

WSR 22-08-003

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed March 23, 2022, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-018.

Title of Rule and Other Identifying Information: WAC 246-203-130 Keeping of animals. The state board of health (board) is proposing amendments to this section of the general sanitation rules, chapter 246-203 WAC, to modernize the rule's structure, standards, and language. The proposal includes a title change to domestic animal waste to reflect the focus on animal excreta, or animal waste. The proposal applies to waste from livestock animals such as horses and cattle and waste from nonlivestock animals such as dogs and cats. The proposal establishes minimum standards for domestic animal waste to (1) avoid unsanitary accumulations in containment areas; (2) prevent contamination of other people's property, drinking water sources, and surface water bodies with potential to affect human health; (3) promote safe handling and disposal of nonlivestock waste; and (4) promote safe stockpiling of livestock waste.

Hearing Location(s): On June 8, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register in advance for the public hearing for WAC 246-203-130 Keeping of animals at https://us02web.zoom.us/webinar/register/WN_6vqdRyUmTamyb61z3wCSBA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: June 8, 2022.

Submit Written Comments to: Stuart Glasoe, State Board of Health, P.O. Box 47990, Olympia, WA 98504-7990, email WSBOHProposedAnimalWasteRule@sboh.wa.gov, by May 2, 2022.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-3301, TTY 711, email melanie.hisaw@sboh.wa.gov, by June 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal establishes minimum standards intended to help prevent, control, and abate health hazards and nuisance associated with the handling and disposal of domestic animal waste. The proposal updates and renames the existing rule. The proposal establishes minimum standards for the safe handling and disposal of domestic animal waste to prevent and mitigate human exposure and health risks, with emphasis on control points at the front end of the waste stream when waste is first excreted by animals and is first handled by people (collection, piling, and disposal).

Reasons Supporting Proposal: RCW 43.20.050 (2)(c) charges the board with unique responsibility and authority to adopt rules and standards to prevent, control, and abate health hazards and nuisance related to the disposal of animal waste. WAC 246-203-130 serves as the board's rule on the handling and disposal of animal waste. The language of the existing rule dates to the 1920s and 1930s. Despite its unique niche and authority, the rule has not undergone review or revision in recent decades, leaving a health and sanitation gap in the state regulatory structure for animal waste. Domestic animal waste

presents many challenges that are often well-managed by people. However, situations arise where waste accumulates or is mishandled in ways that create a nuisance or health hazard and action is needed to address and correct the problem. The proposal sets animal waste standards for people to follow that may be locally enforced by a local health officer if needed.

Statutory Authority for Adoption: RCW 43.20.050 (2)(c).

Statute Being Implemented: RCW 43.20.050 (2)(c).

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Unlike some board rules that involve ongoing implementation and frontline regulation of facilities and systems (e.g., food establishments, shellfish operations, and drinking water systems), this proposal includes no operational functions or requirements (e.g., record keeping, routine inspections, and permitting) of facilities such as dog kennels, horse stables, animal hospitals, livestock producers, and other operations involved in the handling and disposal of animal waste. As such, this rule involves no ongoing implementation. Board rules are enforced by either the Washington department of health (DOH) or local health officers as defined in each rule. In this proposal, DOH plays no role in its enforcement. Enforcement of the proposal rests solely with local health officers.

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stuart Glasoe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4111; Enforcement: Local health officers, varied statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stuart Glasoe, State Board of Health, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4111, TTY 711, email stuart.glasoe@sboh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The following sections incorporate by reference without material change standards of a Washington state rule: WAC 246-203-130 (3)(d)(i), control of odors and attraction of flies, rodents, and other vectors; WAC 246-203-130 (3)(d)(ii), limits storage of stockpiled livestock waste to one year; WAC 246-203-130 (3)(d)(iii)(A), requires siting stockpiled livestock waste 100 feet or more from a drinking water well; WAC 246-203-130 (3)(d)(iii)(B), requires siting stockpiled livestock waste 200 feet or more from a public drinking water spring; and WAC 246-203-130 (3)(d)(iii)(C), re-

quires siting stockpiled livestock waste outside the sanitary control area of a public drinking water system.

The following amendments are clarifying, without changing the effect of the rule: WAC 246-203-130(1), establishes the purpose and applicability of the rule; WAC 246-203-130(2), establishes the definitions of terms used in the rule; WAC 246-203-130(3), preface only, introduces the standards of the rule, defers to more stringent standards in law, and excludes certain diffuse practices; WAC 246-203-130(3)(b)(ii), requires the handling of domestic animal waste to prevent contamination of drinking water sources, which clarifies existing language of the rule without changing its effect; WAC 246-203-130(3)(c), introduces the standards of the subdivision and precludes stockpiling nonlivestock waste; WAC 246-203-130(3)(d)(iii)(D)(I) is interpretive language that clarifies that the setback standard does not apply when surface water bodies are upgradient or protected by a levee or other physical barrier; and WAC 246-203-130(4) establishes structure and authority of local health officers to investigate and enforce violations of the rule.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

The purpose of this rule making is to modernize WAC 246-203-130 Keeping of animals, a long-standing board rule with language dating back to the 1920s and 1930s. This rule is one section of board rules on general sanitation, chapter 246-203 WAC, covering such issues as nuisance, piggeries, disposal of dead animals, and use of common cup and towel. The chapter was codified as WAC in 1960, followed by administrative recodification in 1991. Despite its unique niche and authority, the rule has not undergone review or revision in recent decades while other related laws and regulations have been enacted, leaving a health and sanitation gap in the state regulatory structure for domestic animal waste.

In 2009, the board received a petition from the Washington Association of Conservation Districts to amend the rule. The board denied the specific petition and opted to file a CR-101 Preproposal statement of inquiry (WSR 09-17-132) to more broadly update the rule. The rule making stalled and ultimately resumed in 2017. In 2018, board staff completed a background report¹ to help guide the rule making and restarted work on the rule with emphasis on stakeholder outreach, research, and rule writing. In fall 2019, the board filed a new CR-101, WSR 19-21-018, to better align the rule making with board policy direction. In early 2020, the board distributed a draft rule for public review, processed the feedback, and revised the draft. In November 2020, staff updated the board on the rule making. The board directed staff to file a CR-102 Proposed rule making.

¹ Washington state board of health, 2018. Keeping of animals background and policy recommendations of the Washington state board of health for revising WAC 246-203-130.

Domestic animal waste presents many challenges that are often well-managed by people. However, situations arise where waste accumulates or is mishandled in ways that create a nuisance or health hazard and action is needed to address and correct the problem. The proposed rule establishes minimum standards intended to help prevent, control, and abate health hazards and nuisance associated with the handling and disposal of domestic animal waste. This includes waste from livestock

such as horses and cattle, and waste from nonlivestock such as dogs and cats.

The proposed rule includes standards to:

- Avoid unsanitary accumulations of waste in containment areas;
- Prevent contamination of other people's property, drinking water sources, and surface water bodies with potential to affect human health;
- Promote safe handling and disposal of nonlivestock waste; and
- Promote safe stockpiling of livestock waste.

The proposed rule is not an operational board rule involving on-going implementation and frontline regulation of facilities and systems (e.g., board rules for food establishments, shellfish operations, water recreation facilities, on-site sewage systems, and drinking water systems). Instead, like the companion sanitation rule on disposal of dead animals (WAC 246-203-121), this proposed rule sets animal waste standards for people to follow that may be locally enforced by a local health officer if needed.

The proposed rule aims to focus squarely on domestic animal waste. It intersects other rules and practices associated with solid waste and manure management but largely stops short of waste and beneficial-use streams regulated by other agencies. Due to the narrow focus on animal waste, the rule includes a proposed title change from keeping of animals to domestic animal waste to more accurately reflect and implement board authority regulating animal excreta.

Costs complying with the proposed rule apply only to businesses not already meeting the standards, and are limited to the incremental cost of complying, not the total cost of animal waste handling and disposal. For such businesses, professional services may include waste collection and disposal, engineering and other technical assistance changing waste handling and manure management practices to prevent contamination of properties and water resources, and technical assistance changing stockpiling practices or possibly converting to alternate waste storage practices.

The following North American Industry Classification System (NAICS) codes identify the types of businesses that are required to comply with the proposed rule along with the calculated minor cost thresholds (MCT).^{2,3}

² United States Census Bureau, North American Industry Classification System (NAICS).

³ Governor's office for regulatory innovation and assistance, Regulatory Fairness Act tools and guidance, Minor Cost Threshold Calculator.

NAICS Code 541940, Description "Veterinary Services," # of businesses in WA "970," MCT (1% average annual payroll) "\$5,775.24," MCT (0.03% annual receipts) "\$4,209.02."

NAICS Code 812910, Description "Pet Care Services," # of businesses in WA "1,696," MCT (1% average annual payroll) "\$1,489.05," MCT (0.03% annual receipts) "\$402.47."

NAICS Code 453910, Description "Pet and Pet Supplies Stores," # of businesses in WA "301," MCT (1% average annual payroll) "\$3,453.20," MCT (0.03% annual receipts) "\$5,022.53."

NAICS Code 562111, Description "Solid Waste Collection," # of businesses in WA "190," MCT (1% average annual payroll) "\$11,022.24," MCT (0.03% annual receipts) "\$26,702.06."

NAICS Code 713990, Description "All Other Amusement and Recreation Industries,"⁴ # of businesses in WA "1,130," MCT (1% average annual payroll) "\$1,817.98," MCT (0.03% annual receipts) "\$1,142.49."

⁴ Includes recreational riding, horse rentals, and outfitters.

NAICS Code 611620, Description "Sports and Recreation Instruction,"⁵ # of businesses in WA "1,075," MCT (1% average annual payroll) "\$1,451.98," MCT (0.03% annual receipts) "\$633.96."

5 Includes horse riding instruction and academies.

NAICS Code 1121, Description "Cattle Ranching and Farming," # of businesses in WA "534," MCT (1% average annual payroll) "\$3,657.58," MCT (0.03% annual receipts) "\$3,864.14."

NAICS Code 1122, Description "Hog and Pig Farming," # of businesses in WA "9," MCT (1% average annual payroll) "redacted," MCT (0.03% annual receipts) "\$169.89."

NAICS Code 1123, Description "Poultry and Egg Production," # of businesses in WA "46," MCT (1% average annual payroll) "\$5,316.15," MCT (0.03% annual receipts) "\$10,431.86."

NAICS Code 1124, Description "Sheep and Goat Farming," # of businesses in WA "36," Minor Cost Threshold (MCT) (1% average annual payroll), "redacted," MCT (0.03% annual receipts) "\$586.22."

NAICS Code 112920, Description "Horse and Other Equine Production," # of businesses in WA "50," MCT (1% average annual payroll) "\$621.54," MCT (0.03% annual receipts) "\$359.84."

NAICS Code 112990, Description "All Other Animal Production,"⁶ # of businesses in WA "171," MCT (1% average annual payroll) "\$499.58," MCT (0.03% annual receipts) "\$468.09."

6 Includes dog, cat, alpaca, llama, bison production and breeding.

NAICS Code 112930, Description "Fur-Bearing Animal and Rabbit Production," # of businesses in WA "6," MCT (1% average annual payroll) "\$99.20," MCT (0.03% annual receipts) "\$245.06."

NAICS Code 115210, Description "Support Activities for Animal Production,"⁷ # of businesses in WA "628," MCT (1% average annual payroll) "\$925.53," MCT (0.03% annual receipts) "\$416.80."

7 Includes horse boarding and training.

NAICS Code 424520, Description "Livestock Merchant Wholesalers," # of businesses in WA "15," MCT (1% average annual payroll) "\$2,415.61," MCT (0.03% annual receipts) "\$4,366.41."

NAICS Code 424590, Description "Other Farm Product Raw Material Merchant Wholesalers,"⁸ # of businesses in WA "26," MCT (1% average annual payroll) "\$3,684.24," MCT (0.03% annual receipts) "\$6,733.79."

8 Includes horses and mules.

The following is an analysis of the probable cost of compliance, identifying the probable costs to comply with the proposed rule, including cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Cost Survey: The board developed a cost survey of Washington businesses to determine if they face any new costs as a result of this proposed rule and if so to then identify and describe one-time costs and recurring annual costs to comply with the significant standards of the proposed rule. Potential costs include equipment, supplies, material, labor, professional services, increased administration, and other costs. One-time costs are costs that occur only once, such as a one-time purchase of equipment. Annual costs are costs that occur on a recurring basis once per year. Recurrent costs are costs that occur multiple times for a specified interval.

Board staff twice distributed the cost survey via email to Washington businesses covering 16 NAICS codes. The survey went to 800

Washington businesses in the first distribution followed by 1,000 businesses in the second distribution. The second distribution included the original 800 businesses. The survey covered such businesses as horse stables, livestock producers, dog kennels/groomers, animal hospitals, animal breeders, livestock markets, and equestrian centers. The board posted the cost survey on its rule making web page for a total of six weeks. The board asked approximately 30 organizations and one state agency to help distribute the survey to raise awareness of the rule making and to get broader reach with the survey.

The board received a total of 41 responses to the cost survey. Cost survey results included four businesses that identified cost impacts, 24 businesses that indicated no costs, and 13 with unspecified responses.⁹ In total, 37 of 41 respondents identified no cost impact or provided no cost information. Table 1 presents a summary of survey responses and the range of cost impacts for the individual proposed standards. Overall, respondents indicated applicable, potential costs for six of seven proposed standards included in this analysis. Cost impacts of individual proposed standards are discussed after the table.

⁹ Includes responses that, for example, did not return the cost survey, did not specify dollar amounts, or provided nonspecific comments (e.g. "not sure how it would impact me").

In the following discussion of cost impacts, a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for miscellaneous compliance needs. The board was unable to determine whether the respondent was indicating an estimate of overall cost impacts of the proposed rule or cost impacts of individual proposed standards. The board considered the costs in the cost/benefit analysis in compliance with RCW 34.05.328 for significant legislative rules, also referred to as a significant analysis. The board considered the costs only once in the significant analysis and in each section of this SBEIS but notes that this could be duplication of costs and a potential overestimate of costs to comply with individual standards.

Table 1: Cost survey response summary:

Number of businesses contacted	1,000				
Number of survey responses	41				
Number of surveys indicating costs	4				
Number of surveys indicating no costs	24				
Number of surveys with unspecified responses	13				
Proposed Standard	# Survey Respondents	First year cost to comply with proposed rule ¹⁰		MCT ¹¹	> MCT ¹²
		Low Cost	High Cost		
WAC 246-203-130 (3)(a) Collect waste in containment areas	4	\$500	\$116,000	\$169.89	Y
WAC 246-203-130 (3)(b)(i) and (iii) Do not contaminate properties, surface water bodies	2	\$2,500	\$75,000	\$169.89	Y
WAC 246-203-130 (3)(c)(i) Safely store non-livestock waste	0	no cost	no cost	N/A	N
WAC 246-203-130 (3)(c)(ii) Bag/dispose nonlivestock waste as solid waste	1	\$100	\$100	\$568.22	N

WAC 246-203-130 (3)(d)(iii)(D) Stockpile livestock waste > 100 feet of surface water body	2	\$2,500	\$260,000	\$169.89	Y
WAC 246-203-130 (3)(d)(iii)(D)(II) Allow livestock waste stockpile < 100 feet of surface water body if mitigated by practice(s)	2	\$2,500	\$114,000	\$169.89	Y
WAC 246-203-130 (3)(d)(iii)(E) Remove livestock waste stockpile prior to flooding	2	\$2,500	\$27,500	\$169.89	Y

- 10 Costs are not intended to be summed across rows but analyzed individually and in some cases represent costs to different businesses. First year cost to comply with proposed rule is presented per survey respondent and is the summation of the first year of annual recurrent cost plus one-time cost.
- 11 Derived from the lowest "MCT" for the affected industry(s). Respondents self-identified their NAICS industry code(s). The value listed in this column is the lowest MCT for those affected industries.
- 12 Derived by comparing the highest cost impact to a business with the lowest MCT.

WAC 246-203-130 (3) (a) Collect domestic animal waste at intervals sufficient to maintain sanitary conditions in containment areas.

Description: This proposed standard requires people to collect animal waste frequently enough to avoid unsanitary accumulations in containment areas. The rule defines "containment areas" as areas where domestic animals are held, housed, or kept for a period of time, including but not limited to stables, corrals, confinement areas, kennels, pens, and yards. The proposed standard applies to waste from livestock and nonlivestock animals.

Cost: Most survey respondents (37/41) indicated no cost impacts for this proposed standard. Four survey respondents identified cost impacts. A sheep/goat farming facility identified a recurring annual cost of \$500 for labor, fuel, and equipment. A pig farming/wholesale facility identified a one-time cost of \$58,000 and recurring annual costs of \$58,000 for unidentified needs and concerns related to compliance/enforcement. A horse boarding/riding/instruction facility identified a past one-time cost of \$9,000 to remove a manure pile and ongoing manure disposal costs of \$5,000/month to comply with county regulation (no indication of new costs). And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis identified potential incremental costs for equipment, supplies, and labor depending on the situation, waste volumes, and other factors. Equipment needs, for example, range from small-scale tools and equipment such as shovels, buckets and spreaders that run less than \$100 to \$1,000s, to large-scale industrial equipment such as tractors and related attachments that can exceed \$100,000.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (b) Handle domestic animal waste to prevent deposition, leaching, and runoff to (i) another person's property, and (iii) surface water bodies used for swimming, shellfish harvesting, or other activity with potential to affect human health.

Description: The proposed standards require people to handle animal waste to prevent deposition, leaching, and runoff to another person's property and to surface water bodies where there are activities/uses with potential to affect public health. The proposed standards are addressed jointly because the many associated practices, pollution pathways, and possible impacts are nearly identical. The proposed standards would typically apply to neighboring properties and surface

water bodies, but conceivably could apply more widely depending on transport mechanisms such as wind and water. The proposed standards apply broadly to animal waste handling and are not limited to practices listed in the rule.

Cost: Most survey respondents (39/41) indicated no cost impacts for the proposed standards. Two survey respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$48,000 and recurring annual costs of \$27,000 for unidentified needs and concerns related to legal counsel and agency consultations. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs for the proposed standards are indeterminate, case-by-case given that they potentially involve numerous waste handling practices and pollution pathways.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (c) (i) Hold nonlivestock waste in a watertight container if stored for more than one day prior to proper disposal.

Description: This proposed standard requires people to hold waste from nonlivestock animals in a watertight container, such as plastic bags and enclosed trash bins, if stored for more than a day prior to disposal.

Cost: In the cost survey, no respondents indicated costs associated with this proposed standard. However, one dog boarding facility noted potential costs if required to purchase special waste bins or dumpsters to replace existing waste bins provided by its private waste disposal company. Staff research for the cost-benefit analysis of the significant analysis determined that potential costs are equipment, supplies, and labor. Trash bins and bags are generally less than \$100 in one-time costs and require periodic replacement of bins. Total cost depends on waste volumes and holding needs.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (c) (ii) Bag and dispose of nonlivestock waste as solid waste.

Description: This proposed standard requires people to bag and dispose of waste from nonlivestock animals as solid waste.

Cost: Most survey respondents (40/41) indicated no cost impacts for this proposed standard. One survey respondent identified cost impacts. A goat/sheep farming facility identified a recurring annual cost of \$100 for bags and collection labor. The proposed standard does not apply to goat, sheep, and other livestock waste, so the board assumes this cost estimate is for waste from nonlivestock associated with the business or business owner.

The board assumes nominal costs as most businesses already meet the proposed standard. Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs are disposal services, equipment, supplies, and labor. Solid waste disposal options include curbside collection and self-haul landfill service. Rates vary and are generally less than \$100 for monthly residential service, more for commercial service. Total costs depend mainly on disposal rates and waste volumes.¹³

13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (D) Site stockpiled livestock waste one hundred feet or more from a surface water body (see exception that follows).

Description: If waste from livestock is stockpiled for later use or disposal, this standard requires people to site the stockpile 100 feet or more from a surface water body. The standard assumes unmitigated stockpiling on bare ground on a short-term basis between collection and use.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$210,000 and recurring annual costs of \$50,000 for needs and concerns related to constructing a manure lagoon or selling land to comply with the standard. While a landowner may choose to comply in this manner, the proposed standard applies to stackable waste (not lagoon storage) and allows reductions to the setback if control/treatment practices are applied. Therefore, the board anticipates that the cost impacts will likely be lower than estimated. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs for this proposed standard are indeterminate, case-by-case, affecting people who stockpile livestock waste near surface water bodies or plan to do so in the future.¹³

13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (D) (II) Site stockpiled livestock waste one hundred feet or more from a surface water body unless the surface water body is protected by one or more control or treatment practices that capture and prevent leachate and runoff.

Description: If waste from livestock is stockpiled for later use or disposal, this exception to WAC 246-203-130 (3) (d) (iii) (D) allows reduction of the 100-foot setback from surface water bodies when treatment or control practices are applied to mitigate runoff and leachate. The proposed standard allows people to determine the appropriate practice(s), and existing, functioning controls satisfy this proposed standard.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$95,000 and recurring annual costs of \$19,000 for needs and concerns related to engineering services, local permitting, and legal counsel. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs are equipment, materials, and labor to install and maintain alternate practices to mitigate runoff and leachate from stockpiles. Optional practices range from storage pads and covers to stacking and composting structures.

Costs range broadly (\$100s to \$1,000s and up) depending on the practice(s), waste volumes, and other factors.¹³

13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (E) Site stockpiled livestock waste outside seasonally or frequently flooded areas unless used or disposed of prior to flooding.

Description: If waste from livestock is stockpiled for later use or disposal, this proposed standard prohibits siting stockpiles in seasonally or frequently flooded areas unless the stockpile is used or disposed of prior to flooding to prevent saturation and inundation of stockpiles.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$17,000 and recurring annual costs of \$10,500 for needs and concerns related to inefficient and unscheduled movement of stockpiles. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for record keeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

The board assumes nominal costs for businesses already using or disposing such piles. Staff research for the cost-benefit analysis of the significant analysis determined that costs to remove/reuse stockpiles are indeterminate, case-by-case. Where possible, stockpiles are generally managed/recycled on site. Costs for off-site movement generally involve higher costs for loading, transport, and disposal. Sample disposal costs range between \$38 and \$168 per ton.

Summary of Compliance Costs: The proposed standards involve practices that the board believes most businesses already do when handling and disposing domestic animal waste. Results of the cost survey support this with 37 of 41 responses across industries specifically identifying no cost impact or not indicating any cost impact. Of the four responses that identified cost impacts, one response identified past and existing costs that would be unaffected by the proposed rule, and three responses identified new costs to comply with the proposed rule.

In instances where additional work is needed to comply with the proposed standards, there may be costs for equipment, supplies, material, and labor to regularly collect and safely store and dispose of animal waste to prevent or abate health hazards and nuisance. For large-scale operations, the volume of waste and the related management challenges and cost impacts are potentially much higher. The overall incremental cost impact of the proposed rule is indeterminate for properties and operations statewide and would be unique in each situation.

Loss of Sales or Revenue: There is no evidence or indication that the proposed rule will result in loss of sales or revenue.

Minor Cost Analysis: The minor cost thresholds for the businesses identified above range from a high of \$26,702.06 (.003 of annual receipts of solid waste collection) to a low of \$169.89 (.003 of annual receipts of hog and pig farming). Based on the analysis above, the rule will impose more-than-minor costs on businesses potentially impacted by this proposed rule.

Disproportionate impact: Cost information from the cost survey is limited and is supported by additional cost information from the cost-benefit analysis of the significant analysis. Costs, outlined above

and in the board's legislative cost/benefit significant analysis, apply to businesses of all sizes across a range of industries that involve animal waste handling and disposal. Based on the available information, the board believes the proposed rule will likely have a disproportionate impact on small businesses.

Steps taken to reduce the costs of the rule on small businesses:

Most businesses already meet the basic standards and practices outlined in the proposed rule as evidenced by 37 of 41 survey responses indicating no cost impacts. For those that do not already meet the proposed standards, there may be new costs to comply with the proposed rule. The board will provide information to address a significant misconception and explain the fact that the proposed rule does not include any operational functions or requirements that could generate or increase costs for businesses, such as recordkeeping, routine inspections, permitting, and reporting.

Small business involvement: The board worked with numerous agencies, individuals, and organizations during the stakeholdering and rule-drafting stages—many representing affected businesses and small businesses. The rule writing involved two in-person stakeholder meetings and review of informal versions followed by distribution of a public review draft aimed at soliciting broader stakeholder feedback. As described in Section 3 of this SBEIS, the cost survey was distributed broadly to 1,000 businesses and numerous associations to help raise awareness of the rule making and to invite feedback on cost impacts of the proposed rule.

Estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: There is no evidence that any jobs will be created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Stuart Glasoe, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4111, fax 360-236-4088, TTY 711, email stuart.glasoe@sboh.wa.gov.

March 23, 2022
Michelle A. Davis
Executive Director

OTS-2840.3

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

WAC 246-203-130 ((Keeping of animals.)) Domestic animal waste.

~~((1) Any person, firm or corporation is prohibited from keeping or sheltering animals in such a manner that a condition resulting from same shall constitute a nuisance.~~

~~(2) In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least once a week during the period from April 1st to October 1st and, during the other months, at intervals sufficiently frequent to maintain a sanitary condition satisfactory to the health officer. Manure on farms or~~

~~isolated premises other than dairy farms need not be so protected and removed unless ordered by the health officer.~~

~~(3) Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.)~~ (1) A person may not keep or shelter animals in such a manner that the domestic animal waste creates a nuisance or health hazard. The purpose of this section is to establish standards for the prevention, control, and abatement of health hazards and nuisance detrimental to human health related to the disposal of domestic animal waste, including handling and storage of domestic animal waste, as described in subsection (3) of this section.

(2) The following definitions apply throughout this section unless the context clearly indicates otherwise.

(a) "Containment area" means an area where domestic animals are held, housed, or kept for a period of time and includes, but is not limited to, stables, corrals, confinement areas, kennels, pens, and yards.

(b) "Domestic animal" means an animal domesticated to live and breed in a tame condition under the care of humans. Domestic animal includes livestock and nonlivestock such as dogs and cats.

(c) "Domestic animal waste" means excreta from a domestic animal and includes associated wash water, feed, and bedding soiled with the excreta.

(d) "Health hazard" includes any organism, chemical, condition, or circumstance that poses a direct and immediate risk to human health.

(e) "Livestock" means domestic animals raised for use or for profit, especially on a farm, and includes horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, and game birds.

(f) "Local health officer" means the legally qualified physician appointed as a health officer pursuant to chapter 70.05, 70.08, or 70.46 RCW, or an authorized representative.

(g) "Nuisance" includes an act or omission that harms, endangers, or interferes with the health or safety of another person.

(h) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(i) "Sanitary" means of or relating to conditions that affect hygiene and health, especially relating to cleanliness and other precautions against disease.

(j) "Stockpiling" means the temporary piling of domestic animal waste from livestock prior to use or disposal. Stockpiling does not include active composting or lagoon storage of domestic animal waste from livestock.

(k) "Surface water" means a body of water open to the atmosphere and subject to surface runoff including, but not limited to, lakes, ponds, streams, rivers, and marine waters.

(3) Unless a standard is superseded by a more stringent standard in federal, state, or municipal law, a person must meet the following standards in order to help prevent, control, and abate nuisance and health hazards related to the disposal of domestic animal waste. Except for free-range grazing, livestock trails, trail riding, and other diffuse sources of domestic animal waste, a person must:

(a) Collect domestic animal waste at intervals sufficient to maintain sanitary conditions in containment areas;

(b) Handle domestic animal waste to prevent deposition, leaching, and runoff to:

(i) Another person's property;

(ii) Drinking water sources; and

(iii) Surface water bodies used for swimming, shellfish harvesting, or other activity with potential to affect human health;

(c) Handle domestic animal waste from nonlivestock as follows so that the waste is not stockpiled:

(i) Hold the waste in a watertight container if stored for more than one day prior to proper disposal; and

(ii) Bag and dispose of the waste as solid waste; and

(d) Handle domestic animal waste from livestock that is collected and stockpiled for later use or disposal as follows:

(i) Store the waste to control odors and attraction of flies, rodents, and other vectors;

(ii) Store the waste no longer than one year; and

(iii) Site the stockpile:

(A) One hundred feet or more from a drinking water well;

(B) Two hundred feet or more from a public drinking water spring;

(C) Outside the sanitary control area of a public drinking water source if different from the areas set forth in (d)(iii)(A) and (B) of this subsection;

(D) One hundred feet or more from a surface water body unless:

(I) The surface water body is upgradient or is protected by a levee or other physical barrier; or

(II) The surface water body is protected by one or more control or treatment practices that capture and prevent leachate. Practices include, but are not limited to, storage pads, covers, storage structures, and filter strips; and

(E) Outside seasonally or frequently flooded areas unless used or disposed of prior to flooding.

(4) The local health officer may investigate and enforce this section. Enforcement actions may include any proceeding within the local health officer's statutory authority. Before taking enforcement action the local health officer must attempt to communicate with the person who may be in violation of this section in order to explore the facts and, if the local health officer determines that a violation has occurred, allow the person reasonable time to correct the violation.

[Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-203-130, filed 12/27/90, effective 1/31/91; Regulation .50.130, effective 3/11/60.]