

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

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Tualatin River Subbasin

Purpose

603-095-0100 (1) These rules have been developed to effectuate the implementation of a water quality management area plan for the Tualatin River subbasin pursuant to authorities vested in the department through ORS 568.900-568.933, 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 Tualatin River Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Tualatin River subbasin, for the prevention and control of 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 Tualatin River subbasin.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912

Stats. Implemented: ORS 568.900-568.933

Geographic and Programmatic Scope

603-095-0120 (1) The Tualatin River subbasin includes the drainage area of the Tualatin River upstream from the confluence with the Willamette River near West Linn. The physical boundaries of the Tualatin River subbasin 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 Tualatin River subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of activities which are subject to the Forest Practices Act.

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are 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 Tualatin River subbasin.

(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.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912

Stats. Implemented: ORS 568.900-568.933

Prohibited Conditions

603-095-0140 All landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A land occupier shall be responsible for only those prohibited conditions caused by activities conducted on land managed by the landowner or occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated. These rules are effective upon adoption unless otherwise indicated.

(1) Sheet and rill erosion:

- (a) No agricultural land management or soil disturbing activities shall be conducted in such a way that the estimated sheet and rill erosion rate exceeds the soil loss tolerance factor.
- (2) Active channel erosion: no agricultural land management or soil disturbing activity shall cause active channel erosion. A land occupier shall be responsible for only that portion of the active channel erosion that is caused by agricultural land management or soil disturbing activities conducted on land managed by the landowner or occupier.
- (3) Near-Stream management area
- (a) No agricultural land management or soil disturbing activities within near-stream management areas in agricultural use shall be conducted in a manner that results in the placement or delivery of suspended solids (i.e., nutrients, soil, sediment, manure) into waters of the state. The technical standards to be used to determine compliance with OAR 603-095-0140(3)(a) are
- (A) The affected landowner shall establish and maintain an adequate vegetative buffer, or an equally effective pollution control practice, in the near-stream management area. When a vegetative buffer is established, the plant variety or seed mixture shall be one of those listed in field office technical guide standard 342 (Critical area planting). If any activity disturbs a vegetative buffer in the stream management area, the landowner shall replant or restore the disturbed area to an adequate vegetative buffer as soon as practicable.
- (B) Pastures shall comply with field office technical guide standard 528A Prescribed grazing
- (C) Livestock barnyards, feedlots, drylots and other non-pasture areas cannot be located within the near-stream management area unless a barnyard runoff control system meeting field office technical guide standard 312 (Waste management system) is installed and maintained.
- (D) Agricultural lands within the near-stream management area that receive manure and other nutrients through application of sludge, commercial fertilizer and other added nutrient inputs shall meet field office technical guide standard 590 (Nutrient management).
- (b) Field office technical guide standards referred to in OAR 603-095-0140(3) (a) are those standards that are current as of the date of the adoption of these rules. Copies shall be made available to the public upon request to the department through its central office location.
- (c) A landowner shall not be considered out of compliance with OAR 603-095-0140(3)(a) and 603-095-0140(4) if the department determines that a failure to meet the standards is a result of land use or actions by another landowner.
- (d) Except for operations governed by the Forest Practices Act, no activities related to the conversion of woodland to non-woodland agricultural uses that require removal of the majority of woody material from a parcel of land such that the land no longer meets the definition of woodland, shall be conducted in a manner which results in the placement of soil, the delivery of sediment, the initiation or aggravation of streambank erosion, or compromises the conditions described in 603-095-0140(3)(a) and 603-095-0140(4).
- (e) Limited duration activities related to construction, restoration, or maintenance may be exempted from OAR 603-095-0140(3) subject to prior written approval by the department.
- (4) Stream Temperature: By January 1, 2005 agricultural activities along a perennial stream must allow for the natural or managed regeneration and growth of vegetation, consistent with the site capability, that is adequate after sufficient growth, to provide erosion control, streambank stability, and minimization of direct solar heating.
- (a) Minimal breaks in shade vegetation for essential management activities are allowed.
- (b) Management within the vegetated area is allowed provided it does not compromise achieving the conditions described in 603-095-0140(3)(a) and 603-095-0140(4).
- (c) Drainage and irrigation ditches subject to ORS 196.600 to 196.905 (Removal Fill laws) are exempt from 603-095-0140 (4).
- (5) Irrigation water discharges: no activities shall result in irrigation water discharges to waters of the state during the period May 1 through October 31 annually, except as provided in OAR 603-095-0140(5)(a).
- (a) Irrigation water discharges may be allowed upon submittal and written approval by the department of a monitoring program to be conducted by the landowner or operator. Such monitoring program shall provide reasonable assurance that the quality of the irrigation water discharge meets all applicable water quality standards.
- (6) Waste discharges:

(a) No person conducting agricultural land management or earth disturbing practices shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) No person conducting agricultural land management or earth disturbing practices shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(c) No person conducting agricultural land management or earth disturbing practices shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912

Stats. Implemented: ORS 568.900-568.933

Voluntary Water Quality Farm Plans

603-095-0160 (1) Content: Voluntary Water Quality Farm Plans shall be designed to meet criteria in OAR 603-095-0140. At a minimum, Voluntary Water Quality Farm Plans shall include the following information:

(a) General components:

(A) Such maps, aerial photographs, and soil survey, water resource and other natural resource inventory information that may be necessary to develop a Voluntary Water Quality Farm Plan. Such items shall be included to the extent that the information is pertinent and necessary in the formulation of the Voluntary Water Quality Farm Plan to assure it achieves the criteria in OAR 603-095-0140.

(B) A list of fields, crops grown (including typical rotation), and other land uses, with the area in acres for each field or land use; and

(C) Any agreements entered into by the landowner or operator involving any agency providing technical or financial assistance in the completion of the best management practices included in the Voluntary Water Quality Farm Plan.

(b) Depending on the nature of the operation, any or all of the following specific components shall be included in the Voluntary Water Quality Farm Plan. If any of the components do not apply to the operation, the plan shall indicate as such.

(A) Sheet and rill erosion component: a detailed list of proposed practices for each field or land use, showing the Field Office Technical Guide number (as available) for each practice and the date of application, and the estimated rate of soil loss before and after application of the practices for each field.

(B) Active channel erosion component: a detailed list of proposed practices for each field or land use, showing the Field Office Technical Guide number (as available) for each practice and the date of application, and the estimated rate of soil loss before and after application of the practices for each field.

(C) Near-stream management area component:

(i) A list of activities conducted in the near-stream management area; and

(ii) A detailed list of proposed practices for each field or area, showing the Field Office Technical Guide number (as available), and indicating the date of application.

(D) Irrigation discharge component:

(i) Irrigation water: source of water, amount of water used, how it is applied, and how it is stored;

(ii) Drainage system: indicate whether the drainage system is open or closed;

(iii) A list of proposed practices and measures taken to prevent discharge, and indicating the date of application.

(iv) Plans filed with the department pursuant to letters of intent submitted by operators of container nurseries may serve to meet the requirements of the irrigation discharge component of a Voluntary Water Quality Farm Plan, provided that such plans meet other requirements under OARs 603-095-0160(1) and (2).

(E) Waste discharge component:

(i) Nature of the waste material;

(ii) Estimated volume of waste handled quarterly;

(iii) Specifications and procedures for waste collection, handling, retention, storage, treatment, and disposal;

(iv) A list of measures taken to prevent discharge, and indicating the date of application.

(2) Preparation

(a) The landowner or operator may arrange with a Local Management Agency to prepare a Voluntary Water Quality Farm Plan, or may prepare the plan with assistance, or may contract with another person or agency to prepare the plan. If the plan is not prepared by the Local Management Agency:

(A) The Local Management Agency may require certification by a professional soils scientist or soils conservationist, or a registered professional engineer that it meets the standards of the technical guide for conservation plans, and that completion of the best management practices included in the plan will enable the land owner or operator to meet the criteria in OAR 603-095-0140; or

(B) The Local Management Agency may require proof from the preparer of the plan that he or she is qualified to prepare such a plan.

(b) The Local Management Agency may require such additional documentation as is necessary to identify in detail the best management practices listed.

(3) Implementation schedule: Any portion of a Voluntary Water Quality Farm Plan designed to meet the criteria in OAR 603-095-0140 shall allow the owner or operator to phase in installation of best management practices until compliance with OAR 603-095-0140 is accomplished.

(4) Approval

(a) The Local Management Agency shall approve or disapprove Voluntary Water Quality Farm Plans and plan amendments at its regularly scheduled meeting and shall maintain a record of its actions as part of the meeting minutes. Approved Voluntary Water Quality Farm Plans and plan amendments shall be signed by the chair or the chair's designee. All approved voluntary plans shall meet the criteria in OAR 603-095-0140 and the criteria for plan preparation contained in OAR 603-095-0160(1) and (2).

(b) In the event that the Local Management Agency finds that a Voluntary Water Quality Farm Plan or a plan amendment does not meet the criteria in OAR 603-095-0140 or the criteria for plan preparation contained in OAR 603-095-0160(1) and (2), the Local Management Agency shall provide a written explanation, by certified mail, to the landowner or operator who submitted the plan, listing all the deficiencies to be corrected.

(C) Unless the Local Management Agency determines that a more frequent review is necessary, any Voluntary Water Quality Farm Plans or plan amendments approved by a Local Management Agency under OAR 603-095-0160(4)(a) shall be approved for a period of three years. At the end of the approval period, if the landowner or operator wants to continue the Voluntary Water Quality Farm Plan or any plan amendments, the Local Management Agency shall review the plan or plan amendment as provided in OAR 603-095-0160(4).

(5) Appeal

Any landowner or operator may request reconsideration of the Local Management Agency's decision to disapprove a Voluntary Water Quality Farm Plan or a plan amendment by submitting a request for a hearing before the next regularly scheduled Local Management Agency meeting. If an appeal is filed, the Local Management Agency shall reconsider its decision at its next regularly scheduled meeting and may either affirm, modify or reverse its previous decision. The purpose of the hearing shall be to present relevant information or evidence that the Local Management Agency's action was not based on an appropriate or adequate evaluation of the voluntary plan or plan amendment. The Local Management Agency shall maintain a record of its action regarding reconsideration as part of the meeting minutes.

(b) A landowner or operator may appeal the Local Management Agency's denial of reconsideration within seven days of the date of the reconsideration decision by filing a hearing request with the department. If the landowner or operator appeals within the prescribed period, the department shall notify the Local Management Agency. The Local Management Agency shall forward its action and rationale to the department within seven days of such notification.

(c) Within seven days of a Local Management Agency's denial of an appeal by a landowner or operator, the Local Management Agency shall notify the department of its action and rationale.

(d) Within thirty (30) days of receiving an appeal request, the department shall schedule a hearing between the landowner or operator, a designated representative of the Local Management Agency, and a representative of the department. The purpose of the hearing shall be to review the Local Management Agency's reconsideration decision. If the representatives of

the department and the Local Management Agency can reach agreement, they shall forward a joint recommendation to the Local Management Agency for approval at its next regularly scheduled meeting. The Local Management Agency shall maintain a record of its action as part of its meeting minutes.

(e) If the representatives of the department and the Local Management Agency cannot agree on a joint recommendation, the department may approve or disapprove the Voluntary Water Quality Farm Plan or plan amendment. The department shall forward a copy of its approval decision to the Local Management Agency.

(6) Amendments to an existing plan: Any amendments to an existing Voluntary Water Quality Farm Plan shall be approved by the Local Management Agency in accordance with OAR 603-095-0160(4) and (5).

Stat. Auth.: ORS 561.400, and 568.909

Stats. Implemented: ORS 568.900-568.933

Complaints and Investigations

603-095-0180 (1) To be considered as a formal complaint, any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of OAR 603-095-0140 shall do so by filing a written complaint with the department. The complaint shall be signed and dated by the complainant and shall:

(a) Indicate the location and description of:

(A) The property and/or waters of the state allegedly being damaged or impacted; or

(B) The property allegedly being managed under conditions violating criteria described in OAR 603-095-0140.

(b) Indicate the nature and extent of damage; and

(c) Identify the alleged sources of pollution.

(2) Each formal complaint shall be evaluated in accordance with the criteria in OAR 603-095-0140 to determine whether an investigation is warranted.

(3) Action initiated by the department: when the department finds an apparent occurrence of agricultural pollution through its own observation, through notification by another agency, or through a formal complaint from an individual, the department shall inform the appropriate Local Management Agency in writing of:

(a) The location and nature of the occurrence;

(b) The location and description of the agricultural operation alleged to be causing the pollution occurrence or where prohibited conditions are alleged to have occurred; and

(c) The nature and extent of damage, if known.

(4) Action by a Local Management Agency

(a) Formal complaints

(A) By written agreement with the department, the Local Management Agency may receive formal complaints and evaluate and investigate them on behalf of the department.

(B) A Local Management Agency, which is authorized by the department to evaluate and investigate formal complaints, shall evaluate the formal complaint and investigate it in a timely manner, if warranted. Within 30 days of receipt of a formal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any information relevant to it.

(C) In the event the Local Management Agency is unable to investigate a formal complaint as per OAR 603-095-0180(2), the Local Management Agency shall request assistance from the department. The department shall investigate the complaint.

(b) Informal complaints

(A) By written agreement with the department, the Local Management Agency may receive informal complaints and investigate them on behalf of the department.

(B) Within 30 days of receipt of an informal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any relevant information to it.

(5) Actions based on investigation findings

(a) If the department determines that a violation of OAR 603-095-0140 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is making a reasonable effort to comply with the plan:

- (A) The department shall inform the landowner and the Local Management Agency of the noncompliance with OAR 603-095-0140; and
- (B) The department shall acknowledge the existence of the Voluntary Water Quality Farm Plan and direct the landowner to seek appropriate technical assistance and revise the plan and its implementation in a manner necessary to eliminate the violation.
- (b) If the department determines that a violation of OAR 603-095-0140 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is not making a reasonable effort to comply with the plan; or
- (c) If the department determines that a violation of OAR 603095-0140 has occurred and an approved Voluntary Water Quality Farm Plan does not exist; or
- (d) If the department determines that a landowner has not revised a plan per OAR 603-095-0180(5)(a)(B) within the time specified by the department:
 - (A) The landowner shall be subject to the enforcement procedures of the department outlined in OARs 603-090-060 through 120; and
 - (B) The department shall inform the Local Management Agency of its determination that a violation has occurred.

Stat. Auth.: ORS 561.190-561.191

Stats. Implemented: ORS 568.900-568.933

Appendix 1: Map

