

# MEMORANDUM OF UNDERSTANDING BETWEEN THE OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE OREGON STATE DEPARTMENT OF FORESTRY

## I. Introduction and Statement of Purpose

### A. Introduction

1. The Environmental Quality Commission (EQC) and the Oregon Department of Environmental Quality (DEQ) are responsible for implementing the Federal Clean Water Act in Oregon, ORS 468B.035, including adoption of water quality standards. The DEQ has adopted and the U.S. Environmental Protection Agency (EPA) has approved Oregon's water quality standards and its 1994/1996 303(d) list. DEQ intends to update and resubmit its 303(d) list to EPA in 1998 and subsequent years as required by federal regulations. DEQ is setting priorities for TMDL preparation.
2. Subsection 303(d) of the Federal Clean Water Act (the Act), 33 U.S.C. §1313(d), requires states to identify waters for which effluent limitations or other pollution control requirements required by local, State, or Federal authority are not stringent enough to implement applicable water quality standards, 40 C.F.R. §130.7 (b). These water bodies are referred to as "water quality limited." For each water on the 303(d) list that is not removed from the list by findings of water quality impairment due to natural conditions or best management practice (BMP) effectiveness, the state must establish a total maximum daily load (TMDL) allocation at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. A TMDL is the sum of the individual wasteload allocations for point sources and load allocations for non-point sources and natural background, 40 C.F.R. §130.2(i).
3. TMDLs must be incorporated into the continuing planning process required by Section 303(e) of the Act and the continuing planning process must be included in the state's water quality management plan. Sections 208 and 319 of the Act, 33 U.S.C. §1288 and §1329, require the state to prepare non-point source management plans.
4. ORS 527.765 requires the Oregon Board of Forestry (the Board), in consultation with the EQC, to establish Best Management Practices (BMPs) and other rules applying to forest practices to ensure that to the maximum extent practicable non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of water quality standards established by the EQC. The Oregon Department of Forestry (ODF) is the Designated Management Agency (DMA) by DEQ for regulation of water quality on nonfederal forestlands. Forest operators conducting operations in accordance with ODF BMPs are considered to be in compliance with Oregon's water quality standards.

5. The Board in consultation and with the participation and support of DEQ, has adopted water protection rules in the form of BMPs for forest operations, including, but not limited to, OAR Chapter 629, Divisions 635-660. These rules are implemented and enforced by ODF and monitored to assure their effectiveness. DEQ participates in the design and implementation of these monitoring efforts. The EQC, DEQ, the Board and ODF determined that pollution control measures required as BMPs under ORS 527.765 will be relied upon to result in achievement of state water quality standards.
6. The EQC, DEQ, the Board, and ODF are all committed to restoring salmon and meeting water quality through the Healthy Streams Partnership and Oregon Plan for Salmon and Watersheds, 1997 Oregon Laws, Ch. 7.

## B. Purposes of MOU

The purposes of this memorandum of understanding:

1. To further define the respective roles and responsibilities of the EQC, the DEQ, the Board, and ODF in preventing, controlling and reducing non-point source discharges to achieve and maintain water quality standards;
2. To explain the process for determining whether (a) forest practices contribute to identified water quality problems in listed water quality limited streams; (b) if so, to determine whether existing forest practice rules provide sufficient control to assure that water quality standards will be met so that waters can be removed from the 303(d) list;
3. To describe the process for interagency coordination in revising forest practice rules, if necessary, to assure the achievement of water quality standards; and
4. To encourage the use of voluntary and incentive-based regulatory solutions to achieve and maintain water quality.

## II. Forest Practice BMPs and Water Quality Standards

Since ODF is the DMA for water quality management on nonfederal forestlands and ODF's BMP's are designed to protect water quality, ODF and DEQ will jointly demonstrate how the Forest Practices Act (FPA), forest practice rules (including the rule amendment process), and BMP's are adequate protection pursuant to ORS 527.765. This demonstration of the ODF BMP program adequacy will be done at the statewide scale with due consideration to regional and local variation in effects including non-anthropogenic factors that can lead to water quality standard violations.

Water quality impairment related to aquatic weeds, bacteria, chlorophyll a, dissolved oxygen, flow modification, many nutrients, total dissolved gas, or toxics are generally not attributable to forest management practices as regulated by the FPA. However, it is generally accepted that forest management practices have in some cases caused documented changes in temperature, habitat modification, sedimentation, turbidity, and bio-criteria. Therefore, this statewide demonstration of FPA effectiveness in protection of water quality will address these specific parameters and will be conducted in the following order:

- a. temperature (draft report target completion date Spring, 1999),
- b. sedimentation and turbidity (draft report target completion date Summer, 1999),
- c. aquatic habitat modification (draft report target completion date fall 1999),
- e. bio-criteria (draft report target completion date end 1999), and
- f. other parameters (draft report target completion date spring 2000).

The analyses will be presented in a format compatible with EPA region 10 guidance (pages 4-6, dated November 1995) regarding BMP effectiveness determinations, and will include:

- a. "Data analysis of the effectiveness of controls relative to the problem": analyze relevant data and studies on the parameter and known control methods,
- b. "Mechanisms requiring implementation of pollution controls": give a clear exposition of the rules/programs that are designed to provide for protection,
- c. "Reasonable time frame for attaining water quality standards": discuss expected recovery times which may be long for some parameters because the ecological processes that bring recovery are long-term, and
- d. "Monitoring to track implementation and effectiveness of controls": describe the scope and extent the effectiveness and implementation monitoring program and how they tie back to program changes for adaptive management.

In addition, these analyses will address attainment of state anti-degradation policy. These demonstrations will be reviewed by peers and other interested parties prior to final release. While analysis is being conducted and unless or until changes are made in accordance with ORS 527.765, the FPA and implementing rules will constitute the water quality BMP program for forestlands. These sufficiency analyses will be designed to provide background information and techniques for watershed based assessments of BMP effectiveness and water quality assessments for watersheds with forest and mixed land uses.

### III. ODF and DEQ coordination for listed waterbodies (i.e., 303(d) list)

#### A. Waterbody Specific Coordination

The following coordination will occur between ODF and DEQ regarding the TMDL process and water quality management plans:

- (a) For basins where agreement is reached that water quality impairment is not attributable to forest management practices (Figure 1), the forest practice rules will constitute the water quality compliance mechanism for forest management practices on nonfederal forestland. ODF will not participate in the development of the TMDL or water quality management plan except as requested to assist DEQ as ODF budgeted resources permit. If the basin associated with a listed waterbody is entirely or almost entirely on federal land or non-forestland ODF will have little or no involvement (Figure 1).
- (b) For basins where water quality impairment is attributed to the long-term legacy of historic forest management and/or other practices, but ODF and DEQ jointly agree that the forest practice BMP's are now adequately regulating forest management activities and not adding to further degradation of water quality, the forest practice rules will be designated in the water quality management plan as the mechanism to achieve water quality compliance for forest operations. ODF will participate with the other DMAs in developing the water quality management plan as necessary.
- (c) For basins where water quality impairment may be attributable to forest management practices and ODF and DEQ cannot agree that the current BMPs are adequately regulating forest management activities (Figure 1), the current forest practice rules will be designated in the water quality management plan as the mechanism to achieve water quality compliance for forest operations. However, ODF will design and implement a specific monitoring program as part of the basin plan to document the adequacy of the best management practices. The schedule and scope of the monitoring program will be jointly agreed to by DEQ and ODF. During the interim, while monitoring is being conducted, the current rules will constitute the water quality compliance mechanism. If the monitoring results indicate that changes in practices are needed in a basin, the DEQ and the Board will use OAR 629-635-120 to create watershed specific protection rules or use other existing authority to ensure that forest management activities do not impair water quality.
- (d) For basins where both ODF and DEQ agree that there are water quality impairments due to forest management activities even with FPA rules and BMP's, the DEQ and the BOF will use OAR 629-635-120 to create watershed specific protection rules or use other existing authority to ensure that forest management activities do not impair water quality.

In deciding between conditions (a)-(d) above, the statewide rule sufficiency analysis (described in II) will be critical in determining which situation exists. If the practices and impairments are found by DEQ and ODF to be regional or statewide in nature the BOF will create or modify statewide or regional rules or design other effective measures to address the impairment.

## B. Removal or Reclassification of Waterbodies

DEQ will propose removal of waterbodies (Figure 1) on the 303(d) list when:

- (a) additional data indicates that the waterbody is not in violation,
- (b) water quality parameters are found to be in violation for reasons other than human activities,
- (c) TMDL's, or water quality management plans or their equivalents, have been established in compliance with the Clean Water Act §303, or
- (d) the FPA, forest practice rules and BMP's are found to be adequate for a given water quality parameter in a given basin via the statewide demonstration or watershed based demonstration (see section II above) and all land affecting the listed waterbody is deemed forestland that is regulated under the FPA. Forest basins that have water quality impairment due to legacy conditions that will not be corrected by the current BMPs alone, remain listed with their present status until voluntary or incentive based actions are implemented that are intended to restore watershed conditions such that water quality standards can be met.

## IV. Voluntary and Incentive-Based Approaches

DEQ and ODF will work jointly with landowners and watershed councils, as resources permit, to use innovative approaches to resolving water quality problems. DEQ and ODF will use other pollution control requirements when appropriate to restore watershed conditions such that water quality standards can be met in waterbodies listed under Section 303(d) of the Clean Water Act. These pollution programs include but are not limited to the following:

1. Oregon Laws 1997, ch. 553, The Green Permits Act,;
2. Oregon Laws 1995, ch. 413, The Forest Stewardship Act,;
3. Oregon Laws 1997, ch. 7, Healthy Streams Partnership and the Oregon Plan for Salmon and Watersheds;
4. DEQ's Environmental Management Systems Incentives Project;
5. Habitat Conservation Plans adopted and approved under the Endangered Species Act;
6. Project XL agreements with the EPA; and

7. Pollution Prevention Partnership agreements with the EPA.

Some of these alternative approaches will become critical and complementary to the forest practices program when attempting to restore water quality in streams with significant legacy

conditions caused by past actions such as channel simplification from splash damming and stream cleaning.

## V. Other key coordination points for DEQ and ODF

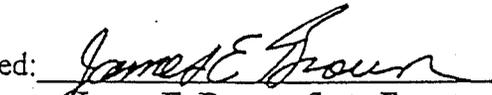
There are two other issues that will require special coordination between DEQ and ODF These coordination issues regard:

1. Outstanding Resource Water designations and management measures, and
2. Coordination between the two agencies when there is a land use conversion.

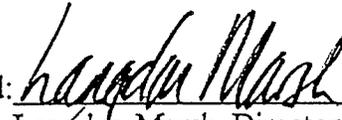
Both agencies agree to open discussion on how to coordinate on these issues but they are separate issues that are not covered by this particular MOU.

## VI. Signatures

Signed:

  
James E. Brown, State Forester  
Oregon Department of Forestry

Signed:

  
Langdon Marsh, Director  
Oregon Department of  
Environmental Quality

Date:

4/16/98

Date:

4-17-98

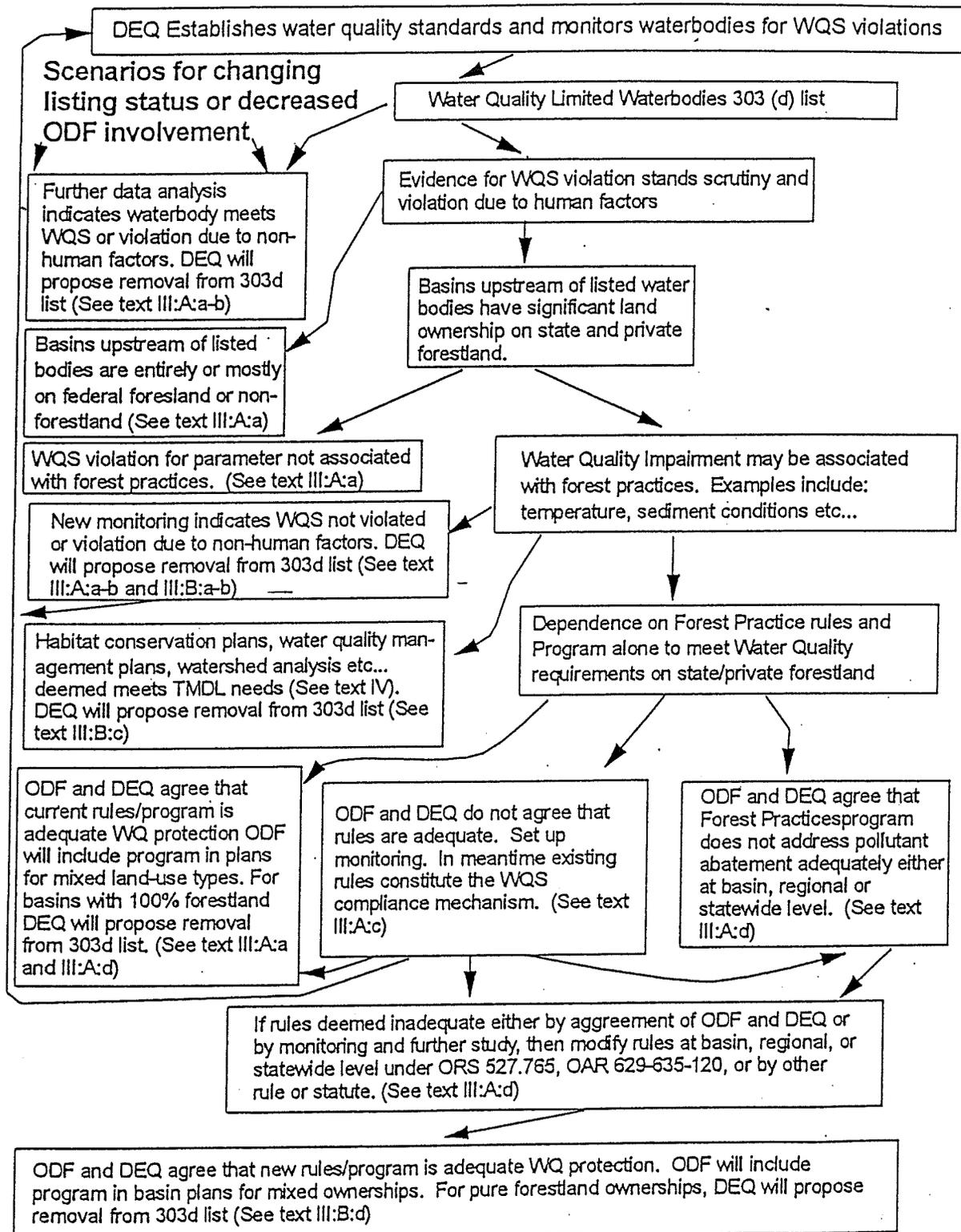


Figure 1. Treatment of waterbodies with forestland and mixed landuse and ownership lands listed as water quality limited under the 303(d) list

