

Official Copy

To: Oregon Department of Environmental Quality
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The Official Public Comment of
Pesticide Poisoning Victims United, a Division of
The Pitchfork Rebellion, and
Lake Creek Salmon Protection Specialists
in Regard to DEQ Plan to Increase Water Quality

In brief: **The proposal is good for the following two reasons, but also has serious flaws that should be remedied.** Two good things about the DEQ proposal to improve water quality and reduce toxic chemicals in fish are as follows:

1) It alters existing language to make clear that DEQ will follow the Federal Clean Water Act anytime they believe that the Forest Practices Act offers less protection than the Clean Water Act.

2) It changes the law to permit WAY LESS specific toxic chemicals in fish (and thus in water).

The BIG PROBLEM with the proposal – a problem so big that we call on DEQ to **make certain specific changes to the proposed DEQ plan**; those changes will be listed below – It only addresses a particular list of chemicals that are currently **legally sprayed purposely DIRECTLY ON water**, such as pesticides to kill algae or mosquitoes etc. The Proposal DOES NOT – and certainly should – address aerial or ground sprayed herbicides that are applied next to or near waterways that then, **via runoff**, gets into the waterway. And of course, MOST of the pesticide (EPA uses the term "pesticide" to also include "herbicides") that gets in water is from runoff related to industrial timber operations and other agriculture. **And those herbicides are not even on the list of chemicals that are part of this proposal to "protect water quality"!!!!!!** That's a BIG problem! We offer a solution to that proposal in subsequent paragraphs of this public comment.

It seems to us that the DEQ seems to really want to do more **but can only do what the Clean Water Act** and other laws legally empower it to do. In this case, the DEQ is legally empowered to: a) ensure safe drinking water; b) ensure that the fish eaten by Oregonians is safe. Logically, to perform their legal mandate to protect drinking water and assure non-toxic fish, the DEQ ***should*** be able to regulate not only a narrow list of pesticides that get legally sprayed directly onto mountain streams, **but also other pesticides that get into the very same mountain streams via runoff from the heavily sprayed clearcuts that in Oregon can legally come up extremely close to the edge of the stream.**

Because the clearcuts that come to within a few dozen feet of the stream are often very steep, rain causes runoff that, carrying herbicide-laden sediment, runs directly into the mountain stream. [This is proven by the testing of EWEB led by Karl Morgenstern.] The fish or people that get negatively impacted by the pesticide that gets into water by runoff get every bit as sick as those sickened by pesticide that is purposely sprayed on the water. Currently, the DEQ feels that it can not address the issue of timber industry pesticides getting into the streams from runoff because the State of Oregon has given

that jurisdiction to a combination of the Department of Forestry and the Department of Agriculture, with the latter having primary legal authority to be the lead agency over pesticides in Oregon. However, in the opinion of the Pitchfork Rebellion and other environmental groups, the problem can be addressed legally and boldly by the DEQ. I explain how in the next paragraph. **THIS IS WHAT WE ARE CALLING ON THE DEQ TO DO!**

THE SOLUTION TO THIS PROBLEM: The DEQ **IS** legally entitled to include "sediment" from timber industry runoff in its list of obligations to protect "water quality". And guess what? The vast majority of timber industry herbicides that get into the mountain streams gets in the water by riding on sediment to which it is attached. That is not a theory but an established scientific fact. The DEQ knows that if they prevent sediment from getting in the streams, they at the same time will be tremendously reducing the amount of herbicides that get in the stream. But the DEQ is afraid that if they include "sediment" in their current proposal to protect "water quality", they will face the ire of Big Timber and Big Pesticide (collectively known as 'Big Agriculture'). **THE SOLUTION HERE IS FOR THE EPA TO HAVE THE ... 'GUTS' ... the intestinal fortitude to confront the industry lobbyists head on, with us, the people, not merely standing beside the DEQ, but, as we now are, leading the charge!**

We call on the Oregon Department of Environmental Quality to take the following specific actions:

- 1) We hereby call on the Department of Environmental Quality to include the regulation of sediment as part of their jurisdiction in protecting our "water quality". If you legally require that less timber industry sediment get into the water, you will also be helping to keep timber industry herbicides out of the water – whether that is your job or not. **And that would be a good thing for all those people and fish that your current proposal insists that it wants to help -- and is legally obligated to help.**
- 2) As an agency acting in the public interest, adopt a *strong* 'Precautionary Principle' in regard to pesticides and encourage the State of Oregon to follow your lead. The DEQ can be a trend-setter for the good of their mandate to protect the quality of our environment! Notice the emphasis placed above on the word *strong* immediately before the term 'Precautionary Principle'. The emphasis implies that we support the recent historic use of that term and not any 'johnny-come-lately' spins and reinterpretations that will certainly come from industry lobbyists.
- 3) The DEQ should request that the new Governor do everything he can to shift authority over forest herbicides in Oregon waterways to the Department of Environmental Quality, including, if possible, the designation of DEQ as the lead agency over all pesticides in Oregon because those pesticides impact the quality of our environment. We make that request to DEQ because we have noticed the difference between the statutory requirements to serve on the Board of the DEQ and the much more lax conflict of interest requirements to serve on the BOF. The DEQ follows federal financial conflict of interest standards; the BOF does not. Oregon law permits up to three members of the seven person board to have overt financial conflict of interest. That is wrong and needs to be changed; until that change comes, it must be recognized that it is no mere coincidence that the recent "struggles" between the BOF and DEQ – as evidenced by a Memorandum from the Oregon Justice Department to DEQ and related events – have found the

DEQ taking a more environmentally friendly stance on several key issues including sediment in water than the BOF. It is not a coincidence because it could have been predicted: A Board that oversees natural resources that is permitted to have three members with overt and current financial conflict of interest related to the timber industry can not logically be expected to be as fair and honestly unbiased and truly 'best-science' based as a Board that, like DEQ, does not permit current financial conflict of interest amongst its board members.

- 4) Emulate the testing done by EWEB that features POCIS one-month duration test strips. Recognize that by not having been doing the sort of testing that EWEB has done, you have not found the amount of pesticides in the waterways that EWEB has found. There is a reason: they have done better testing than you have done. Investigate this accusation and, if you agree that EWEB has – for whatever reasons – done a better job, emulate them. You have relied almost exclusively on the so-called “grab” method of taking water samples to check for herbicides, while the POCIS strips used by EWEB are much more effective because they discover what pesticides pass through over a duration of one month, while the “grab” only tests that one brief moment.
- 5) As the EWEB testing documents, current FPA riparian zones and ridiculously small aerial spray buffer zones have proven woefully inadequate to the task of preventing herbicides from entering our streams. Therefore, we call on the DEQ to do all it can to advocate for significant expansion to existing buffer zones and riparian zones that interface with the waterways that DEQ is charged to protect **IN THE PUBLIC INTEREST, even when that means – and it always does – confronting industry lobbyists.**

-- Day Owen, for Pitchfork Rebellion and Pesticide Poisoning Victims United, and also for Lake Creek Salmon Protection Specialists.

