



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Environmental Hearings Office

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: December 4, 2003.

(2) Purpose: At the request of the Department of Agriculture, our agency is amending existing Pollution Control Hearings Board (PCHB) rules in order to help facilitate transfer of the Livestock Nutrient Management Program from the Department of Ecology to the Department of Agriculture.

(3) Citation of existing rules affected by this order:

- Repealed:
- Amended: Amending WAC Chapter 371-08.
- Suspended:

(4) Statutory authority for adoption: RCW 34.05.360 and ESSB 5889.

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).
Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The adoption in the last legislative session of ESSB 5889 transferring the Livestock Nutrient Management Program from Ecology to Agriculture created a need to amend existing procedural rules governing appeals to the PCHB related to the program.

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes No If Yes, explain:

(6) Effective date of rule:

- Permanent Rules**
- 31 days after filing
 - Other (specify) _____*

- Emergency Rules**
- Immediately
 - Later (specify) 12/16/03

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Eric Z. Lucas

Signature

Title
Administrative Appeals Judge
and FHO Rules Coordinator

Date
December 4, 2003

CODE REVISER USE ONLY

COMPLIANCE OFFICE
STATE OF WASHINGTON

DEC 4 2003

TIME 1019

WSR 04-01-011

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

None.

The number of sections adopted in the agency's own initiative: EHO's is acting on a request from the Department of Agriculture.

New 1 Amended 1 Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New 1 Amended 1 Repealed _____

The number of sections adopted using: None.

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 371-08-306 Livestock nutrient management program (LNMP). As used in this chapter, and chapter 43.21B RCW, when referring to appeals related to civil penalties and orders issued by the department of agriculture, under the LNMP, pursuant to chapters 90.48 and 90.64 RCW, the following terms shall have the following meaning:

- (1) "Department" means the department of agriculture.
- (2) "Director" means the director of the department of agriculture.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, and from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, 86.16.081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330 (~~and~~), 90.58.560 and chapter 90.64 RCW.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.107.060, 88.46.070, 90.14.130, 90.14.190 (~~and~~), 90.48.120 and chapter 90.64 RCW.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits or of biosolid permits pursuant to

chapter 70.95 RCW.

(e) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

(f) Any other decision by the department of ecology, the administrator of marine safety or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.