



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

November 6, 2012



Your address
is in the
Nooksack
watershed

Tom Crabtree
601 Garden Drive
Lynden, WA 98264

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

Dear Mr. Crabtree:

On November 1, 2012, I conducted a citizens' complaint driven inspection (ERTS 634355) of your farm located at 9331 Hammer, Road Lynden, WA 98264, to determine if your operation was in compliance with Washington State Water Quality statutes. During the inspection, I observed and documented with photos the following:

1. Three manure-contaminated muddy areas on your farm that constituted the potential to pollute state waters, especially during rain events
2. Livestock with unfettered access to Squaw Creek (state waters)
3. You were actively operating an excavator removing trees and other vegetation in wetlands and along Squaw Creek with no Best Management Practices (BMPs) in place to protect water quality and no local, state or federal permits to conduct these excavation activities.

The discharges constitute violations of Washington State's Water Pollution Control Law under RCW 90.48.010 and RCW 90.48.080 (see attachment A). These provisions of law and regulation may be found on the Washington State Legislature web site at <http://apps.leg.wa.gov/rcw/> for the statute (RCW) and <http://apps.leg.wa.gov/wac/> for the regulations (WAC).

This **warning notice** requires that you:

1. You have already taken action to temporarily halt all discharges and potential discharges of manure-contaminated water in to state waters. These initial measures taken to stop discharges are intended to remove the immediate threat of pollution, but may not provide long-term protection from further discharges. For a long-term solution you will need to



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develop a Stormwater Pollution Prevention Plan (SWPPP) that provides Best Management Practices (BMPs) protective of water quality throughout the year.

2. Within 14 calendar days of the receipt of this letter, you must contact me to conduct a more thorough assessment of your entire farm operation. I will act as your technical service provider and will work with you to develop a SWPPP that is protective of water quality year round. You are required to report regularly to Ecology regarding your progress in developing and/or implementing the plan or to make changes to the plan. The completed assessment will provide information needed to develop a comprehensive SWPPP comprised of recognized BMPs to protect water quality. The plan must address all agricultural activities that may result in a discharge of pollutants. Once implemented, a successful plan will prevent all discharges to state surface and ground waters. You have a continuing obligation under RCW 90.48.010 to protect water quality. This means that your plan must reflect your current operation and be modified and updated as necessary in the future to achieve this legal requirement.
3. Upon completion of your plan, you must provide a copy of the plan to Ecology for review. Ecology must agree that the plan is protective of water quality, and approve the timeline for implementation of specific provisions of the plan.
4. In addition to the agricultural violations, we observed you conducting excavation activities in wetlands and in Squaw Creek with no BMPs in place to protect water quality. Although you agreed to immediately halt your excavation activities, Whatcom County Planning and Development Services (WCPDS) is going to require you to hire a wetland scientist to delineate the wetlands and their associated buffers on your property. They will likely also require you to provide mitigation and secure permits for these wetland disturbances. They may also take some level of enforcement for these activities that violate Whatcom County code. Please Contact Lyn Morganhill at WCPDS at: (360) 676-6907 or lmorgan@co.whatcom.wa.us to determine what needs to take place to bring your property back into compliance with Whatcom County code requirements.

Compliance with state law or rule

You have been very cooperative to date and have kept me informed on your attempts at making temporary corrections to halt any ongoing discharges into state waters and you have agreed to continue this close coordination. To avoid any escalation of enforcement, please stay in touch with me as your Ecology representative in developing long term plans that will keep you farm in compliance year-round. Ecology reserves the right to initiate further enforcement actions, that may include prescriptive orders and/or penalties as needed to achieve compliance.

If, within 14 calendar days, you do not demonstrate effective progress in developing this plan Ecology reserves the right to initiate further enforcement actions, that may include prescriptive orders and/or penalties as needed to achieve compliance.

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Any future 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.

Sincerely,



Mark A. "Mak" Kaufman
Water Quality Inspector
Bellingham Field Office

Enclosure: Appendix A

cc: Doug Allen, Ecology BFO Manager
Jeannie Summerhays, Ecology NW Regional Director
George Boggs, Whatcom Conservation District
Lyn Morganhill, Whatcom County Planning and Development Services

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 wild life, 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 operation does not apply methods that prevent and control the pollution of waters of the state. The compliance inspection, including photos document your lack of implementation of BMPs to protect water quality.

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.

These discharges are caused by your failure to implement Best Management Practices (BMPs) to protect water quality.

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.

Although no water samples were collected during the compliance inspection conducted on October 30, 2012, your farm will likely discharge water that exceeds the bacterial standard during rain events. In addition to exceeding the bacterial standard, your farm's discharges are also likely exceeding the state standards for sediment, turbidity, pH and biological oxygen demand (BOD) during rain events.

**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.

Your farm generates nonpoint source water pollution, which we observed during an Ecology compliance inspection. That inspection also disclosed that you have not applied all appropriate Best Management Practices (BMPs) in the correct combination to prevent the discharge of manure related contaminates into state waters.