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## States' Application Restrictions Statutes & Regulations: *Oregon*



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# A National Agricultural Law Center Research Publication

## States' Application Restrictions Statutes & Regulations: Oregon

### OR Rev Stat § 568.900 to .933 OR Admin Rules 603-090-0000 to 0040 Management Area Documents

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Oregon Legislative Counsel.*

#### **OR Rev Stat § 568.900. Definitions for ORS 568.900 to 568.933.**

As used in ORS 568.900 to 568.933:

- (1) "Board" means the State Board of Agriculture.
- (2) "Operator" means any person, including a landowner or land occupier engaged in any commercial activity relating to the growing or harvesting of agricultural crops or the production of agricultural commodities.
- (3) "Water" or "the waters of the state" has the meaning given in ORS 468B.005.
- (4) "Water pollution" has the meaning given in ORS 468B.005.
- (5) "Water quality management plan" or "plan" means a plan developed under ORS 568.909. [1993 c.263 §2; 1997 c.249 §184; 2009 c.11 §78]

#### **OR Rev Stat § 568.903. "Landowner" defined.**

Notwithstanding the definition given in ORS 568.210, as used in ORS 568.909 to 568.933 "landowner" includes any landowner, land occupier or operator. [1993 c.263 §4]

#### **OR Rev Stat § 568.906. Plan implementation to involve local agencies.**

It is the intention of the Legislative Assembly that plans developed under ORS 568.900 to 568.933 involve soil and water conservation districts as local management agencies to the fullest extent practical, consistent with the timely and effective implementation of these plans. [1993 c.263 §10]



**OR Rev Stat § 568.909. Boundaries for land subject to water quality plans; implementation of plan and rules.**

(1) The State Department of Agriculture may describe the boundaries of agricultural and rural lands that are subject to a water quality management plan:

(a) Due to a determination by the Environmental Quality Commission to establish a Total Maximum Daily Load for a body of water under the Federal Water Pollution Control Act (33 U.S.C. 1313);

(b) Due to a declaration of a ground water management area under ORS 468B.180; or

(c) When an agricultural water quality management plan is otherwise specifically required by state or federal law.

(2) For an area whose boundaries have been designated under this section, the department shall develop and carry out a water quality management plan for the prevention and control of water pollution from agricultural activities and soil erosion. The department shall base the plan and rules adopted to implement the plan upon scientific information. [1993 c.263 §3; 2001 c.594 §1]

**OR Rev Stat § 568.912. Management plan rules; required actions under rules; prohibiting specific practices; landowner appeals.**

(1) The State Department of Agriculture in consultation with the State Board of Agriculture may adopt rules necessary to implement a water quality management plan initiated under ORS 568.909. The rules adopted under this subsection shall constitute the only enforceable aspects of a water quality management plan.

(2) Pursuant to rules adopted under subsection (1) of this section, the department may require any landowner whose land is located within an area subject to a water quality management plan to perform those actions on the landowner's land necessary to prevent and control water pollution from agricultural activities and soil erosion. Such actions may include:

(a) Construction or maintenance of any works or facilities;

(b) Agricultural and cropping practices; or

(c) Any other measure or avoidance necessary for the prevention or control of water pollution of the waters of the state.



(3) No specific practice may be prohibited under this section unless the department has a scientific basis for concluding that the practice is a factor in causing water quality standards to be exceeded.

(4) A landowner subject to the rules adopted to implement a plan may appeal specific actions required of that landowner by the department to carry out a plan. The department shall establish by rule a procedure and criteria for the appeal process. [1993 c.263 §5; 2001 c.442 §1; 2001 c.594 §2]

### **OR Rev Stat § 568.915. Entry upon land; purpose; consultation with Department of Justice; notice to landowners.**

(1) After making a reasonable attempt to notify the landowner, the State Department of Agriculture or a designee of the department may enter any lands within the area subject to a water quality management plan for the purpose of determining:

(a) Those actions that may be required of landowners under ORS 568.900 to 568.933 or rules adopted under ORS 568.912; and

(b) Whether the landowner is carrying out the required actions.

(2) The State Department of Agriculture, or a designee of the State Department of Agriculture, shall periodically, and in no event less than once biennially, consult with the Department of Justice to ensure that the actions of the State Department of Agriculture taken under this section are consistent with section 9, Article I of the Oregon Constitution, and the Fourth Amendment to the United States Constitution.

(3) Prior to general initiation of inspections in an agricultural water quality management area for compliance with rules adopted under ORS 568.912, the department shall implement a process to notify the affected landowners within the boundaries of the area of any requirements that may by rule apply to landowners in the area. [1993 c.263 §6; 1997 c.657 §1; 2001 c.442 §2; 2001 c.594 §3]

### **OR Rev Stat § 568.918. Notice to landowner of failure to perform requirements.**

Upon finding that a landowner in an area subject to a water quality management plan has failed to perform actions required by the rules adopted under ORS 568.912, the State Department of Agriculture shall notify the landowner and direct the landowner to perform the work or take any other actions necessary to bring the condition of the subject lands into compliance with the rules within a reasonable period of time.



In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty. [1993 c.263 §7; 2001 c.594 §4]

#### **OR Rev Stat § 568.921. Fees from landowners.**

The State Department of Agriculture, in consultation with the State Board of Agriculture, may establish and collect fees from landowners subject to a water quality management plan adopted under ORS 568.909. The fees shall not exceed the total cost of developing and carrying out the plan and shall not exceed \$200 annually per landowner. Fees established by the department under this section are subject to the requirements of ORS 291.055. Any fees received by the department pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of implementing ORS 568.900 to 568.933. [1993 c.263 §9; 2001 c.442 §6; 2001 c.594 §5]

#### **OR Rev Stat § 568.924. Interagency agreements.**

The State Department of Agriculture may enter into agreements with any agency of this state, including but not limited to a soil and water conservation district, or with any agency of the federal government, for the purposes of carrying out the provisions of ORS 568.900 to 568.933 including the development of a plan. [1993 c.263 §11]

#### **OR Rev Stat § 568.927. Law inapplicable to certain forest practices.**

The provisions of ORS 568.900 to 568.933 shall not apply to any forest practice conducted on forestland as defined in ORS 527.620. [1993 c.263 §12]

#### **OR Rev Stat § 568.930. Agricultural activities subject to plan requirements; consultation with Environmental Quality Commission; review and revision of plans.**

(1) Landowners shall conduct all agricultural activities on agricultural lands within the boundaries of an area subject to a water quality management plan in full compliance with the rules implementing the plan and with all the rules and standards of the Environmental Quality Commission relating to water pollution control. In addition to any other remedy provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available to the Department of Environmental Quality or the Environmental Quality Commission.

(2) The State Department of Agriculture and the State Board of Agriculture shall consult with the Department of Environmental Quality or the Environmental Quality Commission in the adoption and review of water



quality management plans and in the adoption of rules to implement the plans.

(3)

(a) The Environmental Quality Commission may petition the State Department of Agriculture for a review of part or all of any water quality management plan and rules implementing the plan. The petition must allege with reasonable specificity that the plan or the rules are not adequate to achieve compliance with applicable state and federal water quality standards.

(b) The State Department of Agriculture, in consultation with the State Board of Agriculture, shall complete its review of a petition submitted under paragraph (a) of this subsection within 90 days of the date of the filing of the petition for review. The State Department of Agriculture may not terminate the review without the concurrence of the Environmental Quality Commission unless the department initiates revisions to the rules implementing the water quality management plan that address the issues raised by the Environmental Quality Commission. If the State Department of Agriculture adopts any revisions in response to a petition by the Environmental Quality Commission, the department shall adopt the revisions not later than two years from the date the Environmental Quality Commission submits the petition, unless the department, with the concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(4) A water quality management plan and rules implementing the plan that pertain to a ground water management area shall be subject to the coordination requirements of ORS 468B.162. [1993 c.263 §13; 1999 c.59 §179; 2001 c.594 §6]

### **OR Rev Stat § 568.933. Civil penalties; availability; reductions.**

(1) In addition to any other liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on a landowner of lands within an agricultural or rural area subject to a water quality management plan for failure to comply with rules implementing the plan.

(2) The department may not impose a civil penalty on a landowner for a first violation under this section unless the department:

(a) Has notified the landowner of the violation in a writing that describes, with reasonable specificity, the factual basis for the department's determination that a violation has occurred; and

(b) Has prescribed a reasonable time for the landowner to correct the violation that may not exceed 30 days after the first notice of a



violation, unless the violation requires more than 30 days to correct, in which case the department shall specify a reasonable period of time to correct the violation in a plan of correction issued to the landowner.

(3) A civil penalty imposed under this section may not exceed:

(a) \$2,500 for a first violation; or

(b) \$10,000 for a second or subsequent violation.

(4) For purposes of this section, each day of a violation continuing after any period of time of correction set by the department is a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(5) The landowner to whom a notice of violation or a notice of civil penalty is addressed shall have 30 days from the date of receipt of the notice in which to make written application for a hearing before the department.

(6) In imposing a penalty under this section, the department shall consider the following factors:

(a) The past history of the landowner incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct a violation.

(b) Any prior violations of rules, regulations or statutes pertaining to a water quality management plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The violator's efforts to correct the violation.

(g) The immediacy and extent to which the violation threatens the public health or safety.

(7) A notice of violation or period to comply shall not be required under subsection (2) of this section if:

(a) The violation is intentional; or

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



(8) The department shall deposit any civil penalty recovered under this section into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on water quality management and to provide funding for water quality management demonstration projects.

(9) The State Department of Agriculture shall reduce the amount of any civil penalty imposed under this section by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality for violations of water quality rules or standards, if the latter penalty is imposed on the same person and is based on the same violation. [1993 c.263 §8; 2001 c.442 §4; 2001 c.594 §7]

### **OR Admin Rules 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.

### **OR Admin Rules 603-090-0010. Definitions.**

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

- (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).

### **OR Admin Rules 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).

### **OR Admin Rules 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.

#### **OR Admin Rules 603-090-0040. Specific Action Requirements – Appeals.**

(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.

#### **Agricultural Water Quality Plans for each Management Area**



[Management Area Documents](#)

