

Western Environmental Law Center

00:02:00 Jennifer Calkins Hi, so I'm Jennifer Calkins again, Western Environmental Law Centre, and I actually have a clarification. It was my understanding that this hearing was to provide testimony about the draught permit and about the sepia DNS. I'm not hearing anything about the sepia DNS. I do have comments. 00:02:20 Jennifer Calkins On both and my expectation would be that you would allow three minutes for each issue, so I I would like clarification both on whether this is s hearing for testimony on the DNS and also that you are allowing separate comments on each as part of the hearing. 00:02:43 Stacey Callaway Yes, Jennifer, that is not something I said before, but that we are collecting testimony for both General draft general permits and SEPA documents, so you may have 3 minutes for each. 00:02:54 Jennifer Calkins Great. OK, then I will start. I'm just, I'm really grateful for this opportunity and I I just want to start with an observation and then I'll I'll go into each comment what the first observation is that the legislature created the Department of Ecology. 00:03:14 Jennifer Calkins Because it recognised the fundamental and inalienable right of the people of the state of Washington to live in a helpful and pleasant environment. 00:03:24 Jennifer Calkins This meant the legislature recognised the need to plant ornate, restore and regulate the utilisation of our natural resources in a manner that will protect and conserve our clean air or pure and abundant waters and the natural beauty of that state. So, Ecology's mandate from the start has been to implement this policy towards recognising the natural resources of the state and protecting them. 00:03:48 Jennifer Calkins But Ecology hasn't done so, at least to this point, with its careful regulations and this draught permit and the issuance of the SEPA DNS make manifest the agency's failure to to realise this fundamental mandate. I do wanna let you know, Doctor Morris, that my comments are not an attack on you or your work or your capacity as a scientist. This feels important to me because my sense also is that you've had to stand out in front of this process because ecology has failed to fully staff this aspect of its work. I recognise that might mean asking the legislature for more funding, but I think it's manifest even at this level of how do they staff on something that has this profound impact on the environment as these capos. So just want to make that clear at the outset. I'm gonna first comment on this SEPA. SEPA is an environmental Full disclosure law. That is it's point. It's disclose the likely impacts of any kind of a project on the environment. And so, under SEPA, government must assess the potential impacts of its decisions on all aspects of the environment. And the first step, which is what ecology did here, is a threshold determination, which the Supreme Court has articulated as perhaps the most important point in the SEPA process. 00:05:15 Jennifer Calkins That in this threshold determination, Ecology, the lead agency reviews the submissions made by the applicant, which is also ecology, to determine whether any as needed. 00:05:30 Jennifer Calkins And they base this determination on the SEPA checklist which is submitted by the applicant here, Doctor Morris, only if the lead agency determines that there will be no probable significant adverse environmental impacts from our proposal may it issue a determination of non significance, ending the requirement for an EIS. Ecology issued such a determination. This determination is supposed to be based on information reasonably sufficient to evaluate the environmental impact of a proposal. Yet in the checklist submitted by ecology, the answer to most of the questions is unknown. So are there surface water bodies on or in the immediate vicinity of a of the site? Unknown. Does a project lie within 100-year floodplain? Unknown. Will water be just discharged to groundwater? Unknown. 00:06:25 Jennifer Calkins This is not a searching and well documented analysis as required by Washington law, and it's not based on reasonably sufficient information. 00:06:35 Jennifer Calkins Now I I do wonder if the agency confuse this duty to consider possible harms with what it views as

environmental benefits. I want to make it clear under SEPA by even if the project is designed to improve the environment, it may have significant adverse impacts, and the threshold determination shall not balance whether the beneficial aspects of a project outweigh its adverse impacts. Instead, it must consider only whether the proposal has any probable significant adverse environmental impacts. 00:07:05 Jennifer Calkins The DNS... 00:07:07 Stacey Callaway Two more minutes. 00:07:08 Jennifer Calkins OK, so the DNS is unlawful. I also want to talk quickly about climate. 00:07:13 Jennifer Calkins Uhm, I appreciate Doctor Morris for identifying the efforts around nitrous oxide, but I am remain concerned about the failure of the draught permit to incorporate a full analysis of climate impacts, including the timing of peak flows, the loss of surface and groundwater overtime, um the like that ongoing concentration of discharge including nitrates, phosphorus, e-coli, Giardia hormones. 00:07:44 Jennifer Calkins And the increased risk of flooding that we have seen and will continue to continue to see across the state in regions where there are natural floodplains like the Nooksack and CAFOs are flooded. So if you look at what happened last November, CAFO infrastructure was destroyed by the floods. This is going to get worse and I see no where in the CAFO permit where this is addressed or dealt with explicitly. 00:08:13 Jennifer Calkins So ecology, while the nitrous oxide is appreciated, I don't see actual compliance with the law that requires consideration of climate change in this draft permit. So I appreciate the the chance to speak and I will lower my hand now. Thank you. 00:08:33 Stacey Callaway Thank you, Jennifer. I appreciate your comments.

Audio file

[Hearings Testimony 2022- Tuesday.m4a](#)

Transcript

00:00:02 Matthew Tietjen

Alright, we're recording.

00:00:03 Stacey Callaway

Perfect. Thank you.

00:00:05 Stacey Callaway

My name is Stacey Callaway and I am the hearing officer for this hearing. We are here to conduct a hearing on the draught modifications to the general permits for concentrated animal feeding operations, or cafos. Let the record show it is 11:07 AM on July 26, 2022 and this hearing is being held via web.

Notices of the hearing were published in the State register, the Lynden Tribune, the Ferndale record, El Pareado, the Yakima Herald and El Sol de Yakima. We also shared the announcement via social media platforms, sent it via e-mail and distribution list to about 2000 people, as well as publishing and on ecology website. Next slide, please.

00:00:58 Stacey Callaway

If you want to testify, please raise your hand now. We will unmute your line, call your name, and then you may testify. Make sure you UN raise or lower your hand once you testify, and if you're joining us via phone, press star 9 to raise and lower your hand and star 6 to unmute your line.

00:01:20 Stacey Callaway

And if your your raise hand feature isn't working, please type in the chat and let us know you wish to provide testimony. Unfortunately, we cannot accept testimony via chat, but we can unmute your line so you can provide verbal testimony. And remember, when your line is unmuted, state your name and affiliation. For the record, speak clearly.

00:01:40 Stacey Callaway

So that we can get a good recording of your testimony and we're limiting comments to 3 minutes today to make sure that everyone has a chance to provide testimony. OK, Matthew, who is up first to revive testimony?

00:01:53 Matthew Tietjen

Thanks, Stacy. Jennifer, you definitely had your hand up. First, I'm gonna go ahead and ask you to unmute, take it away.

00:02:00 Jennifer Calkins

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Two more minutes.

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00:08:33 Stacey Callaway

Thank you, Jennifer. I appreciate your comments.

00:08:36 Stacey Callaway

OK, Matthew, who who should go next?

00:08:39 Matthew Tietjen

Alright, next hand I see up is WJ Gordon, so I'm gonna ask you to unmute and take it away.

00:08:46 Stacey Callaway

Thank you.

00:08:48 Jay Gordon

Afternoon, Chelsea and everybody. My name is Jay Gordon. I'm with the Washington Dairy Federation and I have five comments. I'll try and get him in in the three minutes.

00:08:59 Jay Gordon

First comment is why the switch back to total Kjeldahl nitrogen, TKN? That is not particularly a number that we use either in soil or in newer testing, and the fact sheet does a poor job of explaining why the transition back to TKN from organic matter.

00:09:17 Jay Gordon

#2, we've said this and I want to be very explicit about it. The TSUM 200 is not the appropriate tool to be using on the east side of the state. We argued about this in court on the last permit. I want to make sure very clearly you guys understand TSUM 200 is not supported by good science on the east side of the state.

00:09:38 Jay Gordon

It is supported by good science on the West side of the state and we'll be submitting some additional comments in writing on what we believe is a better tool backed with science for the east side of the state for application timing on the TSUM 200 question.

00:09:52 Jay Gordon

#3. In several places it mentions an October 1 post harvest field soil test. We're not done with harvest by October 1st. We've said this for a number of years. That date was picked arbitrarily in the last round of permits. It's wrong.

00:10:10 Jay Gordon

It should be post-harvest-- that means after harvest and before application. Again, we'll put in comments what we think the appropriate wording for this is, but clearly in October 1, date is arbitrary and it's just not possible to have a post harvest when we're not known as harvest.

00:10:27 Jay Gordon

#3 you included Washington ecosystems riparian volume 2. It is inappropriate for a number of reasons to include this, not the least of which that of ecosystems. Riparian manual is a wildlife department of Fish and Wildlife publication. It is not science. They actually state that on page five of the management recommendations that it is not science.

00:10:51 Jay Gordon

It is science, an opinion based on science for wildlife, not for water quality. This is a water quality permit.

00:10:58 Jay Gordon

And we find that starting with a problem that it also requires if you adopt that as a farmer, that you start at the outer edge of a floodplain and added CMZ. Starting at the outer edge of a floodplain plus CMZ means that a lot of our Western Washington dairies, if they adopted that standard, would be out of business. It's just contrary. It's bad. It's it's wrong.

00:11:18 Jay Gordon

#5 is. This is on page 22 and 24 of the non striker version. I think you guys need to do a little better job of defining what nutrients you're looking at. In several places the draft says all nitrate of all nutrients or infers all nutrients you need to keep track.

00:11:39 Jay Gordon

And that you don't apply more than the annual application, so examples like lime. Does that mean you have to lime only for one year application? What about potassium? What about some of the micronutrients? I think clarifying that would be helpful.

00:11:52 Stacey Callaway

[[undecipherable]]

00:11:54 Jay Gordon

And if I that's my 3 minutes, then thank you and I'll mute myself.

00:12:00 Stacey Callaway

Thank you, Mr Gordon. I appreciate your comments.

00:12:03 Stacey Callaway

OK, Matthew, who is next?

00:12:06 Matthew Tietjen

Alright, looks like Jean Mendoza is up next sheet. I'm gonna go ahead and ask it on mute now.

00:12:15 Jean Mendoza

Thank you. I'm Jean Mendoza from friends of Toppenish Creek in Yakima County, and I just want to state for the record that 3 minutes is not long enough for me to explain to everybody here why I'm so concerned about the lagoon portion of this permit.

00:12:34 Jean Mendoza

I prepared a an 8 slide PowerPoint to educate people about why manure lagoons leaks so badly and pollute our waters so seriously. Ecology refused to let me use this this PowerPoint and I can't explain to this group in 3 minutes. Why this permit needs to do a better job of addressing leaking manure lagoons. Thank you.

00:13:00 Stacey Callaway

Thank you for your comments, Jean. I appreciate them.

00:13:05 Stacey Callaway

OK, Matthew, who is next?

00:13:07 Matthew Tietjen

Next, I see we have Hannah Thompson Gardner. Hannah, I'm gonna go ahead and ask you to unmute now.

00:13:15 Hannah Thompson Gardner

Thank you. Good afternoon. My name is Hannah Thompson Garner and I'm the Director of Advocacy for the Northwest Animal Rights Network, or NARN, a nonprofit based in Seattle.

00:13:25 Hannah Thompson Gardner

On behalf of myself and the 5000 Plus members and supporters of NARN, we applaud Ecology's efforts on this permit reform process.

00:13:33 Hannah Thompson Gardner

However, we do not think that the proposed changes go far enough to protect our water sources from toxic waste runoff produced on CAFO farms and other animal agricultural facilities. I have two asks of ecology today. First, CAFO permit coverage must be required for all CAFO's in Washington state, regardless of whether discharges to surface water and or groundwater is found prior to the permit application, and 2nd, that ecology more effectively. Consider the impacts of climate change on CAFO's and future permitting requirements.

00:14:07 Hannah Thompson Gardner

As you know, ecology has been court ordered to fulfil its legal obligations to consider the effects of climate change while drafting these permits.

00:14:14 Hannah Thompson Gardner

Although the new draught permits add climate specific nutrient management requirements for wetter and drier areas, they include no mention of climate change per se. According to the EPA, climate change can lead to a higher frequency of agricultural stormwater runoff and excess algal growth, both of which damaged water quality. The draught permits do not acknowledge that both of these phenomena are expected to become more prevalent as climate change progresses.

00:14:41 Hannah Thompson Gardner

Ecology can fulfil its legal obligation by producing a supplemental report outlining how the new draft permits consider the effects of climate change and implement measures to mitigate them, or by incorporating this information into the finalised reports.

00:14:57 Hannah Thompson Gardner

We cannot deny that at least several unpermitted CAFO's are currently polluting surface water and or groundwater in Washington state. This pollution in turn leaks into our waterways, polluting drinking water sources and making habitats unlivable for wildlife, including salmon, and by extension our beloved Southern resident orcas. Ecology should work alongside the Department of Agriculture with the goal to expand permit coverage to all CAFO's and large animal AG operations in the finalised permit drafts.

00:15:24 Hannah Thompson Gardner

Until all CAFO are permitted and monitors reduce charges to both surface and groundwater, ecology, must directly inspect CAFO's most likely to pollute. Although the Department of Agriculture is responsible for routine inspections, Ecology should at least directly examine the largest dairies that we have as well as, examine those in close proximity to contaminated water sources. Moreover, Ecology must increase efforts to monitor unpermitted non dairy CAFO's, pointedly the focus.

00:15:52 Hannah Thompson Gardner

CAFO regulation has been primarily on dairies because of their prevalence in Washington state. However, there could be non dairy facilities just charging to surface water and or groundwater that receive little to no monitoring by ecology or the USDA.

00:16:06 Hannah Thompson Gardner

These facilities should also be on ecology radar as key foods that may require permit coverage. Finally, NARN has a new published report that explores exactly the issues I previously outlined in Washington state, as well as presents actionable measures that both ecology and the everyday citizen of Washington state may take to protect our waterways from CAFO pollution for the benefit of all those who reside here. You can find this report published on our website and I will also send to Ecology a copy of the report shortly, along with our official comments. Thank you so much for your time today.

00:16:37 Stacey Callaway

Thank you, Hannah. I appreciate your comments.

00:16:41 Stacey Callaway

OK, Matthew, is there anyone else?

00:16:44 Matthew Tietjen

There are no other hands currently raised and I have not seen a request in the chat from anyone to assistance so.

00:16:54 Matthew Tietjen

So just a minute here.

00:16:55 Stacey Callaway

It is, certainly.

00:16:59 Matthew Tietjen

Jennifer has re raised her hand and Jennifer, I'll give you a chance.

00:17:02 Matthew Tietjen

To unmute my will.

00:17:07 Stacey Callaway

To Jennifer, I apologize. If you've already commented 3 minutes for the draft general permits and three minutes perceived best, so if you'd like to provide further comments, you're welcome to come on Thursday. You're also welcome to provide them in writing.

00:17:20 Jennifer Calkins

Like, excuse me, I'm not actually commenting. Uh, I am. I'm. Well, I am making a comment on the fact that you limited testimony to 3 minutes. It has been I would say 20 has been 20 minutes of of just you don't I'm. I'm a little frustrated that you are closing up the public testimony now with only three minutes per person when you have apparently have oodles of time to have everybody who wants to speak speak five minutes and seems reasonable to me. 10 minutes would be more optimal, but I I just want to register my frustration. This is. This is not the type of public hearing I'm accustomed to when the public is being asked to comment on something that's important.

00:18:11 Jennifer Calkins

And so and I. And for the record, I cannot be here Thursday night, so also asking people to attend both meetings to get their full testimony and is a problem in my view. So I just I did want to mention that and we will include it in our comments as well.

00:18:31 Stacey Callaway

Certainly. You're welcome to do so, yes. Thank you.

00:18:37 Stacey Callaway

Is there anyone who hasn't provided testimony yet that would like to provide verbal testimony now?

00:18:45 Matthew Tietjen

Well, hands currently race, you know. Request that we need to cheque.

00:19:04 Stacey Callaway

OK. I'll just give another minute in case somebody would like to provide testimony at this time.

00:19:28 Stacey Callaway

OK. Last call for verbal testimony at today's hearing.

00:19:40 Stacey Callaway

OK. Lucienne or Matthew, are you seeing something that I am not seeing. Is there anyone else?

00:19:46 Matthew Tietjen

I'm here.

00:19:47 Lucienne Banning

I did just put last call in the chat, so if you can wait just a second just to make sure if it's just been translated.

00:19:53 Lucienne Banning

So let's give it just a hot second to make sure no one needs to see that last call in the chat, if you don't mind not doing anything though, so.

00:20:00 Lucienne Banning

We'll just get a moment.

00:20:15 Matthew Tietjen

Still not seeing.

00:20:20 Lucienne Banning

Yeah. I'm also not seeing anything. Thank you.

00:20:23 Stacey Callaway

OK, not a problem.

00:20:26 Stacey Callaway

All right. So we're going to end verbal testimony for today's hearing. I just have a few things to report to, to read into the record.

00:20:34 Stacey Callaway

If you would like to send ecology written comments, Please remember they must be received by August 17th, 2022. To submit them electronically, use the online comment form on Ecology's website. And Lucienne will include a link in the chat for us.

00:20:51 Stacey Callaway

To mail them to ecology, please address them to Chelsea Morris at Washington State Department of Ecology, PO Box 47696, Olympia, WA, 98504-7696.

00:21:08 Stacey Callaway

All testimony received at this hearing, along with all written comments received no later than August 17th, will be part of the official record for this proposal.

00:21:18 Stacey Callaway

Ecology will send notice about the response to comments availability to everyone that provided written comments or verbal testimony on this proposal and submitted contact information. We will also send availability to everyone that signed in for today's hearing that provided an e-mail address and to other interested parties on the agency's mailing lists for these permits.

00:21:40 Stacey Callaway

The response to comments will, among other things, contain the agency's response to questions and issues of concern that were submitted during the public comment period.

00:21:50 Stacey Callaway

Once the public comment period is over, the next step is to review the comments and make a determination whether to reissue the draught permits, Ecology's water quality program manager Vince McGowan will consider the permit documentation and staff recommendations and will make a decision about issuing the modified permits. We hope to reissue the CAFO general permits before the end of the year.

00:22:14 Stacey Callaway

If we can be of further help to you, please do not hesitate to ask. On behalf of the Department of Ecology, thank you for joining us.

00:22:22 Stacey Callaway

I appreciate your cooperation and courtesy. Let the records show that this hearing is adjourned at 11:29 AM. Thank you. Matt, back to you. And please stop recording.

00:22:35 Matthew Tietjen

Thank you, Stacy.