



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 26, 2010



Your address
is in the
Nooksack
watershed

Mr. Lee Wiebe
6689 Malloy Road
Ferndale, WA 98248

Dear Mr. Wiebe:

RE: Warning Letter -Violations of Washington State's Water Pollution Control Act (RCW 90.48)

Thanks for meeting with me last week on such short notice to identify and address violations of Washington State's Water Pollution Control Act (RCW 90.48).

As I explained, this unannounced inspection was conducted in response to a citizen's water pollution complaint and I was able to verify that the complaint was valid from Brown Road (public access).

During this inspection I pointed out the manure/ farm management problems I could identify from the road that constitute violations of RCW 90.48. During this discussion, I explained that the normal process that Ecology adheres to in situations like this, is that Ecology makes short-term, temporary recommendations to problems that effectively halt discharges to state waters immediately, but only as a temporary measure.

For more permanent solutions, Ecology strongly recommends that farmers contact the Whatcom Conservation District to initiate the farm planning process. During this discussion, you indicated that you did not want to work with the Whatcom Conservation District to aid you in developing a nutrient management plan that would be protective of water quality. You stated that you just wanted to correct the problems we identified during the inspection and in the future operate and maintain your farm in a manner that is protective of water quality.

I explained at the time, that this is a viable and legal option, but that Ecology's experience has been that farmers that develop and implement farm plans with help from the Whatcom Conservation District have had much more success in maintaining compliance with water quality rules and regulations than farmers taking the course you are taking.



The Whatcom Conservation District is a non-regulatory agency dedicated to providing technical assistance to the agriculture community. They support all agriculture operations with technical support. I think you will be pleasantly surprised at the level of service they provide at no charge. They have a complete host of agricultural professional and technical resources they can provide you that if implemented correctly, will allow you to continue farming while still protecting water quality. Often they are able to advise you on small changes you can make to the farm that you can make that will protect water quality.

You can also hire a private consultant to develop a farm plan that is protective of water quality, but there is usually a fee for these services and the plan would ultimately have to be approved by the Whatcom CD anyway.

Remember: Regardless of what actions you take, it is your legal responsibility (RCW 90.48.010 and RCW 90.48.080) as a citizen of the state to ensure that no contaminants from your operation are reaching state waters and that you are implementing all known and reasonable technologies to prevent and control pollution (commonly known as AKART). This is normally accomplished very efficiently through farm/nutrient management planning.

Through this Warning Letter, Ecology is strongly recommending that you contact the Whatcom Conservation District to begin developing a Nutrient Management Plan that is protective of state waters.

Identifying Violations and making Recommendations for Temporary Corrective Measures

The problems I identified to you that constitute violation of RCW 90.48 based on the potential to pollute were:

- 1) There was manure contaminated water pooled in a low-lying area immediately west of your animal confinement area and your solid manure storage area. Immediately west of the pooled area was evidence that this water had flowed into the unnamed tributary of California Creek during previous rain events.

Recommended Temporary Corrective Measures: I explained that as a temporary measure, you should watch the weather and when several dry days are predicted you should pump the manure contaminated water to grass fields that you are sure won't result in polluted runoff flowing in to state waters. Then you should eliminate the pooling by filling the low-lying area with topsoil and ensure that this soil is properly stabilized after it is dumped onto the low-lying area.

Additionally you will need to eliminate any leachate from flowing off of the concrete slab where you keep your cattle penned up and from the adjacent manure solids storage area. I suggested that you pour a small concrete speed-bump type curb to contain water on the slab rather than having it runoff the slab into the field. I also explained that this would likely cause you to have a need to store the contaminated water on-site during the rainy season. This will likely mean that you will need to apply any accumulated manure- contaminated water during the winter, rainy months, when the pollution risk is the highest. It is complexities like this that are easily solved by the Whatcom Conservation District through nutrient management planning.

- 2) Your bull was fenced in an area that slopes towards and is directly adjacent to the unnamed tributary of California Creek. This area is located just south of the pooled water described in #1 above. This area has manure-contaminated mud that definitely discharges contaminants into state waters during rainfall events. I explained that having the bull on the sloped hillside with access to the stream constitutes violation of RCW 90.48. You stated that you have had the livestock fenced out of the stream for over twenty years.

Recommended Temporary Corrective Measures: The bull must be excluded from the area that slopes toward the ditch and all of that area needs to be stabilized. **Remember: You are legally required to prevent any manure-contaminated water from flowing into state waters.**

- 3) You also had a large manure-contaminated muddy area on a hillside that slopes toward the creek. This area is located immediately South of the bridge crossing that allows the cows to graze on property you or your son own on the South side of the creek without accessing the creek itself.

Recommended Temporary Corrective Measures: This area needs to be stabilized and maintained in that condition to prevent further manure contaminated discharges from entering state waters. I also explained that the bridge would need regular maintenance to remove any accumulated manure-contaminated mud to prevent contaminated discharges to state waters during rain events

Please be advised that RCW 90.48.080 prohibits causing or allowing the pollution of waters of the state and that compliance with RCW 90.48.010 and RCW 90.48.080 is now required and expected.

Also be advised that compliance with RCW 90.48 does not mean that your farm is in compliance with Whatcom County's Critical Areas Ordinance.

In a phone conversation the following day (1/21/2010), you indicated that you had already made all of the corrections mentioned above. Ecology applauds your quick response in correcting these identified problems and I will come out in the next week or so to conduct a follow-up inspection to verify the corrective measures have been implemented. I will call before coming out, so you can plan for the inspection rather than the short notice I gave on 1/20/2010.

NOTICE: The violation(s) and failure to correct the violation(s) listed above may result in issuance of an administrative order and/or civil penalties of up to \$10,000 per day per violation.

If you have any questions or need additional technical assistance do not hesitate to contact me by e-mail, fax or mail to the Bellingham Field Office, c/o Mark A. "Mak" Kaufman, using the following information:

- Mail - Dept of Ecology, Bellingham Field Office, 1440 10th Street, Suite 102, Bellingham, WA 98225
- Fax - (360) 715-5225
- Email - makk461@ecy.wa.gov

Lee Wiebe Farm
Inspection Date: January 20, 2010

Permit #: N/A
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Sincerely,



Mark A. "Mak" Kaufman, Stormwater Inspector
Bellingham Field Office
Department of Ecology

mk:ll

Certified Return-Receipt-Requested mail

ec: Nora Mena, Dept of Agriculture
Elke Dougherty, Whatcom Co. Planning and Development Services
George Boggs, Whatcom Conservation District
cc: BFO Central Files:
BFO Reading Files