

Meeting Summary

Aquatic Life Toxics Criteria Rulemaking 2024



Rulemaking Advisory Committee Meeting #2 Nov. 13, 2023 virtual meeting (Zoom)

List of Attendees

Rule advisory committee members:

Emily Bowes (absent)	Rogue Riverkeeper
Michael Campbell	Stoel Rives LLP
Catherine Corbett	Lower Columbia Estuary Partnership
Mike Eliason (absent)	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 (absent)	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:

Val Early, Rishia Latta (City of Coos Bay), Julia Crown (ACWA alternate, Clean Water Services), Jackie White (NWPPA), Greg Hamblet, Ryan Pessah, Tom (Umpqua Research), Nicole Mann, Victoria Frankeny, Rita Cooper (Clean Water Services), Amanda McGarry (Clean Water Services), one unnamed phone dial-in

Materials available before meeting (all available on rulemaking web page):

- Meeting 2 agenda
- Aluminum Standard Interpretation and Application Procedures
- Draft Fiscal and Economic Impact Statement
- Draft Rule Language

Note: the presentation slides for the meeting are posted to the rulemaking web page.

Translations or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)

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Agenda

Time	Topic
8:30 a.m.	Gather, announcements
8:40 a.m.	Draft Fact Sheet and Issue Paper Discussion, question and answer session
9:30 a.m.	Break
9:40 a.m.	Draft Rule Language Discussion
10:10 a.m.	Draft Fiscal and Economic Impact Statement Discussion
10:50 a.m.	Questions from the public
11 a.m.	Break
11:10 a.m.	Discussion, request for RAC review, question and answer session, final thoughts
11:30 a.m.	Adjourn meeting

Meeting summary

I. Gather, announcements

- Kaley Major welcomed the group, introduced DEQ staff, provided Zoom and meeting logistics, initiated meeting recording, called on each RAC member to record attendance, reviewed the agenda
- RAC member Catherine Corbett noted that the “River” has recently been removed from the name of the “Lower Columbia Estuary Partnership”.

II. Draft Fact Sheet and Issue Paper Discussion, question and answer session

Kaley Major opened the floor to discuss any feedback or comment pertaining to the Draft Fact Sheet and Draft Issue Paper that were shared with the RAC after the first meeting.

- Thanked ACWA for submitting comment on the Draft Issue Paper via email prior to the second meeting.
- Noted that DEQ is still reviewing comment but has already found the comments helpful for making sure that all SB 737 wastewater effluent data are included in the issue paper. DEQ will follow up with ACWA regarding all comments once DEQ has a chance to review.
- Asked ACWA if they would like to discuss any of the comments provided during this part of the RAC meeting.

RAC member Raj Kapur thanked DEQ for accepting the comments and noted that in addition to comments regarding the inclusion of wastewater data from SB 737 in the issue paper, ACWA also wanted to note that there was not much stormwater data included in the analysis. Specifically, adding the proposed criteria to rule could have implications for both MS4 discharge as well as industrial stormwater. Raj noted that it would be good to include any available national or Oregon-specific MS4 discharge information in the issue paper to help understand the implications of the proposed criteria changes. Kaley Major responded that DEQ would review the data included in the issue paper and search for additional data.

With no other RAC comment, Kaley proposed to skip the first scheduled break and move into the next agenda item.

III. Draft Rule Language Discussion

Kaley Major presented the proposed draft rule language.

- Presented red-lined rule language for the proposed aquatic life criteria changes to Table 30 Aquatic Life Water Quality Criteria for Toxic Pollutants in OAR 340-041-8033. Included proposed language for

acrolein, aluminum, cadmium, carbaryl, diazinon, and tributyltin aquatic life criteria and relevant applicable footnotes. Added that Oregon already has a human health criterion that is lower than the proposed aquatic life criterion for acrolein. Clarified that DEQ is proposing cadmium criteria based on the EPA's 2016 recommendations, except for freshwater chronic cadmium. Due to a recent court case, that cadmium criterion is no longer recommended, and DEQ has elected to maintain Oregon's current freshwater chronic cadmium criterion at this time. All proposed language can be found in the *Draft Rule Language* document provided to the RAC and posted on the rulemaking website prior to the meeting.

- Described the intent of the footnotes for the aluminum criteria to apply the freshwater criteria as the bioavailable sample fraction in ambient waters and the total recoverable sample fraction in wastewater. Debra Sturdevant added some additional context for aluminum footnotes, including a note that EPA is developing a bioavailable aluminum laboratory method, and Oregon intends to use the bioavailable wastewater method when it is approved by EPA. Until that time, Oregon would apply the freshwater criteria as total recoverable in wastewater, as required by federal rules and regulations. Kaley Major also described the proposed Endnote O that includes a draft of the aluminum criteria interpretation and application procedures and asked the RAC for feedback regarding the level of detail included in this section of the rule.
- Introduced proposal to remove Table 31 Aquatic Life Water Quality Guidance Values for Toxic Pollutants in OAR 340-041-8033 because they are not regulatory values and are outdated. Noted that DEQ is working to develop procedures to apply Oregon's narrative toxics criterion (OAR 340-041-0033(1)), which will provide guidance for implementing aquatic life benchmarks, guidance values, or screening values in conjunction with the narrative toxics criterion.

RAC member Raj Kapur asked what the original purpose of Table 31 was in the rule, and why those values were not implemented in the way that was originally thought. RAC member Jeremy Buck had the same question. Debra Sturdevant responded that the values in Table 31 are quite old and have always been guidance values. It has never been clear how they were supposed to be used, and these values were generated because there was not enough data to establish water quality criteria. RAC member Michael Campbell supported removing the Table 31 guidance values and noted that there is a reference to Table 31 in OAR 340-041-0033 that will also need to be removed. Kaley Major thanked RAC member Michael Campbell for that information and confirmed that DEQ will also have to open up OAR 340-041-0033 to remove that Table 31 reference language.

IV. Draft Fiscal and Economic Impact Statement Discussion

Kaley Major presented an overview of DEQ's major findings of the *Draft Fiscal and Economic Impact Statement* and asked the RAC to provide feedback on these sections.

- Thanked RAC member Cory Engel and RAC member Hannah LaGassey for providing input for the first draft of the Fiscal and Economic Impact Statement.
- Asked for any written feedback on the first draft of the Fiscal and Economic Impact Statement by November 17.
- Specified that the proposed freshwater aluminum and cadmium criteria are already effective because they have been federally promulgated for Oregon, and thus their adoption would not have any fiscal impact because they are already being implemented in Oregon. Focused the fiscal discussion on the impacts of adopting the other proposed criteria for acrolein, cadmium (saltwater only), carbaryl, diazinon, and tributyltin.
- Highlighted key points regarding the cost of compliance for state agencies, local governments, large and small businesses, and the public. These points have been documented in the *Draft Fiscal and Economic Impact Statement* provided to the RAC and posted on the rulemaking website prior to the meeting.
- Briefly reviewed other portions of the *Draft Fiscal and Economic Impact Statement* including the impact of the proposed rule to housing costs and the racial equity statement. Noted that the next draft of the document would contain a summary of the advisory committee review of the fiscal impact as well as a section documenting DEQ's environmental justice considerations.

RAC member Michael Campbell noted that the first draft of the Fiscal and Economic Impact Statement appeared to go back and forth in terms of what the effect of the rule is, sometimes indicating a cost and

sometimes indicating that there will be no expected impact. He noted that from a legal perspective, this proposed rule change may not be legally significant. Specifically, he noted that the State is still legally responsible for controlling pollution using the narrative toxics criterion even if Oregon does not have water quality criteria for a given pollutant. Debra Sturdevant clarified that although the State may use the narrative toxics criterion for a pollutant, there is an operational benefit from having aquatic life criteria in rule because permittees may then be required to monitor for those contaminants. Further, she clarified that the draft Fiscal and Economic Impact Statement language is acknowledging this monitoring requirement for the proposed chemicals that may be required of permittees during permit renewal. RAC member Michael Campbell acknowledged that adding the criteria likely has a practical effect for the State because there is a discrete number that DEQ may implement in its water quality programs. RAC member Michael Campbell also noted that draft Fiscal and Economic Impact Statement did not provide a clear baseline for assessing the change in monitoring costs or treatment costs for the proposed criteria. RAC member Cory Engel noted that even if DEQ has the ability to enforce the narrative toxics criterion, a numerical standard puts the agency in a stronger position in the event that the enforcement effort is challenged. He noted that adopting the proposed criteria provide DEQ with a tool they would not otherwise have, and that without that tool, it could be difficult to perform enforcement at all, especially in the face of limited resources. Connie Dou added that the purpose of the rulemaking is to adopt the numeric standards recommended by EPA as required by federal regulations. Further, she clarified that another reason for the rulemaking is to create clarity and transparency for regulated bodies and the public. Connie Dou also added that states may implement their narrative toxics criterion using whole effluent toxicity testing, and are not obligated to use a numerical value to implement the narrative.

RAC member Glenn Spain noted that the positive impacts and benefits of regulation have been largely discounted or ignored in the *Draft Fiscal and Economic Impact Statement*. He noted that the chemicals with proposed criteria have human health hazards, are watershed pollutants, can get into the human food chain, and are potentially bioaccumulative. RAC member Glenn Spain noted that adopting the proposed criteria may have positive health impacts by reducing the number of carcinogens. He noted that one way to quantify these benefits is in the reduction of treatment costs for urban and rural water supply agencies because by adopting and implementing the proposed aquatic life criteria, there will be lower concentrations of these chemicals in the water supply. RAC member Glenn Spain noted that although the fiscal and economic benefits of the proposed rules are difficult to quantify, they cannot be ignored. Kaley Major reviewed some of the language pertaining to public benefits in the first draft of the Fiscal and Economic Impact Statement, and clarified that this is the section RAC member Glenn Spain was referring to in his comment. He confirmed that it was.

RAC member Raj Kapur noted that the discussion on stormwater impacts should be enhanced in the next draft of the Fiscal and Economic Impact Statement. Specifically, he pointed out that larger municipalities with phase one MS4 permits are required to monitor for pesticides, and those permits contain language related to causing or contributing to any water quality standards violations which may require additional controls, source controls, education, as well as potentially treatment. RAC member Raj Kapur also noted that although the human health criteria for acrolein are more stringent than the proposed aquatic life criteria for acrolein, it is not appropriate to say that permit requirements will be driven by the more stringent value of the human health criteria because human health criteria and aquatic life criteria values are treated differently for reasonable potential analysis. RAC member Raj Kapur also noted that industrial dischargers may still be required to monitor for toxics, even if they discharge less than one million gallons per day, and that information should be corrected in the second draft. Kaley Major thanked RAC member Raj Kapur for his comments and noted that DEQ will incorporate those points in the next draft and verify those corrections with permitting staff.

RAC member Greg Sieglitz asked whether there will be any reference to the impact of climate change related to the proposed toxics criteria in the Fiscal and Economic Impact Statement. He noted that given the changing air and water temperatures and changes to discharge and flows that are occurring and will continue to occur due to climate change, waterbodies could become more concentrated with these toxic chemicals. Kaley Major clarified that for the proposed toxics criteria, temperature fluctuation is not considered, and the criteria were derived from laboratory tests with a narrow range in temperature (i.e. 22 to 25 degrees Celsius). Debra Sturdevant added that the criteria are the maximum concentration of the chemical in a waterbody that protects aquatic life. Reduced stream flows may make it more difficult to meet the criteria, but it doesn't change the criteria itself. RAC member Greg Sieglitz asked whether there are any places where DEQ might make a statement regarding the impact of climate change on the proposed criteria. RAC member Jeremy Buck

supported RAC member Greg Sieglitz's suggestion to consider climate change. Debra Sturdevant noted that climate change is a larger, overarching issue that may not be specific to this rulemaking, and reminded the group that the purpose of the fiscal impact statement is to capture the impacts of the proposed rule amendments. Connie Dou noted that while climate change may not directly affect this rulemaking, it may have impacts for the criteria implementation in the future, and could potentially be addressed that way in the Fiscal and Economic Impact Statement.

V. Questions from the public

Kaley Major asked for any clarifying questions from the public. No questions from the public were asked. The RAC took a 10- minute break. After the break, Kaley Major re-started the meeting.

VI. Discussion, request for RAC review, question and answer session, final thoughts

Kaley Major reminded the RAC of the project timeline and the next steps.

- Reminded the RAC that after RAC input is incorporated this fall/winter, DEQ will invite the public to comment on the proposed rule and hold a public hearing early in 2024. Once public comment is incorporated, DEQ will proposed the rule for EQC action in late summer 2024.
- Presented the timeline for RAC comments for the fiscal and economic impact statement drafts and draft rule language, as well as a summary of DEQ action (see Section VII. Action Items for a summary).
- Noted that DEQ will be in contact with RAC members via email regarding all due dates and next steps. RAC members will be given roughly two weeks when asked to review materials and provide input.

Kaley Major paused for questions from the public. No questions were raised. Kaley Major thanked the RAC for comments and participation and concluded the meeting.

VII. Action Items

A summary of action items after meeting #2. Note, all due dates are tentative, and RAC members will be given at least two weeks to review documents and provide input.

Kaley Major will:

- Post Meeting 2 presentation slides on the [Aquatic Life Toxics Criteria rulemaking page](#) (due: November 17)
- Send an email to RAC members providing them with the Draft Meeting 2 Summary for their review; post the RAC-reviewed Meeting 2 Summary on the rulemaking page (due: November 17)
- Revise the First Draft Fiscal and Economic Impact Statement and the First Draft Rule Language documents based on verbal and written RAC feedback (due: December 1)
- Send an email to RAC members providing them with the Second Draft Fiscal and Economic Impact Statement and the Second Draft Rule Language documents and requesting RAC review (due December 1).
- Send RAC members the final draft Fiscal and Economic Impact Statement and final draft Rule Language documents after RAC review and input on the second drafts (due TBD).

RAC members will:

- Provide any written feedback on:
 - Meeting 1 Summary (due: December 1)
 - First Draft Fiscal and Economic Impact Statement discussed at the first meeting (due: November 17)
 - First Draft Rule Language discussed at the first meeting (due: November 17)
 - Second Draft Fiscal and Economic Impact Statement (due: December 15)
 - Second Draft Rule Language (due: December 15)

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