

Corrections and Clarifications to Toxics Water Quality Standards Rulemaking

Charter

The members of the *Corrections and Clarifications to Toxics Water Quality Standards Rulemaking* Advisory Committee agree to operate under this charter.

I. Purpose

The purpose of the committee is to discuss and make recommendations related to proposed changes to the toxics water quality standards rules. The Oregon Department of Environmental Quality (DEQ) is proposing changes to address a number of aquatic life toxics criteria disapproved by the Environmental Protection Agency (EPA). DEQ anticipates that these proposed changes are straight-forward and do not involve substantive issues. The committee's role is to: (1) provide recommendations to assist DEQ in developing/writing clear language that describes DEQ's proposed changes; (2) confirm that the rule revisions are non-substantive and do not have unintended consequences; and (3) provide potential fiscal impacts, including benefits, if any, that may result from this rulemaking.

II. Background

On Jan. 31, 2013, the EPA took action on Oregon's aquatic life toxics criteria adopted by the Oregon Environmental Quality Commission and submitted to EPA in 2004. DEQ developed these water quality criteria to address toxic pollutants and to protect aquatic organisms such as fish, shellfish, and aquatic insects. The aquatic life toxics criteria for each pollutant are typically comprised of four values: acute and chronic values for freshwater protection and acute and chronic values for saltwater protection.

EPA approved 38 criteria associated with 14 toxic pollutants. EPA disapproved freshwater criteria associated with three pollutants—ammonia, cadmium and copper—based on findings in the National Marine Fisheries Service's (NMFS) August 2012 Biological Opinion. NMFS found that criteria values submitted by DEQ for these pollutants were not sufficiently protective and could jeopardize the continued existence of endangered and threatened species in Oregon and/or are likely to destroy or adversely modify designated critical habitat. NMFS jurisdiction includes protection of ocean species such as salmon and steelhead.

EPA also disapproved criteria associated with 13 other pollutants (11 pesticides, selenium and aluminum) due to inconsistencies associated with EPA's nationally recommended criteria. For more detail on EPA's action see documents at:

<http://www.deq.state.or.us/wq/standards/toxics.htm>

Aquatic life criteria approved by EPA are now federally effective for Clean Water Act programs. When EPA disapproves a standard submitted by the state, the previously effective standard remains in effect for Clean Water Act purposes until such time the standard is revised to address EPA's concerns. The newly effective criteria represent both more stringent criteria and less stringent criteria compared to the previously effective criteria.

The Clean Water Act requires Oregon to fix the deficiencies identified in EPA's disapproval action. If Oregon does not make these revisions, EPA is required to put in place its own regulations addressing the deficiencies.



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III. Scope of the Proposed Rulemaking

This rulemaking will propose minor corrections to address several of the EPA disapproved toxic criteria, plus other minor revisions to the toxics rule. For example, EPA disapproved criteria for 11 pesticides based on an unclear reading of the frequency and duration components of these criteria. DEQ expects that clarifying this aspect of the criteria will remedy the disapproval of 35 pesticide criteria values associated with 11 pesticides. DEQ also anticipates correcting typographical errors associated with the Human Health Toxics Rulemaking and will also propose to consolidate the aquatic life toxics criteria into one table, rather than retaining the toxics criteria that are currently distributed among three tables.

This rulemaking will not include remedies to address the disapproval of the freshwater criteria for aluminum, ammonia, copper, and cadmium (acute only). DEQ expects to conduct a separate, subsequent rulemaking that will likely address the copper and ammonia disapprovals, and may also include other related toxics proposed revisions (see Apr. 30, 2013 DEQ letter to EPA for more information). DEQ is separating these rulemakings to help ensure that the straight-forward corrections are completed in a timely manner, and are not unnecessarily delayed by the more substantive issues DEQ anticipates arising from the other disapproved criteria.

Below is a summary of actions DEQ intends to include in the scope of proposed rulemaking:

- a. Re-adopt freshwater and saltwater arsenic criteria and saltwater criteria for chromium VI. These criteria were inadvertently left off Table 33B in the 2007 rule adoptions. EPA took no action, but recommended reinstatement of the criteria (Table 20 criteria for arsenic and chromium VI currently in effect).
- b. Express freshwater selenium criteria as dissolved—DEQ did not express the criteria as dissolved as intended in 2004 (Table 20 criteria for freshwater selenium currently in effect).
- c. Correct 11 pesticides: Add note to aquatic life criteria table that the frequency and duration of the pesticides is different than other criteria. Clarify pesticide footnote (Table 20 criteria for the pesticides currently in effect). Currently, there are no numeric criteria for endosulfan-alpha, endosulfan-beta, and heptachlor epoxide in Table 20.
- d. Silver acute criterion: Remove Footnote P
- e. Endosulfan: Footnote P should be Footnote O
- f. Consolidate aquatic life criteria into one table—clarify several footnotes, correct criteria to reflect two significant digits
- g. Correct minor typos in Table 40 (human health criteria). Revisions do not include criteria changes.
- h. Correct typos in Arsenic Reduction Policy Rule (OAR 340-041-0033(7))
- i. Revisions/updates to Toxics Rule in OAR 340-041-0033 and associated revisions to groundwater rules from the removal of Table 20 (instead programs should point to the toxics rule in general rather than specifically Table 20)

IV. Advisory Committee Schedule and Guidelines

All committee meetings will be held at DEQ Headquarters:

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1. Schedule

Date	Time	Location	Topic
June 25, 2013	1 - 4	DEQ HQ	Summary of proposed rule revisions and opportunity to ask questions
July 11, 2013	10 - 12	DEQ HQ	Fiscal analysis

DEQ anticipates publishing the proposed rules for public comment during the month of September and submitting the rules to the Environmental Quality Commission for adoption in December. EPA must then approve the adopted rules before they become effective for state CWA programs.

2. Process Overview

a. Meeting materials:

DEQ staff will target distribution of briefing materials, including agenda, at least one week prior to each meeting. DEQ staff will lead the committee in a discussion designed to provide information and seek consensus on recommendations for addressing issues where applicable. Meeting materials will be posted on the DEQ website.

b. Meeting summaries:

DEQ staff will prepare committee minutes. Minutes will summarize significant issues raised during the discussion, whether and how issues were resolved, committee recommendations regarding rulemaking and program implementation and other action items. The meeting minutes will be posted on the DEQ website after they are approved by the committee.

3. Ground Rules

All committee members commit to:

- ❖ Attend both meetings, although it is acceptable if a member cannot attend the entire meeting; avoid substituting or alternating members whenever possible;
- ❖ Treat everyone and his or her opinions with respect;
- ❖ Allow one person to speak at a time;
- ❖ Comment constructively and specifically;
- ❖ Engage in honest, constructive and good faith discussions in all aspects of the discussion;
- ❖ Consult regularly with constituencies and provide their input;
- ❖ Operate according to, and stay focused on, the committee's specific charge; and
- ❖ Not represent the views of any other member, group, or the committee as a whole to the public.

The committee will seek to operate by consensus and strive to make recommendations on all issues identified. However, if the committee cannot achieve consensus on an issue within a reasonable amount of time, the meeting minutes will note the different perspectives of committee members on the issue.

V. Public Involvement

All meetings of the advisory committee are open to the public. Citizens who wish to discuss issues are encouraged to communicate directly with DEQ project staff. DEQ will accept



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comments submitted during development of the proposed rules through an informal process. DEQ will hold a formal public comment period following the conclusion of the stakeholder meetings. DEQ anticipates holding one public hearing tentatively scheduled for Sept. 18, 2013. Citizens may attend the public hearing and provide either oral or written testimony and may also provide written comments submitted any time within the public comment period.

VI. DEQ Contacts

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