



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Bellingham Field Office • 1440 10th Street, Ste 102 • Bellingham, WA 98225
(360) 715-5200 • FAX (360) 715-5225

May 1, 2015



Your address
is in the
Nooksack
watershed

Jim Shelton
9411 Axlund Road
Lynden, WA 98264

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

Dear Mr. Shelton,

During inspections of your farm on April 18th, 2013, and June 18th, 2013, you agreed to take the necessary steps to prevent discharges of manure-contaminated water. Specifically, you agreed to fence livestock out of the steep slope west of the barn each year while it is still saturated and discharging to surface waters off your property. On April 30th, I observed that you have not excluded livestock from this area this spring, that the area is still saturated and water is flowing off of this area and into surface waters. Livestock have created a muddy trail along the fence line on the down-slope edge of this pasture.

A previous water quality sample has documented that runoff from this part of your farm contained fecal coliform bacteria, a constituent of manure, in concentrations exceeding state water quality standards. By allowing these conditions to persist on your farm, you are causing discharges of pollution to state waters. **These discharges are violations of the Washington Water Pollution Control Act (RCW 90.48).**

Ecology prefers to work cooperatively with landowners who voluntarily implement practices that prevent discharges of pollution into our waterways. Two previous inspection reports detail my recommendations to you for preventing these discharges. I am providing you with this opportunity to correct the conditions on your property causing discharges. Technical and financial assistance is available to you to make these improvements. Please contact me immediately to develop a plan for making the necessary changes and take advantage of financial assistance programs to implement that plan.

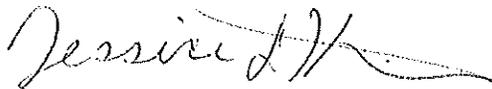
If, within 14 calendar days, you do not demonstrate effective progress in halting these discharges, Ecology reserves the right to initiate further enforcement actions, that may include prescriptive orders and/or penalties of up to \$10,000 per day as needed to achieve compliance. Ecology reserves the right to initiate further enforcement actions that may include prescriptive orders and/or penalties as needed to ensure your property complies with state law. Any future

Jim Shelton
May 1st, 2015
Page 2

violations that 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.

You may avoid further enforcement by contacting me as soon as possible at (360) 715-5217, and working cooperatively to correct the conditions causing polluted discharges. A copy of the regulations pertaining to your responsibility to prevent pollution discharges from your operation is attached for your reference.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jessica Kirkpatrick". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

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.

Your livestock keeping operation does not employ the use of all known, available and reasonable methods to prevent and control the pollution of the waters of the state.

- **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.

Your livestock keeping operation has caused manure contaminated water to discharge into waters of the state. Several components of manure including fecal coliform bacteria, nutrients, and organic matter are pollutants.

- **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.

Water contaminated with livestock manure commonly contains fecal coliform bacteria in excess of this water quality standard.

- **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.

Your livestock keeping operation does not use best management practices so as to comply with the water quality standards.

(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.

All appropriate combinations of best management practices are not being applied to your livestock keeping operation.

(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.

Your livestock keeping operation contributes nonpoint source pollution to waters of the state and is not conducted utilizing best management practices to prevent violation of water quality criteria.

(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.