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Washington State Department of Ecology Water Quality Program
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March 23, 2015

RE: Washington Farm Bureau Comments on Ecology's Proposed Rulemaking to Update WAC 173-201(A) Toxic Pollutant Water Quality Criteria to Protect Human Health

Dear Director Bellon,

I am writing on behalf of the more than 42,000 member families of the Washington Farm Bureau (WFB). One of the largest industries in Washington, agriculture provides 164,000 jobs and drives \$49 billion into the state's economy each year. Beyond their commitment to raising the food, feed, fiber and fuel needed by our state, our nation, and our world, Washington's farm and ranch families also take their responsibilities as environmental stewards very seriously.

We appreciate recent discussions with you and your staff as WFB participated on "Delegates Table" "Creative Solutions" workgroups related to the proposed rulemaking. We also appreciate your efforts on the Agriculture and Ecology Water Quality Advisory Committee, which you tasked with promoting "both water quality protection and a healthy agricultural industry." We see this as an encouraging step forward to better approaches that can improve water quality while promoting agricultural viability.

As we have conveyed at those meetings, our farmers and ranchers need assurance of economically viable options. We appreciate that you and your staff have generally been agreeable to the idea that standards need to be practical and achievable and that, absent a clear compliance problem in the nonpoint agricultural context, voluntary solutions need to be explored prior to regulation.

This is especially critical here, as the state's proposed risk rate of 10^{-5} , coupled with the proposed fish consumption rate, will result in derived numeric criteria that are generally two-and-a-half times more stringent than current National Toxic Rule criteria. We believe EPA must approve the standards proposed as they are more stringent than necessary to protect the health of Washington residents under EPA's regulatory criteria under 40 CFR 131.

We also appreciate that the state has considered the costs and benefits of Clean Water Act programs in relation to the state's economic development needs. This is appropriate as the state is required to adopt the least burdensome alternative that meets the stated objectives and goals of the proposed rule. We applaud the inclusion of implementation tools, mixing zones, variances and extended compliance schedules to help make compliance more reasonable and feasible. Without these flexibilities, water quality criteria, which drive 303(d) listings and TMDLs, would result in unattainable standards and unreasonable burdens on agricultural viability. For that reason, we ask Ecology to condition final enactment of the proposal on EPA approval of all implementation tools in the proposal.

We also kindly request a minor clarifying amendment to ensure that such implementation flexibilities can also be provided in the agricultural nonpoint context, to the extent that is not already sufficiently clear. We believe any pre-TMDL or early implementation efforts to improve water quality should generally focus on voluntary solutions first, through watershed-based promotion of conservation incentive programs. Regulatory hammers should be reserved as a last resort, or placed within in the appropriate sequence and allocation context of a completed TMDL. This approach will help Ecology appropriately protect water quality, as well as the public interest in food security and agricultural viability.

For additional clarification, to what extent if any does Ecology intend to continue using sampling of migratory fish tissue in determining pollution load allocations? This raises concerns because regulation of nonpoint agriculture driven by migratory fish tissue sampling could unfairly attribute toxic pollution to agricultural activities. Migrating fish spend little time in tributary stream systems adjacent to most agricultural activities. Typically, most toxic pollutants found in migratory fish tissue come from pollution originating in ocean and estuary environments, where these fish spend most of their life cycles.

As you know, due process requires a clear and proportional nexus between a regulatory burden and the magnitude of the problem such regulation aims to control. Sampling the tissue of anadromous migratory fish that spend little of their life cycle in tributaries does not fairly or accurately reflect pollution loads originating from the tributary environment. Perhaps this is why other states, including Oregon, predominately use a water column sampling approach, which more fairly reflects appropriate pollution loading allocations and control responsibilities within a particular stream reach. How will Ecology ensure that its approach is fair to farmers and ranchers moving forward?

As you know, increasing costs (from regulation or otherwise) can threaten the thin line of an agricultural operation's profitability. Once viable farms or ranches can give way to crowded subdivisions, making water quality worse, not better. In protecting water quality, please partner with us to also protect agricultural viability and food security, both of which are overriding considerations in the public interest.

Though we realize there are instances where preemptive or corrective regulation may be necessary in the agricultural nonpoint context, your assistance is greatly appreciated in helping voluntary processes get the funding and support they need to work as a viable first response. The Voluntary Stewardship Program, for instance, allows diverse local partners – agricultural, tribal, county, agency and environmental – to work together to promote creative solutions that protect critical environmental resources, reduce pollution, and improve the viability of agriculture—more efficiently delivering good environmental and agricultural outcomes at a lower cost.

We look forward to your responses, and to working together – “to promote both water quality protection and a healthy agricultural industry” – moving forward.

Sincerely,

John Stuhlmiller

Chief Executive Officer

