



March 20, 2014

Joelle Gore, Acting Chief,
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Office of Ocean and Coastal Resource Management
National Ocean Service, NOAA
1305 East-West Highway,
Silver Spring, Maryland 20910

via email: joelle.gore@noaa.gov



Re: EPA/NOAA Proposed Disapproval of Oregon's Coastal Nonpoint Pollution Control Program under CZARA

Dear Ms. Gore:

While the [redacted] agrees that Oregon's coastal nonpoint pollution control program needs significant improvement, we would hate to see Oregon's federal 319 share reduced. Our state relies almost solely on these funds for our nonpoint source programs, and cutting them would only make the problem worse. We submit these comments in the hopes that Oregon will strengthen its program in order to receive approval.

We agree with NOAA and EPA that Oregon's onsite septic and new development programs need improvement. In addition, we are providing information regarding Oregon's agricultural water quality management program. We are not submitting information on the forestry program because it is outside our area of expertise.

New Development

NOAA and EPA asked DEQ to complete TMDL implementation guidelines for new development, create a strategy for completing and updating TMDL implementation plans, and provide training and education to ensure DMAs use the guidance.

In 2007 OEC convened a statewide task force to develop recommendations for reducing the impacts of urban runoff on Oregon's watersheds. The recommendations are included in our report, "Stormwater Solutions: Turning Oregon's Rain Back Into a Resource," which is available at www.oeconline.org/stormwater.

We have seen a draft of guidance to urban DMAs regarding post-construction stormwater management, and we believe it will be a helpful document. However, DEQ has not demonstrated that it has the ability to educate DMAs or ensure that the guidance is implemented. DEQ's basin coordinators are spread too thin and the agency lacks the capacity and perhaps the expertise to provide technical assistance to urban DMAs to ensure that TMDLs are implemented.

What training is provided to cities that do not have MS4 permits has been provided by us, in partnership with OSU Sea Grant Extension and Green Girl Land Development Solutions through our Stormwater Solutions program (www.oeconline.org/stormwater and <http://extension.oregonstate.edu/stormwater/>.) DEQ basin coordinator conversations with managers at urban DMAs have been important in encouraging their participation in Stormwater Solutions workshops, and we value the partnership we have with DEQ. The Stormwater Solutions program has been funded primarily by 319 grants, and we are currently planning to develop a Low Impact Development Guidance Manual (www.oeconline.org/lidmanual) to serve these communities, since Oregon does not have a state stormwater manual.

In our conversations about the LID guide project with non-MS4 urban DMAs in the coastal zone, many have told us that they need model stormwater codes and ordinances as well. That is not currently in the scope of our project proposal, and we referred them to the water quality model code developed by Oregon DLCDC. Most were not aware of that model code, and we don't know yet whether it will meet their needs.

In addition to needing a more robust technical assistance program, we believe Oregon should require urban DMAs to adopt specific post-construction stormwater management strategies similar to those required in Phase II MS4 permits, rather than only recommending that they do so. As it currently stands, TMDL implementation is essentially voluntary and there is little to no enforcement.

DEQ also proposed that when a new EPA stormwater rule is promulgated pertaining to new development outside of MS4 cities, DEQ's implementation of that rule would serve as a component of its coastal nonpoint pollution program for new development. It is disappointing that a state that was once a national leader on environmental issues now waits for federal mandates in order to protect our watersheds from urban runoff. We do not yet know what the new stormwater rules will say, and whether they will be adequate to protect Oregon's natural resources from impacts of new development.

Existing Onsite Septic Disposal Systems

As you know, DEQ had proposed to require inspections of onsite systems at the time of real estate property transfers, but that proposal was opposed by the Oregon Association of Realtors, and the ballot measure that prohibits real estate transfer fees prevents DEQ from establishing a fee to fund such a program.

As an alternative, DEQ created an educational program for Realtors and passed legislation that adds questions about septic systems to the property disclosure statement. DEQ has begun providing workshops to regional Realtor associations, and we think that is a valuable first step. However, DEQ has no way of measuring whether the program results in an increase in onsite system inspections. We still think there is a need for regular inspections of existing septic systems, whether it takes place at the time of property transfer or at a different time.

A few local jurisdictions have developed more advanced onsite septic programs, where they conducted outreach to property owners in targeted areas, offered free inspections, and established loan programs using the State Revolving Fund to support repair or replacement of failing septic systems. We would like to see Oregon DEQ take a more proactive role in establishing similar programs in areas where septic systems are impacting water quality – increasing onsite system inspections as well as financing repairs, and measuring the program's effectiveness.

We know that septic systems are impacting water quality in many parts of the state, including coastal communities. Oregon does not have any 303(d) listings for nitrates because we do not have nitrate water quality standards. However, we do have three state-designated Ground Water Management Areas where high nitrate levels threaten the safety of drinking water sources. In addition, DEQ's recent Rogue Basin Groundwater Investigation found elevated nitrate levels. These nitrates come primarily from agriculture and onsite septic systems. We also have communities such as Tenmile Lakes on the South Coast, where septic systems are directly impacting surface water.

In addition, we recently learned that William Fish at Portland State University is conducting studies of emerging contaminants in coastal waters. His research found higher detections of emerging contaminants in rural areas associated with onsite septic systems, than in urban areas with wastewater treatment plants. While we have seen a presentation about these findings, we are not yet aware of a published study. This research would indicate that effluent from onsite septic systems is impacting coastal water quality.

Agriculture

Oregon is currently failing to protect water quality standards and beneficial uses in agricultural areas in our coastal watersheds, including habitat necessary to the survival of native fish and to support both recreational and commercial fisheries. This is due to the failure of the state's agricultural water quality program to control run-off pollution from riparian areas and to control erosion and sediment from agricultural lands on fish bearing streams. We do not believe that Oregon has in place a program to:

- protect and restore riparian areas needed to maintain cool stream temperatures and habitat
- protect and restore channel conditions from modification
- identify where more protection is needed to protect important habitat for species
- identify where more pollution control is needed to protect uses

We believe Oregon is not adequately controlling run-off pollution from agricultural lands for two reasons:

1. It is publicly acknowledged by Oregon Department of Agriculture (ODA) and Oregon Department of Environmental Quality (DEQ) staff that 100% landowner compliance with current agricultural water quality management area rules alone is not sufficient to meet Water Quality Standards, including TMDL Load Allocations. The area rules are the only enforceable part of the Oregon Agricultural Water Quality Management Program, yet they are insufficient to meet water quality standards. For example, current rules only prohibit agricultural activities from preventing the establishment of riparian vegetation. However, no restoration of riparian vegetation is required, even if this rule is violated. When a TMDL Load Allocation for temperature requires 80-95% riparian vegetative cover in a watershed, compliance with the rules alone will not restore the riparian vegetation necessary to achieve the Load Allocation.

Furthermore, the Oregon Department of Agriculture's Water Quality Management Program does not ensure landowner compliance with the admittedly insufficient rules. Until recently, compliance with the area rules was only investigated if a signed complaint

was lodged. ODA has recently developed a new strategy for its water quality program to determine compliance with the rules. This is an important step forward. However, there is still a serious scale problem with the program's ability to ensure compliance with the rules. Under ODA's current plan to assess agricultural landowner compliance with the area rules by 6th field HUC watershed, it can assess compliance in 6-12 6th field HUCs/biennium. At this rate, ODA will be able to assess compliance with its (insufficient) rules in approximately 1500 6th field HUC watersheds containing agricultural land uses statewide in 250 years. This is not a reasonable timeframe to ensure compliance with the rules.

2. Since ODA acknowledges that the enforceable part of its Agricultural Water Quality Management Program, the rules, are by themselves insufficient to meet water quality standards and to achieve TMDL Load Allocations, it will rely on voluntary actions by landowners described in its unenforceable Area Plans to bridge this performance gap between the rules and meeting water quality standards. However, ODA does not have an implementation plan to ensure these voluntary actions occur. Oregon has not quantified the level of additional landowner actions, or their nature, necessary to bridge this gap between compliance with the rules and achieving TMDL Load Allocations. Its current strategy relies on the relatively random actions of local soil and water conservation districts, which do not have regulatory authority.

In short, Oregon is not reliably or adequately controlling run-off pollution from agricultural lands due to agency reliance on insufficient rules, inadequate enforcement of the rules, and lack of an implementation plan with specific timelines and goals to enlist agricultural landowners in the voluntary actions necessary to protect and restore riparian vegetation, prevent erosion, and reduce bacteria run-off into local creeks and rivers.

We hope EPA will choose not to penalize Oregon by taking away its 319 funding, but instead will work with the state to develop a more robust Agricultural Water Quality Management Program. ODA has already begun this process, but needs to be held to its statutory mandate to design a program that will enable Oregon to meet water quality standards.

Thank you for this opportunity to comment on the adequacy of Oregon's coastal nonpoint source pollution control program.

Sincerely,

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[Redacted contact information]

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