members will send to DEQ any information they believe is important for the group to review...within one week from today's meeting.
- In sending the information, members will state why they think it is important so group understands/reads in the intended context.
- DEQ will compile the information received and send it to the workgroup one week prior to next meeting.

Wrap Up

Jennifer requested a two minute overview.

We have some Oregon data to look at, specifically, the EPA 2004 fish tissue sampling study which is available on the DEQ website. Region 6 has a strategy from 1996 using our data. DEQ requested that Melinda send the info from Region 6.

[<http://www.epa.gov/region6/water/ecopro/watershd/standard/arsenic.htm>]

Q. Have you done a rough scoping of those two factors?

A. If we just look to BCF, it gets us to levels that we are close to 1 ug/l.

Meeting adjourned at 5:00pm

FROM STICKY SHEETS:

CRITERIA: ISSUES/INFO NEEDS

Detection levels (DEQ will get info for 3/2)

Also, DEQ's current policy for non-detectable (does it still work?)

Arsenic: Review Paper from Kathryn Van Natta

Discuss inorganic/organic - treat the same? Or?

Natural Background Levels

What's known? (to aid discussion on intake credits)

Cross Reference Pollutants to current TMDLs and/or 303d listings

STATUS OF MCLs (EPA/DEQ info needed)

- Include mixed media approach language in enabling clause...so can do mixed media offsets to achieve enviro results.
- Pesticides and Herbicides and personal care/pharm – public ed campaign?
- Contributions of toxics via stormwater

SUGGESTIONS

Changes in anti degradation policy/requirements to tie in w/permitted air pollution reqs...may be likely place for linking air/water...would need air deposition info to work.

Tmdl and air permits

Watershed approach language

Exists for air-link?

Enviro link: air water fish HH

1. Expected environmental result?
2. Target sources(s)?
3. Administrative/agency product/program need?
4. Who has authority; Where is the program best housed?

INFORMATION DISTRIBUTION

Send to deq info you believe is important for the group...within one week

State why you think it is important so group understands/reads in that context

DEQ will compile and send to workgroup one week prior to next meeting.

Discussion Protocols to Support the Rulemaking Discussions

- 1) Willingness to Work: All participants agree to come to the discussions with an open mind and a willingness to work with the others to help solve important issues. The discussion will be future oriented and problem solving as opposed to focused on the past.
 - Any alternate that joins the group will be fully briefed by his or her primary representative so that the group does not need to go back and re-cover issues.
- 2) Respect: All participants in the discussions agree to treat each other with respect. This includes listening to each other, being on time, being prepared for meetings, and being mindful of body language during the session. This also includes limiting side conversations so that everyone may hear what each individual is saying.
- 3) Actions to Aid Frank Discussions: Discussions of the small group negotiations will be open. However, to aid the frankness of the discussions, all members should feel that they can say things without having positions attributed to them in other settings. All members and visitors to the meetings will be asked to do all they can to support this protocol by avoiding specific attribution to a group member without prior agreement from that member.
- 4) 'Caucus' Sessions: Any member of a group may request a separate meeting with his or her group at any time during the conversations to allow for time to discuss an issue outside of the large group. The facilitator may be asked to attend these meetings.
- 5) Agenda Development: The group will review and clarify issues on the agenda at the start of the discussion to ensure that all issues that need to be discussed are discussed before the meeting ends.
- 6) Decision Making: The group will make every effort to achieve consensus with full acknowledgement that consensus may not be possible on all issues. Consensus is defined as a group sentiment that suggests a willingness to live with the outcome of the discussions without any one person taking active steps to block implementation. The facilitator's final report of the group's work will indicate those areas in which consensus is or is not achieved. When possible they will look for solutions that have mutual gain. Members will work to support the work of the group between meetings by avoiding 'gossip' or engaging in other outside discussions that could undermine forward progress.
- 7) Agreement with Protocols: All members of the group agreed to these protocols at their January 14, 2009 start-up meeting.