



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-134

FEB 26 2007

Lauri Aunan, Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: Approval of Oregon State Final Integrated Report 2004/2006 (303(d) List and 305(b) Report) submitted for approval May 23, 2006

Dear Ms. ^{LAURI}Aunan:

The Environmental Protection Agency (EPA) has conducted a complete review of Oregon's 2004/2006 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 TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, EPA hereby approves Oregon's Section 303(d) List. The statutory and regulatory requirements, and EPA's review of Oregon's compliance with each requirement, are described in the attachment to this letter.

Oregon Department of Environmental Quality (ODEQ) submitted their final 2004/2006 Section 303(d) List, including a response to public comments, a final list methodology, a memo and report on de-listed waters, a priority ranking and an Integrated Report on the status of Oregon's waters, to EPA on May 23, 2006. EPA received Oregon's Section 303(d) List as a hard copy on May 26, 2006. ODEQ also sent a letter from Robert P. Baumgartner to Mike Gearheard clarifying the Section 303(d) List submission and making a few corrections to the 2004/2006 Section 303(d) List on November 1, 2006. EPA is acting only on the waters listed in Category 5 of the Integrated Report which constitutes the Section 303(d) List.

The approval process for the list goes most smoothly when EPA is closely involved in the development of the list. This close contact facilitates working out issues before the final list is submitted. EPA would like to work with ODEQ more closely in the next listing cycle on several issues that were identified in the approval of the 2004/2006 303(d) list. These issues include the use of narrative criteria in development of the list, the use of biological information to list waters even when a pollutant is not identified, the use of data from different monitoring stations in the listing of waters impaired by toxic pollutants, and the number of waters delisted in different categories (i.e., delisted for a time period only or delisted for the parameter) that should be available to EPA when the list is submitted. We will follow up on these issues with you in the near future and hope to work closely with ODEQ staff throughout the development of the next list.

We recognize and appreciate the excellent work of staff and managers at ODEQ in developing the final 2004/2006 § 303(d) List. We look forward to continuing to work with you on this process to address the water quality issues in the state. If you have any questions please contact Tracy Chellis of my staff at (206) 553-6326, or David Croxton, Manager, Watershed Unit at (206) 553-6694.

Sincerely,

A handwritten signature in black ink that reads "Mike". The signature is written in a cursive, flowing style.

Michael F. Gearheard, Director
Office of Water and Watersheds

cc: Keith Andersen, Interim Deputy Water Quality Administrator
Gene Foster, Manager, Watershed Management Section
Karla Urbanowicz, Water Quality Assessment Coordinator

INTRODUCTION

The Environmental Protection Agency (EPA) Region 10 has conducted a complete review of Oregon's 2004/2006 Section 303(d) list and supporting documentation and information, and based on this review, EPA has determined that Oregon's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby APPROVES Oregon's Section 303(d) list. The statutory and regulatory requirements, and EPA's review of Oregon's compliance with each requirement, are described in detail below.

STATUTORY AND REGULATORY BACKGROUND

I. Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the CWA directs States to identify those waters within its jurisdiction 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 Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (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 CFR 130.7(b)(1).

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

In developing Section 303(d) lists, 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 about 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. 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 Guidance for Water Quality-Based Decisions: The TMDL Process, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). 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 to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA 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 the Region.

III. Priority Ranking

EPA regulations also 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 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also 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 CWA provides that States establish 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's 1991 Guidance.

ANALYSIS OF OREGON'S SUBMISSION

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

EPA has reviewed the State's submission, and has concluded that the State 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.

A. Oregon's List Development Process

Oregon's 2002 303(d) list was used as the starting point for developing the 2004/2006 303(d) list. The Oregon Department of Environmental Quality (ODEQ) began their assessment with the preparation of a draft Assessment and Listing Methodology which was put out with the public call for data from April 1 to May 16, 2003. During the call for data, Oregon actively sought data collected by other federal agencies (including the U.S. Geological Survey, U.S. Forest Service and the Bureau of Land Management), state agencies, tribes, local governments, watershed councils, and private and public organizations, and individuals. The public notice was sent to over 2500 names on ODEQ's mailing list and a news release was sent to all newspapers in the state of Oregon.

After the call for data, ODEQ evaluated the data and prepared a statewide assessment. ODEQ evaluated over 500,000 analytical data records for nearly 7,500 monitoring sites around the state. During the process of evaluating the data, the State refined their designated fish uses, and revised their standards for temperature and dissolved oxygen. The revised standards were submitted to EPA in December 2003, and were approved by EPA in March 2004. The revised Oregon rules specified spawning locations, and spawning time periods for anadromous fish.

Based on these revisions to their water quality standards, the State re-evaluated data used for previous listings, and new data to determine if it met the revised standards, and designated fish uses. ODEQ modified the assessment strategies and protocols to incorporate the changes to the water quality standards, and designated fish uses. Due to the challenges of evaluating the data relative to the revised standards, the intended target date for completing the Integrated Report evaluation was not met.

The draft 2004 Integrated Report and list of water quality limited waters were presented for public comment from September 9, 2005, to October 24, 2005. Public hearings on the draft 2004 Integrated Report and list of water quality limited waters were held on October 11, 2005, in Salem Oregon, and on October 17, 2005, in Bend Oregon. During the public comment period, ODEQ realized it would not be possible to issue another call for data and complete another data assessment by the next Clean Water Act target date of April 2006. In response to requests from the public, the comment period was extended from October 24, 2005, until November 7, 2005, and the extension of the public comment period noted that the draft Integrated Report was to be a 2004/2006 Integrated Report. ODEQ prepared a final list of impaired waters using data they collected and data received during the public processes that met QA/QC criteria and were consistent with Oregon's list methodology. ODEQ communicated its preferred data collection methods and QA/QC requirements to the public in the draft and final list methodologies, which were available in hard copy and on the Internet.

ODEQ sent their final 2004/2006 303(d) list to EPA on May 23, 2006. The final Oregon 2004/2006 submittal including the following documentation: Response to Comments on Oregon's Draft 2004/2006 Integrated Report, Oregon's TMDL Priorities and Schedule, Assessment Methodology for Oregon's 2004/2006 Integrated Report on Water Quality Status, Oregon's 2004/2006 Integrated Report (computer disc and paper format), April 27, 2006, Memo on Waters De-listed in 2004/2006, and the Report on Waters De-listed in 2004/(2006) (computer disc and paper format). EPA received Oregon's 303(d) List as a hard copy on May 26, 2006. An on-line database is also available via Internet at: <http://www.deq.state.or.us/wq/303dlist/303dpage.htm>. Several e-mails were sent by ODEQ between 9/21/06 and 10/04/06 clarifying their submission and correcting a few listing errors. ODEQ also sent a formal letter dated October 30, 2006, clarifying their submission and making a few corrections to their 2004/2006 303(d) list. That letter was received by EPA on November 8, 2006.

B. Public Participation

ODEQ combined the 2004 Integrated Report 303(d) list with the 2006 Integrated Report 303(d) list. For the 2004 303(d) list, Oregon solicited data from April 7 to May 16, 2003, seeking technical information, and data on the conditions of Oregon's surface waters. Data received during this "call for data" period and data collected by ODEQ were

used to develop the draft Integrated Report and 303(d) list. The draft 2004 Integrated Report 303(d) list and list methodology were released for public review from September 9, 2005 to October 24, 2005. In response to requests from the public, the comment period was extended until November 7, 2005, and the extension to the public comment period noted that this would be a 2004/2006 Integrated Report rather than a 2004 Integrated Report. The public comment period provided the public an opportunity to look at and comment on the Integrated Report, including the draft 303(d) list. Oregon provided a Response to Comments on Oregon's 2004/2006 Integrated Report and 303(d) list with their submission. In their Response to Comments, Oregon responded to general comments and waterbody specific comments.

C. EPA's Review Process

EPA received Oregon's Final 2004/2006 303(d) List as a hard copy on May 26, 2006. EPA also reviewed an on-line version of ODEQ's database, which is available via Internet at: <http://www.deq.state.or.us/wq/303dlist/303dpage.htm>. The final 2004/2006 303(d) list submittal included the following supporting documentation: Response to Comments on Oregon's Draft 2004/2006 Integrated Report, Oregon's TMDL Priorities and Schedule, Assessment Methodology for Oregon's 2004/2006 Integrated Report on Water Quality Status, Oregon's 2004/2006 Integrated Report (computer disc and paper format), April 27, 2006, Memo on Waters De-listed in 2004/2006, and the Report on Water De-listed in 2004/(2006) (computer disc and paper format).

The April 27, 2006, Memo on Waters De-listed in 2004/2006 provides a summary of the water bodies that are being removed from Oregon's 303(d) list and the reasons they are being removed based on the 2004/2006 evaluation of information. The Report on Waters De-listed in 2004 is a hard copy spreadsheet of all the water bodies that were de-listed during this cycle of the 303(d) list to make it possible to compare changes between the 2002 and 2004/2006 lists. A computer disc was also provided with electronic spreadsheets of the delisted waters, the 303(d) list, and the 2004/2006 Integrated Report. EPA queried the electronic spreadsheets to determine specific information about the number of waters currently listed for each parameter, and delisted for each parameter. The files sent in computer disc format contain the same records included in the on-line database at <http://www.deq.state.or.us/wq/WQLData/WQLSData2004/view303dlist04.asp>.

EPA also reviewed these files to determine waters which had been added to Oregon's 2004/2006 303(d) list. EPA extensively reviewed Oregon's final 2004/2006 303(d) list and list methodology. EPA also received and reviewed several e-mails sent between September 21 and October 4, and a letter dated October 30, 2006, clarifying the State's submission and making a few corrections to their 2004/2006 303(d) list. EPA communicated regularly with ODEQ, and developed an administrative record that includes the draft and final 303(d) lists, final list methodology, prioritization schedule, public notices, and memo's describing the delisted waters. ODEQ has provided descriptions of the data and information considered and its rationale for the changes in their listing policy in identifying waters for listing and removal from the list.

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 in 40 CFR 130.7(b)(5). The State provided to EPA its rationale for not relying on particular existing and readily available water quality-related data and information as a basis for listing waters.

D. Waters not required to be listed

Oregon's standards designate different criteria applicable at different time periods for temperature and dissolved oxygen. Oregon has also chosen to list waters for bacteria and pH for different time periods, though the criterion for the different time periods is the same. Therefore, when discussing Oregon's 303(d) list the term water segment/pollutant/time period record can be used to capture the fact that waters may be listed or delisted for different time periods for a single pollutant. The term delisted water segment will be used to mean the water segment that is no longer listed for any season. There are 1826 water body segment/pollutant/time period combinations on the 2004/2006 303(d) list. ODEQ added 907 water body segment/pollutant/time period combinations during the 2004/2006 303(d) list cycle. Oregon has not included 298 previously-listed water body segment/pollutant/time period combinations on its 2004/2006 303(d) list as described below.

1. Waters Not Listed Due to Water Quality Standards Attainment or Changes to Water Quality Standards. 86 water segments (correlating to 98 water segment/pollutant/time period records) were removed from the 303(d) list for the pollutant of concern because information shows they were meeting standards or the change in standards meant the standards were no longer applicable. An additional 73 water segments (correlating to 84 waterbody segment/pollutant/season records) were only delisted for a particular season, but the water segment remains listed for the pollutant of concern for another season. These water segments were also delisted because they were meeting standards or the change in standards made the standards no longer applicable. ODEQ also removed a number of water segments from the 303(d) list for DO, temperature or for a specific season for those parameters because the changes in the State's water quality standards meant the standards were no longer applicable to that particular segment or season. The revised standards changed the locations the salmonid spawning use was applied, and redefined the time periods of salmonid spawning use. These waters were removed from the list because either spawning was no longer a use in the water or there was no data available in the spawning season defined by the new standards.

EPA believes ODEQ removed these water body segments for a pollutant, or for a season from Oregon's Section 303(d) list in compliance with Section 303(d) of the CWA, and 40 CFR 130.7 and in a manner consistent with ODEQ's list methodology. EPA concludes ODEQ reasonably considered existing and readily available water quality-related data and information, and reasonably identified water body segments to be removed from the list because data showed water quality standards were being met or the applicability of the standards had changed. Therefore, EPA approves the removal of these water segments in accordance with 40 CFR 130.7(b)(6).

2. Waters Not Listed Due to TMDLs Approved. Oregon has made considerable progress with developing and obtaining EPA approval of TMDLs. For the 2004/2006 list cycle, ODEQ removed 84 water segments (106 water body segment/pollutant/season records) from the 2004/2006 303(d) list based on EPA approval of TMDLs for these water body/pollutant/season combinations. These 84 water segments 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 303(d) list of 84 water segments with an EPA approved TMDL.

Two waters not included in the 84 water segments discussed above were listed for biocriteria in the 2002 303(d) list. These waters (Beaver Creek in the Applegate subbasin and South Fork Goble Creek in the Lower Columbia-Clatskanie subbasin) are not listed in the 2004/2006 303(d) list because TMDLs were approved for other parameters (i.e., parameters that are pollutants not pollution) that are expected to improve the biological conditions in these streams. These waters will be placed in Category 4C "Impairment not caused by a Pollutant." The CWA does not require TMDLs to be prepared for waters listed for pollution. The biocriteria designation of these waters represents impairment of the water identified through biological assessments. TMDLs were done for the pollutants determined to be impairing these waters and the listings for those pollutants were placed in Category 4A "TMDL Approved." The biocriteria listings of these waters are being put in Category 4C "Impairment not caused by a Pollutant" rather than Category 4A "TMDL Approved" because TMDLs are not approved for the parameter biocriteria which is a form of pollution.

3. Waters Not Listed Because Other Pollution Control Requirements Will Result in Attainment of Water Quality Standards Within a Reasonable Time

The State's decision not to include the waters listed below on its 2004/2006 Section 303(d) list is consistent with EPA regulations at 40 CFR 130.7(b)(1). Under 40 CFR 130.7(b)(1), States are not required to list WQLSs still requiring TMDLs where effluent limitations required by the CWA, more stringent effluent limitations required by State or local authority, or other pollution control requirements required by State, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a State's decision not to list particular waters.

EPA approves ODEQ's determination to remove the seven waterbody segments in Table 1 from Category 5 and place those waterbody segments in Category 4B of the integrated report. ODEQ has demonstrated that there are other pollution control requirements required by State, local or federal authority that will result in attainment of water quality standards within a reasonable time for the waterbodies and associated pollutants listed below. Evaluations of each of the pollution control plans developed for these waterbodies identify the controls to be relied upon; identify the authority under which the controls are required and will be implemented with respect to the sources contributing to the water quality impairment; and document how the control measures are generally applicable to the impairments and can reasonably be expected to reduce pollutant loadings, and attain water quality standards.

Table 1 Waterbodies Excluded from Category 5 and Placed in Category 4B

Record #	Watershed	Waterbody Name and River Mile (RM)	Pollutant
5722	North Umpqua	Potter Creek, RM 0-2.7	Biological Criteria
5711	North Umpqua	North Umpqua River, RM 75-75	Total Dissolved Gas
5710	North Umpqua	North Umpqua River, RM 86.9-87.4	Total Dissolved Gas
5709	North Umpqua	North Umpqua River, RM 77-78	Total Dissolved Gas
5763	South Umpqua	South Umpqua River, RM 0-51	Chlorine
5762	South Umpqua	Cow Creek, RM 0-2	Chlorine
9375	South Umpqua	Myrtle Creek	Ammonia

Monitoring should be scheduled for these waters to verify that the water quality standard is attained as expected in a reasonable time frame. Where standards will not be attained through implementation of the requirements listed in 40 CFR 130.7(b)(1) in a reasonable time, it is appropriate for the water to be placed on the Section 303(d) list to ensure that implementation of the required controls and progress towards compliance with applicable standards is tracked. If it is determined that the water is, in fact, meeting applicable standards when the next Section 303(d) list is developed, it would be appropriate for the State to remove the water from the list at that time.

II. Priority Ranking and Targeting

EPA also reviewed the State's priority ranking of listed waters for TMDL development as per 40 CFR 130.7(b)(4) "shall include a priority ranking for all listed water quality limited segments still requiring TMDL," and concludes that the State properly 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 targeted waters are appropriate for TMDL development in 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)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities.

ODEQ fully describes its prioritization process and ranking, and lays out the schedule for completion of TMDLs in a document submitted to EPA with its final 2004/2006 303(d) list submission titled "Oregon's TMDL Priorities and Schedule." Oregon established a prioritization process which was used to set TMDL priorities and schedules in 1998 and 2002. The 2004/2006 TMDL priorities and schedule document updates priorities identified by that process. A Memorandum of Agreement signed by ODEQ and EPA on February 1, 2000, further describes the schedule for completion of TMDLs.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-134

MAY 10 2007

Gene Foster, Manager
Watershed Management Section
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Dear Mr. Foster:

On February 26, 2007, a letter was sent from Michael F. Gearheard, Director, Office of Waters and Watersheds at the Environmental Protection Agency (EPA) Region 10 to Lauri Aunan, Administrator of the Water Quality Division, Oregon's Department of Environmental Quality (ODEQ) approving the Oregon State Final Integrated Report 2004/2006 (Section 303(d) List and 305(b) Report). It has come to our attention that some of the numbers in the enclosure to that letter are incorrect. On page 5 of the enclosure under section "D. Waters not required to be listed," we stated that there were 1826 water body segment/pollutant/time period combinations on the Oregon 2004/2006 303(d) list, and that 298 previously listed water body segment/pollutant/time period combinations were not included in the 2004/2006 303(d) list. These numbers should have been 1825 and 299 respectively. On October 30, 2006, ODEQ sent a letter to EPA stating that Goodman Creek was being taken off of the list and explaining the reasons for this change. EPA approved this change to the list, but this water was inadvertently left out of our calculations.

We apologize for any inconvenience these errors caused. We look forward to continuing to work with you on the 303(d) listing process to address the water quality issues in the state. If you have any questions please feel free to call me at (206) 553-6694, or you may contact Tracy Chellis of my staff at (206) 553-6326.

Sincerely,

A handwritten signature in cursive script that reads "David Croxton".

David Croxton, Manager
Watershed Unit

cc: Keith Andersen, ODEQ
Karla Urbanowicz, ODEQ