

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

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Middle Deschutes

603-095-1600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Middle Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and ORS 561.190 - 561.191, 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 Middle Deschutes Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Middle Deschutes Agricultural Water Quality Management Area to prevent and control 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 Middle Deschutes Agricultural Water Quality Management Area.

(3) Failure to comply with any provisions of the Middle Deschutes 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 603-095-1660;

(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 Middle Deschutes 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 603-095-1600 to OAR 635-095-1660.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1620

Geographic and Programmatic Scope

(1) The Middle Deschutes Agricultural Water Quality Management Area includes the Trout Creek and Willow Creek drainages, and the area along the eastern side of the Deschutes River between Trout Creek and Crooked River and east of Crooked River between confluence with Deschutes River and Sherwood Canyon to the north and Smith Rock to the south. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Middle Deschutes 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 Tribal Trust lands or public lands managed by federal agencies.

(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) 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 Middle Deschutes Agricultural Water Quality Management Area.

(5) 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

603-095-1640

Requirements

(1) Landowners must comply with OAR 603-095-1640(2) through (6) within the following limitations:

(a) A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Area

(a) By January 1, 2005, activities must allow the establishment and development of riparian vegetation, consistent with site capability, for streambank stability and stream shading.

(b) By January 1, 2005, activities must allow the establishment and development of vegetation or the presence of an equally effective erosion control device or practice for filtering out sediments before they enter perennial streams.

(3) Instream structures

(a) Effective on rule adoption, temporary irrigation diversions must:

(A) Be constructed and operated only during periods of irrigation.

(B) Not hinder channel carrying capacity between November 1 and March 1 to accommodate anticipated or expected seasonal streamflow.

(C) Not increase instream turbidity during operation by more than 10%, compared to a point just upstream of the diversion.

(b) By January 1, 2007, temporary irrigation diversions must not contribute to channel instability.

(4) Waste Management

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

(5) Irrigation Tailwater

(a) Effective on rule adoption, irrigation tailwater must not increase the turbidity of the perennial stream into which it drains by more than 10%, compared to a point just upstream of the tailwater discharge.

(6) Nutrients

(a) Effective on rule adoption, nutrient application rates and timing must not exceed specific crop requirements. Crop nutrients will be based on recommendations from the best available data applicable to a specific site.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1660

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 will 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 603-095-1660(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The 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) As used in section OAR 603-095-1660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1660, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) 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.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

Attachment 1: Map of the Middle Deschutes Agricultural Water Quality Management Area

