UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JUL 15 2015

OFFICE OF
WATER AND WATERSHEDS

Ms. Wendy Wiles, Director
Environmental Solutions Division
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

Re: Determination of Progress for Oregon's Nonpoint Source Management Program

Dear Ms. Wiles:

Thank you for submitting the *Oregon Nonpoint Source Pollution Program 2014 Annual Report* (June 2015) ("Annual Report"), prepared by the Oregon Department of Environmental Quality (ODEQ). Based on our review, the Environmental Protection Agency concludes that Oregon has made satisfactory progress in implementing its nonpoint source (NPS) management program during 2014. We have enclosed the EPA's *Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants* to provide you with additional insight into our determination of satisfactory progress.

**Background**

Section 319(h)(11) of the Clean Water Act (CWA) requires States to report annually on progress under their nonpoint source (NPS) management programs. The EPA must establish whether the State has made "satisfactory progress" each year in implementing its NPS management program using the EPA's *Checklist for Determining Progress of State NPS Management Programs.* The annual report is a primary means by which the EPA both makes this determination and evaluates performance under the Section 319 grants.

**Highlights**

- ODEQ, Oregon Department of Fish and Wildlife, Oregon Department of Forestry (ODF), and federal agencies assembled the scientific case for protecting natural thermal regimes, analyzed effects of landscape disturbance on thermal regimes, and presented this information to the Oregon Board of Forestry and Oregon Environmental Quality Commission. The Board of Forestry subsequently affirmed the need to continue the rule analysis for increased protections on fish-bearing streams and directed ODF to begin the process of constructing new rules.
- Nearly completed Water Quality Status/Action Plans for Clackamas and Sandy River Basin and beginning work on plans for the following: Umatilla Basin, Tualatin Subbasin, and Upper Willamette Area.
- Continued to develop the Deschutes, Coquille and Mid-Coast basin TMDLs. Continued working on TMDL implementation and implementation plan development in the Willamette, Rogue, Umpqua, Klamath, Tillamook, North Coast and other basins with issued TMDLs.
- Completed implementation plan reviews for submitted TMDL implementation plans for the John Day, Wallowa (Imnaha, Lower Grand Ronde) and Malheur basins.

- Completed drafts and the public participation process for its NPS plan update (that EPA approved during 2015).
- Worked collaboratively with the Oregon Department of Agriculture, ODF, and other Designated Management Agencies to address nonpoint source issues associated with agriculture, forest, or urban land uses.

**Recommendations**

- Because Oregon has decided to use the 319 NPS workplan commitments to reflect more measurable milestones and these commitments are reflected in Oregon's Performance Partnership Agreement, Oregon should continue to include the table *Performance Partnership Agreement NPS Pollution Control Commitments* in its annual NPS progress report and add a column that addresses the status of each commitment. Oregon's annual commitments through its workplan should be measurable, such as number of WQ10 stories.
- Documenting water quality progress as a result of restoration (through measures such as WQ10) is a key priority of the national NPS program. Oregon stopped using its Laboratory Analytical Storage and Retrieval (LASAR) database on December 1, 2012. According to ODEQ staff, having a repository for data such as LASAR is key to Oregon addressing the requirements of these measures. EPA encourages ODEQ to move as quickly as possible to set up a new database and enter and analyze all appropriate data into that system so Oregon can generate success stories showing improved water quality due to restoration.
- States must use at least 50% of the annual appropriation of § 319 funds (watershed project funds) to implement watershed projects guided by watershed based plans. Usually this plan implementation is conducted by entities funded by ODEQ through its 319 grant program. During 2014, ODEQ directed 36% of its 319 funds towards grants to conduct these projects. According to Dave Croxton, EPA, Gene Foster, ODEQ told him that ODEQ plans to include FTE in the calculation of the amount of funding used to implement watershed based plans. In the future, please include this information either in an email or as part of the annual report. Alternatively, ODEQ may request an interim waiver from the 50% requirement. Justifications should explain how the waiver would result in:
  - improving Oregon's ability to deliver environmental results;
  - reducing impacts on Oregon's FTE, given the planning Oregon has already done to date; and/or
  - reducing Oregon's need to renege on commitments it has made to partners or stakeholders.
- EPA encourages Oregon to take the necessary steps to address the gaps and get to an approvable coastal nonpoint source pollution control program under CZARA.
- Oregon should consider revising the format of its annual NPS reports to be more concise. The current format includes far more information than is needed for the EPA's purposes. The EPA would be happy to meet with ODEQ to discuss refinements on this report.

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The EPA will continue to work in partnership with Oregon to address nonpoint source water quality issues, including program activities and projects supported directly through the EPA Section 319 funding. Please feel free to contact Alan Henning, our Oregon 319 Nonpoint Source Coordinator at (541) 687-7360 if you have any questions regarding our review.

Sincerely,

Christine Psyk, Associate Director
Office of Water and Watersheds

Enclosure: Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants

cc: Mr. Eugene Foster, Watershed Management Section Manager, ODEQ (via email)
Mr. Don Yon, Watershed Management Section, ODEQ (via email)
Mr. Ivan Camacho, 319 Grant Coordinator, ODEQ (via email)

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**Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants**

## 1. Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results

A. Section 319(h)(8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of annual milestones to implement its NPS management program.

i) Does the state's NPS management program include relevant, up-to-date and trackable annual milestones for program implementation?
Yes, ODEQ reports on the status of its NPS management plan actions, priorities, and milestones on pages 16-22. Because Oregon has decided to use the annual 319 NPS workplan commitments to reflect more measurable milestones and these commitments are reflected in Oregon's Performance Partnership Agreement, Oregon should continue to include the table called *Performance Partnership Agreement NPS Pollution Control Commitments* in its annual NPS progress report but also add a column that addresses the status of each commitment (see Table 2 on pages 27-35) or include as an appendix to the report. Oregon should strive to make these annual commitments more measurable, such as committing to a specific number of WQ-10 stories.

ii) If the state does not yet include up-to-date annual milestones in its NPS management program, in what document(s) is this schedule located?
See recommendation described under 1.i.

iii) Has the state reported its progress in the annual report required under CWA section 319(h)(11) in meeting its milestone(s) for the preceding fiscal year?
Yes. This report is nearly 230 pages and describes and illustrates many measures of progress.

iv) Has the state demonstrated satisfactory progress in meeting its schedule of milestone(s) for the preceding fiscal year? Briefly elaborate. (If no, in accordance with CWA section 319(h)(8), the 319 grant award for the coming year cannot be awarded.)
Yes. Although not all milestones were met, Oregon has made sufficient progress.

B. Section 319(h)(11) requires each state to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.

i) For all active projects that have NPS reduction goals for nutrients or sediment, did the state report load reductions (WQ-9) into GRTS during the reporting period after the first year that practices were installed or implemented achieved?
ODEQ modeled and entered the annual nitrogen, phosphorus and sedimentation-siltation reductions into GRTS. Table 10 on pages 66-67 illustrates estimated NPS load reductions for the Willamette Model Watershed Riparian Vegetation project, namely reductions of 200.8 tons/year for nitrogen, 30.9 tons/year for phosphorus and 65 tons/year for sedimentation/siltation.

ii) Has the state reported improvements in water quality that have occurred in the current reporting period resulting from implementation of its NPS management program and/or previous years' section 319(h) grant work plans? (e.g., reporting on SP-12 or other improvements such as shellfish bed and beach openings that have not yet led to attainment of water quality standards)?
Although ODEQ included "making progress" stories in the annual report, these stories were based on SP12 documentation for these waters submitted to EPA in 2011 and 2013. During December 2014, EPA and its contractor, held a conference call with ODEQ staff to review requirements associated with WQ-10 and SP-12 measures, to discuss progress to date in Oregon, and to explore barriers that prevented Oregon from developing more success stories. Barriers raised included confusion over the process to move waterbodies from category 4 or 5 to category 1 or 2, perceptions that it is extra work for basin coordinators, scale (as a large system takes time to respond and data may not show attainment of WQS), lack of appropriate data, lack of resources to analyze data, difficulty in matching up WQ improvement with restoration actions, and fear that future data will show water quality has degraded. The follow up call held in January 2015 revealed that the key barrier was Oregon's decision to stop adding new data to its Laboratory Analytical Storage and Retrieval (LASAR) database as December 1, 2012 in order to move to another database. According to ODEQ staff, having a repository such as LASAR is a key to Oregon having the ability to analyze existing data and address the requirements of these measures. EPA encourages ODEQ to move as quickly as possible to set up a new database and enter and analyze all appropriate data into that system so Oregon can generate stories showing improved water quality due to restoration (as well as evaluating the impairment status of waters that could lead to Oregon submitting complete and timely lists of impaired waters and integrated reports).

ii) Did the state meet its annual commitment/target/goal (if any) under WQ-10 to remove impaired waters from the 303(d) list?
Oregon has completed one WQ10 story, Diamond Lake, and five "showing progress" stories posted on EPA's website but Oregon did not develop any new WQ10 stories during 2014. See explanation and recommendation above.

**2. <u>Overall GRTS Reporting</u>**

*For this question, it is sufficient to report on the results of previously conducted post-award grants monitoring. No additional monitoring may be needed.*

A. To ensure that the state meets the reporting requirements in section 319(h)(11), did the state enter all mandated data elements into GRTS (including geolocational tags where available) for all applicable projects in the previous section 319 grant award?
Yes

**3. <u>Focus on Watershed-Based Implementation</u>**

*For this question, it is sufficient to document the results of previous findings, if this was determined during the Region's reviews of the state's active grant work plans.*

A. Is the state implementing nine-element watershed-based plans – or approved alternative plans - at required grant expenditure levels in accordance with EPA's guidelines for CWA section 319(h) grants? That is, in fiscal year 2014 and subsequent years, was 50% of the state's grant used to implement watershed based plans, unless the state provided state funding for watershed projects equal to its total section 319 allocation? If no, please explain.
Usually this plan implementation is conducted by entities funded by ODEQ through its 319 grant program. During 2014, ODEQ directed 36% of its 319 funds towards grants to conduct these projects. According to Dave Croxton, EPA, Gene Foster, ODEQ told him that ODEQ plans to include FTE in the calculation of the amount of funding used to implement watershed based plans. In the future, please include this information either in an email or as part of the annual report. Alternatively, ODEQ may request an interim waiver from the 50% requirement. Justifications should explain how the waiver would result in:

- improving Oregon's ability to deliver environmental results;
- reducing impacts on Oregon's FTE, given the planning for that Oregon has already done to date; and/or
- reducing Oregon's need to renege on commitments it has made to partners or stakeholders.

**4. <u>Ensuring Fiscal Accountability</u>**

*For this section, it is sufficient to briefly report on the results of previously conducted grants management and oversight required of all grants.*

A. *Tracking and Reporting*. For all active section 319(h) grants, using existing post-award monitoring or best professional judgment:

i) Is the state's RFP process efficient and timely for selecting and funding projects within the work plan timeframe?
Yes

ii) Did the State obligate all of the section 319(h) funds in the previous year's award within one year per current section 319 grant guidelines?
Yes

B. *Rate of Expenditures*. For categorical grants, include and examine a summary of expenditures for all open section 319 grant awards listing the following: state; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. This information could also be obtained from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a state total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below.

*Note: This analysis is not required for section 319 funds incorporated into a PPG.*

| CWA Section 319(h) Funds, Rates of Expenditures (Unliquidated Obligations) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Based on Compass Federal Data Warehouse Online on July 7, 2015 | | | | | | | | |
| | Grant # | FY | Project | | Period | Grant Award Amount | Balance (ULO) | % ULO |
| ORS | C900045110 | 10 | 06/01/10 | - | 12/31/15 | $ 1,381,409 | $ 0 | 0% |
| OR | C900045111 | 11 | 07/01/11 | - | 12/31/15 | $ 1,111,832 | $ 44,996 | 4% |
| OR | C900045112 | 12 | 07/01/12 | - | 12/31/15 | $ 905,000 | $ 263,352 | 29% |
| OR | C900045113 | 13 | 07/01/13 | - | 06/30/17 | $ 756,508 | $ 400,867 | 53% |
| OR | C900045114 | 14 | 07/01/14 | - | 06/30/18 | $ 764,463 | $ 733,163 | 96% |
| OR | Total | | | | | $4,919,212 | $1,442,378 | 29% |

i.) Relying on best professional judgment, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates or the negotiated outlay strategy from the associated grant work plan schedules? If not, briefly explain.
Yes

**5. PPG Considerations**

*For states that include section 319 funds in Performance Partnership Grants (PPGs), briefly report on the following.*

A. Has the state followed the goals, objectives and measures of the national program guidelines and priorities in implementing its NPS program? If not, did the state negotiate with the EPA region a work plan that differs significantly from the National Program Manager (NPM) guidance? (If yes, the EPA Region was required to consult with the NPS NPM.) Please explain.
Yes, the state followed the goals, objectives and measures of the national program guidelines and priorities, as shown in both the annual NPS progress report and ODEQ's final performance report for the Water Quality component of the 2012-2014 ODEQ-EPA Performance Partnership Grant. The PPG workplan pertaining to the NPS program aligns with the NPM guidance.

B. Using best professional judgment, has the state adequately documented progress consistent with its listed priorities?
Yes, Oregon adequately documented progress consistent with its own priorities and national priorities during 2014.

**6. Identifying and Addressing Performance Issues/Progress Concerns**

A. Considering issues itemized on this checklist, briefly summarize any significant outstanding section 319 grant performance issues or progress concerns, including recommendation(s) for corrective action(s). For states with out-of-date NPS management programs or schedule of milestones, Regions are to ensure that

forthcoming section 319 grant awards are contingent on completing updates to these programs or milestones.

- Because Oregon has decided to use the 319 NPS workplan commitments to reflect more measurable milestones and these commitments are reflected in Oregon's Performance Partnership Agreement, Oregon should continue to include the table *Performance Partnership Agreement NPS Pollution Control Commitments* in its annual NPS progress report and add a column that addresses the status of each commitment. Oregon's annual commitments through its workplan should be measurable, such as number of WQ10 stories.
- Documenting water quality progress as a result of restoration (through measures such as WQ10) is a key priority of the national NPS program. Oregon stopped using its Laboratory Analytical Storage and Retrieval (LASAR) database on December 1, 2012. According to ODEQ staff, having a repository for data such as LASAR is key to Oregon addressing the requirements of these measures. EPA encourages ODEQ to move as quickly as possible to set up a new database and enter and analyze all appropriate data into that system so Oregon can generate stories showing improved water quality due to restoration (as well as evaluating the impairment status of waters that could lead to Oregon submitting thorough and timely lists of impaired waters and integrated reports).
- States must use at least 50% of the annual appropriation of § 319 funds (watershed project funds) to implement watershed projects guided by watershed based plans. Usually this plan implementation is conducted by entities funded by ODEQ through its 319 grant program. During 2014, ODEQ directed 36% of its 319 funds towards grants to conduct these projects. According to Dave Croxton, EPA, Gene Foster, ODEQ told him that ODEQ plans to include FTE in the calculation of amount of funding used to implement watershed based plans. In the future, please include this information either in an email or as part of the annual report. Alternatively, ODEQ may request an interim waiver from the 50% requirement. Justifications should explain how the waiver would result in:
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    - **reducing impacts on Oregon's FTE, given the planning for that Oregon has already done to date; and/or**
    - **reducing Oregon's need to renege on commitments it has made to partners or stakeholders.**

B. Are there other significant outstanding section 319 grant performance issues or progress concerns that were not identified through this checklist? If so, please describe, including any recommendation(s) for corrective action(s), as may be appropriate.

Oregon should consider revising the format of its annual NPS reports to be more concise. The current format includes far more information that is needed for EPA's purposes. EPA would be happy to meet with ODEQ to discuss refinements on this report.