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Metropolitan Wastewater Management Commission



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DEQ

MAR 21 2011

Water Quality

*MWMC
Commission*

March 15, 2011

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Andrea Matzke
Oregon DEQ
Water Quality Division
811 SW Sixth Avenue
Portland, OR 97204

*Re: Comments on Proposed Toxins Rulemaking
E-mailed to: ToxinsRuleMaking@deq.state.or.us*

Dear Ms. Matzke:

The Metropolitan Wastewater Management Commission (MWMC) is an intergovernmental entity that was created in 1977 by an agreement among Eugene, Springfield, and Lane County. The MWMC owns and operates the Eugene-Springfield regional wastewater facilities and is responsible for the operation and maintenance of the regional facilities serving the Urban Growth Boundaries of Eugene and Springfield.

The MWMC's purpose is to protect the public health, safety, and environment by providing high-quality wastewater management services to the Eugene-Springfield metropolitan area in a manner that is effective, efficient, and meets customer service expectations. The MWMC is looked upon by the community as a good neighbor and has developed a reputation for being environmental stewards in the communities they serve.

The Regional Wastewater Treatment Facility provides wastewater services for over 220,000 people, and treats approximately 14 billion gallons of wastewater annually. The facility has gone through a number of upgrades since it began operation in April 1984. Most recently the facility has undergone upgrades to comply with wet weather standards and is continuing to implement its 2004 Facilities Plan, which includes some 38 capital projects necessary to meet regulatory requirements and meet growth needs in the Eugene/Springfield area to 2025. The projected reinvestment in the facility is expected to reach \$185 million by Fiscal Year 2014-2015. To fund these improvements, rate payers have experienced a 144% increase in regional sanitary sewer fees since the construction effort began in 2004.

The MWMC strongly supports efforts to reduce toxins from all sources to Oregon's waterways. To achieve this we do the following:

- ✓ Under authority delegated by the Department of Environmental Quality (DEQ) we regulate 44 industrial dischargers in Eugene and Springfield through the implementation of the regional pretreatment program and 80 1200Z permits in Eugene.

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- ✓ We operate our treatment plant and manage our Biosolids effectively and have received Gold Awards from the National Association of Clean Water Agencies (NACWA).
- ✓ Eugene and Springfield participate in the drug take back events.
- ✓ We have partnerships with 150 area dentists in Eugene and Springfield to reduce mercury-containing wastes into the sewers.
- ✓ We have strong public information and involvement programs to reduce use and discharge of toxic pollutants.
- ✓ We perform due diligence environmental site assessment in land acquisition and site cleanups.
- ✓ We partner with local agencies in pollution prevention programs such as the Ecological Business Program for automotive shops.
- ✓ We manage native plant or naturescaping programs to reduce use of fertilizers and toxic pesticides and conduct outreach to businesses such as nurseries and garden centers to reduce their environmental impact.
- ✓ We regulate restaurants to reduce the discharge of fats, oils and grease to eliminate blockages that cause sanitary sewer overflows.
- ✓ We partner with watershed councils and other community groups in restoration projects that protect our rivers and education projects that reach a broad spectrum of the population.

In addition to the regional program, both Eugene and Springfield annually spend millions of dollars to keep the local collection systems maintained to protect the environment and the river.

Some of Our Concerns about the Proposal

Treatment technologies to meet the proposed toxic numbers at the wastewater plant are not available at a reasonable cost to ratepayers and the community.

Effective and feasible treatment technologies to reduce toxic chemicals such as legacy pesticides, PCBs, or plasticizers to the proposed levels do not exist. Some of the toxins are naturally occurring and cannot be removed to the proposed levels.

The proposed standards for toxins will place Oregon in the lead of having the most stringent water quality standards in the nation. While this is a laudable measure toward protecting human health, the real-world practicality of these standards is fraught with present-day technological limitations including the inability to detect many of these pollutants at the proposed criterion concentrations.

We work hard to educate and regulate the public to keep toxins out of the wastewater system. Stopping pollution at the source is the most cost effective approach. While this approach may not eliminate all toxins from entering wastewater treatment systems, it serves to engage communities in discussions of alternatives to products and services utilizing toxins. It helps people understand the resultant need for costly treatment facilities to remove the same toxins from the waste stream. These discussions must also engage representatives at state and national levels where legislation is most effective in minimizing costs to the public including human health, the environment, and financially from the manufacture and use of toxins in this country.

Impact on Oregon's Domestic NPDES Permit Holders

We have reviewed the work from ACWA's technical experts as they have analyzed the impact of the DEQ's proposed revisions on a subset of domestic wastewater treatment plants. We are concerned that the MWMC cannot meet the revised water quality standards. We will in all likelihood need a variance, or ideally another mechanism, to meet the existing proposal. The

DEQ's implementation for these water quality standard revisions must extend beyond the temporary bridge of a variance to permanent solutions within the tools of the Clean Water Act, such as Total Maximum Daily Loads (TMDLs), site specific criteria, or Use Attainability Analysis.

This analysis, which has been provided to the DEQ by ACWA, demonstrates that domestic wastewater plants will have difficulty meeting the revised water quality standards for several classes of pollutants including:

Legacy compounds, including PCBs, DDT, and legacy pesticides. The chemicals in this class are already restricted by the Environmental Protection Agency (EPA) action. Low levels of PCBs and DDTs reach treatment plants through body burden from historic exposure, through food, background levels in potable water, and possibly from illegal dumping into the sewer systems.

The analysis completed for ACWA, by Dr. Dave Stone of Oregon State University, estimated that the load of PCBs entering a medium sized Oregon wastewater treatment plant from excretion at a daily average of 0.16 ng of PCBs per liter. The proposed water quality standard for PCBs is 0.0000064 ug/l (0.0064 ng). Oregon treatment plants are unable to achieve the proposed water quality standard due to human and food waste.

There is no reasonable, effective treatment process for removing PCBs and DDTs at these very low levels from wastewater effluent in order to achieve the DEQ proposed water quality standards¹.

1. **Consumer Products, including bis(ethylhexyl) phthalates**: Plastizers like phthalates are everywhere in the environment, including wastewater. There are no reasonable, effective treatment processes for removing phthalates at the DEQ proposed levels from wastewater effluent.
2. **Metals and arsenic**: Oregon's rivers and streams have naturally occurring levels of arsenic and mercury many times over the DEQ proposed standards. Technology to meet these low limits is not available.
3. **Chlorination by-products**: Most wastewater utilities in Oregon use chlorine for disinfection. Oregon wastewater utilities could move to non-chlorine disinfection systems; however this will require significant financial investments to revise existing disinfection systems.

The DEQ's analysis greatly underestimates the impact of the proposed rule revision on water quality permit holders and, most importantly, does not incorporate the implementation mechanism needed to achieve toxic reduction within the context of the Clean Water Act.

The DEQ's limited recommendation of variances as the only compliance tool for local governments will be an expensive investment with no environmental benefit. Variances are short-term and temporary tools. The overall DEQ rulemaking package does not address how variances can be used at facilities unable to meet water quality standards due to human caused load, where there is no feasible, effective treatment technology available.

¹ These levels of PCBs cannot be measured, therefore the Quantization Level becomes the compliance points; however the underlying water quality standard remains in place

The DEQ has identified a burdensome, expensive, regulatory process with an uncertain outcome as the primary mechanism to obtain relief from these water quality standards. We cannot rely on such process as the only mechanism for compliance.

The MWMC recommends that DEQ and the Environmental Quality Commission (EQC) adopt an implementation plan development process for each class of chemicals that are likely to be exceeded under the new standards. The implementation plan would detail how the appropriate water quality compliance tool under the Clean Water Act would be developed to resolve the underlying standard violation, including development of Total Maximum Daily Loads, site specific criteria, or a Use Attainable Analysis.

The implementation plans should be adopted along with the proposed standards.

Effective Toxic Reduction Must be Tackled at a Watershed Basis and Involve All Sources of Pollution

The MWMC wants to ensure that investments in water quality programs are effective in reducing toxic pollutants. Some toxic chemicals can be tackled by wastewater utilities by changing treatment technologies or reducing dischargers to their sewer system; other pollutants cannot. Chemicals, such as the legacy toxins DDT and PCBs or plasticizers such as bis (2-ethylhexyl) phthalate are found everywhere in the environment, in people, and in wastewater effluent at low levels.

The DEQ and the EQC should be incorporating specific standard implementation strategies (likely by the type of pollutant, such as PCBs or legacy pesticides) that are allowed under the Clean Water Act. Adopting the revised standards without accompanying implementation plans will not move the state towards achieving the water quality goals in the revised standards and puts NPDES permit holders at unnecessary legal risk.

DEQ's Solution of 'Variances' Must Be Improved

The MWMC appreciates the DEQ's offer of variances as a compliance tool, especially where that tool incorporates pollution reduction plans as a way to make progress to the degree feasible towards improvement. We have several concerns:

- The EPA regulations restrict variances to being '*short term and temporary*.' There is nothing 'short term and temporary' about legacy pesticides or very low levels of PCBs or pesticides that are throughout the environment. Even addressing current use toxins will be complicated and may take many years to resolve.
- There is nothing 'short term and temporary' about the investment our rate payers have made over many years to build and maintain the regional wastewater facility and the additional investment in the local wastewater collection system infrastructure. Capital investments made to comply with any regulatory requirement have life spans of decades, not the five year cycles proposed for the variances.
- There is a substantial amount of paperwork involved in securing a variance. The DEQ has estimated that cost as between \$8,000 and \$44,000. This paperwork exercise would need to be repeated at each permit renewal and is specific to each pollutant of concern and each permittee. This diverts ratepayer dollars from other investments that would have greater

water quality benefits, such as: additional treatment process upgrades, reuse programs to keep effluent out of the rivers, and education and monitoring programs to keep toxins out of the wastewater stream, and maintaining critical infrastructure. Renewal or reissuance of variances also has the potential to repeat those costs on the five year permit cycle.

The overall scheme that the DEQ has developed for variances should be simplified, clearly stated, and efficient. Multi-Sector variances should be allowed outright to accommodate similar situations throughout a basin or even throughout the state. The obligation to make specific findings regarding endangered species, existing water quality uses, and unacceptable risks to public health should be made by the DEQ and not by the variance applicant.

DEQ Underestimated Financial Impact

We believe the DEQ has underestimated the scope of impact on the proposed revisions in the following terms:

- The impact on the DEQ's staff resources and/or their ability to conduct other priority activities within their organization
- The fiscal and workload impact to both permittees and the DEQ of moving beyond variances to the development and implementation of watershed-based toxic reduction plans
- The impact of the proposal on ratepayers, including businesses and industries that discharge to our facilities
- The number of municipal wastewater permit holders that the proposed revisions will affect and the number of toxins that each of those permittees may be required to address through variances
- The costs to water quality permit holders for applying and maintaining a variance as a compliance tool

Summary

An effective water quality toxic reduction program must be a broad initiative and all sources must be addressed; an effective approach cannot be just focused on water quality permit holders. We are interested in seeing the DEQ's plans for a comprehensive toxic reduction program tied to adoption of more stringent toxic water quality standards.

We appreciate that the DEQ held a number of public hearings across the state and allowed so many to comment on this important rule making decision. We also appreciate the opportunity to submit these comments and we look forward to working closely with the DEQ to maximize the positive impact on water quality in the most effective manner.

Sincerely,



Ron R. Bittler, City of Springfield
General Manager, MWMC



Michelle Cahill, City of Eugene
Wastewater Division Manager

