

March 25, 2013



Your address
is in the
Nooksack
watershed

Glen Oostema
8402 Northwood Road
Lynden, WA 98264

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

Dear Mr. Oostema:

On March 13, 2013, Water Quality Inspector Mak Kauffman and I conducted a citizen's complaint driven (ERTS # 637529) inspection of your property at 8402 Northwood Road near Lynden, WA. As a result of the inspection, we have determined that violations of state law and state water quality regulations have occurred on your property. ERTS # 637529 contained photographic evidence that you failed to implement Best Management Practices (BMPs) to prevent turbid discharges above state water quality standards from two farm maintenance activities. During the inspection, I observed evidence that your failure to implement BMPs to prevent discharges of sediment laden water from the following activities likely resulted in discharges of turbid water above state water quality standards (WAC 173.201A.200.(1)(e)) into tributaries of Kamm Creek.

During the inspection, you stated that you had not implemented any BMPs to prevent the discharge of sediment laden water when you dredged the ditch that is tributary to Kamm Creek. Also, I observed that no BMPs had been implemented to prevent sediment from discharging from the bare corn field to the East of Northwood Road. During the inspection, you agreed to plant a cover crop in next year's corn crop and, if this failed to produce a vigorous growth of grass soon after the corn crop was harvested next fall, that you would plant a fall cover crop. You also agreed to seed any V-ditch that you might construct to drain the field to prevent erosion during next year's winter rainy season. Mak Kaufman provided you with additional technical assistance by recommending a seeding rate of 175 to 200 lbs of grass seed per acre to quickly produce a vigorous enough growth of grass to stabilize the soils and prevent or significantly reduce the discharge of sediments off of your post-harvest corn fields.

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The Whatcom Conservation District is a good source of technical and possible financial assistance to aid you in selecting and installing the appropriate BMPs for your farm. You may contact them at (360) 354-2035 or wcd@whatcomcd.org.

Specific Site Conditions that Constitute the Violation(s)

During the inspection, I observed and documented with photos the following conditions:

- **A field of bare soil on the East side of Northwood Road was not stabilized with a cover crop over the winter rainy season. Evidence of erosion from the field including rills and sheet erosion, along with the channelization and head-cutting of the two V-ditches that drained the field into a tributary of Kamm Creek indicated that this resulted in sediment discharges to waters of the state. A single straw bale had recently been placed at the outlet of each V-ditch into the roadside ditch. These bales were undercut and dislodged by moving water and were not effectively preventing sediment discharge into the ditch. Additionally, the use of straw bales in waterways as an erosion control BMP were specifically prohibited in earlier versions of Ecology's stormwater manuals and are not recognized as an erosion control BMP under the August 2012 version of Ecology's Stormwater Management Manual for Western Washington.**
- **The ditch along the South end of your property, from Northwood Road to the house, had been recently dredged and the spoils were piled along the side of the road. According to you, no BMPs were implemented at the time of this project to prevent sediment discharge into waters of the State.**

Ecology has elected to provide you with this **warning notice** because you were cooperative and agreed to implement BMPs to prevent sediment discharge from any future ditch and field maintenance activities. I strongly recommend that you plant a cover crop on harvested fields that will stabilize soil on the bare field through the winter months. I also strongly recommend that you work with the ditching district for that area on any future drainage maintenance projects and ensure that proper BMPs are implemented to prevent sediment discharge.

The Whatcom Conservation District is a good source of technical and possible financial assistance to aid you in selecting and installing the appropriate BMPs for your farm. You may contact them at (360) 354-2035 or wcd@whatcomcd.org.

The provisions of law and regulation cited in this letter 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).

Any future violations that are substantially similar to the violations in this Warning Notice may result in enforcement action, without a prior warning notice and opportunity to correct the problems.

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If you have questions about this notice or any of the corrective actions we've recommended, or to arrange verification of your corrective actions, please contact me at (360) 715-5217 or jessica.kirkpatrick@ecy.wa.gov.

Sincerely,



Jessica Kirkpatrick
Water Quality Inspector
Bellingham Field Office

Enclosure: Appendix A

ec: Doug Allen, Ecology BFO Manager
Josh Baldi, Ecology NW Regional Director
George Boggs, Whatcom Conservation District
Mak Kaufman, Ecology 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 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 farm does not apply methods that prevent and control the pollution of 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.

You have caused or permitted pollution in the form of sediment laden runoff to, run, seep or otherwise discharge into waters of the state during rain events.

Your farm continues to discharge sediment laden water into state waters during rain events. These discharges are caused by your failure to implement Best Management Practices (BMPs) to protect water quality.

- **WAC 173.201A.200(1)(e) Aquatic Life Turbidity Criteria in Fresh Water.**

Turbidity shall not exceed 5 Nephelometric Turbidity Units (NTUs) over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

- **Although no water samples were collected during the compliance inspection conducted on March 13, 2013, your farm likely discharged water that exceeds the turbidity standard 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) to prevent the discharge of sediment into state waters.**