**Water Quality Standards Hearing**

**Eugene Transcription**

**February 2nd, 2011**

**Pamela Wright** - At this time, I would like to begin the hearing on the rulemaking for revised human health water quality standards for toxic pollutants. The hearing will be recorded to maintain a permanent record. Today is February 2nd, 2011. We're in Eugene, Oregon, and the time is 10:25.

I would like to begin taking comments if anyone has prepared a written statement or other documents that would help to summarize them orally, and then introduce written materials into the record. Written comments are given the same weight as oral comments. Comments will be taken in the order received. Please come up to the table and speak. The first person to give comments is Dan Hawthrone [actually, Hanthorne], the City of Corvallis. Please state your name into the -- for the record.

You could just come sit up here. We have the microphones here, so you can sit right here.

**Dan Hanthorn** - Good morning. Thank you for this opportunity to address the hearing. My name is Dan Hanthorn. I work for the City of Corvallis. The City of Corvallis operates and advanced secondary treatment plant, serving about 55.000 residents, and we are committed to toxics reductions in the river and the environment. And as an example, we've reduced mercury output by ninety percent. I should say mercury input to our treatment plant by ninety percent by doing vigorous source control in the community, including dentists are working with schools and other contributors. And we received a first place award for our (pretreatment?) program for that activity.

We also sponsor drug take back events, and other pollutant reduction strategies. Corvallis is....We've applied the proposed standards to our reasonable potential analysis calculation, and the bottom line is that the Corvallis will exceed the more stringent standards for legacy pesticides, plasticizers, and pollutants for which there is no feasible or effective treatment technology. These pollutants are ubiquitous in the environment. They come from many sources, and to this point in time, there are no treatment -- effective treatment technologies.

Arsenic is also a concern, even though Corvallis's discharge is far below the background levels that exist in the Willamette River, due to natural conditions. . The only administrative remedy for this situation are the proposed rules appears to be a variance, And while a variance is not considered to be a preferred process, it currently stands as the only default remedy available to Corvallis.

Our concern is the cost to prosecute a variance application is estimated at fifty-five to sixty thousand dollars for Corvallis, and is only a temporary measure, and must be renewed within permit expiration. The proposed rule initiates a bureaucratic treadmill for Corvallis that doesn't tell us anything we don't already know. That includes the City of Corvallis, the DEQ. It does not improve the water quality standards for streams. and it diverts scarce resources to building and maintaining a regulatory bridge to nowhere. Corvallis is firm in its contention that applying legacy regulations to untreatable and background pollutants is not an acceptable approach. The rules should be revised to incorporate pollutant-specific reduction strategies as allowed under other measures on the the Clean Water Act. Adopting the proposed standards without implementation plans in them is, in our estimation, ill-advised, and should be developed and included along with a proposed rule for clarity and understanding. Adopting the proposed standard without embedded implementation plans will not advance the improvement of water quality. The proposed rule will place Corvallis at unnecessary legal risk, and place pointless and unnecessary monetary burden on the community.

There are other approaches that need to be developed. Toxic reductions is a broad initiative, and all sources must be addressed. It is not reasonable to expect any measure of success while focusing on point source dischargers under the current proposed rule.

Corvallis plans to submit more detailed comments to the DEQ by the comment period deadline. Thank you very much.

**Pamela Wright** - Thank you, Mr. Hawthorne. [Hanthorn] Since we have so many people commenting, I think it would be advisable if we could keep our comments each -- that was fine -- if we could keep our comments to about five minutes or so, that would be really helpful. The next person is Michelle Cahill. Please remember to put your name in the -- state your name.

**Michelle Cahill** - Thank you. Hi, my name's Michelle Cahill, and I'm the director of the waste water division for the city of Eugene. We are responsible for the operation and maintenance of regional waste water facilities, including the regional waste water treatment plant that serves the urban growth boundaries of Eugene and Springfield. We serve a population of over 220,000 people, and we treat about fourteen billion gallons of waste water a year. In addition to the wastewater program. Eugene is a Phase 1, NPDES MS4 community, and we have a long history of proactively working to protect and improve the environment. We are committed to toxic reductions.

We strongly support efforts to reduce toxics from all sources of Oregon's waterways. To achieve this, there are several things that we are actively doing. We have delegated authority by DEQ to regulate forty-four industrial dischargers in Eugene and Springfield, and eighty 1200-Z permits in Eugene. We participate in drug take back events. We have partnerships with a hundred and fifty area dentists in Eugene and Springfield to reduce mercury containing waste into the sewer. We have strong public involvement and information programs to reduce the discharge of toxic pollutants. We partner with local agencies and pollution prevention programs, such as the ecological business program for automotive shops, we manage native plant and nature scaping programs to reduce use of fertilizers and toxic pesticides, and conduct outreach to businesses such as nurseries and garden centers to reduce their environmental impact. We partner with watershed councils and other community groups for restoration projects that protect our rivers, and for education projects that reach a strong spectrum of the population.

Because we care about water quality in the Willamette River, we are on track to invest about a hundred and eighty five million dollars in the regional waste water treatment by our fiscal year '13-'14. We work hard to minimize increases to the ratepayer while maximizing the treatment of the waste; however, the investment completed since 2004 already has increased regional waste water rates by more than a hundred and forty four percent. In addition to the regional program, both Eugene and Springfield annually spend millions of dollars to keep the local collection systems maintained to protect the environment and the river.

Some of our concerns about the proposal include that that treatment technologies to meet the proposed toxic numbers at the waste water plant are not available at a reasonable cost to ratepayers in the community. Effective and feasible treatment technologies to reduce toxic chemicals, such as the legacy pesticides, PCBs or plasticizers just do not exist. Effective toxic reduction must be tackled at watershed bases, and involve all sources of pollution. We want to insure investments in water quality programs are effective in reducing toxic pollutants.

DEQ and the Environmental Quality Commission should be incorporating specific standard implementation strategies that are allowed under the Clean Water Act, likely by the type of pollutants, such as PCBs or legacy pesticides. Adopting the revised standards without accompanying implementation plans will not move this state toward achieving water quality goals in the revised standards, and puts NPDES permit holders at unnecessary legal risk.

DEQ's solution of variances must be improved. While we appreciate DEQ's offer of variances as a compliance tool, especially where that tool incorporates pollution reduction plans as way to make progress to the degree feasible towards improvements, we have several concerns. The EPA regulations restrict variances to being short term and temporary. Very low levels of PCBs or pesticides that are throughout the environment cannot be dealt with in the short term. Even addressing current use toxics will be complicated and may take many years to resolve. There's a substantial amount of paperwork involved in securing a variance. DEQ has estimated the cost to be between eight thousand and forty four thousand dollars. This expense diverts ratepayer investments from other investments that would have greater water quality benefits. These investments include maintaining critical infrastructure, providing additional treatment processes, re-use programs to keep the current effluent out of the rivers, and additional education and monitoring programs to keep toxics out of the waste water stream.

The overall plan that DEQ has developed for variances should be simplified, clearly stated, and efficient. Multi-sector variances should be allowed outright, to accommodate similar situations throughout our basin, or even throughout the state. The obligation to make specific findings regarding endangered species, existing water quality uses, and unacceptable risks to human health should be made by DEQ, not the variance applicants.

We think the impact's been underestimated. The impact on DEQ staff resources and ability to conduct other priority activities within their organization, the fiscal and workload impact to both permittees and DEQ moving beyond variances to the development and implementation of watershed based toxic reduction plans. the impact of the proposal on ratepayers, including businesses and industries that discharge to our facilities, the number of municipal waste water holders that the proposed revisions will affect, and the number of toxics that each of toxics these permittees may be required to address through variances, and the cost to water quality permit holders of applying for and maintaining a variance as a compliance tool.

To close, an effective water quality toxic reduction program must be a broad initiative, and all sources must be addressed. It cannot be just focused on water quality permit holders. We are interested in DEQ's plans for a comprehensive toxic reduction program tied to adoption of more stringent toxic water quality standards. We do plan to submit more detailed written comments to DEQ by the comment deadline, and we appreciate you holding -- DEQ holding these public hearings across the state, and look forward to working closely to maximize the positive impact on water quality in the most effective manner. Thank you.

**Pamela Wright** -Our next speaker is -- commenter, is Erin King. Please state your name.

**Erin King** - Hi, I'm Erin King. After reading the new and amended rule language, I was a bit disappointed with what I gathered. Because I live out in industrial timber land, where a good chunk of fish habitat exists. And what I saw for every opportunity for big timber and big ag to opt out of having to be in compliance with water quality standards. Implementation tools such as variances seem to lay out every excuse for dischargers not to take responsibility for the polluted waters around them. And then adding to that a background pollutant allowance that appears only in aiding the ease of non-compliance. Throughout the questions and answers that I read, EPA mentioned their authority, yet again and again, they defer it to other agencies. This is a chance for DEQ to be a lead agency for positive change, but that isn't going to happen by granting variances.

I have documented proof that big timber clear cutting directly adds sediment to our streams. So sediment is a huge issue, because bound to that sediment are the many, many pesticides and herbicides they have sprayed throughout the years. Add to that the slash burning that unleashes plumes of toxic smokes. The Oregon Forest Practices Act rules and ODF have already proven to many concerned citizens that they are not enough to keep our waters clean. This provides the opportunity for DEQ to stand up and take control of the situation, become the designated management agency that fights for our environment, and most importantly, our water.

In the mid-coast basin, we have many streams on the 303-d list, yet they have no TMDLs assigned. This needs to change, for we desperately need a way to enforce. Thousands of acres or industrial timber land are poisoned every year. By including the current use pesticides to your list, you would be lowering the toxins in the fish.

I moved down to Fish Creek three years ago. We saw coho and Chinook daily during the salmon runs. One year ago, Weyerhauser clear cut the headwaters of Fish Creek. I have since then watched the decline of the health of that creek. With turbidity readings topping 39 NTUs, it's no wonder we haven't seen one coho yet this season. Thanks.

**Pamela Wright** - The next commenter is John Steele.

**John Steele** - Thank you. My name is John Steele. I live in Cottage Grove. I'm on the Row River, and I appreciate the opportunity speaking here today. I'd like to talk about in support of this new fish consumption level. I want to encourage it to be very mindful about the variances that you offer. I like that the comments that have been made so far about incomprehensive, and including all. I'm concerned about variances that are unwritten, variances that are in existence that are known, or unmeasured. And if you have a system that you're going to allow variances, -- if they're clearly defined, that'd be one thing, but you've got, as the previous commenter talked about, we've got other things in the forest practices that are causing problems. And I'd like to give you a specific example. I currently spent over fifteen hundred dollars in water samples concerning the amount of mercury coming through Dorena dam, and Cottage Grove dam. okay, and Cottage Grove Lake. And it's very interesting, what the DEQ thinks happens in a year, in terms of the amount of mercury coming through the dam happens in three and a half days, okay? When I look at your samples, which you have a total of four of in the past ten years, if you look at it terms of the flow graph, it is an astounding probability that they sampled at the lowest flow level in that entire year, But when I seem to sample it -- and I don't sample it at the peak, so I have a conservative estimate, the average is the yearly predicted amount of mercury coming to the dam would happen in three and a half days. In fact, on a bad day, it would probably happen in eighteen hours. I tested it again. The same thing happened the next year.

So when you have an impaired river, and then you're going to give a permit to a proposed hydroelectric project, and from my understanding how gates works, operations works, you have five existing gates, and every time you close a gate and open a gate, you create sediment resuspension in washing through. So now you're going to add one more gate, and they're going to take turns opening and closing, you've increased the amount of sediment floating downstream. Yet in your day to day 401 certification of this project, you said, "Oh, it doesn't matter." It's because they didn't cause the mercury to be there, they're not held responsible. But here again, this is an uncalculated amount of mercury improperly scientifically measured on an impaired known river dam system, and this is an undisclosed variance that's happening. And meanwhile, in your 303 report for the entire Willamette River is -- you can't figure out where all the mercury comes from.

So now if you go back to your total maximum daily load, and you look at Cottage Grove Lake, which has ten times higher the concentration in the sediment compared to Dorena, you -- and I thought, too, that the amount of mercury coming through Cottage Grove Lake would be higher. Well, let's go measure it. Well, you have not measured it. I measured it, and it's false. Cottage Grove Lake is a Superfund Site, and you think there's a problem there. Because the slow rate is higher at Dorena. It's a math problem. Slow rate times concentration gives you total amount of mercury coming through the river. Okay, this is just one example of you've got to clear up what is causing the pollution source in your variances. Otherwise, as it's been stated, it's not a comprehensive plan, it will not solve the concentration problems.

I appreciate this comment period. I know we can figure this out. I like the fish consumption level. I support you on that. But we've got to -- and I also recommend that the DEQ be the source of the determination of this, because right now, you don't know who to go to. Thank you, I appreciate it.

**Pamela Wright** -Thank you.

**Pamela Wright** - Dade(?) Owen

**Day Owen** - First of all, thank you very much. It's nice to see so much female energy here at a DEQ meeting. We certainly don't see that at the other government agency meetings that we've been going to [laughter in room]. So maybe it's not surprising that I kind of like where you're going a little bit more than I like, for instance, my friend Gary there, with the Board of Forestry. See for me, the real problem here -- first of all, you're always going to have some problem when you have a complicated issue, a lot of people involved, a lot of stakeholders. You know, it's rugged. And I think you guys have done a great job today, and I actually appreciated the way you answered the questions, and I did understand the specific answers to the specific questions that were asked. I thought you did great.

However, the real problem is that the pollution, the poison, the herbicides, the pesticides, that's in the mountain streams, we don't have any big factories there discharging it. The poison that's in our streams where we live as forest dwellers is largely from timber industry spraying, which can come up right very close to the creek. There's a very miniscule buffer zone, and aerial spraying occurs, and via runoffs. So what we want you to do is we want you to include sediment in this plan. We want it included, because almost one hundred percent of the pesticides, herbicides that are in the mountain streams ride on sediment. That's how they get in there, via runoff. This program that you've got doesn't address that issue, so for my constituency, people that live in the forest and don't want the water that our kids are playing in having poison in it, we don't the fish that we eat having poison in them. This isn't taking care of us. And so we want you to also care about us forest dwellers, us rural people, and fix your proposal.

So to fix your proposal, tackle sediment, realize that that is going to mean taking on the Board of Forestry. Let's look at -- with my little bit of time left, a comparison between the two boards, the environmental quality commission board, and the board of forestry, and we'll understand why there's friction. The state of Oregon allows the Board of Forestry to have three of the seven members have overt, current, flagrant conflict of interest. That's written into the rules, that they can have members of the board with overt financial conflict of interest. Gary Springer sits on the Board of Forestry, but he's also an executive with (Starker Forest?). When we go to the Oregon Board of Forestry, and are complaining about pesticides, the very people that are spraying the pesticides are the Board of Forestry that we're talking to to try to get our problem solved.

This doesn't mean they're evil people. What it means is that there's a certain organizational sanity that the human species, at least in the United States of America, has arrived at, is that you do not have the Board of Directors of something dealing with natural resources be allowed to have overt financial conflict of interest. It does not work. So your conflict with the Board of Forestry is for that reason. The Department of Environmental Quality, they've got a board, they don't have overt financial conflict of interest because they follow federal ethics guidelines. The Board of Forestry does not follow federal ethics guidelines pertaining to financial conflict of interest. Thar’s the problem. So in the meantime, since that the problem, what it means is that you guys gotta have the guts -- that's something that both males and females have? [chuckling in background], that says the same thing I was going to say?

**Pamela Wright** -- No.

[laughter]

**Pamela Wright** - We understand.

**Day Owen** - You've gotta have the guts to just full-on face off with the Board of Forestry, and with the Department of Agriculture

You've gotta take 'em on, and you've got to realize you're doing a good thing when you're doing it, and you've gotta take the blows. I take the blows from them, believe me, and we just gotta be tough, and we just gotta do it. Please add sediments to this program.

**Pamela Wright** - Thank you. Okay, I believe it's Jeff...or maybe it's Seth...or Jeb. [chuckling] \_\_\_\_\_ forest management, please.

I'll be submitting the comments later

**Pamela Wright** - Okay, thank you. Thank you very much. And Reggie DeSoto....Please state your name.

**Reggie DeSoto** - Alright, my name is Reginald DeSoto. I'm a resident of Pleasant Hill, that area. I think one of the first things I'd like to say to everyone here, especially dealing with this, okay, is that we all live downstream. No matter where your politics, or who you're getting paid by, or anything, you all -- your children, your grandchildren, are all affected by the water we drink. And must I remind everybody that you can live longer without food than you can without water, okay. And no matter what kind of dioxin or chemical it is, it is going to have an effect, especially long term, within any kind of a water system, okay. And all drainages, whether they're fish bearing or not, are all connected, because water flows downstream, okay, from the top to the bottom.

The standards -- where I'm at right now, is I'm in total support, if for not for more stricter standards that we all should abide by. The human being, especially the male of the species, is the most resistant to chemical poison, okay. Myself is, I want to use as a prime example. I was exposed to Agent Orange in 1966. I didn't know I had leukemia until 2006. That's how long it took for me, because I was such a healthy kid when I was eighteen. The male of the species is the most resistant. The female adult is the next most resistant, then it goes down the line. And the most immediate affected, indirectly, is the unborn child, okay. It's just like with Roundup, let's say, which everybody uses in their yards, and it's, "Oh man, that stuff ain't gonna hurt you." [laughter] Oh no, not immediately. But twenty years from now, you'll wind up, wow, where did I get this cancer? Where did I got these polyps growing on my skin? Where did I get, you know, this leukemia? You know, where did I get all these diseases that you wind up with, you know? And no matter how little or how much, it all has effect. Again, because it all flows downstream.

We now, with the appropriate technology that we have with computers today, there is no reason for pollution anymore. There's no reason for the lazy waste management that has been ruling our environment since when it became in rule. We can figure out how to do it right. We can figure out how to correct what we already have that we have to correct. Because if we don't, this earth is going to put it to us. We have to now, in our humanity, on this Planet Earth. take care of Mother Nature, because the unfortunate thing is that there is not enough of Mother Nature for her to take care of herself anymore. And with the technology, with the DEQ, which is -- I give more power to, I want to see more teeth involved in this, because yes, we do have to protect what we have left of it, okay?

And global warming is for real, you know. And clear cutting is wrong. Herbal spraying -- I mean aerial spraying -- is wrong, okay? It's just like here, in the State of Oregon, they dump every year -- in the spring, they dump millions of dollars worth of herbicides along the highways, okay? Not only are you poisoning the environment, because it's all going to run off, you create an extreme fire hazard. Same thing in the woods. They go with their (hand app?), applying their herbicides to the plants they want to kill. What do they create? A dead, standing fuel, which is a torch. All you need is a spark, and it's going to light.

**Pamela Wright** - About thirty more seconds.

**Reggie DeSoto** - Okay. So, where I'm at is, I want more, you know. I want DEQ to do something now, no longer just the same-old, same-old. I understand that, you know, being workers, you want to protect your job. I don't blame any of you for protecting your job. But God, you know, are you working it because of the money and retirement, or are you working it because you actually care about what you're doing?

**Pamela Wright** - I'd love to have \_\_\_\_\_\_ \_\_\_\_\_\_\_. [lots of clapping] Thank you very much. And finally, Cat Koehn.

**Catherine Koehn** - Hi, thank you for having this meeting, and thank all of you for showing up and caring about water quality. My name is Cat, or Catherine Koehn, K-o-e-h-n, and I represent Artists for Action, which is an environmental non-profit that is trying to protect salmon.

There's a lot that you've done that's great, and we encourage you, I feel it's really a shame to the entire state that the Department of Environmental Quality has only begun to address some of these very urgent problems after extensive litigation that demanded that you follow what EPA do. So I'd like to reiterate what that last gentleman said about the necessity for you to be a proactive agency. That's what we, as citizens, think we are paying for by your salaries, not a reactive one that comes and cleans up something after somebody's dirtied it up. And besides this proactive approach, you need something that -- you say that these regulations are going to help expedite TMDL-ready plans. But for things like this sediment problem that other people have spoken about, you have not done that. I have attended your meetings, and I see exactly what you're proposing. And they may protect lower watershed things that have constant monitoring that is done by some agency. But the most important headwaters that all these other people have been complaining about, are not being protected because the necessity is that you have hard water quality standards for weeks at a time, sometimes years at a time, to establish levels that you may or may not exceed.

So you need specific numeric criteria that trigger further study by your own department, not -- unless you're going to fund watershed councils to do that type of thing. And you need clear numeric standards for especially things like copper, that would affect any endangered species. And you've done everything possible to circumvent the need to delineate a clear riparian buffer policy. And now we're embroiled in an enormous hands-out battle on the McKenzie, trying to defend our own drinking water, because there is no clear direction about what constitutes a buffer. And even the minimal buffers of two hundred feet, they get all sorts of holes in, so we demand that our high qualities be protected, including the water table. And this would require you locking horns, as that man said about the illusion to various parts of the body, with the Department of Agriculture, and the Department of Forestry, because it's common knowledge that the Department of Forestry and their clear cuts are not in compliance with the Endangered Species Act.

And I'd like to bring you all up to a specific drainage called the Quartz Crick on the McKenzie. to illustrate exactly why sedimentation problems are not being addressed in here. For one thing, you're only going out and measuring them in the summer, when there's the lowest flow, so that isn't going to cut it at all. The headwaters are what need to be protected. Your own research in the Department of Environmental Quality in the Tualatin Basin for which you had the longest TMDL, for like, twenty years, and it still looks like it's a dead little crick runnin' over there. Come to find out, what is it? It's the sediment, surprise, surprise, coming from headwaters that affects the DO, the temperature, the PH, and the bioavailability of any stream. So you need to, as those other people suggested, look at a whole watershed approach, and the -- you need to address the additive, synergistic and cumulative effects of these things.

And I want to bring up another document that is the Department of Environmental Quality's, that shows why sediment needs to be done. This is something that you put together in 1989. It's the 303-d list for the Willamette Basin that was compiled by the Willamette project that Governor Kitzhaber put in place, and it shows staggering levels of sediment pollution -- so it isn't like there's any question. If you want a copy of this, I'll be able to provide it with you, You have it in your own records.

So sediment, where all the smoking guns are, needs to be addressed, and it is not. And also, the priority protections for the rivers that are protected by the Three Basin Rule need to be ratcheted up, because right now, the Three Basin Rule is just like, oh if you're puttin' in a permit, then we're going to watch you. Well that's not what we have in mind for the protection of our clean water sources. And rivers like McKenzie River need to be arduously protected. Global warming and other threats that are coming up will only make these rivers that we have, the Umpqua, and the McKenzie, for instance, as national treasures. And the Endangered Species Act is now in place. So we don't want your shuffled statistics. We want no sediment in the crick at any time of year. And if it's coming off of Department of Forestry land, then let us come and tell the Department of Forestry what they need to do if you can't. Thank you very much for allowing my presentation. [clapping]

**Pamela Wright** - Thank you for your comments. Is there anyone else who would like to comment?

**Jan Nelson** - I have a request. Jan Nelson, 85354 Doan(?) Road, up in the coast range foothills. A meeting like this is difficult for a lot of people to attend, so I'm curious to know why it's at nine o'clock in the morning. I. myself, I'm a farmer and a forest land owner. And I have animal chores to deal with in the morning, and then I have to drive all the way in. And this morning was particularly difficult, because I had to break ice [chuckle] on the animal's water, plus feed them and get them to pasture. So if you could have evening meetings, too, it would be really helpful. And I support cleaning up the water, and what Cat said.

**Pamela Wright** - Do you want to answer?

**Jennifer Wigal** - Actually, we can't -- as part of the comment period, we can't respond in this part of the hearing, so if you'd like to have a conversation after the hearing ends, we could talk with you about that. I'd also like to request that just for the record, if you could -- since we've now got you making a comment, if you could just, for our records, complete one of the pages.

**Pamela Wright** - Okay. Thank you for coming and providing us with your comments. This hearing is adjourned.