

February 3, 2016

Office of the Information and Privacy Commissioner  
PO Box 9038  
4<sup>th</sup> Floor – 947 Fort Street  
Victoria, BC V8W 9A4

Dear Commissioner Denham:

**RE: Request that the Commissioner:**

- **Investigate and report on Government’s breach of the *Freedom of Information and Protection of Privacy Act* in delaying and restricting public access to:**
  - **Ministry of Environment authorizations permitting manure effluent discharge near Hullcar Valley drinking water sources and**
  - **Related data;**
- **Recommend reform of the *Act* to require routine public posting of Environmental Compliance Orders and Authorizations; and**
- **Recommend reform of the *Act* to define other categories of “public interest” documents that should be proactively released by Government, without request.**

On behalf of the Save the Hullcar Aquifer Team<sup>1</sup>, we request that you exercise your powers under sections 42(1) and 42(2)(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to investigate a breach of the Act by the British Columbia Government -- and recommend appropriate legal and policy reform. This apparent breach arises from the Ministry of Environment’s failure to promptly and proactively release to the public the following Ministry documents related to a dairy farm operation in the Hullcar Valley in the Northern Okanagan:

- Five Ministry of Environment documents authorizing the farm to apply liquid manure effluent to a field above a drinking water aquifer – *i.e.*, the five MOE authorizations

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<sup>1</sup> Including Al and Cathie Price.

issued pursuant to a Ministry order that requires such authorizations before effluent can be applied to the field. (Note that the order deemed previous effluent applications a likely source of nitrate pollution of public drinking water.)<sup>2</sup>; and

- Soil tests that the Ministry of Environment possessed, which measure amounts of nitrogen in the field where the farm applies liquid manure effluent.

### *Background*

In March and July 2014 Interior Health issued Water Quality Advisories to Steele Springs Waterworks Districts users and other residents drawing water from the Hullcar Unconfined Aquifer #103 (“Hullcar aquifer”). The advisories warn pregnant women, babies under 6 months of age, the elderly, individuals with weakened immune systems or chronic heart, lung and blood conditions to not drink the water.<sup>3</sup> The Advisories were issued in response to rising levels of nitrates in the water drawn from the aquifer – levels that by March 2014 began to regularly exceed the safe level of 10 ppm.<sup>4</sup> It is estimated that approximately 250 people rely upon the Hullcar aquifer for water.<sup>5</sup>

High nitrate levels raise a number of health concerns. Exposure to high levels reduces the amount of oxygen in the blood – and can cause potentially fatal methemoglobinemia (blue baby syndrome) in very young infants.<sup>6</sup> In adults, current studies suggest an association between consumption of nitrates in drinking water and cancer and thyroid dysfunction. Consumption of nitrates may negatively affect thyroid hormone production in pregnant women, which could

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<sup>2</sup> The MOE authorizations are described more fully below, but they include authorizations to H.S. Jansen and Sons Farm Ltd. dated April 16, 2014; July 15, 2014; August 27, 2014; July 15, 2015; and August 31, 2015. See Appendices D,E,F,G of the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order” and Appendix 9 of this letter. The authorizations were issued pursuant to a March 6, 2014 compliance order found at Appendix 10 of this document.

<sup>3</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order”, Appendices I and J.

<sup>4</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order”, Appendices A and B.

<sup>5</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order” at footnote 6.

<sup>6</sup> Health Canada, *Guideline for Canadian Drinking Water Quality: Guideline Technical Document-Nitrate and Nitrite*. (Ottawa: Health Canada, 2004) at pg 1

impact foetal development.<sup>7</sup> Nitrates may also create risks for immune-compromised individuals.<sup>8</sup>

In response to the elevated nitrate levels in the Steele Springs Waterworks District water, in March 2014 the MOE issued a compliance order to the farm above and near the Hullcar aquifer to stop their practice of applying liquid manure effluent to a “field of concern” – unless they received written MOE *authorization* to do so. Manure effluent is high in nitrogen, and excess spraying can cause nitrates to form in the soil which eventually can enter surface and ground water.

Despite that March 2014 compliance order – and the fact that MOE issued the compliance order on the basis that it had reasonable grounds to believe that the farm was polluting the ground water with nitrates -- MOE proceeded to authorize four additional applications of effluent on the field in the summers of 2014 and 2015. Yet in 19 of the 23 months since the original compliance order was issued, the levels of nitrates in the Steele Springs Waterworks water supply have exceeded the safe (maximum acceptable) levels set out in the Guidelines for Canadian Drinking Water Quality.<sup>9</sup> Users of the Hullcar aquifer today continue to be subject to Drinking Water Advisories warning about drinking the water.

This request letter relates our difficulties in obtaining the MOE authorizations and other information from government, on this matter of high public interest. The difficulties encountered illustrate the non-transparency of the BC government on such matters, in comparison to a number of jurisdictions.

#### **A. The Request for Information- Compliance order authorizations**

H.S. Jansen and Sons dairy farm, with a capacity of approximately 1,000 cows, operates in the same area as the Steele Springs Waterworks District, which supplies water to local residents. The farm disposes of liquid manure waste from the cows into two lagoons, which is then spread as liquid effluent fertilizer on the farm’s feed crops. A crop field sits above unconfined aquifer #103, which provides drinking water to the Steele Springs Waterworks District and to a number of private domestic wells. By March 2014 the nitrate levels in the drinking water from Steele Springs were rising significantly.

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<sup>7</sup> Health Canada, *Guideline for Canadian Drinking Water Quality: Guideline Technical Document-Nitrate and Nitrite*. (Ottawa: Health Canada, 2004) at pg 1

<sup>8</sup> “Nitrates in Well Water”, Health Link BC, British Columbia, online: <http://www.healthlinkbc.ca/healthfiles/hfile05a.stm>

<sup>9</sup> The maximum acceptable safe level is set at 10 ppm. See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order”, Appendix A. Note that in addition to the readings in Appendix A of that document, Brian Upper of Steele Springs Waterworks District has informed us that the January 7, 2016 test again exceeded the safe level, and registered 12.8 ppm.

On March 6, 2014, the Ministry of Environment (MOE) placed a Compliance Order on the farm, on the grounds that there were reasonable grounds to believe that HS Jansen contravened sections 13 and 14 of the Agricultural Waste Control Regulations, which regulate water pollution. The compliance order required that the Jansen farm cease all application of liquid effluent unless provided written authorization from the MOE to apply manure or fertilizer on their field. The order also required the farm to hire a qualified professional to:

- assess the Farm's nutrient application rates and their potential linkage to nitrate levels in Steele Springs;
- test soil nitrogen levels in the soil of the field of concern; and
- prepare recommendations to reduce nitrate levels in the Steele Springs to less than 6 ppm (mg/L).<sup>10</sup>

In March 2014 – the same month that the order was placed on the Jansens' farm – nitrate levels in the groundwater in the Steele Springs Waterworks District exceeded 10ppm, the safe level set by the Canadian Drinking Water Guidelines.<sup>11</sup>

On March 18, 2014 a verbal Water Quality Advisory was issued to the Steele Springs Waterworks District with a recommendation that the District notify all approximately 150 water users of the Waterworks District.<sup>12</sup> In addition, on July 14, a written advisory was sent by Dr. Trevor Corniel, Medical Health Officer of the Interior Health Authority, advising many of the private well owners in the Hullcar Valley who draw their drinking water from the same aquifer. They were urged to have their water tested because of nitrate contamination in the aquifer.<sup>13</sup> Residents in the region have had to install water softeners, reverse osmosis water treatment and nitrate filters to make the water drinkable – these systems reportedly cost around \$5000 to install and \$200 per year to maintain. Others purchase bottled water. Some however cannot afford to take any of these measures, and continue to drink the water.<sup>14</sup>

After the compliance order was issued to the dairy farm, the MOE has proceeded to grant authorizations to HS Jansen to apply liquid manure effluent on four occasions. Residents and farmers in the Hullcar Valley are concerned that these effluent authorizations may be unreasonable, given that nitrate levels in Steele Springs continue to measure above 10ppm.

To be specific: On July 15<sup>th</sup>, 2014, (while the nitrate in the Steele Springs water still exceeded the safe level of 10 ppm) HS Jansen and Sons Farms were granted authorization from the MOE to apply 12,000 US gallons of effluent per acre to the field of concern.

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<sup>10</sup> 6 ppm equals 6 mg/L. See the enclosed Environmental Law Centre letter to Dr. Trevor Corniel, "Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order", Appendix C, p. 5

<sup>11</sup> See Appendices 2 and Appendix 3 of this letter.

<sup>12</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corniel, "Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order", Appendix I.

<sup>13</sup> See Appendix 2 of this letter.

<sup>14</sup> Personal communication with Al Price. Also, see Appendix 11.



Again on August 27, 2014 MOE authorized the application of 12,000 gallons of effluent per acre to the field, despite the fact that the Steele Springs water still exceeded the safe level of nitrates.

MOE granted two more authorizations to spray effluent on July 15, 2015 and on August 31, 2015, when the nitrates in Steele Springs water were still very close to exceeding safe levels. Since October 2015 the water has again exceeded safe levels of nitrate.<sup>15</sup>

Indeed, in 19 of the 23 months since the compliance order was issued, the levels of nitrates in the Steele Springs Waterworks water supply have exceeded the safe (maximum acceptable) levels set out in the Guidelines for Canadian Drinking Water Quality.<sup>16</sup> Yet MOE has continued to authorize effluent applications above the aquifer. The authorizations to apply effluent were granted at times when the nitrate levels in the groundwater were either very close to or exceeding the maximum level identified by the Guidelines for Canadian Drinking Water Quality (10ppm), and our clients take the position that the effluent dispersal is unjustified and poses a risk to public health. Since today – almost two years after the initial compliance order was issued -- nitrate levels in the drinking water aquifer remain above the safe level of 10ppm, our clients have recently requested that the Drinking Water Officer issue an a Drinking Water Hazard Abatement and Prevention Order to establish a permanent moratorium on further application of effluent. (See the attached Request, which has now been supported by the Steele Springs Waterworks District and the Township of Spallumcheen,)

In order to make an informed and rational submission to the Drinking Water Officer, our clients deemed it essential to access MOE records such as:

- the authorizations to apply effluent pursuant to the compliance order, and
- the test results measuring the amount of nitrogen in the field's soil, measured before and after effluent applications.

Such records were deemed necessary, in order to help determine how much additional nitrate was potentially getting into the drinking water supply, and could continue to get into the water in the future. The volume of the effluent applied, the concentration of nitrogen in the effluent, and the measurements of available nitrogen in the 0-12 and 12-24 inch depths of the soil had not been publicly disclosed. Yet such precise information was essential for the public and users of the aquifer to know – because if the MOE orders and authorizations permitted more nitrogen to

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<sup>15</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, "Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order", pp. 7-8 and Appendix A.

<sup>16</sup> The maximum acceptable safe level is set at 10 ppm. See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, "Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order", Appendix A. Note that in addition to the readings in Appendix A of that document, Brian Upper of Steele Springs Waterworks District has informed us that the January 7, 2016 test again exceeded the safe level, and registered 12.8 ppm.

be applied to the field than the alfalfa crop and soil could absorb, the excess nitrogen could potentially enter the aquifer and drinking water supply.

In sum, our clients needed such information, in order to pass it on to Interior Health's Drinking Water Officer so that the Officer could make an order to protect the public drinking water supply.

Unfortunately, instead of recognizing the public interest in disclosure of this health-related information -- and proactively and promptly disclosing it as required by s. 25 of the Act -- government delayed disclosing some of this information, and failed to disclose other information. Specifically, government delayed disclosing the MOE authorizations for the application of effluent by the MOE -- and failed to disclose other critical information. In the process, government:

- refused an informal request for copies of all the effluent authorizations
- required us to file a formal FOI request
- when a formal request for the authorizations was filed, responded to the formal FOI request for the authorizations by imposing a \$150 fee, which, when questioned in a phone call, was described as potentially being as high as \$600.
- after suggesting a narrowing of our request could lower the fee, did respond to our request for the authorizations made on four specific dates -- and sent the authorizations made on or about the dates we specified. (However, even this disclosure was late, and missed the statutory deadline for disclosure.)
- failed to disclose an additional relevant authorization for effluent application, presumably because it was made on a date that we had not been able to specify.
- to the present day, have failed to proactively and promptly disclose the measurements of available nitrogen in the field before and after the effluent application, in response to our informal emailed request

The details are described below.

- On October 5, 2015 the ELC emailed the MOE to ask for copies of the 2015 authorizations for the application of liquid effluent – and to ask if any other authorizations had taken place other than the two 2015 authorizations and an April 2014 authorization.<sup>17</sup>
- On October 6, 2015, Jason Bourgeois, compliance section head of the Environmental Protection Division of the MOE, refused to provide the authorizations to the ELC, and

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<sup>17</sup> See Appendix 4.

stated that access to the 2015 authorizations required a formal Freedom of Information request.<sup>18</sup>

- On October 9, 2015 Rachel Gutman of the ELC submitted a formal FOI request for all effluent application authorizations made under the compliance order since March 1, 2014.<sup>19</sup>
- On October 14, 2015 Information Access Operations of the Ministry of Technology, Innovation and Citizen Services responded with an initial \$150 fee.<sup>20</sup>
- On October 16, 2015, the ELC called Information Access Operations to inquire why the fee was so high. During this telephone call, the ELC was told that the fee could be increased from \$150 to an amount (potentially \$600) to be determined after the information had been located and the time spent accessing the information could be accounted for.<sup>21</sup>
- On October 16, 2015, in order to avoid substantial fees, the ELC wrote to Information Access Operations to narrow the scope of the FOI request, and specifically requested four authorizations made pursuant to the original compliance order -- providing the dates the authorizations were issued and the original compliance order reference number.<sup>22</sup>
- On October 29<sup>th</sup>, 2015 the Information Access Operations emailed the ELC, with dates, titles and descriptions of four authorizations issued to the Jansens' farm that appeared to match the four requested -- although 3 of the four dates of the orders were slightly off (1-3 days difference). Information Access Operations asked the ELC to confirm whether these were the records requested. Rachel Gutman responded that same day confirming that the records were those that the ELC was requesting. [See Appendix 7]
- On November 5<sup>th</sup>, 2015, Rachel Gutman, on behalf of the ELC, emailed Stephanie Little and Jason Bourgeois of the MOE, requesting soil tests taken at the field where the farm sprayed effluent. She stated:

*It is my understanding that these measurements were required before and after the application of effluent and were the basis for MOE's calculations of the appropriate volume of effluent to be applied to the field of concern in the four authorizations made*

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<sup>18</sup> See Appendix 4.

<sup>19</sup> See Appendix 5.

<sup>20</sup> See Appendix 6.

<sup>21</sup> Telephone call with Eric Shiplack, Senior FOI Analyst, Ministry of Technology, Innovation and Citizens' Services. October 16, 2015.

<sup>22</sup> See Appendix 7.

*since the compliance order was issued. Can you provide me with documentation of the qualified professional's soil analysis or any data regarding these nitrogen measurements?*<sup>23</sup>

- Jason Bourgeois sent a return email to the ELC's November 5<sup>th</sup> request for soil tests on November 10<sup>th</sup>, suggesting that the ELC needed to formally update their FOI request for the authorizations to include the soil tests.<sup>24</sup> The ELC did not amend their original FOI request to include the soil tests.
- On December 11, 2015, the ELC received disclosure via email and was not charged a fee for disclosure<sup>25</sup> However disclosure was late and missed the legislated deadline for disclosure in response to FOI requests. Section 7 of the *Freedom of Information and Protection of Privacy Act* requires disclosure 30 business days after receiving a request. The ELC submitted its revised request on October 16<sup>th</sup>, 2015- this means government was required to respond by November 30<sup>th</sup>, 2015, which it failed to do.
- Although Government's late disclosure released the four effluent authorizations that we had been able to supply a (rough) date for, Government did not disclose a fifth authorization document that that we had not been able to supply a date for – the July 15, 2014 effluent authorization.<sup>26</sup> Although this July 2014 document was not identified in our dates supplied when we narrowed the FOI in order to reduce the threatened fees, it would have been encompassed under Rachel Gutman's original October 9, 2015 FOI request for all effluent application authorizations made under the compliance order.<sup>27</sup>
- To date, government has not provided us with the requested soil tests taken at the field where the Jansens' sprayed effluent, despite their obligation to proactively provide such public interest information related to a public health risk – even without the necessity of a request.
- On February 1, 2016 the Environmental Law Centre filed an application for a Drinking Water Hazard Abatement and Prevention Order with the Drinking Water Officer, asking for a moratorium on the application of effluent on the field of concern. The application includes the original compliance order and four of the authorizations.

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<sup>23</sup> See Appendix 8.

<sup>24</sup> See Appendix 8.

<sup>25</sup> See Appendix 9.

<sup>26</sup> Through other means, we have been able to obtain this undisclosed authorization, which is a revision of the April 16, 2014 authorization. The undisclosed authorization is found at Appendix D of the request for a Drinking Water Hazard Abatement and Prevention Order, attached.

<sup>27</sup> See Appendix 5.

This ELC application for a Drinking Water Order includes letters of support from the Steele Springs Waterworks District and the Township of Spallumcheen, as well as letters of concern from the BC Groundwater Association and the City of Armstrong.

### *Government's Failures – What is at Stake Here*

We submit below that s. 25 of the *Freedom of Information and Protection of Privacy Act* required MOE to disclose:

- all the effluent application authorization documents and
- the soil tests

“without delay” -- and ‘whether or not a request for access was made’. Section 25 requires the prompt and proactive disclosure of information if the information is about a significant risk to public health, or if the information’s disclosure is clearly in the public interest.

An MOE compliance order to stop adding nitrogen-laden manure effluent above a nitrate-tainted drinking water supply – and subsequent MOE authorizations to allow the further application of such effluent – are clearly about a risk of significant harm to public health. Nothing is more essential to public health than safe drinking water. Indeed, the authorizations form an important part of the scientific evidence supporting the request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order.<sup>28</sup> Such evidence should be public – it should definitely not be concealed, delayed or withheld subject to payment of unreasonable fees.

The release of such documents is clearly in the public interest, as defined in the Commissioner’s recent report on *Public Interest Disclosure by Public Bodies*.<sup>29</sup> Yet:

- We still await the disclosure of the relevant soil tests.
- It took over 2 months for the ELC to gain access to four of the five relevant effluent application authorizations.
- The fifth relevant authorization document was not provided by government.

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<sup>28</sup> Note that despite government’s delay and failure to deliver all of the authorizations, we have obtained them from other sources.

<sup>29</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies”* (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814>

- Along the way, government officials suggested that a significant payment (between \$150-\$600) would be necessary before they would release the authorization orders that the initial formal FOI request asked for – a remarkably steep price for five authorization documents, totalling only 11 pages of what should be easily retrievable documents.<sup>30</sup>

This is an unacceptable way for government to treat information about a matter that seriously affects the health of the public -- the contamination of drinking water. This kind of information should be released proactively and if requested, should be released promptly.

It is troubling that Government is apparently failing to implement the Commissioner's report on public disclosure. This is especially troubling, since such authorization orders are routinely and promptly available to the public in some jurisdictions. (See below.)

Important questions arise from this situation:

Why did government officials not proactively release the requested information promptly, in accordance with the Commissioner's *Report on Public Interest Disclosure by Public Bodies*?<sup>31</sup>

Why were substantial fees required for obtaining 11 pages of easily retrieved documents?

Why did government delay full disclosure of documents of such clear public importance?

Why are officials still not disclosing the soil tests requested, in a proactive way?

Why did government not release the requested information freely, promptly and without further request, as s. 25 requires – and as other jurisdictions do?

## **B. The Argument: Section 25 of FIPPA – Information in the public interest**

### **i. Apparent breach of s. 25**

Government has committed an apparent breach of FIPPA by refusing to proactively and publicly release the authorization orders issued by the MOE authorizing HS Jansen and Sons Farms to

<sup>30</sup> See Appendix 5, which recapitulates the FOI request for all authorizations subsequent to the compliance order. Each of the five authorizations was essentially 2 pages (see Appendix 9 for the 4 authorizations ultimately disclosed). Note that the 2-page July 15, 2014 authorization that was not disclosed is found at Appendix D of the attached Request for a Drinking Water Hazard Abatement and Prevention Order.

<sup>31</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02, "Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies"* (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814>

apply manure effluent onto its field. The MOE compliance order and authorizations for contaminated effluent release fall squarely within the category of “public interest” information that sections 25(1)(a) and (b) of FIPPA require government to release “without delay” – and without the necessity of a request.

Section 25(1) states:

*25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information*

*(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or*

*(b) the disclosure of which is, for any other reason, clearly in the public interest.*

The documents requested by the ELC on behalf of the Save the Hullcar Aquifer Team should have been released “without delay” **and without a formal request for access**, because they clearly contain information:

*(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people,*

AND

*(b) the disclosure of which is, for any other reason, clearly in the public interest.*

Regarding, (a), no risk to human health can be more important than a risk to a drinking water supply. There is a clear risk to the drinking water supply, evidenced by the Health Authority’s public Drinking Water Advisory and by the MOE’s issuing of the compliance order to the dairy farm. Significantly, the very “group of people” most at risk includes the Save Hullcar Aquifer Team, which was trying to obtain the information—after all, they draw their water from the tainted aquifer.

Regarding (b), the disclosure of the compliance order and related authorizations and reports is clearly in the public interest.

We discuss the reasons why below.

**ii. Section 25(1)(a) – Was the information requested “about a risk of significant harm to the environment or to the health or safety of the public or a group of people”?**

The application of manure effluent on the field near the aquifer presents both a risk of environmental damage and a risk to public health. (See above.) The requested MOE authorizations to apply effluent clearly provide information about both “a risk of significant harm to the environment” and a risk “to the health or safety of the public or a group of people.”

The authorization orders contain information about how much effluent is permitted to be sprayed, the concentration of nitrogen in the soil, and conditions governing the application.<sup>32</sup> The requested soil test results contain information about how much nitrogen is already present in the field being sprayed with effluent – information necessary to determine how much nitrogen might ultimately reach the aquifer. All this information is essential for members of the public who want to evaluate the potential risk that additional effluent applications pose to the environment and public health. This is especially true when the drinking water aquifer already has such excessive nitrates that it is under a Drinking Water Advisory.

First of all, nitrate contamination of water can pose a risk of significant harm to the environment because it can lead to excessive growth of algae and other aquatic plants water bodies. High nitrate levels can in effect ‘kill a lake’; the overgrowth of algae and plants deprives the water of oxygen and can destroy biodiversity.<sup>3334</sup> The EPA notes:

*“Manure, and wastewater containing manure, can severely harm river and stream ecosystems. Manure contains ammonia which is highly toxic to fish at low levels. Increased amounts of nutrients, such as nitrogen and phosphorus...can cause algal blooms which block waterways and deplete oxygen as they decompose. This can kill fish and other aquatic organisms, devastating the entire aquatic food chain.”<sup>35</sup>*

In the case of Steele Springs, nitrate contamination of aquifer #103 may also contaminate Deep Creek and Okanagan Lake. Water from the aquifer flows into Steele Springs Creek, which flows into Deep Creek and further south into Okanagan Lake. This may be particularly problematic in the summer months when water levels are low due to less snow melt and little rain, and the aquifer becomes the main source of water for Deep Creek.

Of even more critical importance, the application of manure effluent may pose a significant risk to the health of the public who drink the water in the area near the Jansen farm. The application of this effluent is a likely contributor to the spike in nitrate levels in groundwater above the maximum safe level of 10 ppm set by Canadian Water Guidelines -- leading to a Water Quality

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<sup>32</sup> See the authorization orders at Appendices D-G of the enclosed letter to the Drinking Water Officer. Note that the April 24 authorization is found at Appendix 9 of this letter.

<sup>33</sup> “Nitrogen and Water”, the U.S. Geological Survey, U.S. Department of the Interior, online: <http://water.usgs.gov/edu/nitrogen.html>

<sup>34</sup> “How’s the Water? Perspectives on Water and Rural Communities in Saskatchewan”, Saskatchewan Econetwork (econet), online: <http://econet.ca/issues/water/research.html>

<sup>35</sup> “Animal Waste, What’s the Problem?”, Pacific Southwest, Region 9, United States Environmental Protection Agency, online: <http://www3.epa.gov/region9/animalwaste/problem.html>



Advisory. The maximum safe level of 10 ppm was set for the simple reason that the effects of drinking water containing more than that amount can be very serious. As discussed above, high levels of nitrates are associated with reduced oxygen in the blood, blue baby syndrome, cancer, thyroid dysfunction, hormone production that may impact fetal development, and potential risks to immune-compromised individuals.

Recently, a jurisdiction just south of the border dealt with a similar issue. The United States District Court in the Eastern District of Washington recently held that the release of manure from dairy farms poses a serious health threat to the public. The Court in *Community Association for Restoration of the Environment et al. v. Cow Palace LLC* (Cow Palace) was dealing in part with a provision in the Resource Conservation and Recovery Act (RCRA). The RCRA:

*“provides that a civil action may be commenced against ‘any person...who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid of hazardous waste which may present an imminent and substantial endangerment to health or the environment.”*<sup>36</sup> (Emphasis added)

In *Cow Palace* the nitrate levels in the groundwater affected by the farms had increased past the limit of 10 ppm (mg/L)<sup>37</sup> set by the Environmental Protection Agency (EPA). The judge pointed to the reasoning that the EPA had set this limit “because of the serious health risks, such as various types of cancer, that arise when water is consumed at or above this level”<sup>38</sup> before reasoning that “there can be no dispute that the Dairy’s operations may present an imminent and substantial endangerment to the public who is consuming the contaminated water.”<sup>39</sup>

**iii. Section 25(1)(b) – Was disclosure of the documents “clearly in the public interest”?**

**Section 25(1)(b) provides:**

*25. Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant,*

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<sup>36</sup> *Community Association for Restoration of the Environment, Inc. v. Cow Palace LLC*, No: 13-CV-3016-TOR, United States District Court Eastern District of Washington, online: [http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415\\_78926.pdf](http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415_78926.pdf)

<sup>37</sup> 10 mg/L is the equivalent of 10ppm, the safety limit set by the Canadian Drinking Water Quality Guidelines

<sup>38</sup> *Community Association for Restoration of the Environment, Inc. v. Cow Palace LLC*, No: 13-CV-3016-TOR, United States District Court Eastern District of Washington, online: [http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415\\_78926.pdf](http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415_78926.pdf) at p. 103

<sup>39</sup> *Community Association for Restoration of the Environment, Inc. v. Cow Palace LLC*, No: 13-CV-3016-TOR, United States District Court Eastern District of Washington, online: [http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415\\_78926.pdf](http://www.centerforfoodsafety.org.php53-2.ord1-1.websitetestlink.com/files/320--order-granting-in-part-msj-11415_78926.pdf) at p. 105

*information... (b) the disclosure of which is, for any other reason, clearly in the public interest.*

Thus, in applying s. 25(1)(b), the key question is: Are the records sought “information the disclosure of which is ... clearly in the public interest”?

The Commissioner has stated that for s. 25(1)(b) to apply, disclosure must “plainly and obviously” be in the public interest. But what is “in the public interest”? In *Clubb v. Saanich (District)*, Justice Melvin considered s. 25(1)(b) and concluded that:

*The public is truly interested in matters that may affect the health and safety of children.*<sup>40</sup>

In light of the dangers of nitrate-related “blue baby” syndrome and risks to fetal development, the public interest in children’s health and safety obviously is engaged here.

Furthermore, the disclosure of these records would be in the public interest for other reasons. The Commissioner has pointed out that the public interest includes situations that affect:

- *Welfare of a Significant Number of Citizens*

The Commissioner has stated: “...the public interest is that which affects, or is in the interests of, a significant number of people, something that transcends private interest, that is of concern or interest to the public...a subject will be of public interest if it is ‘one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens or one to which considerable public notoriety or controversy has attached.’”<sup>41</sup>

Plainly and obviously, the release of the requested documents was in the public interest because they contain information relating to a serious risk to the health of the people who draw their tap water from the Steele Springs Waterworks District and the Hullcar aquifer.

- *Public Education/Debate and Government Accountability*

According to the Commissioner, there may be a clear public interest in disclosure of the information in question if disclosure:

- serves the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the

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<sup>40</sup> 1996 CanLII 8417 (BCSC) This is discussed on pp. 29 and 30 of the Commissioner’s Report on Public Interest Disclosure. See Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02*, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies” (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814>

<sup>41</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02*, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies” (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814> at p. 30

- public has to make effective use of the means of expressing public opinion or to make political choices<sup>42</sup>;
- contributes to the education of or debate amongst the public on an issue that is or may become topical<sup>43</sup>; or
- contributes meaningfully toward holding a public body accountable for its actions or decisions.<sup>44</sup>

The nitrate contaminated water supply in the Steele Spring watershed and Hullcar Valley has attracted a high level of public debate since at least March 2014. From March 2014 to the present day, the Steele Springs Waterworks District has been under a Water Quality Advisory. This has understandably caused intense public concern from those that rely on drinking water from the Steele Springs Waterworks District and nearby wells.

The issue has gained the attention of local news outlets including a local news magazine, *Your Country News*<sup>45</sup>; the *Vernon Morning Star*<sup>46</sup>; *Castanet News*<sup>47</sup>; the *Kelowna Daily Courier*<sup>48</sup>; *Global News*<sup>49</sup>; and the *CBC Morningside* radio show.<sup>50</sup> The issue has also attracted the attention of a UBC Okanagan blog focused on watershed issues in the Okanagan.<sup>51</sup> A local group of residents, the Save the Hullcar Aquifer team formed last August to address the issue after months of discussion within the community.<sup>52</sup> Chairman Brian Upper and a trustee of the Steele Springs Waterworks District at the time, Al Price, were asked to present on this issue in front of the Sustainable Environment Network Society in February 2015, and over 75 people attended from

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<sup>42</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02*, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies” (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814> (at p. 31)

<sup>43</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02*, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies” (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814> at p. 17

<sup>44</sup> As the Commissioner has pointed out, in some cases “pro-active disclosure is clearly in the public interest in order to hold the public body, or others, accountable.” *Mount Polley Report F15-02*, at pp. 31-32.

<sup>45</sup> “Steele Springs Waterworks Trustees are ‘Cautiously Optimistic’”, *Your Country News* article, November 2014, online: [http://www.beesafemonashees.org/sites/default/files/YCN%2010%20November%202014%20Steele%20Springs.p](http://www.beesafemonashees.org/sites/default/files/YCN%2010%20November%202014%20Steele%20Springs.pdf)  
[df](http://www.beesafemonashees.org/sites/default/files/YCN%2010%20November%202014%20Steele%20Springs.p)

<sup>46</sup> “Spallumcheen supports effluent spray ban”, Roger Nox for the *Vernon Morning Star*, April 12, 2015, online: <http://www.vernonmorningstar.com/news/299380451.html> and “Water quality raises concerns”, Richard Rolke for the *Vernon Morning Star*, October 8, 2014, online: <http://www.vernonmorningstar.com/news/278439241.html>

<sup>47</sup> “A year without tap water”, Carmen Weld for *Castanet: Kelowna’s Homepage*, February 7, 2015, online: <http://www.castanet.net/news/Vernon/132382/A-year-without-tap-water>

<sup>48</sup> “Contaminated water running into Okanagan Lake”, Al Price for *Daily Courier*, Kelowna, February 6, 2015, online: [http://www.kelownadailycourier.ca/opinion/article\\_6de15cd8-ada6-11e4-8b8e-2f3365c86830.html](http://www.kelownadailycourier.ca/opinion/article_6de15cd8-ada6-11e4-8b8e-2f3365c86830.html)

<sup>49</sup> “Drinking water worries in Spallumcheen,” *Global News*, October 8, 2014, online: <http://globalnews.ca/news/1605938/watch-drinking-water-worries-in-spallumcheen/>

<sup>50</sup> Telephone interview with Al Price, October 26 2015

<sup>51</sup> “Local Issues: Steele Springs”, *The UBC Okanagan Watershed: Perspectives on Water Issues in the Okanagan*, June 24, 2014, online: <https://blogs.ubc.ca/ubcowatershed/2014/06/24/local-issues-steele-springs/>

<sup>52</sup> Information provided by Al Price via email, October 28, 2015

all over the Okanagan.<sup>53</sup> The issue was also brought to the attention of the Union of BC Municipalities by the Spallumcheen council, at the annual UBCM convention in 2014.<sup>54</sup>

Clearly, disclosure of the requested information had the potential to substantially contribute to the body of information available about what may be polluting public drinking water – and how to fix it. Disclosure would have been valuable in enabling the expression of informed public opinion -- and the making of informed political choices on the regulation of effluent applications near a drinking water aquifer. Prompt and full disclosure would have clearly contributed to the education of – and debate amongst -- the public on an issue that is highly important and topical.

### *Government Accountability*

How the government regulates dairy farms in such situations is of central importance to the public – and information about how much effluent the MOE is permitting is particularly important to ensuring government accountability in this case. The public is vitally interested in Government decisions to authorize effluent applications near a water supply that is already tainted. For example, the public has the right to know:

- the actual amount of effluent being authorized,
- the conditions placed on the authorization,
- the amount of nitrogen in the soil as recorded in the authorizations and soil tests,
- how much nitrate the alfalfa can actually absorb, and
- other information relevant to the question of whether additional nitrate may find its way into the drinking water supply.

If MOE has been authorizing too much effluent above the water supply, the public needs documents like those requested to hold government accountable. In fact, the application for the Drinking Water Hazard Abatement and Prevention Order filed by our client is an important accountability measure – and it has made use of the technical information in the requested government authorizations. Yet, the application for a Drinking Water Order is still impoverished because government has not yet publicly released the soil tests requested by the ELC on November 5, 2015.<sup>55</sup>

It is important to note that this Drinking Water Hazard Order request has now been supported by the Steele Spring Waterworks District and the Township of Spallumcheen, as local citizens take political action to protect local water supplies and hold the Ministry of Environment accountable for authorizing the challenged effluent applications.

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<sup>53</sup> Telephone interview with Al Price, October 26, 2015

<sup>54</sup> Telephone interview with Al Price, October 26, 2015

<sup>55</sup> See the enclosed Environmental Law Centre letter to Dr. Trevor Corneil, “Re: Request that the Drinking Water Officer issue a Drinking Water Hazard Abatement and Prevention Order”. See Appendix 8 of this letter for the request for soil test information.

In sum, the disclosure of the requested documents was clearly in the public interest because the documents convey information that the public needs in order to hold government accountable for its management of the environment and public health – including authorizations of effluent applications which may well have contributed to raising nitrate levels in drinking water to unsafe levels.

The Commissioner has stated that guidance “as to what the public interest is may also be found by examining the circumstances in cases decided in other jurisdictions.”<sup>56</sup> It is important to note that the Ontario Information and Privacy Commissioner decisions have developed the principle that information relating to how government is addressing public safety issues is in the public interest for accountability reasons. For example, in IPC Order P-270, Commissioner Tom Wright found that information related to safety concerns about nuclear energy was in the public interest. He stated that:

*In my view, there is a need for all members of the public to know that any safety issues related to the use of nuclear energy which may exist are being properly addressed by the institution and others involved in the nuclear industry. This is in no way to suggest that the institution is not properly carrying out its mandate in the area...disclosure of the information could have the effect of providing assurances to the public that the institution and others are aware of safety related issues and that action is being taken.*<sup>57</sup>

He also reasoned:

*I believe that the institution, with the assistance and participation of others, has been entrusted with the task of protecting the safety of all members of the public. Accordingly, certain information, almost by its very nature, should generally be publicly available.*<sup>58</sup>

This reasoning was adopted by the Inquiry Officer in Ontario Order P-1175. The Officer in that case was dealing with the failure of the Ontario Ministry of Labour to release a report resulting from an investigation under the Occupational Health and Safety Act conducted at a petrochemical facility. Safety incidents had been documented in the past. The Commissioner found that the release of information related to documented incidents involving machinery failure was in the public interest because “of the documented incidents which have occurred, and the public interest in the safe operation of petrochemical facilities.”<sup>59</sup>

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<sup>56</sup> Office of the Information and Privacy Commissioner for British Columbia, *Investigation Report F15-02, “Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies”* (July 2, 2015), 2015 BCIPC No. 30, online: <https://www.oipc.bc.ca/investigation-reports/1814> at p. 32

<sup>57</sup> Order P-270, Information and Privacy Commissioner of Ontario, Ontario, February 11, 1992, online: [https://www.ipc.on.ca/images/Findings/Attached\\_PDF/P-270.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/P-270.pdf) at p. 33

<sup>58</sup> Order P-270, Information and Privacy Commissioner of Ontario, Ontario, February 11, 1992, online: [https://www.ipc.on.ca/images/Findings/Attached\\_PDF/P-270.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/P-270.pdf) at p. 33

<sup>59</sup> Order P-1175, Information and Privacy Commissioner of Ontario, Ontario, May 7, 1996, online: [https://www.ipc.on.ca/images/Findings/Attached\\_PDF/P-1175.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/P-1175.pdf) p.6

Similarly, a broad interpretation of “public interest” should apply in this case. The application of the manure effluent by the farm has been a likely contributor to a public health risk – the people living in the Steele Springs Waterworks District have been under a Do Not Drink advisory for almost two years, and continue to be under one. The Ministry of the Environment has been entrusted by the public to address such pollution issues, and in this case MOE has taken some action. The public has an extraordinary and compelling interest in whether the actions of government are sufficient to ensure that their drinking water is safe to drink. Indeed, what issue of could be of higher public interest than safe drinking water?

#### **iv. Disclosure in other jurisdictions**

It may be useful to review how some other Governments are releasing the same kind of information we have requested – and releasing it proactively and/or routinely.

Alberta, a jurisdiction with extensive cattle production, proactively releases compliance orders and authorizations related to farms on the Natural Resources Conservation Board website [See Appendix 12 for an example].<sup>60</sup> The operational division of the Board is responsible for the ongoing regulation of confined feeding operations, including cows. Two kinds of orders are posted on their website, enforcement orders and emergency orders. Enforcement orders can be issued “if an operator is creating a risk to the environment or an inappropriate disturbance, or is contravening or has contravened the act, the regulations or a permit issued under the act.”<sup>61</sup> Emergency orders “are issued when a release of manure, composting materials or compost into the environment may occur, is occurring or has occurred, and the release is causing or has caused an immediate and significant risk to the environment.”<sup>62</sup> Users of the website can “click” on either “Active Orders” or “Archived Orders”. Examples of Enforcement Orders include an order that a dairy farm cease spreading manure on its property<sup>63</sup> and an order against a farm that had released manure effluent through irrigation equipment without prior and required authorization by the NRCB.<sup>64</sup> Examples of Emergency Orders include an order against a farm whose liquid manure storage tank had breached and was “possibly contaminating the groundwater” and “potentially, flowing into and thereby polluting the Blindman River”<sup>65</sup>; a farm that had applied

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<sup>60</sup> “Enforcement and Emergency Orders”, Confined Feeding Operations, Natural Resources Conservation Board, online: <https://cfo.nrcb.ca/Compliance/Orders.aspx>

<sup>61</sup> “Enforcement and Emergency Orders”, Confined Feeding Operations, Natural Resources Conservation Board, online: <https://cfo.nrcb.ca/Compliance/Orders.aspx>

<sup>62</sup> “Enforcement and Emergency Orders”, Confined Feeding Operations, Natural Resources Conservation Board, online: <https://cfo.nrcb.ca/Compliance/Orders.aspx>

<sup>63</sup> *Enforcement Order No. 04-24*, August 20, 2004, Agricultural Operation Practices Act, Alberta, online: <https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Enforcement-Orders/2004/04-24.pdf>

<sup>64</sup> Agricultural Operation Practices Act, Alberta, online: <https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Enforcement-Orders/2003/03-17.pdf>

<sup>65</sup> *Enforcement Order 03-17*, September 23, 2003, Agricultural Operation Practices Act, Alberta, online: <https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Emergency-Orders/2011/11-02.pdf>



liquid manure to ground that was frozen and that had caused an “‘immediate and significant risk to the environment’ by entering a common body of water that is used for numerous purposes including domestic water supplies”<sup>66</sup>; and a farm that pumped liquid manure through an irrigation system into a lake.<sup>67</sup> Given these examples, it seems likely that the authorization orders given to the Jansen farm and requested by the ELC would be posted online in Alberta.

The Iowa Department of Natural Resources (DNR) is responsible for ensuring compliance with Iowa’s environmental laws. They issue administrative orders against operations, including farms. The DNR posts all of these administrative orders on their website [See Appendix 13 for an example].<sup>68</sup> Examples of orders posted online include orders against a farm for discharges of manure effluent that were contaminating a local tributary<sup>69</sup>; a dairy farm where manure effluent was running over the lagoon it was being stored in<sup>70</sup>; and a farm that had been applying manure applications illegally<sup>71</sup>.

The United States Environmental Protection Agency (EPA) posts information about farms and other industrial projects on their Enforcement and Compliance History Online (ECHO) website.<sup>72</sup> This website provides information about whether or not an operation is in compliance, but does not post the specific order. The EPA does provide online reading rooms or libraries, however, organized by regions of the United States.<sup>73</sup> The EPA posts frequently requested information in these rooms. In the virtual reading room for Region 4<sup>74</sup>, the EPA has posted two compliance orders against farms because of the release of manure effluent into the environment.<sup>75</sup> In both cases, the farms release of manure effluent was causing nitrate contamination of the drinking water supply. Both orders mention that nitrate contaminated

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<sup>66</sup> *Emergency Order No 11-01*, March 11, 2011, Agricultural Operation Practices Act, Alberta, online: <https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Emergency-Orders/2011/11-01.pdf>

<sup>67</sup> *Emergency Order No 04-13*, July 20, 2004, Agricultural Operation Practices Act, Alberta, online: <https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Emergency-Orders/2004/04-13.pdf>

<sup>68</sup> “DNR Enforcement Actions”, Enforcement Actions, Iowa Department of Natural Resources, online: <http://www.iowadnr.gov/idnr/About-DNR/About-DNR/Enforcement-Actions>

<sup>69</sup> *Administrative Order No. 2015-AFO-30*, Iowa Department of Natural Resources, online: <https://programs.iowadnr.gov/legal/documents/635815421868835532muhlbaauer.pdf>

<sup>70</sup> *Administrative Consent Order No. 2015-AFO-34*, Iowa Department of Natural Resources, online: <https://programs.iowadnr.gov/legal/documents/635823324291741476feuerhelm.pdf>

<sup>71</sup> *Administrative Consent Order No. 2015-AFO-26*, Iowa Department of Natural Resources, online: <https://programs.iowadnr.gov/legal/documents/635780112407099188parks.pdf>

<sup>72</sup> “ECHO”: Enforcement and Compliance History Online, United States Environmental Protection Agency, online: <http://echo.epa.gov/>

<sup>73</sup> “FOIA Online Libraries”, United States Environmental Protection Agency, online: <http://www2.epa.gov/foia/foia-online-libraries>

<sup>74</sup> “Region 4 Virtual Reading Room – Section 1431 of the Safe Drinking Water Act, 42 U.S.C. Section 300i, - Emergency Power”, States Environmental Protection Agency, online: <http://www2.epa.gov/foia/region-4-virtual-reading-room-section-1431-safe-drinking-water-act-42-usc-section-300i>

<sup>75</sup> *Emergency Administrative Order*, Docket No.: SDWA-04-2001-0003, United States Environmental Protection Agency, online: [http://www2.epa.gov/sites/production/files/2014-03/documents/naylor\\_farm.PDF](http://www2.epa.gov/sites/production/files/2014-03/documents/naylor_farm.PDF); and *Emergency Administrative Order*, Docket No.: SDWA-04-2000-0060, United States Environmental Protection Agency, online: [http://www2.epa.gov/sites/production/files/2014-03/documents/barefoot\\_farm.PDF](http://www2.epa.gov/sites/production/files/2014-03/documents/barefoot_farm.PDF)

drinking water can cause methemoglobinemia, blue baby syndrome, and gastric problems which have been shown to cause cancer in test animals.<sup>76</sup> These orders were released in the online reading room because they had been released in response to Freedom of Information requests. Other administrative orders regarding dairy farms in the Pacific Northwest were released in the reading room for Region 10.<sup>77</sup> These orders were released because of a major nitrate contamination of the groundwater in the Yakima Valley. Nitrate levels in the drinking water had exceeded the maximum level of nitrates set out by the EPA.<sup>78</sup> This has caused great public concern in the Yakima Valley, and the EPA now releases information about these farms in its reading room.

In Washington, compliance orders are not necessarily required by law to be proactively released. However, when requested, compliance orders are quickly provided. The Environmental Law Centre requested compliance orders relating to farms spreading cow manure onto fields in Washington State on October 16<sup>th</sup>, 2015 – this request was quickly returned (in this case, the same day) at no cost. The disclosure included soil testing results and compliance orders.<sup>79</sup> The Washington State Department of Ecology sent the ELC a link to an online folder, which contained all of the files, available for download. An informal request to the Washington State Department of Health on October 23<sup>rd</sup> for any compliance order related to nitrate contamination of water was quickly returned free of charge by an email on Monday, October 26<sup>th</sup> with an attached Notice of Correction, issued to a water purveyor for failing to meet regulatory standards, including a safe level of nitrates.<sup>80</sup>

Similarly, the ELC was able to quickly and easily access information related to farm compliance with orders related to spreading manure from Oregon. On November 9, 2015, the ELC sent an email to the Oregon Department of Agriculture requesting inspection documents and orders relating to the discharge of effluent by a specific dairy in Oregon. The next day, November 10, 2015, the Department responded to confirm they were working on the request, and indicated that they would have the orders to the ELC in the next few days. On November 13, 2015, the Department sent all relevant documents (25 files in total) to the ELC by email. These documents included compliance orders and the results from tests done on water for e coli and nitrogen levels.<sup>81</sup>

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<sup>76</sup> See, for example, p. 4-5 of *Emergency Administrative Order*, Docket No.: SDWA-04-2000-0060, United States Environmental Protection Agency, online [http://www2.epa.gov/sites/production/files/2014-03/documents/barefoot\\_farm.PDF](http://www2.epa.gov/sites/production/files/2014-03/documents/barefoot_farm.PDF)

<sup>77</sup> “Lower Yakima Valley Groundwater”, Region 10: The Pacific Northwest, United States Environmental Protection Agency, online: <http://yosemite.epa.gov/r10/water.nsf/gwpu/lyakimagw>

<sup>78</sup> *Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington*, United States Environmental Protection Agency, March 2013, online: [http://www3.epa.gov/region10/pdf/sites/yakimagw/nitrate\\_in\\_water\\_wells\\_study\\_march2013.pdf](http://www3.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_march2013.pdf)

<sup>79</sup> See Appendix 14.

<sup>80</sup> See Appendix 15.

<sup>81</sup> See Appendix 16.



In striking contrast to British Columbia, in both Oregon and Washington State this type of information is not withheld from the public, or subject to delayed release. It is easily available to citizens requesting it -- in less than a week. Such information should also be quickly and easily available in BC, pursuant to s. 25 of the Act.

Better yet, such information should be proactively posted online, as is done in Alberta and Iowa.

After all, British Columbians can commonly go to a Health Authority website that lists the health violations found by inspectors at local restaurants -- and see the corrective actions ordered by health inspectors.<sup>82</sup> Why should such information about drinking water not be similarly posted online?

### **The Continuing Problem of Government Non-compliance with s. 25 of FIPPA**

The BC Government appears to have a recurring problem in failing to proactively disclose “public interest” documents. In 2014, it was surprising that Government refused to release the requested environmental assessment and dam safety inspection reports done at the Mount Polley Mine. However, in that case, Government was labouring under an incorrect interpretation of the requirements of s. 25 of the Act. In the wake of your report that clarified that if disclosure of information is clearly in the public interest, government must release the information without delay and without a request, it is surprising that public bodies are still delaying the full disclosure of public interest information.

While we recognize that it may take public bodies some time to set up sophisticated proactive disclosure regimes, it is surprising that documents of such clear and pressing “public interest” were treated as they were in this case.

### **Conclusion**

We request that the Commissioner investigate and report on the apparent breach of s.25 of FIPPA by Government in this case. The requested authorization orders and soil test analyses fall squarely within both sections 25(1)(a) and 25(1)(b).

Applying s. 25(1)(a), it is clear that the information sought is “about a risk of significant harm to the environment or to the health or safety of the public or a group of people”. The documents sought relate to manure effluent applications which have likely contributed to rising and unsafe

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<sup>82</sup> For example, see restaurant health inspections at Vancouver Island Health Authority Inspections mainpage: <http://www.viha.ca/mho/inspections/>. Click on "Food Facility Inspection Reports" to get to the search page: [http://www.healthspace.ca/Clients/VIHA/VIHA\\_Website.nsf/Food-Frameset](http://www.healthspace.ca/Clients/VIHA/VIHA_Website.nsf/Food-Frameset).

levels of nitrates in the local drinking supply. This is both a threat to the environment and to the health of the public – most particularly to the group of residents who draw drinking water from the affected aquifer.

Applying s. 25(1)(b), the disclosure of the documents would clearly be in the “public interest”, as defined in the Commissioner’s Report on Public Interest Disclosure by Public Bodies. The release of the authorization orders and the soil analyses is in the public interest because these documents contain:

- Information related to the welfare of the public (who are exposed to drinking water that may be contaminated);
- Information related to an issue that has attracted public notoriety, controversy and debate (namely, the cause and cure of contaminated drinking water);
- Information that will enlighten the citizenry about government actions, and help them express public opinion and make political choices; and
- Information related to government’s management of environmental and health hazards that is necessary to hold government accountable for that management – and to rectify government’s actions to better protect public health.

Therefore, the requested information should have been disclosed without delay, without formal request, and without fees.

In light of our submissions above, we request that you:

- pursuant to ss.42(1)(a) and 42(2)(a), investigate the aforementioned apparent breaches of s. 25;
- report on the important policy issues that arise from this case;
- make recommendations for reform of the *Freedom of Information and Protection of Privacy Act* to specifically require that all Environmental Compliance Orders and related Authorization Orders be proactively and routinely released online;

- make recommendations for amendments to the *Act* to define the categories of “public interest” documents that should be proactively released by Government, without request.


Further to the last two recommendations, we urge you to adopt the 17 recommendations found in the attached submission, *In the Public Interest: Unlock the Vault, law reform to ensure proactive disclosure of “Public Interest” records*.

Sincerely,



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Rebecca Kantweg, Law Student



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Calvin Sandborn, Legal Director

## **Appendix 1: Section 25 of FIPPA**

### **Information must be disclosed if in the public interest**

**25** (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

(a) any third party to whom the information relates, and

(b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

## Appendix 2: Water Quality Advisory, July 14, 2014



July 14, 2014

Dear Current Resident,

**RE: Water Quality Advisory for Residents who may draw water from the Hullcar Aquifer in Spallmacheen**

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The purpose of this letter is to notify you that the shallow Aquifer located in your area is showing high levels of Nitrates. Recent nitrate sampling has shown that current nitrate levels are just above acceptable levels as set out by the Guidelines for Canadian Drinking Water Quality. High nitrate levels are a health concern for infants less than 3 months in age and can also increase the risk of stomach cancer for adults.

Interior Health is advising that pregnant women, babies under 6 months of age, the elderly, and individuals with weakened immune systems, or chronic heart, lung and blood conditions should take precautions and use an alternative source of water (ex. bottled water) at this time. For bottle fed infants, use an alternate source of water to mix infant formula for infants less than 6 months of age.

Interior Health and the Ministry of Environment are aware and involved in investigating the source of the nitrates. We are currently monitoring ground water nitrate levels and will provide further updates as more information and monitoring results become available.

Nitrate levels throughout the aquifer may vary; therefore it is recommended that individuals test their water (this applies to wells and surface water sources). Interior Health is unable to pay for testing of private wells, but we are more than happy to assist with interpretation. If you require assistance interpreting your result please contact Janelle at the number below. Testing for Nitrates can be arranged through **Caro Analytical services in Kelowna (250) 765-9646**.

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E-Mail: [trevor.corneil@interiorhealth.ca](mailto:trevor.corneil@interiorhealth.ca)

### **Appendix 3: Nitrate History of the Steele Springs Waterworks**

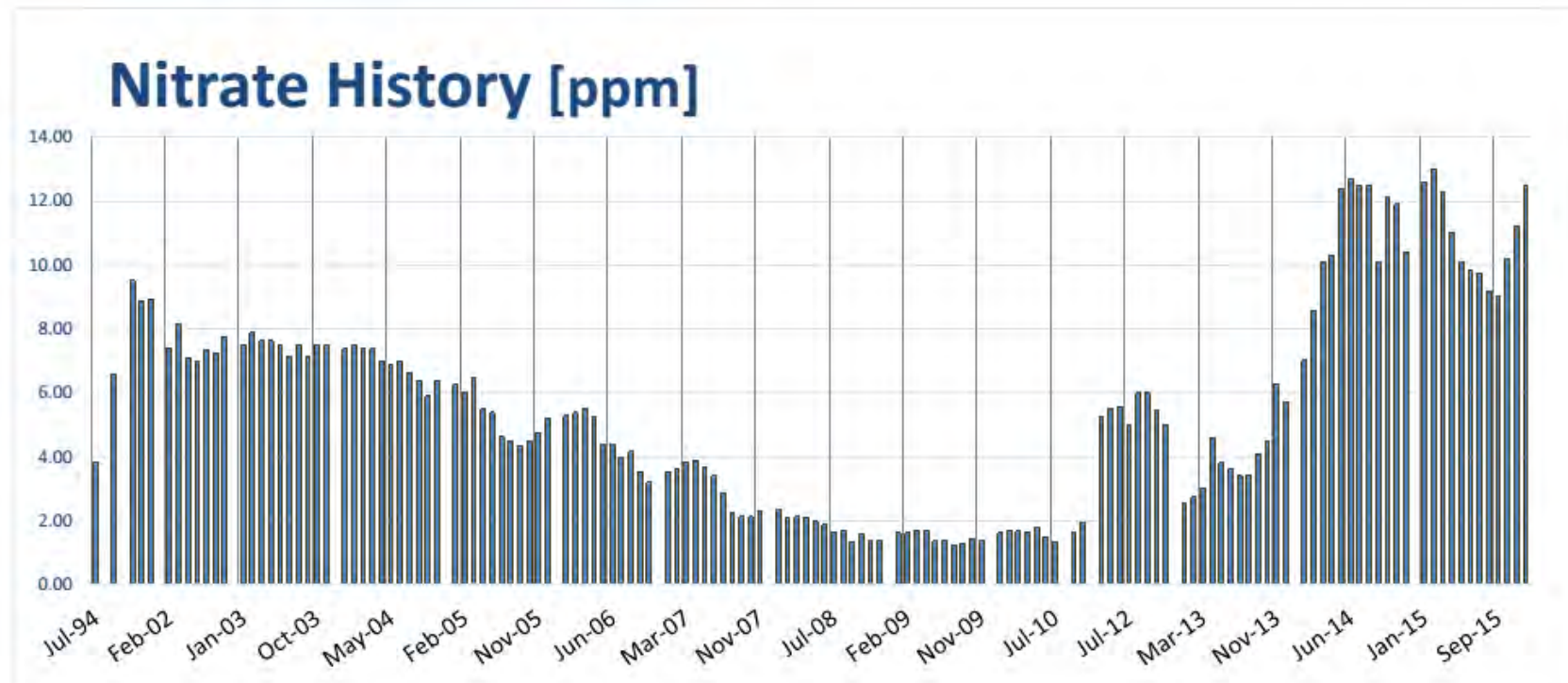
#### **Monthly Nitrate Concentrations (ppm), Steele Springs Waterworks District**

Source: Steele Springs Waterworks District

	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1994							3.83					
1997							6.58					
2001			9.50 8.88	8.90								
2002		7.40	8.15				7.10	7.00	7.35	7.25	7.75	
2003	7.50	7.88	7.62	7.63	7.50		7.13	7.50	7.13	7.50	7.50	
2004	7.38	7.50	7.38 7.38	7.00	6.88	7.00	6.63		6.38	5.90	6.38	
2005	6.25	6.00	6.50		5.50	5.38		4.63	4.50 4.35	4.50	4.75	5.20
2006	5.30	5.38	5.50	5.25	4.39	4.40	4.00		4.17		3.53	3.20
2007	3.54	3.63	3.85	3.90	3.65	3.40	2.87	2.23	2.14	2.12	2.29	
2008	2.35	2.07	2.13	2.10	1.98	1.88	1.64	1.71	1.33	1.60	1.39	1.40
2009	1.62	1.62	1.67	1.70	1.37	1.40		1.23	1.30		1.44 1.38	
2010	1.62	1.69 1.67	1.64	1.78		1.49	1.35					
2011			1.65						1.95			
2012				5.23	5.50	5.57	5.00		6.00	6.00	5.47	5.00
2013	2.55	2.75	3.00	4.60	3.81	3.64	3.42	3.44	4.10	4.50	6.29	5.73
2014	7.01	8.56	10.10	10.30	12.40	12.70	12.50	12.50	10.10	12.10	11.90	10.40
2015	12.60	13.00	12.30	11.00	10.10	9.84	9.74	9.18	9.00	10.20	11.20	12.50

**Figure 1: Nitrate concentration (ppm) Steele Springs Waterworks District**

Source: Steele Springs Waterworks District-graph data from Appendix A



## **Appendix 4**

### **ELC's initial request for the authorizations and response**

-----Original Message-----

From: Rachel Gutman [<mailto:rgutman@uvic.ca>]

Sent: Monday, October 5, 2015 11:05 AM

To: Little, Stephanie ENV:EX

Subject: Information regarding Compliance Order (file #76600-20/Armstrong)

Dear Ms. Little,

I am writing in regards to a Compliance Order issued to HS Jansen and Sons Farms Ltd (file #76600-20/Armstrong). I am a law student with the Environmental Law Centre at the University of Victoria, researching the recent nitrate contamination of the Steele Springs aquifers and am wondering if you might be able to provide me with some information about the Jansen's current farming practices.

On April 16th, 2014, HS Jansen and Sons Farms received authorization from the MOE to apply 12,000 US gallons/acre of effluent after the first and second cuts of alfalfa. This quantity was determined based on a nitrate concentration of 8.1 lbs of nitrogen/1000 gallons. From what I understand, two more authorizations were granted by the MOE on July 16th and August 28th of this year to spray effluent on the field of concern. If it is possible, can you send me a copy of these authorizations?

If you are unable to send me a copy, can you please confirm whether or not the authorizations granted on July 16th and August 28th were consistent with the authorization on April 16th, 2014? That is, was the farmer again permitted to by the MOE to spray 12,000US gallons/acre of effluent on the field of concern after the first and second cuts of alfalfa? What concentration of nitrogen was this based upon?

Finally, have there been any other authorizations to apply effluent to the field of concern besides April 16th 2014, July 16th 2015, and August 28th 2015?

Thank you for your help,

Rachel Gutman

### ***Response from the Ministry of Environment requiring a formal FOI request***

From: "Bourgeois, Jason ENV:EX" <[Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca)>

Subject: Information regarding Compliance Order (file #76600-20/Armstrong)

Date: 6 October, 2015 12:22:38 PM PDT

To: "'[rgutman@uvic.ca](mailto:rgutman@uvic.ca)'" <[rgutman@uvic.ca](mailto:rgutman@uvic.ca)>

Cc: "Little, Stephanie ENV:EX" <[Stephanie.Little@gov.bc.ca](mailto:Stephanie.Little@gov.bc.ca)>

Rachel, thank you for your enquiry for information regarding Compliance Order (file #76600-20/Armstrong). You have identified yourself as a law student with the Environmental Law Centre at the University of Victoria doing



research on an aquifer in the Okanagan. You have not identified the purpose of your research or whether you are, or your law centre is, representing a specific client in existing or pending litigation. The issue you have identified is a sensitive one among a number of parties and we are mindful of privacy rights of everyone involved. For that reason, we are requiring that a formal Freedom of Information request be made to obtain any and all records you may be interested in.

As a courtesy to you, I have provided a document that describes several options you may wish to pursue to navigate the FOI process. Best of luck on your research.

Regards,  
Jason

Jason Bourgeois, LL.B., M.Sc.  
Compliance Section Head | Environmental Protection Division  
Ministry of Environment  
Tel: 250.371.6267 | Fax: 250.828.4000  
1259 Dalhousie Dr. | Kamloops | BC | V2C 5Z5  
[Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca)

## Appendix 5:

### Confirmation of the ELC's formal FOI request



File: 292-30/MOE-2015-53213

October 9, 2015

Sent via email: [rgutman@uvic.ca](mailto:rgutman@uvic.ca)

Rachel Gutman  
1003 Vancouver Street  
Victoria BC V8V 3V9

Dear Rachel Gutman:

**Re: Request for Access to Records**  
***Freedom of Information and Protection of Privacy Act (FOIPPA)***

The **Ministry of Environment** received your request for access to information under FOIPPA on October 9, 2015. We understand your request to be for:

**Regarding the compliance order issued on March 6th, 2014 by the Ministry to HS Jansen and Sons Farms Ltd, file #76600-20/Armstrong: all subsequent records of MOE authorizations permitting the application of liquid effluent by HS Jansen and Sons Farm. (Date Range for Record Search: From 03/01/2014 To 10/09/2015)**

FOIPPA allows 30 business days for public bodies to respond unless the nature of the request requires an extension per section 10 of FOIPPA. We will make every effort to respond to your request by **November 24, 2015**. We will notify you as soon as possible if there is a need to extend the time limit for responding to your request.

FOIPPA also allows that we may charge a fee for certain limited costs of providing you with the requested information, such as locating, retrieving and copying a large volume of records. Should this be the case, we will contact you at a later date with a fee estimate.

Please also be advised that the response to your request (subject to limited exemptions) will be published on the BC Government's Open Information website after its release to you. Your identity will be protected in the response. To find out more about Open Information please access the Open Information website at: <http://www.openinfo.gov.bc.ca/>.

---

Ministry of Technology,  
Innovation and Citizens' Services

Shared Services BC,  
Information Access Operations

Mailing Address:  
PO Box 9569 Stn Prov Govt  
Victoria BC V8W 9K1

Website:  
<http://www.gov.bc.ca/citz/iao/>  
Telephone: 250 387-1321  
Fax: 250 387-9843

Should you have any questions now or during the processing of your request please contact our office at 250 387-1321 and ask to speak with the analyst assigned to your request. Please quote the file number(s) identified at the top of this letter.

Regards,

Brenda Margetish  
Consolidated Intake  
Information Access Operations

## **Appendix 6**

### **Response to ELC's formal FOI request**

From: "Shiplack, Eric" <[IAOResourceTeam@gov.bc.ca](mailto:IAOResourceTeam@gov.bc.ca)>  
Subject: FOI Request MOE-2015-53213  
Date: 14 October, 2015 5:19:54 PM PDT  
To: [rgutman@uvic.ca](mailto:rgutman@uvic.ca)

Dear Rachel Gutman:

Re: Request for Access to Records - Fee Estimate  
Freedom of Information and Protection of Privacy Act (FOIPPA)

I am writing further to your request received by the Ministry of Environment.  
Your request is for:

Regarding the compliance order issued on March 6th, 2014 by the Ministry to HS Jansen and Sons Farms Ltd, file #76600-20/Armstrong: all subsequent records of MOE authorizations permitting the application of liquid effluent by HS Jansen and Sons Farm. (Date Range for Record Search: From 03/01/2014 To 10/09/2015)

Section 75(1) of FOIPPA provides that we may charge a fee for certain limited costs of processing your request. However, the first three hours to search for records and any time spent reviewing and/or severing information from the records is not charged to you. A complete copy of FOIPPA is available online at: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96165\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00)

Due to the size and scope of your request, we are assessing a fee. You may wish to consider options to reduce or possibly eliminate the fee estimate, such as:

- Reducing the time period for which you have requested records, or
- Requesting records from specific staff members or program areas in the Ministry, or
- Requesting specific types of records (e.g. final versus draft, correspondence, briefing notes, reports), or
- Requesting electronic copies of the records.

If you choose to narrow your request, a revised fee estimate may be provided. I will work with you to try to find an efficient and cost effective method in which to provide records. The fee of \$ 150 has been calculated as per the attached Fee Summary.

Due to the amount of the estimate, we will require a full payment in the amount of \$150.00. Please send a cheque or money order made payable to the Minister of Finance, quote your file number and mail it to:

Attn: Eric Shiplack  
Information Access Operations  
Ministry of Technology, Innovation and Citizens' Services  
PO Box 9569 Stn Prov Govt  
Victoria BC V8W 9K1

To pay by credit card, please call 250 387-1321. VISA, Master Card and Amex are accepted. You will need to have your request number and payment amount

ready. Credit card payments will appear on your statement as "QP Bookstore". If applicable, fee refunds are paid by cheque and are not credited back to the payment card.

Your request has been placed on hold. Upon receipt of payment, we will resume processing your request. All reasonable efforts have been made to generate an accurate estimate. You will be required to pay the actual cost whether it is higher or lower than the estimate. If it appears that the actual cost of processing the request will be different than the original fee estimate, we may issue a revised estimate. In certain circumstances fees may be partially or entirely waived.

You have the right to request a fee waiver. Section 75(5) of the FOIPPA sets out the rules regarding when a fee waiver may be granted by a public body. If you decide to request a fee waiver, you bear the burden of proof to establish that a waiver should be granted. You must demonstrate that: (1) You cannot afford the payment or for any other reason it is fair to excuse payment, or (2) The record relates to a matter of public interest, including the environment or public health or safety.

Please send your fee waiver request in writing and provide detailed evidence and reasons to support your case. You may mail or email this information to the analyst processing your request. Their contact information is provided in the body of the email.

The Ministry will consider these factors when assessing whether or not to grant a fee waiver request:

1. Inability to pay: In order for the head of a public body to consider waiving or reducing the fee for reasons of inability to pay, you must provide sufficient evidence to allow the public body to make a fair determination. Sufficient evidence could include a financial statement, pay stub, bank statement or Canada Revenue Agency Notice of Assessment. (Commissioner's Order 79-1996 and 2001-04).

2. Public Interest: In order for the head of a public body to consider waiving or reducing the fee because the records relate to a matter of public interest, you must provide sufficient evidence in support of the following factors:

- Has the information been the subject of recent public debate?
- Does the subject matter of the record relate directly to the environment, public health, or safety?
- Would dissemination of the information yield a public benefit by
  - disclosing an environmental, public health or safety concern
  - contributing meaningfully to the development or understanding of an important environmental, health, or safety issue, or
  - assisting public understanding of an important policy, law, program, or service?
- Do the records show how the public body is allocating financial or other resources?

If the head decides that the records do relate to a matter of public interest, then he or she must then determine whether you should be excused from paying all or part of the estimated fees. Factors that should be considered would include:

- Is your primary purpose to disseminate information in a way that could reasonably be expected to benefit the public, or to serve a private

interest?

- Are you able to disseminate the information to the public?

If your primary purpose is to serve a private interest, then the head may be justified in refusing to waive fees, even where he or she is of the opinion that the records do relate to a matter of public interest. (Commissioner's Order 155-1997)

Where a balance of fees is owed, payment must be received prior to the release of the records. We will notify you if a balance is due. Your request will be placed on hold pending receipt of final payment.

You have 20 business days to respond to this letter. If we do not hear from you by Nov 12, 2015, we will consider your request abandoned and close the file.

If you have any questions regarding your request, please contact me at 250 356-9155. This number can be reached toll-free by calling from Vancouver, 604 660-2421, or from elsewhere in BC, 1 800 663-7867 and asking to be transferred to 250 356-9155.

Pursuant to section 52 of FOIPPA, you may ask the Office of the Information and Privacy Commissioner (OIPC) to review any decision, act, or failure to act with regard to your request. You have 30 business days to file your written request for review. Please provide OIPC with a copy of your original request, our response, and the reasons or grounds upon which you are requesting the review to the address below.

Information and Privacy Commissioner  
PO Box 9038 Stn Prov Govt  
4th Floor, 947 Fort Street  
Victoria BC V8W 9A4  
Telephone 250 387-5629  
Fax 250 387-1696

Sincerely,

Eric Shiplack  
Senior FOI Analyst  
Information Access Operations

## **Appendix 7**

### **ELC's revised FOI request and Response from MOE asking for confirmation of found records**

From: Rachel Gutman [<mailto:rgutman@uvic.ca>]  
Sent: Friday, October 16, 2015 4:44 PM  
To: IAO Resource Team SSBC:EX  
Subject: Re: FOI Request MOE-2015-53213

Hi Eric,

Thank you for speaking with me today. I've re-written my FOI request in an attempt to narrow the the scope. My updated request is as follows:

Regarding the compliance order issued on March 6th, 2014 by the Ministry of the Environment (MOE) to HS Jansen and Sons Farms Ltd, file#76600-20/Armstrong: I request the MOE authorization letters issued on April 16, 2014, August 26, 2014, July 16, 2015, and August 28, 2015, to HS Jansen and Sons Farm, permitting the application of liquid effluent. The authorization letters issued on April 16 and August 26, 2014 we're made by Jason Bourgeois, MOE Compliance Section Head (Kamloops).

Best,

Rachel Gutman

### **Response from MOE asking for confirmation of found records**

From: "IAO Resource Team SSBC:EX" <[IAOResourceTeam@gov.bc.ca](mailto:IAOResourceTeam@gov.bc.ca)>  
Subject: RE: FOI Request MOE-2015-53213  
Date: 29 October, 2015 5:09:28 PM PDT  
To: "'Rachel Gutman'" <[rgutman@uvic.ca](mailto:rgutman@uvic.ca)>

Hello Rachel,

I am following up on your FOI request (MOE-2015-53213) and subsequent narrowing of the scope of the wording:

There has been some back and forth exchanges between myself and the responding Program Areas, and the South Area has advised me that they have four letters, but the dates do not exactly match dates provided in your request. They seem to fit the overall description and are from right around those dates though. I provided you with the date, title and brief description that I am hoping will confirm or deny whether these are the records you are seeking:

April 16, 2014 - Authorization for Nutrient Application Under Section 112 Compliance Order - Issued to H.S. Jansen and Sons Farm Ltd March 6, 2014

August 27, 2014 - Authorization for Nutrient Application Under Section 112

Compliance Order - Issued to H.S. Jansen and Sons Farm Ltd August 27, 2014  
This letter is in response to the email request dated August 26th, 2014... I  
hereby authorize the application of additional nutrients to  
the field...

July 15, 2015 - Request to apply manure on the field under Compliance Order  
dated March 6, 2014 This letter is in response to the email request made July  
13, 2015

August 31, 2015 - Request to apply manure on the field under Compliance  
Order dated March 6, 2014 This letter is in response to the email request  
made August 27, 2015 to authorize the application of 6,000 gallons ...

Please advise, and I will forward your response to the appropriate contacts.

Kind regards,

Eric Shiplack, CIAPP-C, BCom | Senior Analyst, Resource Team | Information  
Access Operations | Shared Services BC  
Ph: 250.356.9155 | e: [Eric.Shiplack@gov.bc.ca](mailto:Eric.Shiplack@gov.bc.ca) | m: PO Box 9569, Stn Prov Gov,  
Victoria BC V8W 9K1

**From:** Rachel Gutman <[rgutman@uvic.ca](mailto:rgutman@uvic.ca)>  
**Subject:** Re: FOI Request MOE-2015-53213  
**Date:** October 29, 2015 at 5:55:24 PM PDT  
**To:** "IAO Resource Team SSBC:EX" <[IAOResourceTeam@gov.bc.ca](mailto:IAOResourceTeam@gov.bc.ca)>

Hi Eric,

Those are the letters I'm looking for. Thanks for your help,

Rachel Gutman



## **Appendix 8**

### **ELC's informal request for the soil analysis information and the MOE's response**

From: Rachel Gutman [<mailto:rgutman@uvic.ca>]  
Sent: Thursday, November 5, 2015 3:08 PM  
To: Bourgeois, Jason ENV:EX  
Cc: Little, Stephanie ENV:EX  
Subject: Re: Information regarding Compliance Order (file #76600-20/Armstrong)

Dear Ms. Little and Mr. Bourgeois,

Thank you for your email on October 6th. As suggested, I have submitted a FOI request for the documentation of the MOE's authorizations for the application of effluent pursuant to compliance order #76600-20/Armstrong.

I'd also like to request from your office information regarding measurements of available nitrogen in the 0-12inch and 12-24inch depths of soil in the area identified as the "field of concern" in the compliance order. It is my understanding that these measurements were required before and after the application of effluent and were the basis for MOE's calculations of the appropriate volume of effluent to be applied to the field of concern in the four authorizations made since the compliance order was issued. Can you provide me with documentation of the qualified professional's soil analysis or any data regarding these nitrogen measurements?

Best,

Rachel Gutman

From: "Bourgeois, Jason ENV:EX" <[Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca)>  
Subject: RE: Information regarding Compliance Order (file #76600-20/Armstrong)  
Date: November 10, 2015 at 4:30:39 PM PST  
To: "'Rachel Gutman'" <[rgutman@uvic.ca](mailto:rgutman@uvic.ca)>  
Cc: "Little, Stephanie ENV:EX" <[Stephanie.Little@gov.bc.ca](mailto:Stephanie.Little@gov.bc.ca)>

Rachel, forgive me here, but are you asking for additional information that was not included in your original FOI request? If so, you need to formally add this new information to your original request. They will know how you do that.

Regards,  
Jason

## Appendix 9:

### Government's Disclosure Package pursuant to FOI, December 11, 2015

From: "Graves, Debra" <[IAOResourceTeam@gov.bc.ca](mailto:IAOResourceTeam@gov.bc.ca)>  
> Subject: FOI Request MOE-2015-53213  
> Date: December 11, 2015 at 7:51:19 AM PST  
> To: [rgutman@uvic.ca](mailto:rgutman@uvic.ca)  
>  
> Please see the attached regarding your FOI request/consultation.  
>  
>  
>  
> Thank you.  
>  
>  
>  
> Ministry of Technology, Innovation and Citizens' Services  
>  
> Shared Services BC  
>  
> Information Access Operations  
>  
> PO Box 9569 Stn Prov Govt Victoria BC V8W 9K1  
>  
> Phone: 250 387-1321  
>  
> Fax: 250 387-9843  
>  
> [www.gov.bc.ca/freedomofinformation](http://www.gov.bc.ca/freedomofinformation)  
<<http://www.gov.bc.ca/freedomofinformation>>

#### Attachments:

<a href="#">untitled-[2.1]</a>	3 k	[ text/html ]	<a href="#">Download</a>   <a href="#">View</a>
<a href="#">Final Response Letter.pdf</a>	184 k	[ application/pdf ]	<a href="#">Download</a>
<a href="#">untitled-[2.3]</a>	0.2 k	[ text/html ]	<a href="#">Download</a>   <a href="#">View</a>
<a href="#">MOE-2015-53213.pdf</a>	12 M	[ application/pdf ]	<a href="#">Download</a>
<a href="#">untitled-[2.5]</a>	0.3 k	[ text/html ]	<a href="#">Download</a>   <a href="#">View</a>



ARCS: 292- 30  
File: MOE-2015-53213

December 11, 2015

Sent via email: rgutman@uvic.ca

Rachel Gutman  
1003 Vancouver Street  
Victoria BC V8V 3V9

Dear Rachel Gutman:

**Re: Request for Access to Records**  
***Freedom of Information and Protection of Privacy Act (FOIPPA)***

I am writing further to your request received by the Ministry of Environment. You narrowed your request on November 2, 2015 through conversation and/or email with Eric Shiplack. Your request is for:

*Regarding the compliance order issued on March 6th, 2014 by the Ministry of the Environment (MOE) to HS Jansen and Sons Farms Ltd, file#76600-20/Armstrong: I request the MOE authorization letters issued on April 16, 2014, August 26/27, 2014, July 15/16, 2015, and August 28/31, 2015, to HS Jansen and Sons Farm, permitting the application of liquid effluent. The authorization letters issued on April 16 and August 26/27, 2014 we're made by Jason Bourgeois, MOE Compliance Section Head (Kamloops). (Date Range for Record Search: From 03/01/2014 To 10/09/2015)*

Please find enclosed a copy of the records located in response to your request. Some information has been withheld pursuant to section(s) and 22 (Disclosure harmful to personal privacy) of FOIPPA. A complete copy of FOIPPA is available online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96165\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00)

Your file is now closed.

.../2

Ministry of Technology,  
Innovation and Citizens' Services

Shared Services BC  
Information Access Operations

Mailing Address:  
PO Box 9569 Stn Prov Govt  
Victoria BC V8W 9K1

Website:  
[www.gov.bc.ca/freedomofinformation](http://www.gov.bc.ca/freedomofinformation)  
Telephone: 250-387-1321  
Fax: 250-387-9843

These records will be published on the BC Government's Open Information website a minimum of 72 hours after electronic release or a minimum of five business days after release by mail in hardcopy. To find out more about Open Information, please access the Open Information website at: <http://www.openinfo.gov.bc.ca/ibc/index.page>

If you have any questions regarding your request, please contact Debra Graves, the analyst assigned to your request, at 250 387-7917. This number can be reached toll-free by calling from Vancouver, 604-660-2421, or from elsewhere in BC, 1-800-663-7867 and asking to be transferred to 250 387-7917.

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

Debra Graves

FOI Analyst | Information Access Operations | Shared Services BC  
Ph: 250 387-7917 | e: [Debra.Graves@gov.bc.ca](mailto:Debra.Graves@gov.bc.ca) | PO Box 9569, Stn Prov Gov, Victoria BC V8W 9K1

On behalf of,

Ken Bejcek, Manager  
Resource Team  
Information Access Operations

Enclosures

<p>How to Request a Review with the Office of the Information and Privacy Commissioner</p>
------------------------------------------------------------------------------------------------

If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

**Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:**

Information and Privacy Commissioner  
PO Box 9038 Stn Prov Govt  
4th Floor, 947 Fort Street  
Victoria BC V8W 9A4  
Telephone 250-387-5629      Fax 250-387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.



April 16, 2014

File: 76600-20/Armstrong

H.S. Jansen and Sons Farm Ltd.  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4

Attention: Dale Jansen, Director

Re: Authorization for Nutrient Application Under Section 112 Compliance Order – Issued to  
H.S. Jansen and Sons Farm Ltd March 6, 2014

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This letter is in response to the email request dated April 14, 2014 submitted by Doug Macfarlane, CCA, acting as the qualified professional on your behalf. Pursuant to Compliance Order (our file 76600-20/Armstrong) Section 1 issued on March 6, 2014, I hereby authorize the application of additional nutrients to the field in question **in accordance with the submitted nutrient management plan.**

The details of the nutrient management plan specify an initial application of 24-10-0-13S-1B fertilizer at the time of planting alfalfa seed tentatively scheduled for the week of April 21, 2014. Application of dairy effluent will **only** be applied after the first and second cuts at a rate of 15,000 US Gallons/acre. This quantity is based on the provided soil and manure analysis and intends to add 33 lbs/acre of Nitrogen after each cut.

A soil moisture monitoring system must be installed in the sandier loam section of the field (as per submitted Veris mapping) to enable monitoring of the areas prone to the fastest movement of water and nutrients into the ground.

All other terms and conditions of the Compliance Order 76600-20/Armstrong dated March 6, 2014 remain in effect. This one-time authorization does not constitute approval by any other agency with jurisdiction over this matter. This decision may also be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered 30 days from the date that the notice of this decision is given. For further information, please contact the Environmental Appeal Board at 250-387-3464.

If you have any question regarding this authorization, please contact Stephanie Little at 250-490-8258 or the undersigned at 250-371-6267.

---

Ministry of Environment

Environmental Protection Division  
Compliance Section  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: (250) 490-8200  
Facsimile: (250) 490-2231

Page 1 of 9 MOE-2015-53213EP

Yours truly,

A handwritten signature in black ink, appearing to read "Jason B.", with a stylized flourish at the end.

Jason Bourgeois, LL.B., M.Sc.  
for Director  
*Environmental Management Act*



August 27, 2014

File: 76600-20/Armstrong

H.S. Jansen and Sons Farm Ltd.  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4

Attention: Dale Jansen, Director

Re: Authorization for Nutrient Application Under Section 112 Compliance Order – Issued to  
H.S. Jansen and Sons Farm Ltd August 27, 2014

---

This letter is in response to the email request dated August 26<sup>th</sup>, 2014 submitted by Doug Macfarlane, CCA, acting as the qualified professional on your behalf. Pursuant to Compliance Order (our file 76600-20/Armstrong) Section 1 issued on March 6, 2014, I hereby authorize the application of additional nutrients to the field in question in accordance with the submitted nutrient management plan and based on the most recent soil and manure analysis results. The rate of application being approved is 12,000 US Gallons/acre.

Soil moisture monitoring and additional soil samples at depths of 12", 24" and 36" are required to be taken from the same locations of earlier sampling and must be conducted within 24 hours of the nutrient application being completed. These results must be submitted as soon as available. If, at any time during the nutrient application process, moisture sensors detect an increase in moisture content at the three foot sensor ALL nutrient and irrigation applications must cease. ***This is the final diary effluent application that will be approved for 2014 to the field in question.***

All other terms and conditions of the Compliance Order 76600-20/Armstrong dated March 6, 2014 remain in effect. This one-time authorization does not constitute approval by any other agency with jurisdiction over this matter. This decision may also be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered 30 days from the date that the notice of this decision is given. For further information, please contact the Environmental Appeal Board at 250-387-3464.

If you have any question regarding this authorization, please contact Stephanie Little at 250-490-8258 or the undersigned at 250-371-6267.

Yours truly,

---

Ministry of Environment

Environmental Protection Division  
Compliance Section  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: (250) 490-8200  
Facsimile: (250) 490-2231

Page 3 of 9 MOE-2015-53213EP



A handwritten signature in black ink, appearing to read 'Jason B.', with a stylized flourish at the end.

Jason Bourgeois, LL.B., M.Sc.  
for Director  
*Environmental Management Act*



July 15, 2015

File: 76600-20 Armstrong

VIA EMAIL

H.S. Jansen and Sons Farm Ltd.  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4

s.22

Dear Mr. Jansen, Director:

**Re: Request to apply manure on the field under Compliance Order dated March 6, 2014**

This letter is in response to the email request made July 13, 2015 to apply manure to the field owned and operated by H.S. Jansen and Sons described as the "field of concern" in the Compliance Order dated March 6, 2014. On June 12, 2015 a request to apply 8,000 gallons per acre was denied on the basis of aquifer protection and satisfactory levels of available nitrogen in the soil. It was also expressed that future applications would be considered based on the most recent analysis after each cut.

A request to apply 8,400 gallons was made via email on July 13, 2015. This amount was reduced to 6,000 gallons on July 15, 2015 to adjust for the most recent manure analysis completed on July 7, 2015.

A review of the most recent soil analysis from the field of concern was reviewed with the Ministry of Agriculture and the following interpretations were made;

- According to the data provided it is anticipated that the alfalfa crop would extract 64 lb of nitrogen per ton, therefore, anticipating a yield of approximately 1.6 ton per acre, the crop would need approximately 100 lbs of nitrogen.
- The most recent soil analysis indicates the field currently has approximately 40 lbs of available nitrogen in the 0-12" soil profile, almost half of what was available in June of 2015.
- The email dated July 15, 2015 requested 6,000 gallons per acre which would add an additional 67 lbs of plant-available N per acre (a small buffer).

---

**Ministry of Environment**

Monitoring, Compliance  
and Stewardship  
Environmental Protection Division

Mailing Address:  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: 250-490-8200  
Facsimile: 250-490-2231  
Website: [www.gov.bc.ca/env](http://www.gov.bc.ca/env)

Page 5 of 9 MOE-2015-53213EP

Based on the provided information a one time application of 6,000 gallons per acre is approved with the following provisions;

- Ensure soil and manure analysis are completed (no more than five days prior to cut) and submitted as soon as possible after the next cut.
- Include protein and yield results based on second cut tissue analysis.
- Continue judicious use of watering pre and post application, retain a record of the dates, time and duration of watering and supply moisture monitoring results upon request.
- Provide a detailed description on how the application rate approved was achieved and not exceeded.
- Provide an up to date version of the nutrient management plan within 30 days that includes; adjustments for the most recent soil and manure analysis, a volume estimate of the current level of manure effluent remaining in lagoon storage and applications made to the whole farm to date.
- Provide soil analysis (historical to current) data separated by field (Hullcar and Dougs) and reported in available pounds per acre (as opposed to parts per million).

Based on the expertise of the qualified professional and assessment by Ministry staff we believe that this approved application rate will remain protective of the aquifer based on all analysis provided. Any further applications will require a separate and additional approval and will only be considered if all of the above requirements are met.

A person who fails to comply with a provision of EMA may be found guilty of an offence and could be liable, on summary conviction, to a penalty, or to be assessed an Administrative Penalty as determined by the Director. For your reference, EMA and all related and pertinent British Columbia Laws can be found at <http://www.bclaws.ca/>.

If you have any questions please contact the undersigned at [Stephanie.Little@gov.bc.ca](mailto:Stephanie.Little@gov.bc.ca) or at (250) 490-8258.

Yours truly,



Stephanie Little  
Environmental Protection Officer  
Compliance Section

cc:

Jason Bourgeois, Section Head, Compliance Section  
Cassandra Caunce, Director, Compliance Section  
Greg Tegart, Regional Manager, Ministry of Agriculture  
Doug MacFarlane, Emerald Bay Ag Services

[Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca)  
[Cassandra.Caunce@gov.bc.ca](mailto:Cassandra.Caunce@gov.bc.ca)  
[Greg.Tegart@gov.bc.ca](mailto:Greg.Tegart@gov.bc.ca)  
s.22



August 31, 2015

File: 76600-20 Armstrong

VIA EMAIL

H.S. Jansen and Sons Farm Ltd.  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4

s.22

Dear Mr. Jansen, Director:

**Re: Request to apply manure on the field under Compliance Order dated March 6, 2014**

This letter is in response to the email request made August 27, 2015 to authorize the application of 6,000 gallons per acre of manure effluent to the field owned and operated by H.S. Jansen and Sons described as the "field of concern" in the Compliance Order dated March 6, 2014.

This application rate request is based on soil analysis, manure analysis, moisture monitoring and protein analysis. A review of this analysis from the field of concern was reviewed with the Ministry of Agriculture and the following interpretations were made;

- According to the data provided, it is anticipated that the alfalfa crop would extract 65 lb of nitrogen per ton, therefore, anticipating a yield of approximately 1.6 ton per acre, the crop would need approximately 100 lbs of nitrogen.
- The most recent soil analysis indicates the field currently has approximately 60 lbs of available nitrogen in the 0-12" soil profile.
- The email dated August 27, 2015 requested 6,000 gallons per acre which would add an additional 47 lbs of plant-available N per acre bringing the total plant-available N per acre to 107 in the 0-12" zone.

Based on the provided information a one time application of **6,000** gallons per acre is approved with the following provisions;

- Notify the Ministry of Environment 24 hrs prior to commencing the spread (via email)
- Ensure the application duration is consistent with the calculated flow rates and no overlapping during spreading occurs.

---

Ministry of Environment

Monitoring, Compliance  
and Stewardship  
Environmental Protection Division

Mailing Address:  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: 250-490-8200  
Facsimile: 250-490-2231  
Website: [www.gov.bc.ca/env](http://www.gov.bc.ca/env)

Page 8 of 9 MOE-2015-53213EP

- Ensure soil analysis is completed immediately after manure application and forward upon receipt.
- Include protein and yield results.
- Continue judicious use of watering pre and post application, retain a record of the dates, time and duration of watering and supply moisture monitoring results upon request.

Based on the expertise of the qualified professional and assessment by Ministry staff we believe that this approved application rate will remain protective of the aquifer based on all analysis provided. Any further applications will require a separate and additional approval and will only be considered if all of the above requirements are met.

A person who fails to comply with a provision of EMA may be found guilty of an offence and could be liable, on summary conviction, to a penalty, or to be assessed an Administrative Penalty as determined by the Director. For your reference, EMA and all related and pertinent British Columbia Laws can be found at <http://www.bclaws.ca/>.

If you have any questions please contact the undersigned at [Stephanie.Little@gov.bc.ca](mailto:Stephanie.Little@gov.bc.ca) or at (250) 490-8258.

Yours truly,



Stephanie Little  
Environmental Protection Officer  
Compliance Section

cc:

Jason Bourgeois, Section Head, Compliance Section  
Cassandra Caunce, Director, Compliance Section  
Greg Tegart, Regional Manager, Ministry of Agriculture  
Doug MacFarlane, Emerald Bay Ag Services

[Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca)  
[Cassandra.Caunce@gov.bc.ca](mailto:Cassandra.Caunce@gov.bc.ca)  
[Greg.Tegart@gov.bc.ca](mailto:Greg.Tegart@gov.bc.ca)

s.22

COORS: 201401575

FW 2 orders re Steele Springs.txt

From: Beck, Tanner ENV:EX  
Sent: Friday, March 21, 2014 11:56 AM  
To: Beck, Tanner ENV:EX  
Subject: FW: 2 orders re Steele Springs  
Attachments: Informatin Order s.22 .pdf; 20140306145054.pdf; JANSEN Service.pdf; s.22 Service.pdf

Please create a COORS file and ECM for this and leave open for my update. 2 suspects outlined in 2 attached orders. EMA 6(2) x2 / MU:8-26 / Outcome: Administrative Document Served x2 / Officer time: 2.5hrs / Details: Manure runoff from fields. Environmental Protection Assist File. Source EP Officer LITTLE. Pollution Prevention Orders Served EP Files: 76600-20 and 107156

Thanks

From: Beck, Tanner ENV:EX  
Sent: Tuesday, March 11, 2014 3:09 PM  
To: Little, Stephanie ENV:EX  
Cc: Reiner, Mike J ENV:EX; Lockwood, Josh ENV:EX  
Subject: FW: 2 orders re Steele Springs

Stephanie,

I served s.22 and Dale JANSEN these documents in person today. Attached are the Certificates of Service. I will send the originals to you in the mail.

Conservation Officer Tanner Beck  
North Okanagan Zone | Conservation Officer Service | Ministry of Environment  
4607B - 23rd Street, Vernon, BC, V1T 4K7  
Phone: (250) 260-3037 Fax: (250) 260-3036  
RAPP: (24 HRS) 1-877-952-7277

From: "Little, Stephanie ENV:EX" <Stephanie.Little@gov.bc.ca>  
Date: March 7, 2014 at 16:18:04 PST  
To: "Lockwood, Josh ENV:EX" <Josh.Lockwood@gov.bc.ca>  
Subject: orders  
Hi Josh,

s.22 so when you have the signed service affidavits can you send them to me and I will make sure they make it into AMS and the files.

Thank you,

Stephanie Little

Environmental Protection Officer  
Ministry of Environment  
Environmental Protection Division  
Southern Interior Region - Okanagan  
102 Industrial Place  
Penticton BC V2A 7C8  
Phone: (250) 490-8200  
Fax: (250) 490-2231

Page 1

Page 1 of 16 MOE-2015-53213COS

FW 2 orders re Steele Springs.txt  
From: Lockwood, Josh ENV:EX  
Sent: Friday, March 7, 2014 1:39 PM  
To: Beck, Tanner ENV:EX  
Subject: Fwd: 2 orders re Steele Springs

SGT. J. D. Lockwood  
Sent from my iPhone

Begin forwarded message:  
From: "Little, Stephanie ENV:EX" <Stephanie.Little@gov.bc.ca>  
To: "Lockwood, Josh ENV:EX" <Josh.Lockwood@gov.bc.ca>  
Subject: FW: 2 orders re Steele Springs

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From: Reiner, Mike J ENV:EX  
Sent: Thursday, March 6, 2014 3:01 PM  
To: Lockwood, Josh ENV:EX  
Cc: 'Kwan, Janelle'; Tegart, Greg AGRI:EX; Victoria EPD Permit Administration ENV:EX;  
Little, Stephanie ENV:EX; Barlas, Sajid A ENV:EX  
Subject: 2 orders re Steele Springs

Hi Josh

We've issued these documents and would appreciate if they could also be served in person.  
s.22

Vic Admin - with respect to the Information Order note we're dealing with hand delivery etc.

Janelle and Greg cc's are to keep you in the loop

Mike Reiner  
Environmental Protection  
Ministry of Environment  
Penticton BC

---

From: Reiner, Mike J ENV:EX  
Sent: Thursday, March 6, 2014 2:18 PM  
To: 's.22'  
Cc: Barlas, Sajid A ENV:EX; 'Doug Macfarlane'  
Subject: Information order

Hello Doug

Am attaching the final information order we discussed earlier this week.  
Your attention to the concerns in this document are appreciated.





## Case Summary

### Details

Case File #:	201401575	Opened Date:	2014-03-26 01:31 PM
Category:	CO SERVICE	Discovery Date:	2014-03-06
Type:	WASTE MANAGEMENT	Closed Date:	2014-08-22 05:21 PM
Status:	Closed	Admin Org Unit:	NORTH OKANAGAN ZONE
Opened By:	COOKE, LESLIE : 90419	Source:	WASTE STAFF
Lead Investigator:	BECK, TANNER	Source Ref #:	MIKE REINER
Lead Investigator's Phone:		Other Source Agency:	ENVIRONMENTAL PROTECTION PENTICTON
Major Case:	No	Transferred to Agency:	
Paper File Created:	No	Other Transferred Agency:	
Joint Investigation:	No		
Investigation Review Process:	No	Transferred Agency Contact:	
Investigation Review Date:		Lead Agency:	MINISTRY OF ENVIRONMENT
Investigation Start Date:	2014-03-06	Joint Agency:	MINISTRY OF ENVIRONMENT
Joint Agency Contact:		Joint Agency Phone:	
Other Joint Agency:		Joint Agency Case No:	
Case Description:	INTRODUCE BUSINESS WASTE X 2. MANURE RUN-OFF.		

### Members:

Name	Phone Number	Start Date	End Date
BECK, TANNER		2014-03-26	2024-03-23
COOKE, LESLIE : 90419		2014-03-26	2024-03-23
SEITZ, EDWARD : 61226		2014-03-06	2024-03-23

### Parties Involved:

Name	Role	Nature of Involvement	Phone Number	Address
JANSEN, DALE	SUSPECT	PROPERTY OWNER, DIRECTOR OF H.S. JANSEN & SONS FARM LTD.		s.22 5063 KNOB HILL ROAD ARMSTRONG BC V0E 1B4 CAN
s.22	SUSPECT	ALSO ASSOCIATED IN THE FOLLOWING COORS; 199319559 - CHARGED 199600726 19319560		s.22

### Sites:

Site	Site Type	Description
1. 8-26; NORTH OKANAGAN ZONE		VERNON - INTERSECTION OF SCHUBERT ROAD AND KNOB HILL ROAD IN ARMSTRONG

Date Printed: 2015/10/15  
User ID: COOKE, LESLIE : 90419  
Environment: PROD

Page 1 of 3  
Report ID: CORS-001

**Notes:**

Date	Name	Comments
2014-03-27	BECK, TANNER	ENVIRONMENTAL PROTECTION ASSIST FILE. FILE CLOSED AND CAN BE OPENED IN THE FUTURE IF NEEDED.

**Continuation Report:**

Date	Time	Name	Report
2014-07-23	11:30	SEITZ, EDWARD : 61226	CO SEITZ ATTENDED AND TOOK PHOTOS OF 2 RECENTLY CUT ALFALPHA FIELDS. 13:55 TRACTOR OPERATOR WOULD NOT STOP AND TALK TO CO SEITZ-TOOK PHOTOS OF TRACTOR, SPRAYING AND WHAT WAS LEFT ON THE GROUND. 14:10 CO TZ AT 5063 KNOB HILL ROAD & SPEAKS TO DALE & s.22 JANSEN WHO ADVISE THEY MONITOR THE MANURE FLOW BY GPS & LINE DIAMETER-650 - 700 GALLONS PER MINUTE. PHOTOS & INFOR SENT TO STEPHANIE LITTLE.
2014-03-11	15:09	BECK, TANNER	CO BECK sent EPO LITTLE, who had taken over the file from EPO REINER, scanned copies of both the Certificates of Service and sent the originals to LITTLE in house mail. File closed. File can be re-opened if further action is needed in the future.
2014-03-11	13:35	BECK, TANNER	CO BECK met with Dale JANSEN ; s.22 JANSEN produced a valid DL confirming his identity and was served with a copy of the Compliance Order for File: 76600-20.
2014-03-11	13:21	BECK, TANNER	CO BECK met with s.22 at the intersection of Schubert Rd. and Knob Hill Rd. s.22 produced a valid DL confirming his identity and was served a copy of Information Order for File: 107156.
2014-03-07	13:39	BECK, TANNER	CO BECK received a request from EPO Mike REINER for two Orders to be served in person to both Dale JANSEN s.22 s.22 . See attached orders for details.

**Attachments:**

Attach#	Description	Photo	File	Attached By	Attached Date
1	CONTINUATION REPOT	No	FW 2 ORDERS RE STEELE SPRINGS.TXT	COOKE, LESLIE : 90419	2014-03-27
2	JANSEN COMPLIANCE ORDER LETTER	No	JANSEN LETTER.PDF	COOKE, LESLIE : 90419	2014-03-27
3	s.22 INFORMATION ORDER LETTER	No	INFORMATIN ORDER s.22 .PDF	COOKE, LESLIE : 90419	2014-03-27
4	SERVICE INFORMATION FOR JANSEN	No	JANSEN SERVICE.PDF	COOKE, LESLIE : 90419	2014-03-27
5	SERVICE INFORMATION FOR s.22	No	s.22 SERVICE.PDF	COOKE, LESLIE : 90419	2014-03-27
6	CO SEITZ FIELD NOTES	No	SEITZ-FIELD NOTES.PDF	NIELSEN, KAREN : 62798	2014-08-22
7	PHOTOS	No	PHOTOS TAKEN BY CO SEITZ.DOCX	NIELSEN, KAREN : 62798	2014-08-22

**Contravention No.1**

**ENVIRONMENTAL MANAGEMENT ACT 6 (2) : INTRODUCE WASTE FROM A PRESCRIBED INDUSTRY, TRADE OR BUSINESS**

Date Printed: 2015/10/15  
User ID: COOKE, LESLIE : 90419  
Environment: PROD

Page 2 of 3  
Report ID: CORS-001

<b>Species:</b>		<b>Party:</b>	JANSEN, DALE
<b>Est. Incident Date</b>	2014-03-06 14:18	<b>Party Address:</b>	s.22
<b>Site:</b>	1. 8-26; NORTH OKANAGAN ZONE; VERNON - INTERSECTION OF SCHUBERT ROAD AND KNOB HILL ROAD IN ARMSTRONG		5063 KNOB HILL ROAD ARMSTRONG BC V0E 1B4 CAN

#### Enforcement Actions

##### Enforcement Action No. 1

<b>Type:</b>	ADMINISTRATIVE ACTION	<b>End Date:</b>	2014-03-11
<b>Effective Date:</b>	2014-03-06		
<b>Admin Action Type:</b>	COMPLIANCE ORDER		
<b>Comments:</b>	SEE ATTACHMENT OFFICER BECK ASSISTED AND SERVED POLLUTION PREVENTION ORDER DOCUMENTS		

#### Contravention No.2 ENVIRONMENTAL MANAGEMENT ACT 6 (2) : INTRODUCE WASTE FROM A PRESCRIBED INDUSTRY, TRADE OR BUSINESS

<b>Species:</b>		<b>Party:</b>	s.22
<b>Est. Incident Date</b>	2014-03-06 14:18	<b>Party Address:</b>	
<b>Site:</b>	1. 8-26; NORTH OKANAGAN ZONE; VERNON - INTERSECTION OF SCHUBERT ROAD AND KNOB HILL ROAD IN ARMSTRONG		

#### Enforcement Actions

##### Enforcement Action No. 2

<b>Type:</b>	ADMINISTRATIVE ACTION	<b>End Date:</b>	2014-03-11
<b>Effective Date:</b>	2014-03-06		
<b>Admin Action Type:</b>	COMPLIANCE ORDER		
<b>Comments:</b>	SEE ATTACHMENT OFFICER BECK ASSISTED AND SERVED POLLUTION PREVENTION ORDER DOCUMENTS		

**Vehicles:**



March 6, 2014

File: 76600-20 Armstrong

**HAND DELIVERED**

H.S. Jansen and Sons Farm Ltd  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4  
Attention: Dale Jansen, Director

**COMPLIANCE ORDER**

Re: Manure application concern in the vicinity of Steele Springs on Schubert Road.

Background

On January 21, 2014, M. Reiner Sr. Environmental Protection Officer attended Steele Springs, a drinking water supply source for approximately 150 residents, and the Jansen Dairy Farm on Knob Hill Road in Armstrong, BC to follow up on a report of unusual trend in nitrate levels detected in Steele Springs.

The information available to M. Reiner prior to this visit and gathered on and after January 21, 2014 is as follows.

- 1) H.S. Jansen & Sons Farm Ltd (henceforth "the Farm") has an Environmental Farm Plan.
- 2) Steele Springs originates from shallow un-confined aquifer in the area as per information provided by a ground water hydrologist with FLNRO in Penticton and documented in this report.  
[http://a100.gov.bc.ca/appsdata/acat/documents/r16678/Hullcar\\_groundwater\\_potential\\_eval\\_1249498672243\\_f7ea0679b44b73003fe49801dfed50cd9361baff77bae58099224e4b1d15397e.pdf](http://a100.gov.bc.ca/appsdata/acat/documents/r16678/Hullcar_groundwater_potential_eval_1249498672243_f7ea0679b44b73003fe49801dfed50cd9361baff77bae58099224e4b1d15397e.pdf)

A large portion of this un-confined aquifer is under the field of concern shown below.

---

Ministry of Environment

Environmental Protection Division  
Kootenay and Okanagan Regions  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: (250) 490-8200  
Facsimile: (250) 490-2231

Well logs also indicate the upper 50 to 100 ft of soils in and around the field are: Sand, Dry Sand and Gravel and Sandy till, all of which typically have high hydraulic conductivities i.e. groundwater in such soils can typically move horizontally at a rate of about 2 m/day.



- 3) The results of most recent water samples collected from Steele Springs during December 2013 and January 2014 and analyzed for nitrates show that nitrates have risen to significantly higher levels this fall and winter as compared to the levels detected in previous years. The previous winters saw nitrate levels peak at 5 to 6 mg/L in October and November and drop as the year progressed. This winter's results exceeded 6.5 mg/L in early January. Subsequent results from later samples collected in January show nitrate levels increased to 7.8 mg/L (Enclosure 1 encompasses the last 18 months or so of Steele Springs data). The undersigned also sampled Steel Springs on January 21, 2014 and that sample was analyzed by another accredited laboratory. That sample showed 8.8 mg/L for Nitrate as N (Enclosure 2). The Canada-Wide drinking water limit for Nitrate is 10 mg/L as N.
- 4) A director for Jansen Farms indicated to M. Reiner on January 21, 2014 and in subsequent communications that in the fall of 2013, 20,000 gallons/acre of liquid manure was applied by the Farm staff to a field located immediately up gradient of Steel Springs. The Farm director also stated that there was no cover crop on that field and the application was intended to supply 120 lb of Nitrogen/acre (equivalent to 120 kg of Nitrogen/hectare) for a corn crop that will be planted in spring of 2014.

- 5) M. Reiner assessed the Farm Director's statements against the Reference Guide for Environmental Farm Plans. That assessment has determined that liquid manure slurries from Dairy cattle likely contain 1.6 Kg of nitrogen per cubic meter ( $m^3$ ) of slurry as per Table 6.7 of the Reference Guide.

Table 6.7 Assumed Annual Manure Nitrogen Excretion Values and Manure Nitrogen Concentrations in Storage for Various Animal Types *			
Type of Animal		Use with Worksheet #4, Box 3	Use with Worksheet #5, Box 3
		Assumed Annual Manure N Excretion (kg N/animal)	Average Manure N Concentration (kg N/ $m^3$ )
Beef Cattle	Cows and Bred Heifers	73	3.4
	Feeder 340 to 600 kg	52	3.4
	Yearling 230 to 340 kg	35	3.4
	Calves 60 to 230 kg	17	3.4
Dairy Cattle	Milking cow including associated replacements	200	1.6 (watery)
			2.8 (medium slurry)
			4.0 (thick slurry)

Even when one uses 1 kg of N/ $m^3$  of liquid manure, the amount of manure applied appears to be in excess of 120 lb of N/acre or 120 kg of N/hectare application. i.e.

20,000 Gallons/acre approximately equals 190  $m^3$ /hectare of manure

Using 1 kg of Nitrogen/ $m^3$  of manure indicates the application rate may have been as high as 190 kg of N/ hectare.

Table 6.10 of the Reference Guide (attached) further suggests that no manure, at all, should be applied to any fields in the interior of BC from September thru to the end of March unless a cover crop is in place.

Table 6.10 Percentage Manure to Apply at Various Times of the Year in Interior Regions						
Crop	Typical Annual Nitrogen Uptake <sup>a</sup> (kg N/ha)	Suggested Manure Application as a Percentage of Annual Crop Uptake <sup>b</sup>				
		Feb & March	April & May	June to Aug	Sept & Oct	Nov to Jan
Perennial Grass <sup>c</sup>	200 to 400	up to 5 %	up to 100 %	up to 75 %	up to 50 %	0 %
Silage Corn	150 to 200	0 %	up to 100 %	20 %	0 %	0 %
Cereals (Spring Planted)	50 to 150	0 %	up to 100 %	0 %	0 %	0 %
Cereals (Fall Planted)	50 to 150	up to 5 % <sup>d</sup>	up to 100 %	up to 100 %	0 %	0 %
Berries, Tree Fruits and Grapes	50 to 100 <sup>e</sup>	0 %	up to 100 %	0 % <sup>f</sup>	0 %	0 %
Vegetables	80 to 185 <sup>g</sup>	0 %	up to 100 %	up to 100 %	0 %	0 %
Cover Crop <sup>h</sup>						
Emerges before Aug 15	100 to 140	0 %	0 %	up to 60 %	up to 100 %	0 %
Emerges before Sept 1	40 to 60	0 %	0 %	0 %	up to 100 %	0 %

<sup>a</sup> For high yielding crop – better estimates of actual uptake can be obtained by completing a Nutrient Management Plan  
<sup>b</sup> Maximum total nitrogen (from manure and chemical fertilizer) applied to the soil not to exceed the crop's annual uptake (i.e., the sum of percent applied for each time period through the year not to exceed 100%).  
<sup>c</sup> For grass legume mixes reduce the application of nitrogen in proportion to legume content  
<sup>d</sup> Feb & March application in the year following planting  
<sup>e</sup> Maximum nitrogen application depends on crop type (i.e. raspberries vs. blueberries or potatoes vs. broccoli)  
<sup>f</sup> For new plantings up to 100% of that year's nutrient need  
<sup>g</sup> Includes relay crops – post-harvest nitrate test should be below 20 µg/g (0-30 cm) if fertilizing a fall-planted cover crop

6) the Agricultural Waste Control Regulation states:

*13 Agricultural waste must not be applied to the land if, due to meteorological, topographical or soil conditions or the rate of application, runoff or the escape of agricultural waste causes pollution of a watercourse or groundwater.*

*14 Agricultural wastes must not be applied*

- (a) on frozen land,*
- (b) in diverting winds,*
- (c) on areas having standing water,*
- (d) on saturated soils, or*
- (e) at rates of application that exceed the amount required for crop growth,*

*if runoff or escape of agricultural waste causes pollution of a watercourse or groundwater, or goes beyond the farm boundary.*

Compliance Order:

Based on the above information, relative to sections 13 and 14 of the Agricultural Waste Control Regulation, I have reasonable grounds to believe that the Farm has contravened of the sections 13 and 14 of the Agricultural Waste Control Regulation.

Under section 112 of *Environmental Management Act*, when an inspector has reasonable grounds to believe a contravention has occurred, the inspector may order a person to do anything the officer considers necessary to stop the contravention or prevent another contravention.

Therefore, pursuant to section 112 of the *Environmental Management Act*, I hereby order, H.S. Jansen & Sons Farm Ltd to comply with the followings:

- 1) Cease any further nutrient (manure or fertilizer) applications to the field of concern identified above in the 2014 calendar year. Additional applications of nutrients may only be considered if deemed necessary based on sampling conducted by and recommendations provided by a Qualified Professional. The application of additional nutrients also requires the approval of the director in writing prior to the application of additional nutrients. The recommended application rate must also consider nitrate levels in Steele Springs. Based on data available to us at this time, applications exceeding 200 to 220 kg/ hectare /year would be considered excessive by a number of other jurisdictions as well as the Environmental Farm Plan Reference Guide Recommendations
- 2) Retain a Qualified Professional to compile and fully assess the Farm's recent nutrient application rates for the field of concern and their potential linkages to nitrate levels in Steel Springs for the past three years. This assessment would include review of available manure, soil and groundwater sampling results, crop rotation patterns, and manure application rates for the last three years. In addition, the Qualified Professional should conduct additional soil and groundwater sampling as necessary to determine present soil nitrogen levels in the in the 0-6, 6-12 and 12 to 24 inch soil horizons prior to March 10, 2014 and again in mid to late April. A report of the QP's findings, recommendations and conclusions relative to mitigating nitrate levels to less than 6 mg/L in Steel Springs must be submitted to the Director by no later than July 15, 2014.
- 3) Develop and submit a comprehensive nutrient management plan for the approval of the director using a Qualified Professional for the entire farm in keeping with the recommendations in the Environmental Farm Plan Reference Guide and specifically including:
  - a) a detailed contingency plan to deal with unforeseen incidents which result in the farm entering or finishing any given growing season with 20% more nutrients than normally expected.
  - b) a monitoring plan for soils, surface waters and groundwater on and around the farm and the lands it farms.

The submission of these plans is required on or before September 1, 2014 and the plan should consider the findings and recommendations from the assessment in requirement #2 above.



- 4) Submit an annual summary on and before February 28, of 2015, 2016 and 2017 calendar years, fully documenting the nutrient content of the manure applied the previous year, the nutrients applied to each specific field and when, as well the results of soil, surface water and groundwater sampling as per the comprehensive nutrient management plan.

Right to Appeal:

This decision and the specific conditions it contains may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date that notice of this decision is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

This compliance order and the associated requirements are without prejudice to whatever enforcement action the Conservation Officer Service may be considering in response to this incident at the present time or in the event that nitrate levels exceed the 10 mg/L as N drinking water limit.

Should H.S. Jansen and Sons require further information or clarification, please contact M. Reiner or S. Barlas at 250-490-8200.

Yours truly,



Mike Reiner, P.Ag.  
Sr. Environmental Protection Officer

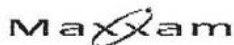
MR/ch

Cc: Janelle Kwan Interior Health, Vernon BC.  
J Lockwood – COS Supervisor N. Okanagan  
G Tegart – Agriculture, Vernon

Enclosure 1 (emailed separately on Feb 24, 2014)

  
nitrates.pdf

Enclosure 2



Maxxam Job #: B405523  
Report Date: 2014/01/29

MINISTRY OF ENVIRONMENT

Site Location: E206210 STEEL SPRING OFF SCHUBERT R  
Sampler Initials: MR

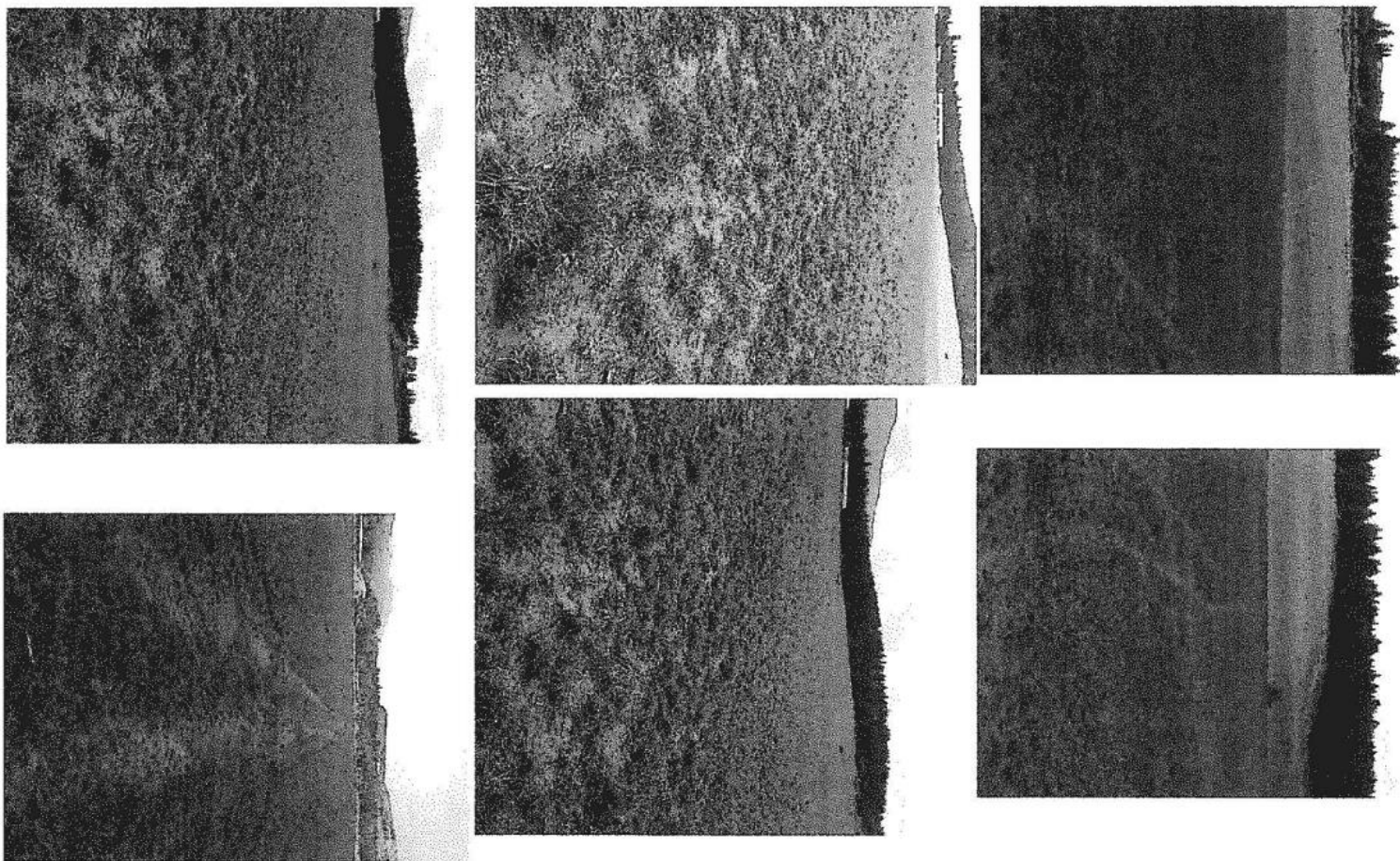
RESULTS OF CHEMICAL ANALYSES OF WATER

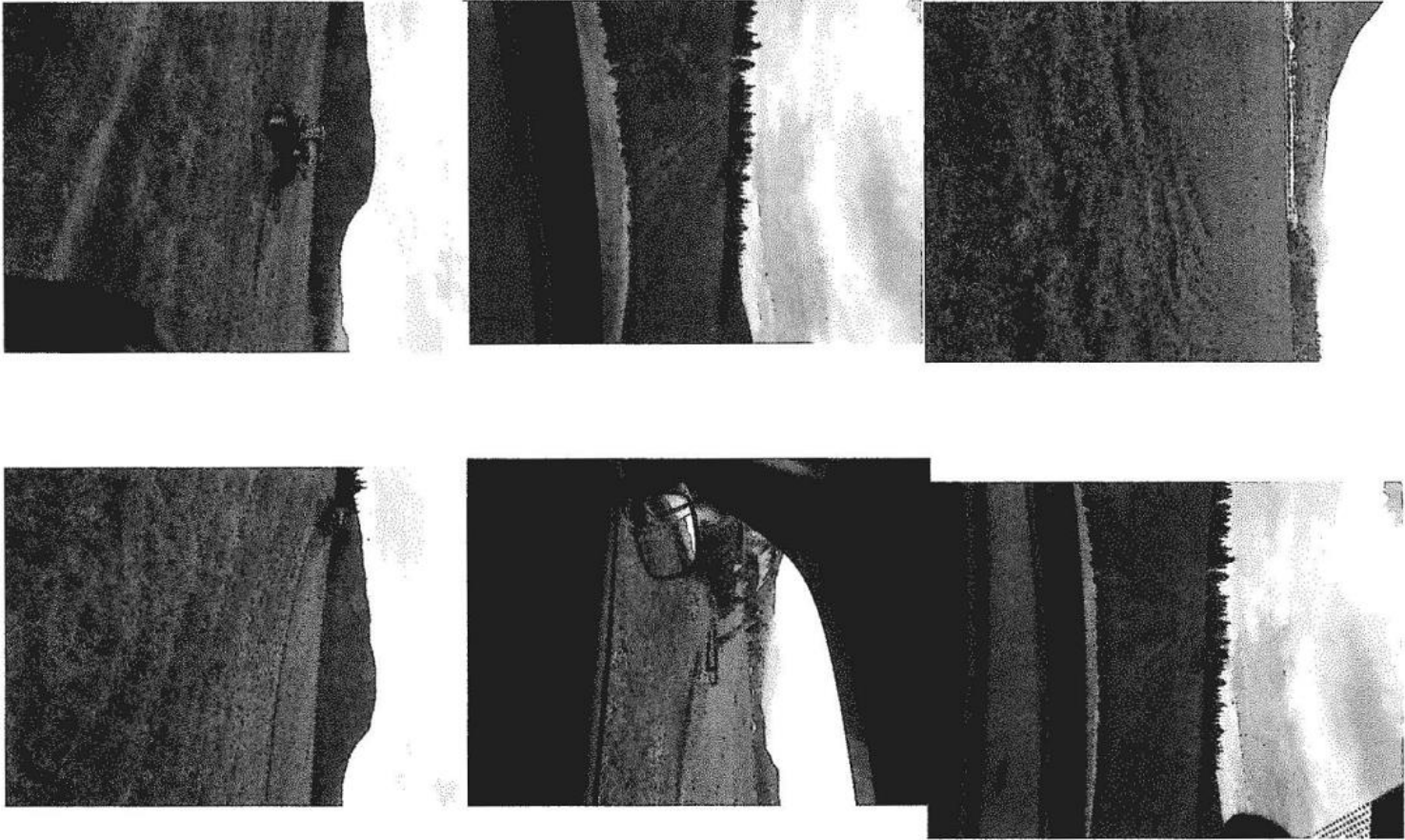
Maxxam ID		IM8758		
Sampling Date		2014/01/21 16:00		
COCE		50206387		
	UNITS	REQD	RDL	QC Batch
Field Parameters				
Sample End Date	N/A	2014/01/21	0	7358554
Sample End Time	N/A	16:00	0	7358554
Sample Start Date	N/A	2014/01/21	0	7358554
Sample Start Time	N/A	16:00	0	7358554
Temperature at Analyt	C	1		7358550
Calculated Parameters				
Filter and HNO3 Preservation	N/A	LA5	N/A	7358597
Nitrate (N)	mg/L	5.80	0.020	7358552
Misc. Inorganics				
Dissolved Hardness (CaCO3)	mg/L	358	0.50	7358400
Ammonia				
Dissolved Chloride (Cl)	mg/L	16	0.50	7362000
Nutrients				
Total Kjeldahl Nitrogen (Calc)	mg/L	<0.20	0.20	7358555
Nitrate plus Nitrite (N)	mg/L	8.80	0.020	7358914
Nitrite (N)	mg/L	<0.0020	0.0020	7359201
Total Nitrogen (N)	mg/L	8.48	0.20	7359231
Physical Properties				
Conductivity	uS/cm	716	1.0	7359214

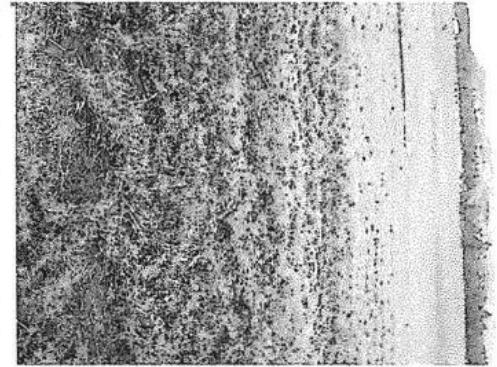
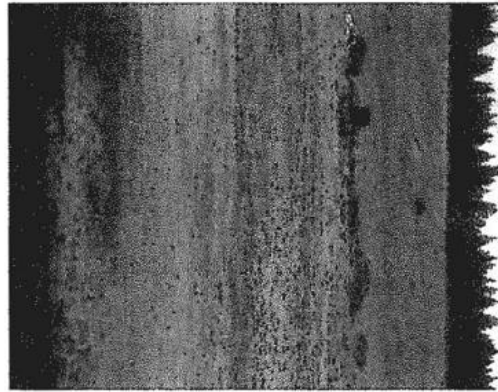
ELEMENTS BY ATOMIC SPECTROSCOPY (WATER)

Maxxam ID		IM8758		
Sampling Date		2014/01/21 16:00		
COCE		50206387		
	UNITS	REQD	RDL	QC Batch
Dissolved Metals by ICPMS				
Dissolved Sodium (Na)	mg/L	11.0	0.650	7358401

N/A = Not Applicable  
RDL = Reportable Detection Limit







# CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Fill in:  
your name;  
the name of the party or  
other person served;  
the date service took  
place;  
the street address  
or location, city and  
province where service  
took place.

Name the documents  
that you served.

Tell how service took  
place by checking  
appropriate box(es) for:

ordinary mail and fill in  
the date mailed;

an individual;

a company as defined  
in the *Business  
Corporations Act*;

an extraprovincial company  
as defined in the *Business  
Corporations Act*;

a partnership;

a municipal corporation,  
regional district or other  
local government body;

a young person;

a society as defined in the  
*Society Act*;

an extraprovincial society  
as defined in the *Society  
Act* (if no attorney has been  
appointed, check one of  
the 2 preceding boxes for a  
society);

an unincorporated  
association or trade union;

a corporation incorporated  
outside British Columbia if  
it is not an extraprovincial  
company;

alternate service method  
ordered by the Court.

I certify that

I Tanner Beck a Conservation Officer

served Dale Jansen

on 2014-03-11

at s.22

at 1335 hrs.

with Compliance Order Re: Manure application  
concern in the vicinity of Steele Springs  
on Schubert Road. File: 76600-20 Armstrong.

by ☐ mailing a copy by ordinary mail to that person's address on \_\_\_\_\_

Date

☒ leaving a copy of it with him or her.

☐ mailing a copy of it by registered mail to him or her.

☐ mailing a copy of it by registered mail to the registered office of the company.

☐ leaving a copy of it ☐ at the registered office of the company.

☐ at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there.

☐ with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.

☐ mailing a copy of it by registered mail to the attorney shown in the corporate registry.

☐ leaving a copy of it with the attorney shown in the corporate registry.

☐ leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.

☐ mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.

☐ mailing a copy of it by registered mail to a partner.

☐ leaving a copy of it ☐ with a partner.

☐ at the place of business of the partnership, with a person who appears to manage or control the partnership business there.

☐ with a receptionist who works at a place of business of the partnership.

☐ giving a copy to the clerk, deputy clerk or a similar official.

☐ leaving a copy of the notice with the defendant's mother, father or guardian.

☐ mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.

☐ leaving a copy of it ☐ at the address for service on file with the Registrar of Companies.

☐ with a director, officer, receiver manager or liquidator of the society.

☐ mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the *Society Act*.

☐ leaving a copy of it with an attorney appointed under section 77 of the *Society Act*.

☐ mailing a copy of it by registered mail to the registered office of the association.

☐ leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.

☐ mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.

☐ leaving a copy of it ☐ at a place of business or registered office of the corporation outside British Columbia with a

receptionist or a person who appears to manage or control the corporation's business, or  
☐ with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.

☐ (fill in any instructions given by a judge or registrar for service)

NOTE: You must give proof of service by REGISTERED MAIL by attaching one of the following:

1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
2. a print-out of the delivery confirmation made available on the Internet by Canada Post (<http://www.canadapost.ca>).

2014-03-11  
Date

  
Signature of person who served the document

## Appendix 10: Compliance Order – March 6, 2014



March 6, 2014

File: 76600-20 Armstrong

### HAND DELIVERED

H.S. Jansen and Sons Farm Ltd  
5063 Knob Hill Road  
Armstrong, BC V0E 1B4

Attention: Dale Jansen, Director

### COMPLIANCE ORDER

Re: Manure application concern in the vicinity of Steele Springs on Schubert Road.

#### Background

On January 21, 2014, M. Reiner Sr. Environmental Protection Officer attended Steele Springs, a drinking water supply source for approximately 150 residents, and the Jansen Dairy Farm on Knob Hill Road in Armstrong, BC to follow up on a report of unusual trend in nitrate levels detected in Steele Springs.

The information available to M. Reiner prior to this visit and gathered on and after January 21, 2014 is as follows.

- 1) H.S. Jansen & Sons Farm Ltd (henceforth "the Farm") has an Environmental Farm Plan.
- 2) Steele Springs originates from shallow un-confined aquifer in the area as per information provided by a ground water hydrologist with FLNRO in Penticton and documented in this report.  
[http://a100.gov.bc.ca/appsdata/acat/documents/r16678/Hullcar\\_groundwater\\_potential\\_eval\\_1249498672243\\_f7ea0679b44b73003fe49801dfed50cd9361baff77bae58099224e4b1d15397e.pdf](http://a100.gov.bc.ca/appsdata/acat/documents/r16678/Hullcar_groundwater_potential_eval_1249498672243_f7ea0679b44b73003fe49801dfed50cd9361baff77bae58099224e4b1d15397e.pdf)

A large portion of this un-confined aquifer is under the field of concern shown below.

---

Ministry of Environment

Environmental Protection Division  
Kootenay and Okanagan Regions  
102 Industrial Place  
Penticton BC V2A 7C8

Telephone: (250) 490-8200  
Facsimile: (250) 490-2231

Well logs also indicate the upper 50 to 100 ft of soils in and around the field are: Sand, Dry Sand and Gravel and Sandy till, all of which typically have high hydraulic conductivities i.e. groundwater in such soils can typically move horizontally at a rate of about 2 m/day.



- 3) The results of most recent water samples collected from Steele Springs during December 2013 and January 2014 and analyzed for nitrates show that nitrates have risen to significantly higher levels this fall and winter as compared to the levels detected in previous years. The previous winters saw nitrate levels peak at 5 to 6 mg/L in October and November and drop as the year progressed. This winter's results exceeded 6.5 mg/L in early January. Subsequent results from later samples collected in January show nitrate levels increased to 7.8 mg/L (Enclosure 1 encompasses the last 18 months or so of Steele Springs data). The undersigned also sampled Steel Springs on January 21, 2014 and that sample was analyzed by another accredited laboratory. That sample showed 8.8 mg/L for Nitrate as N (Enclosure 2). The Canada-Wide drinking water limit for Nitrate is 10 mg/L as N.
- 4) A director for Jansen Farms indicated to M. Reiner on January 21, 2014 and in subsequent communications that in the fall of 2013, 20,000 gallons/acre of liquid manure was applied by the Farm staff to a field located immediately up gradient of Steel Springs. The Farm director also stated that there was no cover crop on that field and the application was intended to supply 120 lb of Nitrogen/acre (equivalent to 120 kg of Nitrogen/hectare) for a corn crop that will be planted in spring of 2014.



- 5) M. Reiner assessed the Farm Director's statements against the Reference Guide for Environmental Farm Plans. That assessment has determined that liquid manure slurries from Dairy cattle likely contain 1.6 Kg of nitrogen per cubic meter ( $\text{m}^3$ ) of slurry as per Table 6.7 of the Reference Guide.

Table 6.7 Assumed Annual Manure Nitrogen Excretion Values and Manure Nitrogen Concentrations in Storage for Various Animal Types *			
Type of Animal		Use with Worksheet #4, Box 3	Use with Worksheet #5, Box 3
		Assumed Annual Manure N Excretion (kg N/animal)	Average Manure N Concentration (kg N/ $\text{m}^3$ )
Beef Cattle	Cows and Bred Heifers	73	3.4
	Feeder 340 to 500 kg	52	3.4
	Yearling 230 to 340 kg	35	3.4
	Calves 50 to 230 kg	17	3.4
Dairy Cattle	Milking cow including associated replacements	200	1.6 (watery)
			2.8 (medium slurry)
			4.0 (thick slurry)

Even when one uses 1 kg of N / $\text{m}^3$  of liquid manure, the amount of manure applied appears to be in excess of 120 lb of N/acre or 120 kg of N/hectare application. i.e.

20,000 Gallons/acre approximately equals 190  $\text{m}^3$ /hectare of manure

Using 1 kg of Nitrogen/ $\text{m}^3$  of manure indicates the application rate may have been as high as 190 kg of N/ hectare.

Table 6.10 of the Reference Guide (attached) further suggests that no manure, at all, should be applied to any fields in the interior of BC from September thru to the end of March unless a cover crop is in place.

Table 6.10 Percentage Manure to Apply at Various Times of the Year in Interior Regions						
Crop	Typical Annual Nitrogen Uptake <sup>a</sup> (kg N/ha)	Suggested Manure Application as a Percentage of Annual Crop Uptake <sup>b</sup>				
		Feb & March	April & May	June to Aug	Sept & Oct	Nov to Jan
Perennial Grass <sup>c</sup>	200 to 400	up to 5 %	up to 100 %	up to 75 %	up to 50 %	0 %
Silage Corn	150 to 200	0 %	up to 100 %	20 %	0 %	0 %
Cereals (Spring Planted)	50 to 150	0 %	up to 100 %	0 %	0 %	0 %
Cereals (Fall Planted)	50 to 150	up to 5 % <sup>d</sup>	up to 100 %	up to 100 %	0 %	0 %
Berries, Tree Fruits and Grapes	50 to 100 <sup>e</sup>	0 %	up to 100 %	0 % <sup>f</sup>	0 %	0 %
Vegetables	80 to 185 <sup>e</sup>	0 %	up to 100 %	up to 100 %	0 %	0 %
Cover Crop <sup>g</sup>						
Emerged before Aug 15	100 to 140	0 %	0 %	up to 60 %	up to 100 %	0 %
Emerged before Sept 1	40 to 60	0 %	0 %	0 %	up to 100 %	0 %

<sup>a</sup> For high yielding crop – better estimates of actual uptake can be obtained by completing a Nutrient Management Plan

<sup>b</sup> Maximum total nitrogen (from manure and chemical fertilizer) applied to the soil not to exceed the crop's annual uptake (i.e., the sum of percent applied for each time period through the year not to exceed 100%).

<sup>c</sup> For grass legume mixes reduce the application of nitrogen in proportion to legume content

<sup>d</sup> Feb & March application in the year following planting

<sup>e</sup> Maximum nitrogen application depends on crop type (i.e. raspberries vs. blueberries or potatoes vs. broccoli)

<sup>f</sup> For new plantings up to 100% of that year's nutrient need

<sup>g</sup> Includes relay crops – post-harvest nitrate test should be below 20 µg/g (0-30 cm) if fertilizing a fall-planted cover crop

6) the Agricultural Waste Control Regulation states:

*13 Agricultural waste must not be applied to the land if, due to meteorological, topographical or soil conditions or the rate of application, runoff or the escape of agricultural waste causes pollution of a watercourse or groundwater.*

*14 Agricultural wastes must not be applied*

*(a) on frozen land,*

*(b) in diverting winds,*

*(c) on areas having standing water,*

*(d) on saturated soils, or*

*(e) at rates of application that exceed the amount required for crop growth,*

*if runoff or escape of agricultural waste causes pollution of a watercourse or groundwater, or goes beyond the farm boundary.*

#### Compliance Order:

Based on the above information, relative to sections 13 and 14 of the Agricultural Waste Control Regulation, I have reasonable grounds to believe that the Farm has contravened of the sections 13 and 14 of the Agricultural Waste Control Regulation.

Under section 112 of *Environmental Management Act*, when an inspector has reasonable grounds to believe a contravention has occurred, the inspector may order a person to do anything the officer considers necessary to stop the contravention or prevent another contravention.

Therefore, pursuant to section 112 of the *Environmental Management Act*, I hereby order, H.S. Jansen & Sons Farm Ltd to comply with the followings:

- 1) Cease any further nutrient (manure or fertilizer) applications to the field of concern identified above in the 2014 calendar year. Additional applications of nutrients may only be considered if deemed necessary based on sampling conducted by and recommendations provided by a Qualified Professional. The application of additional nutrients also requires the approval of the director in writing prior to the application of additional nutrients. The recommended application rate must also consider nitrate levels in Steele Springs. Based on data available to us at this time, applications exceeding 200 to 220 kg/ hectare /year would be considered excessive by a number of other jurisdictions as well as the Environmental Farm Plan Reference Guide Recommendations
- 2) Retain a Qualified Professional to compile and fully assess the Farm's recent nutrient application rates for the field of concern and their potential linkages to nitrate levels in Steel Springs for the past three years. This assessment would include review of available manure, soil and groundwater sampling results, crop rotation patterns, and manure application rates for the last three years. In addition, the Qualified Professional should conduct additional soil and groundwater sampling as necessary to determine present soil nitrogen levels in the in the 0-6, 6-12 and 12 to 24 inch soil horizons prior to March 10, 2014 and again in mid to late April. A report of the QP's findings, recommendations and conclusions relative to mitigating nitrate levels to less than 6 mg/L in Steel Springs must be submitted to the Director by no later than **July 15, 2014**.
- 3) Develop and submit a comprehensive nutrient management plan for the approval of the director using a Qualified Professional for the entire farm in keeping with the recommendations in the Environmental Farm Plan Reference Guide and specifically including:
  - a) a detailed contingency plan to deal with unforeseen incidents which result in the farm entering or finishing any given growing season with 20% more nutrients than normally expected.
  - b) a monitoring plan for soils, surface waters and groundwater on and around the farm and the lands it farms.

The submission of these plans is required on or before **September 1, 2014** and the plan should consider the findings and recommendations from the assessment in requirement #2 above.

- 4) Submit an annual summary on and before February 28, of 2015, 2016 and 2017 calendar years, fully documenting the nutrient content of the manure applied the previous year, the nutrients applied to each specific field and when, as well the results of soil, surface water and groundwater sampling as per the comprehensive nutrient management plan.

Right to Appeal:

This decision and the specific conditions it contains may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date that notice of this decision is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

This compliance order and the associated requirements are without prejudice to whatever enforcement action the Conservation Officer Service may be considering in response to this incident at the present time or in the event that nitrate levels exceed the 10 mg/L as N drinking water limit.

Should H.S. Jansen and Sons require further information or clarification, please contact M. Reiner or S. Barlas at 250-490-8200.

Yours truly,



Mike Reiner. P.Ag.  
Sr. Environmental Protection Officer

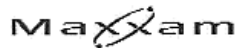
MR/ch

Cc: Janelle Kwan Interior Health, Vernon BC.  
J Lockwood – COS Supervisor N. Okanagan  
G Tegart – Agriculture, Vernon

Enclosure 1 (emailed separately on Feb 24, 2014)

  
nitrates.pdf

Enclosure 2



Maxxam Job #: B405523  
Report Date: 2014/01/29

MINISTRY OF ENVIRONMENT

Site Location: E296210 STEEL SPRING OFF SCHUBERT R  
Sampler Initials: MR

RESULTS OF CHEMICAL ANALYSES OF WATER

Maxxam ID		IM8758		
Sampling Date		2014/01/21 16:00		
COC#		50206387		
	UNITS	REG/1	RDL	QC Batch
<b>Field Parameters</b>				
Sample End Date	N/A	2014/01/21	0	7358854
Sample End Time	N/A	16:00	0	7358854
Sample Start Date	N/A	2014/01/21	0	7358854
Sample Start Time	N/A	16:00	0	7358854
Temperature at Arrival	C	1		7358850
<b>Calculated Parameters</b>				
Filter and HNO3 Preservation	N/A	LAB	N/A	7358857
Nitrate (N)	mg/L	8.80	0.020	7358852
Misc. Inorganics				
Dissolved Hardness (CaCO3)	mg/L	368	0.50	7358400
Ammonia				
Dissolved Chloride (Cl)	mg/L	16	0.50	7362000
<b>Nutrients</b>				
Total Kjeldahl Nitrogen (Calc)	mg/L	<0.20	0.20	7358855
Nitrate plus Nitrite (N)	mg/L	8.80	0.020	7358814
Nitrite (N)	mg/L	<0.0020	0.0020	7359201
Total Nitrogen (N)	mg/L	8.48	0.20	7359231
<b>Physical Properties</b>				
Conductivity	uS/cm	716	1.0	7359214

ELEMENTS BY ATOMIC SPECTROSCOPY (WATER)

Maxxam ID		IM8758		
Sampling Date		2014/01/21 16:00		
COC#		50206387		
	UNITS	REG/1	RDL	QC Batch
<b>Dissolved Metals by ICPMS</b>				
Dissolved Sodium (Na)	mg/L	11.0	0.050	7358401

N/A = Not Applicable  
RDL = Reportable Detection Limit

## Appendix 11

### News articles regarding nitrate contaminated water in Steele Springs

*Article from the regional news network, Castanet*

<http://www.castanet.net/news/Vernon/132382/A-year-without-tap-water>

## A year without tap water

Carmen Weld - Feb 7, 2015 / 5:00 am



Photo: Contributed

Imagine not being able to drink the water out of your kitchen tap for an entire year. Having to rely on bottled water for months on end with no idea when the water will be safe again.

That's the situation for over 300 Spallumcheen residents whose water was deemed unsafe last March.

Nearly one year later they are furious nothing has been done and are begging for the government to take notice and take action.

Al Price is the vice chairman for the Steele Springs Waterworks District and is taking the lead to help his community and to get the government to pay attention to their plea.

“Our district has been supplying water to farms in the area for 90 years with only one other glitch in 2001,” explains Price. “But, ever since a 1,000 cow dairy farm was established about one kilometre up the road, and purchased the field and feed lot adjacent to our spring, our nitrate levels have slowly climbed to the point where they passed the 10 parts per million maximum allowed and have not dropped down since.”

Price says the nitrate level increase is caused by the nitrate heavy manure used to fertilize the 220-acre property owned by H.S. Jansen and Sons adjacent to the spring.

Crossing the 10 ppm threshold meant the water was no longer considered safe to drink under the Canadian Drinking Water Guidelines.

This currently affects 53 farms on the Steele Springs Waterworks District line and leaves another 30 farms on high alert in the Hullcar Valley. The Hullcar Valley farms pull water from the same area and have been told to check their water nitrate levels at least every six-months.

“53 farms are paying for a water system they can't drink,” notes Price.

While Price and his wife spent \$3,000 to have a reverse osmosis system put in at their home so that they can drink the water, most he says, can not afford that.

“We have a lot of seniors on fixed incomes in our area that can't afford it, nor can they afford to buy bottled water every day. Some are just drinking the unsafe water.”

They water district feels the government should enforce rules under the Agricultural Waste Management Act which would restrict the use of manure in the fields.

Price says they don't want to shut the farm down, they just want to be able to drink their water.

“On this water system we are all farmers to some degree or another. We are not against industrial farming because we are all farmers. We are not against using manure as a fertilizer, but it has to be moderated so that the volume of manure used matches the ability of the plants to take it up.”

“We don't want to shut the farm down or anything like that, but there are ways to farm and make money certainly, that is in respect of your neighbours.”

A letter sent from Price's wife to Saputo, a major milk buyer, brought the problem to the B.C. Dairy Association's desk, which is now working on the situation.

“We met with them Dec. 20, their communications director flew in from Vancouver, and the result was that they are trying to set up a face to face meeting with the Jansens. But they have refused to talk to us for the last two years,” says Price. “If the Jansens are willing to talk to us, we would welcome that, but they haven't shown any inclination to do that so far.”

Price fears residents will be stuck with unsafe water for years and years to come. He says the last time there was similar nitrate issue it took seven years for water to return to normal levels.

“We are exploring the possibility of joining Armstrong's water system, but that would take at least four or five years and cost us a minimum of \$300,000 plus doubling our water rates,” explains Price. “Drawing a deep water well into an aquifer that is below the one that is contaminated would be a temporary solution at best and probably almost as expensive.”

He hopes residents across the province will be concerned about this issue. He says only 15 per cent of the water in their spring is used in Spallumcheen, while the rest drains into Deep Creek which heads into Okanagan Lake.

“I am hoping people will start to realize that if this can happen to us, and no one is willing to do anything about it, it can happen to anybody and any water supply. And here in the Okanagan, water is very precious.”

Price says letters have now been sent to BC Environment Minister Mary Polak and Kelowna-Lake Country MLA Norm Letnick with the hopes of getting their support and finding a solution.



*Article from a local news site, the Morning Star*

<http://www.vernonmorningstar.com/news/299380451.html>

## **NEWS**

# Spallumcheen supports effluent spray ban

by [Roger Knox - Vernon Morning Star](#)

posted Apr 12, 2015 at 1:00 AM

Spallumcheen council has now thrown its support behind a water district's request for a moratorium on effluent spraying on a township farm during crop season.

The Steele Springs Waterworks District asked council on March 2 for the moratorium on the spraying of effluent by HS Jansen and Sons on what has been called the "field of concern" adjacent to Steele Springs.

Council, in March, simply received the Steele Springs letter of request. It made its motion of support at Tuesday's regular meeting.

"There was some concern that council's support for our request would not be in the spirit of cooperation discussed at a Feb. 26 meeting," said the executive of Steele Springs Waterworks District in a letter to township council.

"We do not feel that this is the case."

That meeting included representatives of the Jansen farm, B.C. Dairy Association, ministries of health, agriculture and environment, private well owners and Spallumcheen Coun. Christine Fraser.

Said Fraser Tuesday evening: "They still want the moratorium regardless of what's happening with the process of everyone working together. We should support the request because it's coming from 150 well users that are being affected."

The water district has been under a Do Not Drink advisory from Interior Health since March 2014 because nitrate levels in the water source surged past the 10 parts per million (ppm) maximum allowed under the Canadian Drinking Water Guidelines.

Since the don't drink advisory was put in place, Steele Springs officials say its nitrate testing has not gone below 10, fluctuating between 10.4 and 12.7 ppm.

It also says the water does not improve in winter when the neighbouring Jansen farm fields are not being sprayed with effluent.

The only other time the water district experienced a rise in nitrate levels in its water source was when a now-defunct 5,000-head feedlot set up holding pens within 150 metres of the springs.

Steele Springs called for the township to place a moratorium on the spraying of effluent by HS Jansen and Sons or anyone else on the field adjacent to the water source.

Coun. Andrew Casson said his concern was that there was no conclusive proof a moratorium on spraying effluent was going to have a positive impact.

"It seems to me a lot of information is needed to know if this is the right step," said Casson, who voted in favour of the moratorium.

Council was unanimous in its support though Coun. Christine LeMaire stepped out of the discussions, citing a potential conflict of interest.

All of the district's trustees say they are in agreement that the spraying of effluent on the field must stop for the 2015 crop season while funding is sought for a comprehensive study of the aquifer, location of nitrate focal points in the field and possible methods of remediation.

A compliance order issued in 2014 states the farm can only spray effluent with permission.

A spokesperson for the farm declined to comment on council's support.

Coun. Todd York received unanimous support for his motion to write a follow-up letter to Interior Health, asking for details and where they're at with their investigation into the Steele Springs situation.

## **Appendix 12**

**Natural Resources Conservation Board Sample Order, posted online:**

<https://cfo.nrcb.ca/Portals/2/Documents/Orders/Archived-Enforcement-Orders/2004/04-24.pdf>

**AGRICULTURAL OPERATION PRACTICES ACT**  
**REVISED STATUTES OF ALBERTA 2000 CHAPTER A-7**  
**ENFORCEMENT ORDER NO. 04-24**

**Date Issued:** August 20, 2004  
**File Number:** LC04136 / 59-20  
**Inspector:** Kevin Seward, NRCB, Lethbridge

Leeuwenburgh Dairy  
County of Lethbridge No. 26

**Attention: Willard Leeuwenburgh**

This letter constitutes an enforcement order under Section 39(1) of the Agricultural Operation Practices Act Chapter A-7 to Willard Leeuwenburgh, owner/operator of a confined feeding operation located on the Northwest Quarter of Section 36, Township 09, Range 22, West of the 4th Meridian, in the County of Lethbridge, in the Province of Alberta,

**Background:**

On June 24, 2004 a site inspection by Mr. Karl Ivarson, Inspector NRCB, and Mr. Kevin Seward, Inspector NRCB, was conducted in response to a filed complaint. Mr. Leeuwenburgh was spreading liquid manure from the dairy on the Northwest Quarter of Section 36, Township 09, Range 22, West of the 4th Meridian. Mr. Ivarson and Mr. Seward instructed Mr. Leeuwenburgh to maintain the 150 meter setback from any residence occupied by people.

On June 28, 2004 the County of Lethbridge faxed a copy of Mr. Leeuwenburgh's Municipal Development Permit # 59-20 to the NRCB office in Lethbridge. Condition # 4 of the MD permit # 59-20 states:

4. *The animal wastes shall be removed from the operation in keeping with sound waste management practices as prescribed by Alberta Environment and the Barons Eureka Health Unit. The Manure shall not be spread on the property on which the dairy operation is located and further, the Developer/Owner shall provide to the County of Lethbridge No. 26 written permission from two (2) farm holdings to spread the said manure on their respective property.*

A meeting on June 29, 2004 was conducted by Mr. Karl Ivarson, Mr. Kevin Seward and Mr. Leeuwenburgh to explain the conditions and provide a copy of the County of Lethbridge Municipal Development Permit # 59-20. Mr. Leeuwenburgh was instructed not to spread any

more manure on the property where the dairy is located, it was also explained to Mr. Leeuwenburgh that effective June 1, 2004 all Municipal Permits are deemed NRCB approvals, registrations or authorizations and therefore Mr. Leeuwenburgh can apply to the NRCB for an amendment to his permit condition (s).

**Inspection:**

On August 12, 2004, Mr. Karl Ivarson received a phone call from Mr. Leeuwenburgh where Mr. Leeuwenburgh stated that he was going to spread manure on the property where the dairy is located.

A follow up site inspection was conducted by Mr. Kevin Seward on August 13, 2004, Mr. Leeuwenburgh was not at home at the time of the inspection but his son stated that they had spread 5 loads of liquid manure and then stopped after talking to Mr. Karl Ivarson on August 12, 2004.

**Reasons:**

Under Section 39(1) of the Agricultural Operation Practices Act, if in the opinion of the Natural Resources Conservation Board, a person is creating a risk to the environment or an inappropriate disturbance or is contravening or has contravened an approval, registration, authorization, AOPA or the regulations the Board may issue an Enforcement Order directing the person to stop engaging in anything that is described in the Enforcement Order, subject to any terms or conditions set out in the order or specifying the measures that must be taken in order to effect compliance with this Act or the regulations.

Effective June 1, 2004 the Agricultural Operation Practices Act and Regulations state that:

*Sec 18.1 (1) If a confined feeding operation or manure storage facility (b) existed on January 1, 2002 with respect to which a licence, permit or other approval was issued pursuant to the Public Health Act or with respect to which a development permit was issued and that licence, permit, approval or development permit was in effect on January 1, 2002 the owner or operator of the confined feeding operation or manure storage facility is deemed to have been issued an approval, registration or authorization under this Act.*

*Sec 18.1(4) Subject to subsection (5), the terms and conditions of a deemed approval, registration or authorization are those in the licence permit or other approval issued pursuant to the Public Health Act or in the development permit described in subsection (1), and the terms and conditions continue to apply despite the regulations until*

*(b) the terms or conditions are amended when the deemed approval, registration or authorization is amended in accordance with this Act.*

It is the opinion of this inspector that Mr. Leeuwenburgh is non-compliant with a condition in Municipal Development Permit # 59-20.

This is in contravention of section 18.1(4) of the Agricultural Operation Practices Act.

**ORDER:**

Therefore, I, Kevin Seward, Inspector, with the Natural Resources Conservation Board, pursuant to Section 39(1) of the Agricultural Operation Practices Act, do hereby direct that Mr. Willard Leeuwenburgh, owner/operator of a confined feeding operation on the Northwest Quarter of Section 36, Township 09, Range 22, West of the 4th Meridian, in the County of Lethbridge, in the Province of Alberta shall take all necessary and appropriate measures to comply with the Agricultural Operation Practices Act and its Regulations.

These necessary measures shall include, but are not limited to:

1. Immediately cease and desist applying manure on the Northwest Quarter of Section 36, Township 09, Range 22, West of the 4th Meridian, in the County of Lethbridge, in the Province of Alberta

---

Kevin Seward  
Inspector NRCB

**CONSEQUENCES OF NON-COMPLIANCE**

Agricultural Operations Practices Act, section 42(1) states "If a person to whom an enforcement order is directed fails to comply with the enforcement order, the Board may apply to the Court of Queens Bench for an Order of the Court directing the person to comply with the enforcement order."

Failure to abide by the conditions of this Enforcement Order may result in further enforcement action including court prosecution and fines.

**SERVICE OF ORDER:**

Delivered to: \_\_\_\_\_

Method of Delivery: \_\_\_\_\_

Date of Delivery: \_\_\_\_\_

### **RIGHT TO REQUEST A REVIEW**

Under Section 41 of the Agricultural Operation Practices Act, you have the right to request that the Natural Resources Conservation Board (the Board) conduct a review of this enforcement order:

- 41(1) The Board may, on the request of a person to whom an enforcement order is directed, review and confirm, vary, amend or rescind the enforcement order.
- (2) An enforcement order takes effect at the time prescribed in the enforcement order and its operation is not suspended by a request for a review, but the Board may, if it thinks fit, suspend the operation of an enforcement order when a review is requested until a decision on the review is rendered.
- (3) A written copy of the Board's decision under subsection (1) must be served on the persons to whom the enforcement order that is being reviewed is directed.

If you wish to have the Board review this order, please submit a written request to Susan Schlemko, Manager, Board Reviews 4th Floor, Sterling Place, 9940 - 106 Street, Edmonton, Alberta T5K 2N2. Your request must be received by September 7, 2004 and you must clearly explain whether you want the Board to vary, amend or rescind the enforcement order and provide your reasons. If you want the enforcement order suspended until the Board review is completed, you must also include this in your written request and provide your reasons for suspending the order. If you have any questions about requesting a review or about the review process please call Susan Schlemko at (780) 422-1951.

## **Appendix 13**

**Iowa – Sample order, posted online:**

<https://programs.iowadnr.gov/legal/documents/635780112407099188parks.pdf>



**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**PARKS FINISHING J3, LLC  
AFO #67232  
Fremont County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2015-AFO- **26**

TO: Parks Finishing J3, LLC  
c/o Michael Blaser, Registered Agent  
666 Grand Avenue, Suite 2000  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Parks Finishing J3, LLC (Parks Finishing) for the purpose of resolving manure application field violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:** **Relating to legal requirements:**

Alison Manz, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PARKS FINISHING J3, LLC

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Parks Finishing neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Parks Finishing is an animal feeding operation located at 2202 230th Street, Percival, Iowa (NW 1/4 of the NW 1/4 of Section 15, Sidney Township, Fremont County). The facility consists of one confinement building with a building pit for manure storage. The confinement building houses 2,496 head of hogs (998.40 animal units).
2. On November 23, 2014, DNR Field Office 4 received a call from the spill line regarding a manure spill in Fremont County. During the investigation, Ms. Manz discovered that Steve Huegerich dba Twilight Services (Twilight Services) was hired by Parks Finishing to apply manure from its facility to several fields in the area. It was determined that Twilight Services violated manure separation distance requirements and failed to ensure all of its manure applicators were properly certified.
3. On November 24, 2014, Ms. Manz spoke to Shane McFarland, certified manure applicator with Twilight Services. Mr. McFarland indicated the application rates on the corn and bean fields were 5,500 gallons per acre and the application rates on the alfalfa and pasture ground was 6,000 gallons per acre. Ms. Manz determined that the application fields were not in the Manure Management Plan (MMP) for the Parks Finishing facility.
4. On November 26, 2014, Ms. Manz emailed Parks Finishing's consultant, Twin Lakes Environmental Services, requesting the soil samples, RUSLE2, Phosphorus-Index (P-Index) and MMP information for the fields where manure was land applied but not in the MMP. Becky Sexton with Twin Lakes Environmental Services stated she would submit the information by the following day. On December 2, 2014, a representative of Twin Lakes Environmental Services sent an email to Ms. Manz stating that Ms. Sexton was on vacation but that the company was working on Parks Finishing and that everything would be ready for Ms. Sexton to do the RUSLE2 when she returned. On December 3, 2014, Ms. Manz received an email from Ms. Sexton stating she was on vacation but was waiting for the mapping to be finalized for Parks Finishing.
5. On December 11, 2014, DNR issued a Notice of Violation letter to Parks Finishing for the violations discovered during the November investigation. On December 13, 2014 Ms. Sexton emailed Ms. Manz and stated that the Notice of Violation letter was sent in error because the fields had been included in the facility's

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PARKS FINISHING J3, LLC

MMP. Ms. Sexton stated she would email a new copy of the MMP because the field office must not have received the documents needed. Ms. Manz responded that the MMP on file with DNR Field Office 4 did not include any of the application fields. Ms. Sexton responded and stated that the fields had been added to the MMP in the Fall of 2014 prior to the application in question.

6. On December 17, 2014, Ms. Manz received an email from Ms. Sexton inquiring as to if the field office had received the updated MMP. On December 18, 2014, Ms. Manz conducted a file review of all of the Parks Finishing facilities in Fremont County to determine if the application fields were included in one of the other facilities' MMP. Ms. Manz noted that one of the fields was in the MMP for Parks Finishing J4 and another one of the fields was in the MMP for Parks Finishing J9. Ms. Manz responded to Ms. Sexton and informed her that the MMP for the Parks Finishing J3 facility does not include any of the fields in question and none of the updates received since the original MMP was submitted for the facility in 2012 included any of the fields in question. Ms. Sexton stated she would email the complete MMP to Ms. Manz later in the day.

7. On December 23, 2014, Ms. Sexton emailed Ms. Manz the updated information for the Parks Finishing J3 facility. On January 22, 2015, Ms. Manz reviewed the information. This information included soil samples, RUSLE2, P-Index and the MMP summary form for each of the fields in question. Ms. Manz noted that three of the fields had a P-Index greater than 10, indicating manure should not have been applied to those fields.

#### IV. CONCLUSIONS OF LAW

Parks Finishing neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.17(1)"a" states that a confinement feeding operation that is required to submit a MMP to the DNR shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. 567 IAC 65.17(17)"f"(4) further states that manure shall not be applied on a field with a rating greater than 5 and less than or equal to 15 until practices are adopted which reduce the phosphorus index to at least the medium risk category. In November 2014, DNR Field Office 4 observed manure from the Parks Finishing facility applied to three fields with a rating greater than 10. The above-mentioned facts indicate violations of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PARKS FINISHING J3, LLC

**V. ORDER**

THEREFORE, the DNR orders and Parks Finishing agrees to do the following:

1. Parks Finishing shall submit a new MMP with correct information to DNR Field Office 4 for the J3 facility within 30 days of the date the Director signs this administrative consent order. The MMP must also clearly state that manure application is not to take place on fields with a P-Index of greater than 5;
2. Due to the close proximity to the J3 facility of another facility owned by Parks Finishing J4, LLC, and without any precedential effect, Parks Finishing J4, LLC has agreed to review its MMP for the J4 facility to assure it is accurate. A signed statement verifying that the review was completed must be submitted to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order. If any of the information in the MMP for J4 is inaccurate, Parks Finishing J4, LLC has agreed to submit an updated MMP to DNR Field Office 4 within 60 days of the date the Director signs this administrative consent order;
3. Parks Finishing must assure that the certified manure applicator receives written instructions prior to any manure application from the Parks Finishing facility; and
4. Parks Finishing shall pay an administrative penalty in the amount of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PARKS FINISHING J3, LLC

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Parks Finishing gained an economic benefit from applying to at least three application fields where the rules prohibit manure application. Parks Finishing avoided the costs associated with the need to find other acceptable application fields for manure application. Based on the above-factors, \$500.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. One of the main purposes of the RUSLE2 and the P-Index is to ensure that runoff is controlled and water quality is not threatened. Parks Finishing’s failure to land apply manure on suitable ground and ground with a P-Index rating of less than 5 created a potential threat to water quality. This violation is of a kind that may threaten the integrity of the water quality program. Therefore, \$1,300.00 is assessed for this factor.

Culpability – Parks Finishing has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Therefore, \$200.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Parks Finishing. For that reason Parks Finishing waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PARKS FINISHING J3, LLC

  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 14<sup>th</sup> day of  
September, 2015.

  
Parks Finishing J3, LLC

Dated this 31 day of  
AUGUST, 2015.

AFO #67232; Kelli Book, Field Office #4, EPA, VIII.D.2.b

## Appendix 14

### Sample order from Washington State, Department of Ecology

November 30, 2011



Your address  
is in the  
**Lower Skagit-  
Samish**  
watershed

Jerry Greenwell  
5570 Ershig Road  
Bow, WA 98232

<b>Order Docket #</b>	8823
<b>Site Location</b>	5570 Ershig Road, Bow, WA 98232

**Re: Immediate Action Order**

Dear Greenwell:

The Department of Ecology (Ecology) has issued the enclosed Immediate Action Order (Order) requiring you to comply with:

- Chapter 90.48.010 and 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter WAC 173.201A.200(2)(b) and 173.201A.510(a-c) Washington Administrative Code (WAC) – Water Quality Standards for Surface Waters of the State of Washington

If you have questions please contact Mark A. “Mak” Kaufman at (360) 715-5221 or e-mail: [mak.kaufman@ecy.wa.gov](mailto:mak.kaufman@ecy.wa.gov)

Sincerely,

---

Richard Grout  
Manager  
Bellingham Field Office

Enclosures: Immediate Action Order Docket # 8823

Jerry Greenwell  
November 30, 2011  
Page 2

By certified mail: 7010 2780 0000 6712 8470

cc: Josh Baldi, Ecology  
Jeannie Summerhays, Ecology  
Maylee Collier, Ecology  
Kevin Fitzpatrick, Ecology  
Sally Lawrence, Ecology  
Gary Christensen, Skagit County  
Rick Haley, Skagit County  
Corrine Story, Skagit County  
Peter Browning, Skagit County  
Carolyn Kelly, Skagit Conservation District



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN	)	ADMINISTRATIVE ORDER
ADMINISTRATIVE ORDER	)	DOCKET # 8823
AGAINST	)	
Jerry Greenwell	)	

To: Jerry Greenwell  
5570 Ershig Road  
Bow, WA 98232

<b>Order Docket #</b>	8823
<b>Site Location</b>	5570 Ershig Road, Bow, WA 98232

The Department of Ecology (Ecology) has issued this Administrative Order (Order) requiring Jerry Greenwell to comply with:

- Chapter 90.48.010 and 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter WAC 173.201A.200(2)(b) and 173.201A.510(a-c) Washington Administrative Code (WAC) – Water Quality Standards for Surface Waters of the State of Washington

Chapter 90.48.120(2) RCW gives Ecology the authority to issue Administrative Orders requiring compliance whenever it determines that a person has violated Chapter 90.48 RCW.

**ORDER TO COMPLY**

**Corrective actions required:**

For these reasons and in accordance with RCW 90.48.120(2) it is ordered that Jerry Greenwell take the following actions. These actions are required at the location known as the Greenwell Farm located at 5570 Ershig Road, Bow, WA 98232

Immediately upon receipt of this order and continuously thereafter, Mr. Jerry Greenwell must:

1. Immediately halt all contaminated discharges to state waters.
2. Within 30 days of receipt of this Immediate Action Order, halt all potential discharges by stabilizing or removing all disturbed and/or manure contaminated soils that have the potential to pollute state waters during rain events. These manure contaminated soils must be placed at least 200 feet from state surface waters. If weather and soil conditions do not permit the work to be performed within 30 days, contact Ecology promptly to discuss other options to prevent discharges until the work can be completed.

WQ – Order (12/2010)

3. Immediately following completion of item 2, above, prevent all animal access to these manure contaminated areas to prevent the recontamination of these areas.
4. Within 30 days of receipt of this Immediate Action Order, install a vegetated buffer that keeps livestock a minimum of 35 feet from surface water bodies.
5. Within 30 days of receipt of this order, submit to Ecology's Bellingham Field Office a manure management plan/strategy developed for your farm that includes all appropriate combinations of Ecology approved Best Management Practices (BMPs). This plan or strategy must demonstrate how manure or manure related contaminants will be prevented from flowing into state waters from your farm.
6. If this plan or strategy calls for relocating animals to a different property(s) during winter rainy months, Ecology must be informed in advance of the location of this property(s). Compliance with RCW 90.48 is required on this/these property(s) as well.
7. Completely implement the manure management plan/strategy within 45 days of submission to Ecology's Bellingham Field Office.

#### **DETERMINATION OF VIOLATION(s)**

**Ecology's determination that a violation has occurred is based on the information listed below.**

Jerry Greenwell operates a livestock rearing operation at 5570 Ershig Road, Bow, WA 98232.

#### **Chronology**

##### **April 20, 2011**

Ecology water quality inspector Mak Kaufman and Dave English of Skagit County Health Dept. conducted an inspection of Jerry Greenwell's farm and observed and documented a large manure contaminated muddy area created by Mr. Greenwell's livestock rearing operation, adjacent to the west Ershig Road ditch. This manure contaminated muddy area created the substantial potential to pollute state waters and will produce actual polluted runoff into state waters during rain events. These conditions constitute violation of Washington State's Water Pollution Control Law (RCW 90.48.080).

**May 5, 2011**

Ecology issued a "Warning Notice and Opportunity to Correct" notifying Mr. Greenwell of the violations of RCW 90.48. This notice recommended corrections to prevent future discharges and referred him to the Skagit Conservation District for technical assistance to more permanently address the problems through long-term farm planning.

**May 12, 2011**

Mr. Greenwell accepted delivery of the "Warning Notice and Opportunity to Correct" from the United States Postal Service.

**May 17, 2011**

Mak Kaufman noted in field notebook that all of the livestock had been removed from the property.

**June 13, 2011**

Mak Kaufman noted in field notebook that grass seed appeared to be germinating in the former muddy manure-contaminated area.

**August 15, 2011**

Mak Kaufman noted that the farm had the cows on pasture again, but it appeared that a vigorous growth of grass was still in place.

**October 18, 2011**

Mak Kaufman and Dave English of Skagit County Health Dept. contacted Mr. Greenwell and acknowledged that he took action in May of 2011 by moving the cattle off of his property at 5570 Ershig Road, Bow, WA, and reseeded the manure-contaminated muddy areas. However; Mr. Kaufman stated that the cows were back on the property and the manure contaminated muddy areas were being generated again and this condition is one that commonly causes discharges above water quality standards into state waters and is a violation of RCW 90.48.080.

**Statutes, Laws, Rules and Findings of Fact**

The specific provisions of state law, Revised Code of Washington (RCW), and regulation, Washington Administrative Code (WAC), which Mr. Greenwell's farming 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.

**Mr. Greenwell's livestock operation does not apply methods that prevent and control the pollution of waters of the state.**

- **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.

**Mr. Greenwell has caused or permitted pollution, in the form of manure, to drain, run, seep or otherwise discharge into waters of the state during rain events. Mr. Greenwell's farm will continue to discharge manure-contaminated water into state waters during rain events as a result of his 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 no water samples were collected during the compliance inspection conducted on April 20, 2011, Mr. Greenwell's farm is likely discharging water that exceeds the bacterial standard during rain events. In addition to exceedances of the bacterial standard, Mr. Greenwell's farm's discharges are also likely exceeding the state standards for: 1) Sediment, 2) Turbidity, 3) pH and 4) 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.

**Mr. Greenwell's farm generates nonpoint source water pollution. This has been observed during an Ecology compliance inspection. That site inspection demonstrated that Mr. Greenwell has not applied all appropriate Best Management Practices (BMPs) that, in combination, prevent the discharge of manure related contaminants into state waters.**

#### **ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT**

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a "small business" under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) due to a conflict with federal law or program requirements, including federal requirements that are a prescribed condition to the allocation of federal funds to the state. Ecology has determined that you are not eligible for a waiver of a fine, penalty, or administrative sanction for a first-time paperwork violation or an opportunity to correct other violations under RCW 34.05.110 because May 12, 2011 you were provided the opportunity to correct the violation and did not do so by the reasonable period of time May 28, 2011.

#### **FAILURE TO COMPLY WITH THIS ORDER**

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

#### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320.

#### **ADDRESS AND LOCATION INFORMATION**

<b>Street Addresses</b>	<b>Mailing Addresses</b>
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Jerry Greenwell Farm Immediate Action Order # 8823  
November 30, 2011  
Page 6

#### CONTACT INFORMATION

Please direct all questions about this Order to:

Mark A. "Mak" Kaufman  
Department of Ecology  
Bellingham Field Office  
Bellingham, WA 98225  
Phone: (360) 715-5221  
Email: mak.kaufman@ecy.wa.gov

#### MORE INFORMATION

- Pollution Control Hearings Board Website  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)
- Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Laws:** [www.ecy.wa.gov/laws-rules/ecyrcw.html](http://www.ecy.wa.gov/laws-rules/ecyrcw.html)
- **Rules:** [www.ecy.wa.gov/laws-rules/ecywac.html](http://www.ecy.wa.gov/laws-rules/ecywac.html)

#### SIGNATURE

\_\_\_\_\_  
Richard Grout  
Manager  
Bellingham Field Office

Date\_\_\_\_\_

## **Appendix 15: Disclosure from Washington State Department of Health**



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
OFFICE OF DRINKING WATER  
PO Box 47822 • Olympia, Washington 98504-7822  
Tel: 360-236-3100 • Fax: 360-236-2252 • TDD Relay Service: 1-800-833-6388

December 11, 2014

Douglas N. Smith, Owner  
PO Box 911  
Grants Pass, OR 97528

Margaret Reid, Primary Contact  
PO Box 166  
Grants Pass, OR 97528

Subject: Issuance of Notice of Correction for Sagedale Apartments Water System  
PWS ID# AC812 P, Grant County

Dear Water Purveyors:

Enclosed is a Notice of Correction (NOC) which is being issued to you for failing to comply with drinking water regulations governing the operation of Sagedale Apartments water system. In addition to the specific violations laid out in the NOC, you need to comply with the following requirements:

- Submit an annual consumer confidence report to the Department and your customers by July 1 each year,
- Apply for an annual operating permit (latest invoice enclosed),
- Monitor for lead and copper in your distribution system before the end of the year, and
- Obtain system approval.

In order to avoid further enforcement action by this Department you must return to compliance with all applicable drinking water requirements.

If you have questions about your water system's compliance status please contact George Simon in the Eastern Regional Office at 509-329-2135. Specific questions about violations and directives outlined in the enclosed NOC should be addressed to the appropriate contacts listed in that document.

Sincerely,

A handwritten signature in black ink, appearing to read "John Aden".

John Aden  
Headquarters Compliance Manager  
360-236-3157

Enclosures

cc: Grant Co Health District  
George Simon, Eastern Regional Office Compliance Manager  
Stan Hoffman, Eastern Regional Office Source Water Quality Program Manager  
Willa Lawton, Waterworks Operator Certification Compliance Manager  
Russell Mau, Eastern Regional Office Engineer

**Public Health** – Always Working for a Safer and Healthier Washington





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

OFFICE OF DRINKING WATER

PO Box 47822 • Olympia, Washington 98504-7822

Tel: (360) 236-3100 • FAX: (360) 236-2253 • TDD Relay Service: 1-800-833-6388

In Re:	)	
	)	
Sagedale Apartments	)	Docket No. 2014-NOC-0011
GRANT COUNTY	)	
	)	NOTICE OF CORRECTION
ID# AC812 P	)	

TO: Douglas N. Smith, Owner  
PO Box 911  
Grants Pass, OR 97528

Margaret Reid, Primary Contact  
PO Box 166  
Grants Pass, OR 97528

This is a Notice of Correction under RCW 43.05.100 for failure to comply with public water system regulations. You have been previously notified of the failures; the Department of Health (Department) issued you:

- A violation letter dated May 31, 2013, for exceeding the maximum contaminant level (MCL) for nitrate,
- A Notice of Violation (NOV) on September 30, 2013, for failure to conduct required source monitoring,
- A violation letter on December 17, 2013, for failure to conduct quarterly nitrate monitoring,
- A violation letter on March 12, 2014, for failure to conduct quarterly nitrate monitoring,
- A violation letter on August 21, 2014, for failure to conduct quarterly monitoring,

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NOTICE OF CORRECTION



Page 1 of 12

- A violation letter on October 20, 2014, for failure to hire a certified waterworks operator, and
- A letter dated October 24, 2014, notifying you of a maximum contaminant level violation for gross alpha minus uranium and failure to monitor and report as directed for lead and copper, nitrate, and volatile organic chemicals (VOCs).

This Notice of Correction (NOC) notifies you of the means to contact technical assistance services and allows you a final opportunity to return to compliance without a penalty. If you fail to comply with this notice, the Department will issue an order imposing civil penalties.

## 1. FINDINGS

1.1 Identity of System. Sagedale Apartments is a public water system in Grant County, Washington. The owner of said system is Douglas N. Smith whose address is PO Box 911, Grants Pass, Oregon 97528. The primary contact of said system is Margaret Reid whose address is PO Box 166, Grants Pass, Oregon 97528. Based on information reported by the system, Sagedale Apartments provides water for about twenty (20) full-time residential units and is classified as a Group A community water system as defined under WAC 246-290-020.

1.2 Covered by regulations. Sagedale Apartments is a "public water system" as defined under RCW 70.119A.020(4). Douglas N. Smith and Margaret Reid are "purveyors" as defined under WAC 246-290-010. The operation of this public water system is governed by chapter 246-290 WAC, the regulations of the State Board of Health regarding Group A public water systems, chapter 246-292 WAC, the regulations of the Department of Health

regarding waterworks operator certification, and chapter 246-294 WAC, the regulations of the Department of Health regarding drinking water operating permits.

1.3 Violation of duty to monitor bacteriological quality.

The purveyor has a duty under WAC 246-290-300(3) to monitor for coliform bacteria and a duty under WAC 246-290-480(2) to report the results to the Department. You violated this duty by failing to take samples at the required frequency for the months of August, September, October, November, and December 2013, and September, and October 2014.

1.4 Violation of duty to notify consumers. When coliform monitoring is not performed as required, the purveyor has a duty under WAC 246-290-71001 to notify water system users. You violated this duty by failing to notify the system's consumers following the coliform monitoring violation(s) listed in paragraph 1.3 above.

1.5 Maximum contaminant levels exceeded. On May 30, 2013, a nitrate sample taken from the system exceeded the maximum contaminant level as listed in WAC 246-290-310(3). On July 29, 2014, the water distributed by the system exceeded the maximum contaminant level (MCL) for gross alpha minus uranium, as listed in WAC 246-290-310(6) and 40 C.F.R. 141.66.

1.6 Violation of duty to notify consumers. When the water distributed by the system is confirmed to have a radionuclide MCL violation, the purveyor has a duty under 246-290-71001 to notify water system users. You violated this duty by failing to notify the system's consumers following the gross alpha minus uranium MCL violation listed in paragraph 1.5 above.

1.7 Violation of duty to monitor for nitrate. The purveyor has the duty under WAC 246-290-300(4) and 40 CFR 141.23(d), to monitor for nitrate every three (3) months, and to report to the Department as required under WAC 246-290-480(2). You violated this duty by failing to take samples at the required frequency for the third and fourth quarters of 2013 and the second quarter of 2014.

1.8 Violation of duty to monitor for organic chemicals. The purveyor has a duty under WAC 246-290-300(7) and 40 CFR 141.24, to monitor for synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs), and to report to the Department as required under WAC 246-290-480(2). A purveyor may request in writing, a monitoring waiver from the Department in accordance with WAC 246-290-300(7)(f), which may reduce the number and type of samples required. As of the date of this notice, you have failed to conduct quarterly monitoring as directed for VOCs during quarter 2 of 2014. You have also failed to monitor for Pesticides as directed.

1.9 Violation of duty to notify consumers. When chemical monitoring is not performed, the purveyor has a duty under WAC 246-290-71001 to notify water system users within one year. You violated this duty by failing to notify the system's consumers following the third quarter 2013 nitrate monitoring violation listed in paragraph 1.7 above.

1.10 Violation of duty to have a certified waterworks operator. The purveyor has a duty under RCW 70.119.030 and WAC 246-292-020, to have a certified waterworks operator in responsible charge of the water system. You violated this duty by failing to retain the required certified waterworks operator.

2. ACTION REQUIRED TO ACHIEVE COMPLIANCE AND  
TIME BY WHICH YOU MUST COMPLY

In view of the foregoing, under authority of WAC 246-290-050, you are DIRECTED to take the following actions to comply with chapters 246-290 and 246-292.

2.1 Notify consumers. Provide notice as required under subpart A of part 7 of chapter 246-290 WAC, to anyone who uses the Sagedale Apartments water system as follows

2.1.1 Lack of monitoring. Provide notice of the failure to adequately monitor for coliform bacteria, nitrate, and organic chemicals. The notice shall be substantially similar to the "Notice to Water System Users" shown in Attachment A of this notice. Provide copies of the written notice to the Department within thirty (30) days of your receipt of this Notice of Correction.

2.1.2 Maximum contaminant level (MCL) exceedance. Provide notice of the MCL exceedance for gross alpha minus uranium. The notice shall be substantially similar to the "Notice to Water System Users" shown in Attachment B of this notice. Provide a copy of the notice to the Department within thirty (30) days of your receipt of this Notice of Correction.

2.1.3 Notice of Correction (NOC). Provide notice that you have been issued this NOC for failure to comply with drinking water regulations. The notice shall be substantially similar to the "Notice to Water System Users" shown in Attachment C of this notice. Provide a copy of the written notice to the Department within three (3) months of your receipt of this NOC.

When providing the required public notifications, it is your responsibility to ensure that non-English speaking consumers get information in the appropriate language. For technical assistance contact the Department or access the Department's website at <http://www.doh.wa.gov/CommunityandEnvironment/DrinkingWater>.

2.2 Ensure operation by designated mandatory certified waterworks operator. You are directed to ensure that your water system is operated in a compliant manner at all times in accordance with chapters 246-290 and 246-292 WAC.

2.3 Monitor bacteriological quality. Monitor bacteriological quality a minimum of once per month from representative points in the distribution system as required under WAC 246-290-300. Submit monthly reports as required under WAC 246-290-480.

2.4 Submit coliform monitoring plan. Submit a coliform monitoring plan to the Department for review and approval within sixty (60) days of receipt of this NOC as required under WAC 246-290-300(3)(b).

2.5 Conduct bacteriological contamination follow-up. Take follow-up action as required under WAC 246-290-320(1) and (2), if or when bacteriological contamination is found in any water sample.

2.6 Sample for nitrate contamination. Within thirty (30) days of the receipt of this NOC collect a water sample and submit it for nitrate analysis in accordance with WAC 246-290-300(4) and 40 CFR 141.23. Continue to monitor each quarter and report all

sample analysis results to the Department immediately upon receipt.

2.7 Monitor for organic chemicals. Monitor source S01 for pesticides and volatile organic chemicals (VOCs) in accordance with WAC 246-290-300(7), and 40 CFR 141.24 and 141.40 and provide analysis results to the Department within ninety (90) days of receipt of this NOC.

2.8 Conduct organic chemical contamination follow-up. Take follow-up action as required under WAC 246-290-320(1) and (6), and 40 CFR 141.24 and 141.40, if or when a primary organic chemical parameter exceeds the MCL or as otherwise directed by the Department under WAC 246-290-300(1).

2.9 Conduct follow-up monitoring for radionuclides following an MCL exceedance. Monitor for radionuclides in accordance with WAC 246-290-320(7) and 40 C.F.R. 141.26(a)(2)(iv), 141.26(a)(3)(ii) through (v), 141.26(a)(4), 141.26(b)(6), and 141.26(c)(5) and report results to the Department within ninety (90) days of receipt of this NOC.

2.10 Use Department approved methods. Collect, transport and have water samples analyzed according to methods approved by the Department. The analysis shall be done by a laboratory certified for the analyses to be performed in accordance with WAC 246-290-300(1)(c).

2.11 Hire certified waterworks operator. Within thirty (30) days of receipt of this NOC, provide proof to the Department that you have retained the services of a properly certified waterworks operator and that the operator is in charge of the

active, daily, technical operation of the Sagedale Apartments water system in accordance with chapter 246-292 WAC.

### 3. TECHNICAL ASSISTANCE SERVICES AND QUESTIONS

3.1 Technical Assistance. If you need technical assistance services to implement the required actions, call Stan Hoffman, Eastern Regional Office Source Water Quality Program Manager, at (509) 329-2132 or write to him at Department of Health, Eastern Regional Office, 16201 E. Indiana Ave. Ste. 1500, Spokane Valley, WA 99216. If you have questions about coliform monitoring, contact Mark Steward at the Spokane Valley address above or call him at (509) 329-2134. If you have questions about the waterworks operator certification requirement, call Willa Lawton, Waterworks Operator Certification Compliance Manager, at (360) 236-3145 or write to her at Department of Health, PO Box 47822, Olympia, WA 98504-7822.

3.2 Questions. Questions about this Notice of Correction should be directed to John Aden, Headquarters Compliance Manager, at (360) 236-3157 or write to him at Department of Health, PO Box 47822, Olympia, WA 98504-7822.

Referenced rule citations can be found at <http://www.leg.wa.gov/CodeReviser/Pages/default.aspx>. Referenced Code of Federal Regulations (CFRs) can be found at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=424e97e7ac46079409ed118fae42ba01&tpl=/ecfrbrowse/T](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=424e97e7ac46079409ed118fae42ba01&tpl=/ecfrbrowse/Title40/40cfr141_main_02.tpl)  
[itle40/40cfr141 main 02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=424e97e7ac46079409ed118fae42ba01&tpl=/ecfrbrowse/TTitle40/40cfr141_main_02.tpl).



#### 4. REQUESTS TO EXTEND TIME OR MODIFY ACTIONS

If you have good cause to request an extension of the time period(s) to achieve compliance or to otherwise modify the actions required by this Notice of Correction, you may file a request with the Department by sending a written request to John Aden at the address in Paragraph 3.2. The Department must receive such requests before expiration of the time period(s) for compliance specified in Section 2. The Department will review the request and provide a written response within fifteen (15) days of the Department's receipt of your request. The Department has no obligation to grant such requests.

#### 5. PLACE TO SUBMIT DOCUMENTS

Send all documents or reports required by this Notice of Correction to John Aden at the address in Paragraph 3.2. Include the Docket No. shown on the first page of this notice with every submittal.

#### 6. DEPARTMENT'S MODIFICATION OF THIS NOTICE

With or without your consent, the Department may supplement or modify this Notice of Correction if warranted to ensure compliance with chapters 246-290 and 246-292 WAC or to allow for your practical ability to correct the violations.

## 7. CONSEQUENCES OF FAILURE TO COMPLY

If you fail to comply with any provision of this Notice of Correction within the time(s) specified in Section 2, the Department can impose upon you, civil penalties calculated on a per day basis of up to five thousand dollars (\$5,000.00) per violation, per day, or in the case of a violation determined to be a public health emergency, a penalty of not more than ten thousand dollars (\$10,000.00) per violation, per day under authority of chapter 70.119A RCW. Each violation shall be a separate and distinct offense.

Furthermore, failure to comply with this Notice of Correction, may result in referral to the United States Environmental Protection Agency (EPA) for federal enforcement action.

## 8. OPERATING PERMIT STATUS


8.1 Authority. Under WAC 246-294-040, the Department must evaluate and place each system in one of four categories of permits. Category red systems are substantially out of compliance with drinking water regulation. One of the reasons for the Department to place a drinking water system in category red is when it fails to comply with a Notice of Correction.

8.2 Permit categorized as red. The Sagedale Apartments public water system will be categorized as red if you fail to comply with any of the actions required in section 2 of this NOC. A system categorized as red may have loans, building permits, and on-site sewage disposal permits denied for properties connected or to be connected to the system.

9. APPEAL

As provided by RCW 43.05.100, this Notice of Correction is not a formal enforcement action, is not subject to appeal, and is a public record.

SO DIRECTED this 11 day of December, 2014 at Olympia, Washington.

  
Clark Halvorson, Director  
Office of Drinking Water  
Washington State Department of Health

10. INDEX OF ATTACHMENTS

Attachment	Title
A .....	Notice to Water System Users Regarding Failure to Monitor
B .....	Notice to Water System Users Regarding MCL Violation
C .....	Notice to Water System Users (Notice of Correction Issued)

## **Appendix 16:**

### **Disclosure from Oregon State**

**Subject:** request for inspection docs and orders  
**From:** [kantweg@uvic.ca](mailto:kantweg@uvic.ca)  
**Date:** Mon, November 9, 2015 9:51 am  
**To:** [wmatthews@oda.state.or.us](mailto:wmatthews@oda.state.or.us)  
**Priority:** Normal  
**Options:** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#)

Hello,

I am writing to request inspection documents and orders relating to the discharge of effluent by Paul Elsinghorst dairy.

Thank you so much for your help!

Cheers,

Rebecca

--

Rebecca Kantweg  
Environmental Law Clinic, University of Victoria Faculty of Law

CONFIDENTIALITY NOTICE: This message, including any attachments, is confidential and strictly reserved for the use of the person to whom it is addressed. Any copying, disclosure, distribution or use by anyone else without my express authorization is strictly prohibited. If you have received this message in error, please notify me immediately and delete the original message as well as all copies from your system. Thank you.

**Subject:** Public Records Request - Elsinghorst Dairy  
**From:** "Christy M Caldwell" <[ccaldwell@oda.state.or.us](mailto:ccaldwell@oda.state.or.us)>  
**Date:** Tue, November 10, 2015 1:37 pm  
**To:** [kantweg@uvic.ca](mailto:kantweg@uvic.ca)  
**Priority:** Normal  
**Options:** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#)

Good afternoon ! I am the Data Analyst for the CAFO program. I will be pulling the data you requested. I am working on your request now and will have the information to you Thursday afternoon or Friday. We are off tomorrow for the holiday.

Thank  
you, Christy Caldwell

**Subject:** Re: Public Records Request - Elsinghorst Dairy  
**From:** "Christy M Caldwell" <ccaldwell@oda.state.or.us>  
**Date:** Fri, November 13, 2015 9:37 am  
**To:** kantweg@uvic.ca  
**Priority:** Normal  
**Options:** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#)

Hello Rebecca - I have your documents scanned and ready to send. They file is rather large, what is the best way for me to send it to you? Im multiple emails or through our FTP server? I have about 25 documents files to send. Thanks, Christy

**Subject:** Elsinghorst Dairy Document set 1 of 5  
**From:** "Christy M Caldwell" <ccaldwell@oda.state.or.us>  
**Date:** Fri, November 13, 2015 10:51 am  
**To:** kantweg@uvic.ca  
**Priority:** Normal  
**Options:** [View Full Header](#) | [View Printable Version](#)

#### Attachments:

<a href="#">081229Complaint.pdf</a>	283 k	[ application/pdf ]	<a href="#">Download</a>
<a href="#">090102Elsinghorse Dairy photos.pdf</a>	785 k	[ application/pdf ]	<a href="#">Download</a>
<a href="#">090106Complaint Inspection #096915.pdf</a>	1 M	[ application/pdf ]	<a href="#">Download</a>
<a href="#">090106Complaint Inspection #0896015 Photos.pdf</a>	18 M	[ application/pdf ]	<a href="#">Download</a>
<a href="#">090106Elsinghorse Dairy Photos.pdf</a>	1.9 M	[ application/pdf ]	<a href="#">Download</a>

**Sample documents included in Oregon State disclosure**

**BEFORE THE OREGON DEPARTMENT OF AGRICULTURE**

In the Matter of Paul Elsinghorst,	)	<b>NOTICE OF NONCOMPLIANCE</b>
dba Elsinghorst Dairy, LLC,	)	<b>AND PLAN OF CORRECTION</b>
Registrant to CAFO General	)	<b>(#0910410)</b>
Permit No. 1, Master Address No.	)	
182162	)	<u>Sent via certified and regular mail.</u>

**I. BACKGROUND**

Pursuant to its authority, the Oregon Department of Agriculture ("ODA" or "department") has adopted General Permit No.1 for Confined Animal Feeding Operations ("CAFOs"). Oregon Revised Statute (ORS) 468B.035; ORS 468B.217; Oregon Administrative Rule (OAR) 603-074-0014. Any person owning or operating a CAFO must seek coverage under the Oregon CAFO General Permit (NPDES Number 01) ("CAFO Permit") and must comply with the CAFO Permit's terms (conditions). ORS 468B.050; OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025. A Notice of Noncompliance (NON) informs the owner or operator of a violation, including a reference to a particular statute, administrative rule, or order involved, the location of the violation and the consequences of the violation or future violations. OAR 603-074-0040(1)(a).

The department herein finds that Paul Elsinghorst, dba Elsinghorst Dairy, LLC, violated ORS 468B.025 Prohibited Activities, which reads, in part:

- (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:
- (a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

**II. NOTICE OF NONCOMPLIANCE ("NON")**

**A. Findings of Fact**

1. Paul Elsinghorst operates a Large Federal CAFO dairy operation, Elsinghorst Dairy, LLC, at 50901 Umapine Road, Milton-Freewater, Oregon, in Umatilla County under NPDES Number 01 (Confined Animal Feeding Operations) (issued on October 1, 2003) administered by ODA and defined in Oregon CAFO General Permit No. 1 (CAFO Permit). ORS 468B.205; OAR 603-074-0010(3); 40 CFR § 122.23. (Registration of Paul Elsinghorst, dba Elsinghorst Dairy, LLC, to the CAFO Permit is under Master Address No. 182162.)
2. ORS 468B.025 Prohibited activities, which reads, in part:
  - (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:
    - (a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

3. On January 6, 2009, department representatives from the CAFO and AgWQM programs conducted a complaint inspection of Elsinghorst Dairy. Upon entering the facility, the representatives viewed a discharge from the dairy entering the county roadside ditch and the neighbor's (Demaris's) property. The representatives conducted a complete inspection of the dairy facility. The representatives traveled from the southwest corner of the dairy property east along Umapine Road to the southeast corner of the dairy property to view discharge points. Photographic evidence was collected and surface water quality samples were collected at four locations (PE-A, PE-B, PE-C, and PE-D) where manure water was flowing off the dairy and into the roadside ditch. The representatives then traveled from the southwest corner of the dairy property north along the west property line to the northwest corner of the dairy property. Surface water quality samples were collected at two locations (PE-E and PE-F) where manure water was flowing off the dairy onto the neighbor's (i.e., Tim Richartz') crop fields. A total of six (6) surface water quality samples were taken. None of the observed discharges entered surface waters.

The representatives issued an inspection report #096915 showing that the dairy had violated five (5) CAFO Permit conditions, as follows:

- A. Manure and contaminated stormwater were flowing out of the holding pen and down the driveway and discharging from the confinement area, a violation of **S2.A, Discharge Limitations**.
- B. Manure and contaminated stormwater were flowing out of all six (6) milk cow pens and all dry cow and young stock pens and discharging from the confinement area, a violation of **S2.A, Discharge Limitations**, and **S2.E.1, Waste Storage Facilities**.
- C. Manure and contaminated stormwater were flowing out of all feed alley collection pits and discharging from the confinement area. Manure and contaminated stormwater were flowing out of the milking parlor collection pit and discharging from the confinement area, a violation of **S2.A, Discharge Limitations**, and **S2.E.1, Waste Storage Facilities**.
- D. Manure collection, transfer and storage system was not operable allowing manure and contaminated stormwater to discharge from the production area, a violation of **S2.A, Discharge Limitations**; **S2.E.2, Waste Storage Facilities**; **S2.H, Proper Operation and Maintenance**; and **S2.1, Maintaining Compliance if System Fails**.
- E. Silage and feed leachate were mixing with manure and contaminated stormwater and discharging from the confinement area, a violation of **S2.A, Discharge Limitations**, and **S2.E.1, Waste Storage Facilities**.

The representatives reviewed with Elsinghorst the violations and required actions to correct the violations:

- A. Stop all discharges from the confinement areas listed in the five (5) violations above.
- B. Prevent any and all further discharges.
- C. Empty out all manure pits in 30 days.
- D. Clean and mound manure in all cattle pens in 30 days.
- E. Repair mainline pump and manure spreader pump in 30 days.

The representatives directed Elsinghorst to begin to take corrective actions to stop the discharges immediately or face additional civil regulatory actions. By 4:00 PM, the representatives confirmed that Elsinghorst had taken corrective actions and the surface water discharges had been stopped. The representatives scheduled a follow-up inspection for January 7, 2009.

Department representatives also collected one water sample (identified as "Dave Demoris" [i.e., Demaris]) from a drinking water well system located on the Demaris property.



4. On January 16, 2009, the department received the results of the KUO Testing Labs, Inc. analyses of the drinking water sample taken from the Demaris drinking water well system on January 6, 2009. The results showed an *E.coli* quantification greater than 1553.1 MPN/mL. (Sample results from KUO Testing Labs, Inc., dated January 16, 2009, for sample taken from Demaris's drinking water system on January 6, 2009, are attached.)
5. On January 16, 2009, a department representative conducted an inspection (#096918) at the Elsinghorst Dairy facility and also collected a water sample from the Demaris drinking water well system. The sample was taken to Pendleton Lab for analysis.
6. On January 17, 2009, the department received the analyses results from the water sample collected on January 16, 2009, from Demaris's drinking water well system, and submitted for analysis to Pendleton Lab. The results showed an *E.coli* count of 37.3/100 mL. (Sample results from Pendleton Lab., dated January 17, 2009, for sample taken from Demaris's drinking water system on January 16, 2009, are attached.)
7. On January 30, 2009, the department issued Notice of Noncompliance and Plan of Correction (NON/POC) #096915. The NON states that the permittee (Elsinghorst) violated the following special conditions of the Oregon CAFO General Permit: S2.A, Discharge Limitations; S2.E, Waste Storage Facilities; S2.F, Prevention of System Overloading; S2.H, Proper Operation and Maintenance; S2.I, Maintaining Compliance if System Fails; and S4.D, Reporting Requirements – 24-hour Reporting. The Plan of Correction contains nine required actions to bring the Elsinghorst Dairy facility into compliance with special conditions S2.A, S2.E, S2.F, S2.H, S2.I, and S4.D of the Oregon CAFO General Permit No. 1.

#### B. Ultimate Findings of Fact

1. By allowing waste to discharge onto a neighbor's property and into groundwater that caused pollution of drinking water, on January 6, 2009, permittee, Paul Elsinghorst, dba Elsinghorst Dairy, LLC, violated ORS 468B.025, Prohibited Activities.

#### C. Conclusions of Law

1. On January 6, 2009, permittee violated ORS 468B.025, Prohibited Activities.

### III. PLAN OF CORRECTION ("POC")

**Required Action (RA) 1:** Permittee must at all times operate this CAFO facility, Elsinghorst Dairy, so that no discharge occurs that violates ORS 468B.025 or terms and conditions of the CAFO Permit.

### IV. CONCLUSION

ODA may issue a Notice of Civil Penalty for violations noted in this NON/POC. If permittee fails to timely comply with any part of the Plan of Correction (POC) described above, ODA may issue a Notice of Civil Penalty regarding new violations. ORS 468B.230; OAR 603-074-0040. In addition, failure to timely comply with this NON/POC may lead ODA to take additional enforcement actions including but not limited to revocation of permittee's registration to CAFO General Permit No. 1. ORS 468B.215(4).

Page 3 of 4. NOTICE OF NONCOMPLIANCE AND PLAN OF CORRECTION (NON/POC #0910410; Paul Elsinghorst, dba Elsinghorst Dairy, LLC; MA #182162)

STATE OF OREGON  
DEPARTMENT OF AGRICULTURE

Before the Director of the Department of Agriculture

In the Matter of the Imposition	)	NOTICE OF
of Civil Penalty against	)	ASSESSMENT OF
Paul Elsinghorst,	)	CIVIL PENALTY
dba Elsinghorst Dairy, LLC,	)	(#0910356)
Oregon CAFO General Permit No. 1	)	
Master Address No. 182162	)	<u>Sent via certified and regular mail.</u>

**BACKGROUND**

Pursuant to its authority, the Oregon Department of Agriculture ("ODA" or "department") has adopted General Permit No.1 for Confined Animal Feeding Operations ("CAFOs"). ORS 468B.035; ORS 468B.217; OAR 603-074-0014. Any person owning or operating a CAFO must seek coverage under the Oregon CAFO General Permit (NPDES Number 01) and must comply with the permit's terms. ORS 468B.050; OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025.

The department is authorized to assess civil penalties. ORS 468B.230; OAR 603-074-0070.

ODA hereby issues a Notice of Assessment of Civil Penalty in the amount of \$5,160.00 to Paul Elsinghorst, dba Elsinghorst Dairy, LLC, for violating ORS 468B.025 and six (6) special conditions of the Oregon CAFO General Permit No.1: S2.A, Discharge Limitations; 2.E, Waste Storage Facilities; S2.F, Prevention of System Overloading; S2.H, Proper Operation and Maintenance; S2.I, Maintaining Compliance if System Fails; S4.D, Reporting Requirements.

The findings on which this determination is based and the criteria used to calculate the penalty are set out below.

**FINDINGS OF FACT**

1. Paul Elsinghorst operates a Large Federal CAFO dairy operation, Elsinghorst Dairy, LLC, at 50901 Umapine Road, Milton-Freewater, Oregon, in Umatilla County under NPDES Number 01 (Confined Animal Feeding Operations) (issued on October 1, 2003) administered by ODA and defined in Oregon CAFO General Permit No. 1 (CAFO Permit). ORS 468B.205; OAR 603-074-0010(3); 40 CFR § 122.23. (Registration of Paul Elsinghorst, dba Elsinghorst Dairy, LLC ("Elsinghorst Dairy"), to the CAFO Permit is under Master Address No. 182162.)

2. On **March 17, 2006**, the department issued a CAFO Permit registration (MA#182162) to the Elsinghorst Dairy operation. The registration included the approval of the animal waste management plan (AWMP) for 1,300 animals and conditional approval for the construction of a lagoon. The department also issued an Administrative Order regarding the CAFO Permit's Special Condition S4.E, Additional Monitoring Requirements. Elsinghorst Dairy was required to submit a Groundwater Monitoring Plan. The dairy operation was designated as a Large Federal CAFO.
3. On **April 11, 2007**, department representatives conducted a complaint inspection at Elsinghorst Dairy. Manure was stockpiled in an area that was not approved for manure storage in the AWMP. The department representatives issued Notice of Noncompliance and Plan of Correction (NON/POC) #077861, noting the violation and requiring correction.
4. ORS 468B.025 Prohibited Activities, reads, in part:
  - (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:
    - (a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

The CAFO Permit contains special conditions regarding the management of a CAFO, which include:

**S2.A, Discharge Limitations, which reads, in part:**

The permittee is prohibited from discharging process wastes to surface water or groundwater of the state, except as allowed in S2.B and S2.C and provided these discharges do not cause or contribute to a violation of state water quality standards. Discharges to surface water due to upset or bypass are authorized only in accordance with applicable requirements in G3, p.15, and G4, p. 16.

**S2.E, Waste Storage Facilities, which reads, in part:**

1. The permittee must provide adequate storage capacity for solid and liquid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the Land Application Limitations in Condition S2.C, p. 8 of this permit.
2. The permittee must site, design, construct, operate, and maintain all waste storage facilities consistent with the waste management plan. New and modified construction of waste facilities must be approved in advance and prior to construction by ODA in conformance with ORS 468B.055, OAR 340-051 and 603-074.

**S2.F, Prevention of System Overloading, which reads, in part:**

2. Animal numbers must not exceed the capacity of the waste storage facilities.

**S2.H, Proper Operation and Maintenance, which reads, in full:**

The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

**S2.I, Maintaining Compliance if System Fails, which reads, in full:**

The permittee, in order to maintain compliance with the permit, must control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided. This requirement applies where the primary source of power is reduced, lost, or fails.

**S4.D, Reporting Requirements, which reads, in part:**

**1. 24-hour Reporting**

(a) If a discharge to surface water or groundwater occurs that is not allowed by Condition S2.B and S2.C, p. 8, the permittee must notify ODA within 24 hours of the discharge.

The permittee must submit a written report within five (5) days to ODA. The information to be submitted is listed in the monitoring requirements (Condition S4.A, p. 12) of this permit.

5. On **January 2, 2009**, the department received a complaint regarding discharge from Elsinghorst Dairy, LLC ("Elsinghorst Dairy"). The complaint was that manure and contaminated stormwater were running out of the dairy facility into Umatilla County (county) roadside ditches and running across the county road and entering onto a neighbor's property. A department representative with the Agricultural Water Quality Management (AgWQM) Program responded to the complaint and collected photographic evidence of the discharge. After receiving a report of the discharge, a department representative with the department's CAFO Program required the dairy operator, Paul Elsinghorst (hereinafter "Elsinghorst"), to take all measures to immediately stop the discharge and to follow all CAFO Permit conditions. The representative with the AgWQM Program filed a trip report documenting the inspection.
6. On **January 5, 2009**, a department representative with the CAFO Program conducted an inspection with the adjacent property owner where manure and contaminated stormwater had been deposited by the discharge. Due to temperature conditions below freezing, a discharge was not occurring on January 5, 2009. The representative then conducted a partial inspection at Elsinghorst Dairy and discussed the discharge and CAFO Permit violations, viewed on January 2, 2009, with Elsinghorst. The representative required that Elsinghorst continue to take all measures to prevent the discharge from reoccurring if the temperature warmed above freezing. The representative set up a complete inspection with Elsinghorst for the next day, January 6, 2009.
7. On **January 6, 2009**, department representatives from the CAFO and AgWQM programs conducted a complaint inspection of Elsinghorst Dairy. Upon entering the facility, the representatives viewed a discharge from the dairy entering the county roadside ditch and the neighbor's (Demaris's) property. The representatives conducted a complete inspection of the dairy facility. The representatives traveled from the southwest corner of the dairy property east along Umapine Road to the southeast corner of the dairy property to view discharge points. Photographic evidence was collected and surface water quality samples

were collected at four locations (PE-A, PE-B, PE-C, and PE-D) where manure water was flowing off the dairy and into the roadside ditch. The representatives then traveled from the southwest corner of the dairy property north along the west property line to the northwest corner of the dairy property. Surface water quality samples were collected at two locations (PE-E and PE-F) where manure water was flowing off the dairy onto the neighbor's (i.e., Tim Richartz') crop fields. A total of six (6) surface water quality samples were taken. None of the observed discharges entered surface waters.

The representatives issued an inspection report #096915 showing that the dairy had violated five (5) CAFO Permit conditions, as follows:

A. Manure and contaminated stormwater were flowing out of the holding pen and down the driveway and discharging from the confinement area, a violation of **S2.A, Discharge Limitations**.

B. Manure and contaminated stormwater were flowing out of all six (6) milk cow pens and all dry cow and young stock pens and discharging from the confinement area, a violation of **S2.A, Discharge Limitations, and S2.E.1, Waste Storage Facilities**.

C. Manure and contaminated stormwater were flowing out of all feed alley collection pits and discharging from the confinement area. Manure and contaminated stormwater were flowing out of the milking parlor collection pit and discharging from the confinement area, a violation of **S2.A, Discharge Limitations, and S2.E.1, Waste Storage Facilities**.

D. Manure collection, transfer and storage system was not operable allowing manure and contaminated stormwater to discharge from the production area, a violation of **S2.A, Discharge Limitations; S2.E.2, Waste Storage Facilities; S2.H, Proper Operation and Maintenance; and S2.1, Maintaining Compliance if System Fails**.

E. Silage and feed leachate were mixing with manure and contaminated stormwater and discharging from the confinement area, a violation of **S2.A, Discharge Limitations, and S2.E.1, Waste Storage Facilities**.

The representatives reviewed with Elsinghorst the violations and required actions to correct the violations:

A. Stop all discharges from the confinement areas listed in the five (5) violations above.

B. Prevent any and all further discharges.

C. Empty out all manure pits in 30 days.

D. Clean and mound manure in all cattle pens in 30 days.

E. Repair mainline pump and manure spreader pump in 30 days.

The representatives directed Elsinghorst to begin to take corrective actions to stop the discharges immediately or face additional civil regulatory actions. By 4:00 PM, the representatives confirmed that Elsinghorst had taken corrective actions and the surface water discharges had been stopped. The representatives scheduled a follow-up inspection for January 7, 2009.

Department representatives also collected one water sample (identified as "Dave Demoris" [i.e., Demaris]) from a drinking water well system located on the Demaris property.

8. On January 7, 2009, a department representative conducted a follow-up complaint inspection of Elsinghorst Dairy to assess the condition of areas that were discharging on January 6, 2009. No discharge was occurring from any of the areas adjacent to the county

road where discharge was viewed on January 6, 2009. Contaminated stormwater was still ponded and present at the discharge points to the west and northwest corner of the facility. The representative reviewed the required corrective actions again with Elsinghorst. The representative required Elsinghorst to file a written incident report detailing the discharges of January 2, 2009, and January 6, 2009. The written incident report was required to be submitted to the department prior to January 13, 2009.

9. On **January 8, 2009**, a department representative accompanied by a representative of the Oregon Department of Environmental Quality (DEQ) conducted a follow-up inspection with the dairy operator. No discharges to the county road ditch were observed during this inspection, and Elsinghorst was actively removing manure and contaminated stormwater from the facility and land applying the material. Contaminated stormwater was again escaping from the west side of the property and flowing onto Tim Richartz' 40-acre spring wheat field. Contaminated stormwater was also escaping from the northwest corner of the facility and flowing out onto Tim Richartz' 30-acre wheat stubble field. Twelve (12) photographs were taken to document conditions viewed during the inspection. The department representative discussed with Elsinghorst the need for Elsinghorst's continuous compliance with CAFO Permit requirements. The representative issued an inspection report (#0910274) for a violation of stormwater discharge from the west and from the northwest corner of the facility onto Tim Richartz' fields.
10. On **January 10, 2009**, a department representative conducted an unannounced follow-up inspection at Elsinghorst Dairy. There was no discharge occurring to the county roadside ditch or to the adjacent neighbor's (Demaris) property. Elsinghorst was actively hauling manure and contaminated stormwater from the facility manure storage facilities and was land-applying the material on adjacent fields. The representative submitted a trip report and photographs of the inspection.
11. On **January 14, 2009**, the department received laboratory analyses of water samples collected on January 6, 2009, at Elsinghorst Dairy along Umapine Road. Analyses conducted by KUO Testing Labs, Inc., indicated that *E. coli* was present in all samples that exited the property at levels that violated the state surface water quality bacteria standard. (Sample analyses results and a sample location map are found in attachments to Notice of Noncompliance and Plan of Correction (NON/POC) #096915.)

On January 14, 2009, the department also determined that Elsinghorst Dairy had failed to report the January 2, 2009, discharge within 24 hours, and failed to provide a written report of the discharges that occurred on January 2, 2009, and January 6, 2009, to the department prior to January 13, 2009, (i.e., within five days) as directed during the January 7, 2009, inspection. Failing to submit these reports violates CAFO Permit condition S4.D, Reporting Requirements.

12. On **January 16, 2009**, the department received the results of the KUO Testing Labs, Inc. analyses of the drinking water sample taken from the Demaris drinking water well system on January 6, 2009. The results showed an *E. coli* quantification greater than 1553.1 MPN/mL.

13. On **January 16, 2009**, a department representative conducted an inspection (#096918) at the Elsinghorst Dairy facility and also collected a water sample from the Demaris drinking water well system. The sample was taken to Pendleton Lab for analysis.
14. On **January 17, 2009**, the department received the analyses results from Pendleton Lab from the water sample collected on January 16, 2009, from Demaris's drinking water well system. The results showed an *E.coli* count of 37.3/100 mL.
15. On **January 30, 2009**, the department issued Notice of Noncompliance and Plan of Correction (NON/POC) #096915. The NON states that the permittee (Elsinghorst) violated the following special conditions of the Oregon CAFO General Permit: S2.A, Discharge Limitations; S2.E, Waste Storage Facilities; S2.F, Prevention of System Overloading; S2.H, Proper Operation and Maintenance; S2.I, Maintaining Compliance if System Fails; and S4.D, Reporting Requirements – 24-hour Reporting. The Plan of Correction contains nine required actions to bring the Elsinghorst Dairy facility into compliance with special conditions S2.A, S2.E, S2.F, S2.H, S2.I, and S4.D of the Oregon CAFO General Permit No. 1. (Sample results from KUO Testing Labs, Inc. dated January 14, 2000, from analyses of surface water samples taken on January 6, 2009, sample location map, and copy of the Oregon CAFO General Permit No. 1 were attached to the NON/POC.)
16. On **March 17, 2009**, the department issued Notice of Noncompliance and Plan of Correction (NON/POC) # 0910410 to Paul Elsinghorst, dba Elsinghorst Dairy, LLC, for violation of ORS 468B.025, Prohibited Activities, on January 6, 2009, by having a discharge that resulted in pollution of waters of the state. The required action stated: Permittee must at all times operate this CAFO facility, Elsinghorst Dairy, so that no discharge occurs that violates ORS 468B.025 or terms and conditions of the CAFO Permit." (Sample results from KUO Testing Labs, Inc., dated January 16, 2009, from analysis of the sample taken from Demaris's drinking water system on January 6, 2009, were attached to the NON/POC.)

#### ULTIMATE FINDINGS OF FACT

1. **Paul Elsinghorst**, a registered CAFO operator, operates Elsinghorst Dairy, LLC, located at **50901 Umapine Road, Milton-Freewater, Oregon**, in Umatilla County under Oregon CAFO General Permit No. 1 (CAFO Permit). Elsinghorst Dairy, LLC, is registered to the CAFO Permit under Master Address No. **182162**.
2. Between January 2, 2009, and January 17, 2009, Elsinghorst Dairy violated ORS 468B.025, Prohibited Activities, and six (6) special conditions of the Oregon CAFO General Permit No.1: S2.A, Discharge Limitations; S2.E, Waste Storage Facilities; S2.F, Prevention of System Overloading; S2.H, Proper Operation and Maintenance; S2.I, Maintaining Compliance if System Fails; and S4.D, Reporting Requirements.

These findings are based on the recitations in Findings of Fact three (3) through 14.

ORS 468B.230 provides that the department may impose a civil penalty for violation of the statutes or rules governing the CAFO Permit.

### CONCLUSIONS OF LAW

1. Paul Elsinghorst, dba Elsinghorst Dairy, LLC, violated ORS 468B.025, Prohibited Activities, and six (6) special conditions of the Oregon CAFO General Permit No.1: S2.A; S2.E; S2.F; S2.H; S2.I; and S4.D.
2. These violations are subject to imposition of a civil penalty assessment.

### PENALTY CALCULATION

The penalty calculation is **\$5,160.00**. The penalty is determined using the criteria in OAR 603-074-0070 and OAR 603-074-0080.

OAR 603-074-0070(1) provides that "the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B."

Pursuant to OAR 603-074-0070(1) and OAR 603-074-0080(4), the department used the following formula to calculate the civil penalty:

$$B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$$

### VIOLATION NUMBER 1

Penalty calculation for violation number 1, manure and contaminated storm water discharging from the production area onto the county road and into the county road ditches and onto a neighbor's (Demaris's) property into groundwater. The permittee, Elsinghorst Dairy, LLC, violated ORS 468B.025 and the CAFO General Permit No.1's Special Condition S2.A, by having an unauthorized discharge of waste that flowed onto the Demaris property and caused pollution of Demaris's drinking water system. "The permittee is prohibited from discharging process wastes to surface water or groundwater of the state, except as allowed in S2.B and S2.C and provided these discharges do not cause or contribute to a violation of state water quality standards. (S2.A.)". This violation occurred on January 6, 2009, at 50901 Umapine Road, Milton-Freewater, Oregon, and is documented in Findings of Fact paragraphs seven through 14.

1. B, the base penalty, is **\$1,200.00** for category I, Major (first violation), and a High gravity of effect. OAR 603-074-0070-4(a)(C) and 5(a)(B) and 603-074-0080(3).



2. P, the past occurrence, is 0, for having no prior violation or insufficient evidence on which to base a finding. OAR 603-074-0080(4)(b)(A).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some but not all feasible steps to correct prior violations. 603-074-0080(4)(c)(C)",
4. R, the preventability of the violation is 4, the persons actions determined to be in violation were reasonably avoidable. OAR 603-074-0080(4)(d)(E).

$$\$1,200.00 + [(1 \times 1,200) (0 + 1 + 4)] = \$1,800.00$$

## VIOLATION NUMBER 2

Penalty calculation for violation number 2, failing to operate and maintain waste collection, storage and utilization facilities, which allowed the facilities to overflow and discharge. The permittee, Elsinghorst Dairy, LLC, violated the CAFO General Permit No.1's Special Condition S2.H, which resulted in an unauthorized discharge of waste into waters of the state. The discharge was caused in part because the manure collection pits were operated in exceedence of the design capacity, the manure transfer pumps were inoperable, and manure transfer and application equipment were inoperable. This violation occurred on January 6, 2009 at 50901 Umapine Road, Milton-Freewater, Oregon, and is documented in Finding of Fact paragraph seven.

1. B, the base penalty, is \$600.00 for category II, Moderate (first violation), and a High gravity of effect. OAR 603-074-0070-4(b)(C) and 5(a)(B) and 603-074-0080(3).
2. P, the past occurrence, is 0, for having no prior violation or insufficient evidence on which to base a finding. OAR 603-074-0080(4)(b)(A).
3. H, the history of the person taking all feasible steps to correct the violation, is 0, there is no prior history or insufficient information on which to base a finding. 603-074-0080(4)(c)(B).
4. R, the preventability of the violation, is 4, the persons actions determined to be in violation were reasonably avoidable. OAR 603-074-0080(4)(d)(E).

$$\$600.00 + [(1 \times 600) (0 + 0 + 4)] = \$840.00$$

## VIOLATION NUMBER 3

Penalty calculation for violation number 3, by failing to maintain compliance if system fails, by allowing waste collection and storage facilities to overflow and discharge. The permittee, Elsinghorst Dairy, LLC, violated the CAFO General Permit No.1's Special Condition S2.I, which resulted in an unauthorized discharge into waters of the state. The discharge was caused in part by allowing the manure collection pits to be operated in excess of their designed capacity and by failing to maintain the manure transfer pumps in an operable condition and failing to implement any corrective action to maintain CAFO Permit compliance. This violation of S2.I occurred on January

6, 2009, at 50901 Umapine Road, Milton-Freewater, Oregon, and is documented in Finding of Fact paragraph seven.

1. B, the base penalty, is \$600.00 for category II, Moderate (first violation), and a High gravity of effect. OAR 603-074-0070-4(b)(C) and 5(a)(B) and 603-074-0080(3).
2. P, the past occurrence, is 0, for having no prior violation or insufficient evidence on which to base a finding. OAR 603-074-0080(4)(b)(A).
3. H, the history of the person taking all feasible steps to correct the violation, is 0, there is no prior history or insufficient information on which to base a finding. 603-074-0080(4)(c)(B).
4. R, the preventability of the violation, is 4, the persons actions determined to be in violation were reasonably avoidable. OAR 603-074-0080(4)(d)(E).

$$\text{\$600.00} + [(1 \times 600) (0 + 0 + 4)] = \text{\$840.00}$$

#### **VIOLATION NUMBER 4**

Penalty calculation for violation number 4, failing to report a discharge according to CAFO Permit special conditions contained in S4.D.1. This violation of S4.D.1(a) occurred on or before January 13, 2009, and is documented in Finding of Fact paragraph seven.

1. B, the base penalty, is \$1,200.00 for category I, Major (first violation), and a High gravity of effect. OAR 603-074-0070-4(a)(E) and 5(a)(B) and 603-074-0080(3).
2. P, the past occurrence, is 0, for having no prior violation or insufficient evidence on which to base a finding. OAR 603-074-0080(4)(b)(A).
3. H, the history of the person taking all feasible steps to correct the violation, is 0, there is no prior history or insufficient information on which to base a finding. 603-074-0080(4)(c)(B).
4. R, the preventability of the violation, is 4, the persons actions determined to be in violation were reasonably avoidable. OAR 603-074-0080(4)(d)(E).

$$\text{\$1,200.00} + [(1 \times 1200) (0 + 0 + 4)] = \text{\$1,680.00}$$

$$\text{\$1,800.00} + \text{\$840.00} + \text{\$840.00} + \text{\$1,680.00} = \text{\$5,160.00 (Total Penalty)}$$

### RIGHT TO A HEARING

You have the right to a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) on the matters in this Notice of Assessment of Civil Penalty. ORS 183.745; ORS 468B.230. The request for a hearing must be made in writing and filed with the Oregon Department of Agriculture (department) within 20 days from the date of receipt of this Notice. OAR 603-074-0050. A request for hearing must be in writing and directed to the attention of:

**Ray Jaendl, Administrator  
Natural Resources Division  
Oregon Department of Agriculture  
635 Capitol Street NE  
Salem, Oregon 97301-2532**

You may be represented by legal counsel. Legal aid organizations may be able to assist you if you have limited financial resources. If you make a timely request for a hearing, you will be notified of the time and date of such hearing. The rights and procedures in a contested case will be provided to you upon receipt of a request for a formal contested case hearing.

### FINAL ORDER

If you fail to request a hearing within 20 days of receipt of this notice, withdraw a hearing request, notify the department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, this order shall become final. If this order becomes a Final Order by default, the department designates its file on this matter as the record. A civil penalty imposed by the order will become due and payable 10 days after the order becomes final by operation of law or on appeal. ORS 183.745(2). Your check or money order should be made payable to the Oregon Department of Agriculture and sent to:

**Oregon Department of Agriculture  
ATTN: Natural Resources Division  
635 Capitol Street NE  
Salem, Oregon 97301-2532**

Dated this 30<sup>th</sup> day of March, 2009.

  
Katy Coba, Director  
Oregon Department of Agriculture

RECEIVED

JAN 14 2009

NATURAL RESOURCES  
DIVISION



Kuo Testing Labs, Inc.  
CHICAGO, ILL 60644

Ph. (509) 488-0112

Fax (509) 488-0118

kuotest@atnet.net

Date: \_\_\_\_\_ Fax No: \_\_\_\_\_

To: \_\_\_\_\_

From: \_\_\_\_\_

Subject: \_\_\_\_\_

*Consent p. 1 & pp 2-8 are individual sample result pages.*

Number of pages to follow: \_\_\_\_\_

# Kuo Testing Labs, Inc.

337 South 1st Avenue, Othello, WA 99344

(509) 488-0112 Phone (509) 488-0118 Fax (800) 328-0112 Toll Free

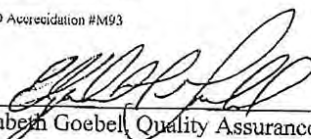
Web Site: <http://www.kuotesting.com> e-mail: [kuotest@atnet.net](mailto:kuotest@atnet.net)

SYSTEM / CUSTOMER		DATE COLLECTED 1/6/2009	DATE RECEIVED 1/7/2009	DATE REPORTED 1/14/2009		
Oregon Dept. of Agriculture 635 Capitol St. NE Salem 97731 Project Name: <i>Natural Resource Div.</i>		SEND REPORT TO: Oregon Dept. of Agriculture 635 Capitol St. NE Salem OR 97731 Attn:				
SAMPLE NO.	CUSTOMER SAMPLE NO.	ANALYSIS	RESULTS	MDL	UNITS	ANALYSTS
98871	PE-A	E. Coli Quantification	57640	1	MPN/mL	EG/JL/GD
98871	PE-A	Total Coliforms Quantification	86640		MPN/mL	EG/JL/GD
98871	PE-A	TKN as Nitrogen	15250	0.1391	mg/L	EG/JL/GD
98871	PE-A	Nitrate as Nitrogen	ND	0.08	mg/L	EG/GD/JL

*I called Denise at Kuo Testing & she corrected the zip code to 97301 & added Natural Resource Div.*

<(0.001): indicates the analyte was not detected at or above the concentration indicated.  
ND: None Detected  
mg/L: indicates milligrams per litre  
MDL: Method Detection Limit

BFCHD Accreditation #M93

  
Elizabeth Goebel, Quality Assurance Manager

*1/14/09*  
Date

*Replaces 02/08 (bnd)*  
PAGE 01/01

KUO TESTING LABS

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