

MEMORANDUM OF AGREEMENT

Between

The Oregon Department of Agriculture

and

The Oregon Department of Environmental Quality

concerning

Water Quality Limited Waterbodies (303(d)), Total Maximum Daily Loads (TMDLs) and Agricultural Water Quality Management Area Plans (AWQMAPs)

WHEREAS the Oregon Department of Environmental Quality (hereinafter referred to as DEQ) has responsibilities in relation to water quality under the federal Clean Water Act as enshrined in state statute and administrative rules; and

WHEREAS the Oregon Department of Agriculture (hereinafter referred to as ODA) has responsibility for regulating farming practices for water quality improvement under ORS 568-900-933 and ORS 561.191; and

WHEREAS the two agencies have responsibilities under the Oregon Plan to develop TMDLs and Agricultural Water Quality Management Area Plans (AWQMAPs); and

WHEREAS the two agencies wish to pursue a collaborative relationship to define the process for improving water quality; and

WHEREAS the two agencies intend to address all parameters exceeding water quality standards and all sources in a geographic area; and

WHEREAS the two agencies will strive to work in as large a hydrologic unit as practicable.

NOW THEREFORE, the two agencies desirous of facilitating a cooperative working relationship enter into the following agreement:

## I. Water Quality Limited 303(d) List

Pursuant to section 303(d) of the Clean Water Act, DEQ is responsible for compiling a list of waters of the state not meeting water quality standards. ODA shall review the draft list and provide input to DEQ on listing, prior to the release of the draft list for public comment.

DEQ has responsibility for prioritizing waterbodies on the 303(d) list. However, DEQ will involve ODA in the prioritization process. DEQ will develop prioritization criteria, and then discuss these with ODA. The actual prioritization of waterbodies affecting the scheduling of AWQMAPs will be mutually agreed by DEQ and ODA.

## II. 303(d) Delisting

DEQ will propose removal of waterbodies from the 303(d) list when any of the following circumstances occur:

1. waterbodies come into compliance with standards, as demonstrated by applicable data;
2. water quality standards are revised which result in a waterbody coming into compliance;
3. a use attainability analysis is completed in which a beneficial use is removed, and the applicable standard which led to the listing is no longer relevant;
4. a TMDL is approved by EPA for that waterbody;
5. a water quality management plan is developed which will ensure that waters meet standards within two years, i.e. within the listing cycle.

## III. TMDL Development

The following shall constitute the elements that make up a TMDL:

### A. TMDL Advisory Committee

DEQ will form a TMDL advisory committee with broad representation from the sub-basin to provide input on TMDL development and implementation. To the maximum extent possible this advisory committee will be based on existing watershed councils as appropriately augmented, including representation from the AWQMAP committee. DEQ shall advise local ODA staff of advisory committee meetings and shall encourage them to attend and participate in these meetings.

### B. Data/Information Gathering

DEQ, in conjunction with the advisory committee shall gather and analyze information and data sufficient to generate the TMDL.

committee, where a TMDL advisory committee is in place. ODA shall ensure that local DEQ staff are aware of meetings of the AWQMAP advisory committee and are afforded the opportunity to attend and to participate in meetings.

#### B. Determination of AWQMAP Boundary

ODA, in conjunction with the advisory committee shall determine the boundary within which a AWQMAP shall apply. The map attached at Attachment A depicting Oregon's 91 sub-basins shall be used in determining boundaries. Generally, DEQ will be working at the sub-basin level. ODA will be working at this level, or a broader geographical area, such as the basin level.

#### C. Gathering Data/Information

ODA, in conjunction with the advisory committee, will gather relevant data and information from other committees or councils in the basin from within the defined area to develop the plan. DEQ commits to sharing water quality data with ODA.

#### D. AWQMAP Elements

An AWQMAP shall consist of the following elements:

1. problem identification;
2. goal statement of water quality objectives. The overriding objective here is attainment of water quality standards;
3. measures needed to attain goals;
4. implementation schedules;
5. guidelines for public participation process, including state and local government roles and responsibilities;
6. compliance establishment and reviews;
7. monitoring of plan for effectiveness;
8. plan review schedule and revision process if conditions warrant;
9. enforcement process and strategy.

#### E. DEQ Input

During AWQMAP development, ODA will seek input from DEQ on the sufficiency of the plan to meet water quality standards, prior to going through the rulemaking process. In all cases, ODA will invite DEQ regional staff participation on a Technical Advisory Committee to the ODA's AWQMAP Local Advisory Committee.

In areas where ODA and DEQ are concurrently active, ODA will also coordinate with DEQ's TMDL Advisory Committee. As feasible, ODA will include members of DEQ's TMDL advisory committee on its AWQMAP Local Advisory Committees.

### C. TMDL Elements

The elements of an approvable TMDL are:

1. a determination of the loading capacity of the receiving waterbody, i.e. the quantity of pollutants that can be assimilated and have water quality standards met;
2. waste load allocations for point source dischargers. These will be incorporated into NPDES permits at the time of renewal or reissue;
3. load allocations for nonpoint sources. These shall be aggregate allocations to each sector, as applicable, including but not limited to; agriculture, forestry and urban within the geographic area of the TMDL;
4. an allocation for background, or natural levels of pollutants;
5. a margin of safety based on the rigor of the available data and modeling.

### D. Development of TMDL Implementation Plans

Load allocations for agricultural nonpoint sources will be provided by DEQ to ODA which will then begin developing a AWQMAP, or modifying an existing AWQMAP, to address the load allocation. DEQ will seek implementation by point sources through NPDES permits and urban nonpoint sources through mechanisms such as stormwater permits. Implementation plans for each sector will be consolidated by DEQ for submission to EPA. DEQ and ODA will communicate with each other on plan components.

### E. Public Participation

DEQ is responsible for ensuring that draft TMDLs will be released for public comment prior to submission to EPA for approval. DEQ will consult with ODA on comments received, particularly those related to the agricultural portion of the TMDL. DEQ will not unilaterally respond to public comments related to agriculture. Responses related to agriculture shall be determined collaboratively between ODA and DEQ.

### F. TMDL Submission

DEQ will compile and submit the various components of a TMDL to EPA for approval. DEQ will not forward for approval packages that it does not believe will meet EPA's requirements. DEQ will keep a record of approved TMDLs.

## IV. Agricultural Water Quality Management Area Plans (AWQMAPs) Development

### A. Advisory Committees

ODA will form a local advisory committee to assist in the development of an AWQMAP. ODA will ensure that its advisory committee maintains links with DEQ's TMDL advisory

#### F. ODA ahead of DEQ

In those circumstances where ODA is present in an area before DEQ, ODA will develop an AWQMAP as detailed above in this agreement. ODA will develop the plan with regard to the 303(d) listings and parameters exceeding standards in the area. At the time that DEQ develops load allocations for agricultural nonpoint sources or groups of sources, ODA will evaluate the AWQMAP previously developed plan to assure attainment of DEQ's load allocations for agriculture.

#### G. Public Participation

ODA is responsible for ensuring that draft Agricultural Water Quality Management Area Plans will be released for public comment prior to submission to DEQ for incorporation into TMDLs. ODA shall consult with DEQ on comments received, particularly those related to the TMDL. ODA shall not unilaterally respond to these public comments related to TMDLs. Responses will be determined collaboratively between ODA and DEQ.

All Agricultural Water Quality Management Area Plans will be codified in administrative rules. Public participation will be invited as a part of the rulemaking process.

#### H. DEQ's Role

ODA will submit the final AWQMAP to DEQ. DEQ will incorporate it into the TMDL submission to EPA.

#### I. ODA AWQMAP Implementation

Under AWQMAPs, it is ODA's intent to work with landowners on water quality issues in a proactive, voluntary manner by providing information and technical assistance for implementation of water quality protective measures.

All AWQMAPs will also contain regulatory backstops which outline measures deemed necessary by the department, and which are codified in administrative rules. Landowners found to be out of compliance will be notified and directed to take actions necessary to bring the condition of the subject lands into compliance with the area plan its associated rules. Such enforcement actions by ODA shall be pursued according to OARs 603-90-060 through 120.

#### V. Federal Lands

ODA and DEQ agree that DEQ shall be the primary point of contact in the state for federal agencies wishing to develop WQMPs/TMDLs, and that furthermore DEQs nonpoint source TMDL guidance shall form the basis for the development of such plans. DEQ will, however, involve ODA in the development of federal plans where there are

agricultural land management issues, public participation and submission of federal plans to EPA. ODA agrees to provide timely feedback to DEQ and the federal agencies so as not to delay development and submission of such plans.

VI. Coordination Meetings

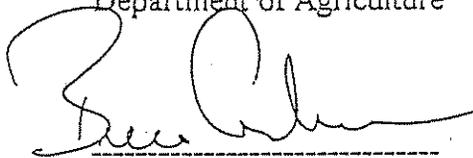
ODA and DEQ commit to meeting quarterly to:

- 1. coordinate work;
- 2. share information; and
- 3. resolve issues.

VII. Amendment and Termination

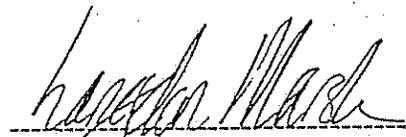
This agreement remains in force until terminated. Termination shall occur after sixty days written notice from either party. No amendments may be made to this agreement without the express written agreement of both parties. Such agreement shall be signed by the Directors of each agency.

For the State of Oregon  
Department of Agriculture



Bruce Andrews  
Director 6/29/1998

For the State of Oregon  
Department of Environmental Quality



Langdon Marsh  
Director 6/23/1998