



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

September 1, 2022

Ms. Jennifer Wigal
Water Quality Division Administrator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100
Jennifer.WIGAL@deq.oregon.gov

Re: EPA's Review of Oregon's 2022 Integrated Report and Approval of the Section 303(d) List

Dear Ms. Wigal:

The U.S. Environmental Protection Agency has conducted a review of Oregon's 2022 Integrated Report (IR), including the Clean Water Act (CWA) section 303(d) list of impaired waters, a Total Maximum Daily Load (TMDL) submission schedule, and the associated supporting documentation and information. EPA received the 2022 IR from the Oregon Department of Environmental Quality (ODEQ) on May 23, 2022, through the ATTAINS online system.¹ Oregon subsequently supplemented its IR to include a TMDL submission schedule pursuant to 40 C.F.R. § 130.7(d)(1) on August 15, 2022.

Pursuant to EPA's authorities under section 303(d) of the CWA, 33 U.S.C. § 1313(d), and the implementing regulations at 40 C.F.R. Part 130, EPA is approving Oregon's 2022 303(d) list of 3,717 waterbody segment/pollutant pairs. Although ODEQ's IR describes the status of all of Oregon's waters, EPA is only acting on the waters listed in Category 5 of the IR, which is the State's 303(d) list. In taking this action on Oregon's section 303(d) list, EPA considered the information in the project record, including but not limited to, Oregon's 2022 Category 5 data in ATTAINS, summary spreadsheets, and narrative supplemental documents submitted by ODEQ. A summary of EPA's review of Oregon's compliance with each statutory and regulatory requirement for its 2022 303(d) list is described in the enclosure to this letter.

The Agency's approval of the State's 2022 303(d) list does not apply to any waters, or portions thereof, that are within Indian country. EPA is taking no action to approve or disapprove the State's list with respect to any waters within Indian country.

EPA has also reviewed the TMDL submission schedule Oregon submitted with its 2022 IR. Consistent with 40 C.F.R. § 130.7(d)(1), the TMDL submission schedule identifies dates by which Oregon anticipates submitting TMDLs to EPA. As recognized in EPA guidance, TMDL submission schedules

¹ The Assessment, Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) is EPA's electronic system to accept and track CWA section 303(d) submissions.

are intended to help the public and EPA understand the State's priorities and assist in work planning.² EPA acknowledges Oregon's TMDL submission schedule and finds it satisfies these purposes, and notes Oregon's intention to coordinate with EPA to update this schedule in the future, including during preparation of its next IR.

We would like to acknowledge the hard work of Lesley Merrick, Travis Pritchard, Connie Dou and other ODEQ staff in developing the 2022 303(d) list.

If you have any questions, please feel free to contact me at (206) 553-1855, or have your staff contact Jill Fullagar, EPA Region 10 Assessment Program Coordinator, at (206) 553-2582 or by email at fullagar.jill@epa.gov.

Sincerely,

Daniel D. Opalski
Director

Enclosure: EPA Clean Water Act Review and Decision Rationale

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² EPA, Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, at 63 (July 29, 2005).

U.S. EPA Clean Water Act Review and Decision Rationale for Approval of Oregon's 2022 303(d) List

[September 1, 2022]

Summary

The purpose of this document is to describe the U.S. Environmental Protection Agency's rationale for approving Oregon's 2022 Clean Water Act (CWA) section 303(d) list of water quality limited segments (WQLS), identified in the State's 2022 Integrated Report (IR). The report includes data and information collected during a five-year period, from January 1, 2016 to December 31, 2020.

The following sections identify those elements required to be included in the list submittal based on the CWA and EPA regulations (see 40 C.F.R. § 130.7). EPA reviewed the methodology used by the State in developing its list and the description of the data and information it considered. EPA's review of Oregon's 303(d) list is based on the Agency's analysis of whether the State reasonably considered existing and readily available water quality data and information and reasonably identified waters required to be listed. This review describes the basis for EPA's decision to approve the State's listings of WQLS requiring a Total Maximum Daily Load (TMDL).

Section 305(b) of the CWA requires that each state report every two years on the health of all its waters. EPA recommends that states combine the 303(d) list with the 305(b) report to create an IR. Each state's 303(d) list is due on April 1 of even-numbered years. EPA is required to approve or disapprove the 303(d) list (33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2)).

The Oregon Department of Environmental Quality (ODEQ) released the draft IR for public review from January 12 through February 11, 2022. ODEQ submitted the IR to EPA on May 23, 2022 for CWA review and action on the section 303(d) list. ODEQ subsequently supplemented the IR, on August 15, 2022, to include a TMDL submission schedule pursuant to 40 C.F.R. § 130.7(d)(1).

Pursuant to EPA's authorities under section 303(d) of the CWA, 33 U.S.C. § 1313(d), and the implementing regulations at 40 C.F.R. Part 130, EPA is approving Oregon's 2022 303(d) list of impaired waters. Although ODEQ's IR describes the status of all of Oregon's waters, EPA is only acting on the waters listed in Category 5 of the IR, which is the State's 303(d) list. The remainder of this document presents EPA's rationale in support of this decision.

I. EPA's Review Process

EPA reviewed Oregon's draft and the 2022 303(d) list submittal, including the priority ranking of impaired waters, the data solicitation process, and the public participation process. In its review of the 2022 303(d) list, EPA evaluated whether the State satisfied the regulatory requirement to assemble and evaluate all existing and readily available water quality-related data and information and reasonably identified waters required to be listed. ODEQ utilized the latest version of its assessment methodology, *Methodology for Oregon's 2022 Water Quality Report and List of Water Quality Limited Waters* (Oregon, 2022a). While EPA does not approve assessment methodologies, it reviewed and provided comments during development of the draft methodology. EPA's approval of a state's section 303(d) list should not be construed as agreement with or approval of the assessment methodology. In reviewing the 303(d) list, EPA took into account ODEQ's assessment methodology as supporting documentation, but the goal of EPA's review was ultimately to determine whether the State reasonably made its listing determinations consistent with the applicable regulatory requirements.

EPA must take action to approve or disapprove the State's submitted 303(d) list (40 C.F.R. § 130.7(d)(2)). Because the 303(d) list is submitted as a component of the IR, EPA also reviews the IR to ensure documentation to support the State's 303(d) list submittal, described at 40 C.F.R. § 130.7(b)(6), is included.

EPA concludes the State reasonably assembled and evaluated all existing and readily available data and information, in compliance with the applicable regulatory requirements including data and information relating to the categories of waters specified in 40 C.F.R. § 130.7(b)(5). Based on this review, EPA has determined that the State developed its section 303(d) list in compliance with section 303(d) of the CWA and 40 C.F.R. § 130.7. This conclusion is supported by the information outlined in Parts II and III of this document.

II. Review of 303(d) List Required Elements and Integrated Report

A. Status of Waters in the State

EPA's 2002 *Integrated Water Quality Monitoring and Assessment Report Guidance* (EPA, 2001) suggests a categorization strategy where waterbodies are placed into at least one of five different categories, based on attainment of water quality standards (WQS) and beneficial use support.³ Oregon uses similar categories for its IR and has developed definitions of each category, as

³ https://www.epa.gov/sites/default/files/2015-10/documents/2002_02_13_tmdl_2002wqma.pdf

described below. The categorized waters can be found in Table 3, Section 3.3.1 of the ODEQ's assessment methodology.⁴ Oregon defines its categories as follows:

- **Category 1:** All designated uses are supported. (Oregon does not use this category.)
- **Category 2:** Available data and information indicate that some designated uses are supported and the water quality standard is attained. This category applies only to the assessed designated use or water quality standard. Other designated uses or water quality standards may or may not be attained.
- **Category 3:** Insufficient data to determine whether a designated use is supported.
Oregon further sub-classifies waters if warranted as:
 - **3B: insufficient data; potential concern:** Insufficient to determine use support but some data indicate non-attainment of a criterion.
 - **3C: insufficient data; non-reference condition:** Biocriteria scores differ from reference condition but are not classified as impaired.
 - **3D: insufficient data; not technologically feasible to assess:** Insufficient data to determine use support because numeric criteria are less than quantitation limits.
- **Category 4:** Data indicate that at least one designated use is not supported but a TMDL is not needed to address the pollutant cause. This includes:
 - **Category 4a:** TMDLs that will result in attainment of water quality standards and beneficial use support have been approved.
 - **Category 4b:** Other pollution control requirements are expected to address pollutants and will result in attainment of water quality standards.
 - **Category 4c:** Impairment caused by pollution, not by a pollutant (e.g., flow or lack of flow are not considered pollutants).
- **Category 5:** Data indicate a designated use is not supported or a water quality standard is not attained and a TMDL is needed.

Based on this categorization scheme, the term "303(d) list" refers to waters in Category 5, which is the list of impaired and threatened waters (stream/river segments and lakes) requiring a TMDL. The State identifies these waters where required pollution controls are not sufficient to attain or maintain applicable WQS. The listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of CWA section 303(d).

The CWA and EPA regulations require states to include the following information as part of their 303(d) list submittal:

⁴ <https://www.oregon.gov/deq/wq/Documents/IR22AssessMethod.pdf>

- A list of water quality-limited (impaired and threatened) waters still requiring TMDL(s) [waters assigned to Category 5], pollutants causing the impairment, and priority ranking for TMDL development (including waters targeted for TMDL development within the next two years).
- Any other reasonable information requested by EPA, such as demonstrating good cause for not including a water or waters on the list.

EPA regulations provide that states must list waters where the following controls are not adequate to implement applicable WQS: (1) technology-based effluent limitations required by the CWA, (2) more stringent effluent limitations required by state or local authority, and (3) other pollution control requirements required by state, local, or federal authority. See 40 C.F.R. § 130.7(b)(1).

Pursuant to section 303(d) and EPA's implementing regulations, states may remove waterbody segments from the 303(d) list, or delist them, after they have developed a TMDL or after other changes to correct water quality problems have been made. If a state uses EPA's recommended system of categorization, that may entail moving a waterbody from Category 5 into a different assessment category. For example, once a TMDL has been approved, the state may move a WQLS from Category 5 to Category 4a. Sometimes, "other pollution control requirements" are stringent enough to implement WQS (see 40 C.F.R. § 130.7 (b)(1)). In these cases, the state can develop a plan that meets the elements outlined in EPA's *Information Concerning 2008 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions* (EPA, 2006). Once the plan has been developed and accepted by EPA, the state may move the WQLS into Category 4b. If WQS are attained and beneficial uses are supported, the waters are moved to Category 2. Occasionally, a waterbody can be taken off the 303(d) list as a result of a change in WQS; however, any new or revised WQS must first be submitted to EPA and approved pursuant to CWA section 303(c).

EPA reviewed ODEQ's 303(d) list and supporting documentation and information, and concludes the State reasonably assembled its assessment of the water quality of all waters in the State, in accordance with the regulations and suggested categorization schemes.

B. Priority Ranking

EPA regulations codify and interpret the requirement in section 303(d)(1)(A) of the CWA that states establish a priority ranking for listed waters. The regulations at 40 C.F.R. § 130.7(b)(4) require states to "include a priority ranking for all listed water quality limited segments still requiring TMDLs." States must also identify those WQLS targeted for TMDL development within the next two years. The CWA does not prescribe a particular method of expressing a priority ranking and states have flexibility in how they define and describe their priorities. In

prioritizing and targeting waters, states must, at a minimum, consider the severity of the pollution and the uses to be made of such waters (33 U.S.C. 1313(d)(1)(A); 40 C.F.R. 130.7(b)(4)). States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs; vulnerability of particular waters as aquatic habitats; recreational, economic, and aesthetic importance of particular waters; degree of public interest and support; and state or national policies and priorities.⁵

EPA reviewed the State's priority ranking of listed waters for TMDL development and concludes that the State satisfied the requirement to take into account the severity of pollution and the uses to be made of such waters (33 U.S.C. 1313(d)(1)(A); 40 C.F.R. 130.7(b)(4)). EPA also concludes that the State satisfied the requirement to “specifically include the identification of waters targeted for TMDL development in the next two years” (40 C.F.R. 130.7(b)(4)).⁶ The priority ranking of waters for TMDL development can be found in ODEQ’s document *TMDL Priorities and Schedule for Oregon’s 2022 Integrated Report Submittal* (Oregon, 2022b).⁷

C. Consideration of Data and Listing Methodology

In developing 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality-related data and information (40 C.F.R. § 130.7(b)(5)). This includes, at a minimum, consideration of data and information regarding the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the state's most recent section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any section 319 nonpoint assessment submitted to EPA. In addition to these minimum categories, states must take reasonable steps to assemble and evaluate any other water quality-related data and information that is existing and readily available. States may decide whether or not to rely on particular data or information in determining whether to list the applicable waters.

In addition to requiring states to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 C.F.R. § 130.7(b)(6) require states to

⁵ <https://www.epa.gov/sites/default/files/2015-10/documents/2006irg-report.pdf> at p. 63-64

⁶ In addition to the statutory language at section 303(d)(1)(a) and the regulatory language at 40 C.F.R. § 130.7(b)(4) addressing priority rankings for TMDL development, the statute at section 303(d)(2) provides for submission of TMDLs to the Administrator “from time to time,” and EPA’s implementing regulations at 40 C.F.R. § 130.7(d)(1) state that: “Schedules for submission of TMDLs shall be determined by the Regional Administrator and the State.” EPA notes that these provisions address distinct points—priorities for TMDL *development* and the timing for TMDL *submission*. Although states may choose to include their submission schedules in their integrated reports, as Oregon has with its 2022 IR, EPA’s regulations do not require them to do so.

⁷ <https://www.oregon.gov/deq/wq/Documents/IR2022-TMDLPriorities.pdf>

include, as part of their list submittal to EPA, documentation to support the decisions on whether or not to rely on particular data and information, as well as the decisions on whether or not to list waters. Such documentation must include, at a minimum, the following information: (1) a description of the methodology used to develop the 303(d) list (i.e. the ‘listing methodology’); (2) a description of the data and information used to identify waters; (3) a rationale for any decision not to use existing and readily available data and information; and (4) any other reasonable information requested by EPA.

ODEQ’s assessment methodology can be found in the document *Methodology for Oregon’s 2022 Water Quality Report and List of Water Quality Limited Waters* (Oregon, 2022a). The assessment methodology contains a standardized approach for developing the 303(d) list and was subject to a public revision process. ODEQ used the assessment category decision factors identified in the methodology document as the basis for the 2022 listing decisions. EPA has reviewed these decisions and concludes the State’s assessments are consistent with the federal listing requirements at 40 C.F.R. § 130.7(b) and applicable WQS.

ODEQ actively sought data and information collected by federal agencies, other state agencies, tribes, local governments, private and public organizations and individuals. A 60-day call for data was conducted from February 1 to April 2, 2021. After the call for data, ODEQ evaluated the data and information and prepared the statewide assessment and list of impaired waters. The data and information were used according to the metadata requirements and quality assurance process outlined in Section 3.2 of the assessment methodology document.⁸

D. Public Participation Process

The draft 2022 IR and list of WQLS were presented for public comment from January 12, 2022 to February 11, 2022. ODEQ received comments from eighteen entities and provided responses in *2022 Water Quality Report and List of Water Quality Limited Waters Response to Public Comments on Draft Report* (Oregon, 2022c).⁹ EPA has considered ODEQ’s public participation process for the 2022 IR and 303(d) list as part of its review of the State’s section 303(d) list.

EPA notes that ODEQ received a number of highly generalized comments pertaining to the State’s assessment methodology without identifying any specific waterbody assessment determinations of concern to the commenter. As noted above, while EPA may provide feedback and technical support in the development of each state’s assessment methodology, the Agency takes no formal action on those methodologies. Rather, EPA considers the State’s methodology in determining whether the State reasonably made its listing determinations consistent with the

⁸ <https://www.oregon.gov/deq/wq/Documents/IR22AssessMethod.pdf>

⁹ <https://www.oregon.gov/deq/wq/Documents/IR2022-ResponsetoComments.pdf>

applicable regulatory requirements. Accordingly, when commenters are concerned that a waterbody has been improperly excluded from the list, the State should encourage them to identify with as much specificity as possible the particular waterbody they believe should have been included on the 303(d) list and any supporting information leading them to that conclusion.

III. Changes from Previous IR Cycle

A. Waters ODEQ Added to Category 5

According to ODEQ's IR submittal spreadsheet titled, *DEQ_IR2022_303ImpWaters_TMDL*, a total of 244 new Category 5 listings were added in 2022. EPA reviewed the basis and rationale for these additions to the 303(d) list and is approving them as consistent with CWA section 303(d) and EPA's implementing regulations.

B. Waters Removed from Category 5

A total of 286 Category 5 listings from 2020 were removed by ODEQ ("delisted") in 2022. This includes 53 delistings because new data indicate the WQS have been attained; 172 delistings due to approval of a TMDL; 53 due to crosswalk errors in the original listing that occurred during the 2018/2020 resegmentation; and seven due to a change in WQS and resulting attainment of the current approved WQS. One additional WQLS was delisted due to an error in the original listing which had applied a WQS that is not applicable to the assessment unit.

Based on its review, EPA finds that Oregon has provided a reasonable basis, consistent with 40 C.F.R. § 130.7(b)(6)(iv), for not including these previously listed waterbody segment/pollutant pairs on its 2022 303(d) list. ODEQ has provided a reasonable justification and documentation for each of the delistings in its IR submittal to EPA, which is contained in a spreadsheet titled *DEQ_IR2022_Delistings*. Delisted waterbody segment/pollutant pairs were moved to Category 2 if there were sufficient data to support attainment status. Waterbody segment/pollutant pairs with an EPA approved TMDL were moved to Category 4a. The reasons for delisting are summarized and described further below. The basis and rationale for each of these changes were reviewed by EPA and found to be consistent with CWA section 303(d) and EPA's implementing regulations.

i. WQS Attainment

ODEQ removed 60 waterbody segment/pollutant pairs from Category 5 (i.e. 303(d) list) because data indicate they are meeting WQS. EPA finds ODEQ removed these waterbody segments/pollutant pairs from the 303(d) list in compliance with section 303(d) of the CWA and 40 C.F.R. § 130.7.

EPA concludes ODEQ reasonably identified waterbody segments to be removed from the list in light of the existing and readily available data and information showing WQS are being met. EPA has determined the removal of these water segments is consistent with 40 C.F.R. § 130.7.

ii. TMDLs Approved by EPA

ODEQ removed 172 waterbody segment/pollutant pairs from Category 5 based on EPA approval of TMDLs for these waterbody segment/pollutant combinations. These 172 waterbody segment/pollutant pairs were placed in Category 4a of the 2022 IR. Under EPA regulations at 40 C.F.R. § 130.7, the 303(d) list is an inventory of waterbodies impaired by a pollutant and requiring a TMDL. EPA concludes that ODEQ's removal of these 172 waterbody segment/pollutant pairs from the 303(d) list with an EPA approved TMDL is consistent with the requirements at 40 C.F.R. § 130.7.

iii. Other Reasons for Delisting

ODEQ removed 54 waterbody segment/pollutant pairs from Category 5 for other reasons, providing reasonable rationale and basis for each determination. These removed waters are separate and distinct from the waters no longer on the 303(d) list due to WQS attainment. ODEQ delisted 54 waterbody segment/pollutant pairs due to errors in the original listing and to correct crosswalk errors made during the 2018/2020 resegmentation process. Consistent with 40 C.F.R. § 130.7(b)(6)(iv), EPA concludes ODEQ provided a reasonable basis for the decisions to remove these 61 waterbody segment/pollutant pairs from Category 5.

IV. EPA Comments

EPA provided comments to ODEQ during the public comment period for the draft 2022 IR. EPA's comments, as well as ODEQ's responses to all the public comments it received, can be found in *Water Quality Report and List of Water Quality Limited Waters Response to Public Comments on Draft Report*.¹⁰ Based on EPA's review of ODEQ's responses and additional information provided, EPA concludes that the Agency's concerns have been fully addressed.

V. Tribal Engagement

EPA Region 10's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. During Oregon's public comment period on the draft 2022 IR and 303(d) list, EPA sent invitation letters to all federally recognized tribal governments in Oregon to participate in a government-to-government consultation with EPA on the pending CWA action. EPA held an informational webinar about the draft 2022 IR and EPA's pending CWA action on March 16, 2022 and provided additional follow up information. EPA received no requests for consultation.

¹⁰ <https://www.oregon.gov/deq/wq/Documents/IR2022-ResponsetoComments.pdf>

VI. References

Oregon Department of Environmental Quality [ODEQ]. 2022a. Methodology for Oregon's 2022 Water Quality Report and List of Water Quality Limited Waters.

Oregon Department of Environmental Quality [ODEQ]. 2022b. TMDL Priorities and Schedule For Oregon's 2022 Integrated Report Submittal.

Oregon Department of Environmental Quality [ODEQ]. 2022c. 2022 Water Quality Report and List of Water Quality Limited Waters Response to Public Comments on Draft Report.

U.S. Environmental Protection Agency [EPA]. 2001. 2002 Integrated Water Quality Monitoring and Assessment Report Guidance.

U.S. Environmental Protection Agency [EPA]. 2006. Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions.