



TO: DEQ Staff

FROM: Jennifer Shmikler, Oregon Farm Bureau (OFB)

SUBJECT: OFB Comments on DEQ Non-NPDES Proposed Rulemaking

Thank you for the opportunity to comment on the DEQ Non-NPDES proposed rulemaking package. Below are comments on behalf of the Oregon Farm Bureau.

I. Legal Citations on All Future Rulemaking Proposals

OFB requests the Oregon Department of Environmental Quality (DEQ) to provide accurate and thorough legal citations when outlining DEQ's legal authority to draft new rules and regulations pertaining to non-point source water quality standards, particularly those referenced in the "Implementation Ready" TMDL draft proposals. It is imperative DEQ establish basic threshold authority prior to adoption of the proposed rulemaking package. The statement "DEQ has authority" without proper legal citation does not was repeated throughout the DEQ draft issues papers. All future proposals and rulemaking packages should clearly identify legal authorities.

II. "Implementation Ready" TMDLs

A. Air Source Contributions

OFB agrees with other industry leaders that the TMDL language relating to air source contributions needs to define "significant" air sources as they relate to air transport within the local and regional air sheds and international deposition from outside the air shed. As it is currently written, the language is overly broad and could have overreaching authority.

B. TMDL Development and Implementation

OFB opposes establishing an "Implementation Ready" TMDL program that shifts regulatory administration away from the Agricultural Water Quality Management Program (AgWQMP) as it is currently structured and implemented by the Oregon Department of Agriculture (ODA).

AgWQMP focuses all regulatory efforts relative to water quality on agricultural lands in ODA, mandating all other agencies work to integrate their involvements through that agency. We believe that with the current program in place, ODA has exclusive authority to regulate agricultural non-point source water quality in Oregon. The AgWQMP program provides a workable framework within which agriculture landowners and operators can work cooperatively with various agencies to appropriately address the protection and restoration of water quality across the state of Oregon.

OFB supports continued use of a standards-based TMDL as is currently implemented by ODA through AgWQMP to address compliance issues on toxic standards and regulate erosion control. Existing rules and processes already review each water quality management plan every two years, thus allowing for toxic standards to be addressed on a local watershed basis and in a timely manner. Creating an “Implementation Ready” TMDL via a DEQ Internal Management Directive (IMD) will only impede ODA’s ability to provide a workable framework within which Oregon agriculture landowners and operators can work cooperatively with both ODA and DEQ to appropriately address the protection and restoration of water quality.

C. Mandatory Best Management Practices

OFB believes DEQ’s recommendation to develop an IMD with “suggested or required BMPs” attempts to override AgWQMP where it “authorizes the Oregon Department of Agriculture to develop and carry out an agricultural water quality management area plan for agricultural and rural lands where a water quality management plan is required by state or federal law.” (OAR 603-90-0000(1)) Current water quality plans administered by ODA are outcome-based due to the presence of multiple micro-climates and varied commodities raised in Oregon, thus making it difficult to find a one-size-fits-all solution. Mandatory BMPs will very likely overlook Oregon’s diverse climate and crop production by creating one practice that cannot resolve varied water quality conflicts across the state.

III. Antidegradation

DEQ, by its own admission Antidegradation Draft Issue Paper, has “limited expertise in evaluating whether land management practices constitute ‘cost effective and reasonable BMPs’” and “has limited authority to directly regulate private and federal land managers and require them to implement BMPs for specific land management activities.” OFB believes regulation of antidegradation is a larger topic that should be handled separately from TMDL modifications.