



State of Oregon Department of Environmental Quality
**1200-Z Permit Renewal Rulemaking
Advisory Committee Meeting #6
Meeting Summary**

Industrial Stormwater Program

1200-Z Rulemaking Advisory Committee Meeting No. 6

June 17, 2020, via webinar

List of DEQ attendees

- Christine Svetkovich
- Krista Ratliff
- Courtney Brown
- Michele Martin
- Justin Green
- Dan Brown
- James McConaghie
- Diane Lloyd (DOJ)
- Dan Connally (PG Environmental)

List of Committee Members attendees

- Ada Banasik
 - Alan Flemming
 - Jonah Sandford
 - Kathryn VanNatta
 - Michael Campbell
 - Stacy Hibbard (Chair)
 - Norma Jobs
 - Debbie Deetz Silva
- [Not in attendance: Chris Rich and Jamie Saul]

List of public attendees (via audio webconference)

List of handouts and presentation notes

- Meeting 6 PowerPoint Presentation
- Draft Permit Crosswalk of Proposed Changes
- Draft Permit, Formatting Corrections on the Redline Version
- Draft 1200-Z Permit, Redline
- Draft 1200-Z Permit, Clean Copy

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.



State of Oregon
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Environmental
Quality

Industrial Stormwater

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Oregon's air, land and
water.*

Industrial Stormwater Program

1200-Z Permit Rulemaking

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Agenda

Time	Topic	Presenter
8:30 a.m.	Welcome and logistics	Michele Martin
8:45 a.m.	Meetings No.5 and the No.5 follow-up, review and rulemaking Schedule <i>DEQ Meeting 6 presentation</i>	Christine Svetkovich
9:00 a.m.	Draft permit proposal presentation and discussion regarding benchmarks <i>Draft permit and crosswalk documents</i>	Krista Ratliff James McConaghie Dan Brown
9:45 a.m.	Draft permit proposal presentation and discussion <i>Draft permit and crosswalk documents</i>	Krista Ratliff
10:30 a.m.	Break	
10:45 a.m.	Continue draft permit proposal presentation and discussion <i>Draft permit and crosswalk documents</i>	Krista Ratliff
11:45 a.m.	Lunch	
12:30 p.m.	Continue draft permit proposal presentation and discussion <i>Draft permit and crosswalk documents</i>	Krista Ratliff
1:30 p.m.	Break	
1:45 p.m.	Informal public input opportunity	Michele Martin
2:00 p.m.	Draft Fiscal Impact Statement <i>Draft Fiscal Impact Statement</i>	Christine Svetkovich
3:20 p.m.	Next steps	Krista Ratliff
3:30 p.m.	Adjourn	



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Meeting Summary

Michele Martin (MM): Welcome; recording the meeting; meeting #6 all by webinar; Roll call of Advisory Committee members: all present except Jeff Hunter in place of Chris Rich, and Jamie Saul, previously communicated would not be attend.

Dan Connelly (Dan C), PG Enviro: here

MM: Today we will use the crosswalk as a guide to review the clean copy of the draft permit; will refer to item numbers on crosswalk; each item on the crosswalk is coordinated with the page numbers on the clean copy of the draft permit; keep crosswalk available for personal reference as we walk through the draft clean copy for discussion; meeting is being recorded; I will call on you; agenda review: this is meeting 5, will review draft permit; also in attendance from DEQ is James McConaghie and Dan Brown; we will look at draft fiscal impact statement, time permitting.

Christine Svetkovich (CS): Thank you; first meeting of this Advisory Committee was last May 2019; world is different today; process has evolved over time; moved from in person to virtual meetings; hopeful you will continue to provide input and feedback, on Schedule for draft out for public comment in late summer/early fall; goal is to recommend a draft permit to EQC that protects water quality and is legally defensible and ensures the permit is implementable., which is a tall order; your input is really important; regarding timeline: we are still on track; hoping to have final permit March 2021.

Krista Ratliff (KR): Will refer to the draft clean copy; will focus on Sector E;

- Intro on benchmark work;
- Acknowledge 2 errors: 1) Columbia Slough phosphorous is 0.16 mg/L, not 0.016 mg/L; and 2) Eastern geo-region lead concentration is 0.032 mg/L not 0.32 mg/L;
- Dan C. (PG Environmental) – technical contractor for this rulemaking- recommended:
 - o maintaining risk based assessment for developing water quality-based metals benchmarks using the applicable water quality criteria, which is the acute aquatic life;
 - o eliminate use of technical achievability analysis and retain benchmarks on applicable criteria;
 - o and retain the use of accepted and conservative translation values
- These were 3 topics PGE presented on; this was our methodology for benchmark work
 - o Copper criteria and subsequent benchmarks based on OR's acute aquatic life criteria using biologic ligand model (BLM) based on bioavailability of copper under defined water chemistry - using several inputs: temperature, pH, and dissolved organic carbon
 - o lead and zinc criteria and subsequent benchmarks are based on OR's hardness-based criteria; hardness has a direct impact on toxicity of metals to aquatic life; came from modelling that was done in specific geo region hardness; we used the median hardness
 - o these are the overall conclusions of what we did;
- High level description of work that was done:
 - o pulled statewide surface water data;
 - o exclusions: eliminated sites less than 500 meters downstream of an outfall of an individual NPDES facility;
 - o excluded estuary sites and high elevation sites above 4700;
 - o to accommodate regional differences in water hardness, separated out in 7 geo-regions based on EPA's ecoregion; metals benchmark numbers came out the same for Portland harbor and Columbia Slough;

- modelling software used to select distributions; resulting in mostly log normal and normal distributions which you would expect from environmental data; good; change from last time
- then randomly generated data, making sure to set bounds based on natural conditions; benchmarks sets at 10% probably of exceedance and dilution of 5 to 1
- Last minute changes to pH benchmarks; historically used to be wider range than basin-specific ranges in water quality standards; past permit evaluation reports discussed reducing it to 5.5 standard units to account for natural conditions; also reasoning for Columbia slough pH benchmark differing from Willamette basin range of 6.5 to 9.0 s.u., relationship between pH and biological growth and detrimental effects of dissolved oxygen; this is the historic pieces that we know;
- Pose a question: in keeping with probability model: should pH benchmarks stay the same or is it more appropriate to align with water quality standards? I clumsily attempted to do in Table 6; let's start with that question and answer; Dan Brown and James McConganhie from DEQ are here to help address questions as they performed the benchmark modeling.

Stacy: regarding pH values: I prefer stick with what's in the current permit; Columbia R. range is very narrow, since it's been delisted for pH, makes sense to go with wider range; facilities have had a hard time reaching that just based on natural conditions and rainfall in the area.

Michael Campbell (MC): I agree with Stacy; confused by the proposal: if we were to go with water quality-based approach, how to do that for pH?

KR: it would be assigned (see footnote) based on actual basin ranges in water quality standards; we are proposing an effluent limit for pH, the public notice draft permit will include a Table of the basin specific pH ranges for transparency; simply use that to assign pH range for whatever basin.

MC: metals use a probabilistic assessment so going to water quality-based benchmark, seems like we would want to do similar assessment for pH; so question was how would you do that?

KR: this was a last minute change so I am hearing feedback that the best thing to do is go back to current ranges, because of the probability model of how we are doing benchmarks

Ada: MC and Stacy covered what I want to say: if we were to go with water quality-based, we want to follow same methodology as metals; not sure how to do it; most facilities that have issue with pH is not from their activities; it's from acidic rain; would be tough benchmark to comply if we tightened it more

Stacy: regarding other benchmarks: Columbia Slough and Portland harbor are lumped together: let's keep them separate columns for ease of reading, even though numbers are the same; did DEQ consider removal of total oil and grease benchmark? Couple reasons: we have visual observation for sheen and direct collection requirement; it creates solvent use and a hazardous waste; was that considered at all?

KR: we have not, but we will consider it

MC: ask Alan or Ada to address the translator issue with the metals benchmark and 1 to 1 assumption; I want to hear their thoughts on use of translator

Ada: last permit cycle DEQ used very conservative translator value the EPA default conversion, almost one; seems like now we have gone further and 100% is assumed to be dissolved which is even more conservative; previously followed Ecology- they came up with own translator value based on pairs of total and dissolved samples collected in Washington and they came out more realistic based on receiving waters; not based on stormwater; based on chemistry of receiving waters; this is more realistic; suggest looking into that

KR: we very carefully tried to address everything that seemed to be an issue through previous meetings or via PG Environmental, our technical contractor for this project analysis; now not sure we have resources to do what Ecology did; Meeting 5 PG Environmental presented on translator values; there may be an option of facilities getting together and doing a waterbody-specific translator

Dan C: we know EPA translator values are conservative; this allows us to use them in broad fashion; without site-specific values, we used EPA values – it is the only thing available to us; we have to establish limits that are protective of water quality; tried to provide flexibility; do agree that site specific is preferable if you have resources

Ada: especially for Columbia Slough and Portland Harbor where we do have data if going from 0.02 mg/L to 0.012 mg/L for copper; if we have data landing in the middle is more realistic; don't make big decisions on a rush

Alan: it is difficult; no good way to do it other than being conservative; except there is good way to do it for Columbia Slough and Portland Harbor; agree impact would be very significant – meeting a copper benchmark of 12 micrograms/liter is extremely challenging – would be worth extra effort in this situation

James: not much to add – DEQ know the general procedures to calculate water body specific translators and for us it is a matter of resources and the time it would take to do that work; the issue comes up in individual NPDES permits too and we are not able to satisfactory resolve it

KR: Dan Brown will get off call soon, any questions?

Ada: based on my understanding of biotic ligand model, BLM, its sensitive to pH, so folks have noted that where you use copper data but it's from samples outside of water quality criteria, it should be discarded because its pH that is biasing the analysis; removing that bias is important; Other comment is also question: we were using a Technology-based benchmark for copper, now we are going to water quality -based; has DEQ looked at technology based benchmark for copper?

KR: Let's start with first Q: Dan Brown can you address the pH being out of natural conditions and how that might affect copper BLM numbers?

Dan Brown: In an attempt to make sure all data within natural bounds, took pH from in-stream collections and bounded distribution of randomly generated data so we weren't getting pH outside normal parameters; regarding how pH might affect criteria in BLM, better question for James

James: pH values used in benchmark calculations outside of models stated range: model range is 4.9 – 9.2; pH in waterbodies is well within that range; Dan's bounding to natural distribution is accurate so even though pulling pH outside of criteria ranges; mostly within model ranges; generally pulling ranges within calibration range for the model

KR: Ada, any follow-up?

Dan C: regarding technology-based considerations, not that it was discounted; we had an in-depth conversation few meetings ago regarding how we are obligated to consider both water quality-based and technology based considerations; a permit has to ensure consistency with applicable water quality standards and ensure appropriate technology-based limits on discharge; you don't get to select one or other; you must evaluate both then select most protective to ensure both technology and water quality requirements are met; you cannot establish a technology-based limit that is not protective of water quality standard; so we look at technology-based limits and applicable water quality-based limit/benchmark and take the most conservative; you can't disregard impacts on water quality

Ada: you describe methodology for calculating limits and now we are applying it to benchmarks and now going with lower benchmarks than DEQ previously determined was technologically achievable; benchmarks are not limits; copper benchmark will be very hard to meet so achievability should be taken into account; should not go with benchmarks we don't think can be met with readily available technology

Dan C: EPA uses water quality criteria to calculate benchmarks; its accepted practice; they are benchmarks not limits; we can't allow a discharge that will cause exceedances in receiving water; there is a lot of flexibility in benchmarks already, with risk assessment and dilution for instance; we cannot establish a benchmark that is not protective; would be unheard of to establish a permit condition that is above applicable water quality standards; you can't do that

MC: last issue: these are benchmarks but with the metals we are trying to assess probability of exceeding water quality criteria; probably appropriate to focus on water quality criterion, that's the point we are trying to get at; not appropriate to say we know it will exceed water quality standards – it's a prediction – need to keep that in mind when looking at consequences of exceeding them; doesn't mean you are causing a water quality problem – make sure it's not a violation; on copper and pH issue – point Ada was making that if you use pH values outside of water quality criteria range in BLM, if you are considering pH, and BLM is sensitive to pH – not sure how I come out on that – a question to think about for copper benchmark – focusing on the wrong problem; last: question about BOD benchmark: there is still room in reserve capacity in TMDL to keep BOD at 33 mg/L– confirm?

KR: we will talk about BOD later – yes, sticking with 33 mg/L benchmark we will use almost all of the reserve capacity – up to 150% which was allocated to all stormwater discharges

Alan: want to address comment that we know limit is above applicable standards and bring it back to conservative translators – important to recognize and weigh the regulatory effort to develop benchmarks that are protective and achievable against the effort from permitted community to deal with consistent exceedances – if a lot are exceeding that there are real costs to manage that.

MM: any comments?

Dan Brown: did a quick check on pH ranges we use to calculate geo-regions and they are within the ranges of the permit being shared; bounded pH values were very close to pH ranges in clean permit draft

Dan C: appreciate the comments – true we do not know we are causing exceedances, true we are making assumptions but we also know we are using percentiles and dilution of 5:1, only true for some facilities – it is a balancing act to come up with acceptable risk – so while we can't be sure any facility won't exceed, benchmark s represent reasonable thresholds

Ada: question about statement about dilution – was it a recent analysis where you determined 80% have a higher dilution?

Dan C: based on previous analysis for previous permit; they evaluated receiving water flows and they assumed mixing which is not likely; selected a dilution that was applicable to 80% of facilities; over half had 100% dilution, but findings were 20% of facilities would not have 5:1; dilution in a the federal multi-sector general permit is almost never granted; this is unusual; shows OR DEQ's flexibility; big effort to accommodate

KR: I can point you to our previous analysis; provided to PG Environmental for their evaluation of benchmark methodology. *Reference: The 2018 Permit Evaluation Report, Appendix 2: pages 61-63 is online: <https://www.oregon.gov/deq/FilterPermitsDocs/1200-Zevalreport.pdf>*

MC: tie a ribbon around discussion: Alan made a good point – may be appropriate to adjust the risk based on achievability – we might be willing to accept greater probability of exceedance if we have a discharge concentration that will be challenging to achieve; if we look at achievability of these numbers – it would be better to have same level of risk across all parameters but if we have something that will generate a lot of exceedances; and if we think that can be addressed by adjusting risk level, it's not either/or- you are causing a violation or not – it's the risk of that

KR: we will take into consideration

Dan Brown will sign off; James McConaghie will stay on for Schedule E discussion – any last minute thoughts?

KR: sector-specific Schedule E monitoring:

- added both salt and freshwater criteria;
- we also included all monitoring – including parameters previously omitted - freshwater will be used for statewide benchmarks for metals copper lead and zinc; for those metals beyond copper lead and zinc will use geo-region hardness;
- for completeness added all parameters to Schedule E (previously omitted statewide benchmarks); any other metals will be calculated using geo-region median hardness from modeling efforts;
- parameters revised based on water quality standards; we adjusted so applicable to OR waters;
- changes to cadmium, chromium, nitrate, nitrite and arsenic,
- also proposing to eliminate iron and magnesium monitoring from Schedule E, consistent with EPA 2020 permit and National Academy of science report;
- will include a Table at beginning of Schedule E that has geo-region hardness calculations;
- any questions to changes on Schedule E?

MM: reminder that we are looking at clean copy of draft;

KR: moving on, crosswalk, p.4 of permit – item 1 of crosswalk, first edit to discuss after Table 1 in the permit– this change proposes once covered under the permit based on industrial activities in Table 1 and the site discharges into Portland Harbor or Columbia Slough and also operates industrial activities under Table 2, the site industrial activities in Table 1 and Table 2 are regulated; implementation clarification will effect small set of facilities; e.g. Marina with on-site fuel sales – this portion of site will have to be included in permit coverage for discharges to Portland Harbor or Columbia Slough

MC: if you have a Table 1 facility with Table 2 activities on same site? If you are a Table 2 facility what are you co-located to? If you are purely Table 2 facility, you would not be subject to Schedule E?

KR: correct, for primary industrial codes under Table 1, may also have activities under Table 2, e.g. marina with fuel distribution

KR: item 2 page 5 – new dischargers to impaired waters without TMDL – please comment on both content and proposed structural changes –

- the intent of draft permit language is to evaluate new applicants for pollutants determined to be associated with industrial activity as presented in meeting 5 presentation by PG Environmental titled OR 1200-Z monitoring recommendation for new applicants for Category 5 303(d) listed waters
- draft permit is culmination of all efforts previously discussed and PG Environmental' s work so most changes have been discussed before;
- Washington, California, and EPA have implemented and proposed similar approaches

- eligibility criteria is limited to impaired waters that discharge certain pollutants, if site has analytical data for stormwater data, we will evaluate the potential for causing or contributing to exceedance on all data presented at time of permit application – overall structure and language abridged; TMDL language changed from wasteload allocation to loading capacity to ensure determination is made to assign coverage for new discharge

Stacy: reading this – a bit excessive that new dischargers have to completely remove exposure/prove parameter is not in discharge when those who have a permit can discharge an amount – example iron at 10 mg/L for permit holders.

Dan C: new discharger is contributing loading to waterbody – we want to minimize that – this is standard practice; yes conservative but without a watershed approach these are accepted approaches used throughout the nation

MC: I did not read that to say bulk of pollutants had to be eliminated – you can still show you are not causing or contributing to exceedance of water quality criterion

Dan C: that is a correct reading; if they can demonstrate they are not causing or contributing to an exceedance of water quality issue then there is a pathway for them

Stacy: question how they can do that absence of data to show what discharge levels are – iron – hard for any facility to say they have eliminated exposure of iron on site, catch basins are made of iron – so tall order; catch 22 of discharging without a permit and collecting data versus getting a permit first before collecting data

Ada: back to roman numeral iv.– makes sense you can prove one way or another you are below benchmark or reference concentration but the “not present in discharge.” Do you want to see non-detect sample results? For a lot of metals like iron it’s unlikely to happen. If you are able to prove that you are unable to meet benchmark, is that going to be ok

Dan C: how I would interpret this from plain text: if I can demonstrate pollutant not present, that is obvious path forward, if I can’t then through industry assessment of my discharge and can predict that my discharge concentrations will be lower than that criterion – that is a potential path forward

KR: this is not a big change from what we had before; what is changed is impairment list and translator for getting iron up to 10 mg/L

Stacy: questioning need for condition (1)(e) regarding not applying for certain parameters – is that necessary if we limit to Table 7 and Table 8? Do we need that (e) language?

Page 5 of the draft clean copy:

(1)(e) Conditions 1.a and 1.f above do not apply if the waterbody is impaired for:

- Biological communities (biocriteria), including harmful algal blooms and aquatic weeds, where no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment; or*
- Temperature, habitat and flow modifications.*

KR: likely not, but want to be considerate of facilities that have monitoring – a few facilities had Portland Harbor clean-up data in record of decision; other instances where we do have monitoring data for new applicants and want to make sure exemption remains in those instances; decided to keep it in

MM: great comments. Keep them coming and thank you.

KR: item #3 of crosswalk, page 5:

- this section is new
- objective of change is two-fold: 1) account for proper administrative procedure for existing permitted facilities that want to change industrial activity and 2) for correcting fee and application process;
- current permit has similar language that permit transfer is not the right process for changing industrial process; however, it requires a new application; this change just requires an environmental management review fee, \$679; a more appropriate fee for plan review which reduces cost; proposed new process is appropriate for facility already covered but changing process; while safeguarding the public notice and review and Land Use Compatibility processes, assuring new industrial operation is consistent with land use laws

KR: Item 4:

- general acknowledgement throughout permit to explain electronic reporting procedures – agents will move to e-reporting after DEQ; there will be lots of additions not in permit now as it relates to electronic system

Stacy: regarding item 3 – 3.D says public review period on revised SWPCP – does this apply only to changed activities? Reads like all renewal SWPCPs go for comment; should this be another bullet under c?

KR: Thank you, I will look at the structure of that section; items 5 and 6 – p.9 narrative TBELs:

- very few revisions – use of soil binders is one – mostly used in construction; facilities should identify use of these products; proposed language from EPA 2020 proposed industrial permit
- other section with new is spill prevention and response – provides explicit language that was absent in current permit

Stacy: comment on limitations of coverage language section (*page 8 clean copy, section Condition 1, section 7*) – interior floor drain changed out of this section – I concur with – but previous language was more clear on the prevention of discharge; we rely on the previous language pretty heavily to regulate floor drains and get them abandoned based on potential to discharge

MC: quick question on tarps – still ok to have them in 1.c but not 1.a? Are you intending to eliminate them all together?

Page 9 of the draft clean copy

1. Narrative Technology-based Effluent Limits

(1)(a)(i) Locate materials and activities indoors or protect them with storm resistant covers if stormwater from affected areas may discharge to surface waters. Acceptable covers include, permanent structures such as roofs or buildings and temporary covers, except tarps;

(1)(c) Waste Chemicals and Material Disposal - Recycle or properly dispose of wastes to eliminate or minimize exposure of pollutants to stormwater. Cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants. Acceptable covers include, storage of bins or dumpsters under roofed areas or use of lids or temporary covers such as tarps.

KR: probably eliminate all together – tarps are not reliable cover – intent is to move away from tarps all together

MC: long-term solution no disagreement but for short-term they are appropriate

Stacy: acceptable for temporary so many just say that; define what temporary is; aligns with no exposure language which does not allow use of tarps

KR: item 7, numeric technology-based effluent limits Table – in order to improve permit components framework; appropriate to move monitoring Tables to Schedule B – make sure all Table and monitoring requirements are in one place,

Alan: great idea to put all together but as I got to benchmark and corrective action need language up-front to say you moved everything to Schedule B

KR: item 8 and 9 – discussed in meetings 5 and 5.5; discussion on control measures – changes included on supplement sheet 1 from meeting 5 so no additional substantive changes proposes; Schedule E was mistakenly cross out this was corrected; section comprises technology-based effluent limits, TBELs, and economic feasibility of NPDES permits; water quality section changes also discussed last meeting; today's proposed permit language is similar

MC: looked like modifications to control measures Schedule A.2.f was changed from 60 to 30 days – looked like no opportunity to ask for more time – feedback that it was too short; need opportunity to ask for more time

KR: Thank you, we will look at that

KR: items 10 and 11, clean copy draft permit page 13- Water quality-based effluent limitations (WQBELs)

- purpose of section is to outline procedures for Category 5 and 303(d) listed dischargers and discharges that have EPA-approved TMDL with waste load allocation for industrial discharge
- hope is to delete redundancy and simplify – meant to help with comprehension and implementation of the conditions
- decided appropriate to use EPA-approved 303d list in effect at time of assignment; hasn't been consistently implemented
- current permit cycle using static list; 2012 permit cycle we referenced Integrated Report
- thinking about assessing facilities based on water quality standards and applicable standards in order to form numeric water quality-based effluent limitations, WQBEL, using approved 303(d) list makes most sense
- also expect to be fully electronic; will be easier
- likely won't use reference concentration term,
- Table 8, clean copy draft labelled "Applicable Water Quality Criteria" analytical results must not exceed concentrations set out in Table 7 or 8 so purpose of new language is make sure connection between impaired waters monitoring and water quality standards;
- some proposed changes previously discussed; Roman iv top of page 14; will define how we use new watershed units; then talk about implementation; language is from 2018 methodology document used in Integrated Report; provide for context
- To meet Clean Water Act, waterbodies partitioned into assessment units;
- these units reflect water quality of one part of waterbody; may be different in another part
- units represent smaller streams within sub watershed;
- data and info resulting in identification of impairments is most relevant to the stream where it was collected so if discharge to a different segment than where data collected with no hydrologic connection to segment used for assessment; DEQ will evaluate permit requirements based solely water quality within segment where facility discharges;

- discontinuing use of term “reference concentration” also “permit assignment letter” term no longer used because of electronic system; DEQ will identify monitoring requiring in electronic system;
- depending on TMDL approval: may be new requirements for existing facilities – don’t know at this time; section allows for additional monitoring or site controls to comply with TMDLs that have wasteload allocations for industrial stormwater
- permit already states in water quality section that when we require site-specific water quality standards DEQ will hold 30 day comment period – that was removed in this permit
- any comments on that section?

MC: question on permit assignment: will there be an electronic notification that coverage has been assigned? An electronic equivalent of assignment letter?

KR: No. Last permit we did define this permit assignment letter – that referred to how we assessed the required monitoring – we will still send out mailed coverage letters; permit assignment letter was how we assigned monitoring requirements; so coverage letter will still be a piece of paper

MC: last time there were sometimes errors – at what point would facilities be notified what DEQ thinks are the monitoring requirements and benchmarks – when is the time to have that discussion?

KR: I haven’t been involved in the electronic system discussions; my understanding is discharge monitoring report, DMR, is generated in electronic system and that’s how they would know what monitoring is required by them

MC: there is a legal question here – because the permit itself is a rule but if DEQ makes decision to assign coverage and monitoring requirements, that’s technically an order so trying to be clear about when that happens – I just want to flag that issue.

CS: the first step is: issuing permit coverage- that will be a separate process; for DEQ facilities anticipate all of that communication happens through electronic system from beginning of new permit term; for agents, we don’t have a Schedule for them; we expect that their communication regarding permit assignment will be similar to how it happens now; but likely at some point during permit term a transition to an electronic system

MC: I don’t have a strong preference as long as it’s clear when it happens; other thing is that third parties might be unhappy with some of the assignment decisions so clarity as to when they have to express their unhappiness so clarity as to when we can expect effectiveness of permit

Diane: thank you for comment. The permit will be issued as a rule by the EQC. However in assigning coverage to an applicant DEQ will issue a decision through an agency order which can be reviewed or appealed according to the Oregon Administrative Procedures Act.

Jonah: clarification regarding top of page 14, Schedule A.4.iv impairment pollutant requirements – not clear about second sentence in that section – can you walk through?

For reference, the second sentence as discussed reads: When the facility discharge enters an impaired watershed unit, the listing will only be applied if there is a hydrologic connection to the assessment water body causing the impairment.

KR: integrated report has colored streams – called watershed unit – you will see that some of the colors of streams are not connected to where actual impairment was assessed; some of the streams are not even connected to larger area of colored streams; there are segments that aren’t actually connected to where

impairment was found and if a discharger is discharging to that segment then they will not be assigned an impairment listing for that watershed

Jonah: so no hydrologic connection means no connection to where discharge is happening?

KR: correct

KR: Stormwater Pollution Control Plan, SWPCP, traditional came next in the 2018 permit structure

- crosswalk was tricky to create due to structural changes – prior to SWPCP we are proposing to move and revise benchmark language and Tables to simplify header to “stormwater discharge” – item 12, p.14
- in this section broke up into statewide and sector specific, mass reduction and numeric effluent to show 3 distinct monitoring requirements –
- Most of Schedule A.5 is included in current permit Schedule A.9
- Redline is not exactly correct; apologize;
- some of green text not totally accurate;
- only new language to consider is Schedule A.5.c shows benchmark monitoring “Statewide benchmarks reflect Oregon’s waters’ regional characteristics. Schedule E sector-specific benchmarks take into account specific pollutants likely to be mobilized from industrial sectors or activities.”
- so c which is not in blue is the new language;
- any comments on benchmark section?

MC: Schedule A.5.b – we have tried to be clear in permit in the past that benchmark exceedance is not a violation but think about further clarity on that; Schedule A.5.b in particular; there isn’t much connection between benchmarks and what we are doing under narrative technology-based effluent limits; that causes some uncertainty in enforcement can we provide further clarity on that – can we make connection between benchmark s and best management practices, BMPs, more clear? It was intended to be “ you have discharged at a level that has a higher probability of exceeding water quality standards”; And that itis not intended to be a violation; I want to highlight that; we see it all the time in citizen suits

KR: Schedule A.6 mass reduction, item number 13 on the crosswalk

- Trying to address discussions regarding fine tuning mass reduction waiver framework
- heard concerns about performing infiltration testing on built devices
- worked with PG Environmental
- correlates to overall new approach;
- since monitoring in permit is concentration based, allowing facilities to reduce the mass of pollutants generated some practical challenges
- need regulatory assurance devices are working as designed and verification that maintenance and operation specifications are being performed
- mass reduction waiver may be requested if implement volume reduction measures such as low impact development, LID, that has resulted in mass reductions of the benchmarks
- permit and crosswalk deadlines don’t match – permit deadlines are correct: allow 6 months over drier parts of year to get a professional to site to perform elements;
- Operation and Maintenance section is important element to ensure following specifications
- Our goal is to improve this condition at the same time still allowing for infiltration that benefits the environment in many ways, while attempting to find the right balance of regulatory assurance that the devices are working
- Reminder Tier II mass reduction waiver is an alternative to installing treatment

- In context of post-installation mass reduction need to consider the parity of permit conditions related to Tier II treatment installation

Stacy: is the intent for this to apply to all mass reduction devices, be careful of the word “infiltrating” – some facilities reuse water in process so broadening that to include those systems in this section if that is the intent

Alan: infiltration devices

- Devices is the wrong word, they are more “systems” built into landscape so point on language;
- regarding infiltration testing inside an existing system after constructed– one: potential for damaging system by introducing preferential pathway; second: could be variability inside the system that may be greater than in native system so need to define what infiltration testing under Schedule A.6.a.i, bring up information regarding draw down and expand to allow more flexibility; say something like “infiltration testing or data concerning performance”; so combine infiltration testing with other data and allow engineers to apply their expertise;

Clean copy draft permit language: Schedule A.6.a.i – The submittal must be stamped by an Oregon Professional Engineer (PE) or Oregon certified engineering geologist (CEG).

i. Infiltration testing to confirm intended performance metric;

- proper installation – define more if that is record drawings; or ties to performance testing;
- system design life expectancy and plans to rejuvenate: difficult to estimate and subject to change because of operations;
- plan to rejuvenate: these have operations and maintenance plans, they have language about how to fix or replace but really until you get to actually developing a plan, not more than a story and conjecture – not a lot of value; add a bullet to make sure people are thinking about it but don’t expect much about design life expectancy and plans to rejuvenate; thank you for adding this; good section that will add value to the permit

Ada: ditto what Alan said; second comment about design life expectancy – we will be wildly guessing – no accurate way to predict; if we have to test and evaluate it, it should be based on that; overall having more guidance on what we are looking for in terms of testing; and what are we looking for in terms of draw down; need more detail. A separate guidance would be good.

Debbie: echo Alan and Ada – first sentence regarding approved design capacity that were installed in previous cycle – some installed 2 or 3 cycles ago – can you make it “cycles” – also allow flexibility in how we demonstrate performance; infiltration testing is probably not best way

Alan: add language about substantially similar systems – sites that install many small systems throughout; should be encouraged

BREAK

KR: top of page 15; Stormwater Pollution Control Plan, SWPCP, section; very little substantive changes; little Schedule A.8.e moved from Control Measures section; aligned language to match terminology changes in water quality section – preparation and implementation of plan is followed by revisions and elements of the plan; not a lot of changes

Schedule A, section (8)(e): If the permit registrant fails to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by DEQ or agent.

Alan: under Schedule A.9 plan revisions – required no later than 30 calendar days; clarify “after what”?
Under e and f – says deemed 30 days after receipt but swap those two.

Schedule A, section (9)(e) If the permit registrant fails to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by DEQ or agent.

(f) The SWPCP must be kept current and revised as necessary to reflect applicable changes to the site.

Ada: if revising plan because of a change in monitoring location – do you need approval prior to plan update?
Plan update used to be how you documented this

KR: in current permit we always want a facility to include us when changing monitoring location; intended that if changing locations you talk with DEQ prior; it is in current permit under Schedule A. d; so the plan is the avenue where you revise monitoring location and then that would be the place where you need to hear back from DEQ or agent prior to changing locations – I will make sur clarify- we do want to be involved and the SWPCP is the avenue to do that – but you do need approval prior to making the change

Schedule A, Section (9)(d): Review of the revisions by DEQ or agent prior to implementation is not required, except revision to location of monitoring locations.

Ada: reads like you need approval prior to plan update

Stacy: distinction between monitoring and discharge points – we want 3 digit number to correspond to monitoring point – not everyone monitors at the discharge point, you also might have 2 monitoring points within one discharge area.

MC: concern about required elements to identify spills on site map – what is the purpose? Concerned it will clutter an already cluttered site map; can you talk about problem trying to solve?

KR: this was in response to Stacy’s comments; requirement to identify spill on site that goes back 3 years

Stacy: I do not recall; would have been in regarding materials from past industrial activity covered elsewhere

Alan: I also had same comment; maybe keep a spill log and written record but not in map

MC: if some big spill not cleaned up other places in plan requirement where that would show up

Alan: on 17, similar thing, heartburn indicating if discharge points are substantially similar; also this is the one spot where you say exact location – I think a better word is “actual” or “specific” – what is that asking for

KR: I do want coordinates for monitoring locations; with 2020 Integrated Report mapping tool it gives you latitude/longitude – gives a better assessment of where receiving water is from each discharge point

KR: crosswalk – permit structure gets funky –current permit Schedule A.9 used to be Stormwater Discharge Benchmarks and Table 9; so go to item 17-19:

- Columbia Slough benchmark: 18 on crosswalk Columbia Slough BOD5 benchmark reduction
- Last meeting PG Environmental was asked to reevaluate reserve capacity of Columbia Slough TMDL to make sure change in zoning and industrial sites still within allowance; recommended 24 mg/l – keeping in line with TMDL modeled output; PG Environmental recommended 24 mg/L, keeping in

line with the TMDL modeled output after adjusting for more reasonable existing discharge concentrations and applicable land area, while maintaining a similar overall loading to the Columbia Slough. The previous applicable land area was ~2,702 acres, which has grown to 3,816 acres. Adjusting the benchmark to 24 mg/L brings that loading to back to 603 kg/day, very close to the original loading of 587 kg/day loading when the TMDL was developed. This is pretty close to the calculated wasteload allocation based on loading previously considered and well within the available reserve capacity. This essentially retains the current BOD loading for the just over 1000 acres of larger land area, protecting the reserve capacity available within the TMDL for continued growth. Further, a review of recent data showed that the vast majority of dischargers will be compliant with 24 mg/L.

Comments on the reduction?

MC: I think the folks on the Columbia Slough may want more conversations with DEQ about the reserve capacity; want follow-up on that; I recall actual loading from industrial sources had gone down a bit; a paper exercise; want to preserve reserve for new sources

Dan C: nothing to add; the 24 mg/L is representative of 103% of current loading; is a reserve allows up to 150% of current loading and is split with an municipal separate storm sewer system, MS4; how to split with MS4 and industrial; trying to protect the reserve for potential future growth

KR: p.19 top – changes to Tier I corrective action, crosswalk 20 – 24; feedback on new permit structure; these sections added to improve clarity

MM: no comments

KR: new structure addresses confusion about visual observation – Tier I corrective action response – clarify any visual observation of pollution would trigger a Tier I report; impairment addressed elsewhere

Site assessment and report – needs no explanation

Deletion of 2018 permit language for Tier I report for impairment exceedance since no longer applicable; Tier I reports are now applicable only to benchmarks exceedances presuming the permit structure and conditions in this draft permit address impairment monitoring exceedances separately

MC: exemptions –for facilities that infiltrate 100% of design storm – what about those that treat up to design storm, still have discharge so not eligible for exemption – but appropriate either have an exemption for those discharges or make clear that it's an acceptable Tier I response if the storm was in excess of design storm

Alan: since results are exempt from corrective actions, should Schedule B exempt from monitoring – why included here if you are not monitoring them? Maybe I am confused; triggering events – a variety – but be clear what the date of that triggering event is – under Tier I– is the date they receive the results? Or if visual is it the date of inspection?

Ada: same comment as Alan – presumably no exceedances if people are not sampling – exemption for not sampling overflows should apply to overflows from treatment – both should be exempt

KR: this draft does not completely articulate where facilities have small systems, like rain gardens, that do not meet criteria of larger DEQ design storm, those required to be sampled; what happens if engineered report indicates the system they evaluated is failing or inadequate- then what? Need to consider when exempting the monitoring and what to do with facilities if engineered certifications show lacking

Ada: extend it to treatment

MC: I like belt and suspenders approach – make clear they are exempt from Tier I and Tier II– better to be clear we are exempting from corrective action as well as monitoring

KR: pg.20 follow-up monitoring/sampling, item 24 of crosswalk;

- new section calling it follow-up sampling, regarding completion of EPA checklists, Appendix Q, EPA industrial permit 2020 draft; See: https://www.epa.gov/sites/production/files/2020-02/documents/final_proposed_2020_msgp_-_appendix_q_-_scm_checklists.pdf
- based on continuous exceedance of benchmarks;
- since EPA proposed draft appendix Q checklist – this section adopts appendix Q -
- EPA reviewed potential pollutants from common industry activities, pollutant sources, and practices that could reduce pollutant discharges – most appear reasonably implemented- must complete checklist if any 2 samples consecutive samples exceed; Once sample results for the same parameters at the same discharge points continue to exceed the benchmarks facilities that have not evaluated Tier II previously will be in Tier II status.

MC: I do not think folks have had a chance to get deep in checklist; concern checklist too rigid; will not be able to implement all items within 30 days; looking for more flexibility; some provision for explaining why not feasible to implement; allows for more time but you can't exempt yourself from checklist

KR: Schedule A.11.e.iii reads: “All source control and operational measures must be implemented upon submission of the checklist(s), or checklist(s) must provide explanation or schedule of implementation” – the checklist is formatted this way, you can provide a “not applicable for my site” – explain your rationale

MC: I did not read checklist

Ada: follow-up sampling not right wording – sounds like you are asking for follow-up – second sentence, I think you mean “additional” – second exceedance requires additional new measures – is that what you mean? Last sentence of roman numeral i

Draft clean copy page 20, Section (11)(e)(i): If monitoring results continue to exceed two consecutive qualifying samples of any applicable statewide benchmark in Table 6 or sector-specific benchmarks in Schedule E, permit registrant must do more than Tier I reports. At a minimum, prescriptive source and operational controls must be implemented and maintained with the goal of meeting benchmarks.

KR: Tier I is your choice, Tier 1.5 then you have to do more – prescriptive by DEQ by appendix Q, prescriptive by industry

Ada: explain that; you are referring to checklists but assume that means you will implement something you have not implemented before.

KR: yes – that is the hope, if you have done everything in checklist and you are still not meeting benchmark, then you will trigger next corrective action if not willing to do something else; there is still a corrective action coming if you haven't done something more

Ada: clarify, there are instances where facility knows they are heading into Tier II; even though you know you are heading into Tier II; you may be seen as out of compliance if you don't do anything; there are instances where its ok to not do anything because you will do this bigger thing in the future

Alan: echoing, also confused, be clear about the checklists, instead of (i) – just say “if monitoring results for 2 subsequent consecutive qualifying samples exceed etc ...” sets it off that you are continuing sampling and this is an increase in response; be clear when date for Tier II starts

KR: item 25, page 20/21 – proposed changes to Tier II –

- Crosswalk 25-29
- Tier II responses applicable to sector-specific benchmarks now –
- EPA had issues not applying Tier II to sector-specific exceedances in last permit renewal 2017;
- sector specific benchmark monitoring included in Schedule E in last permit, did this in 2012 permit – outcome of lengthy advisory committee
- thus the sector-specific monitoring part of the permit for nearly 2 cycles now;
- we requested PG Environmental evaluate appropriateness of Schedule E benchmarks in OR;
- sector E is consistent with EPA permit except when OR water quality standards differ
- other big change in Tier II – no longer need to use terms like “monitoring year” and “permit assignment letter”
- proposing no longer to evaluate Tier II based on second-year of coverage – it will be based on a full monitoring year –
- other big change allowing a pause of Tier II corrective action response for facilities that have invested in treatment or mass reduction devices;
- item 26 – timing of Tier II evaluations; there were a few complications, for existing facilities that renewed in 2017 (the majority), their implementation deadline will be end of June 2021; Since we are re-issuing this permit early having it span 2 cycles is not ideal;
- then pandemic and some facilities in Tier II have concerns about meeting June 2021 deadline;
- we have extended the adaptive management approach; practical concerns about applying Tier II again in this permit cycle and DMR reporting; assuming we issue March 2021, practical tracking concerns about applying Tier II again this permit cycle for facilities that are working on implementation;
- quarterly sampling exceedances are exempt until Tier II installation complete
- you have another span of time before facilities will start Tier I report and subsequent checklist prior to triggering a potential Tier II response;
- by the time they install if they still exceed and trigger Tier II it will be year 2024;
- when we renewed 2012 permit facilities were required to install treatment under 2007 permit were not required to implement additional treatment measures if did not meet new benchmarks; i.e. allow them time to evaluate effectiveness of controls; what we may consider is DEQ prioritizing facilities that haven’t consistently met benchmarks;
- eDMR system will make it easier;
- this is some context around not requiring facilities during this permit cycle to continue to calculate or evaluate Tier II;
- the intent of Tier II based on second-year of coverage, was to give facilities time to adjust pollutant and operational controls prior to triggering; since we haven’t done a great job of tracking this the next permit cycle we expect to have a great opportunity to track electronically and in 2026 pull reports; so existing facilities have already invested a lot, existing industrial facilities operating under the current permits already have control measures in place; treatment and mass reduction has on-going costs
- the current proposal the intent of the Tier II corrective action requirements; DEQ is NOT requiring additional treatment if they don’t meet benchmarks; some facilities may need more time to meet lower benchmarks; also taking into account lower benchmarks may take some facilities more than one permit cycle to achieve them
- Do we want to take comment after lunch or discuss now?

MC: vote for comments after lunch

MM: anyone else?

Jonah: makes sense about Schedule A.12.a as it relates to facilities that might exceed benchmarks; but do I understand correctly that even if a facility like that triggers Tier II for a pollutant it did not trigger in previous cycle and its response wasn't designed to tackle that, that they would also be exempt?

KR: yes, as its written now – because we are issuing early and have opportunity to track better; Tier II is exempt for all facilities that install Tier II previously; intent is to evaluate in next cycle when we have more info; recognizing benchmarks are going down; and adding checklist to process

Ada: fine with waiting till after lunch

Back at 12:30; informal public comment at 1:45

LUNCH BREAK

Roll call: no Debbie

Clarification (Debbie joined shortly after roll-call)

KR: taking comments on Schedule A.12.a on page 20 of the clean permit copy

Ada: appreciate exemption from Tier II but what isn't stated is that those facilities will have to do Tier I report every time they have a benchmark exceedance? Is that correct?

KR: once they have installed, yes, and if they have 2 consecutive exceedances they will be subject to the operational and source checklist.

Ada: so could end up in perpetual Tier I response with the checklists.

KR: checklist is just once per permit cycle

Ada: that makes sense. Some relief from having to do Tier I reports for entire permit cycle would be helpful; or I see doing it once or twice, but at some point I can see they would trigger Tier II, would it be acceptable for DEQ to accept Tier I reports that don't propose new measure if there truly are not new measures they can implement.

Stacy: in favor of limiting Schedule A.12.a to facilities that trigger Tier II under current permit – some facilities implement bare requirements and trigger Tier II every time they have the opportunity to under the permit, also make it apply just for parameters that are triggered; I realize some benchmarks changed (are lower); confusing how currently written, not clear what happens after Tier I “plus” if exempt from Tier II – permit doesn't speak to that at this point.

KR: needs to be a “what then;” hasn't been completely formulated yet

MC: Schedule E Tier II comment: the reason, I was on advisory committee way back when Schedule E was added; Tier II wasn't part of Schedule E – reason benchmarks were in Schedule E, exempt is because for metals Schedule E benchmarks don't have probabilistic assessment; appreciate that for the statewide benchmarks- for those that don't have statewide benchmarks concerned about applying Tier II to those because they are strictly an application of the water quality criteria; no good off ramp for Tier II so if you trigger it you are doing something substantial to meet those benchmarks, so that is my concern about carrying all those Schedule E benchmark exceedances applying to Tier II.

Alan: Under 12b the triggering event, after implementation of industrial controls might be better to delete language after that language (industrial controls) – not everyone will follow that pattern; strikes me as unnecessary

Ada: permit will be effective in March, almost tail end of monitoring year and when people will implement Tier II; so samples collected in spring of 2021 will those count?

KR: no, those count for Tier I and current concept – may be hard to track – spring sample from March – June you would trigger Tier I if not at a discharge point where you are intended to install Tier II – then next quarter do checklist, then need full monitoring year to trigger Tier II

Ada: that makes sense, just clarify – Alan’s point, say after implementation starting with the 2021/22 monitoring year

KR: idea is to give facilities time for Tier I to work, if not under benchmark then assess further with checklist, then need time to evaluate, then another full evaluating year – intent is to give time after they have done everything on checklist, to tweak things before getting into Tier II on the next full monitoring year. You get rid of the second year and then you have all of this – tracking and trying to get clear permit language and being able to tweak your Tier I and checklist, is very tricky with the timing. That is the intent – to give people time and a few monitoring results depending on the how their exceedances fall out and what quarter of the exceedances before they get into Tier II.

MC: awkward that permit is being issued in middle of monitoring year – can we write our way around that – settlement agreement requires permit to be issued by March 30, 2021 but can we make an effective date say July 1st – gives people time to get used to permit and that would enable the permit to start and end in a monitoring year. Not sure it is necessary, but wanted to put that out there.

KR: item #27 triggering event language Schedule A.12.b – following new Tier I structure – again referencing the 2012 PER, the intent of Tier II mass reduction waiver is an exemption from implementing additional treatment; right before Schedule A.12.e put exemptions header for mass reduction and background waivers and then go down into deadlines

MC: I think that is a good idea

Debbie: I see why you have a PE, engineer certify the SWPCP mass reduction – how frequently does that certification need to be done?

KR: intent is that draft 2021-2026 permit cycle; not a lot of changes to the current Tier II structure

Ada: roman number iv – monitoring must resume at substantially similar discharge points – confusing – if applying for Tier II mass waiver would be applying for all substantial similar point – if substantially similar discharge point then you have to start sampling – so clarify that monitoring not required if substantially similar discharge point because those become overflows

KR: actually had that question is appropriate to resume monitoring

KR: Tier II background waiver – it’s an option for right facility – EPA comment period ended June 1, 2020, we will likely see final permit around the same time we issue in Oregon – we might see response to comments on how they propose to address this – proposed demonstration criteria hasn’t changed – best path forward is to address in permit evaluation report – hopefully will clarify – deadlines haven’t changed

Stacy – deadlines – “must be installed and implemented no later than a year and half from Tier II corrective action proposal response submittal” – tie it to date it’s due date instead of submittal date.

Ada: clarify 6 months from triggering Tier II status

KR: This would be when the regulator became aware, it has to be DMR due date

Stacy: just make it end of monitoring period – then we stay on same schedule – also under deadlines combine roman number iii and iv or making a leading statement and have two subsections below it

Draft clean copy page 20: Section (12)(g)(iii): No later than 30 calendar days from implementing Tier II corrective actions or mass reduction measures, the permit registrant must inform DEQ or agent of the date of completion. This notification requirement also applies to facilities with an implementation deadline established in previous permit.

(iv). No later than 30 calendar days from implementing all Tier II corrective actions or mass reduction measures, the permit registrant must submit a revised SWPCP incorporating control measures and any associated changes to monitoring locations.

Ada: I realize you can ask for more time but implementation deadline becomes June – does not result in a lot of construction in spring, but it can be a rainy time – in Washington deadline for treatment installation is September 30th during the dry months– gives time for construction

Dan C: Water quality-based effluent limitations, WQBEL, and exceedance for impaired monitoring section – This is for establishing effluent limitations for discharging to impaired waterbodies – needs to account for existing wasteload allocations – rulemaking advisory committee #3, my colleague from PG Environmental presented on stormwater data analyses which identified list of pollutants deemed to be significant or moderate concerns – copper, E. coli, lead, zinc, iron and pH. We don’t currently have cadmium impaired but we did establish limits for the others

- Schedule A.13.a references Table 7 – need to achieve applicable pH criteria – no assimilative capacity – no available dilution – need to protect existing criteria – potential buffering impacts

MC: buffering issue – problem for most facilities is low end of pH scale – appropriate to have a one sided or 2 sided limit? If appropriate to have some period for compliance?

Dan C: One sided limit didn’t occur to me; I would like to explore and look into; in regards to compliance Schedule for pH, I don’t want to misspeak on this - we did not propose – we were considering pollutants we thought had significant costs – can go back at look at pH

KR: we will talk about that later in Schedule B monitoring Tables; I talked about this with Becky Anthony, DEQ’s Assessment Lead, and most pH listing are for high range – some were not assessed this time around, some gaps in data that don’t allow us to justify or demonstrate for all basins

MC: If there are a narrower set of issues – could be very expensive to address this – worth looking into

Ada: I agree, there is no simple way to adjust pH in stormwater – talking about chemical treatment; I agree with the one sided instead of a range if that is what we are going with - not establishing that as a limit, allow for adaptive process

Dan C: two good suggestions – will discuss with Krista

Schedule A.13.b – establish a threshold when water quality limits become applicable – 2 consecutive samples exceeding app criteria or any one sample that is 2 times applicable – if 2 consecutive then need for improved

controls then one sample greater than 2x – shot in the dark but criteria itself has a factor of 2 when its developed to be protective of aquatic life

MC: Not so much on the thresholds, I take it the intent is to override Schedule A.4 comply with water quality standards, now, A.3; idea would be one exceedance - how these limits are triggered you would not be violating A.4, now A.3?

Dan C: I interpret this as allowing 2 consecutive samples, not a presumption of exceedance unless it became applicable under this scenario

MC: One argument would be that this provision would be meaningless if it didn't override the generic narrative requirement; would good to clarify that.

KR: that is the intent

Stacy – whole section unclear with regard to numeric vs. narrative limits, needs more clarity; general the whole section could use clarity around if numeric or narrative limits are required.

Dan C – Schedule A.13.c regarding mandate following controls- should reference Table 8 at this point – if they exceed they have to implement narrative criteria that we specified in Schedule A.13.e for E. coli and iron exceedances. If the discharger exceeds for iron or E. coli, then there are narrative requirements.

MC: before we talked about just narrative limits – now we have both numeric and narrative? Is the intent that only the narrative requirements would apply?

KR: intent is that only narrative will apply but trigger is based on Schedule A.13.b which is based on applicable water quality standard Table 8, concentrations for monitoring; until two consecutive exceedances; if we want to do narrative and every facility that discharges to an E.coli listed water – to at the front end do these narratives; the intent was to give them the same opportunity to have the trigger and then have to install the narrative with the trigger being the exceedance of those applicable standards.

MC: Yes, intent is clear and helpful. I think we want to wordsmith it a bit

Dan C: Schedule A.13.d – Registrants discharging to waterbodies impaired for fecal coliform and enterococcus must monitoring and report as specified in Table 9 and 10. DEQ may require narrative water quality-based effluent limits if there is determined to be public health risk from the discharge.

Schedule A.13.e – narrative water quality-based effluent limits (WQBELs) if discharger exceeds thresholds

Ada: e roman number I (3) and ii (2) – requiring annual catch basin cleanout makes sense – not sure cleaning stormwater lines is feasible; doing it once and see if it makes an impact; but the full outline cleanout of storm sewer lines can be very expensive and also I worked with facilities that do this and it doesn't provide an improvement; maybe providing an out where if the facility does it once and it didn't do anything, let's not make them do something that costs thousands of dollars every year that really isn't helping. The catch basin seems reasonable; the cost for a full-line clean-out is a lot.

Draft clean copy page 22: Section (13)(e) Narrative water quality-based effluent limits:

(i) Permit registrants exceeding total iron associated with industrial activities must:

(3) Clean storm sewer lines, including catch basins, annually;

i. Permit registrants exceeding E. coli:

ii. (2) Clean storm sewer lines, including catch basins, annually;

Kathryn VN: bacteria water quality standards for mimicking a bacteria violation for wood product facilities – precedent in the bacteria standard allows someone who is having trouble to look deeper; talk to Aron Borok, DEQ Standards

KR: Schedule A.13.e roman number ii number (6) – allows for biochemical speciation – I have talked to Aron about what type of fecal concerns – do you think this captures what you are concerned about?

Draft clean copy page 22: (6) Conduct and report biochemical speciation identification results to indicate non-fecal discharges.

KVN: I will take that back to the people who do speciation, but I missed that. Thanks.

Stacy: E. coli – weird statement – what is meant by Schedule A.13.e.ii (4) Investigate any human dwelling encampments; – just document they exist? More language around the purpose.

KR: I know this is a challenge for most facilities, especially around the Willamette Valley; intent was to be able to demonstrate that the bacteria issues are not associated with industrial activities and with speciation.

Stacy: have a documentation requirement; also narrative limits, is it every time they an exceedance they have to do this? Or one time – and report on it?

KR: some are on-going some are one-time; we will have to clarify that for sure.

Dan C: Schedule A.13.f – this is a fairly standard condition in most general permits

Stacy: “consistently comply” – this is subjective – who makes this decision? I assume tied to violations so, OCE?

Dan C: – we run into this quite a bit. Schedule A.13.g – I won’t read through all – made sure to incorporate all requirements for having a compliance schedule; if exceeds one year must have interim limits; here we used previous benchmarks but those are annual averages and here they are being implemented as daily maximums, would have 24 months to implement several steps to comply with final effluent limits

MC: not clear how compliance schedule would be triggered. Idea is that the discharger would ask for it?

Dan C: not specified yet – I believe there will be a decision on implementation; would have to be requested by the discharger. The compliance schedule the dischargers are supposed to request it

Stacy: Status report due date – confusing that it must be submitted 14 days following the due date; required to do the thing by the due date in the table and have 14 days after to submit to the DEQ

Dan C: language comes directly from the federal requirements. How does everyone feel about the 24 months requirement? EPA is a stickler - compliance should be as soon as possible and often, with individual permits, you have to go through a thorough assessment of ASAP to satisfy EPA; we thought we would make a convincing argument for 24 months. Any comments on the interim limits as far as applying the existing benchmarks as daily maximums or is there an agreement and consider a statistical multiplier?

MC: yes. A lot of facilities have challenges meeting existing benchmarks; look at a multiplier; try not treat individual samples as a compliance point – current corrective action based on geometric mean

Alan: what happens if they do not comply with interim limits if that is a permit violation, then yes, multiplier

Dan C: actual steps to move through compliance schedule – Table 3 and 4 next page – copper criteria is based on BLM; DEQ used applicable data, some is more stringent, others less so; compliance schedule is only

where existing performance is less stringent than resulting limit. This is not going to be a limit, this is a threshold for when narrative limits become applicable

- Total iron – EPA has stated not sufficient data for acute criteria for iron; we do want to address discharges to our impaired waterbodies; used acute to chronic translator of 10:1 from EPA’s 1991 Technical Support Document (page 18)
- Best to come up with site specific ratio based on tests – EPA says to use site-specific tests to come up with acute to chronic ratio; where data is lacking can use 10:1-
- For total lead there is an acute criteria, and based on median hardness DEQ has calculated for geo-regions; similarly for zinc, acute criteria has been calculated for geo-regions.
- Jonah: generally speaking in favor of new structure for impairment pollutants in this draft and appreciate the movement towards setting numeric effluent limits; still processing details and how those interim limits evolve; express support for new direction – come back to triggering events – in Schedule A.13.b – does create a scenario where in theory a facility - every other sampling event is above applicable criteria and as long as those results are more than 2 times the criteria they wouldn’t trigger the effluent limitation; Dan, in your view if that happens a facility is not contributing to an exceedance of water quality standards? Even though no assimilative capacity?
- Dan C: I am not necessarily agreeing they are contributing to an exceedance – it is more that if they are demonstrating they can meet criteria at least half the time they are demonstrating best management practices - pollutant controls are working; if reference concentrations demonstrate that more often than not they are meeting, then they are not significant contributors; it’s a balancing act
- MC: on that point, note we are being very conservative by applying; we are assuming the water body is not meeting the standards at the time of the discharge and the listing of the 303(d) list can be generous in terms of assuming the standard isn’t met; and so I do not think it is correct to say that just because a discharge is over criterion there a violation of criterion; it’s conservative to make that assumption; discharges occur in winter with lots of dilution; we just do not know and we are making a conservative assumption, but don’t assume that
- Dan C: that is true – we do not know if something is 303(d) listed – sometimes those listing are based on small amounts of data – *Note: Dan experienced technical issues with his computer and connection was momentarily lost.*
- Informal public comment opportunity:
- Last name M-Q: Danelle Peterson, Port of Portland – are we going to have an opportunity to comment on things; like quarterly reporting, a problem for our organization; the Port would request that we keep existing sampling of 2 before Dec 31, and 2 after; the rain events we target large rain events because our facilities are large and we have a lot of outfalls in winter and fall; spring and summer events are more difficult to predict and don’t always result in discharge from all of our outfalls, makes that perhaps a consultant comes out and the event does not come to life as we hoped and we spend more time on consultants waiting for storms to evolve; creates more opportunity for error with data management; predict result in discharge; other comment: once DEQ transitions to electronic reporting I think it will be easier for permittees to report their data as it comes in and we won’t have the difficulties how DEQ or the agents want the form to be filled out because it’s part of the electronic reporting requirements. Those are thoughts on why would like collecting samples to remain the same as they are now.

Dan C: acknowledge statement that we don’t know for sure but typical approach is to presume there is no assimilative capacity

BREAK

KR: p.27 benchmark section – Schedule E – when there’s saltwater criteria that is the appropriate benchmark instead of statewide; only 1 facility under 1200-Z that directly discharges to Pacific Ocean, only instance we’d want to use the saltwater; intent is to establish correct monitoring based on the waterbody’s characteristics

Item 34 on crosswalk – suggest limit impairment monitoring and applying correct criteria based on receiving water – mostly this impacts bacteria

Schedule B.1.b - added in 2018 re-issuance – these exemptions have been there for impairment monitoring since 2018

Stacy: my recollection was the driver was PAHs, PCBs, etc. and the cost – recommend removing it – no longer applicable.

KR: move on to draft clean copy page 27/28 – item number 35 on crosswalk– change to account for proposed Water quality-based effluent limitations, WQBEL, methodology presented by Dan C. – also water quality standards account for different receiving waters when establishing specific pH range; proposing to set that pH WQBEL because it’s important to biological systems; we will consider comments made on Dan’s presentation; already have pH ranges broken into basins; when looking at things like hardness based for metals need to factor in some other ambient characteristics

Stacy – seems odd we do not have to mention the potential for other effluent limits

KR: Definitely gaps in the draft of the draft permit.

Item 36 on crosswalk, page 29 draft clean copy - changing frequency of sampling – Item 37 on crosswalk is the frequency we are proposing (under Schedule B.f.i) – 72-hours or 3 days in between sampling events rather than 14-days- talked about this is meeting 5 and 5.5

Schedule B.f.ii and g – exempt monitoring of mass reduction devices at or above DEQ-approved design capacity; also under monitoring frequency (f) we are proposing any data results from properly maintained mass reduction devices infiltrating at or above DEQ-approved designed capacity will not be used in establishing a waiver or Tier II corrective action response

Ada: add that overflows from treatment – in the Columbia Slough under the source control program they have to do sampling of bypasses for things outside of permit - would like that to be exempted from Tier II since it’s an overflow from treatment

Stacy: regarding to g. mass reduction devices – reading this as they do not have to take samples as long as they are in compliance of submitting the report – report is not due until end of first monitoring period; just to be clear they would still have to monitor and submit a variance for that first monitoring period before the monitoring report is submitted and accepted.

Alan: A second that we should add an “h” for treatment systems very similar to achieve mass reduction devices - Schedule B.2.h to address treatment systems similar to the Schedule B.2.g for mass reduction; also be specific about where treatment system is installed and where treated flows are returned – my position is only treated flows should be sampled only

KR: thank you.

MC: want to reinforce a comment Danelle Peterson, Port of Portland, made regarding quarterly requirement – I have gotten the most feedback on this – people are worried about requesting a variance often because they

cannot get a sample in the spring quarter– concerned we will increase workload in having to seek variances; disconnect with quarterly reporting; e.g., getting a first flush sample; think this will be a big problem for folks

KR: monitoring frequency – we were not proposing to change reporting frequency so thought was to align sampling frequency

Stacy: fall flush – have people that like to wait to get the samples, I like the move towards quarterly sampling, aligns with reporting; we get a lot of blank DMRs, rainfall is changing in Oregon and I like people being ready to sample earlier in the year and not waiting until October to get the bulk of their samples; so I support the change

Ada: second MC and Danelle – logistical difficulty with summer quarterly sampling – might only be one storm event that occurs in business hours and folks go on vacation; we tend to have one or couple storm events so not representative; important for samples to be representative of the volume of storm events

KR: Items 40-42 on crosswalk, monitoring variance conditions, not much change – used to say *may* now says *must*. Monitoring waivers- this requires 4 consecutive samples equal to or below the benchmarks – last meeting we proposed 6 consecutive samples to qualify for a waiver - this proposal has 5 consecutive samples for a geometric mean; based on recommendation of National Academy of Sciences; impairment waiver mirrors EPA proposed language to require a little longer for sampling up to three years.

Debbie – want to make sure that the ability to collect 5 samples in the first year of the permit to try to obtain a waiver – can still do that?

KR: Correct. But not less than a full year; want to make sure we get the full year, but you can add an extra sample (5) for the waiver.

Stacy: regarding variance language – if sticking with quarterly sampling rather than 2 times per year, then variances should be due with each DMR; supporting data may include just statements about drought year and the 20% below the 3-year average gives the permit registrants impression they only need to provide that and not also site-specific information

MC: no detects – PCBs, now that we have narrow Table 8 set of impairment pollutants, non-detects for metals will be rare, query is whether we can have some level above non-detect half or 75% to support a waiver for impairment pollutants

KR: item 43 on crosswalk, page 31 of the clean copy draft, Schedule B.4.f – thinking: previous presented proposal for one sample for verification to continue waiver until the end of the permit term– comments received that it wasn't appropriate, based on one sample, thinking of requiring facilities with waivers to reinstate 2nd quarter of 2025 ...as we continue to work on TMDL development grounded in science, the increased number of samples will be crucial, ensure greater effectiveness ... stated goal in NAS report – This will provide DEQ will 2 full years of monitoring data for all registered facilities, since facilities must reinstate monitoring upon renewal into the next permit

MC: I think the feedback I have gotten is if the monitoring will be re-instated anyway why cut off waiver? I guess I heard wanting 2 years of data; but we are dialing back on waivers as it is – we should continue waiver into the permit period

Stacy: support some sort of verification; hesitant to take both of them out – especially that we are down to 5 consecutive samples

KR: item 44 on crosswalk, heard no objections last meeting for inspections of infiltration devices; item 45-47 applies to Schedule E;

Oil and Gas extraction and refining: we do not currently have any of these facilities permitted under the 1200-Z in the state: ammonia, nickel, lead, nitrate-nitrogen, and zinc –

Land transportation and warehousing: lead and mercury

and Ship and Boat Building and Repairing Yards chromium, copper, lead, nickel, and zinc - proposing to add always had a different structure from federal

Last item on crosswalk: Iron and magnesium, removing those based on EPA's proposal, proposing only iron monitoring would be for 303d listed waters – anything else in Schedule E?

Stacy: Table 11 reporting table needs updating based on new permit language; a plug for record-keeping to include sweeping records be kept, it technically falls through the cracks in permit language.

MC: waiver, one of the things we had asked for in earlier comments is a default waiver if no response, concern that people are left hanging; I am sure DEQ will be faster this time around so won't ask for a default waiver, but just want to make that point that timely response to the waiver request is really important to permit registrants.

MM: good job Krista!

Alan: echo accolades; about Table 1 and 2 of sources that are covered; might be legal ground; new sentence that has been added about co-location; when an activity in Table 2 is co-located; when you go to definition of industrial activities; reference to activities in Table 2 are significant contributors - so why significant but not when co-located? From non-lawyer perspective, I don't have suggestions how to fix it; seems confusing but want to raise the point

KR: we worked with Diane Lloyd, Department of Justice; co-located is in term of primary SIC code and co-located; generally accounts for primary SIC codes that are in 40CFR122-126

KVN: want to say NWPPA supports MC's comments and positions on the issues; compliment someone on color-coding and attention to detail – was easy to follow along today; trying hard to make things simpler – think there could be some simplifications that could be done to meet goal of having an easy to understand permit and also easy to implement; thank you for all your work

Stacy: definitions gg “stormwater associated with industrial activity” – missing “includes but not limited to” – please use definition from the Code of federal register, CFR

MC: accolades, nature is this that you talk about stuff you do not like and there is a lot in here we do like

CS: not done yet but thank you. We are transitioning to the fiscal part of agenda; we are required by state law to do fiscal impact statement and to ask specific questions associated with the draft

CS: before we move into the fiscal impact statement, are there any questions about the fiscal and economic impact statement that was provided in the materials for this meeting?

NONE

CS: high level summary: we concluded that while we expect draft permit – assuming it is in this general framework – that it will have impacts on 862 current registrants – we do not have the details to determine specifically what all those impacts are for many different factors - that said, we have some specific questions

First question: will the proposed rule, in this case the proposed permit have a fiscal impact?

KVN: I believe it will have a fiscal impact; you have noted that fiscal effect costs cannot be separated whether a large or small business, that is appropriate; are you thinking the site itself has 50 or less employees

MM: the way we get that number: 50 is in Oregon rule; look at Oregon Dept. of Employment that has census numbers; consider it a small business if adds up to 50 or less; yes, it is per site, and then add up all sites together to get whole company; it's not exact science

KVN: the effect with increased quarterly monitoring on the whole will increase monitoring costs (even though can get a waiver and samples could decrease) still think a business still has to have resourcing and record-keeping and the people doing the monitoring and running the checklist, whether on-site or a contractor; does not include installing any stormwater infrastructure; the numbers you have estimated seem low to me

CS: do you mean dollar amounts?

KVN: costs on sector-specific monitoring is \$25-218 for hydrocarbons although some of those will be going away depending, not all of them, having the people to do that work and handling the scheduling of getting quarterly samples at this time during COVID, not sure if we looked at all possibilities for reducing burden on

CS: we did not develop this draft FIS as it relates to COVID because to date have not received any information from any site that told anyone at DEQ they could not get samples done because of pandemic; no one, agents or to DEQ; I thought I would share that, because we have not been told it is an issue yet for this permit.

KVN: ok but only one quarter when one could have a waiver it is going to be the future of the permit; I think DEQ should be open to changing the FIS during the comment period if getting feedback, no one wants to admit they are a failure and wants to talk about this; DEQ should think about small businesses and how increased costs will play out; it's the focus of fiscal statement work

MM: any additional recommendations on how to reduce the impact on small businesses?

KVN: pay close attention during comment period; but also further accommodations for increased waivers that are letting DEQ know they are having COVID-related issues; if first flush storms are during *COVID* quarantine, could be a problem; how to assist with that and certified smart people like Ada and Stacy would really help more to be responsive to that concern.

Debbie: preface by saying haven't looked at it (fiscal impact statement) closely; cost increases are significant for doing mass reduction system with certified PE *engineer*, will be tens of thousands of dollars, increase in sampling costs, then subtle increases in costs if required to clean the stormwater line versus just catch basins (which Ada pointed out) that is significant specifically for a larger facility; so permit costs associated are for large and small businesses; if you want to reduce costs you might think about adding flexibility in how these things are done; I think it is appropriate to clean catch basins, but is it appropriate to clean the line (e.g. Certified engineer should show performance of system; don't require cleaning lines)

Alan: COVID impacts for this year's sampling – most permittees probably finished sampling in March so not much impact; mass reduction costs will be high, probably tens of thousands

Stacy: important to point out - and it is in the fiscal impact statement, also costs savings: e.g. waiver for mass reduction if they submit certification – maybe they don't balance each other out but should go into consideration of the cost of that analysis

CS: extent of impact? Other AC members have input?

Stacy: I recall there was concern earlier today about lowering of copper benchmark, may not be achievable

CS: other Q: if rule will have significant adverse impact on small businesses? KVN and Debbie already provided info but others?

KR: next steps- we will work on draft out for public comment based on today's feedback; this draft was a quick turnaround; will be holding public hearings during comment period and presenting at EQC in September or at least one more time before we finalize in early 2021.

MM: any e-mails will be provided to all AC members; work with Stacy our chair – or best to reply to all members; any final comments?

CS: thank you everyone for your participation and feedback; it is exactly what we need today

MM: 3:06 adjourn