Memorandum of Agreement

Between

Oregon Department of Agriculture

And

Oregon Department of Environmental Quality

Relating to Agricultural Nonpoint Source Pollution

I. Purpose

The Oregon Department of Environmental Quality (DEQ) is the primary agency responsible for implementing the federal Clean Water Act (CWA), 33 United States Code Section 1251 et. seq. and general state water quality laws found in Oregon Revised Statute (ORS) chapters 468 and 468B. This includes the responsibility for establishing and revising water quality standards under CWA Section 303(c) and Oregon Administrative Rule (OAR) chapter 340, division 41, developing the Nonpoint Source (NPS) Control Program required under CWA section 319, and issuing (and ensuring the implementation of) Total Daily Maximum Loads (TMDLs) under CWA Section 303(d) and OAR chapter 340, division 42, for those surface waters that fail to meet water quality standards. The CWA requires effective public participation for all CWA programs, including those relating to standards, NPS pollution control and TMDLs.

The Oregon Department of Agriculture (ODA) is the agency responsible for implementing the Agricultural Water Quality Management Program established under ORS 568.900 to 568.933 and ORS 561.191, and OAR chapter 603, divisions 90 and 95. The ODA Agricultural Water Quality Management Program achieves the goals of these statutes and rules by implementation of ORS 468B within its jurisdiction. It is also the program used to implement load allocations for agricultural nonpoint source pollution assigned under TMDLs issued pursuant to CWA Section 303(d). OAR 340-042-0080.

This memorandum of agreement is intended to assist DEQ and ODA in collaborative efforts to meet their legal responsibilities relating to agricultural nonpoint source pollution, and to help ensure that the agencies fulfill their respective obligations in an effective and efficient manner. This, in turn, furthers the state's objectives to protect water quality and the public's use and enjoyment of this resource.

The two agencies also have regulatory authority and responsibilities with respect to ground water protection and certain agricultural point sources. These programs are not addressed in this agreement.

II. Adoption and Revision of Water Quality Standards

DEQ, acting through the Environmental Quality Commission (EQC), must establish water quality standards to protect designated and existing beneficial uses. DEQ must review and revise the standards periodically. Water quality standards must be adopted as rules by the EQC and approved by the U.S. Environmental Protection Agency (EPA).

DEQ will advise ODA staff and agricultural stakeholders of the water quality standards revision process and invite them to attend and participate in advisory committee meetings.

III. Implementation of the Section 319 Program

Under the Clean Water Act, the objective of the Section 319 Nonpoint Source Program is to identify "best management practices and measures to control each category and subcategory of nonpoint sources and... to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source..." Oregon's Section 319 program is documented in the Oregon Nonpoint Source Program Plan which is periodically updated by DEQ and approved by EPA.

In Oregon, Agricultural Water Quality Management Area Plans (area plans) and Agricultural Water Quality Management Area Rules (area rules; also referred to as Prohibited Conditions) are intended to be the implementation measures for Section 319 with respect to agriculture.

When revising Oregon's Nonpoint Source Program Plan, DEQ will seek input from ODA on elements that relate to agricultural land uses.

IV. TMDL Development and Implementation

Oregon Administrative Rules Division 42, Total Maximum Daily Loads (TMDLs), describe the TMDL process including establishing and implementing Load Allocations (LAs) for nonpoint sources. Division 42 and DEQ's TMDL Internal Management Directive provide detail as to how load allocations are developed and implemented. Where adequate information is available, LAs may be established at smaller geographic scales to guide implementation efforts. In some cases, LAs are expressed in terms of targets or surrogates.

When developing or revising a TMDL, DEQ will form a local TMDL stakeholder committee with broad representation of, and experience and interest in, the geographic area to provide input on TMDL development and implementation. DEQ works with TMDL Advisory Committees to determine how to allocate pollutant loads to point and nonpoint sources.

DEQ will request representation from ODA and the Agricultural Water Quality Management Area (management area) Local Advisory Committee(s) (LAC) for the TMDL Advisory Committee. DEQ will advise the relevant ODA staff and Local Management Agencies (LMA)

of TMDL Advisory Committee meetings and will encourage them to attend and participate in these meetings.

DEQ will work with ODA to ensure that appropriate LAs for agricultural NPS sectors are established.

V. Monitoring and Evaluating Effectiveness of Area Plans

ODA will develop and implement a monitoring strategy for the Agricultural Water Quality Management Program as resources allow, in consultation with DEQ. The strategy will include activities to evaluate the effectiveness of area plans and rules and of the Agricultural Water Quality Management Program, including ambient water quality monitoring, land condition monitoring, conservation practice implementation monitoring, and monitoring of other plan implementation activities such as education and outreach.

ODA will evaluate area plan and rule implementation effectiveness, in collaboration with DEQ. To support the evaluation,

- ODA will determine the percentage of lands achieving compliance with the area rules.
- ODA will determine whether the target percentages of lands meeting desired land conditions, as outlined in the goals and objectives in the area plan, are being met.

The agencies will review and evaluate existing information with the objective of determining:

- Whether additional data are needed to conduct an adequate evaluation.
- Whether goals and objectives need to be revised to facilitate better measuring of progress.
- Whether existing strategies have been effective in achieving the goals and objectives of the area plan.
- Whether the rate of progress is adequate to achieve the goals of the area plan. Achievement of area plan goals will occur consistent with legislative direction to achieve water quality standards and within the time frames established under TMDLs.
- Whether existing prohibited conditions, and compliance activities to implement those conditions, are sufficient to implement the area plan.
- Whether additional prohibited conditions or other mandatory control measures are needed. This evaluation will occur in accordance with OAR 603-090-0000 through 603-090-0120.

The agencies will coordinate monitoring and reporting efforts to evaluate land conditions and water quality trends, and whether agricultural load allocations are being addressed.

If the agencies determine, after the above review process, that TMDL agricultural load allocations may not be appropriately set, then DEQ working with ODA will re-evaluate the allocation attributed to agriculture utilizing the existing TMDL review procedures.

VI. Area Plan Review and Modification

The biennial review process described below includes consultation with Local Advisory Committees, as described in OAR 603-090-0000 to 603-090-0120.

Area plans rely on a combination of voluntary and regulatory measures to prevent and control water pollution from agricultural activities and soil erosions. Area plans and rules are reviewed every two years for sufficiency and revised as appropriate to satisfy the requirements under the Clean Water Act and Oregon state law.

To achieve the above objectives and prior to the biennial review of an area plan,

- The LAC may meet as often as necessary to review progress and recommend strategies for implementation.
- ODA will notify DEQ regional and headquarters staff and request review and comment on the area plan. ODA will invite DEQ regional staff to participate in each of the LAC biennial review meetings.
- ODA and DEQ will review and evaluate available monitoring and implementation information as described in Section V and provide the results of this evaluation to the LAC.
- The LAC, in collaboration with ODA, will evaluate the area plan, determine whether the area plan and rules need to be modified to meet statutory and rule requirements, and propose modifications for discussion with DEQ.

During the biennial review process,

- The LAC is responsible to recommend strategies necessary to achieve water quality goals and objectives outlined in the agricultural water quality management area plan.
- In consultation with the LAC, ODA is ultimately responsible to revise the area plan, area rules, and/or implementation as needed to achieve the goals of the area plan and water quality standards within the time frames established under TMDLs.

DEQ's role in the biennial review process will be as follows.

- DEQ will review available data for water quality trends and whether waterbodies are achieving water quality standards and meeting TMDL agricultural load allocations.
- DEQ will review the area plan and working with ODA will recommend any changes or additions necessary to achieve water quality standards and meet TMDL agricultural load allocations.
- DEQ will evaluate and provide comment to ODA on the suitability of landscape conditions to achieve TMDL agricultural load allocations.

DEQ review is not limited to scheduled biennial reviews and DEQ may provide comments to ODA at any time on any area plan and rules.

In collaboration with DEQ, ODA will ensure milestones and timelines included in each management area plan achieve the goals of the area plan. This work could occur during, but is not limited to, the biennial review process.

At the conclusion of the biennial review process,

- The LAC is responsible for completing a biennial report that includes an evaluation of progress and identifies impediments toward implementation of an Area Plan. The report will also include the LAC's and DEQ's recommendations for modifications to the area plan necessary to ensure effectiveness of the Area Plans over time, and ODA's modifications to the area plan and rules.
- ODA will notify DEQ and will post the biennial report and modifications to the area plan on the ODA website.

VII. Interagency Coordination and Dispute Resolution

Should disagreements occur, DEQ and ODA are committed to work together with the intent to resolve issues at the lowest levels in a timely manner. In the event that issues cannot be resolved at the lowest levels, staff and managers will raise the issue to the director level. If DEQ believes that an area plan and associated rules are not adequate to achieve and maintain TMDL agricultural load allocations, DEQ will provide ODA with comments on what would be sufficient to meet TMDL agricultural load allocations. ODA will modify the Area Plan and Rules and implementation activities as needed to address the comments. If a resolution cannot be agreed upon, DEQ will request the Environmental Quality Commission (EQC) to petition ODA for a review of part or all of the area plan and rules.

VIII. Amendment and review

The agencies will review the agreement every five years. No amendments may be made to this agreement without the express written agreement of both parties. Such agreement will be signed by the Directors of each agency.

Katy Coba, Director
Oregon Department of Agriculture

Date: 5-17-12

Dick Pedersen, Director
Oregon Department of Environmental Quality

Date: 5-17-12