



Developing Implementation Tools Related to Recently Approved Human Health WQS for Toxic Pollutants in Oregon

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DOE Public Workshop: Surface Water Quality Standards
Lacey, WA
December 13, 2011

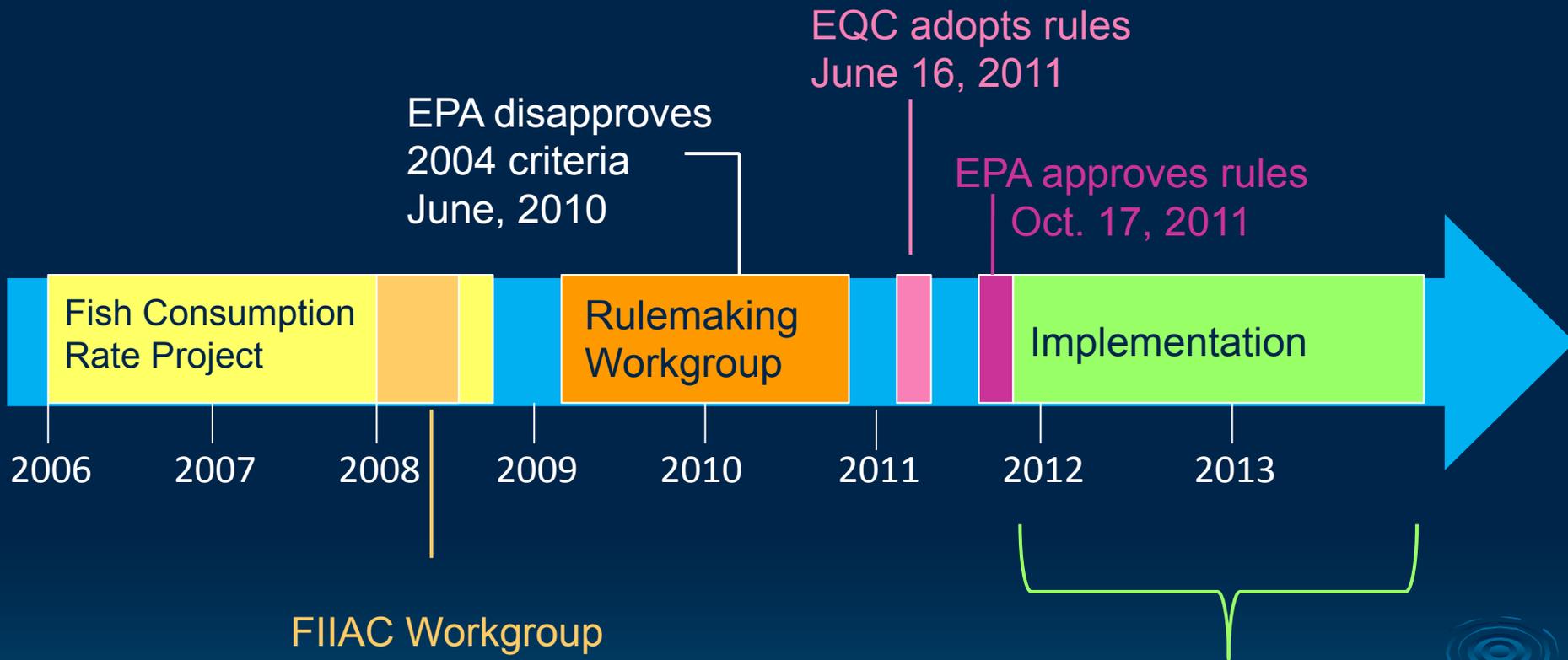


Introduction

- Presentation will cover:
 - Timeline of Rulemaking Process
 - Stakeholder Advisory Workgroups
 - Membership/Objectives
 - Implementation Tools Identified Through Workgroups
 - Final/Approved Rules



Summary of Rules: Timeline



- intake credits
- site-specific background pollutant criterion
- revised variance rule



Prior to Rulemaking

- Fiscal Impact and Implementation Committee
 - Objectives:
 - Discuss potential fiscal impacts associated w/ selection of higher FCR. Reviewed and commented on an EPA-contracted cost/benefit analysis of revising the FCR (no final consensus).
 - Identify possible implementation strategies to address costs of implementation
 - Representatives from tribes (2), public health (1), municipal water agencies (1), local government (1), industry (2), economic consulting firm (1) and economic innovation organization (1)
 - Approximately seven meetings beginning in Jan. 2008



During Rulemaking

- Rulemaking Workgroup (met Dec. 2008-October 2010)
 - Monthly meetings
 - 8 members: municipal and county governments, industry, and environmental organizations
 - Charged with providing input on scope and content of proposed rules
 - Developed issue papers
 - Summarized workgroup discussions and concerns, including any issues the stakeholders identified as significant
 - Included DEQ's recommended approach and analysis



Early Workgroup: Identified key variables to consider in selecting implementation approaches

- ⦿ tool option
- ⦿ general approach
- ⦿ regulatory vs. voluntary
- ⦿ affected party
- ⦿ chemical driver
- ⦿ regulatory certainty
- ⦿ implementation steps/schedule
- ⦿ monitoring plan
- ⦿ compliance enforcement mechanism
- ⦿ costs/benefits
- ⦿ expected results
- ⦿ feasibility (tech., legal, political, economic)





Brainstorming

- Using the key variables identified in the prior slide, DEQ and stakeholders discussed potential implementation tools
- Some options were eliminated because they:
 - did not conform to CWA objectives or regulations
 - were too resource intensive
- Some options addressed by current rules
- Final rules reflect 2 new rules and 1 revised rule



Stakeholder Advisory Workgroups: Tool Options

○ Approaches Where Legal or Health Risk Questions Arose

● WQ Benchmark Criteria

- Benchmarks used to establish WQ permit goals and pollution prevention (similar to stormwater approach)

● Deminimus:

- Include in WQS narrative
- Establish pollutant-specific PQL/MDL/QL based on a deminimus value for each human health criterion



Stakeholder Advisory Workgroups: Tool Options

- Approaches Where Legal or Health Risk Questions Arose , cont.
 - **Delayed Implementation/Phased-in Approach**
 - Postpone effective date giving DEQ and the regulated community time to prepare guidance documents and explore compliance options
 - Allow a lower FCR or higher risk level on an interim basis
 - Very likely not approved by EPA given their disapproval of the 2004 HHC based on 17.5 g/day (the action caused the HHC criteria to revert back to old criteria based on 6.5 g/day)



Stakeholder Advisory Workgroups: Tool Options

- Approaches Where Legal or Health Risk Questions Arose , cont.
 - Various Toxics Reduction approaches
 - Based on RPA and a statewide integrated toxics reduction strategy
 - Later a narrative standard (no WQBEL) was proposed w/ a required pollutant reduction plan—not legal under CWA
 - OR already has a statewide toxics reduction strategy in place (i.e. SB 737 effort)



Stakeholder Advisory Workgroups: Tool Options

- ⦿ Approach that was too resource-intensive
 - Restoration Standards
 - EPA FRN Jan. 2010: Proposed to develop “restoration standards” for Florida. Requires a UAA and regulatory interim DUs and WQ criteria while restoration activities are being undertaken. Other steps similar to TMDL development are also needed.
 - Generally, not to exceed 20 years
 - Too resource-intensive and requires rulemakings at each interim step



Stakeholder Advisory Workgroups: Tool Options

- ⦿ Approaches that required site-specific rules or already exist
 - Compliance schedules
 - Used when a permit holder cannot comply w/ a WQBEL immediately, but is expected to within a given timeframe
 - Offsets
 - Permit holders seek reduction opportunities elsewhere in the watershed to “offset” their mass loading
 - Use Attainability Analysis
 - Revise DU for a waterbody if that use is incorrect (e.g. not used as a drinking water source)



Stakeholder Advisory Workgroups: Tool Options

- ⦿ Approaches that required site-specific rules or already exist, cont.
 - Site-specific Criteria
 - Develop site-specific criteria to account for natural conditions





Final Rules

- ⊙ Intake Credits (OAR 340-045-0105)
 - Accounts for pollutants already present in intake water
 - mass and concentration of effluent same or less than intake water—modeled after Great Lakes Initiative
- ⊙ Variances (OAR 340-041-0059)
 - Allows an exemption from meeting WQS
 - Must meet at least one of the six 40 CFR 131.10(g) factors (e.g. economic, natural or human caused sources of pollutant)
 - DEQ's rule requires a pollutant reduction plan
 - DEQ will re-assess need for a multiple discharger variance



Final Rules

- Site-specific Background Pollutant Criterion
 - Establishes a site-specific criterion at the vicinity of the discharge
 - Only for human health toxics that are carcinogens
 - Discharge mass \leq intake mass
 - Allows a 3% increase in discharge concentration
 - Cannot exceed a 1×10^{-4} risk level
 - Performance-based standard
 - Predictable and repeatable: EPA approves provision rather than each discharger request
 - Earlier approach for this tool did not reflect a change to a WQS



Questions?

Toxics Rulemaking Website:

<http://www.deq.state.or.us/wq/standards/humanhealthrule.htm>

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