March 21, 2011

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Water Quality Division

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**RE:** Revised water quality standards for Human Health Toxics and implementation policies

The Oregon Board of Agriculture appreciates the opportunity to comment on the proposed rules concerning Human Health Toxic Pollutants. On March 11, the Board passed a resolution approving the submittal of comments by the Board to DEQ on the proposed new and amended rule language for the Human Health Toxics also referred to as revision to water quality standards used to regulate levels of toxic pollutants in Oregon waterways.

The Board questions the wisdom of why Oregon needs to increase so dramatically its fish consumption standard when there is no other state that is higher than the standard we are at today. There have been many Oregon farmers that have commented to us that regulations developed based on the new fish consumption standard will affect their ability to grow and expand and may even affect their ability to continue to farm in the environmentally friendly way they are now.

Load allocation as used in your rules is a term used in the regulation of point source pollution, but in the Clean Water Act non-point sources are required to do what is “reasonable and practicable”. Oregon’s statues for agricultural water quality management are described in ORS 568.900 to 933 and indicate that landowners are “responsible for the prevention and control of water pollution from agricultural activities and soil erosion”. Oregon’s Ag Water Management Plans have been successful as a condition based program. Moving agricultural water pollution plans to comply with a numeric standard in addition to simultaneously increasing the water standards will dramatically affect a farmers ability to produce food and fiber with no added improvement in water quality.

The Agricultural Water Quality Management Program implemented by ODA is a very effective program. Agricultural representatives, environmental interests and others have been involved in the implementation of this condition based program from its inception. We have seen tremendous landowner acceptance and effort to address water quality issues because of this program and efforts of SWCDs, ODAs partner in efforts to implement this program. Where it has been needed, the program's enforcement authority has been effectively used to resolve issues. This program presently is effective in addressing source of toxics that may enter waters of the state via sediment. The program addresses sediment transport to water through education and outreach provided by the program in cooperation with SWCDs and through regulation implemented by ODA.

We recognize and support DEQ’s current role as a regulatory back up to ODA if and when needed. Yet, we believe, the new rules would give DEQ more authority over the Agricultural Water Quality Program and lessen ODA’s responsibility and authorities. The existing rules that recognize ODA's statutory authority to regulate and enforce the Agricultural Non-Point Source Water Quality Program need to remain unchanged.

We recommend that DEQ reconsider the proposed fish consumption standard, limit intrusion on existing and successful Agricultural Water Quality Management Program, and limit the use of numeric standards for non point source issues.

Sincerely,

/s/

Tom Fessler, Chair

Oregon State Board of Agriculture