

A scenic view of a river flowing through a forest. The water is calm and reflects the surrounding greenery. In the foreground, the tip of a canoe is visible, with a red bag inside. The sky is blue with some light clouds.

Willamette River Alliance

A Bridging Opportunity for Water
Quality Permitting

Overview

- Challenges of water quality permitting for temperature
 - Standards Issues
 - Permitting Issues
- Willamette River Alliance
 - Creates a bridge to future temperature regulation
 - Opens an opportunity for DEQ to have a permitting strategy that focuses on improving river health to protect salmon
 - Provide regulatory certainty to the NPDES permitted community



Timeline: Oregon's Temperature Standard

1996: Oregon revises temperature standard

July 1999: EPA disapproves portions of temperature standard

2001: NWEA lawsuit against EPA

2003: Judge Haggerty issues decision in *NEA I* case

2003: EPA's Regional Temperature Guidance

2004: EPA approves Oregon's revised temperature standard

February 2012: NCC approval arbitrary and capricious; additional consultation with Services req'd

November 2012: Stipulated Order to Services re: consultation on stds

April 2013: Judge Acosta's opinion re: NCC & statewide narrative standards

July 2015: NMFS draft jeopardy determination re: 20 deg. C criterion

1990s

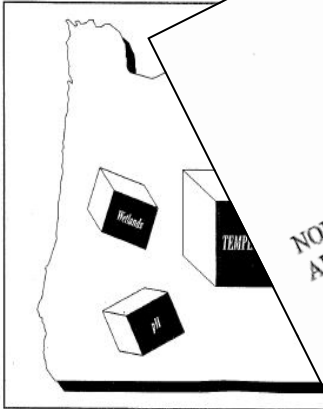
2000s

2010s

2005-2013: *Northwest Environmental Advocates v. EPA et al.* case litigated

Temperature

1992 – 1994 Water Quality Standards



State of Oregon

Technical Advisory Committee
 Policy Advisory Committee
 Temperature Subcommittee

Department of Environmental Quality
 Standards & Assessment Section
 811 Sixth Avenue
 Portland, Oregon 97204



UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL
 ADVOCATES, a non-profit corporation,
 Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY, a United States
 Government Agency; NATIONAL MARINE
 FISHERIES SERVICE, a part of the National
 Oceanic and Atmospheric Administration, a
 part of the United States Department of
 Commerce; UNITED STATES FISH AND
 WILDLIFE SERVICE, a part of the United
 States Department of the Interior,
 Defendants,

STATE OF OREGON; and NORTHWEST
 PULP AND PAPER ASSOCIATION,
 Intervenor-Defendants.

Case No. 3:05-cv-01876-AC
 OPINION AND ORDER

United States
 Environmental Protection

Region 10
 Office of Water

EPA 910-B-03-002
 April 2003

Region 10 Guidance Specific Northwest State Water Temperature Quality Standards



State of Oregon
 Department of
 Environmental
 Quality

Standard
 Directive

Challenges of Standards

- Temperature Standards
 - Use of NCC rejected by Federal judge in 2012, NMFS 'draft' jeopardy for 20°C migration criteria in 2015
 - NMFS and EPA need to decide what removes the draft jeopardy determination
 - EPA needs to update 2002 EPA Guidance Document
 - DEQ needs to develop and adopt new temperature standards for Oregon
 - Oregon new standards need to be approved by EPA, survive any NGO litigation

Legal Outcome of Temperature Litigation

TMDLs Left Intact with Some Modification

- Meet existing WLAs from TMDLs plus temperature standards at edge of mixing zone
- Worst of both worlds, would trap many permit holders
- Anti-backsliding issues

TMDLs Invalidated

- For short term, meet 18, 16, 14, 13, 12°C requirements plus HUA at edge of mixing zone
- Probably forces some kind of cumulative effects analysis
- Leave a large number of permitted facilities without renewals
- For the long term, requirements unknown

And the permit backlog grows.....with consequences

Permit backlog grows



NPDES permits are expired



Lack of temperature standard, potentially soon-to-be invalidated TMDLs



Muni's can't upgrade facilities/modify practices with an expired permit



Muni's stuck with outdated technologies, antiquated plans, high risks for investments; DEQ with back log that will not go away

Options for a Permit Holder

- Go it alone with DEQ help...
 - Seek permit while exceeding numeric standards at the edge of the mixing zone unclear
 - Trade excess load
 - Get a compliance schedule
 - Get a variance

Trade Excess Thermal Loads

- Trading is difficult, complex
 - CWS, large organization
 - Freshwater Trust, high expertise and competency
- Challenges for defining NPS requirements and background
 - Creating a triangle between DEQ, Dept. of Ag, and farmers about compliance and background
- Municipalities concerned about trading within a compliance schedule
- Only adding shade will address only part of the problem in the Willamette River

Options for a Permit Holder

- Go it alone with DEQ help...
 - Create individual trading programs
 - Compliance schedules to construct “something stupid”

Watershed Health vs “Doing Something Stupid”



Compliance, not
watershed health

Control temperature

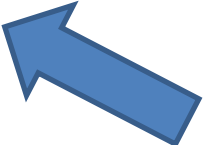


CWA/DEQ

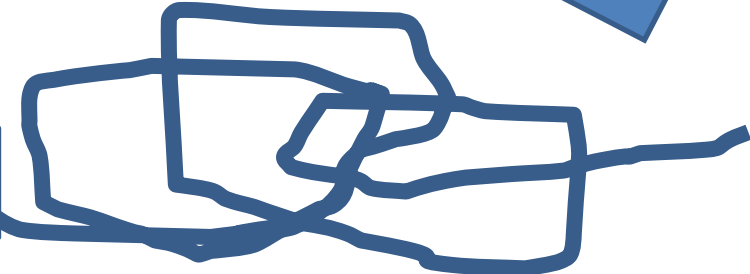
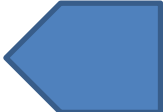


Standards/TMDLs/
WQBEL

NPDES Permits



Forestry/Ag



Options for a Permit Holder

- Go it alone with DEQ help...
 - Create individual trading programs
 - Compliance schedule
 - Variances for those spending over 2% of the mean annual income

The Holy Grail of a Variance

- Probably only good for one permit cycle
- Probably only defensible if expenditures are over 2% of MHI, threshold for “substantial and widespread economic and social impact”
- Increase the complexity of the permitting process
 - DEQ has never issued a variance!!
- Litigation likely
- No defined costs – likely expensive
- No defined timeframe for regulatory action

Just who is going first?????



Willamette River Alliance



NPDES Permit Holders

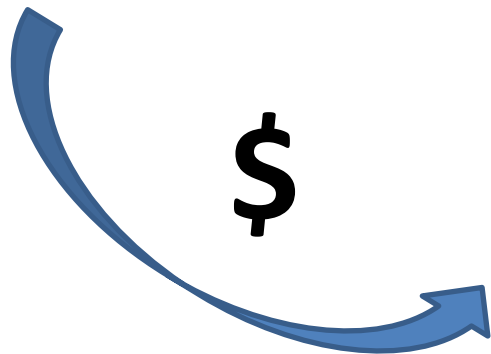
Excess Thermal Load



Willamette River Alliance,
general permit



- Make trades
- Optimize WQ benefits
- Improve watershed health
- Reduce transaction costs
- Develop collaborations
- Provide regulatory certainty



Willamette River Alliance

- General Concept
 - Voluntary participation
 - Participating wastewater & industrial permit holders
 - No impact on non-point sources allocations
 - Apply for coverage under a General Permit for Willamette temperature allocations (ex. SF Hg and PCBs)
 - Alliance would generate credits to ensure compliance
 - Financial contributions
 - Membership basis
 - Compliance obligation relative to needs (ex. Wisconsin phosphorus TMDLs)

Willamette River Alliance

- Overall focus on river health
- Restoration investment in order of river priority
- Incorporate cold water refugia protection
- Coordinated approach
- Attempt to obtain matching funding from additional sources to increase restoration



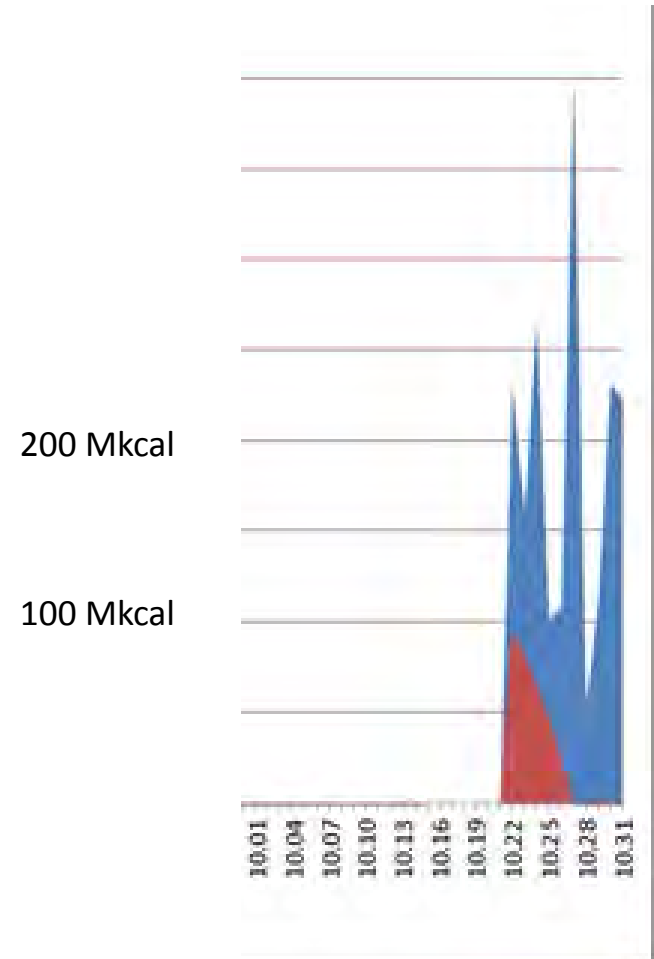
Example Restoration Costs

- Example restoration costs
 - Clean Water Services
 - \$0.025-0.0375/KCal
 - City of Medford
 - \$0.03/KCal
 - MWMC/Springfield
 - \$0.05-0.18/KCal
- Potentially could generate several million \$s per year for ecological uplift in the Willamette Basin---both shade planting and protection of cold water refugia



Uncertain Future Liability

- 100 million Kcal deficit in October with TMDL (red)
- Much higher with numeric criteria (blue)
- Deficit could be year-around



The Willamette Alliance

A collaborative, coordinated effort that would provide compliance plus help to protect fish, restore watershed processes, and improve watershed health.