

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 9, 2011

To: Environmental Quality Commission

From: Eric Nigg

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 1, 2011, 1 p.m.

Hearing location: Oregon Department of Transportation Office
Deschutes River Room
63055 N. Highway 97
Bend, OR 97701

This hearing was held in Bend and Eric Nigg served as hearings officer. Twenty-eight people attended the hearing and four people provided oral testimony. DEQ convened the rulemaking hearing on the proposal referenced above at 1 p.m. and closed it at 2:55 p.m.

Nigg introduced Andrea Matzke and Koto Kishida from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At approximately 2:35 p.m., Nigg opened the formal hearing on the proposed rulemaking. He informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Nigg explained his role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. He asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. He noted that written comments would be given the same weight as oral comments. Nigg reminded the audience that the deadline date for receipt of written comments on the proposed rules is Wednesday, Febr. 23, 2011, at 5 p.m. This date was later extended to March 21, 2011. He stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. He added that DEQ's final recommendation for rule adoption will be made at the commission meeting scheduled for June 16-17, 2011, and that EQC

can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Four persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|---------------------------------|------------------|
| Name | Affiliation | General position |
| 1. Chris Gannon (also written testimony) | Crooked River Watershed Council | Oppose |
| 2. Jerry Brummer (also written testimony) | City of Prineville | Oppose |
| 3. Bruce Jim (also written testimony) | Warm Springs Tribe | Support |
| 4. Chuck Lang | Private citizen | Oppose |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking.

Chris Gannon: Crooked River Watershed Council – submitted written comments in addition to verbal testimony

The Watershed Council works with local landowners in partnership with other local state and federal agencies. They are very involved in improving water quality, but are concerned that the proposed toxics rules will have unintended consequences and unknown economic impacts. They request that DEQ delay adoption until it has considered what the economic impacts of the rules may be. They are also concerned with indirect consequences of the more stringent rules, including increases in fish advisories and residues of toxic pollutants in by-products of fish harvesting. These could have a dampening effect on beneficial uses of these by-products. The council is not convinced there will be any human health benefit to the proposed consumption rate.

They provide alternatives to the rule including site-specific rules in areas that would likely expose tribal populations or an outright ban of certain toxic chemicals. In closing, Mr. Gannon suggested we consider a philosophical construct of Raymond C. P. Beamesderfer entitled “Deciding When Intervention is Effective and Appropriate.” It is a systematic decision making process to determine for a given case if (1) the problem being addressed is significant enough to warrant action, (2) the solution being proposed is effective in fixing or significantly reducing the size of the problem, and (3) the biological benefits of the action outweigh costs as well as social and political considerations.

Jerry Brummer: Public Works Superintendent for the City of Prineville– submitted written comments in addition to verbal testimony

The City of Prineville is excited about ongoing water quality improvements it has constructed and will continue to invest in facilities that improve water quality. Prineville currently has an unemployment rate near 20 percent and some of the highest sewer service rates in the state. Mr. Brummer described several projects the city is constructing including wetlands for improved wastewater treatment, repair of sewer collection pipes to reduce inflow and infiltration during winter, and stormwater planning. The City is concerned that the DEQ has underestimated the impacts of these new rules and will not be adequately staffed to implement them including more complicated permitting, requirement for variances for permittees, development of basinwide pollution reduction plans all of which will increase costs to permitted sources. They are concerned that there is no effective and feasible technology for treating wastewater sufficiently to meet the proposed rules for legacy pesticides and PCBs.

Bruce Jim: Confederated Tribes of the Warm Springs and Chairman of the Columbia River Inter-Tribal Fish Commission– submitted written comments in addition to verbal testimony

Mr. Jim expressed support for the proposed fish consumption rate of 175 grams per day. This was based on a study that determined 23 eight-ounce servings of fish per month is “a realistic value that represents the fish consumption habits of our people.” The consumption of fish is not only a major food source for tribal members, it is also an integral part of our cultural, economic, and spiritual well-being. Current national estimated fish consumption rates are simply not sufficient to protect our tribal peoples residing in the Columbia River Basin, or other people that consume healthy amounts of fish. I urge the DEQ to adopt the standards that are based on these proposed reasonable and reliable measures of fish consumption by the residents of Oregon.

It seems the tribes are targeted as responsible for some of this. Tribal people in this basin have an important stake through treaty rights, but also have done a lot of work to improve fisheries, water quality and the land. Tribal members have always considered the importance of environment to the headwaters of streams and this has been beneficial to water quality protection. When they do this, it benefits all people in the basin, not just tribal members.

Chuck Lang: Prineville Resident

There are global sources of DDT and PCB that impact ocean food chains including those of salmon. These sources will eventually be reduced or eliminated followed by a painfully slow degradation of the chemicals and concentrations in salmon will follow. This will happen regardless of the proposed consumption rates and related toxics criteria. Including these new salmon consumption rates is not supported by science. He suggests this is why EPA is not recommending applying these rates to marine salmon and consumption of marine species. He

also suggests that studies should be undertaken to determine if juvenile salmon are contaminated before they reach the estuary. While the higher consumption rate may be justified to generate health advisories, using it for inland water quality criteria calculations is premature.

There was no other testimony provided. DEQ adjourned the hearing at 2:55 pm.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 28, 2011

To: Environmental Quality Commission

From: Pamela Wright

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 2, 2011, 9 a.m.

Hearing location: DEQ Eugene Office
Willamette Conference Room
165 East 7th Ave., Suite 100
Eugene, OR 97401

The hearings officer was Pamela Wright. Twenty-eight people attended the hearing, eight provided oral testimony, and 26 written comments were submitted. DEQ convened the rulemaking hearing on the proposal referenced above at 9 a.m. and closed it at approximately 11:05 a.m.

Wright introduced Andrea Matzke and Koto Kishida from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. Two of the testifiers did not sign in, but were counted as part of the total attendees. People were also advised that the hearing was being recorded.

At approximately 10:25 a.m., Wright opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Wright explained that her role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. She added that written comments would be given the same weight as oral comments. Wright reminded the audience that the deadline date for receipt of written comments on the proposed rules is Monday, Feb. 23, 2011, at

5 p.m. This date was later extended to March 21, 2011. She stated that after reviewing the comments, the department may consider revisions to the proposed rules. She added that DEQ's final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Eight persons provided oral testimony, and 26 written comments were submitted by persons who did not testify, with the majority of the written comments being a form letter and a coupon clipped out of a newspaper. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|---------------------|-------------------------|
| Name | Affiliation | General position |
| 1. Dan Hanthorn | City of Corvallis | Oppose |
| 2. Michelle Cahill | City of Eugene | Oppose |
| 3. Eron King | Private citizen | Oppose |
| 4. John Steele | Private citizen | Support |
| 5. Day Owen (also submitted additional written comments) | Pitchfork Rebellion | Support |
| 6. Reggie DeSoto | Private citizen | Support |
| 7. Cat Koehn | Artists 4 Action | Support |
| 8. Jan Nelson | Private citizen | Support |
| Written comments received from persons who did not testify | | |
| 1. Dixie Lee Noland (Noted she will send written comments to DEQ) | Private citizen | Not noted |
| 2. Letters (18) | Pitchfork Rebellion | Support |
| 3. Newspaper Coupon (7) | Pitchfork Rebellion | Support |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking.

The cities of Corvallis and Eugene have been active and forward thinking in their efforts to reduce toxics. They voiced concern that treatment technologies to meet the proposed toxic

numbers at the wastewater plants are not available at a reasonable cost to ratepayers in the community. Effective and feasible treatment technologies to reduce toxic chemicals, such as legacy pesticides, PCBs or plasticizers do not exist. Effective toxic reduction must be tackled on a watershed basis, and involve all sources of pollution. They believe DEQ has underestimated the financial impact. An effective water quality toxic reduction program must be a broad initiative, and all sources must be addressed. It cannot be just focused on water quality permit holders.

Adopting the proposed standards without implementation plans in them is, ill-advised, and should be developed and included along with a proposed rule for clarity and understanding. Adopting the proposed standard without embedded implementation plans will not advance the improvement of water quality.

DEQ's solution of variances must be improved. The EPA regulations restrict variances to being short term and temporary. Very low levels of PCBs or pesticides that are found throughout the environment cannot be dealt with in the short term. Even addressing current use toxics will be complicated and may take many years to resolve

Erin King and Day Owen live in rural Oregon surrounded by industrial forest land. Both indicated they felt that DEQ is not going nearly far enough to regulate private forestry. Their primary concerns are sediment, pesticides and slash burning. They both indicated variances would provide an excuse for dischargers not to take responsibility for their actions. Jan Nelson and Reggie De Soto indicated support for stronger environmental regulations. Reggie De Soto voiced support for stricter standards for toxics due to cancers they cause.

John Steele voiced concern about the mercury coming through Cottage Grove Lake and wants DEQ to monitor mercury more extensively there. He also was concerned that variances will prevent water quality from being improved.

Catherine Koehn indicated that the headwaters are not being protected as much as they should. DEQ should develop clear numeric standards for copper and delineate a clear riparian buffer policy. DEQ's 303(d) list indicates sediment is a problem throughout the basin and yet the agency is doing nothing about it.

There was no other testimony provided. The hearing was adjourned at approximately 11:05 a.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: April 22, 2011

To: Environmental Quality Commission

From: Zach Loboy

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 2, 2011, 6 p.m.

Hearing location: DEQ Medford Office
 Large Conference Room
 221 Stewart Ave., Suite 201
 Medford, OR 97501

The hearings officer was Zach Loboy. Twenty-three people attended the hearing, eight provided oral testimony. DEQ convened the rulemaking hearing on the proposal referenced above at 6 p.m. and closed it at approximately 8:10 p.m.

Loboy introduced Andrea Matzke and Koto Kishida from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 7:20 p.m., Loboy opened the formal hearing on the proposed rulemaking. He informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Loboy explained his role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. He asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. He added that written comments would be given the same weight as oral comments. Loboy reminded the audience that the deadline date for receipt of written comments on the proposed rules is Monday, Feb. 23, 2011, at 5 p.m. This date was later extended to March 21, 2011. He stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. He added that DEQ's final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own

discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Eight persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|--|-------------------------|
| Name | Affiliation | General position |
| 1. Dennis Baker | City of Medford | Oppose |
| 2. Glenn Archambault | Jackson County Farm Bureau | Oppose |
| 3. Keith Nelson | Josephine County Farm Bureau, Illinois Valley SWCD, and Illinois Watershed Council | Oppose |
| 4. Ronald Bjork | Jackson County Farm Bureau | Oppose |
| 5. Don Rowlett | Jackson County Cattlemen | Oppose |
| 6. Charles Boyer | Private citizen | Oppose |
| 7. Robert Miller (also written testimony) | Oregon Cattlemens Association | Oppose |
| 8. Shin Takeda | Private citizen | Oppose? |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking.

The list of testifiers all clearly opposed the rulemaking, with the exception of Shin Takeda whose testimony was unclear as to whether he supported or opposed the rulemaking. Shin Takeda's testimony expressed caution and careful consideration of the impact of the rule but discussed diesel engine exhaust, California water quantity issues, DDT and medications in wastewater. In all instances these comments were irrelevant to the proposed rulemaking.

The opponents of the rulemaking consisted of a municipality, members of the Farm Bureau, the Cattlemen's association, and a private citizen. The city commented that the program as proposed is extremely regionalized and does not account for differences in water in areas outside of some coastal lakes, the Willamette River basin, and the Columbia River. The city commented that the variance process being proposed in the new rules are not a viable option for solving water quality problems. Concern was expressed over how the variance process would be administered and if DEQ would have enough resources to review the variances in a timely manner. The city also stressed that the cost of complying with the new rules by installing new treatment technology is exorbitant.

The remainder of the opponents to the rulemaking was comprised of agricultural interests. All said that the proposed rules would regulate agriculture, and especially small farms and ranches, out of business and hurt agriculture production in Oregon. A concern expressed by the Farm

Bureau members and the Cattlemen's Association was the belief that the changes to the rules would have DEQ directly regulate and enforce water quality standards on agricultural properties. They also opposed implementation ready TMDL's. They viewed these things as being in disagreement with the regulatory authority given to ODA by SB1010. They expressed interest in continuing to work under the SB1010 plans.

There was no other testimony provided. DEQ adjourned the hearing at approximately 8:10 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: April 11, 2011

To: Environmental Quality Commission

From: Pamela Blake

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 3, 2011, 1:30 p.m.

Hearing location: City Hall, Council Chambers
 500 Central Ave.
 Coos Bay, OR 97420

The hearings officer was Pam Blake. Twenty-one people attended the hearing and eight provided oral testimony. In addition, 79 form letters in support of the rulemaking and a resolution signed by the Affiliated Tribes of Northwest Indians were submitted. DEQ convened the rulemaking hearing on the proposal referenced above at 1:30 p.m. and closed it at approximately 3:45 p.m.

Blake introduced Andrea Matzke and Koto Kishida from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 3:15 p.m., Blake opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Pam explained her role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. She added that written comments would be given the same weight as oral comments. Blake reminded the audience that the deadline date for receipt of written comments on the proposed rules is Monday, Feb. 23, 2011, at 5 p.m. This date was later extended to March 21, 2011. She stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. She added that DEQ's final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own

discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Eight persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|---|--|-------------------------|
| Name | Affiliation | General position |
| 1. Howard Crombie (additional written comments and signed Council resolution) | Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians | Support |
| 2. Dave Messerle (additional written comments) | Messerle and Sons | Oppose |
| 3. Tom Younker | Coquille Tribe | Support |
| 4. Kathryn Brigham (submitted 79 support letters and a signed resolution from the Affiliated Tribes of NW Indians) | Confederated Tribes of the Umatilla Indian Reservation | Support |
| 5. Diane Barton | Columbia River Intertribal Fish Commission | Support |
| 6. Arron McNutt | Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians | Support |
| 7. Jody McCaffree | Private citizen | Support |
| 8. Tom Forgatsch | Coos County SWCD | Support |
| Written comments received from persons who did not testify | | |
| 1. Form letters (79) | Various tribal members | Support |
| 2. Signed resolution | Affiliated Tribes of NW Indians | Support |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking. Seven of eight persons testifying support the rulemaking. Those who support the rulemaking were tribal members, a private citizen, and a director of the Coos Soil and Water Conservation District. The entity in opposition represents a local family business.

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw support the proposed rule and the Tribal Council has passed a resolution in support. A letter of support was also sent to Oregon Environmental Quality Commission Chairman Blosser. The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw is currently developing its own water quality standards applicable to waters present within reservation lands. These standards will reference the same consumption rates that the state of Oregon is proposing. The tribe has long standing traditions honoring salmon and the cycle of life which they represent. In order to preserve and restore the tribe's culture the tribes need to consume fish and shellfish at traditional levels without fear of

toxins. Fish and shellfish are important to Oregonians and the financial commitment has been significant. The proposed consumption rate represents a balance between a higher more protective rate and the lower consumption rates currently being applied. The Coquille Tribe agrees with and supports the statement provided by the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw.

The Confederated Tribes of the Umatilla Indian Reservation support the consumption rate in the proposed rule. The Umatilla Tribe has adopted a much higher consumption rate but because the tribe agreed to work in partnership and tribal elders are committed to continue planning for the future and future generations they can accept the proposed consumption level in the rule. Although this will mean more regulation, future generations need clean air, water, and land. The Affiliated Tribes of Northwest Indians passed a resolution supporting the adoption of the rule to better protect tribal first foods, and the native people who depend upon them. This individual also spoke as a homeowner and owner of a small acreage farm with irrigation right in support of the rule.

The coordinator for the Columbia River Intertribal Fish Commission, or CRITFC, stated that water quality is a key component in the conservation and restoration of salmonid habitat and natural production. The adoption of the proposed fish consumption rate is a critical first step to improve water quality, protect fisheries, and tribal members. The CRITFC coordinator stated that studies conducted to examine fish consumption rates are scientifically defensible and that DEQ's Human Health Focus Group determined that the fish consumption survey accurately represented the habits of tribal peoples. Of those surveyed, 97 percent eat fish and, based on stated consumption levels, the rule would protect 95 percent of tribal members' health. Other fish surveys looked at other cultures and determined that these cultures also consume fish at the similar levels as Oregon tribes. She also stated that even though salmon spend a great deal of their lives in the ocean, tests of juvenile fish show they contain some contaminants.

A Confederated Tribes of the Coos, Lower Umpqua, Siuslaw council member and parent of an autistic child spoke specifically about mercury. He stated that U.S. Department of Education data identifies autism as the fastest growing developmental disability and that mercury detoxification as a treatment received a far higher effectiveness rating than any drug supplement or special diet. Tests show that babies with autism have only one eighth the amount of mercury in their hair as normal babies do, so perhaps their ability to excrete heavy metals is impaired. Autistic babies' teeth have an average of three hundred percent more mercury than normal babies. He identified this as a group of individuals that are more severely impacted than the national average. He voiced his support for increased surveillance, regulation, and testing.

A private citizen in support of the rule vocalized concerns that conditions will not improve unless additional baseline data is collected. She stated that reduced fishing is indicative of a

problem and water quality is a contributor. She stated her concern that the needed monitoring will not get done because DEQ lacks adequate staffing and funding for monitoring and clean up. She supports the rule but emphasized that it needed to be followed up with testing and cleaning up the water.

A director of the Soil and Water Conservation Service stated that many, including DEQ, have known about local mercury problems for years and have not figured out where it is from or what to do about it. He expressed concern about the adverse impacts of mercury exposure on salmon eggs, smolt, and adults as well as other fish are present in contaminated areas. He stated that Forestry and DEQ know about this and do nothing because it is too expensive to clean these streams. He agrees with the rule but stated that we need to try and remove some of the mercury we know about although some of it may be natural and there might not be anything that can be done. Although in agreement with the rule he stated that most of the fish either comes from or spend a lot of their lives somewhere else. He stated that when algae are tested you will find some chromium and a lot of mercury and that fish eat the algae and store the mercury. He did not agree with using a 150 pound person, and stated that most people are heavier than that in United States. He also stated that contaminants like heavy metals, PCBs, and plastics are stored in fat and start to come out when people are on a diet and losing weight. These people can start having side effects and one of them may be autism.

A representative of Messerle and Sons, private land managers, opposed the rule. The family has managed resource lands for four generations and is concerned that this rule could potentially add another layer of regulation on farm and forest lands. They wish to continue working with the Departments of Agriculture and Forestry, agencies with whom they currently have good relationships.

There was no other testimony provided. DEQ adjourned the hearing at approximately 3:35 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 10, 2011

To: Environmental Quality Commission

From: Cheryl Hutchens-Woods

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 7, 2011, 2:30 p.m. (MST)

Hearing location: Ontario City Hall
 Council Chambers (2nd floor)
 444 SW 4th St.
 Ontario, OR 97914

The hearings officer was Cheryl Hutchens-Woods. Thirty-eight people attended the hearing and seven provided oral testimony. DEQ convened the rulemaking hearing on the proposal referenced above at 2:30 p.m. and closed it at approximately 4:24 p.m.

Hutchens-Woods introduced Andrea Matzke and Gene Foster from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 3:50 p.m., Hutchens-Woods opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Hutchens-Woods explained that her role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. She added that written comments would be given the same weight as oral comments. Hutchens-Woods reminded the audience that the deadline date for receipt of written comments on the proposed rules is Monday, Feb. 23, 2011, at 5 p.m. This date was later extended to March 21, 2011. She stated that after reviewing

the comments, DEQ may consider revisions to the proposed rules. She added that DEQ’s final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Seven persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|--|--|
| Name | Affiliation | General position |
| 1. Chuck Mickelson | City of Ontario | Oppose |
| 2. Judith Kirby | Private citizen | Oppose |
| 3. Curtis Martin (also written testimony) | VP Ranch | Oppose |
| 4. Lynn Shumway | Burnt River Irrigation District | Oppose |
| 5. Peggy Browne | Powder Basin Water & Stream Health Committee | Oppose |
| 6. Joe Dominick | Mayor, City of Ontario | Oppose |
| 7. Clinton Shock | Private citizen | Unknown - made comments on the arsenic rulemaking and not on this rulemaking |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking. All of the testifiers who commented on the proposed rule were opposed to the rulemaking. One person testifying made comments in opposition to the arsenic rule, which is not part of this rulemaking. Those testifying in opposition to the rulemaking mainly consist of municipalities or other government entities, agricultural interest, and private citizens.

The City of Ontario had two officials commenting in opposition to the rule. Their comments included concerns that the citizens of Eastern Oregon are being required to follow statistics from the western half of the state. They encouraged DEQ to develop rules that are area specific. The city also provided details on how the city has worked to improve water quality in their areas by improving their sewage collection system, an aggressive stormwater program, and work done in conjunction with the Watershed Enhancement Board. They also commented that the program needs to address all sources not just focus on water quality permit holders. Finally, there were a number of concerns expressed by the City of Ontario regarding the city’s concern around the cost and difficulty of complying with proposed arsenic regulatory levels and potential cost to their ratepayers. Please note, arsenic is not part of this proposed rulemaking.

Many of the private citizens who opposed the rulemaking came from the agricultural sector. They are opposed to having DEQ directly regulate or enforce water quality standards. They expressed concern that the rule as proposed would interfere with the already positive working relationship that they share with Oregon Department of Agriculture. They believe that there has been a great deal of effort put into the developing plans with ODA and they believe that the Agricultural Water Quality Management Plans do work. There were comments by three citizens stating that if DEQ interjects itself into the relationship that they have with ODA it will result in an adversarial relationship. In addition, it was stated that DEQ is acting outside the statute.

Commenters also voiced concern that the implementation of the rule will cause job losses. The rule will put agricultural producers out of business. This will result in fewer jobs available and more people will be out of work. In addition, businesses and jobs are leaving the state because of excess rulemaking.

Finally, there were comments made regarding the fish consumption number that is identified in the rulemaking. There was concern expressed that the number was based on consumption from a study based in the Puget Sound area, not in Oregon. There was also concern voiced that the consumption rates were based on a small segment of Oregon's population and not well founded. Finally, it was noted that the proposed fish consumption rate is 26 times greater than the rate that is currently in place in the State of Washington.

There was no other testimony provided. DEQ adjourned the hearing at approximately 4:24 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 11, 2011

To: Environmental Quality Commission

From: Cheryll Hutchens-Woods

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 8, 2011, 2:00 p.m.

Hearing location: St. Anthony's Hospital
Cascade Room (1st floor)
1601 SE Court Ave.
Pendleton, OR 97801

The hearings officer was Cheryll Hutchens-Woods. Twenty-six people attended the hearing, five provided oral testimony and one person submitted 15 support letters. DEQ convened the rulemaking hearing on the proposal referenced above at 2 p.m. and closed it at approximately 3:45 p.m.

Hutchens-Woods introduced Andrea Matzke and Gene Foster from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 3:20 p.m., Hutchens-Woods announced opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Hutchens-Woods explained that her role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. She added that written comments would be given the same weight as oral comments. Hutchens-Woods reminded the audience that the deadline date for receipt of written comments on the proposed

rules is Monday, Feb. 23, 2011, at 5 p.m. This date was later extended to March 21, 2011. She stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. She added that DEQ’s final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Five persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|---|--|-------------------------|
| Name | Affiliation | General position |
| 1. Leo Stewart | Confederated Tribes of the Umatilla Indian Reservation (CTUIR) | Support |
| 2. Myrna Williams Tovey | CTUIR member | Support |
| 3. Brett VandenHeuvel | Columbia Riverkeeper | Support |
| 4. Mark Milne | City of Pendleton | Oppose |
| 5. Carl Merkle (submitted 15 support letters) | Private citizen | Support |
| Written comments received from persons who did not testify | | |
| 1. Form Letters (15) | Various tribal members | Support |

The following is a summary of written and oral comments received at the hearing. The department will include these comments in the Summary of Comments and Agency Responses for this rulemaking. There were a total of five people giving testimony and of the five four commented in support of the rulemaking and one opposed the rulemaking.

Those who support the rulemaking were members of the Confederated Tribes of the Umatilla Indian Reservation, the environmental organization Columbia Riverkeeper and a private citizen who also presented 15 letters in support signed by various tribal members. Opposition to the rule came from the City of Pendleton.

The City of Pendleton commented in opposition to the rulemaking. Their representative pointed out that the limits for toxics in the proposed rule are not attainable by the city. The treatment technology is not available to go as low as the proposed limits. DEQ’s proposed variance procedure must be improved. The variance procedure will cost money, take staff time and result in no toxics reduction. The city is in the middle of a \$15 million upgrade to their plant which will help the city remove ammonia but not specifically address toxics. In addition, the city

commented that toxins should be removed before they get the plant; the toxins need to be stopped at the source at the watershed level.

The Confederated Tribes of the Umatilla Indian Reservation commented that the proposed rule is more protective of tribal members and other citizens of Oregon who eat fish. The tribe has worked with the State, EPA, and other interested stakeholders to increase the fish consumption rate to better reflect the amount of fish consumed by tribal members. They believe that the proposed rate is a fair and reasonable number and it is already a substantial compromise. When the tribe signed the Treaty of 1855 they understood that the fish would be safe to eat. They also pointed out that water and fish are the first of their first foods and are not just valued as natural resources but also for their cultural and religious values as well. Finally, they commented that the higher fish consumption rate is designed to protect Oregon's more sensitive fish consumers and is similar to Oregon's decision to adopt air quality standards that protect people with asthma.

The commenter on behalf of Columbia Riverkeeper stated on behalf of its three thousand members they support the proposed rule. Twenty years ago, there were studies showing that the assumption of how much fish people eat is not true. The assumption of how much fish people eat is important, because it controls how much toxics are allowed to be discharged. With this rule Oregon is poised to become a leader in water quality standards and we should take pride in this. Telling people that we shouldn't eat fish is not an acceptable solution. Reducing toxins is necessary to protect people who are eating fish; it is a matter of environmental justice and a matter of fairness. The environmental group did have some criticism of rule. The rule exempts stormwater. Stormwater contains toxics gathered as the rain runs off industrial and urban lands. They believe that the rules should apply to stormwater. They also have concerns with the variance procedures.

The final commenter in support of the rule pointed out that even living in Pendleton, the high desert, he still managed to eat a lot of seafood. The commenter supports the proposed rule and consumption rate and pointed out that the old rate did not really reflect what Oregonians ate, the average, non-Indian Oregonians. The new rate does not reflect the consumption of Native Americans, Asian Americans, nor Eastern Europeans. The commenter presented fifteen written testimonies in support of adopting the proposed rate.

There was no other testimony provided. The hearing was adjourned at approximately 3:45 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 11, 2011

To: Environmental Quality Commission

From: Beth Moore

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 10, 2011, 6 p.m.

Hearing location: DEQ Headquarters
 Room EQC-A (10th floor)
 811 SW 6th Ave.
 Portland, OR 97204

The hearings officer was Beth Moore. Twenty-seven people attended the hearing, 11 provided oral testimony and one person submitted 41 support letters. DEQ convened the rulemaking hearing on the proposal referenced above at 6 p.m. and closed it at approximately 7:52 p.m.

Moore introduced Andrea Matzke and Gene Foster from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 7 p.m., Moore opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Moore explained that her role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. Moore added that written comments would be given the same weight as oral comments. Moore announced that that the deadline date for receipt of written comments on the proposed rules had been extended to March 21, 2011, at 5 p.m. and that there

was an additional hearing scheduled in Salem, details to be determined. She clarified that the end of the public comment period for the proposed arsenic rulemaking will remain Feb. 23, 2011.

She stated that, after reviewing the comments, DEQ may consider revisions to the proposed rules. She added that DEQ's final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Eleven persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|---|---|-------------------------|
| Name | Affiliation | General position |
| 1. John Phil Hassinger (also written testimony) | Private citizen | Oppose |
| 2. Mitch Pond | Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Columbia River Inter Tribal Fish Commission (CRITFC) | Support |
| 3. Lauren Goldberg | Columbia Riverkeeper | Support |
| 4. Stan Vande Wetering | Confederated Tribes Siletz Indians | Support |
| 5. Paul Lumley (also written testimony and submitted 41 support letters) | CRITFC | Support |
| 6. Robert Keutta | Confederated Tribes Siletz Indians | Support |
| 7. Bob Baumgartner | Clean Water Services | Oppose |
| 8. Don Gentry | The Klamath Tribes | Support |
| 9. John Platt | Private citizen | Support |
| 10. Michael Karnosh | Grand Ronde Tribes | Support |
| 11. Victor Stevens | Private citizen | |
| Written comments received from persons who did not testify | | |
| 1. Form Letters (41) | Various tribal members, non-members, and students | Support |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking.

Those testifiers who generally support the rulemaking included tribal members, several private citizens, an environmental organization and an organization dedicated to protecting salmon and tribal treaty rights.

Several tribal members expressed support for the fish consumption rate. The Confederated Tribe of the Umatilla Indian Reservation, CTUIR stated that the fish resource is not only a major food source for tribal members, but is also an integral part of their cultural, economic, and spiritual way of life. The Klamath Tribe said that tribal members are also farmers, ranchers and fishermen and believe that what Oregon is doing is something that's needed for all of us in this state, and all of us in the region. It's time that we move forward with this proposed rule, and increased water quality standards that are more protective of tribal people because they depend on these fish. He further stated that implementation of TMDLs are going to be an important part of this process in his geographic area.

The Confederated Tribes of Siletz Indians also expressed concerns regarding the proposed implementation-ready TMDL process, but stated they are willing to move forward with what has been proposed at this time. He further clarified that the past history of jurisdictional issues among DEQ, Oregon Department of Forestry and Oregon Department of Agriculture will not improve without additional clarity that ensures one agency or another must meet the standards through this process, and therefore protect the citizens of this state. The Siletz Tribe made a decision several years ago to enter the state's TMDL process for the mid-coast region, rather than set water quality standards for the tribe's areas of interest because they wanted to be a partner with regional stakeholders, and a partner with the state.

The Confederated Tribes of Grande Ronde stated that the Willamette River was very contaminated and that fish that are on the reservation, which include salmon, steelhead, and lamprey have to travel through these contaminated waters. He expressed thanks and support for DEQ in developing these water quality standards over the past several years.

The executive director of the Columbia River Intertribal Fish Commission, CRITFC, said that out in the Pacific Northwest, and particularly along the Columbia, he knows families that eat a lot more than 175 grams per day of fish. They have salmon every day, sometimes several times in the day, so this is not a standard that will protect all Indians; it's just an average. They applaud EPA's stance in trying to protect more tribal communities, and they also applaud Oregon for taking the stance to try and account for higher levels of fish consumption. CRITFC submitted forty-three letters in support of Oregon's water quality standards.

The Columbia Riverkeeper staff attorney believes that the rule package DEQ has proposed is a workable package and one that has had extensive amount of collaboration up to this point. She further emphasized that it is critical that the DEQ moves forward in a timely manner. She indicated that this rulemaking is the culmination of decades of research. EPA funded the Columbia River Inter-tribal Fish Commission to do a more extensive study to look into this issue, and CRITFC provided an in-depth study that showed that there was the presence of at least 92 contaminants in fish that were consumed by tribal members. In Oregon, we already live in a

state with a number of fish advisories, where people are impacted on a daily basis in terms of whether they can go out and eat fish from rivers near their homes and where they work. In reference to the fiscal analysis, she believes that the analysis never looked at the economic benefits. It never quantified how much Oregonians will gain from having water bodies and fish that we can go out and, on a regular basis, eat, and be free of the fear of contamination.

A landowner discussed tribal rights. Tribal members have reserved rights to take fish exclusively within the reservations, as well as the right to take fish at all of their usual and accustomed fishing places. Tribes expected, and the United States agreed, to secure those rights, and those rights are meaningless if the fish are not fit to eat.

A recreational user stated that he has sailed extensively on the Willamette and Columbia Rivers and believes we can do a better job of improving water quality on the river. These rivers and their drainages are one of our greatest regional assets and these regulations will go a long ways to improving that.

Several testifiers voiced opposition to the proposed rulemaking. One landowner stated that Senate Bill 502 and 503 were passed by the legislature in 1995 to give the Oregon Department of Agriculture sole responsibility for developing and implementing their program. This legislation would clearly be violated if DEQ established implementation-ready TMDLs. In addition, DEQ's need to determine specific amounts of surrogate measures needed to achieve TMDL goals is one hundred and eighty degrees away from a cooperative method successfully used since Senate Bill 1010.

Clean Water Services stated that they are committed to effective toxic pollution control and gave examples of the innovative programs they are currently implementing. Their members have participated for a long time on the development of this rule package and they feel it fails to provide clear and effective implementation guidance and implementation programs. This rulemaking could force them into a situation where they spend a substantial amount of money on programs that are not effective at reducing toxics within the basin. They further recommended that the DEQ and the Environmental Quality Commission provide clear and effective guidance associated with this rule and, as much as possible, to integrate implementation guidance within the rule itself. Alternatively, DEQ needs to make sure that guidance is well developed as they review this rule package, and not to proceed with the rulemaking until it is clear on what that guidance contains. The testifier also suggested that the rulemaking should look at the basins more broadly (e.g. implement a watershed approach) and not focus solely on what a waste water treatment plant can provide.

There was no other testimony provided. DEQ adjourned the hearing at approximately 7:52 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Feb. 16, 2011

To: Environmental Quality Commission

From: Jane O'Keeffe, EQC commissioner

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: Feb. 16, 2011, 1:30 p.m.

Hearing location: DEQ Headquarters
 Room EQC-A (10th floor)
 811 SW 6th Ave.
 Portland, OR 97204

This hearing was held in front of the Environmental Quality Commission. The hearings officer was Commissioner Jane O'Keeffe, a member of EQC. Sixty-four people attended the hearing, 35 provided oral testimony, and 96 written comments were submitted. The department convened the rulemaking hearing on the proposal referenced above at 1:30 pm and closed it at 4:30 pm.

Commissioner O'Keeffe introduced Jennifer Wigal and Gene Foster from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. Sixteen of the testifiers did not sign in, but were counted as part of the total attendees. People were also advised that the hearing was being recorded.

At approximately 1:45 p.m., Commissioner O'Keeffe announced opened the formal hearing on the proposed rulemaking. She informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. She asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. She added that written comments would be given the same weight as oral comments. Commissioner O'Keeffe reminded the audience that the deadline date for receipt of written comments on the proposed rules is Monday, March 21, 2011,

at 5 p.m. She stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. She added that DEQ’s final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Thirty-five persons provided oral testimony, and 96 written comments were submitted by persons who did not testify, with one of the three written comments being a form letter that was submitted by 94 people supporting the rulemaking. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|--|-------------------------|
| Name | Affiliation | General position |
| 1. Elwood Patawa (written testimony and also submitted written comments) | Confederated Tribes of the Umatilla Indian Reservation (CTUIR) | Support |
| 2. Kat Brigham | CTUIR | Support |
| 3. Curtis W. Martin (also written testimony) | Oregon Cattleman’s Association | Oppose |
| 4. Jack Giffen, Jr | Confederated Tribes of the Grand Ronde | Support |
| 5. Ryan Bransetter | CTUIR | Support |
| 6. (J.) Michael Read (also written testimony) | Oak Lodge Sanitation District | Oppose |
| 7. Ron Bittler | The Metropolitan Wastewater Management Commission | Oppose |
| 8. Chuck Mickelson | City of Ontario | Oppose |
| 9. Steve Griffith (submitted various research papers) | USDA—Agricultural Research Service | Oppose? |
| 10. Brandy Humphreys | Confederated Tribes of the Grand Ronde | Support |
| 11. Don Gentry | Klamath Tribes | Support |
| 12. Peggy Browne | Natural Resources and Agricultural Consultant/Rancher | Oppose |
| 13. Tracey Liskey | Private citizen | Oppose |
| 14. Doug Krahmer | Private citizen | Oppose |
| 15. Barry Bushue | Oregon Farm Bureau | Oppose |
| 16. Jennifer Shmikler | Oregon Farm Bureau | Oppose |
| 17. Joe Hobson | Oregon Farm Bureau | Oppose |
| 18. Stephanie Eisner (also written testimony) | City of Salem | Oppose |
| 19. Liz VanLeeuwen (also written testimony as private citizen and Board member) | Private citizen and Linn County Soil and Water Conservation District Board | Oppose |
| 20. Mark Mellbye | OSU Extension Service | Oppose |

| Provided oral testimony | | |
|---|--|-------------------------|
| Name | Affiliation | General position |
| 21. Jon Kane | Columbia River Inter-Tribal Fish Commission (CRITFC) | Support |
| 22. Marc Whitman | Nez Perce Tribe | Support |
| 23. Bobby Begay | Yakama Nation | Support |
| 24. Janet Gillaspie & Chris Fick (also written testimony) | Association of Clean Water Agencies and League of Cities | Oppose |
| 25. Dan Hanthorn | City of Corvallis | Oppose |
| 26. Lauren Goldberg | Columbia Riverkeeper | Support |
| 27. Kathryn VanNatta | Northwest Pulp & Paper Association | Oppose |
| 28. Terry Witt | Oregonians for Food & Shelter | Oppose |
| 29. Steve Higgs | Perkins Coie LLP (representing City of Klamath Falls) | Oppose |
| 30. Aja DeCoteau (also written testimony) | CRITFC | Support |
| 31. David Liberty | CTUIR | Support |
| 32. Teresa Huntsinger | Oregon Environmental Council | Support |
| 33. Brett Vandenheuvel | Columbia Riverkeeper | Support |
| 34. Karla Kay Edwards | Cascade Policy Institute | Oppose |
| 35. Sheri Wadekamper | LGW Ranch | Oppose |
| Written comments received from persons who did not testify | | |
| 1. Laura Gephart | CRITFC | Support |
| 2. Steve Fancher | City of Gresham | Oppose |
| 3. Form letters (94) | Various tribal members | Support |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking. The list of testifiers was distributed between those who generally support the rulemaking and those who do not support the rulemaking. Those who support the rulemaking were members of tribes and several environmental organizations.

Tribal members expressed the need for DEQ to protect the health of those Oregonians who regularly consume fish and shellfish—tribal members, other ethnic groups and Oregonians who choose to eat more fish. Tribal members expressed that fish are not only a major source of food, but are also an integral part of their cultural, economic and spiritual well-being. Some tribal members felt that treaty-protected rights to take fish are threatened if the fish and waterways are contaminated. Supporters state that a fish consumption rate of 175 grams per day is a reasonable and protective value to use as the basis for Oregon’s human health toxics criteria. Tribal members and environmental groups feel that the information and data contained in the CRITFC study and the other studies examined to develop a fish consumption rate are scientifically defensible. One environmental group member expressed that addressing toxics in fish that we eat is an environmental justice issue, while another environmental group representative was

disappointed that members of the various workgroups involved in the rulemaking are now attacking the rule. The Chairman of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation submitted 94 letters of support from primarily tribal members residing in Oregon and Washington.

The Columbia Riverkeeper environmental organization strongly supports going forward with this rulemaking, although they feel there are flaws contained in the rule. For example, stormwater discharges are not considered in this rule, and the rulemaking fails to address nonpoint sources of toxics in any meaningful way because the changes DEQ is proposing to make, simply re-state statutory requirements.

Opponents of the rulemaking mainly consist of municipalities, agricultural and forestry interests, and private landowners.

The cities stressed that they are committed to toxics reduction, as evident in the various pollution reduction strategies and programs that are currently being implemented. However, it would be far more effective to go after the sources of the toxic pollutant. Without the active participation of forestry and agriculture, the water quality objectives will never be met. Once the pollutant is in the waste stream, some of these toxic chemicals are either impossible to remove or are very expensive to treat. Some of the commenters discussed the results of an independent analysis which indicated that most of the publicly-owned treatment works will exceed new water quality criteria for mostly legacy pesticides and PCBs from human waste. In addition, chemicals such as DDT and plasticizers are found everywhere in the environment, in people and in wastewater effluent at low levels.

Many cities and the Association of Clean Water Agencies, ACWA, remain concerned that variances are not a viable or appropriate tool for resolving water quality objectives. As variances may be the primary compliance tool for municipalities, there is concern about how the variance process will be administered and question whether DEQ water quality staff will be able to accomplish expected workload increases in reviewing variances. Many municipalities indicate that the costs to request and approve a variance have been underestimated by DEQ and that the expenditure of funds could potentially divert ratepayer investments from other investments that would have greater water quality benefits. ACWA and several of the municipalities recommended that EQC direct DEQ to develop a specific implementation plan by category of pollutant to indicate which Clean Water Act tool could be used to meet the underlying water quality criteria, including TMDLs, use of site specific criteria or a use attainability analysis.

The remainder of the rulemaking opponents consisted of forestry and agricultural interests. All expressed frustration that the efforts by many landowners to install or implement various best

management practices to reduce nonpoint sources of pollution are being ignored by DEQ. Another point of contention expressed by the Oregon Farm Bureau, soil and water conservation districts, the Oregon Cattlemen's Association and a number of landowners was the belief that the proposed rule language in Division 41 and 42 regarding nonpoint sources is a direct challenge to the statutory and regulatory authority given to the Oregon Department of Agriculture by Senate Bill 1010. Many commenters feel that the current relationship and process between ODA staff and landowners works well and would destroy the cooperation and trust that has taken years to establish.

Northwest Pulp and Paper Association recognizes the challenges faced by dischargers and the department and believes there are other options available. These ideas will be submitted before the end of the comment period.

One person from the Cascade Policy Institute vigorously questioned the scientific validity of 175 grams per day. She indicated that the CRITFC study is over 20 years old and that the fish consumption rate should be recalculated based on current data. In addition, salmon should not be included in the fish consumption rate because they spend the majority of their life cycle in the ocean where Oregon water quality standards do not apply.

There was no other testimony provided. Commissioner O'Keeffe adjourned the hearing at 4:30 pm.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: March 11, 2011

To: Environmental Quality Commission

From: Steve Schnurbusch

Subject: Presiding Officer's Report for Rulemaking Hearing

Title of proposal: Revising Human Health Water Quality Standards for Toxic Pollutants

Hearing date and time: March 7, 2011, 5:30 p.m.

Hearing location: Labor and Industries Building
350 Winter Street NE, Room 260
Salem, OR 97309

The hearings officer was Steve Schnurbusch. Twenty-four people attended the hearing and 11 provided oral testimony. DEQ convened the rulemaking hearing on the proposal referenced above at 5:30 p.m. and closed it at approximately 7:48 p.m.

Schnurbusch introduced Jennifer Wigal and Gene Foster from DEQ, who gave a short presentation summarizing the proposed rulemaking. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

At 6:48 p.m., Schnurbusch opened the formal hearing on the proposed rulemaking. He informed people that the hearing would be recorded and that testimony would become part of the public record for the rulemaking. Steve explained that his role was to take testimony on behalf of EQC and prepare a report summarizing the written and verbal comments. He asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. Schnurbusch added that written comments would be given the same weight as oral comments. Schnurbusch announced that the deadline date for receipt of written comments on the proposed rules is March 21, 2011, at 5 p.m. He stated that after reviewing the comments, DEQ may consider revisions to the proposed rules. He added that

DEQ’s final recommendation for rule adoption will be made at the EQC meeting scheduled for June 16-17, 2011, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings.

Summary of the testimony

Eleven persons provided oral testimony. Table 1 lists the names of those who provided testimony and the general position supported by each person.

TABLE 1: List of commenters

| Provided oral testimony | | |
|--|--|-------------------------|
| Name | Affiliation | General position |
| 1. Senator Doug Whitsett (also written testimony) | Representing District 28 | Oppose |
| 2. Nina Bell | Northwest Environmental Advocates | Oppose |
| 3. Jonathan Schlueter | Westside Economic Alliance | Oppose |
| 4. Jannine Jennings (also written testimony) | Environmental Protection Agency Region 10 | Support |
| 5. Wilbur Slockish (also written testimony) | Yakama Nation / Columbia River Inter Tribal Fish Commission (CRITFC) | Support |
| 6. Janet Gillaspie | Association of Clean Water Agencies | Oppose |
| 7. Mitch Pond (also written testimony) | Confederated Tribes of the Umatilla Indian Reservation / CRITFC | Support |
| 8. Don Winisnut Sr. (also written testimony) | Confederated Tribes of Warm Springs | Support |
| 9. Diane Barton | CRITFC | Support |
| 10. Cat Koehn | Artists for Action | Support |
| 11. Ivan Maluski | Sierra Club | Support |

The following is a summary of written and oral comments received at the hearing. DEQ will include these comments in the final rulemaking.

Eleven people testified at the hearing, with four opposed and seven people in favor of the proposed rules. Four of those in support of the rulemaking are associated with the tribes. They stated the consumption rate of 175 grams per day is a reasonable value to use that would be protective of the majority of their members. Fish are a major source of food for the tribes just as meat is for a large portion of Americans. Fish are also an integral part of their culture and used for ceremonial purposes. They mentioned there are other ethnic groups who are subsistence fishers and this rule would be protective of them as well. They state there are studies that show some toxics are building up in fish tissue and present in the water column, so now is the time to act on these new standards before it is too late.

The Sierra Club was in support of the proposed rule. They were involved with the adoption of Senate Bill 737 which was aimed at toxics monitoring for domestic sources. They feel this rule

will push industrial sources to reduce toxic pollutants in their effluents. They also expressed concern about DEQ needing to work closely with the Oregon Departments of Agriculture and Forestry in improving implementation of nonpoint strategies for reducing toxics.

EPA stated that if DEQ did not adopt these new rules that EPA would be forced to promulgate new rules for the state. In general, they believe states are in the best position to adopt and implement new standards. EPA stated the consumption rate of 175 grams per day is the appropriate value to use. They also stated Oregon's proposed rule provides some innovative compliance tools that EPA would not be proposing if they were forced to promulgate the new standards.

The Association of Clean Water Services expressed support for reducing toxics. They feel all pollution sources need to be involved in reducing toxics pollutants. They support the rule revision for nonpoint sources but feel the language needs to be stronger. They believe there needs to be an implementation strategy for each category of pollutant that will outline the overall strategy for reducing toxics. They state that end of pipe treatment is not necessarily feasible or the most cost effective way to reduce toxics. They would like to see a comprehensive toxics reduction program prior to the adoption of the revised standards. They are also concerned about the use of variances because they are burdensome and expensive to develop and will not resolve the underlying water quality issues.

Northwest Environmental Advocates are opposed to the variance provisions incorporated into the rule, as they feel these are loopholes for point sources. They also feel the rule does not have strong enough language for controlling nonpoint sources of pollution. Overall, they feel this rule will have little, if any, environmental improvements.

Westside Economic Alliance expressed concerns regarding the costs of these new regulations and whether we really know what the problem is that DEQ is trying to solve and what is the goal and how DEQ measures success. They also are concerned about the validity of the fish studies used to determine the fish consumption rate regarding anadromous versus resident fish. They want to know whether a distinction was made between consumption of anadromous fish and resident fish because salmon spend such little time in fresh water where the new standards would apply.

Senator Whitsett opposed the proposed rule primarily because the scientific studies used to establish the fish consumption rate were lacking in merit. He questioned some of the methods used in surveying participants, noting in one study that data was only collected over a two-day period. He also noted that low income individuals were oversampled to ensure their

representation in the survey. In addition, he noted another study reported that some of the fish consumed may not be found in Oregon waters.

Another commenter stated DEQ needs to address toxics in sediment and do more to address nonpoint sources. The commenter did not support variances.

There was no other testimony provided. DEQ adjourned the hearing at approximately 7:48 p.m.