

*****DRAFT - NOT FOR FILING*******1501:3-12-05 Operating procedures.**

- (A) Operation and management plans. The district shall approve or disapprove operation and management plans at their regularly scheduled board meetings and shall maintain a record of their actions as part of their meeting minutes. Approved plans shall be signed by the chairman. Plans may also be submitted by the owner or operator to the chief for approval. District boards of supervisors may establish such guidelines as may be needed for plan format and submission; however, all plans shall meet the standards for agricultural pollution abatement contained in rules 1501:3-12-02 to 1501:3-12-06 of the Administrative Code. Any portion of an operation and management plan specifying control of agricultural pollution shall allow the owner or operator to phase in installation of conservation practices under a schedule approved by the chief or the chief's designee until compliance with rules 1501:3-12-02 to 1501:3-12-06 of the Administrative Code is accomplished.
- (1) If the chief or the chief's designee determines that any person owning or responsible for an agricultural production or silvicultural operation is managing such operation in accordance with an operation and management plan currently approved by the chief or the chief's designee, the person shall be considered in compliance with the state rules for agricultural pollution abatement. In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural production or silvicultural operations is operating under and in substantial compliance with an approved operation and management plan.
- (2) In the event that the district finds that an operation and management plan does not meet agricultural pollution abatement standards as contained in these rules, the district shall provide a written explanation, by certified mail listing all the deficiencies to be corrected, to the person who submitted the plan. Any person may appeal the district's decision to the chief. Upon such appeal, the chief shall review the plan for compliance with these standards, and uphold the district's action or reverse it. If the chief reverses the district's action the plan shall be deemed approved. In either case, the chief shall make such determination within thirty days of receiving the appeal and shall inform the owner or operator and the district of his decision in writing. Such notification shall include the reasons for the chief's decision.
- (3) In the event that any person operating or owning an agricultural production or silvicultural operation in accordance with an approved operation and management plan who, in good faith, is following that plan, causes agricultural pollution, the plan shall be revised in a manner necessary to mitigate the agricultural pollution, as determined and approved by the district board.
- (4) In the event that the district board determines that it lacks staff or expertise to adequately review an operation and management plan, the district board of supervisors may submit such plan to the chief for review and approval or disapproval.
- (B) Pollution complaints. Any person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written complaint to the chief or the chief's designee. By written agreement with the chief, the district may receive complaints and investigate them to determine whether agricultural pollution has occurred or is imminent. The chief reserves the right to assume responsibility to investigate and resolve any complaint. The district shall provide the chief a copy of any complaint received. The district also shall inform the division of the disposition of the complaint and provide relevant information concerning the agricultural production or silvicultural operation. The district chief or his or her designee shall gather information pertinent to the alleged violation. This information includes but is not limited to:

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(1) The location and description of property and/or waters of the state allegedly being damaged;

(2) The nature and extent of damage;

(3) The alleged sources of pollution;

(4) Any efforts made to obtain voluntary cooperation to eliminate the problem.

(C) Action initiated by the division.

(1) When the division finds an apparent problem of agricultural pollution through its own observation, through notification by another agency, or through a complaint from a person, the division may investigate the complaint and shall inform the appropriate district of:

(a) The location and nature of the problem;

(b) The location and description of the agricultural production or silvicultural operation alleged to be causing the pollution problem;

(c) The nature and extent of damage;

(d) Any assistance needed from the district.

(2) When the division investigates a complaint involving an agricultural or silvicultural operation that is allegedly not in compliance with state rules for agricultural pollution abatement, a representative of the division will contact the owner or operator and inform them of the complaint and explain the agricultural pollution abatement rules and standards. The division may perform an investigation to determine whether or not there is compliance with this chapter.

(3) In order to determine if there is a violation of the rules for agricultural pollution, such investigation by the division shall include but need not be limited to the following:

(a) Identification of property boundaries, streams, water courses, wetlands, ponds, lakes, water wells, the general topography, and the general storm water runoff pattern if applicable, including roof water;

(b) For animal manure pollution: identification of the number and kind of animals in the feeding operation, the size and slope of the feedlot, the method of handling animal manure, and the overall manure management system including disposal system; for sediment pollution: estimation of average annual rates of soil erosion based on soil type, present land use, and cropping and management practices;

(c) Determination of soil types and need for additional geologic study if applicable to determine potential ground water pollution;

(d) Observation and documentation of the nature and extent of existing or potential pollution damage; documentation may include photographs, video recording, physical measurements, onsite chemical analysis and water, sediment or manure samples for lab analysis consistent with appropriate sampling procedures and nutrient status of the soil;

(e) Determination of suitability and availability of land for application of animal manure, crops grown on the land, tillage practices used, and average crop yields;

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(f) Contacts with the operator, complainant, cooperating agencies contacted, dates and times of investigations shall be recorded and kept on file along with a copy of the complaint. Copies of all information shall be made available to the district.

(4) Investigation indicating no pollution problem. If the investigative report indicates that the operation is in compliance with the rules for agricultural pollution abatement, the division may offer to assist the owner or operator in preparing an operation and management plan for the operation as it exists and have the district board or chief approve it to provide assurance that the operation is considered in compliance with the applicable rules.

(5) Owner, operator, or person responsible interested in voluntary, cooperative solution. If the investigative report indicates that a violation of the rules for agricultural pollution abatement exists and the landowner or operator is interested and willing to seek a corrective solution, the division shall:

(a) Offer information and technical assistance for developing and evaluating alternative solutions;

(b) Provide information on financial assistance available;

(c) Offer to develop an operation and management plan which complies with the rules for agricultural pollution abatement; and

(d) Secure district or chief approval of the operation and management plan to provide assurance that the operation is considered in compliance with the rules for agricultural pollution abatement.

(6) Owner, operator, or person responsible failure to cooperate in a voluntary solution.

(a) The division representative shall inform the district board of supervisors and the chief of the facts established by the investigative report, the succeeding action followed to seek compliance with the rules, and the action or inaction taken by the owner or operator. If the chief decides that a violation does exist and corrective action is needed, the chief will develop a compliance schedule and inform the person in violation by certified mail that he has a period of time to proceed voluntarily to correct the violation.

(b) If the owner or operator has failed to implement the corrective actions in the time specified, the chief shall then decide if an order shall be issued.

(D) Action by a district.

(1) When a district, which has entered into an agreement with the chief for the purpose of implementing the agricultural pollution abatement program, finds through a complaint that an agricultural production or silvicultural operation is allegedly not in compliance with state rules for agricultural pollution abatement, a representative of the district will contact the owner or operator of the operation and explain the district role in the agricultural pollution abatement program. Upon receipt of the complaint the district shall give priority to conducting an investigation. If the district determines it is unable to initiate an investigation within three business days, the division shall be notified immediately. The chief or the chief's designee shall initiate an investigation of the complaint within three business days of notification by the district.

(2) In order to determine if there is a violation of the rules for agricultural pollution, such investigation shall include but need not be limited to the following:

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- (a) Identification of property boundaries, streams, water courses, wetlands, ponds, lakes, water wells, the general topography, and the general storm water runoff pattern if applicable, including roof water;
 - (b) For animal manure pollution: identification of the number and kind of animals in the feeding operation, the size and slope of the feedlot, the method of handling animal manure, and the overall manure management scheme including disposal system; for sediment pollution: estimation of average annual rates of soil erosion based on soil type, present land use, and cropping and management practices;
 - (c) Determination of soil types and need for additional geologic study if applicable to determine potential ground water pollution of aquifer;
 - (d) Observations and documentation of the nature and extent of existing or potential pollution damage; documentation may include photographs, video recordings, physical measurements, onsite chemical analysis and water, sediment or manure samples for lab analysis consistent with appropriate sampling procedures and nutrient status of the soil;
 - (e) Determination of suitability and availability of land for application of animal manure, crops grown on the land, tillage practices used, and average crop yields;
 - (f) Contacts with the owner, operator, person responsible, complainant, cooperating agencies contacted, dates and times of investigations shall be recorded and placed in a cooperators file or other appropriate district file. A copy of the complaint and other relevant information shall be placed in the same file.
- (3) Investigation indicating no pollution problem. If the investigative report indicates that the operation is in compliance with the rules for agricultural pollution abatement, the district representative may offer to assist the owner or operator in preparing an operation and management plan for the operation as it exists and have the district board approve it to provide assurance that the operation is considered in compliance with the applicable rules.
- (4) Owner, operator, or person responsible interested in voluntary, cooperative solution. If the investigative report indicates that a violation of the rules for agricultural pollution abatement exists and the landowner or operator is interested and willing to seek a corrective solution, the district representative shall:
- (a) Offer information and technical assistance for developing and evaluating alternative solutions;
 - (b) Provide information on financial assistance available;
 - (c) Offer to develop an operation and management plan which complies with the rules for agricultural pollution abatement;
 - (d) Secure district approval of the operation and management plan to provide assurance that the operation is considered in compliance with the rules for agricultural pollution abatement; and
 - (e) Inform the owner, operator, or person responsible that if a corrective solution is not implemented within six months of the investigation, the district and the division will review the complaint and determine if adequate progress has been made towards a solution. If adequate progress is not made then the division will request that the district refer the complaint to the division for resolution or possible further enforcement action.

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- (5) Owner, operator, or person responsible failure to cooperate in a voluntary solution. If the investigative report indicates that a violation of the rules for agricultural pollution exists, but the owner, operator, or person responsible is unwilling to cooperate in correcting the problem:
- (a) The district representative shall inform the district board of supervisors and the division of the facts established by the investigative report, the succeeding action followed to seek compliance with the rules, and the action or inaction taken by the owner or operator. If the district board decides that a violation does exist and corrective action is needed, the board will inform the person in violation by certified mail of the period of time available, as determined and specified by the district, for the person to proceed voluntarily to correct the violation.
 - (b) If the owner, operator or person responsible has failed to implement the corrective actions in the time specified, the board may choose to invite the owner, operator, or person responsible by certified mail to the next regularly scheduled board meeting or file a copy of their findings with the division and a copy to the alleged violator and to the complainant if appropriate, and request the chief to issue an order. These findings include:
 - (i) The investigative report by the district representative;
 - (ii) Any pertinent testimony by the person in violation;
 - (iii) A copy of the district's decision as recorded;
 - (iv) Alternative methods for correcting the violation;
 - (v) Practices needed and cost-share eligibility;
 - (vi) A timely sequence for application of corrective measures; and
 - (vii) A time period (specified by the district) for completion of all corrective and control measures.

Replaces: 1501:15-5-15

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Certification

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