

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 15, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item I, Rule adoption: Amending water quality standards for iron and manganese
December 9-10, 2010, EQC meeting

Why this is important This rule amendment withdraws water quality criteria for iron and manganese that are not based on human health effects.

DEQ recommendation and EQC motion The Department of Environmental Quality recommends that the commission amend Oregon's water quality standards for iron and manganese as presented in attachment A.

Background and need for rulemaking The commission adopted the current iron and manganese criteria in the late 1980s when it adopted all of Environmental Protection Agency's 1986 recommended toxics criteria. In response to public comment in October 2008, EQC directed DEQ to review the science behind the human health criteria for naturally occurring metals. DEQ's review, which is summarized in attachment D, led to this proposed rule amendment. In addition to iron and manganese, DEQ reviewed the human health criteria for arsenic, another naturally occurring earth metal, and proposed revisions for public comment. DEQ needs additional time to consider and respond to comments received on arsenic and is therefore not proposing revisions to the arsenic criteria at this time. DEQ anticipates proposing rule revisions for EQC's consideration in summer 2011.

Oregon's current human health criteria for iron and manganese are not attainable in some Oregon waters, due at least in part to natural sources. These criteria are based on their potential to affect the taste of water or cause laundry staining when high levels of these metals are contained in domestic water supplies; they are not based on human health effects. As seen in attachment D, DEQ's scientific review finds that the proposed criteria revisions are not likely to result in human health impacts.

Implementing the criteria results in unnecessary costs to the state and regulated entities to address pollutant levels that are naturally occurring and do not pose a human health risk. DEQ expects that several NPDES discharge permits due for renewal in the near future will be affected by the proposed revisions.

Effect of rule The rule amendment will withdraw the 'water and fish ingestion' human health

criteria for iron and manganese in Table 20 and the ‘fish consumption only’ human health criteria for manganese as it applies to freshwater, but leave the criterion in place as it applies to saltwater. These changes are shown in attachment A as redline changes to Table 20 for the iron and manganese criteria and the associated footnote. No changes to the toxics standards rule language at OAR 340-041-0033 are proposed.

Commission authority

The commission has authority to take this action under ORS 468.020, 468B.010 and 468B.035.

Stakeholder involvement

During the review of the iron and manganese criteria, DEQ informed and obtained input from the Toxics Standards Rulemaking Workgroup, a stakeholder committee that DEQ assembled to provide input on the toxics standards rulemaking. The membership of this group is provided in the issue paper in Attachment D. The issue paper findings and DEQ’s recommendations were discussed with the rulemaking workgroup prior to the formal public comment period and the group supported DEQ’s recommendations.

Public comment

DEQ accepted public comment from August 25 to Sept. 30, 2010, and held public hearings in Portland and Pendleton. A summary and response to public comment is provided in attachment B; hearing reports are provided in attachment C. DEQ received comments from nine individuals or organizations. Some of the comments supported the changes. A few commenters opposed relaxing the standards, concerned that it would allow increased pollution by industry. Two commenters had unique concerns that are not appropriately addressed by establishing surface water quality criteria and will not be affected by the proposed criteria changes.

Key issues

A key issue in the water quality toxics standards work has been to meet the EQC’s goal to adopt water quality standards that protect public health, reduce toxic pollutants and achieve meaningful environmental results for the costs expended. The proposed iron and manganese criteria revisions are an incremental step toward meeting this goal.

Another key issue is to ensure that Oregon’s water quality criteria are based on relevant and available science. The available science and conclusions of EPA and other states support DEQ’s finding that the criteria are not necessary to protect human health in Oregon.

Next steps

DEQ proposes that the criteria revisions be effective under state and federal law at the time they are approved by the Environmental Protection Agency. EPA approval is required before the criteria are effective under the federal Clean Water Act.

If adopted by the commission, the rule change will be filed with the Secretary of State and submitted to EPA for approval. Once EPA approves the changes and the criteria withdrawals are effective, an updated Table 20 will be posted on DEQ's webpage and available to the public and DEQ staff. In addition, the standards program staff will notify all DEQ staff and managers that implement water quality standards and Clean Water Act programs of the rule change. No additional resources will be needed to implement the rule.

Attachments

- A. Proposed rule revisions (redline version)
- B. Summary of public comments and agency responses
- C. Presiding Officer's report on public hearings
- D. Issue Paper: Summary of rule development process including stakeholder workgroup membership and scientific review.
- E. Relationship to Federal Requirements questions
- F. Statement of Need and Fiscal and Economic Impact
- G. Land Use Evaluation Statement

Available upon request

- 1. Legal notice of hearing
- 2. Cover memorandum from public notice
- 3. Written comment received
- 4. Rule implementation plan

Approved:

Division: _____

Section: _____

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