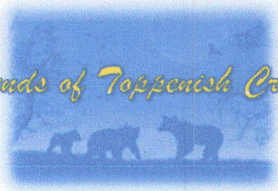


Friends of Toppenish Creek

Please see our attached comments

Friends of Toppenish Creek



May 14, 2021

Dear WA State Dept. of Ecology and U.S. Environmental Protection Agency:

Please accept these comments from the Friends of Toppenish Creek (FOTC) regarding the proposed 2021 – 2023 Environmental Performance Partnership Agreement (Agreement) between the WA State Dept. of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA).

Friends of Toppenish Creek is a 501 C (3) non-profit group in the Lower Yakima Valley:

Friends of Toppenish Creek is dedicated to protecting the rights of rural communities and improving oversight of industrial agriculture. FOTC operates under the simple principle that all people deserve clean air, clean water and protection from abuse that results when profit is favored over people. FOTC works through public education, citizen investigations, research, legislation, special events, and direct action.

FOTC believes that Ecology has failed to protect the air, water, and soil in the Lower Yakima Valley (LYV), in large part because the agency is cowed by the dairy industry. We will explain in this letter.

The Cow Palace Dairy and the WA Dairy Federation are currently suing the EPA in an effort to undo the EPA's work on a cluster of dairies in the LYV. EPA research found that 61% of domestic wells one mile downgradient from the dairies had nitrate levels above the safe drinking water standard. EPA monitoring wells at the site had some of the highest nitrate readings in the nation. This is beyond dispute, but the dairy industry continues to attack environmental protections, and the dairy industry enlists Ecology support.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza".

Jean Mendoza

Executive Director, FOTC

3142 Signal Peak Road
White Swan, WA 98952

FOTC Concerns Regarding the Agreement

1. Chapter 2 - Quality Assurance:

On page 17 the agreement cites Water Quality Program Policy 1-11 Chapter 2 Ensuring Credible Data for Water Quality Management.

- A. Ecology fails to do this for the LYV. In 2018-2019 a LYV Groundwater Management Area (GWMA), under Ecology's oversight, set up a system of 30 monitoring wells in alluvial fans where hydrogeology and geology vary significantly within small areas. The LYV GWMA drilled these wells without a research hypothesis, without a plan on how to use the data to prove or disprove improvement to water quality as BMPs are implemented. There is no strategy for measuring implementation of BMPs and no listing of the BMPs that will be evaluated¹.
- B. The LYV GWMA contracted with the WA State Dept. of Agriculture (WSDA) to conduct a Nitrogen Availability Assessment (NAA) that lacked a QAPP and was contested by both the Yakima Farm Bureau and FOTC because the process was significantly flawed².

2. Chapter 4 – Environmental Justice:

- A. **Ecology EJ:** Reading about Ecology subscribing to environmental justice (EJ) is like listening to a lecture on vegan diets by the cattlemen's association. It is hard to take seriously.
 - a. Ecology has publicly stated, without proof, that there is no health risk when dairymen compost 950 bovine carcasses in 2,300 feet of windrows in a rural community, where 70% of the population is Latino³. The fact that bureaucrats with solid health care plans would make this determination from their climate controlled offices speaks volumes about Ecology's understanding of life at the poverty level.
 - b. Ecology oversaw the LYV GWMA meetings in which a coalition of dairymen prevented any discussion of environmental justice. EJ was never addressed during the seven years in which the LYV GWMA Advisory Committee (GWAC) met. The LYV GWMA did not engage the 25% of the community who speak little or no English².
 - c. Ecology is in charge of PFAS surveillance in WA State and does no monitoring in the Central Washington regions where over half of the sewage sludge is applied to cropland and the sludge is not tested for PFAS. It is disturbing that Ecology is willing to risk contamination of rich agricultural soils with a chemical that does not degrade⁴.

-
1. Lower Yakima Valley Groundwater Management Area Program, Vol. I (2018) Available at <https://www.yakimacounty.us/DocumentCenter/View/22177/GWMA-VolumeI-July2019>
 2. FOTC Minority Report for the LYV GWMA (2018) Available at <https://www.yakimacounty.us/2162/Minority-Report-GWMA-by-Jean-Mendoza>
 3. Yakima Herald Republic (2020) Composted Cows: A Success Story for Some, A Concern for Others. Available at https://www.yakimaherald.com/news/local/composted-cows-a-success-story-for-some-a-concern-for-others/article_4a007eb6-3947-574d-9f9a-1a355620fa1b.html
 4. America's Dairyland May Have a PFAS Problem (2019) Natural Resources Defense Council. Available at <https://www.nrdc.org/stories/americas-dairyland-may-have-pfas-problem#:~:text=Milk%20containing%20PFAS%20tends%20to,end%20up%20in%20their%20milk>

- d. Ecology refuses to intervene when the Yakima Regional Clean Air Agency (YRCAA) fails to investigate complaints regarding air pollution by LYV dairies. One third of all WA milk cows are housed in the LYV. Yakima County animal agriculture emits between 5,000 and 8,000 tons of ammonia per year, mostly from the LYV, and the YRCAA refuses to address the problem.
- e. Ecology declined to participate in a forum on equity in the City of Yakima that was funded by the WA State legislature to inform and to gather EJ information.
- f. Data is needed to prove pollution and compel sources of pollution to acquire NPDES permits or air quality permits. Ecology and the YRCAA do not conduct studies that would prove air and water pollution from LYV dairies. Ecology and YRCAA do not accept statements from the people who are impacted by pollution. Ecology and YRCAA reject the results of citizen science. The agencies say they cannot regulate these sources of pollution because there is no proof of pollution and they refuse to do the research.

B. Moving Children's Health: FOTC disagrees in the strongest terms with the decision to move Children's Health out of the Environmental Justice Chapter.

- a. Children are de facto a marginalized group with limited representation. Ecology commits environmental injustice by ignoring the impact of pollution on the next generation.
- b. FOTC only finds one reference to children's health in the Agreement and that reference requires coordination and networking with other agencies, a code for shifting responsibility. Keeping Children's Health under EJ acknowledges the importance of this population.
- c. Chapter 7 – Air Quality never mentions the major impact of polluted air on children's developing lungs. The impact on children is more serious than the impact on adults. This is an EJ issue. The population of the LYV is young with a high percentage of children.
- d. On behalf of the children FOTC asks you to 1. return Children's Health to Chapter 4 – Environmental Justice; 2. emphasize the importance of a safe environment for children; and 3. provide pathways so agencies, working together with citizens, can advocate for the next generation.

C. Ecology Goals: None of the three Ecology goals for EJ listed on page 23 of the Agreement are realized in the LYV. Those unattained goals are to provide all people:

- a. The same degree of protection from environmental and health hazards.
- b. Equal access to decision-making processes.
- c. A health environment in which to live, learn, and work.

3. Chapter 7 – Enhancing Public Health by Improving Air Quality:

The Clean Air Act in Washington is implemented in some counties, including Yakima, by Clean Air Agencies. Ecology acknowledges that Yakima County has the highest levels of

particle air pollution in Washington State⁵. The Yakima Regional Clean Air Agency (YRCAA) fails to adequately address this problem. Instead, the YRCAA pressures the state to give the agency more money, while simultaneously shielding the polluting dairy industry from any financial responsibility. This issue is so severe that FOTC will include an attachment regarding the YRCAA to our comments on the Agreement. Please read that attachment to better understand how the Clean Air Acts are subverted in Yakima County.

In brief, the YRCAA, with Ecology's tacit approval, has:

- a. Rejected environmental justice.
- b. Refused to address public health.
- c. Received citizen complaints with disinterest or disdain.
- d. Supported the dairy industry's interests and prevented citizen representation on the board of directors.
- e. Ignored valid citizen science.
- f. Failed to investigate citizen complaints in a timely manner, and often failed to investigate at all.

RCW 70A.15.1005 Declaration of public policies and purpose, states in paragraph 6: *It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.*

Ecology's 2011 County Emissions Inventory estimated ammonia emissions from animal agriculture in Yakima County at > 8,000 tons annually.

Nevertheless, the YRCAA decided in 2018 not to register LYV dairies and not to collect fees from the dairies.

4. Chapter 9 - Water Quality Program:

- A. **Non-Point Sources:** To the best of our knowledge delivery of a Non-Point Source Pollution Plan has dragged on for years and there is a distinct possibility that the WA NPS Plan will not be delivered as scheduled. FOTC believes this is due in large part to Ecology's deference to large agricultural interests that hold too much sway over governance. The WA Cattle Feeders Association has acted as an equal partner with Ecology in developing a *Clean Water Guidance for Agriculture*. Industrial agriculture asserts that the industry should dictate best management practices. Industrial agriculture's opinion certainly has merit, but that group lacks expertise in environmental science and should not be allowed to veto valid BMP's. Ecology refuses to accept the role of expert on water quality and allows industry to override the agency scientists.

5. WA Dept. of Ecology (2021) Particle Pollution in Washington's Air. Available at <https://ecology.wa.gov/Air-Climate/Air-quality/Air-quality-targets/Air-quality-standards/Particle-pollution>

The first sentence on page 72, in part 2C, under Activities and Measures reads “Per the settlement, Ecology will submit a Washington State Nonpoint Plan update to EPA by the end of 2022.” FOTC has been unable to find that case based on the footnote. Can you help us?

- B. Point Sources: Concentrated animal feeding operations (CAFOs) are point sources of pollution. In 2017 Ecology issued two new NPDES General Permits for CAFOs in Washington State. A coalition of environmental groups challenged the permits before the WA State Pollution Control Hearings Board for the following reasons:
1. The Permits fail to require AKART for existing lagoons.
 2. The permits failed to require AKART for composting areas, animal pens, and corrals.
 3. Ecology failed to establish effluent limits and monitoring requirements necessary to ensure compliance with the State Water Quality Standards.
 4. Ecology provided no explanation of how the permit will ensure compliance with Water Quality Standards.
 5. The permits do not ensure compliance with State Water Quality Standards for Groundwater.
 6. Ecology violated state and federal law by failing to require adequate monitoring.
 7. The permit’s Groundwater Quality Effluent Limitation is unenforceable without groundwater monitoring and violates Washington’s Anti-Degradation Principle.
 8. The permits fail to require monitoring to ensure compliance with effluent limits regarding surface water.
 9. Ecology failed to comply with federal law by requiring the development of site-specific nutrient management plans subject to public scrutiny prior to permit issuance.
 10. Ecology failed to ensure the permit accounted for the impacts of climate change.

The PCHB ruled against the petitioners in 2018. The WA State Court of Appeals heard our appeal in November 2020.

In the meantime, Ecology fails to enforce a major part of the Clean Water Act for Point Sources since < 25 of Washington’s approximately 250 CAFO dairies are under permit. Thus, the objectives for water quality protection from point source pollution, listed on page 74 of the Agreement, have not been met and are unlikely to be met in the future.

The Friends of Toppenish Creek have asked Ecology to investigate discharges to surface water from an unpermitted LYV dairy that is located next to the Yakima River. Ecology has not tested the river for the presence of pollutants from the dairy, despite research proving a connection between ground and surface waters. Ecology has advised FOTC that the agency will not accept citizen research to demonstrate discharge. Thus, Ecology does not require the dairy to obtain an NPDES permit since there is no data to show a discharge.

FOTC requests EPA actions that require Ecology to issue a strong NPDES General Permit for CAFO’s that protects ground and surface water in Washington State according to the requirements of the law. Perhaps, once upon a time there was a dairy that did not discharge to waters of the state. This hypothetical case is not sufficient to relieve Washington dairies of

the requirement to obtain NPDES permits. Ecology should require all Washington dairies to acquire NPDES permits, and the EPA should provide all the necessary support to make this happen.

- C. **NPDES Permitting:** Ecology outreach regarding a 2022 CAFO General Permit is lacking.
- a. The permit writers did not advertise public meetings regarding permit renewal in the media. Instead, Ecology sent notices to select contacts within industry and the environmental community.
 - b. Ecology did not send notices to many of the people who commented on the 2017 permit.
 - c. Ecology did not inform people in Grant or Franklin Counties where there is significant pollution from large CAFOs.
 - d. Ecology sent a doodle poll to potential participants and then chose a date and time when most environmental leaders were unable to attend.

5. Some Ecology administrators lack integrity:

- A. **Working with Criminals:** Slightly over ten years ago Easterday Ranches, Inc. took steps to construct a 30,000 head feedlot in Franklin County. Easterday drilled a well into the Grande Ronde aquifer to water the cattle. Easterday estimated drinking water needs for 30,000 head at 450,000 to 600,000 gallons per day. Ecology helped Easterday to transfer water rights from a neighboring property that gave the operation another 316 acre feet per year for other feedlot purposes.

Neighbors sued to stop the feedlot under RCW 90.44.050, contending that such a large withdrawal of groundwater is not authorized by law, would dry up their domestic wells, and deplete the aquifer. Easterday disagreed and Ecology sided with Easterday. Ecology stood shoulder to shoulder with Easterday and trade groups in court and defended actions that deplete Washington groundwater stores.

The case progressed to the WA State Supreme Court which found in favor of Easterday. Now, thanks to Ecology's help, animal agriculture can withdraw unlimited amounts of water from declining aquifers.

Since that time, the Easterday family has engaged in political action, most notably through the WA Cattle Feeders Association. This group sits on Ecology's Agriculture and Water Advisory Committee and meets with the WA State Board of Health to advocate for changes in the law that benefit a few farmers and worsen public health.

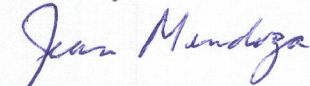
In March 2021 Cody Easterday, President of Easterday Ranches, pled guilty to defrauding Tyson Foods of \$244 million. Subsequently Easterday Ranches and Easterday Farms filed for bankruptcy. This is not new. The Easterday family has filed for bankruptcy before. Every time this happens innocent, hard working people incur losses because they are not paid for property they sold in good faith, or for services rendered.

Ecology has worked with criminals to dilute Washington's environmental laws, and at the same time Ecology provided legitimacy to a scamming operation.

B. **False Testimony:** In 2020 FOTC appealed Ecology's certification of the LYV GWMA. Then Water Quality Manager for Ecology's Central Offices, David Bowen, gave testimony in defense of a *Nitrogen Availability Assessment* commissioned by the GWMA advisory committee. FOTC now accuses Mr. Bowen of misleading the Pollution Control Hearings Board. We believe he gave false testimony when he said that sources of nitrates in groundwater are not significant when the sources have NPDES permits. See Attachment.

Thank you for evaluating the facts presented here by FOTC. We hope we have contributed towards an improved collaboration between Ecology and the EPA, that will result in a healthier environment in Washington State and the Lower Yakima Valley.

Sincerely,



Jean Mendoza

Executive Director, FOTC

3142 Signal Peak Road
White Swan, WA 98952

Presentation to the Yakima County
Commissioners

Arguments for Dissolving the Yakima Regional Clean Air
Agency as Authorized by RCW 70A.15.2570

May 11 & 12, 2021

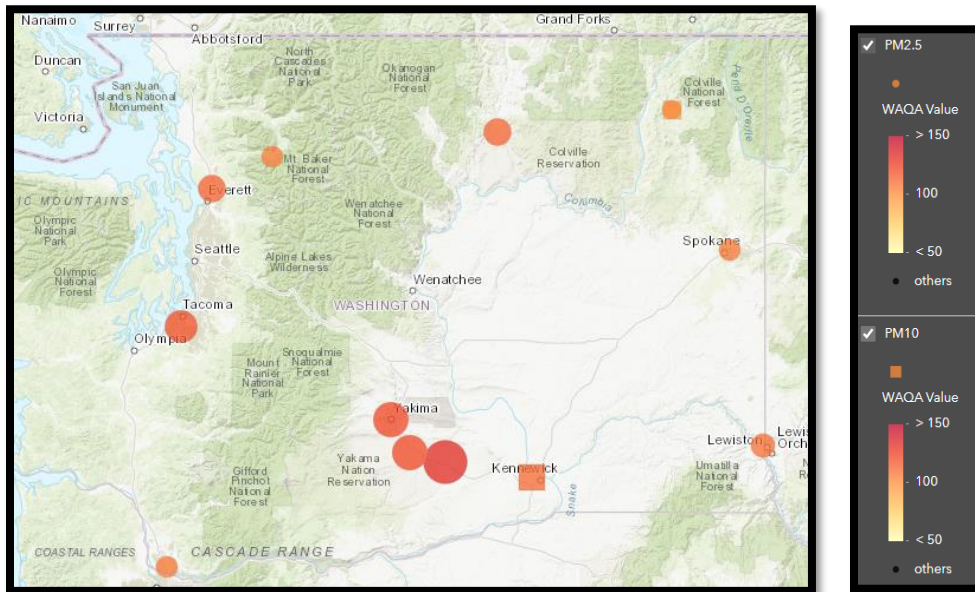
Friends of Toppenish Creek



The YRCAA should be dissolved because:

- We all care about the health and wellbeing of the people.
- The YRCAA lacks the expertise to address the most serious air pollution in WA State. Ecology has more resources.
- Yakima County is at risk for non-compliance with the Clean Air Act.

Introduction: WA Areas of Concern for Particle Air Pollution 2021



From <https://ecology.wa.gov/Regulations-Permits/Plans-policies/Areas-meeting-and-not-meeting-air-standards>

All States are required to compile an air emissions inventory every five years. Washington evaluates Criteria Air Pollutants and Precursors to Criteria Air Pollutants for this inventory. Ecology estimates emissions for:

- Ammonia (NH₃)
- Carbon monoxide (CO) (Criteria)
- Hazardous air pollutants
- Nitrogen oxides (NO_x) (Criteria)
- Particles (or particulate matter, PM) (Criteria)
- Sulfur dioxide (SO₂) (Criteria)
- Volatile organic compounds (VOCs)

In the Lower Yakima Valley about 31% of fine particulate matter (PM 2.5) is composed of ammonium nitrate. Ammonium nitrate is acidic when dissolved in water. Ammonium nitrate contributes to acid rain.

According to Ecology, in 2011 Yakima County livestock emitted 8,053.58 tons of ammonia into the ambient air. In 2017, using a different model, the number was 5,194 tons of ammonia = 10,388,000 lbs. = 28,460 lbs./day. Most of these emissions take place in the 500 square mile Lower Yakima Valley*.

*To put this into perspective, in 2020 the EPA fined Kenyon Zero Storage \$34,000 for the accidental release of about 100 pounds of ammonia into the air from its cold storage facility in Grandview.

Why Yakima County Should Disband the YRCAA

Yakima County has public health problems related to air pollution.

The Yakima Regional Clean Air Agency has a duty to address this issue.

Much of the air pollution in Yakima County is related to emissions from concentrated animal feeding operations (CAFOs).

Those emissions include:

- Dust
- Odor
- Ammonia
- Hydrogen sulfide
- Volatile Organic Compounds (VOC's)

One third of all WA dairy cows are housed in the 500 square mile Lower Yakima Valley (LYV).

Large LYV dairies are major sources (a legal term) of air pollution.

The YRCAA does not register and regulate CAFO dairies as required by law.

The YRCAA marginalizes the citizens.

- Citizen complaints at public meetings are met with disinterest or disdain.
- Dairy industry interests are supported while there is no citizen representation on the YRCAA board.
- Site visits to investigate citizen complaints are not timely or do not happen at all.
- Valid citizen science is ignored.
- YRCAA has been successfully sued twice because of their lack of responsiveness to citizen requests.

Other counties use the WA State Department of Ecology to manage air quality issues.

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Public Health in Yakima County

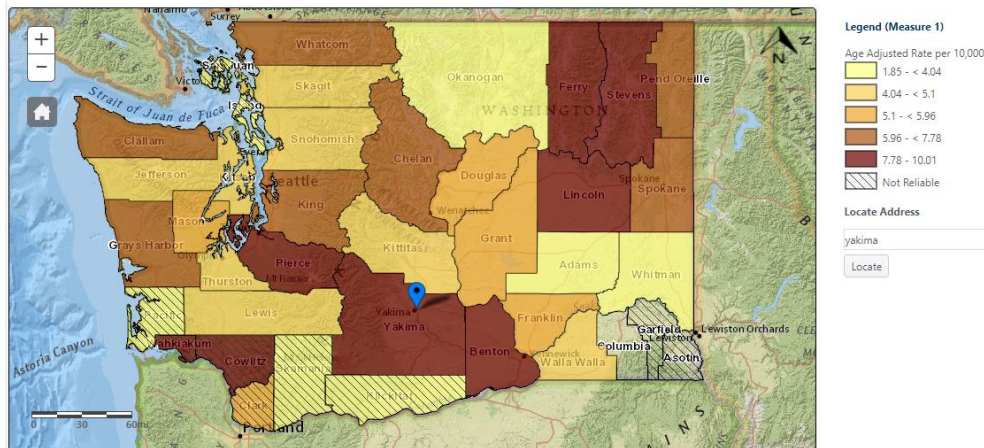
Health issues related to air pollution include:

- Premature Death
- Asthma Attacks
- Cardiovascular Disease
- Lung Cancer
- Developmental Damage
- Susceptibility to Infections
- Low Infant Birth Weight
- Wheezing, Coughing & Shortness of Breath
- Death rates from COVID 19 are higher in areas with elevated fine particulate matter.

Examples of increased disease in Yakima County, often related to air pollution:

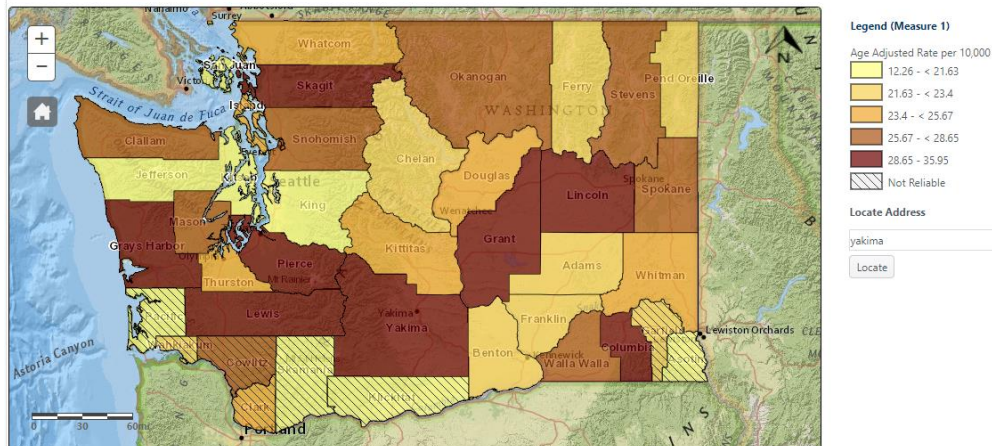
Asthma Hospitalizations: Age-Adjusted Rate per 10,000

Geography: County, Age Group: All (Combined), Time Period: 2010-2014



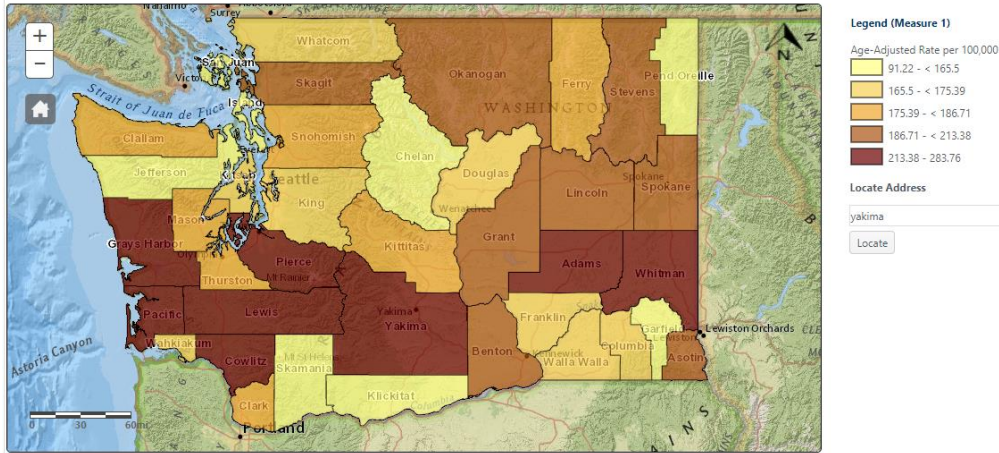
Heart Attack Hospitalizations: Age-Adjusted Rate per 10,000 (for specified age groupings)

Geography: County, Age Group: 35+, Sex: All (Combined), Time Period: 2010-2014



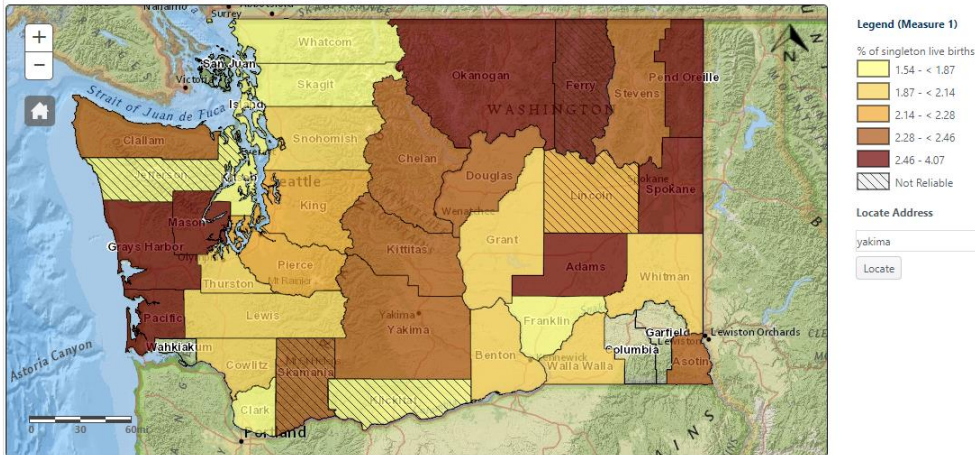
Cardiovascular Disease Mortality - Age Adjusted rate per 100,000

Geography: County, Sex: All (Combined), Time Period: 2015-2019



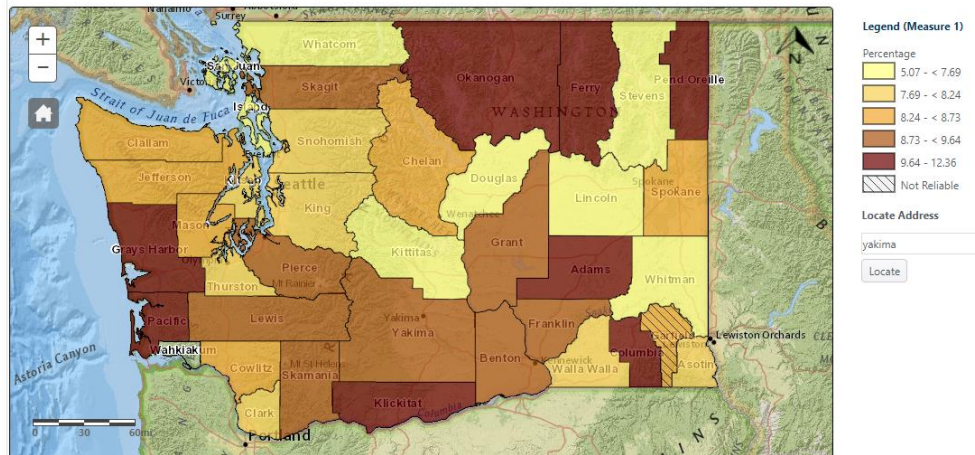
Low Birthweight (<2500 grams) Singleton Fullterm Births

Geography: County, Maternal Age: All (Combined), Time Period: 2015-2019



Preterm (less than 37 weeks) Singleton Births

Geography: County, Maternal Age: All (Combined), Time Period: 2015-2019



From the WA State Dept. of Health Washington Tracking Network at <https://fortress.wa.gov/doh/wtn/WTNPortal/#!q0=370>

Studies of Air Pollution and Health in Yakima County

Here is research that was performed in Yakima County regarding health impacts from air pollution. This research belongs on the YRCAA website, but it has never been posted.

This study provides evidence that PM_{2.5} in an agricultural setting contributes to elevated asthma morbidity.

Loftus, C., Yost, M., Sampson, P., Arias, G., Torres, E., Vasquez, V. B., ... & Karr, C. (2015). Regional PM_{2.5} and asthma morbidity in an agricultural community: a panel study. *Environmental research*, 136, 505-512. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4425279/>

Ammonia concentrations were elevated in this community and strongly predicted by proximity to animal feeding operations. Ammonia's association with acute lung function decrements in children with asthma in the surrounding community may be causal or, alternatively, ammonia may be a marker for other pollutants from animal feeding operations associated with respiratory effects.

Loftus, C., Yost, M., Sampson, P., Torres, E., Arias, G., Vasquez, V. B., ... & Bhatti, P. (2015). Ambient ammonia exposures in an agricultural community and pediatric asthma morbidity. *Epidemiology (Cambridge, Mass.)*, 26(6), 794. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4587379/>

Our findings indicate that children with asthma may experience short-term respiratory effects following increased exposure to airborne AFO pollutants, adding to a growing body of research evidence that AFO-related air pollution may cause community-level health effects.

Loftus, C. (2015). *Industrial Animal Agriculture in the Yakima Valley, Air Pollution, and Pediatric Asthma Morbidity* (Doctoral dissertation). Available at https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/26152/Loftus_washington_0250E_13499.pdf?sequence=1

These findings demonstrate that dairy operations increase community exposures to agents with known human health effects. This study also provides evidence that airborne biological contaminants (i.e. cow allergen) associated with airborne particulate matter are statistically elevated at distances up to three miles (4.8 km) from dairy operations.

Williams, D. L., Breyse, P. N., McCormack, M. C., Diette, G. B., McKenzie, S., & Geyh, A. S. (2011). Airborne cow allergen, ammonia and particulate matter at homes vary with distance to industrial scale dairy operations: an exposure assessment. *Environmental Health*, 10(1), 72. Available at <https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-10-72>

Air Quality in Yakima County

Percentage of Ammonium Nitrate in Fine Particulate Matter in WA State

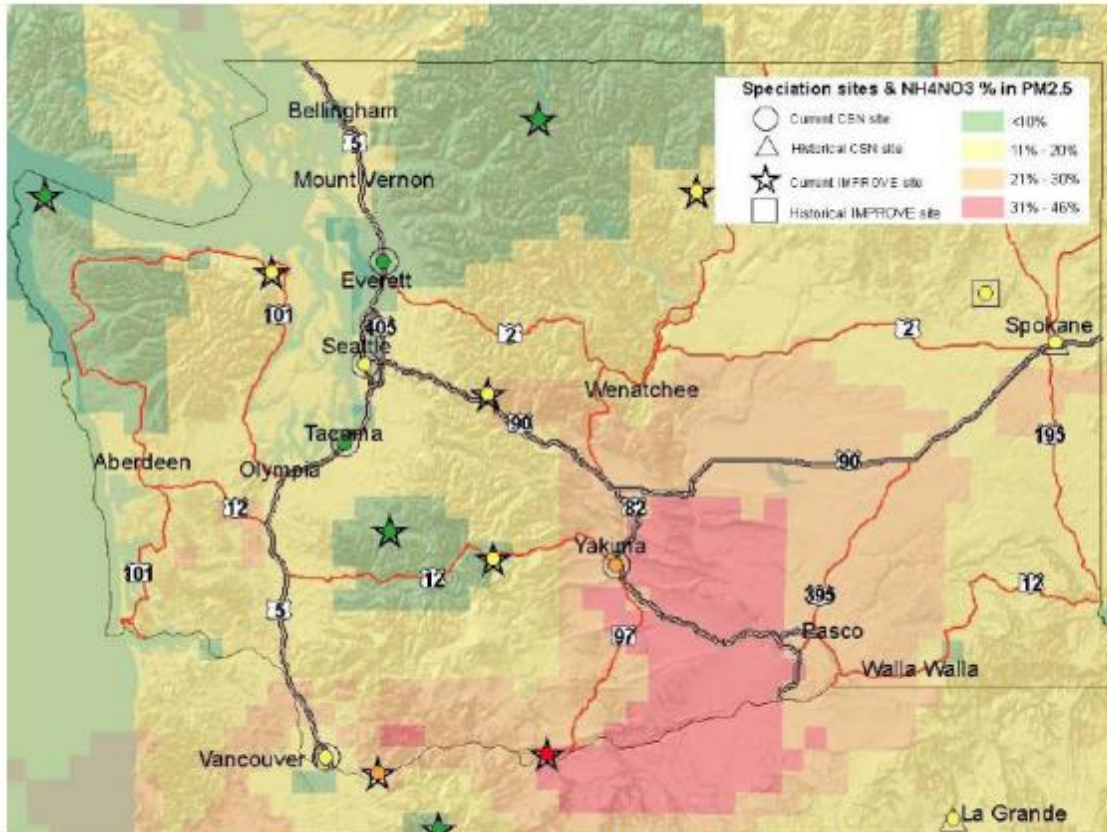


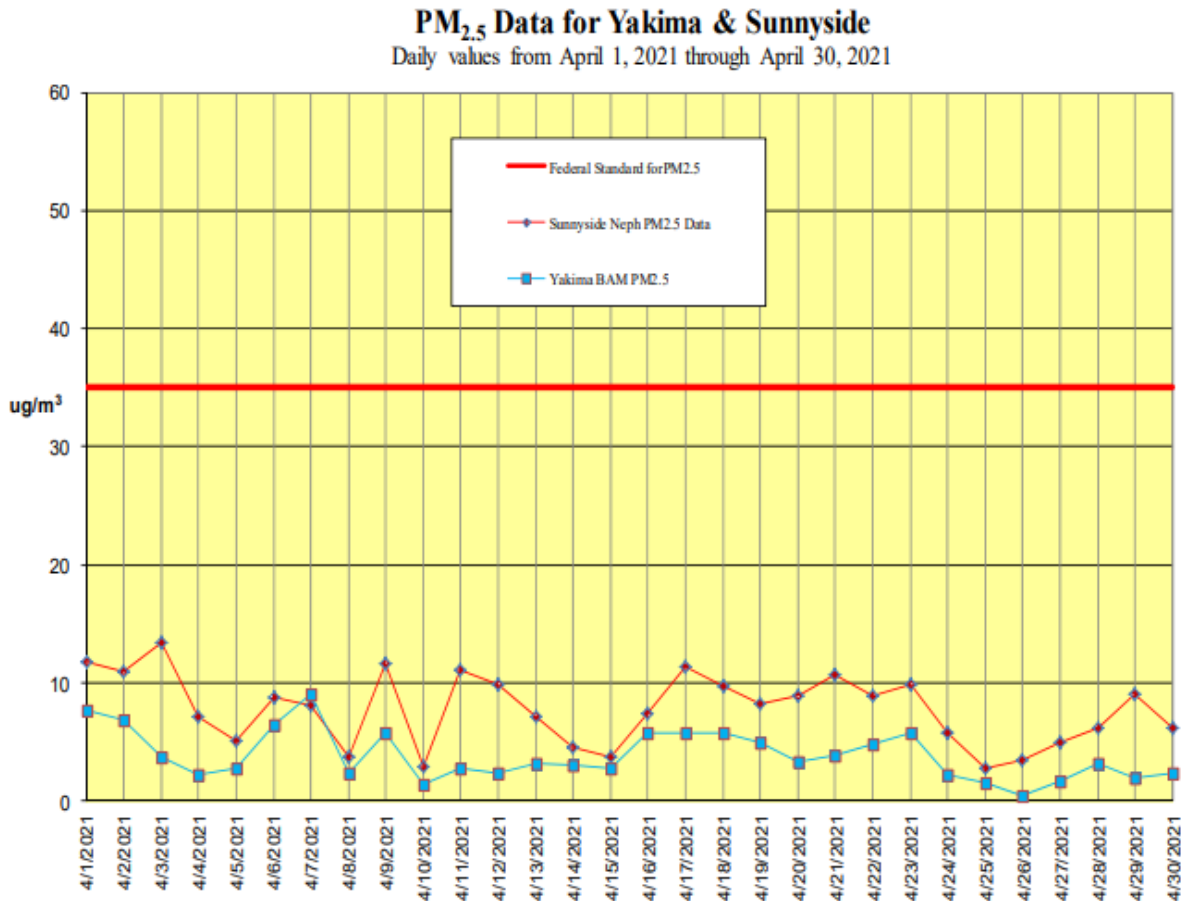
Figure 1.1. Contribution of ammonium nitrate (NH₄NO₃) to total PM_{2.5} in Washington. Map is based on measured aerosol speciation data collected through 2009, spatially interpolated with CMAQ-modeled data at a 12km resolution. Map created and provided by Dr. Ranil Dhammapala, Washington Department of Ecology.

The 2015 Yakima Air Winter Nitrate Study found:

Episodes of elevated particulate nitrate in the Yakima Valley during winter result from a combination of factors. The wintertime meteorology of the region drives gas-particle equilibrium of ammonium nitrate strongly toward the particle phase, and high relative humidity enhances this effect. High ammonia emissions from agricultural sources in the area lead to elevated atmospheric concentrations of the pollutant. This excess ammonia drives virtually all available nitric acid into the particulate phase, forming particulate nitrate, and leads to a condition where any additional nitric acid production would lead directly to greater particulate nitrate levels. The production of particulate nitrate precursors is complicated and sensitive to the varying meteorological and chemical conditions in the valley. Given the backdrop of excess gaseous ammonia, there is usually sufficient reactive nitrogen in the valley to produce elevated levels of particulate nitrate if the right meteorological conditions take hold.

YRCAA Data: Air quality in the LYV is usually worse than air quality in the Upper Yakima Valley (UYV). Here is a recent typical example from a monthly director’s report to the YRCAA Board of Directors.

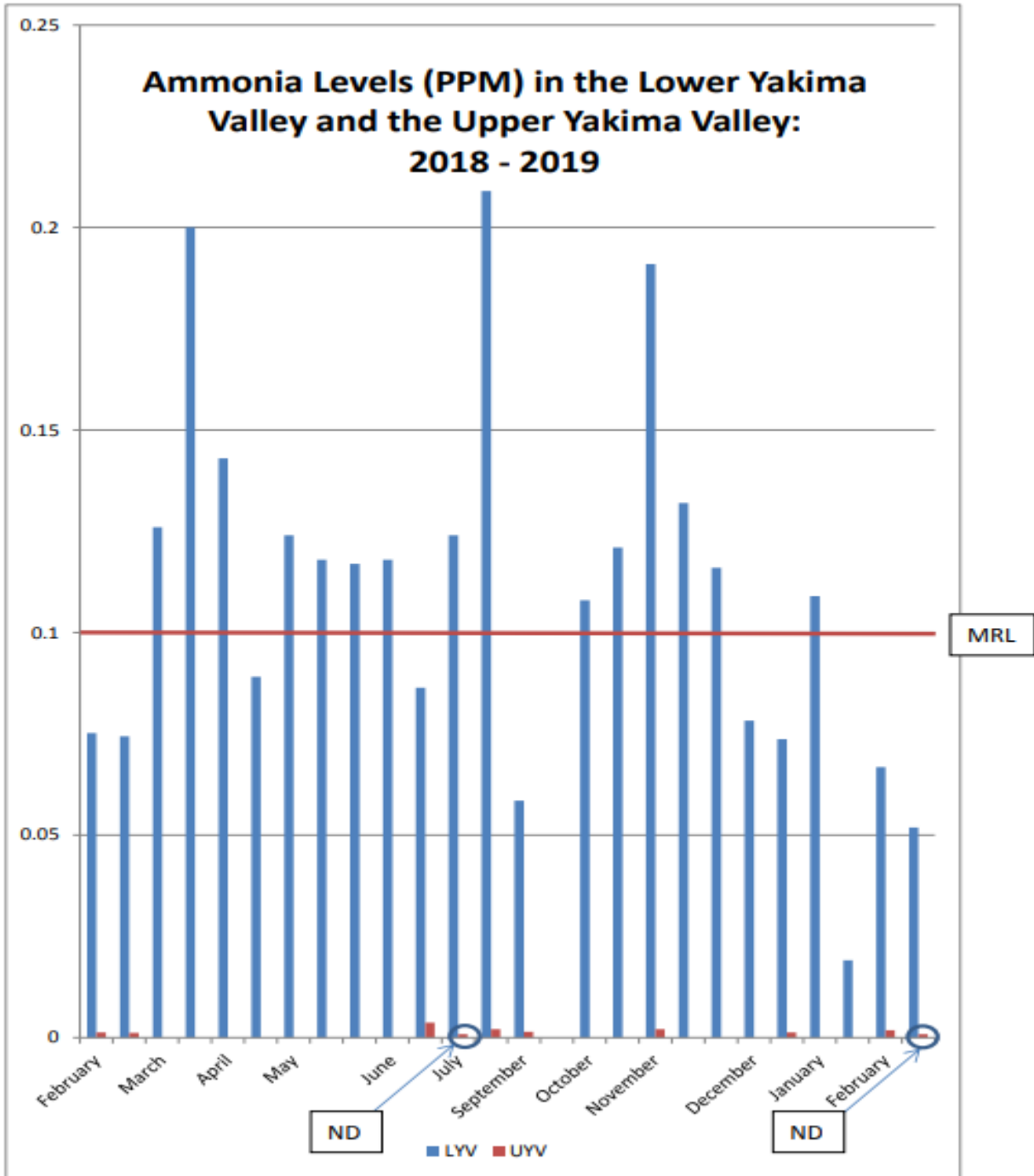
4. Air Monitoring Data for April 2021



Citizen Science: The Friends of Toppenish Creek measured average ammonia levels for two week periods from February 2018 to February 2019, at a home site in the LYV and a control site in the UYV. The average of all samples at the LYV site was 0.1092 parts per million (ppm) with a range of 0.0191 ppm to 0.209 ppm. The average of all samples at the UYV site was 0.0016 ppm. Ammonia levels in the lower valley averaged sixty eight times higher than those in the upper valley.

The Agency for Toxic Substances and Disease Registry (ATSDR) at the Center for Disease Control (CDC) has determined that the Minimum Risk Level (MRL) for long term (≥ 1 year) exposure to ammonia is 0.10 ppm. According to the CDC, “An MRL is an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse non-cancer health effects over a specified duration of exposure.”

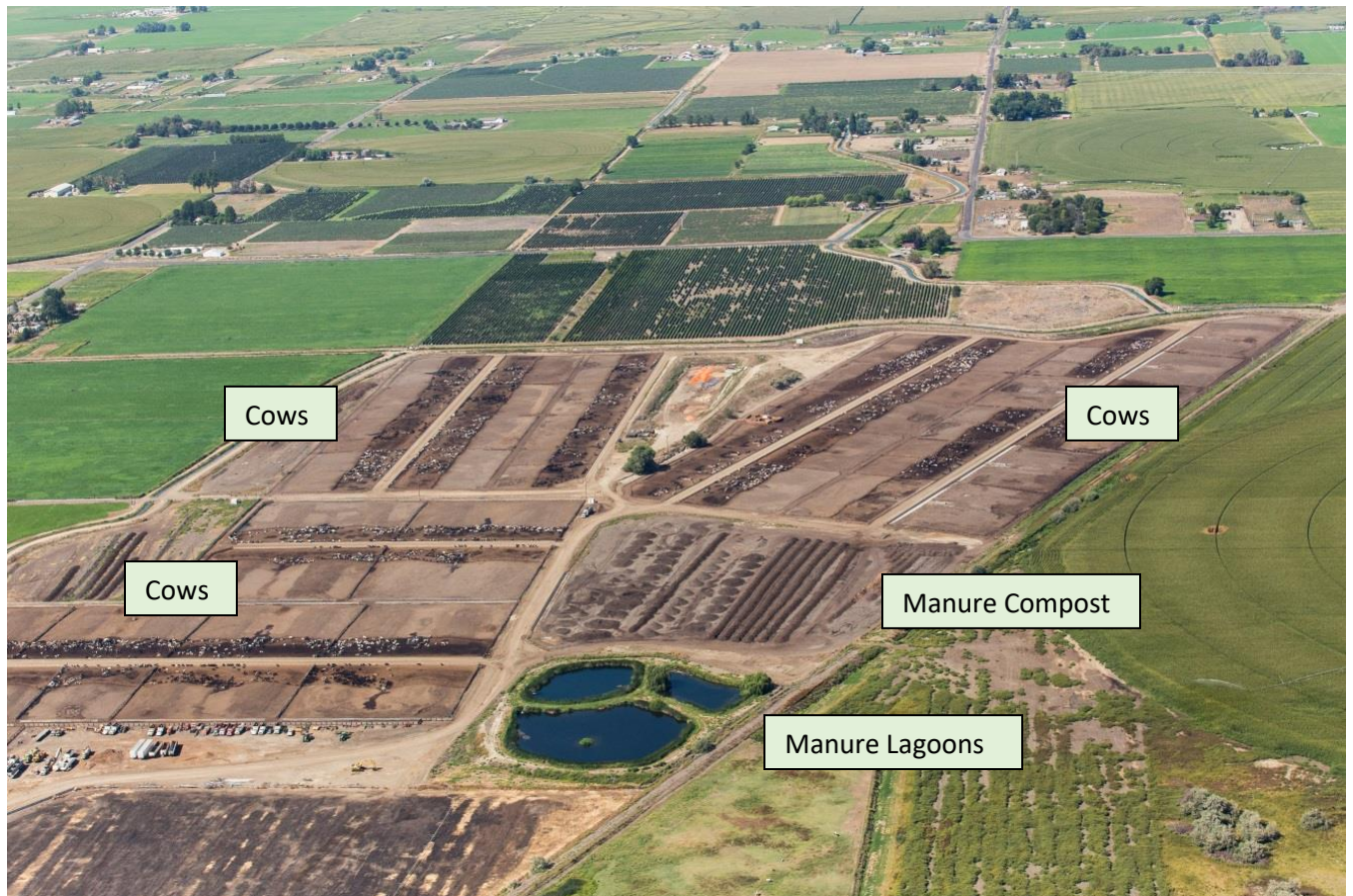
Below is a graph of the FOTC findings:



FOTC shared these results with the YRCAA. The agency did not respond.

In 2016 the YRCAA staff brought a proposed ammonia study to the YRCAA board for consideration. The board rejected the proposed study.

Dairy Emissions: This aerial photo shows the sources of emissions from LYV dairies:



The WA State Dept. of Agriculture estimates that 35% of the nitrogen in waste from dairy cows volatilizes and ends up in the atmosphere. This happens in the production area, before manure is composted or applied to crops. See Lower Yakima Valley Groundwater Report, Vol. I, page 25 at <https://www.yakimacounty.us/DocumentCenter/View/22177/GWMA-VolumeI-July2019>

Regulation of Air Pollution in Yakima County

Timeline

1967

The Yakima Regional Clean Air Authority, later the Yakima Regional Clean Air Agency, is formed per RCW 70.94.081

1997

YRCAA adopts a Beef Cattle Feedlot Air Policy

2002

YRCAA approves Confined Heifer Operations Dust Control Policy

2005

Les Ornelas, Director of the Yakima Regional Clean Air Agency tells a WSU Dairy Workshop in Sunnyside WA,

Now, I receive the largest number of odor complaints currently for my jurisdiction against feedlots, dairies, other kinds of chicken farmers, and other sorts of activities like this. We have people in the field who have been trained to evaluate odors, to be able to discern from a level 1, 2, 3 or 4 (4 typically is the one that causes a gag reflex). We go out and respond to all these numerous complaints every year and we have not yet issued a citation to any of the dairy people on odors in Yakima County, even though we have hundreds and some years over a thousand complaints.

Not much has changed since then. The YRCAA still fails to cite Lower Yakima Valley dairies for odor and dust.

2010

YRCAA discussion re AQMP for Dairies begins

Publication of *Emission Data from Two Dairy Freestall Barns in Washington*. Study performed in the LYV by WA State University for the National Air Emissions Monitoring Study.

2011

John Hopkins study, *Airborne cow allergen, ammonia and particulate matter at homes vary with distance to industrial scale dairy operations: an exposure assessment*. The lead author presents the study to the YRCAA. There is no agency action.

February, YRCAA published public comments for the AQMP for dairies

February, YRCAA Board of Directors approved the dairy air policy as a pilot research project.

2012

Presentation of Draft AQMP for Dairies at YRCAA Board Meeting

2013

May, Citizens present a petition to ban spreading and spraying of manure during burn bans and air inversions. The YRCAA Director recommends rejecting the petition and the YRCAA Board agrees.

June, the YRCAA Board of Directors approves an *Air Quality Management Policy and Best Management Practices for Dairy Operations (AQMP)*.

November, FOTC presents a critique of the Literature Review used to rebut a need for Ban on Spraying Manure during Inversions

2014

YRCAA adopts a *PM Advance Program Path Forward*

January, YRCAA forms an Agricultural Task Force and a Dairy Work Group

The Yakima Air Winter Nitrate Study is completed

November, Board Study Session review *Report to the YRCAA Board of Directors of the July, 2013 to October 2014 Policy Implementation Period* – two board members hear the report.

Publication of Ecology's *2011 County Emissions Inventory*.

2015

YRCAA Board of Directors tables a proposed Five-Year Strategic Plan

University of Washington publishes studies on asthmatic children in the Yakima Valley.

2016

FOTC asks the WA Dept of Health and the Yakima Health District for an “expert opinion on when and under what conditions it is safe to apply manures, especially aerosolized manures, to cropland when human and animal exposures and health risks are taken into consideration.” To date there has been correspondence but there have been no substantive answers.

FOTC responds to an article in two local newspapers that quotes the YRCAA Director and states that ammonia emissions from animal agriculture are insignificant.

FOTC files a Civil Rights Complaint to the EPA re YRCAA

FOTC asks Ecology to investigate the YRCAA under RCW 70A.15.3000(8)

Complaints about Conflict of Interest for a YRCAA Board Member

2017

Steve George from the Yakima Dairy Federation tells the YRCAA Board of Directors that he can speak for the dairy farmworkers.

YRCAA denies a second petition to ban manure spraying during burn bans and inversions.

2018

AQMP for Dairies rescinded

2019

FOTC repeats a request for Ecology to investigate YRCAA. The request is denied.

Complaint because WA State helps a mushroom operation, with known odorous air emissions, to relocate from the west side of the state to the Sunnyside area.

The EPA Office of Civil Rights External Compliance comes to an agreement with the YRCAA regarding engagement of Spanish speaking residents.

FOTC analyzes ammonia emissions in Yakima County and shares the study with YRCAA. The YRCAA takes no action.

2020

University of Washington publishes studies on asthmatic children in the Yakima Valley.

Violations of Rules & Regulations

RCW 17A.15.2000(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

WAC 173-400-260 Conflict of interest: All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest (Section 128).

FOTC Comment: Dr. Steven Jones is a dairy nutritionist who works for the dairy industry in Yakima County. He was part of the group that developed the YRCAA Air Quality Management Policy (AQMP) for Dairies beginning in 2011. Dr. Jones has served on the YRCAA Board of Directors since January 2014 as the designee for the Yakima County Commissioners when the commissioners chose him over two citizen applicants. He has been reappointed without consideration of other candidates since that time.

- In 2015 Dr. Jones voted against a YRCAA Strategic Plan stating that he disagrees with the proponents of environmental justice. (Attachment L)
- In 2017 the YRCAA staff brought a proposed project to the board that would measure ammonia emissions in the LYV. The Dairy Federation opposed the project. Dr. Jones actively criticized the value of the project and voted against it. (Board Meetings March 2017 & April 2017).
- In 2017 the YRCAA Board of Directors made changes to the public comment section of board meetings at the request of the Dairy Federation. Dr. Jones voted in favor of the changes. (Board Meetings October 2017 & November 2017).
- In 2018 the YRCAA voted to rescind the AQMP for dairies. Dr. Jones voted for an option to rescind the AQMP, to eliminate a requirement for dairies to register and to eliminate registration fees for dairies. The elimination of registration fees resulted in a reduction of \$20,000 to \$22,000 that would have been used to address this source of air contaminants. This decision resulted in the reduction of YRCAA FTEs by one employee. (Board Meeting, October 2018)
- Dr. Jones has voted on every YRCAA budget since 2014.

* * * * *

RCW 70A.15.1005 Declaration of public policies and purpose.

Paragraph 6 states:

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

RCW 70A.15.2270

Annual fees from operating permit program source to cover cost of program.

(1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. . . .

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

RCW 70A.15.3060

State financial aid—Application for—Requirements.

(1) Any authority may apply to the department for state financial aid. . . .

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is

fulfilling the requirements of this chapter. If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70A.15.3000, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

FOTC Comment: YRCAA acknowledges that CAFO dairies are a source of air pollution in Yakima County. YRCAA does not register dairies and collects no fees to pay for actions to address air pollution from this source. YRCAA does not do all that is possible and reasonable to control and prevent air pollution in Yakima County.

* * * * *

WAC 173-400-100

Source classifications.

(1) **Source classification list.** In counties without a local air pollution control authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories must register the source with Ecology:

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

RCW 70A.15.3050

Emission control requirements.

(1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located.

FOTC Comment: Rules and Regulations for Local Clean Air Agencies cannot be less stringent than state rules and regulations.

The YRCAA does not require registration of dairies, despite the fact that CAFO dairies are de facto cattle feedlots with inventories of one thousand or more cattle in operation year round, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season. (Board Meeting, October 2018)

The YRCAA does not require registration of dairies, despite the fact that Ecology requires registration of cattle feedlots.

The YRCAA does not require registration of dairy composting operations despite the fact that there are over 500 acres in the LYV devoted to manure composting.

* * * * *

RCW 70A.15.3150

Penalties.

(1) Any person who knowingly violates any of the provisions of this chapter or chapter **70A.25 RCW**, **RCW 70A.45.080**, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death of substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

[FOTC Comment: Animal agriculture in Yakima County releases](#)

- [between 5,000 and > 8,000 tons of ammonia every year \(Attachment M, page 101/108 & Attachment N. page 88/94\).](#)
- [approximately 1,771 tons of PM 10 every year \(Attachment N, page 82/94\)](#)
- [approximately 366 tons of PM 2.5 every year \(Attachment N, page 83/94\)](#)
- [approximately 416 tons of volatile organic compounds \(VOCs\) every year \(Attachment N, page 86/94\)](#)

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under **RCW 70A.15.2000** is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars.

[FOTC Comment: See Dr. Steve Jones' voting record on the YRCAA Board of Directors.](#)

[See the WA State Emissions Inventories for 2011 and 2017 \(Attachments M & N\)](#)

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RCW 70A.15.4530

Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.

(1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

FOTC Comment: To the best of FOTC's knowledge, the YRCAA has never consulted an expert to determine consistency with good agricultural practices. In Yakima County, due to a winter storm emergency, it is now an accepted agricultural practice to compost 950 dead cows in 2,300 feet of windrows. (Attachment O)

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or a detailed statement with evidence that the odors or fugitive dust have substantial adverse effect on public health.

FOTC Comment: To the best of FOTC's knowledge, the YRCAA has never consulted an expert to determine whether there is evidence that fugitive dust and odor has a substantial adverse effect on public health. FOTC has provided YRCAA with research on the adverse public health effects of emissions from CAFO's. FOTC has offered the expertise of a physician and a masters prepared nurse to help YRCAA better understand health effects. YRCAA declined citizens' assistance.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW **70A.15.2200** as specified in WAC 173-400-100 as of July 24, 2005, **70A.15.2210**, or **70A.15.2260**. The exemption for fugitive dust provided in subsection (1) of this section applies to cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season; except that the cattle feedlots must comply with applicable requirements included in the approved state implementation plan for air quality as of July 23, 2017; and except if an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standard for particulate matter, additional control measures may be required for cattle feedlots as part of a state implementation plan's control strategy for that area and as necessary to ensure the area returns to attainment.

FOTC Comment: WAC 173-400-100 requires registration of

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

CAFO dairies are de facto animal feedlots, yet YRCAA does not regulate them. There are over 500 acres of manure compost in the LYV, yet YRCAA does not regulate these operations.

YRCAA uses the exemption for odor and dust as a reason not to address emissions of ammonia, hydrogen sulfide and volatile organic compounds (VOCs). This is a false interpretation of the statutes.

* * * * *

RCW 70A.15.6200

Legislative declaration—Intent.

The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition.

RCW 70A.15.6210

Definitions.

As used in RCW 70A.15.6200 through 70A.15.6220, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken.

RCW 70A.15.6250

Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature.

The department of ecology, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

- (1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;
- (2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and
- (3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section

FOTC Comment: The pH of a 0.1 M solution of ammonium nitrate in water is 5.43. Ammonium nitrate contributes to acid rain.

Since 1993 Ecology has performed samplings of Washington waters for pH. WRIA 37 contains the Lower Yakima River. Ecology has recorded 25 samples from WRIA 37 with sufficient data to make determinations.

- 9 of the 25 samples (36%) were classified as “Waters of Concern”.
- 11 of the 25 (44%) samples were classified as “Impaired”.
- 5 of the 25 samples (20%) were classified as “meets the standard”.

See Ecology’s Washington State Water Assessment at <https://apps.ecology.wa.gov/ApprovedWQA/ApprovedPages/ApprovedSearchResults.aspx>

Citizen Complaints

Excerpts from YRCAA Board Meeting Summaries

March 2012: Larry Fendell (Citizen) states, *I brought a few pictures showing the smell problems we have. They push up berms. Make lagoons wherever, usually on property lines. They spread it out to dry right next to people's homes. This is a rig spreading the manure out. This is what it looks like after they harrow it. They haul it everywhere. This is Roza Drive in one drive. How do you incorporate manure on asphalt? One of the pictures they have dead calves laying out there. Here are the Big Guns. This is brown water. There supposed to be cutting that with something. Dr. Pius has said this is the thing they can do. Aerating it through irrigation. Here is a barn that hasn't been cleaned.*

Jan Whitefoot (Citizen) states, *On Monday the day the wind was blowing, 40 miles or more. Helen and I invited a reporter to go with us on a poop tour. You couldn't hardly see the road. In the Best Management Plan, it said they wouldn't do anything in the wind. We saw truck after truck applying manure. They are not following it now. What will make them follow the plan?*

YRCAA Board Chairman Tom Gasseling states, *The problem with the pictures is you cannot tell what they are. They could be dust blowing or anything. . . . I'm getting real tired being told that I'm sneaky, deceitful, devious. . . . I 'm getting real tired of being called devious. . . . Don't come here every month and being told I'm some useless piece of crap. I personally, I'm fed up with it. This has got to stop. I'm not going to tolerate it anymore.*

Jan Whitefoot: *You were bad mouthing me in an email.*

Gasseling: *I meant what I said.*

April 2012: Doug Moore (Citizen) says, *There is a lagoon with 3 million gallons of raw manure 187 feet from my house. I've filed complaints against it. They bulldozed down cat tails because that was a wetland. One time the gate broke and the whole 3 million gallons drained into Black Rock Creek. Nothing has ever been done. I'm so mad I have just about given up.*

May 2012: Helen Reddout (Citizen) tells the YRCAA Board of Directors that the April YRCAA Board Minutes said she had been invited to be on the Dairy Work Group. In fact, she was never invited. Ms. Reddout stated, "If I had been invited, I would have been there with bells on."

Director Pruitt clarified that he had intended to invite her but never got the opportunity.

Ms. Reddout added that she would still like to be on the work group. That never happened.

December 2012: Larry Fendell (Citizen) Community meetings. I've asked a question for three meetings now. No answer. Why are dairies allowed to spread manure during burn bans? The reason we bring things to the board is when we bring things to the agency nothing happens. Need to have concerns recorded. For the last three months we have asked about ammonia. We have to

stop using wood stoves and fireplaces. We go out and they are spreading manure and the air is bad. I want the board to know that there is a problem.

Director Gary Pruitt: “You’re so full of crap.”

January 2013: Larry Fendell (Citizen) quotes from a TV interview of Mr. Pruitt, “Frankly the money just isn’t there. Testing wouldn’t produce credible evidence of anything. It would cost tens of millions of dollars to set up testing in the lower valley.” Does that statement bother anyone?

November 2014: Jean Mendoza explained to the YRCAA Board that Dr. Nicole Embertson gave them mis-information in her Literature Review on the Spraying of Manure During Inversions. Among other points:

- Referenced 40 pieces of research. Only 13 pieces looked at community health. 12 of the 13 found significant health impacts related to public health.
- Incorrect statement of a chemical reaction
- Misstated statistics regarding the impact of ammonia on PM 2.5
- Stated that manure is not typically applied during winter months. This is not true in Yakima County.
- Misquoted the John Hopkins study and said it addressed pollutants carried by winds. It does not and the lead author said that Dr. Embertson’s statements do not represent her work.
- Ignored other studies done in the Yakima Valley.

Dr. Embertson responded in writing that she did not have to justify her work. The YRCAA Board took no action.

March 2015: Jan Whitefoot asks the YRCAA to investigate solar panels as a way of reducing air pollution from wood smoke. No response.

April 2015: The contract for Smoke School was given to a newly retired YRCAA employee. The contract was broken into two parts, each < \$25,000 so that there was no requirement for open bidding.

August 2015: Jan Whitefoot asks why the number of cows is not listed on the AQMP Dairy Air Score Cards. *If you don’t know how many cows, how do you know how much ammonia or hydrogen sulfide?*

Director Pruitt replies, *There is no reason to look at cow numbers.*

September 2015: Request from FOTC that YRCAA address Global Warming. FOTC provides information on reactive nitrogen in the atmosphere. Director Pruitt replies that 80% of the atmosphere is nitrogen and it is not a pollutant.

Jean Mendoza offers to volunteer her time to help YRCAA with evaluation of Global Warming in the Yakima Valley. Not accepted.

December 2016:

Steve George from the Yakima Dairy Federation states: *The government is providing services to two chronic dairy complainers who have demonstrated that their complaints are frivolous, being used as harassment, and, according to agency staff that I have had conversations with, wasting public resources.*

Jim Dyjak (Citizen): *I'm going to rebut that. He just gave you a false statement, that all the complaints have never been verified at my house. Do you know why? Not one person from this agency in sixteen years has ever been to my house. Not one. When you report something on Monday and they might come out a week later, it ain't going to be there. The study he cites was done inside the barns. Dr. Pius is using an assumption that the drift is less. I resent being told my complaints are wrong when no (investigators) have ever been to my house.*

Larry Fendell (Citizen): *All the testing has been done on dairies. The neighbors really don't care what is on the dairy. We care about what comes across the fenceline. We care about all the fields where they apply manure, don't disc it in, make two or three applications. The neighbors get to smell it for a month. So, let's be fair about this. He (Steve George) is a paid person who gives you half-truths. Too many of us live with this. We want to know what is coming over the fence. We want it reported.*

Regarding an ammonia study, Steve George tells the YRCAA Board of Directors that, *Although the research reveals small amounts of ammonia emissions from farms, these emissions are insignificant and do not pose an overall risk to human health.*

March 2017: FOTC asks Dr. Jones to recuse himself from voting on the ammonia project.

April 2017: Mayor Childress votes to reject the proposed ammonia study. If they find something, then they will have to address a problem. Commissioner Anderson votes in favor of the ammonia project. Councilwoman Mendez, and Dr. Jones vote against the project.

May 2017: Jean Mendoza & Sandy Braden, after jumping through many hoops, arrived at the YRCAA offices for a scheduled community forum. Although the Director was in his office, he refused to have a meeting because his staff was not present. They were told that the meeting was cancelled, and they should come back in August.

Public testimony regarding the Agriculture Advisory Committee: The previous month's report sounded like everything was going well. Attendees disagree. YRCAA shared no data at the meeting. No data from the AQMP. The only evidence at the meeting was testimony from two people who live close to dairies. In one home a woman's son came to her and said he could not breathe.

The last report on the Air Quality Management Policy for Dairies was done in 2014. Beginning in 2015 dairies with a grade of D were supposed to be inspected every 6 months and dairies with a grade of C were supposed to be visited yearly. This was not done.

September 2017: Sandy Braden attempts to inform the YRCAA Board regarding the WA State Attorney General's opinion on conflict of interest. The Acting Chair cuts her off:

Acting Chair Norm Childress – *that item is not on today’s agenda.*

Director Hurley – *You are absolutely correct. that item is not on the agenda. Her characterization is incorrect. It is wrong. It’s off. There were three opinions.*

Braden - *Which were two maybes and a no*

Hurley – *No, it is pretty clear. Much more . . .*

Braden is forced to sit down.

After another citizen, who was invited by a County Commissioner to the meeting, is allowed to speak Ms. Braden is allowed to comment.

Jean Mendoza states that she tried and failed to get an item on the agenda. She asks how to do this. The Acting Board Chair and the YRCAA Director do not know the answer.

Francisco Maltos asks the YRCAA to address Global Warming. There is no response.

October 2017: Director Hurley incorrectly tells the YRCAA board that prohibiting spraying of manure during inversions would conflict with RCW 90.64 the Dairy Nutrient Management Act and RCW 90.48 the Water Pollution Control Act. Director Hurley incorrectly tells the Board that there is no evidence that spraying manure into the air during inversions has a negative impact on public health.

June 2018: FOTC shares research regarding “manure irrigation”. A permit is required in Wisconsin. They looked only at bacterial infections. Three different bacteria – Salmonella, Campylobacteria and E-coli 0.157. They found an increase in infections when manure is sprayed and spread. In Wisconsin manure spraying is prohibited within 500 feet of a home. They recommended that manure irrigation should not take place during inversions. YRCAA takes no action.

August 2018: Study Session to Review the AQMP

Director Hurley introduces Laurie Crowe from the South Yakima Conservation District as an expert on nutrient management. He suggests that she has a doctorate. In fact, Ms. Crowe does not even have a bachelor’s degree.

Ms. Crowe states, *Most eastside producers are doing a really good job.* This is untrue. One of the largest producers has applied manure to crops at up to seven times agronomic rates.

October 2018: Board votes to rescind the AQMP for dairies. Dr. Jones votes.

March 2019: Jean Mendoza (Citizen): *Am I allowed to talk about the study session?* Previously was a member of the AG task force and disagreed with Director Hurley’s summary of the meeting. Asked to be put on the next agenda to make corrections at the next meeting. Was not placed on the agenda. Emailed each of the board members. Asked them to let her know if they received the emails and there were no replies.

Sandy Braden (Citizen): Clarification of the type of burn permits and enforcement methods if an inspection officer determines that the permit is not the correct one. Initially talked to Director Hurley at a community forum. Relates a case. Appears that someone used an incorrect permit for land clearing and there were no consequences.

February 2020:

Sandy Braden (Citizen): Question for Director Hurley. 20 – 25 acres off of Washington and 64th due north of Ahtanum View Correction area. It appears they have taken out the orchard and there are house size piles of removed trees ready for burning. Appears to require a land clearing permit. There are restrictions, including population limitations.

Director Hurley: It is not land clearing so the restrictions for land clearing do not apply. Has visited and there have been approved burns because it is not land clearing. It is inside the UGA. Land clearing and residential are prohibited within the UGA. Ag burning within a UGA is permissible and permits have been permitted previously. Aware of citizen concerns on the internet. Will have a meeting with the orchardists to resolve issues. Must let stuff dry for at least 30 days before burning.

What type of permit?

Agriculture.

So, you are saying that land will be re-planted with something?

Yes

Ms. Braden later researched the property and learned that it was not zoned agricultural. Instead, it had been zoned as a Small Convenience Center District in 2008. Mr. Hurley mis-informed both Sandy Braden and the YRCAA Board of Directors.

December 2020: At a YRCAA Community Forum Director Hurley told citizens that the graphs on Ecology's air quality website do not show actual concentrations of particulate matter. When citizens asked him to explain what the graphs show, he said that he could not and advised us that we would have to get that information from Ecology. FOTC sent questions to Ecology and received answers four months later. It is disturbing that YRCAA does not understand these processes well enough to explain them to lay people. It is disturbing that citizens must use public records requests, study the technological processes on our own and then endure disparagement from the experts at YRCAA because we are not experts in air quality. Citizens should not have to acquire degrees in engineering and the law in order to compel the YRCAA to protect our appeal for clean air.

See Attachment B for a more comprehensive summary of YRCAA Board Meetings

Example of YRCAA Investigations of air quality complaints in the LYV

July 19, 2019 (Friday) at 7:35 PM a resident left a voice mail message with YRCAA that was picked up on Monday, July 22, 2019 at 3:00 PM.

CP says there's "Ambient cow pen dirt from Hornby west to Waneta and further. Particle dirt filling the air around us can be seen on video with lights. It smells like urine but you don't care about that."

According to the report the complaint received a Response Level 3 and an investigation was not begun until eleven days later on July 30, 2019 at 3:00 PM.

July 21, 2019 (Sunday) at 11:30 PM the same resident left a message that was picked up on Monday, July 22, 2019 at 3:00 PM.

CP says that "Foul cloud of ambient open pen dirt and lagoon storage. Strong smell of ammonia/urine permitting our property and home. Gagging, sinus headache and inability to breathe even with high power filtering system."

Although the resident clearly states health complaints that are impacting her, the complaint is assigned a Response Level 3 that implies no health risks. An investigation was begun eleven days later, on July 30, 2019 at 3:00 PM.

July 22, 2019 at 11:15 PM the complainant left another message:

CP says that "The ambient pen dirt air was sucked into her home and her sons through open windows around 11:00 PM when she was cooling her house down with the evening air. Horrible dirty feeling ambient pen dirt willed with horrid ammonia and manure AND

The YRCAA recorded the message the next morning but took no action. Initially the assignment was Response Level 3.

July 24, 2019 at 9:35 AM the complainant called again, this time in the morning, but the message was not picked up until 22.5 hours later.

After wonderful rain and thunder showers last night no smells! Wonderful sweet clean air! But tonight, Wednesday, 7/24/2019 9:25, windows open screen doors letting in fresh air until this very moment! Boom ! Ambient pen ammonia stench coming in.

YRCAA assigned a Response Level 4 that signifies no previous complaints. There was no investigation.

July 25, 2019 at 8:00 AM the complainant called and YRCAA documented the call 45 minutes later.

"Awoke to horrid smell of dead cow composting. Velduis Klompe CAFOs is composting turning dead cow compost and it's gross. The ambient air is bringing this cloud of stench to my property this morning! Go to sleep with smells of urine wake up to manure

The YRCAA did not investigate and made a Response Level 3 assignment to the complaint.

July 25, 2019 at 8:27 AM the complainant called again and the YRCAA recorded the call one hour later.

"Kelsey this has to stop! More and more ambient air full of CAFOs stench. I've written several complaints and no response from yrcaa! Come on you guys! Do your job. Kathy Rogers"

The YRCAA did not investigate and made a Response Level 4 assignment to the complaint.

July 25, 2019 at 11:15 PM the complainant called and left a message that was picked up the next morning at 9:00 AM.

CP says "Cool nights are once more and very appreciated. However, opening our windows and screened doors is a negative. The ambient pen dirt full of odor from the cafo open pens surrounding our home and the neighbors is restricting the enjoyment of fresh

The YRCAA did not investigate and made a Response Level 3 assignment to the complaint.

July 26, 2019 (Friday) at 1:20 AM the complainant left an email message. YRCAA had all day Friday to pick up but they did not record the message until Monday morning on July 29, 2019. Not being able to sleep due to odor qualifies as a health concern but YRCAA made a Response Level 3 assignment and did not investigate.

CP says "Awakened by stench form ambient open pen dirt infiltrating our home! Cool night, windows open, sleeping well, then BOOM, I can't sleep because I'm breathing in this heavy dirt, band like dust in my house. Our large Austin Air filters is always

July 29, 2019 with no time recorded the complainant left an email message that was picked up the next day at 9:55 AM.

CP says "Kelsey, once more Klompe CAFO is composting and the ambient dirt from that is just nasty at my home. The wind was blowing from the east as well. I believe they've been told not to compost in the wind. Kelsey I have photos! This needs to be handled

The YRCAA initiated an "investigation" on July 30, 2019 at 1 PM. This was their investigation:

Dairies and CAFOs in the vicinity of Hornby, Stove, Braden and Tear Roads were contacted and made aware of the complaints

This was the final response for all of the above odor complaints during this episode of foul air. YRCAA is well aware that FOTC research in this area found average ammonia levels that exceed the Minimum Risk Level (MRL) for chronic ammonia exposure. The YRCAA cannot

state that composting dead cows next to family homes is an acceptable agricultural practice. YRCAA performed no onsite investigations and took no odor measurements. Based on the evidence no one can state how high the odor or ammonia levels were during this week or what the risks were to complainant health. See Attachment C for more information.

Riverview Dairy: In March of this year seven citizens who live next to the Riverview Dairy signed a petition asking agencies, including the YRCAA, to address pollution from that dairy. The petitioners stated:

Respected Officials:

These are the facts:

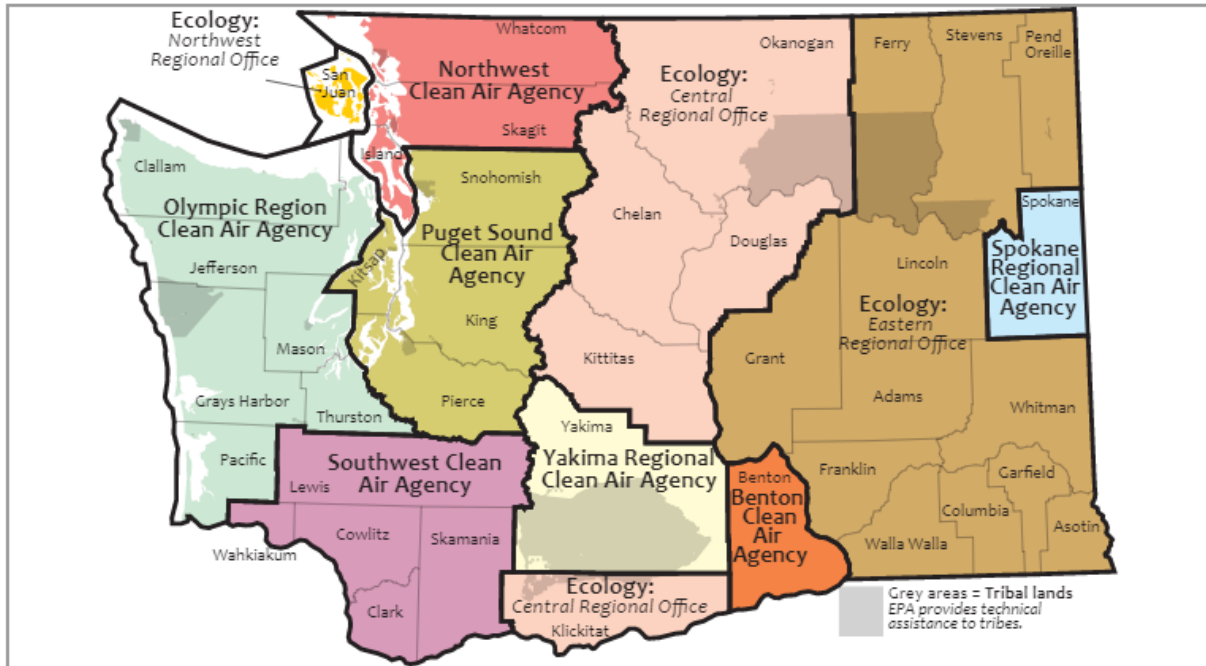
- *Rural county roads in the Lower Yakima Valley (LYV), for example Vance Road north of Mabton, are frequently covered with manure track out from trucks that transport manure from dairies to farmland.*
- *People in the LYV cannot walk to their mailboxes, cannot jog, without stepping in manure.*
- *Large trucks and heavy equipment on rural roads break down the edges of the pavement and create potholes.*
- *When dairies do not address the problem, flies from manure piles proliferate and make it impossible for rural neighbors to enjoy the outdoors, to barbecue or entertain family and friends.*
- *Dust from pens, corrals and compost areas are a major problem for rural neighbors, perhaps the biggest problem. We know that dust and fine particulate matter harm our health and reduce our life spans. There are actions that dairies can take to reduce dust, but they often do not take them. The Yakima Regional Clean Air Agency does nothing to address air pollution from dairies.*

For these reasons, we the undersigned, ask the Yakima County Commissioners to:

- *Estimate the cost to taxpayers for maintenance of rural county roads that experience heavy use by dairy trucks and heavy equipment.*
- *Assess whether users that damage the roads adequately compensate the county.*
- *Provide a hotline so people in the LYV can report manure spills to people who can compel quick clean up.*
- *Encourage Ecology and WSDA to enforce the anti-spill provisions of Nutrient Management Plans.*
- *Require the Yakima Health District to actively address the problem of flies from dairies.*
- *Require the Yakima Regional Clean Air Agency to respond to citizen complaints; to follow their own guidelines for complaint investigation, measure air quality near dairies, and appropriately issue citations.*

The YRCAA response was defensive and self-serving, with no acknowledgement of specific requests and no promise of relief. See Attachments T, U, & V.

Parts of Washington State where Ecology manages air quality.



From <https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Clean-air-agencies>

Air quality in large parts of Eastern Washington is managed by the WA State Department of Ecology.

Ecology’s Eastern Regional Office manages air in Ferry, Stevens, Pend Oreille, Lincoln, Grant, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield and Asotin Counties.

Ecology’s Central Regional Office manages air in Okanogan, Chelan, Douglas, Kittitas, and Klickitat Counties.

See the chart below for Clean Air Agency Demographics

Clean Air Agency	# Counties	Total Pop.	Land Area in sq. mi.	Employees	People per FTE	Sq. Mi. per FTE	People per Sq. Mi.
NW CAA	Whatcom, Skagit, Island, San Juan = 4	446,087	4,220	24	18,587	176	105.7
Puget Sound CAA	Snohomish, King, Pierce = 3	3,871,323	5,766	25	154,853	231	671.4
Olympic CAA	Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific = 6	541,946	8,058	16	33,872	504	67.3
SW CAA	Lewis, Wahkiakum, Clark, Skamania = 4	674,196	6,091	17	39,659	358	110.7
Yakima CAA	Yakima = 1	249,697	4,295	10	24,970	430	58.1
Benton CAA	Benton = 1	197,518	1,700	4	49,360	425	116.2
Spokane CAA	Spokane = 1	505,505	1,764	21	24,072	84	286.6

Thank you for considering our request that Yakima County dissolve the Yakima Regional Clean Air Agency and ask the WA State Dept. of Ecology to manage air quality in Yakima County.

Sincerely,

The Friends of Toppenish Creek & Others

Attachments

- A: WSU Dairy Workshop – Les Ornelas Statements
- B: Citizen Testimony at YRCAA Board Meetings
- C: Descriptive Analysis of YRCAA response to citizen complaints
- D: Public Comments on Air Quality Management Program Pilot Project (begin on page 24)
- E: FOTC Ammonia study in the LYV
- F: Literature review of health impacts from spraying manure commissioned by the WA Dairy Commission
- G: FOTC response to Dairy Commission Literature Review
- H: Letter to Ecology Director Bellon, January 2019
- I: Letter to Ecology Director Bellon, March 2019
- J: Timeline of YRCAA actions to address air pollution
- K: Partial list of misinterpreted rules and regulations
- L: Dr. Steve Jones statement on environmental justice
- M: WA State County Emissions Inventory 2011
- N: WA State County Emissions Inventory 2017
- O: Agency’s statement on composting dead cows
- P: WSU study of air emissions from a LYV dairy for the National Air Emissions Monitoring Study (NAEMS)
- Q: Yakima Air Winter Nitrate Study
- R: Research related to health impacts from CAFOs
- S: FOTC description of ammonia emissions in WA State 2016
- T: Letter and petition from neighbors of Riverview Dairy
- U: YRCAA reply to Riverview petition
- V: FOTC response to YRCAA reply re Riverview
- W: YRCAA Fact Sheet for New Source Review (NSR)

Washington State Pollution Control Hearings Board

PCHB No. 19-060

Friends of Toppenish Creek versus Washington State Department of Ecology and the Lower Yakima Valley Groundwater Management Area Advisory Committee

Friends of Toppenish Creek Petition for Reconsideration

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I. Introduction

On March 19, 2021 the WA State Pollution Control Hearings Board (PCHB) ruled against the Friends of Toppenish Creek (FOTC) on all issues in PCHB Case No. 19-060. This is a petition for reconsideration of that ruling, authorized by WAC 371-080-550.

Although the issues are complex, FOTC will focus this request on two main problems with the PCHB decision. We believe the PCHB would have ruled differently with better information. We apologize for our ineptitude in presenting evidence to the board in September 2020.

The two issues we will pursue are:

1. In September 2020, after 14 months, and again in March 2020, after 18 months, the LYV GWMA Implementation Executive Committee had not fulfilled the three conditions for certification in Ecology's July 2019 Letter of Certification. *Ex. 1*
2. Ecology's expert witness, David Bowen, mis-informed and mis-led the PCHB when he defended a decision by unnamed persons to ignore nitrogen leaching from Underground Injection Control Wells (UICs), Bio-solids, and Municipal or Industrial Wastewater. *Ex. 2*. Because the PCHB trusted Mr. Bowen's testimony to be honest, the PCHB ruled against FOTC on Issue 4 in summary judgement on April 7, 2020. *Ex. 2*. This led to exclusion of evidence regarding a. the accuracy of GWMA research, and b. a comprehensive review of all nitrate sources during the September 2020 hearing.

II. Issue I

Has the LYV GWMA Implementation Executive Team followed through on Ecology's three requirements for LYV GWMA Program certification?

Facts & Arguments:

A. The Certification Letter, *Ex. 1*, required the Executive Team to name a lead entity and develop a Scope of Work to implement the goals and recommendations of the LYV GWMA Program.

The Executive Team met twice in 2019 and has not met since then. *Bowen testimony*. The South Yakima Conservation District (SYCD) agreed to serve as the lead entity for implementation. *Bowen testimony; Ex. 2*. SYCD is a small agency, currently with a staff of one plus clerical support. *Ex. 4, Mendoza Declaration*. It is impossible for one man to perform all his usual duties for the SYCD and also lead the Executive Team. To date there is no published Scope of Work.

B. The Certification Letter, *Ex. 1*, required the Executive Team to submit a prioritized implementation schedule to Ecology on or before May 31, 2020.

According to Ecology testimony at the September 2020 PCHB hearing, *Bowen testimony*, this has not been accomplished. Emails obtained by public records requests suggest that the SYCD created an informal priority list that was not approved by the Implementation Executive team, because that group had ceased meeting. That list omits provision of safe drinking water to impacted residents. *Exhibit 5, page 2/9*.

C. The Certification Letter, *Ex. 1*, required the Executive Team to seek funding and provide safe drinking water to the people in the LYV whose wells have nitrate levels above safety standards.

The Executive Implementation Team has not delivered safe drinking water to impacted LYV residents. According to David Bowen, *Bowen testimony*, he was working on this problem in September 2020. Mr. Bowen has since moved on to another division at Ecology. This is alarming since Ecology has known about unsafe drinking water since 2002 and the LYV GWMA had a stated goal of providing safe drinking water eight years ago in 2012 when meetings began. Danger to public health was the prime motivation for creation of a GWMA in 2012, and this goal has been steadily and continuously ignored by officials. Why do they disdain us so much?

III. Issue

Did Ecology's David Bowen mislead the PCHB when he testified that, "Municipal and industrial wastewater discharges, which are regulated by NPDES permits that require compliance with water quality standards, were not considered a significant source. Similarly, land application of biosolids and underground injection wells (UICs) must comply with water quality standards. Thus, these sources were also considered unlikely to be significant contributors to nitrates in groundwater."

FOTC postulates that this misinformation caused the PCHB to rule, "The Board concludes that as a matter of law, the Program has sufficiently identified and analyzed the sources of nitrate in the groundwater. As a result, Ecology is entitled to summary judgment as a non-moving party and Issue 4 is dismissed."

The Law

According to RCW 9A.72.010 (1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding.

Facts & Arguments

1. Mr. Bowen mis-informed in his Declaration in Support of Cross Motion for Summary Judgement *Exhibit 3*, when he said that "The (LYV GWMA Advisory) Committee met approximately 120 times over the course of 7 years." In fact, the GWAC only met 62 times over the course of 7 years. *Ex. 4, Mendoza Declaration*
2. In 2015, the WSDA signed an agreement with Yakima County to deliver a Nitrogen Loading Assessment (NLA) for the LYV according to an agreed upon Scope of Work. *Ex. 5, page 458/1803*. According to WSDA, "The Nitrogen Loading Assessment is a mass-balance model." *Ex. 5, page 460/1803*
3. The WSDA and Yakima County did not deliver an NLA. Instead, the agencies delivered a Nitrogen Availability Assessment (NAA) that a. was not a mass balance study, and b. did not evaluate the following sources of nitrogen contamination of the groundwater – compost operations, municipal wastewater treatment plants, industrial wastewater treatment operations, application of biosolids to cropland, underground injection wells, abandoned wells, runoff from agricultural operations, stormwater runoff, and accidental spills/cleanups. *Ex. 6, Nitrogen Availability Assessment*

4. The LYV GWMA Advisory Committee (GWAC) never approved the NAA due to concerns about the accuracy of the data. *Ex. 4, Mendoza Declaration*
5. Although the technical committee may or may not have decided to remove these sources from consideration, the technical committee never informed the GWAC of this plan. Ecology has provided no documentation of discussions within the technical committee regarding this decision. *Ex. 4, Mendoza Declaration*
6. Yakima County promised the GWAC in public meetings that there would be an assessment of nitrates from bio-solids. The county did not follow through on this promise. Here are excerpts from GWAC Meeting Summaries.
 - a. April 20, 2017: *Vern (Vern Redifer, Director of Public Services for Yakima County) added that Peter Severtsen of the Department of Ecology is preparing a separate analysis of bio-solids for the NAA because none had been included earlier.*
 - b. May 18, 2017: *The group had learned through the comments made by members that biosolids and land application of wastewater (that has nitrogen loading) had not been included in the Nitrogen Availability Assessment (NAA). The Department of Ecology is working on a biosolid piece and the Port of Sunnyside is working on land application of wastewater piece for inclusion in the NAA.*
 - c. November 2, 2017: *Vern stated that an analysis of biosolids would be included in the next draft of the NAA. The lack of analysis on compost was also raised. Gary (Gary*

Bahr, WSDA representative to the GWMA and NAA author) stated that this was being looked into by WSDA.

7. A 2012 EPA estimate of nitrogen sources in Yakima County found that application of biosolids to cropland, almost entirely within the LYV, resulted in an average of 186,423 lbs. of nitrogen to the land surface every year from 2005 to 2009 with a maximum of 419,174 lbs. in 2007. *Exhibit 7, page 14.*

Table 3: Amount of Biosolids Utilized in Yakima County

	2005	2006	2007	2008	2009
Total Lbs Nitrogen/year applied	58,305	105,669	419,174	175,300	173,667
# acres biosolids applied	346	831	2994	1982	1381
# fields biosolids applied	11	28	63	41	59

8. Mr. Bowen stated in his Declaration in Support of Cross Motion for Summary Judgement, “Municipal and industrial wastewater discharges, which are regulated by NPDES permits that require compliance with water quality standards, were not considered a significant source.”
9. There are monitoring wells on LYV dairies that have NPDES permits, with nitrate readings over ten times the safety standard of 10 mg/L. *Exhibit 10, pages 3/13 & 12/13.* Possession of an NPDES permit does not ensure that no leaching takes place.
10. The Port of Sunnyside has an NPDES permit. Port of Sunnyside reports show high levels of nitrates in groundwater monitoring wells beneath that facility. David Bowen was aware of these readings. He signed the Port of Sunnyside NPDES permit in 2019. *Ex. 8*

- a. The Port of Sunnyside is authorized to apply wastewater to 398 acres of land via spray irrigation. *Exhibit 8, page 9/61*
 - b. The Port of Sunnyside is authorized to apply up to 432 lbs. of nitrogen per acre per year or a total of 172,000 lbs. of nitrogen per year. *Exhibit 8, page 10/61*
 - c. From 2008 to 2013 Port of Sunnyside mid-field monitoring well 7 had a mean nitrate concentration of 18.4 mg/L with a maximum reading of 38.7 mg/L. *Exhibit 9, page 26/69*
 - d. From 2008 to 2013 Port of Sunnyside mid-field monitoring well 8 had a mean nitrate concentration of 34.1 mg/L with a maximum reading of 176 mg/L. *Exhibit 9, page 26/69*
 - e. According to Ecology's Water Quality PARIS data base, there have been 30 enforcement actions against the Port of Sunnyside since 2015.
11. The LYV GWMA Program lists the following sources of nitrogen as potentially available for transport to groundwater:

Table 4 – Estimated nitrogen available per acre from all sources at the low, medium, and high ranges

Source		Area (acres)	Low Scenario (lb/ac/yr)	Medium Scenario (lb/ac/yr)	High Scenario (lb/ac/yr)
Irrigated Agriculture		85,775	0-58	0-148	0-284
CAFO	Pens	2,096	67	480	892
	Lagoons	210	1,354	7,448	13,542
	Residential On-site sewage	398	223	403	662
	Large On-site sewage	3	195	209	225
	Commercial On-site sewage	30	163	173	183
	Residential fertilizer	4,381	4.7	11.7	18.6
RCIM	Small scale farms	2,096	4.3	10.7	17.1
Atmospheric deposition		87,082	1.53	2.05	6.15

This estimates Residential Fertilizer application at 20,000 to 84,000 lbs. nitrogen per year, and Small-Scale Farms application at 8,000 to 36,000 lbs. nitrogen per year.

12. The LYV GWMA Program included residential fertilizer and small-scale farms as significant sources but excluded biosolids and wastewater treatment spray fields, both with higher annual applications of nitrate. This does not make sense.
13. Ecology was aware of a clean-up action plan at the Bee-Jay Scales site in Sunnyside, under Washington's Model Toxics Control Act Regulations. *Exhibit 11*. Ecology never brought this spill to the attention of the GWAC. Spills and hazardous waste sites were not assessed in the LYV GWMA Program or in the GWMA NAA, as recommended by WAC 173-100-100 (2).
14. NPDES permits do not prohibit the discharge of nitrates to groundwater. NPDES permits simply regulate how much nitrate can be discharged. There are NPDES permits for food processing and other commercial operations in the LYV that authorize discharge of nitrogen and other pollutants. According to Ecology's Water Quality Permitting and Reporting Information System some of these businesses are: Con Ag Packing & Storage, Windy Point Packing Co., the USDA Research Station, Del Monte Plant 122, and the City of Grandview POTW. *Ex. 4 Mendoza Declaration*
15. The NAA simply did not address leaching from abandoned wells as recommended by WAC 173-100-100 (2), even though Ecology's expert on abandoned wells, Avery Richardson, spoke with three of the GWMA Work Groups – RCIM, Regulatory and EPO; and the

GWMA organized a meeting specifically to address abandoned wells. *Ex. 4, Mendoza Declaration*

IV. Conclusion

The Friends of Toppenish Creek make this petition to the WA State Pollution Control Hearings Board on behalf of the people who live in the Lower Yakima Valley. For the most part we are honest hardworking citizens and immigrant workers who do our best to survive amid agricultural chemicals and pollution. Safe drinking water is essential for our survival and we look to state and local government to protect this resource.

If our nation's enemies want to learn how to destroy faith in government, they can take lessons from the LYV GWMA. Ten years ago, agencies told the public that the GWMA would address problems with communication, egregious pollution, and unsafe drinking water. The GWMA failed to do so but officials will not admit this.

Despite vague promises, and after ten years, there is still no government program to provide safe drinking water. Even worse, as we have shown in this petition, the WA State Dept. of Ecology and others downplay the problem and do not acknowledge or address the real and imminent danger to people's health.

PCHB Case No. 19-060 gives the PCHB an opportunity to defend honesty in government. Please do so, for the people who live in Washington State today and for the children to come.

Respectfully submitted this 27th day of March 2021.

s/ *Jean Mendoza*

Jean Mendoza

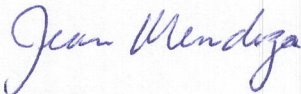
Executive Director Friends of Toppenish Creek
3142 Signal Peak Road
White Swan, WA 98952

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March 2021, I served one true and correct copy of the foregoing on the following individuals using e-mail, as stipulated by the parties in the above-captioned matter:

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s/ 

Jean Mendoza
Executive Director Friends of Toppenish Creek
3142 Signal Peak Road
White Swan, WA 98952

Exhibits

Exhibit 1. Ecology Letter Certifying the LYV GWMA Program, July 29, 2019. Available at [DOE-Certification-Letter \(yakimacounty.us\)](#)

Exhibit 2. PCHB Ruling on Motion for Summary Judgement. Attached

Exhibit 3. Declaration of David Bowen in Support of Ecology's Cross Motion for Summary Judgement, January 29, 2020. Attached

Exhibit 4. Mendoza Declaration, March 26, 2021. Attached

Exhibit 5. LYV GWMA Program, Volume IV, Available at [GWMA Volume IV - Member Contributions \(yakimacounty.us\)](#)

Exhibit 6. LYV GWMA Nitrogen Availability Assessment, June 2018, Available at [Nitrogen Availability Assessment | Yakima County, WA](#)

Exhibit 7. EPA Nitrogen Screening Analysis, June 2012. Attached

Exhibit 8. Port of Sunnyside NPDES permit. Attached

Exhibit 9. Port of Sunnyside Fact Sheet. Attached

Exhibit 10. EPA Yakima Dairies Consent Order Update – 2014. Available at <https://www.epa.gov/sites/production/files/2017-12/documents/lower-yakima-valley-groundwater-fact-sheet-december-2014.pdf>

Exhibit 11. Bee Jay Scales Clean Up Action Plan. March 8, 2013. Attached.