

Date: March 12, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda Item C, Informational item: Coastal Zone Amendments and Reauthorization Act Update
March 21-22, 2024, EQC meeting

Why this is important DEQ will inform the commission about Oregon’s coastal program and Coastal Nonpoint Control Plan revision process. This involves the Nonpoint Source, Total Maximum Daily Load, and Forest Water Quality sub-programs within the Water Quality Program.

Prior EQC involvement Staff presented a brief update on the state’s Coastal Nonpoint Control Plan update process during the Director’s Report on Sept. 14, 2023.

Background The Coastal Zone Amendments and Reauthorization Act (CZARA) require states with approved coastal management programs approved and funded through the Coastal Zone Management Act (CZMA) to develop a Coastal Nonpoint Control Plan (CNPCP) that demonstrates the state has regulatory or effective voluntary programs in place to limit nonpoint source pollution from a wide variety of potential sources within the coastal zone. Oregon’s coastal zone includes lands west of the Coast Range crest, and the Coastal Nonpoint Source Pollution Control Boundary which extends into the Umpqua and Rogue basins. A plan must demonstrate that, over time, water quality standards adopted under the Clean Water Act (CWA) will be met in waterbodies and estuaries in the coastal zone and “shall serve as an update and expansion of the State nonpoint source management program developed under section 1329 of Title 33 [CWA section 319], as the program under that section relates to land and water uses affecting coastal waters” (16 U.S.C. § 1455b(a)(2)).

The Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) must review and approve the plan. Failure to develop an approved plan can result in a state incurring penalties, including significant reductions in federal funding through the CZMA Section 306 and the CWA Section 319. Currently, the state’s funding through these sources has been reduced by 30% of each federal grant starting with the 2015 funding allocation and continuing through present day.

The Oregon Coastal Management Program (OCMP), hosted by the Department Land Conservation and Development (DLCD), includes 10 other state agencies, including DEQ, and 41 local jurisdictions. DEQ and DLCD are the lead agencies responsible for

writing, submitting, and implementing the state's CNPCP, in coordination with other relevant state agencies.

In 1997, EPA and NOAA "conditionally approved" Oregon's CNPCP as they had for other states, noting needed changes to the plan, particularly with regard to onsite septic systems, low-impact development, and forestry. The state resolved the issues with onsite septic systems and low-impact development but did not make progress on forestry to the satisfaction of EPA and NOAA. Forced by a lawsuit to decide on compliance or noncompliance of Oregon's program, EPA and NOAA reviewed supplemental information provided by the state on inspection of operating onsite septic systems, post-construction stormwater management for non-NPDES MS4 permitted communities, and the additional management measures for forestry. In the denial notice, EPA and NOAA implied that, based on the supplemental information, Oregon likely met the threshold for approval of the onsite septic and urban stormwater management measures.

Oregon's plan was disapproved in 2015 based on the EPA's and NOAA's assessment that the additional management measures for forestry were not adequately addressed. In order to restore funding for CZMA Section 306 (DLCD) and CWA Section 319 (DEQ) programs, Oregon needs final approval of an updated CNPCP for additional forestry management measures.

Forestry has four conditions needing remediation through additional management measures assigned by EPA and NOAA in the 1997 conditional approval and reiterated in the 2015 disapproval documents are:

- Aerial application of herbicides
- "Legacy" roads
- Riparian zones (on small and medium streams)
- Landslide-prone areas

Sections given interim approval (some of which have fully approved subsections). CZARA programs with interim approval are:

- Administrative coordination
- Agriculture
- Critical coastal areas and additional management measures
- Coastal zone boundary
- Hydromodification
- Marinas and recreational boating
- Monitoring
- Urban areas (stormwater, development)
- Wetlands, riparian areas, and vegetated treatment systems

When the State of Oregon submits its revised CNPCP, the federal agencies must proceed through the usual process for federal environmental decision-making. This includes updating their comprehensive decision document, federal clearance (legal and management review), federal register notice and public comment, environmental compliance (review under the National Environmental Policy Act and the Endangered Species Act), and then full approval with a notice of decision in the federal register. This will take up to three years, depending on federal resources, and must be completed before

funding is restored. Because this is a federal action, it is subject to legal challenges, so the CNPCP must be stringent enough to be legally defensible.

Current efforts and timeline

DEQ and DLCD are the lead agencies for the CNPCP, coordinating communication between EPA and NOAA and the other agencies involved in the State's coastal program. Some programs exist within these two agencies (e.g. urban development and stormwater), others are within other state agencies (e.g. forestry, agriculture, marinas). Creating an CNPCP that is approvable by the federal government and legally defensible is truly a group effort. Oregon needs regulatory or voluntary measures (with monitoring and back-up regulatory authority) capable of addressing all the identified program areas in CZARA.

DEQ and DLCD renewed efforts with EPA and NOAA on this topic and increased staff work and organization in 2022. Oregon state agencies are working through each of the sections individually and sending them to EPA and NOAA for review and comment prior to re-submitting a complete plan. The intent is to have all sections drafted with initial review by the federal agencies prior to submission of the final plan, in order to streamline the federal review and action process.

Statewide collaboration is an important contributor to Oregon's CNPCP. DEQ has Memoranda of Understanding with Oregon Department of Agriculture and Oregon Department of Forestry, adopted in 2023 and 2021, respectively. These MOUs describe each agencies' commitments and roles in protecting and improving water quality on agricultural lands and nonfederal forestlands. DEQ sets water quality targets (i.e. water quality standards, TMDL load allocations and surrogate measures), and ODA and ODF each serve as the Designated Management Agency for their respective land use, utilizing their programs to meet those water quality targets.

At this time, DEQ is in the process of coordinating among programs and state agencies to update the sections with interim approval, and coordinate with EPA and NOAA to conduct an initial review. DEQ and DLCD are working toward submitting the completed draft CNPCP to the federal agencies by the end of August 2024.

Key issues

DEQ has primary responsibility for implementing both the water quality provisions of CZARA in Oregon and the CWA. Writing and implementing the CNPCP is part of DEQ's core regulatory and environmental responsibilities in Oregon's coastal zone.

DEQ is currently penalized 30% of our CWA section 319 allocation, reducing money for nonpoint source staffing and for pass-through grants to reduce and prevent nonpoint source pollution. DLCD is similarly losing 30% of their CZMA section 306 grant funding, creating a similar impact to coastal planning efforts and loss of funds. Section 319 fund has lost \$4,715,440 since 2015.

The state will need to demonstrate that the state's programs (regulatory, voluntary, or a combination of both types of programs) will, over time, ensure attainment of water quality standards in the coastal zone. DEQ is working with Oregon Department of Forestry to document how the combination of ODF's programs and authorities (including the Private Forest Accord additions to the Forest Practices Act) and DEQ's programs and authorities (including TMDLs) together meet the federal requirements. DEQ is working with Oregon

Department of Agriculture to similarly document how the combination of ODA and DEQ programs and authorities meet the requirements for an approvable CNPCP.

There is an urgency to this work: The goal is to have a finished, pre-reviewed, and submitted CNPCP before the end of 2024, enabling the federal review and decision process to begin in early 2025. DEQ staff are coordinating with stormwater staff and basin coordinator water quality. Other state agencies are engaged and assisting with the compilation of information and documentation. With sustained effort, we are working toward submitting an approvable CNPCP by the end of this year. The goals of the CNPCP align with DEQ's goal to protect, maintain, and restore water quality statewide.

EQC involvement This item is for information. DEQ anticipates periodically updating the EQC on the state's progress toward program approval.

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