

Date: June 3, 2010
To: DEQ
From: Kathryn Walker, Oregon Dairy Farmers Association
Subject: **Comments regarding "Implementation Ready" TMDLs for Reducing Toxic Pollutants in Oregon Waters from Nonpoint Sources (date May 13, 2010)**

Comments regarding Item #2: Although DEQ has authority to do so already, its ability to identifying significant air and land sources and assign waste load allocations is not explicit in Division 42 TMDL rule and subsequent proposed solution/rule language, applicability/scope, DEQ recommendation and rule objective.

Item #2 (and subsequent parts) should be removed from the "Implementation Ready" TMDL for Reducing Toxic Pollutants in Oregon Water from Nonpoint Sources. The term "significant air and land sources" is undefined, unambiguous and could result in unintended consequences and conflict with on going efforts addressing these areas.

For example, in 2007, the Oregon State Legislature passed Senate Bill 235 which established the formation of the Oregon Dairy Air Quality Task Force. This 15 member, government-appointed task force was directed to study air emissions on Oregon dairy farms. The task force included agency representatives, researchers, politicians and representatives from both the conservation community and dairy industry. After eight months of meetings, reviewing the research and discussing the issue, the task force created a final report that laid out the next steps for dairy industry regarding air emissions. The Oregon Dairy Air Quality Task Force report has been attached and can also be found online at <http://www.deq.state.or.us/aq/dairy/docs/finalReport.pdf>. Item #2 can to undue the recommendations made by this task force.

In addition, the formation of the Oregon Dairy Air Quality Task Force was a process that brought *all* of the stakeholders to the table for open, transparent discussion. The leading air emission experts were also included in the discussion. It was important for all of the task force members to have the same knowledge and understanding of the subject in order to make an informed, science-based decision. This type of process has not occurred with Item #2. Those that maybe impacted by this proposal have not been part of the dialogue. Stakeholders that are to be affected (which still remains undefined---which is why the entire item should be removed) by Item #2 have (1) not been identified and thus (2) not part of the conversation.

Efforts to understand air emissions on livestock farms has also taken place at the national level, for example, the National Air Emission Monitoring Study (NAEMS). The agricultural industry invested in this study in order to:

- 1) Accurately assess emissions from livestock (dairy, pork, egg and broiler operations) and compile a database for estimation of emission rates,

2) Promote a national consensus for emissions-estimation methods/procedures from livestock operations.

Data collection for the NAEMS study began in 2007 on farms across the US. On-farm air emission data was collected for two years. All of the data has now been submitted to EPA. EPA is currently in the stages of reviewing the data and will be using the scientific information in order to make a decision regarding air emission regulations on agriculture operations. Agriculture invested over \$6 million for this research project.

NAEMS is the most comprehensive, thorough air emission data collection project of its kind for the agricultural industry. Significant time, energy and money have been invested in this project. The inclusion of Item #2 has the potential to impede the efforts and create conflict with the NAEMS project.

It is important to understand what has been done at a state and national level before DEQ rule making occurs. Air emissions are a complicated topic within the agricultural industry. This complexity must be analyzed with the help of the leading air emissions experts. It is important that decisions and rule making be based on science. This process has not occurred within this workgroup.

Comments regarding Item #3 – Proposed rule language – Develop design specification for riparian buffer strips and require Water Quality rules.

Item #3 proposed solution recommends the “develop (of) design specification for riparian buffer strips and required in Water Quality rules.” The proposal implies that riparian areas be established according to a set of standards. First off, establishment of riparian areas cannot be a “one size fit all” approach. Topography, geography, soil type and other factors will affect the ability to establish a riparian area as well as determine the effectiveness of the riparian. A design for a riparian area on the coast will not work for a riparian area in the desert. Flexibility for riparian design must exist in order for a riparian area to be healthy and function appropriately.

In addition, in the 2010 Legislative Session, a bill was introduced that would increase access to riverbanks for recreationists. The legislation was tabled and a working group has been established to study the topic. This legislation will be introduced again in 2011 Legislative Session. However, having an established riparian area could be perceived as a physical barrier to recreationists thus putting the agricultural land owner in violation with legislation. If agricultural landowners are not allowed to use/access riparian areas for productive purposes then the same should be true for recreationist. The Department of Environment Quality must address this potential conflict with the proposed legislation as the proposed rule language creates impossible expectations for land owners.