UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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WATER DIVISION

Aron Borok
Oregon Department of Environmental Quality
Water Quality Standards and Assessment
700 NE Multnomah Street, Suite 600
Portland, OR 97232

RE: The EPA's Comments on the Proposed Revisions to Oregon's Water Quality Standards at OAR Chapters 340-041-0059 and 340-041-0345

Dear Mr. Borok:

Thank you for the opportunity to review the Oregon Department of Environmental Quality's proposed revisions to the water quality standards variance authorizing provision and multiple discharger variance for mercury in the Willamette Basin, Chapters 340-041-0059 and 340-041-0345 of the Oregon Administrative Rules, respectively, filed on September 16, 2019. The EPA has provided comments for your consideration on both Chapters of the proposed revisions to Oregon's water quality standards in the enclosure. The EPA recommends that DEQ incorporate these comments or revise accordingly when finalizing the water quality standards revisions.

The EPA appreciates DEQ's commitment to update Oregon's water quality standards. We look forward to continuing to engage with you throughout this process. If you have any questions, please contact me at (206) 553-0268 or Guzzo.Lindsay@epa.gov.

Sincerely,

Lindsay Guzzo
Water Quality Standards Coordinator

Enclosure

Enclosure
EPA's comments on Oregon's Proposed Revisions to Chapters 340-041-0059 and 340-041-0345

The EPA has reviewed DEQ's proposed rule revisions and offers the following comments and recommendations for your consideration:

Recommended Revisions to Proposed Language at Chapter 340-041-0059

1. The proposed language at OAR 340-041-0059(1) Applicability states:

The commission may also grant a water body variance, which applies to all qualified facilities that discharge to the defined water body or water body segment.

The EPA recommends that DEQ delete "all qualified facilities that discharge to" from the sentence. A waterbody variance applies to the waterbody or waterbody segment where all point and non-point source dischargers are evaluated.

2. The proposed language at OAR 340-041-0059(3) Variance Duration and Re-evaluation states:

DEQ will re-evaluate the highest attainable condition using all existing and readily available information at least every five years and submit this re-evaluation to EPA within 30 days of its completion. DEQ will identify the specific re-evaluation frequency in each variance.

The EPA regulations at 40 CFR 131.14(b)(1)(v) require water quality standard variances with a term greater than five years include a provision specifying how the state intends to obtain public input on the reevaluation. The EPA recommends that DEQ add standardized language in the authorizing provision or state that each variance will identify how the state intends to obtain public input on the reevaluation. The EPA suggests the following language: "DEQ will identify the specific re-evaluation frequency and how it will obtain public input on the reevaluation in each variance."

3. OAR 340-041-0059(7) Public Notification Requirements.

The EPA recommends adding language to this section to address the requirement for how DEQ intends to obtain public input on re-evaluations or referencing the language if added to OAR 340-041-0059(3) Variance Duration and Re-evaluation.

The EPA also recommends stating where the published list of all approved variances can be found.

Recommended Revisions to Proposed Language at Chapter 340-041-0345

4. The proposed language at OAR 340-041-0345 states:

The following describes requirements for permitted wastewater discharge facilities that qualify for a water quality standards variance for the human health criterion for mercury and the process by which a discharger can qualify for the variance.

Consistent with 40 CFR 131.14(a), the EPA recommends that DEQ add the statement that all other applicable standards not specifically addressed by the WQS variance remain applicable.

5. The proposed language at OAR 340-041-0345(6)(a)(A) Findings states:

The fishing use and associated human health criterion for mercury cannot be attained in the waters of the Willamette Basin in the next 20 years because human-caused sources of mercury from global mercury emissions and erosion of native soils are deposited or transported to Willamette Basin waters. These mercury sources are outside the control of Oregon point source dischargers and the state and cannot be remedied to meet the underlying designated use and criterion during the next 20 years.

The EPA recommends clarifying that the "erosion of native soils" in many cases, can be controlled by the state, and is included in the draft TMDL.

6. The proposed language at OAR 340-041-0345(6)(e), (f), and (g) Highest attainable condition.

The EPA recommends adding language to OAR 340-041-0345(6)(e) to clarify that the HAC includes this requirement as applicable to all sources as well as OAR 340-041-0345(6)(f) for municipalities and OAR 340-041-0345(6)(g) for industrial sources.

7. The language at section 3.2.3 State Activities to Reduce Mercury Loads in Attachment 1 of the Notice of Proposed Rulemaking:

DEQ also oversees stormwater and point source (NPDES) permitting programs that will reduce mercury loads to the river over time; this includes municipal stormwater (MS4) permits. DEQ is incorporating the draft water quality management plan by reference. It is available at the following link:
https://www.oregon.gov/deq/wq/Documents/tmdlWillHgD.pdf.

Since factor 3 is used to justify the variance, specifically "cannot be remedied," then for the HAC3 justification, the EPA recommends that DEQ include a discussion of what can be remedied by the state and the dischargers covered by the variance. Please describe the reasons why the reductions achievable through the Mercury Minimization Plans (MMPs) are those can be remedied within the 20-year term of the variance. In addition, the variance must identify how other sources (beyond the point sources) of mercury can be remedied and include those activities. For example, this could include non-point source reductions; commitments under existing programs, such as the Forest Practices Act and Ag Water Practices Act; and possibly air quality permitting or controls. Please cite to existing information sources.

General Comments

8. 20-year Justification:

The support documents should provide a clear and detailed rationale for a 20-year term for all the dischargers. For example, acknowledge that the state is choosing a shorter timeframe for the dischargers given the persistent nature of mercury (because dischargers would still not achieve compliance in 20+ years). Please also discuss why 20 years may allow for real change/action, and, even though dischargers would not reach the ultimate reduction goal of the underlying criteria when the term is reached, it would be a good time to reconsider the assumptions made in the variance.

9. PMPs

Please provide clarifying edits to ensure that it is clear that the activities specified in section 3.2.2 "Implementation of a Mercury Minimization Plan" constitute the MMP for this variance. To reduce confusion, please refer to the facility-specific information that will be provided once a facility qualifies for the variance as implementation of the MMP.