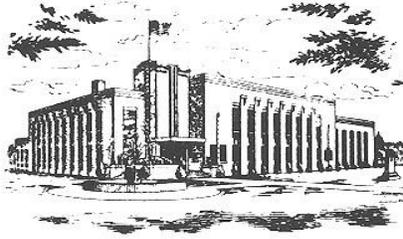


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Mark Burrows  
District No. 2

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## Stevens County Commissioners

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August 17, 2022

To: Chelsea Morris  
Washington Department of Ecology  
P.O. Box 47696  
Olympia, WA 98504-7696

Re: Concentrated Animal Feeding Operation (CAFO) General Permit

I would like to submit the following for the record on behalf of the Board of Stevens County Commissioners and the over 46,000 citizens we represent in Stevens County.

We wish to oppose the General Permit as proposed and ask Ecology take action to redraft major portions of the permit and standards, especially the small CAFO sections.

The permit, associated perimeters, and determination of who needs a permit are arbitrary and capricious. The next four paragraphs explain why.

The definitions of who must be under this general permit are vague and undefined. For example, "Animals are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period." This statement is vague and left undefined. If a person has one duck, or one cow, or one horse within a five-acre parcel is that "confined?" We are required to keep our animals fenced in and will/desire to feed them adequately. This scenario fits the vague definition of "confined," but should hardly meet the definition of being a CAFO. Yet under the permit as written, the owner has already met one of the conditions to being defined as a CAFO and would require following the permit. It would seem logical to set out some animal-to-land base ratio depending on the size of the animals that would better suit this perimeter.

The next perimeter toward meeting the definition of a CAFO is "Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where the animals are confined." I am aware of many horse owners that keep their horses confined in around their barn for winter feeding. They do not plant these area (although they may contain some weeds), so under this definition, they are meeting the second perimeter of being defined as a CAFO. The same would be true for the single cow, or single duck in a penned area for the 45 plus days of winter.

Therefore, you can see by the two examples above how an owner of a single animal would be defined as a CAFO.

The third and final perimeter that must be met to be determined as needing to come under this general permit is that a CAFO is a “significant contributor of pollutants.” This is defined in the permit as “The owner or operator of a small CAFO must apply for coverage under this permit if Ecology has designated the CAFO to be a significant contributor of pollutants to surface water. A small CAFO confines the number of animals listed in Table 2.” This is problematic for two reasons. First, what is considered a “significant” contributor of pollutants. Technically, it I pour distilled water into a stream or pond that is “pollution.” There are no guidelines to let the folks know what that actually means. Second, “if Ecology determines...” This is extremely arbitrary considering that the program and permit lack side boards. Any Ecology employee can go out and make this “determination” without any definitive perimeters. This is truly the definition of “arbitrary and capricious.” One person gets to decide from Ecology and there is no appeal process. The single or small animal owner can be determined to be a CAFO, significant polluter and then be subjected to fines and a very costly permit, essentially putting them out of business and ownership. This should NEVER be the case.

Ecology may say that this is not the intent, and that this scenario (above) would never happen, but as the permit is written, it could happen and would have to be upheld if challenged as this is exactly what the permit states. At a time when we are having record inflation, supply chain issues, and labor shortages, we should be encouraging small farmers and landowners to become self sufficient and productive locally to ensure an adequate food supply.

I realize the permit has existed in this form prior to this current update and my example has not happened is not an excuse to “fix” the permit and provide adequate sideboards and definitions in this current update. Ecology need not perpetuate an ongoing issue of concern.

We also take issue with the unscientific requirement for more and time specific soil testing, as well as more buffers that take land out of production and have no scientific basis on size of buffer or operation size, slope of terrain, or realist site specific criteria. These are all unnecessary costs and timelines. Please eliminate these criteria.

We would suggest a more appropriate, voluntary basis to work with small animal owners (CAFO’s or not). Our conservation districts and NRCS have done a great job in helping landowners of large and small producers be better stewards. The VSP program is a great example of this. And as one of the members of the Statewide Advisory Committee for the VSP, I would encourage Ecology to further embrace those efforts.

As for the small business impact statement, Ecology should be looking for ways to reduce the cost of compliance to all CAFO’s. These added costs are NOT a requirement under the Clean Water Act (CWA). Ecology should stick to what is required to comply with the CWA when writing this permit and not go to extremes “just to make sure” it is going to work. Substantive due process would require you to identify the harm you are trying to prevent in order to regulate, and that the regulation be proportional. Ecology has exceeded that due process standard in this current draft. Please find a balance that allows for all food production without unnecessary regulation and cost.

Thank you for allowing us to comment. Please contact us should you have any questions.

Wes McCart  
Stevens County Commissioner