



DATE: June 11, 2014
TO: Washington State Board of Health Members
FROM: Keith Grellner, SBOH Environmental Health Committee Chair
SUBJECT: BRIEFING – KEEPING OF ANIMALS: WAC 246-203-130

Background and Summary:

The Washington State Board of Health’s general sanitation rules, chapter 246-203 WAC, address various public health nuisances. The chapter has some of the state’s oldest rules, including such things as prohibiting spitting on the floor and using common drinking cups in public buildings. The language of section 130, Keeping of Animals, dates back prior to 1936. It includes provisions for preventing public nuisances and protecting public health from animal manure. The rule overlaps more recent and specific statutory authority and rules of the departments of Ecology and Agriculture.

On June 25, 2009, the Board received a petition for rule-making from the Executive Director of the Washington Association of Conservation Districts (WACD) requesting amendment of subsection (2) of WAC 246-203-130. The Board’s Executive Director, Craig McLaughlin, in consultation with the Environmental Health (EH) Committee at that time, recommended the Board open the section for possible rule-making, but the rule-making process consider alternatives alongside the language WACD suggested, including possibly striking subsection (2). The rule-making was delayed, first due to uncertainty about the results of Governor Gregoire’s initiative to reorganize the state’s resource agencies, and then due to her rules moratoriums from late 2010 through the end of 2012. Staff began work on the rule-making again in 2013, holding public workshops in Yakima on November 20 and Tumwater December 3. The Board’s E. H. Committee met with agriculture and environmental agency staff in January 2014. Michelle Davis and Ned Therien toured part of the Yakima Valley with three community members on April 18.

Today, Ned Therien will summarize staff’s understanding of the overlapping regulatory authorities that impact this rule-making. He will introduce three speaker panels to brief the Board about animal manure (or nutrient) management in Washington. The first panel has representatives from the Snoqualmie Tribe, United States Environmental Protection Agency, Department of Health, Department of Ecology, Department of Agriculture, and Washington Association of Local Public Health Officials. The second has representatives from the Washington Association of Conservation Districts, Washington Dairy Federation, Washington Cattle Feeders, and Washington Cattleman’s Association. The third has representatives from the Western Environmental Law Center, Puget Soundkeeper Alliance, and Concerned Citizens of the Yakama Reservation. Please refer to materials at Tab 8 of your packets.

Recommended Board Action:

None at this time.

Staff Contact:

Ned Therien

Discussion:

Existing WAC 246-203-130 has three subsections. The goal is to provide a tool to local health jurisdictions for controlling potential public health nuisances caused by the keeping of animals, related to their wastes. The first subsection provides generalized authority regarding controlling nuisances. The second section specifically requires storing stable manure in “populous districts” in a watertight pit or chamber with weekly removal from April 1 through October 1. Manure on farms or isolated premises, other than dairy farms, is excluded from this requirement unless ordered by the local health officer. The third subsection prohibits the accumulation of manure that would “prejudicially affect” any source of drinking water. The terms “populous districts” and “prejudicially affect” are not defined and left to local health jurisdictions to interpret.

WAC 246-203-130 is an antiquated rule that seems to be superseded for large livestock operations by more specific authorities of the departments of Ecology and Agriculture (WSDA) under chapters 90.48, Water Pollution Control, and 90.64 RCW, Dairy Nutrient Management. Ecology was formed and received legislative authority in the 1970s to be the lead state agency for surface and ground water quality protection. In 1998, the Legislature transferred authority to WSDA for dairy nutrient management.

For small-scale animal-keeping operations, WAC 246-203-130 has been occasionally useful to local health jurisdictions; for example, regulating hobby farms and dog kennels. However, the lack of definition of some terms in the rule and confusion about areas of overlap with the authority of Ecology and Agriculture create problems for local health jurisdictions and increase the lack of statewide consistency in the interpretation and enforcement of the rule. The manure storage and disposal requirements in subsection (2) are more restrictive than alternative nutrient management practices would allow.

Local conservation districts are an excellent source of information for manure handling practices. As mentioned in the petition, they use a USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide. The goal is to appropriately apply manure to fields in the right amount for plants to use the nutrients without the nutrients leaching into the ground water or running off the fields. In fact, RCW 90.64.026 requires the State Conservation Commission to specify the elements for approval of dairy nutrient management plans by the districts, which relate to the NRCS Guide. However, Board staff has concerns about adopting a national manure management guideline into the rule for interpretation by local health jurisdictions, which lack expertise. Adopting such a guideline in Board rule would require citing a specific edition of NRCS document.

When WAC 246-203-130 was adopted prior to its last major update in 1936, cows and horses were still commonly stabled within city limits. Animal manure caused nuisances and public health hazards such as flies, odors, and well contamination. Although this rule is structured in a way that is not clear whether the whole is limited to “populous districts,” most local health jurisdictions have interpreted it that way. Local health jurisdictions assume that animal keeping in rural areas is not covered by the rule and that agri-business operations are specifically regulated by the departments of Ecology and Agriculture. Most local health jurisdictions lack the capacity to regulate large-scale agri-business operations.