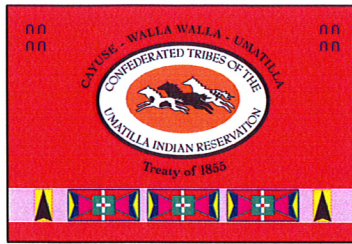


**Confederated Tribes of the
Umatilla Indian Reservation**

Board of Trustees



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March 21, 2011

Andrea Matzke
Oregon DEQ
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204
FAX: 503-229-6037

Sent via e-mail to: ToxicsRuleMaking@deq.state.or.us

Dear Ms. Matzke:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submits the following comments on the rules proposed by the Oregon Department of Environmental Quality (DEQ) for “Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies.” We support the proposed rules and encourage you to recommend that they be adopted by the Oregon Environmental Quality Commission.

Improved human health is the driving force behind this entire effort. The proposed water quality standards incorporate a fish consumption rate (FCR) that is more protective of tribal members and other Oregon citizens who consume fish. CTUIR and other tribal members eat more fish than the average population. The proposed higher FCR recognizes and acknowledges this fact. As you have stated, Oregon’s “currently effective human health toxics criteria are based on a fish consumption rate that does not provide adequate protection for the amount of fish and shellfish consumed by Oregonians.”¹

DEQ’s objective is “to adopt water quality standards for Oregon that will protect people from adverse health effects as a result of consuming fish and water from Oregon streams and lakes.”² The proposed rules will also “implement the water quality standards in a manner that is cost effective and achieves meaningful environmental results.”³ The proposed rules will accomplish these objectives. They should be adopted without delay.

The proposed rules represent the culmination of years of effort by the CTUIR, Oregon, the U.S. Environmental Protection Agency (EPA) and interested stakeholders. The CTUIR has worked collaboratively these and other parties to increase the FCR rate to better reflect the amount of fish consumed by our tribal members. The scientific foundation for the increased fish consumption rate is solid and substantial, backed by rigorous assessment and analysis. It was the subject of extensive discussion and debate, in a two-year, open, public process. One hundred seventy-five grams per day is a fair and reasonable number, and is already a substantial

¹ DEQ, “Proposed Rulemaking Announcement – Revised,” Feb. 22, 2011.

² *Id.*

³ *Id.*

compromise. Evidence shows that many tribal people eat even more fish than that. For its own water quality standards, the CTUIR has adopted a rate of 389 grams per day.

The current EPA national default value of 17.5 grams per day was determined on a per-capita basis for the general U.S. population, including both fish consumers and non-consumers. With Oregon's historic and current use of the Columbia River, its tributary fisheries, and our coastal tributaries, it is plain that this national standard is inappropriate for Oregon.

Assertions have been made that the Fish Consumption Survey is "old," or somehow outdated, yet it remains the most definitive examination of the subject. Furthermore, subsequent studies of other tribes and communities have only supplemented and corroborated its findings. It has also been suggested that the Survey supposedly showed that tribal fish consumption rates were declining. If so, that is only part of the story. When the Survey was conducted, in the early- to mid-1990s, fish populations were declining. There were far fewer fish for tribal members to catch and eat.

Salmon listings under the Endangered Species Act began in the early '90s. By the mid-'90s, salmon numbers had plummeted even further. Fish were rationed at tribal ceremonies. Traditional longhouses along the Columbia River wrote to tribal governments, begging for salmon and pleading for action. If tribal consumption rates at that time were declining, one need only look at the circumstances. Since then, however, many salmon populations have increased. Tribal fishing has increased. A new survey, examining current consumption, may well show even higher rates.

It has also been said that a person would have to eat fish 280 days a year to eat 140 pounds worth, and that no one that eats that much fish. That number should be put in perspective. While 140 pounds of fish a year might sound high, studies have estimated that the average person in the United States eats 275 pounds of meat per year. One hundred forty pounds is just about half that amount, and not unreasonable for tribal members for whom salmon and other fish are traditional staples. Furthermore, the recently revised *Dietary Guidelines for Americans 2010*, from the federal government, emphasizes consuming more nutrient-dense foods like seafood as part of a healthy eating pattern. The *Guidelines* specifically recommend "increasing the amount and variety of seafood consumed by choosing seafood in place of some meat and poultry."

The science showing the presence of various toxic contaminants in many fish species throughout Oregon and the Pacific Northwest is also sound. The studies and reports documenting all these facts are reliable and convincing.

The CTUIR recognizes that the proposed rules must be both effective in protecting Oregonians and fair in their implementation. They must lead to concrete reductions in the amount of toxics released into the environment. They must be more than just a number on paper. The proposed rules contain provisions for reasonable implementation. We understand that in some circumstances compliance may not be achieved immediately, or may be difficult to achieve because of background contaminants. The CTUIR is committed to working with DEQ, EPA and

affected stakeholders to reduce toxics in a manner that is not excessively expensive or burdensome.

Some have also expressed concerns that, under the proposed rules, DEQ would aggressively dictate standards for agricultural and other land management practices. However, it appears that the rules only seek to **clarify** the agency's authority regarding nonpoint sources. DEQ has given no indication that its aim is to drastically expand its regulatory mandate.

In the Treaty of 1855, the CTUIR secured our historic, pre-existing "right of taking fish." Our ancestors would not have signed the Treaty without that guarantee. When they signed the Treaty, they understood that the fish would be safe to eat. Water and fish are the first of our "First Foods." Our community recognizes the First Foods not just for their natural resource values, but for their cultural and religious values as well. In fact, we hold these values to be inseparable. Our First Foods ceremonies begin and end with a drink of water to recognize its importance and we have songs that speak to the religious significance of water and the other First Foods.

The higher fish consumption rate is designed to better protect Oregon's more sensitive fish consumers. This is similar to, and consistent with, Oregon's decision to adopt air quality standards that protect people with asthma. The approach is to be respectful of, and protective of, people with higher health risks and vulnerabilities. This makes sense for air quality standards, and it makes sense for water quality standards.

In the past, those water quality standards did not protect Indian people. They did not protect our children, our women, our mothers. We must think of the next seven generations—what we will pass on to them, what they will inherit. We cannot allow imperiling the exercising their Treaty Rights, practicing their religion, or continuing our culture. The revised rules for toxics, with the 175 grams per day fish consumption rate, will change that. They will help safeguard the health of our children, on which our future ultimately rests. They will better ensure that our First Foods will remain and will be safe and healthy to eat.

The CTUIR is committed to working with DEQ, EPA and affected stakeholders to reduce toxics in a manner that is not excessively expensive or burdensome. It can be done, and it must be done. We encourage the State of Oregon to adopt the proposed rules. They will better protect our people, and many others who eat a lot of fish, like we do. All Oregonians will be able to enjoy the benefits of cleaner water.

Sincerely,



Elwood H. Patawa
Chairman, Board of Trustees

EHP: DNR EP/RP: cfm