

From: MATZKE Andrea

Sent: Monday, January 28, 2013 4:21 PM

To: RIDER Morgan; 'cjohnson@eou.edu'

Cc: WIGAL Jennifer; ALDRICH Greg; FOSTER Eugene P; CALDERA Stephanie; MATZKE Andrea

Subject: Aquatic Life Toxics Rulemaking: DEQ requests EQC interest

Dear Commissioners Johnson and Rider,

I understand that you expressed interest in the Aquatic Life Toxics Rulemaking DEQ is proposing for this year. Commissioner Johnson expressed interest in an EQC facilitated hearing, and both of you indicated you would like to be added to any advisory committee meeting related to this rulemaking. Since your review of the 2013 rules agenda and proposed rulemaking schedule for DEQ in Dec. 2012, DEQ has since proposed to modify the Aquatic Life Toxics Rulemaking. The purpose of this correspondence is to confirm your continued interest in this rulemaking based on what DEQ is now proposing to do, and described below.

This rulemaking is now called, *Corrections and Clarifications to Toxics and Nonpoint Source Regulations* and is comprised of proposed changes to both toxics and nonpoint source regulations. DEQ anticipates that neither rulemaking presents major policy issues that need to be considered. The proposed revisions are either non-substantive corrections or clarify the water quality standard consistent with the original intent. Thus, we are proceeding with an abbreviated advisory committee process. These rulemakings were combined for the purpose of program rulemaking efficiency.

Toxics

DEQ identified the need to make certain corrections to its toxics criteria rule and associated tables. In reviewing documentation to prepare for EPA's upcoming action (by January 31, 2013) on DEQ's 2004 aquatic life criteria, DEQ identified typographical errors, omissions, and needed text clarifications. In addition, DEQ identified several typos associated with the human health criteria adopted in 2011. In addition, proposed changes to the Toxic Substances rule reflect the movement of the effective aquatic life criteria from Tables 20, 33A, and 33B into a new aquatic life criteria table, Table 30. As a result of this movement, Tables 20, 33A, and 33B are no longer needed and are proposed to be deleted. A separate toxics rulemaking will follow this rulemaking to address more complex issues such as revisions to and derivation of aquatic life toxics criteria to address the National Marine Fisheries Service's recent biological opinion and other updates, as needed.

Nonpoint Source

The need for the nonpoint source rulemaking arose as a result of a lawsuit filed by Northwest Environmental Advocates against EPA, challenging EPA's approval of DEQ's water quality standard for temperature. In February 2012, the U.S. District Court issued a decision requiring EPA to review and formally approve or disapprove several provisions in Division 41 as water quality standards. After discussions with EPA and major stakeholders, DEQ believes removal of these provisions from Division 41

is preferable. Accordingly, DEQ has agreed to commence rulemaking and recommend removal of the provisions to the EQC by June 2013. DEQ does not believe that the provisions create authority or obligations in addition to that already provided by state or federal law.

We held one advisory committee last week to solicit input on potential fiscal impacts as a result of these proposed changes. Because the toxics rule changes and the nonpoint source rule changes are not related to each other, DEQ held two separate fiscal meetings on Jan. 24—one for the toxics revisions, and one for the nonpoint source revisions. I apologize you were not contacted before the one (and only) advisory meeting was conducted. I wasn't aware of your interest until too late. That being said, I can forward you the information and documents we previously sent out to the fiscal committees and include you on any future communications we have with the committees. We would also be happy to discuss this rulemaking with you by phone or in person. Please let us know what your interest is in this rulemaking.

In order to meet our June EQC adoption as committed to in the temperature litigation lawsuit, we need to submit proposed rulemaking documents to the Sec. of State by Feb. 15. Public comment will be open from Mar. 1 – April 1.

Thank You,

Andrea Matzke, MPH

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