January 30, 2014

OREGON COASTAL NONPOINT PROGRAM
NOAA/EPA INTERIM DECISIONS

A. URBAN AREAS MANAGEMENT MEASURES – NEW DEVELOPMENT

PURPOSE OF MANAGEMENT MEASURE: The purpose of this management measure is four-fold: (1) decrease the erosive potential of increased volumes and velocities of stormwater associated with development-induced changes in hydrology; (2) remove suspended solids and associated pollutants entrained in runoff that result from activities occurring during and after development; (3) retain hydrological conditions that closely resemble those of the pre-disturbance condition; and (4) preserve natural systems including in-stream habitat.

CONDITION FROM JANUARY 1998 FINDINGS: Within two years, Oregon will include in its program: (1) management measures in conformity with the 6217(g) guidance; and (2) enforceable policies and mechanisms to ensure implementation throughout the coastal nonpoint management area. (1998 Findings, Section IV.A).

PROPOSED FINDING: Oregon has satisfied this condition.

RATIONALE: In its March 20, 2014, submittal to NOAA and EPA, the State has committed to using its finalized TMDL implementation plan guidance for post-construction to voluntarily implement the new development management measure, to track this implementation with milestones, and to use Oregon Department of Environmental Quality's (DEQ) regulatory authorities to accomplish the objective of this measure in the event that the State's voluntary approach falls short of meeting the tracked milestones.

The performance standard required by the new development management measure is to reduce post-construction development total suspended solids (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than pre-development loadings, and to maintain post-construction development peak runoff rate and average volume at pre-development levels.

Communities/municipalities designated as Municipal Separate Stormwater Sewer Systems (MS4s) are excused from implementing the new development management measure, per the federal agencies' December 20, 2002, memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*, as they are regulated under the National Pollutant Discharge and Elimination System (NPDES) Phase I and II stormwater permit program. The federal agencies rely on the NPDES program to manage polluted runoff from new development in these areas. There are 11 communities/municipalities currently designated as MS4s within the coastal nonpoint management area, as follows: Ashland, Gold Hill, Grants Pass, Medford, Ranier, Rogue River, and the Rogue Valley Sewer Services (which includes Central

Point, Eagle Point, Jacksonville, Phoenix and Talent, as well as portions of Jackson County in the Medford Urbanized Area).

Beyond regulated MS4 communities/municipalities, Oregon is relying on a TMDL implementation strategy to implement the new development management measures across its coastal nonpoint management area. In 2014, Oregon finalized and issued its *TMDL Implementation Guidance for Including Post-Construction Elements in TMDL Implementation Plans*, which focuses on the creation of local programs to control pollution loads from new development and to meet the specific objectives of the new development management measure. The guidance is primarily aimed at Designated Management Agencies, or DMAs (chiefly, local governments), that are subject to Water Quality Management Plans (WQMPs) associated with TMDLs where post-construction stormwater management has been identified as a load reduction strategy. DMAs are required to develop management strategies within TMDL implementation plans to address post-construction runoff where WQMPs have identified this need. The guidance strongly encourages the use of a model stormwater ordinance (included as an appendix to the guidance) specifically designed to meet the new development management measure and other objectives.

Oregon DEQ is required under Oregon Administrative Rule (OAR) 340-042 (commonly referred to as the TMDL rule) to develop WQMPs for non-agricultural and non-forestry related land use sectors. These State-issued WQMPs provide the framework of management strategies for attaining and maintaining water quality standards. In Oregon's coastal nonpoint management area, the State has TMDLs in place, either for bacteria, sediment, nutrients or another pollutant, that cover nearly the full extent of its coastal nonpoint management area, and must therefore develop WQMPs for most urbanized and urbanizing areas that address these impairments.

Under Oregon's TMDL Rule, each urban or rural residential DMA identified as a source of stormwater or non-stormwater pollution (for example, excess heat causing unnaturally wide variations in receiving water temperature) must develop and implement a TMDL implementation plan to meet its assigned load allocation under the TMDL. Therefore, nearly all communities (DMAs) within the coastal nonpoint management area are assigned load allocation targets for bacteria, sediment, nutrients, or another pollutant. All community-specific TMDL implementation plans must be submitted to Oregon DEQ by the DMAs for review and approval. Under OAR 340-042-0080, any TMDL implementation plan must include: a timeline for implementing management strategies that will meet the required TMDL load allocation; a schedule for completing measurable milestones; and performance monitoring that demonstrates implementation of the strategies identified in the plan. The DMA must also provide reasonable assurances that the strategies described for addressing post-development runoff will be effective in meeting the TMDL load allocation.

Oregon DEQ asserts that bacteria and sediment impairments—and potentially nutrient impairments—are historically related to urban stormwater. There are 62 community/municipal

DMAs spread across Oregon's coastal nonpoint management area, of which 49 (79 percent) are subject to either bacteria or sediment TMDLs or are regulated MS4 communities under the national Phase II stormwater program. These 49 communities/municipalities comprise approximately 92 percent of the combined population of the 62 communities. Five additional communities in this management area are subject to a nutrient TMDL that may trigger the development of TMDL implementation plans to address post-construction runoff.

The State is tracking the implementation of this voluntary approach through a variety of means. Primarily through its TMDL Tracking Matrix that DMAs are required to use, DEQ has a system in place to regularly track DMA assignments, TMDL implementation plan approval, TMDL plan implementation, and compliance. DEQ has established a target of five years to address and implement the CZARA New Development Management Measure across the coastal nonpoint management area, with the potential for an additional five years from the date of TMDL approval for any forthcoming urban TMDLs. This will allow time for DMAs to incorporate, develop, and implement appropriate management strategies including for addressing post-construction runoff.

To promote this guidance and encourage local implementation of the 6217(g) new development management measure, the State has committed to a schedule for training and educating DMAs and other stakeholders about the guidance. Oregon DEQ has developed an outreach strategy to promote the guidance (and the recommendations it contains) to the public, potentially affected communities and DMAs. Oregon DEQ developed outreach curricula in late 2014, and in early 2015 Oregon DEQ is scheduling a number of public informational meetings in different basins across the State's coastal nonpoint management area. These will be followed by one-on-one meetings with DMAs/permittees during TMDL/WQMP development and implementation (2015 through 2019).

In the event that Oregon's voluntary approach is shown to be inadequate for implementing the new development management measure within a reasonable time frame, DEQ has committed to taking formal regulatory action to accomplish that objective. DEQ has proposed an action horizon of five years from finalizing TMDL implementation plans and stated that this action could take one of three forms: (1) DEQ would develop and implement a post-construction general permit to meet the new development management measure and align with (or be combined with) Oregon's existing construction site runoff NPDES general permit (1200-C/CN), either through DEQ's permitting authority [ORS 468B.050] or by requesting that Oregon Environmental Quality Commission adopt a rule requiring these permits [ORS 4608B.020]; (2) develop a rule for all DMAs to meet the new development management measure for adoption by Oregon Environmental Quality Commission [ORS 468.020; 468B.020; and 468B.110]; or (3) designate local governments in the coastal nonpoint management area as regulated MS4 communities [federal - 40CFR 122.26 and state – ORS 468B.035].

B. OPERATING ONSITE SEWAGE DISPOSAL SYSTEMS

PURPOSE OF MANAGEMENT MEASURE: The purpose of this management measure is to minimize pollutant loadings from operating onsite sewage disposal systems (OSDS) by inspecting them at a frequency adequate to ascertain whether they are failing.

CONDITION FROM JANUARY 1998 FINDINGS: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal. (1998 Findings, Section IV.C).

PROPOSED FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon requires all alternative decentralized treatment systems (including sand filter systems, pressure distribution systems and recirculating gravel filter systems) to have service contracts with certified maintenance providers and owners of these systems must submit annual reports to Oregon DEQ (OAR 340-071). . Failure to submit an annual maintenance report results in an enforcement process which may include a civil penalty (OAR 340.012.0060). For these systems, the inspection requirements of the OSDS management measure have been met. According to Oregon DEQ estimates, these alternative decentralized treatment systems currently account for 10 percent of the OSDS in the coastal nonpoint management area, although the proportion of these systems is growing over time; for instance, a survey of all newly permitted systems in Oregon's coastal counties revealed that nearly 30 percent were alternative systems required to have annual maintenance contracts.

For the remainder (conventional septic systems), Oregon proposes to meet the management measure for OSDS inspection by promoting voluntary time-of-transfer inspections and through education of homeowners and realtors, with incentives for tracking by certified inspectors. In accordance with NOAA and EPA guidance from 2001 on enforceable policies and mechanisms, the federal partners will approve a voluntary or incentive-based program as long as the State provides: a description of the voluntary or incentive-based programs the state will use to encourage implementation of the management measure, including the methods for tracking and evaluating those programs; a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary. Oregon has provided these items.

With regard to Oregon's voluntary, incentive-based approach, Oregon has developed a comprehensive strategy. Oregon enacted a law (effective in January 2014) that expands mandatory disclosure on the condition of OSDS on the Seller's Disclosure Statement for all real estate transactions (ORS 105.464). Answers to descriptive OSDS questions, as well as

supporting materials specific to OSDS inspection, maintenance and repair, must be provided to the buyer prior to closing (ORS 105.464). Oregon believes this information will raise awareness of OSDS issues and prompt the buyer to obtain an OSDS inspection as part of the real estate transaction, similar to home inspections that are now routine for residential real estate transactions.

This voluntary approach also relies on a partnership between Oregon DEQ and the Oregon Association of Realtors (OAR), formalized in a Memorandum of Understanding (MOU) signed in November 2013 that is aimed at increasing voluntary time-of-transfer inspections of OSDS. The MOU commits Oregon DEQ to: develop an educational packet for new home buyers and train realtors on the importance of regular septic system maintenance; amend the buyer and seller advisories to include recommendations for septic system inspection at time of property transfer; and collaborate with the Oregon Bankers Association to determine lender requirements for loans involving properties served by septic systems. To date, Oregon DEQ has developed a variety of educational materials for homeowners, home buyers, and industry professionals, all of which are packaged in a new Oregon Septic Smart program that is modeled after EPA's national Septic Smart program. The Oregon Septic Smart program is designed to help educate Oregonians about the importance of septic systems, septic system inspections and proper septic system maintenance through providing Oregonians with easy access to important information about their septic systems and with easy access to certified industry professionals that perform septic system inspections.

Additionally, OAR has committed to supporting these outreach and educational efforts and conducting its own complementary efforts. Oregon DEQ and OAR have collaborated to provide OSDS classes to each of Oregon's 30 realtor associations to encourage time-of-transfer OSDS inspections and provide information on proper OSDS operation and maintenance. This class also is available as an hour-long webinar for associations that cannot accommodate an in-house OSDS class. The webinar is also available online. The target for realtor outreach is to provide a class to all 30 associations by June 2015. As of July 2014, 47 percent of associations have hosted an in-house OSDS class and an additional 10 percent have scheduled an in-house class within the 2014 calendar year. As of July 2014, nearly half of the realtors active in Oregon's coastal counties have taken this new course. OAR and DEQ also are committed to working with the Oregon Real Estate Agency to include the OSDS curriculum in the Law and Rule Required Course – a mandatory class that all brokers in Oregon must attend in order to maintain their real estate broker license (ORS 696.174 and OAR 863-022-0055). Additionally, the collaboration will yield articles to be published in the Oregon Real Estate Journal and Local Focus (official journal for the League of Oregon Cities) and aimed at encouraging local governments to partner with Oregon DEQ to pursue and strengthen local OSDS initiatives.

Oregon DEQ's Septic Smart website also includes a list of certified industry professionals that perform septic system inspections. Approved OSDS inspectors who want to be listed on Oregon DEQ's Oregon Septic Smart website must participate in the Oregon Septic Smart program.

Oregon DEQ is conducting targeted outreach to inform industry professionals about Septic Smart and encourage participation. For example, Oregon DEQ gave a presentation at the Oregon Onsite Wastewater Association annual conference in March 2014 to introduce Oregon Septic Smart and Oregon's expanded time-of-transfer disclosure requirements that was attended by more than 190 participants.

While participation in Oregon Septic Smart is voluntary, it provides a competitive business advantage for certified inspectors. In order to maintain eligibility for Oregon Septic Smart, all approved inspectors must present evidence that all certification requirements are up-to-date and submit annual reports to Oregon DEQ which identifies their inspection activities during the previous calendar year. Oregon DEQ is relying on these annual reports as a key tracking mechanism for implementing this management measure. Although Oregon Septic Smart was introduced as a new program in January 2014, already by July 2014, 95 of the state's approximately 630 certified inspectors statewide (15 percent) had chosen to participate in it. Oregon's database reveals the heaviest participation is in its coastal counties, with 40 of its participants (42 percent) primarily serving these counties. Participation rates are tracked monthly by Oregon DEQ and are rising steadily. As the Oregon Septic Smart brand grows and the business advantages are recognized by more wastewater professionals, Oregon DEQ foresees the time when a majority of active certified inspectors will have joined Oregon Septic Smart and will submit annual reports on septic system inspections to the State.

Oregon has established a goal with interim milestones for its voluntary incentive-based program, as well as a strategy for tracking and evaluating the effectiveness of its voluntary incentive-based program, to implement this management measure. Specifically, Oregon expects that within 15 years, these collective efforts will result in inspection of 95 percent of all the OSDS associated with property transfers across the coastal nonpoint management area. Oregon DEQ has set an interim goal to achieve inspections for 60 percent of residential property transfers involving OSDS in the coastal counties by 2014 and 80 percent by 2020. Oregon is tracking the effectiveness of the State's voluntary initiative, primarily through the annual reporting requirements by certified inspectors who participate in Oregon Septic Smart, as described above. The annual reports require separate tracking of OSDS inspections associated with property transfers (versus inspections conducted for other reasons that are also tracked). The report includes information on the number and outcomes of OSDS inspections. Collectively, these reports will help to guide outreach and enforcement efforts at the county level. This tracking will be augmented by information from lenders, brokers, realtor surveys, and GIS analysis, as described below.

With the passage of Oregon's expanded OSDS seller disclosure forms, a growing number of lenders and principal brokers are choosing to retain records of these forms; Oregon DEQ is working with the lending community and brokers to augment its tracking of OSDS inspections during time of transfer. Additionally, the Oregon Septic Smart website hosts a survey for new

home buyers to ask whether a septic system inspection was included as part of the home buying process, and Oregon DEQ is working with realtors to encourage these buyers to take the survey.

Oregon also will prioritize its efforts to prevent failures by identifying areas that meet two primary conditions: 1) a specific area classified as high risk for OSDS failure, using Geographic Information System (GIS), and 2) tracking reports that indicate that OSDS inspections are uncommon in this area. Areas that meet both of these conditions will be prioritized for targeted evaluation. Toward this end, Oregon DEQ is developing a GIS tool that it intends to use to proactively identify coastal areas that have a high risk for OSDS failures. In September 2014, Oregon DEQ completed mapping and analysis of a pilot area within Lincoln County (along the coast). This model will be used to identify high risk areas throughout the coastal nonpoint management area where the State will conduct more targeted outreach and provide resources for OSDS repair and replacement. A similar approach has been used previously in another Oregon county outside the coastal nonpoint management area to provide focused outreach and resources to address problems.

Results from these various tracking mechanisms will be analyzed for potential inconsistencies and used to identify focus areas for further outreach and evaluation. Taken collectively, Oregon will use an overall weight-of-evidence approach to inform decisions regarding additional outreach and evaluation efforts, as well as the need for a regulatory time-of-transfer inspection program.

As noted above, for NOAA and EPA to approve a voluntary or incentive-based program, the State also must provide: a legal opinion that back-up enforceable authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; a description of the mechanism or process that links the implementing agency with the enforcement agency; and a commitment to use the existing enforcement authorities where necessary. In the event the State's voluntary approach falls short, Oregon has committed to use ORS 454.625 and ORS 468.020 to propose rules for adoption by the Oregon Environmental Quality Commission (EQC) to implement the inspections element of the Operating OSDS management measure. In the event the EQC does not pass adequate rules, the Oregon Attorney General's Office has provided a legal opinion asserting that the State has adequate back-up authority (ORS 468B et. seq.) to require implementation of the 6217(g) management measures, as necessary. Specifically, Oregon has the authority under ORS 468B.015 and ORS 468B.020 to prevent and control pollution from any nonpoint source, including OSDS.

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Comment [CJ1]: Do you mean to develop action plans, BMPs or a management strategy to address post construction runoff within the TMDL implementation plan? TMDL implementation plans usually contains numerous actions.

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RATIONALE: Oregon requires all alternative decentralized treatment systems (including sand filter systems, pressure distribution systems and recirculating gravel filter systems) to have service contracts with certified maintenance providers and owners of these systems must submit annual reports ~~to be submitted~~ to Oregon DEQ ~~to local onsite management systems agents~~ (OAR 340-071). ~~Owners of these systems must submit annual reports to Oregon DEQ~~. Failure to submit an annual maintenance report results in an enforcement process which may include a civil penalty (OAR 340.012.0060). For these systems, the inspection requirements of the OSDS management measure have been met. According to Oregon DEQ estimates, these alternative decentralized treatment systems currently account for 10 percent of the OSDS in the coastal nonpoint management area, although the proportion of these systems is growing over time; for instance, a survey of all newly permitted systems in Oregon's coastal counties revealed that nearly 30 percent were alternative systems required to have annual maintenance contracts.

Comment [CJ2]: I am confused. Who submits the annual reports to ODEQ? Owners or local onsite management systems agents? May want to include the exact location in OAR 340-07-XXX as the document is 98 pages.

Comment [CJ3]: Is the number of alternative systems increasing or the percent requiring annual maintenance contracts?

For the remainder (conventional septic systems), Oregon proposes to meet the management measure for OSDS inspection by promoting voluntary time-of-transfer inspections and through education of homeowners and realtors, with incentives for tracking by certified inspectors. In accordance with NOAA and EPA guidance from 2001 on enforceable policies and mechanisms, the federal partners will approve ~~such~~ a voluntary or incentive-based program as long as the State provides: a description of the voluntary or incentive-based programs the state~~s~~ will use to encourage implementation of the management measure~~s~~, including the methods for tracking and evaluating those programs; a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary. Oregon has provided these items.

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~~which~~ expands mandatory disclosure on the condition of OSDS on the Seller's Disclosure Statement for all real estate transactions (ORS 105.464). Answers to descriptive OSDS questions, as well as supporting materials specific to OSDS inspection, maintenance and repair, must be provided to the buyer prior to closing (ORS 105.464). Oregon believes this information will raise awareness of OSDS issues and prompt the buyer to obtain an OSDS inspection as part of the real estate transaction, similar to home inspections that are now routine for residential real estate transactions.

This voluntary approach also relies on a partnership between Oregon DEQ and the Oregon Association of Realtors (OAR), formalized in a Memorandum of Understanding (MOU) signed in November 2013~~,~~ that ~~which~~ is aimed at increasing voluntary time-of-transfer inspections of OSDS. The MOU commits Oregon DEQ to: develop an educational packet for new home buyers and train realtors on the importance of regular septic system maintenance; amend the buyer and seller advisories to include recommendations for septic system inspection at time of property transfer; and collaborate with the Oregon Bankers Association to determine lender requirements for loans involving properties served by septic systems. To date, Oregon DEQ has developed a variety of educational materials for homeowners, home buyers, and industry professionals, all of which are packaged in a new Oregon Septic Smart program that ~~, which~~ is modeled after EPA's national Septic Smart program. The Oregon Septic Smart program is designed to help educate Oregonians about the importance of septic systems, septic system inspections and proper septic system maintenance through providing Oregonians with easy access to important information about their septic systems and with easy access to certified industry professionals that perform septic system inspections.

Additionally, OAR has committed to supporting these outreach and educational efforts and conducting its own complementary efforts. Oregon DEQ and OAR have collaborated to provide OSDS classes to each of Oregon's 30 realtor associations to encourage time-of-transfer OSDS inspections and provide information on proper OSDS operation and maintenance. This class also is ~~also~~ available as an hour-long webinar for associations that cannot accommodate an in-house OSDS class. The webinar is also available online. The target for realtor outreach is to provide a class to all 30 associations by June 2015. As of July 2014, 47 percent of associations have hosted an in-house OSDS class and an additional 10 percent have scheduled an in-house class within the 2014 calendar year. As of July 2014, nearly half of the realtors active in Oregon's coastal counties have taken this new course. OAR and DEQ also are ~~also~~ committed to working with the Oregon Real Estate Agency to include the OSDS curriculum in the Law and Rule Required Course – a mandatory class that all brokers in Oregon must attend in order to maintain their real estate broker license (ORS 696.174 and OAR 863-022-0055). Additionally, the collaboration will yield articles to be published in the Oregon Real Estate Journal and Local Focus (official journal for the League of Oregon Cities) and aimed at encouraging local governments to partner with Oregon DEQ to pursue and strengthen local OSDS initiatives.

Comment [CJ4]: Is this an annual class or a class required to get their brokers' licenses?

Oregon DEQ's Septic Smart website also includes a list of certified industry professionals that perform septic system inspections. Approved OSDS inspectors who want to be listed on Oregon DEQ's Oregon Septic Smart website must participate in the Oregon Septic Smart program. Oregon DEQ is conducting targeted outreach to inform industry professionals about Septic Smart and encourage participation. For example, Oregon DEQ gave a presentation at the Oregon Onsite Wastewater Association annual conference in March 2014 to introduce Oregon Septic Smart and Oregon's expanded time-of-transfer disclosure requirements that ~~, which~~ was attended by more than 190 participants.

While participation in Oregon Septic Smart is voluntary, it provides a competitive business advantage for certified inspectors. In order to maintain eligibility for Oregon Septic Smart, all approved inspectors must present evidence that all certification requirements are up-to-date and submit annual reports to Oregon DEQ which identifies their inspection activities during the previous calendar year. Oregon DEQ is relying on these annual reports as a key tracking mechanism for implementing this management measure. Although Oregon Septic Smart was introduced as a new program in January 2014, already by July 2014, 95 of the state's approximately 630 certified inspectors statewide (15 percent) had chosen to participate in it. Oregon's database reveals the heaviest participation is in its coastal counties, with 40 of its participants (42 percent) primarily serving these counties. Participation rates are tracked monthly by Oregon DEQ and are rising steadily. As the Oregon Septic Smart brand grows and the business advantages are recognized by more wastewater professionals, Oregon DEQ foresees the time when a majority of active certified inspectors will have joined Oregon Septic Smart and will submit annual reports on septic system inspections to the State.

Comment [CJ5]: Should we see if we can get updated statistics?

Oregon~~The State~~ has established a goal with interim milestones for its voluntary incentive-based program, as well as a strategy for tracking and evaluating the effectiveness of its voluntary incentive-based program, to implement this management measure. Specifically, Oregon expects that within 15 years, these collective efforts will result in inspection of 95 percent of all the OSDS associated with property transfers across the coastal nonpoint management area. Oregon DEQ has set an interim goal to achieve inspections for 60 percent of residential property transfers involving OSDS in the coastal counties by 2014 and 80 percent by 2020. Oregon is tracking the effectiveness of the State's voluntary initiative, primarily through the annual reporting requirements by certified inspectors who participate in Oregon Septic Smart, as described above. The annual reports require separate tracking of OSDS inspections associated with property transfers (versus inspections conducted for other reasons that~~, which~~ are also tracked). The report includes information on the number and outcomes of OSDS inspections. Collectively, these reports will help to guide outreach and enforcement efforts at the county level. This tracking will be augmented by information from lenders, brokers, realtor surveys, and GIS analysis, as described below.

Comment [CJ6]: Since we anticipate sending this document out on January 30, should we find out whether Oregon met its 2014 goal?

With the passage of Oregon's expanded OSDS seller disclosure forms, a growing number of lenders and principal brokers are choosing to retain records of these forms; Oregon DEQ is

working with the lending community and brokers to augment its tracking of OSDS inspections during time of transfer. Additionally, the Oregon Septic Smart website hosts a survey for new home buyers to ask whether a septic system inspection was included as part of the home buying process, and Oregon DEQ is working with realtors to encourage these buyers to take the survey.

Oregon ~~The State~~ also will prioritize its efforts to prevent failures by identifying areas that meet two primary conditions: 1) a specific area classified as high risk for OSDS failure, using Geographic Information System (GIS), and 2) tracking reports that indicate that OSDS inspections are uncommon in this area. Areas that meet both of these conditions will be prioritized for targeted evaluation. Toward this end, Oregon DEQ is developing a GIS tool that it intends to use to proactively identify coastal areas that have a high risk for OSDS failures. In September 2014, Oregon DEQ completed mapping and analysis of a pilot area within Lincoln County (along the coast). This model will be used to identify high risk areas throughout the coastal nonpoint management area where the State will conduct more targeted outreach and provide resources for OSDS repair and replacement. A similar approach has been used previously in another Oregon county outside the coastal nonpoint management area to provide focused outreach and resources to address problems.

Results from these various tracking mechanisms will be analyzed for potential inconsistencies and used to identify focus areas for further outreach and evaluation. Taken collectively, Oregon will use an overall weight-of-evidence approach to inform decisions regarding additional outreach and evaluation efforts, as well as the need for a regulatory time-of-transfer inspection program.

As noted above, for NOAA and EPA to approve a voluntary or incentive-based program, the State also must provide: a legal opinion that back-up enforceable authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; a description of the mechanism or process that links the implementing agency with the enforcement agency; and a commitment to use the existing enforcement authorities where necessary. In the event the State's voluntary approach falls short, Oregon has committed to use ORS 454.625 and ORS 468.020 to propose rules for adoption by the Oregon Environmental Quality Commission (EQC) to implement the inspections element of the Operating OSDS management measure. In the event the EQC does not pass adequate rules, the Oregon Attorney General's Office has provided a legal opinion asserting that the State has adequate back-up authority (ORS 468B et. seq.) to require implementation of the 6217(g) management measures, as necessary. Specifically, Oregon ~~the state~~ has the authority under ORS 468B.015 and ORS 468B.020 to prevent and control pollution from any nonpoint source, including OSDS.