January 9, 2014

Daniel D. Opalski, Director

Office of Water and Watersheds

U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue Mail Code: OWW-135

Seattle, Washington 98101

RE: Oregon Submission of Revised State Water Quality Standards for Toxic Pollutants

Dear Mr. Opalski:

The Oregon Department of Environmental Quality is pleased to submit revisions to its state water quality standards adopted by the Oregon Environmental Quality Commission (EQC) on Dec. 12, 2013. The EQC adopted revisions to the Toxics Substances Rule in Division 41 and corrected minor reference errors to the Groundwater Rules in Division 40 of the Oregon Administrative Rules (OAR) Chapter 340. In accordance with 33 USC 1313(c) of the Clean Water Act, DEQ is seeking EPA’s review and action on the submitted rule revisions. The adopted rule revisions and the associated water quality toxics criteria tables are attached to the Oregon Attorney General’s certification letter, shown in underline/strikeout format.

The adopted revisions to Oregon’s Toxics Substances Rule address EPA’s Jan. 31, 2013 disapproval of aquatic life criteria for 36 criteria associated with eleven pesticides and two freshwater criteria associated with selenium. DEQ added a sentence to the introductory paragraph in Table 30 to make it clearer that the pesticides associated with Footnote A have an alternate frequency and duration than the other toxic pollutants. This lack of clarity was the basis for EPA’s disapproval. DEQ also corrected the freshwater selenium criteria by multiplying the criteria magnitude by the appropriate conversion factors to express the criteria as dissolved. As part of the 2004 rulemaking, DEQ mistakenly left off these conversion factors. DEQ anticipates that both of these revisions will address EPA’s disapproval of the pesticide and selenium criteria.

The revised rules do not address EPA’s disapproval of aquatic life freshwater criteria for aluminum, ammonia, cadmium (acute only), and copper. DEQ anticipates reviewing ammonia and copper criteria this year. Given EPA’s current literature and toxicity review of aluminum and cadmium criteria, DEQ does not intend to evaluate revisions to state criteria until EPA finalizes their criteria recommendations.

In addition to addressing EPA’s disapproval of pesticide and selenium criteria, DEQ also adopted the following revisions:

* Re-proposed freshwater and saltwater arsenic criteria and chromium VI saltwater criteria that were inadvertently left off the criteria table during a 2007 rulemaking. These criteria already underwent Endangered Species Act consultation by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and were not found to create jeopardy for any ESA-listed species. Therefore, DEQ expects prompt EPA approval.
* Deleted aluminum from Table 30. EPA’s disapproval of the freshwater criteria for aluminum renders the criteria ineffective and there are no other EPA approved criteria for aluminum. DEQ anticipates evaluating revised freshwater criteria for aluminum in a future rulemaking process as discussed above.
* Moved all aquatic life criteria from Tables 20, 33A and 33B into a new aquatic life criteria table—Table 30. Therefore, rule revisions in the Toxics Substances, Bacteria and Groundwater Rules now refer to Table 30 or the Toxic Substances Rule in general. Consequently, DEQ repealed Tables 20, 33A and 33B because they are no longer needed. In addition, DEQ made several footnote clarifications in Table 30.
* Revised Table 33C, which contains water quality guidance values for toxic pollutants, and Table 40, which contains human health toxics criteria, to be consistent with agency table formatting guidelines. Other revisions renamed Table 33C as Table 31 and removed the arsenic guidance values. These values are unnecessary because Oregon already has aquatic life criteria for arsenic.
* Corrected typographical and reference errors made during the 2011 Human Health Toxics Rulemaking.

For more information about these revisions, please see the enclosed staff report. The staff report also includes a summary and response to public comment. Additional information related to the advisory committee, including materials and minutes may be found on DEQ’s website: <http://www.deq.state.or.us/wq/standards/StandardsClarification.htm>.

The rule amendments associated with OAR-340-041-0009 (Bacteria Rule), OAR-340-040-0020 (Groundwater Quality Protection) and OAR-340-040-0080 (Numerical Groundwater Quality Reference Levels and Guidance Levels) became effective under State law upon filing with the Oregon Secretary of State on Dec. 23, 2013. The revisions made to these rules are not water quality standard revisions and are therefore being forwarded to EPA for informational purposes only.

OAR-340-041-0033 states that revisions to the Toxics Substances Rule do not become effective until April 18, 2014, and are not applicable for purposes of the CWA until they are approved by EPA. DEQ selected this date in consultation with EPA staff. If EPA finds they cannot take action on Oregon’s adopted rules by that date, please notify us at your earliest convenience. In that event, DEQ would likely extend the effective date by temporary rule.

An Attorney General’s certification of rule adoption, the Secretary of State Certificate of Filing, clean and redline versions of the adopted rules, and the EQC staff report are enclosed. Note that DEQ separated these documents by effective date of rule revisions. DEQ will forward the EQC meeting minutes when they have been approved by the EQC, expected to occur by Jan. 13.

DEQ would like to take this opportunity to thank EPA staff member Kathleen Collins for her input and participation on this rulemaking. We hope to continue this partnership with EPA as we look towards upcoming rulemakings for ammonia and copper.

If you have questions regarding this submittal or would like additional information, please contact me or have your staff contact Andrea Matzke, Water Quality Standards Specialist, at 503-299-5384.

Sincerely,

Gregory K. Aldrich

Water Quality Division Administrator

Cc: Angela Chung, EPA

 Kathleen Collins, EPA

 Jennifer Wigal, DEQ

 Debra Sturdevant, DEQ

 Andrea Matzke, DEQ

 Larry Knudsen, DOJ

Enclosures:

OAR Rules Chapter 340-041-0033, 340-041-0009, 340-040-0020, 340-040-0080 and associated toxics criteria tables

DOJ Certification of Rule Adoption

Copy of Secretary of State Certificate of Filing

Staff Report to the Commission (Dec. 12, 2013)