

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

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Lower Deschutes

603-095-0600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Lower Deschutes 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 Lower Deschutes Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Lower Deschutes 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 Lower Deschutes Agricultural Water Quality Management Area.

Statutory Authority: ORS 561.190 - 561.191, ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0620

Geographic and Programmatic Scope

(1) The Lower Deschutes Agricultural Water Quality Management Area includes the drainage area of the Deschutes River downstream from its confluence with Trout Creek to its confluence with the Columbia River near the city of The Dalles. It also includes all Oregon lands draining to the Columbia River between the Hood River drainage and the John Day Basin. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Lower Deschutes 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 and lands that make up the Reservation of the Confederated Tribes of the Warm Springs.

(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 Lower Deschutes 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 will 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 561.190 - 561.191, ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0640

Required Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. Implementation of these rules will begin upon adoption and will be fully implemented by the dates listed below. A landowner is 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 or other exceptional circumstances are not the responsibility of the landowner.

(2) Soil Erosion on Uplands; effective on rule adoption, landowners must control soil erosion on uplands using practical and available methods.

(a) On croplands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(b) On rangelands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(c) Landowners must control active gully erosion to protect against sediment delivery to streams. 'Active Gully Erosion' means gullies or channels that at the largest dimension have a cross-sectional area of at least one square foot and that occur at the same location for two or more consecutive years of cropping or grazing.

(3) Active Stream Bank Erosion; by January 1, 2005, active streambank erosion is not allowed beyond the amount expected for the specific stream flow regime and channel type. Stream channel modification that extends well beyond the level anticipated from natural disturbance given stream characteristics is not allowed.

(4) Placement, Delivery or Sloughing of Wastes; effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

(5) Riparian Vegetation; by January 1, 2005, agricultural management or soil-disturbing activities that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability, are not allowed.

Statutory Authority: ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0660

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, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will 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 603-095-0660(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 criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-0660(4), “person” does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0660, 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

