

Oregon's Water Quality Standards Review Project Toxics Stakeholder Group

September 28, 2009 Meeting

DRAFT Facilitator's Summary

The following notes are a summary of issues discussed at the meeting and are intended to point out future actions or issues that may need further discussion at upcoming meetings.

Present for all or part of the meeting:

Lisa Arkin (Oregon Toxics Alliance), Nina Bell (NW Environmental Associates), Abby Boudouris (DEQ), Myron Burr (Siltronic Corporation), Cheyenne Chapman (HCWH), Deanna Connors (DHS-PH), Kathleen Feehan (CTUIR), Rich Garber (Boise, Inc), Cheryl Grabham (DEQ), Andy Ginsberg (DEQ), Renee Hackenmiller-Paradis (Oregon Environmental Council), Ellen Hammond (on phone, ODA), Bruce Hope (DEQ), Brenda Hoppe (DHS), Theresa Huntsinger (Oregon Environmental Council), Chris Jarmer (OFIC), Sujata Joshi (DHS), Dave Kliever (ACWA), Brad Knotts (ODF), Gregg Lande (DEQ), David Livengood (DEQ), Charles Logue (ACWA), Palmer Mason (DEQ), Andrea Marke (DEQ), Kevin Masterson (DEQ), Neil Mullane (DEQ), Margaret Oliphant (DEQ), Greg Pettit (DEQ), Steve Riley (ODA), Gail Shibley (DHS), Jennifer Shmikler (OR Farm Bureau), Mary Lou Soscia (EPA), Sheree Stewart (DEQ), Barbara Stifel (DHS), Debra Sturdevant (DEQ), Ryan Sudbury (CTUIR), Debra Taevs (PPRC), John Tarantino (Oregon Toxics Alliance), Kathryn Van Natta (Northwest Pulp and Paper), Ela Whalen (ACWA), Jennifer Wigal (DEQ), Wendy Wiles (DEQ), Dave Wilkinson (ODA), Travis Williams (Willamette Riverkeeper), Tom Zelenka (Schnitzer)

Also Present: Donna Silverberg and Robin Gumpert, DS Consulting Facilitation Team.

Welcome, Introductions & Agenda: Donna Silverberg, facilitator, welcomed the group and reviewed the day's agenda.

What's Going On In Toxics Reduction Work?

Kevin Masterson provided an overview of DEQ and the Team Toxics' strategy work that has been ongoing since the last meeting, including:

- Determining sources and pathways on the toxics Focus List.
- Evaluating toxics to determine which chemicals on the Base List will be added to the Focus List (a flow chart depicting this evaluation process was provided and discussed in more detail later during today's meeting).
- Determining criteria for adding toxics to the base list.
- Developing a toxics web page which is now available. The webpage provides access to all toxics efforts throughout the state as well as updates on the Toxics Reduction Strategy. It is also a place to register for a November 17 workshop on toxics reduction strategies (discussed in more detail later during the meeting). Kevin welcomed comments and any suggested improvements to the web page.
- Finally, Kevin reminded everyone of the Pollutant Category Subgroups who are to be looking at sources and pathways identification, and encouraged subgroup members to

send information to DEQ. He asked interested people to add their names to the sign-up list, if they had not already done so.

Other Related DEQ Efforts: Neil Mullane, DEQ's Water Administrator, provided additional background from the EQC, noting that when the Fish Consumption Rate was set and the Department was sent to begin its water quality standards rule making effort, the EQC also directed DEQ to look at non-NPDES sources and their contributions. The Water Quality Rulemaking Work Group (WQ RWG) has been exploring human health criteria specifically around arsenic, iron, and manganese, and looking at implementation tools directed at point sources. For non-point sources, a 'mixed media' subgroup formed to look at toxics in multiple setting (water, land, and air). A preliminary memo will be available from the mixed media subgroup on areas they have been exploring sometime in the next week or so.

Action: A member of the WQ RWG noted for the record that the WQ RWG has not seen anything in writing from the mixed media group since February. Neil responded that a draft memo for the rulemaking group is expected to be sent in the next week.

Neil added that DEQ is also exploring with the Attorney General's office the legal authorities the agency has to move forward on its toxics reduction strategy effort. Finally, DEQ has been reviewing EQC's recommendations and lining out the process, timeline, people, and material needs for the ongoing effort. They are considering, for example, how best to involve the Toxics Stakeholder Group and the RWG in the process. Neil shared a rough outline of the future meeting schedule and major topics.

Donna shared additional information about the schedule: The WQ RWG will continue to do its work on the human health criteria revisions and the implementation tools for NPDES permit holders (meetings to be held October 19 and December 9). A broader Toxics Workshop (see below) will be held November 17th. This will be followed on the 18th by a kickoff discussion of a newly configured 'RWG+' (the current WQ RWG plus people from air and land) around legal authorities within water rules that can reach other areas (land and air).

In response to a question, DEQ clarified that the RWG has been working under the context of reviewing only DEQ's legal authorities up to this point. A next step in overall toxics reductions would be to explore other agencies' authorities. A stakeholder member noted that this multi-agency 'authorities' discussion has been held in the past and suggested DEQ review and build on those discussions rather than starting from scratch.

What's Coming Up in Toxics Work in the Near Future?

Oct. 1 House Environment Committee: Kevin Masterson reported that DEQ and DHS have been invited to the House Environment Committee on October 1 to talk about how they are transcending agency silos and developing an integrated approach to toxics reduction in the state. DEQ will share information about the work of the Toxics Stakeholder Group, and the presentation will be similar to that which will be shared with the EQC later in October.

October 22 EQC meeting: Wendy Wiles, DEQ's Land Administrator, updated the team on the upcoming October 22 EQC meeting: Three hours have been slotted on the agenda to talk about the work happening with this committee and within DEQ on the overall toxics reduction strategy. DEQ is hoping to hear feedback from the EQC about how the agency is moving forward with its strategy process. Topics will include: Why toxics are a problem; an update on the agency-wide strategy and how far along the process has come; the toxics focus list; and next steps. The afternoon portion of the meeting will focus on three visible activities DEQ is involved with that can be tied back to the toxics reduction strategy: SB 737, WQ standards development and the Portland air toxics work. DEQ will follow up again with the EQC in December – an agenda for the October meeting will be available in the near future.

November 17 Toxics Reduction Opportunities Workshop: Kevin Masterson shared information about EPA/DEQ's November 17 Toxics Reduction Opportunities Workshop, which is intended to bring folks together to brainstorm ideas for reducing toxics from all different sectors, and advance the goals of SB 737. A draft agenda was distributed today and Kevin noted that comments on the agenda and format are welcome. He also asked Toxics Stakeholder Group members to get the word out through their various networks. EPA will facilitate the registration process and materials will be sent out in advance to assist in an informed and productive dialogue. There is space available for about 200 participants. It was suggested that the COE and mining operations should be invited to participate, particularly for legacy issues. Registration for the workshop can be done on the Toxics website.

What Needs Work Today?

Sources and Pathways of Toxics on DEQ's Focus List

Kevin reviewed the memo he shared with this committee at their last meeting regarding the pollutant sub-category work groups for sources and pathways. DEQ is hoping to add knowledge shared from members of this committee to its research in determining sources and pathways of the toxics on the focus list. Kevin noted that these groups are not scheduled to meet until summary information is assembled and distributed. Instead DEQ is at the point of gathering information from individuals who are part of the groups. Once the information is gathered, DEQ will synthesize and summarize the information, send the summaries back to this committee for review and comments, and then finalize the summaries. Once the summaries are done, people assigned to the subgroups of different classes of chemicals (combustion by-products, consumer products, metals, PBDEs/PCBs, pesticides and volatile organic compounds) will meet to discuss the conclusions and determine if/where there is consensus around those conclusions.

Questions and Comments from the Stakeholder Group:

- How should data be sent to DEQ?
 - DEQ's preference is to receive data in the Excel spreadsheet DEQ sent out with the original query to be on a subgroup. However, the agency will accept information in other forms so long as it is well-cited. Kevin suggested that information about toxics effects and occurrences is useful but at this point, DEQ really wants concrete source pathways information.
- What is the expectation for outreach to other experts beyond this work group?
 - DEQ hopes the stakeholder group will recruit those individuals they have direct contact with and/or suggest people DEQ should call. Kevin is the

contact person for this effort, and there is a separate email: toxics_strategy@deq.state.or.us to send actual data.

- How will this effort be focused up front?
 - Kevin referred the group back to the one page memo he sent out last time that described expectations, specific data requests and a spreadsheet for entering data.
- How will DEQ know that the information is verifiable data, not just anecdotal?
 - DEQ staff will review and verify all data. Data needs to be peer reviewed and cited in order to be considered for this process. The challenge, Kevin suggested, will be in acquiring Oregon-specific source data.

Kevin provided an example of summary information to show how the summaries will be organized and what information will be included: source, pathways/receptors, toxics effects and data gaps.

Action: Kevin will email the summary to the group.

- How do these summaries address risk assessment?
 - Since the toxics that will be addressed in the summaries have already been prioritized as problem pollutants, it is not explicitly addressed in the summaries. Some information about the risk assessment may be included in the effects section.
- Suggestion: Include physical chemical data in the summaries. Without the numbers, it is difficult to tell whether there is an issue or not. This layer should be included to justify a strategy that gets developed.
 - DEQ noted that physical chemical data will be included in another appendix.
- Will we prioritize the toxics list?
 - Possibly, as a next step to help DEQ tailor strategies and prioritize efforts.
- Does DEQ plan to overlay the map with regulated sources?
 - Yes, this ‘gap analysis’ will be a next step in the process.

Update on Toxics Focus List and Toxics Evaluation Process

Kevin Masterson reminded the group that an updated toxics focus list was provided prior to today’s meeting, and noted that the list will be revised further as the process continues. DEQ’s internal toxics evaluation process was described in a visual shared with the group today, also emailed out prior to today’s meeting.

The toxics under review came from the Base List (i.e., chemicals on 11 existing DEQ priority lists). The initial Focus List is comprised of toxics designated by three or more DEQ programs and at least two or more DEQ divisions (‘multi media’). However, if a toxic from the Base List did not meet these criteria, it would go through a multi-stage evaluation process, and may end up on the Focus List. Kevin noted that, based on DEQ’s first stage evaluation, eight additional toxics from the Base List could make it on to the Focus List in the short term because of exceedances of water or air quality standards or benchmarks: three that exceed air toxics benchmarks, four exceeding surface water quality standards and one exceeding drinking water standards.

Stakeholder Group Questions and Comments:

- Is the geographic spatial filter built in to the screening process?
 - Yes, but DEQ will need to further evaluate whether the limited geographic impacts of toxics due to limited monitoring vs. only being a problem in a few streams, as well as the severity of the levels of toxics in the areas of concern. In addition, some localized reduction recommendations could be included in the Toxics Strategy.
- The filtering criteria reveal that some toxics are addressed via many programs. This could lead to a perception that many resources are already committed, so why add more resources to those toxics instead of looking at the toxics of concern that aren't receiving resources?
 - DEQ responded that some of those toxics that are 'addressed' are only on monitoring lists, not actually addressed with reduction strategies; also some toxics may be addressed adequately in some areas (e.g. water) but not as much in other environmental medias – so DEQ needs to assess linkages/gaps and ways to assure those linkages. (It was suggested that DEQ add 'identify gaps' under Step 4 to show that part of the effort is to create/assure linkages across the media).
- Are there any proposed additions to the base list?
 - Yes, based on the groundwater monitoring list. This could then lead to additions to the focus list as well.
- Suggest showing on the flow chart a way 'out', e.g. based on reduction successes that would result in the removal of a toxic from the focus list.
- What is DEQ doing or planning to do about blue green algae?
 - Nationally, the southeast has identified this as a toxics issue. Also issues have been identified in the Rogue River basin. DEQ does look at advisories as part of its assessment and blue green algae is part of the 303(d) listing process. If it were to be included as a toxic, DEQ would have to open the process up to a broader realm of nutrients. Other efforts are underway related to nutrients but not under the toxics reduction strategy. There is a need to find a balance.

Kevin asked the group to review the information shared today and provide comments. He noted that the October EQC meeting will set the stage at a high level on steps in the process, objectives, progress to date and possibly specific strategies. The goal is to get the EQC conversant in all the pieces and how they fit together in the overall toxics reduction strategy. Input on the draft strategy between now and February will be important and DEQ will look to this group to offer ways to gather meaningful public input on several parallel efforts, including SB 737 trigger rulemaking (February 2010), WQ standards rulemaking (Spring 2010), and additional related activities.

WQ Standards Rulemaking Effort

Jennifer Wigal and Debra Sturdevant reported on the WQ Standards rulemaking effort. The WQ RWG met a couple weeks ago and are wrapping up specific human health criteria, arsenic provisions, and implementation tools, including those addressing the inability of a source to meet a "WQBEL" (water quality-based effluent limit). The group will discuss issues around folding the criteria into NPDES permits at their October meeting. Adoption of the rules is expected in October 2010, and Jennifer acknowledged

that there is still a lot of work yet to be done to get there. DEQ's target of March and April for the public comment period may need to shift while still maintaining the October 2010 rule adoption target timeframe. DEQ is currently assessing how the work related to the mixed media and other subgroups will fold in.

DEQ currently is putting numbers into a new criteria table, which will be ready for review by the WQ RWG in October. When completed, this table will include clear definitions and new iron, manganese and arsenic numbers, as well as EPA's newly recommended criteria (aquatic life for acetylene and phenol).

Arsenic: Debra Sturdevant shared a briefing summary of a proposed arsenic reduction policy to accompany the new higher numeric criterion. She noted that the arsenic subgroup developed the draft policy and it was well received by the broader WQ RWG. Details can be found in the handout she provided. While the new arsenic language focuses on industrial sources, DEQ expects it will dovetail with the SB737 process to address POTWs.

Stakeholder Group Comments and Questions:

- What is the ambient level of arsenic in the rivers? How can we get information on that?
 - The rules would guide collection and submittal of that data. DEQ hopes to expand its arsenic data collection to a statewide effort in the next few months. Information is available on the laser data base, or via the lab. There is arsenic data in the drinking water program database and there are also some USGS studies.
- Do the quantitation limits get included?
 - Total arsenic QLs are included in the appendix to the Reasonable and Potential Analysis internal directive, which can be found on DEQ's website. DEQ will be developing quantitation limits for inorganic arsenic.

NPDES Implementation Tools: A handout was provided. Debra shared that the document is the same as that sent to the WQ RWG, except that the list the items that were 'not a priority for DEQ at this time' was removed. Debra reported that this is an evolving document and includes DEQ's compilation of implementation tools that are currently available or being developed. She clarified that they are at this point recommendations from DEQ staff, not the WQ RWG. She also noted that the draft shared today was not necessarily a complete or final list.

- One stakeholder commented that the WQ RWG members were not able to comment on this draft and expressed concern with the process: the changes and rationale were not noted as such by DEQ when the current draft was sent out to the Stakeholder Group. Therefore, what was shared today does not reflect the message of the WQ RWG.
 - DEQ shared the desire to have a more complete discussion of the implementation tools at the October WQ RWG meeting.
- A stakeholder member offered a suggestion that the document highlight verifiable toxics reduction, i.e. documentation of benchmarks. This could bring more certainty about how the goals will be reached.
 - DEQ responded that some of the tools would include benchmarks – even though these were not explicitly written into the draft document. DEQ plans to

share language with the WQ RWG at the next meeting, which includes accountability measures.

- A further suggestion was made that the document should go far enough to include a schedule of fines.
 - DEQ offered to take these comments back to the rulemaking group for consideration as they move forward.

Future Meeting Topics and Dates

Kevin reiterated the activities that will occur over the next couple months, including:

- completion of several draft summaries of focus list chemicals of concern with data input from this group;
- gap analysis work; and
- the November 17 Toxics Reduction Opportunities Workshop. (He suggested that this workshop could serve as the next meeting of the Toxics Stakeholder Group)

The data summaries will be posted on the DEQ toxics web page with an easy feedback loop to one contact. DEQ will organize distribution of the summaries to help this group provide the best, most efficient feedback – by sending targeted questions, grouping similar toxics, etc. It was suggested that this group could meet again in early December to check in on the work of the pollutant subgroups, and to debrief the October EQC meeting and November 17 workshop.

Action: DS Consulting will send a meeting ‘Doodle’ to set up the next meeting date for early December. The lab offered to host the meeting and schedule a tour for anyone interested.

Additional Update

Mary Lou Soscia shared that an EPA PBD workshop will be held in January/February of 2010. She will keep the group informed of developments.

These notes submitted by the facilitation team at DS Consulting. Questions or comments should be directed to Erin Halton at ehalton@cnnw.net or 503-248-4703.