



March 21, 2011

Transmitted via e-mail
ToxicsRuleMaking@deq.state.or.us

Andrea Matzke
Oregon Dept. of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

Re: Revised Water Quality Standards

Dear Ms. Matzke,

On behalf of Water for Life, Inc., I would like to submit the following comments regarding the Revised Water Quality Standards currently proposed by the Oregon Department of Environmental Quality.

Although it appears as though Oregon is faced with the need to modify water quality standards, specifically with respect to human health criteria for toxic pollutants, we strongly encourage the Department to withhold further consideration of the proposed rules at the current time.

On behalf of the many individuals directly engaged in production agriculture throughout the state, we encourage the Department to give further consideration to the impact the proposed rules may have on production practices that may give rise to nonpoint source pollution. We believe that in order to effectively implement future rules, a distinction must be made between potential water degradation arising from a specific point source, as opposed to a nonpoint source, or one which is by its own nature exceedingly diffuse, so as to make management practices or regulatory practices difficult if not impractical to ultimately implement. Further, in light of the potential impact the proposed rules may pose to traditional agricultural production practices, we believe the Department has not adequately taken into consideration the actual economic implications associated with implementation of the proposed rules.

We firmly believe it is incumbent upon the Department to further consider the actual economic impacts associated with the proposed rules before proceeding with the rules as currently proposed.

In addition to a continued review of economic considerations, we encourage the Department to review the provisions found in the “Agricultural Water Quality Management” planning process found in ORS 568.900 et seq. established through legislation enacted in 1993. Provisions contained in this statutory framework were intended to vest the Oregon Department of Agriculture with primary authority to address issues of water quality management, specifically as they relate to agricultural production practices. With respect to this statutory framework, we encourage the Department to review provisions found at ORS 568.930. Such provisions provide in part:

ORS 568.930 (3) (a)

The Environmental Quality Commission may petition the State Department of Agriculture for a review of part or all of any water management plan and rules implementing the plan. The petition must allege with reasonable specificity that the plan or the rules are not adequate to achieve compliance with applicable state and federal water quality standards.
(Emphasis added)

These provisions are highlighted to demonstrate the need to draw the previously referenced distinction between point and nonpoint source water quality considerations.

Further, while the statutory framework associated with Agricultural Water Quality Management planning activities does provide the Department of Environmental Quality with the ability to participate in certain regulatory activities associated with agricultural practices, the overarching framework provides the Department of Agriculture with responsibilities associated with agricultural practices, specifically as they relate to issues of water quality management.

Again reviewing provisions found in the Agricultural Water Quality Management planning process, it is apparent the Legislative Assembly affirmatively acted in a manner to constrain the state from interjecting itself into the regulation of nonpoint source activities. Provisions found at ORS 568.912 provide in part:

ORS 568.912 (3)

No specific practice may be prohibited under this section unless the department has a scientific basis for concluding that the practice is a factor in causing water quality standards to be exceeded. (Emphasis added)

Such provisions again demonstrate the potential difficulties the Department may experience with the actual implementation of the rules as proposed.

The purpose in reviewing these provisions is to emphasize the feasibility of attempting to implement the proposed rules. Although we continue to question the basis of the proposed rule through an inconclusive and seemingly subjective “fish consumption rate,” the potential impact to agricultural practices has not been adequately addressed. Rather than continuing to address potential agricultural-related regulatory practices in a cooperative nature through the Departments of Agriculture and Environmental Quality, the proposed rules may serve to hinder future cooperative efforts.

In light of the above considerations, we respectfully request the Department hold the proposed rules in abeyance and give due consideration to further modification and refinement of such rules.

Sincerely,

/s/

Helen Moore
Executive Director
Water for Life, Inc.