

## Addressing a Regulatory Gap in the Washington State Dairy Nutrient Management Act: A Statement to the Legislature and the Governor from the Lower Yakima Valley Groundwater Management Area

Lower Yakima Valley dairies are significant contributors to the nitrate pollution that makes water from 12% to 20% of domestic wells in the area unsafe for human consumption.

A 2014 report from the Environmental Protection Agency (EPA) documented that 61% of domestic wells one mile down gradient from a LYV “dairy cluster” had water with nitrates > 10 mg nitrate N/L, the EPA standard for drinking water. Quarterly testing in one of the monitoring wells found nitrate levels at 166, 174, 195 and 234 mg nitrate N/L. (EPA, 2014; EPA, 2106)

There are well-done case studies of infants who have developed blue baby syndrome in rural America. Some have died after drinking formula made with well water that had levels of nitrate below those found in the LYV. (Knobeloch et al, 2000; Ward, 2005)

Nitrates in LYV groundwater pose a serious environmental and public health problem. The State of Washington has the authority and the obligation to take all reasonable means to solve that problem.

One worthy option is to strengthen RCW 90.64, the WA Dairy Nutrient Management Act (DNMA), so that Washington dairies are not only required to develop Nutrient Management Plans (NMP’s) but are also required to follow them.

This is important because not all dairies have followed their NMPs. Court documents from CARE versus Cow Palace reveal that large dairies in the LYV have ignored NMP guidelines and the result has been unacceptable levels of nitrate in soils and groundwater. Enforcement of the NMP guidelines by the EPA and the court is beginning to turn this around in one small area. (Tebbutt Law, 2018; EPA, 2014; EPA 2016)

The WSDA stated in a 2017 Report to the Governor and Legislature entitled *Implementation of Nutrient Management Training Program for Farmers and Manure Management Program Review*:

***There is no penalty for failure to follow or update an NMP.***

*For an NMP to be certified as required, the elements described in the plan must be “being used as designed and intended,” but there is no requirement that the plan be implemented once it is certified. The statute (Chapter 90.64 RCW) includes monitoring development and implementation of NMPs as a purpose for inspections, and it identifies the existence and implementation of NMP as criteria for prioritizing inspections, but not following an NMP is in itself not a violation of the statute, and there is no penalty for it.*

*Also, facility infrastructure and on-farm management practices change, and land application acreage are often traded with other farmers, but NMPs are not required to be updated to reflect those changes. Expanded operations, reconfigured facilities and even*

*changing weather patterns may affect a plan's effectiveness. An NMP that was effective for protecting water quality 5 years ago may not be effective today. Currently, a dairy is not required to update its NMP even if there are substantial changes in the operation. The statute only requires a plan to be updated after a discharge violation has occurred-- if there is a discharge and the plan did not prevent it. However, there is no penalty for not updating it, even after a discharge.*

**STRATEGY TO CONSIDER:**

***Require NMPs to be updated every 5 years and prior to operation expansion.***

*Updating NMPs regularly keeps them more useful. The plans and farm conditions are more likely to be in synch, and the repeated process keeps attention on the plan. Updated plans will have to be implemented in order to be re-certified. Updating the NMP ahead of an expansion allows water quality protection measures to be integrated into the process of expansion, rather than be added on later, which could be more costly. It also reduces the risk of an operation having a discharge violation due to its expansion.*

*However, updating and recertifying a plan every five years does not guarantee that the plan will be implemented between updates. Also the updates can be expected to significantly increase demands on conservation district resources. See C3, below. Prioritizing new plans and updates may become an issue. Some dairies may feel their opportunity to expand is impeded by the inability to get their NMP updated.*

***Requires:*** *Statutory changes. Funding for conservation districts. (WSDA, 2017)*

The Lower Yakima Valley Groundwater Management Area plan supports these statutory changes to RCW 90.64. The LYV GWMA supports periodic updates to dairy NMPs and requiring Washington dairies to follow their NMPs with strong penalties for non-compliance.

We submit this request under the GWMA guidelines in WAC 173-100-100 (6)(a) that require:

(6) An implementation section comprised of:

(a) A detailed work plan for implementing each aspect of the groundwater management strategies as presented in the recommendations section. For each recommended management action, the parties responsible for initiating the action and a schedule for implementation shall be identified. Where possible, the implementation plan should include specifically worded statements such as model ordinances, recommended governmental policy statements, interagency agreements, proposed legislative changes, and proposed amendments to local comprehensive plans, coordinated water system plans, basin management programs, and others as appropriate;

Respectfully,

*The Lower Yakima Valley Groundwater Management Area*

## References:

Environmental Protection Agency (2014) *Fact Sheet: Yakima Dairies Consent Order Update*. Available at <https://www.epa.gov/sites/production/files/2017-12/documents/lower-yakima-valley-groundwater-fact-sheet-december-2014.pdf>

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Knobeloch, L., Salna, B., Hogan, A., Postle, J., & Anderson, H. (2000). Blue babies and nitrate-contaminated well water. *Environmental health perspectives*, 108(7), 675. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1638204/pdf/envhper00308-0137.pdf>

Tebbutt Law (2018) *Documents in CARE and Center for Food Safety versus Cow Palace et al*. Available at <http://charlietebbutt.com/cases.html>

Ward, M. H. (2005). Workgroup report: drinking-water nitrate and health—recent findings and research needs. *Environmental health perspectives*, 113(11), 1607. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1310926/>

Washington State Department of Agriculture (2017) *Implementation of Nutrient Management Training for Farmers and Nutrient Management Program Review: Report to the Governor and Legislature*. Available at [https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=634-DNMP2017LegReport\\_b2479af1-2fc9-4218-8200-1a0118e3063b.pdf](https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=634-DNMP2017LegReport_b2479af1-2fc9-4218-8200-1a0118e3063b.pdf)