**Water Quality Standards Hearing Portland EQC**

**February 16, 2011**

**Jane O'Keefe** - My name is Jane O'Keefe, and I am not the Chair of the Commission, but we have a couple commission members that are not here. So they may come in and take over, and that's cool, but we're going to go ahead and get started. I have this script here I'm going to read to you, because it's all pretty important information, and we want to make sure that everybody understands how we're going to proceed.

At this time, the Commission will be taking comments on the revised water quality standards for human health, toxic pollutants, and revised water quality standards implementation policy. The purpose of this hearing is to provide the public with an opportunity to comment on proposed rules. \_\_\_\_\_ the toxics water quality standards. And those are OAR-340-041-0033; and creating and amending certain water quality standards implementation provisions. These implementation relate to variances, intake credits, background allowances, non-point sources, and total daily maximum loads. A more detailed description of the changes can be found in the rule-making notice. The Commission is seeking comments on the proposed rules in general, and specifically invite comments on the issue of whether there are other options for achieving the rule's objectives, while reducing negative economic impacts on business.

If you wish to provide oral comments, you must complete one of the registration forms, which are..,they are available on the table, located on the table at the entrance of the room, and turn it in to Stephanie Clark, the Commission Assistant. If you wish to provide only written comments at this time, you may give those comments to Stephanie Clark at any time during this hearing. In addition, written comments may be filed with DEQ at any time prior of the close of the rule-making comment, which is now March 21st. Instructions on where to send the comments are also provided in the rule-making notice. If you have filled out a request to speak form, I will call your name in the order received, and ask you to come up to the table. Please speak into the microphone, and identify yourself for the record. And if you represent and organization, please state the name of the organization, If you have written materials that you wish to have entered into the record, please give those to Stephanie Clark, either immediately before or after you make your comments. Your comments will be audio-recorded so that we can make an accurate record.

The Commission will not be responding to your comments at this time. After the close of the comment period, DEQ will provide a summary of comments and responses. We ask that you keep your comments to the point, and that you reference, rather than repeat comments that have already been made by earlier speakers. Please keep your comments to less than ten minutes. And with the crowd that we have, perhaps could I get a show of hands of people that have signed up to speak, so that we could...Oh, boy. That's great. We might have to adjust that down to - I'm going to adjust it down to seven minutes for now, and see how that goes. And if we're still stacked up, then we may change that. After reviewing comments, DEQ may consider revisions to the proposed rules. DEQ will recommend the final rules for adoption at the EQC meeting scheduled for June 16th and 17th, at a location to be determined. The Commission will use its discretion in deciding whether to adopt all, part, or none of the proposed rules, postpone adoption, or hold additional hearings. And with that, we're going to get started with the presentation by Neil Mullane.

**Neil Mullane** - Chair members of the Commission, my name is Neil Mullane. And we're just going to do a very brief presentation here. Jennifer actually has the lion's share of the presentation. But we'd like to do is just kind of give an overview of these standards and the action that's being taken, and then open up the hearing.

**Jennifer Wigal** - Good afternoon. For the record, my name is Jennifer Wigal, and I manage the water quality standards program here at DEQ. So as Neil mentioned, what we're going to do is just provide a brief overview of the proposed rule-making before we start the formal comments. What I just want to start off noting is that this is the eighth hearing on this proposed rule. We've noted all the locations that we've been to so far: Bend, Eugene, Medford, Coos Bay, Ontario, Pendleton. We held an evening hearing here in Portland last week, and then now we are doing this one. We have just scheduled a ninth hearing on this proposed rule in Salem for March 7th, and that will be at 5:30 in the evening to a location that we will be announcing as soon as we nail that location down.

Also before I begin the overview, I do want to take a moment to acknowledge all of the people who have engaged in this process in one way or another over the last four years. DEQ staff, work group members, and people who attended workshops in the beginning, through all of the all of the people who have taken the time to attend these hearings so far, and continue to participate in this process.

So briefly, I just want to highlight what this rule-making will do, and then Gene and I will provide a little bit more detail on the second two bullets here. But what this rule-making proposes to do is to revise the human health criteria for a hundred and fourteen toxic pollutants, based on a fish consumption rate that is higher than what's currently effective in our current water quality standards. That fish consumption rate that we are proposing to use is a hundred and seventy five grams per day. The second thing this rule-making proposes to do is to include and revise tools to address both current known issues that are being faced by point sources, and those that - and issues that may arise through the implementation of the proposed criteria. And thirdly, it proposes revisions to rules to clarify both ODA and ODF resource management directives to protect water quality. And what this - and why we are proposing these rules, the main component of this - objective to this is to protect Oregonians from toxic pollutants that may be present in fish tissue that people eat, and water that they drink.

The criteria that we have in effect today do not adequately protect the amount of fish that Oregonians eat. This was a key aspect of EPAs June, 2010 action on our earlier 2004 revisions to these same criteria that we are proposing revisions to. This rule would revise our criteria and address EPA's disapproval that we received earlier this year. If we do not complete this rule-making in a timely fashion, EPA is compelled, under federal law, to put in place federal rules for the state, addressing those deficiencies that they identified in their June, 2010 action.

Briefly I'd just like to spend just a minute talking about the implementation tools that we're proposing, in addition to the revisions to the toxics criteria. The first two tools, intake credits and background pollutant allowances address that we're - that deal with when we have high background levels of toxic pollutants. In the first case, facilities - it would allow - the intake credit - it's a new rule for intake credits, and what it would do would be to allow facilities to discharge water at the same quality they take into their facility. And so it would permit that to occur without further regulation or further requirements placed in the permit.

The second situation is similar to the first, except for it addresses the situations where facilities - the facility processes result in an increase in the concentration of that pollutant. And this may occur through such processes that result in evaporation of the water, leaving a higher concentration of that pollutant, but no addition of the pollutant to the discharge. But this would allow what then would then be - it would allow the permit to discharge the pollutant at a higher level than what came in within the specified boundaries, which is up to a three percent increase in the river concentration, and would only be restricted to be used for those pollutants that are not carcin- - that are \_\_\_\_\_ carcinogens, and would also put a further sideboard on it, not to exceed a ten to the minus fourth risk level.

The third proposed implementation tool that we've included in this package is to revise our rules regarding variances. This last tool could be used in a broader variety of situations. The main premise, and the main situation in which this would be available for use would be in situations where point sources find it is not feasible to meet requirements that we would otherwise place in their permit to meet water quality standards. And there is a significant amount of detail that we've added to our - that we're proposing to add to our rule that govern where and when, and the types of conditions and requirements we would put on those facilities in instances where we would grant variances. And then briefly, Gene's just going to highlight our proposed non-point source revisions.

**Gene Foster** - Commission members, for the record, my name's Gene Foster with DEQ Water Quality Division. And the proposed non-point source changes, just to clarify and make our rules consistent, was state statute, and that's area plans and rules for - area plans and rules, and \_\_\_\_\_ practices that need to meet water quality standards and TMDL load allocations. DEQ will continue to work with ODA and ODF for implementation of the Clean Water Act for non-point sources. It would still mean that ODA is responsible for administering the Agricultural Water Quality Management Act, and that agricultural lands are regulated by ODA through these area plans and rules, as identified in the Ag Water Quality Management Act. And that for non-federal forest lands, those are regulated by Oregon Department of Forestry, through the Forest Practices Act.

**Jennifer Wigal** - And so briefly where we are in the rule-making process, we have concluded our stakeholder work group processes late last year. We are in the public comment period, which now ends March 21st. Following the public comment period, we will review all of the comments that we receive, and prepare responses to those comments, and make any necessary changes to what the rule and supporting and record as appropriate after the review of the comments that we receive. We are targeting June 2010 (means 2011?) for EQC action on this proposed rule-making, after which we need to submit any rules adopted to EPA for their approval. These rules cannot be implemented until we receive that EPA approval of the rule-making.

Lastly, we just have a slide here noting the different ways in which people are welcome to submit comments, through email, hard copy mail, and fax. All comments must be received by five pm Monday, March 21st. This information on how to submit comments is also available on the rule-making announcement of which we have copies out in the hallway.

**Jane O’Keefe** - Alright. As I said, the way this is going to work is I am going to mangle your name, and then you will come up and correct me. And I'll give you two or three folks so people know that they're next. So we're going to start with Elwood Patawa, and next will be Kat Brigham, and followed by Curtis Martin. So Elwood, please. Welcome. And also, I am timing, and I will give you a little tap when you're very close, and then at the end of the seven minutes, I'm sorry, but I'm going to have to just ask people to wind it up so that we can all talk. So, go forward.

**Elwood Patawa** - Good afternoon. I'm Elwood Patawa, \_\_\_\_\_ Chairman of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation. I want to thank you for holding this public hearing today, and for your attention to this issue of great importance to the Confederated Tribes. We'd also like to thank Dick Peterson and other DEQ staff for meeting with us, and working with us over many years on this issue. The Confederated Tribes supports the revised rules proposed by the Oregon Department of Environmental Quality. The rules represent a culmination of years of effort by the Confederated Tribes, the State of Oregon, the Environmental Protection Agency, and many interested stakeholders. We encourage you to vote to adopt the revised rules. In doing so, we all need to remember that improved human health is the driving goal behind this effort.

The current fish consumption rate does not represent the fish consumption habits of Northwest natives, and other ethnic groups, and those Oregonians who choose to eat more fish. The current EPA national default value of seventeen point five grams per day was determined on a per capita basis for the entire US population, including both fish consumers and non-consumers. With Oregon's historic and current use of the Columbia River and its tributary fisheries, and the use of Oregon's coastal tributaries, it's easy to see that this national standard does not make sense for Oregon.

The one hundred and seventy five grams per day fish consumption rate is an accurate and reasonable value to use, and would safely protect ninety five percent of fish consumers. Studies reviewed by DEQ's human health focus group, in their June, 2008 report, corroborate this rate, and indicate that Asian and Pacific Islanders, and Eastern European communities in Oregon also consume fish at levels similar to Columbia River Treaty tribes. The approach of using sensitive populations to set the standard is not unlike DEQ's consideration of asthmatics as the sensitive population in developing air quality standards: protect those most likely to be harmed.

We want implementation of the standards to be fair and achievable, and the Confederated Tribes supports DEQ's proposed implementation tools, including intake credits, background pollution allowances, and variances. DEQ's intake credit, for example, allows facilities to (count the?) pollutants already in their intake water, as long as the facility does not increase the mass or concentration of a pollution at the point of discharge. The rule also provides that they can be phased in over time in some circumstances.

We know that some changes will be difficult, but the Confederated Tribes is committed to working with all parties to see that they are made reasonably and effectively. Oregon needs to control its own approach to managing water quality for its citizens. If DEQ fails to change the current standard by December, EPA is required to set the standard, and implementation tools would likely not be a part of that process. By implementing the proposed rules, Oregon would take responsibility for the health and quality of life of its citizens.

Some people might wonder why we don't simply reduce our fish consumption, or stop eating fish altogether. That is not a plausible, or even rational scenario. Fishing is one of Oregon's true shared heritages, and it has been the lifeblood of Oregon's tribes for a thousand generations. Tribal religion and culture depend on, and even require water, and salmon, and other native fish. Reducing fish consumption is not the answer. As stewards of the state's waters, we need to increase the health of the water, and provide fish that are safe for Oregonians to eat. The Confederated Tribes asks you to adopt the proposed rules. They will better protect our people and many others to eat a lot of fish like we do. All Oregonians will be able to enjoy the many benefits of cleaner water, and a healthier environment. Thank you.

**Jane O’Keefe** - Thank you very much.

**Kat Brigham** - Good afternoon, my name is Kat Brigham. I - well first of all, I just want to tell you briefly that I'm a fisherman's wife. I've been a fisherman's wife for forty six years. And during that time, I've come down to the Columbia River, learned to live along the river, fish, and take care of fish, and I have taught my children, my three daughters, my grandchildren, six of them, and then we're now looking forward to teaching the great grandson. So this is something that's important to all of us. This is something that all of us are going to be impacted by, because it's - in order - we're protecting our (tribal?) rights, and practicing our (tribal?) rights, but it's also important to know that you're going to eat fish that is healthy. And so this is something, you know, we want to protect and plan for the future.

We know any change is difficult. I mean whether or not it's good or bad, a change is hard to adjust to. And we recognize that. And as Mr. Patawa stated, that you know, we're willing to help. We'll want to help, because we are planning for the future, and that's the responsibility of our tribal leaders, is to look at the next seven generations and beyond, and looking at how we can make things better. We know things aren't good around the ecosystem, but we also know that only if we work together to make the changes that are needed, will we accomplish that.

I have here, today, seventy letters that tribal - from the Tribal Government facility. Some are tribal employees, some are tribal members, and we have some tribal fishermen who have also signed this. And they've signed this because they, too, support what's being discussed today, a change in fish consumption rate, because they, too, are looking at the future, and planning for the future. Thank you.

**Jane O’Keefe** - Thank you very much. Next we have Curtis Martin, followed by Ryan Brandstetter(?), and Jack Giffin, Jr., please be ready.

**Curtis W. Martin** - My name is Curtis W. Martin, and I'm here today, representing the Oregon Cattleman’s Association. The Oregon Cattleman’s Association appreciates the opportunity to comment before the Oregon Department of Environmental Quality, and the board members of the Environmental Quality Commission, considering the proposed revisions and the water quality standards for toxic pollutants. Oregon Cattleman's Association and livestock producers are committed to the protection and enhancement of Oregon's water quality while ensuring the continued management of this vital resource results in the multiple beneficial uses our citizens now enjoy.

While OCA understands the need for some revision of Oregon's water quality standards due to federal EPA directive, the current proposal goes far beyond what is reasonable, and threatens our livelihoods, both rural and urban. Oregon Cattleman’s comment will focus on several venerable points considering the non-point source revisions. The assumption through the proposed establishment of implement-ready TMDLs, that the agricultural community has not contributed to improved water quality, is totally in error, and has no statistical data for that assertion. The Agricultural Water Quality Management Program, administered through the Oregon Department of Agriculture, has significantly aided in maintaining and restoring healthy waters, while also having a positive economic benefit to producers.

The current proposal will require surrogate measures, and best management practices that will cause economic hardship to ranchers, while not assuring that the imposed land management practice will add beneficial improvement to water quality. Although DEQ maintains that their department does not want to control the Ag Water Quality Management Program, the language contained within this revision is directly challenging the statutory and regulatory authority given to the Oregon Department of Agriculture by Senate Bill 1010, enacted by the 1993 legislature, clarified in 1995, and signed by then-Governor Kitzhaber.

Oregon Cattleman’s Association knows the area plans containing the regulatory rules administered by the Oregon Department of Agriculture's authority have been, and are, an effective way to collaboratively enforce mandated regulations, where all parties come together to achieve water quality. The current format of the DEQ revision would harm the existing process that relies upon best available science, and has become the principle strategy for agriculture's role in responding to the 319 section of the federal Clean Water Act. This proposed change would destroy the cooperation and trust that has taken years to establish between ODA and agriculturalists, The mindset that because there has been no fines or civil penalties assessed, there needs to be stricter regulation and (enforced?) by DEQ, will only lead to litigated stalemate, with environmental and economic loss resulting. Another issue of the current rule-making is the lack of in-depth economic analysis, and the financial harm these standards would impose. As has been reflected in previous testimony, urban businesses would suffer with the resultant loss of jobs, as would the agricultural sector, with increased input costs with no monetary compensation.

This proposed rule is ill-advised, with our state trying to find a way out of the existing economic malaise. In closing, Oregon Cattleman’s Association recommends that the Environmental Quality Commission instructs DEQ to reopen this process to more than the previous seven workshops, with inclusion of the Diversified Resource organizations, and tell the Federal Environmental Protection Agency that Oregon is working toward a logical common sense standard that will adequately address human health concerns. Again, Oregon Cattleman's sincerely thank the Department and the EQC for this opportunity to comment. Curtis W. Martin, Oregon Cattleman’s Association, Water Resources Committee Chair.

And I'd just like to add one little thing that's off my script here. I guess I'd like the commissioners to realize that this is another one of those instances where a division between rural and urban Oregon drives a bigger wedge into. It seems like our concerns for the rural aspect of our economy, and our lifestyle, our culture and our heritage is once again kind of ignored, and the elite bureaucracies and entities that think they know best are going to have the rule. So I would appreciate, again, that the commissioners go back, that we can be involved in this process, and get something that is liveable, and logical, and achievable. Thank you very much.

**Jane O’Keefe** - Thank you. Mr. Bransetter, and next will be Jack Giffen, Jr.

**Jack Giffen Jr**. - Yes, my name is Jack Giffen Jr, I'm a tribal council member for the Confederated Tribes of Grande Ronde Committee of Oregon. I bring to you some testimony on behalf of \_\_\_\_\_ Kennedy, who could not be here today. Salmon, lamprey, sturgeon and other fish make up a very large part of tribal members' diet since time immortal. These fish are not just food; they are an integral part of the tribe's culture. Tribal members eat large amounts of fish, much larger than amounts eaten by the average American, or the average Oregonian. The tribe's ceded lands include the Willamette River and its tributaries. Grande Ronde reservation is in the Willamette Basin. Salmon coming back to the reservation's streams have to first swim through the lower Columbia, and the Willamette, both of which, they have to travel through the Portland harbor Superfund site. Both rivers are among the most contaminated waterways in the State of Oregon, and in the United States.

The tribe is also very concerned that the fish and its ecosystems are being negatively impacted because of the current consumption rate of six point five grams per day may allow for certain contaminants to reach the levels in the fish tissue that are hazardous to the fish themselves, and other fish eating animals, as well as human beings. In May, 2008, the Tribal Council passed a resolution supporting a fish consumption rate of three hundred and eighty nine grams per day, which is the ninety ninth percentile of fish consumption according the Umatilla and Warm Springs tribal fish consumption surveys. While the tribe feels that Oregon's 2008 adoption of a hundred and seventy grams per day is a compromise of three hundred and eighty nine grams per day rate the tribe supported. It acknowledges that Oregon's adoption of the hundred and seventy five grams per day is a much needed improvement over the current rate of six point five grams per day. The tribe supports the current proposed water quality standards for human health toxic pollutants based on the fish consumption rate of a hundred seventy five grams per day. And on a personal note, I believe it is the duty of all Oregonians, all the people of the Northwest to protect water quality and the standard way of life several generations, not just tribal seven generations, but for all the people all over the great Northwest. Thank you,

**Jane O’Keefe** - Thank you.

**Ryan Bransetter** - Ryan Bransetter - Hello, my name is Ryan Bransetter, and I'd like to thank the Commission for letting me hear my words. First I'd like to say that I'm am an old Umatilla tribal member, and I'd like to the affirm the words spoken by fellow tribal members, Mr. Patawa, and Mrs. Brigham. As a tribal member who consumes salmon, and has a family, I'm is support of the new rule changes, and the fact that I'll take peace of mind that my family is well protected, and that my child and grandchildren will have healthier minds and healthier bodies from cleaner water and cleaner food. I'd also like to say that I think that these rule changes will benefit all citizens of the tribe, and of Oregon as well, and the ecosystem as well. I'll keep it short, so thank you very much.

**Jane O’Keefe** - Thank you. Next we have J. Michael Read, followed by Ron Bittler, and Chuck Mickelson, be ready.

**Michael Read** - Members of the Commission, thank you very much for accepting my testimony today. My name is Michael Read, and I am the General Manager of the Oak Lodge Sanitary District. We provide sanitary sewer collection, conveyance, and treatment to over thirty thousand residents. Our district and its customers will be significantly affected financially by DEQ's proposed toxic water quality standards revisions. Our service area is residential(?), without any industries that produce the compounds which are to be regulated by the proposed revisions. Yet recent analyses show that our district may be confronted with potential non-compliance issues if the new standards are adopted. Our district and our community are committed to doing whatever we can to protect and improve the water quality that the Willamette River and its tributaries.

In fact we're in the midst of a fifty five million dollar program to replace our aging treatment plant with a technologically advanced facility that can serve public health and water quality for the next thirty-plus years. Fifty five million dollars is a heavy financial burden for a community of thirty thousand to bear. DEQ's current approach for addressing toxics is flawed. Their intent to establish new standards, when DEQ is aware that currently available technologies are incapable removing many of these pollutants, place communities in the position of permanent violations without recourse. DEQ's proposed variance process is temporary and expensive, and accomplishes nothing towards the goal of achieving water quality objectives. The expense of applying for repetitive variances takes money from water quality improvement activities, and puts it into non-productive bureaucratic processes.

I'm also a past president of the Water Environment Federation, known more commonly as WEF. WEF is working with EPA and other water quality organizations to establish and approach to water quality improvement that ensures all sources of water pollution at city and rural populations, industrial and commercial development, agriculture, forestry, and urban storm water runoff work collaboratively to address water pollution problems in our nation's rivers, lakes, and oceans. Without the collaborative participation of all these parties, we would never meet our nation's water quality objectives. However, the proposed revisions to the toxic water quality standards are focused on point sources, both industrial and municipal. Active participation of forestry, agriculture, along with all point sources is necessary for the standards to be achieved.

In order to effectively address reducing toxics, DEQ and EQC should begin by incorporating specific standard implementation strategies, such as developing watershed-based TMDLs for toxics, or developing site specific criteria, or committing to use attainability analyses to adjust the water - the listed beneficial uses of a water body determined appropriate. The revised toxic criteria should not be implemented until DEQ has developed an EQC-approved implementation strategy by chemical class. Adopted revised standards without implementation plans will not move the state towards achieving the water quality goals and the revised standards, and puts NPDES permit holders at unnecessary legal and - legal risk, and in financial jeopardy.

One final comment: Many chemicals in the proposed revision are either legacy chemicals, over which we can have no pollution prevention strategy, since they are already ubiquitous environment, or chemicals that are contained in everyday products that consumers use without knowledge or regard for their environmental impact. Until DEQ and EQC begin regulating the components of household products to eliminate their toxic constituents will never effectively control sources of many of these pollutants. Source control is the most effective strategy to reduce toxic substances in the water environment. I'd like to thank you again for the opportunity to provide this testimony.

**Jane O’Keefe** - Thank you very much. Mr, Bittler.

**Bittler** - Good afternoon, Commissioners. I also appreciate appreciate the opportunity to speak to you today, My name is Ron Bittler, and I'm the General Manager for the Metropolitan Waste water Management Commission. MWMC provided waste water services for the greater Eugene and Springfield area. We currently serve a population of about two hundred and twenty thousand, and we treat approximately fourteen billion gallons of waste water annually. I'd just like to focus on some of the things that our commission does in terms of providing that service to our community. We have a series of key outcomes, where our guiding principles that our commission operates by. In carrying out the daily activities of managing the regional waste water system, we strive to achieve and maintain high environmental standards, fiscal management that is effective and efficient. And I just bring those to your attention. As Mr. Read said, MWMC is also in the process of making a rather significant investment in its regional waste water treatment plant. We are currently undertaking a number of capital projects. We expect to spend a hundred and eight five million dollars by fiscal year '14-'15 to address what other standards and other water quality criteria. During this time of our construction, our ratepayers have seen rates increase by a hundred and forty percent.

 I just want to comment on the toxic reduction. MWMC strongly supports the efforts to reduce toxics. And we've been participating at many levels over the past few years, including our industrial pre-treatment program that works with industries. We manage our treatment plant, and and manage our bio-solids effectively, and have received national recognition from EPA for our pre-treatment program, as well as recognition by the National Association of Clean Water Agencies for our effluent quality. We participate and sponsor drug take back programs. We partner with over a hundred and fifty local dentists to reduce mercury discharges. We have an active public involvement program in terms of educating our youth, and participating in school programs. We also partner in pollution prevention in our eco biz(?) automotive shops program, where we work with local shops to help them protect storm water, and recycle toxic chemicals. Both Eugene and Springfield, also with MWMC, have developed a wet weather management flow program, where we control inflow and infiltration of the collection system. Those numbers I gave you earlier about the investments do not include the investments that the local communities are making in the repair of their collection systems to prevent sanitary sewer overflows. Each one of the communities is spending millions of dollars each year.

I'd like to address the treatment technologies for just a minute. And I guess what I'm saying is the lack of treatment technologies that effectively and feasibly treat reduced chemicals, such as legacy pesticides, PCBs, or plasticizers to the proposed levels of the rule. Chemicals such as legacy pesticides and PBCs (means PCBs?) have been restricted for decades, but yet appear in our waste water effluent. Recently ACWA, the Association of Clean Water Agencies, worked with David - Dr. Dave Stone of the University - Oregon State University. PCBs entering a technical medium sized Oregon waste water treatment plant, due to the excretion, due to body burden and food waste alone, based on the data from a mid-sized Oregon community, a daily average of point one six nanograms of PCBs per liter is estimated to reach the waste water’s influent, due to human excretion. The proposed water quality standard for PCBs is prime zero-zero-six-four nanograms. Oregon treatment plants are unable to achieve the proposed water quality standards. There is no reasonable effective treatment process for removing PCBs or DDTs at these very low levels of waste water effluent in order to achieve the DEQ's proposed water quality standards. The most efficient strategy is to reduce these legacy pollutants is through a watershed-based TMDL process that involve all sources in the watershed, not regulations focused primarily on NPDS permit holders.

In closing, I'd just like to say that we recommend that EQC requests from DEQ a specific implementation plan by category of pollutants, such as metals, PAHs, legacy PCBs, and pesticides or similar categories. The implementation should lay out the Clean Water Act tool that will be used to resolve underlying water quality criteria, including the development of a TMDL, or the use of site-specific criteria, or the development of (use attainability?) analysis, And the glide path to achieving the necessary reductions across all sources in the watershed to achieve the water quality standard. The revised toxic water quality standards should be adopted, and in effect, (win?) the implementation plan as agreed to by EQC. Again, I thank you for your time today, and appreciate the opportunity to make these comments.

**Jane O’Keefe** - Thank you very much. We now go to Mr. Michael Mickelson, followed by Steve Griffith, and next - and then I need to check with folks to make sure I know correctly who's next.

**Chuck Mickelson** - My name is Chuck Mickelson. I'm the Public Works Director for the City of Ontario, which has a population of approximately eleven thousand, four hundred people, and a daily population impact of about fifty thousand, since we are located on the border with Idaho, and significant traffic and commerce occurs from our neighbors across the border. Ontario is very concerned with the impact this regulation will have on our community, and particularly with arsenic. Our source of drinking water is primarily from the Snake River, which has an arsenic background of approximately five micrograms per liter, which is well below the safe drinking water standard. Our two largest customers, the Heinz potato processing facility, and the Snake River Correctional Institution utilize over sixty percent of our domestic water. Ontario's waste water system consists of a series of lagoons, with an average daily flow of about one and a half million gallons per day. Waste water effluent is land-applied to a city owned farm six months of the year from May 1 to October 30, and the effluent is discharged to the Snake River from November 1 to April 30.

Ontario strongly supports efforts to improve water quality, where there is a measurable and positive impact on the environment. Ontario's commitment has done many things in the past, included replacing over seventeen thousand feet of sewer line in that past couple of years. We participated in a drug take back program, collecting over seventy pounds of prescription drugs last summer. We have an aggressive street sweeping program, collect over seven hundred yards of cubic yards of material per year from our streets, eliminating that source of contamination. We clean over fourteen hundred catch basins annually. We have numerous food establishments with grease interceptors, along with industrial and commercial sites. (Then?) have sand and grease traps intercepting petroleum products, keeping our groundwater and surface water clean. The city consistently meets the requirements of our NPDS permit. We participate in the local watershed council, and have numerous educational programs, educating the youth of our community.

All the above activities and capital projects demonstrate Ontario's strong commitment to doing our part to keep our waterways and groundwater safe. The geology of Southern Idaho and Eastern Oregon is very arsenic-laden. As a result, the waterways commonly and routinely have a background of arsenic that far exceeds the level of two-point-three micrograms per liter, which is proposed in the water quality standard. An option that should be considered by DEQ is adopting the ten micrograms per liter of arsenic for the Snake River basin. The concentration would be very protective of the use of the river as drinking water, and consistent with the maximum contaminant level for arsenic of ten micrograms per liter, under the Safe Drinking Water Act. In fact, region ten of EPA approved Idaho's water quality standards at ten micrograms per liter just last July.

As I noted earlier, Ontario only discharges our waste water effluent to the Snake River during the period from November 1 to April 30. The rest of the year, the effluent is used to grow forage crops on a city-owned farm. The city is removing arsenic from the Snake River on an annual basis. I have not seen language in the proposed rules that provide a credit for this type of operation. How will the issue of land application be taken into account, since only one half of Ontario's waste water is discharged to the Snake River on an annual basis? Will the number of pounds of arsenic being removed be a consideration in granting a variance if that variance is necessary?

To put things in perspective, staff has calculated the amount of arsenic that is removed from the Snake River on a daily basis at our water treatment plant. Considering the water demand of six million gallons per day, and a river background of five micrograms per liter, six million per days will contain four ounces of arsenic. Our average inflow to the waste water plant is one-point-six-nine gallons per day. Assuming no removal in either the water treatment plant, or the waste water treatment plant, the city will be discharging about one ounce per day to the Snake River. I submit there will be no measurable change in the background of the Snake River, which flows at approximately ten thousand CFFs. A flexible permitting mechanism that could be considered is to address elevated background levels of arsenic by allowing a background pollutant allowance, or a increase of three percent or less in the background pollutant concentration of a water body approaches or exceeds an applicable human health criteria, and does not result in a significant change in human health protection. It is my understanding that this background pollutant allowance is available for an industry, but not for a municipality. Why is that not being made? At our variance meeting a couple of weeks ago, EPA reps indicated to us in our workshop that it was not available to cities, but only to industry, I'm troubled with that.

The arsenic criteria should at a minimum, address the elevated levels of arsenic in the Snake River basin, and elsewhere consistent with DEQ's own rule which states, "for a less stringent natural condition of the water of the state exceeds the numeric criteria set out in this division. The natural condition supersedes the numeric criteria, and becomes the standard for that water body. How is that being addressed in this rule making process? There appear to be numerous options for DEQ to consider when dealing with this complex issue that are significantly less cumbersome than the variance process. I would be concerned if DEQ is adequately staffed to handle the multiple variances that may be contemplated under this proposed rule. The City strongly encourages DEQ to consider a strategy to deal with background conditions on a regional or watershed basis, rather than dealing with each permittee individually.

Additionally, there are two regulatory drivers currently in play in Oregon that potentially affect effluent discharge limits for compounds. Senate Bill 737 in this rule making we're dealing with(?) Both regulatory processes impact the waste water discharges in Oregon. The City of Ontario's very concerned about having to develop two sets of plans for arsenic reduction. In summary, we encourage DEQ to move forward cautiously in this toxic reduction rule making process, and make sure that any required community investment has a positive impact on water quality, and is just not a paper exercise. The program needs to address all sources, and not just be focused on the water quality permit holders. Thank you for the opportunity, and we will submit formal comments by the deadline. Thank you.

**Jane O’Keefe** - Thank you very much. Steve Griffith.

**Steve Griffith** - Yes. I was invited here by Liz VanLeeuwen, the Linn County Soil Conservation District Chairperson, and she thought the information I had might be useful today. So I'll try to make it short. I'm Dr. Steve Griffith, a research plant physiologist for the USDA ARS National Forest Seed Production Research(?) Center in Corvallis, Oregon. My comments today are going to sort of highlight the importance of using scientific based information in making rules and standards, and particularly with regard to non-point source. That's the research we've been involved in in summing up TMDLs, based on scientific data. We've been working in the Calapooia watershed system for quite awhile. We've had cooperators from USDA, NRCS - Conservation Service, watershed councils, US EPA, as well as Oregon State University scientists and extension people. I'm the lead scientist of the multi-disciplinary project that assesses the USDA \_\_\_\_\_ national program 216, agricultural system's competitiveness and sustainability. Team research assesses the effects of farm conservation practices, and the potential for conversion of agricultural crop residues and the bioenergy is a value-added enterprise on the profitability and sustainability of grass seed production systems in the Pacific Northwest.

The function and natural landscape features, including riparian forest, natural vegetated channels, wetlands, and supplementing conservation practices to maintain water quality, and so as biological indicators of watershed health is also being evaluated within multiple hydrologic basins in the Pacific Northwest, particularly the Calapooia watershed, a sub basin of the Willamette Valley of Oregon. The impact of multiple economic variables as a resource at various scales is being evaluated in the context of agricultural profitability and sustainability within the region. These studies will produce scientific data, and have produced scientific data for the last twenty years that can be used to develop farm management options and decision tools that promote sustainable and profitable farming systems that comply with environmental regulations, and make wise use of natural and crop production resources, and incorporate conservation measures that protect wildlife habitat and natural resources.

I've got some material here that I'm going to share, that you can have. It's a list of twenty nine peer reviewed publications - non peer reviewed publications lists are longer, but I'm giving you the peer-reviewed scientific data that relate primarily to Oregon, Western Oregon watershed, primarily, again, Calapooia watershed system. And also there are a number of graphs that have been supported by ODA and a number of federal agencies that allow us to conduct this work. We're also on a (ad?) that we have worked very tightly in cooperation with the growers, particularly in the grass seed production areas of the northern Willamette Valley, and that's helped us do on-farm sampling of water quality, birds and fish, as well as aquatic insects.

And lastly, I just wanted to point out, that if DEQ's not aware of it, that the Calapooia watershed is one of the many watersheds nationwide that USDA, ARS, and RCS has adopted as a study watershed. I work in collaboration with other scientists nationally, with other watersheds, and trying to pool all this information together. And it's called a conservation effect assessment project, and I think the data that come from this project, as well as the other data we collect will be very important to EPA, and we hope that we can make that available to your agency. So I have that material. And also, in collaboration with Oregon State University, there's a specific subcomponent of that seat project, and I've outlined the proposal, and its major emphasis is fish, wildlife and fish, birds, and aquatic insects. I appreciate the opportunity to speak today. I hope that's useful to you, your group, and thank you.

**Jane O’Keefe** - Thank you very much. Okay, now we have Brandy Humphreys, followed by Don Gentry, followed by Peggy Browne.

[00:51:58.26]

**Brandy Humphreys** - Good afternoon, Chair Blosser and commissioners. Thank you for allowing me to speak today. I'm Brandy Humphreys, Environmental Resource Specialist for the Confederated Tribes of Grand Ronde. The Grand Ronde tribe is very protective of its tribal members' health and safety. For this reason, in May, 2008, our tribal council approved a tribal resolution supporting the fish consumption rate of three hundred eighty nine grams per day, which according to local studies, protects ninety nine percent of adults tribal consumers. In October 2008, the tribe testified in support of the adopting the one hundred seventy five grams per day fish consumption rate, which protects ninety five percent of adult tribal fish consumers. Even though we [audio problems, static, hard to hear] \_\_\_\_\_\_ reduction of tribal health protection, we felt, and still feel that there is an urgent need for a change, and acknowledge that the one hundred seventy five grams per day rate is a much needed improvement over the current rate of six point five grams per day.

We want to thank DEQ for its leadership in working with interested parties through the entire public process. The tribe's staff and council have participated in the workshops and meetings, who brought us to the current rule-making, and benefited from hearing other parties' interests and challenges. We feel that DEQ has worked hard to find compliance options that will result in an implementable water quality standard that will be protective of fish consuming Oregonians. We are also glad to see that the new rules include revisions to the water quality standards and TMDL regulations for non-point sources. Again, the tribe supports the currently proposed water quality standards for human health toxic pollutants based on a fish consumption rate of one hundred seventy five grams per day. Thank you again for your time and consideration.

**Don Gentry** - Thank you, Chair Blosser and commissioners. It's good to be before you again. And Dr. Peterson. I appreciate this opportunity. My name is Don Gentry. Is this on? Okay. My name is Don Gentry. I'm Vice Chairman of the Klamath Tribes. And I represent the Yahooskin, Mukluks, Moadakknii, Numu, the Klamath, the Modoc, and the Yahooskin \_\_\_\_\_ \_\_\_\_\_ Indian Peoples. And the Creator placed us in the upper reaches of the river basin, and we still hunt, fish. I've spoken quite a bit in the past about the importance of supporting the increased fish consumption rate, and revised water quality standards in the past. And today I wanted to focus more on the TMDLs, and the implementation measures.

My wife and I live on the Sprague River, which is listed on the 3-d list. And I'm also a tribal fisherman. And I come from a long line of family fishermen and hunters in the Klamath Tribes. And I love - I know that's why my people sent me up here to speak on behalf of our people in that regard. Currently we don't have salmon in our basin, and we're working hard to restore salmon back into the system. But we have some real issues in the Upper Klamath basin. We also have endangered c'waam(?), which I explained in the past is an important subsistence species to the tribes. The c'waam are a large, endangered long-nosed sucker. And we have qapdo., which is our short-nosed sucker. Those are fish that we believe Creator placed for us, and others to use there, but those fish are on the endangered species list. And we know why. The Klamath Tribes have the longest data stat, in regard to nutrient input, and to the Klamath Lake system. Nutrients that are coming into the - through the tributaries, the Sprague River, the (Linson?) River, Woodruff River. And we know what has changed over time. And some of the changes actually occurred way back, and under BIA management of reservation times when there was a move to make us ranchers, and farmers, which we are and still are today. We live on - my wife and I live on a family piece of property, nine hundred and sixty acres along the Sprague River. We have cattle, we have horses. We also have timber along the edge. I have family members \_\_\_\_\_ loggers, I have family members that have owned mills. So I'm on all sides of this issue, in a sense. And I like to believe that we're standing up for what's right for the Upper Basin.

So the TMDLs are vitally important. Implementating these TMDLs, we believe - we know - the reason that we have endangered suckers, because our suckers live in Klamath Lake, and those fish spend a lot of their time in Klamath Lake, and the come up and spawn in the springtime. They're staging to spawn in our river right now. But we've had fish die-offs in that lake that has been caused by nutrients that have come into the lake, because our rivers have been (rabbled?) They've changed significantly; instead of being lined with appropriate riparian vegetation, and providing the shade, besides being the narrow, deep rivers that they once were, they're now shallow, wide. We have sagebrush encroaching on the areas where we should have willows. We have significant problems that contribute to the high water temperatures, and the nutrients that go into the lake and cause alba blooms that create fish die-offs, because we elevated pH levels, problems with dissolved oxygen. I've collected, along with US Fish and Wildlife, our c'waam. I've been there. I've smelt the dead fish, you know, because of this.

So we have a legacy of what has been done. And these are unintended consequences from some of the things that we've done, and I think that we know better now. We have some good information. And I'm thankful that so many landowners on the Sprague River are doing good things, taking advantage of federal programs, and even doing things on their own time, and own effort, to fence along the streams, and do things that are important to improve water quality. But it's unfortunate that some of our neighbors seem to be in a state of denial, like they don't know what our rivers once were. And - but our elders do, and we remember, and we know things need to be way different than what they are. So I believe it's critical to implement the TMDLs. And I believe it's appropriate, the implementation - the revised implementation measures, and the new measures, I think, are appropriate to adopt.

And I was thinking on the way up about what I would speak about, and I was thinking quite a bit about one of our tribal elders that was around when we once had salmon. And she's a near and dear lady to my heart. She's no longer with us, but she's the one that gave me my Klamath tribal name at our Return of C'waam ceremony. And her name was Clarice (Lotches?). And she was such a wonderful, colorful lady. And after Nike came out with their saying, this became one of her most famous things to say whenever we came to a point in our lives when we knew what we needed to do, when we knew what was right. She would just tell us, (homaski?). That means "Just do it." So she loved to tell us, (homaski?). So I encourage you, Oregon and commissioners to adopt these rules, because it's the right thing to do, we know it's the right thing to do. We know there are issues and concerns, and people \_\_\_\_\_ that help people are going to be affected, and have been affected, because of what's happened in the past. So, (homaski?). Thank you again for the opportunity.

**Jane O’Keefe** - Thank you very much. So we have Peggy Browne, Tracey Liskey, followed by Doug Krahmer.

**Peggy Browne** - Chairman Blosser, members of the commission, my name is Peggy Browne. My husband and I farm approximately five hundred acres in southern Union County in the Powder Basin. We raise predominantly hay and cattle. My background is that I am a rangeland consultant, and Native American, and I do subscribe to the - try to preserve what we have for seven coming generations. What I do, though, for off farm work, is both my husband and I do have to provide off farm work so that we can stay in the business, is I'm a consultant, and a natural resource and agricultural consultant. Ironically enough, I started my business during - going to meetings with the local advisory committee. I was on the original committee for the Powder Basin. And during my time with that committee, I realized more than ever how important it is for our farmers and ranchers, and those land managers to be on their farms. trying to provide a living for their families, and actually managing their property. They need to be able spend their time that is so valuable, just as valuable as yours and mine, on their horses, on their tractor, and on the ground.

Through the system that's currently in place with the Oregon Department of Agriculture, and Oregon Department of Agriculture having the sole responsibility of managing and implementing the ag water quality management plans, I have assisted many, many land owners through my business with implementing numerous science-based projects ranging from riparian plantings, typing(?) irrigation ditches, and updating outdated irrigation systems. On our own property, we have put in gravity-fed center pivot systems, and also installed riparian buffers. Now as a reward for what we have done, as well as many other land owners, you're suggesting more regulation, more very costly regulation. You're suggesting new requirements, regulations, and new authority to the Department of Environmental Quality.

I recently attended the hearing in Ontario, and let me tell you, that room was completely full of people against this rule-making, and this rule-making process. There - during the presentation, there was absolutely no mention of implementation-ready TMDLs, what those are, or what those mean. I found this completely misleading. In fact, what was referenced were, and I quote, "innovative compliance methods," end-quote. What does that mean to us on the ground? What are you telling us that we have to do? We already know from past experience, and from how this has been promoted to us, that we're not talking about something that's economically sensible. And we're certainly not talking about something that's achievable outcome based solution. We're asking you to please knock the agriculture out of business, because that is completely what is potentially possible here.

Let me talk just a little bit about economy and revenue. For Baker County, which is where the majority of the Powder Basin is, our number one source of economic revenue is agriculture. That is number one source. In downtown Baker City, there's the Geiser Grand Hotel. Everybody’s familiar with Geiser Grand. It's the heart of downtown Baker City. And across from that hotel, that historic landmark, is a block with more than five storefronts that are open. That's just in one block. And I just happened to notice that the other day when I was walking down there. And actually the block that the Geiser Grand sits, on that side of the street, is worse. There's more than five storefronts open. We cannot live through this and stay economically viable. Worse, it affects our very, very real communities. Our community of Unity, Oregon - I'm not sure if anybody's familiar with that area, It's a very large rural area. There are no children in that community under five years old. That community is dying. And they're hundred percent relied - they rely on agriculture.

So in conclusion, even the current relationships between agriculturists and Oregon Department of Agriculture, specifically where water quality is concerned, is delicate. It is working. These proposed rules will definitely tip the scale, and what we have in place will no longer work, and what you're proposing will not work. The on the ground reward systems, versus over-regulation, has proven very successful. I urge you to think that direction. And finally, we, in agriculture, truly want clean water as well, and we urge you to review and apply some language is going to be submitted to you, that is written by Oregon Farm Bureau Federation. Thank you very much for your time. I realize that you're probably not going to comment, but if you have any questions, I'd be happy to answer them.

**Jane O’Keefe** - Thank you very much. Okay, Tracey Liskey, Doug Krahmer, Barry Bushue, be ready.

**Tracey Liskey** - Hello. I'm with Oregon Environmental Quality, Chair Blosser. My name is Tracey Liskey. I'm a third generation farmer and rancher at Klamath Basin. I'm also first Vice President of Oregon Farm Bureau, and a board member on the Oregon Farm and Agriculture. Today I'm speaking to you as a land owner in the Klamath Basin. In the early 1990s, I was involved with the DEQ, working on the TMDL process on the Klamath River. This was when the Agriculture Water Quality Management Act was passed, Senate Bill 1010. When the TMDL process derailed, I was asked to participate on the local advisory committee to help develop a local agriculture plan for the Department of Agriculture. After a few years of work, we completed the plan that let agriculture and ODA work collaboratively to reduce, to the maximum extent practical, the level of pollution resulting from agriculture at non-point source pollution. This Water Quality Management Act was not easy for agriculture to get behind, but with ODA as its regulating authority, and a plan worked on by local farmers and ranchers, slowly, agriculture's acceptance of ODA's 1010 plan started to happen.

On my ranch in the last ten years, we've worked collaboratively with the soil and water agencies to reduce pollution to the maximum extent possible for the environment and for ourselves. We've converted over five hundred acres of floodland to pivot irrigation, upgraded two older pivots, and four half mile (wheel?) lines. We have leveled over five hundred acres of farm ground, and we converted ditch irrigation to buried main line irrigation. We have put in over two miles of riparian fencing to keep cattle out of the surrounding water. All these projects were in collaboration with the ODA 1010 Plan, working with Soil and Water, and NRCS, Fish and Wildlife Service, to save water and reduce pollution. In the Klamath Basin, there have been great strides to reduce pollution in collaboration with the ODA 1010 Plan. One irrigation company has put in over three hundred and eighty pivots and linear systems, which represents over forty six thousand acres of land converted to more efficient irrigation and less pollution.

According to the local soil and water agencies, there have been approximately eighty three million dollars on more than a hundred and eighty six thousand acres of conservation practices that either directly, or likely indirectly benefited water quality and water quantity on private lands on the Oregon side of the basin. And the total basin was over a hundred and fifteen million on more than four hundred and eleven thousand acres. During that time there were only two water quality complaints handled by the district, and hundreds of projects completed to improve conditions. Seems self-\_\_\_\_\_ that the proactive ODA 1010 process for agricultural water quality is working exactly as intended. Agricultural Water Quality Management Act is working. Agriculture is doing its part to reduce pollutants to to the maximum extent practical, as prescribed by the Federal Clean Water Act. The Oregon Department of Agriculture has the sole regulatory authority by Oregon law, but the most important part is having the trust of Oregon agriculture industry.

It is critical that any water regulation from farming practices remain under direction and enforcement of ODA. Administrative(?) practical outcome based methods to reduce water pollution from agriculture no- point sources. Any regulation implemented by the Agriculture Water Quality Management area plans and rules should be based on the best available soil, crop and animal science that demonstrates the effect of the land practices on water quality, and is reasonable and practical to modern production agriculture. And any attempt by DEQ to directly regulate farming practices through any mechanism, practicing(?) implement-ready TMDLs would be a direct conflict with Oregon law, and years of working between ODA and local ranchers and farmers. If DEQ goes through with this proposed regulations, it would only be seen as a way to supplement their budget on the backs of agriculture at a time when additional fees may be - cause great harm to the industry. I support the formal comments, and suggestion rules language changes submitted by Oregon Farm Bureau, and believe ODA area plans and rules, administrated through the ODA management process are an effective way to collaboratively enforce mandated regulations, where all parties come together to find ways to evaluate water quality on farms and ranches in Oregon. I'd like to thank you for listening to me, and hope you will leave a good working tool in the hands of ODA, and keep the trust of Oregon agriculture.

**Jane O’Keefe** - Mr. Kreamer, followed by Mr. Bushue, and then Jennifer Shmikler.

**Doug Kraemer** - Chair Blosser, members of the commission, my name is Doug Kraemer. I reside at 19664 (Edward?) Grove Rd., St, Paul, Oregon. I'm on the Board of Agriculture, Oregon Dept. of Agriculture, but I am here today testifying on my personal behalf. relying on my experiences as Director of the Marion (sone?)Water Conservation District, and as a berry grower in the Willamette Valley. My experience is that ODA is fulfilling its statutory responsibilities under the Agricultural Water Quality Act. There's been thirty nine agricultural water quality basin plans that have been established with the help of more than four hundred and fifty local constituents on committees in those basins. These plans get reviewed every two years, and updated to reflect the change that may have occurred during the previous twenty four months. I believe these rules and actions have been effective in fulfilling agriculture's obligations as it relates to the non-point water quality.

Because of these successes, I believe your proposed rules revised water quality standards for human health toxics are over-reaching, and not harmonious with ODA's statutes and rules on non-point source agricultural water quality. Oregon statute prohibits ODA from implementing a practices-based regulatory program, which is what it appears DEQ is trying to say in rule that the will do if ODA is found lacking in enforcement of their program. Department of Environmental Quality has the statutory authority to set water quality standards, and we as ag producers strongly support ODA's regulatory authority to regulate and enforce agriculture's non-point water quality program. Thank you.

**Jane O’Keefe** - Thank you very much. Mr. Bushue, followed by Jennifer Shmikler and then Joe Hobson.

**Barry Bushue** - Chair Blosser and members of the commission, I appreciate the opportunity to be here today. My name is Barry Bushue. I'm the elected President of the Oregon Farm Bureau Federation. I also would like to make this public announcement about the appreciation for Dick Peterson, the Director of DEQ and his open door policy with regard to discussions related to these rules. Although we don't necessarily agree on the outcome, I do appreciate his openness, and the willingness of his department to work collaboratively with us on this issue.

The Clean Water Act passed by the Federal Government contains language to deal with non-point source solution, and I quote, "to reduce the maximum extent practicable, the level of pollution of resulting from agricultural non-point sources." [punctuation guessed at by transcriber]. Congress was extremely wise in its understanding of agriculture, and set an extremely high bar for us in agriculture, considering the diversity of the challenges we face on a daily basis. 1010 was passed in 1993 as the state's regulatory mechanism to address the Clean Water Act, and its non-point source issues. The guiding principles of 1010 are pretty clear. It's a basin-wide strategy, in which land owners do everything practicable to reduce pollution resulting from agriculture. We have a proven track record, and it's accomplished by addressing conditions on the land, as opposed to practices. A hundred and eighty degrees to this, the proposed rules will instead propose a numerical standard that must be achieved, regardless of they are practicable, or even possible. If these numbers cannot be reached, then the Department of Environmental Quality would have the authority to mandate practices for individual land owners that may or not be practicable, or even achievable.

My farm - my wife, my three children, I farm about twenty miles due east of here, near Sandy . We do a diverse agriculture - we do nursery, we do berries, we do flowers, we do retail, we do wholesale. My father, in the early '70s recognized the value of water quality, and installed, at his own expense, a retaining pond and settling pond which captures all of the runoff water from our container nursery, and that was as early as thirty-some years ago. We are heavily into cover cropping; we do grass strips between our container yard, and amongst our major crops; we use - we're heavily involved in IPM strategies, the grass strips, soil testing, and all of the other rotational crop issues and cultivation methods that we use to improve the sustainability of our farm, with a goal to passing that on. If my children are desirous to continue to farm, that will be their choice, but obviously an eye to water quality, and sustainable management practices.

Commitment of thousands of Oregon's farmers, and its land owners, working in collaboration with the NRCS, USDA, soil and water conservation districts, and Department of Agriculture have established agricultural water quality management plans. I served on the local advisory committee to help develop our basin's plan in the Clackamas Basin. These were lively, passionate discussions, but in the end, they were all in the interests of enhancing and improving Oregon's water quality. This collaboration, and the huge financial investments on both the part of the land owners, and the Department of Agriculture have resulted in a model program with proven results.

Some believe that the only way to determine the success of a plan is by the number of fines levied. That seems to me regressive, and accomplishes absolutely nothing. The Ag community are notorious problem solvers. Our work to address conditions on the land have made tremendous strides in water quality. That is how you measure success. Farming is a struggle every day. In this fragile economy, it is even more challenging. As the state's second largest industry, we provide a approximately one out of every nine jobs in this state. The cost of ever-increasing regulations and an economy in crisis have meant less jobs in agriculture, as these Draconian rules will further impact us. The Department of Agriculture has been a partner and a problem solver, and has managed and regulated a successful program. The state's response, however, has been to cut funding the department, cut funding for these successes. and consider rules that would require increased funding for the Department of Environmental Quality, who frankly, don't have the best tools to deal with the diversity of agriculture.

The economic impacts cannot be ignored, and I believe the public has considerable interest more now in jobs than they do in further impeding the agricultural economy of the state. Cutting funding for success at the same time we consider (egregious?) and (im?)practicable rules seems to serve no one's interests. Farmers have considered - have committed to solution-oriented plans, and we are extremely proud of our success. These rules would create a fundamental change in the relationship between the Department of Environmental Quality, the Oregon Department of Agriculture, and farmers, creating a paradigm shift of which only serves to threaten a successful partnership. These rules send a message, intended or not, that despite all farmers have done, that we are not doing enough if we are not being punished. I hope and pray that that is not a message that the members of this commission want promulgated. Thank you for your time.

**Jane O’Keefe** - Thank you very much. Jennifer Shmikler, followed by Joe Hobson, and Stephanie Eisner, be ready.

**Jennifer Shmikler** - Good afternoon, Chair Blosser and members of the commission. My name is Jennifer Shmikler. I'm the Regulatory Affairs Specialist with the Oregon Farm Bureau. And I participated in the DEQ stakeholder work group, regarding the impact of the proposed rule making on non-point sources. And I did want to send out a thank you to Director Peterson, and his staff, Jennifer Weigel., Gene Foster(?), and Neil Mullane(?) for always reaching out to us, and answering our questions as we moved along, and Donna Silverman for being an excellent mediator as we moved forward.

In November of 2009, at the first stakeholder work group, DEQ stated they were looking to submit the proposed rule making package in May of 2010, with a goal of October, 2010 for final adoption by this commission. We are here a year and a half later, in the midst of public comment period. So we believe that the task put before DEQ to rewrite the rules impacting non-point sources was a much bigger challenge than originally anticipated. As the stakeholder group progressed over the past year, Oregon Farm Membership has grown increasingly more concerned about the potential intervention of DEQ. And what we find is a well functioning system of agricultural regulation by the Agricultural Water Quality Management Plans, regulated by the Oregon Department of Agriculture. In my testimony today, I hope to reach out to you, as members of the EQC, and inform you of some of our more serious concerns with the rule making package being submitted by DEQ. And I want to be very clear that we do support regulation; we just hope that it can be effective. We are not here, necessarily, to address the fish consumption rate.

The package currently up for public comment is extremely complex, and will have a significant impact on Oregon agriculture. We believe the specific language being proposed goes against the original legislative intent of SB 1010 passed in 1993, creating the Agricultural Water Quality Management Act, and subsequent legislation passed in 1995, declaring the Oregon Department of Agriculture to be the sole agency responsible for developing and implementing quote, "any program or rules that directly regulate farming practices, that are for the purpose of protecting water quality," unquote. [punctuation guessed by transcriber] The current mandatory regulation conducted by ODA is a collaborative effort that works continuously to manage conditions on agricultural land that improves Oregon's water quality. We believe that setting a numeric standard with a prescriptive TMDL will only create a non-science based, unachievable goal, while still placing a heavy economic burden on production agriculture. Oregon's second largest industry.

Farm Bureau strongly believes in doing our part to enhance water quality in Oregon. Our own internal policies support protection of Oregon's surface and ground water, provided such regulations are based on sound science, and are attainable, site-specific standards that are based on the ability of the water body to achieve those standards. Our policy also encourages water quality regulations to address conditions on the land that will enhance water quality, while protecting a farmer's ability to economically use his or her land for agricultural purposes. We fear that the proposed regulation will allow DEQ to regulate farms and ranches to the point where it is no longer economically viable to produce on our land.

DEQ continues to reiterate in the stakeholder group and in recent public hearings that they have no intention of taking over the 1010 area plans and rules with this rule making package. However, the very language in the rule making indicates otherwise. The language proposed states, quote, "If DEQ determines that the area plan and rules are not adequate to achieve and maintain water quality standards, DEQ will provide ODA with comments on what would be sufficient to meet water quality standards, or TMDL load allocations." The language goes on further to state, quote, "If a person subject to an ODA area plan causes or contributes to water quality standards violations, DEQ will refer the activity to ODA for further evaluation of potential requirements, or DEQ may also require remedies of a person causing pollution, or contributing to water quality standards violation if ODA does not take action," unquote. To Oregon farmers and ranchers, this language sounds like direct intervention by DEQ and the management of farming practices related to water quality, which is already strongly regulated by the Oregon Department of Agriculture.

Additionally, DEQ provides no safe harbor for land owners who comply with prescriptive TMDLs submitted by DEQ. Thus, even if a farmer complies with DEQ requirements and the water quality does not improve, additional remedies or regulations may still be imposed. We ask DEQ to remove this language from the rule making proposal, and consider our own alternative to be submitted with our formal written comments that regulate Oregon agriculture to the maximum extent practicable, as is prescribed by the Federal Clean Water Act.

After a ten day stretch of DEQ presentations and public hearings across the state, there is much confusion amongst our members, and others who work in Oregon agriculture. The feedback from our membership indicates that during the question and answer portion of these meetings, particularly, I believe, in the Medford area, DEQ seemed unprepared or unwilling to answer directly how the proposed rules will either improve water quality in Oregon, or how the new regulations will be implemented by DEQ. Oregon Farm Bureau members are still uncertain as to what DEQ is seeking to accomplish if the agency is not intending to directly intervene in the ag water quality management plans. Farm Bureau members are also unsure of what implementation-ready TMDLs will look like, or what (surfeit?) measures or conditions will be required of them by DEQ, should this rule making be enacted by this commission.

Many of our members have submitted comments on this issue, with several examples of how they are currently improving water quality on their own land. And I believe you've heard some of those examples today. Many are participants in local advisory committees, and are active with their local SWCDs. Others work directly with ODA and NRCS to find new land management initiatives that will contribute to water quality enhancement in Oregon. Please keep these efforts in mind as you consider adopting these rule making proposals. Oregon Farm Bureau will be submitting extensive written public comments on how best we can move forward to improve Oregon's water quality. We ask that you review these comments carefully, and consider our alternative language to the rules you are seeking to amend. We believe we have an approach that will continue to regulate agricultural land to the maximum extent practicable, while maintaining a healthy and robust agricultural industry in Oregon, and keeping within federal and state law. Thank you very much for your time and consideration today.

**Jane O’Keefe** - Thank you. Mr. Hobson, followed by Stephanie Eisner, and then Liz VanLeeuwen.

**Joe Hobson** - Chair Blosser, members of the commission, my name is Joe Hobson. I'm an attorney in Salem, am in private practice. My client today is the Oregon Farm Bureau Federation. I'm not going to go into too much detail. We will submitting, as Jennifer said, some detailed written comments. But I did want to just kind of focus a little bit on what you've heard, and what you're going to hear from agriculture about the proposed new rules. Agriculture's focused on what looks like a very small piece of these proposed new rules; I mean in number of words involved, it's a very small piece. But it's a huge, as far as they're concerned. And it - yeah, I think you will find it deserves some careful consideration, and maybe some further thought with respect to how you go about doing this.

The problem with the proposal is the point at which it begins to alter, we believe, the relationship between DEQ, Department of Environmental Quality, and the Oregon Department of Agriculture. It does that by changing the way the load allocation and the TMDL would be set, number one. Number two, it will change the effect the load allocation would have on the agricultural water quality management plan. In effect, it would make it a goal that Agricultural Water Quality Management Plan would - one of the goals would be achievement of a numeric standard. And then number three, it will make it appear as though a farmer that complies, in full compliance with an agricultural water quality management plan could still be liable for other water quality related issues. Those are three very serious mistakes in the approach of the new rule, of this piece of the new rule, for three reasons: one, it's not practical. It's probably not achievable. It's simply not going to work. And we should be focusing on something that is achievable, or will work, will get us to the goal; number two, it's not required. It's not something that can be required by EPA, and it's not required by Oregon law; and number three, it's not allowed. And we'll be showing why that is all true in the written comments that we submit. So I just wanted to focus on those three things. Thank you very much.

**Jane O’Keefe** - Thank you very much. Stephanie Eisner, followed by Liz VanLeeuwen, and Mark Mellbye.

**Stephanie Eisner** - Chair Blosser and members of the commission, I want to thank you for hearing my testimony. I'm Stephanie Eisner, and I work for the City of Salem. The City of Salem Willow Lake Water Pollution Control Facility is responsible for treating the waste water generated by the citizens of Salem, Keyser, Turner, and other incorporated areas in Marion County, served by the our sewer collection system. The current service population is approximately two hundred and twenty nine thousand people. The city has changed finished \_\_\_\_\_ our capital projects of approximately a hundred million dollars to better water quality. The City of Salem strongly supports efforts to reduce toxics from all sources entering Oregon's waterways. To achieve this, we do many things, including working with our industries to limit the toxics discharge into our sewer system through our pretreatment program; we operate our treatment plant effectively; we sponsor drug take back programs and events; we partner with area dentists to reduce mercury containing waste into our sewer.

We appreciate DEQ's offer of variances as a compliance tool, especially where that tool incorporates pollution reduction plans as a way to make progress to the degree feasible towards improvement. We do have several concerns. The EPA regulations restrict variances to being short term and temporary. There's nothing short term and temporary about legacy pesticides, or very low levels of PCBs or pesticides that are present throughout the environment. Even addressing current use toxics will be complicated, and may take many years to resolve. There is nothing short term and temporary about the investment our communities have made over many years to build and maintain our community's waste water collection and treatment infrastructure. Capital improvements made to comply with any regulatory requirements have life spans of decades. not the five year cycles proposed for the variances.

And there is a substantial amount of paper work involved in securing a variance. DEQ has estimated the cost as between eight thousand and forty four thousand. This paper work exercise would need to be repeated at each permit rule, and is specific to each pollutant of concern, and each permittee. This diverts rate payer investments from other investments that would have greater water quality benefits. Renewal or reissuance of variances also has the potential to repeat those costs on the five year permit cycle. And the analysis completed by (AQUA?) indicates that many, if not most, domestic major waste water treatment plants will need variances for pollutants that cannot be effectively treated or removed from the waste water stream, such as PCBs from human and food waste, or phthalates. That equates to an overall expenditure of between three hundred and ninety two thousand and two million one hundred and fifty six thousand for a paper work exercise for no water quality benefit. That expenditure will reoccur every permit cycle. DEQ's statements that the first time variance are anticipated to be greater than subsequent requests, and is not supported. The overall scheme 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 a basin, or even throughout the state. We also have questions on how the background pollutant alone will be useful to municipalities and districts. The obligation to make specific findings regarding endangered species, existing water quality uses, and unacceptable risks to public health should be made by DEQ, not by the variance applicant.

Overall, we have numerous questions regarding variances, and how they'll be used in Oregon. DEQ is asking municipalities and districts to support the revisions in the toxic water quality standards when the path for for securing NPDES permits through variances is still very unclear. As an example, one of the variance experts that DEQ asked to speak at its variance workshop held on January 26th, 2011 in Portland was the chief of the Wisconsin Department of Natural Resource, Wastewater Section. In response to a question, he indicated that he would use the variance process to handle widespread legacy pollutants, such as PCB issues, remarking that it would, in quotes, "grind the permitting process to a halt. (He would want?) an implementation procedure other than variances," end-quote.

In summary, we recommend that the EQC request from DEQ a specific implementation plan by category of pollutants. The implementation plan should lay out the Clean Water Act tool that will be used to resolve the underlying water quality criteria, including development of a TMDL, use of the site-specific criteria, or development of a use-attainability(?) analysis. And the guide path to achieving the necessary reductions across all sources in the watershed to achieve the water quality standard. The revised toxic water quality standard should only be adopted and effective when the implementation plan is agreed to by the EQC. Thank you.

**Jane O’Keefe** - Thank you very much. We have Liz VanLeeuwen, followed by Mark Mellbye, and John Cain(?)

**Liz VanLeeuwen** - And thank you, commissioners, for listening to us, and yes, represent the Herb Ballow(?), do I say it correctly? I come twofold today, from our farm operation, and also as a Chairperson of Lynn Soil and Water Conservation District. And I do have written material on that. I'm going to go to my testimony first, because I've been involved in water issues for at least the last fifty years. And when I was term limited out at the - or being term-limited out at the legislature, where I spent eighteen years, the local soil and water district came and got me to serve on that group, because they knew they knew they were going to be dealing with the 1010 Water Quality Management Plan, which I carried on the floor of the house in 1993, and I think there was a unanimous vote when that went through. And so now I'm on - with the group, where we are working with the Department of Ag on the concerns that come in over water quality, and our staff, working with the Department of Ag in, I think, since our plan - water quality plan was completed, I think six years ago - several years ago. I think there have been at least forty five or fifty water concerns, and every last one of them, our staff, working with the Department of Ag, has been able to get compliance on those issues. And I think that speaks well for what's happening with 1010.

We're - we just all want clean water. and the improvement that has been made in our area's tremendous. One of the main things that we've been doing in our particular area, which is largely grass seed and wheat, but quite heavily agriculture and forestry. We've been doing the - he can say it better than I can - we've been doing the vegetative - the grass strips, and then we've been also taking the drainage ditches and putting one of kind of grass in those to prevent the erosion from going out, to help catch the chemicals in the erosion. I just read this just the way I wrote it, instead of trying to go off of that.

Anyway, one of the - my basic life principles has been realizing that everything in this world in chemical. And if I take one aspirin, it may save me from a heart attack, or that aspirin a day the doctor says we should take. But if I take that whole bottle, I might die. And that's the thing with all of the chemicals you're dealing with, is the dose ratio. And one of my real concerns is in our waters, we have naturally occurring arsenic and mercury, and I'm not sure that the EPA, or whoever's in charge always recognizes that and tries to make those of us who are non-point - probably the point-sources too, responsible for that chemical being in there. Anyway, I just - please recognize that things are improving, and working well with the regulations and enforcement now in place, under the Oregon Department of Agriculture. And it seems to us that a change in agency oversight would be counterproductive and expensive. And yes Jane, I know, I come from your part of the country originally, but I have webs between my toes now, instead of sagebrush, [chuckle] Anyway, and then as far as the Soil and Water Conservation District is concerned - and I want you to know it was other members of the district that said yes, we need to need to send in the testimony. But their last paragraph says ODA has administered practical outcome based methods to reduce water quality pollution from agriculture non-point sources.

If DEQ continues to move forward with the proposed rule making language, the district believes agricultural land owners and producers could very likely be subject to unreasonable and economically inefficient rules that farms and ranchers out of business in Oregon. And I guess that was the thinking eighteen years ago - is that what '93 is? - when the committee - the committees, the senate and then the house, passed Senate Bill 1010. Thank you for listening to us. And we're struggling out there.

**Jane O’Keefe** - Thank you very much. Mark Mellbye, followed by John Cain(?), and Marc Whitman.

**Mark Mellbye** - Good afternoon. I'm Mark Mellbye. I'm an extension agent in Linn County, work for the OSU extension service. And I'm an (area agronomist in the South Willamette Valley, And in my capacity as an extension agent, I work with farmers, and NRCS staff, and scientists pretty extensively in a variety of problems, efforts to find alternatives to field burning, and in recent - last couple of decades - efforts to identify conservation practices to improve soil quality, and protect water quality. And that's been a big part of my program. And I guess in the interest of time, I just want to echo some of the other testimony that's been here, that's already presented in terms of the value of keeping ODA as the regulatory point person on - in this process, And I see in a lot of your language, you anticipate working with them. and so forth. And I think that is good. I support that approach. And as I look back over the last twenty years, when we really started focusing on surface water quality, and efforts to prevent runoff, we've seen the adoption of better spring practices, variable rate fertilizer application, and just lots of various best management practices to help farmers to do a better job of protecting water quality.

And ODA's been an important pat of that during those Senate Bill 1010 plans. But one of the previous ladies that testified from east of the mountains really struck a note with me. It's a delicate balance. There are farmers that I've worked with that won't allow ODA to come on their property, because they really look at them as the regulatory point person. And that's changed over time, but it is a delicate balance. Anyway, thank you for letting me give testimony today.

**Jane O’Keefe** - Thank you. John Cain, followed Mark Whitman, and Bobby Begay.

**John Cain** - Hello, my name is John Cain(?) I am an enrolled member of the Nez Perce Tribe. I am also a fish science technician at Columbia River Inter-Tribal Fish Commission. And I have to cite my source for this information, Sarah Thompson, and Jeremy Fivecrows from our office put this together, so that's where I'm getting some of my notes from here on my phone. I just basically wanted to reiterate a lot of the stuff that some of the earlier speakers said. I like the comparison of asthmatic people being considered for air quality standards, and so I feel that Natives should be considered for water quality standards.

We also - there was a survey conducted by CRITFC with Nez Perce, Umatilla, Warm Springs, and Yakima tribal fishermen. And basically said the survey said we eat nine times what the national average is of six point five grams per day. So I am requesting that the average be increased to a hundred and seventy five grams of fish per day, or twenty four eight ounce fish meals per month. Thank you.

**Jane O’Keefe** - Thank you. Mr. Whitman, followed by Bobby Begay, and next up will be Janet Gillespie, and Chris Fick.

**Mark Whitman** - [difficult to understand, too close to microphone?] \_\_\_\_\_ the panel. My name is Mark Whitman, \_\_\_\_\_ tribal member. I also work for Columbia River Tribal Fish Commission. I just - my quick response toward meetings. Thank you very much for being here. I'm glad to be invited myself, I just wanted to \_\_\_\_\_ along the river systems. And I'm also from Idaho, \_\_\_\_\_ (fish?) tribe. We always dealt with, back home, with the large manufacturers dumping pollutants and so forth into the river system, which always makes it down here, go into the ocean. I feel that with them, along with us, \_\_\_\_\_\_ fisherman, as well as \_\_\_\_\_\_, we're kind of somewhat teaming up in the past years on trying to protect the fish, but \_\_\_\_\_ water mainly to mean water quality. It was the \_\_\_\_\_, along with the land here, to reduce these fish, the animals, the plant life, and so forth to keep them growing. And just with the better water quality, assist them \_\_\_\_\_ you know. And \_\_\_\_\_\_ asked a lot of people to, you know, be out there more \_\_\_\_\_\_, you know, you get more of a grip on what's going on with it, because \_\_\_\_\_\_ river, people back in the day were always arguing over the fact of who gets the fish, or who gets to do this, whatever \_\_\_\_\_\_\_. In the \_\_\_\_\_\_ with the water quality, and a lot of people don't understand that. I think more meetings with the - especially with the manufacturers, the big people, the big boys out there need to get some \_\_\_\_\_ presentation along with this also, because I mean, \_\_\_\_\_ with the water quality, but a lot of contaminants and so forth that go along with it, and as well as the fish be consumed, as well as by non-Native people also in the stores, like Safeway. Like my co-worker here also sells fish to people like this. I mean, businesses, so it's not only the Native people who thrive on this, also the non-Native people also, So it's not just, you know, a one way street here if they get ready to take a good look at this. Thank you.

**Jane O’Keefe** - Thank you. Bobby Begay, followed by Janet Gillespie, and Chris Fick, and then Dan Hanthorn.

**Bobby Begay** - Good afternoon. My name is Bobby Begay. I'd like to thank the commission for allowing me to participate in this hearing today. I'm a Columbia River Indian, and a member of the Yakima Nation. I live in Celilo, Oregon. Celilo is (cohort) years ago, you know, from the days I was in - my family has lived there for thousands of years. My generations go back thousands of years as fishermens from the Columbia River. And our livelihood up and down the river is based upon the fishery. Our diet is the salmon. Our children consume the salmon on a daily basis. We consume salmon fresh, we consume it dried, we smoke salmon, we can salmon, and it's been consumed at any meal of the day. The salmon is sacred food that was given to us by the Creator, and it's our duty to protect it. The salmon sacrifice themself to nourish our bodies as humans. And it's the salmon who return first in this system of our water. And the salmon nurses its young to our elders. And our consumption of salmon is greater than the average person. We consume salmon year-round. And with the salmon, we eat sturgeon, we eat lamprey.

These fish, they live in the rivers as juveniles before they migrate to the ocean. They live in the river for months. Where toxins are in the river, they absorb into their bodies, into their flesh. Same with the lamprey, Lamprey will live a year to three years as a \_\_\_\_\_\_ in the mud, and all the toxins of the river. Lamprey will come up and over winter, all year long, here in the Willamette, to Oregon City, to the Superfund sites, they absorb all these toxins into their body, their fats. But the fish is sacred to us, because it's not just a fish that we eat. Fish is used for other resources, for medicine. The oil is dried and preserved. It cleanses our skin, nourishes our skin, nourishes our body. Our Native people consume the fins, the tail, the head, call it (kun-kun?) Our elders will eat the head, all of it, the eyeballs. So it's a very, very sacred fish to us. So this is what I wanted to share with you today. And the water is very important, not just to the Indian people, but to people throughout the world. And water's important because it nourishes everything that lives with us, ourselves, the animals, plants, all over this world. It creates our rains, it creates our floods for us to wash away the things that it needs to, It replenishes itself. So that much I want to say, and thank you.

**Jane O’Keefe** - Thank you. Okay, so Janet --

? - I've been corrected. Dan Hanthorne is here and ready to testify after us.

**Jane O’Keefe** - And then after Dan will be Lauren Goldberg.

**Janet Gillespie** - Chair Blosser, members of the commission, I'm Janet Gillespie, and I'm the Executive Director of the Oregon Association of Clean Water Agencies.

**Chris Fick** - I'm Chris Fick, with the League of Oregon Cities.

**Janet Gillespie** - We certainly appreciate the commission's time, and its very, very hard work on this issue over time. Many people in this room have spent a huge amount of effort working on this issue over time. The department, the commission and others, we appreciate all of their efforts. You've heard from some of our members today. We thought we would just take a few minutes and highlight some of the big policy issues regarding the rule changes that you have in front of you.

**Chris Fick** - I think it's important to point out that our respective members support your efforts to improve public health and to reduce toxic pollution. Over the years, Oregon's waste water facilities have spent millions of dollars upgrading our waste water treatment plants. We're committed to high performance standards at those facilities. Over the - we're now in the process - many of our cities are spending tens of thousands, hundreds of thousands, or millions of dollars, even, to re-orient our cities to our waterways, bring those residents back down to water, \_\_\_\_\_\_\_ that has been, in many cases, in generations. We continue to operate industrial pretreatment facilities. Our programs to reduce concentrations of metals and chemicals at our treatment plants. We partner with local law enforcement officials to collect unused drugs, and we promote non-toxic products. We have partnered over the past year with the Department of Environmental Quality to implement Senate Bill 737, or Oregon's persistent priority pollutants, and are developing pollution prevention plans for those pollutants that were in exceedence of the plan initiation levels.

**Janet Gillespie** - In addition to our efforts for reduced toxics, one of our key messages to the commission is that the impact of the proposed rule changes is much broader than the staff report would predict, based on the NCIC(?) report. We conducted our own analysis, using more current and more up to date data of a selective few treatment plants, and found that most, if not all domestic waste water treatment plants in Oregon will not be able to meet these standards, and will need either a variance or a compliance schedule. A tool such as a compliance schedule would be a reasonable one for a pollutant such as chlorination byproducts, where you had a community that needed to invest in and revise its disinfection system. The vast majority of the problems that domestic majors will have will be for legacy PCBs and pesticides. We're getting those into our waste water stream from the human bodies, and from food waste. There aren't existing treatment technologies to handle it, and it is a load that would exceed the water quality standard by several orders of magnitude.

**Chris Fick** - Without detailed implementation programs, the goal of this commission, these proposed rules are not going to be met, and we're not going to see the toxics reduced in our rivers and streams. We need effective implementation programs, including specific TMDLs, site-specific criteria, and use-attainability analysis developed by this department.

**Janet Gillespie** - The treatment plant technologies that a treatment plant would need to meet these standards at the extremely low levels that they're being proposed, are not available. There are not feasible and available technologies to remove these chemicals to these levels, as you've heard from our members, who are much more expert at operating our treatment plants around the state effectively,

**Chris Fick** - As you probably heard, DEQ has never issued a variance, EPA region 10 has never issued a variance, so there's a lot of unknowns as we enter the final stages of this process. Variances, as we see them, are going to be an expensive, time-consuming process for both the permit holders and DEQ, with no resulting improvement in water quality. Of all the different types of compliance options that have been discussed over the years, and that DEQ has dangled as an incentive for us to go along with their plans, municipal treatment plants are left with none of these options. Intake credit and background pollutant allowances are not available to our facilities. We remain concerned about how the variance process will be administered in Oregon. We have many unanswered questions. The ability of the DEQ staff to administer these programs and answer these questions is questionable, given the staffing reductions the department is facing. We believe that DEQ has underestimated the cost to municipalities of applying for, securing, and reapplying for variances at each permit cycle. As you're probably aware, in Salem the House Committee on Business and Labor, how the hearing on this issue last Friday, and Commissioner - or Representative Margaret Doherty summarized some of the concerns in the legislature. Overall, her message was don't promulgate standards that we can't meet.

**Janet Gillespie** - One additional item with regard to variances. Variances are a bridge. I'm sure you've heard them described as that in presentations that you've seen. We need to be very clear about how to get onto that bridge as domestic waste water treatment plants, and where that bridge is taking us, which is why our recommendation is that the commission ask the department to return with specific implementation plans by category of pollutants. And those implementation plans should detail which of the tools are available under the Clean Water Act, to resolve the underlying water quality standard issue will be tools. The variance should be a bridge to a TMDL, to a site-specific criteria, or to a use-attainability analysis. And that pathway, and that outcome should be clear, is our recommendation. And those revised water quality toxic standards should only be in effect when that implementation plan has been reviewed by the department, and put in place for a category of chemicals. We'll of course be providing you more detailed written testimony. We appreciate your time.

**Jane O’Keefe** - Thank you very much. Alright, Dan Hanthorn, followed by Lauren Goldberg, and (Katherine Van Etta?)

**Dan Hanthorn** - My name is Dan Hanthorn. I'm happy to be here today to address Chair Blosser and the commission on behalf of the interests of the City of Corvallis. The City of Corvallis is a compact community in the mid-Willamette Valley, hub of commerce and government for Benton County, and the residents, the business industry, and Oregon State University contribute about four billion of gallons waste water for treatment each year. To date, the city's secondary treatment facility, and combined sewer treatment plant have been able to consistently meet NPDES permit conditions in support of existing water quality standards.

Corvallis has a strong and long commitment to improving water quality for the benefit or citizens of Corvallis, enhancing community livability. We work with local dentists, and removed ninety percent of the mercury input to the community's waste water treatment plant. We were on the leading edge of that, and for that effort, we achieved a EPA national first place award, which we're very proud of. Also, our treatment plants are operated and maintained with just one performance deficiency in the past twenty three years. We take our mission seriously, and have a lot of pride in the effort that we go to to maintain our permit compliance. We sponsor community drug take back events, and provide public information on toxics reductions to the treatment plant, and we've sharply limited the use of things like fertilizer, and pesticides in the way we treat water ways and parks within the city.

We've also invested a great deal of money in improving water quality. Thirty million dollars was spent to abate combined sewer overflows in the city. And as a result, we now treat one third of the stormwater that's collected in the community before it's released to the environment. You know, pending now, is the investment of additional millions to meet Willamette River TMDL temperature requirements. In short, Corvallis has consistently demonstrated its strong bias to exceed mandated water quality requirements.

But we have a concern with a particular portion of some of the constituents in the new water quality standards, and that's the very, very low requirements for PCBs, and for phthalates, and other persistent toxins in the environment. And these constituents are untreatable at the waste water treatment plant. They will pass to the environment, and we have no options for removing them. These come from human waste. They're prevalent and ubiquitous in the environment. Research by Doctor (Hundell?) of the Chicago Metro, he's their senior environmental scientist there, and he's documented the prevalence of, throughout the environment, of these constituents. And he has, over a broad range of samples, identified PCBs of up to seventy micrograms per gram in house dust. That means the merest pinch of house dust could render three million gallons of water unfit for - to be released to the environment in Oregon.

So our concerns effectively revolve around how we approach, you know, compliance with these rules. If we're unable to treat it, right now, consistent with the department's revising and updating of the variance rule, it looks like that may be the default approach. And we're concerned that that would put us on a treadmill, an expensive treadmill, to nowhere. What we really - the citizens of Corvallis, what we really need, is a pathway to use-attainability, or to a TMDL, or other measures that are available under the Clean Water Act. These are in and of themselves, legacy regulations for a time when the focus was on conventional pollutants. And they worked very well. They are just not transferring well to these new toxins, these persistent and bio-accumulative and untreatable toxins. So there must be another way to approach this. We're looking at reversed regulation to improve the human diet. and that's how prevalent these toxins are. And while I have no qualms at all about the fish consumption limit, or - it's how do we reach them in a way that's credible, and can pass the straight face test with our constituents? I don't know how we're going to improve the water quality with the tools that I see being prepared at this point. I really strongly recommend that the department embed a comprehensive implementation guidance with the proposed rule, and that - so this really needs to be, and is much more in character and nature with something on the scale of the Willamette River TMDL for temperature, where there was a great deal of input over a long period of time in crafting a solution that made sense, and had a return on the investment, whereas with the variance process, we're looking at spending considerable number of some - moneys, and you know, we're used to getting a bang for our buck in Corvallis. And a consultant after reviewing the compliance - or variance compendium suggested that a minimum of fifty thousand to an excess of sixty thousand dollars to perform a process that would not tell us anything we don't already know, provide no therapy or remedy, and be a great expense for no use. So we just don't seen the variance process as having legs in this situation.

So in closing, the main concern for the citizens and the City of Corvallis is how we implement these new and worthwhile goals - they are - and how we \_\_\_\_\_ them into regulation is another matter. Let's do it in a make-sense way that allows us to continue to expend our resources in ways that truly make a difference in the environment. Thank you, and the city does plan to submit comments before the deadline.

**Jane O’Keefe** - Thank you very much. Okay, Lauren Goldberg, Kathryn VanNatta, followed by Terry Witt.

[02:05:13.00]

**Lauren Goldberg** - Thank you for the opportunity to testify for the record. My name is Lauren Goldberg. I'm the staff attorney with Columbia River Keeper, and over the last two and a half, three years, I've had a number of opportunities to come and testify before the commission on the importance of this rule making. And today, Columbia River Keeper is here just to strongly encourage the commission to act now, more specifically in June of this year, on the proposed rule package that DEQ has in front of you. As you're aware, there has been - there have been committees meeting, specifically on implementation of the new standards, for the last two years on both point source and non-point source issues. Before that, there were additional committees that met for a number of years to get to the point of having the commission advise DEQ to adopt a hundred and seventy five grams per day standard. So what's clear is that there's been a great deal of time that's gone into developing this rule making package, and ensuring that it can work on the ground.

Now the reality is that it's going to be implemented over decades. That is, we've gotten to this point, that is, of having fish that are contaminated throughout the state over a number of decades. So just to be specific, back in 1992, EPA looked across the country, and they did this national study, and they identified, right here in Oregon, areas that were downright unsafe for people to eat fish on a regular basis. And that led to a significant investment, additional studies that were done. So the evidence has been here for a number of years. We have studies from US EPA, USGS, the Army Corps of Engineers, the Lower Columbia River Estuary Partnership and its predecessors. So the science is clear that we have a problem in Oregon. The Oregon Health Department has issued a number of health advisories for fish consumption throughout the state. So the question is, how do we act in a way promptly, and how do we act in a way that complies with the Clean Water Act? And so during the last two years, we've invested a lot of time in looking at methods to implement the new standards in a way that complies with the law, and allows individuals who hold permits, and who work the land across Oregon, to continue their operations. And we believe, as DEQ is recommending, that the current rule making package does just that.

In addition, as our comments, which we'll be submitting before the March 21st deadline provide in-depth discussion of how the rules ultimately will only make a difference in water quality based on how they're implemented. And there's a number of concerns that we have about DEQ's intentions to for example, exempt storm water discharges from compliance with the new toxic standards. But at this point, what's critical is to get these rules on the books, and to begin the long term work of getting to a point when people can - particularly tribal people - eat fish in Oregon without fear of exposing their families to toxic pollutants.

My final remark is just on the economic analysis, because there's been a lot of discussion about that in the last week. And I think it's important to realize that the economic analysis that DEQ has, and that the commission will be looking at is one that only quantifies the impacts to industry municipalities. It does not quantify the environmental benefits of adopting toxic standards that protect people throughout the state. And that's a critical flaw. And as the commission reviews these rules and their economic impacts, it's very important to keep in mind the fact that you don't have any numbers in front of you on how these rules will benefit people across Oregon, industry, commercial fishing, you know, tribal fishermen across Oregon. So that's an important piece of information to keep in mind.

The final piece of information to bear in mind is while - is that for decades, in Oregon, we have allowed entities to discharge pollution, toxic pollution, at levels that don't protect human health. And there has been an economic gain for decades because of that. And it's important, looking forward, to begin taking steps to ensure that we're not continuing down that path. The Umatilla Tribe CRITFC, EPA, a number of stakeholders who have been involved in this process, including Columbia River Keeper, strongly support the commission acting promptly to adopt these new standards. Thank you for your time.

**Jane O’Keefe** - Thank you. Alright, Kathryn VanNatta, followed by Terry Witt, and then Steve \_\_\_\_.

**Jane O’Keefe** - Thank you very much. Okay, Lauren Goldberg, Kathryn VanNatta, followed by Terry Witt.

[02:05:13.00]

**Jane O’Keefe** - Thank you. Alright, Kathryn VanNatta, followed by Terry Witt, and then Steve \_\_\_\_.

**Kathryn VanNatta** - Chair Blosser, members of the commission. For the record, Kathryn VanNatta, Governmental Affairs Manager of the Northwest Pulp and Paper Association. Isn't it nice to see so many folks in the room today. It's usually only me chatting with you on this issue. [chuckle]. Thank you for holding this hearing today, and for your personal interaction in this issue. And we think that that's important for everyone to get an understanding of the risks that this issue presents for everyone involved. We'd especially like to thank the department for all their hard work on this issue, and for holding the variance workshop. We thought that the variance workshop was a timely event that provided us with some information. The problem was is that the information that we got from the workshop, we found that it wasn't helpful. It had us raising more issues than it had actually had answers. And I'd like to reference and agree with Stephanie Eisner from the City of Salem and Keizer about that. We agree with the city's position on that.

Oregon faces a whole suite of generic issues. Those issues go beyond what the Great Lakes is facing, and go beyond what the variances issued in the Great Lakes are facing. And therefore, we think that this creates some implementation difficulties for the agencies. We think that it will present challenges in a lot of different ways. And therefore, we have some ideas. You've heard a lot of negative thoughts today, a lot of encouragement, but no real ideas about how to raise - how to solve some of the problems at hand for implementation for the point sources. We have some ideas about that. We'll be bringing those forth, and we look forward to working with the Environmental Quality Commission in the future on this issue. Thank you.

**Jane O’Keefe** - Thank you. Terry Witt.

**Terry Witt** - Thank you Chair Blosser and members of the committee. My name is Terry Witt. I'm Executive Director of Oregonians for Food and Shelter, out of Salem, Oregon. I'd first also like to thank Director Peterson, and the staff at the water quality department for all of their patience, and indulging us in many, many questions, and also for extending the comment period on this particular complex rule for about another month, so that we can have more of the agricultural community informed and have them comment.

To start with, I guess I would like to say on the record that OFS supports clean water. We always have, always will. As one of the primary drafters of the Agricultural Water Quality Management Act and Senate Bill 1010 back in 1993, along with Joe Hobson and Andy Anderson of the Farm Bureau, we faced kind of a daunting task, not only convincing the legislature that Senate Bill 1010, but we had probably as much of a task to convince the agricultural community that Senate Bill 1010 was a good - was a good deal for them, as well. So I can vouch for the intent of what we were trying to accomplish, and what I believe we did accomplish in 1993 by passing that particular act. And that is what we have is a process by which local advisory committees, comprised of individuals from that particular area, put together a plan for what - their watershed, and then that plan is codified in rule so that it is enforceable. It is not a voluntary program; it is an enforceable program that is enforced by the Department of Agriculture. One of the benefits of having such a plan, which is - we believe is very similar to what the forest industry has with the Forest Practices Act, is that if they are in compliance with the Agricultural Water Quality Management Act, that they are given, in essence, safe harbor from additional regulatory constraints or enforcement. That's specifically what many people are concerned about in the current rule. It appears that what is happening is with the implementation-ready TMDLs. the DEQ is attempting to, in essence, come over the top of the Department of Agriculture, and also enforce agricultural practices upon the land owners across the landscape in the State of Oregon.

Senate Bill 1010, or the Ag Water Quality Management Act, is an outcome based program. It's designed to give flexibility, because not all watersheds, not all agricultural-producing lands across this state are homogenous in nature; they're different. And so you have to have different solutions for different areas. We believe that the elements of the LAC plans that are codified in rule and therefore enforceable, have been providing exactly what they were designed to do. We are seeing significant improvement in water quality across this state in the agricultural - our \_\_\_\_\_ is being protected. Our primary concern with the rules before you today is regarding that of the non-point source implementation-ready TMDLs. I don't pretend to know much about the point sources. They're far more complex and complicated than I hope to get into. So again, my concern is specifically on the non-point source implementation-ready TMDLs. And we do believe that this portion of the rule is flawed, primarily because we don't believe that DEQ has the statutory authority to implement. That authority was solely given to the Department of Agriculture in the 1010 statutes, and the subsequent Senate Bill 502-503 that was passed in the following legislative session.

I'll close by saying that I think during the current difficult economic times that we're facing right now, the last thing that thing that our grower communities need is additional, unwarranted restrictions on their farming and ranching operations, and needless increased cost burdens. Oregon agencies are also facing the daunting tasks of balancing budgets in a very tough economic time. I would think that for all - the agency here to attempt to take over a program that is working in another agency, to me doesn't seem to make a lot of fiscal sense as well. And you know, I'll just close with a quote that we hear quite often: If it ain't broke, don't fix it. We don't think it's broke; we think it's working. We think that the program needs to remain with the Department of Agriculture, and we'll be submitting some additional comments, along with supporting the technical and recommendation comments by the Oregon Farm Bureau. Thank you.

**Jane O’Keefe** - Thank you. Alright, we have Steve Higgs, followed by Aja DeCoteau, and David Liberty.

**Steve Higgs** - Good afternoon commissioners and members or the department. I appreciate the opportunity for all these comments. My name is Steve Higgs. I'm an attorney and the law firm, Perkins Coie. I appear today on behalf of the City of Klamath Falls. The city is greatly - appreciates the opportunity to comment on DEQ's proposed water quality criteria, and the NPDS implementation policies as well. The city presents these comments an NPDS permittee, and it provides municipal waste water collection and treatment services for nearly twenty thousand residents and Klamath Basin area customers. This is a prime time for a number of NPDS permittees that we've heard today. And for the city, it is addressing many, many moving parts, including new TMDLs; implementation of Senate Bill 737 regarding priority persistence pollutants; and substantive changes to the state's water quality criteria that we're discussing today.

The city, as with other owners and operators of publicly owned treatment works, is providing vital and cost effective environmental services to the public. Its objective is to continue to provide these services at a level us ratepayers can afford. As members of the commission may know, the city is among those jurisdictions, like the City of Ontario. You heard earlier today, in a state where naturally occurring levels of arsenic greatly exceed the criteria that that department is proposing in a separate rule making. And while that is - nonetheless, the implementation policies that are actually the subject of this rule making, should also apply to any water quality criteria in the state; toxins, nonconventional pollutants, or conventional pollutants alike. DEQ's proposed arsenic criteria (is set?), actually as proposed, two point one micrograms per liter for both different types of criteria. And the data indicate that much higher levels of arsenic, greater than five to ten micrograms per liter, may be present in some south central and southeastern Oregon basins. More recent data show arsenic levels greater than ten micrograms per liter, and off of Klamath Basin streams, and the Sprague and the Basin measuring an arsenic concentration of sixteen micrograms per liter. So in the Klamath Basin itself, the city measured concentrations of arsenic at ambient background levels well in excess of DEQ's proposed criteria. Elevated level of arsenic are likely the result of naturally occurring arsenic found in the spring fed rivers of the region, that discharge into the Upper Klamath Lake, and the upstream of the city's outfall, Whether in setting the criteria, or translating the criteria into (effluent?) limits, DEQ needs to recognize - and I think they are - the natural background levels of toxins, including arsenic in some rivers, are highly variable, and well in excess of the proposed criteria. And in such instances, the state's criteria set by rule should not apply in these basins.

Just focusing a minute on the implementation policies, which the department has brought before you, the city commends the department for actually developing these implementation processes and policies in conjunction with the new criteria setting. Often times, the translation between criteria and NPDS permit limits is very obscure and difficult for anyone to really know how to do it. And it comes time to be the task of the permit writer, and it's a great, challenging process. And I think it's really imperative for the department to afford the permittees the ability to actually utilize these policies prior to requiring construction of any technologies to actually address the criteria themselves, just to see what criteria, what policies that can actually be used and applied, given any individual point sources, any individual situation. The city supports the underlying concepts underlying the three major implementation policies presented in the rule making: the background pollutant allowance; the intake credit program; the variance program. The city may be in a position where it will actually work with the department and use these policies if possible, and therefore plans to submit more detailed written comments about them. And the intent of those comments will be to simply make them more workable, less vague, and written in a way that they don't actually nullify the point of the policy.

The focus on alternative approaches is also really important for the city as well. When it comes to naturally elevated pollutants, which we've talked about a little bit today, in the city's view it would be far simpler and preferable from an environmental, economic, and an administrative standpoint, to avoid where possible, using the policies that are being implemented or discussed today. One mechanism to do that would be through the adoption of basin-specific water quality criteria, even for pollutants such as toxins, that are elevated naturally in the watershed. The department seems to support that view, as well. Another viable approach is for the permit writer to develop NPDS permit effluent limits based on locally relevant and well documented data, as to what background levels of a constituent are in the region, irrespective of whether that criteria concerns a toxin, a conventional pollutant, or a non-conventional pollutant.

We've heard today, earlier, the department already has a regulatory infrastructure under OAR 340-041-00072, which states, quote, "where a less stringent natural condition of a water, the state exceeds the numeric criteria set out in the division..." - which is the Water Quality Division. The natural condition supersedes the numeric criteria, and becomes the standard for that water body. And so the DEQ - and so the city actually supports that view of actually looking at water quality criterias from what is a naturally occurring standpoint. The - I've actually had some correspondence with the department in the past, and the department does - has expressed concerns that using this natural condition provision should not apply to a criteria that's based on human health. And the department believes that it must demonstrate that the levels are protective of human health. It's our understanding that they're relying from that position on an EPA memorandum - it's a technical memorandum dated back in 1997. As best we can tell, that policy, or that memorandum concerns the use of natural background conditions in establishing site-specific criteria for protecting aquatic life uses. And with respect to human health concerns, EPA states in the memorandum as follows: For human health uses, where the natural background concentration is documented, this new information should result in, at a minimum, a reevaluation of the human health use designation. Where the new background information documents that the natural background concentration does not support a human health use, previously believed attained, it may be prudent for the state or the tribe to change the human health use to one that the natural background concentration will support, eg from drinking water supply, to drinking water supply only after treatment.

**Jane O’Keefe** - Mr. Higgs, I need you to wind up.

**Steve Higgs** - Okay, so they say, (in short?) the memo demonstrates do not impede - it doesn't impede the development of locally appropriate criteria for arsenic. Rather it suggests that if natural background levels are high for any constituent, the department ought to consider the designated use, eg a source of drinking water, is appropriate. Thank you very much for your time. I appreciate it.

**Jane O’Keefe** - Thank you. Okay, Aja DeCoteau, David Liberty, followed by Teresa Huntsinger.

**Aja DeCoteau** - Good afternoon. My name is Aja DeCoteau, and I'm a member of the Confederated Tribes and Bands of the Yakima Nation. I also come from a family of fishermen, and I am proud to continue that tradition today, as I also fish from the river whenever I get the chance. I'm also the Watershed Department Manager for the Columbia River Inter-Tribal Fish Commission, and I want to thank you for the opportunity to present our views on the proposal to revise water quality standards to protect human health.

CRITFC, also the Columbia River Inter-Tribal Fish Commission, was created in 1977 by the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of the Warm Spring Reservation, the Confederated Tribes of the Umatilla Reservation, and the Nez Perce Tribe. This was to ensure a unified voice in the overall management of the fishery resources, and as managers, to protect - reserve treaty rights by exercising the inherent sovereign powers of the tribes.

In the watershed department, our tasks involve identifying key areas that must be addressed to conserve and restore the habitat and natural production and productivity of fisheries' stocks for the benefit of not only tribes, but all people in the Pacific Northwest. One of these key areas is the quality of surface waters in the Columbia River Basin. We believe the adoption of the proposed fish consumption rate of a hundred and seventy five grams per day is a critical first step in improving water quality in the basin, as well as protecting the health of our fish, and the tribal members who eat fish.

Salmon and other fish provide tribal members not only with a subsistence resource for food, but are also fundamental to our cultural, spiritual, and economic well being. To put it simply, our natural resources are our cultural resources. The tribes signed treaties in 1855, but ceded millions of acres of land in order to retain our rights to hunt, fish, and gather all usual and accustomed areas, thereby protecting our way of life in perpetuity. These treaty-protected rights are being threatened if our fish and the waterways are contaminated.

In 1996, CRITFC, in cooperation with the Center for Disease Control, sponsored a survey of fish consumption rates and patterns of tribal members who reside in and consume fish from the Columbia River Basin. The survey reports that ninety seven percent of the tribal members interviewed eat fish, and eighty eight percent of these fish originated in the basin. This survey is an accurate measure of the fish consumption habits of the average tribal member, noting that many tribal members consume much more than this.

A subsequent study was completed by the EPA in 2002, which collected fish tissue samples from the same areas noted in the CRITFC survey where tribal members regularly take fish. This study showed the presence of ninety two priority pollutants in fish that are consumed by CRITFC tribal members and other people in the basin. Chemicals measured include PCBs, dioxins, furons, arsenic, mercury, and DDE. This is significant because these fish are affected by the quality of the Oregon waters for all or part of their life cycle. The fish consumption survey created by our organization reveals that ninety five percent of tribal members health will be protected, using the fish consumption rate of a hundred and seventy five grams per day, and so it is a reasonable and protective value to use as the basis for Oregon's human health criteria. Other surveys reviewed by DEQ's human health focus group corroborate our findings, and demonstrate that Asian and Pacific Islanders, and Eastern European communities also consume fish at levels similar to Oregon tribes.

In conclusion, I would like to emphasize if the tribes have economic interests in the sustainable development of our own natural resources, as well as a culture of natural resource stewardship. We recognize the difficulties that meeting some of the new standards will create, and we are willing to support interim measures as needed to seek cost-effective long term solutions to eliminate toxic chemicals from Oregon's waters that we all share. Thank you, and once again, I appreciate this opportunity to speak on behalf of CRITFC, and the many tribal members and state citizens who will protected by these proposed rule makings. I'd also like to submit fourteen signed letters of support for these rule makings, as well as a copy of the testimony I've read today. Thank you.

**Jane O’Keefe** - Thank you. Alright, Mr. Liberty, followed by Teresa Huntsinger, and then Brett Vandenheuvel.

**David Liberty** - Thank you, Commissioner, and thank you for the opportunity to speak today. Thank you to the members of the audience for your interest and concern in this important issue. My name is David Liberty. I'm an enrolled member of the Confederated Tribes of the Umatilla Indian Reservation. I fully support the comments that began this hearing, the testimony from Elwood Patawa, and Kathryn Brigham. As a tribal fisherman, I have a real conflict between wanting to maintain the culture of my people, and wanting to maintain the health of my family. These are are in conflict, unfortunately, because of the toxins that are found in the salmon that we eat, that come from Columbia River. I want my grandchildren to eat salmon someday. They're too young right now, they're babies. But I am \_\_\_\_\_ to feed them salmon, and I hope that there would be a taste for salmon, because I have been eating salmon since I was four years old, or sooner. All my life, I've fished in the Columbia River Basin, and ate the fish that I caught in the basin. So it's really difficult for me to weigh the balance between the importance of culture, and the importance of my own health.

As Aja mentioned in her testimony, ninety two different toxic chemicals were found in Columbia River salmon, so I do take some precautions. I remove the fat from my salmon, and I don't eat the skin anymore, which is unfortunate, because I always ate the skin. I love crispy salmon skin; it's hard to beat. But it's no longer an option for me until I see that the fish are coming back to their health, the toxin levels are level. And it's the work that the Environmental Quality, your department does in Oregon that can help end this conflict that I have - this personal conflict that I have in my life to maintain my culture, and to maintain my health. Thank you very much.

**Jane O’Keefe** - Thank you. Alright, Teresa Huntsinger, followed by Brett, and Karla Kay Edwards after that.

**Teresa Huntsinger** - Good after, Chair Blosser and members of the commission. My name is Teresa Huntsinger, and I am the Program Director for Clean and Healthy Rivers at the Oregon Environmental Council, and I appreciate the opportunity to testify before you today. The Oregon Environmental Council strongly supports the Oregon Department of Environmental Quality's proposed rule changes to allow less toxic pollution in Oregon's waterways. I have some brief comments to make today, and we will also submit more detailed written comments.

DEQ's current human health toxics criteria were rejected by the federal government because they do not provide adequate protection for Oregonians who eat fish and shellfish on a regular basis. The bottom line is that the fish swimming in Oregon's rivers should not be toxic to eat. The fact that our fish are toxic to eat is unacceptable, and Oregon can and must do better. Our public health and safety laws must protect all Oregonians, not just the average Oregonian. That's why the proposed fish consumption rate and the related water quality standards were designed to protect vulnerable populations, including tribal communities. This rule making will help Oregon make progress on reducing the toxic load in our water and our fish. DEQ worked closely with an advisory committee, including the affected industries, to ensure the revised rules are feasible to implement. And it's disappointing to see that after years in participating in working groups to develop these rules, some stakeholders are now attacking the proposal.

The cancer causing pollutants this rule making protects us against come from no-point sources, such as urban storm water, farm and forest land, and from industrial and municipal point sources. They include heavy metals transported to our rivers through runoff and soil erosion, pesticides and products of industrial processes, as well as waste water from our homes. We're all responsible for their presence in the fish that swim in Oregon's waters, and we all bear responsibility for reducing them below harmful levels.

Thank you.

**Jane O’Keefe** - Thank you. Brett, followed by Karla Kay Edwards, and Bill Hoyt.

**Brett Vandenheuvel** - Chair Blosser, members of the commission, my name is Brett Vandenheuvel. I'm Director of Columbia River Keeper. Columbia River Keeper supports the proposed rule to decrease toxic pollution in our rivers, in our fish, and in our bodies. I catch and eat fish on a regular basis on the Columbia River and other water bodies throughout Oregon, and in Hood River and the Columbia River Gorge. And in the summertime, when the fall Chinook are running, you know, there's not a day that goes by when I and most of you know, my friends and family are not eating fish. I spend a lot of time down in the Columbia River Estuary near Astoria, and you know, you go to a barbecue down there at any time in the summer, or even in the spring. Right now, the spring Chinook are starting to run, and people are regularly consuming fish.

So this rule not only is it - it's important to me for a number of reasons. One, it's a - it addresses a problem of environmental justice, but two, it addresses something very personal to me, and that's my health, the health of my family, and the health of my community. There are places in the Columbia River and elsewhere that I won't eat fish from. There are multiple species of fish that I won't eat, because they're too high in toxic pollution. And that's unfair to our citizens, who have the right, a very fundamental right, to be able to catch and eat fish. So everyone in this room today that's left, and everyone who was here before, you know, wants to reduce toxics. I don't think there's any debating that. I mean, I think everyone recognizes the problem, wants to reduce toxics, wants clean water, wants healthy families. They want the fish to be safe to eat. But we have a problem: the fish aren't safe to eat. We have too many toxic in our water bodies, so we need to come up with a solution.

The proposed rule before the commission is pretty simple. I mean, it's changing the fish consumption rate from what it is right now, six point five, after it was previously rejected by EPA to a hundred and seventy five grams. And that's based on science, it's based on repeated studies. And I don't think - I haven't heard any debate of whether that's a reasonable rule or not, a reasonable standard. I think it's unquestioned that that is supported by science, and that that should be adopted.

So when Oregon adopts this rule, it's poised to become a national leader, and that's something that we shouldn't shy away from, that's something we should be very proud of, that's something that the EQC has directed in the past, it's something that the agency and many of the stakeholders here today have worked very hard to make this work. And that is something that is going to be good for our economy. It's going to attract business, based on Oregon's clean water, clean reputation. It's going to help preserve our fishing industry and all of the communities who depend on clean water.

The rule has flaws. I mean, we're - I mean, as everyone else says, we're submitting comments [laughs]. There's flaws in the rules. It doesn't address storm water, it exempts storm water, which is a huge problem. Storm water is a major source of toxics. That's absolutely unacceptable. The rule fails to address non-point sources in any meaningful way. DEQ has frankly neglected the management of non-point sources for many decades, and this rule doesn't solve that.

The - I just wanted to address quickly a couple misconceptions, that it's going to have a dramatic effect, or a dramatic changes, on some of the regulations. And frankly, to our disappointment, a lot of the language that is already in the statutes regarding management of non-point sources from the Department of Forestry and the Department of Agriculture, is simply repeated in these rules. So it doesn't really have any additional effect. And I would encourage to ask the different agencies, the Department of Agriculture, the Department of Forestry, and DEQ what effect does this have, what new effect does this have? And from our analysis, you go back and look at the statute, and it's essentially a rewording of the statute, so there's not additional burdens.

So, will this - will this rule that addresses the amount of toxic pollution - does it have on the ground changes? We really hope so. We hope that when this rule is implemented, that it actually reduces toxics, because that's the design of it. And is it cheaper and easier to leave those toxics in the river? Is it cheaper and easier for discharges to simply pass along those toxics to our rivers, to our fish, and to our bodies instead of dealing with them at the site? Yeah, it's cheaper. It's cheaper and easier to maintain the status quo, but that's not an acceptable solution. Passing on the pollution from the sources to the people is unacceptable. And so we have a choice right now of whether to reduce toxics in our rivers and protect human health, or not? And that's what this rule making boils down to. And I'm very proud of the department and the EQC for proposing to take the proactive step to reduce toxics.

And what does that mean? Does that mean - there's a lot of arguing of why - you know, today I've been hearing a lot of arguing, a lot of statements that this can't be done. And I think - I think a lot of those aren't based on the facts here. We can do this. As a state, we can take the necessary steps? Does that mean that all of us are going are going to have to try harder? Yeah. I mean for me, the City of Hood River - you know, our sewage treatment plant takes the waste that I produce when I'm, you know, cleaning my car, cleaning the shower, so I'm going to try to reduce the use of toxics, I'm going to try to contribute to this. Of course, all the farmers want to do the same, of course the industry want to do the same. But instead of arguing why we can't do this, I think it's something that we should be proud of, and recognize that it's - that there are solutions out there, that we just need to pass the rule, and we will continue to implement it.

Thank you.

**Jane O’Keefe** - Thank you. Alright, Karla Kay Edwards, followed by Bill Hoyt(?), followed by Sheri Wadekamper.

**Karla Kay Edwards** - Thank you for this opportunity this afternoon. I'm sorry that you've had such a long wait since between breaks. But my name is Karla Kay Edwards, and I'm with Cascade Policy Institute, which is a think tank to look at public policy, and research organization. And I specialize in \_\_\_\_\_ policy. And unfortunately the gentleman before me just challenged that no one actually challenged the science, and that's exactly what I sit here to do today, is to in fact challenge your one seventy five grams per day, and believe that this is actually a disservice to the citizens of Oregon.

After reviewing the minutes of the human and health focus group, which only three had minutes of eleven meetings, by the way, that were posted on the website, and referring to the materials used - that they used to develop the rate. I believe that the rate actually is suspect, and that there was actually a lot of picking and choosing what they wanted to pick out of it. Specifically, most of the decisions were made off the 1994 CRITFC study. Of all the studies, it seems that this was the one study that they really heavily relied upon. This is a twenty year old study. And within that study, it said the average consumption was fifty eight point seven grams per day. Of - ninety percent of consumers in that study actually met within ninety seven point two grams per day. One of the most significant things is that they also surveyed if there was a decrease or increase in trends of fish consumption. And within that study, sixty eight point five percent of the survey respondents actually responded that their fish consumption had been decreasing by two point three eight meals per week. That's significant. Yet we're taking numbers directly from that study without correlating any of the fact that they actually saw decreases in the consumption, and was reported in the study. In addition, of that fifty percent of the consumption was identified was as specific, salmon, and I will deal with that at a later point in my comments.

The human health focus group minutes of May 21st of 2007 indicated that EPA actually informed the group that marine species were not, in fact, directly calculated in the fish consumption rate, and that there was a factor that was used to calculate those numbers because the majority of the bio-accumulated toxins in the fish are accumulated from the ocean. There is a significant body of study, including of which EPA has recognized, and Alaska has used significantly, that actually identifies that almost all of the methyl mercuries to be specifically accumulated in Pacific salmon comes at their life stage within the ocean. Yet we're going to set water quality standards for fresh water, based upon toxins that are gotten from the ocean, and will have no effect on fifty percent of the diet that we're basing this upon. There will be no human health effect, unfortunately. Most of that has been documented from both India and China as pollutants out in the ocean. Yet the focus group clearly stated, in 2008's report, that Pacific salmon were to be directly calculated as consumption. They refuted that they should be considered as marine species. even though there are a number of studies, like I said, that (defute?) that. They should have most likely considered them marine.

The focus group also the statistical outliers were thrown out of the study, and then should be compensated for. Within true studies there are statistical outliers. They are thrown out, generally because they are outliers, because the data or something looks suspect, and that often the survey respondent didn't understand the question, or something. There is a reason why those are thrown out, that we made your committee, your human health committee that was setting the standard, chose it - took it upon themselves to make up for that consumption, to calculate for that. They're picking and choosing what they wanted to do.

So I have some recommendations. First of all, you put together a technical advisory committee, and they recommended a tiered approach to the fish consumption level. Yet it was ignored, because it was too difficult, in the words of DEQ, to perform. This is no matter to be ignored. It would have significant effects throughout Oregon if you used a tiered approach to your fish consumption. Fish consumption is not the same throughout the State of Oregon.

In addition, I hope that you take in advisement all of the comments from the business and ag communities that have directly addressed the potential water quality impacts from the established rate - fish consumption rate - that I believe needs to be addressed. The fish consumption rate should be recalculated before you adopt it, with Pacific salmon being considered a marine species. This will have significant effect on hundred and seventy five grams per day. In addition, I believe you owe it to the citizens of Oregon, if you're going to promulgate rules based upon a fish consumption, that you use current data, which means you should put out a new survey, and develop new fish consumption rates on today's consumption, not on twenty years ago what it was. That didn't consider the fact that fish consumption rates were actually decreasing. There is no mention that - or in the calculations of the hundred and seventy five. This fish consumption rate has been designed to protect ninety percent of just one point eight percent of this population, who are the highest consumers in Oregon.

EQC has a responsibility to all Oregonians. There must be consideration given to that vulnerable fourteen point three percent of Oregonians living in poverty, and seventeen point two percent, if you look at the rural communities that are living in poverty, if these rules go into effect, statistically this will increase the number of companies going out of business, and cutting jobs, and leaving more people in jeopardy of meeting poverty rates.

**Jane O’Keefe** - I need you to wrap that up.

**Karla Kay Edwards** - I suggest to you that poverty rates have a much greater impact on human health than the toxin levels that you are proposing today.

**Jane O’Keefe** - Alright, Bill Hoyt(?), followed by Sheri Wadekamper, and then that's all I have...go ahead.

**Shari Wadekamper** - Good afternoon. I'm Sheri Wadekamper. My husband (Lon?) is in attendance with me also. We represent LGW Ranch, which is a family owned and operated cattle-calf(?) operation on seven hundred deeded acres, along with the west bank of the Umatilla River near Hermiston, Oregon. We have been farming at ranching in the (west land?) area for forty years. Our ranch is divided into forty to fifty acre paddocks, where we practice rotational intensive grazing of our livestock. Since Senate Bill 1010 was passed, we have attended many conferences and seminars where the Oregon Department of Agriculture has instructed and advised ranchers on measures and practices to implement to comply with clean water regulations. Since that time, we have installed off stream watering sites on nearly all of these paddocks. We employ as many of the best management practices as they have recommended, because we believe these measures and others taken under the Watershed Basin Area Plans, has significantly improved water quality in Oregon, as it relates to pollution from non-point agricultural sources.

Now we are very concerned about increased regulation, and adverse impacts to production agriculture from the proposed human health toxic pollutants rules. We support the formal comments and suggested rule language changes submitted by the Oregon Farm Bureau, because they seek to maintain Oregon's water quality standards, while keeping farm families and ranchers viable. The Oregon Department of Agriculture has performed well in obtaining TMDL compliance through the water quality plans, the (sounds like 'caffo') enforcement, and in conjunction with OSU extension the educational programs that they have provided, ODA should continue to be the sole authoritating - sole authority regulating farm practices, and adopting rules regarding water quality protection.

In our own experience, however, DEQ is not doing an acceptable job managing TMDLs in the Umatilla River with point source polluters. DEQ recently issued MAOs to the cities or Echo(?) and Hermiston, allowing them to dump Class C water into the river for the next two irrigation seasons, when better environmental options are available. For nearly twenty years, LGW Ranch has land applied Class C water from Hermiston's wastewater treatment plant.

Our pastures and haylands have utilized the ammonia, nitrates and phosphate components of this effluent, and has allowed cool filtered return flows to the Umatilla River that benefit fish and water quality. Our contract with the city contained extension provisions to continue land application on our ranch. But the city chose to discontinue delivery when the DEQ allowed direct discharge of what the DEQ described as the source of ammonia standard violations in the Umatilla River in their 2007 evaluation report on Hermiston's waste water treatment plant.

We are discouraged that successful land application of effluent is being disregarded, and believe the DEQ is issuing these MAOs of this nature in error. We ask that the EQC direct the DEQ to rescind MAO issued to the City of Hermiston, and continue land application of effluent on LGW Ranch. Agriculture is being blamed for diminished water quality when point source polluters are being allowed to contaminate rivers. We are proud to be good stewards of the land, and we will continue to improve and enhance our systems and practices for the benefit of water quality in Oregon. Thank you for allowing our presentation today. We will be submitting written statements within the comment period, and we will include contact information, should any of the commissioners wish to contact us about the items that we brought forward today. Thank you.

**Jane O’Keefe** - Thank you. Alright, is Bill Hoyt not here?

? - He's not here.

**Jane O’Keefe** - Okay, then we are done. Thank you everybody. We really appreciate you coming and giving us your perspective on these proposed rules. And anybody that would like to continue to watch us, we'll be in session tomorrow at 8:30. We'll be taking up other matters. Thank you very much.