



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

WATER DIVISION

July 27, 2020

Ms. Jennifer Wigal, Deputy Administrator for Water Quality
Water Quality Division
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

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

Dear Ms. Wigal:

Thank you for submitting the *2019 Oregon Nonpoint Source Pollution Program Annual Report* (Annual Report) prepared by the Oregon Department of Environmental Quality (DEQ). Based on our review, the Environmental Protection Agency (EPA) concludes that Oregon has made satisfactory progress in implementing its nonpoint source (NPS) management program during 2019. We have enclosed the EPA's *Checklist for Determining Progress of State NPS Management Programs* 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 2019 are listed below.

- In 2019 DEQ issued a revised TMDL in the Upper Klamath and Lost River Subbasins for a suite of pollutants including dissolved oxygen, pH, ammonia toxicity and chlorophyll a impairments and issued a separate temperature TMDL for the same subbasins. DEQ also issued the Revised Willamette Basin Mercury TMDL and its Water Quality Management Plan (WQMP). The WQMPs for these two TMDLs presented very comprehensive approaches for implementing the TMDLs.
- DEQ submitted a biennial water quality assessment report to EPA on the condition of Oregon's waters. The draft 2018/2020 Integrated Report was released for public comment in September 2019. This report was based on a significantly improved robust methodology, and it created a framework and foundation for future assessments. This was the first time that DEQ conducted a statewide data call since the 2004/2006 Integrated Report. Using the updated and revised methodology, DEQ evaluated over 6.5 million data points from 74 organizations, totaling over

26,000 assessments. It was also the first time that DEQ released the report as an interactive map tool, including an interactive web map, interactive story map, online searchable database and geodatabase.

- The Drinking Water Program completed the remaining 98 of the 168 “Updated Source Water Assessments” to address non-point sources in watersheds used for Community and Non-Transient-Non-Community surface water drinking water systems. The updated assessments give drinking water systems information on geographic setting and point and non-point pollution risks to drinking water supplies. The program also hosted Source Water Protection Workshops focused on forestry and agriculture to encourage partners and water systems to address nonpoint sources of pollution. Additionally, DEQ partnered with the Oregon Health Authority, Business Oregon, and several federal agencies to fund watershed assessment and restoration and provide technical assistance to water systems and local partners throughout Oregon.
- DEQ Basin coordinators participated in 16 Oregon Department of Agriculture’s (ODA) biennial review processes for agricultural water quality management area rules and plans by providing comment and recommendations on changes or additions necessary to achieve water quality standards and TMDL agricultural load allocations. As part of this process DEQ develops water quality status and trends reports. The status and trends reports are analyses and summaries of best management practices being implemented. DEQ, ODA and the ODA Local Advisory Committees often use this information during the biennial reviews.
- DEQ developed and is applying a comprehensive “check list” to use in evaluating watershed management plans submitted by 319 grant applicants. Using the check list helps ensure that 319 funds are used for best management practices and actions under a comprehensive watershed-based plan by ensuring that its plans align with EPA’s “Key Elements of a Watershed Based Plan

Key Recommendations

During 2020, EPA recommends that DEQ focus on the actions listed below:

- Even with what we understand to be an exceptionally high workload, DEQ’s NPS Coordinator continues to provide strong leadership in implementing the State’s NPS programs and provides valuable input into regional and national NPS discussions. Consistent with the recommendation included in our last four satisfactory progress letters, EPA encourages progress in filling vacant NPS positions. It is our observation that having unfilled NPS positions has contributed to delays in the development and delivery of NPS Program requirements such as the revisions to the 2014-2018 Non-Point Source Management Plan and the development of NPS Success Stories.
- In updating the 2014-2018 NPS Management Plan, DEQ should describe how NPS management and implementation were addressed in 2019 and will be addressed in 2020, prior to completing the revised 2014-2018 NPS Plan, i.e., the 2020-2024 Plan. It should be noted that EPA did receive DEQ’s request to continue applying the 2014-2018 NPS Management Plan until the revised plan (2020-2024 Plan) had been completed.
- EPA remains interested in engaging with DEQ to address outstanding issues for attaining an approvable Coastal Non-Point Pollution Control Program.

- DEQ, in cooperation with EPA, should evaluate steps in the 319 grant process to determine where opportunities exist to ensure an earlier submittal of DEQ's grant application and then a subsequently earlier grant approval action by EPA.

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 call me at (206) 553-1855, or have your staff contact Mr. Alan Henning, Oregon 319 Nonpoint Source Coordinator at (541) 687-7360 if you have any questions regarding our review.

Sincerely,

Daniel D. Opalski
Director

Enclosure: Checklist for Determining Progress of State NPS Management Programs

ecc: Mr. Eugene Foster, Watershed Management Section Manager, ODEQ (via email)
Mr. Ryan Michie, NPS Coordinator/Senior Analyst, Watershed Management Section (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

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’s Nonpoint Source Management Program Plan (Plan) includes relevant and trackable annual milestones for program implementation. In its 2019 Annual Nonpoint Source Pollution Program Annual Report (Annual Report), the Oregon Department of Environmental Quality (DEQ) reports on the status of its Plan’s goals, priorities and milestones. Oregon issued the Plan in 2014, and EPA approved the Plan in 2015. Throughout its Annual Report, DEQ summarizes actions taken to address specific goals identified in the Plan and in the 2018-2020 and 2020-2022 Performance Partnership Agreement (PPA). DEQ is currently revising its Plan and anticipates submitting it to EPA in November 2020. The Plan will cover calendar years 2020 through 2024.

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?**

N/A. See comment above.

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 meeting NPS milestones in its Annual Report. See comment for 1.A.(i) above and refer to “Section 3. Nonpoint Source Activities and Accomplishments in 2019” beginning on p. 21 of the Annual Report.

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 in addressing many milestones in a variety of programs including but not limited to: issuing three major TMDLs; issuing Watershed Basin Status and Action Plans; completing 98 ‘Source Water Assessments’ under the Drinking Water Protection Program; completing the 2019 Oregon Statewide Status and Trends Report submitting its biennial Integrated Report; and participating in 16 Ag Water Quality Management Program Plan reviews. In the appendices to the Annual Report, DEQ provides basin specific project activities funded and implemented by DEQ and other

State agencies to address fisheries and water quality issues. Many, if not most of the projects funded by the other State agencies, address non-point sources of pollution directly or indirectly.

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?**

DEQ did report 2019 load reductions in GRTS for this reporting period. Load reduction estimates are presented in Table 11, Section 3.6.6. “Estimates of Load Reductions from 319 Projects”, page 44 of the 2019 Annual Report.

- 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)?**

Sections 3.10.2 and 4.4 of the Annual Report identify waters where monitoring shows water quality is improving following restoration actions. In 2019, DEQ also prepared water quality status and trend reports and evaluated dissolved oxygen, pH, total phosphorus, temperature, total suspended solids, Escherichia coli, enterococcus and fecal coliform over a twenty-year period from 1999 to 2018. Across 1872 stations statewide with available data to assess water quality status, 40% (744 stations) attained water quality standards or TMDL targets and 60% (1128 stations) showed that the water quality standards were not attained. In the assessment of water quality trends for 750 stations statewide with sufficient data, 52% (392 stations) showed improving or maintaining water quality while 48% (358 stations) showed degradation in water quality.

- iii) **Did the state meet its annual commitment/target/goal (if any) under WQ-10 to remove impaired waters from the 303(d) list?**

DEQ did not develop any new WQ-10 stories during 2019. However, DEQ identified some waters across Oregon where water quality improvements have been noted, such as the Walla Walla River and the Lower Owyhee River. See Sections 3.10.2 and 4.4 respectively of the Annual Report.

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?**

To address this question, EPA ran the GRTS report on mandatory elements which identifies missing information for mandatory elements. The GRTS mandatory report identified possible reporting errors on 15 funded projects. EPA informed DEQ of the possible errors and DEQ addressed the errors in the database.

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 approve 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.**

DEQ uses its 319 award to support Performance Partnership Grants (PPG) and grants to implement alternative plans (TMDLs and associated TMDL implementation plans). In recent years, the majority of the funds were directed to support the programmatic work via DEQ staff, so less than 50% of the state's grant was used to implement alternative plans. In FYs 2015, 2016, 2017, 2018 and 2019, DEQ's 319 awards were reduced by 30% because the State failed to provide an approvable Coastal Nonpoint Pollution Control Program. In each year, the penalty was taken from the portion of the funding targeted for projects (and pass through grants) because the funding for the PPG supports staff to implement the State's NPS Program. In October 2016, DEQ requested and EPA granted a waiver from the 50/50 spending guideline for FYs 2015 and 2016. In FY 2017, DEQ implemented a time management program and tracked staff time so that a portion can be counted towards project implementation. DEQ calculated that 75% (\$1,010,781) of the total 2019 319 funds had been spent on watershed-based projects and eligible activities thus meeting the 50% target identified in EPA guidance. See page 39 of the Annual Report.

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?**

While DEQ's RFP process is efficient and timely for selecting projects, DEQ should consider initiating the RFP process a few months earlier so the Intended Use Plan (IUP) can be submitted earlier to EPA. Both the IUP and the NPS Annual Report are critical documents in processing the State's 319 Grant. An earlier submittal of the NPS Annual Report and the IUP would ensure adequate time is available for processing DEQ's grant application.

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?

The State obligated subgrants to four of the eight recipients and anticipates having all the funding from the 2019 319(h) grant funds obligated within the first year.

Rate of Expenditures. The table below reflects only the project funds (categorical grant). The 319 funds in the PPG supports DEQ staffing etc. and is not included.

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 September 11, 2019								
	<i>Grant #</i>	<i>FY</i>	<i>Project</i>		<i>Period</i>	<i>Grant Award Amount</i>	<i>Balance</i>	<i>%ULO</i>
OR	C900045115	15	07/01/15	-	12/31/19	\$80,851	\$ 0	0%
OR	C900045116	16	10/01/16	-	12/31/20	\$333,501	\$ 4,366	1.3%
OR	C900045117	17	10/01/17		12/31/21	\$327,041	\$ 138,354	43.3%
OR	C900045118	18	08/01/18	-	12/31/20	\$257,245	\$225,665	87.7
OR	C900045119	19	09/01/19	-	12/31/23	\$244,061	\$244,061	100%

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 NPSNPM.) Please explain.

Yes. The State followed the goals, objectives and measures of the national program guidelines and priorities as described in the 2019 Annual Report. Even though the State now has a new data base for entering and retrieving water quality data, the lack of staff prevented

the State from developing any WQ10s or making progress stories in 2019. In 2020, the EPA Project Officer will work with DEQ staff in developing potential success stories.

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 2019 as shown throughout the body of the 2019 Annual Report and in the Appendices, i.e., the Basin specific reports.

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.

Documenting water quality progress as a result of restoration (through measures such as WQ-10a) is a key priority of the national NPS program. In recent years, Oregon did not report on any WQ-10 waters because of challenges with storing and retrieving monitoring data from LASAR, its data base. However, DEQ replaced LASAR with AWQMS, and can now retrieve and review water quality data. DEQ is in the process of migrating data from LASAR to AWQMS. Nonetheless, DEQ was unable to report on WQ-10 waters because they lacked adequate staff to complete the assessments. The EPA Region 10 Project Officer will work with EPA HQ, DEQ and other State agencies to support DEQ in developing a success story in 2020.

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.

Key vacancies continued to exist in in 2019 in DEQ's 319 program. Because of this, the 319 workload was redistributed to existing staff in order to meet deadlines in a more timely and efficient manner. However, the vacancies created an increased workload on the remaining staff and prevented/delayed the state from fulfilling the national EPA expectations for the 319/NPS program such as the WQ-10a success stories.

No activity occurred in 2019 that focused on submitting a new Coastal Nonpoint Pollution Control Plan (CNPCP) as identified by NOAA and EPA in their January 2015 CZARA decision.