



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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(360) 715-5200 • FAX (360) 715-5225*

July 1, 2014

David & Jackie Brown  
1769 W Badger Road  
Custer, WA 98240

**Re: Warning Notice and Opportunity to Correct Violation of State Law or Agency Rule**

Dear Mr. & Mrs. Brown,

Thank you for meeting with Water Quality Inspector Chris Luerkens and me on June 27<sup>th</sup>, 2014. The purpose of this letter is to notify you of violations of the Washington Water Pollution Control Act (RCW 90.48) caused by your livestock-rearing operation at 1769 W Badger Road in Custer, and to provide recommendations to help you avoid similar violations in the future.

In January of this year, you made an application of solid manure to a field west of your facility. The timing of this application (mid-winter) and the condition of the field (corn stubble with little growing vegetation and saturated soils) greatly increased the risk of discharging manure-contaminated water to adjoining waterways.

Subsequent routine sampling conducted by the Nooksack Tribe on January 29<sup>th</sup>, February 12<sup>th</sup>, and March 19<sup>th</sup>, 2014 detected elevated levels of fecal coliform bacteria in the tributary of Dakota Creek, downstream of your manure application. Some of these samples confirmed levels of fecal coliform bacteria many times higher than the state standard set to protect the health of humans who may touch this water.

While following up on these high results, on March 3<sup>rd</sup>, I observed and documented with photos significant stormwater runoff flowing from the area where piles of manure were still visible, and into these tributaries of Dakota Creek. This visual evidence confirms that your operation caused discharges of manure-contaminated water to these streams. This does not indicate that your operation is the only source of fecal coliform bacteria detected in Dakota Creek and its tributaries.

Additionally, during the visit to your property on June 27<sup>th</sup>, I identified a pipe that likely drains manure-contaminated runoff from in front of the two front heifer barns into the waterway on the west side of your property.

Manure carries high concentrations of fecal coliform bacteria, other pathogens, nutrients, and other pollutants into waters that it discharges into. These discharges of manure-contaminated water are violations of the Washington Water Pollution Control Act. Any future violations that

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are substantially similar to the violations in this Warning Notice may result in enforcement action, without a prior warning notice or opportunity to correct the problems. Ecology reserves the right to initiate further enforcement actions, that may include prescriptive orders and/or penalties of up to \$10,000 per day per violation as needed to achieve compliance.

I am providing you with this notice and opportunity to correct the practices on your property to avoid discharges of pollution (and violations of the law) in the future. I strongly recommend that you work with the Whatcom Conservation District (360-354-2034 extension 3) to develop and implement a plan for managing manure that is protective of water quality.

Thank you for cooperating with Ecology and implementing practices that will prevent discharges of pollution into our waterways. I will follow up to ensure that these issues are being addressed in a timely manner. Please contact me at (360) 715-5217 if you would like to take advantage of technical and financial assistance that is available to you to make necessary changes to your operation in order to prevent future discharges.

A copy of the regulations pertaining to your property and livestock operation is attached for your reference.

Sincerely,



Jessica Kirkpatrick  
Water Quality Inspector

## **Attachment A**

Ecology is required by law (RCW 34.05.110(1)) to give you a copy of the state law or agency rule that you are violating, and to give you a minimum of 7 calendar days to correct the violations before the agency may impose a penalty or other administrative sanctions. (Ecology has made no determination as to whether you meet the definition of a "small business" under this section.)

The specific provisions of state law, Revised Code of Washington (RCW), and regulation, Washington Administrative Code (WAC), which your activities violate, are listed below:

- **RCW 90.48.010 Policy enunciated**

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wildlife, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.

- **RCW 90.48.080 Discharge of polluting matter in waters prohibited**

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.

- **WAC 173.201A.200(2)(b) Bacteria criteria to protect water for primary contact recreation in fresh waters.**

Fecal coliform organism levels must not exceed a geometric mean value of 100 colonies /100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 200 colonies /100 mL.

- **WAC 173.201A.510 (3) Means of Implementation  
Nonpoint source and storm water pollution.**

(a) Activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in

waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. Best management practices established in permits, orders, rules, or directives of the department shall be reviewed and modified, as appropriate, so as to achieve compliance with water quality criteria.

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria. When applicable best management practices are not being implemented, the department may conclude individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

(d) Activities which cause pollution of storm water shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate storm water pollution. The consideration and control procedures in (b) and (c) of this subsection apply to the control of pollutants in storm water.