OREGON SHORES

CONSERVATION COALITION

March 19, 2014

Joelle Gore, Acting Chief
Coastal Programs Division (N/ORM3)
Office of Ocean and Coastal Resource Management
NOS, NOAA
1305 East-West Highway
Silver Spring, Maryland, 20910

[redacted]

Dear Ms. Gore,

The Oregon Shores Conservation Coalition submits these comments on behalf of its members, to address the U.S. Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) proposal to find that Oregon has failed to submit an approvable coastal nonpoint pollution control program pursuant to the Coastal Zone Act Reauthorization Amendments (CZARA). Oregon Shores is a nonprofit organization whose mission is to conserve the ecosystems, natural resources and scenic qualities of Oregon's coastal region, provide assistance and support to members and other concerned citizens in land use, water quality and other regulatory processes affecting coastal communities, and protect public access to and along Oregon's coast. Oregon Shores uses legal oversight, field monitoring, and public education to help protect Oregon coastal and marine environment, including Oregon's public shoreline recreation zone and public access points, from the impacts of pollution and development.

Oregon Shores generally agrees with the agencies that Oregon's coastal nonpoint program fails to meet the relevant standards for approval under the CZARA. While forest management is a primary contributor to nonpoint source pollution in our coastal region, Oregon Shores is

particularly concerned that Oregon's programs for new development and onsite sewage disposal systems are not adequate to protect Oregon's designated uses and meet Oregon's water quality standards.

Management Measures for Urban Runoff

Management measures for new development are critical to the protection of water quality in urban areas and downstream waterbodies. This is particularly important in coastal areas, as approximately 80 percent of the U.S. population lives in coastal areas. The conversion of open space to urban uses increases impervious surface area, and in turn results in increased delivery of runoff and pollutants to surface and ground waters.

Oregon Shores is particularly concerned about the impacts of pollutant loading from new development to Oregon's coastal estuaries, which support populations of fish and other aquatic life that are central to the health of coastal communities' economies and culture. Estuaries are by their very nature dynamic places, with varying degrees of salinity, sedimentation, and water flow depending on tidal and storm conditions and river flows. Most Oregon estuaries have already been heavily impacted by human activities including diking, ditching, and fill. Uncontrolled construction runoff, and the increased volumes of runoff that occur after construction has been completed, negatively impact the water quality and habitat health of estuaries in Oregon.

In the 1998 findings, the agencies imposed two conditions: within 2 years, Oregon was to include in its program (1) management measures consistent with the 6217(g) guidance, and (2) enforceable policies and mechanisms to ensure implementation throughout the coastal nonpoint management area. The proposed 2013 findings conclude that Oregon has not met the conditions. In particular, the state has not committed to taking formal regulatory action to require implementation of management measures where voluntary approaches are not successful.

Oregon Shores agrees with the agencies and believes that the agencies should require that the state provide a clear path forward for implementing the new management measures consistent with the 6217(g) guidance, whether by incorporating it into existing the NPDES general permit or crafting a new permit, and require regulatory action if voluntary measures do not result in meaningful and good faith efforts to achieve compliance. This is particularly important given the questionable effectiveness of the existing 1200C NPDES general permit for construction activities. Oregon Shores believes that management measures for new development in urban areas must include effective monitoring and enforcement requirements to ensure that best management practices do in fact succeed in protecting water quality and beneficial uses from nonpoint source pollution. If the state chooses a TMDL implementation approach, Oregon Shores agrees that the guidance must require that Designated Management Agencies (DMA) include control measures applicable to small MS4s under the Phase II program, and that Oregon must adopt a regulatory back-up approach in order to ensure that the guidance is implemented correctly by the DMAs. Absent such a program, the agencies cannot conclude that the TMDL implementation will be effective to protect Oregon's designated uses and meet Oregon's water quality standards.

Operating On-site Disposal Systems Management

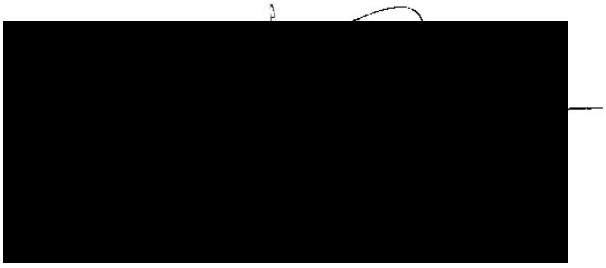
According to Oregon's Department of Environmental Quality, over 30 percent of Oregonians rely on septic systems to treat wastewater from their homes and businesses.[1] If a septic system is not functioning properly, illegally constructed, or undersized for the use, it can create a community health hazard as well as harm natural resources and water quality. According to EPA, most wastewater from domestic sources includes nitrates, phosphates, bacteria, viruses, and organic compounds.[2] Nitrates, bacteria and viruses are of most concern because of their common potential to contaminate groundwater and, in turn, sicken people who rely on that water for drinking. We know that on-site systems can lead to elevated chloride, sodium, and sulfate concentrations in ground water. Because dilution is the primary mechanism for reducing these compounds, restricting on-site system density may effectively control effluent levels and groundwater.

For proper functioning of on-site septic systems, it is important that the systems be sited in locations where they are properly separated from groundwater. Restricting on-site septic system density (the number of systems per unit of land area) lowers the nitrate input to ground water. Likewise, proper sizing of the system is important to minimize concentrations of contaminants and prevent hydraulic overloading. Proper maintenance and regular inspection can help ensure functioning systems last for many years.

In its 1998 findings, the agencies concluded that Oregon's on-site disposal system management measures conform to the 6217(g) guidelines, with the exception of an inspection program. The 1998 findings included a condition that Oregon finalize its plan for an on-site disposal inspection program within two years. In the December, 2013 findings, the agencies noted that Oregon has not complied with this condition, and therefore has not submitted an approvable program.

Oregon Shores supports the state's planned outreach efforts to educate property owners and promote voluntary inspections. However, Oregon has not described how it will track and evaluate the implementation and effectiveness of its voluntary program to promote routine inspections of conventional onsite disposal systems. Oregon Shores agrees with the agencies that a lack of inspection or other enforcement mechanism undermines the effectiveness of Oregon's voluntary management measures.

Sincerely,



[1] http://www.deq.state.or.us/wq/onsite/onsite.htm
[2] http://www.deq.state.or.us/wq/uic/docs/largecapacity.pdf