

NORTHWEST ENVIRONMENTAL ADVOCATES



September 13, 2010

Bill Blosser, Chair
Ken Williamson, Vice-Chair
Donalda Dodson, Commissioner
Jane O’Keeffe, Commissioner
Judy Uherbelau, Commissioner
c/o Oregon Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, OR 97204

Re: Rulemaking Needed to Protect Oregon’s Waters: Antidegradation Tier I

Dear Chair Blosser and Commissioners:

We write to ask the Commission to direct the Department to undertake rulemaking in the near future to address significant gaps in Oregon’s water quality program to control nonpoint source pollution contributions.

When the Commission directed DEQ on October 23, 2008 to pursue rule revisions to establish new human health criteria for toxic pollutants, it specifically directed the Department to “[p]ropose rule language or develop other implementation strategies to reduce the adverse impacts of toxic substances in Oregon’s waters that are the result of non-point source (not via a pipe) discharges or other sources not subject to section 402 of the Clean Water Act.” In issuing this directive, the Commission demonstrated its commitment to taking actions necessary to restoring the quality of Oregon’s waters.

Unfortunately, DEQ waited over a year before it began to address this specific directive and, having finally done so, rejected nearly all of the proposals that had been developed in the interim by Northwest Environmental Advocates (NWEA) and the municipal representatives on the toxics Rulemaking Work Group. These proposals were set out in the extensive October 21, 2009 memorandum “Controlling Non-Point Source Runoff of Toxic Contaminants” which was provided to you last year. As a consequence, the rulemaking package now being finalized includes very little to remedy nonpoint source pollution. In fact, none of the proposed rule changes will *require* the Department or any other agency to conduct its activities differently than they do now. The primary vehicle for reducing toxic and other nonpoint source contributions is the new “implementation ready” Total Maximum Daily Loads (TMDLs) – an approach that holds promise to actually restrict nonpoint source pollution in ways that existing TMDLs simply do not. But these new TMDLs should be the beginning, not the end, of the search for solutions.

Faced with a recalcitrant Department and nonpoint source stakeholders, I prepared the attached memorandum to demonstrate what DEQ could do *through its water quality standards* to significantly curtail the ongoing pollution problem from nonpoint sources. As this memo demonstrates, for all of its positive attributes, the “implementation ready” TMDL approach does not relieve huge gaps in water quality protection. These gaps include lack of mechanisms to:

- Lower pollutant loads to impaired waters prior to the development of a TMDL – a time period that is likely to lengthen due to budget cuts;
- Restrict water pollution where Oregon’s narrative criteria are violated;
- Restrict toxic inputs for the half of Oregon’s new human health toxics criteria that are below the level at which they can be quantified;
- Protect “existing uses” where water quality has eroded over the last 35 years; and
- Protect good water quality from nonpoint sources that will lower that quality.

Clearly, the effort called for in this memo was beyond the capacity of DEQ to incorporate in the current rulemaking effort. However, if the Commission remains committed to controlling nonpoint sources, it is our opinion that adopting federally-required implementation methods for Tier I antidegradation provisions, as outlined in the attached, is key to the Commission’s success. The memo proposes that the Commission would adopt, in rules, *baseline controls for nonpoint sources that would apply as Tier I antidegradation protections* unless and until a TMDL directed that more stringent controls were necessary to meet load allocations and water quality standards. Unlike any DEQ internal guidance document, these minimum requirements would be part of the water quality standards that other agencies would have to meet in establishing their best management practices.

In closing, we urge the Commission to direct DEQ to provide a work plan and schedule to adopt Tier I antidegradation implementation methods in rules and then, subsequently, to direct the Department to implement that work plan.

Sincerely,

Nina Bell
Executive Director

cc: Dick Pederson, Director
Neil Mullane, Water Quality Division Administrator

Attachment: Memorandum “Using Tier I Antidegradation Policy Requirements to Address Gaps in Water Quality Protection for Oregon’s Waters,” from Nina Bell to DEQ Staff, June 7, 2010.