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*Corrections and Clarifications to Toxics and Nonpoint Source Regulations Rulemaking*

**Fiscal and Economic Advisory Committee: Nonpoint Source**

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), Scott Dahlman (OFS), Mike Freese (OFB), Jason Gritzner (USFS), Jim James (OSWA), John Ledger (AOI), Kay Teisl (OCA), Kathryn Van Natta (NWPPA), Kyle Abraham (ODF, by phone)

DEQRepresentatives: Gene Foster, Jennifer Wigal, Andrea Matzke , Koto Kishida

**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.

Comment: There was a concern about some of the language being proposed to be deleted, especially about federal lands.

Comment: 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.

* + Response: DEQ doesn’t have official (signed) copies of side agreement.  That said, 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.

Comment: Removal of the language for federal forests could affect USFS’s role as a Designated Management Agency and make Forest Service vulnerable to litigations.

* + Response: For basins where TMDLs are in place, Division 42, TMDL rules would apply including language on DMAs. Further, having EPA to approve the language could have mixed results.

Comment: Without additional legal planning, there could be potential fiscal impact to the public, small businesses, industry, and USFS.

* + Response: DEQ will edit the fiscal document to reflect input made by the committee.
* **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.

Comment: Same concern about federal forests as for Temperature. Without additional legal planning, there could be potential fiscal impact to the public, small businesses, industry, and USFS due to more litigation.

* + Response: DEQ will edit the fiscal document to reflect input made by the committee.

Comment: Answers to the questions in the fiscal document are too simplistic and do not relate to environmental gain.  (Page 5/12)

* + Response: DEQ will edit the fiscal document to reflect input made by the committee.

Comment: The provisions were challenged but characterizing it as successful is not accurate.  Court said “EPA needs to approve” and not “these provisions need to be deleted”. Proposing to delete was not a court decision but result of negotiations to respond to the court ruling.

* + Response: DEQ will edit the fiscal document to reflect input made by the committee.

Question: Does DEQ always approve Water Quality Restoration Plans?

* + Response: DEQ does not always approve WQRSs due to limited resources.  DEQ will not be asking for additional resources as a result of this rulemaking.

Comment: Proposed rulemaking could shift DEQ’s priorities and some important work may not get done.

* + Response: DEQ will edit the fiscal document to reflect input made by the committee.

**11:20          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.  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.  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.

**11:30          Adjourn**