

AUTHORITY TO PROTECT WATER QUALITY ON FORESTLANDS



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Topics:

- DOJ Advice Memo
 - EQC Authority to Implement the CWA
 - Water Quality Standards
 - TMDL Development
 - Surrogate Measures
 - Reasonable Assurance
 - BOF Authority under Oregon Forest Practices Act
 - Supervise all matters of forest policy and management
 - Establish forest practices that maintain water resources
 - Ensure forest operations do not impair water quality standards
- Coordination

Water Quality Standards

- Designated use or uses for the water body
- Water quality criteria based upon such uses and
- Antidegradation requirements

40 CFR § 131.3(i), 40 CFR § 131.6.

- CWA 305(b) and 303(d) Report

TMDL Formula

$$\mathbf{TMDL = \Sigma WLA + \Sigma LA + MOS}$$

TMDL Development Process

- OAR Chapter 340, Division 42
- Local Advisory Group
- ORS 468B.110 Authority to establish and enforce TMDLs by rule or order

Surrogate Measures

- Where a pollutant is highly variable or difficult to measure directly, surrogate measures may be used as an additional means to express allocations.
- One example, important for nonpoint sources, is the use of riparian shade as a surrogate measure for temperature TMDLs.
- OAR 340-042-0040(5)(b).



TMDL Implementation

- For non-point sources, TMDL allocations are implemented by designated management agencies (DMAs), such as cities, counties and other government agencies (including ODF for non-federal forestlands), as identified by DEQ in the TMDL.
- DMAs develop TMDL implementation plans that may contain regulatory measures, non-regulatory measures, or both, and that are subject to review and approval by DEQ.
- For non-federal forestlands, the Commission has adopted a specific TMDL implementation rule.
 - OAR 340-042-0080(2)

BOF Authority

- The BOF shall supervise all matters of forest policy and management. ORS 526.016(1).
- The BOF has exclusive authority to develop forest practices rules. ORS 527.630(3).
- The BOF shall adopt rules establishing standards for forest practices that ensure the continuous growing and harvesting of forest tree species; and provide for the overall maintenance water resources. ORS 527.710.

BOF Authority

- The BOF shall establish best management practices applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. ORS 527.765(1).

BOF Authority

- The BOF will coordinate with other state agencies and local governments which are concerned with the forest environment. ORS 527.630(3).
- The BOF shall consult with the EQC in adoption and review of best management practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands. Further, the EQC may petition the BOF to require a review of the established best management practices. ORS 527.765.

BOF Authority

- The BOF may adopt rules that set standards for forest practices not specifically addressed in statute, only after determining that certain facts exist and standards are met. ORS 527.714(5)(a) - (f).
- The BOF shall appoint an interdisciplinary task force if forest practices are measurably limiting to water quality achievement. The task force shall analyze conditions within the watershed and recommend watershed-specific practices to ensure water quality achievement. OAR 629-635-0120.

BOF Authority

- Forest operations shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control.
ORS 527.724.
- Operations conducted in accordance with Board's best management practices shall not be considered in violation of any water quality standards. ("BMP Shield").
ORS 527.770.

Coordination

- EQC / DEQ
 - Assess waters and develop water quality standards
 - Develop TMDLs with ODF participation in Local Advisory Group
 - Assess whether reductions are adequate
- BOF / ODF
 - Statutory requirements for findings and criteria for rulemaking
 - Target is achievement of DEQ's determinations of load allocations
 - Flexibility in determining how to achieve the target
- Goal of collaborative process:
 - Commission determines amount of pollution reduction needed
 - Board determines how to achieve those reductions

Temperature TMDL Replacement

- Substantive litigation regarding whether replacement is required is complete
- DEQ and EPA are working together to develop TMDLs
- Schedule in District Court Order

TMDL	Deadline for EPA Approval or Disapproval ¹⁶
Southern Willamette Subbasins	January 15, 2024
Mid-Willamette Subbasins	January 15, 2024
Lower Willamette Subbasins	January 15, 2024
Willamette River Mainstem and Major Tributaries	February 28, 2025
North Umpqua Subbasin	February 28, 2025
South Umpqua and Umpqua Subbasins	February 28, 2025
Applegate, Illinois, Lower Rogue, and Middle Rogue Subbasins	April 17, 2026
John Day Basin	April 17, 2026
Upper Rogue Subbasin	April 17, 2026
Snake River-Hells Canyon	June 4, 2027
Lower Grande Ronde, Imnaha, and Wallowa Basins	June 4, 2027
Middle Columbia-Hood, Miles Creeks Basins	June 4, 2027
Umatilla Basin-Walla Walla Subbasin	May 29, 2028
Willow Creek Subbasin	May 29, 2028
Malheur River Subbasins	May 29, 2028

Thank you