

# WASHINGTON STATE BOARD OF HEALTH

September 22, 2022

To Whom It May Concern,

The Washington State Board of Health (Board) adopted revisions to WAC 246-203-130, Keeping of Animals, at its meeting on June 8, 2022. The rule outlines standards for the handling and disposal of animal excreta, or animal waste. The revision changes the rule title to Domestic Animal Waste.

## **Purpose of the Rulemaking**

The purpose of the rulemaking is to modernize the language, structure, and standards of WAC 246-203-130. The rule serves as the Board's cornerstone rule on the safe handling and disposal of domestic animal waste and is one section of the Board's rules on General Sanitation, chapter 246-203 WAC.

The rule establishes minimum standards 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 animals such as horses and cattle, and waste from nonlivestock animals such as dogs and cats. The rule includes standards to:

- Avoid unsanitary accumulations of waste in containment areas where animals are held or housed for a period of time;
- 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 Board filed the adopted rule as WSR 22-19-043 on September 15, 2022. The rule takes effect on October 16, 2022. This document serves as the concise explanatory statement for the rulemaking as required under RCW 34.05.325. Below is a summary of changes to the proposed rule and a summary of responses to comments on the proposed rule.

## **Changes to the Proposed Rule**

At its meeting on June 8, 2022, the Board adopted the following clarifying, non-substantive changes to the proposed rule filed as WSR 22-08-003 on March 23, 2022. The changes were based on public comment and staff review of the rule language.

**WAC 246-203-130(3) More Stringent Standards Supersede the Rule.** The Board added clarifying language to include examples of laws and regulations with more stringent standards that supersede the rule.

Unless a standard is superseded by a more stringent standard in federal, state, or municipal law, a person must meet the following standards in order to help prevent, control, and abate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. For purposes of these rules, examples of more stringent standards include, but are not limited to, the Dairy Nutrient Management Act, chapter 90.64 RCW, the state Water Pollution Control Act (WPCA), chapter 90.48 RCW, agricultural activities nuisance law under RCW 7.48.300 through 7.48.320, concentrated animal feeding operations permits issued by the department of ecology under the federal Clean Water Act and/or the WPCA, and fugitive dust or air emission plans approved by the department of ecology or a local government agency under the Washington Clean Air Act, chapter 70A.15 RCW.

**WAC 246-203-130(3) Exempt Diffuse Sources.** The Board replaced the term “free-range” grazing with “open-range” grazing to more accurately describe the grazing practice.

Except for ~~free-range~~open-range grazing, livestock trails, trail riding, and other diffuse sources of domestic animal waste, a person must: ...

**WAC 246-203-130(3)(c) Nonlivestock Waste Standards.** The Board deleted introductory language for nonlivestock waste standards to avoid internal conflict with the definition of stockpiling.

Handle domestic animal waste from nonlivestock as follows ~~so that the waste is not stockpiled~~: ...

**WAC 246-203-130(3)(c)(ii) Nonlivestock Waste Disposal.** The Board added clarifying language to avoid conflict with other state rules regarding commercial composting of nonlivestock waste.

Bag and dispose of the waste as solid waste, unless waste is composted by a regulated compost facility per WAC 173-350-220;

**WAC 246-203-130(3)(d)(i) Livestock Waste Stockpile Odor/Pest Control.** The Board clarified the standard as a performance standard regarding control of odors and pests with livestock waste stockpiles to the extent reasonable.

~~Store the waste to control odors and attraction of flies, rodents, and other vectors~~Apply control measures as reasonable to minimize and reduce odors and attraction of flies and rodents;

**WAC 246-203(4) Voluntary Compliance.** The Board edited enforcement language to emphasize voluntary compliance via education.

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, seek voluntary compliance by education and allow the person reasonable time to correct the violation.

**Comments on the Proposed Rule**

The Board received written comments from approximately 97 people/organizations during the public comment period and received verbal comments from 11 people/organizations at the public hearing on the proposed rule on June 8, 2022. The following tables summarize comments received on the proposed rule and the Board’s responses. In some cases, closely associated comments are listed jointly, separated by a forward slash (/). The comments are organized according to (1) comments where the Board made changes to the rule language and supporting rule analyses, and (2) comments where the Board did not make changes to the rule language, organized by theme.

Public Comment Resulting in Changes to Proposed Rule Language		
Item in Proposed Rule	Comment Summary	Response & Board Action
<p><b>WAC 246-203-130(3)</b>            Minimum standards preface—more stringent standards:  <i>“Unless a standard is superseded by a more stringent standard in federal, state, or municipal law...”</i></p>	<p>We do not believe new rules are needed regarding commercial livestock because they are already regulated by the Dairy Nutrient Management Act, concentrated animal feeding operation (CAFO) permits, air emission programs, etc. However, if the Board of Health is going to adopt regulations, it is important to recognize what a “more stringent standard” means, as proposed in subsection (3) of the proposed rules. Suggest adding these examples to clarify authorities and avoid confusion and lawsuits.</p>	<p>The Board added a clarifying amendment listing several laws and regulations as examples of more stringent standards that supersede the rule.</p>

<p><b>WAC 246-203-130(3)</b> Minimum standards preface—exempt diffuse sources: <i>“Except for free-range grazing, livestock trails, trail riding, and other diffuse sources of domestic animal waste...”</i></p>	<p>What does the term "free-range grazing" mean? Free-range grazing is more popularly used as a synonym for organically raised rather than a rangeland management practice. Recommend replacing free-range grazing with open-range grazing or pasture grazing.</p>	<p>The Board amended the term “free-range” grazing to "open-range" grazing as an example of a diffuse source of animal waste.</p>
<p><b>WAC 246-203-130(3)(c)(ii)</b> Nonlivestock waste disposal: <i>“Bag and dispose of the waste as solid waste”</i></p>	<p>Edit as follows "Bag and dispose of the waste as solid waste, <u>unless waste is composted by a licensed compost facility per WAC 173-350-220:</u>"</p>	<p>The Board added the clarifying amendment and changed the language to “regulated” compost facility to avoid conflicting with other state rules regarding commercial composting of nonlivestock waste.</p>
<p><b>WAC 246-203-130(3)(d)(i)</b> Livestock waste stockpiling: <i>“Store the waste to control odors and attraction of flies, rodents, and other vectors.”</i></p>	<p>The proposed rule violates the state’s Right to Farm law. RCW 7.48.305 states that “agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.” The proposed rule has no qualifying language such as this. Rather it provides a broad requirement that the stored waste must be managed to control odors, whether a public health issue has been</p>	<p>The Board added a clarifying amendment, revising the language to “apply control measures as reasonable to minimize and reduce odors and attraction of flies and rodents” to better position the standard as a performance standard encouraging use of measures to control odors and pests to the extent practical and reasonable.</p>

	<p>determined to exist. Is the premise behind the proposed rule that any and all odors present a public health risk? Nothing in your documentation cites any scientific research, or state and federal laws to substantiate this expansion of authority. RCW 7.48.310, also part of the Right to Farm law, includes odors as a normal, acceptable condition related to agricultural activities.</p>	
<p><b>WAC 246-203-130(4)</b> Enforcement— voluntary compliance</p>	<p>In enforcement, replace “explore the facts” with “seek compliance by education and prevention as a first step...”</p>	<p>The Board added a clarifying amendment to emphasize “voluntary compliance by education” in the enforcement subsection.</p>

**Public Comment Resulting in Changes to Supporting Rule Analyses**

<p><b>Significant Analysis / SBEIS</b> <b>WAC 246-203-130(d)(i)</b> Livestock waste stockpiling: “<i>Store to control odors and attraction of flies, rodents, and other vectors.</i>”</p>	<p>The Significant Analysis incorrectly references and incorporates by reference the standard to “control odors and attraction of flies, rodents and other vectors.” The reference to WAC 173-350-320(6), is a storage pile permit requirement, not a storage pile rule requirement. The Board incorrectly exempted this standard from the Significant Analysis and, by extension, the Small Business Economic Impact Statement. WAC 173-350-320(2) is the appropriate language by defining agricultural waste to include livestock manure. WAC 173-350-320(2) does not include any requirement for odor control. Therefore, the addition</p>	<p>The Board corrected the mistake and addressed the amended standard in the final Significant Analysis and Small Business Economic Impact Statement (SBEIS).</p>
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	of the requirement to control odor in your proposed rule has no legal or statutory standing and must be removed.	
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Public Comment Resulting in No Changes to Proposed Rule Language	
Comment Summary	Response
Rule Language	
In subsection (1), add “direct and immediate” to health hazard for consistency with the proposed definition of health hazard, and to emphasize this quality of the term.	Like other language in the rule, this term is defined in subsection (2) to avoid the need for further clarification in the body of the rule.
In subsection (1), add language to account for stormwater runoff, algal overgrowth, and environmental protection of aquatic environments.	The rule's scope includes runoff and impacts to surface water bodies where there are human health risks. This may not include all scenarios involving algae and protection of aquatic environments but would extend to and include harmful algal blooms in surface water bodies where there are human health risks.
The proposed rule expands authority of local health officers beyond provided statutory authorities. The purpose addresses "health hazards and nuisance detrimental to human health." The definition of nuisance in subsection (2), in contrast, includes "health and safety." Inclusion of “safety” in this definition seeks to broaden authority of local health officers far beyond what is provided in state law.	"Health and safety" are foundational to public health, especially environmental public health, and is found throughout Board and local health officer authority, programs, and material. In addition, the definition of public nuisance in WAC 246-203-010 includes "safety" and the term “health hazards” implies safety.
The definition of "nuisance" in subsection (2) is narrow and not reflective of current nuisance law under RCW 7.48. Recommend adopting the definition of "actionable nuisance" under RCW 7.48.	State rules and laws, including chapter 7.48 RCW, contain numerous and contrasting definitions of nuisance, actionable nuisance, private nuisance, public nuisance, common nuisance, and more that were reviewed and considered. This plain-talk definition is adapted to fit the subject matter of the rule.
Add the clause, "and conveyance systems to surface waters," to the	The definition of surface water includes surface runoff to the water body, which at

<p>definition of surface water bodies in subsection (2).</p>	<p>a minimum, encompasses natural conveyance systems. In addition, subitem (3)(b)(iii) similarly accounts for runoff to surface water bodies where there are human health risks.</p>
<p>There is a huge loophole in subsection (3) since the definition of "stockpiling" does not include active composting or lagoon storage of domestic animal waste from livestock. This is a gift to interest groups and harms human health. Ask that you remove this exemption of lagoons and composting.</p>	<p>Definitions of stockpiling generally apply to stackable waste and do not include lagoon storage or composting. The rule does not directly regulate composting or lagoon storage. However, subitem (3)(b) can apply to all animal waste forms and pathways if impacting another person's property, drinking water sources, or surface water bodies with human health risks.</p>
<p>In the preface of subsection (3) earlier versions of the rule excluded "pasture livestock." What does this term mean, and how would a local health officer determine if livestock fall into this category? By what principles, health concerns, or scientific findings do you justify removal of pasture livestock as an exempt diffuse source.</p> <p>/</p> <p>There is no open-range grazing in western Washington. Would pasture grazing where animals are regularly moved around come under this rule? If so, I have a problem with that.</p> <p>/</p> <p>The Board needs to exempt pastures.</p>	<p>The rule drafting explored many trial ideas, terms, and principles that are not in the rule. Staff removed "pasture livestock" in an earlier draft because pasture grazing scenarios are highly variable, ranging from large-acreage, low-density grazing to more concentrated, small-lot animal keeping. Pasture grazing does not consistently serve as an example of a diffuse source.</p>
<p>I walk my dog in areas with signage to pick up after dogs, dog owners fail to pick up the waste, and no one enforces the rule. For anyone to push livestock owners to remove their herds' waste seems to be an absurd step in the wrong direction. Livestock waste does not have the offensive odor that small animal waste has.</p>	<p>The standard in subitem (3)(a) to collect waste does not include all areas where animals are herded and instead focuses on areas where animals are held or housed for a period of time and waste can accumulate to create a problem.</p>

<p>In subitem (3)(c)(i), replace temporary storage in a “watertight container” with, “a hard-sided container with a lid that closes securely so that animals cannot access it and it cannot overflow from falling rain or snow.”</p>	<p>In many situations people can safely store modest volumes in plastic bags and other simple receptacles. More substantial container storage may be needed depending on circumstances and volumes. People can determine the appropriate means.</p>
<p>Standards for nonlivestock need to be more specific. For example, would landowners with acreage be required to pick their field to find pet waste for temporary storage in a water-tight container and disposal?</p>	<p>For nonlivestock waste, if the waste is held for a period of time prior to disposal, the goal and expectation is to store it safely. Collection from acreage would not be necessary.</p>
<p>If adopted, Clark County would incorporate language from subitems (3)(c)(i) and (ii) into local code revisions and would cite this code depending on the situation and need for state supported enforcement.</p>	<p>Comment acknowledged.</p>
<p>Bagging horse manure would cause safety issues—riders cannot carry a rake and bag with them or safely attach a rake to the side of a horse.</p>	<p>The standards in (3)(c)(i) and (ii) to safely store, bag, and dispose waste apply only to nonlivestock animals, not to horses. In addition, diffuse horse riding is exempt from the rule.</p>
<p>In subitem (3)(d)(i), what constitutes odor control? At what distances and duration does a landowner need to control odor? What devices will be used to detect odor? Can you specify which pests are to be controlled?</p>	<p>The amendment to this standard discussed above clarifies this as a performance standard that encourages people to apply control measures for odors and pests to the extent practical and reasonable.</p>
<p>If required to annually remove my horse's manure under subitem (3)(d)(ii), it will be cost prohibitive in equipment and other fees.</p>	<p>The standard to remove stockpiles at least annually incorporates by reference an existing state standard for agricultural waste piles. This and similar comments note the challenges landowners face using and disposing stockpiles. It is expected enforcement would be reasonable and reserved for situations where the scale and duration of a stockpile presents a public health risk.</p>
<p>Add new subitem (3)(d)(iv) as follows, "Domestic animal waste from livestock</p>	<p>Farm conservation plans help guide good waste handling practices. However,</p>



<p>shall be collected and stockpiled in accordance with an approved jurisdictional farm management plan."</p>	<p>approved farm plans should not serve as a minimum standard and prerequisite for livestock waste stockpiling.</p>
<p>Add new subitem (3)(d)(v) as follows, "Domestic animal waste from non-herbivores may not be composted at the site of origin or used for land application."</p>	<p>The rule does not regulate livestock or nonlivestock waste composting.</p>
<p>Is all waste to be removed if found within the 100-foot setback?</p>	<p>This 100-foot setback and its exceptions apply to livestock waste stockpiling near surface water bodies, not waste collection.</p>
<p><b>Regulated Agricultural Facilities</b></p>	
<p>This 'rule' was originally designed for "Keeping of Animals" in an urban setting. Facilities located in an agricultural zoned area should be exempt if there is a regular inspection of the facilities by one or more state or federal agencies (e.g., permitted CAFOs regulated by WSDA/Ecology and licensed dairies regulated by WSDA).</p> <p>/</p> <p>The rule is unnecessary for dairies regulated under the dairy nutrient management program and will create conflict and lawsuits among neighbors. It's unhelpful for agency inspectors to access facilities and not be able to say what water quality problem they are trying to address.</p> <p>/</p> <p>All dairies have nutrient management plans regulated under the dairy nutrient management act, some have CAFO permits, and some are involved in air emission programs.</p> <p>/</p> <p>These established regulations and programs already cover everything the rule is trying to do. We don't need multiple agencies coming on properties</p>	<p>Board policy direction for the rulemaking suggested that the rule should apply to everyone. As a practical matter, it is expected local health would continue to coordinate with and defer to WSDA, Ecology, and other agencies regarding issues at facilities regulated by those agencies under established permits and programs for large agricultural operations. The rule includes no ongoing operational requirements of any facilities. The amended language discussed above clarifies the rule's deference to more stringent standards, including CAFO permits, the Dairy Nutrient Management Act, and air quality regulations.</p>

checking on things. This is all double the work and not needed.	
<b>Enforcement</b>	
Most farmers/ranchers follow these practices. People who disregard make it difficult for people who follow the rules. People that violate need to be accountable.	Comment acknowledged.
Use of public health officers to investigate complaints causes problems in the regulatory framework for livestock producers. This jeopardizes relationships with existing regulators. Local health officers and staff lack training and expertise regulating agricultural operations. The rule should give investigation and enforcement to those better positioned. A coordinated team of regulators and professional resource planners should assess situations and provide prescriptions to address pollution risks to ensure consistency, equity, and successful results.	Local health jurisdictions have unique authority and training related to health and sanitation that complements the work and authority of other agencies. The Keeping of Animals rule has been in effect for decades and local health already serves in this role responding to complaints and impacts related to animal waste, which often involves interagency coordination. It is expected local health jurisdictions would be judicious and would continue to coordinate with other agencies as needed when investigating complaints and considering possible enforcement. Enforcement of Board rules by local health officers is standard Board regulatory structure.
Local health officials lack training and knowledge of animal keeping issues; there is risk of abuse by local health departments; the policies are so unclear that anyone who works for a local health department could abuse the authority when enforcing the unclear rules; we don't need more confusion.	As noted above, the current Keeping of Animals rule has been in effect for decades. Local health officers and staff already serve in this role responding to complaints and impacts related to animal waste.
Where will the enforcement money come from? Has the Board estimated the cost of enforcing the rule?	This is not an operational Board rule that involves comprehensive, ongoing oversight and implementation. Local health jurisdictions can determine on a case-by-case basis the significance of a possible violation and the resource needs for possible enforcement. It is expected enforcement would be reasonable and reserved for situations where there are

	public health risks. Additionally, this is not a new rule, but an update of an existing rule that has been in effect for decades.
<p>We are concerned that there are no details or specifics for what constitutes an “attempt to communicate” or what is a “reasonable time” to correct the violation. Additional specifics are needed to provide the required transparency for the overall process that will be used, and to increase justice and equity by ensuring all citizens are treated equally and that the rule is implemented in a uniform manner statewide.</p> <p>/</p> <p>Different jurisdictions will treat this very differently; it's concerning that counties will address this issue without a uniform approach. There needs to be uniformity of enforcement across the board, not leaving the decisions up to each individual health officer and local health jurisdiction.</p>	Enforcement of Board rules by local health officers is standard structure of many Board rules and relies on local enforcement procedures. The rule does not aim to define comprehensive investigation and enforcement protocols for the state's local health jurisdictions. Jurisdictions are required to ensure fairness and due process.
We recommend articulating situations and timelines when enforcement will occur.	Scenarios and timelines regarding the rule’s potential use and enforcement are unknown.
<p>Recommend revising enforcement to require coordination with property owners and encourage you to see the Citizen’s Alliance for Property Rights website. Don’t support the idea of violating property rights and accessing property regarding the possibility of a problem without communicating with the property owner. You cannot direct a health officer to just walk onto another person’s property. It’s unconscionable.</p>	The rule does not involve property inspections. The rule does not change established laws or local health enforcement procedures related to private property, property access, due process, and trespass.
<b>Request Rulemaking Delay to Form Workgroup and Work on Concerns</b>	
Request delaying the CR-102 policy proposal and forming a stakeholder workgroup or task force to address unresolved concerns, including concerns	Staff worked with interested parties while researching, drafting, and revising the rule, and solicited public comment at different junctures in the rulemaking. The

<p>related to mixing livestock oversight with nonlivestock; unclear/overreach on stockpiling and composting; concern of complaint abuse from urban neighbors; lack of uniformity of enforcement and more.</p> <p>/</p> <p>Given the serious outstanding issues, both technical and policy based, we request that the Board delay action on this proposed rule and create a workgroup with key stakeholders to help address the many problems that we and others have raised.</p> <p>/</p> <p>Conduct a process that brings stakeholders and impacted individuals to the table to find real solutions that will work for everyone—a more comprehensive and detailed stakeholder process to ensure common ground is identified and solutions are clear and provide the most benefit for Washingtonians.</p> <p>/</p> <p>BOH membership does not include someone who can speak to rural or agricultural issues and so need a workgroup with expertise in agricultural issues.</p>	<p>Board considered further work on the rule and decided instead to amend and adopt the proposed rule.</p>
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Support	
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<p>Favor and support these proposed rule revisions. The existing rule is outdated and these changes are long overdue and will modernize the rule. It is a much-needed update to the existing rule with clearer standards for animal keepers to understand and use. The changes support the protection of human and environmental health and will improve public health outcomes by providing local health jurisdictions tools to address and</p>	<p>Comments acknowledged.</p>
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<p>resolve animal waste problems; will better protect drinking water, surface and groundwater, shellfish, and water recreation areas; will complement other state agency's regulatory roles and authorities to protect water and air quality; and will align with revisions being pursued by some local jurisdictions.</p>	
<p><b>Proposed Rule Conflicts with Non-Regulatory Programs, Voluntary Actions</b></p>	
<p>Landowners need education and assistance, not enforcement and fees. Concerned that this is overreach and the proposed rule would detract from the many interagency efforts and programs that work with landowners to implement good practices through educational voluntary methods, such as assistance and education offered by conservation districts. A sudden regulatory effort would be difficult to implement and would affect the opportunity for property owners to work with the voluntary processes and programs. Put education and assistance ahead of regulation.</p> <p>/</p> <p>It's important to encourage good behavior by education, especially the work of conservation districts promoting good environments for livestock.</p>	<p>There are numerous non-regulatory strategies and programs to help landowners properly manage animal waste, particularly livestock owners. These are essential and highly regarded. Rules help set expectations and provide a backstop in cases where waste may be badly mishandled and action is needed to address and correct a problem. Rules and non-regulatory programs are complementary. This Board rule update is not the rollout of a new regulatory effort.</p>
<p><b>Proposed Rule will Cause Harm and Costs</b></p>	
<p>Concerned that the proposal will stress livestock small businesses and harm Washington agriculture; impact people's rights, pursuit of happiness, and income; be one more infringement on our freedoms; hurt our economy and tax base revenue; penalize hard working people and hurt industry and community; impact operations; be an immense cost; and exacerbate the current issues it is trying to resolve.</p>	<p>As noted elsewhere, it is expected that use and enforcement of the rule would be reasonable and reserved for situations where there is a notable problem. This is an update of an existing rule that has been in effect for decades.</p>
<p><b>Proposed Rule is Unnecessary, Redundant with Other Agency Roles and Authority</b></p>	

<p>Landowners are better custodians of their property than any government agency, and 99.9% of folks take care of this all the time and have for decades. People are very capable of handling their own land, animals, and lives without state interference.</p>	<p>Comment acknowledged.</p>
<p>The rule lacks a demonstrated need; is unnecessary, unwise, impractical, and redundant; and fails to show how it might benefit public health or protect drinking water. If a rule has worked for 100 years, do we really need to change it? There are no examples that demonstrate how the current WAC language impedes resolution or instances where local boards of health were unable to find resolution using existing language, making this feel more like a solution looking for a problem. The changes to this rule are overly burdensome, overly complex, and do not take into consideration existing rules and regulations from other agencies. This rule change is out of time and out of place.</p>	<p>State law requires the Board to review and, as needed, revise its regulations. The existing rule is antiquated and, as such, is little used when addressing local animal waste problems. The rulemaking researched and considered the authority and limits of related programs. The Washington State Environmental Health Directors commented that this is a much-needed update to the existing rule with clearer standards for animal keepers to understand and use.</p>
<p>The Board should work within the existing regulatory framework and should focus on matters not addressed by other governmental departments. Property owners are already subject to federal and state laws that regulate animal waste and water resources. WSDA and Ecology should manage manure and animal waste issues without conflict from this rule. They have authority and infrastructure to mandate and enforce waste regulations. If their regulations for waste management are insufficient, those should be updated. NRCS has established best management practices for all aspects of agriculture. And conservation districts</p>	<p>Local health officials and sanitarians in local health jurisdictions have a longstanding role addressing problems and responding to complaints associated with animal waste as it pertains to health and sanitation. While there are overlapping interests and authorities, the public health role is unique and distinct from the work of other natural resource agencies. The Washington Department of Health plays no direct role in the rule.</p>

<p>have a charter to engage people with voluntary actions.</p> <p>/</p> <p>The rule is completely unnecessary, adding another bureaucracy when two other agencies (Ecology and WSDA) already regulate farming operations. The Department of Health is untooled and unprepared to dive into this realm. The Department of Health regulated manure in urban settings prior to the industrial revolution. This is unwarranted and will overcomplicate compliance with other pertinent laws.</p> <p>/</p> <p>What makes the Board think it's going to do a better job than EPA and the other agencies already regulating these issues?</p>	
<p>RCW 43.20.050(c) grants Board authority but does not provide authority to delegate duty to WSDA or Ecology; neither of those agencies are qualified to address human health; there are no protections to ensure other agencies will protect public health.</p>	<p>Other state agencies have complementary authority, but no agency shares local health's niche and unique focus on health and sanitation. The respective agencies have different limits to their authorities and responsibilities. The rule does not purport to delegate authority to other agencies.</p>
<p>Under RCW 70.05 counties already have the authority to adopt rules to address public health issues, and health officers have the power to maintain health and sanitation, and prevent, control or abate nuisance detrimental to public health. This is the stated purpose of the proposed rule.</p> <p>/</p> <p>The local board of health is made of people from the community who better understand the community's needs. We acknowledge that there are bad actors who are creating actual problems. However, the details of such a rule as this</p>	<p>Local health jurisdictions have authority to adopt local codes on matters of health and sanitation. The Board has similar authority and duty at the state level. Code development at the two levels of government are not mutually exclusive. Similar to the intent and purpose of the Board's companion rule on disposal of dead animals, local health jurisdictions can reference and use this state animal waste rule to address health risks on problem properties.</p>

<p>should be determined by the local board of health in ways that align with local values and interests.</p>	
<p>Request that the Board withdraw the rule change. Inspections and access to private property are very problematic. Small farm owners are responsible and respectful of the land. The rule is government overreach and unnecessary regulation.</p> <p>/</p> <p>Disagree with the proposal and the Board of Health telling landowners what they can do with their own property and walking onto property. What about all the other sources of fecal pollution? This is nonsense—you need to step back and figure out where you are going with this. Is your goal to tell people what they can and can't do with their private property?</p>	<p>The rule does not involve property inspections or other operational requirements of any facilities. Similarly, the rule does not add authority or change established laws and standards related to code enforcement, private property, property access, and trespass.</p>
<p><b>Nuisance and Right to Farm</b></p>	
<p>The proposed rule has the potential to expose livestock owners to complaints and enforcement by people unfamiliar with agriculture operations and best management practices. Often people who make complaints about animal keeping have no idea what is involved, especially as more urban people move into rural areas without having an effective understanding of agricultural management practices. The state and many counties, especially in eastern Washington, have Right to Farm laws and ordinances. The application of this new rule, if it goes forward, has the likelihood of placing rural people with animals in a position where they believe they are exempt from these rules and yet, they end up receiving needless complaints and potential prosecution.</p> <p>/</p>	<p>The Board adopted amendments to more directly acknowledge and fit Right to Farm laws. The rule outlines standards to safely handle and dispose animal waste to stay below the high bar of nuisance and health hazards.</p>



<p>Despite Right to Farm, you keep putting more rules in place and you make it more difficult for people to keep the open space that people say they enjoy, but they don't want to hear the agricultural noise or the smells associated with it.</p>	
<p>Concerned about using nuisance as a regulatory metric related to livestock waste; too subjective, loose, and based on personal preference; a lot of public resources go into responding to "nuisance" complaints from people new to agricultural areas or with little understanding of agricultural practices. /</p> <p>Don't want to see local health departments involved in conflict among neighbors where people move into agricultural areas and then want it to be a nonagricultural area. Counties have other tools and authorities they can use to address pollution issues if needed and don't believe this proposal is needed or helpful.</p>	<p>Nuisance is integral to Board authority related to disposal of human and animal excreta and animal remains. The rule outlines minimum standards to safely handle and dispose animal waste and stay below the high bar of nuisance as it relates to agricultural practices. Local health jurisdictions and other agencies face the task of gauging the validity of complaints.</p>
<p><b>Weakens Public Health Protection, Not Strong Enough</b></p>	
<p>The proposed rule weakens or removes public health and nuisance protections in the existing rule by eliminating protection against nuisances caused by keeping or sheltering animals; eliminating stable waste collection, storage, and removal requirements; and eliminating drinking water protections. Recommend creating minimum standards in existing rule, more frequent waste removal, and include all areas.</p>	<p>The rule retains nuisance and drinking water protection, establishes select minimum standards, and includes all areas. The rule focuses more directly on Board authority for animal excreta, not animal keeping.</p>
<p>Changing the focus of the rule to domestic animals no longer regulates pollution caused by farm animals. The rule leaves out the dairy cows in Yakima County, thereby ignoring the largest source of groundwater pollution in the</p>	<p>The rule's focus on animal excreta includes pollution caused by manure from farm animals.</p>

<p>state and failing to protect the health of the citizens of lower Yakima Valley.</p>	
<p>Narrowing the scope of the rule from keeping of animals to animal waste ignores the hazards, nuisance, air quality and airborne disease, dust, and odors due to the keeping, feeding, watering, housing, and transporting of animals. The rule should also not exclude off-site manure transport and use from regulation. The Board's regulatory authority and responsibility extends beyond just managing animal waste, and these draft rule revisions do not go far enough.</p>	<p>The Board's core authority associated with animal keeping is animal excreta. The rule aims to balance the minimum standards and the rule's fit with the roles and programs of other agencies. As noted in other responses, if addressing an overarching impact to properties, drinking water sources, or surface water bodies with public health risks, local health officers can take into account all animal waste sources and pathways.</p>
<p>The Board is failing to meet its mandate to address three manure practices that harm health and drinking water sources: storing manure in lagoons, transferring/selling manure to use as fertilizer, and applying manure to fields as fertilizer. Composted waste and lagoon storage should be managed more stringently and require greater public health protections. Recommendation to: (1) articulate which types of livestock operations are authorized to stockpile waste and which types should keep waste in covered, airtight containers for disposal; and (2) outline clear, science-based for livestock waste management by different operations based on size, type of livestock, type of waste, and site conditions.</p>	<p>Staff are unaware of mandates to the Board to address specific manure management practices. Subitem (3)(c) retains protection of drinking water sources and gives voice to local health officers to help address animal waste in all its forms and pathways if impacting drinking water sources.</p>
<p>Laws are written for the small percentage of people who are disrespectful and who don't know common decency. This rule allows CAFOs to operate and impact other properties. As written the rule will not address legitimate complaints with such operations.</p>	<p>The rule is designed to fit with the CAFO permit and other related regulations and programs administered by other agencies. Other agencies operate under independent authority regulating these issues separate from Board authority.</p>
<p>Mixing Livestock and Nonlivestock Issues</p>	

<p>The proposed rule covers too broad a range of animals, and management practices. The rule should differentiate between livestock (e.g., cattle, horses, goats) and domestic pets (e.g., dogs, cats) as the waste, health risks, and practices are very different; Management of horse waste is not in any way related to management of dog and cat waste. Composted horse manure is a valuable soil amendment. Not so dog and cat waste.</p> <p>/</p> <p>The rule misses key health factors by not discerning different health impacts of the various types of animal waste. Carnivore waste poses a much greater health risk than herbivore waste. This is not considered in the current rule proposal. Instead, this appears to be a statewide, one-size-fits-all approach that would not address those differences and creates unnecessary burdens that would not provide additional health benefits.</p> <p>/</p> <p>The rule is unclear where it applies. It would be better if this rule applied only within urban areas to carnivorous domestic animals. Including livestock creates complications that should be handled by the Washington Department of Agriculture, not the Department of Health. Pets such as cats and dogs have different manure than livestock animals like cattle and horses. The rule should address these differences.</p>	<p>The rule addresses both types of animals with tailored standards as needed. Differences in practices and health risks is integral to the rule's structure. Use and enforcement of the rule would take this essential understanding into account. The Board's companion rule on disposal of dead animals, WAC 246-203-121, similarly addresses different animals in a single rule. And other Board rules address related but different activities and health risks under consolidated rules.</p>
<p>Concerned about mixing equines in with domestic animals. They are working animals that can react as prey animals and run wild. Equines have always been farm animals, not pets.</p>	<p>The term pet does not appear in the rule. The term "domestic animal" includes livestock animals and other domesticated animals not classified as livestock. The list of livestock animals, which includes</p>

	horses, comes from definitions of livestock in state law.
<b>Miscellaneous</b>	
The Board should opt into the Healthy Environment for All (HEAL) Act and consider the potential environmental justice impacts of this rulemaking (e.g., impacts of climate change on communities of color and low-income communities).	Seven state agencies are required to implement the HEAL Act, and other agencies may opt in. Three entities, including the Board, have opted to join in a "Listen and Learn" capacity and are participating in meetings of the Environmental Justice Council and implementing HEAL Act requirements as resources allow.
The rule does not allow composting and spreading of livestock manure. Composting livestock waste is a vital part of the life cycle of the farm. The rule should clearly state that manure composting and spreading is allowed.	The rule does not regulate and does not prohibit composting and manure spreading. Staff recognize that these manure management practices are vital to the life cycle of farms.
Is composted livestock waste allowed to be spread on lands within the 100 ft setbacks? Will livestock waste need to be separated by omnivore and herbivore to allow composting? And if so, how is the omnivore waste to be disposed of? What criteria will be set to determine if composted waste is acceptable to be spread? And who will make that determination? Will chicken compost be prohibited from being utilized?	The setback from surface water bodies is specific to livestock waste stockpiling and the rule does not regulate composting.
It is unclear what geographical areas and what type of entities this rule would apply to. The rule is silent on whether it applies to organizations that are commercial or private, urban or rural, or are affected regardless of their size. Since municipal and incorporated areas already have regulations regarding livestock (e.g., rooster prohibitions) and domestic pets (e.g., waste disposal). It appears the target for this proposed rule would be	The standards of the rule apply to everyone, all persons. There are many related federal, state, and local laws. If standards overlap, more stringent codes would supersede this rule.

<p>unincorporated commercial and private acreage with livestock.</p>	
<p>The rule should have addressed other topics/concerns, including: keeping animals (e.g., poultry) in residential neighborhoods; state waste removal regulations; protection of agricultural areas and existing stockpiles from threats of new development; public health threat of climate change (which is exacerbated by keeping of animals); and the authorization of citizen lawsuits against polluters.</p>	<p>Comments acknowledged.</p>
<p>This rule has poor timing due to supply-chain problems, food shortages, fertilizer shortages, inflation resulting from the COVID-19 pandemic and foreign conflict. Homeowners are engaging in small scale food production to address these problems and this new regulation would impede that.</p>	<p>Staff recognize the current challenges people are facing. Small scale food production and safe handling of animal waste should be compatible.</p>
<p>SBOH should focus on more pressing issues like "junkies and hoarders, homeless and their abuse of public lands and right of ways."</p>	<p>Comment acknowledged.</p>
<p>In recent decades hundreds of acres of farmland have been put back into nature for the preservation of salmon, and invasive reed canary grass has gone unchecked—a major source of nutrients and refuge for rodents and their waste, bigger pollution sources than livestock. And domestic cat populations are on the rise. How will you implement this rule to address this problem in suburbia?</p>	<p>Other issues and impacts occur. The scope of the rule is animal waste. The rule includes provisions for the safe storage and disposal of cat waste and other nonlivestock waste.</p>
<p>Would like to see the state address the large elk herds, which are essentially domesticated animals. The wastes and pathogens are risks and the rule does nothing about these. Who is responsible for the elk herds that wander all over the place?</p>	<p>The scope of the rule is domesticated animals. The list of livestock animals comes from state law. Elk are commonly considered and managed as wild/game animals.</p>

<p>I live in unincorporated Clark County. Our neighbors created a horse sacrifice area seven feet from our drinking water well—about a dozen horses on less than three acres. The well existed before the neighbors designed their fields. Local regulations have been in limbo for ten years because of strong pushback from the equestrian community. We cannot rely on local enforcement. We have talked with local and state agencies. There is bullying and other conflict from the neighbor. We test the water and hope it stays clean. Neighboring wells are contaminated. Clear rules should be in place. It should not be left to livestock owners to do the right thing. No animal should ever be within 100 feet of a wellhead.</p>	<p>The county is continuing to work on a local code. State and local codes on sanitary control areas and setbacks from drinking water sources and wells may be applicable.</p>
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<p><b>Small Business Economic Impact Statement</b></p>	
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<p>Outreach on this rulemaking was inadequate. Compounding matters, the cost analysis was also inadequate and did not produce enough data to quantify the potential impacts of this proposed rule. The SBEIS survey had a low response rate that is not representative of livestock producers and other affected businesses. Without more responses, we do not have a clear picture of the totality of the rule’s consequences. It would set a dangerous precedent to move forward without additional insight and input.</p>	<p>The Board followed standard rulemaking process in its efforts to assess business costs, including the practice of surveying a large representative sample of businesses in affected industry classifications to estimate financial impacts of the proposed rule. In addition, staff asked numerous associations and trade organizations to help spread word of the rulemaking and the cost survey to their members. Further analysis would not change the findings that the proposed rule imposes more than minor costs on businesses in affected industries and will likely have a disproportionate impact on small businesses.</p>
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<p>The cost estimates for cattle ranching and farming (which would include the dairy industry) are inaccurate—the payroll for veterinary services does not exceed the payroll for dairies; discussion of (3)(d)(iii)(D)(II) does not state that</p>	<p>Payroll data used in the analysis came from a standard database used in state rulemaking. Yes, the stockpiling setback from a surface water body has its basis in a voluntary NRCS standard.</p>
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composting and lagoons are not included in definition of stockpiling; NRCS standards are guidelines and are not enforceable.	
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### **Remaining Opposition to the Rule**

Many people and organizations voiced concerns throughout the rulemaking, often for equal and opposite reasons, such as the rulemaking goes too far regulating animal waste or it doesn't go far enough regulating manure and animal keeping. The comment summary above captures many aspects of the opposition. The adopted rule now falls to people to safely handle and dispose of animal waste, and it falls to local health officers/jurisdictions for appropriate use and enforcement if needed. As with other sections in the Board's General Sanitation rules, Board staff will provide support regarding interpretation of the rule's intent and meaning. And like other Board rules, people can monitor its use and, in the future, can help review and update the rule to address any needs.

Any person may petition the adoption of the rule in accordance with RCW 34.05.330. Questions regarding this rule adoption should be directed to Stuart Glasoe, Policy Advisor at [stuart.glasoe@sboh.wa.gov](mailto:stuart.glasoe@sboh.wa.gov) or (360) 236-4111

Respectfully,



Michelle A. Davis  
Executive Director