

SUBMITTED BY ELECTRONIC MAIL

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Dear Ms. Gore:

The [REDACTED] [REDACTED] [REDACTED] provides the following comment in response to the request from U.S. Environmental Protection Agency (“EPA”) and National Ocean and Atmospheric Administration (“NOAA”) for public comment on the adequacy of the State’s programs and policies for meeting the Coastal Zone Act Reauthorization Amendments (“CZARA”) 6217(g) agriculture management measures and conditions placed on Oregon’s Coastal Nonpoint Pollution Control Program (“CNPCP”).

[REDACTED] urges EPA/NOAA to disapprove Oregon’s program because: 1) basic agricultural management measures are not in place and 2) current agricultural nonpoint source controls are insufficient to protect water quality and designated uses.

I. Animal Agriculture is a contributing nonpoint source threat to Oregon’s coastal waters.

While CZARA regulates coastal *nonpoint* sources, concentrated² animal feeding operations (“CAFOs”) are *both* nonpoint sources and point sources. The federal Clean Water Act (“CWA”) defines CAFOs as potential point sources and requires them to be permitted and regulated under the federal National Pollutant Discharge Elimination System (“NPDES”) program under certain conditions.³ However, CAFOs also pose a tremendous nonpoint source problem.

¹ [REDACTED] is a grassroots organization that educates the public about the devastating effects of CAFOs, while working directly with the communities most heavily impacted by these animal factories. Through education, advocacy, and community organizing, [REDACTED] empowers rural communities to protect themselves from CAFOs and provides guidance and assistance to communities seeking to develop healthy, sustainable alternatives to industrialized livestock production.

² Oregon uses the term “confined” animal feeding operations. O.A.R. 603-074-0010(3).

³ 33 U.S.C. § 1342.

By EPA's own estimates, the annual production of manure produced by animal confinement facilities exceeds that produced by humans by at least three times.⁴ The majority of discharge from CAFOs result from the inevitable over-application to soil of the volumes of untreated manure and the resulting runoff into water systems. Manure in such large quantities carries excess nutrients, chemicals, and microorganisms that find their way into waterways, lakes, groundwater, soils, and airways.⁵

II. Oregon does not have basic management measures for agriculture in place because the State fails to adequately regulate CAFOs.

Water quality impairments from agriculture activities within the coastal nonpoint management area are widespread and the State's programs and policies do not adequately meet the 6217(g) management measures for agriculture to protect coastal waters. There are systemic problems within the State's agricultural water quality management program because Oregon fails to adequately regulate CAFOs. Additionally, it is unclear what enforcement actions regarding agriculture have been taken in the coastal nonpoint management area and what improvements resulted from those actions.

In Oregon, the state Department of Agriculture ("ODA") is essentially the agency administering and enforcing the federal Clean Water Act program for CAFOs. However, an extensive study conducted by the Animal Law Clinic at Lewis and Clark Law School ("Report") in 2011 reported that ODA lacks federal authorization to manage the federal NPDES program.⁶ Based on independent research, information from ODA files and documents from Region 10 EPA's response to a Freedom of Information Act request, the Report found the State's program to be lacking in a variety of areas, including ODA's system of investigating discharge complaints, inadequate inspections and monitoring, knowledge, and resources.

Enforcement of agricultural water quality in Oregon is limited and largely complaint-driven. In addition to numerous documented examples of actual pollution, complaints against certain facilities are repeatedly submitted with no follow-up done or recorded.⁷ ODA itself acknowledges difficulties due to the limited number of inspectors available to cover all CAFOs and the broad number of facilities regulated under the general NPDES permit. Given this resource shortage, complaints serve to bring potential violators to ODA's attention.⁸ Unfortunately many complainants report that ODA is unresponsive and dismissive of their concerns.⁹ It is not uncommon then, for complainants to give up reporting discharges despite witnessing continuous problems.¹⁰

⁴ EPA (2007). US EPA 2008 Compliance and Enforcement: Clean Water Act. pp 1-3.

⁵ The Pew Commission on Industrial Farm Animal Production (2008). *Putting Meat on the Table: Industrial Farm Animal Production in America*, Executive Summary, p. 9.

⁶ Kathy Hessler, et al., *Revised Report on the Authority to Administer and Enforce The Clean Water Act As it relates to CAFOs By Oregon's Department of Agriculture* (2011).

⁷ *Id.* at 33, 34.

⁸ *Id.* at 35.

⁹ *Id.*

¹⁰ *Id.*

These examples do not just demonstrate that CAFOs lack enforcement, but that Oregon's agricultural water quality program is severely inadequate.

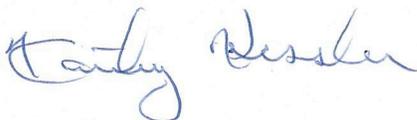
III. Oregon's Agricultural Water Quality Management Area (AWQMA) Plans are insufficient to meet CZARA.

CZARA 6217(g)(5) defines "management measures" as economically achievable measures to control pollution from nonpoint sources that reflect the greatest degree of pollution reduction achievable through the application of best available practices, technologies, processes, siting, operating methods or other alternatives. However, Oregon fails to ensure basic management measures are in place.

For example, Management Measure B1.3. states that Oregon will "[p]rovide a strategy to use the state's water quality law as a back-up mechanism for implementation of the CAFO measure." However, Oregon's Agricultural Water Quality Management Area ("AWQMA") plan is entirely voluntary. "The rules adopted under this subsection shall constitute the only enforceable aspects of a water quality management plan." O.R.S. § 568.912(1). "Area rules are the only enforceable aspect of an AWQMA plan." O.A.R. 603-090-0000 (4). And this voluntary program is not backed up by any legal enforcement authority to regulate nonpoint sources as EPA/NOAA requires.¹¹ The federal agencies' policy regarding this needed "back-up" enforcement is set out in their 1998 policy document, Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

In conclusion, Oregon's CNPCP contains insufficient measures to achieve and maintain water quality standards and protect designated uses. Additional management measures are needed.

Respectfully submitted,



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On Behalf of The
Socially Responsible Agricultural Project

¹¹ See also: EPA/NOAA's response to Oregon's Submittal of Additional Information on the State's Measures for Agricultural Sources in response to Federal Findings of January 1998, December 31, 2002, comments at 4-5. ("If the Oregon [Coastal Nonpoint Pollution Control Program] CNPCP plans to rely on voluntary programs to implement the program, a backup water quality authority is necessary.")