



Oregon

John A. Kitzhaber, MD, Governor

Department of Agriculture

635 Capitol St NE
Salem, OR 97301-2532

CERTIFIED MAIL

September 30, 2014



Stephen Coleman
15151 S. Feyrer Park Road
Molalla, OR 97038

Dear Mr. Coleman:

On September 18, 2014, the Oregon Department of Agriculture (Department) documented that you had placed agricultural waste (manure) adjacent to S. Molalla Forest Road and in a location likely to enter Bear Creek. Agricultural activities on your property are subject to the Molalla/Pudding/French Prairie/North Santiam Subbasins Agricultural Water Quality Management Area regulations (Oregon Administrative Rules (OAR) 603-095-1900 to 603-095-1980)).

OAR 603-095-1940(6)(a) states: "No person subject to these rules shall violate any provision of ORS 468B.025..." ORS 468B.025 states in part that "...no person shall: (a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means." OAR 603-095-1940(6)(b) states: "Landowners and operators shall prevent the runoff or leaching of contaminated water from feed and manure storage piles into waters of the state, including but not limited to groundwater. The Department documented violations of OAR 603-095-1940(6)(a) on March 12, 2014, May 28, 2014, August 5, 2014, and September 18, 2014. In addition, the Department documented violations of OAR 603-095-1940(6)(b) on March 12, 2014, and September 18, 2014.

In response to these violations, the Department is issuing a Notice of Noncompliance and Plan of Correction (NON/POC). Failure to timely comply with any part of the NON/POC may result in the Department issuing a Notice of Civil Penalty. Page 4 of the NON/POC details the Required Corrective Actions.

You have 60 days from the date this Order is served to petition for judicial review. In addition, you may also contact me within 60 days to file a petition for reconsideration of the Order.

Sincerely,

Ray Jaendl, Director
Natural Resources Program Area
PH (503) 986-4700
FX (503) 986-4730

Enc. Notice of Noncompliance and Plan of Correction

Cc: Marion Soil and Water Conservation District
Tiffany Yelton Bram, Oregon Department of Environmental Quality



BEFORE THE OREGON DEPARTMENT OF AGRICULTURE

In the Matter of	)	NOTICE OF
Stephen Coleman	)	NONCOMPLIANCE
15151 S. Feyrer Park Road	)	AND PLAN OF CORRECTION
Molalla, OR 97038	)	(tracking #14-02)

I. BACKGROUND

Pursuant to its authority under Oregon Revised Statute (ORS) 568.900 through 568.933, ORS 561.190 through 561.200, and any other applicable ORS and Oregon Administrative Rules (OAR), the Oregon Department of Agriculture (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 or soil erosion. Upon finding that a landowner in an area subject to a water quality management plan has failed to perform actions necessary to comply with the rules adopted under ORS 568.912, the Department shall notify the landowner and direct the landowner to take any actions necessary to bring the condition of the subject lands into compliance with the rules within a reasonable period of time. A Notice of Noncompliance (NON) informs the owner or operator of a violation, including a reference to a particular statute, administrative rule, or order involved, the location of the violation, and the consequences of the violation and future violations. A Plan of Correction (POC) is 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. OAR 603-090-0080(2).

The Department herein finds that Stephen Coleman is in violation of OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b) for placing livestock waste in a location where it has entered Creamery Creek and where it is likely to enter Bear Creek:

OAR 603-095-1940(6)

Waste: Livestock and Other. Effective upon rule adoption.

(a) No person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

(b) Landowners and operators shall prevent the runoff or leaching of contaminated water from feed and manure storage piles into waters of the state, including but not limited to groundwater.

Furthermore, ORS 468B.025 reads:

...no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

II. NOTICE OF NONCOMPLIANCE

A. Findings of Fact

1. Stephen Coleman is the registered agent and operator of property at 15151 S. Feyrer Park Road, Molalla, OR 97038. The Legal Description of this property is: T05S, R02E, S10 and 15, Tax Lot 3105, 3107, and 704.
2. Agricultural activities on the property described in paragraph 1 above are subject to the Molalla/Pudding/French Prairie/North Santiam Subbasins Agricultural Water Quality Management Area Rules, Oregon Administrative Rules 603-095-1900 to 603-095-1980.
3. Department staff visited the property with Stephen Coleman on March 12, 2014, to investigate a complaint regarding potential water pollution from agricultural activities along Bear Creek and Creamery Creek. During the investigation, Department staff documented a very large manure pile that likely causes groundwater contamination and likely runs off into Bear Creek during the rainy season. Violations of OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b).
4. On May 28, 2014, in response to an additional concern from the complainant, Department staff obtained a water sample where Creamery Creek flows off of the property at Mathias Road. The water sample had an *E. coli* level of 14,873 MPN/100 mls. The state standard for *E. coli* is 406 MPN/100 mls. A violation of OAR 603-095-1940(6)(a).
5. On August 5, 2014, in response to continued concern from the complainant, Department staff obtained a water sample where Creamery Creek flows off of the property at Mathias Road. The water sample had an *E. coli* level of 14,200 MPN/100 mls. The state standard for *E. coli* is 406 MPN/100 mls. A violation of OAR 603-095-1940(6)(a).
6. Department staff visited the property with Stephen Coleman on September 18, 2014, and conducted a follow-up site visit to view changes that had been made in response to the letters dated March 25, 2014, and June 9, 2014. Stephen Coleman had taken no actions. During the investigation, Department staff documented a very large manure pile that likely causes groundwater contamination and likely runs off into Bear Creek during the rainy season. Violations of OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b).

B. Ultimate Findings of Fact

Agricultural activities on the property described in section II.A.1. above are subject to OARs 603-095-1900 to 603-095-1980.

On March 12, 2014, Department investigators documented that manure on land owned by Stephen Coleman located at 15151 S. Feyrer Park Road, Molalla, OR 97038, (T05S, R02E, S10 and 16, Tax Lot 3105, 3107, and 704) had been placed along Bear Creek where it was likely to enter, or be carried into, Bear Creek and also likely to enter groundwater.

On May 28, 2014, Department investigators documented that agricultural activities resulted in *E. coli* entering Creamery Creek above the state water quality standard.

On August 5, 2014, Department investigators documented that agricultural activities resulted in *E. coli* entering Creamery Creek above the state water quality standard.

On September 18, 2014, Department investigators documented that manure had been placed along Bear Creek where it was likely to enter, or be carried into, Bear Creek and also likely to enter groundwater.

C. Conclusions of Law

1. The violations of OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b), observed on March 12, 2014, May 28, 2014, August 5, 2014, and September 18, 2014, were caused by activities conducted by the landowner or operator on land managed by the owner or operator. OAR 603-095-1940(1).
2. On or about March 12, 2014, Stephen Coleman violated OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b) by placing waste in a location where such wastes are likely to escape, or be carried into Bear Creek, a water of the state.
3. On May 28, 2014, Stephen Coleman violated OAR 603-095-1940(6)(a) by placing waste in a location where such wastes are likely to escape, or be carried into Creamery Creek, a water of the state.
4. On August 5, 2014, Stephen Coleman violated OAR 603-095-1940(6)(a) by placing waste in a location where such wastes are likely to escape, or be carried into Creamery Creek, a water of the state.
5. On or about September 18, 2014, Stephen Coleman violated OAR 603-095-1940(6)(a) and OAR 603-095-1940(6)(b) by placing waste in a location where such wastes are likely to escape, or be carried into Bear Creek, a water of the state.

III. PLAN OF CORRECTION

Required Corrective Action(s):

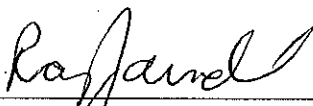
1. By November 3, 2014, export or apply at agronomic rates all manure adjacent to S. Molalla Forest Road.
2. Within 60 days of this Notice, exclude livestock from an area 15 feet on each side of Creamery Creek when there is flow in the channel.
3. Within 60 days of this Notice, exclude livestock from an area 15 feet on each side of the unnamed/unmapped tributary to Bear Creek and Bear Creek when there is flow in the channel.

In addition to any other lawful remedy, the Department may seek injunctive relief for performance of any or all of the actions specified in this Notice of Noncompliance/Plan of Correction if those acts are not performed by the deadlines specified.

IV. CONCLUSION

Failure to timely comply with any part of the Plan of Correction may result in the Department taking any action consistent with law to enforce the provisions of this order including seeking injunctive relief or assessing civil penalties. ORS 561.280; ORS 568.933; OAR 603-090-0110 to 603-090-0120.

DATED this 30th day of September, 2014.



Ray Jaindl, Director
Natural Resources Program Area
PH: (503) 986-4700
FAX: (503) 986-4730

NOTICE OF APPEAL RIGHTS: This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484.

A petition for judicial review must be filed within 60 days of the date this order is served, as specified by ORS 183.484(2). You may also request reconsideration of this order by filing a petition for reconsideration with the Department within 60 calendar days after the date of the order, OAR 137-004-0080. A petition for reconsideration must set out the specific grounds for reconsideration and may be supported by a written argument.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

cc: Marion Soil and Water Conservation District
Tiffany Yelton Bram, Oregon Department of Environmental Quality