

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.

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.

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.