

Friends of Toppenish Creek, Center for Food  
Safety, Western Environmental Law Center

Please see attached comment from Friends of Toppenish Creek, Center for Food Safety.

**HEADQUARTERS**

120 Shelton McMurphey Blvd.  
Suite 340  
Eugene, OR 97401  
(541) 485-2471  
info@westernlaw.org

**OFFICES**

Oregon  
Washington  
New Mexico  
Montana  
Colorado

**Defending the West****westernlaw.org**

---

**WESTERN ENVIRONMENTAL LAW CENTER**

August 17, 2022

*Via Electronic Submission*

Chelsea Morris  
Permit Writer  
Washington State Department of Ecology  
PO Box 47696  
Olympia, WA 98504-7696

**Re: Follow-up Comment Regarding Environmental Justice and Washington Concentrated Animal Feeding Operations Permitting**

Friends of Toppenish Creek, Center for Food Safety, and Western Environmental Law Center, and their tens of thousands of members, supporters, and volunteers throughout the State of Washington, submit this letter during the Department of Ecology's (Ecology) comment period on the draft Concentrated Animal Feeding Operations (CAFO) General Permit (General Permit) and its related SEPA Determination of Nonsignificance (DNS). This comment is a follow up to our earlier comment regarding environmental justice and community engagement, submitted May 6, 2022.<sup>1</sup>

In this comment, we discuss actions implemented by Ecology in support of the draft General Permit, and urge Ecology to do more. We also express concerns about the failure of the agency to publicize the SEPA process and the public's opportunity to comment on the SEPA DNS.

As we made clear in our initial letter, the agency is not operating in a vacuum. There are extensive resources available to support development of a coherent and effective plan for engagement rather than what still appears to be piecemeal actions, including the Washington State Environmental Justice Task Force Report and the state's Health Disparities Mapping Tool.<sup>2</sup> Indeed, as of July 1, 2022, Ecology has had a draft provisional community engagement plan as mandated by the Healthy Environment for All Act (HEAL Act) in place.<sup>3</sup> Given these resources,

---

<sup>1</sup> We use the terms "impacted" and "affected" to refer to regions and people subject to harms from CAFO discharges ranging from lack of access to healthy drinking water to impacts on fish that are an important source of food. Because there is the tendency for CAFOs to be located in regions where people experience cumulative environmental burdens, these terms overlap with the "vulnerable populations" and "overburdened communities" identified in the HEAL Act. See RCW 70A.02.010.

<sup>2</sup> EJTF Report; Map. We referred to both of these in our initial letter.

<sup>3</sup> Ecology, Draft Provisional Community Engagement Process Guide (July 1, 2022) (Community Engagement Guide).

we are baffled by Ecology’s failure to conduct outreach on the SEPA DNS. We are also disappointed that the agency did not take more steps toward ensuring meaningful engagement by affected community members on this draft permit. We suspect part of the problem is the failure to adequately staff the CAFO program in order to develop the outreach plan for the communities impacted by CAFOs.

We conclude expressing our concern that efforts to meaningfully engage members of impacted communities and the public on the draft permit and the DNS, seems overshadowed by Ecology’s efforts to work with the dairy industry. Ecology’s mandate is to protect the air and waters for current and future generations of all Washingtonians. To realize this mandate, Ecology must act on behalf of the people of the state, not the entities it is tasked with regulating.

In our initial letter, we identified Ecology’s moral and legal mandate to do better in its work with communities impacted by CAFOs. Ecology has acknowledged this moral and legal requirement.<sup>4</sup> The agency’s outreach with respect to the draft General Permit is a start, but is still inadequate. Its near complete failure to provide outreach regarding the SEPA DNS is a grave disappointment.

We know the agency wants to do better. We are happy to support Ecology in these efforts. You may reach out to Jennifer Calkins at [calkins@westernlaw.org](mailto:calkins@westernlaw.org) or 206-607-9867 to talk further with us about these concerns.

## **I. Introduction**

In our initial letter, we described the profoundly negative impacts of CAFOs on the health of workers and the people who live in surrounding communities, including through pollutant discharge into water.<sup>5</sup> We also made clear that when Ecology permits these operations it must actively engage members of communities affected by CAFO discharge in a dialogue regarding (1) the impact of industrial dairy farms on their water, (2) the manner in which the agency implements the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and the state-specific requirements under the State Water Pollution Control Act (WPCA), (3) the scope of the general permit, and (4) the needs and wishes of the members of the local community regarding the regulation of these entities under federal and state clean water law. To do less is unacceptable in any case, but it is particularly disappointing here because the agency asserts its commitment to environmental justice.<sup>6</sup>

---

<sup>4</sup> Most recently in its Community Engagement Guide at 2 (stating “We recognize the critical value of repairing relationships and building trust with these communities.”)

<sup>5</sup> See, e.g., Grout et al., A Review of Potential Public Health Impacts Associated With the Global Dairy Sector, 4 GeoHealth 1 (January 30, 2020); Carrie Hribar, Understanding concentrated animal feeding operations and their impact on communities, National Association of Local Boards of Health at 7, 9 (2020) available at [https://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf).

<sup>6</sup> See e.g. Ecology, Environmental Justice <https://ecology.wa.gov/About-us/Who-we-are/Environmental-Justice> (last visited August 6, 2022).

## II. Background

In January 2021, Ecology began the process of developing a new general permit to implement when the existing permit expired, on March 2, 2022.<sup>7</sup> Ecology held two “listening sessions” early on to gather input from the public.<sup>8</sup> On June 29, 2021, the Washington State Court of Appeals declared the existing permit unlawful.<sup>9</sup> In response to this decision, Ecology held an additional two listening sessions, with Spanish translation, in the fall of 2021.<sup>10</sup>

In May 2022, we submitted a comment letter to Director Watson describing Ecology’s failure to engage members of impacted communities in the process of drafting the permit.<sup>11</sup> We incorporate the contents of that letter by reference. We received a response to our letter from Ecology on May 27, 2022.<sup>12</sup>

Ecology released the draft permit, Fact Sheet, DNS and SEPA checklist on June 22, 2022.<sup>13</sup> Initially, Ecology requested comments from June 22 through August 4, 2022. Upon request, Ecology extended the comment period through August 17, 2022 for both the draft permit and DNS.<sup>14</sup> **We submit this comment in response to the comment period for each of these actions, the draft CAFO permit and the DNS.**

## III. Ecology’s Outreach

### A. Outreach on the Draft General Permit

Ecology’s outreach on the Draft General Permit emerged in roughly three separate phases. These include initial outreach, outreach immediately following the Court of Appeals’ decision concluding the previous General Permit was unlawful, and outreach conducted in association with the release of the draft General Permit and the comment period. The Coalition Letter addressed our concerns arising from the initial outreach and the actions taken immediately following the court’s decision. Ecology has demonstrated some increased attention to outreach aimed at supporting engagement by those most impacted by the General Permit. However, Ecology has not provided adequate information about CAFOs or the General Permit, or sufficient opportunities for

---

<sup>7</sup> Ecology, Concentrated Animal Feeding Operation <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Concentrated-animal-feeding-operation> (last visited August 9, 2022) (Ecology CAFO Website).

<sup>8</sup> Ecology CAFO Website.

<sup>9</sup> *Washington State Dairy Fed'n v. State*, 18 Wash. App. 2d 259, 304, 490 P.3d 290 (2021).

<sup>10</sup> Ecology CAFO Website.

<sup>11</sup> Letter to Director Laura Watson re: Environmental Justice and Washington Concentrated Animal Feeding Operations Permitting (May 6, 2022) (Coalition Letter; see attached).

<sup>12</sup> Letter from Ecology in Response to Coalition Letter (May 27, 2022) (Response Letter).

<sup>13</sup> See e.g. Ecology, DNS on Concentrated Animal Feeding Operation (CAFO) General Permits, (June 22, 2022) <https://apps.ecology.wa.gov/separ/Main/SEPA/Record.aspx?SEPANumber=202203141>.

<sup>14</sup> Chelsea Morris, Email to Coalition Announcing Extension of Commenting Period (July 7, 2022); Chelsea Morris, Email Reply to Jennifer Calkins (July 7, 2022).

engagement, to satisfy its duty as the agency responsible for managing the state’s waters and implementing aspects of the Healthy Environment for All (HEAL) Act.<sup>15</sup>

## 1. Ecology’s Response Letter

Ecology’s Response Letter did not directly recognize or address our concerns. Instead it provided a list of what it planned to do to “ensure people are aware of the permits and how to comment.”<sup>16</sup> Many of these actions are the things we recommended in our letter, including better outreach to channels in regions impacted by CAFOs and providing better information on the website. However, as we stated in our letter, our suggestions were “first steps.” We are concerned that Ecology’s failure to provide a response to the substance of our letter, and its implementation of a subset of the steps we recommended as “first steps” indicates that the agency does not recognize its fundamental duty to work directly with impacted communities.

Ecology recognizes that “systems cannot change without the direct involvement of the communities who have borne the weight of systemic disparities, and that such involvement has been rarely supported by Washington State’s government.”<sup>17</sup> This is Ecology’s opportunity to move beyond words, repair past injuries, and work in collaboration with the people most impacted by its actions.

### *a. Ecology Provided a Goal that Falls Short of Meaningful Engagement and Environmental Justice*

We agree that Ecology’s articulated goal is important. However, this goal is insufficient. Making people “aware” of the agency action and how to comment is the bare minimum of an agency’s duty towards the public it serves. It does not come close to realizing the sort of meaningful engagement that is required of the agency centrally responsible for planning and coordinating the management of Washington’s natural resources to ensure our waters and lands are protected and conserved and enhanced for current and future generations.<sup>18</sup> Meaningful involvement in agency management of environmental resources means that members of an

---

<sup>15</sup> We discuss these responsibilities more extensively in our Coalition Letter.

<sup>16</sup> Response Letter.

<sup>17</sup> Guidance Document at 2.

<sup>18</sup> . See Guidance Document at 2 (stating A focus on trust-building in this context places skills like cultural humility and emotionally intelligent communication in the forefront, and we see more ties to community organizing and cultivating ongoing relationships than to conventional communications-oriented information sharing.) RCW 43.21A.010. Ecology, About Us <https://ecology.wa.gov/About-us> (last visited August 6, 2022).

impacted community have access to the agency, foundational information about the proposed action, and can trust that their input will be heard and respectfully considered by the agency.<sup>19</sup>

*b. Ecology Failed to Engage our Concerns in its Letter*

In its Response Letter to the Coalition Letter, Ecology summarized its outreach prior to release of the draft General Permit but failed to engage our concerns about this outreach. We discuss the improvements Ecology has made in actions subsequent to the Response Letter below. But, because Ecology continues to fall short of providing for meaningful engagement, we highlight the Response Letter's absence of substantive response to the issues we raised here.

First, the Response Letter did not directly respond to the relationship between CAFOs and environmental injustice nor did it provide any recognition of the concept of meaningful engagement. We believe that the continued failure to provide for meaningful engagement stems from the CAFO group's failure to directly recognize the need for environmental justice in the implementation of the CWA and WPCA when it regulates the state's CAFOs. This failure might be more adequately addressed if the agency staffed the CAFO program, including the outreach components, more fully. Regardless, until the CAFO program recognizes that engaging impacted communities requires a more comprehensive effort than simply providing notice of an action and how to comment, the agency will continue to fail in its duties.

Second, our concern centered on Ecology's efforts related to the General Permit process. Ecology, in response, assured us that their public engagement is not limited to the general permit because people can review and comment on a facility's site-specific actions if they apply for new or modified coverage.<sup>20</sup> Certainly, it is essential that the public have access to this information for new and/or modified CAFO permit coverage. Indeed, we call the agency to do more than just provide access to this information but to **meaningfully engage** the communities directly impacted by a particular facility's new or modified operations. However, this is a separate process **and does not substitute for meaningful engagement on the General Permit**. The General Permit **sets the conditions both for existing and for future permits. Therefore, providing site-specific comment periods after the general permit is issued is irrelevant to the issue of whether the agency sufficiently empowered the people most impacted by the currently-covered CAFO facilities.**

---

<sup>19</sup> See, e.g. Draft Provisional Community Engagement Process Guide; Washington State Environmental Justice Task Force Final Report (Fall 2020).

<sup>20</sup> Response Letter.

## 2. Implemented Outreach

In the Response Letter, Ecology stated that it planned to use the following methods to make sure people received information about the permit and how to comment: issuing a press release, drafting a general information focus sheet, providing website information in English and Spanish and announcing the draft permit, webinars and opportunity to comment on Spanish-language radio, in newspapers and in Facebook advertisements.<sup>21</sup> Ecology did follow through on these plans, taking basic steps in terms of notice and comment. However, as we noted in our letter, these are “first steps,” and serve to provide broader access to notice. But notice is not enough for meaningful engagement.

Ecology added some pertinent information in Spanish on the website and issued a focus sheet translated into Spanish.<sup>22</sup> People seeking information in other languages still need to request translation from the agency.<sup>23</sup> Ecology did not provide public access to a translation of the permit or Fact Sheet.

Ecology also issued a press release upon release of the draft permit, with notification regarding the draft permit, information about the opportunity to comment on the draft, and dates and times of the two hearings.<sup>24</sup> Ecology notified people who signed up for updates on their website of the draft permit, the public hearing dates and the timelines. Ecology used the following additional channels to alert people of the public hearing dates for the draft permit: “email notices of the hearing via our water quality distribution lists and news media to about 2,000 people” and Facebook advertisements in Spanish with dates and times of the hearings and the links to the webinars posted from July 11 to July 28.<sup>25</sup> Ecology also published advertisements with the hearing dates, the permit website, and the comment period deadline in Spanish and English in the Lynden Tribune, The Ferndale Record, Country Life, El Periodico, Yakima Herald, and El Sol de Yakima.<sup>26</sup> Finally, they published the ad in the Lynden Tribune website.<sup>27</sup>

We are pleased that Ecology made an effort to provide access to information and notice across a variety of channels, in both English and Spanish. We hope the agency continues to do so. To move towards meaningful involvement, however, the agency must make all the relevant information it provides more accessible to Spanish-speaking residents. Furthermore, the

---

<sup>21</sup> Response Letter.

<sup>22</sup> Ecology, Hoja de Enfoque: Permiso de Operación de Alimentación de Animales Confinadosm Publicación 17-10-002 (Abril 2022) available at <https://apps.ecology.wa.gov/publications/parts/1710002part1.pdf>.

<sup>23</sup> Ecology CAFO Website.

<sup>24</sup> Ecology CAFO Website. We discuss the hearings below.

<sup>25</sup> Email Chelsea Morris to Jennifer Calkins

<sup>26</sup> Email Chelsea Morris to Jennifer Calkins

<sup>27</sup> Email Chelsea Morris to Jennifer Calkins

information it provides must not be solely targeting the CAFO owner, which the focus sheet seems to do. In particular, we suggest providing Spanish language translations of the permit and the Fact Sheet (as well as the DNS and SEPA Checklist, see below). At a minimum, we recommend the agency develop more in-depth materials for the public, not just for CAFO owner/operators. More broadly, however, Ecology must do more to engage the public than provide notice of the comment period and draft General Permit release along with a document briefly describing the CAFO permit in Spanish, without more substantive information.

### **C. Lack of Outreach on the SEPA DNS**

While Ecology made some effort towards providing notice of the draft General Permit to those impacted by CAFOs, the agency appears to have broadly failed to provide notice of the DNS and the comment period. Further, the agency failed to provide any information about these SEPA documents or the process in Spanish or any other language, and did not advertise that oral testimony on the DNS was to be collected at the two hearings.

The legislature enacted SEPA with the recognition that “each person has a fundamental and inalienable right to a healthful environment.”<sup>28</sup> Accordingly, under SEPA, Ecology must consider SEPA across its actions and work towards fulfilling “the responsibilities of each generation as trustee of the environment for succeeding generations”, assuring “for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings”, maintaining “wherever possible, an environment which supports diversity and variety of individual choice”, and achieving “a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.”<sup>29</sup> Ecology’s failure to complete its basic duty to provide sufficient notice of the DNS and the opportunity for comment makes a mockery of its mandate under SEPA. It ensures that the agency will likely not have a full sense of the potential for environmental impacts it missed in its DNS. As a result, the agency does not have this information to reconsider its DNS, consider the relevant information, and withdraw the DNS and remedy the violation.

It also risks impeding the ability of the people to ensure SEPA violations are addressed judicially. Appeals to the Pollution Control Hearings Board include a discovery process, and SEPA appeals hearings are generally open record. However, failure to comment on a threshold determination when the opportunity is provided has been used to impede access to justice in SEPA appeals. Failure therefore on Ecology’s part to ensure that the public has full notification of the opportunity to comment on the SEPA DNS may hamper the peoples’ access to justice, particularly if the agency then uses the failure to comment as a basis for a motion to dismiss on threshold issues on appeal.

---

<sup>28</sup> RCW 43.21C.020(3).

<sup>29</sup> RCW 43.21C.020(2)a,b,e,f.



#### **D. Ecology's Outreach via Workshops and Hearings**

Ecology provided two workshops focused on the draft General Permit and two opportunities to provide oral testimony on both the permit and the DNS. We appreciate the agency's use of Zoom, a more accessible platform for attendees, as well as the simultaneous Spanish interpretation. These workshops are the minimum of what is expected of an agency satisfying the most basic notice and comment requirements of the draft permit. However, the agency gave no information regarding the DNS, so these events did not provide the most basic notice or support for commenting on the SEPA process.

Ecology scheduled two workshops/hearings for July 26 and 28, 2022.<sup>30</sup> Initially, these dates fell a week or less before the comment due date on August 3, 2022, which would have given commenters an unreasonably short period of time after the session to submit their comments. Subsequently, Ecology granted a request for an extension of the comment period.<sup>31</sup> At these events, Ecology provided Spanish language interpretation services, and paused the July 26, 2022 hearing to fix technical issues and ensure that the interpreter could be heard. These hearings were on Zoom, which allowed people to see one another and provided more of a sense of it being a public forum than those held immediately after the court opinion was released.<sup>32</sup> Ecology also attempted to at least engage all the questions that were raised.

During the initial hearing, Ecology only allowed three minutes per issue (draft permit and DNS) for testimony.<sup>33</sup> Despite the fact that we raised concerns about the failure to provide adequate time, particularly in light of the few comments (testimony was completed within 25 minutes), Ecology refused to extend the time for commenting. Upon reviewing their internal policies, however, Ecology recognized that it had arbitrarily prohibited people from providing additional testimony and allowed people to provide additional three minute testimony on July 28, 2022, once all individuals wishing to provide testimony had done so.<sup>34</sup> At the July 28, 2022 hearing, however, Ecology did not make clear that the SEPA DNS was a separate action from the draft General Permit, and that each commenter could take three minutes at a time per action.

During each one hour workshop, Ecology presented a very general overview of CAFO discharges and the legal framework governing the permit and then walked through how the permit has been updated in response to the court of appeals opinion that was filed in June 22,

---

<sup>30</sup> Ecology CAFO Website

<sup>31</sup> Ecology CAFO Website

<sup>32</sup> See Coalition Letter for more information.

<sup>33</sup> Ecology only clarified that participants could take three minutes **per action** after the question was raised. The agency did not establish at the outset that the DNS and the issuance of the draft General Permit were separate actions subject separate comment processes.

<sup>34</sup> Chelsea Morris also contacted Jennifer Calkins who had raised the concern about time and who was expecting to be unable to provide testimony on Thursday to attempt to provide process for Dr. Calkins to testify further. Phone Call Chelsea Morris to Jennifer Calkins July 26, 2022.

2022. Some of the information presented was inconsistent with our understanding of the permit. For example, in answering whether or not the permit requires testing of effluent from tile drains, Ecology answered that it did, both the quality and quantity of discharge from tile drains. We do not understand this to be the case. Additionally, in answer to the question of whether there are only two conditions in the draft permit that trigger the requirement for monitoring wells, Special Condition S4.L and Special Condition S7.C, Ecology stated that no, there are additional triggers to well monitoring. These include triggers that may be in place such as land application fields (as part of adaptive management), or when testing for compliance with storage locations for the production area. We are also concerned this is a misleading statement.

Ecology provided **no information about SEPA or the DNS in either presentation, nor did it discuss climate change.**<sup>35</sup> At no point did Ecology address the rapidly changing hydrological cycles and weather patterns the state is experiencing and will continue to experience in the wake of climate change. Ecology failed to provide any information about how the permit provided essential adaptation to increased flooding intensity, decreased average annual rainfall, changes in peak stream flow, reduction in snowpack, increased surface water temperature and reduction in water tables, all of which interact with CAFO discharges in ways that increase the risk to people and the environment.

These are the only public spaces we know of where Ecology is engaging the public. They were only minimally sufficient in terms of providing basic and generally accurate (although not always) information about the draft permit and a space by which people could orally comment. The failure to address climate change, and to discuss the SEPA DNS, however, leaves the audience with a lopsided view of Ecology's actions and their implications.

#### **IV. Ecology's Outreach and Analysis Disenfranchises Small Farmers**

Ecology's efforts to meaningfully engage members of impacted communities falls short here. This impacted community includes small farmers.

Ecology has failed to provide information to the public that clearly identifies what CAFOs will be impacted. In reviewing comments received to this point, we notice that many people seem to believe the General Permit affects small farmers and even people with backyard chickens. The only beneficiaries of this lack of clarity are the discharging operators and the dairy industry more generally who are arousing outrage based upon the false narrative that this permit adversely impacts small farmers.

This narrative bias in favor of the larger entities is clear upon reviewing Ecology's Small Business Economic Impact Analysis (SBEIA) of the new CAFO NPDES Combined Permit and the CAFO State Waste Discharge Permit illustrates how the agency appears to privilege the concerns of industry while ignoring concerns of the impacted community, as well as small farmers.<sup>36</sup> For this analysis to be meaningful, the category of CAFOs considered "small businesses" must be based on some sort of objective metric—whether it is statutory definition of small businesses under RCW 19.85.020, or the agency's definition of a small CAFO. Yet, the

---

<sup>35</sup> At the July 26, 2022 workshop, in response to the question of whether it had considered climate change, Ecology stated, consistent with SEPA, it had addressed the climate impact of CAFO emissions of nitrous oxide off of fields. Ecology did not raise this at the July 28, 2022 workshop.

<sup>36</sup> Shon Kraley, Ph.D., *Small Business Economic Impact Analysis*, Ecology 22-10-008 (Apr. 2022), <https://apps.ecology.wa.gov/publications/documents/2210008.pdf>.

entities included in the analysis as “small businesses” do not meet the statutory definition and many of them are classified as medium or large CAFOs.

RCW 19.85.020 defines a small business as “any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is *owned and operated independently from all other businesses*, and that has *fifty or fewer employees*.”<sup>37</sup> Ecology reads out the first half of the definition, and ignores the fact that many of these “small businesses” share ownership and/or management. For example, Top En Twel, LLC shares the same officers and location as at least six dairies.<sup>38</sup> DB Dairy LLC and Noteboom Farm LLC share the same Governor and same registered agent.<sup>39</sup> DBD Washington LLC, SMD LLC, Washington Agri Investments, LLC, and Washington Dairy Holdings, LLC, also all share the same Governor.<sup>40</sup>

Further, the analysis compares two different cost structures associated with operating medium and large CAFOs based solely on the number of employees at each facility, rather than the including a more comprehensive analysis of operations.<sup>41</sup> The comparison shows that it costs “large businesses” one-fourth the amount, per employee, to operate.<sup>42</sup> It is unclear how these costs were calculated, or how CAFOs with equal animal numbers can have such starkly different operating costs. As a result of this analysis, the agency concludes that the “general permit likely imposes disproportionate costs on small businesses” and therefore must “reduce small business compliance burden.”<sup>43</sup> This conclusion disenfranchises small farmers as well as the impacted public.<sup>44</sup>

---

<sup>37</sup> Wash. Rev. Code § 19.85.020(4) (emphasis added).

<sup>38</sup> OpenGovWA, *Top en Twel, LLC*, WA Secretary of State, <https://opengovwa.com/corporation/603411243#entity-overview> (last visited Aug. 14, 2022).

<sup>39</sup> WA Secretary of State, *Corporation and Charities Business Search*, <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation> (follow the “Advanced Business Search” hyperlink; then search “Daniel Noteboom” in the “Governor” search bar) (last visited Aug. 14, 2022).

<sup>40</sup> *Id.* (follow the “Advanced Business Search” hyperlink; then search “Wayne Cummings” in the “Governor” search bar).

<sup>41</sup> Kraley, *supra* note 44 at 34-35.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (We note that Ecology seems disproportionately concerned with the idea of “encouraging” compliance by CAFOs. Thus, to some extent, it is not surprising to see the language pop up in these analyses. However, this ongoing concern about the regulated entities’ comfort fails the people of the state and is inconsistent with the legislature’s intent when it created the agency to help “plan, coordinate, restore and regulate the utilization of our natural resources in a manner that will protect and conserve our clean air, our pure and abundant waters, and the natural beauty of the state.” RCW 43.21A.010).

<sup>44</sup> Lest anyone suggest that larger CAFOs are actually struggling, it is worth noting that federal farm subsidies also benefit these large CAFOs, while the vast majority of small operations receive no benefits. See EWG, *Farm Subsidy Primer*, <https://farm.ewg.org/subsidyprimer.php> (last visited Aug. 14, 2022). Indeed, over the last thirty years, large CAFOs in the Yakima Valley have received millions in federal farm subsidies, only resulting in further consolidation and industrialization of the industry, while small family farms drop like flies and the pervasive presence of mega dairies create greater and greater harm. See EWG, *USDA subsidy information for George Deruyter and Son Dairy LLC*, <https://farm.ewg.org/persondetail.php?custnumber=B06248499> (last visited Aug. 14, 2022); see also EWG, *Coronavirus Food Assistance Program in Yakima County, Washington, 2020*, [s](#) (last visited Aug. 14, 2022).

We are concerned both with the failure to adequately inform farmers of the implications of the permit and the analysis that appears to conflate small operations with their larger counterparts. As a part of its efforts towards meaningful engagement, we urge Ecology to make efforts towards ensuring that small farmers are informed about, and can participate in, the permitting and SEPA processes. We also urge Ecology to revise its SBEIA so that it reflects the actual impact of the permit on small business.

## V. Conclusion

Ecology is our bulwark agency tasked with protecting against polluted air and waters for current and future generations of Washingtonians. CAFOs cause enormous environmental harm, and much of it falls directly on the people who are already the most burdened by past and ongoing discriminatory agency decision-making. Ecology has the information it needs to start taking action to meaningfully engage these communities in its regulation of CAFOs.

Ecology did more towards engaging impacted communities in the issuance of this draft permit, although it failed to do so with respect to the DNS. Ecology needs to do more. The agency must allocate sufficient staff and resources to CAFO outreach to the public to ensure that Ecology brings the most impacted Washington residents to the table. These are the people with the expertise the agency desperately needs to understand the actual impacts of the CAFOs on communities. Further, continued insufficient actions to meaningfully engage members of impacted communities continues Washington's historical and ongoing injuries to the people of this state most impacted by structural discrimination on the basis of class, race, nationality, language, education-level, income-level, ability, and age, among other things.<sup>45</sup>

We believe Ecology wants to do better. We are happy to continue to work with the agency in its efforts to repair its past and ongoing harms and to build real partnerships with the Washingtonians for whom it owes a fundamental duty to protect the waters and air of the state.

We look forward to supporting Ecology in these efforts. If you have questions or would like to talk with us further please feel free to reach out to Jennifer Calkins, at [calkins@westernlaw.org](mailto:calkins@westernlaw.org) or (206) 607-9867.

Sincerely,

**Jennifer D. Calkins, Ph.D., J.D.**  
Attorney and Diehl Fellow  
Western Environmental Law Center  
1402 3rd Avenue, Suite 1022  
Seattle, WA 98101  
(206) 487-7207, ext. 144  
(206) 607-9867  
[calkins@westernlaw.org](mailto:calkins@westernlaw.org)

**Jean Mendoza**  
Executive Director  
Friends of Toppenish Creek

**Amy van Saun**  
Senior Attorney  
Center for Food Safety

---

<sup>45</sup> Letter to Director Laura Watson re: Environmental Justice and Washington Concentrated Animal Feeding Operations Permitting (May 6, 2022) (Coalition Letter; see attached).

May 6, 2022

*Via First Class and Electronic Mail*

Laura Watson, Director  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**Re: Environmental Justice and Washington Concentrated Animal Feeding Operations Permitting**

Dear Director Watson,

Puget Soundkeeper Alliance, Friends of Toppenish Creek, Sierra Club, Waterkeeper Alliance, Center for Food Safety, and Western Environmental Law Center, and their tens of thousands of members, supporters, and volunteers throughout the State of Washington, are writing to express our concern with the Department of Ecology's (Ecology) failure to engage with communities impacted by discharge from Concentrated Animal Feeding Operations (CAFO) while drafting its general NPDES permit.<sup>1</sup>

**Introduction**

As we have made clear in our advocacy during the CAFO permitting process, Ecology must engage with the communities impacted by its regulatory decisions, particularly those already overburdened by past and ongoing environmental discrimination. Because Ecology is the state agency charged with protecting our air and water, this engagement is not only a moral imperative but also a legal requirement.

Ecology acknowledges this moral and legal requirement. Yet, in its efforts to develop a general NPDES permit for CAFOs, Ecology is failing to engage with the people directly harmed by pollution from these operations. Because of this, the agency is uninformed of the true impacts and interests of the people working and living in and around CAFOs, and is at risk of producing yet another inadequate and unprotective general permit.

CAFOs have profoundly negative impacts on the health of workers and the people who live in surrounding communities, including through pollutant discharge into water.<sup>2</sup> As a result,

---

<sup>1</sup> We use the terms "impacted" and "affected" to refer to regions and people subject to harms from CAFO discharges ranging from lack of access to healthy drinking water to impacts on fish that are an important source of food. Because there is the tendency for CAFOs to be located in regions where people experience cumulative environmental burdens, these terms overlap with the "vulnerable populations" and "overburdened communities" identified in the HEAL Act. *See* RCW 70A.02.010.

<sup>2</sup> *See, e.g.,* Grout et al., A Review of Potential Public Health Impacts Associated With the Global Dairy Sector, 4 *GeoHealth* 1 (January 30, 2020); Carrie Hribar, Understanding concentrated animal feeding operations and their impact on communities, National Association of Local Boards of Health at 7, 9 (2020) available at [https://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf).

Ecology must actively engage members of communities affected by CAFO discharge in a dialogue regarding the impact of industrial dairy farms on their water, the legal requirements mandating NPDES permitting of these operations, the scope of the general permit, and the needs and wishes of the members of the local community regarding the regulation of these entities under federal and state clean water law. To do less is unacceptable in any case, but is particularly egregious here given the agency's professed commitment to environmental justice.

**I. Ecology's mission and duties mandate attention, consultation, and engagement with people affected by CAFO discharge**

Ecology's mission is to “[p]rotect, preserve and enhance Washington’s land, air and water for current and future generations.”<sup>3</sup> This mandate to protect our natural resources is broad, and is based on the “fundamental and inalienable right of the people of the state of Washington to live in a healthful and pleasant environment and to benefit from the proper development and use of its natural resources.”<sup>4</sup> To carry out this mission effectively, Ecology, “in consultation with affected constituent groups, [must] continue appropriate public involvement and outreach mechanisms designed to provide cost-effective public input on their programs and policies.”<sup>5</sup>

While the duty to consult with communities affected by pollution is not new, it is now informed by the specific duties of the HEAL Act, passed in 2021, requiring the agency to act towards realizing environmental justice for overburdened communities and vulnerable populations.<sup>6</sup> Ecology reaffirms this duty by stating that it is “committed to making decisions that do not place disproportionate environmental burdens” on communities in Washington State.<sup>7</sup> Further, the agency recognizes that full participation by impacted communities in decision-making is an essential step toward environmental justice.<sup>8</sup> This is consistent with the HEAL Act's requirement that Ecology adopts and implements a plan to engage overburdened communities and vulnerable populations by July 1, 2022.<sup>9</sup>

Because Ecology failed to draft a general permit that met the mandates under state and federal law, CAFOs in Washington State now operate under a permit that expired in March 2022.<sup>10</sup> Ecology's current timeline indicates it plans to release a draft general permit by late

---

<sup>3</sup> Ecology, About Us <https://ecology.wa.gov/About-us> (last visited April 8, 2022).

<sup>4</sup> RCW 43.21A.010.

<sup>5</sup> RCW 43.20A.005.

<sup>6</sup> Engrossed Second Substitute Senate Bill 5141 67th Leg. 2021 Reg. Session (HEAL Act).

<sup>7</sup> Ecology, Environmental Justice <https://ecology.wa.gov/About-us/Who-we-are/Environmental-Justice> (last visited May 2, 2022).

<sup>8</sup> *Id.*

<sup>9</sup> RCW 70A.02.050(1).

<sup>10</sup> Ecology, Concentrated Animal Feeding Operation <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Concentrated-animal-feeding-operation> (last visited May 4, 2022); *Washington State Dairy Fed'n v. State*, 18 Wash. App. 2d 259, 304, 490 P.3d 290 (2021).

spring 2022 for public comment.<sup>11</sup> This means the first stage of drafting will be complete before the July 1 date by which the HEAL Act requires Ecology to adopt its engagement plan. However, any attempt by Ecology to suggest it has some grace period not to engage because its plan is not required at the time the draft permit is released is contrary to stated policy and statutory mandates.

First, as discussed above, Ecology itself states that it is “committed to providing environmental justice to our most vulnerable communities.”<sup>12</sup> It claims that environmental justice “is a priority in our efforts to restore and protect land, air, and water.”<sup>13</sup> The agency does not tie this commitment to a timeline but indicates it is working towards environmental justice now. Second, under RCW 43.20A.005, the agency has a statutory duty predating the HEAL Act to make at least some effort toward facilitating public engagement.<sup>14</sup> Third, the Clean Water Act requires “[p]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State.”<sup>15</sup> This was one of the legal mandates that Ecology violated in its last iteration of the permit according to the Washington State Court of Appeals.<sup>16</sup>

Finally, apart from policy declarations and statutory duties, any suggestion by Ecology that it is not prepared to effectively engage in outreach is belied by the fact that it already has started outreach efforts under the Climate Commitment Act.<sup>17</sup> Through this program, it is seeking input **from some of the very same communities most impacted by CAFOs**. Despite this overlap, Ecology is not coordinating these efforts.<sup>18</sup> Additionally, Ecology can look to the Environmental Justice Task Force Final Report, produced nearly two years ago, for detailed information about approaches for effectively facilitating community engagement.<sup>19</sup>

---

<sup>11</sup> Ecology, Concentrated Animal Feeding Operation <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Concentrated-animal-feeding-operation> (last visited May 4, 2022).

<sup>12</sup> Ecology, Prioritizing EJ <https://ecology.wa.gov/About-us/Who-we-are/Environmental-Justice/Prioritizing-EJ> (last visited April 12, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> RCW 43.20A.005.

<sup>15</sup> 33 U.S.C. § 1251(e).

<sup>16</sup> *Washington State Dairy Fed'n v. State*, 18 Wash. App. 2d 259, 304, 490 P.3d 290 (2021).

<sup>17</sup> See Ecology, Improving Air Quality in Overburdened Communities <https://storymaps.arcgis.com/stories/1409205ca61847faa4194072330709cd> (last visited May 4, 2022); See also Ecology, Overburdened communities <https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Climate-Commitment-Act/Overburdened-communities> (last visited April 12, 2022).

<sup>18</sup> *Id.*

<sup>19</sup> Washington State Environmental Justice Task Force Final Report (Fall 2020).

**II. To comply with its own policy goals and its legal duty to realize environmental justice, Ecology must engage those members of overburdened communities and vulnerable populations affected by CAFO discharge<sup>20</sup>**

Environmental justice is an effort to redress the impacts of historical and ongoing racism and poverty on the distribution of environmental benefits and harms and resulting health outcomes. Currently, the pattern seen across the United States and within Washington State is the inequitable distribution of environmental burdens and benefits, where the cumulative harms of pollutants and other environmental risk factors fall hardest on people of color, Indigenous and Tribal people, and low-income residents, among others.<sup>21</sup> These disparate environmental impacts result in clear patterns of higher mortality rates and worse general health outcomes for people with historically marginalized identities.<sup>22</sup> The discrimination driving the decision-making by governmental entities that lead to these patterns is directly related to failures to ensure that people with historically marginalized identities have a voice and power in decisions directly affecting them. Thus, a governmental entity, such as Ecology, in working towards repairing its and other entities' legacies of discrimination must ensure the right of individuals most impacted by environmental decisions to "participate as equal partners at every level of decision-making, including during needs assessment, planning, implementation, enforcement, and evaluation."<sup>23</sup> Waiting until decision-making processes have already reached draft form is too late because, at this point, members of these communities have already been stripped of the power to drive the shape and parameters of the governmental action.

In Washington State, many CAFOs regulated under Ecology's general permit occur in regions, such as Yakima County, with a higher proportion of low-income and Indigenous people,

---

<sup>20</sup> The HEAL Act defines an "overburdened community" as "a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW [19.405.020](#)." RCW 70A.02.010(11). It defines "vulnerable populations" as

population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

RCW 70A.02.010(14)(a).

The Heal Act states that the term "vulnerable populations" "includes, but is not limited to: (i) Racial or ethnic minorities; (ii) Low-income populations; (iii) Populations disproportionately impacted by environmental harms; and (iv) Populations of workers experiencing environmental harms." *Id.*

<sup>21</sup> See, e.g., Julie Sze, *Environmental Justice in a Moment of Danger* (2020); Clifford Villa et al., *Environmental Justice: Law, Policy & Regulation*, Third Edition (2020).

<sup>22</sup> See, e.g., Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 *Health Affairs* 879 (May 2011).

<sup>23</sup> See First National People of Color Environmental Leadership Summit, *Principles of Environmental Justice* (1991), available at <https://www.ejnet.org/ej/principles.html>.



people of color, and Tribal members living and working in the area.<sup>24</sup> People with these historically marginalized identities who live and work in the regions where CAFOs tend to be clustered experience elevated environmental burdens where community members suffer worse health outcomes as a result of air and water pollution, including higher rates of asthma, lower birth rates, and shorter life-spans.<sup>25</sup>

Ecology's current regulatory approach for addressing the environmental damage of CAFOs is through its NPDES general permitting program. Under federal law, as reiterated and reaffirmed by the Washington State Court of Appeals in June 2021, Ecology must provide a means for the public to comment on the draft NPDES permit for regulating CAFO discharge. Under state law, Ecology must work to engage and consult with impacted communities. Finally, Ecology's commitment to equity and environmental justice makes it imperative that it ensure the full participation of local communities in the process.

### **III. Ecology's public outreach to date has been inadequate**

So far, unfortunately, Ecology has failed to engage impacted communities sufficiently.<sup>26</sup> In contrast, the agency has reached out to and visited the *regulated* community.<sup>27</sup> Fortunately, there is still time for Ecology to take the necessary steps to engage the public before finalizing the draft permit.

As Ecology is well aware, the permitting process is complex. Fundamental, therefore, to enfranchising people who are not experts in the technical or legal field, but are experts in their own lived experience, is effectively communicating to the public the impacts of CAFOs on water, the function of NPDES permitting to address these impacts, the process by which Ecology goes about developing these permits, and how affected individuals can be involved in the process. Ecology's website is one obvious place where the agency should host this information.

---

<sup>24</sup> U. S. Census, Quickfacts Washington State <https://www.census.gov/quickfacts/fact/map/WA,US/PST045221> (last visited April 28, 2022).

<sup>25</sup> See, e.g., E. Min, Quantifying the Distribution of Environmental Health Threats and Hazards in Washington State Using a Cumulative Environmental Inequality Index, 14 Environmental Justice 298 (2021) (determining that pollution burdens in general, are significantly higher for people of color and those living in poverty in Washington State); Esmey Jimenez, New Map Shows Hotspots Of Environmental Health Hazards For Washington Neighborhoods, Northwest Public Broadcasting (January 10, 2019) (describing Yakima County's reduced health outcomes as appearing like "a big, red blemish" on the Washington State Health Disparities Map) available at <https://www.nwpb.org/2019/01/10/new-map-shows-hotspots-of-environmental-health-hazards-for-washington-neighborhoods/>; Jacques Colon, The Disproportionate Burden of Fossil Fuel Air Pollution on Communities of Color in Washington State, Front and Centered Report (June 15, 2016) (describing shorter life-spans on average resulting from community exposure to cumulative environmental harms).

<sup>26</sup> Chelsea Morris mentioned that she was sending information to one community group at our meeting with her on January 7, 2022.

<sup>27</sup> Statements by Chelsea Morris during the September 21, 2021 meeting between Ecology's Chelsea Morris, Jeff Killelea, Nathan Lubliner, and members of Center for Food Safety, Friends of Toppenish Creek, and Puget Soundkeeper Alliance.

Currently, Ecology’s website does not provide this information. In particular, it does not explain the permitting process, discuss why permitting is needed for CAFOs, or describe exactly how the agency develops the CAFO permit.<sup>28</sup> Instead, the website briefly mentions the current development of the general permit as a direct response to the June 2021 court opinion, with little further information, and no indication of how public input functions as part of what it is considering.

Further, the website’s information about opportunities to comment is stale, as it is limited to links for the two “listening sessions” held in October 2021 and a link to an “online comment form” that closed on Sunday, October 24, 2021.<sup>29</sup> Information such as the “Detailed Explanation of the Permits” discusses the previous iteration of the permit and is long and dense rather than user-friendly.<sup>30</sup>

Ecology has provided a Spanish-language focus sheet discussing the NPDES permit regulation of CAFOs, including a description of the potential for the operations to pollute drinking water, and instructions for reporting contamination.<sup>31</sup> This sheet provides one possible starting point for developing more information on the website itself. However, it does not provide a discussion of the current permitting process, nor does it invite input.<sup>32</sup> So it does not solve the website’s fundamental lack of information regarding the permitting process.

Another approach to outreach is public forums, including listening sessions. Ecology had two virtual listening sessions in October 2021. Unfortunately, these listening sessions did not represent effective forums for communication. They did not provide clear information but rather meandered through the dense technical weeds of the court opinion and Ecology's concerns.

---

<sup>28</sup> The site links to a fact sheet in Spanish that at least provides some basic explanation of the problem. Translating some of this fact sheet back to English, particularly in the discussion of the impact of CAFO discharge on drinking water could be one, of many, ways Ecology could update the landing site to make it more relevant and useful to people affected by CAFO discharge in their region. *See*, Ecology, Hoja de Enfoque: Permiso de Operación de Alimentación de Animales Confinados (April 2022) available at <https://apps.ecology.wa.gov/publications/parts/1710002part1.pdf>.

<sup>29</sup> As we communicated to Ecology during the January 7, 2022 meeting, those “listening sessions” were deeply flawed.

<sup>30</sup> Ecology, Fact Sheet for the Concentrated Animal Feeding Operation National Pollutant Discharge Elimination System and State Waste Discharge General Permit and Concentrated Animal Feeding Operation State Waste Discharge General Permit (June 15, 2016) available at <https://ecology.wa.gov/DOE/files/a3/a36ceb3d-7767-4a21-a354-d4b7c1965c95.pdf>.

<sup>31</sup> Ecology, Hoja de Enfoque: Permiso de Operación de Alimentación de Animales Confinados (April 2022) available at <https://apps.ecology.wa.gov/publications/parts/1710002part1.pdf>. The opportunity to report violations is not currently an effective way for people in the community to protect their waters given apparent failures in agency response to these reports. This is, in part, the result of the 2011 Memorandum of Understanding between Ecology and the Washington State Department of Agriculture, which has led to holes between permitting under state and federal clean water law and enforcement in situations where dairies are violating the law.

<sup>32</sup> It is a positive step that Ecology provides the possibility of translated materials via contacting Chelsea Morris or Ecology’s Language Access Team. But this service still requires a member of the community know what information it is he/she/they seek, take the step of asking for that information to be translated, and be prepared to wait however long it takes the agency to return the translated materials.

Further, the information provided was not always accurate. The webinars were hosted on a platform that disenfranchised participants because people could not see each other, and the webinars were not moderated in any way to facilitate comments by those not part of the regulated community. Finally, when people, for example from the regulated community, spoke the agency did not provide information about these speakers and their involvement and interests in the process or correct the misinformation that was provided.

Providing clarity of process and a sense that input is valued and can impact agency decision-making is essential to effective engagement. Unfortunately, as described above, Ecology does not explain how it will use public input in its permit development process. And by stating on its website that it “will not create a formal response to verbal or written comments during [its] listening session comment period”<sup>33</sup> it gives the appearance of relieving itself of any duty to consider the comments.

This opacity of process, apparent lack of interest in community dialogue, and failure to even do the minimum on its website or in forums to reduce barriers to access for members of the impacted community is unacceptable. We know Ecology can do better.

V. **Ecology must engage in far more effective outreach as it develops the draft and final CAFO general permit**

As mentioned above, Ecology has the internal knowledge, connections, and resources to far more effectively engage and empower members of impacted communities in the process of CAFO permit development than it has done so far. Given the legal and policy landscape under which it is undertaking this process, the agency does not have a choice. It must do a better job. Although ultimately, it is the agency's role to develop an engagement plan, we provide some basic expectations below for how the agency might improve its outreach and engagement with impacted communities moving forward.

These expectations arise out of our recognition of the barriers to engagement experienced by members of impacted communities resulting from the systems of oppression, including White supremacy, settler colonialism, capitalist hegemony, patriarchy, and Christian hegemony threaded through agency culture and structure.<sup>34</sup> These barriers include lack of access and information, failure of effective communication, apathy and a sense of burden, lack of clear and transparent process, lack of resources, lack of a sense of potential for influence, lack of trust, and a failure to recognize different types of knowledge.<sup>35</sup> Many of these barriers result from Ecology's fundamental failure to recognize its role as the steward of the state's clean water, and the expertise people in communities impacted by CAFOs have regarding their own life experiences. Realizing environmental justice requires Ecology to approach these communities with humility, an interest

---

<sup>33</sup> Ecology, Concentrated animal feeding operations, <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Concentrated-animal-feeding-operation> (last visited May 4, 2022).

<sup>34</sup> Washington State Environmental Justice Task Force Final Report at Appendix C (Fall 2020).

<sup>35</sup> *Id.* at 64, Appendix C.

in what people can tell them about their experience, and a willingness to allow that information to impact its decision-making.

We recognize that the agency will continue to work through the more fundamental structural and cultural barriers to achieving environmental justice. Related to this, however, Ecology must do a much better job of reaching out to the communities most impacted by pollution from CAFOs. Below are some of the first steps we expect to see from Ecology as it develops the CAFO general permits.

A. Provide better information.

As described above, Ecology has not provided easy access to or effective communication of information about the CAFO permitting process, including how Ecology will consider comments from community members. **Ecology should improve the website, as described above, and host community events, whether virtual or in-person, to provide basic, jargon-free information about the problem, process, and potential for engagement.** Optimally, this information would be provided in English and languages other than English, and delivered through a variety of media, recognizing that providing information only through the written word often presents a barrier in and of itself.

B. Use a variety of platforms and media to communicate information.

Currently, Ecology's failure to widely distribute information across different platforms disenfranchises members of the impacted community. **Ecology must distribute information about CAFOs, their impact, the permits, the permitting process, and opportunities to engage, both online and via meetings, across platforms, to those individuals in regions affected by the permits through electronic and other means (such through churches, colleges, community centers, groceries, food banks, feed stores, hardware stores, the Yakima Herald Republic, Cascadia Weekly, and Radio KDNA).**

C. Coordinate internally to identify groups and individuals in the communities impacted by CAFOs to invite them into the conversations about the CAFO permitting process.

As discussed above, Ecology is already conducting outreach and listening sessions consistent with the Climate Commitment Act in regions also affected by entities covered by the CAFO general NPDES permit. By failing to coordinate internally, the agency disenfranchises members of the communities by failing to make a reasonable effort to reach out to them about CAFO impacts and additionally burdening the local communities with trying to understand the agency's role in the region. **Ecology should therefore coordinate with those agency employees developing the Air Quality in Overburdened Communities Initiative to identify common regions of concern and reach out to people already engaged with the agency in these areas.**<sup>36</sup>

---

<sup>36</sup> For example, the agency now has a list with addresses and phone numbers of individuals who had expressed concerns about Yakima air quality over the years as a result of efforts on the part of Friends of Toppenish Creek. This is exactly the sort of resource that should be shared within the agency. It is an obvious first step to mail information about the CAFO permitting process, in multiple languages, to these people.

D. Convene organizations and individuals to gather input on how best to reach out to and communicate with those directly impacted by CAFOs

People and organizations in Whatcom County and Yakima are experts in their experience of the impact of CAFOs. They are also knowledgeable about each other and how to communicate with people living and working in these regions. Yet, Ecology has not made an effort to gather input on outreach from these groups and individuals. Instead, it expects the communities and individuals to do the outreach that it should be doing. This further burdens groups and individuals already stretched thin by multiple overlapping crises<sup>37</sup> and ensures that barriers to access are strengthened rather than dismantled. **Given the wealth of expertise available and recognizing the burdens already faced by organizations and individuals, Ecology should convene these groups and individuals and collect information from them regarding how best to conduct outreach. These meetings should follow best practices in recognizing barriers to participation in meetings and Ecology should communicate how it intends to use the information. It should also provide follow-up demonstrating that it relied on the information as a way to establish the value of the input of these organizations and individuals.**

E. Host more frequent and more accessible meetings that empower members of the community.

Ecology's approach to meetings creates barriers to access. **Ecology should provide more opportunities for the impacted community to discuss their lived experience of CAFOs with the agency.** Optimally, these opportunities would be in person, although we recognize that the pandemic continues to make this difficult. Regardless, these events must be organized to ensure that people feel empowered rather than excluded. **At a minimum, Ecology must provide the information participants need to feel comfortable speaking up in such a space. Further, participants must be able to see one another, the discussion must be sensitive to different abilities and languages, and Ecology should make sure that, when members of the regulated community provide inaccurate information, that information is challenged.**

## VI. Conclusion

Ecology has a moral and a legal duty to engage people impacted by the entities they regulate, particularly members of those communities harmed by a history of discriminatory environmental decision-making. Yet, in the process of developing its general CAFO NPDES permit, the agency has, time and again, failed to make even the most basic attempt to include impacted community members. We urge Ecology to comply with law and policy as it moves forward in the process.


---

<sup>37</sup> Isabel Carrera Zamanill, Covid-19 Gap Analysis, Front & Centered Report (February 2021) available at <https://frontandcentered.org/wp-content/uploads/2021/02/FC-COVID-19-Gap-Analysis.pdf>; Alison Saldanha and Elise Takahama, Graphics tell story of COVID's unequal toll across WA, Seattle Times (April 12, 2022) available at <https://www.seattletimes.com/seattle-news/health/tracking-covids-unequal-unpredictable-toll-across-washington/>; Brandi Fullwood and Libby Denkmann, Whatcom County in Recovery Braces for More Floods, KUOW (February 3, 2022) available at <https://www.kuow.org/stories/whatcom-county-in-recovery-braces-for-more-floods>.

People most impacted by CAFOs in the state are themselves currently dealing with ongoing emergent situations ranging from the COVID-19 pandemic to flooding.<sup>38</sup> Indeed, COVID-19 has had a particularly harmful impact on the lives of people in Yakima Valley.<sup>39</sup> These multiplying crises mean that, rather than using COVID-19 as an excuse for its failure to engage the people impacted by CAFOS, the agency must redouble its efforts to protect these communities and empower their members in the process of permit development.

We look forward to supporting Ecology in these efforts. If you have questions or would like to talk with us further please feel free to reach out to Jennifer Calkins, at [calkins@westernlaw.org](mailto:calkins@westernlaw.org) or (206) 607-9867.

Sincerely,



---

**Jennifer D. Calkins, Ph.D., J.D.**  
Attorney and Diehl Fellow  
Western Environmental Law Center  
1402 3rd Avenue, Suite 1022  
Seattle, WA 98101  
(206) 487-7207, ext. 144  
(206) 607-9867 direct  
[calkins@westernlaw.org](mailto:calkins@westernlaw.org)

**Jean Mendoza**  
Executive Director  
Friends of Toppenish Creek

**Margie Van Cleve**  
Conservation Chair  
Washington State Sierra Club

**Amy van Saun**  
Senior Attorney  
Center for Food Safety

**Alyssa Barton**  
Policy Manager  
Puget Soundkeeper Alliance

**Kelly Hunter Foster**  
Senior Attorney  
Waterkeeper Alliance

---

<sup>38</sup> Isabel Carrera Zamanill, Covid-19 Gap Analysis, Front & Centered Report (February 2021) available at <https://frontandcentered.org/wp-content/uploads/2021/02/FC-COVID-19-Gap-Analysis.pdf>; Alison Saldanha and Elise Takahama, Graphics tell story of COVID’s unequal toll across WA, Seattle Times (April 12, 2022) available at <https://www.seattletimes.com/seattle-news/health/tracking-covids-unequal-unpredictable-toll-across-washington/>; Brandi Fullwood and Libby Denkmann, Whatcom County in Recovery Braces for More Floods, KUOW (February 3, 2022) available at <https://www.kuow.org/stories/whatcom-county-in-recovery-braces-for-more-floods>.

<sup>39</sup> Isabel Carrera Zamanill, Covid-19 Gap Analysis, Front & Centered Report (February 2021) available at <https://frontandcentered.org/wp-content/uploads/2021/02/FC-COVID-19-Gap-Analysis.pdf>; Alison Saldanha and Elise Takahama, Graphics tell story of COVID’s unequal toll across WA, Seattle Times (April 12, 2022) available at <https://www.seattletimes.com/seattle-news/health/tracking-covids-unequal-unpredictable-toll-across-washington/>.