U.S. Department of Commerce
National Oceanic and Atmospheric Administration

U.S. Environmental Protection Agency

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Neil Mullane
Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Bob Bailey
Administrator
Coastal Division
Department of Land, Conservation and Development
635 Capitol Street, NE, Suite 150
Salem, Oregon 97301

Dear Mr. Mullane and Mr. Bailey:

The Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) have been working closely with you and your staff to address the remaining conditions on Oregon's Coastal Nonpoint Pollution Control Program (Coastal Nonpoint Program). We are very pleased with the progress that has been made. Over the past several months, we have had several meetings and conversations to discuss Oregon's October 29, 2009 draft approach to receive full approval of its Coastal Nonpoint Program the state shared with us in January. We would like to take this opportunity to formally follow up on the state's proposal and clarify what EPA and NOAA would need from the state before we are able to consider fully approving Oregon's Coastal Nonpoint Program.

We are highly supportive of Option #1, the prescriptive TMDL approach, extended to address all three outstanding forestry issues, for meeting the additional management measures for forestry, as well as the two strategies you laid out for satisfying the new development and onsite disposal system conditions. We believe these approaches could enable the state to receive full approval of its Coastal Nonpoint Program. However, additional clarification and details are needed before we can make a final decision.

The enclosed attachment lists the information Oregon must provide and timeline for doing so before EPA and NOAA would be able to approve Oregon's program. We recognize that some of these items may be challenging and require time to complete. EPA and NOAA developed the timeline in consultation with state staff to ensure due dates were reasonable yet keep the process moving forward. If sufficient progress is not being made, EPA and NOAA may disapprove Oregon's program and withhold a portion of the state's Clean Water Act Section 319 and Coastal Zone Management Act Section 306 funding pursuant to 16 U.S.C. § 1455b(c).

After careful consideration, EPA and NOAA no longer believe pursuing a change to the Forest Practices Act (Option #2) is a viable option at this time. It would take years for the rule change process to play out and there is no certainty the resource-intensive effort would ultimately result in substantive rule changes to address NOAA and EPA's remaining forestry concerns: adequate protection of riparian and landslide-prone areas, and management/maintenance of forestry roads impairing water quality, particularly legacy roads.

As always, EPA and NOAA look forward to continuing to work with you to address the remaining conditions on your Coastal Nonpoint Program. Please let us know if there is any specific assistance you need. For example, we would be happy to provide existing reports and data, and/or comparable examples on how the outstanding additional management measures for forestry can be met. NOAA's National Marine Fisheries Service could also provide information on forest management strategies that will help protect aquatic species, including salmon.

We encourage you to share proposed riparian, landslide, and legacy road best management practices (BMPs) as well as drafts of the onsite disposal system rules and TMDL Implementation Guidance with us to review. Early NOAA and EPA feedback will help ensure the BMPs, onsite rules, and TMDL Implementation Guidance will help to protect water quality and aquatic resources and satisfy the conditions on the state's Coastal Nonpoint Program.

Please contact either Dave Powers of EPA Region 10 at (503) 326-5874 or Allison Castellan of NOAA at (301) 563-1125 if you have questions.

Sincerely,

John King, Chief
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Mike Bussell, Director
Office of Water and Watersheds
Environmental Protection Agency, Region 10

Enclosure

cc: Don Yon, OR DEQ
Amanda Punton, OR DLCD
Eugene Foster, OR DEQ HQ
Don Waye, EPA HQ
Dave Powers, EPA R10
Allison Castellan, NOAA

Attachment

What NOAA and EPA Need from Oregon for Coastal Nonpoint Program Approval

OSDS:

1. Adopt new rules requiring regular inspections for OSDS. Inspecting the systems at time of property transfer by trained/certified inspectors as laid out in Oregon's October 29, 2009 draft strategy is sufficient. Please provide NOAA/EPA with a copy of the draft rules to review to ensure the final rules will meet Coastal Nonpoint Program requirements.

Timeline:

- **November 30, 2010:** Policy Option Package for Rules Development completed.
- **January 2011 through June 2011:** Request funding from the 2011 Oregon Legislature to support time-of-sale inspections for OSDS.
- **June through December 2012:** Provide draft(s) of rule language to NOAA and EPA for review/comment.
- **December 31, 2012:** Rule development completed.
- **January 31, 2013:** Submit new rules to NOAA and EPA for review/approval.
- **March 2013:** Rule implementation and inspections begin.

New Development:

1. Complete TMDL Implementation Guidelines for the Coastal Nonpoint Program management area that incorporate the new development management measure requirements or practices consistent with the new development measure. Please provide NOAA and EPA with drafts of the guidance to review to ensure the final product will meet Coastal Nonpoint Program requirements.

2. Submit a strategy and schedule for completing and updating TMDL Implementation Plans within the Coastal Nonpoint Program management area to be consistent with the new TMDL Implementation Guidance.

Timeline:

- **June 30, 2010:** Initial draft guidance document completed and provided to NOAA and EPA for review and comment.
- **December 31, 2010:** Final draft guidance document completed and provide to NOAA and EPA for review and comment.
- **March 31, 2011:** Public review of final draft guidance document completed.
- **June 30, 2011:** Final guidance document released and submitted to NOAA and EPA, along with strategy and schedule for updating TMDL Implementation Plans.
- **June/July 2011:** Workshops for Designated Management Agencies begins.

Additional Management Measures for Forestry:

1. Commit to the prescriptive TMDL, Implementation Plan, and "safe harbor" BMP approach ("Option 1" under the State's proposal) that will satisfy the additional management measures for forestry condition, specifically addressing riparian and landslide-prone areas, and road issues.

2. Provide a legal opinion from the Oregon Attorney General's Office that clearly concludes Oregon DEQ has the authority to prevent nonpoint source pollution and require implementation of the additional management measures for forestry. Specifically, under the state's current proposal, the legal opinion must conclude that DEQ has the authority to enforce TMDLs, including "safe harbor" BMPs, with regard to riparian buffers, landslide-prone areas, and legacy roads.

3. Provide a more detailed description of the new prescriptive TMDL process. This revised description should:
   a. Clarify the mechanism DEQ plans on using to require prescriptive, "safe harbor" BMPs. Will the BMPs (or possibly a menu of "safe harbor" BMPs to select from) be placed in the TMDLs themselves or only included in the TMDL Implementation Plans? Does DEQ's enforcement authority apply to both TMDLs and Implementation Plans?

   b. Briefly describe how the prescriptive TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, particularly on "legacy roads." During our January 14th meeting/conference call, the state discussed the potential use of DOGAMI LIDAR coverages, Relative Bed Stability, and GRAIP methodologies to assess, target, and address landslide prone areas and road issues in support of the new prescriptive TMDL process. DEQ should briefly describe these methodologies and/or others and how they will be used in the new TMDL process. The description should include how these tools will help target and, where needed, develop "safe harbor" BMPs.

   c. Provide a few examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads, specifically legacy roads, and meet load allocations and surrogate targets. We recognize that the BMPs could vary from parcel to parcel based on the site conditions but we need a reasonable assurance that the types of "safe harbor" BMPs Oregon is developing link to, and would meet, water quality standards and protect beneficial uses. For example, requirements for restricting harvest intensities and methods on high risk landslide prone areas should be described along with the triggers or thresholds for their application. We recommend providing comparable examples of harvest restrictions on high risk landslide prone areas such as those applied under the Washington Forests and Fish rules as well as the harvest restrictions under the Oregon Forest Practices Act rules related to high risk landslide areas above roads and buildings. The Northwest Forest Plan also includes measures for landslide prone areas that DEQ could consider.

   d. Briefly describe DEQ's approval/disapproval process for TMDL Implementation Plans. To address the additional management measures for forestry condition, decisions to approve or disapprove need to be based on the plan's ability to meet load allocations or surrogate targets. If DEQ's decisions are based on a basin-specific rule adopted by BOF, then such rule must have the ability to meet load allocations or surrogate targets.

4. Provide a schedule for developing new prescriptive TMDLs and safe harbor BMPs and updating existing TMDLs and Implementation Plans within the 6217 boundary following the new prescriptive TMDL process.

5. Complete and submit to EPA and NOAA a prescriptive TMDL that includes safe harbor BMPs and a TMDL Implementation Plan for the Mid-Coast basins and that addresses the outstanding additional management measures for forestry condition.

Timeline:

- **June 30, 2010:** Submit a legal opinion from Oregon's Attorney General's Office (Item 2).
- **September 30, 2010:** Provide commitment that Oregon will pursue prescriptive TMDL process for addressing the additional management measures for forestry condition **January 31, 2011:** Provide additional detail on the prescriptive TMDL process (Item 3).
- **March 31, 2011:** Provide a schedule for implementing the prescriptive TMDL approach throughout the Coastal Nonpoint Program management area which includes a timeline for developing new TMDLs as well as updating existing TMDLs.
- **June 30, 2012:** Complete and submit prescriptive TMDLs and TMDL Implementation Plans for Mid-Coast basins.