

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

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Bear Creek Subbasin

603-095-0200

Purpose

(1) These rules have been developed to effectuate the implementation of a water quality management area plan for the Bear Creek subbasin pursuant to authorities vested in the department through ORS 568.900-568.933, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Bear Creek Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Bear Creek subbasin for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Bear Creek subbasin.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912

Stats. Implemented: ORS 568.900-568.933

603-095-0220

Geographic and Programmatic Scope

(1) The Bear Creek subbasin includes the drainage area of Bear Creek upstream from the confluence with the Rogue River near Central Point, Oregon. The physical boundaries of the Bear Creek subbasin 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 Bear Creek subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of activities which are subject to the Forest Practices Act.

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Bear Creek subbasin.

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

Stat. Auth.: ORS 561.190-561.191, ORS 568.912

Stats. Implemented: ORS 568.900-568.933

603-095-0240

Prohibited Conditions

(1) Effective upon adoption of these rules, all landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A land occupier shall be responsible for only those prohibited conditions caused by activities conducted on land managed by the landowner or occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) No person conducting agricultural land management or land disturbing activities shall violate provisions of ORS 468B.025(1) or (2).

(3) Except as provided in ORS 468B.050, no person conducting agricultural land management or land disturbing activities shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to be carried into the waters of the state by any means.

(b) Discharge any wastes into any waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(4) No person shall violate the conditions of any waste discharge permit issued pursuant to ORS 468B.050 or ORS 568.

(5) Agricultural management of riparian areas shall not impede the development or maintenance of adequate riparian vegetation to control water pollution.

(a) Effective four years after plan adoption, vegetation and streambank management in riparian areas shall not result in the following conditions:

(A) Sloughing of stream banks due to management practices which result in sediment entering a stream beyond what would be expected in that specific hydrologic regime; or

(B) Destabilization of stream banks beyond what would be expected in that specific hydrologic regime; or

(C) Damage to riparian vegetation that destroys its proper function and the vegetative recovery that is reasonably necessary to withstand a 25-year high flow event; or

(D) Absence of seasonally appropriate regeneration and recruitment, according to site capability.

(b) This condition is not intended to prohibit riparian grazing where it can be done while managing for proper functioning riparian condition.

(c) Exceptions:

(A) Written, limited duration exemptions to conditions described in OAR 603-095-0240(5)(a)(C) or (D) above will be considered for short-term activities included in a department (or its designee) approved plan intended to enhance the long-term function and quality of the riparian area.

(B) Constructed irrigation delivery and drainage ditches are exempt from conditions described in OAR 603-095-0240(5)(a)(C) or (D) above.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912
Stats. Implemented: ORS 568.900-568.933

603-095-0260

Voluntary Water Quality Farm Plans

(1) Content: Voluntary Water Quality Farm Plans shall be designed to meet criteria in OAR 603-095-0240. At a minimum, Voluntary Water Quality Farm Plans shall include the following information:

(a) General components:

(A) Such maps, aerial photographs, and soil survey, water resource and other natural resource inventory information that may be necessary to develop a Voluntary Water Quality Farm Plan. Such items shall be included to the extent that the information is pertinent and necessary in the formulation of the Voluntary Water Quality Farm Plan to assure it achieves the criteria in OAR 603-095-0240.

(B) A list of fields, crops grown (including typical rotation), and other land uses, with the area in acres for each field or land use;

(C) Any agreements entered into by the landowner or operator involving any agency providing technical or financial assistance in the completion of any best management practices included in the Voluntary Water Quality Farm Plan.

(b) Depending on the nature of the operation, any or all of the following specific components shall be included in the Voluntary Water Quality Farm Plan. If any of the components do not apply to the operation, the voluntary plan shall indicate as such.

(A) Component for facility and contaminated runoff from nonpermitted livestock facilities

(i) Nature of any waste material;

(ii) Estimated volume of waste handled quarterly;

(iii) Specifications and procedures for waste collection, handling, retention, storage, treatment, and disposal;

(iv) A detailed list of measures, practices or system of practices proposed to collect solids and avoid placement of any wastes in a location where such wastes are likely to be carried into the waters of the state. Indicate the Field Office Technical Guide number (as available) for each practice and the date of application.

(B) Nutrient management component

(i) Realistic yield expectations for the crop(s) to be grown;

(ii) A summary of the nutrient resources available to the producer, which at a minimum include soil test results for pH, nitrogen, phosphorus, and potassium; nutrient analysis of manure, sludge, or effluent (if applicable); nitrogen contribution to the soil from legumes grown in the rotation (if applicable); and other significant nutrient sources;

(iii) An evaluation of field limitations based on environmental hazards or concerns, such as soils with high leaching potential, lands near surface water, highly erodible soils, and shallow aquifers;

(iv) Use of the limiting nutrient concept to establish the mix of nutrient sources and requirements for the crop based on a realistic yield expectation;

(v) Identification of timing and application methods for nutrients to provide nutrients at rates necessary to achieve realistic crop yields, reduce losses to the environment, and avoid applications as much as possible during periods of leaching or runoff;

(vi) Provisions for the proper calibration and operation of nutrient application equipment.

(C) Irrigation water management component

(i) Irrigation water: source of water and how it is stored; provisions for accurate measurement of soil-water depletion volume; amount of water used; how it is applied; and provisions for uniform application;

(ii) Drainage system: indicate whether the drainage system is open or closed;

(iii) A list of proposed practices and measures to operate the irrigation system so that the application of irrigation water is timed to match the crop's water needs. Indicate the Field Office Technical Guide number (as available) for each practice and the date of application;

(iv) Provisions for use of backflow preventers when chemigation is used;

(v) Plans filed with the department pursuant to letters of intent submitted by operators of container nurseries may serve to meet the requirements of the irrigation water management component of a Voluntary Water Quality Farm Plan, provided that such plans meet other requirements under OARs 603-095-0260(1) and (2).

(D) Grazing component: a detailed list of proposed measures or practices to ensure that livestock grazing does not cause direct or indirect adverse affects on water quality, streambanks, stream channels, riparian conditions, or fish and wildlife habitat values in riparian and aquatic areas. Indicate the Field Office Technical Guide number (as available) for each practice and the date of application.

(E) Erosion and sediment control component: for each field or land use, a detailed list of proposed practices to minimize the delivery of sediment from agricultural lands to surface waters from the contributing area for storms of up to and including a 10-year, 24-hour frequency storm. Indicate the Field Office Technical Guide number (as available) for each practice, the date of application, and the estimated rate of soil loss before and after application of the practices for each field.

(2) Preparation

(a) The landowner or operator may arrange with a Local Management Agency to prepare a Voluntary Water Quality Farm Plan, or may prepare the voluntary plan with assistance, or may contract with another person or agency to prepare the voluntary plan. If the voluntary plan is not prepared by the Local Management Agency:

(A) The Local Management Agency may require certification by a professional soils scientist or soils conservationist, or a registered professional engineer that it meets the standards of the technical guide for conservation plans, and that completion of the best management practices included in the voluntary plan will enable the land owner or operator to meet the criteria in OAR 603-095-0240; or

(B) The Local Management Agency may require proof from the preparer of the voluntary plan that he or she is qualified to prepare such a plan.

(b) The Local Management Agency may require such additional documentation as is necessary to identify in detail the best management practices listed.

(3) Implementation schedule: Any portion of a Voluntary Water Quality Farm Plan designed to meet the criteria in OAR 603-095-0240 shall allow the owner or operator to phase in installation of best management practices until compliance with OAR 603-095-0240 is accomplished.

(4) Approval

(a) The Local Management Agency shall approve or disapprove Voluntary Water Quality Farm Plans and voluntary plan amendments at its regularly scheduled meeting and shall maintain a record of its actions as part of the meeting minutes. Approved Voluntary Water Quality Farm Plans and voluntary plan amendments shall be signed by the chair or the chair's designee. All approved voluntary plans shall meet the criteria in OAR 603-095-0240 and the criteria for voluntary plan preparation contained in OAR 603-095-0260(1) and (2).

(b) In the event that the Local Management Agency finds that a Voluntary Water Quality Farm Plan or a voluntary plan amendment does not meet the criteria in OAR 603-095-0240 or the criteria for voluntary plan preparation contained in OAR 603-095-0260(1) and (2), the Local Management Agency shall provide a written explanation, by certified mail, to the landowner or operator who submitted the voluntary plan, listing all the deficiencies to be corrected.

(C) Unless the Local Management Agency determines that a more frequent review is necessary, any Voluntary Water Quality Farm Plans or voluntary plan amendments approved by a Local Management Agency under OAR 603-095-0260(4)(a) shall be approved for a period of three years. At the end of the approval period, if the landowner or operator wants to continue the Voluntary Water Quality Farm Plan or any voluntary plan amendments, the Local Management Agency shall review the voluntary plan or voluntary plan amendment as provided in OAR 603-095 0260(4).

(5) Appeal

(a) Any landowner or operator may request reconsideration of the Local Management Agency's decision to disapprove a Voluntary Water Quality Farm Plan or a voluntary plan amendment by submitting a request for a hearing before the next regularly scheduled Local Management Agency meeting. If an appeal is filed, the Local Management Agency shall reconsider its decision at its next regularly scheduled meeting and may either affirm, modify or reverse its previous decision. The purpose of the hearing shall be to present relevant information or evidence that the Local Management Agency's action was not based on an appropriate or adequate evaluation of the voluntary plan or voluntary plan amendment. The Local Management Agency shall maintain a record of its action regarding reconsideration as part of the meeting minutes.

(b) A landowner or operator may appeal the Local Management Agency's denial of reconsideration within seven days of the date of the reconsideration decision by filing a hearing request with the department. If the landowner or operator appeals within the prescribed period, the department shall notify the Local Management Agency. The Local Management Agency shall forward its action and rationale to the department within seven days of such notification.

(c) Within seven days of a Local Management Agency's denial of an appeal by a landowner or operator, the Local Management Agency shall notify the department of its action and rationale.

(d) Within thirty (30) days of receiving an appeal request, the department shall schedule a hearing between the landowner or operator, a designated representative of the Local Management Agency, and a representative of the department. The purpose of the hearing shall be to review the Local Management Agency's reconsideration decision. If the representatives of the department and the Local Management Agency can reach agreement, they shall forward a joint recommendation to the Local Management Agency for approval at its next regularly scheduled meeting. The Local Management Agency shall maintain a record of its action as part of its meeting minutes.

(e) If the representatives of the department and the Local Management Agency cannot agree on a joint recommendation, the department may approve or disapprove the Voluntary Water Quality Farm Plan or voluntary plan amendment. The department shall forward a copy of its approval decision to the Local Management Agency.

(6) Amendments to an existing voluntary plan: Any amendments to an existing Voluntary Water Quality Farm Plan shall be approved by the Local Management Agency in accordance with OAR 603-095-0260(4) and (5).

Stat. Auth.: ORS 561.400, and 568.909

Stats. Implemented: ORS 568.900-568.933

603-095-0280

Complaints and Investigations

(1) The department shall investigate apparent occurrences of agricultural pollution identified through its own observation or through notification by another agency.

(2) Formal complaints shall be evaluated by the department in accordance with the criteria in OAR 603-095-0240 to determine whether an investigation is warranted. The department may investigate apparent occurrences of agricultural pollution brought to its attention through a formal complaint.

(3) To be considered as a formal complaint, any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of OAR 603-095-0240 shall do so by filing a written complaint with the department. The complaint shall be signed and dated by the complainant and shall:

(a) Indicate the location and description of:

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

or

(B) The property allegedly being managed under conditions violating criteria described in OAR 603-095-0240.

(b) Indicate the nature and extent of damage; and

(c) Identify the alleged sources of pollution.

(4) When the department finds an apparent occurrence of agricultural pollution through its own observation, through notification by another agency, or through a formal complaint from an individual, the department shall inform the appropriate Local Management Agency in writing of:

(a) The location and nature of the occurrence;

(b) The location and description of the agricultural operation alleged to be causing the pollution occurrence or where prohibited conditions are alleged to have occurred; and

(c) The nature and extent of damage, if known.

(5) Action by a Local Management Agency

(a) Formal complaints.

(A) By written agreement with the department, the Local Management Agency may receive formal complaints and evaluate and investigate them on behalf of the department.

(B) A Local Management Agency, which is authorized by the department to evaluate and investigate formal complaints shall evaluate the formal complaint and investigate it in a timely manner, if warranted. Within 30 days of receipt of a formal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any information relevant to it.

(C) In the event the Local Management Agency is unable to investigate a formal complaint, the Local Management Agency shall request assistance from the department.

(b) Informal complaints.

(A) By written agreement with the department, the Local Management Agency may receive informal complaints and may investigate them on behalf of the department.

(B) Within 30 days of receipt of an informal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any relevant information to it.

(6) Actions based on investigation findings

(a) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is making a reasonable effort to comply with the voluntary plan:

(A) The department shall inform the landowner and the Local Management Agency of the noncompliance with OAR 603-095-0240; and

(B) The department shall acknowledge the existence of the Voluntary Water Quality Farm Plan and direct the landowner to seek appropriate technical assistance and revise the voluntary plan and its implementation in a manner necessary to eliminate the violation.

(b) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is not making a reasonable effort to comply with the voluntary plan; or

(c) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan does not exist; or

(d) If the department determines that a landowner has not revised a voluntary plan per OAR 603-095-0280(6)(a)(B) within the time specified by the department:

(A) The landowner shall be subject to the enforcement procedures of the department outlined in OARs 603-90-060 through 120; and

(B) The department shall inform the Local Management Agency of its determination that a violation has occurred.

Stat. Auth.: ORS 561.190-561.191,

Stats. Implemented: ORS 568.900-568.933

APPENDIX 1

