

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 7, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item F, Informational item: Update on DEQ's development of revised water quality standards and implementation policies for toxic pollutants April 29-30, 2010 EQC meeting

Purpose of item DEQ will update the commission on the development of rules and other approaches for implementing revised human health water quality standards for toxic pollutants, which DEQ expects to propose for adoption in mid 2011. DEQ will ask for any additional input the commission may have on implementation policies.

Why this is important DEQ will base the revised water quality standards on the highest fish consumption rate used by any state, 175 grams per day, making Oregon's criteria significantly more protective of human health than other state or federal criteria. The water quality criteria include pollutants from many different sources, including sources that have National Pollutant Discharge Elimination System permits and sources that do not. In some cases, sources not permitted under the Clean Water Act contribute a significant load of these pollutants to Oregon waterways. State and federal regulations control the discharge of pollutants from point sources that are required to obtain NPDES permits, but remain largely silent relative to implementation strategies for other potential sources of these pollutants. Pursuant to 40 CFR 403, ORS 468B.035 and 454.020 and OAR 340-045-0063, many publicly-owned treatment works are required to issue permits and use other controls on the wastewater discharged by businesses in their service area.

DEQ must address two issues to successfully meet its environmental objective of attaining the revised water quality standards in Oregon waters. First, DEQ must have implementation tools in place that facilitate cost-effective environmental improvement for NPDES permitted sources, even when ultimate attainment of the water quality standards is uncertain. Second, DEQ must develop strategies to reduce or control potential other inputs of these pollutants into Oregon waters where they are not being addressed through other mechanisms.

Background

DEQ is responsible for establishing water quality standards in Oregon to protect human health. Water quality standards include numeric water quality criteria expressed as concentrations that are not to be exceeded. The criteria allow Oregonians to consume fish and shellfish and to use state waters for drinking water supply without adverse health effects. Most of DEQ's current criteria are based on EPA's recommended values. Through the current rulemaking, however, DEQ will revise Oregon's human health criteria based on a fish consumption rate that is substantially higher than the national averages used in EPA's recommended criteria values. These water quality standards are the basis of regulatory tools used by DEQ and EPA to prevent or reduce water pollution.

EQC directed DEQ to pursue rule revisions that will set new water quality standards for toxic pollutants in Oregon based upon on a revised fish consumption rate of 175 grams per day. The commission also directed DEQ to propose rule language or develop other implementation strategies to reduce the adverse impacts of toxic substances in Oregon's waters that are the result of nonpoint source discharges or other sources not subject to section 402 of the federal Clean Water Act, which governs NPDES permits.

The commission instructed DEQ to carefully consider the costs and benefits of the fish consumption rate and the data and scientific analysis already compiled or that is developed as part of the rulemaking proceeding. The proposed rule language must allow DEQ to implement the standards in an environmentally meaningful and cost-effective manner.

Key issues

Project timeline

At the February 2010 EQC meeting, DEQ requested and the commission agreed to extend the timeline for rule adoption to mid 2011. The extension will provide more time to develop implementation rules and strategies for sources required to obtain NPDES permits and for other sources. DEQ sent a revised work plan to the commission in late March.

The commission directed DEQ to provide information updates on the status of this project at each of its commission meetings. DEQ will provide an overview of the status of this project, including the information identified below.

**Project
Status**

NPDES source implementation

DEQ has met with the rulemaking workgroup since December 2008 to discuss the commission's charge that DEQ develop tools to implement

the revised human health criteria in an environmentally meaningful and cost-effective manner. Staff will provide an overview of the work done to develop implementation tools based on anticipated issues that may arise for permitted sources when DEQ implements the revised water quality standards. Some of the potential implementation tools are allowed under existing authorities, while others would require new regulations or revisions to existing regulations. For NPDES sources and other sources regulated under the federal Clean Water Act, DEQ's rules must comply with federal regulations.

Nonpoint source implementation

DEQ considered the input of stakeholders to establish a set of policies that could be included in the rulemaking package to address nonpoint and other sources that do not receive individual NPDES permits. DEQ will update the commission on the development of these draft concepts and proposals and workgroup discussions. In addition to the elements being pursued as part of this rulemaking, DEQ expects some ideas will be further developed and recommended as part of the DEQ's agency-wide Toxics Reduction Strategy. Future rulemakings may be needed to implement additional recommendations ultimately contained within the strategy.

Provisions pertaining to nonpoint sources and other non-NPDES sources that are currently under consideration for inclusion in the current rulemaking package include:

- "Implementation-ready" Total Maximum Daily Loads;
- Rules specifically describing the pollutant sources for which waste load and load allocations can be developed and implementation plans required;
- A rule directing DEQ to develop and implement effective rules to reduce the impacts of toxic pollutants associated with sediment;
- Rules, as necessary, to develop a state program to address indirect discharges of toxic pollutants to municipal collection systems; and
- Antidegradation policy rule modifications to clarify and facilitate its application to non-NPDES sources.

Any of these recommendations and actions would specifically relate to the agency-wide toxics prevention and reduction strategy while advancing the objectives of the revised human health water quality standards for toxic pollutants.

Stakeholder involvement	DEQ is working with NPDES and non-NPDES stakeholders and other interested parties to develop implementation strategies for the proposed standards. Implementation strategies for sources required to obtain NPDES permits as well as for nonpoint sources and other sources not currently subject to NPDES permits are being considered. See attachment A for a list of rulemaking workgroup members.
Next steps	DEQ will continue to work with EPA, tribal governments and stakeholders to develop proposed implementation tools and policies. DEQ will develop proposed criteria tables and solicit review.
EQC involvement	DEQ will continue to provide informational updates on the progress of this rulemaking at the pleasure of the commission. As shown on the schedule sent to the commission in late March, DEQ will continue to meet with the rulemaking workgroup through early fall and will then prepare to take draft proposed rules to the public for comment and hearings. DEQ will continue to invite Commissioners Blosser and Williamson to these meetings, as requested.
Attachments	A. List of rulemaking workgroup members
Available upon request	1. Project work plan summary

Approved:

Section: _____

Division: _____

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Toxics Rulemaking Work Group Memberships

Rulemaking Work Group (RWG) Members

Facilitator: Donna Silverberg, DS Consulting

Organization / Sector	Individual(s)
CTUIR	Kathleen Feehan / Ryan Sudbury
EPA	Jannine Jennings
ACWA	Dave Kliewer
League of Oregon Cities	Peter Ruffier
Northwest Pulp and Paper	Kathryn Van Natta
Industrial Dischargers	Michael Campbell
Associated Oregon Industries	Rich Garber or alternate Myron Burr
Northwest Environmental Advocates	Nina Bell
Oregon Environmental Council	Andrew Hawley
Columbia Riverkeeper	Lauren Goldberg

Rulemaking Work Group Members

Non-NPDES Discussions

Facilitator: Donna Silverberg, DS Consulting

Organization / Sector	Individual(s)
CTUIR	Kathleen Feehan / Ryan Sudbury
ACWA	David Kliewer
League of Oregon Cities	Peter Ruffier
Northwest Pulp and Paper	Kathryn Van Natta
Industrial Dischargers	Michael Campbell
Associated Oregon Industries	Rich Garber or alternate Myron Burr
Northwest Environmental Advocates	Nina Bell
Northwest Environmental Defense Center	Andrew Hawley
Columbia Riverkeeper	Lauren Goldberg
Oregonians for Food and Shelter	Terry Witt
Oregon Farm Bureau	Jennifer Shmikler
Oregon Forest Industries Council	Chris Jarmer
Association of Oregon Counties	Emily Ackland
Oregon Small Woodlands Association	David Ford

Participating Agencies

Individual(s)

EPA	Mary Lou Soscia / Jannine Jennings
Department of Agriculture	Dave Wilkinson or Ellen Hammond
Department of Forestry	Jim Paul