Oregon Environmental Council
It's Your Oregon

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Andrea Matzke
Oregon DEQ Water Quality Division
811 SW 6th Ave
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March 21, 2011

Dear Ms. Matzke:

The Oregon Environmental Council strongly supports the Oregon Department of Environmental Quality's proposed rule changes to allow less toxic pollution in Oregon's waterways.

DEQ's current human health toxics criteria were rejected by the federal government because they do not provide adequate protection for Oregonians who eat fish and shellfish on a regular basis. If DEQ does not adopt standards that protect human health, the EPA will.

The bottom line is that the fish swimming in Oregon's rivers should not be toxic to eat. The fact that our fish are toxic to eat is unacceptable, and Oregon can and must do better. Our public health and safety laws must protect all Oregonians, not just the average Oregonian. That's why the proposed fish consumption rate and the related water quality standards were designed to protect vulnerable populations, including tribal communities for whom fish are a culturally important subsistence food protected by treaty.

This rulemaking will help Oregon make progress on reducing toxic pollution in our water and our fish. DEQ worked closely with an advisory committee including the affected industries to ensure that the revised rules are feasible to implement.

The hazardous pollutants this rulemaking protects us against come from nonpoint sources such as urban stormwater, farm and forestland, and from industrial and municipal point sources. They include heavy metals transported to our rivers through runoff and soil erosion, pesticides, wastewater from our homes, and the byproducts of industrial processes. We are all responsible for their presence in the fish that swim in Oregon's waters, and we all bear responsibility for reducing these toxics below harmful levels.

Nonpoint Source Pollution

The rulemaking maintains and clarifies the current relationship between DEQ and the Departments of Agriculture and Forestry for reducing nonpoint source pollution from forestry and agriculture. If the plans and rules developed by ODA and ODF do not meet water quality standards, DEQ can petition its partner departments to modify plans and rules to do so. This maintains Oregon's unique, collaborative, industry-specific approach while acknowledging that the state is required to meet federal Clean Water Act standards. DEQ is still ultimately responsible for Oregon's compliance with the Clean Water Act, and this structure recognizes DEQ's role as a backstop in the case that the Agricultural Water Quality Management Program and Forest Practices Act fail to meet water quality standards. The rulemaking clarifies this process within existing authorities.

For example, right now ODA is unable to report that the Agricultural Water Quality Management Program is sufficient to meet water quality standards under the Clean Water Act. Important changes to the program are necessary to be able to do so in the future. Adding robust riparian and water quality monitoring are necessary to enable ODA to strategically focus its resources on areas where water quality is of most concern to human health and aquatic life, and to identify the best opportunities for reducing toxic pollution and meeting water quality standards in the future. Monitoring, assessment and reporting are needed for ODA to show progress in reducing agricultural pollution and trends in water quality over time. The Governor's Recommended Budget currently has a policy option package that will provide this monitoring, assessment and reporting capacity to ODA, which we strongly support.

ODA and ODF both must incorporate new toxics water quality standards and strategies to meet them into their current water quality programs. It is critical for both agencies to show progress in meeting water quality standards over time, or the programs will have to be changed to better meet water quality standards. The capacity at both agencies to do so is critical to the success of these rules and their water quality programs.

Unfortunately, the rulemaking also maintains the current lack of oversight of runoff from small cities, except in cases where a TMDL has been completed. We are hopeful that an EPA stormwater rulemaking currently under development will begin to address this problem. Stormwater permits for Oregon's largest cities (phase I MS4 permits) were improved this year in ways that we believe will reduce releases of toxic pollutants into Oregon waters. However, the latest permits still do not include numeric effluent limitations as recommended by the EPA in a November 12, 2010 memo.

The Environmental Quality Commission needs to seriously consider how Oregon will manage urban stormwater runoff from municipal sources that are completely unregulated today. Runoff from several cities with populations larger than 20,000 is currently unregulated and should be considered a point source. Substantial development occurs in these communities. Consider, for example, the Woodburn Company Stores. This megamall, with acres of heavily used parking lot area, is likely a source of heavy metals and carcinogenic PAHs. If it had been built in Salem or Portland, it would fall under a municipal stormwater permit and would be required to use certain practices to reduce water quality and hydrologic impacts. Because it is located in Woodburn, its pollution is unregulated by the state. This lack of oversight of urban runoff is a significant gap in DEQ's water quality program.

Point Source Pollution

For point sources, the proposed rules require meeting water quality standards protective of human health, but they include reasonable exceptions for situations where intake water already exceeds standards, and a variance process for facilities that determine it is not feasible to meet water quality standards. The variance process includes pollution reduction plans that will make progress toward improving water quality.

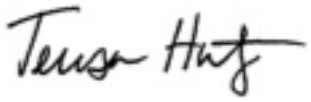
It appears that the intake credits and background pollution levels will primarily benefit industrial permittees, and most municipal wastewater treatment plants expect that they will need to apply for a variance. This is sad evidence of the fact that we still have a lot of work to do if we are to achieve the goals of the Clean Water Act. It does not mean that we should make our standards weaker than what is actually needed to protect human health and the environment.

The question remains, how will we meet these standards? We think DEQ should work with permittees to identify any pollutants for which a majority of permittees expect to need a variance. DEQ should then provide guidance in developing reduction plans for those pollutants. These plans may focus on pollution prevention, and they may include improved treatment processes. The development of these plans may be similar to the work the DEQ and ACWA have already invested in determining how to develop the reduction plans required by Senate Bill 737. If permittees are unable to meet water quality standards and must request a variance, the strength and effectiveness of these reduction plans will determine whether or not these toxic pollutants are actually reduced in Oregon, and whether we make progress toward the public health goals represented by the higher fish consumption rate. This process would also identify the highest priority toxics for increased attention in the agency wide toxics reduction strategy.

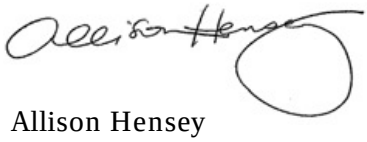
DEQ should also explore opportunities for water quality credit trading to meet these standards, as DEQ did to address temperature in the Clean Water Services permit. For pollutants that enter a given body of water through both point and nonpoint source pathways (such as those that bind to sediment), municipalities may be able to finance reductions on agricultural and forest lands that are more significant than what they could achieve within their own systems.

We believe DEQ has worked hard to accommodate the needs of affected industries while developing rules that protect Oregonians' health. We sincerely hope that one day, every Oregonian will be free to swim, boat, and fish in our rivers – and to eat what they catch – without being exposed to dangerous toxics. This rulemaking will help get us closer to that goal. It also underscores the need for DEQ's agency-wide toxics reduction strategy, and for an even more comprehensive effort that engages other state agencies.

Sincerely,



Teresa Huntsinger
Program Director,
Clean & Healthy Rivers



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