



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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JAN 31 2013

OFFICE OF
WATER AND WATERSHEDS

Mr. Greg Aldrich
Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: EPA's Action on New and Revised Aquatic Life Water Quality Criteria for Toxics in Oregon's Water Quality Standards

Dear Mr. Aldrich:

The U.S. Environmental Protection Agency (EPA) has completed its Clean Water Act (CWA) review of Oregon's new and revised aquatic life water quality criteria for toxics, which are in Tables 20, 33A, and 33B of Oregon water quality standards found in Chapter 340, Division 41, of Oregon's Administrative Rules (OAR 340-041). Oregon submitted them to the EPA on July 8, 2004, and amended its submission on April 23, 2007 and July 21, 2011.

Under Section 303 of the Clean Water Act, 33 U.S.C § 1313, states must establish water quality standards and submit them to the EPA for approval or disapproval. Likewise, revisions to a state's water quality standard must also be submitted to the EPA for approval or disapproval.

On May 29, 2008, the U.S. District Court for the District of Oregon issued a consent decree setting forth deadlines by which the EPA must take action, under Section 303(c) of the CWA, on Oregon's July 8, 2004 submission to the EPA (*Northwest Environmental Advocates v. U.S. EPA*, No. 06-479-HA (D. Or. 2006)). The court subsequently issued several extensions of the applicable deadlines for action and also amended the order requiring the EPA to act on Oregon's July 8, 2004 submission, as amended by Oregon submissions to EPA on April 23, 2007 and July 21, 2011. For the portions of the submission that the EPA is acting on today, the applicable deadline for the EPA action under the consent decree is January 31, 2013.

While the Oregon submittals included revisions to a number of provisions, only aquatic life criteria are being addressed in today's decision. Revisions not addressed in today's action have been addressed by the EPA in separate actions.

SUMMARY OF EPA'S DECISION

Pursuant to the EPA's authority under Section 303(c) of the Clean Water Act and implementing regulations found in the *Code of Federal Regulations* (CFR) at 40 CFR Part 131, the EPA is approving the following:

- Introductory language to Tables 33A and 33B
- Aquatic life criteria:

COMPOUND	FRESHWATER		SALTWATER	
	Acute (CMC)	Chronic (CCC)	Acute (CMC)	Chronic (CCC)
BHC gamma- (Lindane)	approve	---	---	---
Cadmium	---	approve	approve	approve
Chromium (III)	approve	approve	---	---
Chromium (VI)	approve	approve	---	---
Copper	---	---	approve	approve
Dieldrin	approve	approve	---	---
Endrin	approve	approve	---	---
Lead	approve	approve	approve	approve
Nickel	approve	approve	approve	approve
Pentachlorophenol	approve	approve	---	approve
Selenium	---	---	approve	approve
Silver	approve	approve	approve	---
Tributyltin (TBT)	approve	approve	approve	approve
Zinc	approve	approve	approve	approve

NOTE: “---” means no new or revised criterion was submitted to EPA or EPA is disapproving the criterion (see table below for disapprovals).

- Table 33A Footnotes: D, M (acute pentachlorophenol criterion), N, P (as applied to alkalinity only), S, U, and X.
- Table 33B Footnotes: E, M (chronic pentachlorophenol criterion), and N.
- Non-substantive formatting/editorial changes in Tables 33A, 33B, and 20.

The EPA is disapproving the following:

- Aquatic life criteria:

COMPOUND	FRESHWATER		SALTWATER	
	Acute (CMC)	Chronic (CCC)	Acute (CMC)	Chronic (CCC)
Aldrin	disapprove	---	disapprove	---
BHC gamma- (Lindane)	---	disapprove	disapprove	---
Chlordane	disapprove	disapprove	disapprove	disapprove
DDT 4,4'-	disapprove	disapprove	disapprove	disapprove
Dieldrin	---	---	disapprove	disapprove
Endosulfan	disapprove	disapprove	disapprove	disapprove
Endosulfan alpha-	disapprove	disapprove	disapprove	disapprove
Endosulfan beta-	disapprove	disapprove	disapprove	disapprove
Endrin	---	---	disapprove	disapprove
Heptachlor	disapprove	disapprove	disapprove	disapprove
Heptachlor Epoxide	disapprove	disapprove	disapprove	disapprove
Aluminum	disapprove	disapprove	---	---
Ammonia	disapprove	disapprove	---	---
Cadmium	disapprove	---	---	---
Copper	disapprove	disapprove	---	---
Selenium	disapprove	disapprove	---	---

NOTE: “---” means no new or revised criterion was submitted to EPA, or EPA is approving the criterion (see table above for approvals).

- Table 33A footnotes: A, I, O, P (as applied to endosulfan criteria), and T
- Table 33B footnotes: A, C, P, V, and W
- Introductory language to Table 20
- Addition of hardness based formulas to Table 20

The EPA is not taking action on the following because they are not considered water quality standards under Section 303(c) of the CWA, or the footnote is not actually cited in the Table:

- Table 33A Footnotes: C, E, F, V, and W are not cited in Table 33A
- Table 33A Footnotes: Q and Y are not water quality standards
- Table 33B Footnotes: D, I, O, S, T, U, and X are not cited in Table 33B
- Table 33B Footnotes: N, R, and Y are not water quality standards

Finally, the EPA is not taking action on the revised freshwater and saltwater aquatic life criteria for arsenic and saltwater aquatic life criteria for chromium VI adopted into Oregon's water quality standards in 2004 and subsequently removed from the Oregon's water quality standards in 2007. Because Oregon's 2007 submission to the EPA supercedes its 2004 submission to the Agency, the omitted criteria are no longer before the EPA for review. The EPA recommends that Oregon re-adopt the inadvertently omitted criteria.

Additional information and a detailed discussion of the rationale supporting all of the EPA's actions is included in the enclosed document titled *EPA Clean Water Act 303(c) Determinations On Oregon's New and Revised Aquatic Life Toxic Criteria Submitted on July 8, 2004, and as Amended by Oregon's April 23, 2007 and July 21, 2011 Submissions*.

ADDRESSING THE DISAPPROVALS


Under CWA Section 303(c)(3) and the EPA's regulations at 40 CFR Sections 131.21 and 131.22, if the EPA disapproves a state's new or revised water quality standards, it must "specify the changes" necessary to meet the applicable requirements of the Act and the EPA's regulations. If the state does not adopt necessary changes, the EPA is required to propose and promulgate appropriate changes. Additionally, the EPA's decision to approve or disapprove any future actions must be consistent with the requirements of the Endangered Species Act.

The specific changes necessary for each disapproval are included in the *EPA Clean Water Act 303(c) Determinations On Oregon's New and Revised Aquatic Life Toxic Criteria Submitted on July 8, 2004, and as Amended by Oregon's April 23, 2007 and July 21, 2011 Submissions*. The Clean Water Act requires that these disapprovals be addressed in a timely manner and, as discussed with your staff, the EPA is available to work with Oregon as it reviews the required revisions. The Clean Water Act requires EPA to promptly propose aquatic life criteria for Oregon if Oregon does not adopt the changes specified in the disapproval within 90 days of notification.

In addition, during government-to-government consultation with the Confederated Tribes of the Umatilla Indian Reservation on the EPA's action, the Tribe requested that the EPA and Oregon provide them updates regarding what specific changes are made to address the EPA's disapproval. Therefore, we plan to provide these updates to the Tribe and will coordinate with Oregon on these discussions.

We have appreciated our work together throughout this process and remain committed to providing assistance as you move forward in the rule making process. If you have any questions concerning this letter please contact me at (206) 553-1855 or you may contact Angela Chung, Water Quality Standards Unit Manager, at (206) 553-6511.

Sincerely,



Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosures

cc: Jennifer Wigal, ODEQ
Andrea Matzke, ODEQ
Debra Sturdevant, ODEQ