UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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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: Approval of the Oregon Nonpoint Source Management Program Plan

Dear Ms. Wiles:

The Oregon Department of Environmental Quality (ODEQ) submitted the Oregon Nonpoint Source Management Plan (plan) on June 18, 2015. Following our review, EPA is approving the plan. This plan is generally consistent with key components for effective state nonpoint source (NPS) management programs referenced in EPA's *Nonpoint Source Program and Grants Guidelines* (April, 2013). However, the plan is unwieldy and does not present a coherent picture of Oregon's nonpoint source management program. We expect ODEQ to improve this plan for the next update. We are ready to help you make these improvements.

The plan describes how Oregon's NPS programs will protect and improve water quality in Oregon over the next five years through process improvement, program integration, watershed prioritization and commitment to measurable goals (detailed in both the plan and the annual grant workplan). The EPA encourages Oregon to work towards setting measurable goals and milestones in its annual workplans and to improve its framework to ensure Section 319 funding, technical support and other resources will be directed to Oregon's priority water quality issues and NPS watershed projects. The EPA also encourages Oregon to begin work on the next NPS plan update early and to consider our recommendations contained on the enclosed checklist for improving the next NPS plan update. For example, an area for improvement is for the plan to better describe how its coastal nonpoint pollution control program under CZARA Section 6217 is addressed via the NPS management program since CZARA requires implementation through the state's NPS management program. We would like to engage you in conversation on how you can meaningfully incorporate our recommendations as well as concerns raised by the public during the public comment period.

We look forward to supporting Oregon in implementing the plan to protect healthy waters, restore impaired waters and improve water quality throughout Oregon and in meeting its water quality performance measures and goals.

If you have any comments or questions, please call me at (206) 553-1855, or have your staff call Alan Henning of my staff at (541) 687-7360.

Sincerely,

Christine Psyk, Associate Director
Office of Water & Watersheds

Enclosure: Key Components of an Effective State Nonpoint Source Management Program Checklist: Oregon

cc: Mr. Eugene Foster, Watershed Management Section Manager, ODEQ (via email)
Mr. Don Yon, Watershed Management Section, ODEQ (via email)

Key Components of an Effective State Nonpoint Source Management Program Checklist: Oregon

1. **The state program contains explicit short- and long-term goals, objectives and strategies to restore and protect surface water and ground water, as appropriate.**
   The state's long-term goals should reflect a strategically focused state NPS management program designed to achieve and maintain water quality standards and to maximize water quality benefits. The shorter-term objectives consist of activities, with annual milestones, designed to demonstrate reasonable progress toward accomplishing long-term goals as expeditiously as possible. Since the NPS management program is a longer-term planning document, the annual milestones may be more general than are expected in an annual section 319 grant workplan, but are specific enough for the state to track progress and for EPA to determine satisfactory progress in accordance with section 319(h)(8). Annual milestones in a state's NPS management program describe outcomes and key actions expected each year, e.g., delivering a certain number of WQ-10 success stories or implementing projects in a certain number of high priority impaired watersheds. The state program includes objectives that address nonpoint sources of surface water and ground water pollution as appropriate (including sources of drinking water) in alignment with the goals of the Clean Water Act. The objectives include both implementation steps and how results will be tracked (e.g., water quality improvements or load reductions).

   Location in Oregon's NPS Plan: Table 1 (pages 21-26) and throughout Chapters 3 &4

   Evaluation: The plan contains explicit short- and long-term goals, objectives and milestones to restore and protect surface water and ground water. These can be found mostly in Table 1 *Oregon NPS Management Plan Actions/Requirements, Priorities and Output/Action* but also in narrative commitments throughout Chapters 3 ( ) and Chapter 4 (Management of NPS by Land Use). The plan provides general milestones with timeframes identified as 2014-2018. Although the plan focuses on implementation steps, only a few milestones track water quality improvements. The plan notes "Annual milestones in state agencies' NPS work plans describe key actions expected each year (e.g., delivering a certain number of WQ-10 success stories or implementing projects in a certain number of high priority impaired watersheds)." Oregon will need to make sure that it reports in its annual NPS progress reports on the status of all of the milestones contained in the NPS plan, as well those contained in its annual grant workplan.

2. **The state strengthens its working partnerships and linkages to appropriate state, interstate, tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and federal agencies.**
   The state uses a variety of formal and informal mechanisms to form and sustain these partnerships such as memoranda of agreement, letters of support, cooperative projects, sharing and combining of funds, and meetings to share information and ideas.

   The state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds. Interagency collaborative teams, NPS task forces, and representative advisory groups can be effective mechanisms for accomplishing these linkages, as can more informal but ongoing program coordination and outreach efforts. The state works to ensure that its local partners and grantees

have the capacity to effectively carry out watershed implementation projects funded to support its NPS management program.

Further, the state seeks public involvement from local, regional, state, interstate, tribal and federal agencies, and public interest groups, industries, academic institutions, private landowners and producers, concerned citizens and others as appropriate, to comment on significant proposed program changes. This involvement helps ensure that environmental objectives are well integrated with those for economic stability and other social and cultural goals.

Location in Oregon's NPS Plan: Page 13, Chapter 4: *Management of NPS by Land Use*, Section 3.2 *Public Review* (page 11), Section 3.3: *Partnerships* (pages 27-30)

Evaluation: Oregon's plan lists partnerships, describes relevant agreements (such as Memorandum of Understandings/Agreements) between agencies, and covers how Oregon works with Oregon tribes to address NPS pollution. Oregon plan notes that "Section 3.4 *Other Management Programs* and Section 5 *Oregon 319 Grant Program* are important sections that describe the programs available from local, state and federal, watershed councils and other funding partners, funding is a necessary part for implementing the NPS plan."

Although the plan does not explicitly explain how Oregon seeks public involvement on significant proposed program changes, Oregon sought public comment on this plan and has a process for seeking public involvement on significant proposed program changes. In the next plan update, Oregon should describe its process for public involvement on significant proposed program changes.

Because the Plan does not include a list of high priority watersheds, there is nothing in the plan that explains how the state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds. Instead the plan describes how all of the individual programs prioritize work. Oregon has submitted a list of high priority watersheds to EPA as part of its Integrated Report submittal, 303d vision implementation submittal and its PPG/PPA process. In the next plan update, Oregon should explicitly list its high priority watersheds and describe how the state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds.

3. **The state uses a combination of statewide programs and on-the-ground projects to achieve water quality benefits; efforts are well-integrated with other relevant state and federal programs.**
The state has the flexibility to design its NPS management program in a manner that is best suited to achieve and maintain water quality standards. The state may achieve water quality results through a combination of watershed approaches and statewide programs, including regulatory authorities, as appropriate. The state NPS management program emphasizes a watershed management approach and includes an explanation of the state's approach to prioritizing waters and watersheds to achieve water quality restoration and protection.

The state NPS management program is well integrated with other relevant programs to restore and protect water quality, aligning priority setting processes and resources to increase efficiency and environmental results. These include the following programs, as applicable:

- *Total Maximum Daily Loads (TMDLs);*
- *Clean Water State Revolving Fund (CWSRF);*
- *U.S. Department of Agriculture (USDA) farm bill conservation programs;*
- *state agricultural conservation;*
- *state nutrient framework or strategy*
- *source water protection;*
- *point sources (including stormwater, confined animal feeding operations, and enforcement of permitted facilities);*
- *ground water;*
- *drinking water;*
- *clean lakes*
- *wetlands protection;*
- *national estuary program;*
- *coastal nonpoint pollution control program;*
- *pesticide management;*
- *climate change planning;*
- *forestry, both federal (U.S. Forest Service) and state; and*
- *U.S. Army Corps of Engineers programs;*
- *other natural resource and environmental management programs.*

Because of the significant resources potentially available through USDA conservation programs, the state makes a strong sustained effort to coordinate and leverage with USDA NRCS. Similarly, a state NPS management program is well-integrated and clearly identifies processes to incorporate some of the significant resources of the CWSRF loan program for eligible nonpoint source activities.

Where applicable, the state NPS management program explains how NPS projects fit into the state's prioritization scheme for CWSRF funding, and describes state efforts to increase the use of the state CWSRF for the NPS management program. If there are barriers to prioritization of NPS projects, the state NPS management program describes efforts to coordinate with the CWSRF program and potential future steps to encourage NPS projects are considered.

Location in Oregon's NPS Plan: Section 3 *Oregon's NPS Program*, specifically 3.1, 3.3 & 3.4 & Section 4: *Management of NPS by Land Use*

Evaluation: The plan provides thorough explanations of Oregon's water programs such as water quality standards, pesticides, drinking water, ground water, impaired waters/integrated report, TMDL development and associated implementation plans. The plan briefly addresses other topics such as nutrients, point sources (including confined animal feeding operations) wetlands protection, and U.S. Army Corps of Engineers programs. In the next plan update, Oregon should fully address all of the pertinent programs listed in the guidance, including climate change planning.

The Plan describes in detail how Oregon's NPS management program uses a watershed management approach including incorporation of the EPA's Watershed Plans Nine Elements. In the plan, Oregon commits to including in its guidance a table (Table 3 on page 45 in the plan) that indicates whether the nine elements have been met for each watershed and whether they are included in the TMDL implementation plans and watershed approach basin reports. EPA looks forward to seeing the progress made for this milestone ("Report on how TMDL implementation plans and Watershed Basin Status and Action Plans meet EPA's Nine Key elements") in Oregon's future annual NPS progress reports.

Under 3.5 *Baseline Regulatory Statutes*, the plan lists and provides website addresses to the State of Oregon and federal rules and regulations that pertain to its NPS program. Chapter 4 *Oregon's Management of NPS by Land Use* also references to legal authorities and requirements, both regulatory and non-regulatory. In the next NPS plan update, Oregon should provide more detailed information about the regulatory authorities available (such as enforcement authorities) to address NPS pollution.

Under 5.3 *Oregon NPS Program Funding*, the plan notes that proposals are ranked through addressing NPS priorities identified in the request for proposals solicitation notice. The solicitation notice provides detailed information on the specific waters and actions needed. Although it appears that this work is being done outside of the Plan (see response to previous component), the next NPS plan update should include an explicit explanation of Oregon's approach to prioritizing waters and watersheds to achieve water quality restoration and protection.

Under 6.1 *Clean Water State Revolving Fund*, the plan explains how NPS projects fit into the state's prioritization scheme for CWSRF funding, and describes state efforts to increase the use of the state CWSRF for the NPS management program. Under 6.3 *Oregon Conservation Reserve Enhancement Program* and 4.3.6 *NRCS National Water Quality Initiative and State Resource Assessment Progress*, the plan touches on coordination and resources through USDA conservation programs and can further elaborate on how Oregon makes a strong sustained effort to coordinate and leverage with USDA NRCS in the future NPS plan update.

4. **The state program describes how resources will be allocated between (a) abating known water quality impairments from NPS pollution and (b) protecting threatened and high quality waters from significant threats caused by present and future NPS impacts.**

The program describes its approach to addressing the twin demands of remedying waters that the state has identified as impaired by NPS pollution and preventing new water quality problems from present and reasonably foreseeable future NPS impacts, especially for waters which currently meet water quality standards.

With limited resources, the state will likely need to make choices about the relative emphasis on restoring impaired waters and protecting high quality waters. The state's program describes how it will approach setting priorities and aligning resources between these two areas of emphasis based on their water quality challenges and circumstances.

Location in Oregon's NPS Plan: Page 14 and Chapter 5

Evaluation: The plan includes protection as a priority and explains how Oregon promotes watershed restoration and protection. Although the plan could have explained more clearly how Oregon decides on allocating resources between restoration and protection and where Oregon places its emphasis (as well as how Oregon sets priorities and aligns resources between protection and restoration), the plan does detail the locations of watershed protection programs and notes that priority setting is considered during the 319 grant selection process described in Chapter 5. In the future NPS plan update, Oregon should more explicitly explain its priority setting process as a whole rather than each program's priority setting process, how Oregon decides on allocation between restoration and protection, and where Oregon places its emphasis.

5. **The state program identifies waters and watersheds impaired by NPS pollution as well as priority unimpaired waters for protection. The state establishes a process to assign priority and to progressively address identified watersheds by conducting more detailed watershed assessments, developing watershed-based plans and implementing the plans.**
The state identifies waters impaired by nonpoint source pollution based on currently available information (e.g., in reports under sections 305(b), 319(a), 303(d), 314(a), and 320), and revises its list periodically as more up-to-date assessment information becomes available. As feasible, the state also identifies important unimpaired waters that are threatened or otherwise at risk from nonpoint source pollution. In addition, the state identifies the primary categories and subcategories causing the water quality impairments, threats, and risks across the state. At regular intervals the state updates the identification of waters impaired or threatened by NPS pollution preferably as part of a single comprehensive state water quality assessment which integrates reports required by the Clean Water Act. The state establishes a process to assign priority and to progressively address identified waters and watersheds by conducting more detailed watershed assessments, developing watershed-based plans, and implementing the plans. Factors used by the state to assign priority to waters and watersheds may include a variety of considerations, for example:
    - *human health considerations including source water protection for drinking water;*
    - *ecosystem integrity, including ecological risk and stressors;*
    - *beneficial uses of the water;*
    - *value of the watershed or ground water area to the public;*
    - *vulnerability of surface or ground water to additional environmental degradation;*
    - *likelihood of achieving demonstrable environmental results;*
    - *degree of understanding of the causes of impairment and solutions capable of restoring the water;*
    - *implementability (site-specific technical feasibility);*
    - *adequacy of existing water quality monitoring data or future monitoring commitments;*
    - *degree to which TMDL allocations made to reduce point sources are dependent on NPS reductions being achieved;*
    - *extent of partnerships with other federal agencies, states, local public and private agencies/organizations and other stakeholders to coordinate resources and actions;*
    - *availability and access of funding sources other than section 319(h); and*
    - *readiness to proceed among stakeholders and project partners.*

The state links its prioritization and implementation strategy to other programs and efforts such as those listed under component #3. In establishing priorities for ground water activities, the state considers wellhead protection areas, ground water recharge areas, and zones of significant ground water/surface water interaction, including drinking water sources.

Location in Oregon's NPS Plan: Pages 14-15 and through Chapters 3, 5 & 6

Evaluation: The plan includes a description of how the state conducts assessments, develops TMDLs and implements them and a web link to the assessment data base. The plan also describes how priorities are set in the various programs such as the integrated report/impaired waters program, TMDL program watershed approach basins and NPS funding allocations. Although Oregon does prioritize its waters for funding purposes (see link to solicitation notice), Oregon could do a better job in describing how it identifies factors used to assign priority to waters (either unimpaired waters for protection or waters impaired by NPS pollution) or how Oregon links its prioritization and implementation to other programs. As described previously, Oregon submitted a list of high priority watersheds to EPA as part of its Integrated Report submittal, 303d vision implementation submittal and its PPG/PPA process. In the next NPS update, Oregon should provide a detailed description on how it identifies factors used to assign priority to waters (either unimpaired waters for protection or waters impaired by NPS pollution) and how Oregon links its prioritization and implementation to other programs. Although Oregon indirectly indicates the various impairments throughout the plan, Oregon should explicitly identify the primary categories and subcategories causing the water quality impairments, threats, and risks across the state in its future NPS plan update.

6. **The state implements all program components required by section 319(b) of the Clean Water Act, and establishes strategic approaches and adaptive management to achieve and maintain water quality standards as expeditiously as practicable. The state reviews and upgrades program components as appropriate. The state program includes a mix of regulatory, non-regulatory, financial and technical assistance, as needed.**

   Under section 319(b) state NPS management programs include all of the following components:
   (i) An identification of measures (i.e., systems of practices) that will be used to control NPS pollution, focusing on those measures which the state believes will be most effective in achieving and maintaining water quality standards. These measures may be individually identified or presented in manuals or compendiums, provided that they are specific and are related to the category or subcategory of nonpoint sources. They may also be identified as part of a watershed approach towards achieving water quality standards, whether locally, within a watershed, or statewide;
   (ii) An identification of the key programs to achieve implementation of the measures, including, as appropriate, non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. The state is free to decide the best approaches for solving the problems that it identifies under key component #5 above. These approaches may include one or all of the following:

- *watershed or water quality-based approaches aimed at meeting water quality standards directly;*
- *iterative, technology-based approaches based on best management practices or measures, applied on either a categorical or site-specific basis; or*
- *an appropriate mix of these approaches.*

(iii) A description of the processes used to coordinate and, where appropriate, integrate the various programs used to implement NPS pollution controls in the state;
(iv) A schedule with goals, objectives, and annual milestones for implementation at the earliest practicable date: legal authorities to implement the program; available resources; and institutional relationships;
(v) Sources of funding from federal (other than section 319), state, local, and private sources;
(vi) Federal land management programs, development projects and financial assistance programs; and
(vii) A description of monitoring and other evaluation programs that the state will conduct to help determine short- and long-term NPS management program effectiveness.

In addition, the state incorporates existing baseline requirements established by other applicable federal or state laws to the extent that they are relevant. For example, a coastal state or territory with an approved coastal zone management program incorporates its approved state coastal nonpoint pollution control programs required by section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990, into its NPS management program since CZARA requires implementation through the state's NPS management program. In this manner, the state ensures that this program and other relevant baseline programs are integrated into, and consistent with, section 319 programs.

Location in Oregon's NPS Plan: Page 15, Sections 3, 4, 5, 6 and 7

Evaluation: This component is addressed throughout the plan, although not in a cohesive fashion. For example, the plan does not explicitly identify measures (i.e., systems of practices) that will be used to control NPS pollution but the plan references manuals or compendiums that contain measures. These references are often contained in the descriptions of the various programs that conduct NPS type of activities within Oregon. For example the plan cites the National EPA/NOAA Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters ((g) Guidance); notes that under ORS 468B.110(2), ORS 527.765, and ORS 527.770, the Board of Forestry establishes best management practices or other control measures by rule that, to the maximum extent practicable, will ensure attainment and maintenance of water quality standards; and explains that BLM has developed a BMP list for roads that is being used throughout Oregon.

The plan describes key programs that are likely to implement BMPs and measures but does not make an explicit link. The plan describes processes used to coordinate and, where appropriate, integrate the various programs used to implement NPS pollution controls in the state and included sources of funding from federal (other than section 319), state, local, and private sources. The plan includes Federal land management programs, development projects and financial assistance programs and a description of monitoring and other evaluation programs that the state will conduct to help determine short- and long-term NPS management program effectiveness.

Although the plan describes Oregon's coastal zone management program on page 40-42, the plan could do a better job in describing how it incorporates its coastal nonpoint pollution control program under CZARA section 6217 into its NPS management program since CZARA requires implementation through the state's NPS management program.

EPA expects Oregon to better address this component in its next NPS plan update.

7. **The state manages and implements its NPS management program efficiently and effectively, including necessary financial management.**
To help assure that priority water quality problems are addressed cost-effectively and in a timely manner, the state includes in its program a process for identifying priority problems and/or watersheds, and deploys resources in a timely fashion to address priorities, including any critical areas requiring treatment and protection within watersheds.

The state employs appropriate programmatic and financial systems that ensure section 319 dollars are used efficiently and consistent with its legal obligations, and generally manages all section 319 funds to maximize water quality benefits. The state ensures that section 319 funds complement and leverage funds available for technical and financial assistance from other federal sources and agencies.

Location in Oregon's NPS Plan: Page 16, Section 5 (pages 63-68) and Section 6 (pages 68-75).

Evaluation: In its plan, Oregon explains how Oregon's 319 Grant Program manages the Section 319 funds so that the funds are primarily used for organizational capacity development and implementation activities, including monitoring used to support TMDL development, implementation and measuring progress towards achieving TMDL allocations. The plan also describes the process for funding priority projects via grants to various organizations. The plan did not directly address financial management although is stated that "it is critical for the 319 Grant Program to be implemented strategically and efficiently. Oregon's priorities are to streamline grant administration and reporting, and to allocate funds strategically." EPA looks forward to hearing more about the progress of the initiative to streamline grant administration and reporting in Oregon's annual NPS progress reports and expects that the next NPS plan update will reflect the results of this initiative.

Although the plan provides detailed descriptions of the various sources of funding, EPA looks forward to Oregon describing how Oregon ensures that section 319 funds complement and leverage funds available for technical and financial assistance from other federal sources and agencies in the future NPS plan update.

8. **The state reviews and evaluates its NPS management program using environmental and functional measures of success, and revises its NPS management program at least every five years.**
The state establishes appropriate measures of progress in meeting programmatic and water quality goals and objectives identified in key component #1 above. The state also describes a monitoring/evaluation strategy and a schedule to measure success in meeting those goals and

objectives. The state integrates monitoring and evaluation strategies with ongoing federal natural resource inventories and monitoring programs.

The state NPS management program is reviewed and revised every five years. The revision is not necessarily a comprehensive update unless significant program changes warrant a revision; instead, an update targets the parts of the program that are out-of-date. At a minimum, this includes updating annual milestones and the schedule for program implementation, so that they remain current and oriented toward achieving water quality goals.

Location in Oregon's NPS Plan: Page 16, Section 3.1 *General Description of Oregon's NPS Program* (pages 16-21), 5.5.2 *Oregon NPS Program Annual Report* (pages 67-68) and Section 7 *Water Quality Data and Assessments* (page 75-76).

Evaluation: The plan discusses Oregon's use of the annual NPS report to track yearly progress of implementation of the plan, including annual nitrogen, phosphorus, and sedimentation-siltation NPS pollutant load reduction estimates for NPS projects. In addition, the plan notes that the Integrated Report is used for identifying waters not meeting water quality standards (Category 5), where TMDLs have been developed (Category 4 once TMDL issued), and with some or all designated uses and the water quality standards have been met (Categories 1 and 2).

The plan noted that the state NPS management program will be reviewed and revised every five years.

The plan describes water quality monitoring activities both present and future, although Oregon could improve this component by explicitly referencing and summarizing its monitoring/evaluation strategy in Oregon's future NPS update.