



U.S. Department of Commerce
National Oceanic and Atmospheric Administration



Allison
U.S. Environmental Protection Agency

JAN 13 2004

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635 Capitol Street, NE, Suite 150
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Dear Messrs. Llewelyn and Evans:

The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA), Headquarters and Region 10 have received Oregon's submittals pertaining to the remaining conditions of approval for Oregon's Coastal Nonpoint Pollution Control Program (CNPCP). We apologize for the delay in providing written feedback on your submittals. We have completed the review of information submitted by Oregon with regard to its boundary, agriculture and urban conditions, and have enclosed an interim decision document. This decision addresses each condition, conveys each NOAA/EPA finding, presents a rationale for each decision, and recommends actions the State can take to achieve full approval.

Based on the information provided, NOAA and EPA concluded that Oregon has fully met several of the conditions addressed, including: boundary; agriculture (confined animal facilities); and urban (sediment and erosion control, construction site chemical control, watershed protection, and existing development). NOAA and EPA have also included information regarding the role of Phase II in meeting several of the management measures as part of the discussion within the urban section.

Please note that NOAA and EPA's final decision on these conditions is contingent upon a public notice and opportunity to comment on our intent to fully approve Oregon's CNPCP. This process will occur once NOAA and EPA conclude that Oregon has met all of the conditions under Section 6217. The final decisions may be subject to Tribal and ESA consultation. In addition, this letter should not preclude the use of (1) FY03 Clean Water Act Section 319 funding to further support any of the conditions placed on your program; and (2) FY03 Coastal Zone Management Act Section 310 funding to support implementation of approved elements of your program.

NOAA and EPA congratulate Oregon on its progress towards program approval and encourage you to continue working to address the remaining CNPCP conditions. We will be sending additional feedback on Oregon's other conditions shortly. Our target dates for responding to the other submittals are the week of February 16, 2003 (hydromodification, marinas, wetlands) and the week of March 17th (additional management measures and monitoring). If you have any questions regarding the enclosed interim findings or recommended actions, please contact either Allison Castellan of NOAA at (301) 713-3155, Extension 225, or Teena Reichgott of EPA Region 10 at (206) 553-1601.



Sincerely,

John King, Acting Chief
Coastal Programs Division
National Ocean Service

JAN 13 2004

Rick Parkin, Acting Director
Office of Ecosystems and Communities
EPA Region 10

Enclosure

cc: Don Yon
Amanda Punton

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Please note that NOAA and EPA's final decision on these conditions is contingent upon a public notice and opportunity to comment on our intent to fully approve Oregon's CNPCP. This process will occur once NOAA and EPA conclude that Oregon has met all of the conditions under Section 6517. The final decisions may be subject to Tribal and ESA consultation. In addition, this letter should not preclude the use of (1) FY03 Clean Water Act Section 319 funding to further support any of the conditions placed on your program; and (2) FY03 Coastal Zone Management Act Section 310 funding to support implementation of approved elements of your program.

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December 30, 2003

Draft NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. BOUNDARY

CONDITION: Within one year, the Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Environmental Quality (DEQ), U.S EPA, NOAA, and other relevant State, local, and federal agencies will participate in a cooperative process to review relevant information and determine an appropriate 6217 management area boundary consistent with established national guidance for the 6217 program.

FINDING: Oregon has satisfied this condition.

DETERMINATION: The 6217 management area for the State of Oregon will be the existing coastal zone with the addition of the inland portions of the Rogue and Umpqua Basins, in their entirety. The inland boundary of the management area intersects the Columbia River at the westward end of Puget Island.

RATIONALE: The boundary of the 6217 management area on the Columbia River is near Washington's 6217 boundary. The inland boundary of Washington's management area intersects the Columbia River at the eastern border of WRIA 25, just east of the Wahkiakum County border.

The Columbia River Basin is a huge, multi-state and multi-national drainage basin covering 233,000 square miles; three states and Canada contribute to the water quality of the lower Columbia River. In Washington, 91% of the portion of the Columbia River watershed within the State is located above Bonneville Dam. In Oregon, 98% of that portion of the watershed within the State is located above the "coastal watershed." In both states, 90% of all of the agricultural indicators of nonpoint source pollution examined by NOAA in making its boundary recommendation are located above the coastal watershed. Similarly, in both states, 70% or more of the population of the Columbia watershed resides above the coastal watershed. These figures show that a large number of nonpoint sources are spread out over a very large watershed, and that only a small part of the watershed is included in either the coastal zone or the coastal watershed of either state. These factors make it extremely difficult to determine whether the relatively small portion of polluted runoff generated within the coastal watershed but outside of the states' coastal management boundaries has a significant impact on the coastal waters of the states. Therefore, based on these complicating factors and the March 16, 1995 Flexibility for State Coastal Nonpoint Programs guidance, NOAA and EPA will defer to Oregon's and Washington's statement that the appropriate 6217 boundary is westward of Puget Island and the eastern border of WRIA 25, respectively.

NOAA and EPA recognize that there are other tools that are currently in use or being developed to address nonpoint source pollution outside of the 6217 management area boundary, such as the development of TMDLs for 303(d) listed waters and phase II of the NPDES stormwater permits. However, NOAA and EPA remain concerned that sources outside the management area boundary could contribute to water impairment in the lower Columbia River. Therefore, we expect Oregon and Washington to use all applicable programs to control nonpoint source pollution beyond the 6217 management area in the Lower Columbia coastal watersheds, to monitor water quality, and, if necessary, to take additional steps in the future to address those sources that have a significant impact on coastal water quality.

II. AGRICULTURAL MANAGEMENT MEASURES

A. CONFINED ANIMAL FACILITIES (Large and Small Units)

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also within two years, Oregon will provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.

FINDING: Oregon has satisfied this condition.

RATIONALE: The Oregon Legislature adopted House Bill (HB) 2156 in 2001, amending ORS 468B to define confined animal feeding operations according to rules established by DEQ and ODA and to require that the definition distinguish between various categories of operations, including those regulated by NPDES permits. The new definition removes the exclusion for CAFOs where animals are confined for less than four months and that do not have prepared surfaces or waste water facilities. OAR 603-074 establishes rules for administering the CAFO program, including enforcement against water quality violations. Since 1999, ODA has conducted annual inspections of permitted CAFOs. Two new CAFO inspector positions have been created for the south and mid-coast CNPCP area. An inspector based in Tillamook will also service the northern portion of the CNPCP area. The state also has a complaint-driven enforcement process and an educational outreach program.

B. EROSION AND SEDIMENT CONTROL, NUTRIENT, PESTICIDE, GRAZING, and IRRIGATION WATER MANAGEMENT

CONDITIONS: Within one year, Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management

area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

FINDING:

- Oregon has satisfied the condition for designating AWQMAs.
- Oregon has satisfied the condition to complete the alternative management measure for grazing.
- Oregon has sufficiently demonstrated the AWQMAPs will include management measures in conformity with the 6217 (g) guidance.
- Oregon has sufficiently demonstrated it has a process in place to incorporate the irrigation measure into the overall AWQMAPs
- Oregon will have satisfied the condition for having AWQMAPs in place once the South Coast AWQMAP is finished.

RATIONALE: Oregon has satisfied the conditions for designating AWQMAs [1010 plans]. The State has established seven AWQMAs in the coastal zone and six of the seven coastal AWQMAPs and administrative rules are currently in place. Once the South Coastal AWQMAP, which is currently under development, is finalized, Oregon will have satisfied the condition for having AWQMAPs in place.

The State has also completed the wording of the alternative management measure for grazing by including language consistent with the (g) measure as recommended practices in the appendix. In fact, all agriculture management measures have been included in the appendices of the coastal 1010 plans, and in some cases the measures have been incorporated directly into the plans. ODA and DEQ have established a joint process to revise the AWQMAPs every two years. NOAA and EPA encourage Oregon to use this process to insert the agricultural management measures into the body of the 1010 plans over time and to more closely link 1010 plans with TMDL load allocations. Recommendations in the plans are voluntary. The mandatory part of the program are the rules associated with each plan that specify prohibited conditions related to a few of the recommendations.

While ORS 568.900-568.933 and OAR 603-090-0000 through 603-090-0120, do grant ODA the authority to adopt rules necessary to implement the plans and to address water pollution problems where voluntary compliance is not achieved, it is not yet clear whether the biennial plan and rule revision process will link enforcement capability to the management measures as needed to meet water quality goals. NOAA and EPA strongly encourage DEQ and ODA to do a

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thorough sufficiency analysis every two years and revise the plan and rules accordingly. Also NOAA and EPA are concerned that, in actuality, the State does not always take enforcement action when needed. Therefore, NOAA and EPA also strongly encourage ODA to take a more active enforcement role to ensure the 1010 plans and (g) measures are being implemented as designed. A Memorandum of Agreement between DEQ and ODA memorializes coordination efforts addressing TMDLs for water quality limited water bodies and 1010 plans. The MOA includes a commitment by ODA to modify 1010 plans to address TMDL load allocations. The MOA potentially ensures that ODA will evaluate 1010 plans to assure attainment of DEQ's load allocation for agriculture.

By including the (g) measures in the appendix of 1010 plans, enforceable under ORS 568.900-568.933, Oregon has demonstrated the AWQMAPs will include measures in conformity with the 6217 guidance. The State also has specific programs for nutrient management and irrigation that provide additional support for the 1010 plans. Nutrient management plans, consistent with the (g) guidance, are required under all new or expanded CAFO permits (Oregon Confined Animal Feeding Operation General Permit Number 01, May 2003 draft, in compliance with the provisions of Oregon Revised Statutes (ORS) Chapter 468B, Oregon Administrative Rules (OAR) Chapter 603, Division 74, The Federal Water Pollution Control Act as amended (The Clean Water Act) Title 33 United States Code, Section 1251 et seq., and The National Pollutant Discharge Elimination System (NPDES)) Under the CAFO laws and rules, ODA has the authority to require nutrient management plans as part of compliance orders they issue to correct nutrient or waste load violations.

The Water Resources Department's (WRD) Water Use Basin Programs codified in OAR Chapter 690 support the irrigation measure by establishing sub-basin classifications and limits on water use. NOAA and EPA encourage the ODA and DEQ to improve their coordination with WRD to ensure implementation of the 6217 irrigation measures. Finally, Oregon State University has also developed Western Oregon Irrigation Guides which include information on timing, measuring soil-water depletion and application rates.

Even though AWQMAPs are developed on a watershed scale and cover the entire 6217 boundary, NOAA and EPA are concerned that, since the impetus for the AWQMAP planning process is driven by TMDLs, people may assume that measures need only to be implemented in specific areas where water quality is degraded. Site-specific implementation triggered by degradation rather than implementation across the landscape, would not meet the 6217 goals of pollution prevention. Also, if a specific parameter is not listed on the 303(d) list, the AWQMAP may not include the related management measure, even though the measure is included in the appendix. Therefore, NOAA and EPA encourage the State to take a holistic, pollution prevention approach when upgrading their 1010 plans to incorporate all agricultural management measures and ensure the plans are being implemented properly throughout the 6217 area.

[Editorial comment on the TMDL discussion: Please change the wording in the paragraph that describes DEQ's submittal and EPA's responsibilities so that it is clear that EPA approves or *disapproves* the TMDL, and that EPA does *not* approve or disapprove the water quality management plan.]

RECOMMENDATIONS

In order to reach full approval for the agriculture management measures, NOAA and EPA recommend the State do the following:

1. *Submit a final copy of the South Coast AWQMAP that incorporates the 6217 (g) measures for agriculture.*

III. URBAN

A. NEW DEVELOPMENT, SITE DEVELOPMENT, CONSTRUCTION SITE EROSION and SEDIMENT, and CHEMICAL CONTROL

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

FINDING:

- Oregon is exempt from the New Development measure within designated Phase I and Phase II areas. These areas will now be covered under the NPDES Phase I and II Storm Water Program.
- Outside of Phase I or II designated areas, Oregon has not satisfied the management measure and enforceable policy components of the New Development management measure.
- Oregon has met the management measure component for the Site Development measure.
- However, the State has not demonstrated it has enforceable policies and mechanisms in place to ensure implementation of the site development measure throughout the 6217 boundary.
- The State is exempt from the Construction Site Erosion and Sediment Control and Construction Site Chemical Control measures throughout the 6217 boundary. These measures are now covered under the NPDES Phase I and II Storm Water Program.

RATIONALE:

New Development

The New Development condition is met in MS4 areas automatically under the National Pollution Discharge Elimination System (NPDES) storm water permit program (Phase I and II). State coastal nonpoint control programs are no longer required to include the New Development Management Measure for any new development, redevelopment, and new and relocated roads, highways, and bridges occurring in urbanized areas subject to Phase I or Phase II MS4 permits. In Oregon, the Medford Urbanized Area is currently the only MS4 within the CNPCP Management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Outside of Phase I and II areas, Oregon has proposed relying on its TMDL strategy to implement the new development management measure. Given that TMDLs have wide geographic coverage in Oregon and that almost all communities within the CNPCP management area must meet load allocations for sediment, Oregon could meet the new development condition through the TMDL process, provided that enforceable basin-wide implementation plans are developed. NOAA and EPA believe that Oregon's TMDL rule has the potential to meet the enforceable policy requirement for the New Development Management Measures, provided that Urban TMDL Implementation Plan Guidance consistent with the (g) measures is in place. An outline for the draft guidance we have reviewed comports with these requirements, however, the document must be finalized before we can consider approving the management measure. For example, the stormwater management element, to "maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels," are addressed by the following brief entry in the outline: "no net increases of off-site run off." EPA and NOAA encourage this important goal to be fleshed out in the approved guidance document, and note that the stormwater management element is evaluated based on the 2-year, 24-hour storm. Alternately, Oregon could present a complementary program to address stormwater, particularly if the 1200-C statewide stormwater construction permit addresses post-construction stormwater management. If the TMDL implementation guidance is used to meet the New Development Management Measure, NOAA and EPA would need to see an example of an implementation plan that addresses the (g) guidance requirements.

For areas where TMDL coverage may be lacking, Oregon is encouraged to demonstrate that local governments are adopting its water quality model code and guidebook. Because the Model Code and Guidebook is a voluntary program, the State would need to submit a legal opinion as required by the *1998 Administrative Changes Memo* to demonstrate it has enforceable mechanisms and policies to back-up this voluntary approach. In addition, Oregon would have to provide: (1) a complete description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs it will use to encourage implementation of the management measures; and (2) a description of the mechanism or process that links the

implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

Site Development

Oregon has described a number of programs that partially address the remaining condition on site development including its NPDES General Permit for Construction Activities, 401 Water Quality Certification Program, Urban TMDL program, State Land Use Goals, and Water Quality Model Code and Guide Book.

First of all, all activities that disturb more than an acre of land must receive a NPDES General Permit for Construction Activities. The General Permit includes, as additional control practices which must be developed if appropriate to the site, recommendations to minimize the area of disturbance and requires the permittee to describe practices that will protect existing vegetation. However, no recommendation is given to limit disturbance of natural drainage features, limit the increase in impervious areas, and protect areas that provide important water quality benefits. If Oregon wishes to pursue this approach, the State should clarify how these recommendations are enforceable for meeting the (g) guidance.

For areas not covered under the NPDES permit, the 401 Water Quality Certification Program requires storm water management and erosion and sediment control plans that serve a similar function as the NPDES General Permit be developed. Again, if the State would like to pursue this approach further, NOAA and EPA would need more information on these erosion and sediment control plans. For instance, for what entities are these erosion and sediment control plans issued? Oregon should also provide illustrative examples to demonstrate how the 401 program is being used to meet the management measure.

State Land Use Goals 5, 6, and 7 can be helpful in protecting areas that provide water quality benefits and in limiting disturbance of natural drainage features if the areas and features are deemed significant. The Statewide Planning Goals and Guidelines have value and potential for this program because they provide a framework and a process to implement the measures through land use planning and consistency reviews. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

The Water Quality Model Code and Guide Book includes guidelines and examples that limit impervious surface, retain natural vegetation, protect areas that provide important water quality benefits, and limit disturbance of natural drainage features. However, it is not clear to NOAA and EPA how the Code and Guide Book are being promoted in the CNPCP area. In order to satisfy the site development management measure through this voluntary program, the State would need to provide more information on how it encourages local municipalities to use these materials. In addition, in order to satisfy the management measure requirements through

voluntary measures, the state would need to submit a legal opinion and supporting documentation as required by the 1998 Final Administrative Changes Memo to demonstrate they have adequate back-up authority to ensure the site development management measure will be implemented.

One final option to meet the site development measure is through the state's Urban TMDL Program. The State may be able to satisfy both the management measure and enforceable policy requirements through this Program. The TMDL Implementation Guidance has the potential to include site development measures as shown in the rough outline (e.g. (i), (ii), and (v) under Environmentally Sound Development). However, as the introductory note states, this draft outline may substantially change since the workgroup has only recently convened. Therefore, NOAA and EPA can not make an assessment of the TMDL program's ability to meet the site development measure until the draft guidance is finalized. We strongly encourage Oregon to retain these site development elements in the final version of its TMDL Implementation Guidance. Oregon should also address how binding this TMDL implementation guidance is. Does it carry the force of law?

Construction Site Erosion and Sediment Control

Effective December 20, 2002, NOAA and EPA have determined that these activities are no longer subject to requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 Coastal Nonpoint Pollution Control Program due to their coverage in the National Pollution Discharge Elimination System (NPDES) storm water permit program (Phase I and II).

State coastal nonpoint control programs are no longer required to include the Construction Site Erosion and Sediment Control Management Measure because the NPDES storm water regulations for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

Construction Site Chemical Control

Effective December 20, 2002, NOAA and EPA have determined that these activities are no longer subject to requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 Coastal Nonpoint Pollution Control Program due to their coverage in the National Pollution Discharge Elimination System (NPDES) storm water permit program (Phase I and II).

State coastal nonpoint control programs are no longer required to include the Construction Site Erosion and Sediment Control Management Measure because the NPDES storm water regulations for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

RECOMMENDATIONS

In order to reach full approval for these urban management measures, NOAA and EPA recommend the State do the following:

1. *Finalize the draft TMDL Implementation Guidance and ensure that the document will still be consistent with the (g) guidance for new and site development.*
2. *If Oregon does not want to wait until the TMDL program is finalized, they can submit a legal opinion stating that they have adequate back-up authority to implement the new and site development measures throughout the 6217 boundary. When submitting a legal opinion to provide back-up authority for voluntary measures, the state must also provide:*
 - (a) *a complete description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, it will use to encourage implementation of the management measures; and*
 - (b) *a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary. (see Final Administrative Changes Memo).*

B. WATERSHED PROTECTION and EXISTING DEVELOPMENT

CONDITION: Within three years, Oregon will further develop its program to implement the management measures for watershed protection and existing development in conformity with the 6217(g) guidance throughout the 6217 management area.

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon has satisfied the condition on existing development via its TMDL program and watershed protection and restoration activities under the Oregon Watershed Enhancement Board and the Oregon Plan for Salmon and Watersheds.

Oregon has met the watershed protection measure through a variety of programs including its urban growth boundaries (UGBs), activities conducted under the Oregon Plan, and the Executive Order No. EO99-01. Oregon's rigid UGBs provide watershed protection benefits by confining development to a predetermined geographic boundary. The State provides extensive assistance to communities coping with population increases within the UGB, such as DLCD's Transportation Growth Management Program, which provides technical and financial assistance to local government to incorporate "Smart Growth" principals into their planning codes. The State's Transportation Planning Goal (Goal 12) and associated rules require local governments to

plan for the maximum efficiency of existing road systems, as well as provisions for public transit, bicycling and pedestrian transit options. In a case where a UGB needs to be expanded, the state statute sets priorities for what lands adjacent to the UGB should be considered for inclusion, which include the consideration of environmental concerns. The statute also states that lower priority land for urbanization can be considered for inclusion into the UGB if future urban services (i.e., roads, sanitary sewers, storm sewers, other public utilities) could not be provided to the higher priority land due to topographical or physical constraints (i.e., steep erodible slopes, sensitive riparian habitat, wetlands or other areas essential to the natural drainage system of the area. The intent of these provisions is made clear in the guidelines to the Urbanization Goal (Goal 14).

Under the Oregon Plan, watershed councils have developed watershed assessments that help identify opportunities to preserve and restore areas that provide important water quality benefits or are necessary to maintain riparian and aquatic biota. Based on these assessments, watershed councils developed watershed action plans to make funding decisions for watershed projects carried out through the Oregon Watershed Enhancement Board or the Healthy Streams Partnership. For example, between July 2001 and December 2002 OWEB distributed \$45 million for projects that restore, maintain, and enhance Oregon's watersheds.

Other statewide planning goals and guidelines such as Goals 5 and 6, also support the watershed protection measure by requiring local governments to inventory sensitive areas and protect natural resources. Oregon encourages local governments to adopt ordinances to support these Goals. NOAA and EPA strongly recommend the State continue to ensure local governments adopt ordinances consistent with the statewide land use goals.

C. NEW and OPERATING ONSITE DISPOSAL SYSTEMS

CONDITION: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal.

FINDING: Oregon has not satisfied this condition.

RATIONALE: Oregon has and continues to carry out activities related to inspecting existing onsite disposal systems (OSDS). For example, the State used Clean Water State Revolving Funds to fund pilot projects to inspect and repair OSDS in Tillamook and Coos County. DEQ's enforcement program is largely a complaint-driven system, which has the potential to lead to some additional inspections, but not in a comprehensive manner. Activities related to Drinking Water/Source Water Protection Programs have led to a citizen workshop in the City of Bandon on OSDS maintenance, but EPA and NOAA have not seen evidence that this program is leading to any systematic inspections of OSDS.

The DEQ Onsite Program Advisory Committee is currently reviewing the State's overall onsite program. Part of this review is consideration of a proposed rule requiring OSDS inspections at the time of property transfer. As part of the inspections, an evaluation report would be submitted to the buyer and DEQ. NOAA and EPA encourage Oregon to move forward with this rule making progress. We also recommend that the State should periodically consult with us as the rule is developed to ensure it will meet all requirements of the (g) guidance for inspection of existing onsite systems.

If time-of-property transfer inspections were in place, then NOAA and EPA believe the inspection program, combined with other voluntary activities and demonstration programs, would satisfy the remaining condition on operating OSDS. If the regulatory approach fails, the State should consider developing a voluntary inspection program that will cover a majority of systems within the 6217 boundary by 2013. The voluntary program could include a point-of-sale inspection program or inspections targeted to areas of known OSDS impairment. For example, many lenders require inspections as part of mortgage applications. Providing more information on these types of inspection programs and what they require and developing an accompanying outreach program geared towards lenders, relators, and homeowners to promote inspections at the point of sale could be one way to meet the inspection requirement through voluntary means. The Coos County inspection forms are excellent, and should be used as models elsewhere. If the State chooses to develop a voluntary program, they must also submit a legal opinion and supporting documents to demonstrate they have the authority to ensure regular inspections of existing OSDS (see New Development).

RECOMMENDATIONS

In order to reach full approval for the OSDS management measures, NOAA and EPA recommend the State do the following:

1. *Pass legislation requiring regular inspections of existing OSDS throughout the 6217 boundary.*

OR

2. *Develop a voluntary inspection program for existing OSDS throughout the 6217 boundary.*

AND

3. *Submit a legal opinion and supporting documents stating the state has back-up authority to ensure implementation of the existing OSDS management measure, specifically regular inspections (See Recommendations for Urban Part A.)*

D. ROADS, HIGHWAYS, and BRIDGES

CONDITION: Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the 6217 management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the 6217 management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

FINDING:

- Oregon is exempt from the road, highway and bridge construction site chemical control measure throughout the 6217 boundary. These areas will now be covered under the NPDES Phase I and II Storm Water Program.
- Oregon is exempt from the road, highway and bridge operation and maintenance and runoff systems measures in designated Phase I and Phase II areas only. These areas will now be covered under the NPDES Phase I and II Storm Water Program.
- Oregon has developed enforceable policies and mechanisms to implement the road, highway and bridge measures for all state and federal roads.
- Oregon has not demonstrated they have adequate programs or enforceable mechanisms and policies to implement the road, highway and bridge measures for planning, siting, and developing roads and highways, operation and maintenance, and runoff systems for local roads throughout the 6217 boundary.

RATIONALE:

Planning, Siting, and Developing Roads and Highways

ODOT's Phase I Stormwater NPDES MS4 General Permit met the remaining conditions for state and federal roads, but Oregon must still demonstrate a program to address local roads and highways.

Road, Highway and Bridge Construction Projects

Effective December 20, 2002, NOAA and EPA have determined that these activities are no longer subject to requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 Coastal Nonpoint Pollution Control Program due to their coverage in the National Pollution Discharge Elimination System (NPDES) storm water permit program (Phase I and II).

State coastal nonpoint control programs are no longer required to include the Road, Highway and Bridge Construction Projects Management Measure because the NPDES storm water regulations

for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

Road, Highway and Bridge Construction Site Chemical Control

Effective December 20, 2002, NOAA and EPA have determined that these activities are no longer subject to requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 Coastal Nonpoint Pollution Control Program due to their coverage in the National Pollution Discharge Elimination System (NPDES) storm water permit program (Phase I and II).

State coastal nonpoint control programs are no longer required to include the Road, Highway and Bridge Construction Site Chemical Control Management Measure because the NPDES storm water regulations for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

Road, Highway and Bridge Operation and Maintenance

Effective December 20, 2002, state coastal nonpoint control programs are no longer required to include the Road, Highway, and Bridge Operation and Maintenance Management Measure for any road, highway and bridge operation and maintenance in urbanized areas subject to Phase I or Phase II MS4 permits. Management measures in conformance with the 6217(g) guidance will still be required for any operation and maintenance of roads, highways and bridges occurring outside of these permitted urbanized areas.

For the remaining areas, ODOT's Phase I Stormwater NPDES MS4 General Permit meets the remaining conditions for state and federal roads, but Oregon must still demonstrate a program to address local roads, highways and bridges. The Oregon DOT maintenance and construction manuals would meet the operation and maintenance measure if implemented by most local agencies. The February 17, 2001 letter to local governments is great encouragement. Oregon should describe a program that builds on this letter which will result in the use of its manuals by a majority of the local governments. Oregon may be able to use its Land Use and Transportation Program and Administrative Rule 660 – 15 – 0000 to provide a basis for use of the Oregon DOT manuals. However, it may be best to include the roads, bridges and highways management measures in the legal opinion the state develops to satisfy other enforceable policy and mechanism requirements.

With regard to meeting the siting, design, and maintenance management measure for bridges, Oregon has expressed a desire to use Clean Water Act section 401 certifications for federal decisions involving section 404 permits. Federal acceptance of this approach would be based on the State's ability to demonstrate that most local bridges in the coastal nonpoint area will be covered.

Road, Highway and Bridge Runoff Systems

State coastal nonpoint control programs are no longer required to include the Road, Highway and Bridge Runoff System Management Measure for any road, highway and bridge runoff systems in urbanized areas subject to Phase I or Phase II MS4 permits. Management measures in conformance with the 6217(g) guidance will still be required for runoff systems associated with roads, highways and bridges outside of these permitted urbanized areas.

For the remaining areas, NOAA and EPA Region 10 made a preliminary determination in 1999 that ODOT's Phase I Stormwater NPDES MS4 General Permit met the remaining conditions for state and federal roads, but Oregon must still demonstrate a program to address local roads, highways and bridges.

Local Roads

Oregon has not fully identified a mechanism by which the management measures apply to local roads, highways, and bridges. The submittal states that ODOT provides education and training to cities and counties on using the state maintenance and construction manuals. NOAA and EPA believe that an explanation or example of how the ODOT maintenance and construction manuals are used by locals would likely satisfy this condition.

RECOMMENDATIONS

In order to reach full approval for the roads, highways, and bridges management measures, NOAA and EPA recommend the State do the following:

- 1. Develop a program that will address the roads, highway and bridge measures for local roads throughout the 6217 area. Several ways this could be done, include: (1) demonstrating that outreach and technical assistance programs are in place to promote the use of the voluntary ODOT maintenance and construction guidebooks at the local level; (2) expanding the NPDES Storm Water program to include local roads; (3) demonstrating that a significant number of local communities have adopted ordinances that are consistent with the (g) guidance for roads, bridges and highways.*
- 2. If the State chooses to develop a voluntary program to address the roads, bridges and highways measure for local roads, then they must also submit a legal opinion and supporting documents (see Recommendations for Urban, Part A) stating they have back-up authority to ensure implementation of the management measure when necessary.*