**Water Quality Standards Hearing**

**Ontario Transcription**

**February 7th, 2011**

(Recorded pre-hearing—audience member) Could you finish what you started to say about salmon being added into the equation?

**Andrea Matzke** - We're beginning the formal hearing. I'll talk with you right afterwards. Is that okay?

**Cheryll Hutchens-Woods** - At this time, I'd like to begin the hearing on the rule making for revised human health water quality standards for toxic pollutants. This part of the hearing will be recorded to maintain a public record. Today is February, 7th, and we are in Ontario, Oregon, and the time is 3:50. I'd like to begin taking comments, and if anyone had prepared a written statement or other documents, it would help to summarize them orally, and then introduce written material into the record. Written comments are given the same weight as oral comments. Comments will be taken in the order received. Actually, we have one request that somebody would like to go first, so if you don't mind, I'll do that. Please come up to the table to speak. The first person to give public comment is Chuck Mickelson. Right here is fine. And if you'll just give your name before you start to speak, that would be helpful.

**Chuck Mickelson** - My name is Chuck Mickelson. I'm the Public Works Director for the City of Ontario. I'd like to introduce Mayor Dominick, who's sitting in the middle; Council President Norm Crume; and Jackson Fox, who's on the Council, newly elected council member; and our Public Works Committee Chairman, Riley Hill sitting in front of me.

I want to give a bit of background, and I'll move through this fairly fast. We will submit written comments, however. Ontario has a population of approximately eleven thousand, four hundred people who sleep here at night, and a daily population of about fifty thousand, since we're located on the border with Idaho, and we have significant traffic and commerce from our neighbors across the border. Ontario City is very concerned with the impact this regulation will have on our community, and particularly with arsenic. Our source of drinking water is from the Snake River, and a few wells located adjacent to the river. The Snake River has an arsenic background of approximately five micrograms per liter, which is well below the safe water drinking standard. Domestic water is treated and delivered throughout our community and to some customers outside the city limits, such as the Snake River Correctional Institution, and the Heinz Potato processing facility in Ontario. These two facilities utilize over sixty percent of our domestic water. Ontario's waste water system consists of a series of lagoons. Average daily flow is about 1.5 million gallons per day, with the (rated?) treatment capacity of 3.06 million gallons per day. Waste water effluent is land-applied to a city-owned farm from May 1 to October 30 of each year, and the effluent is discharged to the Snake River from November 1st to April 30th.

Ontario strongly supports efforts to improve water quality where there is a measurable and positive impact on the environment. Ontario has done a number of things to the sand. We've replaced over seventeen thousand feet of aged sewer line over the past few years, expect to do that in the future as funding is available. We recently participated in a drug take program - drug take back program, where the city collected over seventy pounds of prescription medication was kept out of the waste water stream. The city has an aggressive street sweeping program. We collect over seven hundred yards of material on an annual basis, eliminating that source of contamination. We also recently adopted a new construction standard, regarding catch basins, and having a sump in each of our catch basins on our drainage system. When we collect those solids each year from about thirteen hundred catch basins. We have over forty food establishments with grease interceptors, along with a number of commercial and industrial sites that intercept petroleum products through sand and grease traps. We've consistently met our NPDS permit requirements. We participate in the local watershed council, recently completed a project on the Malheur River, improving the habitat and the riparian zone. It was done in conjunction with the Watershed Enhancement Board. We participate in public education and outreach programs at the fair every year. And we also we have an agreement with Pheasants Forever, where they - which allows recreational use, hunting and fishing on the city farm adjacent to the Malheur River. All of these activities demonstrate that Ontario has a strong commitment to doing our part to keep our waterways and ground water safe.

Our understanding is that DEQ intends to deal with the arsenic issue for our communities - or for our community, through a variance process. As you are very aware, the geology of Southern Idaho and Eastern Oregon is very arsenic-laden. As a result, the waterways common and routinely have a natural background of arsenic that exceeds the level of 2.1 micrograms per liter in the surface water quality standard. It is also our understanding that DEQ has no experience with variances in Oregon. If a community exceeds a water quality standard, then the issue will be addressed through the NPDS permit process. Variances will be duration-specific, and are intended to be short term and temporary. If DEQ does grant a variance to the community, does this mean it will have to be reviewed and reissued during every permit cycle? Are there options available that can deal with the natural geology of the region? Is it necessary to create a water quality standard for arsenic lower than natural background levels that will then require regulatory variance for compliance?

And remember that Ontario only discharges effluent during the winter period to the Snake River. The rest of the year, the effluent is land-applied to grow forage crops on the city owned farm. Ontario actually accomplishes a net reduction in arsenic in the Snake River as a result of withdrawal from the river for water supply, and finally, land application of treated effluent waste water How will effluent waste water discharge permitting for the mass load reduction of arsenic that Ontario accomplishes in light of arsenic standards based on receiving water concentrations. 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?

One flexible permitting mechanism that could be considered is to address elevated background levels of arsenic by allowing for a background pollutant allowance, where an increase of three percent or less in the background pollutant concentration of a water body approaches or exceeds an applicable human health criterion, but does not result in a significant change in human health protection. Is this being considered? Will DEQ issue an internal management directive for a background pollutant allowance prior to adoption of revised water quality standards for toxics?

Another option that can be considered by DEQ is adopting the ten micrograms per liter of inorganic arsenic. The concentration would be protected for - of the use of the river as a drinking water, and consistent with the maximum contaminant level for arsenic of ten micrograms per liter under the Safe Drinking Water Act. Adoption of this criterion would also be appropriate since, as DEQ indicates in supporting documentation for this rule, inorganic arsenic is not readily bio-accumulative in the fish tissue. This approach has been adopted by a number of other states. The arsenic criteria should at a minimum, address the elevated levels of arsenic in the Snake River basin, consistent with DEQ's own rule, which states, "Where a less stringent natural condition of a water of the state exceeds a numeric criteria set out this division of the code, the natural condition supersedes the numeric criterion, and becomes the standard for water body." [end quotes here?] This approach needs to be considered. Will DEQ finalize an internal management directive for a procedure for addressing naturally occurring arsenic in NPDS permits?

There appear to be a number of options to consider when applying this complex issue. The cost was raised during one of the questions. We understand that your consultant indicated the cost between eight thousand and forty four thousand dollars to create the work for a variance. We think that might be low. We are unclear as to how much data needs to be collected, and to substantiate the need for a variance. Most communities would need to hire experts fully conversant with the rules and regs of the Clean Water Act in order to work through this process. It appears that this paperwork exercise will need to be repeated at each permit renewal, and is specific to each pollutant of concern, and each permittee. This diverts ratepayer investments from other investments that likely will have greater water quality benefits. The city would much prefer to invest in capital projects that have a long lasting impact to the treatment process, rather than investing in a paper exercise.

Additionally, this process will cause an increase in rates to all of our ratepayers. And further, is DEQ adequately staffed to handle the multiple variances contemplated under this proposed rule, given all the other program responsibilities? We would encourage DEQ to consider a strategy to deal with background conditions on a regional or watershed basis, rather than dealing with each permittee individually. There's been a lot of discussion about the fish consumption standard, and I will leave those comments for my - for our formal submittal. Although I would say that it appears to us that this standard of one seventy five is actually twenty six times greater than what the State of Washington presently has in place. The city is also concerned about conflicting direction between the variance process and the pollution reduction plan required by Senate Bill 737. We don't want to have to develop two plans for arsenic reduction. In summary, we encourage DEQ to move forward cautiously in this toxic reduction exercise, and make sure that any community investment has a positive impact on the environment, and is not just a paper exercise to satisfy this regulatory requirement. The program needs to address all sources, and not just be focused on the water quality permit holders. Thank you, and we will submit written comments and documentation.

**Cheryll Hutchens-Woods** - Do you want to give us a copy of the written...

**Chuck Mickelson** - Not yet.

**Cheryll Hutchens-Woods** - Okay.

**Cheryll Hutchens-Woods** - Next up, we have Judith Kirby.

**Judith Kirby** - I'm just speaking as a public citizen, and a person who has two unemployed persons in my family, because they can't get jobs in Oregon. And I feel that Oregon is - should not exceed national standards in our water quality, because a lot of our businesses are going out of state, and our jobs are going out of country, because of excess rule-making. And Oregon seems to be leading the way. And I am really against these toxic rates based on a lot of fish consumption by a very few people that are Native Americans. We eat a lot of fish ourselves, but some of it is canned in Thailand, some of it is from Idaho, some of it is naturally grown or farm raised. And I would question forming rates that would affect all Oregonians, and chase businesses and jobs away, based on a few Native Tribe consumptions, one which was in the Puget Sound area, that is not even in Oregon. Thank you.

**Cheryll Hutchens-Woods** - Thank you for your comments. Next is Curtis W. Martin? Do you want to please state your name before you spell it?

**Curtis W. Martin** - Yes, I'm Curtis W. Martin, and my address is 51840 Highway 237, North Powder, Oregon, representing our ranch, the VP Ranch. I want to thank the DEQ and their staff, and the administration for having these hearings around the state, I think it's very beneficial to enlighten the public of what's going on, and with that, I'll go into my comment, which will be brief.

I want to voice my opposition to the proposed regulation by DEQ to directly regulate and enforce water quality standards and violations in Oregon agricultural lands. The language proposed by this department, DEQ, declares that any landowner or land manager that are already under and agricultural water quality management plans, and do contain administrative rule, they that are the found in violation of DEQ water quality standards, that DEQ will require direct regulatory intervention. The current language from DEQ states, and I quote,"DEQ may also require remedies of a person causing pollution or contributing to water quality standards of violation, if Oregon Department of Ag does not take action." That proposed OAR is 340-041-066, 11 in parentheses. (340-041-066(11). This is absolutely - this is absolutely a direct contradiction to the statutory authority given to to the Oregon Department of Agriculture through the 1993 and 1995 legislative - legislation enacting Senate Bill 1010.

The agricultural water quality management program administered by Oregon Department of Agriculture has been very successful in cooperative and collaborative projects that have not only benefited the environment, but also provided economical benefits to the producer. This rule would destroy the mutual trust between ODA and producers that has taken years to establish. The mindset of some agency bureaucrats that because there has been no fines or civil penalties assessed, the 1010 program is ineffective. This is totally in error, and would set back the active cooperation between agriculturalists and ODA.

For this reason, DEQ needs to replace the current proposed language, open the dialogue with natural resource entities, and reinforce, not weaken, the current administration of protecting and enhancing the water quality of Oregon. Respectfully submitted, VP Ranch, Curtis W. and Cheryl Martin.

I would like to add one comment that I don't have down in writing right yet. This has kind of been referred to. I think it would be very interesting for the citizens of Oregon to know the specific populations of the tribes that are specific to Oregon. What is the population that we're acquiescing their wishes of fish consumption to the rest of the population? And it basically boils down to several comments made by the economy. I'd like to see the percentage of that populous, as compared to the rest of the population of Oregon, and in economic impact that - that would be very negative, I would imagine so. Thank you very much. I appreciate it.

**Cheryll Hutchens-Woods** – Thank you. The next commenter is Lynn Shumway....if you want to please give your name before you start. Thank you.

**Lynn Shumway** - I'm Lynn Shumway, 20892 Pioneer Lane, Bridgeport. Bridgeport's a little ranching community in Burnt River Valley. I have grown up there. I'm a cowboy, rancher, irrigator. And growing up in Burnt River, I learned very early the importance of water. And my brothers and I grew up with the concept that we were God's stewards of the land, and that we needed to give it to the next generation in better shape than we received it. And my brothers and I feel that we have been faithful in doing that from the rewards that we have received over the years for forestry and conservation work. I'm also the Chairman of the Burnt River Irrigation District, and I co-chaired the local advisory committee for the 1010 plan. We worked on that for two years very closely with ag department officials. Had a very good relationship with them, and I echo Curt's concerns that ODA destroy that relationship that we have with ODA at this time, and working through the things that the - the programs where they have identified some problems, and they've worked cooperatively with the landowners, and have seen great success. On Burnt River \_\_\_\_\_\_ the problems that we face is the invasion of canary grass, (reeds?) canary grass on all of our riparian areas, which in turn causes willows to not regenerate, or keeps them from regenerating. So we don't have the stream bank stabilization we used to, so we have been addressing that with solving two problems at once. We have an invasion of juniper in our uplands, and the landowners have been cutting those junipers and bringing them down, and then destabilizing the river banks.

And there is a tremendous amount of work being done on the Burnt River. We have a very active Soil Conservation District that is very helpful in helping people implement programs. And it really concerns that we would lose relationship with ODA, and working through the problems. And we feel that if DEQ interjects itself into this, we will be having an adversarial relationship with the state agency, which we don't need. And I would like to comment on those - that we have the fish consumption. You know, as a member of the Oregon Cattlemen Association, I would strongly recommend that you recommend to those folks that they eat more beef. [loud laughter and clapping]

**Cheryll Hutchens-Woods** - Thank you for your comments. Next commenter is Peggy Browne.

**Peggy Browne** - Good afternoon. My name is Peggy Browne. And I reside in Union County. And my husband and I own what I'd guess you'd call a "franch." It's a farm and ranch. We raise hay, cattle, and a little bit of grain. And it's relatively small in comparison for this are. We run about five hundred and thirty acres, which again, is relatively small, considering the area. I want to thank you, first of all, for having us at this side of the state. It makes it a big difference for all of our stakeholders, and people to show up and actually comment, and understand a little bit more of what's going on.

I mimic Mr. Shumway and Mr. Martin's comments, in that 1010, the Oregon Ag Water Quality Management Plan does work. We want Oregon Department of Ag to consult with agriculture resource producers, and no one else, no other agency. It's a mechanism that works, its in place. It took years to develop, years of landowner's time, that they should have really been out in the fields, working, rather than sitting at a table during a meeting. We developed it, we implemented, and now they're enforcing it. It's not without some of its own strife, but it works. Again the Ag Water Quality Management Plan took years to develop. It was in the early 2000s. Now, 2010, with no preponderance of evidence, no additional monitoring to find out if things are actually changing for the better or not, we're getting more regulation. This is unacceptable, and we do not want to stand by by for it.

DEQ is simply going above and beyond what is said in statute that they will do. It statute, it simply states that DEQ to limit itself to the Clean Water Act to the most practicable extent of the law. Right now, we just heard today, that DEQ is proposing to increase our fish consumption rates by ten times, and what wasn't discussed were implementation ready TMDLs. It takes far too long to really go into what these are, but quite frankly, they scare me to death. They are going to put agriculture producers out of business. One of the ladies who testified before me talked about jobs that aren’t available. This is going to make jobs less available, and there are going to be more people out of work.

Those of us that are agriculture producers are all about needing to produce practical outcomes based on practical solutions. We want to talk about erosion. Gene brought up erosion, and that erosion will just not be allowed, because it's going to increase from non point source pollution some of the toxins they're trying to re-regulate. Well the problem is that erosion is a natural process. Streams actually aren't functioning properly unless there is a certain amount of erosion happening. It's part of the natural system.

So again we're here today to say that - or, I'm here again to say that we have bought into, and dealing with Oregon Department of Agriculture implementing the ag water quality management plans, and regulating non point source pollution. We're asking that you please do not try to put forestry and agriculture out of business. Thank you.

**Cheryll Hutchens-Woods** - Thank you for your comment. Next commenter is Mayor Joe Dominick.

**Joe Dominick** - Good afternoon. I am Mayor Joe Dominick, the City of Ontario, Oregon. I'd like to thank the DEQ for being here, and we appreciate what you're trying to do in having a public hearing. While our public works director was specific on the issues, and gave some harsh realities of the effect on the city, I'm here to speak for the citizens. As usual, we in Eastern Oregon are being required to follow statistics from the western half of the state. I find your fish consumption rates biased, and quite (flood?). In our area of the state, you should be using onion and beef consumption rates. Your high level of requirements may destroy many of our small businesses, many of our farmers, as well as very adverse impact on our city.

This is a prime example of that one standard does not fit all, especially when Ontario gets water from Idaho that does not have to meet these requirements. And the Snake River flows from Idaho to Ontario through Oregon, yet all the other rivers in Oregon are already in Oregon when they get to the other side of the state. So they will have other cities following rules that make the water better by the time they get further downstream. I encourage DEQ to create rules that are area specific, and can help everyone in the State of Oregon for a greener state. Thank you.

**Cheryll Hutchens-Woods** - Thank you for your comment. The next commenter is Dr. Clinton Shock.

**Clinton Shock** - Hi, thank you for coming over. I'm Clint Shock from 1059 SW 2nd Avenue, Ontario, Oregon, speaking as a private citizen, not as a public employee. The first revegetation work is ever done and published for the tropical world was done by me in Brazil forty years ago. And I was one of the key people that did the first revegetation work in the Amazon from '75 to '78. And in the twenty six years that I've worked here, tested many, many processes and projects to improve water quality. Forty of the ideas - forty of the principle ideas that were included in Oregon plan for saving salmon were taken permission of writing the salmon off of my website.

Oregon continues to allow Idaho to discharge elevated mercury into the headwaters of Jordan Creek. Second point, the mercury continues to contaminate Jordan Creek, Antelope Reservoir, Towhee River, Towhee Reservoir, the Snake River, and its reservoirs. Three. Methyl mercury builds up in the fish and these water bodies, and limits fish consumption. Oh, DEQ's remedy for this is "Don't eat the fish." We sought remediation of this mercury contamination through the mid-Snake TMDL, but mercury was taken off the table by Oregon DEQ and Idaho DEQ for reasons that I do not understand to this day. Oregon and Idaho commissioned a study to remediate the contamination coming to Jordan Creek, and received the recommendations in 1995, but have delayed taking action.

The prior proposed arsenic concentration rules were based on extremely low concentration assumptions, and clearly need to be replaced. They are absolutely in error. But the new proposed rules do not adequately correct the extreme rules proposed for arsenic. The amount of fish consumption was discussed, but the numbers for arsenic that were proposed were ridiculously low, point-seven. The DEQ assumption, the fish rate consumed for the highest ten percent of Oregonians is not well founded. There are not ten percent of Oregonians who consume six ounces or more of Oregon fish per day per person, point-eight. The fish that are consumed do not likely have a bio-concentration factor of fourteen. That is the fish consumed that come from fresh water are not likely to have a bio-concentration factor of fourteen. t is my understanding that the anadromous fish are likely to have much lower bio-concentration figures. References I saw showed numbers as low as one.

Before rules are made, ODEQ has a responsibility to know the actual population distribution of fish consumption levels, and the crick(?) frequency distribution of bio-concentration factors corresponding to consumption. and the distribution factor of the arsenic coming from fresh water fish. So the rules would be made based on science, rather than wild guesses.

The current proposed rules confound arsenic for marine fish with arsenic from fresh water fish. Now marine fish, which your changes in practices cannot affect arsenic, point-eleven. The marine arsenic fish consumption is best dealt with with a fish advisory consumption. They're just like mercury for the present time, because the people for their traditions are going to continue to eat - consume the fish, be they salmon, with most of their arsenic coming from the ocean, or be it tuna, or shellfish, or whatever, they're not going to be affected by Oregon's rules.

Number twelve: I take exception to the conclusion of the current Department of Environmental Quality's chapter three-forty, proposed rule-making statement of need and fiscal and economic impact. The current arsenic rules are extreme, and the new proposed arsenic level of 2.3 micrograms per liter, will still negatively affect selected cities and businesses.

 I would think just offhand that Ore-ida and the City of Ontario can't meet these rules. The new rules are so restrictive that they will effectively impede new businesses from locating in Malheur County. How is a business to discharge water three times cleaner than the environment provides?

Point thirteen: Based on the Bureau of Reclamation data, the background levels in the Snake River near Ontario are around five to ten micrograms per liter, arsenic, averaging seven grams per liter arsenic. Anyway, the data I found are richer than the data that you found.

Fourteen: Based on the EPA (stored?) data at the background levels in the Malheur River Basin range from three to ten micrograms per liter arsenic.

Fifteen: Based on public records, the well from Cairo Junction to Vail and Jamieson( contain ten to more than two hundred micrograms per liter arsenic. This should not be a surprise, because the public - it's been published for a very long time that there's very high concentration in many parts of the west. And publications from ten years ago show that there are substantial arsenic, especially in the areas that have geothermal activity, that have volcanic activity, that have lacustrine deposits from the volcanic activity, and have gold in the deposits. We have all four geological features.

The proposed ODEQ rules are below ambient background conditions, and create unnecessary restrictions. The ODEQ regulation that demands that the City of Ontario, the industries in Ontario, or others in South and Eastern parts of the state now own the future, discharge very low rates below the natural background, will provide no net environmental benefit. And we'll be prejudicial to business, employment, and social welfare. Thank you.

**Cheryll Hutchens-Woods** - Thank you. Before I close public comments, is there anyone else wishing to make public comment? Thank you for coming and providing us with your comments. The hearing is adjourned.