*Corrections and Clarifications to Nonpoint Source Regulations Rulemaking*

**Fiscal and Economic Advisory Committee Meeting Minutes**

January 24, 2013, 10:00 to 11:30

Location: Oregon DEQ HQ EQC A

Portland, OR

*Present for all or part of the meeting:*

*Committee Members: Curtis Barton (Clackamas WES), Dianne Barton (CRITFC), Heath Curtiss (OFIC), Mike Freese (OFB), Jason Gritzner (USFS), Jim James (OSWA), John Ledger (AOI), Kay Teisl (OCA), Kathryn Van Natta (NWPPA), Kyle Abraham (ODF, by phone)*

*DEQ Representatives: Gene Foster, Jennifer Wigal, Andrea Matzke, Koto Kishida*

*Public Participant: Michael Campbell*

**Welcome and Introductions**

Gene and Jennifer welcomed the group, reviewed the agenda, and conducted a round of introductions.

**Purpose and Background**

Gene explained that rulemaking was to meet a requirement under a stipulated order and is a result of a lawsuit filed by Northwest Environmental Advocates against EPA that challenged EPA’s approval of DEQ’s water quality standards for temperature.

Andrea provided overview of the rulemaking process and fiscal analysis review. She explained that rulemaking requires a public comment period as well as a fiscal analysis because EQC, DEQ, and the public need to know the fiscal impacts of the rule changes. She further explained that NPS and Toxics rulemaking are combined for administrative efficiency and are not related actions.  For this reason, there were two fiscal committees to separately review potential fiscal and economic impacts associated with NPS and Toxics revisions.

**Review of Proposed Rule Language**

Gene went over the proposed rule language and asked the committee members for questions and concerns.

* **Statewide Narrative Criteria:** Delete 340-041-0007(5) about private and state forestry.

A committee member raised a concern about some of the language being proposed to be deleted, especially about federal lands.  Another member pointed out that there are three documents listed on page 11/12 that were not provided in the package for the Committee to review.  The member expressed her concern that the committee may not be able to do a proper review without the documents. Gene explained that the side agreement had not been signed by the parties. Gene explained that DEQ is asking questions about how the rule language changes would affect various entities, and not asking to comment on those documents that describe what DEQ is required to do.

* **Temperature:** Delete provisions in 340-041-0028 about private and state forestry and agriculture, as well as federal lands and NPS other than agriculture and forestry.

A member of the committee explained that removal of the language for federal forests could affect USFS’s role as a Designated Management Agency and make Forest Service vulnerable to litigations. Gene responded that TMDL rules would apply including language on DMAs for basins where TMDLs are in place and that having EPA to approve the language could have mixed results.

A member also stated that there could be potential fiscal impact to the public, small businesses, industry, and USFS without additional legal planning. Gene committed to edit the fiscal document to reflect input made by the committee and invited committee members to provide additional comments in writing.

* **Other Implementation of Water Quality Criteria:** Delete provisions in 340-041-0061 about private and state forestry and agriculture, as well as federal lands and NPS other than agriculture and forestry.

Same concern about federal forests as for the deletion of rule language in Temperature was raised by a committee member. The member reiterated that without additional legal planning, there could be potential fiscal impact to the public, small businesses, industry, and USFS due to more litigation. Gene acknowledged the concern and committed to edit the fiscal document to reflect input made by the committee.

Another committee member said that answers to the questions in the fiscal document are too simplistic and did not relate to environmental gain.  (Page 5/12) Gene agreed to the comment and committed to rewrite the part of the fiscal document to reflect input made by the committee member.

An attendee of the meeting pointed out that the provisions were challenged but characterizing it as successful was not accurate.  He pointed out that the court said “EPA needs to approve” and not “these provisions need to be deleted” and that proposing to delete was not a court decision but result of negotiations to respond to the court ruling. Gene agreed to reword the fiscal document to reflect the point made.

A committee member asked if DEQ always approved Water Quality Restoration Plans. Gene explained that it did not always approve WQRSs due to limited resources, and that DEQ would not be asking for additional resources as a result of this rulemaking.  It led to another committee member to express his concern that the proposed rulemaking could shift DEQ’s priorities and some important work may not get done.  DEQ reiterated to edit the fiscal document to reflect input made by the committee members.

**Next Steps**

DEQ explained that input to the fiscal documents related to NPS proposed revisions are due by 1/31 and should be sent to Koto and Gene. Some committee members said they planned to submit comments to DEQ. DEQ committed to sending a courtesy copy out to the committee members, and that individual members would be contacted if there are major changes made. In addition, DEQ committed to meet with USFS to further discuss about the potential fiscal impact from the proposed rules. DEQ went over the rulemaking process and explained that the rulemaking package will be submitted to the Secretary of State office on 2/15, and public review notice would be sent out on 3/1.  Gene ended the meeting by thanking the members.