



**Rules Governing  
Agricultural Activities in the Lower Umatilla  
Groundwater Management Area**

**Rules Advisory Committee Meeting #2**

**April 23, 2025**

**10:30 a.m. – 12:00 p.m.**

A. Welcome and discuss agenda

B. Rules that apply to all landowners

1. XX01 Purpose and Authority
2. XX02 Geographic and Programmatic Scope
3. XX03 Definitions
4. XX04 Prohibited Acts
5. XX05 Land Application Rates and Restrictions
6. XX06 Animal Pasturing

C. RAC comments and questions

D. Close meeting

PUBLIC DRAFT

AGRICULTURAL ACTIVITIES IN  
THE LOWER UMATILLA BASIN  
GROUNDWATER MANAGEMENT AREA

3/18/25  
[Edits by RM 4/21/25](#)

**603-XX-XX01**

**Purpose and Authority**

(1) The Lower Umatilla Basin Groundwater Management Area (LUBGWMA) is comprised of about 550 square miles in northern Morrow and northeastern Umatilla counties as shown in **Appendix A**. The Oregon Department of Environmental Quality (DEQ) has designated the area as a groundwater management area because of high levels of nitrate in water wells used for human consumption. High levels of nitrate in drinking water can cause serious health effects and is particularly dangerous for infants and pregnant persons.

(2) Understanding that agriculture within the LUBGWMA provides valuable food and fiber products to communities worldwide, these area rules are intended to prevent the discharge of nitrates into groundwater from agricultural activities while maintaining the economic viability of agriculture within the LUBGWMA. These area rules implement the Umatilla and Willow Creek Water Quality Management Area Plans as those plans address nitrate pollution in groundwater within the LUBGWMA and contain actions necessary to minimize nitrate leaching to groundwater.

(3) The Oregon Department of Agriculture's authority for these rules is ORS 561.191, ORS 568.900 – 930 and ORS 468B.184(2). Other authorities include ORS 561.200 and ORS 561.2765 - 290 as applicable.

Commented [RM1]: Note typo to the RAC

**603-XX-XX02**

**Geographic and Programmatic Scope**

(1) Operational boundaries for the agricultural lands subject to these area rules are as provided in **Appendix A** and include all lands within the LUBGWMA in agricultural use.

(2) These area rules do not apply to public lands managed by federal agencies, lands that make up the Reservation of the Confederated Tribes of the Umatilla Indian Reservation, and land or activities subject to Oregon's Forest Practices Act.

(3) All landowners conducting agricultural activities on lands in agricultural use within the LUBGWMA shall comply with these area rules as they are applicable to the size and type of agricultural operation.

(4) These area rules do not authorize violation of any federal, state, or local law or regulation.

(5) These area rules do not constitute a National Pollutant Discharge Elimination System Permit or Water Pollution Control Facility Permit issued pursuant to the Federal Clean Water Act or ORS 468B.050. Compliance with these area rules does not exempt a landowner from the Federal Clean Water Act or state water pollution control laws.

(6) The fact that it is necessary to halt or reduce activities contributing to discharges to maintain compliance with these area rules shall not be a defense for violation of these rules.

(7) The requirements in these area rules do not authorize the commission of any act causing injury to property of another or protect the landowner from liabilities under other federal, state, county, or local laws.

(8) These area rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances beyond the reasonable control of the landowner. An example of reasonable control of the landowner means that technically sound and economically feasible measures are available to address conditions described in these rules.

### **603-XX-XX03**

#### **Definitions**

For the purposes of these rules unless the context requires otherwise.

(1) “Agricultural activities” means engaging in any generally accepted, reasonable and prudent method of growing or harvesting agricultural crops and commodities.

(2) “Agronomic application rate” or “agronomic rate” means the rate of synthetic fertilizers, compost or manure required to achieve estimated crop yield with minimal leaching of nitrate.

(3) “Agricultural land(s)” means lands that ~~may are permitted to~~ be used for agricultural activities.

(4) “Agricultural operation” means (a) all agricultural land, whether or not contiguous, that is under the effective control of a landowner engaged in any commercial activity relating to the growing or harvesting of agricultural crops or the production of agricultural commodities; (b) synonym for a “farm” as defined in ORS 30.930(1).

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

(6) “Area Rules” are administrative rules adopted by the Oregon Department of Agriculture, in consultation with the Oregon Board of Agriculture and the Oregon Department of Environmental Quality, for the implementation of the Area Plans referenced in these rules.

(7) “Certifier” means a qualified irrigation and nitrogen management plan specialist as provided in OAR 603-XX-XX14.

(8) “Compost” has that meaning given in ORS 633.311(5).

(9) “Department” means the Oregon Department of Agriculture.

(10) “Director” means the director of the Oregon Department of Agriculture.

(11) “Estimated crop yield” means the near-maximum or optimum crop yield estimated for each field according to sources such as recommendations by land grant universities, the Natural Resources Conservation Service, commodity groups, or according to site-specific knowledge based on previous experience.

(12) “Fertilizer” has the meaning given in ORS 633.311(12).

(13) “Field” means an area of land that is used for agricultural activities and enclosed or otherwise marked by a physical, topographical or other boundary.

(14) “Groundwater” or “groundwater of the state” means water within the LUBGWMA that is in a saturated zone or stratum beneath the surface of land or below a surface water body.

- (15) “Irrigated agricultural lands” or “irrigated agriculture” means agricultural lands irrigated to produce crops or pasture and including lands that are planted to commercial crops that are not yet marketable such as vineyards and tree crops. Irrigated lands include nurseries.
- (16) “Landowner” has the meaning given in ORS 568.210 and ORS 568.903 and includes an “operator” as defined in ORS 568.900(2).
- (17) “Manure” means solids or liquids excreted from an animal.
- (18) “Nitrogen Management Measures” means measures to match fertilizer and nitrogen applications to agronomic demands and includes a determination of the appropriate agronomic application rate to achieve estimated crop yield. Nitrogen management measures include the 4Rs of nutrient stewardship as provided in NRCS Conservation Practice Standard Nutrient Management Code 590 (2019).
- (19) “Operator” has the meaning given in ORS 568.200(2).
- (20) “Pasture” means land that sustains vegetative growth in the normal growing season that is primarily used to grow forage for grazing livestock where the livestock are not confined in pens or lots or on a prepared surface and where waste is not managed using a waste water control facility.
- (21) “Pollution” or “water pollution” has the meaning given in ORS 468B.005.
- (22) “Saturated soil” means soil with all available pore space filled that has reached its maximum retentive capacity.
- (23) “Synthetic fertilizer” means fertilizer made from ammonia, nitrogen, phosphate minerals, and other chemicals through human-controlled chemical reactions. Synthetic fertilizers include dry fertilizer, liquid fertilizer, foliar fertilizer, and any other type of fertilizer that has a guaranteed nutrient content.
- (24) “Waste” or “wastes” has that meaning given in ORS 468B.005 with the clarification that waste or wastes includes but is not limited to commercial fertilizers, soil amendments, composts, animal wastes, vegetative materials and includes nitrate that enters groundwater by any means.
- (25) “Water” or the “waters of the state” has the meaning given in ORS 468B.005.

#### **603-XX-XX04**

##### **Prohibited Acts**

**[This rule applies to all landowners in the LUBGWMA]**

- (1) The discharge of waste to the groundwater of this state from agricultural activities is prohibited.
- (2) Wastes may not be placed in a location where such wastes are likely to escape or be carried into groundwater by any means.
- (3) The discharge of fertilizers, fumigants, or pesticides into groundwater via back flow through a water supply well is prohibited.
- (4) The discharge of fertilizers, fumigants, or pesticides down a groundwater well casing is prohibited.
- (5) A landowner within the LUBGWMA may not violate the provisions of 603-XX-XX05.

#### **603-XX-XX05**

##### **Land Application Rates and Restrictions**

**[These rules apply to all landowners within the LUBGWMA]**

- (1) A landowner shall employ nitrogen management measures when making land applications of synthetic fertilizers, compost or manure.
- (2) Before synthetic fertilizers, compost or manure may be applied a landowner shall:
  - (a) Take soil samples consistent with [SOIL SAMPLE PROTOCOL RULE]; and
  - (b) Take into consideration existing plant available nitrogen levels and estimated crop yields when making an application of fertilizers, compost, or manure.
- (3) A landowner shall document, and upon request by the department make available for inspection, the following for each field to which synthetic fertilizers, compost, or manure are applied:
  - (a) The date(s) and location(s) of all nitrogen applications;
  - (b) The weather conditions and soil moisture at the time of application; and
  - (c) The agronomic application rate used.
- (4) A landowner shall prevent the downward movement of nitrate in the soil by managing irrigation water so that the amount of water applied from the combination of precipitation and irrigation does not exceed the water holding capacity of the soil beyond the crop root depth.
- (5) A landowner may not apply synthetic fertilizers, compost, or manure in a manner that causes direct, indirect, or precipitation-related discharge to groundwater.
- (6) A landowner may not apply synthetic fertilizers, compost, or manure:
  - (a) To fields with a frozen surface crust (2 inches) or deeper, or if the soil is at or below zero degrees Celsius (32 degrees Fahrenheit).
  - (b) To fields that are snow covered.
  - (c) To fields with soils that are or will become saturated with forecasted precipitation prior to infiltration or incorporation.
  - (d) If the water table is within 12 inches or less to the surface.
  - (e) If precipitation is forecasted in the next 24 hours for the field location and it is likely that application will result in a prohibited act.
  - (f) To fields that are bare unless the landowner is preparing the bare fields for the current year's annual crop planting and the application is within 30 days of planting.

#### **603-XX-XX06**

##### **Animal Pasturing**

**[This rule applies to all landowners within the LUBGWMA]**

- (1) A landowner grazing livestock on pasture within the LUBGWMA shall rotate livestock and limit livestock numbers to prevent bare ground and promote and maintain adequate vegetative cover.
  - (a) In determining an appropriate stocking rate for livestock grazing on pasture, a landowner shall match livestock requirements with the available forage and frequently monitor forage growth and adjust the stocking rate and grazing period to prevent runoff or overgrazing.
- (2) Where animals are concentrated to a distinct heavy use area during the rainy season, when the soil is prone to compaction or when inadequate forage growth would result in over-grazing, a landowner shall remove manure and waste feed from these areas and maintain grassy buffer strips around the area.
- (3) A landowner applying synthetic fertilizer, compost, or manure to irrigated pasture shall conduct nutrient management in a manner that prevents the over-application of nitrogen and reduces the likelihood of nitrate leaching to groundwater.

(a) A landowner applying synthetic fertilizers, compost, or manure to pasture shall first conduct a soil test consistent with [CITE SOIL SAMPLE RULE] to establish plant available nitrogen in the soil.

(4) A landowner shall prevent the downward movement of nitrate in the soil by managing irrigation water so that the amount of water applied from the combination of precipitation and irrigation does not exceed the soil's water holding capacity within the forage root depth.

#### **603-XX-XX07**

##### **Control Measures for Irrigated Agriculture on Large Acreages**

**[This rule applies only to landowners irrigating large acreages]**

(1) [OAR 603-XX01 – XX19] govern agricultural activities on irrigated agricultural lands where the total land acreage under the ownership or control of a landowner is equal to or greater than 1,000 acres and where irrigation is used to grow crops or pasture on those acreages.

(2) These area rules describe those irrigation and nitrogen management measures necessary to minimize percolation of waste to groundwater and prevent excess nitrogen application relative to crop need.

(a) Measures include irrigation water management, an annual nitrogen budget, and annual post-harvest summary records. Records that implement these measures shall be retained by the landowner at the landowner's principal place of business for the agricultural operation and made available for inspection at the request of the department.

(3) Each landowner shall employ best practicable management practices to implement the irrigation and nitrogen management measures in these area rules according to the site-specific attributes and needs of each agricultural operation.

#### **603-XX-XX08**

##### **Irrigation Water Management**

**[This rule applies only to landowners irrigating large acreages]**

(1) A landowner subject to these rules shall prevent the downward movement of nitrate in the soil by managing irrigation water so that the amount of water applied from the combination of precipitation and irrigation does not exceed the soil's water holding capacity within the crop's rooting depth.

(2) A landowner subject to these rules shall base the volume of water needed for each irrigation event on at least the following information as relevant to a crop or field:

(a) Available water-holding capacity of the soil for the crop rooting depth;

(b) Management allowed soil water depletion;

(c) Current soil moisture status;

(d) Distribution uniformity of the irrigation event;

(e) Water table contribution;

(f) Computerized irrigation scheduling recommendation.

(3) A landowner subject to these rules shall plan the rate and volume of irrigation water to minimize the transport of nutrients to groundwater by:

(a) Controlling the rate of water application to limit the transport of nitrogen through the soil profile to groundwater; and

(b) Matching irrigation application quantities and rates to the crop, soil type, soil moisture content, and agronomic demands of each crop type such that irrigation does not exceed the soil's infiltration rate or water holding capacity within the crop root zone.

#### **603-XX-XX09**

##### **Annual Nitrogen Budget**

**[This rule applies only to landowners irrigating large acreages]**

(1) Each year, prior to the first application of synthetic fertilizers, compost, or manure, a landowner subject to these rules shall prepare an annual nitrogen budget that demonstrates that synthetic fertilizers, compost, or manure will be applied only at the agronomic application rate necessary to support estimated crop yield.

(a) An annual nitrogen budget shall cover the entire growing season and include double-crops, and winter cover crops.

(2) An annual nitrogen budget shall include all anticipated nitrogen management measures including the anticipated agronomic application rate for each crop. To determine agronomic rates:

(a) A landowner shall test soil to determine plant available nitrogen prior to planting;

(b) A landowner shall conduct soil sampling to determine plant available nitrogen and/or conduct plant tissue sampling and analysis to determine nitrogen need prior to mid-growing season application, and prior to late-season application;

(3) Because annual nitrogen budgets are prepared in advance of the crop season and based on circumstances that are forecasted, actual conditions may differ from those forecasted in a certified annual nitrogen budget.

(a) Where crop season conditions differ from those forecasted, an annual nitrogen budget may be adjusted to reflect changes in weather, water availability, or other unanticipated circumstances.

(b) Should an adjustment to an annual nitrogen budget be necessary, a landowner should document the reasons for the adjustments in the annual nitrogen budget retained at the landowner's principal place of business for the agricultural operation.

(4) A landowner's inability to follow an annual nitrogen budget may not result in enforcement action by the department. However, failure to submit proof of certification of an annual nitrogen budget by January 1 of each year, may result in an enforcement action by the department, and conditions that indicate a violation of ORS 468B.025 may result in an enforcement action by the department.

(5) Proof of certification of an annual nitrogen budget shall be submitted to the department by January 1 of each year.

#### **603-XX-XX10**

##### **Annual Nitrogen Budget Contents**

**[This rule applies only to landowners irrigating large acreages]**

Annual nitrogen budgets shall include each of the following elements.

(1) Landowner name: Record the name of the landowner and the name of the operator if operator is not the owner of the land. If a certifier prepares the form, then the name of the certifier shall also be included.

(2) Crop year: Record the crop year for the calendar year that the crop is harvested.

- (3) Field identification and acreage: Identification and the acreage of each field.
- (4) For each field, record the soil type of the field and record pre-planting levels of plant available nitrogen as determined by pre-planting soil sample results.
- (a) For the first annual nitrogen budget prepared after the effective date of these rules, record the residual soil nitrate levels for each field.
- (5) Nitrogen management measures: For each field, record anticipated nitrogen management measures and specify the anticipated agronomic application rate. An agronomic application rate shall include total nitrogen applied in irrigation water.
- (6) Irrigation Water Management Measures: Record methodology that will be used to determine appropriate water application rates so that the amount of water applied from the combination of precipitation and irrigation does not exceed the soil's water holding capacity within the crop's rooting depth.
- (7) Crop type: For each field identify the crop type for the upcoming season.
- (8) Estimated crop yield: For each field, estimate yield per acre for each crop type.
- (9) Anticipated Total Nitrogen: For each field, record estimated total nitrogen to be applied in irrigation water, synthetic fertilizers, compost, or manure and estimated mineralization and atmospheric deposition.
- (10) Recommended or planned total nitrogen: For each field, record the nitrogen recommended or planned to meet the estimated yield.
- (11) Adaptive management measures provided in 603-XX-XX12 as applicable.
- (12) Certification. A landowner shall provide proof of certification of an annual nitrogen budget to the department by [SPECIFY DATE].

#### **603-XX-XX11**

##### **Post Harvest Summary Records**

**[This rule applies only to landowners irrigating large acreages]**

Each year, a landowner subject to these rules shall prepare a post-harvest summary record to evaluate the effectiveness of their annual nitrogen budget. A post-harvest summary record shall include each of the following elements.

- (1) Landowner name: Record the name of the landowner and the name of the operator if operator is not the owner of the land. If a certifier prepares the form, then the name of the certifier shall also be included.
- (2) Crop year (harvested): Record the crop year for the calendar year that the crop is harvested.
- (3) Crop type: For each field, record the type of crop harvested.
- (4) Crop harvest yield: Record the crop harvest yield in crop production units per acre and include all harvested materials from primary harvest, secondary crop harvests, and crop residue (lb/acre).
- (5) Nitrogen management measures: Record nitrogen management measures implemented including the agronomic application rate used for each crop.
- (6) Total nitrogen applied (lbs/acre): For each field, record the total nitrogen applied as follows:
  - (a) Total nitrogen applied through irrigation water;
  - (b) Total nitrogen applied through synthetic fertilizers;
  - (c) Total nitrogen applied through compost; and
  - (d) Total nitrogen applied through manure.



- (7) For each field, a determination according to 603-XX-XX12 of whether the annual nitrogen budget was followed and a description of the methodology used to make this conclusion.
- (8) For each field, describe any applicable adaptive management measures to be employed in the following year's annual nitrogen budget.

## **OAR 603-XX-XX12**

### **Annual Nitrogen Budget Evaluation**

(1) A landowner is following an annual nitrogen budget if, for each field, plant-available nitrogen from all sources does not exceed the total nitrogen required to reach each a crop's estimated yield, and environmental loss or post-harvest soil nitrate levels are low or showing a trend of decreasing.

(a) A landowner may determine whether they followed their annual nitrogen budget by using either one or both of the methods described in subsections (2) and (3) of this section.

(2) A landowner may compare the sum of all nitrogen inputs with the sum of all nitrogen outputs as follows:

(a) Total nitrogen input is calculated as the sum of all nitrogen inputs from applied synthetic fertilizers, compost, manure, irrigation water, and estimated mineralization and atmospheric deposition.

(b) Total nitrogen output is calculated as the sum total nitrogen removed from crop yield removal (lb/acre x N content of crop) and from crop biomass harvested (lb/acre) multiplied by tissue nitrogen concentration (%).

(c) Environmental nitrogen loss may occur through leaching, denitrification, volatilization or leaching. Environmental nitrogen (N) loss may be estimated as follows:

$$\text{Environmental N loss} = \Sigma \text{N Inputs} - \Sigma \text{N Removal}$$

(3) A landowner may determine soil nitrate levels in post-harvest soil samples consistent with [CITE SOIL SAMPLE PROTOCOL RULE].

(a) Low postharvest soil nitrate concentrations limit the loss of soil nitrate below the root zone during the winter and indicate that a landowner has applied fertilizers and/or organic nutrients at an agronomic rate.

(b) Increasing or high postharvest soil nitrate concentrations may indicate that a landowner has not applied fertilizers and/or organic nutrients at an agronomic rate.

(4) For each field, a landowner shall determine and record in their post-harvest summary report whether their annual nitrogen budget was followed or not.

(5) Adaptive Management Measures: For each field where an annual nitrogen budget was not followed, a landowner shall record in the following year's annual nitrogen budget, the adaptive management measures they will employ according to Table 1.

(a) Table 1: Adaptive Management Measures

<b>Annual Nitrogen Budget Followed?</b>	<b>Required Actions</b>	<b>Required Actions Based Upon Trends (after 2 Consecutive Years)</b>
Yes	- No changes to current practices required	- N/A
No	Document reason(s) for not following ANB .	- N/A

Year 1	Reevaluate nitrogen budget assumptions for estimated crop yield, nitrogen volatilization, mineralization and other sources of nitrogen. - Verify actual land application rates and recalibrate land application equipment as necessary.	
No Year 3	<b>Continue the actions for Year 1 and:</b> - Document reason(s) for not following the ANB in post-harvest summary record. - Adjust land application timing so nutrient availability aligns with peak crop uptake. - Stop land application after peak crop uptake. - Collect and analyze an additional fall soil sample at the second foot depth (24-36 inches).	<b>Continue the actions in the Required Actions column and:</b> - Reduce nitrogen application to fields. - Hire a professional/consultant to develop annual nitrogen budget and application rates.
No Year 5	<b>Continue the actions for Year 3 and:</b> - Assume no nitrogen losses from denitrification and volatilization on the annual nitrogen budget for all applicable fields. - Enhance nitrogen removal via cropping. - Reduce nitrogen application amount to field.	<b>Continue the actions in the Required Action column and:</b> - Stop land application of nitrogen to the field. - Hire a professional/consultant to develop annual nitrogen budgets and application rates and implement nitrogen management measures advised. - Collect additional post-harvest soil samples at the second, third, and fourth foot depth or until refusal or groundwater is reached and analyze for nitrate.

(7) A landowner shall certify the post-harvest summary record as described in [CITE CERTIFICATION RULE] and provide proof of certification to the department by [x date].

#### 603-XX-XX13

##### Residual Soil Nitrate Levels

[This rule applies only to landowners irrigating large acreages]

(1) A landowner subject to these rules shall determine residual soil nitrate levels for each field under their ownership or control using the soil sampling protocol in [CITE SOIL SAMPLE PROTOCOL RULE]:

- (a) Initial residual nitrate soil samples shall be taken in the spring prior to planting; and
- (b) Thereafter, residual soil nitrate samples shall be taken in the fall, post-harvest, once every five years.

(c) Soil sample results shall be certified by the processing laboratory.

(2) A landowner shall record residual soil nitrate levels for each field under their ownership or control on a worksheet supplied by the department and shall submit completed worksheets to the department within 30 days of obtaining sample results from the processing laboratory.

(a) Notwithstanding who the operator is, a landowner shall assure that residual soil nitrate samples are taken, recorded, and sample results submitted consistent with this rule.

(3) Where a residual soil nitrate sample indicates a violation of ORS 468B.025, the department may proceed to determine a landowner's compliance with the rules governing a landowner irrigating large acreages and if necessary, may proceed with appropriate enforcement.

**603-XX-XX14****Certification of Annual Nitrogen Budgets, Post Harvest Summary Records and Residual Soil Nitrate Levels**

**[This rule applies only to landowners irrigating large acreages]**

(1) Annual nitrogen budgets, post-harvest summary records, and residual soil nitrate sample results shall be certified in one of the following ways:

(a) Certified by an irrigation and nitrogen management plan specialist. In certifying a plan, a specialist shall attest that the record accurately reflects the conditions and management of the agricultural operation, that they can answer questions relevant to the document certified and are competent and proficient by education and experience relevant to the development of the document. These specialists may include Professional Soil Scientists, Professional Agronomists, or Crop Advisors certified by the American Society of Agronomy, Technical Service Providers certified in nutrient management in Oregon by the National Resource Conservation Service (NRCS);

(b) Self-certified by the landowner who attests that the document adheres to a site-specific recommendation from the NRCS or the Oregon State University Cooperative Extension [NEED SPECIFICS ]; or

(c) Self-certified by the landowner if the landowner states that they apply no fertilizer to any field on the agricultural operation.

(2) Each record for which proof of certification is required shall include the name of the farm operator if different than the landowner, certifier, the date of plan certification, and certification method used.

(a) Each submission of proof of certification shall be contained on a form provided by the department and contain a statement stating that under penalty of law, the certified record is true, accurate and complete.

**603-XX-XX15****Soil Sampling Protocol**

(1) A landowner taking pre-planting soil samples or soil samples taken prior to application of synthetic fertilizers, compost, or manure shall collect separate composite soil samples at the depth of the root zone according to guidance contained in EC628.

(2) A landowner using post-harvest soil samples to determine whether they have followed an annual nitrogen budget shall collect separate composite post-harvest soil samples after harvest of annual crops and before 3 inches of rainfall accumulates. September 1 shall be the start date for tallying the accumulation of rainfall.

(a) Separate composite soil samples shall be collected at the 0-12 inch depth, the 12-24 inch depth and the 24 – 36 inch depth according to guidance contained in PNW 570-E, EM 8832-E for post-harvest nitrate-nitrogen.

(b) If the soil sample is taken after 3 inches of rainfall accumulates, a landowner shall collect an additional composite soil sample for the 72 - 84 inch depth to account for nitrate leaching.

(3) To determine soil nitrate residues as required in [CITE RESIDUAL SOIL NITRATE RULE], a landowner shall collect separate composite soil samples after harvest of annual crops and before 3 inches of rainfall accumulates. September 1 shall be the start date for tallying the accumulation of rainfall.

(a) Separate composite soil samples shall be collected at the 36 – 48 inch depth according to guidance contained in PNW 570-E, EM 8832-E for post-harvest nitrate-nitrogen.

(b) If the soil sample is taken after 3 inches of rainfall accumulates, a landowner shall collect an additional composite soil sample for the 72 - 84 inch depth to account for nitrate leaching.

#### **603-XX-XX16**

##### **Large Irrigated Acreages Program Evaluation**

**[This rule applies only to landowners irrigating large acreages]**

(1) The department shall conduct an evaluation of agricultural operations with large irrigated acreage areas to determine whether and to what extent the nitrogen management measures, and annual nitrogen budgets have been implemented and adaptive management measures adopted.

(a) The department shall not conduct an evaluation under this subsection for at least three growing seasons subsequent to the effective date of these rules.

(b) The department's evaluation shall include an audit to determine the percentage of landowners who have submitted proof of certifications for annual nitrogen budgets and post-summary harvest records and the percentage of total landowners who have submitted residual soil nitrate sample results;

(c) Upon inspection of documents for which proof of certification shall be submitted; and

(d) Upon inspection of the agricultural operation.

(2) The department's evaluation shall include a determination of the trends of residual soil nitrate levels.

#### **OAR XXX-XX-XX17**

##### **Water Quality Certification Program and Agreements**

**[This rule applies only to landowners irrigating large acreages]**

(1) The Agricultural Water Quality Certification Program is a voluntary opportunity for a landowner conducting agricultural activities within the LUBGWMA. Through this program, certified a landowner who has entered into an Agricultural Water Quality Certification Agreement with the department may:

(a) Upon entry into a Water Quality Certification Agreement with the department, receive regulatory certainty. The department shall, during the term of the certification agreement, consider a landowner as in compliance for purposes of enforcement, with ORS 468B.025 and ORS 568.930(1) and any of the department's rules implementing those statutes;

(b) Receive recognition that certified landowner's agricultural practices are protective of water quality; and

(c) Receive priority access to specially designated technical and financial assistance to implement practices that promote groundwater quality as that assistance is available.

(2) Qualifying landowners may apply for certification on an Oregon Agricultural Water Quality Certification Program form supplied by the department. Application elements shall include:

- (a) A statement from the landowner agreeing to produce any documents requested for inspection by the department during the term of the Agricultural Water Quality Certification Agreement;
  - (b) A statement from the landowner agreeing to submit to the department post-harvest soil sample results each year for each field;
  - (c) A statement from the landowner agreeing to submit to the department residual soil nitrate samples; and
  - (d) A statement from the landowner agreeing that the department may use the data collected during landowner's participation in the Agricultural Water Quality Certification Program to support the program.
- (3) The department may enter into an Agricultural Water Quality Certification Agreement with a landowner if:
- (a) The application is complete; and
  - (b) The landowner agrees to the terms of the agreement.
- (4) An Agricultural Water Quality Certification Agreement shall, among other terms, contain terms specifying that the landowner's duties include the duty to:
- (a) Maintain compliance with all applicable water quality rules in place at the time of certification and to notify the department within 30 days of a violation of applicable water quality rules;
  - (b) Continue to implement the annual nitrogen budgets, soil sampling as appropriate to implement the annual nitrogen budget, and post-harvest and residual soil nitrate soil sampling regimes.
  - (c) Inform the department upon the sale of any lands subject to the certification agreement or inform the department upon the purchase or lease of any additional agricultural land after the start of the certification agreement;
  - (d) Retain all records pertinent to the certification agreement and make them available to the department upon request;
  - (e) Allow entry by the department at agreed-upon dates and times to lands subject to the certification agreement for the purpose of the department's inspection for compliance with the terms of the agreement; and
  - (f) Inform the department if landowner is unable to comply with the terms of the certification agreement due to circumstances the landowner believes are beyond the landowner's control.
- (5) An Agricultural Water Quality Certification Agreement shall, among other terms, contain terms specifying that the department:
- (a) May conduct periodic audits with the landowner on lands subject to the certification agreement. An audit means a review of land management practices on lands subject to the certification agreement and a review of documents necessary to determine compliance with the certification agreement's terms;
  - (b) Shall notify landowner if documents or data retained by the department pursuant to a certification agreement are requested for disclosure under the Oregon Public Records Act;
  - (c) May recognize that all documents submitted to the department as part of landowner's certification agreement are exempt from disclosure provided that the documents are confidential submissions as provided in ORS 192.355(4), exempt as provided in ORS 192.355(9)(a), are trade secrets as provided in ORS 192.345(2) or are otherwise determined as lawfully exempt from disclosure;

- (d) May terminate the certification agreement upon a final determination that the landowner has violated any state water quality law and rule in effect during the period of the certification agreement;
- (e) May terminate the certification agreement if the department finds the landowner is no longer complying with any term of the certification agreement.

#### **OAR 603-XX-XX18**

##### **Specific Action Requirements**

- (1) A landowner subject to the rules in this chapter may be required to undertake additional, site-specific practices designed to prevent agricultural wastes from entering the groundwater of the state if after inspection of an agricultural operation, the department determines that a landowner is in compliance with the rules of this chapter but there still exists the potential for agricultural wastes to enter the waters of the groundwater of the state.
- (2) A landowner may appeal a specific action requirement as provided in OAR 603-090-0040 – 50.

#### **OAR 603-XX-XX19**

##### **Complaints and Investigations**

- (1) When the department receives notice of an alleged 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, in its discretion, coordinate inspection activities with the appropriate Local Management Agency.
- (2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 and 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 468B.025, 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 OAR 603-095-0380(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 ORS 468B.025, ORS 568.900 to 568.933 or any rules adopted thereunder.
- (5) As used in subsection (4) of this section, “person” does not include any local, state or federal agency.
- (6) If the department determines that a violation of ORS 468B.025, ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the department may proceed with the enforcement procedures provided in OAR 603-090-60 through 603-090-0120.