

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,

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Rules & Regulations that Favor Dairies

The dairy industry will contest stronger NPDES permits on the grounds that dairies are over regulated and suffering economic distress. To counter these arguments FOTC submits this list of rules and regulations that give dairy CAFOs special treatment.

40 CFR Part 122

Removed the requirement that CAFOs apply for NPDES permits if they “propose to discharge” to waters of the state.

RCW 90.48.260

WA Ecology and WA State Dept. of Agriculture have a memorandum of understanding (MOU) regarding NPDES permits for AFOs and CAFOs that has not received federal approval. This MOU complicates the enforcement process to such a degree that little enforcement takes place.

The MOU states, “WSDA is responsible for inspections and compliance actions for all dairies.”

Only the dairy industry receives this special treatment. Dairy is inspected by the same agency charged with protecting and marketing the industry.

Since WSDA took over inspection of dairies for compliance with the Clean Water Act in 1998 the number of inspectors has fallen from 7 to 4. There is one inspector for all of Eastern Washington where 2/3 of WA milk cows are kept. It is physically impossible for one inspector to properly monitor this many CAFOs.

RCW 90.64

- No oversight committee as required in sections 90.64.005, 90.64.023, 90.64.026, 90.64.050, 90.64.080
- No EPA approval
- No livestock program as anticipated
- Has been incorrectly cited by air control agencies and health agencies as a method of addressing air quality and public health. RCW 90.64 only applies to the Clean Water Act.

RCW 90.64.020

Unlike regulations for other sources, requires on-site inspection of a facility before requiring a permit. This is an additional, expensive hurdle that regulators must pass. Funding is inadequate because fees for dairy permits have been frozen since 1998. Since there is no funding for inspections, there is no proof of discharge, and no requirement for a permit.

RCW 90.64.150

All penalty fees levied against dairies can only be spent on education and research for dairy.

RCW 90.64.901

In 1998 when the Dept. of Ecology tried to implement the Dairy Nutrient Management Act the dairy industry pushed back and convinced the legislature in 2003 to move that authority to the WA State Dept. of Agriculture. Only the dairy industry is regulated by the same agency designed to promote and market their products. Since 2003 the number of permitted dairies has dropped from 101 to 19. Dairies do not have to implement their dairy nutrient management plans and pollution proliferates.

WAC 173-201A-020

Ecology has never developed a list of approved Best Management Practices¹

WAC 173-224

Requires significantly lower permit fees for dairies compared to other forms of animal agriculture. An 800 head beef feedlot pays \$3,094 for an NPDES permit. An 800 head dairy pays \$280.

In 2015 Ecology increased fees for sources that underpaid, except for dairies.²

RCW 90.72.070

Shellfish Protection Districts may charge dairies no more than \$500 per year in fees to protect shellfish beds from closures. There are no limits on fees for other sources.

RCW [90.44.050](#) (The 1945 Stock Watering Law)

Has been interpreted to mean that animal feeding operations can withdraw unlimited amounts of groundwater for livestock.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Exempts animal agriculture from reporting air emissions

Emergency Planning and Community Right-to-Know Act (EPCRA)

Exempts animal agriculture from reporting air emissions

40 CFR Part 98

EPA is not implementing subpart JJ (manure management) of 40 CFR Part 98 using funds provided in its appropriations due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

RCW [7.48.305](#)

Has been interpreted to mean that animal agriculture can do anything they please and citizens have the burden of proving harm to our health.

RCW [70A.15.4530](#) Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter

Has been interpreted to prohibit regulation of all emissions from CAFO dairies.

RCW [46.25.050](#) Commercial driver's license required—Exceptions, restrictions, reciprocity

Drivers of farm vehicles are not required to obtain commercial licenses.

WAC 173-350-220 (2) Composting facilities – Permit exemptions.

Provides special exemptions for dairies.

WAC 173-350-220 requires dairies that compost manure to register with and report to local health districts. Yakima Valley dairies ignore the law do not register with or report to the Yakima Health District.⁴

WAC 16-256 Commercial Feed Rules

The State of Washington finds it necessary to regulate how much animal waste (feces) can be included in animal feed.

WAC 16-250 Commercial Feed

The State of Washington finds it necessary to regulate the addition of certain animal parts to food for livestock. This relates to the practice of feeding bovine nervous tissue to cows and the subsequent spread of bovine spongiform encephalopathy.

The Agricultural Act of 2014 (HR 2642)

Established a Margin Protection Program. For \$100 dairies can buy insurance that compensates them when the difference between milk prices and cost for feed falls below a certain level. This program also requires the government to purchase dairy products for food programs when dairy profits decline. The United States has a stockpile of 1.4 billion pounds of surplus cheese.³

References:

1. *The Quest for the Holy Grail*, Page 24, Agricultural Pollution of Puget Sound at <http://www.westernlaw.org/sites/default/files/Agricultural%20Pollution%20in%20Puget%20Sound%20-%20April%202016%20-%20Web.pdf>
2. WA Ecology, Final Cost-Benefit Analysis and Least Burdensome Alternative Analysis Chapter 173-224 WAC Wastewater Discharge Permit Fees. Available at <https://apps.ecology.wa.gov/publications/documents/1510047.pdf>
3. Friends of Toppenish Creek, How CAFOs Milk the Public (2021) Available at <http://www.friendsoftoppenishcreek.org/cabinet/data/FOTC%20How%20CAFOs%20milk%20the%20public%20and%20pollute%20the%20environment.pdf>
4. Personal Communication, Shawn Magee, Yakima Health District, October 20, 2021.