

NORTHWEST ENVIRONMENTAL ADVOCATES



September 13, 2010

Bill Blosser, Chair
Ken Williamson, Vice-Chair
Donalda Dodson, Commissioner
Jane O'Keeffe, Commissioner
Judy Uherbelau, Commissioner
c/o Oregon Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, OR 97204

Re: Rulemaking Needed to Protect Oregon's Waters: Municipal Source Control

Dear Chair Blosser and Commissioners:

We write to urge the Commission to direct the Department to undertake rulemaking to significantly reduce the urban contribution of toxics to Oregon's waters.

As you know, industrial, commercial and residential sources discharge toxics into sewage collection systems. Of these, only some large or very hazardous industries are regulated under the federal "pretreatment" program; *the remainder are free to discharge into sewage collection systems without treatment and without permits*, unless a municipality adopts additional controls.

At the urging of Northwest Environmental Advocates (NWEA) and the municipal representatives of the toxics Rulemaking Work Group, the Department belatedly established the "Source Control Small Group," comprised overwhelmingly of municipal pretreatment coordinators. This group worked under extreme time constraints with little opportunity to achieve consensus and with no clear Department support for the proposition that currently unregulated sources of urban toxics should be controlled. A short summary of the outcome of this process is as follows: the pretreatment coordinators pushed for a "toolbox" from which they could *voluntarily choose* what, if anything, they wanted to do; the environmental representatives pushed for *requirements* to control toxic inputs into sewage collection systems; and the industrial sources advocated for no changes. As a result of this impasse and odd process no rule changes will be proposed to the Commission to address sources of toxics, many of which would require NPDES permits if they discharged directly to Oregon's waters.

NWEA urges the Commission to pursue approaches to control urban inputs of toxic pollutants. I have attached a memorandum written for the Source Control group that contains some details about the basic approach we suggest the Commission direct DEQ to pursue. Here is a summary:

First, Oregon should have a policy to control under- and un-regulated urban toxics with the following *goals*:

- Ensure all municipalities adopt authority to control pollution inputs to their sewage collection systems;
- Require consistent treatment for certain industrial and commercial sources of toxic pollutants – a “technology-based” pollution prevention approach that would apply across the state;
- Control residential and nonpoint sources of toxics entering sewage collection systems through use of local ordinances where SB 737 pollutants exceed trigger levels or Clean Water Act toxic pollutants are a known or suspected problem;¹ and
- Balance limited Department and municipal resources with forward progress – by doing something rather than nothing.

To achieve these goals, NWEA suggests the following minimum source control *objectives*:

- Require all major municipalities to adopt sewer use ordinances by a date certain to ensure they have basic authority to control inputs to sewage collection systems;²
- Require major municipalities to use sewer use ordinances to:
 - Prohibit water disposal of pharmaceuticals by certain commercial entities;
 - Increase treatment requirements for industries regulated as federal pretreatment “categorical discharges” (e.g., electroplating);
 - Regulate *industrial* discharges of toxics that are excluded from the federal pretreatment program;
 - Regulate *commercial* facilities, all of which are excluded from the federal pretreatment program (e.g., radiator shops, hospitals, photo processors);
 - Regulate *residential* sources of toxics; and
 - Control *nonpoint* source inputs into combined sewage systems by adopting local ordinances³ if SB 737 triggers are exceeded or for Clean Water Act

¹ Roughly half the new human health criteria are below the level technology can quantify. Therefore, the absence of a pollutant in effluent does not mean that the pollutant is not present at hazardous levels.

² In addition, this should cover municipalities that contract to have sewage treated by other municipalities.

³ Local ordinances can be either bans or limits. This is not difficult; as of May 9, 2010, no fewer than 166 municipalities in Canada have adopted municipal pesticide ordinances. See: <http://www.flora.org/healthyottawa/BylawList.pdf>. These include bans on the sale and use

pollutants under certain circumstances.

Current widespread resource limitations would suggest that DEQ should address required toxics reduction from urban sources in an incremental manner, such as starting with high priority pollutants and/or high priority sources. DEQ could expand this effort down the road.

On the other hand, choosing to take no action now to control currently unregulated sources of toxics, as DEQ proposes, would be a poor policy choice. For example, DEQ is currently designing the requirements for implementing SB 737's most important component: the Persistent Pollutant Reduction Plans. Yet more than half of the municipalities covered under this State law do not have a federal pretreatment program and therefore likely do not have even basic authority to control the discharges from industrial, commercial, and residential sources into their sewage and stormwater collection systems. Moreover, those with the authority do not use it broadly. To our knowledge, no municipality has to date instituted controls over residential sources, few if any restrict toxics from commercial sources, many industrial sources go unregulated, and no municipalities have enacted local bans.⁴

We urge the Commission to direct DEQ to provide a work plan and schedule to develop meaningful source control regulations to restrict currently under- and un-regulated toxic inputs into sewage and stormwater collection systems and, subsequently, to direct the Department to implement that work plan.

Sincerely,

Nina Bell
Executive Director

cc: Dick Pederson, Director
Neil Mullane, Water Quality Division Administrator

Attachments: Memorandum from Nina Bell, NWEA, to Source Control Small Group,
"Municipal Source Control ** Revised **," May 26, 2010.

Metro Code section 3.05 (Phosphorus Ban - expired Dec. 31, 1994).

of hundreds of over-the-counter lawn care herbicides and pesticides

⁴ In 1991, Metro enacted a now-expired phosphorus ban, attached.