

Legal Issues for Oregon NPDES Permit Renewals



Presenters

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Disclaimer

- Legal thoughts and ideas
- Every community may be in a different fact set
- Discussion is not legal advice

Summary

- Legal Framework
- DEQ/EPA Overlay
- What Can you Do?
 - Need for a Pro-Active Approach
- Things to Watch For
- When to Hit the Panic Button...

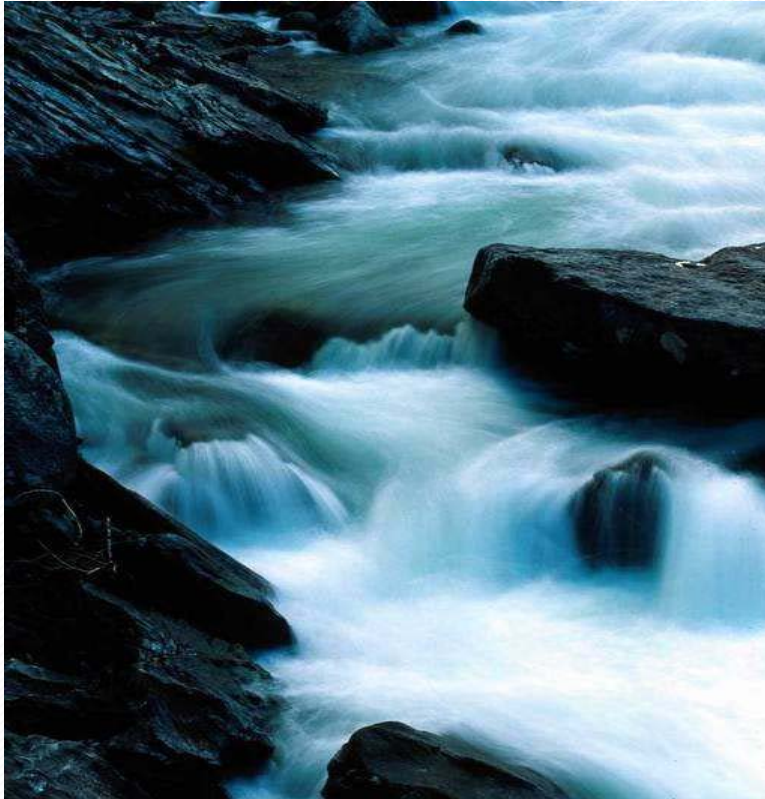




Setting the Stage

- Oregon NPDES permit holders in unique situation
 - DEQ actions under EPA & Tribal pressure
 - Federal judge actions
- Careful attention to permits
 - Some communities might not be able to craft compliance strategies for some permit conditions
- Game changer...

Legal Framework



- Clean Water Act
- Variety of cases
 - Temperature
 - “Natural Conditions” removed from Oregon temperature standard
 - TMDL status under review
 - Aquatic Life Standards
 - EPA disapproved Oregon provisions
 - Metals, ammonia, pesticides

Legal Foundation

- Third Party Litigation Allowed
 - DEQ and EPA may agree, but a Third Party could still prevail
 - Pay your legal costs PLUS their legal costs
 - Clean Water Act antiquated
- Outcome = Regulation by Settlement



DEQ/EPA Overlay

- Complicated Relationship
- EPA Oversight Role
- DEQ staff
 - Experience Reduced by Recent Retirements
 - Limited Resources

Crushed...





What Can You Do?

- Take a pro-active role
 - Careful analysis
 - High quality data
 - Understand permitting tools
- Build the Administrative Record
 - DEQ Record
 - *Fact Sheet, Permit Evaluation Report (PER)*
 - Careful review of draft fact sheet and PER in addition to draft permit



What Can You Do?

- Protecting your Analysis
 - Oregon Public Records Law overlay
 - Might not be possible, but could try:
 - Stamp as '*business analysis*'
 - Use outside attorney and consultants and only review records
 - Do not have the records turned over to the public agency
 - Use outside attorney to hire consultant indicating the advice is related to anticipated litigation



Things to Watch For...

- Read your current permit carefully
 - Understand the basis for the limits and conditions
- Draft permits
 - Applicant review CRITICAL
 - Think about each condition...
 - What is compliance?
- Mixing zone
 - Take full advantage of DEQ policy
 - Consider if an update of your mixing zone study would be useful

When to Hit the Panic Button?

- When it appears your facility cannot meet a potential permit limit
 - Pro-active review of ongoing data and RPA analysis
 - Watch for ammonia, metals, human-health related pollutants
- DEQ proposes substantial revisions in the mixing zone





Possible Panic Button Actions

- Get good assistance
 - Attorney – need Clean Water Act experience
 - Check the ACWA associate members
 - Contact a community of a similar size
 - Consulting/Engineering Firms
 - Check the ACWA associate members
 - Contact a community of a similar size
 - Connect with other communities in similar situations

Questions?

