

Email: waterqualitystandards@deq.state.or.us

March 21, 2011

Andrea Matzke
Water Quality Division
Oregon Department of Environmental Quality
811 Sixth Avenue
Portland, Oregon 97204

RE: Boise Incorporated Comments on Proposed Revisions to Water Quality Standards for Human Health Toxic Pollutants; and Water Quality Standards Implementation Policies

Dear Ms. Matzke:

Boise Inc. (Boise) has participated in, and supports, the detailed comments of the Oregon Water Quality Standards Group (OWQSG) submitted by Michael Campbell. Boise is also a member in good standing of the Northwest Pulp and Paper Association and fully supports the NWPPA comments submitted by Llewellyn Mathews and Kathryn VanNatta.

As a member of the Oregon DEQ FIIAC Committee (2008) and the HH Toxic WQ Rulemaking Workgroup (2009-2010), I have personally participated in more than 30 stakeholder committee and subcommittee meetings as a representative for the pulp and paper industry and Associated Oregon Industries. As a member of the various DEQ workgroups, I know that many members have worked diligently and in good faith to offer practical and implementable solutions for the group to consider. My experience with industrial NPDES permits in various states across the USA provides for a unique perspective from which to evaluate the proposed increase in fish consumption rate and the tools necessary to write valid and legally defensible permits for both industrial permittees and Oregon DEQ.

As a member of both the FIIAC and Rulemaking Workgroup, the support for the increased fish consumption rate and associated revisions to water quality standards from the member companies and associations that I've represented has always been contingent on practical, implementable, economically feasible, and legally defensible implementation methods and tools. Unfortunately, efforts to work in good faith don't necessarily resolve the regulatory, technical and legal problems that were

encountered during this rulemaking process. As proposed, the revised HH WQ Toxics rule is too broad, cannot be practically implemented, and creates significant legal uncertainty for both Oregon DEQ and the regulated community. In short, the creation of a legal obligation for an Oregon business under the Clean Water Act to comply with water quality standards that are below naturally occurring background levels in some cases (earth metals like arsenic) and below limits of detection in others (PCB's, pesticides, others) does not meet the objectives established by the EQC when it commissioned the DEQ to develop the revised WQ standards. Furthermore, technology necessary to achieve ultralow discharge levels necessary to meet the stringent new requirements are both technically unproven and economically infeasible. As such, the rule needs reconsideration until the technical, regulatory and legal questions can be more fully addressed and resolved. Failure to resolve the implementation concerns leaves Oregon businesses, municipal dischargers, and ultimately the Oregon public in an untenable and unsustainable position with respect to these WQ standards.

Implementation Concerns

Boise will defer to the more detailed comments of NWPPA and OWQSG on the issue of implementation and legal concerns, but would like to briefly raise the following concerns:

1. Compliance demonstration relies too heavily, and in some cases exclusively, on variances as an implementation tool. Variances have not been previously used in Oregon for compliance with WQ standards in the past. Legal concerns have been detailed by committee members and also were noted by other regulators at the Oregon DEQ variance workshop. Reliance on the variance process is unproven and leaves industrial and municipal dischargers exposed to permitting processes outside of their control.
2. Compliance costs for meeting revised WQ standards have been significantly underestimated by Oregon DEQ fiscal analysis and that of the SAIC report. Economic feasibility is an important consideration for the rulemaking process and accurate information is critical. A lack of economic feasible implementation alternatives leaves point source dischargers vulnerable and could ultimately result in the loss of jobs.
3. Proposed revisions to the arsenic WQ standards, to account for naturally occurring background concentrations, were expected to be adopted prior the current rulemaking packaging but have been delayed. Adoption of the revised arsenic criterion is essential.
4. Oregon DEQ has not established what the ultimate compliance demonstration path will be for legacy pollutants such as PCBs, DDT, and dieldrin – compounds that haven't been produced industrially in more than

30 years, but which may be present in a facility's intake water. Use of variances, which were meant to be temporary in term, to address compliance with these and other pollutants potentially creates legal uncertainties for both Oregon DEQ and permit holders during the permit renewal process.

5. DEQ should not adopt the country's most stringent WQ standards without having full consideration and adoption of appropriate implementation tools needed for each class or grouping of pollutants - including earth metals, pesticides and herbicides, pharmaceuticals, and legacy pollutants.

Thank-you for consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Garber", written in a cursive style.

Richard Garber
Corporate Environmental Manager