

June 6, 2013



Your address
is in the
Nooksack
watershed

Lee Mobley
9191 Weidkamp Road
Lynden, WA 98269

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

Dear Ms. Mobley,

This letter serves to notify you of ongoing violations of state water quality law caused by your livestock-keeping operation at 9191 Weidkamp Road and to provide you an opportunity to correct those violations. I have attempted to contact you regarding this matter multiple times by leaving phone messages (On 4/17/2012, 4/29/2013, and 5/2/2013). When you returned my call on April 18, I reiterated this request and you agreed to set up a meeting and stated that you would check your schedule and call back to set up an appointment. During this conversation, I offered to visit your property outside of normal business hours to accommodate your work schedule. However, you have not called back and declined to return any of my other phone calls. On May 10th, I left my business card with a person at your property along with a written request to contact me. On May 16, a person at the property signed acknowledging receipt of a certified letter addressed to you. This letter stated Ecology's request and its purpose, and notified you that Ecology would take formal enforcement action if you failed to set up a site visit May 31, 2013. Although you left a voicemail on May 23 stating that you would call back during business hours, you have not done so and subsequent attempts to contact you by phone have gone unanswered.

Recently collected water samples below your property have shown fecal coliform concentrations far above water quality standards. I must notify you that visual observations of your property demonstrate that your property has and continues to discharge pollution in the form of manure-contaminated storm water into the waterway that bisects your property. I have observed the following conditions evidence of pollution discharges on your property:

1. A concrete slab adjacent to the barn on the north side of the property has heavy accumulations of manure and discharges directly into the ditch that flows through your property. Visible erosion off the edge of the slab and trails of manure-contaminated water leading into the waterway are evidence of previous discharges of contaminated water.

2. No measures have been implemented to prevent rain water from flowing off of a large pile of manure located on the north side of the property into the ditch flowing through the property. The pile is located less than 20 feet away from the ditch.
3. Horses and cattle appear to have unfettered access to surface waters within the property.

There may be other conditions on your property that are or have the potential to discharge pollution into state waters that are not visible from outside the property.

In addition, a water quality sample of the ditch flowing through your property, collected on April 5, 2013 immediately downstream of your property, indicated that the water in that ditch contained 21,000 fecal coliform colonies per 100 milliliters of water. This is over 100 times greater than the legal water quality standard for this stream, and poses a health risk to humans who come into contact with this water. While I was not able to take a water quality sample of the ditch immediately upstream of your property on that day, subsequent visual observations indicate that your farm is likely a significant contributor of fecal coliform bacteria to this stream.

These 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).

I prefer to work cooperatively with you to identify the practices on your farm and correct these violations. I have and continue to extend the offer of technical assistance to you. Financial assistance may still be available to you to correct these conditions. However, I must issue this warning notice because you have declined to work cooperatively to resolve these issues.

This **warning notice** requires that you:

Take immediate action to halt all discharges and potential discharges of manure-contaminated water in to state waters. These initial measures are intended to remove the immediate threat of pollution from sources that I have identified from outside of your property. There may be additional sources not visible from outside the property and any measures you take may not provide long-term protection from further discharges. These initial measures must:

- a) prevent contaminated water from flowing off of the concrete pad behind the barn,
- b) prevent contaminated water from discharging from the unmanaged manure pile into surface waters or leaching into groundwater, and
- c) prevent contaminated water from discharging off of pasture areas. Ecology strongly recommends that you do this by removing all livestock from areas within 35 feet of surface water on the property.

2. Contact me immediately to schedule a site visit to occur on or before June 21, 2013. The purpose of this site visit is to conduct a thorough assessment of your entire farm operation. I

provide you technical assistance and will work with you to identify appropriate Best Management Practices for your farm that will be protective of water quality year round. You have a continuing obligation under RCW 90.48.010 to prevent discharges of pollution to state waters. This means that you must adapt the management of your farm when conditions change to prevent the discharge of polluting matter from your farm at all times.

3. By August 15, 2013, complete implementation of all long-term appropriate Best Management Practices and contact me to conduct a follow-up site visit to verify that livestock on the property will not pose the potential to discharge pollution to state waters throughout the upcoming rainy season.

Compliance with state law or rule

Ecology reserves the right to initiate further enforcement actions that may include prescriptive orders and/or penalties as needed to achieve compliance. To avoid further escalation of formal enforcement, contact me immediately to schedule a site-visit to occur on or before 14 days from the receipt of this letter so that I can evaluate your entire operation and work with you to develop a plan for correcting these conditions. Financial assistance will not be available if Ecology issues further formal enforcement actions to gain compliance with state law on this property.

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 the problems.

Sincerely,



Jessica Kirkpatrick
Water Quality Inspector
Bellingham Field Office

Enclosure: Appendix A

cc: Doug Allen, Ecology BFO Manager
Chris Luerkens, Ecology Water Quality Inspector
Steve Hood, Ecology Water Quality Engineer

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. Visual observation from outside of the property has confirmed this.

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 discharges of polluting matter into state waters by failing to implement Best Management Practices (BMPs) to protect water quality. Visual observation from outside of the property has confirmed this.

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 from your property, on April 5th, 2013, a sample immediately downstream of your property indicated extremely elevated levels of fecal coliform bacteria. Visual observation of your property, as well as areas upstream of your property, indicate that your livestock operation is likely the most significant source of this bacteria. 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 from outside of your property on April 26th, 2013, and on other dates. 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.