State of Oregon Department of Environmental Quality

Willamette Basin Mercury Multiple Discharger Variance Fiscal Impact Statement

DRAFT Statement of fiscal and economic impact

Fiscal and Economic Impact

The proposed rules provide an efficient method and reduce administrative burden for facilities in the Willamette River Basin to comply with Clean Water Act requirements. ~~will benefit facilities discharging effluent into waters of the Willamette Basin.~~ The rules will ensure that these facilities have a means for complying with effluent limits for mercury. Without a variance, these facilities would have effluent limits based on the human health criterion for methylmercury that are unachievable with current treatment technology during the term of the variance. This situation would either: 1) result in numerous enforcement orders against these facilities; 2) delay DEQ in issuing permits that would have unachievable limits; or 3) require individual variances for each facility.

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By developing an MDV, the process of obtaining a variance for wastewater dischargers in the Willamette Basin is less burdensome than obtaining individual variances. The MDV will require less staff time for the permit holder, DEQ staff and the U.S. Environmental Protection Agency than individual variances. In particular, by developing an MDV, DEQ only needs to justify the need for the variance and obtain EPA approval one time for all the qualifying dischargers in the Willamette Basin. Obtaining coverage under the variance will still require effort from both permit holders and DEQ staff, but it will require less effort than individual variances.

These rules are expected to ~~benefit~~ reduce administrative burden for holders of all major NPDES permits ~~to~~ that discharge wastewater into the Willamette Basin, as well as holders of minor NPDES permits in certain industries. At this time, DEQ estimates that the rules would affect up to 23 major municipal NPDES dischargers, five active and two inactive major industrial wastewater dischargers,~~.~~ and up to ~~28~~ 15 minor industrial wastewater dischargers. These numbers could change as communities grow larger and some minor municipal NPDES dischargers increase their flow volumes to become major dischargers. The proposed rules would ~~have a positive impact~~reduce administrative burden to these permit holders, as they will not have to apply for individual mercury variances, saving them resources that would not normally be part of a permit renewal process.

The proposed rules will ~~benefit~~ reduce administrative burden for DEQ water quality permitting staff by utilizing the appropriate tool under the CWS for issuing a permit under this circumstance. The requirements for permittees under the variance will be tailored according to procedures developed during the variance development, which will provide

efficiency and require less time of the permit writers than using individual variances~~, or having no variance~~. Without the MDV, dischargers would have to apply for individual variances instead, which would require more time and effort for the permittees and for DEQ staff. It would also delay the process, because each individual variance would have to be submitted to EPA for approval before it would be effective for use in permitting.

The proposed rules require a re-evaluation of the highest attainable condition every five years, consistent with federal variance regulations. This re-evaluation will require effort from both water quality standards staff and permitting staff. Without the proposed rules, DEQ would have to do the HAC re-evaluation for each individual permittee obtaining a variance, assuming the variance lasted longer than a permit cycle. If the variance only lasted a permit cycle, DEQ staff would have to work with the permittee to reapply for the variance every five years, which would likely be even more burdensome. Therefore, the proposed rules will likely save effort from DEQ staff overall.

DEQ does not expect that the changes to the variance authorization rule to have any fiscal or economic impact, as these changes ensure that DEQ's variance rules are consistent with federal rules. They do not change the level of effort needed to develop and issue or adopt a variance.

Statement of Cost of Compliance

The cost of compliance with these rules is less than the cost of compliance without these rules. Without the rules in place, each facility that could not meet water quality based effluent limits for mercury would have to apply for an individual variance. This would require additional staff time from facility staff. In addition, under individual variances, each facility would have to do a five-year re-evaluation of the highest attainable condition, requiring additional time. Under the MDV, DEQ would do this re-evaluation for all covered facilities. Permit limits for mercury will be the same, whether done through individual variances or an MDV, as DEQ would use the same methodology to calculate limits in either instance. For both individual variances and a multiple discharger variance, at least two years of quarterly mercury sampling will be required for DEQ to calculate permit limits. Such monitoring would be required ~~Moreover, required sampling would be similar~~ whether under individual variances or an MDV. DEQ is aware that some facilities that may require a variance have not yet conducted this level of sampling to date and that such sampling poses greater monitoring costs that is currently required. However, DEQ would require this sampling effort whether under an individual variance or an MDV; as such, the MDV does not pose greater costs to these facilities.

State and federal agencies

DEQ

Direct Impacts

The proposed rules will require effort for DEQ permitting staff to ensure that permittees have provided all required documentation needed for coverage under the MDV and to incorporate

variance-related permit requirements into the permit. DEQ is currently finalizing permitting tools for individual mercury variances. Once it completes this process, such work should require no more than a few hours to calculate the LCA and permit limits.

However, without the MDV rules in place, DEQ permitting staff would likely have to ask permittees to apply for individual variances. Individual variances would require additional staff time, because the justification for the variance would need to be made for each facility. In addition, each individual variance would need to go through a public comment process, be approved by the Director and then submitted to EPA for approval before it could be used to issue a permit. As a result, the proposed MDV rule will result in less time per permit than not having the rules in place.

The proposed rules will require DEQ staff to conduct a review of the highest attainable condition under the variance every five years. However, DEQ would either have to do a 5-year HAC re-evaluation for each facility for individual variances, or issue individual variances with a five year duration, with subsequent renewals. In either case, the HAC would have to be re-evaluated for each facility. Thus, HAC re-evaluation is more efficient under an MDV than using individual variances.

Indirect Impacts

DEQ does not expect indirect impacts from the proposed rules.

Local governments

Direct Impacts

The proposed rules will ~~have a positive benefit~~reduce administrative burden for ~~to~~ local governments, as compared to not having the rules in place. The proposed rules will ensure that local governments operating wastewater treatment plants that discharge effluent into waters of the Willamette Basin have a means for complying with mercury effluent limits. Without the MDV available, local governments would have to apply for individual variances, which can be a lengthy process, and require each entity to justify the variance under federal and state rules. Moreover, each individual variance would require EPA approval. In contrast, the MDV would only require initial approval by the EPA one time. Thus, the MDV would save the extra effort needed to justify each individual variance and obtain approval for the variance from EPA. DEQ cannot quantify exactly how much effort the MDV will save as compared to an individual variance, as that will likely vary for each facility.

Indirect Impacts

DEQ does not anticipate indirect impacts from the proposed rules.

Public

Direct Impacts

DEQ does not expect direct impacts to the public from the rules.

Indirect Impacts

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The public will benefit indirectly from the proposed rules, in that the proposed rules will ~~likely save~~reduce administrative burden for local government ~~effort~~ staff that would otherwise be needed to apply for individual variances. This will potentially have an impact on costs associated with applying for a variance. DEQ cannot quantify this impact with available information; however, DEQ expects those impacts to be relatively small per capita.

Large businesses - businesses with more than 50 employees

Direct Impacts

Impacts to large businesses that discharge wastewater under an NPDES permit will be similar to that of local governments. The proposed rules will ensure that any large businesses that discharge wastewater into waters of the Willamette Basin have a means for complying with mercury effluent limits. Without the proposed rules, these businesses would have effluent limits that would be unattainable, leading to either frequent enforcement orders or delays in permit issuance. At the present time, DEQ anticipates that only NPDES dischargers with major and minor permits in the following sectors may have the need to apply for coverage under the MDV, if they would otherwise have effluent limits for mercury based on the water quality standard:

- Timber products;
- Paper products;
- Chemical products;
- Glass/clay/cement/concrete/gypsum products;
- Primary metal industries;
- Fabricated metal products;
- Electronics and instruments

~~Currently~~Based on current information, these rules could impact no more than ~~35~~ 22 businesses with NPDES permits in the Willamette Basin. It is unclear how many of these businesses are large businesses.

Without the MDV available, large businesses would have to apply for individual variances, which can be a lengthy process. The MDV would save extra effort needed to justify each individual variance and wait for approval for the variance from EPA. DEQ cannot quantify exactly how much effort the MDV will save as compared to an individual variance, as that will likely vary for each facility.

For both individual variances and a multiple discharger variance, at least two years of quarterly mercury sampling will be required for DEQ to calculate permit limits. Such monitoring would be required whether under individual variances or an MDV. DEQ is aware that some facilities that may require a variance have not yet conducted this level of monitoring to date and that such sampling poses greater monitoring costs that is currently required. However, DEQ would require this sampling effort whether under an individual

DRAFT

variance or an MDV; as such, the proposed MDV does not pose greater costs to these facilities.

Indirect Impacts

DEQ does not expect indirect impacts to large businesses.

Small businesses – businesses with 50 or fewer employees

Direct Impacts

Impacts to small businesses that discharge wastewater under an NPDES permit will be similar to that of local governments. The proposed rules will ensure that any small businesses that discharge wastewater into waters of the Willamette Basin have a means for complying with effluent limits for mercury. Without the proposed rules, these businesses would have effluent limits that would be unattainable, leading to either frequent enforcement orders or delays in permit issuance. At present time, DEQ anticipates that only NPDES dischargers with major and minor permits in the following sectors might have the need to apply for coverage under the MDV:

- Timber products;
- Paper products;
- Chemical products;
- Glass/clay/cement/concrete/gypsum products;
- Primary metal industries;
- Fabricated metal products;
- Electronics and instruments

Without the MDV available, small businesses would have to apply for individual variances, which can be a lengthy process. The MDV would save extra effort needed to justify each individual variance and wait for approval for the variance from EPA. DEQ cannot quantify exactly how much effort the MDV will save as compared to an individual variance, as that will likely vary for each facility.

For both individual variances and a multiple discharger variance, at least two years of quarterly mercury sampling will be required for DEQ to calculate permit limits. Such monitoring would be required whether under individual variances or an MDV. DEQ is aware that some facilities that may require a variance have not yet conducted this level of monitoring to date and that such sampling poses greater monitoring costs that is currently required. However, DEQ would require this sampling effort whether under an individual variance or an MDV; as such, the proposed MDV does not pose greater costs to these facilities than current rules.

Indirect Impacts

DEQ does not expect indirect impacts to small businesses.

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a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

Small businesses in the following industries, which hold individual permits to discharge wastewater in the Willamette Basin may be subject to the proposed rule:

- Timber products;
- Paper products;
- Chemical products;
- Glass/clay/cement/concrete/gypsum products;
- Primary metal industries;
- Fabricated metal products;
- Electronics and instruments

Currently, these rules could impact no more than ~~35~~ 22 businesses with NPDES permits in the Willamette Basin. At least six of these are small businesses.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

There is no increased reporting or recordkeeping to comply with the proposed rule. In fact, the proposed rule will decrease administrative costs associated with applying for an individual variance, which is more than required than applying for a multiple discharger variance.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

DEQ does not anticipate that the proposed rule would require additional equipment, supplies, labor or increased administration to comply with the proposed rule, as any requirement already is required through individual variances, which would be required without the proposed rule.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included small business representatives on the Willamette Basin Mercury Multiple Discharger Variance Advisory Committee that reviewed the fiscal impact statement. This included representatives of the Oregon Business and Industry and the Oregon Association of Nurseries. DEQ also provided rulemaking notice to any small business signed up for water quality standards rulemaking notices.

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Documents relied on for fiscal and economic impact

Document title	Document location
Title	Link or office address
Oregon Department of Employment # quarter 20yy data	Employment Department 875 Union Street NE Salem OR 97311
Draft Mercury Multiple Discharger Variance for the Willamette Basin and Amendments to Oregon Variance Rule	Oregon DEQ 700 NE Multnomah St. #600 Portland, OR 97202

Advisory committee

As ORS 183.333 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses, and if so, how DEQ can reduce that impact as ORS 183.540 requires.

The committee reviewed the draft fiscal and economic impact statement and
- its comments are stated in the approved minutes dated DATE.

The committee Enter specifics about the committee's fiscal impact review. The committee determined the proposed rules would would not have a significant adverse impact on small businesses in Oregon.

Only if the committee determined there would be a significant adverse impact on small business, include the following:

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

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Explain the outcome of the above review.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules will have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules will have no effect on the development costs because the rules do not directly or indirectly impact development.

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