



Oregon

John A. Kitzhaber, MD, Governor

March 27, 2013

Department of Environmental Quality

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Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
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Dear Mr. Opalski and Ms. Davidson:

In a letter dated February 12, 2103, I notified you that the Oregon Department of Environmental Quality would not be able to meet certain timelines in the settlement agreement EPA and NOAA entered into to resolve disputes in Northwest Environmental Advocates v. Locke, et al. Specifically, Oregon cannot meet the June 30, 2013 settlement agreement date for issuing the Mid-Coast Implementation Ready TMDL or for the Onsite time of transfer inspection requirement. In light of that, I want to inform you of DEQ's current expectations relative to those timelines and accomplishments.

Mid-Coast Basin Implementation Ready TMDLs: Work on the temperature TMDL has been paused until there is better clarity on the resolution to the temperature standard litigation. However, DEQ is moving forward with the sediment-related IR-TMDLs and the bacteria IR-TMDLs.

The bacteria IR-TMDLs are continuing without any change of plans, though it will take longer than three months to complete the necessary work.

For the sediment-related IR-TMDLs, DEQ is setting aside its work on potential management measures and refocusing its efforts on the source assessment and linkage analysis. DEQ is committed to developing the Mid Coast IR-TMDL in a manner that makes it an effective tool for on the ground improvements to address impairments and pollutants from point sources and land management activities to improve water quality in the MidCoast. As with past TMDLs, this approach begins by discussing with local advisory committee members the following: water quality standards, 303d listings and location; pollutant loading capacity, and excess load; source assessment and linkage analysis; allocations and surrogates; margin of safety; and, implementation measures and the water quality management plan. In the Mid Coast IR-TMDL process we have already had discussions about a number of these topics and will build on that prior work. With this IR-TMDL, we will need to complete the extra steps related to the implementation work prioritization process, assignment of responsibilities and timeline for each effort. Of course, DEQ has decision-making authority and final discretion on all TMDLs issued by DEQ.



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Time of Transfer inspections for onsite sewage disposal systems: In September 2012, DEQ proposed rules that would require onsite system inspections at the time of property transfer in the coastal nonpoint program management area. We anticipated taking those rules to the Environmental Quality Commission for adoption in March 2013, but encountered hurdles along the way that have diverted us from that path.

In December 2012, we were advised by legal counsel that we would not be able to assess a reporting fee for time of transfer inspections due to a ballot measure passed by the voters in November 2012. This eliminated the funding mechanism for implementing the time of transfer program, causing us to rethink our approach. DEQ had also been approached by state legislators and the Oregon Association of Realtors about their concerns with the regulations, and suggested we consider a voluntary approach instead. In follow up conversations with the Realtors, we believe that, with their assistance, we will be able to implement a voluntary time of transfer inspection initiative that will be equally as effective as our original regulatory approach, and would be far more effective than an unfunded regulatory program would be. We are presently working with the Realtors to develop an agreement about the structure and support for a voluntary program. We will discuss the approach with EPA and NOAA once we've worked out the details with OAR.

Urban TMDL implementation guidance: DEQ remains on track to complete this work by the end of June 2013. We are currently reviewing edits received from EPA and NOAA and will incorporate them into the final document.

As you know, there are discussions between EPA and DEQ to see what options there may be to address the CZARA litigation timeframe. In addition, a meeting including EPA, Oregon Governor's Natural Resources Advisor, state agencies and NOAA has been scheduled for May 1 in Portland. We hope that these discussions may provide a mutually acceptable approach for moving forward that might address the outstanding CZARA issues.

Very truly yours,



Gregory K. Aldrich

Water Quality Administrator

cc: Dick Pedersen, Director, ODEQ
Eugene Foster, Watershed Management Manager, ODEQ