



December 5, 2025

RE: Clean Water Act Agricultural Guidance

On behalf of the undersigned organizations, we submit the following written comments on the draft Clean Water Guidance for Agriculture. We appreciate the opportunity to provide comments and want to emphasize that this is voluntary guidance for agricultural practices that must protect water quality, not accommodate industry preferences or lower regulatory expectations. As an organization committed to protecting and restoring the Spokane River and its tributaries, we are deeply concerned that the current draft guidance does not provide the level of clarity, rigor, or accountability needed to ensure compliance with federal and state clean water laws.

I. Legal Background

The Clean Water Act establishes a clear and non-negotiable baseline: discharges of pollutants into waters of the United States are prohibited unless explicitly authorized under the Act. Legal compliance is not voluntary, it is mandatory. Washington's Water Pollution Control Act further strengthens this framework. RCW 90.48.030 gives Ecology jurisdiction "to control and prevent the pollution of ... waters of the state of Washington." Pollution is broadly defined in RCW 90.48.020 to include any physical, chemical, or biological alteration of state waters. Under state law, it makes no difference whether pollution originates from point or nonpoint sources—all pollution of state waters falls squarely within Ecology's authority and responsibility to control and prevent.

RCW 90.48.080 makes it unlawful for any person to "cause, permit, or suffer" the discharge of any matter that causes or tends to cause pollution. RCW 90.48.120 authorizes Ecology to issue enforcement orders to any person who violates, or creates a substantial potential to violate, the Act. Ecology is empowered to "issue such order or directive as it deems appropriate under the circumstances," including requiring corrective management measures.

The Washington Supreme Court confirmed this authority in *Lemire v. Department of Ecology*, 178 Wn.2d 227 (2013), holding that the plain language of RCW 90.48.080 gives Ecology the authority to regulate nonpoint source pollutant discharges. The Court further affirmed that Ecology may issue orders to remedy activities that have a substantial potential to violate the Act, meaning Ecology's authority reaches both ongoing pollution and activities that threaten to pollute.

The Attorney General's Office has also affirmed this authority. In a 2019 legal memorandum, the Attorney General's office concluded that:

- Ecology has statutory authority to prevent nonpoint source pollution under RCW 90.48;
- Ecology may act not only after pollution occurs but also proactively to prevent pollution where there is a “substantial potential” for violation;
- Ecology may require nonpoint sources to implement specific management measures; and,
- Ecology’s authority is not limited to education or voluntary programs. The statute explicitly grants Ecology the power to issue enforceable directives and require implementation of management measures when necessary to protect state waters.

Together, RCW 90.48, the *Lemire* decision, and the Attorney General’s 2019 memo make one point absolutely clear: Ecology has both the legal authority and the legal obligation to regulate nonpoint sources of pollution, to prevent pollution proactively, and to require implementation of management measures, mandatory, enforceable, and binding when needed.

Voluntary programs cannot supplant this mandatory enforcement framework. They operate only in addition to, not instead of, Ecology’s nonpartisan duty to control and prevent pollution under state and federal law. Thus, this guidance document for voluntary compliance should support going beyond the required compliance.

II. Discussion

Voluntary approaches can play a constructive role in improving agricultural water quality, but they cannot replace Ecology’s legal obligations under the Clean Water Act, RCW 90.48, and Washington Supreme Court precedent. In many of Washington’s impaired agricultural watersheds, including Hangman Creek, voluntary approaches have historically failed to reduce pollution to levels necessary to meet state water quality standards. Ecology must ensure that any new guidance reflects what is required by law: at minimum, the prevention of pollution and the protection of designated uses.

Hangman Creek demonstrates clearly that relying on voluntary measures alone is insufficient. The creek delivers massive sediment loads, high turbidity, and elevated temperatures into the Spokane River, creating one of the most severe water quality impairments in the state. High turbidity and sedimentation have buried spawning gravels and degraded habitat, preventing redband trout and native salmon from accessing historic spawning grounds. These impacts are not merely environmental issues, they affect tribal cultural resources, regional recreation, and the long-term viability of salmon recovery efforts throughout the Spokane River basin.

The degraded condition of Hangman Creek is rooted in well-documented land-use changes: clearing of riparian vegetation, channel straightening, drainage, livestock access, unstable banks, and erosion from winter-tilled fields on highly erodible soils. These activities have created a stream system that responds quickly and violently to winter rainfall, transporting large volumes of sediment downstream. With each rain-on-snow event or winter storm, the creek belches mud into the Spokane River at precisely the time when redband trout are spawning.

The last decade of increased restoration work shows that meaningful progress is possible when restoration investment is paired with consistent expectations and enforcement. The momentum generated since the 2018 settlement agreement between Ecology and Spokane Riverkeeper has produced more active restoration partnerships, more on-the-ground projects, and greater

community involvement than ever before. Riparian planting, floodplain reconnection, and collaborative projects with Tribes and conservation partners are already beginning to stabilize banks and improve habitat in parts of the basin.

But these investments cannot succeed in the absence of strong and consistent enforcement. Ongoing nonpoint pollution, including unbuffered streambanks, dredging, riparian clearing, and sediment runoff from tilled fields, continues to undermine water quality and undo restoration gains. Some sites will not come into compliance without regulatory action. Ecology has a statutory obligation to intervene where pollution is occurring or where there is a substantial potential for pollution, as confirmed in *Lemire v. Department of Ecology*, 178 Wn.2d 227 (2013), and in the 2019 Attorney General memorandum affirming Ecology’s authority to regulate nonpoint sources.

The Spokane River cannot meet water quality standards without major, enforceable improvements in Hangman Creek. Redband trout recovery, salmon reintroduction efforts, and the cultural and economic benefits these fish provide all depend on real reductions in sediment, nutrients, and temperature. The future health of the Spokane River basin requires continued investment in large-scale restoration, paired with consistent enforcement to ensure all landowners meet the legal minimums already required under RCW 90.48.

III. Comments on the Introduction to the Draft Guidance

We offer the following specific comments on the Introduction to the Voluntary Clean Water Guidance for Agriculture:

1. Clarify that voluntary guidance does not replace legal obligations: The Introduction should clearly state that this document does not alter, diminish, or substitute for mandatory requirements under RCW 90.48, the Clean Water Act, or *Lemire*. Voluntary assistance must be supplemental, not an alternative to compliance.
2. Remove or revise the “presumption of protection” tied to BMP implementation: Protection of water quality must be based on actual outcomes and compliance with standards, not on the presence of BMPs. Monitoring, not assumptions, must guide compliance determinations.
3. Replace language suggesting Ecology only intervenes after “significant impacts.”: RCW 90.48.080 prohibits any pollution. Ecology must act before harm occurs or where pollution is likely—not only when impacts are “significant.”
4. Clarify that incomplete guidance chapters do not delay enforcement: Water quality obligations are in effect now. The Introduction should state explicitly that producers remain responsible for meeting standards regardless of the document’s development timeline.
5. Ensure balanced representation in future revisions: The advisory group is heavily weighted toward agricultural industry organizations. Future revisions should include additional environmental organizations and community representatives.

We respectfully urge Ecology to revise this guidance to:

- Clearly distinguish mandatory legal requirements from voluntary conservation measures;
- Affirm that compliance with the CWA and RCW 90.48 is non-negotiable;
- Ensure voluntary measures exceed, not merely echo, minimum legal standards; and
- Resist industry pressure that undermines water quality protections.

Washington's rivers, lakes, and communities deserve guidance that reflects the full force of the law and the full weight of Ecology's commitment to clean water.

Thank you for the opportunity to comment.

Respectfully submitted,

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