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Oregon Department of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

RE: Human Health Toxic Pollutants and Implementation Policies Rulemaking

Oregon Cattlemen's Association members are private landowners and livestock producers who have managed the land and water in Oregon for generations. Our members are active participants in managing land for a healthy environment and clean water through promotion and support of the Agriculture Management planning and rule development administered by the Oregon Department of Agriculture (ODA).

The proposed rules are ambiguous and fail to clearly state the intent of Oregon Department of Environmental Quality (DEQ) in the rule changes regarding the development of TMDL plans and the role of Agriculture Management Plans and rules. Any attempt by DEQ to regulate land management practices through any mechanism such as the TMDLs would be in direct conflict with the current Oregon law. Our industry relies on management practices to curb nonpoint source contributions and do not think DEQ has authority or expertise to regulate them in any way.

Management practices on agriculture lands are intended for site-specific conditions and the agency does not have authority to regulate what can only be designed from on-the-ground, site-specific conditions. The plan and rules are designed for implementation under the unique conditions of each watershed. Furthermore, compliance with the rules has to be determined using good scientific procedures. The proposed DEQ rules make no mention of the scientific methods or protocols that the agency uses in developing the TMDL load allocations. Nonpoint source contributions to water pollution can only be determined through a designed sampling method that identifies the water conditions between two points. Land management practices can be designed to curb contributions on a stream segment if they are needed, but the agency bears the burden to obtain the data and facts about the water quality prior to designing a remedy for the problem.

Oregon's Agriculture Water Quality Management Area Plans and Rules are based on decades of experimental and practical agriculture plant and animal science, which has demonstrated the effects of land practices on water quality. Agriculture practices, under the ODA administration of the Agriculture Water Quality Management Area Rules, are being implemented in a way that provides a way to assess where and when streams meet federal and state water quality standards. The current law provides an effective way for livestock producers to protect water quality, contribute to healthy riparian areas, and limit the economic impacts to their small business operations due to unworkable and unreasonable regulations.

The DEQ proposed regulations in many respects conflict with Oregon law and may impact the economic and living standards across the state. All Area Plans and Rules must be economically reasonable and implemented only to the "maximum extent practical" as prescribed by the federal Clean Water Act. We disagree with the language in the proposed rule 340-041-0061 (11).

The Agriculture Management rules do not specify any activities that must cease and do not require any particular

activity to take place. A person subject to the area plan is not a "cause" of water quality standard violations, but activities on the land can contribute pollution, at which point the rules can be implemented. The Agriculture Management rules do not make specific prescriptions for activities on land because of the variations between watersheds within the state.

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340-042-0040 (4) (h) Load allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing nonpoint sources, including run off, deposition, soil contamination and groundwater discharges, or to background sources. Load allocations are best estimates of loading, and may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever reasonably feasible, natural background, long-range transport and anthropogenic nonpoint source loads will be distinguished from each other.

A TMDL is the calculated pollutant amount that a waterbody can receive and still meet Oregon water quality standards. It is inappropriate to use an agricultural water quality management area plan (ORS 568.900-933) to provide a reasonable assurance that a TMDL load allocation for agriculture will be met. Under current law a load allocation developed in the establishment of a Total Maximum Daily Load (TMDL) is "attributed" to nonpoint sources and background. It is not assigned to them. The same would be true for Forest Practices. Where feasible, the natural background, long range transport and nonpoint source contributions will be distinguished from each other. This definition indicates that in the TMDL plan, the load allocations are set after the separations are made and attributed to each.

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340-042-0080 (3), Implementing a Total Maximum Daily Load. This section should be edited and revised. If DEQ "assigns" source specific load allocations it cannot be assigned to agriculture lands, which are nonpoint sources from dispersed contributions that cannot readily be separated from natural background runoff contributions. It is not the burden of Agriculture Management rules to meet load allocations. Load allocations are calculated after background and nonpoint contributions are given an amount and the load allocation is set up from these upstream and/or incoming conditions.

Thank you for consideration to our comments.

Sincerely,

Kay Teisl

Kay Teisl
Executive Director