

Corrections and Clarifications to Toxics Rulemaking

Fiscal and Economic Advisory Committee Meeting Minutes

January 24, 2013, 1:00 - 3:00

Location: Oregon DEQ HQ Conference Room 10

Portland, OR

Present for all of the meeting:

Committee Members: *Curtis Barton (Clackamas WES), Dianne Barton (CRITFC), Heath Curtiss (OFIC), Mike Freese (OFB), John Ledger (AOI), and Kathryn Van Natta (NWPPA)*

DEQ Representatives: *Jennifer Wigal and Andrea Matzke*

Public Participant: *Michael Campbell*

Welcome and Introductions

Andrea and Jennifer welcomed the group to the toxics fiscal discussion. Introductions were accomplished in the morning session.

Purpose and Background

The purpose of the fiscal and economic review was described during the meeting with the Nonpoint Source fiscal and economic committee in the morning, as the people in the toxics rulemaking meeting had also attended the NPS meeting (see meeting minutes for Nonpoint Source Rulemaking). Jennifer Wigal, DEQ, provided the committee with background information in regards to EPA's anticipated action (Jan. 31, 2013) on DEQ's aquatic life toxics criteria submitted in 2004, including jeopardy decisions from the National Marine Fisheries Service on several of DEQ's criteria. Jennifer Wigal and Andrea Matzke, DEQ stressed that the proposed rulemaking was based on anticipated disapproval actions from EPA given recent discussions; however, there was no certainty until DEQ received the final action.

Review of Proposed Rule Language

Andrea referred the committee members to the proposed rule changes document. She briefly described some of the anticipated approval and disapproval actions from EPA. Several of the potential disapproved criteria (e.g. pesticide criteria) and footnotes were based on errors or lack

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of clarification, rather than technical or scientific flaws. Therefore, some of the disapproved criteria could be fairly easily addressed.

DEQ is not proposing new criteria—only correcting criteria (e.g. correctly applying the dissolved conversion factor to selenium); reinstating criteria inadvertently removed from Table 33B (e.g. arsenic and saltwater criteria for chromium VI); or providing clarifying footnotes/introductory statements preceding the toxics criteria table to clarify that certain pesticides have different durations and frequencies than the other toxic pollutant criteria.

Other proposed revisions include: correcting typographical errors associated with the human health criteria; and a new criteria table that would consolidate aquatic life toxics criteria from Tables 20, 33A, and 33B into one new Table 30. Containing the aquatic life criteria in three separate toxics tables is confusing to both the public and DEQ staff. Any criteria disapproved by EPA would revert back to criteria last approved by EPA in Table 20 (if exists). Therefore, Table 30 would also reflect Table 20 criteria for pollutants disapproved by EPA and not addressed as part of this first rulemaking (e.g. ammonia, cadmium, aluminum, copper, etc.). The proposed changes to the bacteria and groundwater rules would correct regulatory references to Table 20 once Table 20 was removed from the toxics rule.

Andrea explained that a subsequent toxics rulemaking would follow this rulemaking that would address the more substantive disapproval actions from EPA (e.g. ammonia, cadmium, aluminum, copper, etc.). Because of the complexity associated with these pollutants and in light of upcoming EPA national criteria updates, DEQ would convene a stakeholder workgroup to discuss anticipated technical and implementation issues. DEQ anticipates that the corrections as part of the current rulemaking would likely be a straight-forward approval process for EPA. Andrea described that if DEQ combined these corrections with the second, more substantive rulemaking, it is likely that the corrections would be unnecessarily delayed given the complexity of adopting alternate criteria for some of the pollutants specified above. Therefore, DEQ did not convene a stakeholder group to review these proposed rule changes. Rather, DEQ convened this Fiscal and Economic Advisory Committee to review proposed rule changes within the context of fiscal impacts.

Andrea and Jennifer responded to questions about the proposed changes. Generally, committee members did not express concern with specific rule changes; however, several committee members expressed concern about the timing of this rulemaking. One committee member specifically noted that their members were opposed to moving forward with this rulemaking at this time. They expressed concern that this water quality standards rulemaking could result in litigation, even if this rulemaking was considered non-substantive. In addition, the ongoing temperature litigation had not been finalized and there were outstanding questions yet to be addressed. Jennifer and Andrea explained the rationale for pursuing this rulemaking and potential ramifications for not addressing EPA disapprovals in a timely manner.

Review of Draft Fiscal and Economic Analysis

Andrea briefly reviewed some of the potential impacts of the proposed rule changes referring the committee members to the fiscal rulemaking template that DEQ distributed prior to the meeting. Generally, DEQ does not anticipate any significant fiscal impacts related to the proposed changes for toxics to the general public, small or large businesses, local governments/cities, or to DEQ. DEQ is not proposing new criteria with this rulemaking—only correcting criteria or providing additional clarification.

Regulated businesses, including municipalities, and DEQ will need to do minor recordkeeping to update records to correctly reference the currently effective criteria. DEQ anticipates that the proposed changes to the rules will benefit the regulated community by consolidating the three toxic pollutant criteria tables into one criteria table. Also, it will address federal requirements by promptly responding to some of EPA's disapproval actions.

Next Steps

Jennifer ended the meeting by thanking the members for their participation and to remind members to send any additional information on potential fiscal impacts to Andrea by Jan. 31, 2013.