

March 17, 2011

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RE: Human Health Toxics Rulemaking (Submitted by Email)

Dear Ms. Matzke:

The Oregon Dairy Farmers Association (ODFA) is the dairy producer trade association that represents Oregon's 280 diverse dairy farm families. ODFA has reviewed the proposed rule language for the Human Health Toxics Rulemaking and would like to offer the following comments.

I. LOAD ALLOCATION

(h) Load allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing nonpoint sources, including runoff, deposition, soil contamination and groundwater discharges, or to background sources. Load allocations are best estimates of loading, and may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever reasonably feasibility, natural background, long-range transport and anthropogenic nonpoint source loads will be distinguished from each other.

A. First off, ODFA strongly recommends that the Department of Environmental Quality remove the word "deposition" from the Load allocation definition for the following reasons:

ODFA is very concerned about the inclusion of the term "deposition" in the Load allocation definition. The term "deposition" is not defined. Without this term being defined, it creates uncertainty for non-point sources (the group in which Load allocations apply to) as well as regulatory uncertainty for the Department of Environmental Quality as TMDLs are developed. It is important and fair for farmers to know what is expected of them before a rule is completed, not after.

During the stakeholder committee, individuals implied that the term "deposition" related to air however, the discussion to include (air) "deposition" as part of the Load allocation definition was not fully vetted. There was marginal conversation with the stakeholders as to what would be considered part of (air) "deposition." There was no opportunity to study the science

pertaining to air emissions, both from point and non-point sources; there was no discussion or consideration given to current air mitigation practices being employed by non-point sources, such as dairy farmers. The inclusion of (air) “deposition” was not fully vetted during the rulemaking discussion that thus should be removed from the Load allocation definition until such process has occurred.

Furthermore, if the term “deposition” does apply to air, this rulemaking has burdened non-point sources since “deposition” only exists in the Load allocation definition. There is no “deposition” requirement in the Wasteload allocation definition. Both point and non-point sources have the potential to contribute to air deposition, however, with this current, proposed definition non-point sources are the only entity responsible for addressing contributions of deposition. Air deposition created by point sources should be dealt with by point sources and not solely on non-point sources.

If it is the Department of Environmental Quality’s intent to regulate (air) “deposition” (assuming that is DEQ intention – however, it is unclear since “deposition” was not defined), regulating air through a TMDL is not appropriate. TMDLs are developed as a means to regulate water quality under the Clean Water Act. The Clean Air Act is the appropriate vehicle in which to regulate air so if the Department of Environmental Quality’s intention is to regulate air, the Clean Air Act is the appropriate means to do so and should not be part of this definition or rulemaking.

B. ODA is also concerned the Department of Environmental Quality is not required to determine the difference between natural background sources from non-point sources. ODA feels that it is important for the Department of Environmental Quality be required to distinguish the difference between these sources so that non-point sources are not unfairly treated.

C. ODA is also concerned with the use of the word “including” in the Load allocation definition as it does not exclude additional elements to be regulated for non-point sources. The term “including” is not limiting and creates additional risk to non-point sources.

II. Department Authorities

The second issue pertains to the Department of Environmental Quality’s interaction with the Oregon Department of Agriculture.


The rulemaking package states that, “the department will provide ODA with comments on what would be sufficient to meet WQS or TMDL load allocations.”

A. Currently, as Oregon Department of Agriculture develops the Area Management Plans under the Agriculture Waster Quality Management Plan, these plans must be based on science (ORS 568.909(2), ORS 568.912(2) and ORS 568.912(3)). The Department of Environmental Quality is not held to these standards when it comes to non-point sources. When making changes to load allocations the Department of Environmental Quality is only required to use best estimates. The Department of Environmental Quality is only required to use scientific data only when it is available. If the Department of Environmental Quality request changes to the Agriculture Water Quality Management Plan, these changes should be based on science in order to protect the integrity of the Agriculture Water Quality Management Program and the environment.

B. It is also important that water quality matters associated with non-point sources be handled by the Oregon Department of Agriculture. The Oregon Department of Agriculture has been given this authority and the Department of Environmental Quality should not try to supersede this. In 1995, the Oregon State Legislature declared the Oregon Department of Agriculture to be the sole agency responsible for developing and implementing program or rules that directly regulate farming practices that protect water quality. The Oregon Department of Agriculture has an established and proven track record when it comes to working with farmers and ranchers about environmental issues and it should continue to remain this way.

Thank you for the opportunity to provide thes comments on behalf of Oregon's dairy farm families. If you have any questions, please feel free to contact me.

Regards,

A handwritten signature in cursive script that reads "Jim Krahn".

Jim Krahn, Executive Director
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