

FINAL

OREGON ADMINISTRATIVE RULES OREGON DEPARTMENT OF AGRICULTURE CHAPTER 603, DIVISION 95

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Coos and Coquille Area

603-095-1500

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Coos and Coquille Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - ORS 568.933 and ORS 561.190 - ORS 561.191. The area plan is known as the Coos and Coquille Agricultural Water Quality Management Area Plan. Nothing in the Coos and Coquille Agricultural Water Quality Management Area Plan or in OARs 603-095-1500 through 603-095-1560 will allow the department to implement this plan or rules in a manner that is in violation of the U. S. Constitution, the Oregon Constitution or other applicable state laws.

(2) The purpose of these rules is to outline requirements for landowners in the Coos and Coquille Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules (OARs 603-095-1500 through 603-095-1560) is expected to aid in the achievement of applicable water quality standards in the Coos and Coquille Water Quality Management Area.

(3) Failure to comply with any provisions of the Coos and Coquille Agricultural Water Quality Management Area Plan:

(a) does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of OAR 603-095-0010 to OAR 603-095-1560;

(b) is not intended by the department to be evidence of a violation of any federal, state, or local law by any person.

(4) Nothing in the Coos and Coquille Agricultural Water Quality Management Area Plan shall be:

(a) construed as an effluent limitation or standard under the federal Water Pollution Control Act, 33 USC §§ 1251-1376;

(b) used to interpret any requirement of OAR 603-095-1500 to OAR 635-095-1560.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1520

Geographic and Programmatic Scope

(1) The Coos and Coquille Agricultural Water Quality Management Area is comprised of the Coos and Coquille drainages, the Tenmile drainage, the Twomile drainage, the Fourmile drainage (including the headwaters of South Fork Fourmile Creek), and those lands within Coos County that lie north of the county line west of its junction with Bethel Mountain Road. The physical boundaries of the Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Coos and Coquille Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies. These rules (OAR 603-095-1500 through OAR 603-095-1560) will affect any lands in agricultural use on all non-Federal and non-Tribal lands in the Coos and Coquille Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots primarily used for the cultivation of vegetables, flowers, herbs or fruits for domestic or household use.

(b) The provisions of the Coos and Coquille Agricultural Water Quality Management Area Plan and OARs 603-095-1500 through 603-095-1560 shall not apply to any forest practice conducted on forestland as defined in ORS 527.620.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1540

Prohibited Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. A landowner is responsible for only those conditions resulting from activities caused by the landowner. A landowner is not responsible for conditions resulting from actions by another landowner. A landowner is not responsible for conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(a) Limited duration activities may be exempt from these conditions subject to prior written approval by the department.

(2) Sediment Management.

(a) Effective three years after rule adoption, soil erosion associated with agricultural cultivation shall not deliver sediment sufficient to violate water quality standards.

(3) Nutrient Management.

(a) Effective three years after rule adoption, application and storage of manure, commercial fertilizer, and other added nutrient inputs to agricultural lands will be done in a manner that minimizes the introduction of nutrients into waterways.

(4) Pesticide Management.

(a) Effective three years after rule adoption, in cranberry production, water storage systems that intercept agricultural drainage containing pesticides and that reapply this water will be designed to minimize percolation of drainage waters to groundwater or overflow of the impoundment to surface waters.

(5) Riparian Management.

(a) Effective three years after rule adoption, management activities in the riparian area will be conducted in a manner that allows the establishment, growth, and maintenance of riparian

vegetation consistent with vegetative site capability so as to provide some combination of filtering capacity, sediment trapping, stream bank stability, and shade.

(A) Exemptions shall include stream crossings, access for irrigation equipment and other accepted water dependent agricultural uses when conducted in a manner that minimizes impacts on streambank stability.

(6) Irrigation Management

(a) Effective three years after rule adoption, application (direct, chemigation, and fertigation) and irrigation systems will be managed to minimize runoff and the introduction of nutrients and farm chemicals into waterways.

(7) Waste Management

(a) Effective upon adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1560

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, or through notification by another agency, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-1560(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and/or waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) Notwithstanding OAR 603-095-1560, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may, is or impends to create an immediate threat to the public health or safety.

(6) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

(a) Enforcement action shall be pursued only when reasonable attempts at voluntary solutions have failed.

(7) The department may not impose a civil penalty on a landowner for a first violation of OAR 603-090-0000 through 603-090-0120, or of OAR 603-095-01500 through OAR 603-095-1560 unless the department:

(a) has notified the landowner of the violation in writing that describes, with reasonable

specificity, the factual basis for the department's determination that a violation has occurred; and

(b) has prescribed a reasonable time for the landowner to correct the violation that may not exceed 30 days after the first notice of violation, unless the violation requires more than 30 days

to correct, in which case the department shall specify a reasonable period of time to correct the violation in a plan of correction issued to the landowner.

(8) No notice of violation or period to comply shall be required under subsection (8) of this section if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(9) The department, or a designee of the department shall periodically, and in no event less than once biennially, consult with the department of justice to ensure that the actions of the department taken under ORS 568.915 are consistent with section 9, Article I of the Oregon Constitution, and the Fourth Amendment to the United States Constitution.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

APPENDIX 1

