



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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

WATER DIVISION

November 12, 2020

Mr. Justin Green
Water Quality Division Administrator
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

Re: Approval of Oregon's 2014-2020 Clean Water Act Section 303(d) List

Dear Mr. Green:

The U.S. Environmental Protection Agency has completed the review of the State of Oregon's 2014-2020 Integrated Report. On April 21, 2020, the Oregon Department of Environmental Quality (ODEQ) submitted the final 2014-2020 Integrated Report which included the Clean Water Act Section 305(b) report on the status of all state waters, the 303(d) Impaired Waters List (list), a response to public comments, and the State's Total Maximum Daily Load (TMDL) Priorities and Schedule. EPA determined during the course of our review that additional information was needed from ODEQ to support the State's reasoning associated with several assessment determinations. On June 25, 2020, EPA requested additional information pertaining to microplastic data, placement of marine waters in Category 3b for hypoxia, and delisting of the mainstem Coquille for dissolved oxygen.

On October 13, 2020 ODEQ submitted further information to EPA and corrected several errors in the electronic submittal through EPA's Assessment, TMDL, Tracking and Implementation System (ATTAINS). EPA has reviewed the revised submittal and determined it is complete. Although ODEQ's Integrated Report describes the status of all of Oregon's waters for which data is available, EPA is only taking action on the waters listed in Category 5, which constitutes the 303(d) list applicable to the waters within the jurisdiction of the State of Oregon.

Based on EPA's review of Oregon's 2014-2020 Integrated Report and supporting documentation, we have determined that Oregon's list of water quality limited segments (WQLSs) still requiring a TMDL meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations. Therefore, EPA approves Oregon's 2014-2020 Section 303(d) list. EPA's review and discussion of Oregon's compliance with the statutory and regulatory requirements is described in the enclosure to this letter. EPA notes that while ODEQ titled this submittal the 2018-2020 Integrated Report, a 10-year data review was conducted, encompassing data from the 2014, 2016, 2018 and 2020 listing cycles. As such, EPA is approving this Integrated Report as a combined 2014-2020 assessment.

In accordance with Section 303(d) of the CWA and 40 C.F.R. §§130.7(b)(1) and (5), states are required to "assemble and evaluate all existing and readily available water quality-related data and information to develop the list." EPA has concluded that Oregon has met the requirements at 40 C.F.R. § 130.7(b)(5) with regard to all the waters listed by the State in the 2014-2020 Integrated Report. In addition, EPA has determined that the State's decision to exclude from the 303(d) list 463 previously identified WQLSs

due to attainment of water quality standards, as well as 55 WQLSs that were delisted with good cause due to errors in the original listing, was also consistent with CWA Section 303(d) and the federal regulations. The State has also appropriately excluded 53 WQLSs from the list consistent with CWA Section 303(d) and the federal regulations, and instead placed them in Category 4a based on the establishment of EPA-approved TMDLs.

EPA would like to recognize the hard work by the staff and managers at ODEQ to accomplish a timely Integrated Report submittal that combines four listing cycles. EPA appreciates the resources that the state dedicated towards achieving this goal, including upgrading the assessment database, increasing staffing of the Water Quality Assessment team, and addressing technical issues such as the resegmenting of Oregon's waters. EPA also appreciates ODEQ's efforts to transition to EPA's ATTAINS database and electronically submitting the final 2014-2020 Integrated Report. If you have any questions, please feel free to call me at (206) 553-1855, or have your staff contact Jill Fullagar, EPA Assessment Coordinator, at (206) 553-2582.

Sincerely,

Daniel D. Opalski
Director

Enclosure: EPA's Clean Water Act Review and Decision Document

cc (e-copy): Ms. Connie Dou, Water Quality Standards & Assessments Manager, ODEQ
Ms. Becky Anthony, Water Quality Assessment Coordinator, ODEQ

**State of Oregon 2014-2020 Integrated Report
EPA's Clean Water Act Review and Decision**

I. Purpose

The purpose of this document is to summarize the U.S. Environmental Protection Agency's review of Oregon's 2014-2020 Clean Water Act Section 303(d) list and supporting documentation and information. Based on this review, EPA has determined that Oregon's list of water quality limited segments (WQLSs) still requiring Total Maximum Daily Loads (TMDLs) meet the requirements of Section 303(d) of the Clean Water Act (CWA or the Act) and EPA's implementing regulations. The statutory and regulatory requirements, and EPA's review of Oregon's compliance with each requirement, are described in detail below.

II. Statutory and Regulatory Background

A. Identification of Water Quality Limited Segments for Inclusion on the Section 303(d) List

Section 303(d)(1) of the CWA directs states to identify those waters within their boundaries for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The listing requirement includes waters impaired by point and/or nonpoint sources.

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

B. Consideration of Existing and Readily Available Water Quality Related Data and Information

In developing the Section 303(d) list, states are required to assemble and evaluate all existing and readily available water quality-related data and information, including at a minimum, consideration of existing and readily available data and information regarding the four 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. See 40 CFR 130.7(b)(5). In addition to these minimum categories, states are required to consider any other data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available. See EPA, 1991, Appendix C.

While states are required to evaluate all existing and readily available water quality-related data and information, states may decide to rely or not rely on particular data or information in determining

whether to list particular waters. In addition, the regulations at 40 CFR 130.7(b)(6) require states to include as part of their submissions to EPA, documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by EPA.

C. Priority Ranking

EPA regulations also implement the requirement in Section 303(d)(1)(A) of the Act that requires states to establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require states to prioritize waters on their Section 303(d) list for TMDL development and to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, states must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that states shall establish the priorities. 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. See 57 FR 33040, 33045 (July 24, 1992), and EPA, 1991.

III. Analysis of Oregon's 2014-2020 Integrated Report Submittal

A. Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information.

EPA has reviewed the State of Oregon's 2014-2020 Integrated Report submittal and has concluded that the State has developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality related data and information and reasonably identified waters required to be listed.

1. Oregon's List Development Process and Public Participation

The Oregon Department of Environmental Quality (ODEQ) posted a public notice solicitation for existing and readily available water quality data and information for the 2014-2020 Integrated Report (IR) on May 1, 2018. The State requested that data and information be submitted to ODEQ by June 29, 2018 for consideration and inclusion in Oregon's 2014-2020 IR. ODEQ solicited data dating back 10 years ensuring that a comprehensive review of all data that would have encompassed the 2014, 2016, 2018 and 2020 listing cycles would be included in the combined assessment. ODEQ also sought written comments on the draft assessment methodologies, which would be used to interpret data for the purposes of making listing determinations. Comments on the methodologies were accepted until May 31, 2020. While ODEQ has titled the submittal the 2018/2020 IR, EPA is viewing and approving the submittal as a combined 2014-2020 IR because the State conducted a 10-year data review, encompassing data from the 2014, 2016, 2018 and 2020 listing cycles.

ODEQ solicited public comments on the draft 2014-2020 IR from September 30, 2019 through December 2, 2019. ODEQ received a request for an extension to the public comment period and granted the extension of the deadline to January 6, 2020. ODEQ held informational public meetings in several locations throughout the state, including Portland, Bend, Central Point, Corvallis and Newport during the months of October and November, 2019, to demonstrate the new tools ODEQ had developed and review major water quality assessment changes since the 2012 listing cycle. ODEQ summarized and responded to comments received on the draft 2014-2020 IR in a document titled, “2018/2020 Water Quality Report and List of Water Quality Limited Waters Response to Comments on Draft Report,” dated April, 2020, which was included with final IR submittal.

Oregon's 2014-2020 IR describes its reasoning for listing specific waters on the 303(d) list. Additionally, where appropriate, the IR provides the State's reasoning, including the data and information considered, for the classification of each waterbody contained in Category 2, Category 3, Category 4, and specifically for those waters that were delisted from Category 5. These determinations, as well as the State's reasoning and supporting information were submitted via EPA's Assessment, Total Maximum Daily Load (TMDL), Tracking and Implementation System (ATTAINS) database. This information is available to the public on EPA's "How's My Waterway" website at <https://mywaterway.epa.gov/>.

2. EPA's Review Process

ODEQ submitted the final 2014-2020 Integrated Report including the 303(d) list, a response to public comments document, a final listing methodology, a 305(b) report, and a TMDL priority ranking, to EPA through ATTAINS on April 21, 2020. The IR also included waters removed from the State's prior 303(d) list and the reasoning for the removal, as well as various supporting documents. EPA determined during the course of its review that additional information was needed from ODEQ to support the reasoning associated with several assessment determinations pertaining to three issues: microplastic data, placement of marine waters in Category 3b for hypoxia, and delisting of the lower mainstem Coquille River for dissolved oxygen. On June 25, 2020 EPA sent a request for additional information to ODEQ to support these decisions. On October 13, 2020 ODEQ submitted the requested additional information to EPA, and corrected errors that had been identified in the electronic submittal through ATTAINS. With regard to these three issues, EPA's final review and decision is based on the additional information provided in October 2020. EPA has reviewed the submittal and determined it is complete.

EPA concludes that the State properly assembled and reasonably evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified at 40 CFR 130.7(b)(5).

B. Consideration of Existing and Readily Available Water Quality-Related Data and Information.

1. Waters not listed due to water quality standards attainment. ODEQ removed 463 waterbody segment/pollutant pairs from Category 5 from the 2014-2020 list because data and information indicated water quality standards were attained. In some instances, new data demonstrated attainment of the water quality standards. In other cases, changes to listing methodology or water quality criteria since the original listing resulted in attainment of the

current standard. EPA concludes that ODEQ's removal of these waters from Oregon's 2014-2020 Section 303(d) list is in compliance with Section 303(d) of the Act and 40 CFR 130.7.

Please note that on June 25, 2020, EPA requested additional information pertaining to the delisting of Coquille Assessment Unit OR_SR_1710030505_02_104992 (in the Coquille River mainstem, RM 20 to RM 35.6, the South Fork Coquille River from RM 0.0 to RM 2.8, and the North Fork Coquille River from RM 0.0 to RM 3.1) for dissolved oxygen for the trout spawning use. ODEQ provided the additional requested information on October 13, 2020.

EPA has concluded that, consistent with 40 C.F.R. § 130.7(b)(6)(iv), ODEQ has provided an adequate basis for the Coquille delisting, based on strong support from the Oregon Department of Fish and Wildlife (ODFW) on the lack of active resident trout spawning in the identified areas of the tidally-influenced riverine portions of the lower Coquille River mainstem and the North and South Forks. The State has identified salmon and trout rearing and migration as the highest attainable use in the areas that they wish to delist.¹ While stream habitat and water quality restoration in this reach could improve conditions for rearing and migration, information provided by ODFW indicates that the tidal hydrology will continue to preclude suitable spawning habitat (consistent flow direction with suitable velocities, depth and substrate composition).² ODEQ provided multiple lines of evidence to support the determination to delist trout spawning in these areas, and relied on data specific to the Coquille.

Additionally, ODEQ has made progress towards developing rulemaking workplans to update the aquatic life use and clarification of the application of the dissolved oxygen criterion. This commitment is reflected in the 2020-2022 Performance Partnership Agreement between ODEQ and EPA Region 10.³ Furthermore, the State has initiated a technical workgroup of external stakeholders to inform the planned revisions to the aquatic life designated uses and EPA has been invited to participate. The kick-off meeting is scheduled for November 17, 2020.⁴

Note that the application of the Coastal and Marine Estuarine Classification Standard (CMECS) model to determine the extent of "tidally inundated waters" and whether trout spawning is the highest attainable use alone (in other words, if the state had used CMECS as the only or main line of evidence/broad application to areas of current inundation) would not have been persuasive on its own. However, since ODEQ provided additional information specific to the Coquille and the most sensitive fish/use biology, the related physical environment/habitat in the Coquille, and the existing use/historical information, as well as what the State considers the highest attainable use based on judgment of state fish experts, the basis is more complete. Should areas of additional stream complexity be restored in the

¹ An area that overlays Oregon's mapped designation of trout spawning and rearing, which EPA consulted pursuant to Section 7 of the Endangered Species Act, with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration – National Marine Fisheries Service in 2015 on EPA's Clean Water Act action on Oregon's temperature standards.

² Letter from Michael E. Gray, ODFW District Fish Biologist, to Rebecca Anthony, ODEQ, dated September 1, 2020.

³ Available at <https://www.oregon.gov/deq/FilterDocs/PPA2022.pdf>

⁴ Email communication from James McConaghie, ODEQ, to Rochelle Labiosa, EPA, dated November 2, 2020.

Coquille, including for example side channels and gravel bars, that are in future deemed to be areas of trout spawning, EPA encourages the State to consider protection and designation of those areas in future actions. For example, in the Columbia River estuary, areas of tidal inundation as demarcated by CMECs include existing use salmon spawning areas in certain gravel bar locations within the main channel. Likewise for other estuaries in Oregon, such complexity, where the use is known to be attainable or exist, should be evaluated and included, where relevant, for protection.

2. Waters not listed due to TMDL approval. For the 2014-2020 list cycle, ODEQ removed 53 waterbody segment/pollutant pairs from the Section 303(d) list based on EPA's approval of TMDLs for these waters. These 53 water body pollutant pairs were placed in Category 4a, TMDL Approved, of the Integrated Report. Under EPA regulations at 40 CFR 130.7, the 303(d) list is an inventory of water bodies impaired by a pollutant and requiring a TMDL. Thus, EPA approves ODEQ's removal from the 2014-2020 Section 303(d) list the 53 water bodies consistent with the EPA-approved TMDLs.
3. Waters not listed with good cause. ODEQ removed 55 waterbody segment/pollutant pairs from Category 5 for the 2014-2020 cycle with good cause due to errors in the original listing determination. In most cases the waters were incorrectly listed under water quality criteria that were not applicable, while others were due to data entry errors. Consistent with 40 CFR § 130.7(b)(6)(iv), EPA concludes ODEQ provided good cause for the decisions to remove these 55 waterbody segment/pollutant pairs consistent with the requirements of 40 CFR § 130.7.
4. State responses based on data and information provided during the comment period
 - a) Microplastics. Based on EPA's request for additional information regarding its review of comments regarding microplastics, the State provided a summary of the available data and its conclusion that the data did not meet the assessment data quality requirements and were not credible for use in making an impairment determination. ODEQ has made the decision to leave these assessment units uncategorized and will continue to study and investigate the issue of microplastics for future assessments. EPA finds the State's determination regarding data quality to be reasonable and encourages ODEQ to continue to review data and information relating to microplastics as they become available to determine potential causes of impairment.
 - b) Marine hypoxia. ODEQ placed marine waters in Category 3b (Insufficient Data – Potential Concern) citing insufficient information to reach an attainment or impairment determination. In response to EPA's request for additional discussion regarding why the available data were insufficient to reach a conclusion, ODEQ submitted an evaluation of data as it relates to the marine dissolved oxygen narrative water quality standard. Additionally, ODEQ noted the complexity and challenges associated with hypoxic conditions due to changing ocean conditions, climate, and other global factors. The State is committed to working with its partners, stakeholders, and scientific experts to identify information gaps for further research. EPA finds the State's decision to place Oregon territorial waters into Category 3b for dissolved oxygen recognizes the body of information indicating potential negative impacts to aquatic life and fisheries from

changing ocean conditions, while acknowledging there are insufficient data to determine nonattainment of the narrative marine dissolved oxygen criterion.

C. Priority Ranking and Targeting

EPA also reviewed Oregon's priority ranking of listed waters for TMDL development, included in a document titled "State of Oregon Department of Environmental Quality TMDL Priorities and Schedule for Oregon's 2018/2020 Integrated Report Submittal, October 2020." In accordance with 40 CFR 130.7(b)(4), which requires that states "shall include a priority ranking for all listed water quality limited segments still requiring TMDLs," EPA concludes that the State took into account the severity of pollution and the uses to be made of such waters. EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years and concludes that the State has satisfied the applicable regulatory requirement to target waters for TMDL development within this time frame. In prioritizing and targeting waters, states must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(I)(A). As long as these factors are taken into account, the Act provides states with broad discretion to establish their own priorities.

EPA has received Oregon's long-term schedule for TMDL development for waters on the 2014-2020 Section 303(d) list. As a policy matter, EPA has requested that states provide such schedules. See Memorandum from Robert Perciasepe, Assistant Administrator for Water, to Regional Administrators and Regional Water Division Directors, "New Policies for Developing and Implementing TMDLs," August 8, 1997. EPA is not taking any action to approve or disapprove this schedule pursuant to the CWA Section 303(d).

References

EPA. Memorandum from Robert Perciasepe, Assistant Administrator for Water, US EPA, *entitled New Policies for Establishing and Implementing TMDLs*. August 8, 1997a.

<https://www3.epa.gov/npdes/pubs/owm0124.pdf>

EPA. Federal Register Notice, *40 C.F.R. Parts 122, 123, 130, Revision of Regulation*. July 24, 1992. 57 FR 33040.

EPA. "Guidance for Water Quality-Based Decisions: The TMDL Process," April 1991. EPA 440/4-91-001.