

**Oregon Fish and Shellfish Consumption Rate Project
Fiscal Impacts and Implementation Advisory Committee
Meeting 6**

Tuesday June 3, 2008

9:00-5:00 pm

Location: US EPA - Region 10 (503 326-3250)

805 S.W. Broadway, 20th Floor

Portland, OR 97205

Call-In Number: TBD

Proposed Agenda

Purpose of this meeting: To finalize the group's work together and prepare for the June 27th public workshop.

9:00 Get Settled, Welcome and Introductions

9:15 What does DEQ need/want from the FIIAC—clarifying comments about 6/27 public meeting agenda

9:30 Cost of Compliance (Decision Needed):

What does FIIAC, as a group and/or as individuals, want to convey about the following?

- Commentary related to SAIC's final report
- Municipalities' perspectives on cost of compliance
- Industry perspectives on cost of compliance

(10:30-10:45 Brief Break)

11:30 Implementation Inventory (Decision Needed)

Members developed a proposal for an 'implementation option' related to the Implementation Strategies Inventory at the 5/23 meeting. Should that be refined in any way? What does the group want to convey to the public about this? How and who will do this?

12:30 LUNCH (ordered in?)

1:30 Continue Implementation discussion

2:15 Benefits (Decision Needed)

What, if anything, does FIIAC want to say about benefits that might flow from an increased FCR? Is there qualitative language the group could agree to and/or a

suggested approach that the group could support that would enable a better understanding of these benefits (e.g. Can Kristen or Sarah provide a proposed outline of the types of benefits, both direct and indirect, that DEQ or the EQC could build upon at a later date)?

4:00 Final Planning for Public Workshop

- Roles for FIIAC members
- Roles for DEQ, EPA, CTUIR
- Materials needed to support workshop
 - Who will produce these?
 - By when?
- Any other assignments at this time?
 - E.g. report/memo on group's work and decisions

5:00 Adjourn

**Oregon Fish and Shellfish Consumption Rate Project
Fiscal Impact and Implementation Advisory Committee (FIIAC)
DRAFT Meeting Summary
June 3, 2008**

In attendance for all or part of the meeting:

Members: Deanna Connors (DHS), Kathleen Feehan (CTUIR), Rich Garber (Boise, Inc.), Kristin Lee (ECONorthwest), Susie Smith (ACWA), Willie Tiffany (League of Oregon Cities), Kathryn VanNatta (Northwest Pulp and Paper Association)

Resource Advisors and Others: Tim Connor (on phone, EPA Headquarters), Chris Jarmer (OFIC), Jannine Jennings (EPA), Annette Liebe (DEQ), Melinda McCoy (EPA), Neil Mullane (DEQ), Rob Roholt (Blue Heron Paper), Mary Lou Soscia (EPA), Deb Sturdevant (DEQ), Jennifer Wigal (DEQ), Mike Wiltsey (DEQ), Terry Witt (OFS)

Facilitation Team: Donna Silverberg and Robin Gumpert, DS Consulting

What does DEQ Need/Want from the FIIAC? Jennifer Wigal, DEQ, shared what would be desirable, from DEQ's perspective, for the FIIAC to focus its efforts on, and provided ideas for products that might result from the group's work. She reiterated the three broad areas that the group could focus on – cost, implementation and benefits. She suggested discussions today might lead to clarity on what the final product will look like. She also clarified that a FIIAC memo could be completed by the end of the Fish Consumption Rate Project process (not necessarily in time for the June 27 workshop), and shared the process the Human Health Focus Group used: they shared updates of their work at an EQC informational meeting and general conclusions at a public workshop, and will have a completed, final product in time for the August EQC informational meeting.

A draft June 27 workshop agenda was shared with FIIAC members to help focus today's discussions in preparation for that meeting.

Questions and Comments on the draft agenda:

- The agenda pre-supposes that workshop participants understand the range of fish consumption rate options being considered in terms of cost. (It was noted that the range of options and the number the three governments are coalescing around will be part of the up front, 'Setting the Stage' portion of the agenda.)
- One member suggested a half hour for the implementation options discussion might be cramped. (*Times on the agenda were adjusted per FIIAC suggestions throughout today's meeting.*)

Discussion of the Cost Analyses:

Re: ACWA's analysis: It was clarified the traditional approach costs analysis (a range based on real data) is an expanded version of what was put into the Alternatives Matrix. This analysis does not attribute cost to fish consumption rates. Instead, cost is associated with volumes of water. The group acknowledged the difficulty for a lay person to understand what that really means, so it was suggested that ACWA provide more context for people to understand the scale of cost. (ACWA said they could provide very general rates, as they have in the past –e.g. what the general rate increase would be for the four different jurisdictions used in the analysis.) This will help tell the take home message that traditional approaches to meeting an increased fish consumption rate would be very costly, if possible at all.

Re: NWPPA Cost of Compliance Analysis: the report was not yet ready to share. Kathryn VanNatta reported that the report analyzes technologies needed for treatment of a range of criteria (63-389 grams/day) and considers capital, O&M and annual costs. A reasonable potential analysis was done for mill effluent and water column, re: cost to treat now vs. cost with new criteria. Because reverse osmosis is not a common treatment, it was difficult for the contractor to get cost information for that technology. Specifically, the contractor looked at those effluents with high organic matter concentrations. Kathryn noted that disposal of by products is also a cost factor, and is largely dependent on where a facility is located geographically. Kathryn said NWPPA's hope was to have information available to share prior to the June 27 workshop. She acknowledged that FIIAC members would like to review it sooner and said the tight timeline of the FIIACs work likely would not allow for this to happen. She also reported that the SAIC report was shared with their contractor when it was received yesterday.

Question to NWPPA: Is it possible to extract/glean some rough comparative cost estimates from the analysis, perhaps as a poster for the workshop – similar to what ACWA plans to present? Again, the group is looking to provide a simple and easy way for the lay person to understand costs, and to point out the 'sticker shock' of treating a higher rate using the traditional approach.

NWPPA response: Yes, we will provide an executive summary of our findings.

Everyone agreed that there needs to be clarity up front about how much FIIAC has reviewed the analyses that get shared at the public workshop and that FIIAC, as a committee, has not endorsed any of the analyses. The group will not have reached any conclusions on the analyses by the June 27 workshop.

ACTION: The June 27 agenda was refined to include time for the FIIAC co-chairs to share a summary of the status of FIIAC concerning review of the analyses and the extent to which the analyses fed into discussions around implementation and benefits. In addition, it was discussed that, while data is lacking for pre-treatment costs, this is an important piece of the overall picture and a narrative of those areas that would be impacted/have an impact should be included in the co-chair summary at the meeting.

While not all members of the FIIAC had a chance to review the SAIC report before today's meeting, one FIIAC member shared that the latest revisions made to the SAIC report showed more consistency with the ACWA and NWPPA analyses, and expressed appreciation for SAIC's response to FIIAC comments.

RE: the SAIC analysis: Tim Connor, SAIC, shared that the additional facilities recently added for analysis have not been included in the current draft, and that costs for alternative strategies will be included in the final report. (One FIIAC member noted the cost estimates from this report would not necessarily fit into the 'sticker shock' category mentioned earlier.)

Comments:

- All analyses should clarify what the baseline is: 17.5 grams/day? ACWA's baseline is the 'current standard' (6.5) rather than 17.5 grams/day. Current treatment technologies don't treat toxics to get to 17.5 grams/day – so where there is a reasonable potential to violate, technology needs to be developed.
- It is important to know whether these technologies would be needed to get to compliance with the current, 17.5 grams/day so it would not necessarily be an 'added cost' if you need to do it to get to compliance with the current standard.
- NWPPA and ACWA responded that it is very complicated and difficult to differentiate the baseline of 17.5 grams/day from some other rate, as compliance measures are dependent on more than just the fish consumption rate. Dilution, e.g., comes into play.
- It was also noted that we are making assumptions on a current rate that has not been approved by EPA and is not currently being used for 303(d) listings. This is a major caveat. Permits are written to either the old, approved criteria, or to Oregon's current (not approved) 17.5. It will be important to clarify this reality during the June 27 workshop.

Note from DEQ: DEQ anticipates a relationship between pretreatment (small business) costs and impacts to municipalities and will need to think through this at some point. Small businesses were not addressed here. ACWA affirmed that their cost estimates were based on treatment only, not on small business/pretreatment. This is very difficult to quantify, and is a very important component. Neil Mullane, DEQ, offered that small

businesses with pretreatment programs could in the future be required to meet criteria, if contaminants could be attributed and it would be possible to meet the criteria. This would reduce cost to municipalities. However, he noted, we do not have the data so we need to assume at this stage that municipalities will be responsible to cover all the costs. DEQ will make the point that we have not yet gone there, but we are close. It was noted that universities, other non-profits, and other non-industry groups fall into this category.

- To highlight potential impacts to small businesses, it was suggested that a statement should be made at the June 27 workshop about where metals entering the system are coming from. An additional statement could be made about the comparable cost if a city has to treat vs. a small business. Economic issues would then need to be addressed – and there are many uncertainties.

Action: DEQ shared the SAIC response to comments with the FIIAC during today's meeting. Tim Connor reported that a final analysis will not be completed this week and it was uncertain when it would be finished. He noted this is a high priority for SAIC and they will finish their work as soon as possible.

Questions and Comments on SAIC report:

- To what extent did SAIC rely on the PCS data base? EPA response: PCS was not relied on much for this analysis. SAIC was encouraged not to rely too much on the database.
- NWPPA expressed appreciation for the added robustness of the end of pipe costs and control section (Appendix C), and agreed with SAIC's note about the difficulty in doing reverse osmosis treatment for large scale wastewater, at dilute concentrations.
- Appendix B: re: dioxin. Oregon has a functioning dioxin TMDL which NWPPA complies with. Note this in the analysis. Also note that NWPPA no longer uses bleaching techniques.
- **Action:** Tim offered to share the original summary of potential changes and/or, once the final is complete, the summary of changes that were made to the report. FIIAC members requested both.

Action: By Friday June 13, FIIAC members will provide 'factual review' comments to Deb Sturdevant and Jennifer Wigal, who will pass them on to SAIC. FIIAC members will circulate broad perspective comments on the SAIC analysis via email to Kristin and Sarah who will compile/summarize the comments for further review by the FIIAC, with an eye toward presenting at the June 27 workshop and eventually folding them into a final FIIAC memo.

A number of FIIAC members expressed perception concerns related to the workshop panel on the analyses. It needs to be made clear that the analyses were not done by FIIAC nor fully reviewed or agreed upon by FIIAC. The question and answer session after each analysis should focus on clarifying questions only, with discussion around limitations, etc. to follow after the FIIAC co-chairs give their summary of FIIAC responses to the analyses.

Additional revisions were made to the June 27 workshop agenda, and the revised agenda was shared at the next day's (June 4) Toxics Reduction public workshop.

Implementation Inventory

FIIAC members reviewed the latest matrices, one a complete list of implementation options and the second a proposed comprehensive alternative that the FIIAC began to develop at the May 23 meeting. In addition, DEQ shared a flow chart draft that shows when/how DEQ might apply the different approaches. This was offered as a framework for discussion.

Questions and Comments:

- Regarding the proposed comprehensive approach: Would a permit review happen through rulemaking, or via the permit renewal schedule? Renewal schedule.
- Under the alternative process with compliance schedules, will DEQ issue these? DEQ response: Yes, if available, we would. At the present time, a law suit exists that questions EPA's approval of Oregon's compliance schedule rule. A possible settlement was expected in the next 90 days on this matter. If it were to go to court, it is uncertain when this issue would be settled. If DEQ were to issue compliance schedules in the absence of a settlement, we would need to have all the appropriate information and assurances in place to do so. DEQ is open for discussion around adding a compliance schedule where human health criteria is the limit.
- FIIAC members asked whether Oregon could provide any certainty whether it will utilize this mechanism in the near term.
 - DEQ response: It is difficult to have a specific plan while we are under litigation, and, we believe under certain circumstances, compliance schedules are needed and useful. Again, we would need to have all the appropriate information in place to make that determination.
 - EPA response: Uncertainty exists, and, EPA would like to explore options to use compliance schedules.
 - It was also noted that, because FIIAC does not have 'control' over the decision, the best we can do is offer recommendations that will inform and perhaps influence decision-makers. We need to be clear where uncertainty exists, and, use this process as an opportunity to point out why some of these tools (e.g. compliance schedules) are important in moving forward.
 - FIIAC agreement: A compliance schedule is needed in order to move into the other tools. FIIAC members agreed a decision should be made on this soon, and hope that compliance schedules will be used as a tool in the future.
- Have source reduction plans been challenged? DEQ response: We are not aware of any legal challenges, which could be an indicator that they would be feasible, based on national experience.
- Be consistent with term usage for the tools (source reduction, toxics reduction, pollution prevention – are they all the same?)
 - DEQ response: In the graphic we developed, pretreatment should be separated from source reduction and included as its own approach.

- EPA response: Toxics reductions are a broad umbrella term EPA uses. We should determine together which specific toxics reduction approaches to recommend and choose language that makes the most sense to us in Oregon.
- What legal problems exist with BMPs? DEQ response: The original temperature rule included a temperature management plan that would require compliance to be met in cycles. Now, we just look at which temperature criteria needs to be met. FIIAC could help DEQ make the case to put that type of process into place for human health criteria. DEQ suggests the group not focus on the past, rather on what we need to do and say now to build a robust rule and documentation (including cost) as to why these approaches and tools are necessary.
 - A FIIAC member suggested that the difference between the temperature management plans process and this FIIAC process is that there were several environmental representatives sitting at the table – and those members are not at the FIIAC table.
 - DEQ response: Today we should look at what FIIAC wants to pursue, and DEQ can work with others to figure out if and how it can happen.

Comprehensive Alternative Approach to Implementation

Susie Smith, ACWA, shared ideas about how the matrix might be configured to best represent the two recommended comprehensive approaches. It was developed on a chart and FIIAC members worked together to refine it to make the most sense to them, and to potential audiences.

Questions and Comments:

- On the Benchmark Approach – with no legal numeric limit accompanying this approach, DEQ is more prone to litigation. How would this be sufficiently legal to cover DEQ’s regulatory needs?
- NWPPA/AOI response: When DEQ writes the Rule, they would need to include, in the implementation section, how benchmarks are to be used. An example might be Phase I stormwater management plans, which require meeting a benchmark first, and then move into WQBEL in a stepwise process. If the benchmark is not met, the permit holder needs to ratchet up efforts but do not have as much risk of litigation. If requirements in the permit are not met, the permit holder would be in violation and subject to all fines associated with that violation. A compliance schedule would be used with this approach.
- CTUIR response: If this approach does not lead to numeric criteria at some point, this would likely be a concern to the Tribe. These various approaches could be used if coupled with numeric criteria.
- DEQ response: We need to have an enforceable limit. DEQ does both a technology based analysis and a human health analysis.
- So would the baseline be 17.5 grams/day? Yes, from industry perspective and with this approach, 17.5 grams/day would be retained as the standard, and, e.g., 175 grams/day be set as the revised FCR to establish a new water quality benchmark analysis.

- DEQ response: From a permitting perspective, yes this is feasible. From a standards perspective, there is a concern. DEQ noted that compliance schedules might be extended beyond just one permitting cycle (could go on beyond 5 years), and that they are in discussions with EPA about this.
- Concern with the absence of any legal bite with this approach– how would removing this threat get us closer to cleaning up toxics? Also, analyses we have seen so far show that the toxics reduction approach could be a workable approach – and not so much for the water quality benchmark approach.
- Need to see regulatory strength of setting a numeric target – so would have difficulty supporting the benchmark strategy.
- From DEQ’s and EPA’s perspective, is the benchmark approach feasible?
 - DEQ response: Without submitting a standard for EPA approval, this would have no regulatory meaning.
 - EPA: We agree; this approach would be problematic for us as it raises real legal challenges for us to say 17.5 grams protects the human health of Oregonians, given all the work that has been done over the last two years through this process. Not sure we could approve 17.5 grams/day.
- Has a phased in approach to a water quality standard ever been done? Yes, in conjunction with other regulatory tools. EPA has to determine whether or not the criteria are protective of the use, or whether activities will get to a level of protection that would protect consumers. The Delaware Bay estuary set interim numeric targets based on feasibility, studies and monitoring. Keep in mind this was water body specific.
- CTUIR will not support a benchmark approach unless it is tied to a regulatory standard of a higher rate to protect fish consumers – it needs to be tied to the Clean Water Act. That said, we are interested in discussing options for flexibility around implementation to get there.
- Industry reiterated that the purpose of this out of the box approach was to help remove or reduce the threat and uncertainty of lawsuits.

Next Steps for the Inventory: Without over-complicating it, members of the FIIAC wanted to flesh out the matrix with all the possible approaches to show the full breadth of considerations needed to make decisions around the various approaches. One suggestion is to have three visuals: the original matrix with ‘terms/definitions’; the DEQ flow chart and the alternative approach flow chart that shows an alternative approach applied to DEQ’s flow chart.

Action: To be shared with FIIAC by June 13: Susie Smith, ACWA, and Deb Sturdevant, DEQ, will make refinements to the proposed alternatives and format them into a graphic. They will also make refinements to the ‘terms/definitions’ matrix to flesh it out, and to include columns for ‘Implemented in Oregon’ and ‘Implemented in the U.S.’. Deb will make revisions to the DEQ flow chart.

Neil Mullane, DEQ, suggested a different way to use benchmarks: If we choose a new rate (175 grams) and establish standards, as we put the Rule together, we could imbed an implementation schedule/compliance schedule that could include benchmarks as a first

step toward getting there. NWPPA/AOI response: This would meet our interest in having enough time to get to the baseline and then beyond. EPA: This idea holds more promise for approval; and some challenges might be posed because the number wouldn't apply at the time of adoption, but at a later time. If a compliance schedule is attributed to a particular facility, it would be easier than applying it to the Rule.

Action: The FIIAC agreed to revise the original benchmark approach to include the alternative proposed benchmark option described above, which would include an increased rate. CTUIR thanked industry for their willingness to explore the option of a higher rate in combination with this particular compliance approach.

Question: under ACWA's comprehensive approach, how would compliance be addressed during the first cycle? ACWA response: A compliance schedule and/or development of toxics reduction programs.

Neil noted that while DEQ appreciates and welcomes all the ideas being developed, these may or may not be feasible for DEQ to implement. Just as a reality check, we could face tremendous legal challenges to these approaches. Question: What is the difference between the two proposed strategies? DEQ response: There does not seem to be much difference but they could have different timeframes depending on whether a compliance schedule, benchmark, or some other tool was used. Both likely would need to include a 10 year compliance schedule with different stops along the way. The approaches need to be further tested.

It was clarified that 'traditional treatment' in DEQ's flow chart refers to technically feasible, vs. ACWA's inclusion of 'traditional approach', which means reverse osmosis or other technology decision.

Donna shared a list of overarching messages she heard threading through the discussion. Implementing a new fish consumption rate:

- Will take time for municipalities, industry and others to comply.
- Will have increased costs associated--especially with traditional approaches.
- Will need innovative approaches to attain the standard.
- Likely benefits will be accrued (but those benefits are currently 'unknown').
- Will require a comprehensive approach.

Presenting at June 27: FIIAC did more work for the June 27 workshop, including assigning presenters, times and refining the format. A draft agenda was shared at the June 4 public workshop, and distributed to the email list of 'core group' participants.

Benefits Likely To Stem from a Revised FCR

Led by co-chairs Kristin and Sarah, the group developed a list of potential benefits based on two categories.

1) Potential benefits of raising the fish consumption rate and meeting the standards

Human health benefits

- Safe drinking water
- Avoided costs from illness/death
- Dietary (cleaner and local = better)
- Reduce risk for those who do eat fish

Environmental benefits

- Water reuse
- Business
- Recreational – water contact
- Ecosystem health – boost to goods and services
- Tourism
- Amenity/aesthetic
- Avoided costs to industries and utilities
- Fewer contaminants
- Fishing – tribal, commercial, recreational, subsistence
- Improve other species in food chain: birds, etc.

Cultural benefits

- Enable religious/ceremonial activities
- Children
- Healthy fish – icon of the Northwest

2) Potential benefits of specific implementation strategies

Toxic Reductions Strategy

- Human health reduce health impacts
- Innovative possibilities used to reach more efficient systems when not 100% fearful of litigation
- Costs of litigation reduced
- Reduced O&M
- Reduced hazardous waste removal costs
- Reduced energy costs and associated emissions

Stormwater Control Strategy

- Erosion
- Fish health
- Water temperature

Infiltration and Inflow

- Reduce quantity of water and toxics entering plant

Question: What about quantitative benefits? How do we frame so as to not overemphasize benefits that will come out of a new standard? Might we also add a column about whether this would be a measurable benefit anticipated from a rulemaking?

Describe as ‘what should be considered if a comprehensive analysis of benefits were to be done.’ Use an example – DEQ has a mercury pie chart for the Willamette basin. Where would you include this in the workshop? It was suggested to include this example during the introduction to the benefits agenda item. Are there any other examples? EPA will consider this and might be able to calculate load reductions.

It was also suggested that the co-chairs, in setting up the discussion, provide the following qualifiers and share the limitations of doing a benefits analysis: Benefits listed are qualitative and may not be quantifiable; point sources are a small component of all contaminant sources; this is a list of categories of expected results for achieving water quality standards – and it is unknown what the outcomes will actually be from this effort; this is not a comprehensive, definitive or predictive list; and it was developed by economic experts.

Action: Kristin and Sarah will put the list into a document that can be used as meeting materials and folded into a final FIIAC memo. Kathleen Feehan, CTUIR, offered CTUIR assistance on this. **A draft will be distributed to FIIAC by June 13** with an eye toward finalizing all meeting materials by June 23.

Action: All power points and materials should be finalized by June 23 for circulation and review prior to the June 27 workshop.

A question was raised about small group discussion time on the agenda: What is the purpose of this? One suggestion was to limit discussions to responses/feedback on the implementation ideas. Another suggestion was to include time for small group discussion earlier on the implementation agenda item. Or, include paper on the tables for folks to fill out so more time could be used by FIIAC to roll out their work.

Post-June 27 Schedule

August EQC: Neil will share logistics information about the **August EQC** meeting date and location as soon as possible.

July 29 Workshop: Ideas were shared about the use of the **July 29** date currently reserved for the final public workshop:

- FIIAC might use July 29 to finish up their work and to prepare for the August EQC meeting.
- Has outreach to the broader business community been done for the June 27 workshop? If not, July 29 should be reserved as a time for them to participate.
- Allow parties a final opportunity to say what they need to say at the July 29 meeting, rather than at the EQC information meeting. (Or, is this just the beginning of the public input process that will continue through the rulemaking phase?)

Final FIIAC work product: The facilitators will develop a draft final FIIAC report and share it with FIIAC after the June workshop. They will tailor the report from the June 27

meeting outline. CTUIR offered to provide staff assistance. FIIAC members are invited to be on a panel at the August EQC meeting to present their final report.

Given this, the group agreed to have a short meeting sometime in July to finalize the report. DS Consulting will coordinate a meeting date with FIIAC participants via email.

Final FIIAC member comment: NWPPA does not support a new fish consumption rate of 175 grams/day that the three governments have begun to coalesce around. Since this number is being used as parlance to guide the FIIAC process, NWPPA felt they needed to make their position clear. It was also noted that the NWPPA analysis will show a range of rates, the SAIC analysis includes a range of rates, and the EQC expects to see a range of rates to help inform their final decision.