Water Quality Standards

Willamette Mercury Multiple Discharger Variance

Advisory Committee Meeting #5

June 3, 2019
DEQ Portland Office Room #610
700 NE Multnomah St
Portland, Oregon 97232

List of attendees

Members
Raj Kapur, Clean Water Services, Association of Clean Water Agencies; Sharla Moffett, Oregon Business and Industries; Kathryn Van Natta, Northwest Pulp and Paper Association; and by phone: Chandra Ferrari, Oregon Trout Unlimited; Michael Karnosh, Confederated Tribes of Grand Ronde; Allison LaPlante, Earthrise Law Institute; Todd Miller, City of Springfield/ACWA; Jeff Stone, Oregon Association of Nurseries.

DEQ Staff
Aron Borok
Erich Brandstetter
Connie Dou
Alex Liverman
Michele Martin
Inez Lawson
Debra Sturdevant
Jennifer Wigal

Others in attendance
by phone: Samantha Bayer, Oregon Farm Bureau; Karen Burgess, EPA; April Catan, City of Newberg; Lindsay Guzzo, EPA; Amanda Keller, Clackamas County; Cheryl Niemi, Washington Department of Ecology; Ryan Pessah, Western Wood Preservers Association; Shane Sinclair, City of Corvallis.

State of Oregon Department of Environmental Quality

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List of handouts and presentation notes

- Agenda
- Draft Procedure for calculating the level currently achievable and LCA-based effluent limits
- Draft rule language amendments to OAR 340-041-0059 and OAR 340-041-0345
- Draft Fiscal Impact Statement
- DEQ Presentations
    - Draft variance authorization and MDV rules
    - Level Currently Achievable and permit limit derivation
    - Draft fiscal impact statement

Meeting Summary

The meeting began with a round of introductions and Alex Liverman led review of the Charter Objective and Roles and Ground Rules.

Interaction of TMDL and MDV
Jennifer Wigal spoke briefly about the intersection of the Willamette Mercury TMDL and the Variance document. After the latest TMDL Advisory Committee meeting, DEQ is pursuing an approach for point sources that would allow for narrative requirements to be placed in permits that would require implementation of mercury minimization plans. To date, in conversations with, they have indicated that it would be an acceptable means to implement wasteload allocations and consistent with the approach other states have made when issuing Mercury TMDLs. If this proposed approach is included as written in the final TMDL, then individual NPDES permits would not need the MDV. However, DEQ is still moving forward with the MDV because it is too early to know how the proposed approach in the TMDL may change due to comments from the public comment period. Additionally, the work put in to the Willamette Mercury MDV could be applied to other pollutants of concern as well as other landscapes and regions within the state, so the work would still be useful in any case.

Aron updated the group on the timeline, stating that the variance document would be open for public comment after the TMDL public comment period. The primary reason for this change was the likelihood that comments on the mercury TMDL may inform some of the decision making for MDV. The updated schedule is to open the public comment period on September 15 and presenting rules for commission adoption in January 2020. Kathryn Van Natta expressed concern about the new timeline, removing the overlap in comment period for the Variance document and TMDL so there's no way to comment and compare the requirements concurrently. Stating that while it may not be an issue, it could matter if there was a problem with the current implementation process in the TMDL that could drive the need for people to acquire the variance, then they would want to look closely at the variance approach. Raj Kapur requested that DEQ check in with the advisory committee after the TMDL public comment period to make sure there was no major deviation from the currently proposed process.

LCA and permit limits
Deb Sturdevant and Erich Brandstetter presented on level currently achievable and permit limit derivation process. DEQ is using the term Level Currently Achievable as a shorthand for the portion of the federal highest attainable condition requirement that reads, "The interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance." Erich described the method to calculate the LCA, using up to the most recent 5 years of data with a minimum of two years of data for facilities that haven't been collecting data, though not ideal situation. Under the procedure, each sample will be treated as an individual data point, even if taken on consecutive days, log-transformed and not corrected for auto-correlation. DEQ would use the EPA TSD methodology to calculate the 95th percentile of distribution. Raj questioned the lack of auto-

correlation assumption. Erich explained that while there may be correlation between consecutive day samples, there isn't across quarterly sampling events, so while there is correlation in the short-term, there isn't in the long-term. Raj commented that municipal facilities have data, though industrial facilities likely don't have effluent data other than what is required for permit application. Erich considered this and added that there are few industrial facilities from industries of concern and also don't have data. Also stated that the LCA will be evaluated every 5 years and most major facilities collect data regularly, many are in the pretreatment program, and there may be opportunity to schedule permit renewals such that if a facility doesn't currently collect mercury effluent data, that they could be given time to collect baseline data.

Erich further explained the proposal for LCA-based permit limits. DEQ would use the LCA as a quarterly average permit limit; however, to acknowledge the variability of mercury in effluent, no violation will occur unless two consecutive quarterly averages are above the permit limit. Evaluating data from several facilities, DEQ believes this to be a reasonable method to set a ceiling while not causing violations when there isn't necessarily a problem at the facility. Raj questioned that with this approach, we are allowing for 5 percent exceedance. He cautioned that we need to ensure we are setting a ceiling based on protecting water quality rather than just available data. Kathryn additionally flagged potential seasonality issues, especially in the case of facilities using a large amount of river water and concentrating due to evaporation.

Details of rule language
Allison LaPlante requested word document for commenting on rule language, though Aron confirmed that DEQ does not allow this, even for advisory committee members.

Aron covered edits to draft authorization rule (OAR 340-041-0059) and MDV rule language. Raj questioned the meaning of "limited-time alternate designated use" referenced in the definition of "variance" and if that was part of the process. Deb clarified that the variance document is not identifying alternative criteria or designated use, so wording of definition may need to be clarified but was trying to be consistent with Clean Water Act language. Several comments regarding word choice or clarity were brought up:

- Raj pointed out "best technology available" is not defined. If DEQ is maintaining consistency with EPA verbiage, need to include stipulation of "best technology available and economically feasible".
- Kathryn questioned page 12 use of "Commission or Department" and if there was no reason for word order, document should maintain consistent order.
- Kathryn added that "known sources" was not defined. Proposed the replacement of known to "potential sources"
- Raj suggested rule language should be general, and not specify which industries may be targeted for mercury effluent. Saving the examples of potential mercury source industries for supplementary information.

Several advisory committee members requested clarity on the scope of the rulemaking and who DEQ believes may be planning on applying for the mercury MDV and how stormwater permits may be impacted.
Allison pointed out the variance document doesn't address non-point sources and there needs to be a plan to address those sources. Alex stated that there is a mercury TMDL that focuses on non-point sources that will be implemented.

Fiscal impact statement
Aron summarized the fiscal and economic impact document. DEQ additionally requests committee recommendations on (1) whether the proposed rules would have a fiscal impact, (2) the extent of the impact, and (3) whether the proposed rules would have a significant adverse impact on small businesses and complies with ORS 183.540.

Kathryn and Allison noted that there is not much emphasis placed on pretreaters. Many businesses are pretreaters, and there may be a benefit to them to have facilities they pretreat for being part of the MDV if they chose. Raj suggested that there is no direct benefit to facilities or permit holders but could structure the document to say "that rules provide an efficient method to reduce administrative burden in implementing Clean Water Act requirements". Kathryn suggested that the word "effort" in the first paragraph be replaced with something that better relates the purpose, stating that we still want to engage in a level of rigor to protect water quality to the best of our ability. Raj also wanted to point out that DEQ is just modifying existing rules, that there are already rules in place that allow for variance in the Clean Water Act.

Aron requested comments on fiscal impact statement to be submitted by June 28, 2019, and comments on other materials presented today to be submitted by June 24, 2019.

Meeting adjourned at 4 p.m.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.