

Department of Agriculture

Chapter 603

Division 90

AGRICULTURAL WATER QUALITY ^[1]_[SEP] MANAGEMENT PROGRAM

[603-090-0000](#)

Preamble

(1) ORS 568.900 to 568.933 authorizes the Oregon Department of Agriculture to develop and carry out an agricultural water quality management area plan for agricultural and rural lands where a water quality management plan is required by state or federal law. In executing this responsibility, the department develops, adopts, and periodically modifies programs to effectuate agricultural water quality management area plans in the applicable geographic areas.

(2) These administrative rules establish policies, guidelines, and specific requirements for the development and content of agricultural water quality management area plans and rules, requirements of agricultural water quality management area plans and rules for applicable geographic areas, the process of landowner appeal of specific required actions, and enforcement procedures to be followed by the department.

(3) Agricultural water quality management area plans are plans that comprehensively outline measures that will be taken to prevent and control water pollution from agricultural activities and soil erosion on agricultural and rural lands located in a management area which requires such a plan and for which boundaries have been established by the department.

(4) Agricultural water quality management area rules are adopted by the department to implement an agricultural water quality management area plan. Area rules are the only enforceable aspect of an agricultural water quality management area plan.

(5) It is the policy of the department that:

(a) Cooperation between private and public entities be encouraged during the development and implementation of water quality management area plans;

(b) To the full extent possible, pollution prevention activities be the focus of water quality management area plans;

(c) Voluntary adoption of land management activities be encouraged through education and demonstration programs to achieve the goals and objectives of water quality management area plans;

(d) Enforceable mechanisms be available to address water pollution problems where voluntary compliance is not achieved;

(e) Enforcement action be pursued only when reasonable attempts at voluntary solutions have failed; and

(f) Measures required of individual landowners under agricultural water quality management area rules provide as much flexibility as reasonably possible.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

DOA 16-2006, f. & cert. ef. 9-15-06

AD 9-1994, f. & cert. ef. 7-26-94

[603-090-0010](#)

Definitions

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- (1) "Agency of this state" has the meaning given in ORS 568.210(1).
- (2) "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 the boundaries of which have been designated under ORS 568.909.
- (3) "Area Rules" or "Agricultural Water Quality Management Area Rules" are administrative rules adopted by the state Department of Agriculture, in consultation with the state Board of Agriculture, for the implementation of the Area Plan adopted under ORS 568.909.
- (4) "Board" means the state Board of Agriculture.
- (5) "Department" means the state Department of Agriculture.
- (6) "Director" means the director of the state Department of Agriculture.
- (7) "Individual Water Quality Management Plan" means a plan for the prevention or control of water pollution for an individual landowner.
- (8) "Landowner" includes any landowner, land occupier or operator as defined in ORS 568.903.
- (9) "Local Management Agency" means any agency of this state, including but not limited to a soil and water conservation district, which has been designated by the department to undertake activities within a management area whose boundaries have been designated under ORS 568.909.
- (10) "Local Management Area Advisory Committee" means a committee established by the department under OAR 603-090-0020.
- (11) "Operator" has the meaning given in ORS 568.900(2).
- (12) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).
- (13) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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AD 9-1994, f. & cert. ef. 7-26-94

603-090-0020

Local Water Quality Management Area Advisory Committee

- (1) The department shall establish a local water quality management area advisory committee for each water quality management area established under these rules. The local water quality management area advisory committee shall represent a balance of affected persons. The local water quality management area advisory committee must provide an opportunity for a high level of citizen involvement in the development and implementation of the agricultural water quality management area plan and rules. The members of each local water quality management area advisory committee shall be appointed by the director in consultation with the board. The director and board shall consider the recommendations, if any, of the designated local management agency when making advisory committee appointments.
- (2) A local water quality management area advisory committee shall consist of not more than twelve members, unless otherwise determined by the director in consultation with the board.
- (3) A local water quality management area advisory committee shall be composed primarily of landowners in the affected local agricultural water quality management area. Membership may include, but is not limited to:
- (a) State Board of Agriculture representatives;
 - (b) Persons serving on local soil and water conservation districts;
 - (c) Private landowners;
 - (d) Representatives of local, state and federal boards, commissions and agencies;
 - (e) Members of Indian tribes;
 - (f) Members of the public;
 - (g) Persons associated with industry;
 - (h) Members of academic, scientific and professional communities;

(i) Public and special interest groups.

(4) The local water quality management area advisory committee's responsibilities shall include but are not limited to:

(a) Participation in the development and ongoing modifications of the agricultural water quality management area plan and rules;

(b) Recommendation of strategies necessary to achieve water quality goals and objectives outlined in the agricultural water quality management area plan;

(c) Biennial review of the progress of implementation of the agricultural water quality management area plan and rules, including enforcement actions taken, and requests for alternate measures that have been granted or denied;

(d) Submittal of biennial, written reports to the Board and the director, including

(A) A summary of meetings held, advisory committee members present, actions taken, and progress and impediments toward implementation of the agricultural water quality management area plan; and

(B) Recommendations for modifications that may be necessary to achieve the purpose of the agricultural water quality management area plan as provided in OAR 603-090-0030.

(5) The Local Advisory Committee may reconvene as frequently as necessary to carry out the duties described above in OAR 603-090-0020(4).

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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603-090-0030

Requirements of Agricultural Water Quality Management Area Plan and Rules

(1) Agricultural water quality management area plans must describe a program to achieve the water quality goals and standards necessary to protect designated beneficial uses related to water quality, as required by state and federal law. An area plan shall include but not be limited to a description of the geographical area and physical setting to which the area plan applies, a listing of water quality issues of concern, a listing of current designated beneficial uses that are being adversely affected, a statement that the goal of the area plan is to prevent and control water pollution from agricultural activities and soil erosion and to achieve applicable water quality standards, a statement of the water quality objectives of the area plan, a description of the pollution prevention and control measures deemed necessary by the department to achieve the goal, a schedule for implementation of the necessary measures that is adequate to meet applicable dates established by law, guidelines for public participation, and a strategy for ensuring that the necessary measures are implemented.

(2) Agricultural water quality management area rules are the only enforceable aspect of an area plan. Area rules must be sufficient to assure that landowners in compliance with the area rules will prevent and control water pollution from agricultural activities and soil erosion. Some level of erosion and runoff can occur on agricultural and rural lands but must be within the limitations established by existing water quality laws.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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603-090-0040

Specific Action Requirements — Appeals

(1) Pursuant to ORS 568.912, a landowner subject to agricultural water quality management area rules may be required to undertake certain specific actions. The required specific actions may but need not be incorporated into an individual water quality management plan. A landowner may appeal a specific action requirement by filing a formal request for alternate measures as provided in OAR 603-090-0050.

(2) Prior to filing a formal request for alternate measures, a landowner may informally consult with the department regarding the specific actions required to comply with the agricultural water quality management area rules. Such consultation, however, shall not extend the time periods required for filing a formal request.

(3) A general requirement for an individual water quality management plan may not be appealed under this provision.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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AD 9-1994, f. & cert. ef. 7-26-94

603-090-0050

Request for Alternate Measures — Filing, Content, and Approval

- (1) A request for alternate measures shall be made in writing and filed with the director. The request may be filed at anytime.
- (2) A request shall include a detailed description of proposed alternate measures and sufficient information to determine whether the request satisfies the requirements of section (3) of this rule.
- (3) A request for alternate measures shall be approved if the director, following consultation with other agencies as appropriate, finds that the alternate measures will provide a level of water quality protection equivalent to that which is provided by the specific actions required to comply with the agricultural water quality management area rules.
- (4) The director shall determine whether to allow a request for alternate measures within 60 days after the request is received unless the landowner agrees to extend the period or the director makes a determination that a longer period of time is required to obtain sufficient information to evaluate the request. If the request is filed while an enforcement action is pending, this 60 day period shall not begin to run until the enforcement action has been concluded. The enforcement action shall not be considered concluded if an appeal is pending or civil penalties remain unpaid.
- (5) The director's decision to approve or deny a request for alternate measures shall be made in writing and shall be an order in other than a contested case for purposes of judicial review.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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AD 9-1994, f. & cert. ef. 7-26-94

603-090-0060

Definitions

Unless otherwise required by the context, as used in this Division:

- (1) "Compliance" means meeting the requirements of ORS 568.900 to 568.933 or any of the department's rules or orders pursuant thereto.
- (2) "Flagrant Violation" means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.
- (3) "Formal Enforcement Action" means any order of the director or the director's designee which is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and stipulated or consent orders.
- (4) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.
- (5) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.
- (6) "Order" has the meaning given in ORS 183.310(5).
- (7) "Past occurrence of violations" means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (8) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the federal government and any agency thereof.
- (9) "Previous notice of the same or similar violation" means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation which is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.

(10) "Reckless" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(11) "Repeat Violation" means the recurrence of the same type of violation as a violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(12) "Respondent" means the person to whom a formal enforcement action is directed.

(13) "Rule" has the meaning given in ORS 183.310(8).

(14) "Violation" means failure to comply with any rule or order made by the department pursuant to ORS 568.900 to 568.933 and includes both acts and omissions.

(15) "Wastes" has the meaning given in ORS 468B.005(7).

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

AD 9-1994, f. & cert. ef. 7-26-94

603-090-0070

Consolidation of Enforcement Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against a landowner may be consolidated into a single proceeding.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

AD 9-1994, f. & cert. ef. 7-26-94

603-090-0080

Enforcement Actions

(1) A Notice of Noncompliance:

(a) Shall inform the landowner of the violation, including a reference to a particular statute, administrative rule(s) or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;

(b) Shall direct the subject landowner to perform those actions necessary to comply with the water quality management area rules and orders made pursuant to the area rules:

(c) Shall specify a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the date of the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;

(d) Shall be issued by the director or the director's designee;

(e) Shall be in writing and shall be served personally or by registered or certified mail;

(f) Shall in all cases also be mailed or delivered to the legal owner of the property;

(g) Shall be an order other than a contested case for purposes of judicial review.

(2) A plan of Correction:

(a) Shall include a statement of the actions that must be taken by the landowner to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;

(b) May include requirements for the landowner to report the completion of specific actions;

(c) Shall be in writing and shall be sent to the landowner by registered or certified mail or served personally;

(d) Shall be an order other than a contested case for the purposes of judicial review.

(3) The department shall make a reasonable attempt to consult with the subject landowner in the development of a plan of correction.

(4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

(5) A Notice of Civil Penalty Assessment:

(a) Shall be issued by the director or the director's designee;

(b) Shall be issued in a manner consistent with the provisions of ORS 183.415, 568.900 to 568.933, and OAR chapter 137;

(c) Shall be in writing and shall be served personally or by registered or certified mail;

(d) Shall include but not be limited to:

(A) A reference to the particular statute, administrative rules or order involved;

(B) A short or plain statement of the matters asserted or charged including a reference to the location of the violation when appropriate;

(C) A statement of the amount of the penalty and how it was calculated;

(D) A statement of the person's right to request a hearing within ten business days from the date of receipt of the notice and an explanation of how a hearing may be requested;

(E) A statement that the notice becomes a final order unless the person on whom the civil penalty is assessed makes a written request for a hearing within ten business days from the date of receipt of the notice.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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AD 9-1994, f. & cert. ef. 7-26-94

603-090-0090

Hearing Procedures

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR chapter 137.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

AD 9-1994, f. & cert. ef. 7-26-94

603-090-0100

Entry of Order, Appeal Rights, and Payment of Civil Penalties

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-090-0090, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order shall be signed by the director or the director's designee.

(3) If the order is not appealed, any penalty is due and payable ten business days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(4) When an order assessing civil penalty becomes final by operation of law or on appeal and the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state as provided by ORS 183.090(6) and proceedings to enforce the order may be initiated in accordance with 183.090(12).

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

AD 9-1994, f. & cert. ef. 7-26-94

603-090-0110

Civil Penalty Assessment

(1) In addition to any other penalty provided by law, the department may assess a civil penalty against a landowner for failing to comply with the requirements of agricultural water quality management area rules adopted under ORS 568.900 to 568.933 including orders to implement the area rules. The amount of civil penalty shall be determined using the two matrices contained in OAR 603-090-0120 in conjunction with the formula contained in OAR 603-090-0120(4). The amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department shall provide a notice of noncompliance to the landowner. No advance notice or period to achieve compliance prior to assessment of a civil penalty shall be required under section (1) of this rule and the department may issue a notice of civil penalty assessment if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

(a) Category I (Major):

(A) A violation of a department order issued as part of or in connection with a formal enforcement action;

(B) Failure to provide access to premises or records when required by statute, rule or order;

(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;

(D) Submitting records, reports or application forms that are false, misleading, or fraudulent;

(E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of public waters;

(b) Category II (Moderate):

(A) Failure to submit a plan or report if required by rule;

(B) Placing wastes such that the wastes are likely to enter the waters of the state by any means:

(C) Any violation of a department rule or order which is not classified elsewhere in these rules as major or minor.

(c) Category III (Minor): Failure to operate in accordance with an approved individual water quality management plan.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(a) Gravity of Effect — High Level:

(A) Significant injury to crops, wildlife or livestock; or

(B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.

(b) Gravity of Effect — Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.

(c) Gravity of Effect — Minor Level: Water contamination not found or not found at a level in excess of applicable water quality standards.

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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603-090-0120

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation of the requirements of agricultural water quality management area rules adopted under ORS 568.900 to 568.933, the department shall apply the following procedure:

- (1) Determine the magnitude of the violation as specified in OAR 603-090-0110(4).
- (2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-090-0110(5).
- (3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in this rule. [Table not included. See ED. NOTE.]
- (4) Calculate the amount of the civil penalty to be assessed utilizing the formula: $B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$ where:
 - (a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-090-0120;
 - (b) P = Past occurrence of violations of the requirements of water quality management area rules adopted under ORS 568.900 to 568.933. P will be weighted from 0 to 6 in the following manner:
 - (A) 0 = no prior violation or insufficient evidence on which to base a finding;
 - (B) 1 = past occurrence of a Category III violation;
 - (C) 2 = past occurrence of a Category II violation or two category III violations;
 - (D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;
 - (E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;
 - (F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;
 - (G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.
 - (c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:
 - (A) -2 = the person took all feasible steps to correct any prior violations;
 - (B) 0 = there is no prior history or insufficient information on which to base a finding;
 - (C) 1 = the person took some, but not all feasible steps to correct prior violations;
 - (D) 2 = the person took no action to correct prior violations.
 - (d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:
 - (A) -2 = the person's actions determined to be violative were unavoidable;
 - (B) 0 = information is insufficient to make any finding;
 - (C) 3 = the person's actions determined to be violative were reasonably avoidable;
 - (D) 7 = the person's actions were flagrant or reckless.
- (5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.
- (6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments which may include payment of interest on the unpaid balance for any delayed payments.

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 561 & 568.900 - 568.933

Statutes/Other Implemented: ORS 568.900 - 568.933

History:

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