State of Oregon
Department of Environmental Quality Memorandum

Date: May 6, 2022

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item D: Schedule of TMDLs Proposed for Adoption by Rule 2022-2024 (Concurrence)
May 19-20, 2022, EQC Meeting

Purpose of Item

DEQ is seeking commission concurrence on DEQ's proposed schedule for review and action on TMDLs as rules. DEQ is proposing that the EQC act on the following proposed TMDLs as rules for the Upper Yaquina River Watershed, Powder River Basin, Coquille River Subbasin, Willamette River Basin, Sandy River Subbasin and the North and South Umpqua River Subbasin. DEQ intends to propose these TMDLs for adoption as rules in 2023 and 2024.

Background

At recent commission meetings, DEQ presented information on the TMDL development and implementation process, as well as the rationale and differences between TMDLs issued as orders and TMDLs adopted as rules. The information discussed included: an overview of the TMDL development process; DEQ's criteria and process for prioritizing TMDLs for development and issuance as orders or by rule; policy issues the commission will be asked to consider, and examples of the types of materials that will be presented to the commission.

TMDLs are developed for waterbodies not meeting water quality standards and listed in Oregon's Water Quality Integrated Report as requiring additional measures to reduce pollution have not been sufficient. DEQ evaluates the sources of the water quality impairments during TMDL development and identifies pollutant reductions required for human-related activities and sources. DEQ also evaluates existing regulatory and voluntary programs and actions for sufficiency to achieve the needed pollutant reductions. Using the rulemaking process to develop these TMDLs, along with EQC adoption of the rules, will identify and apportion the needed pollutant reductions and establish the framework for reductions to occur.

Key Issues

DEQ proposes to bring five TMDLs to the commission in 2023 and three TMDLs in 2024. Table 1, below, presents the list and schedule for information and action items on these TMDLs that will occur incrementally during the remainder of 2022 through 2024 to allow full consideration of each TMDL and project area specific issues. DEQ plans to present TMDL-specific information items to the commission in September 2022 for the Upper Yaquina and Powder TMDLs, with continued discussions in November 2022, and action by the commission in February 2023.

Table 1: Proposed 2022-2024 List and Schedule for Information Sessions and Rule Decisions on TMDLs

EQC Meeting Date	Item	Schedule
Sep 22-23, 2022	EQC Informational Item	**Powder Basin and Upper Yaquina Watershed Bacteria TMDLs** briefings on technical work, local outreach and rule advisory committee input
Nov 17-18, 2022	EQC Informational Item	**Upper Yaquina Watershed DO TMDL** briefings on technical work, local outreach and rule advisory committee input
	Director's Report	Agency-wide rulemaking schedule for 2023 (including TMDLs by rule)
Feb 2023	EQC Decision	**Upper Yaquina Bacteria & DO TMDLs & Powder Bateria TMDL** briefings on EPA and public process input and proposal for adoption by rule
Mar 2023	EQC Informational Item	**Coquille Subbasin Bacteria, DO, Temperature, pH TMDLs** briefing on technical work, local outreach and rule advisory committee input
May 2023	EQC Informational Item & Decision	**Coquille Subbasin Bacteria, DO, Temperature, pH TMDLs** briefing on EPA and public process input and proposal for adoption by rule
July 2023	EQC Informational Item	**Willamette Basin (+Clackamas) and Sandy Subbasin Temperature TMDL Replacements** briefings on technical work and rule advisory committee process
Sep 2023	EQC Informational Item	**Willamette Basin (+Clackamas) and Sandy Subbasin Temperature TMDL Replacements** briefings on EPA input and public process
Nov 2023	EQC Informational Item & Decision	**Willamette (+Clackamas) and Sandy Temperature TMDL** proposal for adoption by rule *(EPA action court deadline Jan 2024)*
	Director's Report	Agency-wide rulemaking schedule for 2024 (including TMDLs by rule)
Feb 2024		
Mar 2024		
May 2024		
July 2024	EQC Informational Item	**Willamette mainstem/tribs, No and So Umpqua Temperature TMDL Replacements** briefings on technical work and rule advisory committee process
Sep 2024	EQC Informational Item	**Willamette mainstem/tribs, No and So Umpqua Temperature TMDLs** briefings on EPA input and public process
Nov 2024	EQC Informational Item & Decision	**Willamette mainstem/tribs, No and So Umpqua Temperature TMDLs** proposal for adoption by rule *(EPA action court deadline Feb 2025)*
	Director's Report	Agency-wide rulemaking schedule for 2025 (including TMDLs by rule)

Developing these TMDLs through rulemaking will provide transparency regarding the expected implementation and accountability mechanisms for any additional regulatory or voluntary measures needed to achieve required pollution reductions. Examples of situations where additional actions may be needed include: where agricultural rules are being met, but riparian conditions and/or runoff from agricultural lands are contributing to water quality exceedances, or where active restoration is needed; when stream channels or flow alterations or withdrawals prevent achievement of water quality standards; where implementation of forest regulations is not expected to achieve TMDL allocations; or when current wastewater treatment plants or other point sources

will not achieve TMDL allocations. These are some examples of the types of situations DEQ may evaluate and discuss with rulemaking advisory committees and entities responsible for implementing the TMDL during the rulemaking process. DEQ will also brief the commission on DEQ's evaluations, the issues and decision points associated with these issues, along with input received during the rulemaking process and how DEQ is proceeding based on that input with the objective of preparing the commission with information to make informed decisions about the proposed rules.

The TMDL project areas being proposed for development as rules are:

1. Upper Yaquina River Watershed, for bacteria and dissolved oxygen;
2. Powder River Basin, for bacteria;
3. Coquille River Subbasin, for temperature, dissolved oxygen, pH, and bacteria;
4. Willamette River Basin (as two phases: *small tributaries in the Upper, Middle Lower and Clackamas; and then the *Mainstem and major tributaries below dams), for temperature;
5. *Sandy River Subbasin, for temperature; and,
6. *North and South Umpqua River Subbasins, for temperature.

The four project areas marked by an asterisk * above have court-ordered deadlines for replacement temperature TMDLs. The Willamette River Basin and Umpqua Subbasins are complex systems that cover large geographic areas. These (and the Sandy River Subbasin) affect large numbers of people with varied interests related to long-term watershed health.

The Willamette River Basin supports 70 percent of Oregon's population; the Umpqua Subbasins sustain resource and recreation industries, including world-class flyfishing; and, the Sandy River Subbasin contains the Bull Run Watershed, which is the drinking water source for much of the Portland area. In addition, the Willamette River Basin contains the largest number of point sources in the state, and all three basins represent a significant diversity of land ownership and nonpoint source-related activities. DEQ recognizes the high level of interest in the TMDL development for these project areas and intends to provide multiple opportunities for public engagement through outreach, meetings and requests for input, including from tribal nations.

DEQ proposes adoption of the replacement temperature TMDLs in the Willamette, Sandy and North and South Umpqua as rules because temperature impacts are significant, over large geographic areas where the pace and scale of

nonpoint source controls may need to accelerate, where large numbers of entities and people are affected, and where there are court-ordered deadlines.

The Upper Yaquina River Watershed lies within the Mid Coast Basin. With the Oregon Department of Transportation's (ODOT) highway stormwater permit as the only permitted point source in the watershed, nonpoint sources are the main contributors of pollutants entering these waterways. Data and local organizations' input indicate that bacteria and pollutants affecting dissolved oxygen (solar radiation and nutrients) are primarily caused by insufficient shade on pastures and riparian areas grazed by livestock in the flat lands of the valley bottoms, and insufficient shade on some industrial forest lands. These water quality impairments also affect public health, and DEQ anticipates heavy local interest in these TMDLs.

The Powder River Basin covers a large geographic area and its hydrology is strongly impacted by the extensive reservoir and irrigation conveyance networks throughout the basin. There are few permitted point sources within the basin with limited discharges. These include ODOT's highway stormwater permit and a few small municipal wastewater facilities, which are in the process of eliminating discharges. Bacteria exceedances of the water quality standard are significant, affect public health, and appear to be driven largely by irrigation season runoff in contact with manure in livestock grazing areas.

Multiple and significant water quality issues in the Coquille River Subbasin are widespread and intertwined. This Subbasin of the South Coast Basin covers a large geographic area with diverse stakeholder interests and strong tribal interest in water quality improvement. Leading factors in bacteria impairments include seasonal runoff in contact with manure in livestock grazing areas in the flat valley bottoms along the many tributaries and forks of the river system. Control of bacteria, temperature and other pollutants that impair dissolved oxygen is also needed at multiple wastewater treatment plants.

In addition to identifying waters in these watersheds as impaired as part of DEQ's Water Quality Integrated Report, which then requires development and implementation of TMDLs to address these impairments, data analysis demonstrates that water quality concerns in many areas are significantly driven by riparian conditions and runoff associated with agricultural lands and activities. As a result, the Upper Yaquina, Coquille and Powder TMDLs are likely to identify the need for significant reductions from nonpoint sources to address conditions on agricultural lands and rural activities to achieve water

quality standards. DEQ has participated with the Oregon Department of Agriculture (ODA) in efforts through Agricultural Water Quality Area Plans and Area Rules and voluntary incentive programs over the past 20 years. Despite these efforts, however, significant water quality impairments continue in these and other project areas.

Many of the TMDL project areas also include nonpoint sources associated with forestry activities. DEQ anticipates progress on forest-related activity controls following recent developments associated with Oregon's forest practice rules, including current rulemaking resulting from the Private Forest Accord agreement and legislation, and the improved water quality collaboration Memorandum of Understanding between DEQ and Oregon Department of Forestry. DEQ is working collaboratively with ODA to make similar progress on actions to reduce pollution associated with conditions and runoff from agricultural lands and agricultural activities.

DEQ proposes development and issuance of TMDLs for the Upper Yaquina River Watershed, Powder River Basin and Coquille River Subbasin as rules because these projects address significant and multiple impairments that affect public health and the environment; span large geographic areas; affect many diverse stakeholders; have significant contributions from agriculture-related nonpoint sources; and include significant interest of tribal nations as well as others.

EQC involvement

DEQ requests commission concurrence with the list of TMDLs shown in Table 1, above, that DEQ proposes for adoption by rule through 2024 and feedback on the schedule of informational items to support the commission's action on these rules.

Report compiled by Alex Liverman
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