

March 19, 2011

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Oregon Department of Environmental Quality  
Water Quality Division  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

DEQ  
MAR 25 2011  
Water Quality

**RE: Oppose DEQ Toxics Reduction Rulemaking Proposal**

To: Oregon Environmental Quality Commission:

The Eastern Oregon Mining Association is opposed to the Oregon Department of Environmental Quality (DEQ) proposal, through this rulemaking, to revise the water quality standards regulation to address the human health criteria for toxic pollutants. DEQ seeks to raise water quality standards for both point and nonpoint sources of pollution without scientific justification. EOMA considers this rule making to be unnecessary and believes that this rulemaking creates undue, unnecessary regulatory burden on landowners.

All agriculture producers, small woodlands operators and mine operators in Oregon will be adversely affected by the rulemaking if adopted. The proposed rule would move from “maximum extent practicable” to a numeric value on an “implementation-Ready” TMDL. This is an arbitrary rule and measurement, and is in direct conflict with the wording of the Clean Water Act regarding nonpoint source agricultural actions.

We believe the DEQ is over-reaching. In addition, we do not believe it was ever intended for DEQ to adopt such rules under the Clean Water Act or Oregon statutes. In fact, ORS 468.010 to 110 clearly does not authorize DEQ to regulate nonpoint sources to numeric values.

In addition, the Fish Consumption Rate calculation is faulty. When EPA increased their fish consumption default rates nationally to 17.5 g/day, it gave latitude to states to base their numbers on local consumption data, wherever possible. Without scientific justification, DEQ is proposing to raise the consumption rates for Oregonians by 10 fold. This is an arbitrary figure, and it is not based on sound science.

In fact, DEQ stated in written format to a legislative hearing that:

1. “They were not aware of any studies that quantify the fish consumption of all Oregonians”;
2. “They were not aware of any studies documenting the harm to human beings related to toxins consumed through a fish-oriented diet”;
3. “They relied on a Human Health Focus Group to recommend relying on 5 studies – four of which were conducted in the Pacific Northwest and one national study”;

4. All of the 5 reports relied upon for the 175 g/day consumption recommendation, were full of disclaimer language, and one was only a review of literature.

We urge DEQ to match the EPA recommendation of 17.5 g/day of fish consumption. Until peer reviewed, sound science protocols must be used to accurately determine fish consumption. Consideration must be made that fish consumed in Oregon may have spent a good portion of their lives in waters over which Oregon has no control.

Imposition of the proposed new numeric rules will with certainly curtail voluntary improvement practices. Landowners will no longer have the incentive of utilizing "best management practices" or "maximum extent practicable" to correct problems on their own lands. They will be working under a "one-size-fits-all" rule, which will carry severe penalties on situations that may very well be beyond their "practicable" control.

The Science Applications International Corporation report to DEQ states for nonpoint source and storm water costs "... the additional controls needed for compliance or the baseline could not be estimated. There are, however, indications that *baseline compliance costs for nonpoint sources and storm water discharges could be substantial*".

We urge you to not adopt the proposed "Toxics rule". It is not scientifically justified. Implementation of this rule will have severe, adverse effects to the long-term economic recovery of Oregon's farm, woodlands and mine operators.

Thank you for your consideration to our testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maureen Anderson".

Maureen Anderson  
President Eastern Oregon Mining Association  
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541-786-3983