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

OFFICE OF
WATER AND WATERSHEDS

SEP 23 2016

Ms. Wendy Wiles, Administrator
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 2015 Annual Report* ("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 2015. 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. 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

Notable accomplishments during 2015 are listed below.

- ODEQ and its partners continued to develop the Deschutes, Powder/Burnt, Coquille and Mid-Coast basin TMDLs. ODEQ continued work to revise the Hood River temperature TMDL and the Klamath and Lost Rivers nutrient TMDLs and they continued working on both TMDL implementation and implementation plan development in the Willamette, Rogue, Umpqua, Klamath, Tillamook, North Coast and other basins with TMDLs.
- ODEQ worked with the Oregon Department of Agriculture (ODA) to establish clear and measureable objectives to include in Agricultural Water Quality Management Plans. This is an important action which could strengthen the State's approach for addressing agricultural management measures established under CZARA.
- The Willamette Basin Coordinators participated on the OWEB interagency grant review teams to assist with the prioritization of funding as well as provided support for projects that relate to TMDL load allocations. DEQ Basin Coordinators also participated on technical teams

specifically for temperature load allocations in the Willamette (e.g., the Habitat Technical Team for the Willamette Biological Opinion).

- Groundwater monitoring continued in groundwater management areas with nitrate concentrations of concern. Additional groundwater screening outside of GWMAs began in the spring of 2015 and will rotate to two new areas each year. Funding from 319 supported key outreach and project personnel instrumental in connecting with community members in the Upper Willamette Groundwater Management Area.
- ODEQ, ODF, NOAA and EPA staff worked closely over the year to explore options for addressing the identified forestry gaps in Oregon's Coastal Nonpoint Pollution Control Program.
- ODEQ collected macroinvertebrate samples at approximately 60 locations in the Tillamook and Umatilla watersheds to interpret watershed health. By using macroinvertebrate assemblages at reference sites to characterize environmental tolerances of various taxa, ODEQ can assess whether macroinvertebrates are impaired and infer the nature of potential stressors such as sediment loading for poorly maintained roads.

Key Recommendations

In addition to EPA's evaluation of ODEQ's progress on its NPS programs during 2015, we have listed actions below on which ODEQ can focus during 2016 and beyond.

- Demonstrating water quality improvements resulting from completed restoration actions is challenging because ODEQ's Laboratory Analytical Storage and Retrieval (LASAR) database has not been functional since 2012. This impacts staff's ability to store, retrieve and analyze existing data to measure progress. Recently ODEQ did produce a report titled "Business Case for DEQ Environmental Data Management System" which outlines the State's approach for addressing the database problem. Unfortunately, the report indicates it will take six years to establish a new data base system which will cost several million dollars. EPA urges ODEQ to move forward with this comprehensive approach as quickly as possible because the data management system supports multiple programmatic needs. We encourage ODEQ to continue working with EPA Region 10 and EPA Headquarters experts to ensure development of a data system that allows the state to store, retrieve and analyze all appropriate data to measure progress, generate success stories showing improved water quality due to restoration, and evaluate the impairment status of waters to allow for the submittal of complete and timely lists of impaired waters and integrated reports.
- In FY 2015, key vacancies existed in ODEQ's 319 program including the NPS Coordinator position. This increased the workload of existing staff and impacted the timely development of important documents such as the 319 Annual Report and Oregon's Intended Use Plan. ODEQ should take the necessary steps to fill these vacancies or re-evaluate how the 319 related workload will be addressed in an efficient and timely manner.
- 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. In FY 2015 and FY 2016, ODEQ's award was reduced by 30% because the State failed to provide an approvable Coastal Nonpoint Pollution Control Program. In both years the "penalty" was taken from the portion of the funding targeted for watershed projects because the NPS program funds support staff who implement the State's NPS program. Consequently the funding for the watershed projects was far below 50% of the total award. ODEQ is submitting a waiver request for the CWA 319 requirement for 50% of the state's allocation to be used for watershed projects and is exploring applying for a "leverage exemption" from this

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requirement in FY 2017. Over the next year, ODEQ is strongly encouraged to work closely with EPA to explore how ODEQ could meet the requirements of the leverage exemption.

- Oregon should consider revising the format of its annual NPS reports to be more concise which would create time efficiencies for both agencies. EPA would be happy to meet with ODEQ to discuss ways to reduce your reporting burden.

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 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,

David Croxton for

Daniel D. Opalski, 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. Ivan Camacho, 319 Grant Coordinator, ODEQ (via email)

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

Note: Pages or Tables referenced in the responses below were based in part on a July draft of the "Oregon Nonpoint Source Pollution Program 2015 Annual Report". It is possible that the page and table numbers referenced in this report do not align with the State's final annual report because of edits to the July draft.

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, Oregon Department of Environmental Quality (ODEQ) reports on the status of its NPS management plan directions, priorities, and milestones on pages 22-24 and in the Tables 1 – 3. Oregon also uses the annual 319 NPS workplan commitments to reflect more measurable milestones. These commitments are reflected in Oregon's Performance Partnership Agreement and are presented in the annual report in Tables called "2015-2016 *Performance Partnership Agreement NPS and 319 – Funded Related Water Quality Component".*

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. The state reported its progress in the draft annual report in meeting its milestone(s) for 2015. This report provided sufficient information to address this component. Most of my comments on the draft report were editorial in nature (needing clarification, formatting issues, etc.) and I anticipate receiving the final report by the end of November 2016.

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.

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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 9 on page 62 illustrates estimated NPS load reductions for the six 2015 319 funded projects.

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)?

ODEQ provided WQ-10 making progress stories for Tillamook River and Kilchis River based on trends showing improving water quality. See Table 10. ODEQ also collected surface and ground water quality data to support TMDL development, GWMA assessments, annual ambient monitoring, pesticide stewardship programs and other activities. Analysis of the data occurred at the project level i.e., within a GWMA, as part of the development of a TMDL, or within the PSP area. However, a comprehensive analysis of change in water quality data relative to water quality project implementation was not completed. A key factor that prevented the analysis from being completed was that ODEQ's NPS program coordinator position and another key NPS position were vacant for the last year. It is anticipated that the NPS Coordinator position will be filled in December 2016 and that the other NPS staff will return this fall after a leave of absence.

Demonstrating water quality improvements due to completed restoration actions is challenging because ODEQ's Laboratory Analytical Storage and Retrieval (LASAR) database has not been functional since 2012. This impacts staff's ability to store, retrieve and analyze existing data and address the requirements of these measures. Recently ODEQ did produce a report titled "Business Case for DEQ Environmental Data Management System" which outlines the State's approach for addressing the database problem. Unfortunately, the report indicates it will take six years to establish a new data base system which will cost several million dollars. EPA urges ODEQ to move forward with this comprehensive approach as quickly as possible because the data management system supports multiple programmatic needs. We encourage ODEQ to continue working with EPA Region 10 and EPA Headquarters experts to ensure development of a data system that allows the state to store, retrieve and analyze all appropriate data to measure progress, generate success stories showing improved water quality due to restoration, and evaluate the impairment status of waters to allow for the submittal of 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 2015. In 2015, ODEQ completed WQ-10 making progress stories for Tillamook River and Kilchis River. These stories had also been used to address SP12 in 2011 and 2013 respectively and ODEQ updated the information. The updates demonstrate

how the strength in partnerships led to implementation of a variety of BMPs and conservation practices moving closer to the goal of water quality standards attainment.

2. Overall GRTS Reporting

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. Focus on Watershed-Based Implementation

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 2015 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.

ODEQ uses its 319 award to support Performance Partnership Grants (PPG) and grants to implement watershed based plans. In recent years, the majority of the funds were directed to support the PPG, so less than 50% of the state's grant was used to implement watershed based plans. In FY 2016, ODEQ's award was reduced by 30% because the State failed to provide an approvable Coastal Nonpoint Pollution Control Program. The "penalty" was taken from the portion of the funding targeted for pass through grants because the funding for the PPG supports staff to implement the State's NPS Program. Without funding NPS staff, it would be difficult to implement a pass-through grant program. Consequently, in FY 2016, it is estimated that only 20% of this year's award will be used for implementing watershed based plans. On September 21, 2016, ODEQ submitted a waiver request for the 50% spending requirement and is suggesting that it will explore applying for a "leverage exemption" from this requirement in FY 2017. In Oregon, the Oregon Watershed Enhancement Board (OWEB), an established state agency, funds over $60 million in watershed restoration projects each biennium. Projects funded often address nonpoint source water quality issues that support water quality standards and beneficial uses. OWEB is funded primarily by the State's Lottery Program.

EPA is considering ODEQ's waiver request and will likely support it based on the impact of the CZARA penalty. EPA is also planning to work with ODEQ over the next year to determine the possibilities of the State obtaining a "leverage exemption" to the 50% allocation of funds towards implementing watershed based plans or the approved alterative plans.

4. Ensuring Fiscal Accountability

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**	**Projec**		**Period**	**Grant Award**	**Balance (ULO)**	**% ULO**
OR	C900045111	11	07/01/11	-	12/31/15	$ 1,111,832	$ 5,652	.5%
OR	C900045112	12	07/01/12	-	12/31/15	$ 905,000	$ 99,526	10%
OR	C900045113	13	07/01/13	-	06/30/18	$ 756,508	$ 154,091	20%
OR	C900045114	14	07/01/14	-	06/30/19	$ 764,463	$ 356,154	46%
OR	C900045115	15	07/01/15	-	06/30/20	$ 80, 851	$ 80,851	100%
OR	**Total:**					**$3 6 1 8 6 5 4**	**$ 696,724**	**19.25%**

Note: While the ULO listed for the FY 2015 is "100%" in EPA's database, Ivan Camacho from ODEQ indicated that all of the FY 2015 funds have been obligated. It is likely that ODEQ has yet to request payment for these funds through EPA's automated payment system.

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 during 2015. See Table 8 in the Annual Report.

6. <u>Identifying and Addressing Performance Issues/Progress Concerns</u>

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. A recent report by ODEQ titled "Business Case for DEQ Environmental Data Management System (EDMS)" indicates that it may take up to six years before the EDMS is completed. A data repository such as LASAR is key to Oregon addressing the requirements of these performance measures. EPA encourages ODEQ to move as quickly as possible to set up a new database. ODEQ should enter and analyze all appropriate data into a data management 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. In FY 2015, ODEQ's

award was reduced by 30% because the State failed to provide an approvable Coastal Nonpoint Pollution Control Program. The "penalty" was taken from the portion of the funding targeted for pass through grants because the funding for the PPG supports key staff to implement the State's NPS Programs. Without funding NPS staff, it would be difficult to implement a pass-through grant program, and other components of the state's NPS program. Consequently, in FY 2016, it is estimated that only 20% of this year's award will be used for implementing watershed based plans. On September 21, 2016, ODEQ submitted a waiver request for the 50% spending requirement. Oregon should explore applying for a "leverage exemption" from this requirement in FY 2017. In Oregon, the Oregon Watershed Enhancement Board (OWEB), an established state agency, funds over $60 million in watershed restoration projects each biennium. Projects funded often address nonpoint source water quality issues that support water quality standards and beneficial uses. OWEB is funded primarily by the State's Lottery Program. ODEQ want to access the opportunities for including projects like OWEB's, to be counted as watershed plan implementation actions.

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. EPA would be happy to meet with ODEQ to discuss refinements on this report to reduce ODEQ reporting burden.
    - ODEQ should establish a firm schedule for accomplishing actions needed in the 319 application process including a schedule for submitting the annual report, the intended use document and other appropriate documents.
    - ODEQ needs to fill the existing 319 program vacancies or re-assign 319 related tasks to existing staff to ensure timely completion of 319 related products.

End

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