Andrea Matzke
OR DEQ Water Quality Division
811 SW Sixth Ave.
Portland, OR 97204

March 21, 2011
sent via email to: ToxicsRuleMaking@DEQ.state.or.us

Re: Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies

I, Jan Wroncy, am submitting comments on my own behalf and on behalf of Gaia Visions, Canaries Who Sing, Coast Range Guardians, Residents of Oregon Against Deadly Sprays and Smoke, and Citizens Environmental Protection Alliance.

Goals for Standards and Rule Making

1.) I would like to encourage the Oregon Department of Environmental Quality to make a bold leap here and enact the most protective measures to keep toxic pollutants out of our water entirely.

2.) I would further encourage the OR DEQ to make sure that the traditional fish diet of our Native Tribes in Oregon is completely free of toxins so that the health of our Native People is restored and the water quality is restored to pristine pre-industrial conditions.

3.) I would like to encourage the OR DEQ to make every effort to restore all bodies of water, streams, lakes, and ground water to pristine unpolluted conditions for sake of all living organisms which depend on water for survival, including but not only humans.

Discussion

Comment 1. <u>The DEQ is permitted to be stricter than the federal Environmental Protection Agency:</u>

> **40 CFR § 123.25 Requirements for permitting.**
>
> (a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that **States are not precluded from omitting or modifying any provisions to impose more stringent requirements:** (author's emphasis added)
>
> (1) through (46):
>
> (14)§122.43—(Establishing permit conditions);
>
> (15)§122.44—(Establishing NPDES permit conditions);
>
> (16)§122.45—(Calculating permit conditions);
>
> Note: Except for paragraph (a)(46) of this section, states need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. **While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent** (author's emphasis added) ; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

The following comments apply to pesticides as pollutants, and as toxics and are taken from comments I submitted on March 7, 2011 for the NPDES Permits for Pesticides, and which are relevant here as well: They may also be found here at: http://gaiavisions.org/NPDES4Pesticides/

Comment 2. The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) must not be violated. No provision of the FIFRA label may be violated.

7 USCA Section 136j Unlawful acts [FIFRA section 12]

(a)(2) It shall be unlawful for any person ---

(G) to use any registered pesticide in any manner inconsistent with its labeling

Therefore, no NPDES permit for a pesticide should be issued for any use of a pesticides (whether biological or chemical) that would violate any provision of the label.

I share the concerns that *Rogue Riverkeeper* expressed on pages 2-3 of their comments:

> *DEQ states in the fact sheet that this threshold includes pest control projects "in and over forest canopies where water is below the canopy. Applications of this nature usually occur over larger tracts of land, and are typically made in response to specific pest outbreaks."*
>
> *There is significant aerial spraying of toxic pesticides in Oregon not for pest outbreaks, but to grow fiber farms. DEQ states in the definitions section of the draft permit that "pesticide" includes "defoliant" and "herbicide."*

Rogue Riverkeeper used the example of just one of the toxic herbicides (atrazine) that foresters use as a management tool. Of course foresters use many other toxic herbicides on lands in Oregon. A partial list would include triclopyr, imazapyr, clopyralid, glyphosate, hexazinone, sulfometuron methyl and many more. Most of these chemicals are found in *Washington Toxics, et al v. EPA* , and even more in the recently filed *Center For Biological Diversity and Pesticide Action Network North America v. EPA* listing 3 pages of pesticides which threaten endangered species.

However, as stated in the above comment No. 2, No NPDES permit can legally be granted for a pesticide which has label language restricting such a use. Please see sample labels attached: Garlon 4, Aatrex 90, Arsenal, Oust, and Velpar.

Comment 3. No false or misleading statements regarding pesticidal or non-pesticidal claims, or claims of safety may be made in violation of 40 CFR Section 156.10, especially to justify the use of pesticides by the applicant for an NPDES permit, or by the DEQ or any other agency to support issuance of the permit.

40 CFR Section 156.10:

(a)(5) *False or misleading statements*. Pursuant to section 2(q)(1)(A) of the Act, a pesticide or a devise declared subject to the Act pursuant to § 152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

(ix) Claims as to the safety of the pesticide or its ingredients, including statements such as "safe," "nonpoisonous," "noninjurious," "harmless," or "nontoxic to humans and pets" with or without such qualifying phrase as "when used as directed";

Most of the labels for these pesticides warn about contaminating water, contaminating food, feed, and warn against breathing the fumes and vapors. (See above labels). EPA registration does not mean the pesticide is safe! Please see attached articles from the Northwest Coalition for Alternatives to Pesticides regarding EPA Registration.

Comment 4. Issuance of NPDES permits for pesticides must comply with all other Federal Laws, including but not limited to the Reauthorization of the Coastal Zone Management Act (RCZMA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), and the Endangered Species Act (ESA - all provisions), Ocean Dumping Law, Marine Mammal Protection Act, the Rehabilitation Act (RA) of 1973, the Americans with Disabilities Act (ADA) of 1990, and any other applicable Federal Law.

Washington Toxics, et al v. EPA court-ordered buffers must be observed and all other measures to protect endangered salmonids. Any release of pesticides, and toxic inerts and adjuvants is likely to adversely affect their survival. Please see Diminishing Returns:*Salmon Decline and Pesticides* by By Richard D. Ewing, PhD, February 1999 herein attached, and also at:

http://www.pesticide.org/get-the-facts/ncap-publications-and-reports/clean-water-for-salmon/clean-water-for-salmon-publications-and-reports

The rights of people under ADA and the Rehabilitation Act are violated by discrimination and the disparate harm caused by forced exposure to toxic chemicals and biological agents.

Comment 5. Issuance of NPDES permits for pesticides must comply with Migratory Bird Treaty and any other International Treaties to protect wildlife.

Releasing chemical and biological pesticides (poisons) into water not only threatens wildlife and fish, but also birds and especially waterfowl. Many of these birds are on long migrations and certainly don't need to be subjected to poisons on their arduous journeys!

Comment 6. The potential impacts on the human environment from issuance of NPDES permits for pesticides obligate the DEQ to provide a thorough and public National Environmental Policy Act (NEPA) review.

Eastern Oregon is very different from Western Oregon, as the Northwest Coastal area is from the Southeast corner. Each area has different water ways, different land owners, different weather, rainfall. topography, fish and wildlife concerns, different endangered species concerns and so forth. For each area, for each chemical or biological pesticide formula, for each type of application method, for each pest targeted, for each and every time a permit is requested, the public has a right to examine and challenge the particulars of the requested permit. GENERAL PERMITS will not address the public's needs, or the public's rights.

Therefore, an Environmental Impact Statement or an Environmental Assessment must be provided to the public for review for each application for an NPDES permit. Different considerations for the ecology, the environment, the private property, the water rights, the endangered species considerations, and all other relevant factors must be made available to the public for review and for comments.

Comment 7. No one may be forced to endure exposure to any pesticides without their informed consent, voluntarily given.

7 USCA Section 136j Unlawful acts [FIFRA section 12]

(a)(2) It shall be unlawful for any person ---

(G) to use any registered pesticide in any manner inconsistent with its labeling

(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test

In almost all cases, the labels of pesticides prohibit exposure to unprotected workers or "other persons", and prohibit the breathing of the vapors or fumes, warn against contaminating water, food, and feed, clothes, shoes, etc. Whether or not, a full scale experiment is intended by the exposures, there are at least 4 or more ways the data is collected from exposures to assess harm. People's Constitutionally protected "Right of Bodily Integrity" and other human rights must be protected.

See the attached Report by Thomas A Kerns, Environment and Human Rights Advisory

A Human Rights Assessment of ODA's Proposed Aerial Gypsy Moth Spray in Eugene, Oregon, March 2, 2009.

Comment 8. Buffers proposed are woefully inadequate.

The Proposed Permit's Use of a Three Foot Buffer for Application of Pesticides for Weed and Algae Control and Nuisance Animal Control Is Unreasonable.

The proposed permit only covers applications made within three feet of the waters' edge for weed and algae control and for nuisance animal control. The proposed fact sheet cites a court case for DEQ's selection of three feet:

> Those discharges near water that are deemed to reach waters of the state are applications within 3 feet of waters of the state and conveyances with a hydrologic surface connection to waters of the state. *DEQ selected a 3 feet minimum buffer because that number is consistent with the buffer established in the US District Court Western District of Washington at Seattle Case No. CO1-0132C, Washington Toxics Coalition vs. EPA*. and it is believed to reasonably reflect the distance where a pesticide application is likely to reach waters of the state or conveyances that flow to waters of the state. Proposed Fact Sheet p. 5. (Emphasis added.)

However, the District Court in the Washington Toxics case actually *struck down* every three-foot buffer that was presented to it, and instead established 20 yard buffers for terrestrial applications and 100 yard buffers for aerial applications of certain pesticides. As the Court stated:

> The Court find that pesticide-application buffer zones are a common, simple, and effective strategy to avoid jeopardy to threatened and endangered salmonids. . . . The Court further finds that 20-yard buffer zones for ground use and 100 yard buffers for aerial applications will substantially contribute to the prevention of jeopardy. . . . EPA's authorization of any Pesticide identified in Section I of this Order within 20 yards, and EPA's authorization of any aerial application within 100 yards, of any Salmon Supporting Waters in California, Oregon, and Washington is hereby ENJOINED, VACATED, AND SET ASIDE. Court Order at p. 4.

The Ninth Circuit U. S. Court of Appeals upheld the District Court in Washington Toxics Coalition v. E.P.A., 413 F.3d 1024 (9th Cir. 2005).

Nor is a three-foot distance supported by studies of buffers needed to mitigate for pesticide applications. The Natural Resources Conservation Service of the U.S. Department of Agriculture, in its publication Conservation Buffers to Reduce Pesticide Losses, March, 2000, found that

> "the width of a conservation buffer strip depends on a number of factors. The purposes of the buffer strip must be defined. Buffers to entrap and deposit sediment are not required to be as wide (only at least 20 feet) as **buffers used to remove soluble compounds, such as nitrogen or pesticides (as wide as 100 feet or longer)."** p. 12.

And these widths are for buffers specifically designed to remove pesticides, not typical riparian areas. Thus three feet is totally inadequate to trap pesticides and the agency is clearly in error when it states that this reasonably "reflects the distance where a pesticide application is likely to reach waters of the state."

To exempt all applications more than three feet from public waters is not reasonable to protect human health or the health of aquatic populations. Nor will it protect the shallow groundwater from pesticide leaching. See the Oregon State University Extension Publication Understanding pesticide persistence and mobility for groundwater and surface water protection, hereby attached and also found at :

http://extension.oregonstate.edu/catalog/pdf/em/em8561-e.pdf

Comment 9. All the ingredients in the pesticide formula or mixtures to be allowed by a NPDES Permit must be revealed, evaluated, and available to the public for public review and comments before any NPDES permit can be issued.

In order for the public to consider the potential impacts to the human environment, their own personal property, and their human rights, including the right of bodily integrity, the public must have the identity of all the ingredients in the pesticide formulas and the adjuvants to be used must be revealed to the public. If the applicants for the permits, or the pesticide manufacturers wish to hide this information from the public, even if using the lame excuse of "trade secrets", then they should not ask to or expect to be granted permission to discharge these toxins into public waters! Informed consent, voluntarily given is a requirement of both the label and Federal Law, as well as a requirement of human rights.

Please see attached articles from the Northwest Coalition for Alternatives to Pesticides regarding inerts, and regarding nonlyphenol (in surfactants) as well as the article by Caroline Cox on nerts.

Comment 10. Compliance with the Endangered Species Act mandates consultation with the United States Fish and Wildlife Services and with the National Marine Fisheres Services, and issuance of Biogical Opinions for each and every listed species for every pesticide considered, including inerts and adjuvants, and for each area where the listed species and their habitat need protection for every relevant NPDES permit requested.

Issuance of NPDES permit for pesticides into waters important for any ESA species, requires Biological Opinion and consultation with NMFS and USF&W. Each request for a permit should be treated separately.

Comment 11. All property rights including water rights must be honored.

Drinking water, irrigation water, recreational waters, instream water rights for fish and every form of water right must not be violated. If people don't want biological and chemical pesticides in their water, they have the protected right to say NO. Waters drawn from legal water rights should not contain pesticides. Most of the chemicals and biological agents contained in pestiticides can not be filtered out of water, even for municiple water supplies. The private water rights holders and municipal water rights holders have a right to prohibit pollution and contamination of their legal property, water rights. This is critical for drinking water safety, as well as for irrigation water, especially for organic farms.

Additionally when chemical and biological pesticides are placed in the water, whether or not through an NPDES permit, they will contaminate private and public lands during high water flow times, and during floods. Oregon case law prohibits trespass, even by pesticides, through Common Law, and guarantees remedies for every harm by the Oregon Constitution.

Comment 12. IPM methods will help, but the hysteria about invasive species, pests and noxious weeds must be examined and tempered. What is a pest? What kind of action is need, or is any action needed?

See *Invasion Biology: A Critique of Pseudoscience* by David I. Theodoropoulos, 2003 herein attached.

http://gaiavisions.org/sToprOd/BLMAppealRecord/4%20of%204/PDFs/VEGEIS_AR_76263.PDF

This important book about the hysteria over invasive species was submitted to the Bureau of Land Management by two different commenters on the *Draft Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon* The BLM subsequently scanned the book and provided it in digital form for the Appeal Record.

Also please read *Invasive Plant Medicine: The Ecological Benefits and Healing Abilities of Invasives* by Timothy Lee Scott, 2010. I will mail a copy of this book to the DEQ via mail shortly, to become part of this record.

Please see articles about Invasion Biology at:

http://gaiavisions.org/InvasionBiology/

How can it be that we are now asked to allow pollution of our waters in order to allow chemical and biological warfare on a hypothetical enemy?

Conclusion and Final Thoughts - The Solution to Pollution is NOT Dilution! It is to NOT Pollute in the first Place!

As a renowned agronomist/drift expert from California once told me - Pesticides and people DON'T mix. I would add that pesticides do not belong in our water!

Chemiculture (formerly agriculture and forestry) is not a solution to anything. Organic non-chemical farming and forestry are the Best Management Practices.

Pesticides, whether chemical or biological are pollutants. The Clean Water Act can go a long way toward reducing and hopefully eventually eliminating discharges of pesticides into the waters of United States. Please consider the above arguments for tight regulation of discharges of pesticides into our waters.

Comments regarding other forms of pollution and toxics:

Almost every form of pollutants and toxics affected by this rulemaking process is fully under the control of humans, whether viewed as point source or non-point source. The pollutants and toxics spread over the lands in the name of land management, whether forestry or agriculture, roadside or non-cropland management, are all placed on the land as point sources originally. The fact that wind, water, and air can later move these pollutants and toxics into the water is not amazing at all. They are not acts of God, but acts of natural processes, and therefore more or less predictable. Therefore, the best way to prevent pesticides, pollutants, and toxics from entering the waters in Oregon is to control and ultimately eliminate their use on land in Oregon.

Every effort the DEQ can make to keep pollutants, pesticides and toxics out of the water entirely is ultimately the best use of time, money and human energy. This can be accomplished by both stricter rules and a system of incentives.

Respectfully submitted by,

_____

Jan Wroncy, on my own behalf
and on behalf of
Gaia Visions, Canaries Who Sing, Coast Range Guardians,
Residents of Oregon Against Deadly Sprays and Smoke, and
Citizens Environmental Protection Alliance.
Post Office Box 1101
Eugene, OR 97440