

DRAFT Meeting Summary

Willamette Mercury Multiple Discharger Variance Advisory Committee



State of Oregon
Department of
Environmental
Quality

April 4, 2019
DEQ Offices
700 NE Multnomah St.
Portland, OR 97232

List of Attendees

Members

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

DEQ Staff

Aron Borok
Alex Liverman
Debra Sturdevant
Erich Brandstetter
Connie Dou
Inez Lawson

Others in attendance

Raj Kapur, Clean Water Services/ACWA; and by phone: Cheryl Niemi, Washington Department of Ecology; Lindsey Guzzo, EPA; Taylor Lucey, Oregon Forest Industries Council, Amanda Keller, Clackamas County; Shane Sinclair, City of Corvallis.

List of Handouts and Presentation Notes

- Agenda
- Variance process and requirements description
- DEQ Methylmercury IMD
- DEQ Presentations
 - Revisions to Draft Highest Attainable Condition Process
 - Variance Application and Re-evaluation Process
 - Requirements of the Variance

Meeting Summary

The meeting began with a round of introductions and welcome to two new members replacing former representatives of Oregon Business and Industries and Oregon Trout Unlimited.

Alex Liverman led review of the Charter Objective and Roles and Ground Rules.

Water Quality Standards and Assessment

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Alex acknowledged additional feedback received via email and phone from Oregon Association of Clean Water Agencies and Northwest Pulp and Paper between the last meeting and this one and gave opportunity for anyone else to provide additional feedback after having discussed the topics from the last meeting with constituents that members represent. No additional input was provided.

Aron Borok gave an update to the MDV schedule in that the request for adoption by EQC will now be targeted for January 2020.

Aron explained that today's materials will walk through a simplified procedure for determining which facilities will be justified for HAC 2 or 3. The simplification is due to additional information received from member input, other states and through discussions with EPA. Aron also mentioned that a recent court decision on a nutrient variance in MT may have implications for interpreting the federal rules around HACs, but potential impacts are still being assessed.

Aron presented on the revisions to the HAC process. Todd Miller asked for clarification as to determinations on feasibility of additional treatment steps. Within a few slides, Aron explained DEQ's determination that no feasible treatments have been demonstrated for large volume facilities beyond those that currently exist at some facilities in Oregon. Chandra Ferrari asked what actions are typically in MMPs. DEQ deferred discussing MMPs until a later presentation. Sharla Moffett asked if Oregon's WQC was lower than WI. Aron clarified that the WI standard was for fish & wildlife and OR's is for human health and is lower at 0.14 ng/L, which has been deemed unable to be met and is one reason for development of the MDV, with the expectation that we can make as much progress through MMPs as with treatment. Todd commented that a simpler process is good and noted that two of the three outcomes are for HAC 3, with a nuanced differentiation, such that further simplification may be possible. Todd also asked for more detail on the case where a facility may be installing upgrades that also address mercury and how that will be evaluated for the MDV. Aron responded that these would be upgrades for purposes other than a mercury variance, but the data would be used in DEQ's 5 year evaluations of the HAC and mercury decreases would result in a lower LCA-based permit limit under the MDV. Chandra asked for confirmation that the variance justification for human caused pollution that can't be remedied or would cause more harm than to leave in place had not been used for mercury in other states and whether OR's rationale of additional energy expenditures and waste management were acceptable to EPA. DEQ and EPA confirmed that one is in process in WI, but no others have yet been approved under the new federal regulations. Also, discussions on OR's approach are ongoing with EPA, but seem to be on a good path for acceptance. Chandra also asked if there was OR-specific experience with MMP success, beyond the WI information discussed. Aron clarified that Clean Water Services has decades of positive experience and data showing decreased mercury in effluent and biosolids after implementing MMPs and that there are data-backed examples from both WI and MN. Sharla asked how many Willamette Basin facilities fell under HAC 3 due to having advanced treatment. Aron counted out 5 and noted that there were 8 in the evaluation, but not all were in the Willamette Basin.

Aron presented on the variance application and re-evaluation process. Todd asked for confirmation that maintaining the status quo in effluent wouldn't trigger additional MMP requirements and to clarify what "significant" increase means. Aron clarified that some facilities would have more to do based on what their LCA was, but some with sophisticated practices and low LCAs would likely not have additional requirements. Erich clarified that determination of significant would be via a comparison of means to look for statistical difference.

We took a short break and then continued taking feedback on the concepts presented so far, and opened it up to non-AC members. Raj Kapur offered that simplifying the HAC process was good, but it is still more complicated than it could be. For example, WI has just one category for POTWs. Also, while the data evaluated is of low quantity, it shows overlaps between the two proposed bins. Maybe putting all POTWs together would avoid arguments about treatment technology merits and alleviate potential complications on justification arguments. Further, demonstrating that MMPs achieve similar reductions as treatment is complicated by the fact that EPA's 2008 dental amalgam rule went into effect in the middle of the WI data sets (2004-2018). There may well be a plateau for mercury reductions via MMPs because this largest identified source has been addressed, particularly in OR since the state amalgam rule went into effect earlier. Kathryn VanNatta asked about DEQ's and EPA's thinking on requiring continuing reductions when there will likely be population increases that could increase

mercury in discharges. Alex Liverman asked Kathryn if she knew of any studies linking population increases with mercury discharge increases and Kathryn confirmed that she did not. Erich offered that because DEQ proposes measuring decreases as concentration, rather than mass load, and population increase would come with flow increases, there would be no expectation of concentration increases. Aron confirmed that federal variance rules require continued progress in reductions. Alex summarized some of the findings from the Willamette Mercury TMDL modeling on the sources and pathways for discharge of mercury – because global emissions and air deposition are dominant sources of mercury onto the landscape, this is unchanged by population increases. We see more transport to waters in more densely populated areas of the basin, but this is due to surface runoff and land disturbance, which won't be captured in POTWs or industrial permitted discharges eligible for the MDV. The literature indicates global emissions are decreasing, which will result in decreases in deposition in OR. Debra Sturdevant discussed the eventual process of re-evaluation of the mercury WQC, which could be a long term outcome following the point where additional progress cannot be demonstrated. Debra also clarified that MMPs are tailored to each facility as to what can be done, which can change in response to changes like population increases, as warranted. Kathryn expanded on that thought, pointing out that there will be differing trends of differing progress at facilities and areas within the basin, so our thinking should be about both large and small scales and measurement of success. Todd remarked on the 20 year time frame for the variance being subject to 3rd party lawsuits and highlighted that WQ trading can be invoked in tandem with a variance and asked when that would be appropriate to think about pursuing. DEQ acknowledged the trading option, but has opted not to pursue it currently, given that the MDV and CWS variances are OR's first, as well as EPA's 1st with the human-caused pollution that can't be remediated or would cause more harm to remove justification. Debra also confirmed that issuance of the revised TMDL will help sort out whether or not pursuit of trading will be needed. Todd agreed that the TMDL should be helpful and advocated that DEQ be mindful of not putting roadblocks to trading in place during the process, since we are not thinking fo trading now. Raj echoed that the processes in place for temperature trading have similarities to what would be needed for mercury reduction and should be considered. Raj also agreed the having the TMDL in place is important for understanding the baseline. Chandra asked if mercury trading was being done in CA. No one knew of any.

Erich presented on variance requirements. Chandra restated the 20 year variance term and wondered when the discussion about determining that nothing more can be done occurs. Aron confirmed that evaluations will take place every 5 years. Alex reminded everyone that the TMDL will require nonpoint sources reductions, which are far greater contributint sources, and evaluations would not be done in isolation of the other anticipated reductions at the watershed scale. Kathryn asked if the IMD on MMPs would be part of the MDV public comment package. Erich acknowledged that the IMD was currently being updated. Debra clarified that the MDV public comment opportunity would include the content of the IMD. In addition, each permit renewal application would include a comment period with the facility specific MMP. Kathryn refined her concern as to compliance with the MMP now being an enforceable condition of the permit, but the IMD had not previously been looked at in that light, so an opportunity to comment on it or adjust it is needed. Further, the desire is for a replicable process that is understandable to the public, so having it all in one place to comment on seems good. Also the IMD applies to all areas of the state, not just the Willamette Basin and there may be different approaches needed. Debra confirmed that DEQ's expectation is that the IMD is applicable throughout the state and differences aren't anticipated. Debra also explained that DEQ and EPA were discussing the level of specificity and prescriptiveness of MMPs needed in the MDV vs facility-specific MMPs on public notice during their renewals. Raj offered to share CWS long-standing experience with MMPs and noted that the IMD has several unproductive rabbit holes that smaller municipalities should avoid going down in developing MMPs. Raj offered to participate in development of an MMP template that would be customizable, to assist municipalities that aren't as well resourced as CWS.

Alex confirmed that the next steps include: AC members taking information from today back to constituents and providing any input back to DEQ between now and the next meeting (or at that meeting) via email or phone calls to Aron; the next meeting is May 15th and DEQ will send details and materials prior; the LCA procedure will be shared, likely ahead of the next meeting; DEQ is still working on rule language and cost analysis which are aimed to be presented at the May meeting, but may be later than that. Kathryn asked when the MDV rulemaking was proposed for public notice. Aron confirmed that moving the EQC adoption request out to January 2020 means that the public notice will be targeted for mid to late August 2019, for 45 days, and public hearings are targeted for late September to early October.

The meeting ended at approximately 11:45am.

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