

Water Quality Law and Regulation

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1972 Clean Water Act (CWA)
(33 U.S.C. §1251 et. seq.)



Clean Water Act

Makes it unlawful to discharge a pollutant from a point source to surface waters of the United States

UNLESS

You have a permit to do so

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Clean Water Act

- ▶ Allows authority to enforce and manage NPDES program to be delegated to a state
- ▶ In WA, Ecology is CWA authority (delegation)
- ▶ RCW 90.48.260 authorizes Ecology to establish and administer the NPDES permit program
- ▶ CWA also delegates authority for non-point source pollution control to the states

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RCW 90.48.010

Public policy is to maintain the highest possible standards to insure the purity of all waters

Require[s] the use of all known available and reasonable methods by industry and others to prevent and control the pollution of the waters of the state of Washington.

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1945 Water Pollution Control Act RCW 90.48

- ▶ Grants Ecology broad authority to control and prevent pollution of the waters of the state
- ▶ “Waters of the state” has broad meaning, includes all surface waters, underground waters, waters in manmade ditches (including irrigation ditches), wetlands, and isolated bodies of water
- ▶ Ecology authorized to administer a state permit program (RCW 90.48.160)

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Discharges Prohibited RCW 90.48.080

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.

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RCW 90.48.080

- ▶ Not limited to point sources, applies equally to non-point sources
- ▶ Applies to all “waters of the state” which includes groundwater

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CWA NPDES Permits

- ▶ National Pollution Discharge Elimination System Permits
- ▶ Covers point source pollution discharges to surface waters
- ▶ Dischargers can be covered by either a general or an individual permit
- ▶ General permits cover a variety of dischargers – including industrial, wastewater treatment, and Concentrated Animal Feeding Operations (CAFOs)

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EPA CAFO Rule

- ▶ First - to be a CAFO you have to be an Animal Feeding Operation (AFO) (40 CFR 122.23)
- ▶ To be an AFO:
 - Animals must be confined for 45 days or more, and
 - No crops are grown in the confinement area
- ▶ Categorized by size
- ▶ Different requirements may apply depending on size and what species of animals are involved

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EPA CAFO Rule

- ▶ Initially rule required virtually all CAFOs apply for NPDES permit coverage
 - Waterkeeper Alliance v. EPA, 399 F.3d 486 (2nd Cir. 2005)
 - National Pork Producers v. EPA, 635 F.3d 738 (5th Cir. 2011)
- ▶ NPDES permit required only if CAFO actually discharges to surface water
- ▶ Result is fewer facilities under mandatory application requirement

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Washington Regulatory Scheme

- ▶ Ecology is delegated NPDES agency (issues CAFO Permits)
 - Ecology issues a combined state and federal permit (WAC 173-220-170)
- ▶ WSDA is regulatory agency for dairies
- ▶ Ecology is regulatory agency for all other point and non-point source water quality matters

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RCW 90.64 Dairy Nutrient Management Act

- ▶ Establishes an inspection and technical assistance program for dairies (RCW 90.64.005)
- ▶ Requires dairies to have a nutrient management plan (RCW 90.64.026)
- ▶ Makes discharge of pollutants into the waters of the state a violation, with exceptions for
 - Chronic or catastrophic events
 - Upset
 - Bypass(RCW 90.64.010(17))

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RCW 90.64 Dairy Nutrient Management Act

Role of WSDA

- Conducts inspection program for dairy farms
 - Survey for evidence of violations
 - Identify corrective actions
 - Monitor development of nutrient management plans
 - Identify candidates for technical assistance programs
- Investigate complaints
- Issue enforcement orders and penalties for violations of RCW 90.64 or RCW 90.48
- Operates under an MOA with Ecology

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RCW 90.64 Dairy Nutrient Management Act

Role of Ecology

- If dairy discharges and/or are found to be significant contributors of pollution to surface or ground waters, designates dairy as a CAFO, issues permit
- Issues and regulates NPDES and/or state waste discharge permits to CAFOs
- Operates under an MOA with WSDA

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RCW 90.64 Dairy Nutrient Management Act

Role of Washington State Conservation Commission and Conservation Districts

- ▶ WSCC
 - Develop elements for dairy nutrient management plans that, when implemented, will not violate water quality standards
 - Assist and provide coordination for conservation districts
- ▶ Conservation Districts
 - Apply dairy nutrient management plan technologies and methods appropriate to specific operations
 - Approve dairy nutrient management plans, certify their implementation
 - Provide technical assistance

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Antidegradation Policy

- ▶ RCW 90.54.020(3)(b)
 - All wastes shall be provided with all known available and reasonable methods of treatment (AKART) prior to entry of waste materials into state waters
 - Wastes and other materials shall not be allowed to enter such waters which will reduce the existing quality of the waters

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Antidegradation Policy

- ▶ Applies to surface waters
(WAC 173-201A-260 through 410)
 - Purpose is to restore and maintain highest possible quality of surface waters
 - Ensure all human activities likely to lower water quality apply all known, available, and reasonable methods of prevention, control and treatment

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Antidegradation Policy

- ▶ Applies to groundwater (WAC 173-200-030)
 - Goal is to ensure the purity of the state's groundwaters and to protect the natural environment
 - Existing and future beneficial uses maintained and protected, and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall not be allowed

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Technical Assistance Programs RCW 43.05

- ▶ Applies to WSDA, Ecology, DOH, DNR, F&W
- ▶ Authorizes agencies to develop and provide technical assistance programs
 - Info on laws, rules, compliance methods, technologies
 - Info on methods for compliance
- ▶ Authorizes agencies to issue a Notice of Correction for violations, and, under specific conditions, a penalty

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Water Quality Standards

- ▶ For surface waters, the standards are found in WAC 173-201A
 - Standard for nitrogen is the standard for total ammonia
- ▶ For groundwater, the standards are found in WAC 173-200
 - Nitrate standard is 10 ml/L (same as drinking water)
- ▶ Both list limits for a variety of other pollutants

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Violation of WAC 173-201A Surface Water Quality Standards

- ▶ Means a discharge where specific water quality criteria are exceeded
- ▶ When applicable BMPs are not being implemented the department may conclude individual activities are causing pollution in violation of 90.48.080
- ▶ If BMPs are being applied and violation occurs, discharger must modify BMPs or apply further control measures, selected or approved by the department to achieve compliance (WAC 173-201A-510(3))

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Violations WAC 173-200 Groundwater Quality Standards

- ▶ Applies where nutrients have been applied above agronomic rates (WAC 173-200-010(3)(a))
- ▶ If a potential to pollute exists, agency can request a plan for groundwater quality evaluation (WAC 173-200-080(2) see also RCW 90.48.120)
- ▶ Enforcement: agency may issue an order, then may follow the order with a penalty (WAC 173-200-100)

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Land Applications

- ▶ Was there a discharge or substantial potential to discharge to surface or ground waters?
- ▶ Discharge as a result of rainfall or over application?
- ▶ Was the land under the control of the CAFO or, for dairies, at a location away from where the nutrients were produced?
- ▶ Was the land application at agronomic rate and in compliance with an NMP?

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Land Applications

- ▶ Were site specific practices to reduce runoff utilized?
- ▶ Was manure transferred to 3rd party or applied by the facility?

Definition of Transfer: (from CAFO permit)

The transfer of manure, litter or process waste water to other persons when the receiving facility is in direct control of:

- a) The application acreage; and
- b) The application rate; and
- c) The application times; and
- d) The transfer rate and time

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Notice of Violation RCW 90.48.120

RCW 90.48.120(1)

Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of RCW 90.48, or fails to control polluting content of waste discharged:

- Ecology shall notify such person
- In 30 days person must file a report stating what steps are taken to control or comply
- Ecology may then issue "such order or directive as it deems appropriate under the circumstances"

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Actions to Correct WQ Problem

- ▶ Non-dairy point source or non-point source
 - If immediate action required to correct a WQ problem - Ecology may issue an Administrative Order
 - Significant contributor of pollution - may be required to obtain a permit
- ▶ Dairy
 - If immediate action required to correct a WQ problem - WSDA to notify producer and refer to conservation district
 - Significant contributor of pollution - subject to enforcement provisions of RCW 90.48 and 43.05, including requirement for permit and penalties

RCW 90.48.120(2)

RCW 90.64.030(7)&(6)

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Civil Penalties

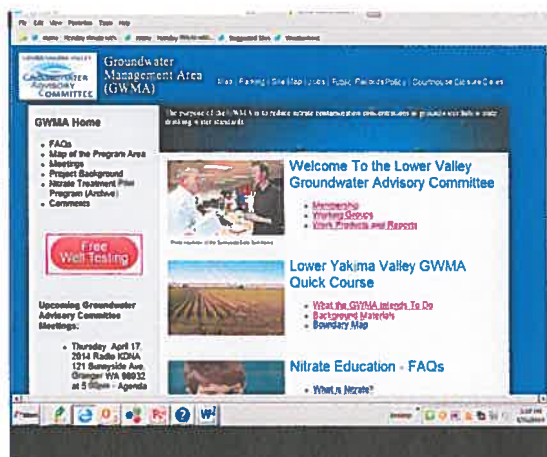
RCW 90.48.144, 90.64.030(6)

Penalties may be issued for:

- ▶ Violations of the terms of a permit
- ▶ Discharging without a permit
- ▶ Violation of any part of 90.48, including 90.48.080
- ▶ Violation of rules promulgated under 90.48 (the WACs - including the standards)
- ▶ Violation of an administrative order

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Groundwater Management Areas



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GWMA Regulations WAC 173-100

- ▶ Establishes a process for identification and designation of Ground Water Management Area (GWMA) and development of groundwater management programs (GWMP)
- ▶ Provides for an advisory committee to oversee program development
- ▶ Provides for a public hearing on the program once developed
- ▶ Provides that implementation is through state regulation and local ordinance

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Groundwater Management Areas and Programs WAC 173-100

- ▶ Lead Agency
 - WAC 173-100-080
 - Coordinates and undertakes activities (data collection, analysis, presenting draft materials for review, etc.)
 - Prepares work plan, contracts, schedule and budget
 - Coordinates SEPA review
- ▶ Groundwater Advisory Committee
 - WAC 173-100-090
 - Represents a broad spectrum of the public
 - Provides oversight advisory role

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Groundwater Management Program

- LYV GWMA long-term goal:
 - To reduce concentrations of nitrate in groundwater to below Washington State drinking water standards
- Is tailored to the specific conditions and reasons the GWMA was proposed (WAC 173-100-100)
- Is implemented through the actions of agency and local government regulations and ordinances
- Will have a public hearing
- Will undergo Ecology review and certification as consistent with intent of WAC 173-100
- Is appealable to the PCHB

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