Introduction

Agriculture is a major contributor to the State’s economy and has an equally important role in affecting the quality of the State’s surface water. Agriculture’s role in affecting water quality is important because the surface waters upon which our communities rely for beneficial uses such as irrigation, fish habitat, domestic use, livestock watering, recreation and manufacturing either originate or are affected by the rivers, creeks and ditches that flow through agricultural lands. Most of these agricultural lands were historically forest lands.

This water eventually finds its way into the Puget Sound or the Strait of Georgia. Recently, the decline of water quality has been so pronounced that there is a new “community effort of citizens, governments, tribes, scientists and businesses working together to restore and protect Puget Sound”. To achieve these important goals, farmers will have to join with this new alliance.

The Laws

Clean Water Act 33 USC § 1251 et seq. and Washington State Water Pollution Control Act 90.48 RCW and Lummi Nation Water Resources Protection Code (Title 17) for Lummi Indian Reservation Lands. The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act. It was significantly reorganized and expanded in 1972 and became known as the “Clean Water Act” (CWA) with the amendments of 1977.

Under the CWA, it is unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is first obtained. Additionally the U.S. Environmental Protection Agency (EPA) has set water quality standards for all contaminants in surface waters. It has also set wastewater standards for industry. The standards describe how much pollution can be allowed after All Known And Reasonable Technologies (AKART) have been applied. Point sources are discrete conveyances such as pipes and man-made ditches.

Under Section 404 of the CWA, a Department of Army Corp of Engineers (ACOE) permit is normally required for the discharge of dredged or fill material into the waters of the U.S. “Waters of the U.S.” include navigable and interstate waters, their tributaries, and certain adjacent and abutting wetlands. An exception to this requirement is where the discharge is incidental to maintenance but not construction of drainage ditches. Before an ACOE permit can be issued the Washington Department of Ecology (WDOE) or the Lummi Nation (for work on Lummi Indian Reservation Lands) must “certify” that the proposed work complies with the applicable provisions of the CWA and applicable state or tribal laws. Failure to obtain a permit under the CWA can result in civil penalties up to $25,000 per day and fines of $10,000 per incident.

WDOE and the Lummi Nation have been delegated authority from EPA to implement certain sections of the CWA. The WDOE is also charged with implementing the State’s Water Pollution Control Act (WPCA). The effect of these two laws is the extension of water quality standards to surface and ground waters. The water quality standards are established to sustain public health and public enjoyment of the waters and the propagation and protection of fish, shellfish, and wildlife. Whether or not dredging requires an ACOE discharge permit.
the activity cannot result in a violation of water quality standards. If maintenance activities do not follow AKART and generate pollution, it can result in a fine or penalty of $10,000 per day. Water quality standards that are commonly exceeded due to drainage activity include temperature and turbidity. Where pollution already exists in the “background”, it need not be controlled or improved. However, you must avoid increasing pollution beyond a specified amount. By incorporating appropriate BMPs and procedures in your DMP and by following the BMPs in the field, one can avoid problems with the CWA, WPCA, and tribal laws and meet the goals of the Puget Sound Partnership. Factsheet #16 Water Quality Protection Measures, Factsheet #19 Drainage Water Quality and Factsheet #22 Farm Practices provide detailed information on how to farm and maintain drainage without running afoul of water quality standards.

In 1987, Congress changed the federal Clean Water Act by declaring the discharge of stormwater from certain industries and municipalities also be regulated. Due to this change, certain stormwater discharges now require a National Pollutant Discharge Elimination System (NPDES) permit or water quality discharge permit. The U.S. Environmental Protection Agency (EPA) delegated the Department of Ecology the authority to implement these permits in Washington State in two phases.

In Phase I, only certain industries, large construction sites, and a few of the largest municipalities were required to have an NPDES permit. The Phase II regulations expanded the requirement for NPDES stormwater permits. This potentially sweeps within its requirements special purpose districts (such as a Drainage Improvement District) when boundaries cross into a city or county jurisdiction subject to a Phase I or Phase II stormwater permit.

Additionally, a third party can petition WDOE to determine that the DID is a significant contributor of pollution to surface waters. Note that the DID need only be the conduit and not the generator of the pollution. So, DIDs should work closely with landowners to ensure that their operations result in clean water leaving their lands and entering into the drainage system.

With a designation of a DID as a “significant contributor of pollution”, it must develop a stormwater program that addresses the following six main elements:
  • Public Education and Outreach
  • Illicit Discharge Detection and Elimination
  • Post-Construction Runoff Control
  • Public Participation/Involvement
  • Construction Site Runoff Control
  • Pollution Prevention/Good Housekeeping

Water quality standards have proven to be inadequate in and of themselves to protect Puget Sound. Beginning in 1987 a series of management plans were developed to coordinate actions of Federal, State, Local and Tribal governments to stem the declining water quality of the Sound. Twenty years later and faced with the continued serious decline “as indicated by loss of and damage to critical habit, rapid decline in species populations, increases in aquatic nuisance species, numerous toxics contaminated sites, urbanization and attendant storm water drainage, closure of beaches to shellfish harvest due to disease risks, low-dissolved oxygen levels causing death of marine life, and other phenomena” the legislature created a new agency through passage of RCW 90.71.

Known as the Puget Sound Water Quality Protection Act, an “Action Agenda” is being crafted to recover and protect Puget Sound. The action agenda is to consist of the goals and objectives expressed in the legislation including implementation strategies to meet measurable outcomes, benchmarks, and identification of responsible entities. All governmental entities within Puget Sound are expected to exercise their existing authorities to implement the applicable provisions of the action agenda. Since drainage systems can convey nutrients, pathogens, sediment and other pollutants, it is reasonable to expect that Drainage Improvement District activities will come under close scrutiny by this new agency in the near future as the Action Agenda is developed and implemented.