

NORTHWEST ENVIRONMENTAL ADVOCATES



September 14, 2010

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency Region 10
1200 6th Ave., Suite 900
Seattle, WA. 98101

*Via Certified Mail – Return Receipt
Requested*

Re: **60-Day Notice for Violations of Clean Water Act; Failure to Disapprove and Promulgate State of Oregon's 2008 and 2010 Section 303(d) Lists**

Dear Ms. Jackson and Mr. McLerran:

By this letter, Northwest Environmental Advocates (NWEA), the Northwest Environmental Defense Center (NEDC), and the Center for Biological Diversity (CBD) give you 60 days notice of intent to file an action under section 505 of the Clean Water Act (CWA), 33 U. S. C. § 1365(a)(2), concerning the violations described below. (In addition, such failure by the U.S. EPA constitutes an unlawful withholding and unreasonable delay of agency action under the Administrative Procedure Act, 5 U.S.C. § 706.) NWEA, NEDC, and CBD's members live, work and engage in recreational activities in, on, and near Oregon's navigable waters.

Both NWEA and NEDC previously filed actions against your agency because of Oregon's failure to timely promulgate lists of water quality limited segments under section 303(d) of the Act. This notice involves, once again, Oregon's failure to submit timely 303(d) lists and EPA's failure to disapprove this non-submission and promulgate such a list.

Section 303(d)(1)(a) of the CWA requires that States shall identify those waters within its boundaries for which the effluent limitations required by sections 1211(b)(1)(A) and 1311(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. That list is referred to as the "303(d) list." These lists are to be submitted from "time to time." CWA § 303(d)(2). The list must 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 U.S. Environmental Protection Agency has promulgated regulations interpreting the statute

and governing the development and submission to EPA of such 303(d) lists. 40 C.F.R. § 130.7(b). EPA requires that each state shall submit biennially the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years. 40 C.F.R. § 130.7(d)(1). States are required to submit these 303(d) lists on April 1 of every even-numbered year. *Id.* EPA is required to approve or disapprove 303(d) lists not later than 30 days after a State submits them to the Regional Administrator. 40 C.F.R. § 130.7(d)(2); CWA § 303(d)(2). If a state does not submit its 303(d) list, EPA must, within 30 days of the deadline, identify waters in that state which do not meet applicable water quality standards. 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2).

On May 23, 2006, Oregon submitted a combined 303(d) list for the 2004 and 2006 reporting periods, having failed to submit a list for 2004.¹ Oregon failed again to prepare or submit a report for 2008. The Oregon Department of Environmental Quality purports to be developing a 2010 303(d) list but to date has only issued a “call for data.”² EPA’s last action on a 303(d) list for Oregon was its approval of the 2004/2006 list on February 26, 2007.³

EPA has taken no action to disapprove Oregon’s failure to submit a list by either April 2008 or April 2010, nor has it promulgated a list based on a disapproval of Oregon’s non-submission of a 303(d) list in either 2008 or 2010.

Persons Giving Notice

The names, addresses, and telephone numbers of the organizations giving notice in this letter are:

Nina Bell, Executive Director
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Northwest Environmental Defense Center
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¹ <http://www.deq.state.or.us/wq/assessment/rpt0406.htm>.

² <http://www.deq.state.or.us/wq/assessment/2010DataInfo.htm>.

³ <http://www.deq.state.or.us/wq/assessment/docs/ORApproved%20Integrated%20Rptw-enc.pdf>

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Attorney Representing Persons Giving Notice

The name, address, and telephone of the attorney representing the parties in this notice is:

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Conclusion

We look forward to discussions with EPA to ensure that Oregon issues its now overdue 303(d) lists for 2008/2010 or, in the alternative, that EPA takes action to ensure that Oregon's 303(d) list is appropriately updated.

Sincerely,

Nina Bell
Executive Director
Northwest Environmental Advocates

and on behalf of

Mark Riskedahl, Executive Director, Northwest Environmental Defense Center
Miyoko Sakashita, Senior Attorney/Oceans Program Director, Center for Biological Diversity

cc: Dick Pederson, Director
Oregon Department of Environmental Quality
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United States Department of Justice
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