



State of Oregon Department of Environmental Quality

Advisory Committee Charter

Willamette Basin Mercury Multiple Discharger Variance

Contact: Aron Borok
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Last update: Oct. 16, 2018

Authority

The authority for convening this advisory committee is ORS 183.333.

Objectives

This committee's purpose is to provide early input to the Oregon Department of Environmental Quality on a rule establishing a multiple discharger variance for mercury in the Willamette Basin, as well as amendments to Oregon's variance rule at OAR 340-041-0059. DEQ does not expect the committee to make decisions or recommendations as a group.

A water quality variance is a time-limited change to a water quality standard specific to a discharger or water body. The variance will allow qualified dischargers in the Willamette Basin with individual permits under the National Pollutant Discharge Elimination System to meet mercury effluent limits while also requiring activities to reduce mercury levels in their effluent.

Because a variance is considered a temporary change to a water quality standard, it requires approval by the U.S. Environmental Protection Agency under the Clean Water Act. DEQ is coordinating with EPA during this process to ensure transparency about where DEQ has decision space regarding variance requirements and sideboards. This will help ensure that the advisory committee focuses on issues where their input can be used to improve the MDV.

DEQ also is considering changes to the state variance rule. In 2015, EPA adopted revised water quality standards rules including rules related to state adoption of variances. DEQ needs to revise the state rule to ensure that it is consistent with the new federal regulations.

Background

In 2011, the Environmental Quality Commission adopted more stringent human health toxics criteria based on a fish consumption rate of 175 grams/day. The human health criterion for mercury is based on the concentration of methylated mercury (methyl-mercury) found in fish tissue found in Oregon waters. Methylmercury is a neurotoxin that can bioaccumulate in the aquatic food chain so that it can pose a health risk for humans consuming fish (Hope 2005).

Elevated mercury levels in water and fish throughout the country is largely due to deposition of atmospheric mercury. Atmospheric mercury derives from burning coal for electricity, metallurgy, waste incineration and other sources worldwide (Butler, et al. 2007). Natural sources

of atmospheric mercury include wildfires and volcanic eruptions. The volcanic soils in Oregon also have naturally high levels of mercury. In 2006, DEQ estimated that more than 95% of the mercury in Willamette Basin waters came from direct deposition to water or erosion of soil containing mercury from native soils or air deposition. Less than 5% was estimated to come from point sources discharging to the waters of the Willamette Basin.

In 2006, DEQ completed a total maximum daily load for mercury in the Willamette River Basin to meet the then-current methyl-mercury criterion of 0.30 mg/kg in fish tissue. The 2006 TMDL included a bio-accumulation factor used to translate the amount of mercury in surface water to concentration in fish. As a result, DEQ has a means to determine if concentrations of mercury in wastewater discharges are sufficient to attain the water quality standard. DEQ is in the process of updating this TMDL under a court order, including an updated bioaccumulation factor, source estimates, and wasteload allocations.

DEQ anticipates that point source dischargers in the Willamette Basin, including municipal wastewater treatment plants and industrial facilities, will not be able to treat wastewater to effluent limits for mercury based on the current water quality standard or the upcoming TMDL. There are no feasible treatment technologies that would be able to treat to anticipated effluent limits. Moreover, potential reductions in mercury from point sources would not result in meeting the water quality standard, because human-caused conditions (i.e., atmospheric mercury deposition from global sources and erosion of local soils) prevent attainment of the methyl mercury criterion.

Under Clean Water Act regulations and associated water quality rules in Oregon, dischargers have the option to apply for a water quality variance. A variance is a temporary designated use and criterion for a specific pollutant that provides a means for regulatory relief while still requiring a facility to reduce levels of the pollutant in its discharge through source reduction and treatment optimization, where feasible. Variances need to be justified based on one of six factors. Each variance requires approval by the EPA. DEQ also has the option of developing a multiple discharger variance. An MDV is an amendment to water quality standards rules that provides a process for qualified dischargers to apply for and obtain a variance. Once EPA approves the MDV, DEQ can then issue variances to individual dischargers under the MDV without additional EPA approval. Moreover, having an MDV streamlines justification of each individual variance, as DEQ already has provided justification through the MDV. By developing an MDV, DEQ can move forward with issuing permits for qualified dischargers that require mercury reductions, but include effluent limits and other permit requirements that are achievable.

Preliminary Topics

Meeting #1

- Overview, Charter and Ground rules
- Project background
- Rulemaking objectives

- Other related mercury projects
- Federal and state variance requirements
- Related processes currently underway (TMDL Update, Clean Water Services Variance)
- Basis for the need for the variance
- Effectiveness of treatment in reducing mercury

Meeting #2

- Eligibility requirements for the variance
- The Highest Attainable Condition during the term of the variance
 - Determining the greatest pollutant reduction achievable
 - Calculation of level currently achievable
 - Mercury minimization program requirements
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- Monitoring and reporting requirements
- Term of variance

Meeting #3

- Parking lot items
- Variance application procedure
- Procedure for DEQ review and issuance of the variance; and for EPA approval
- Rule language
 - Multiple discharger variance
 - Federal rule consistency

Meeting #4

- Parking lot items
- Final review of draft issue paper
- Fiscal impact statement

Timeline

The following milestones comprise the major elements of the rulemaking process:

Milestone	Date
Advisory Committee	Oct. 2018 – Feb. 2019
Public Notice & Comment Period	Apr. – May 2019
Public Hearings	May 2019
EQC Presentation	September 2019
EPA Submittal	September 2019

Committee meetings

1. All committee meetings will be:
 - Open to the public
 - Advertised on DEQ’s webpage calendar prior to the meeting at: [DEQ Event Calendar](#)
 - Advertised through public notices and news releases, and posted to the DEQ rulemaking and water quality standards website
 - Noticed by Gov Delivery email to the following topic groups:
 - i. Rulemaking
 - ii. Water quality standards
 - Noticed on DEQ’s Facebook/Twitter account
 - Accessible via a call-in number or webinar

The committee is expected to meet four times on the following dates: November 1, 2018; November 28, 2018; January 24, 2019 and February 27, 2019. Meeting duration times may vary depending on topics, committee progress, and member availability. In addition, meeting locations will likely vary and will be determined at least one month prior to each meeting, but all meetings will be within the Willamette Valley.

2. Meeting materials and agenda will be provided to committee members at least one week prior to each meeting.

Decision space and decision-making

DEQ will do its best to communicate to committee members during each meeting the topics on which DEQ has decision space and those for which there is none, due to, for example, EPA variance requirements. On topics where there is decision space, DEQ will not seek consensus

recommendations from the committee, although DEQ will ask for discussion and input from committee members and may gauge the committee’s overall level of support for certain topics.

The committee’s discussions will be valuable to DEQ in forming its multiple discharger variance. Rulemaking documents will then be available for broader public review and comment as part of normal rulemaking process.

When DEQ shares information with the group, DEQ will allow a reasonable timeframe for comments.

Membership

In convening this committee, DEQ selected members that reflect a range of stakeholders both directly and indirectly affected by development of a multiple discharge variance.

Committee Member	Affiliation	Representing	Contact Information
Stephanie Eisner	City of Salem/ Association of Clean Water Agencies	Municipal Dischargers	seisner@cityofsalem.net 503-588-6380
Michael Karnosh	Confederated Tribes of Grand Ronde	Tribes	Michael.Karnosh@grandronde.org 503-879-2383
Allison Laplante	Northwest Environmental Defense Center	Environmental Interests	laplante@lclark.edu 503-768-6894
Abbie Laugtug	Oregon Business & Industry	Industrial Dischargers	abbielaugtug@oregonbusinessindustry.com 503-588-0050 x.874 612-239-0021
Michael O’Leary	Northwest Guides and Anglers Association	Fishing Interests	michael@publicpurposes.com 503-970-8214
Donna Schmitz	Benton County Soil and Water Conservation District	Soil and Water Conservation Districts	dschmitz@bentonswcd.org 541-753-7208
Jeff Stone	Oregon Association of Nurseries	Agricultural Interests	jstone@oan.org 971-235-3868
Kathryn Van Natta	Northwest Pulp and Paper Association	Pulp and Paper Industry	kathryn@nwpulpanpaper.org 503-844-9540
Alternate	Affiliation	Representing	Contact Information
Todd Miller	City of Springfield/ Association of Clean Water Agencies	Municipal Dischargers	tmiller@springfield-or.gov 541-736-7137
Bob Rees	Northwest Guides and Anglers Association	Fishing Interests	brees@pacifier.com (503) 812-9036
DEQ Team	Title		Contact Information

Debra Sturdevant	Water Quality Standard Lead		sturdevant.debra@deq.state.or.us 503-229-6691
Aron Borok	Water Quality Standard Specialist/Rulemaking Lead		borok.aron@deq.state.or.us 503-229-5050
Spencer Bohaboy	Policy Development Specialist		bohaboy.spencer@deq.state.or.us 503-229-5415
Alex Liverman	Water Quality Coordination Program Analyst		liverman.alex@deq.state.or.us 503-229-5080
EPA Team (Agency Advisors)	Title		Contact Information
Lindsay Guzzo	Water Quality Standards Unit		guzzo.lindsay@epa.gov 206-553-0268
Rochelle Labiosa	Water Quality Standards Unit		labiosa.rochelle@epa.gov 206-553-1172

Roles and Ground Rules

Committee members

Advisory committee members should attend each meeting in person to ensure continuity throughout the process. An alternate may be assigned if the member is not able to attend a meeting. However, it is each committee member's responsibility to fully brief their alternate on all relevant issues and prior committee discussions in order to meet the meeting objectives and keep the project on schedule. If a member's absence is unavoidable, please notify the DEQ project manager as soon as possible and let them know if you will have an alternate attend in your place.

The committee member:

- Prepares for and sets aside time for the meetings;
- Provides DEQ staff with copies of relevant research and documentation cited during the meeting;
- Stays focused on the specific agenda topics for each meeting;
- Comments constructively and in good faith;
- Consults regularly with stakeholders to inform them on the process and gather their input;
- Treats everyone and his or her opinions with respect;
- Allows one person to speak at a time;
- Is courteous by not engaging in sidebar discussions; and
- Avoids representing to the public or media the views of any other committee member or the committee as a whole.

Non-Committee Member Attendees

Those who attend the committee meetings, but are not members of the committee are there only to observe and not to actively participate. If time is available, DEQ may allow non-committee attendees to provide comments or ask questions. Anyone who is interested in providing feedback will be able to do so during DEQ's public comment period, which is expected to begin in January 2019.

DEQ staff

DEQ is committed to making the most effective use of committee members' time by:

- Establishing clear committee goals, meeting objectives and agendas;
- Communicating DEQ sideboards and available decision space
- Giving committee members reasonable access to staff;
- Encouraging all committee members to take part in discussions; and
- Providing a clear description of members' roles, the committee timeline, the level of agreement expected and feedback on how members' input is used.

DEQ support and website

DEQ will provide materials to the advisory committee at least one week in advance. DEQ will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members. DEQ will not prepare a formal committee report, however, the committee process and highlights of the discussion will be included in the staff report to the EQC when the rule is proposed for adoption. The DEQ project manager will send draft meeting summaries to the advisory committee for review and input. Final meeting minutes will be posted to the advisory committee website and will be part of the public record.

The advisory committee charter, meeting agendas and minutes, and background materials will all be located on the following advisory committee webpage: [Mercury Variance Rulemaking 2019 Page](#).

Public records and confidentiality

Committee communications and records, such as formal documents, discussion drafts, meeting summaries and exhibits are public records and are available for public inspection and copying. DEQ does not assume responsibility for protecting proprietary or confidential business information shared during committee or subcommittee meetings. However, the private documents of individual committee members generally are not considered public records if DEQ does not have copies.

Information exchange

Committee members will provide relevant information in advance of meetings to the extent possible. The members will also share all relevant information with each other to the maximum

extent possible. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it.

Public involvement

All meetings will be open to the public. The public may attend, but is not entitled to participate in, meetings. Later in this rulemaking there will be a public comment period during which any person may submit comments on the proposed rules. DEQ may set aside time for the public to speak. Additionally, citizens who wish to submit comments are encouraged to communicate directly with a committee member or directly with DEQ staff.

Once the committee process is complete, DEQ will prepare a Notice of Proposed Rulemaking and provide a public comment period according to the requirements of the state Administrative Procedures Act. Committee members will have the opportunity to comment on the Statement of Fiscal Impact prepared for the Notice during the advisory committee process. Individual committee members may provide comments to DEQ on the full notice during the public hearing. DEQ may modify the final rule based on public comment.

DEQ Contacts

Primary Contact

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Alternate contacts

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Alternative formats

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.