



Associated Oregon Industries

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March 21, 2011

Ms. Andrea Matzke
Oregon Department of Environmental Quality
Water Quality Division
811 SW Sixth Ave
Portland OR 97204

Sent via email: ToxicsRuleMaking@deq.state.or.us

Dear Ms. Matzke:

Associated Oregon Industries is Oregon largest statewide, comprehensive, business association with 1,600 members. Approximately 200,000 Oregonians are employed by AOI members, statewide. AOI also represents the largest group of businesses affected by this rulemaking, either through direct discharges or indirectly through municipal systems.

AOI has reviewed the comments prepared by Northwest Pulp and Paper Association and the Oregon Water Quality Standards Group and we endorse and concur with those comments. In addition, AOI has these further comments it wishes to reinforce, elaborate on, or add:

1. Fish Consumption. AOI requests that the fish consumption rate adopted by the Environmental Quality Commission (EQC) be re-evaluated. On its face the 175 gram/day value, which is the equivalency of approximately 140 pounds per year, appears excessive. The agency should re-assess the wisdom of basing the value on the top 5% of tribal adult's fish consumption as well as the 10⁻⁶ risk factor. Adjusting the fish consumption rate value to a more representative value as well as using a risk factor similar to that used for arsenic would result in more realistic standards. This is especially true in cases for background levels of long-banned legacy pollutants such as PCBs where treatment technology is non-existent or prohibitively expensive for pass through pollutants.
2. Variances. The agency should provide for the issuance of multi-discharger variances. Given the universality and extremely low background levels of many of these pollutants, requiring individual sources to develop and then be issued nearly identical variances is unduly resource consumptive for both the agency and applicants. AOI suggest that provisions for general permit provisions (e.g., rules of general applicability) be strengthened.

3. **Prioritization of Work.** This rulemaking covers such a large number and wide type of pollutants and will likely result in a workload the agency will be unable to absorb. Since, in many cases, these pollutants effectively constitute background levels with no remedy or means of reduction, and that the health implication of these pollutants varies widely, AOI suggests that the agency devise a system to assess the feasibility of reduction and public health implications for each pollutant and phase in the program based on a rationalized, workable, schedule.
4. **Stormwater.** The agency should clarify that the discharge permitting requirements in this rule does not apply to stormwater.
5. **Proprietary business information.** In cases where a variance is necessary for economic reasons, the agency should have clear, unambiguous rules protecting proprietary business information submitted by the applicant. Failure to do so places an Oregon business, perhaps already economically stressed, in the position of having its confidential operational and fiscal data unfairly being released to its competitors.
6. **Time of Process.** It is not clear for the proposed rules how long the variance process will take. This question leaves businesses with great uncertainty about when a variance will be approved or even if one will be granted at all. This uncertainty could greatly hinder prospects for new construction or expansion. AOI suggests that a specific timeframe be identified, e.g., a variance should be granted within six months of receiving a completed application.

Thank you for this opportunity to comment. AOI would be pleased to provide any clarifying comments that would be helpful to the Department.

Sincerely,



John Ledger
Vice President

Cc: Tom Lindley, Perkins Coie LLP
David Like, Hampton Affiliates
Greg Miller, Weyerhaeuser Company
Sania Radcliffe, Portland General Electric