Nonpoint Water Quality Compliance and Enforcement 101

October 21, 2024

Puyallup WQ Partnership





State pollution law, RCW 90.48

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.

Waters of the state include groundwater, saltwater, and all types of surface waters (RCW 90.48.020).



Where do I work?





Reactive Work: ERTS (Environmental Report Tracking System)

Southwest Region

Counties: Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, and Wahkiakum

Online: <u>Statewide reporting form</u> Email: <u>swroerts@ecy.wa.gov</u> Phone: 360-407-6300

Proactive Work: Watershed evaluations

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Proactive Work: How do we prioritize reaches and parcels?

Proactive Work: How do we prioritize reaches?

Updated reach priority designations for Boise, Pussyfoot and Second Ck. based on current Ecology & KC SWS data 4. In 3 years, when Julian begins monitoring at a finer scale again, we can revise priorities if needed

3. All newly discovered sites will get slotted into the priority list according to location and be dealt with accordingly Assign reach names and priorities to existing ~100

sites in database

d. Compliance/enforcement

Enumclaw-area

Circle of Life Adaptive process as necessary Management

priority.... a. Check sites of concern for status b. Discuss with KCD c. Contact landowners and refer to KCD if not already

2. In order of

cooperators. Push for voluntary compliance!

Proactive Work: How do we prioritize parcels for enforcement *within* **high-priority reaches?**

- Is this person already a KCD cooperator?
- Is the parcel associated with a licensed dairy?
- Can I even access the parcel to look at it?
- How bad does it look? In what ways? Is that changing over time? (Perceived risk to water quality)
- Are there conditions that would prevent enforcement from being effective here, or that would bog us down/drain our limited resources? (e.g. landowner mental health issues)
- Are there equity concerns?

OK, so we've narrowed down some parcels for enforcement.... How does that work?

The Rube Goldberg Machine of Enforcement

effective nonpoint enforcement

bureaucratic red tape

Administrative order

- Ecology funding no longer available to landowner
- Ecology determines the exact BMPs and how they are to be installed
- Landowner must work on Ecology's timeline (usually a tighter timeline)
- Some CDs will no longer provide services to landowner

Voluntary compliance

- Ecology funding available to landowner
- Landowner can choose a range of BMP alternatives & configurations
- Landowner can proceed on a self determined timeline (within reason)

Two technical assistance letters and a warning letter? Sounds easy! We should be able to knock this out in three months, right?

.....right?

Robby Long administrative order

Year-round grazing; no pasture rest, even in winter when grass is dormant. Grazing when soils are saturated has led to compaction, further runoff, and exposed soil. Drainage feature that leads to surface water

Cattle are present in field when feature is actively draining/field is wet

Unrestricted cattle access to ditches and creeks; minimal riparian vegetation

Presence of cattle in wet field has led to 'pugging' (hoof prints in soil that create compaction)

Parcel located in high-priority reach of high-priority subwatershed

Reach priority designations for Second and Pussyfoot Creeks based on current Ecology & King County E. coli data

High priority reach

Medium priority reach

Low priority reach

Muddy feeding area is directly upslope of a drainage feature that drains into Pussyfoot Creek. No apparent manure storage structure. No confinement area. No footing. No gutters on structure. Feeding area

Drainage Creek (unfenced) (unfenced)

Timeline of outreach to Robby Long by Ecology

2021: Ecology institutes new, standardized procedures for nonpoint enforcement

Nonpoint staff turnover

Fall 2023: Nonpoint staff turnover (welcome, me!)

2018

Site first noted as site of concern

Jan 2020

Technical assistance letter sent

June 2022

Technical assistance letter sent

Jan 2024

Technical assistance letter sent

Ecology outreach timeline, continued

But why did it take four months?

Several thousand layers of review and approval by various managers and assistant attorneys general

Oct 18 2024

Approved to send

June 2024

Voicemail, text message, and door hanger

Early July 2024

Documents drafted by Emily, early reviews done

Late Sept 2024

Ready to be presented at program managers team meeting...but have to schedule a month out

What's in the Administrative Order?

- 1) Develop a management plan that protects water quality.
- Structural BMPs—like fencing, buffers, and heavy use area
- Management BMPs- like rotational grazing
- 2) Implement the plan.
- 3) Prove to us you implemented the plan.
- 4) Keep implementing the plan.

What do we consider "compliant"?

Standards as presented in the Voluntary Clean Water Guidance for Agriculture (CWG)

Voluntary Clean Water Guidance for Agriculture

Introduction

Water Quality Program

Washington State Department of Ecology Olympia, Washington

December 2022, Publication 20-10-008

What do we consider "compliant" re: buffers?

Stream Category	Ephemeral	Intermittent & Perennial			
Bankfull Width	All widths	<5 ft	5-30 ft	30-150 ft	>150 ft
Core Zone	35 ft	65 ft	8o ft	100 ft	125 ft

Challenge #1: Who's on first? **Overlapping** authorities, stepping on toes, & potentially conflicting mandates

Challenge #2: Walking the **Voluntary** Compliance Tightrope/ **Getting Caught** in the Endless Loop

Challenge #3: Parcel Ownership Turnover/ ECY Staff Turnover

Challenge #4: Everything Everywhere All At Once

Enforcement FAQs

- How long does one enforcement case take?
- Why aren't we doing more enforcement around the plateau?
- What happens if people don't do what an admin order says?
- How do you choose who to enforce on?
- Why don't you take water samples?

Answers

- Even if things go right on schedule, the straightforward 'easy' cases can take almost a year
- We are doing more enforcement on the Plateau than we have ever done, and hopefully it will ramp up from here (but manage your expectations)
- Penalties, liens
- Reach prioritization, parcel prioritization, professional judgment
- We don't have to prove causation (see *Lemire vs. DOE*, 2013)

DO YOU GUYS EVER THINK ABOUT

HOW NONPOINT POLLUTION IS SO PERVASIVE AND WATERSHED-WIDE YET WE'RE TACKLING IT ON A PARCEL BY PARCEL BASIS AND ENFORCEMENT CAN TAKE YEARS FOR JUST ONE TEN ACRE PARCEL

Questions?

Resources

Review the Voluntary Clean Water Guidance for Agriculture: https://apps.ecology.wa.gov/publications/SummaryPages/2010008.html

Buffer requirements mapping tool:

https://waecy.maps.arcgis.com/apps/mapviewer/index.html?webmap= 07ea73eceae849f38f1706cbc8d7a4c1