

January 22, 2013



Your address
is in the
Nooksack
watershed

Bill Vanderlaan,
7878 Goodwin Road
Everson, WA 98247

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

Dear Mr. Vanderlaan:

On November 1, 2012, Water quality Inspectors, Mak Kaufman, Chris Luerkens and I conducted a citizens' complaint driven inspection (ERTS 637224) of your farm located at 7878 Goodwin Road, Everson, WA 98247, to determine if your operation was in compliance with Washington State Water Pollution Control Law (RCW 90.48). During the inspection, Mr. Kaufman observed and documented with photos the following:

1. An animal confinement area denuded of vegetation and covered in mud and manure adjacent to Goodwin Road on your farm which constituted the potential to pollute state waters, especially during rain events. This confinement area is located within 5-10 feet of the east Goodwin Road ditch.

During that inspection, Mr. Kaufman explained to you that you needed to take steps to immediately stabilize the manure-contaminated area and prevent any future discharges of manure-related contaminants from flowing into state waters. This included stabilizing the feeding and watering areas with heavy use area protection, removing the cattle from the contaminated confinement area, and building a dirt berm between the confinement area and the east Goodwin Road ditch. At that time, you verbally agreed to do these things. You were very cooperative and were actively taking steps to remove the cattle from this confinement area by building a fence around a pasture located about 100 feet away from the ditch.

On November 19th 2012, Mr. Kaufman returned to the property during a rain event and collected a sample from a 4-inch diameter pipe that discharges into the east Goodwin Road ditch in front of the confinement area. The lab results showed this discharge to contain 130,000 Fecal Coliform Bacterial Colony Forming Units (CFUs) /100mL water, which is 650 times the state water quality standard for fecal coliform bacteria for this water body.

Bill Vanderlaan Farm

Inspection Dates: November 1, & December 28th, 2012

Page 2

On December 28th 2012, Water Quality Inspector, Chris Luerkens and I conducted a follow-up inspection of your farm to determine if you had taken the necessary steps to correct the issues identified during the first inspection to prevent future contaminated discharges from flowing into state waters. During the inspection, we observed and documented with photos the following:

1. Cattle are still present in the muddy, manure contaminated confinement area adjacent to the east Goodwin Road ditch. This confinement area is extremely muddy and contaminated with manure. No steps had been taken to stabilize the soils in this area. Cattle were feeding at a hay ring in the middle of the area. No steps had been taken to provide heavy use area protection for the area around the hay ring and the mud here was approximately one foot deep.
2. A dirt berm has been installed on the east edge of the confinement area. This berm has not been extended far enough north or south to prevent all muddy, manure contaminated discharges from the confinement area to the east Goodwin Road ditch. There was evidence of contaminated runoff from the confinement area just past the gate on the south end of the confinement area.
3. The operation of vehicles between the confinement area and the parking area in front of the barn had resulted in manure-contaminated mud being tracked out into the parking area. No BMP had been implemented to prevent this manure-contaminated mud from being washed into the east Goodwin Road ditch, which is approximately 10-15 feet downhill of this area.
4. The pasture that was newly fenced on November 1st was not in use and appeared to be severely trampled.
5. A 4-inch diameter pipe was observed discharging turbid water into Goodwin Road east ditch in front of the confinement area. Brown foam had accumulated around the outlet of this discharge pipe. A water sample was collected from the discharge of this pipe at that time. Lab results showed this discharge to contain 290 CFUs/100 mL of water. This is above the state water quality standard of 200 CFUs/100 mL of water.

During the inspection, you stated that you had moved the cattle back to the confinement area adjacent to the road after they had quickly trampled the newly fenced pasture to the West. You stated that the 4-inch diameter pipe discharging into Goodwin Road ditch in front of your property was not collecting runoff from your property, but that it might be originating on the property to the West. This will need to be verified through dye testing. As the land-owner you are required to prevent all contaminated discharges from flowing into state waters.

These discharges and potential 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).

Bill Vanderlaan Farm

Inspection Dates: November 1, & December 28th, 2012

Page 3

This warning notice **strongly recommends** that you:

1. Take action to immediately halt all discharges and potential discharges of manure-contaminated water into state waters. The dirt berm that was constructed on the east edge of the confinement area adjacent to the east Goodwin Road ditch should be extended to the north and south to prevent runoff from the confinement area reaching the Goodwin Road east ditch. This dirt berm is an initial measure intended to remove the immediate threat of pollution, but may not provide long-term protection from further discharges. It is strongly recommended that you remove the cattle from this confinement area and stabilize it with vegetation. If you intend to keep livestock on this area again, it is recommended that you install heavy use area protection around feeding and watering areas. Additionally, if you continue to drive vehicles from the confinement area to the area in front of the barn you must install a BMP or combination of BMPs that prevents manure contaminated mud from being tracked from the confinement area to the area in front of the barn and upslope of the Goodwin Road east ditch.
2. Contact me within 14 days to provide documentation of the actions you have taken to halt all discharges and potential discharges of manure-contaminated water into state waters.
3. Cooperate with Ecology in identifying the source of the contaminated water discharging from the 4-inch diameter pipe in front of your property. Ecology will contact you to schedule dye-testing to determine the source of this water.
4. To permanently correct this problem, you will need to reduce your herd size on this property to one cow per acre or less and keep the ground stabilized by preventing the generation of manure contaminated muddy areas. You previously mentioned that you have land you rent 1) further south on Goodwin Road, 2) on Stickney Island Road 3) as well as land you rent from Mr. Unrue in Ferndale.

Compliance with state law or rule

To avoid any escalation of enforcement, please stay in touch with me as your Ecology representative in developing long term plans that will keep your 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.

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.

Bill Vanderlaan Farm

Inspection Dates: November 1, & December 28th, 2012

Page 4

Sincerely,



Jessica Kirkpatrick
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

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 two compliance inspections, including photos and water samples 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 the source of the water discharging from the 4-inch pipe in front of your property into the east Goodwin Road ditch is unknown at this time, water samples collected on November 19th and December 28th show this water to contain fecal coliform bacteria in concentrations above the state water quality standards.

Additionally, your farm will likely discharge water that exceeds the bacterial

standard during rain events from the confinement area near the road. 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 contaminants into state waters.