MEMORANDUM OF UNDERSTANDING
Between the
WASHINGTON STATE DEPARTMENT OF AGRICULTURE
and the
WASHINGTON STATE DEPARTMENT OF ECOLOGY

Related to

The State of Washington's efforts to protect water quality related to livestock activities under the authority of Chapter 90.48 RCW, Water Pollution Control Act and Chapter 90.64 RCW, Dairy Nutrient Management Act.

PURPOSE AND SCOPE

The Washington State Department of Ecology (Ecology) and the Washington State Department of Agriculture (WSDA) enter into this Memorandum of Understanding (MOU) for the purpose of working towards the shared goal of using their respective authority and resources as efficiently and effectively as possible to assure water quality compliance related to livestock activities.

With this MOU, Ecology and WSDA will identify the areas that are the responsibility of each agency and in cases where the two agencies share responsibilities specify how they will coordinate and work together. The agencies are authorized for implementing water quality activities under Chapter 90.48 RCW and Chapter 90.64 RCW.

A. RESPONSIBILITIES (PRINCIPAL AGREEMENTS) – ECOLOGY

1. Ecology is responsible to EPA for Clean Water Act compliance for AFOs and CAFOs and retains the authority under Chapter 90.48 RCW to take compliance actions on any livestock operations where human health or environmental damage has or may occur due to potential or actual discharges.
2. Ecology is responsible for compliance actions for pasture or rangeland based operations.
3. Ecology is responsible for compliance actions for manure spreading operations when it is determined the manure was not applied by a dairy.
4. Ecology is responsible for compliance actions for non-dairy AFOs, CAFOs and permitted CAFOs and has ultimate authority for compliance actions on permitted dairies.
5. Ecology may take compliance actions against permitted and non-permitted dairies. In such cases, Ecology will discuss the compliance actions with WSDA and ensure that compliance actions are sufficient to protect human health and the environment.

6. Ecology is responsible for the approval of best management practices (BMPs) used to show compliance with the water quality standards.
7. Ecology will provide available monitoring data and trends analysis for livestock related pollutants to WSDA upon request and as available.
8. Ecology will include WSDA as a stakeholder in TMDL and other watershed based activities whenever livestock issues are anticipated.
9. Ecology will provide WSDA access to the NPDES database and the Environment Report Tracking System (ERTS), support in their use and provide facility site numbers for new facilities.

B. RESPONSIBILITIES (PRINCIPAL AGREEMENTS) - WSDA

1. WSDA is responsible for implementing Chapter 90.64.RCW and is required to follow Chapter 43.05 RCW.
2. WSDA is responsible for inspections and compliance actions for all dairies. WSDA is responsible for inspections and may initiate compliance action on permitted dairies. Before taking any compliance action for a permitted dairy where discharge has occurred, WSDA will notify Ecology and provide a Recommendation for Enforcement. Ecology will respond to WSDA within 30 working days of receipt of a Recommendation for Enforcement.
3. WSDA is responsible for inspections, complaint response and writing warning letters for all non-dairy permitted CAFOs.
4. WSDA is responsible for initial complaint response for non-dairy AFOs and CAFOs as long as resources are available and may write warning letters.
5. WSDA will coordinate with Ecology when compliance actions beyond warning letters are necessary for non-diary AFOs and CAFOs or permitted CAFOs.
6. WSDA will enter complaint inspections and any warning letters issued by WSDA on non-permitted AFOs and CAFOs into Ecology's NPDES data base.

C. COORDINATION

1. Ecology and WSDA will meet annually, or more frequently if needed, to discuss the state livestock program and implementation of this agreement
2. Ecology and WSDA will provide each other access to all livestock related records either agency may possess as necessary to fulfill state and federal requirements for livestock under the Clean Water Act, Chapter 90.64 (Dairy Nutrient Management Act) and Chapter 90.48 RCW (Water Pollution Control Act).
3. Ecology and WSDA will respond to requests from the other agency to discuss policy issues identified as affecting both in implementing the livestock program.
4. WSDA and Ecology will coordinate in response to public disclosure requests for AFOs, CAFOs and dairies, permitted or unpermitted.

5. When mutually agreed to, Ecology and WSDA may request the other agency to assist in carrying out responsibilities for inspections, complaint investigations and compliance actions.
6. Ecology and WSDA may coordinate field activities, follow-up inspections or compliance actions as necessary or as resources allow.
7. Ecology and WSDA may coordinate on livestock impacts to water quality during initial TMDL development, TMDL implementation, in shellfish management areas, riparian and water quality protection activities, watershed planning and state grant and loan programs.
8. Ecology and WSDA will coordinate on livestock complaints and violations as needed to address water quality related activities.
9. WSDA and Ecology will communicate prior to Ecology designating a dairy as a CAFO or requiring a CAFO to apply for the CAFO permit.
10. WSDA and Ecology will participate as resources allow with other stakeholders on livestock issues, discussion of technical standards and implementation of livestock related water quality activities.
11. When either agency is served with documents requesting remission or mitigation of a penalty issued by the other agency under RCW 43.21B.300(1) or a notice of appeal under RCW 43.21B.230, 43.21B.300(2) or 43.21B.310 when the penalty or order being appealed, the receiving agency shall immediately contact staff with either the LNMP at WSDA or the WQ program at Ecology by telephone, advising them of the documents served. The responsible agency shall immediately dispatch staff to pick up the documents. This telephone notification and pick up service shall also apply to any other documents related to such legal proceedings.
12. Attached as Appendix B is a flowchart, *Livestock Coordination Framework*, which outlines the approach Ecology and WSDA will take to address livestock related issues in the state. This flowchart does not supplant state and federal laws and other legal agreements.

D. LIVESTOCK COMPLAINTS

1. Ecology and WSDA will use ERTS to document all livestock related complaints and track their status.
2. Complaint referrals between Ecology and WSDA will be made using ERTS, and emailed to the appropriate LNMP inspector or Ecology regional contact. Referrals will be made within 5 working days of receiving the ERTS notification or from field determination of appropriate agency.
3. Urgent situations that have the probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to property will include direct notification by phone consistent with the complaint response flow chart.

4. WSDA and Ecology regional office staff will coordinate responses based on factors such as staff availability, safety, location, severity or need to clarify the type of operation.
5. Ecology and WSDA recognize that circumstances or resource limitations may prevent either agency from responding to livestock complaints.
6. Pasture and rangeland operation complaints are handled by Ecology.
7. Manure application complaints are handled by Ecology when it is determined the manure has not been applied by a dairy or permitted CAFO.
8. Complaints for dairy, AFO, permitted CAFO and manure applications made by a dairy or permitted CAFO are handled by WSDA.
9. For non-permitted, non-dairy AFO complaints, WSDA will conduct an initial assessment of the complaint and respond as staff and resources allow. WSDA will refer non-permitted, non-dairy AFO complaints to Ecology when unable to respond due to limited resources
10. Ecology will review referred complaints and respond based on resources and regional priorities.
11. When discharges occur outside normal working hours Ecology's Spill Response Program will be notified. WSDA or Ecology will conduct necessary follow-up inspections and compliance actions as outlined in this MOU
12. Attached as Appendix C is a flowchart, *Livestock & Manure Complaint Response*, which describes the shared responsibilities of each agency and outlines the process in which livestock complaints, will be addressed. ERTS coordinators and staff from each agency will use this MOU and included flowcharts to determine how livestock and manure complaints will be addressed.

E. DISCHARGE NOTIFICATION - WSDA

1. WSDA will notify Ecology headquarters and regional staff contacts via email of all discharges to waters of the state identified during routine inspections, complaint response or other types of investigations.
2. WSDA will notify local stakeholders and the state Department of Health if a discharge may endanger human health or impact shellfish bed harvest.
3. WSDA will proceed with an investigation and work with the facility, landowner, or responsible party to stop the discharge and cause of pollution, and clean up the discharge. For non-dairy discharges, if WSDA does not have resources to continue, Ecology will be notified immediately consistent with Appendix C.
4. WSDA will document the facility, landowner, or responsible party in the ERTs report and send a copy to the Ecology headquarters and regional staff within 5 days of completing the investigation.
5. WSDA will send to Ecology the final Recommendation for Enforcement and supporting documentation such as sampling analysis, maps, photos and reports for all documented discharges investigated. Transfer will be by email or by using WSDA's FTP file sharing site.

6. For non-permitted operations, WSDA will use its inspection report to notify the landowner or facility operator that Ecology will receive notification of the discharge and the landowner or facility may be required to apply for the CAFO general permit.
7. WSDA may recommend to Ecology that an AFO apply for the CAFO permit based on a discharge to waters of the state or other compliance concerns.

F. DISCHARGE NOTIFICATION – ECOLOGY

1. Ecology is responsible for issuing and administering the CAFO permit; therefore, Ecology will determine if and when an AFO that discharges must apply for the CAFO permit.
2. Ecology will notify WSDA of all discharges to waters of the state identified as potentially coming from a dairy consistent with Appendix C.
3. Ecology will notify local stakeholders and the state Department of Health if a discharge may endanger human health or impact shellfish bed harvest.
4. Ecology headquarters or regional contacts will evaluate discharge information provided by WSDA. Within 10 working days of notification, Ecology will let WSDA inspector and headquarters know if the case is a high priority. If a high priority or permitted facility with discharge, Ecology will identify appropriate staff to coordinate with WSDA.
5. Ecology will respond to WSDA within 10 working days of receipt of a Recommendation for Enforcement from WSDA on a discharge case in order to discuss possible coordination on compliance activity.
6. Ecology headquarters or regional staff and WSDA will coordinate to determine appropriate compliance responses, enforcement actions, or permit requirements as necessary or as resources allow.
7. When Ecology determines to require a dairy to apply for a permit due to a discharge, Ecology will notify WSDA prior to sending the dairy notification.

G. CAFO AND STATE WASTE PERMIT

1. Ecology is responsible for the development, issuance, cancellation and revocation of both federal NPDES permits and state waste discharge permits to CAFO facilities. Ecology will work with WSDA to implement the CAFO permit.
2. Ecology will determine CAFO permit applicability for CAFOs and AFOs that discharge or propose to discharge to state waters and may choose to designate an AFO as a CAFO.
3. Ecology is responsible for compliance actions for all violations related to the requirements of the CAFO permit.
4. Ecology will enter all CAFO permit administrative information and Ecology enforcement actions into Ecology's NPDES permit database.

5. Ecology will review nutrient management plans submitted as part of an application for CAFO permit coverage. Ecology will coordinate with WSDA to ensure plans meet CAFO permit requirements and appropriate standards, adequately protect surface and ground waters, and prevent environmental damage when implemented.
6. WSDA will review nutrient management plans submitted as part of an application for CAFO permit coverage and provide comments to Ecology to ensure plans meet CAFO permit requirements and appropriate standards, adequately protect surface and ground waters, and prevent environmental damage when implemented.
7. Ecology is responsible for approving nutrient management plans for permitted CAFOs.
8. Ecology will review CAFO permit annual reports to ensure reports meet CAFO permit requirements and protect surface and ground waters, and prevent environmental damage when implemented.
9. WSDA will review CAFO permit annual reports and provide Ecology comments. Ecology will coordinate with WSDA to ensure reports meet CAFO permit requirements and protect surface and ground waters, and prevent environmental damage when implemented.
10. Within 10 days of receipt of a written request for permit cancellation, Ecology will request WSDA to perform a permit cancellation inspection. After WSDA performs the permit cancellation inspection and provides the inspection to Ecology, Ecology will act on WSDA recommendation(s) and provide a copy to WSDA.
11. WSDA will complete a permit cancellation inspection for permitted CAFOs within 30 days of a request by Ecology and provide a recommendation for appropriate action.
12. WSDA will conduct routine inspections at least once every 24 months and will respond to complaints for all permitted CAFOs.
13. WSDA will provide Ecology written results of all inspections of permitted facilities by the last working day of the following month and no later than 60 days after any inspections.
14. WSDA will send to Ecology, for all permitted facilities, a Recommendation for Enforcement and all supporting documentation such as sampling analysis, maps, photos and reports for all documented violations investigated. Transfer will be by email or by using WSDA's FTP file sharing site.
15. Ecology will coordinate with WSDA upon receipt of a Recommendation for Enforcement to determine appropriate compliance actions. Ecology will respond to WSDA within 30 working days of receipt of a Recommendation for Enforcement if they will be assuming responsibility for the case.
16. WSDA will enter inspection data into Ecology's NPDES database no later than 60 days after an inspection.
17. WSDA will enter in Ecology's NPDES data base all data generated by WSDA for permitted facilities including inspections, registrations, investigations and compliance consistent with EPA required permit elements.

18. Notice of corrections cannot be issued for permitted facilities when a discharge has occurred.

H. DISPUTE RESOLUTION

In the event of a dispute regarding implementation of this MOU and joint program activities, the parties shall make all reasonable efforts to resolve the dispute at the lowest staff level. The parties may request the assistance of a mutually agreed upon facilitator at any time. If a facilitator is engaged, the timelines will be adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process:

Step 1: Disputes that cannot be resolved between the immediate staff involved should be documented as to timing, issue, background, attempts for resolution and any other relevant facts. A request for resolution will be presented to their immediate supervisors.

Step 2: If the dispute cannot be resolved at the immediate supervisors' level within 20 days, this step should be documented and the entire packet sent on to the Ecology Water Quality Section Manager and Livestock Nutrient Management Program (LNMP) Manager for resolution.

Step 3: If the dispute cannot be resolved at the section manager, LNMP Manager level within 20 days, this step should be documented and the entire packet sent on to the Ecology Water Quality Program Manager and the WSDA Assistant Director for resolution.

Step 4: If the dispute cannot be resolved at the Water Quality Program Manager and WSDA Assistant Director level within 20 days, this step should be documented and the entire packet sent on to each agency's Director.

I. ALTERATION AND AMENDMENTS

This MOU may be amended by mutual agreement of the parties. Such amendments will be documented in writing and signed by the signatories to this MOU, or their designees. If representatives of either agency encounter a situation where deviation from the above outline processes and agreements is necessary and/or warranted, they should immediately notify the other party and begin a cooperative dialogue in order to reach an agreeable solution. If appropriate, the parties shall modify this agreement as needed to ensure proper program implementation and to maintain NPDES AFO/CAFO delegation from EPA.

J. TERMINATION

This MOU is necessary to guide activities of the two agencies to implement a joint-agency livestock program. This MOU can be terminated by mutual agreement after discussion and with agreement by Agency Directors.

K. DISCLAIMER

This MOU is intended solely to assist the above-listed agencies in implementing Chapters 90.64 and 90.48 RCW. No duties, rights, or benefits, substantive or procedural, are created or implied by this MOU for third parties or others.

Oct 30, 2009

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ASSISTANT DIRECTOR

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10/30/09

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PROGRAM MANGER

Water Quality Program

Department of Ecology