

Meeting Summary

Aquatic Life Toxics Criteria Rulemaking 2024



Rulemaking Advisory Committee Meeting #1 Sept. 12, virtual meeting (Zoom)

List of Attendees

Rule advisory committee members:

Emily Bowes	Rogue Riverkeeper
Michael Campbell	Stoel Rives LLP
Catherine Corbett	Lower Columbia River Estuary Partnership
Mike Eliason	Oregon Forest & Industries Council (OFIC)
Raj Kapur	Oregon Association of Clean Water Agencies (OR-ACWA)
Hannah LaGassey	Cow Creek Band of the Umpqua Tribe of Indians
Sharla Moffett (absent)	Oregon Business & Industry
Lauren Poor	Oregon Farm Bureau
Glen Spain	Pacific Coast Federation of Fishermen's Associations (PCFFA)
Becky Anthony	Oregon Department of Fish and Wildlife
Jeremy Buck	U.S. Fish and Wildlife Service
Cory Engel	Oregon Department of Transportation
Michelle Maier	U.S. Environmental Protection Agency
Rebecca McCoun	Oregon Department of Forestry
Kathryn Rifenburg	Oregon Department of Agriculture
Greg Sieglitz	NOAA – National Marine Fisheries Service

DEQ Staff:

Kaley Major, Debra Sturdevant, Connie Dou, Michele Martin, Trina Mayberry

Interested parties:

Jackie White, M. Kubow, Gilbert Uribe (ODA alternate), Nicole Mann, Victoria Frankeny, April Catan, Rhett Cash

Materials available before meeting:

- Meeting 1 agenda (rulemaking web page)
- Rulemaking Advisory Committee Charter and Roster (rulemaking web page)
- Rulemaking Advisory Committee appointment letter (individual correspondence)

Agenda

Time	Topic
1 p.m.	Welcome, introductions
1:20 p.m.	Purpose of project, review of RAC charter
1:50 p.m.	Background: water quality standards and aquatic life toxics criteria in Oregon
2:10 p.m.	Break
2:20 p.m.	Review of proposed aquatic life toxics criteria updates
2:50 p.m.	Questions from the public
3 p.m.	Break
3:10 p.m.	Request for information: Fiscal and Economic Impact Statement
3:30 p.m.	Discussion, questions and answer session, comments from the public (as time allows)
4 p.m.	Adjourn meeting

Meeting summary

I. Welcome, introductions

- Michele Martin welcomed the group, introduced DEQ staff, provided Zoom and meeting logistics, initiated meeting recording, and called on each RAC member to introduce themselves
- Kaley Major reviewed the agenda, copied the rulemaking web page link into the chat

II. Purpose of project, review of Rulemaking Advisory Committee (RAC) charter

Kaley Major presented policy objective of the rulemaking and highlights of the RAC charter.

- Presented the objective for the rulemaking: *"To update Oregon's water quality standards for toxic substances for aquatic life"*, based on *"EPA's most recent recommendations, based on the latest science."*
- The roles of the committee members and ground rules for the Advisory Committee were explained.
- The rulemaking web page link for this rulemaking was shared: [Aquatic Life Toxics Criteria 2024](#)
- Information sharing, public records, and confidentiality information was shared.

No RAC questions or comments noted.

III. Background: water quality standards and aquatic life toxics criteria in Oregon

Kaley Major presented information about water quality standards in general and aquatic life toxics criteria. The presentation slides are posted to the webpage.

- Presented components of water quality standards and the water quality programs that implement them.
- Highlighted the major federal and state actions that must be taken for aquatic life criteria to become effective for Clean Water Act purposes.
- Explained the structure and format of numeric aquatic life toxics criteria.
- Presented a highlight of recent aquatic life toxics criteria actions in Oregon, including links to Oregon's water quality standards for toxic substances.

- Presented rulemaking project timeline.

RAC member Glen Spain asked whether the committee will be commenting on standards for additional criteria, particularly considering synergistic effects of some chemicals. Debra Sturdevant answered that as long as the topic is toxic aquatic life criteria, DEQ will welcome and review that type of input from the RAC. RAC member Raj Kapur asked for clarity around the statement that 95% of aquatic species are protected by criteria recommendations. Debra Sturdevant and Kaley Major clarified that 95% protection of the aquatic community is the statistical goal of the EPA during criteria development. Further, criteria recommendations are often calculated based on the four most sensitive genera rather than the most sensitive aquatic group. A more detailed explanation can be found in EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (Stephen et al., 1985).

The meeting was running ahead of schedule, so DEQ invited questions from the public. No questions from the public were received. Michele Martin confirmed with RAC members that the first Break on the agenda would be skipped to move directly into the next topic. Several RAC members agreed.

IV. Review of proposed aquatic life toxics criteria updates

Kaley Major presented an overview of the proposed aquatic life toxics criteria updates.

- Presented the review process DEQ used to identify discrepancies between Oregon rule and EPA recommendations, as well as the general considerations during DEQ's decision process regarding whether to update criteria at this time.
- Presented the chemicals that DEQ is proposing to update: acrolein, aluminum, cadmium, carbaryl, diazinon, and tributyltin. This included specific information for each chemical's use and measurements in the environment, and the proposed criteria values. Regarding cadmium, noted a recent court case that may have implications for these criteria recommendations. DEQ will continue to update the RAC as more information becomes available.
- Presented the chemicals that DEQ is not proposing to update at this time: mercury, nonylphenol, selenium, lindane, endosulfan, and silver, along with a brief reason why DEQ has decided to not move forward to adopt criteria for these chemicals at this time.

RAC member Raj Kapur noted that there is a bioavailable provision already built-in to the proposed aluminum criteria document. Kaley Major agreed and noted that there is some disagreement about what the term "bioavailable" means, emphasizing that DEQ wants to be really clear about how DEQ uses the word "bioavailable" and what exactly it means and how it can be used. Raj agreed and mentioned that the bioavailable aluminum laboratory methods are under development. Kaley Major confirmed and agreed that the method is still under development.

RAC member Greg Sieglitz asked if DEQ will be sending out the meeting presentation, Kaley Major responded that the presentation would be available shortly after the meeting, likely this week, on the web page. RAC member Raj Kapur recommended using SB737 data to provide insight on wastewater concentrations for several of the chemicals. Raj Kapur also asked whether concerns with mercury in Oregon are driven primarily by human health criteria and not aquatic life criteria. Kaley Major stated that she believed that human health criteria for mercury was the main concern for mercury in Oregon, and confirmed she would check assessment listings for mercury aquatic life after the meeting and notify the committee.

RAC member Greg Sieglitz asked whether the committee is able to provide feedback on the chemicals with criteria that DEQ is not proposing to update at this time. Kaley Major and Debra Sturdevant clarified that DEQ will accept input and feedback regarding the six chemicals that DEQ is not proposing to update at this time.

RAC member Michael Campbell noted that there has been recent litigation in Washington challenging Washington's failure to update its aquatic life in a timely manner. Kaley Major confirmed that mercury is the list of aquatic life criteria being challenged in Washington, and explained the legal challenge to aquatic life criteria in Idaho. Specifically, that EPA has been court-ordered to develop new mercury recommendations that will sufficiently protect aquatic life in Idaho, including endangered species. DEQ will wait until those new criteria are released to consider new aquatic life criteria for mercury.



Michele Martin noted that the meeting was ahead of schedule, again opened the floor for questions, and reminded RAC members that they can feel free to email Kaley Major with additional information or to ask for clarity on any of these materials.

V. Questions from the public

Kaley Major asked for any clarifying questions from the public. No questions were asked. The RAC took a 10-minute break. After the break, Michele Martin confirmed that RAC members were back from the break and restarted the meeting.

VI. Request for information: Fiscal and Economic Impact Statement

Kaley Major presented the general outline of the types of information that DEQ will ask from the RAC to compile the Fiscal and Economic Impact Statement after this meeting and before the second RAC meeting.

- Presented DEQ's requirement to consider cost compliance for entities affected by the proposed rule.
- Advisory committee will be asked to provide input on the Fiscal and Economic Impact Statement, which includes fiscal implications for small business, potential alternatives for adverse effects, and impacts of the proposed rule on racial equity in Oregon.
- Advisory committee will be provided an outline of relevant information for the Fiscal and Economic Impact statement after this meeting.
- Presented detailed timeline including when RAC materials would be provided and when input would be requested. RAC will be provided with two weeks to review and comment on any materials DEQ is asking for feedback on.

No comments or questions received from the RAC on this material.

VII. Discussion, questions and answer session, comments from the public

RAC member Michael Campbell asked whether the RAC will receive an email once meeting materials and materials requiring review will be available. Kaley Major clarified that once items are posted, she would send an email to the RAC letting them know and providing instructions for next steps.

VIII. Action Items

A summary of action items after meeting #1

Kaley Major will:

- Post informational meeting materials on web page within a week or two after the meeting. These include:
 - Meeting 1 presentation slides
 - Draft issue paper
 - Draft fact sheet
 - Example outline of information requested for Fiscal and Economic Impact Statement
- Send an email to RAC members within a week or two after the meeting, providing them with:
 - Meeting 1 Summary
 - Doodle poll to schedule RAC meeting #2
- Post meeting summary to the web page after RAC review

RAC members will:

- Review and send feedback, due two weeks after documents become available to the RAC, on the following items:
 - Meeting 1 Summary
 - Information related to the Example outline of information requested for Fiscal and Economic Impact Statement (If RAC members need more time to provide this information, please let Kaley know.)

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