

Friends of Toppenish Creek



October 24, 2021

Dear WA Dept. of Ecology,

Please consider these comments from the Friends of Toppenish Creek (FOTC) as you prepare a new National Pollutant Discharge Elimination System (NPDES) permit for Concentrated Animal Feeding Operations (CAFOs).

Sincerely,

Jean Mendoza

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

Why Washington must require NPDES permits for all CAFOs

It is in the overriding public interest to require all CAFOs to obtain NPDES permits because this is the most effective and efficient way for Washington State to implement the Clean Water Act with respect to animal agriculture.

1. As we all know a federal court ruled that CAFOs cannot be required to obtain NPDES permits solely on the presumption that the CAFOs have a potential to discharge. There must be proof of discharge according to federal law.¹
2. States may enact regulations that are more stringent than federal rules.²
3. Washington Ecology's Literature Review identified only one CAFO dairy where studies were conducted and there was no proof of discharge.³ Experts dispute this one supposed exception.⁴ Ecology has found no studies that say manure lagoons do not discharge to

groundwater.⁵ The courts have found ⁶, and the Natural Resources Conservation Service states ⁷, that clay lined manure lagoons are designed to leak.

4. Ecology has so far subscribed to the legally safe course of action that says only CAFO dairies with proven discharges will be compelled to obtain permits. Consequently only 24 WA CAFOs and only 19 out of 230 WA CAFO dairies have NPDES permits.^{8,9} Ecology simply does not have the resources to adequately evaluate every WA manure lagoon.
5. At the start of 2005, 101 dairies and 16 non-dairy facilities were covered by the permit.¹⁰ Washington is moving backward.
6. There are CAFO dairies in Washington with well documented discharges that do not have permits, presumable because Ecology does not have the resources to take these CAFOs to court and enforce the law.¹¹
7. Private citizens throughout Washington State pay for this lack of regulation every day as they purchase bottled water¹² and deal with the health impacts from nitrates in well water.¹³
8. Requiring all Washington CAFOs to obtain NPDES permits will save Washington taxpayers millions of dollars and will improve health.
9. Requiring all Washington CAFOs to obtain NPDES permits will fulfill the requirements of Washington water law to protect the purity of Washington waters.¹⁴
10. Prevention is less costly than remediation.
11. CAFO owners who pollute the waters of the state do not compensate neighbors and taxpayers for the damage done by pollution.¹⁵
12. Since 2017 about one CAFO per year has acquired an NPDES permit.⁹ There are currently about 230 CAFO dairies in Washington State and 19 have NPDES permits.⁹ At a rate of one per year it will take over 200 years to bring all these CAFOs under permit.
13. Ecology is required by law to prevent water pollution.¹⁶

References:

1. Waterkeeper Alliance, Inc. v. U.S.E.P.A, 399 F.3d 486 (2d Cir. 2005) Available at <https://www.casemine.com/judgement/us/5914b68badd7b04934779782>
2. 40 CFR § 131.4 - State authority. (a) *States* (as defined in § 131.3) are responsible for reviewing, establishing, and revising *water quality standards*. As recognized by section 510 of the *Clean Water Act*, *States* may develop *water quality standards* more stringent than required by this regulation. Consistent with section 101(g) and 518(a) of the *Clean Water Act*, *water quality standards* shall not be construed to supersede or abrogate rights to quantities of water.
3. Redding, Melanie. *Manure and Groundwater Quality: Literature Review*. Washington State Department of Ecology, Environmental Assessment Program, 2016. Available at <https://apps.ecology.wa.gov/publications/documents/1603026.pdf>
4. On page 810 of his testimony in PSK v. Ecology, David Erickson refutes the assertion that the Sheridan lagoon did not leak: <http://charlietebbutt.com/files/WA%20Permit/WA%20State%20Dairy%20Federation%20vs.%20Ecology%205-24-18.pdf>
5. The Sheridan lagoon was seven years old when Ecology performed this study. According to the abstract: *Monitoring wells were installed and subsequently sampled quarterly. Analytes included chloride, total dissolved solids, total organic carbon, chemical oxygen demand, total phosphorus, ammonia-N, nitrate + nitrite-N, and total and fecal coliform bacteria. The target aquifer consisted of a thin, confined or semi confined gravel layer at a depth of about 30 feet. Silt and clay deposits overlie the gravel layer and act to separate the lagoon from the aquifer. The lagoon does not appear to have affected ground water quality to date. Although nitrate + Nitrite-N concentrations were elevated relative to upgradient conditions in two downgradient wells none of the other parameters tested, particularly chloride, were elevated.* Groundwater Quality Assessment at Sheridan Dairy Lagoon, Adna, Washington (1992). Available at <https://apps.ecology.wa.gov/publications/documents/92e24.pdf>
6. Published Opinion: WA Dairy Federation et al v. Ecology. WA State Court of Appeals No. 52952-1-II (2021) Available at [D2 52952-1-II PUBLISHED OPINION \(4\).pdf](https://www.courts.wa.gov/court_records/opinions/52952-1-II_PUBLISHED_OPINION_4.pdf)
7. NRCS Agricultural Waste Management Field Handbook, *Chapter 10: Agricultural Waste Management System Component Design*, App. 10D-16, (2009) (“NRCS guidance considers an acceptable initial seepage rate to be 5,000 gallons per acre per day.”) Available at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=31529.wba>
8. Testimony of Melanie Redding before the WA State Pollution Control Hearings Board, Day 2, 5/22/2018. (page 395) Available at <http://charlietebbutt.com/files/WA%20Permit/WA%20State%20Dairy%20Federation%20vs.%20Ecology%205-22-18.pdf>
9. Ecology Permitting and Reporting Information System (PARIS). Available at <https://apps.ecology.wa.gov/paris/PermitLookup.aspx>
10. Preparing Elements of a Quality Assurance Monitoring Plan to Conduct Water Quality Monitoring Near Dairies and CAFOs (2006) Available at <https://apps.ecology.wa.gov/publications/documents/0603015.pdf>
11. A few of the dairies with documented discharges to waters of the state:

- A. Bartelheimer Dairy in Snohomish County. Now SnoValley Farms.
 - B. Bosma Dairy & Liberty Dairy in Yakima County
 - C. Klompe Dairy & Veldhuis Dairy in Yakima County
12. Costs Related to Elevated Nitrates in Groundwater (2017) Available at <https://www.yakimacounty.us/DocumentCenter/View/18726/GWMA-MR-Attachment-26-Costs-Related-to-Elevated-Nitrates-in-Groundwater>
 13. Health Problems Related to Nitrates in Drinking Water (2017) Available at <https://www.yakimacounty.us/DocumentCenter/View/22178/GWMA-VolumeIV-MemberContributions-July2019>
 14. Regulatory Authority in the Lower Yakima Valley Groundwater Management Area (2019) Available at <https://www.yakimacounty.us/DocumentCenter/View/22175/GWMA-VolumeII-Appendices-July2019>
 15. RCW 90.64.150 Livestock nutrient management account: *The livestock nutrient management account is created in the custody of the state treasurer. All receipts from monetary penalties levied pursuant to violations of this chapter must be deposited into the account. Expenditures from the account may be used only to provide grants for research or education proposals that assist livestock operations to achieve compliance with state and federal water quality laws.*
 16. WAC 173-200-030 Available at <https://apps.leg.wa.gov/wac/default.aspx?cite=173-200-030>