STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN ADMINISTRATIVE ORDER AGAINST Dale Marr dba Marr's "Black Plush" Ranch Inc.	)))))	ADMINISTRATIVE ORDER DOCKET # 9744

To: Dale Marr
dba Marr's "Black Plush" Ranch Inc.
3121 Chandler Parkway
Bellingham, WA 98226

Order Docket #	9744
Site Location	9471 Mt. Baker Highway, Deming, WA 98244 and 9580 Mt. Baker Highway, Deming, WA 98244

The Department of Ecology (Ecology) has issued this Administrative Order (Order) #9744 requiring Dale Marr dba Marr's "Black Plush" Ranch Inc. to comply with:

- Chapter 90.48.010 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter 173.201A.200 (2)(b) Washington Administrative Code (WAC) – Water Quality Standards for Surface Waters of the State of Washington

Chapter 90.48.120(2) RCW gives Ecology the authority to issue Administrative Orders requiring compliance whenever it determines that a person has violated Chapter 90.48 RCW.

DETERMINATION OF VIOLATION(s) AND ORDER TO COMPLY

Ecology's determination that violations have occurred is based on the information listed below.

Executive Summary

Mr. Dale Marr owns and operates Marr Mink Farm. The operation is run in two proximate, but not contiguous locations. The first location is on Cornell Creek Road, (physical address: 9580 Mt. Baker Highway, Deming WA, 98244) (Cornell Creek Farm). The second location is adjacent to Mt. Baker Highway (9471 Mt. Baker Highway, Deming, WA 98244) (Mt. Baker Highway Farm). See Photo1 of attached photo log. Mr. Marr has a history of documented contaminated discharge violations dating back to 1999. See subsection entitled "History" below. In 1999, Mr. Marr was issued formal enforcement including Immediate Action Order DE 99WQ-N435 and Notice of Penalty DE 99WQ-N443 in the amount of $24,000.

The current investigation revealed that Mr. Marr had not maintained Best Management Practices (BMPs) in a manner that prevented contaminated discharges into state waters. Mr. Marr's farm was again and is currently discharging manure-related and mink food related contaminants into highly sensitive state waters. These discharges were flowing into ditches that flow to an unnamed tributary of Hedrick and Cornell Creeks. Both of these named streams have documented populations of all five salmon species and two trout species. Two species are listed as "Threatened" under the federal Endangered Species Act.

Due to: 1) the documented history of violations from the Marr farm, 2) the egregious nature of these ongoing contaminated discharges, 3) the lack of maintenance of the BMPs to prevent contaminated discharges, and 4) the sensitivity of the receiving waters Ecology is taking formal enforcement in the form of an Administrative Order requiring Mr. Marr to halt all discharges immediately and in the future and to require him to apply for and gain coverage under an Ecology Individual National Pollution Discharge Elimination System (NPDES) and State Waster Discharge Permit. Additionally, Ecology is taking formal enforcement in the form of a Notice of Penalty in the amount of $48,000.

Chronology

December 10, 2012

At 11:45 am, Ecology water quality inspector Mak Kaufman arrived at the Marr Mink Farm to conduct a compliance investigation. This investigation was conducted in response to a citizen's water pollution complaint (ERTS # 637767). Mr. Kaufman contacted Mr. Dale Marr, who owns and operates the mink farm to discuss the complaint. Upon his arrival, with just a casual look at the farm from the road, Mr. Kaufman observed several ongoing discharges of mink manure and mink food contaminated with manure flowing from each of the five barns located at the Cornell location into the South Cornell Creek Road ditch that flows past the farm. Each of the five barns at this location were built within about 20-25 feet from the ditch that flows past the farm, and the land the barns are built upon slopes toward the ditch. At the lower end of each of the five barns, there were two 5-gallon buckets receiving manure-contaminated mink food and incidental spillage from a low-pressure, nipple watering system that spills into a stainless steel watering trough that had previously served as the main source of water for the mink Mr. Marr rears. Mr. Marr installed this low-pressure, nipple watering system after Ecology took enforcement actions for similar discharges that Ecology documented in 1999. This system significantly reduced the volume of water Mr. Marr has to deal with and made compliance with state water quality standards much easier to achieve. These 5-gallon buckets mentioned above had not been properly maintained and were overflowing at the time of inspection. Mr. Kaufman observed thick bacterial mats and a leachate trails leading from the overflowing buckets towards pipes that flowed to the ditch along the south side of Cornell Creek Road. This indicated that the contaminated flows from these overtopping buckets conveyed flows directly into pipes that flowed to the ditch along the south side of Cornell Creek Road. These bacterial mats were also indications that these poorly maintained conditions on Mr. Marr's farm had been going on for quite some time and were the sources of contaminated discharges into state waters at the time of the inspection. These stainless steel watering troughs had previously been decommissioned as main source of water after similar discharges were detected and formal enforcement actions had been taken against Mr. Marr in 1999. These watering troughs now only convey small volumes of incidental drinking water spilled from a low-pressure nipple watering system that was installed after contaminated discharges were detected in 1999. See photos 5-12 in the attached photo log.

Mr. Kaufman explained to Mr. Marr that these contaminated discharges were coming from the same areas that had been documented during compliance inspections conducted in 1999. After documenting the previous discharges in 1999, Ecology took formal enforcement against Mr. Marr in the form of a $24,000 penalty and an order requiring him to permanently halt all of these discharges. He openly admitted that he had not been maintaining the BMPs as he had been formally ordered to do in 1999. Mr. Kaufman took several documentary photographs of the facility and of the contaminated discharges into pipes that collectively flow into the ditch that flows past his property. This ditch continues on and flows past the Mt. Baker location, and later flows into Hedrick Creek.

Mr. Kaufman then continued the compliance inspection at the Mt. Baker location. This part of the operation was also discharging contaminated water, in this case onto a property that Mr. Marr had deeded to Whatcom Land Trust and placed into a Conservation Reserve in perpetuity. This exchange of land was conducted in lieu of paying the entire $24,000 Notice of Penalty that had been issued for the previous discharges documented in 1999. This property was supposed to be protected in perpetuity as portions of the property have valuable salmon spawning habitat. Mr. Kaufman collected a sample of the water flowing through contaminated areas at the Mt. Baker location and off of the farm into state waters for fecal coliform bacterial analysis. The third-party, independent laboratory results indicated a FC bacterial count of 24,000 FC bacteria/100 ml water. The state limit for this water body is 100 FC bacteria/100ml water.

Mr. Kaufman and Mr. Marr then proceeded back to the Cornell location to collect documentation samples of contaminated water flowing off of his property and of water flowing onto his property. The sample results indicated 900 FC bacteria /100 ml of water flowing into his property, but also documented discharges above water quality standards for all other sample collections of water flowing off of the Cornell Creek location and into state waters. All of the samples collected of water flowing off of Mr. Marr's property exceeded state water quality standards. See photos 2-4 for sampling locations and listings of the lab results. See figures 1-2 for copies of the actual lab results.

December 14, 2012
After receiving verbal confirmation of the bacterial analysis from the certified, independent, third- party laboratory, Mr. Kaufman spoke with Mrs. Marr. She indicated that her husband had taken action to correct the problems and that they felt that the discharges had been halted. Mr. Kaufman explained to Mrs. Marr that because the previously documented discharges were substantially similar to the current discharges, and because of the state of his facility, that Ecology could not allow them to adaptively manage this facility through the normal technical assistance mechanisms used at the Whatcom Conservation District.

Mr. Kaufman explained that Ecology was likely going to require the Marr Mink Farm to hire a professional engineering firm to thoroughly evaluate their facility and design a system to collect and contain all contaminated water into impervious storage. Mr. Kaufman explained that the Marr Mink Farm must provide this analysis and design for Ecology to review. Mr. Kaufman went on to explain that this storage must be designed with enough capacity to store all contaminated water for the entire winter rainy months, and that in northeastern Whatcom County, this usually translates to 7-8 months of storage. Mr. Kaufman went on to explain that this engineering firm would also have to provide Ecology with

evidence that there was adequate cropland to apply all of this contaminated water during the growing season at agronomic rates based on known crop uptake values for nitrogen and phosphorus. Mr. Kaufman explained that in 1999 Ecology had allowed Mr. Marr to implement BMPs recommended by the Whatcom Conservation District with the expectation that he would maintain these BMPs into perpetuity. Since he has demonstrated that has not managed these BMPs properly, Ecology needs assurances that any future designs will result in permanently halting all contaminated discharges from the facility. Mr. Kaufman explained that professional engineering firms experienced in preventing industrial pollution would be required to address these issues.

Mr. Kaufman then immediately drove out to the farm to conduct a second compliance inspection to check on how effective Mr. Marr's actions were at preventing contaminated discharges into state waters.

When he arrived at the farm at 3:30 pm, Mr. Kaufman observed that Mr. Marr had replaced the five-gallon buckets used to catch the manure and mink food-contaminated water discharged by the low-pressure nipple watering system. Mr. Marr admitted that he had not "stayed on top of things", but that the changes he had made should correct these problems.

Mr. Marr stated that he had found that his kitchen sink (septic system) had been plumbed to some underground piping that flowed to the sump that Mr. Kaufman had collected a water sample from on December 10, 2012. That particular sample revealed a FC bacterial count of 120,000 Colony Forming units (CFUs) per 100 milliliters of water. Mr. Marr thought that this should solve the ongoing contaminated discharges, but Mr. Kaufman let him know that all of the gravel around all of his barns was contaminated with manure and mink food from the wheels of the mechanical feeding cart that had been driven through the manure in the barns. Mr. Marr had eliminated the need for the feeding cart to drive on some of the gravel that is exposed to precipitation (i.e. storm water) at the lower end of two of his barns that are located immediately adjacent to the ditch flowing past the barns. Mr. Kaufman explained that this would reduce the contaminant loads, but that Mr. Marr would have to do this on all of his barns and prevent the feeding cart from contaminating the gravel throughout the farm. Mr. Kaufman explained to Mr. Marr that Ecology was going to require him to hire a professional engineering firm to evaluate his entire facility and design a system that could collect, contain and properly store all contaminated water generated on the facility for 7-9 months. Mr. Kaufman explained that he would also be required to protect groundwater by halting the winter applications of manure contaminated water on his brother's farm fields and fields owned by Mark Kelly, a beef farm located on Silver Lake Road. No samples were collected that day as it was too late in the afternoon to get the samples to the lab.

January 7, 2013
Mr. Kaufman conducted an additional follow-up compliance inspection with Ecology inspectors Jessica Kirkpatrick and Chris Luerkens. Mr. Marr had not made any additional changes at the time of this follow-up compliance inspection. Mr. Kaufman collected water samples from the same locations he had collected the samples from on December 10, 2012, but added a sample site that represented storm water flows from his house and employee parking lot. See sample collection sites and a list of lab results in photo 4 in the attached photo log. To view a copy of the actual laboratory results see Figure 2 in the attached photo log.

History
Ecology has previously taken formal enforcement action for contaminated discharges that are substantially similar to the discharges currently being cited in this enforcement recommendation. In 1999, Ecology took formal enforcement in the form of Immediate Action Order DE 99WQ-N435. This order required Marr Mink Farm to cease all discharges of septic waste and mink manure to state waters and to hire a professional engineering firm to provide Ecology with an analysis of the farms wastewater and produce a design that would permanently correct the conditions on these two facilities that were causing contaminated discharges into state water.

Additionally, Ecology took enforcement in the form of Notice of Penalty DE 99WQ-N443 in the amount of $24,000 against the Marr Mink Farm. After an appeal of the order and penalty were filed, Ecology agreed to allow the Whatcom Conservation District to provide Mr. Marr with technical assistance in lieu of a professionally engineered design to correct these conditions on his property that were the causes of ongoing contaminated discharges to state waters.

The design for BMPs produced by Whatcom Conservation District were ultimately insufficient to prevent discharges. This was compounded by the fact that the BMPs recommended by WCD relied heavily upon Mr. Marr conducting a great deal of careful maintenance, which he failed to complete. The result has been ongoing contaminated discharges of manure, mink food and manure-related contaminants into Hedrick Creek, an unnamed tributary of Hedrick Creek and Cornell Creek (all state waters).

Severity
The long-term, ongoing contaminated discharges from Marr Mink Farm's two facilities appear to have caused significant degradation of aquatic habitat in the waters receiving runoff. This degradation has been documented in the form of a heavy bacterial mat covering the entire benthic surfaces (stream bottom) of unnamed tributaries of both streams. This bacterial mat has also effectively degraded all habitat required for the benthic macroinvertebrates that the juvenile salmon rely on for a food source as these fish species hatch from their respective spawning redds (nests). This habitat degradation affects seven species of the taxonomic family Salmonidae in Hedrick Creek and eight species of the taxonomic family of Salmonidae in Cornell Creek (WDF&W records).

For Hedrick Creek, these species include:
1) Both Fall and Spring runs of Chinook Salmon (*Oncorhynchus tshawytscha);*
2) *Coho Salmon (Oncorhynchus kisutch);*
3) *Chum Salmon (Oncorhynchus keta);*
4) *Pink Salmon (Oncorhynchus gorbuscha)*
5) *Both winter and summer runs of Steelhead trout (Oncorhynchus mykiss);*
6) *Bull Trout (Salvelinus confluentus)*
7) Cutthroat Trout (*Oncorhynchus clarkii)*

For Cornell Creek, these species include:
1) Both Fall and Spring runs of Chinook Salmon (*Oncorhynchus tshawytscha);*
2) *Coho Salmon (Oncorhynchus kisutch);*
3) *Chum Salmon (Oncorhynchus keta);*

4) *Pink Salmon (Oncorhynchus gorbuscha)*
5) *Both winter and summer runs of Steelhead trout (Oncorhynchus mykiss);*
6) *Bull Trout (Salvelinus confluentus)*
7) Cutthroat Trout (*Oncorhynchus clarkii)*
8) *Sockeye Salmon (Oncorhynchus nerka)*

Relevant Statues, Rules and Findings of Fact

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 (commonly known as AKART by industries) and others to prevent and control the pollution of the waters of the state of Washington.
Mr. Marr's operation of his mink rearing farm does not meet AKART for animal rearing operations. Mr. Marr has not implemented any additional Best Management Practices (BMPs) to protect state waters and he has not maintained the BMPs that he had previously implemented. This has been demonstrated through inspections and water sample collections and analysis.

RCW 90.48.030 Jurisdiction of department
The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.
Hedrick and Cornell Creeks and the ditches and waterways flowing past Mr. Marr's farm meet the definition of waters of the state. Ecology has legal authority and obligation to prevent and control pollution of these water bodies.

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.
Mr. Marr's farm discharged manure-contaminated water into state waters. This is demonstrated by water quality samples showing the exceedance of state water quality standards for fecal coliform bacteria. In addition to violations of fecal coliform standards, discharges of manure contaminated muddy water to waters of the state has substantial potential to violate water quality standards for turbidity, pH, and dissolved oxygen and biological oxygen demand (BOD) for aquatic life.

RCW 90.48.120 Notice of department's determination that violation has or will occur — Report to department of compliance with determination — Order or directive to be issued — Notice
(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter 90.56 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section.

An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.
Ecology is formally notifying Mr. Marr of these violations and is requiring correction of the conditions on his farm that are causing violations of RCW 90.48 through Administrative Order # 9744.

RCW 90.48.160 Waste disposal permit — Required — Exemptions
Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the *thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems; or

(2) Any category of waste disposer;

if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland finfish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system. **Mr. Marr's mink rearing operation has had documented discharges above state water quality standards for fecal coliform bacteria into state waters on December 10, 2012 and on January 7, 2013. As a result, Ecology is formally designating Mr. Marr's farm as a significant contributor of pollutants to state waters and designating the farm as a Confined Animal Feeding Operation. Mr. Marr is being required through Administrative Order #9744 to apply for and gain coverage under an Ecology Individual National Pollution Discharge Elimination System (NPDES) and State Waste Discharge Permit.**

WAC 173.201A.200(2)(b) Bacteria criteria to protect water extraordinary primary contact recreation in fresh waters.
Fecal coliform organism levels must not exceed a geometric mean value of 50 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 100 colonies /100 mL.
All of the water samples collected of water flowing off of Mr. Marr's farm and into state waters on December 10, 2012 and January 7, 2013 exceeded the water quality standard for fecal coliform bacteria. Hedrick Creek and Cornell Creek flow into the North Fork of the Nooksack River upstream of Maple Creek and therefore meet the criteria of "extraordinary primary contact recreation".

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. **The Marr Mink Farm generates nonpoint source pollution. This has been demonstrated during inspections and by the analysis of water samples collected of water flowing off Mr. Marr's mink farm and into state waters on December 10, 2012 and on January 7, 2013. The inspections and the analysis of these water samples indicate exceedances of water quality standards and demonstrate that he has not applied all appropriate Ecology approved Best Management Practices (BMPs) that in combination prevent the discharge of manure related contaminants into state waters.**

Corrective actions required:

For these reasons and in accordance with RCW 90.48.120(2) it is ordered that Dale Marr dba Marr's "Black Plush" Ranch Inc. take the following actions. These actions are required at the location known as Marr's "Black Plush" Ranch Inc. This farm has two non-contiguous locations:

9471 Mt. Baker Highway, Deming, WA 98244 and
9580 Mt. Baker Highway, Deming, WA 98244

Effective immediately upon receipt of this order and continuously thereafter Dale Marr dba Marr's "Black Plush" Ranch Inc.:

1) Ecology is formally designating Dale Marr's mink farm known as Marr's "Black Plush" Ranch Inc. as a Significant Contributor of Pollutants to waters of the State.

2) Ecology is formally designating Dale Marr's mink farm known as Marr's "Black Plush" Ranch Inc. to be a Concentrated Animal Feeding Operation (CAFO).

3) Within 15 days, Dale Marr dba Marr's "Black Plush" Ranch Inc. shall submit application for an individual National Pollution Discharge Elimination System (NPDES) and State Waste Discharge CAFO Permit to prevent further discharges from his farm. Below is a link to Ecology's website to access these two forms (EPA/Ecology Form 1 and EPA Form B).

http://www.ecy.wa.gov/programs/wq/permits/forms.html#state_forms

4) Immediately halt all contaminated discharges of waste into state waters from Dale Marr's mink farm known as mink farm.

5) Marr's "Black Plush" Ranch Inc. shall permanently halt the discharge of waste to state waters by hiring a qualified professional engineering firm to evaluate both facilities and land application fields and provide Ecology with a professionally engineered Pollution Prevention Plan (PPP). The PPP must address all aspects of the operation including:
   a. facility operations and maintenance (O&M),
   b. the land application of waste, and
   c. continued compliance.

   This Pollution Prevention Plan must be submitted to Ecology's Bellingham Field Office within 45 days of receipt of this Administrative Order for approval.

6) The professionally engineered Pollution Prevention Plan must address all of the following:

A. Facility Operations/Maintenance:

1) All liquid waste and water that comes into contact with contaminants must be collected and conveyed to long-term, impervious and covered waste storage facility. The facility must have enough volumetric capacity to store all liquid waste and contaminated water generated at both facilities for the entire average winter, rainy season (typically 7-9 months for this portion of Whatcom County) and when full, have the capacity to store the direct precipitation and collected contaminated run-off from a 25-year, 24-hour storm event while still maintaining 1-foot of freeboard.

2) Clean water that doesn't come into contact with waste or other pollutants must be diverted from the production area through the use of gutters, berms, roofs, tarps, or other means of conveyance to prevent contact with waste. The production area

means: "*the part of an CAFO/AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, the waste containment areas, egg washing or processing facilities, and any area used in the storage, handling, and treatment of products and wastes, or in the disposal of moralities. This includes waste stockpiled on fields.*"

3) All piping on the entire property, including the house and septic system at the Cornell Creek location, must be dye tested and tested for fecal coliform bacteria and Biological Oxygen Demand (BOD). If pipes conveying contaminated water to State waters are discovered, those piping systems shall be properly decommissioned and the sources of the contamination of those pipes be halted to prevent future contaminated discharges into state waters.

B. Land Application of Waste:

2) All waste must be tested for nutrient content prior to land application. Waste must be tested for:
   a. Percent solids.
   b. Nitrogen (Total Kjeldahl, Ammonia, and Organic Nitrogen).
   c. Phosphorus (As P2O5).
   d. Potassium.

3) Waste application rates must be based on the nutrient content of the waste.
4) The waste application rates must not exceed known agronomic uptake rates for any crop that waste is applied to.
5) A nutrient budget for the farm must be developed that demonstrates that there is an adequate land-base and vigorously growing crops capable of taking up nutrients available for land application. If other waste, not generated by the Marr farm, is applied to the same fields it must be taken into account in the nutrient budget. If not enough land is available, more must be obtained, or the amount of waste generated must be reduced. The nutrient budget must be based on:
   a. Field nutrient values, including mineralization of nutrients over the growing season.
   b. Waste nutrient values.
   c. Other sources of nutrients (e.g. chemical fertilizer, waste application by other parties, cover crop plow-down, etc).
   d. Nitrates in irrigation water.
   e. The Phosphorus index (P-index) of each field. If the P-Index is high or very high, agronomic rates must be Phosphorus based.
6) Any demonstrated exceedance of an agronomic uptake rate shall be considered pollution of groundwater and will be cited as a violation of RCW 90.48.

7) The PPP shall incorporate a minimum of a 35-foot vegetated buffer (larger buffers shall be required if the application ground slopes toward surface waters) from all surface waters for all fields when contaminated water is applied as fertilizer. The 35 feet will be measured from the top of the bank on drainage ditches and other conduits to surface water. Photographic documentation at the time of application is required to demonstrate that the 35-foot buffer requirement is implemented.
8) Waste application to frozen, snow covered, or saturated fields is prohibited. The PPP shall not allow for any of the contaminated water or solids to be applied at any other time of year than when the crops are in vigorous growth.
9) Waste application during precipitation events, or when precipitation is predicted for that day, is prohibited.
10) Waste application must not occur sooner than one day after any previous precipitation event and with a minimum of 5 dry days (non-rain event days) predicted after the waste is applied.
11) Each field where waste application occurs must be monitored during application, and daily for 10 days after application, to ensure that no waste discharges into surface waters. All waste exported from the facilities must be recorded. A current nutrient analysis of the waste is required to be given to all recipients of waste. The records must capture the following information:
    a. Who the waste was exported to (Name and Address)
    b. The amount of waste exported in gallons or pounds,
    c. Date the export occurred.
    d. which fields were applied to
    e. rates and dates of application
    f. crops grown on each field
    g. documentation that 35 foot buffer zones have been implemented.
12) An annual report must be submitted to Ecology's Bellingham Field Office (BFO) by December 1 of each year. The annual report must document each waste application, including photographic evidence demonstrating compliance with field buffer requirements, and printouts of National Weather Service (NWS) weather predications prior to waste application and for the 5 day period after waste was applied. The annual report must also provide:
    a. A nutrient test results for waste and fields prior to application. Waste application records.
    b. Monthly, third-party inspection reports and facility water testing results (see Section C below).

C. Continued Compliance

An independent, third-party contractor must be hired to conduct un-announced, representative compliance inspections and monthly water quality monitoring of water flowing off the facilities. The contractor will ensure that all prescribed BMPs are properly maintained and are protective of water quality. Water quality monitoring samples will be analyzed for:

1) Fecal coliform bacteria.
2) Oil and grease.
3) pH.
4) Biological Oxygen Demand (BOD).
5) Nutrients (Nitrate and Phosphorus).

ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a "small business" under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) listed above as these are not paperwork violations under RCW 34.05.110 and therefore you are not eligible for a waiver for a first-time paperwork violation.

FAILURE TO COMPLY WITH THIS ORDER

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 **Pollution Control Hearings Board** 1111 Israel Road SW STE 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Mark A. "Mak" Kaufman
Dept. of Ecology
1440 10th Street Suite 102
Bellingham, WA 98225
Phone: (360) 715-5221
Email: mak.kaufman@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
  www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B
- **Chapter 371-08 WAC – Practice And Procedure**
  http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08
- **Chapter 34.05 RCW – Administrative Procedure Act**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05
- **Laws:** www.ecy.wa.gov/laws-rules/ecyrcw.html
- **Rules:** www.ecy.wa.gov/laws-rules/ecywac.html

SIGNATURE

Kelly Susewind, P.E., P.G.
Water Quality Program Manager

3/25/13
Date