21 March 2011

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

Re: Comments on Proposed Toxics Rulemaking

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

Dear Ms. Matzke:

The Oregon Association of Clean Water Agencies is a private, not for profit organization of Oregon's wastewater treatment and stormwater management agencies, along with associated professionals. Our 120 statewide members are focused on protecting and enhancing Oregon's water quality.

The League of Oregon Cities is an association of all 242 cities in Oregon. Oregon's cities are home to seventy percent of all Oregonians and eighty percent of the state's jobs and income tax collections.

The Special Districts Association of Oregon (SDAO) was formed in 1979 to provide a broad range of membership services to special service districts located throughout the state of Oregon. SDAO represents approximately 950 local governments of varying sizes and functions throughout the state. Member districts include some 28 different types of districts, including sanitary districts and sanitary authorities.

ACWA, LOC and SDAO encourage toxic reduction efforts to improve the quality of Oregon's rivers and streams. These efforts must be effective and address all sources of toxics from all sectors in Oregon. Local government actions and leadership to reduce toxics to Oregon's rivers and streams are many. A few examples include:

- Financially supporting SB 737, including screening of the largest 52 treatment plant effluent for legacy and emerging Priority Persistent

Pollutants. Efforts are currently underway to develop a comprehensive pollution prevention manual to assist communities in continuing to refine and improve pollution prevention programs,

- Pretreatment programs that work with industries to limit the toxics discharged into sewer systems,
- Sponsoring drug take back events,
- Partnerships with the Oregon Dental Association and Oregon dentists to reduce mercury-containing wastes into sewer , and
- Many communities support native plant or naturescaping programs to reduce use of fertilizers and toxic pesticides, and others have instituted Integrated Pest Management programs for their communities.

One of the charges from the EQC was to develop and implement the human health standards in an environmentally meaningful and cost effective manner. DEQ has not evaluated whether the implementation of the revised human health criteria will result in environmentally meaningful reductions of pollutants. Such an evaluation requires an understanding of the relative contributions of pollutants in a watershed. DEQ has not conducted such an evaluation and therefore, is unable to assess whether these standards would result in environmentally meaningful reductions of pollutants. The EQC should request the Department return to it with implementation programs by category of toxic pollutants that are based in a watershed approach and involve all pollutant sources in order to be successful in reducing toxics in Oregon's rivers and streams.

Local Governments Consistent

As representatives of Oregon's principal associations involving wastewater utilities, we appreciate the involvement of our representatives throughout this process.

As local governments, we have routinely advocated several key points in the many years of these discussions:

1. Toxic reduction programs must result in meaningful action to reduce toxics,
2. Toxic water quality reduction programs must be comprehensive and address all sectors,
3. Pollution prevention is the most effective and cost-effective manner to reduce toxics, and
4. Water quality permit holders must be able to renew their permits.

The DEQ proposed rulemaking does not achieve these objectives.

Summary

The DEQ analysis greatly underestimates the impact of the proposed rule revisions on water quality permit holders, and most importantly, does not incorporate the implementation mechanism needed to achieve toxic reduction within the context of the Clean Water Act.

DEQ's limited recommendation of variances as the only compliance tool for local governments will be an expensive investment with no environmental benefit. Variances are short-term and temporary tools. The overall DEQ rulemaking package does not address how variances can be used at facilities unable to meet water quality standards due to human caused load, where there is no feasible, effective treatment technology available.

DEQ has identified a burdensome, expensive, regulatory process with an uncertain outcome as the primary mechanism to obtain relief from these water quality standards. We cannot rely on such a process as the only mechanism for compliance.

We recommend that DEQ and EQC adopt an implementation plan development process for each class of chemicals that are likely to be exceeded under the new standards. Each implementation plan would detail how the appropriate water quality compliance tool under the Clean Water Act would be developed to resolve the underlying standard violation, including development of Total Maximum Daily Loads, site specific criteria, or a Use Attainable Analysis.

The implementation plans should be adopted along with the proposed standards.

We are concerned that the comprehensive Oregon toxic reduction strategy requested by the Environmental Quality Commission has been delayed, while the toxic rule making standards have pressed forward. The water quality standards for toxics are a subset of the overall toxics reduction program for the state. The comprehensive toxics reduction program should be adopted by the EQC as the first step, and the appropriate role and emphasis on reductions from revising the water quality standards should follow.

Also, the fish consumption survey that is the basis for the standard revision was conducted on the Columbia River – a river impacted by the actions of the States of Oregon, Washington, and Idaho. If EPA is going to force Oregon to adopt these standards, Oregon should insist that similar standards be instituted immediately in Washington and Idaho.

Impact on Oregon's Domestic NPDES Permit Holders

ACWA technical experts have analyzed the impact of the DEQ's proposed revisions on a subset of domestic wastewater treatment plants. DEQ's implementation for these water quality standard revisions must extend beyond the temporary bridge of a variance to permanent solutions within the tools of the Clean Water Act, such as TMDLs, site specific criteria, or Use Attainability Analysis.

This analysis, included as Attachment 1, shows that domestic wastewater plants will have difficulty meeting the revised water quality standards for several classes of pollutants including:

1. **Legacy compounds, including PCBs, DDT, and legacy pesticides**. The chemicals in this class are already restricted by EPA action. Low levels of PCBs

and DDTs reach treatment plants though body burden from historic exposure, through food, background levels in potable water, and possibly from illegal dumping into the sewer systems.

An analysis completed for ACWA by Dr. Dave Stone of Oregon State University estimated the load of PCBs entering a typical medium sized Oregon wastewater treatment plant from excretion due to body burden and food waste. A copy of the report is included as Appendix B.

The report estimates that a daily average of 0.16 ng of PCBs per liter is estimated to reach the wastewater influent due to human excretion. The proposed water quality standard for PCBs is 0.0000064 ug/l (0.0064 ng). Oregon treatment plants are unable to achieve the proposed water quality standard due to human and food waste.

There is no reasonable, effective treatment process for removing PCBs and DDTs at these very low levels from wastewater effluent in order to achieve the DEQ proposed water quality standards[1].

2. **Consumer Products, including bis(ethylhexyl) phalate.** Plastizers 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.

3. **Metals and arsenic.** Oregon's rivers and streams have natural levels of arsenic and mercury many times over the DEQ proposed standards. Technology to meet these low limits is not available.

4. **Chlorination by-products.** Most wastewater utilities in Oregon use chlorine for disinfection. Oregon wastewater utilities could move to non-chlorine disinfection systems - however, this will require significant financial investment to revise existing disinfection systems.

SPECIFIC COMMENTS - PROPOSED RULE

Statewide Narrative Criteria

Under the proposed revisions to OAR 340-041-007, we recommend that the language in section (5) be strengthened. We recommend that the language be revised to read:

> *(5) Logging and forest management activities must be conducted in accordance with the water quality standards and implementing rules established by the Environmental Quality Commission…Forest operations ~~may be~~ are subject to load allocations established under OAR 468B.110 and OAR Division 340-042, ~~however,~~ to the extend needed to implement the federal Clean Water Act and meet water quality standards.*

[1] These levels of PCBs cannot be measured, therefore the Quantation Level becomes the compliance points; however the underlying water quality standard remains in place

Toxic Substances

The language in OAR 340-041-0033(4) – Human Health Criteria, should be revised to reflect the compliance tools incorporated in OAR Division 41 proposed revisions. We recommend the language be revised to read:

> *(4) Human Health Criteria*
> *(a) Levels of toxic substances in waters of the state may not exceed the applicable human health criteria listed in Table 40, except as provided by applicable sections of OAR 340, Division 41.*

Expand Background Pollution Provisions

The background pollution provisions of proposed OAR 340-041-0033(6) should be expanded to allow this tool to be used by domestic wastewater permit holders. These issues in the current rule should be addressed in the rule revisions:

- The Background Pollutant Allowance rule as drafted is not workable for municipalities because they will generally be unable to meet the requirement that the intake water is from the "*same water body*" as the discharge (e.g., Intake Credit rule at OAR 340-045-0105(2)(a)(A) & Background Pollutant Allowance portion of toxics rule at OAR 340-041-0033(6)(a)(C) and (6)(b)(A))

- Municipalities have intake water from a variety of sources. Even intake water drawn from groundwater wells located near surface water bodies likely will not be able meet the requirement for being "*hydraulically connected*" to the discharge water body.

- Even if municipalities could meet the "*same water body*" criterion, there are hurdles to calculating the Background Pollutant Allowance and Intake Credits that would be extremely difficult for municipalities to meet, particularly calculation of the harmonic mean stream flow in some smaller streams.

- The rule needs to eliminate the "*same water body*" requirement for municipalities so that they only need to meet the maximum 3% increase to the discharge water. Note that even this will be difficult and expensive for municipalities to calculate.

- More flexibility should be provided in the harmonic mean calculation – a range of acceptable harmonic means should be allowed, rather than limiting it to either 100% or 25%. Case-by-base analysis of the harmonic mean should be allowed.

Specific changes suggested to the proposed rule include:

OAR 340-041-0033(6)(a):

~~*(C) The mass of pollutant in the facility's intake water is from the "same water body" if it is taken into the facility from the receiving water body or a hydrologically connected water such that the intake pollutant would have reached the vicinity of the outfall in the receiving water within a reasonable period had it not been removed by the permittee. This definition is intended to be the same as and is further explained in the 'intake credits" rule in OAR 340-045-105.*~~

OAR 340-041-0033(6)(b):
Conditions for a background pollutant allowance:
(A) The mass of the pollutant in the discharge does not exceed the mass of the pollutant in the facility's intake water ~~*taken from the same water body that receives the discharge and, therefore, does not increase the mass load of the pollutant in the receiving water body.*~~
(B) The 3% increase above the background pollutant concentration is calculated~~*:*~~
(i) ~~*For the Willamette and Columbia Rivers,*~~ *using* ~~*25% of*~~ *the harmonic mean flow of the water body, as calculated for the discharge point.*
~~*(ii) For all other waters, using 100% of the harmonic mean flow of the water body.*~~

Variances

The proposed rulemaking would amend the existing variance provision at OAR 340-041-0061(2) with a new provision at OAR 340-041-0059. For municipal wastewater treatment facilities operating under a NPDES permit, this provision is the only viable compliance mechanism available for those situations where the Publicly Owned Treatment Works cannot achieve the water quality-based effluent limits that will result from the revised water quality standards.

While ACWA and its member agencies appreciate the efforts that the DEQ and EPA have put into their review of the variance process, information provided at the Variance Summit in January, 2011 clearly illustrates that there is no standardized methodology or approval process for variances. In other states and regions where variances have been used, it has taken a decade of interaction, interpretations, and process development to achieve any level of efficiency in developing, reviewing, and approving variances to water quality standards. Given that the neither the State of Oregon nor EPA Region 10 has ever processed a variance before, it is to be expected that this lengthy implementation of variances will need to occur as well with the proposed revisions to the Oregon Administrative Rules.

As noted elsewhere in these comments, domestic wastewater plants will have difficulty meeting the revised water quality standards for several classes of pollutants. Since many of these pollutants are common to all POTWs due to their ubiquitous presence in domestic wastewaters, we request that the DEQ develop a multi-discharger or pollutant category option under the variance provisions being proposed. It would be wasteful and extremely inefficient to force permittees that have the same fact set underlying the inability to achieve compliance with new water quality standards to have to prepare separate variance applications.

The DEQ should revise the proposed variance rules to:

- Include in section *(1) Applicability* a specific recognition of the need and allowance for multi-discharger or pollutant category variances;
- Include in sections *(2) Conditions To Grant Variances* and section *(3)* an allowance to consider the conditions listed in the context of multiple dischargers when the conditions are widespread and common to multiple permittees (such as for the human caused conditions or sources that prevent the attainment of the use);
- Outline in section *(5) Variance Submittal Requirements* the submittal requirements for a multi-discharger or pollutant category variance application. These requirements should indentify which of the submittal elements are common to all applicants (such as a determination technical feasibility of treatment, and the documentation of natural background or human caused conditions that prevent attainment of the use) and which elements may need to be specific to the sub-applicants (such as for certain financial or economic data).
- Include in section *(6) Variance Permit Conditions* how the multi-discharger or pollutant category variance conditions will be represented in individual permits, including components for interim limits, pollutant reduction plans, monitoring, and annual reporting.

ACWA and its member agencies recognize that variances may need to be issued for public notice, review, and comment on an individual permit basis. However, under the multi-discharger or pollutant category variance process, the Department should review and accept as part of the application submittals all of the common determinations and documentation elements of a multi-discharger or pollutant category variance prior to the individual variance applications being noticed for public comment. Final determination of the variance approvals would then occur after public comment.

(2) CONDITIONS TO GRANT VARIANCES

The obligation to make specific findings regarding endangered species, existing water quality uses, and unacceptable risks to public health should be made by DEQ, not by the variance applicant. These findings are subjective, and will be difficult for local governments to undertake on their own. Should DEQ be unwilling to make these findings themselves, detailed guidance on how these finding should be made will be needed.

'Substantial And Widespread Social And Economic Impact " [See Proposed OAR 340-041-(2) (F)]

EPA's criteria for evaluation of 'substantial and widespread social and economic impact' are general. Additional information is needed from EPA on how these criteria will be evaluated, the level of information needed from Oregon municipalities to justify variance requests, and how variance request renewals will be handled. The ability to evaluate the 'social' impacts on a community is unclear – guidance is only provided for economic impact.

(5) - VARIANCE SUBMITTAL REQUIREMENTS

Use of trading for Toxic Reduction

Proposed rule OAR 340-041-0059(5)(d) discusses the use of pollutant offsets or trading. For the human health criteria most affected by this rule making, that provision of the rule directly conflicts with the DEQ *Internal Management Directive on Water Quality Trading* (December, 2009) [2] regarding water quality trading which states:

> *DEQ recognizes that trading programs may provide incentives for reducing the presence of EPA priority pollutants (Appendix A to 40 CFR Part 423) and Oregon priority persistent pollutants (Senate Bill 737 list) in the environment beyond what can be achieved through current regulation. DEQ also recognizes that there are unique ecological risks and analytic challenges associated with such pollutants; therefore, no trades involving these pollutants are under consideration at this time. DEQ will address this issue when water quality rules or EPA provide more substantive direction and guidance on these types of trades.*

Substantially greater information and direction should be provided in the rule if the DEQ intends to make this a useful tool for NPDES permittees.

Water quality trading should be discussed for both point and nonpoint sources.

Clarify Pollution Reduction Plan and SB 737 Requirements

The proposed rule should be clear that the proposed pollutant reduction plan can be the same plan as the one developed under SB 737 (a persistent priority pollutant reduction plan) for similar pollutants. We believe this to be the Department's intension, but clarifying the language would be beneficial.

The variance pollution reduction plan (see proposed OAR 340-041-0059) should be linked to the written persistent pollutant reduction plan of the SB 737 requirements in OAR 340-045-0100(2)(e).

We propose the language for (5) be revised to read:

> *"(d) A proposed pollutant reduction plan…for implementing these measures. A proposed pollutant reduction plan prepared for the same pollutant for which a variance is being requested can be plan developed to meet OAR 340-045-0100(2)(e) as a written persistent pollutant reduction plan. Pollutant reduction plans will be…"*

(6) VARIANCE PERMIT CONDITIONS

The proposed limit included in condition (6) of the variance permit conditions could be read to set a maximum limit on facilities that have a variance for a specific pollutant. This would preclude any population related growth in a community for pollutants such as PCBs or other legacy pollutants that are population based. We recommend that the language be revised as

[2] See http://www.deq.state.or.us/wq/pubs/imds/wqtrading.pdf

below:

> *(6) Variance Permit Conditions. Effluent limits in the discharger's permit will be based on the variance and not the underlying water quality standard, so long as the variance remains effective. The department shall establish and incorporate into the discharger's NPDES permit all conditions necessary to implement and enforce an approved variance and associated pollutant reduction plan. The permit must include, at minimum, the following requirements:*
>
> > *(a) an interim concentration based permit limit or requirement representing the best achievable effluent quality based on discharge monitoring data and which is no less stringent than that achieved under the previous permit;*
> > *(b) a requirement to implement any pollutant reduction actions approved as part of a pollutant reduction plan submitted in accordance with section (5)(d) above and to make reasonable progress toward attaining the underlying water quality standard(s);*
> > *(c) any studies, effluent monitoring, or other monitoring necessary to ensure compliance with the conditions of the variance; and*
> > *(d) an annual progress report to the department describing the results of any required studies or monitoring during the reporting year and identifying any impediments to reaching any specific milestones stated in the variance.*

Other Implementation of Water Quality Criteria

We support the overall direction of the proposed rules in the TMDL portion of the rule revisions, and suggest that the revisions can be strengthened.

In the proposed revisions to OAR 340-041-0061(10), we recommend this change:

> *(10) Forestry on state and private lands. Nonpoint sources of pollution from forest operations on state or private lands are subject to…Forest operations on state and private lands ~~may be~~ are subject to the load allocations under ORS 468.110 and OAR*
> *340. …*

We support the proposed revisions in OAR 340-041-0061(11) that clarifies that Agricultural Water Quality Management Act plans must be designed to achieve and maintain water quality standards.

Also in the proposed revisions to OAR 340-41-0061(10), the ability for the Department to take action if ODA does not take action to resolve a water quality standards violation should be strengthened. We recommend that language be modified to read:

> *…If a person subject to an ODA area plan and implementing rules causes or contributes to water quality standards violations, the department will refer the activity to ODA for further evaluation and potential requirements. The department [~~may~~] will also require remedies of a person causing pollution or contributing to water quality standards violation if ODA does not take action.*

Establishing Total Maximum Daily Loads (TMDLs) – OAR 340-042-0040

We support the proposed revisions in OAR 340-042-0040(4)(h) and specifically includes runoff, deposition, soil contamination and groundwater discharges to the development of the receiving water loading capacity, and also agree that long range transport should be distinguished within the loading capacity calculations, along with natural background and anthropogenic nonpoint source loads. A scientifically robust loading capacity is the foundation for a TMDL that focuses pollution reduction activities in areas where they can be most effective.

Fiscal and Economic Analysis

As we have commented earlier, the DEQ *Fiscal and Economic Impact Statement* is inaccurate. Specifically, it:

1. Underestimates the costs to develop, apply for and renew water quality variances as the only compliance tool for municipalities

DEQ estimates that the one-time cost per major municipality for a variance ranges from $8,000 to $44,000. We believe that estimate is low. Estimates provided by national consulting engineering firms to an ACWA member ranged from $45,000 to $65,000 for a single variance application based on experiences in other states and completing a variance for three (3) legacy or persistent compounds.

If the estimate was correct and based on ACWA's analysis that many - - if not all 49 - - domestic majors will ultimately need water quality variances, mostly for legacy pollutants, that is an investment of $392,000 to $2,156,000 for a paperwork exercise - - no water quality benefit. That expenditure will reoccur every permit cycle.

DEQ's statement that first time variance costs are anticipated to be greater than subsequent requests is not supported. The environmental public interest groups participating in the NPDES Work Group have repeatedly stressed in the Working Group discussions their believe that variances are only "short term and temporary".

2.Underestimates the impact of the proposal on domestic wastewater permit holders

ACWA's analysis, using more current and complete data from Oregon municipal dischargers than that used in the SAIC report, shows that the impact on domestic wastewater treatment plants will be much broader than anticipated in the SAIC [3]report. Many domestic treatment plants need variances for legacy pollutants and pesticides, for the foreseeable future.

3.Overestimates the availability of technology to meet the more stringent standards

DEQ indicates that some sources may need to install additional treatment technologies to meet the toxic water quality standard. DEQ staff relied upon the SAIC report, and the SAIC report concluded that three pollutants would be affected: arsenic, bis(2-

[3] *Cost of Compliance with Water Quality Criteria for Toxic Pollutants for Oregon Waters*, June 2008, Science Applications International Corporation (SAIC)

ethylhexyl)phthalate, and mercury.

Oregon wastewater treatment plants are very effective at removing metals such as mercury; for example, an advanced secondary wastewater treatment plant is effective at removing more than 90% of the mercury that is conveyed to the treatment plant. The proposed standards would require nearly 100% removal of these pollutants. There is no reasonable, effective treatment process that can meet these standards.

There is no reasonable, effective treatment process for removing these pollutants from municipal wastewater effluent at the DEQ proposed levels.

4.Underestimates the amount of DEQ staff time needed

We believe the DEQ staff time listed in the *Table of Potential Impacts to DEQ* (page 23) is underestimated. The timelines included in the table do not account for the staff time involved in information gathering, reviewing comments and preparing responses on submittals, the negotiation process with the source, discussions with EPA to seek its approval, and other complications a variance would cause in the permit issuance process.

If these time estimates were included - - and they are all a critical portion of accomplishing the work - - the time estimates would be much longer.

The additional time for processing variances as part of the standard NPDES permit renewal process will likely lengthen the DEQ NPDES permit backlog, raising issues with both permittees and the EPA.

5.Overstates the resultant environmental achievements

Overall, the DEQ Fiscal analysis does not meet the EQC direction to the DEQ in its October, 2008 meeting of developing a proposed rule and implementation methods that carefully consider the costs and benefits of the fish consumption rate and the data and scientific analysis already compiled or that is developed as part of the rulemaking proceeding.

DEQ has not outlined the likely compliance cost of the proposed rulemaking on a small municipality, a mid-size municipality, or a large municipality. The costs of applying for a variance are not the costs of complying with the revised water quality standard.

The "*Potential Benefits of Raising the Fish Consumption Rate and Meeting the Standards*" is presented in Table 2 of the Statement of Rulemaking[4]. The general statements included in this table need to be substantiated. For instance:

- What '*environmentally attributable diseases*" are associated with NPDES permits under the current water quality standards?

- What '*reduced risk from water contact'* will result from recreational water

[4] Statement of Need and Fiscal and Economic Impact, page 46

use? The primary risk associated with water contact is bacteria.

o Please quantify how these standards will result in increased water reuse opportunities. Please provide examples of how the current water quality standards have prevented or stalled water reuse opportunities in Oregon.

o Please provide examples of how the revised standards will result in *cleaner intake water for downstream industries, increased tourism, amenity/aesthetic/property value benefits, and avoided costs to industries and utilities.*

For many pollutants, NPDES permitted source reductions to meet Water Quality Based Effluent Limits (WQBELs) will not achieve water quality standards in stream.

The listed benefits of litigation cost reduction, reduced hazardous waste removal costs, and reduced O & M costs are not true and should be modified. Infiltration and inflow reductions are being accomplished at Oregon wastewater treatment plants to meet the DEQ bacteria water quality standards and are not related to this proposed rulemaking

Potential Indirect Effects Associated with Municipalities

The impacts to businesses that discharge to municipalities with federal and state pretreatment programs is not stated. The evaluation should describe the pretreatment requirements and clarify that some municipalities may need to revise their local limits to meet the revised DEQ water quality standards. Under the federal and State Pretreatment Programs, local limits are calculated by working backwards from the applicable water quality standard. The allowable concentration at the end of the mixing zone to meet the applicable water quality standard is calculated; the domestic sources are then subtracted, and the remaining pollutant load can then be allocated to industrial sources. If the water quality standards are set at a level that there is no 'room' after the domestic load, no additional industrial load can be permitted.

This might affect large and small Oregon businesses currently operating in Oregon and connected to a wastewater treatment plant. The DEQ conclusion that under that scenario "*some businesses and industries would need to disconnect from the sewer system and manage their wastewater on site*". For many Oregon businesses and industries that use large amounts of water, managing their wastewater onsite is not reasonable. This type of thinking will stop Oregon's business recovery in its tracks.

Comprehensive Toxic Reduction Strategies

The Environmental Quality Commission has specifically directed DEQ to develop a comprehensive toxic reduction strategy for the State. The toxic water quality standards are a portion of this overall effort. The Commission should ensure that these efforts are coordinated and focused on the most effective actions to reduce toxics in Oregon. Adoption of the revised toxic water quality standards should not be undertaken until the overall toxic reduction strategy for Oregon is reviewed and approved by EQC and the necessary steps to implement it initiated.

Use of Reasonable Potential Analysis Flexibility

The Department's current *Internal Management Directive for Reasonable Potential Analysis for Toxic Pollutants* (September, 2005) can be revised to use the flexibility incorporated into the federal EPA Technical Support Document for Water Quality-Based Toxics Control[1] . Specific areas where DEQ should be reevaluating and improving its IMD to focus resources and permitting actions on areas of true toxic concerns include:

- Response to limited data,
- Temporal record for data (how long of a record will be used),
- Response to limited data above reporting levels ,
- Response to potential false positives for limited data exceed reporting levels,
- Methods and approaches for focusing deriving geometric means with limited data to develop Water Quality Based Effluent Limits (WQBEL) using a long term average,
- Changing or improving quantitation levels,
- Inability to meet specific quantitation levels due to interference, need for dilution,
- Interpretation and application of data collected either qualified or unqualified reported at below the minimum quantitation levels identified by DEQ, and
- Approach for mixing and larger, complete, or reach mixing especially following TMDL or other comprehensive mass load analysis.

The DEQ has presented their assessment of reasonable potential analysis and noted that they would recommend collecting additional data when available data are limited, especially where data reported are at or near the minimum levels defined by DEQ. The use of sufficiently sensitive analytical method is important for making effective and consistent regulatory and analytical decisions. To be consistent with potential permit limits the RPA analysis should use the reporting levels and methods defined by DEQ as the lowest available methods. The DEQ should update that document to discuss how reporting levels would be adjusted to account for dilution and interference. Other new, developing, or available methods that can provide lower reporting levels than identified by DEQ for methods available in 40 CFR 136 should be encouraged for use in evaluating basin scale TMDLs where the greater precession will be useful in developing targeted and effective toxic control strategies.

Internal Management Directives – Outline

These outlines are too general to allow us to provide any detailed comments. However, we are including additional issues and questions that should be addressed in each IMD in our comments here. We request an opportunity to review the draft IMDs when completed.

Our issues and general concerns include:

1. **Water Quality Standards: Variance with Pollutant Reduction Plans**
    - In order to reduce the costs to municipalities, especially smaller municipalities, of

[1] Environmental Protection Agency, *Technical Support Document for Water Quality-Based Toxic Control*, Office of Water, March 1991

completing a variance application, we request that the DEQ be responsible for making the necessary variance findings related to the Endangered Species Act and 'unreasonable risk' to human health.

- We are unclear on the definition of "*nonpoint sources under the discharger's control"*.
- The IMD should be clear that the Pollutant Reduction Plan could be the same as the Priority Persistent Pollutant Plan developed under OAR 340-045-0100(2)(e)
- The *Interim Limit Currently Achievable* must be set on a concentration basis to normalize the data for population increases.
- How will the permittees have a variance application incorporated into its permit renewal application when the *Reasonable Potential Analysis* that would trigger the possible need for a variance application is not completed by the permittees but by the DEQ permit writer? See DEQ RPA IMD, 9/05 page 22 – Step 6a.
- Details of what will be considered a 'complete' variance application request – What level of detail will be necessary?
- Details on technology evaluation that will be required
- Clear definition of what level of treatment will be required, how costs, relative contributions, will be evaluated Details and scope on the pollution prevention plans that will be required
- Variance processing details on a step – by – step basis, including the development of any interagency agreement with the EPA on how they will conduct their review
- More detail is needed regarding the potential for use of common information and study in application to multiple variance applications. What criteria would be used to determine the viability of such an approach? Are there examples of how that would/could be done?
- Impact on permitting – will permits be administratively extended if a source has applied for renewal timely; how long would a source have to prepare their variance request if the DEQ determines a variance is needed; how will other permit or compliance related issues be handled while the variance is being processed if it is for a pollutant not related to the variance?
- Will permittees be granted compliance schedules for pollutants unrelated to the variance while the variance is being processed?
- What are the roles and responsibilities between DEQ, the source, and EPA – Region 10 and EPA – Headquarters?
- We believe that DEQ should be taking the lead on some specific aspects of the variance process information evaluation such as the human health risk assessment and determination that existing uses will be maintained
- What level of technical assistance can DEQ rely upon from EPA to process these complicated variances?
- If water quality standards are not achievable due to background or natural conditions, how can a variance request contribute to the ultimate solution of a site specific standard, Use Attainability Analysis, or TMDL? How will DEQ use variances as a 'bridge' so that the state can make a determination that the use is not attainable?
- Triennial Review Role **–** The role of the Triennial Review Process in approval or review of variances should be discussed. What criteria would indicate that such a

review should occur? How might that affect other reviews of the variance?
- If a variance request is 'temporary', what is the long term solution for a municipal wastewater treatment facility that has implemented all practicable pollution prevention tools and is implementing the best available technology at its treatment plant?
- How will DEQ and EPA view programs to reduce toxics from other sources in the same watershed?

EPA Revisions to Variance Regulations Must be Considered

EPA is planning a limited set of targeted changes to the water quality standards regulations to improve its effectiveness in helping restore and maintain the chemical, physical, and biological integrity of the nation's waters. EPA expects to publish a proposed rule in the Federal Register in summer 2011.

Water quality standards serve as the foundation for the water quality-based approach to pollution control, including Total Maximum Daily Loads (TMDLs) and National Pollutant Discharge Elimination System (NPDES) permits, and are a fundamental component of watershed management.

Specifically, EPA is considering providing clarity in the following key areas: 1) antidegradation implementation methods, 2) Administrator's determination, 3) designated uses, **4) variances to water quality standards**; 5) triennial review scope and requirements, and 6) updating the regulation to reflect court decisions (*emphasis added*).

Oregon DEQ should be discussing with EPA how these proposed rules will be crafted to allow maximum flexibility for Oregon variances granted under the existing rules, and allowing the state considerable and adequate time to adjust its process to any revisions in the federal process.

We also question how the proposed budget cuts to EPA will impact its ability to effectively partner with DEQ on processing variance applications in a timely manner.

Summary

Meaningful reductions in toxics and improving human health cannot be achieved by regulating only point sources. If DEQ is serious about toxics reduction, it will develop a strategy that incorporates all sources of toxics in Oregon's water quality. We urge DEQ and the EQC to only adopt revised water quality standards for toxics when specific implementation plans are ready to be developed to address that pollutant through permanent water quality standards adjustment, including development of TMDLs, Use Attainability Analysis and site specific criteria.

It is important to recall that one of the variance 'experts' the DEQ asked to speak at its variance workshop held 1/26/11 in Portland was the chief of the Wisconsin Department of Natural Resources Wastewater Section. In response to a question, he indicated that he would not use the variance process to handle wide-spread legacy pollutants such as PCB issues, remarking it would "*grind the permitting process to a halt. You would want an implementation procedure other than variances*…".

Recommendation
Overall, LOC, SDAO and ACWA are recommending that EQC request from DEQ a specific implementation plan by category of pollutants (such as metals, PAHs, or legacy PCBs and pesticides or similar categories). The implementation plan should lay out the Clean Water Act tool that will be used to resolve the underlying water quality criteria including development of a TMDL, use of site specific criteria, or development of a Use Attainability Analysis, and the glide path to achieving the necessary reductions across all sources in the watershed to achieve the water quality standard. The revised toxic water quality standard should only be adopted and effective when the implementation plan is agreed to by the EQC.

Since Washington and Idaho are not being pressured by EPA to adopt similar standards, this action will have little impact on the overall health of Columbia River, while putting Oregon businesses and industries at an economic disadvantage.

Very Truly Yours,

Janet Gillaspie

Janet A. Gillaspie
Oregon Association of Clean Water Agencies

Chris Fick

Chris Fick
League of Oregon Cities

Mark Landauer
Special Districts Association of Oregon

Attachment 1 – ACWA Technical Memo - *Influence of Changing the Oregon Fish Consumption Rate on Major Domestic NPDES Facilities Having Reasonable Potential to Exceed Water Quality Standards, 1/25/11*

Attachment 2 – Technical memo - *Estimates and sources of polychlorinated biphenyls and DDT/DDD/DDE to wastewater treatment influent from human excretion and food waste*, Dr. David Stone, 1/31/11

cc: ACWA Board
Dick Pedersen, DEQ
Neil Mullane, DEQ
ACWA Water Quality Committee