



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

WATER
DIVISION

August 17, 2022

Mr. Vince McGowan
Manager, Water Quality Program
Washington State Department of Ecology
PO Box 47696
Olympia, Washington 98504-7696

Re: U.S. Environmental Protection Agency Comments
Draft – National Pollutant Discharge Elimination System Concentrated Animal Feeding
Operation General Permit

Dear Mr. McGowan:

The U.S. Environmental Protection Agency (EPA) Region 10 appreciates the opportunity to review and comment on the Draft National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) General Permit (draft permit) and commends the Washington Department of Ecology for its work to update this important draft permit. NPDES CAFO general permits protect surface water by regulating the discharge of CAFO's manure, litter, and process wastewater. Our comments focus on the changes that strengthen the draft permit and include recommendations for protecting critical groundwater resources.

In its previous NPDES CAFO general permit, Ecology incorporated the nine minimum elements of a nutrient management plan or the Manure Pollution Prevention Plan (MPPP) plan into the permit. The updated draft permit proposes to require a CAFO owner/operator to include a MPPP with their application for a permit and make it available to the public for review and comment before Ecology issues permit coverage. This change ensues from the July 2021 decision from the Washington State Court of Appeals. EPA also supports this approach, as it is more consistent with federal law (40 CFR §§ 122.23(h), 122.42(e)(1) and provides added transparency.

EPA also supports the approach proposed for Field Discharge Management practices (S4.N). Using best management practices (BMPs) to control and limit runoff from land application areas is essential to protect surface water from the potential impacts of the land application of manure, litter, or process wastewater. We note that the draft permit proposes to include an additional element that would allow for alternative management of riparian management zones. Under 40 CFR part, 122.42(e)(1)(vi), large CAFOs, at a minimum, must implement a 100-foot setback or 35-foot vegetated buffer or demonstrate that setback or vegetated buffer is unnecessary due to the implementation of alternative BMPs. And Appendix A proposes to include Chapter 12 of the Voluntary Clean Water Guidance for Agriculture: Riparian Areas. While that chapter has yet to be completed, it is scheduled to be completed by the end of 2022. This chapter will provide additional options for permittees in protecting riparian management zones. EPA looks forward to the opportunity to review that chapter when released for public comment.

EPA appreciates that the draft permit includes specific elements related to groundwater monitoring, including requirements to conduct deep soil monitoring to assess whether groundwater impact is occurring and the inclusion of procedures to design and install groundwater monitoring wells. As we

know from more than a decade of work in the Yakima Valley, as well as in other communities in Region 10, when groundwater is a source of drinking water, the risks from nitrate contamination pose a very significant public health concern to residents, often in small, disadvantaged communities with limited ability to secure alternative drinking water supplies. In the Yakima Valley and elsewhere, the EPA, USDA, multiple state agencies, county governments, local dairies, and others have spent considerable time and resources to reduce health risks associated with CAFOs' impacts on drinking water. We have identified strategies to better protect community drinking water through that work. These include the location, design, and assessment of manure storage lagoons; the application of manure by third-party recipients at agronomic rates; and groundwater monitoring requirements. EPA encourages both Ecology and the Washington State Department of Agriculture to use its authorities to the fullest extent to protect underground sources of drinking water through additional measures such as:

1. More stringent groundwater monitoring requirements with clear applicability triggers;
2. Manure storage lagoon requirements that ensure large facilities located in moderately high, high, or very high, proposed nitrate priority areas¹ with multiple lagoons, and line those lagoons to prevent leakage to underground drinking water sources; and
3. Requirements that ensure that manure application fields, regardless of ownership, are not a source of nitrate contamination.

Finally, EPA acknowledges that, at this time, only a small percentage of the CAFOs in Washington have sought coverage under the NPDES CAFO General Permit. Regardless of the provisions in the draft permit, Washington's surface and groundwater resources will realize little benefit unless dischargers seek permit coverage and comply with its terms. EPA offers to coordinate with the state to identify unpermitted discharges from CAFOs, encourage permit coverage, and provide assistance in implementing the permit when it is final.

Thank you again for the opportunity to comment on this draft permit. If you, or anyone at Ecology, has questions or concerns regarding the comments in this letter, don't hesitate contact Dan Opalski at (206) 553-1855, or by email at opalski.dan@epa.gov and Nicholas Peak at (208) 378-5765, or by email at peak.nicholas@epa.gov.

Sincerely,

Daniel D. Opalski, Director
Water Division

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division

¹ Washington State Department of Ecology. 2016. Washington Nitrate Prioritization Project. May 2016. Ecology Publication No. 16-10-011.