



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Oregon

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Nutrient Management Plans

STATE OF OREGON

1) ORS §§ 568.900 et seq.; OAR 603-909-0000—0050

2) ORS §§ 468B.035, .200—.217; OAR 340-045-0010, 0035; Oregon’s Nutrient Management Program

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.

1) ORS §§ 568.900 et seq.; OAR 603-909-0000—0050

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

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.

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).

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).

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.

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.

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.

2) ORS §§ 468B.035, .200—.217; OAR 340-045-0010, 0035; Oregon's Nutrient Management Program

§ 468B.035 Implementation of Federal Water Pollution Control Act; rules.

(1) The Environmental Quality Commission may perform or cause to be performed any acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and federal regulations or guidelines issued pursuant to the Act. The commission may adopt, modify or repeal rules, pursuant to ORS chapter 183, for the administration and implementation of this subsection.

(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS chapter 183 for the administration and implementation of this subsection.

§ 468B.200 Legislative findings.

The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state.

§ 468B.203 Applicability of 468B.200 to 468B.230.

The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 is consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended.

§ 468B.205 Definition of confined animal feeding operation; rules.

(1) As used in ORS 468B.200 to 468B.230, “confined animal feeding operation” has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.

(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules.

§ 468B.210 Maximum number of animals per facility; determination.

(1) All permits for confined animal feeding operations issued under ORS 468B.050 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.943.

§ 468B.215 Fees; permit conditions; review.

(1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.255.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, a fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation of four months or less duration or that does not have waste water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state.

(3) The Department of Environmental Quality or the State Department of Agriculture may impose on the permit required for a confined animal feeding operation only those conditions necessary to ensure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(4) A permit for a confined animal feeding operation may be revoked or modified by the Department of Environmental Quality or the State Department of Agriculture or may be terminated upon request by the permit holder. An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture.

§ 468B.217 Memorandum of understanding with Department of Agriculture.

(1) The Environmental Quality Commission and the State Department of Agriculture shall enter into a memorandum of understanding providing for the State Department of Agriculture to operate a program for the prevention and control of water pollution from a confined animal feeding operation.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the control and prevention of water pollution from a confined animal feeding operation.

(b) May enter onto and inspect, at any reasonable time, a confined animal feeding operation or appurtenant land for the purpose of investigating a source of water pollution or to ascertain compliance with a statute, rule, standard or permit condition relating to the control or prevention of water pollution from the operation. The State Department of Agriculture shall have access to a pertinent record of a confined animal feeding operation including but not limited to a

blueprint, design drawing and specification, maintenance record or log, or an operating rule, procedure or plan.

340-045-0010 Definitions

- (1) As used in this division unless otherwise required by context:
- (2) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.
- (3) "DEQ" means the Oregon Department of Environmental Quality.
- (4) "Director" means the Director of the Oregon Department of Environmental Quality or the Director's authorized designee.
- (5) "Discharge or Disposal" means placing wastes into public waters, on land, or otherwise into the environment in a manner that affects or may tend to affect the quality of public waters.
- (6) "Disposal System" means a system for disposing of wastes by surface or underground methods and includes sewerage systems, treatment works, disposal wells, and other systems but excludes onsite sewage disposal systems regulated under OAR 340-071-0160, 340-071-0162, or ORS 454.655 and systems that recirculate without discharge.
- (7) "Environmental Management Plan" means a document specified within the conditions of a permit that identifies environmental impacts, establishes environmental goals and periodic review for effectiveness in meeting environmental goals, best management practices, monitoring, corrective actions and other enforceable requirements of the permit.
- (8) "Federal Act" means Public Law 92-500, known as the Federal Water Pollution Control Act Amendments of 1972, and amendments.
- (9) "General Permit" means a permit issued to a category of qualifying sources under OAR 340-045-0033 in lieu of individual permits for every source.
- (10) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance, or a combination of them, resulting from any process of industry, manufacturing, trade, or business or from developing or recovering any natural resources.
- (11) "Municipal Separate Storm Sewer" means a conveyance or system of conveyances including: roads with drainage systems, municipal streets, catch basins, curbs, gutter, ditches, manmade channels, or storm drains, that is:

(a) Owned or operated by a state, city, county, district, association, or other public body;

(b) Designed or used for collecting or conveying stormwater; and,

(c) Is not a combined sewer or part of a Publicly Owned Treatment Works as defined in 40 C.F.R. §122.2.

(12) "Municipal Separate Storm Sewer System" means all municipal separate storm sewers that are defined as "large," "medium," or "small" municipal separate storm sewer systems in 40 C.F.R. §122.26(b).

(13) "NPDES Permit" means a waste discharge permit issued under the National Pollutant Discharge Elimination System authorized by the Federal Act and OAR chapter 340, division 045.

(14) "Navigable Waters" means all navigable waters of the United States and their tributaries; interstate waters; and intrastate lakes, rivers, and streams that are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken and sold in interstate commerce or that are used for industrial purposes by industries in interstate commerce.

(15) "Permit Action" means DEQ's issuing, modifying, renewing, or revoking a permit.

(16) "Person" means the United States and its agencies, state, individual, public or private corporation, political subdivision, governmental agency, municipality, co-partnership, association, firm, trust, estate, or any other legal entity.

(17) "Point Source" means any discernible, confined, discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged.

(18) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(19) "Pretreatment" means the waste treatment that might take place before discharging to a sewerage system including but not limited to pH adjustment, oil and grease removal, screening, and detoxification.

(20) "Process Wastewater" means wastewater contaminated by industrial processes but not including non-contact cooling water or storm runoff.

(21) "Public Waters" or "Waters of the State" means lakes, bays, ponds, impounding reservoirs, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private, except those private waters that do not combine or effect a junction with natural surface or underground waters, that are wholly or partially within or bordering the state or within its jurisdiction.

(22) "Regional Administrator" means the Regional Administrator of Region X of the U.S. Environmental Protection Agency.

(23) "Septage" means the liquid and solid material pumped from a septic tank, holding tank, cesspool, or similar domestic sewage treatment system.

(24) "Septage Alkaline Stabilization Facility" means a facility that actively mixes alkaline material with raw septage to increase and maintain pH at 12 in the resultant mixture for sufficient time to achieve chemical stabilization.

(25) "Sewage" means water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The mixture of sewage with wastes or industrial wastes is also considered sewage.

(26) "Sewerage System" means pipelines or conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(27) "State" means the State of Oregon.

(28) "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(29) "Toxic Waste" means any waste that will cause or can reasonably be expected to cause a hazard to fish or other aquatic life or to human or animal life in the environment.

(30) "Treatment" or "Waste Treatment" means altering the quality of wastewater by physical, chemical, or biological means, or a combination of them, that reduces the tendency of the wastes to degrade water quality or other environmental conditions.

(31) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances, that will or may cause or tend to cause pollution of any waters of the state.

(32) "WPCF Permit" means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Director under the procedures of this division or OAR 340-071-0162.

340-045-0035 Issuance of NPDES Permits

(1) DEQ will review each application on its own merits after determining the application is complete for processing. DEQ will develop recommendations under provisions of all applicable statutes, rules, regulations, and effluent guidelines of the State of Oregon and the U.S. Environmental Protection Agency.

(2) DEQ will formulate and prepare a tentative determination to issue or deny an NPDES permit for the discharge described in the application. If the tentative determination is to issue an NPDES permit, then DEQ will draft a proposed NPDES permit that includes at least the following:

- (a) Proposed effluent limitations;
- (b) Proposed biosolids limitations;
- (c) Appropriate monitoring requirements;
- (d) A Proposed schedule of compliance, if necessary, established under the Federal Act and regulations issued under it; and
- (e) Other special conditions.

(3) In order to inform potentially interested persons of the proposed discharge and of the tentative determination to issue an NPDES permit, DEQ will provide public notice as directed in sections (6) and (7) of this rule. In addition to the information required under OAR 340-045-0027(4) the public notice will contain:

- (a) When available, a description of the water quality of the receiving water body both upstream and downstream;
- (b) If the waterbody is water quality limited under Section 303(d)(1) of the Clean Water Act, a description of whether the permit relates to the parameter(s) that is water quality limited and if so, how the permit will fit within the existing Total Maximum Daily Load (TMDL) or if no TMDL exists, how it is acceptable; and
- (c) A description of any load increase proposed and action required for its approval.

(4) DEQ will prepare a fact sheet for each draft NPDES permit for a major facility and for each NPDES general permit. In addition, DEQ will prepare a fact sheet for every industrial NPDES permit that incorporates a variance and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly describe the principle facts and the significant factual, legal,

methodological, and policy questions considered in preparing the draft permit. Fact sheets will contain the following, where applicable:

- (a) A brief description of the type of facility or activity;
- (b) The type and quantity of wastes to be discharged;
- (c) Applicable standards and guidelines used as a basis for effluent and biosolids limits;
- (d) An explanation of any proposed variances;
- (e) A sketch, map, or detailed location of the discharge, where appropriate;
- (f) Information spelling out procedures for finalizing the permit and providing additional public input, including opportunity for public hearing; and
- (g) Where appropriate, an assessment of future control needs based on the adequacy of present controls, records of compliance, applicable rules and regulations;
- (h) A statement of the inclusion of a biosolids management and land application plan, if appropriate; and
- (i) Name and telephone number of a person to contact for additional information.

(5) After DEQ has drafted the public notice and prepared the proposed NPDES permit provisions DEQ will forward them to the applicant for review and comment. These comments must be submitted in writing within 14 days after mailing of the proposed materials if the comments are to receive consideration prior to final action on the application, unless the applicant requests additional time. The applicant may also waive his right for the 14-day review time in the interest of accelerating the issuance procedures.

(6) Issuing an NPDES permit, except a new NPDES permit for a major facility or a renewal NPDES permit for a major facility when there is a new or increased discharge load, is a Category III permitting action as described in OAR 340-045-0027. DEQ will provide public notice after the 14-day applicant review period has elapsed and will include the fact sheet when one is required, under section (4) of this rule.

(7) Issuing a new NPDES permit for a major facility or a renewal NPDES permit for a major facility when there is a new or increased discharge load, is a Category IV permitting action as described in OAR 340-045-0027.

(8) At the conclusion of the public involvement period, the Director will make a final determination on the application as soon as practicable and promptly notify the applicant

in writing of the final determination. For all permits that receive comments on the proposed permit requirements during the public comment period, DEQ will issue a response to comments that specifies any changed provisions in the permit, and the reasons for the changes, and that describes and responds to all significant comments. DEQ will make this response to comments available to the public on request. Any NPDES permit issued under these rules will contain such pertinent and particular conditions as may be required to comply with the Federal Act or regulations issued under it. Under federal regulations, an NPDES permit will be effective for a fixed term not to exceed five years.

(a) Denial of the permit: If the Director determines that the NPDES permit should be denied, DEQ will include in the notification the reasons for the denial under OAR 340-045-0050.

(b) Issuance of the permit: If conditions of the NPDES permit issued are different from the proposed provisions forwarded to the applicant for review, the notification shall include the reasons for the changes made. DEQ will attach a copy of the NPDES permit issued to the notification. In any case, before the Director will issue an NPDES permit that applies effluent limitations under effluent guidelines rather than water quality standards, the Director will make a determination that the permitted discharge will not violate applicable water quality standards and will provide some justification for that determination. Such justification will include, but not necessarily be limited to:

(A) A description of the anticipated effect on water quality at the mixing zone boundary of the chemical and/or physical parameter(s) upon which the size and shape of the mixing zone are based; and

(B) A statement of anticipated effect of the discharge on aquatic life.

(9) DEQ's decision is effective 20 days from the date of service of the notification or on the date specified in writing by DEQ provided this date occurs after the date of service of the notification. A request for hearing on DEQ's decision must be made by the applicant in writing within 20 days of the effective date of the permit and state the grounds for the request. The hearing will be conducted as a contested case hearing under ORS 183.413 through 183.470 and OAR chapter 340, division 011.

(a) If a request for hearing is filed on a permit for a new facility, the entire permit is stayed and will not go into effect until the hearing process is complete.

(b) If the request for hearing is for an existing facility or activity, or a new activity within an existing facility, only the contested permit condition and the conditions that cannot be implemented separately from the contested conditions are stayed until the hearing process is complete.

State of Oregon Department of Environmental Quality

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