



Oregon

Theodore R. Kulongoski, Governor

David Powers

Department of Environmental Quality

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July 26, 2010

Michael Bussell,
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John King
Office of Coastal Resource Management
National Ocean and Atmospheric Administration
1305 East West Highway #11305
Silver Spring, MD. 20910

RE: Oregon Department of Environmental Quality's commitment to implement the Implementation Ready TMDL Approach Identified in the "Oregon Department of Environmental Quality's Response to the EPA and NOAA's Conditions of Fully Approving Oregon's Coastal Nonpoint Program (CNPCP), submitted by letter dated May 12, 2010"

Dear Mr. Bussell and Mr. King:

This letter is to provide additional detail on Oregon Department of Environmental Quality's (DEQ) commitment to implement the Prescriptive TMDL approach. It should be noted, that in the attached material, Attachment A, describing the Options developed by the State of Oregon to address the three conditions to the CNPCP, the Department used the term "Prescriptive TMDL", in the months since this material was first developed that term has evolved to "Implementation Ready TMDLs". The terms mean the same thing, but the Department will be using the term Implementation Ready TMDL to describe the future detailed TMDL approach.

Implementation Ready TMDLs provide additional detail on sources of the pollutant, specifics on TMDL implementation for point and nonpoint sources, and reasonable assurance that the TMDL will result in pollutant load reductions for restoring water quality and meeting water quality standards. DEQ has the authority for developing Implementation Ready TMDLs in OAR 340-042.

The Department of Environmental Quality sent a letter to you on July 21, 2010 in response to your joint letter of May 12, 2010 wherein we committed to resolving the remaining three Nonpoint Source Plan elements for the Coastal Nonpoint Plan within the schedule provided or as modified by the DEQ. However, it has come to our attention that the commitments description was not as clear as it could have been. Consequently, we would like to provide this clarification for the Department's commitments under the "Additional Management Measures for Forestry" section of the July 21st letter.

- 1.) DEQ commits to implementing the Implementation Ready TMDL Approach (prescriptive TMDL approach), Implementation Plan, and "safe Harbor" BMP approach described in Option 1 of Attachment A to this letter which would identify BMPs that could be used to meet the load allocations. This document was developed by the state and reviewed by the affected state agencies and the Oregon Governor's Office for the specific purpose of identifying options the state would be committed to implement to resolve the conditional approval issues associated with the state's Coastal Nonpoint Source Control Plan.
- 2.) DEQ will use the Implementation Ready TMDL approach in the coastal basins beginning with the Mid-Coast Basin and then in the subsequent coastal basin on a schedule to be described in a letter to be submitted to EPA/NOAA on or before September 30, 2010.
- 3.) The Implementation Ready TMDL approach will provide more detailed source delineation than the current Oregon TMDL approach thus allowing DEQ to specifically identify significant nonpoint sources, including significant forestry sources.
- 4.) DEQ commits to establishing enforceable load allocations in the Implementation Ready TMDL for all significant nonpoint sources, including significant forestry nonpoint sources.
- 5.) DEQ commits to developing "safe Harbor" BMP's for the load allocations established for the significant nonpoint sources, including significant forestry nonpoint sources.
- 6.) DEQ commits to issuing an implementation order to significant sources, including significant forestry nonpoint sources that have received load allocations through the Implementation Ready TMDL Approach.
- 7.) DEQ commits to using the Implementation Ready TMDL approach in the Mid Coast Basin to address temperature and bacteria 303(d) listings. A similar approach will be used for sediment in the Mid Coast Basin.

We hope this clarifies the Department's commitments and position.

Sincerely,



Neil Mullane, Administrator
Water Quality Division

Cc: Marvin Brown, ODF
Peter Daugherty, ODF
Don Waye, EPA HQ
David Powers, EPA Region 10
Allison Castellan, NOAA HQ
Don Yon, DEQ WQ HQ
Amanda Punton, DLCD
Eugene Foster, DEQ WQ HQ

State of Oregon Approach to Receive Final Approval of the Coastal Nonpoint Source Control Plan

(Provided to EPA/NOAA on July 26, 2010 to identify the material which had been discussed by the state agencies and the Oregon Governor's Office in the Fall of 2009 and previously approved for release to the federal agencies in an effort to outline proposed approaches for resolving the conditional approval of Oregon's (CNPCP))

Introduction

The purpose of this document is to identify options developed by the State of Oregon for addressing EPA & NOAA's conditional approval of three management measures in the State of Oregon's Coastal Nonpoint Source Control Plan (CNPCP) and getting full approval from the federal agencies for these management measures.

Three management measures in the CNPCP were identified as deficient and received conditional approvals by the federal agencies. These management measures were:

1. Forest Management in Critical Coastal Areas: Specific areas that need to be addressed are:
 - a. Increased riparian protection of small, medium, and non-fish bearing streams;
 - b. High risk landslide areas;
 - c. Mitigating the impacts of legacy roads.
2. On-Site
3. Urban Development

States with an approved coastal zone management program must develop and submit to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval a CNPCP. The CNPCP serves as an update and expansion of the State nonpoint source management program developed under section 1329 of Title 33 (Clean Water Act). The three conditionally approved management measures must receive final approval by the USEPA and NOAA to have an approved CNPCP for the State of Oregon.

Options for Getting Full Approval of Management Measures

Forest management in critical coastal areas

There are two options outlined below for addressing increased riparian protection in the forest management measure. One option is a basin specific approach using TMDLs and the other is a region wide programmatic approach. The second approach would also be used to address high risk landslides and mitigating the impacts of legacy roads.

Option #1: TMDL Process for Increased Riparian Protection (January 2010 through January 2011)

TMDL developed for a basin that is more prescriptive and requires nonpoint sources of pollution to meet the TMDL load allocations. TMDLs are a requirement of the CWA.

A more prescriptive TMDL would evaluate loadings at the landowner scale and assigns load allocations to specific sources such as: land owners, crop type, or a specific land use.

The TMDL and Water Quality Management Plan (WQMP) would be developed to:

1. identify loading capacity to meet a WQS (for example, temperature);
2. use a surrogate for the load allocation (for example, effective shade) to meet the WQS;
3. assign load allocations to specific public and private sources identified in the TMDL;
4. identify "safe harbor" BMPs that could be used to meet the load allocation (for example, basal tree area retention within a riparian management area);
5. require TMDL Implementation Plans from all sources assigned a load allocation, sources would be required to identify in their plan how they will meet their load allocation;
6. The TMDL would be issued as an administrative order by DEQ.
7. DEQ would request that the BOF implement these LAs with *basin specific rules* using the proposed safe harbor BMPs or other BMPs that are equally effective.
8. DEQ approval or disapproval of TMDL Implementation Plans based on the plans ability to meet the load allocations or the basin specific rule adopted by the BOF

If the Board declines to implement the TMDLs, DEQ could ask the EQC to petition the Board under ORS 527.765. However, DEQ would reserve its authority to impose BMPs under ORS 468B.110 to the extent necessary to comply with Sections 303 and 309 of the CWA.

Option #2: Programmatic Process for Increased Riparian Protection, High Density Landslide Areas, & Legacy Roads (March 2010 through July 2011)

There will be combined EQC & BOF meetings to explore these areas of concern. Five joint sessions would be held one for each of the following areas:

1. CZARA litigation: background, process, and legal issues and definitions, specifically on the meaning of legacy roads
2. Policy: EQC and the CWA for achieving WQS; BOF and FPA for protecting beneficial uses
3. Implementation of TMDLs and FPA and what other land uses, owners (federal, state) and states are doing for riparian protection
4. ODF & DEQ present available technical information (such as RipStream Study results) on these three areas in regards to water quality standards, TMDLs, and Category 4B
5. Recommendations by EQC and BOF on how to move forward

Depending on the outcome of the combined EQC and BOF meetings and recommendations the EQC could petition the BOF to begin rule changes to address identified needs. This may include increased riparian protections for small, medium and non-fish bearing streams, high density landslide areas, and legacy roads in order to receive full approval for the forestry management measure and meet the requirements of the CWA.

On-Site

DEQ will work on a rule change to require inspections by certified inspectors from either DEQ or the County of on-site systems at the time of property transfer. Certification of Inspectors would occur. Inspections would at least include the tank, any treatment units, and drainfield. The schedule for development of this program is:

Policy Option Package for Rules Development completed by November 2010

Request Funding from the 2011 Oregon Legislature to Support On-Site Time of Sale Inspections – January 2011 through June 2011

Rule Development completed by December 2012

Attachment A to DEQ's July 26, 2010 letter to EPA/NOAA

Rule Implementation and Inspections begin in March 2013

Urban Development

A detailed Urban TMDL Implementation Plan Guidance document will be developed by DEQ. The process for developing the Guidance is:

Initial Draft Guidance Document completed March 2010

Final Draft Guidance Document completed September 2010

Public Review of Final Draft Guidance Document completed December 2010

Final Guidance Document completed March 2011

Workshops for DMAs begin April 2011