

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

**AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM**

**603-095-0010**

**Definitions** Unless otherwise required by the context, as used in this Division:

(1) "Active Channel Erosion" means gullies or channels which at the largest dimension have a cross sectional area of at least one square foot and which occur at the same location for two or more consecutive years.

(2) "Adequate vegetative buffer" means an area that is maintained in vegetative cover that maintains at least 70 percent ground cover.

(3) "Agency of this state" has the meaning given in ORS 568.210(1).

(4) "Agricultural use" means the use of land for the raising or production of livestock or livestock products, poultry or poultry products, milk or milk products, fur-bearing animals; or for the growing of crops such as, but not limited to, grains, small grains, fruit, vegetables, forage grains, nursery stock, Christmas trees; or any other agricultural or horticultural use or animal husbandry or any combination thereof. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as in agricultural use.

(5) "Agricultural Water Quality Management Area Plan" or "area plan" means a plan for the prevention and control of water pollution from agricultural activities and soil erosion in a management area whose boundaries have been designated under ORS 568.909.

(6) "Approved Voluntary Water Quality Farm Plan" or "approved voluntary plan" means a Voluntary Water Quality Farm Plan which has been developed according to standards and specifications developed by the department and which has been approved by the Local Management Agency with jurisdiction in the area for which the plan was developed.

(7) "Best Management Practice" means a practice, or combination of practices, that is determined to be the most effective practicable (including technological, economical, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources of pollution to a level compatible with water quality goals. Best Management Practices may include structural and nonstructural practices, conservation practices, and operation and maintenance procedures.

(8) "Confined Animal Feeding Operation" has the meaning given in ORS 468.687.

(9) "Department" means the state Department of Agriculture.

(10) "Designated Management Agency" means a public agency which possesses the legal authority, technical competence, organizational ability, and financial resources to carry out all or part of the nonpoint source control program as stipulated in an agreement with the Department of Environmental Quality.

(11) "District" or "soil and water conservation district" has the meaning given in ORS 568.210.

(12) "Erosion, soil" means the general process by which soils are removed from the surface of the land by the action of water, wind, ice, or gravity.

(13) "Erosion rate, sheet and rill" means the annualized amount of soil material lost from a field or parcel of land due to sheet and rill erosion, expressed in tons of soil eroded per acre per year, and calculated according to the Universal Soil Loss Equation (USLE) or the Revised Universal Soil Loss Equation (RUSLE).

(14) "Erosion, rill" means an erosion process in which numerous small channels only several inches deep are formed and which occurs mainly on recently disturbed soils. The small channels formed by rill erosion would be obliterated by normal smoothing or tillage operations.

(15) "Erosion, sheet" means the removal of a fairly uniform layer of soil from the land surface by runoff water.

(16) "Erosion, streambank" means erosion within a perennial stream or river which is caused by the action of water flowing in a concentrated stream acting against the soil confining its flow.

(17) "Excessive soil loss" means soil loss that is greater than the standards set forth in Oregon Administrative Rules adopted by the Oregon Department of Agriculture to implement any Agricultural Water Quality Management Area Plan adopted pursuant to ORS 568.900 through 568.933. Excessive soil loss may be evidenced by sedimentation on the same parcel of land, on adjoining land, in wetlands or a body of water, or by ephemeral, active channel, or streambank erosion; or by calculations using the USLE or RUSLE showing soil loss exceeding the soil loss tolerance factor.

(18) "Field Office Technical Guide" means the localized document currently used by the soil and water conservation district and developed by the United States Department of Agriculture, Natural Resources Conservation Service which provides:

- (a) Soil descriptions;
- (b) Sound land use alternatives;
- (c) Adequate conservation treatment alternatives;
- (d) Standards and specifications of conservation practices;
- (e) Conservation cost-return information;
- (f) Practice maintenance requirements;
- (g) Soil erosion prediction procedures; and
- (h) A listing of local natural resource related laws and regulations.

(19) "Formal complaint" means a complaint against a landowner or operator alleging a violation of a requirement of any Water Quality Management Area Plan adopted pursuant to ORS 568.900 through 568.933 at a specific site. The complaint shall be submitted in writing stating the nature and location of the violation and shall be filed with the department or by agreement with the department, with the Local Management Agency with jurisdiction over the site in question.

(20) "Highly erodible lands" means soils with a potential erodibility of eight times the soil loss tolerance factor.

(21) "Informal complaint" means a water pollution complaint, not formally filed with the department.

(22) "Irrigation water discharge" means the release of irrigation return flows to surface waters.

(23) "Land disturbing activity" means any activity not directly related to general farming resulting in a disturbance of the natural condition or vegetative covering of the earth's surface.

(24) "Landowner" includes any landowner, land occupier or operator as defined in ORS 568.903.

(25) "Load allocation" has the meaning given in OAR 340-41-006(19).

(26) "Local Management Agency" means any agency of this state, including but not limited to a soil and water conservation district, which has been designated by the department through an interagency agreement to undertake activities within a management area whose boundaries have been designated under ORS 568.909.

(27) "Near-stream management area" means the area extending 25 feet as measured along the ground surface from the top of the streambank of a perennial stream or river, or the ordinary high-water mark of a pond or a lake.

(28) "Nonpoint sources" has the meaning given in OAR 340-41-006(17).

(29) "Operator" has the meaning given in ORS 568.900(2).

(30) "Ordinary high-water mark" means the point on the streambank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other recognizable characteristics.

(31) "Pasture" means land with a permanent, uniform cover of grasses or legumes used for providing forage for livestock. A pastures does not include any area where supplemental forage feeding is provided on a regular basis.

(32) “Perennial stream” means a natural channel in which water flows continuously and which is shown on a United States Geological Survey quadrangle map.

(33) “Point source pollution” means water pollution which emanates from a clearly identifiable discharge point.

(34) “Pollution” or “water pollution” has the meaning given in ORS 468B.005(3).

(35) “Prohibited condition” means a condition of the land which is not allowed under Division 95 rules.

(36) “Riparian vegetation” means plant communities consisting of plants dependent upon or tolerant of the presence of water near the ground surface for at least part of the year.

(37) “Runoff” means the portion of rainfall, other precipitation, or irrigation water that leaves a location in the form of surface water.

(38) “RUSLE” means the Revised Universal Soil Loss Equation, which is a method used to estimate soil loss by sheet, rill, and wind erosion.

(39) “Sediment” means soil particles, both mineral and organic, that are in suspension, are being transported, or have been moved from the site of origin by flowing water or gravity.

(40) “Sewage” has the meaning given in ORS 468B.005(4).

(41) “Sloughing” means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.

(42) “Soil” means unconsolidated mineral or organic material that overlies bedrock, on the immediate surface of the earth, that serves as a medium for the growth of plants.

(43) “Soil disturbing activity” means any agricultural use resulting in a disturbance of the natural condition of vegetative surface or soil surface exceeding 10,000 square feet in area, including, but not limited to tilling, clearing, grading, excavating, grazing, and feedlot usage, but not including such minor land disturbing activities as home gardens and individual landscaping and maintenance.

(44) “Soil loss” means soil moved from a given site by the forces of erosion and redeposited at another site, on land or in a body of water.

(45) “Soil loss tolerance factor” or “T” means maximum average annual amount of soil loss from erosion, as estimated by the Universal Soil Loss Equation (USLE) or the Revised Universal Soil Loss Equation (RUSLE), and expressed in tons per acre per year, that is allowable on a particular soil. This represents the tons of soil (related to the specific soil series) which can be lost through erosion annually without causing significant degradation of the soil or potential for crop production.

(46) “Streambank” means the boundary of protected waters and wetlands, or the land abutting a channel at an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape; commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For perennial streams or rivers, the streambank shall be at the ordinary high-water mark.

(47) “Surface drainage field ditch” is a graded ditch for collecting excess water in a field.

(48) “Total Maximum Daily Load” or “TMDL” has the meaning given in OAR 340-41-006(21).

(49) “USLE” means the Universal Soil Loss Equation, which is a method used to estimate soil loss by sheet, rill, and wind erosion.

(50) “Vegetative cover” means grasses or other low growing plants grown to keep soil from being blown or washed away.

(51) “Voluntary Water Quality Farm Plan” or “voluntary plan” means a plan for the prevention or control of water pollution from agricultural activities and soil erosion for an individual landowner.

(52) “Wasteload allocation” or “WLA” has the meaning given in OAR 340-41-006(20).

(53) “Wastes” has the meaning given in ORS 468B.005(7) and includes but is not limited to commercial fertilizers, soil amendments, composts, animal wastes, vegetative materials or any other wastes.

(54) “Waste discharge” or “waste discharges” means the discharge of waste, either directly or indirectly, into waters of the state.

(55) “Water” or “waters of the state” has the meaning given in ORS 468B.005(8).

(56) “Water quality limited” has the meaning given in OAR 340-41-006(30).

(57) “Woodland” means an area with a stand of trees that has a canopy cover as shown on the most recent aerial photographs of at least 50 percent, being at least one acre in size and having a minimum width measured along the ground surface of at least 132 feet.

Statutory Authority: ORS 561.190, and 568.909

Stats. Implemented: ORS 561.190, and 568.900 - 568.933

### **603-095-0020**

#### **General Purpose**

(1) These rules have been developed to effectuate the implementation of water quality management area plans pursuant to authorities vested in the department through ORS 568.900-568.933.

(2) The purpose of these rules is to outline requirements for landowners conducting agricultural activities in areas for which the department designates boundaries for the purpose of developing and implementing a water quality management area plan pursuant to ORS 568.900-568.933.

Statutory Authority: ORS 561.020, 561.190, 568.909

Stats. Implemented: ORS 568.900 - 568.933

### **603-095-0030**

#### **General Policies** It is the policy of the department that:

(1) Cooperation between private and public entities be encouraged during implementation of agricultural water quality management area plans for the prevention and control of water pollution from agricultural activities and soil erosion;

(2) Voluntary adoption of best management practices to prevent or control water pollution from agricultural activities and soil erosion be encouraged through education programs, demonstration projects, and availability of technical assistance; and

(3) Enforcement action to achieve compliance with water quality management area plans and rules be pursued only when reasonable attempts at voluntary solutions have failed.

Statutory Authority: ORS 561.140, and 561.190

Stats. Implemented: ORS 568.900 - 568.933

### **603-095-0040**

#### **Appeals**

Any appeals of specific actions required of a landowner or operator by the department under Division 95 rules shall may be pursued according to the provisions of the appeals process in OAR 603-90-0040.

Statutory Authority: ORS 568.912

Stats. Implemented: ORS 568.912

## **Malheur River Basin**

### **603-095-0900**

#### **Purpose**

(1) These rules have been developed to implement a water quality management area plan for the Malheur River Basin 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 Malheur River Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Malheur River Basin 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 Malheur River Basin Water Quality Management Area.

(3) Failure to comply with any provisions of the Malheur River Basin Agricultural Water Quality Management Area Plan:

(a) does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of OAR 603-095-0010 to OAR 603-095-0960;

(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 Malheur River Basin 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 603-095-0900 to OAR 635-095-0960.

Statutory Authority: ORS 561.190 - 568.191, ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

### **603-095-0920**

#### **Geographic and Programmatic Scope**

(1) The Malheur River Basin Agricultural Water Quality Management Area includes the drainage area of the Malheur River and all its tributaries from the headwaters to the mouth, and the Moores Hollow and Jacobsen Gulch subbasins. 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 Malheur River Basin 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.

(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 Malheur River Basin 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 shall 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 568.909

Statutes Implemented: ORS 568.900 - 568.933

## **603-095-0940**

### **Prohibited Conditions**

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by agricultural activities conducted on land controlled by the landowner. A landowner is not responsible for prohibited conditions resulting from actions by another landowner. Conditions resulting from unusual weather events (equalling or exceeding a 25-year storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior approval by the department. The intent of these rules, in accordance with the Clean Water Act, is to protect clean water while also maintaining the economic viability of individual farming enterprises.

(2) Placement, Delivery, or Sloughing of Wastes: Effective upon adoption:

No person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

(3) Irrigation Surface Water Return Flow

(a) After January 1, 2006, irrigation surface water return flow to waters of the state shall not cause an excessive, systematic, or persistent increase in sediment levels already present in the receiving waters, except where the return flows do not cause the receiving waters to exceed established sediment standards.

(b) A landowner conducting irrigation activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

(4) Active Streambank Erosion

(a) By January 1, 2006, no person may cause active streambank erosion beyond the level that would be anticipated from natural disturbances given existing hydrologic characteristics.

(5) Riparian Vegetation

(a) By January 1, 2006, no conditions are allowed that prevent the establishment and development of adequate riparian vegetation consistent with vegetative site capability to control water pollution by providing control of erosion, filtering of sediments, moderation of solar heating and infiltration of water into the soil profile.

(6) Range and Pasture Management

(a) By January 1, 2006, vegetative condition on rangelands and pasturelands shall be managed such that the functionality of the watershed is not impaired. Watershed function includes the ability of vegetation to filter sediment, utilize nutrients, control soil erosion, optimize infiltration of water to the soil profile, and minimize the rate and maximize the duration of runoff from precipitation.

(b) A landowner conducting range and pasture management activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

Statutory Authority: ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

## **603-095-0960**

### **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 investigation activities with the appropriate Local Management Agency.

(2) Each notice of an apparent 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 603-095-0960(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) As used in section OAR 603-095-0960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0960, 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 568.915, 568.918 and 568.933

Statutes Implemented: ORS 568.900 - 568.933

# Appendix 1

## Malheur Agricultural Water Quality Management Area

