CITY OF PORTLAND
ENVIRONMENTAL SERVICES
1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ▪ Dan Saltzman, Commissioner ▪ Dean Marriott, Director

March 21, 2011

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

Re: City of Portland Bureau of Environmental Services Comments on Proposed Revisions to Water Quality Standards

E-mailed to: ToxicsRuleMaking@deq.state.or.us

Dear Ms. Matzke:

The City of Portland's Bureau of Environmental Services (BES) appreciates the opportunity to comment on the Department of Environmental Quality's (DEQ) proposed revisions to the Water Quality Standards and implementation options.

BES provides water quality protection, watershed planning, wastewater collection and treatment, sewer installation and stormwater management services to approximately 576,000 people. BES clearly has a strong commitment to improving the health of Oregon's water bodies, as evidenced by our soon to be completed $1.4 billion, 20 year program that will significantly reduce combined sewer overflows to the Columbia Slough and Willamette River. In addition, BES implements a federal pretreatment program where we work with industries to limit the toxics discharged into our sewer system. We also work with community partners on drug take back events, programs that reduce mercury generated by dental offices, clinics and schools, and programs that minimize the environmental impact from automotive businesses.

BES realizes that the proposed water quality standards are based on revised human health criteria that are intended to better protect Oregonians who consume fish from the state's waters. We applaud DEQ for their leadership in protecting all of Oregon's citizens.

The new water quality standards will provide significant implementation challenges for DEQ and the regulated community. The unknown fiscal, operational and legal aspects of implementing these new standards present significant concerns for BES. As we work through the challenges, it will be important for DEQ to consider and promote implementation options that are clear, cost effective and equitable.

The following comments are offered for your consideration.

Variances

DEQ has indicated that the use of variances will be the primary tool for NPDES permit holders that are unable to meet the more stringent water quality standards. While we recognize the constraints of the federal clean water act, it is unfortunate that the primary implementation tool could be an expensive investment with no environmental benefit. Variances are short-term and temporary tools.

Based on the work of ACWA and others, it is possible that domestic wastewater plants may have difficulty meeting the revised water quality standards for several classes of pollutants including:

- **Legacy compounds, including PCBs, DDT, and legacy pesticides**. Low levels of PCBs and DDTs reach treatment plants from historic exposure, background levels in potable water, and possibly from illegal dumping into the sewer systems. These compounds have been banned from use for many years, yet remain in the environment and consequently enter domestic wastewater treatment plants.
- **Consumer Products, including bis(ethylhexyl) phalate.** Plasticizers like phalates are everywhere in the environment, including in wastewater. There are no reasonable, effective treatment processes for removing phthalates at the DEQ proposed levels from wastewater effluent.
- **Chlorination by-products.** Most wastewater utilities in Oregon use chlorine for disinfection. Moving to non-chlorine disinfection systems will require significant investments to revise existing disinfection systems.

We would hope that when the presence of ubiquitous and legacy contaminants requires a wastewater treatment plant to obtain a variance, DEQ and EPA will take a reasonable approach and consider the lack of cost effective treatment options and the limited ability for a NPDES permit holder to manage the sources of these chemicals.

Financial Impact

Both DEQ and NPDES permit holders are likely to incur a substantial amount of staff time and other costs securing a variance. DEQ has estimated that cost as between $8,000 and $44,000. It is unclear whether this applies to one constituent per variance, if multiple variances for multiple constituents are needed, and what the additional costs are with each permit renewal cycle. The uncertainty of the additional planning cost and potential capital investments makes our fiscal planning more difficult, and could add another significant financial burden to Portland sewer ratepayers who are already funding the City's $ 1.4 billion combined sewer overflow abatement effort. The resource issues for DEQ are also a significant consideration. Oregon's state government continues to experience economic difficulties, and this relates directly to DEQ's ability to staff current programs or fund new commitments. \

Toxics Reduction Planning

When reduction planning is required in a variance, DEQ should consider using the reduction plan outline developed for SB 737 pollutant reduction plans. DEQ, wastewater treatment facilities and other stakeholders worked together on developing this outline, and it provides a clear framework for developing a reduction plan. This would support DEQ's efforts to develop a comprehensive toxic reduction strategy for the state and while coordinating DEQ programs. The implementation

of SB 737 sets a precedent for a reasonable and flexible implementation approach (i.e. exempting cholesterol and coprostanol from pollutant reduction planning) that we hope will carry through into the implementation of the new water quality standards. In addition, as you have heard from stakeholders throughout the rule development process, we look to DEQ to work with both point and non-point sources on toxics reduction to improve Oregon's water quality.

Internal Management Directive for Variances

As DEQ implements the variance options, the internal staff guidance should be simple and clearly stated. Multi-sector variances should be allowed outright to accommodate similar situations throughout a basin or even throughout the state. DEQ should also consider a variance by rule option that has been used in other parts of the country. With clear evaluation criteria and application and approval processes, a permit by rule option could reduce administrative efforts and costs. Issues for which we would look to DEQ to provide clarity include:

- The coordination of a permit renewal or issuance with a variance application and approval process
- The need for multiple variances at one facility if water quality standards are exceeded for multiple pollutants
- Variance off-ramps that describe how a variance can be modified into another tool such as compliance schedule, etc.
- Interpretation of the criteria that allow for a variance, specifically those that consider social and economic impacts

Again, BES appreciates the opportunity to provide comments on this important and far-reaching rulemaking, and encourages DEQ to also consider the comments submitted by ACWA. We realize the uncertainties and unknowns provide implementation challenges for DEQ, and we are certain that DEQ recognizes the regulated community has the same concerns. Our hope is that DEQ considers implementation options that are cost effective and fair across all sectors, always with the goal of improving water quality. We look forward to working with DEQ on the implementation of these new standards. If you have any questions or comments please contact Kim Cox, BES Environmental Policy Manager at 503-823-5313 or kim.cox@portlandoregon.gov.

Sincerely,

Dean Marriott
Director, Bureau of Environmental Services