

Corrections and Clarifications to Toxics Water Quality Standards Rulemaking

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Agenda Topic: Review of Advisory Committee Charter

- **Purpose**

- Provide recommendations to DEQ help clarify rule proposals, identify unintended consequences, and highlight potential fiscal impacts and benefits

- **Background**

- EPA's Jan. 31, 2013 action on OR's aquatic life criteria (ALC) submitted in 2004
- Disapprovals based on errors, lack of clarification, inconsistency with EPA national criteria, and NMFS' jeopardy decisions
- If criteria disapproved, criteria revert back to what was last approved by EPA (i.e. Table 20) if exists
- CWA requires OR to fix the disapprovals or EPA is required to promulgate criteria for OR

Agenda Topic: Review of Advisory Committee Charter

- **Scope Will Include:**

- Non-substantive changes related to the toxics rules and tables
- Remedies to address EPA disapproval of 11 pesticides and FW selenium criteria
- Removal of references to Table 20 in Bacteria and Groundwater Rules since DEQ proposes to replace Table 20

- **Scope Will Not Include:**

- Addressing EPA disapprovals of FW aluminum, ammonia, cadmium (acute only), and copper.
- Development of any new/revised pollutant criteria, revisiting the fish consumption rate for the human health criteria, etc.

Agenda Topic: Review of Advisory Committee Charter

- **Rulemaking Schedule**
 - Public comment period: Sept. 2013
 - One public hearing in Portland: Sept. 18, 2013 (tentative)
 - EQC adoption: Dec. 2013
 - Revisions must be approved by EPA before effective for state CWA purposes

Agenda Topic: Review of Advisory Committee Charter

- **Process**

- Advisory Committee meetings are open to the public
- Agenda, minutes, and materials for meetings are posted to DEQ's website
- Ground rules review
- DEQ encourages open dialogue—ask questions as we go along
- Committee member recommendations, suggested edits, etc. from today's discussion may be sent to Andrea by **July 2.**

Agenda Topic: Proposed Rule Revisions *Document B*

1. Toxic Substances OAR 340-041-0033(1-5)

Consolidated Toxics Table

- Propose to delete Tables 20, 33A, 33B which contain the aquatic life criteria and replace with consolidated Table 30
- As part of the 2004 rulemaking, DEQ developed the tables to account for what criteria would be effective until EPA approval
 - Table 33B contained proposed criteria that were less stringent than the previous criteria; therefore were not effective for any CWA program until EPA approval
 - Table 33A contained proposed criteria that were more stringent than the previous criteria or contained criteria that did not change. The permitting program used these criteria or referred back to Table 20 criteria for those criteria that were proposed in Table 33B, but had not yet been approved by EPA
 - Table 20 criteria applied to all the other CWA state programs

Agenda Topic: Proposed Rule Revisions

1. Toxic Substances OAR 340-041-0033(1-5) cont.

Consolidated Toxics Table, cont.

- EPA's action left the criteria that became effective in their respective tables with accompanying approved footnotes, and intro language
- DEQ proposes to combine the criteria from Tables 20, 33A, and 33B into a new Table 30
 - Will contain criteria: approved by EPA; proposed to address EPA approval; that remain unchanged; previously effective from Table 20

Agenda Topic: Proposed Rule Revisions

1. Toxic Substances OAR 340-041-0033(1-5) cont.

Pesticide Disapprovals (11 pesticides)

- Frequency and duration components of the ALC (*i.e. 1 hr. or 4 day averages can't be exceeded more than once every 3 yrs.*) do not apply to the majority of pesticide criteria
- Most of the pesticide criteria were developed prior to the 1985 EPA Guidelines and were developed with an alternate frequency and duration (*i.e. acute can't be exceeded any time and the chronic can't be exceeded based on a 24 hr. average*)
- DEQ correctly footnoted these pesticides, but by adding the general frequency and duration to the intro paragraph of the toxic tables, EPA determined that it effectively changed the frequency and duration of the pesticides despite the footnote.

Agenda Topic: Proposed Rule Revisions

1. Toxic Substances OAR 340-041-0033(1-5) cont.

Pesticide Disapprovals (11 pesticides), cont.

- DEQ proposes to add clarifying language to the intro paragraph noting this exception
- DEQ proposes to revise the pesticide footnote (Footnote A) to read more clearly

Selenium Disapprovals

- DEQ did not apply the conversion factors to the FW criteria to convert a total recoverable result to a dissolved expression as intended in 2004
- DEQ proposes to correct this error

Agenda Topic: Proposed Rule Revisions

1. Toxic Substances OAR 340-041-0033(1-5) cont.

Arsenic and Chromium VI Criteria

- DEQ proposes to re-adopt FW and SW criteria for arsenic and SW criteria for Cr VI—inadvertently left off toxics criteria table during the 2007 rulemaking

Significant Figures

- DEQ proposes to correct criteria to reflect 2 significant digits (i.e. 0.050 vs. 0.05) per EPA 1985 Guidelines (not yet done)

Rule Language

- DEQ proposes to remove references to Tables 20, 33A, and 33B from rules and provide clarifying information
- Refer to Pg. 3 of Document B

Agenda Topic: Proposed Rule Revisions

2. Arsenic Reduction Policy OAR 340-041-0033(7)

- DEQ proposes to fix incorrect references within the rule
- Refer to Pg. 4 of Document B

3. Bacteria Rule OAR 340-041-0009

- DEQ proposes to delete Table 20 reference and instead reference the Toxic Substances rule
- Refer to Pg. 6 of Document B

Agenda Topic: Proposed Rule Revisions

4. Groundwater Quality Protection OAR 340-040-0020

- DEQ proposes to delete Table 20 reference and instead reference the Toxic Substances rule
- Citation in rule no longer exists—should refer to antideg policy in that same rule
- Refer to Pg. 7 of Document B

5. Numerical Groundwater Levels OAR 340-040-0080

- DEQ proposes to delete Table 20 reference and instead reference the Toxic Substances rule
- Refer to Pg. 8 of Document B

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Agenda Topic: Proposed New Table 30

Documents C and D

Agenda Topic: Table 40 Revisions

Document E

Agenda Topic: Fiscal Analysis

Statement of Fiscal and Economic Impact

- Submitted as part of the proposed rule package to the Secretary of State
- Developed to inform DEQ, the public, and EQC of the potential economic impacts of specific proposed rules

Agenda Topic: Fiscal Analysis

The Oregon Administrative Procedures Act requires DEQ to seek an Advisory Committee's recommendations about:

- Whether the rule will have a fiscal impact
- What the extent of that impact will be
- Whether the rule will have a significant adverse impact on small businesses (50 or less employees)

Agenda Topic: Fiscal Analysis

Statement of Fiscal and Economic Impact

- Describes all direct and indirect economic impacts to DEQ and other state agencies, regulated community, the general public, local governments, and small and large businesses
- In considering economic effects, the agency shall utilize available information to project any significant economic effect of that action

Agenda Topic: Fiscal Analysis

Focus of Committee's Analysis

- The fiscal impact analyzes incremental costs based on proposed changes—not costs associated with the criteria/revisions from the 2004 aquatic life toxics rulemaking:
 - Redline/strikethrough of rule language
 - Deletion of Tables 20, 33A, and 33B and replacement with consolidated Table 30 and
 - Associated changes to footnotes, criteria, etc.