

Friends of Toppenish Creek

Dear WA Ecology,

Friends of Toppenish Creek is pleased to submit these important comments regarding potential revisions to WAC 173-224.

Thank you.

Jean Mendoza



Friends of Toppenish Creek

April, 2023

Ligeia Heagy
Rulemaking Lead, WA Ecology
PO BOX 47600
Olympia, WA 98504-7600

Dear WA State Dept. of Ecology:

The Friends of Toppenish Creek appreciate the opportunity to comment on Ecology's proposed changes to permit fees under Washington's National Pollutant Discharge Elimination Permit (NPDES) program, pursuant to RCW 90.48.465 and WAC 173-224.

Friends of Toppenish Creek is a 501 C (3) non-profit with the following mission:

Friends of Toppenish Creek is dedicated to protecting the rights of rural communities and improving oversight of industrial agriculture. FOTC operates under the simple principle that all people deserve clean air, clean water and protection from abuse that results when profit is favored over people. FOTC works through public education, citizen investigations, research, legislation, special events, and direct action.

We have reviewed the proposed fees for NPDES permits, specifically fees for dairies and concentrated animal feeding operations (CAFOs). We believe that these proposed fee changes do not comply with Washington laws.

Fees Do Not Support the NPDES for CAFOs Program

RCW 90.48.465 (1) says:

All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

Washington dairies are major contributors to pollution of groundwater and surface waters. NPDES permits are the recognized best tool for addressing this pollution. Enforcement of NPDES permits for CAFOs is not a simple job. It requires hard work by skilled and experienced regulators. Competent experts do not work for free. Has Ecology documented how much it costs to process a CAFO application, monitor and evaluate compliance, conduct inspections, and oversee implementation of NPDES permits for CAFOs?

Over the past five years Ecology has reported the following fee revenues from CAFOs and from dairies.

	2013-2015 ¹	2015-2017 ¹	2018-2019 ²	2020-2021 ³
Revenue from CAFO Fees	\$26,436	\$31,922	\$85,224	\$98,333
Revenue from Dairy Fees	\$10,984	\$4,877	\$10,629	

Ecology did not report fees from dairies in 2020-2021. Presumably those fees were subsumed in the CAFO category. According to FOTC calculations there were 40,517 milk cows = 56,724 animal units on the 18 WA dairies with NPDES permits in 2020-2021. There were 12,528 heifers = 10,022 animal units on the 18 dairies with NPDES permits in 2021. The total is 66,746 animal units with fees of \$33,373.

According to records from Ecology’s PARIS data base there were four large beef CAFOs and one large egg CAFO in 2020-2021 who would have paid 5 x \$3,094 = \$15,470. One mega beef feedlot with an Individual permit would have paid a much larger fee based on gallons discharged per day.

Ecology did not report expenditures by NPDES fee category in 2018-2021. For the earlier years, according to Ecology, these were the expenditures.⁴

	2013-2015 ¹	2015-2017 ¹
CAFO Expenditures	\$88,385	\$214,159
CAFO FTE’s	0.51	1.12
Dairy Expenditures	\$2,736	\$1,002
Dairy FTEs	0.02	0.01

¹ *Wastewater and Stormwater Discharge Permit Fee Program Report to the Legislature State Fiscal Years 2014-2017*. Table C, page 20.

https://apps.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2017%20Wastewater%20and%20Stormwater%20Discharge%20Permit%20Fee%20Program%20Report_1e83a960-b1e1-4b37-93f3-9ea65affb396.pdf

² *Wastewater and Stormwater Discharge Permit Fee Program Report to the Legislature State Fiscal Years 2018-2019*. <https://apps.ecology.wa.gov/publications/documents/2010004.pdf>

³ *Wastewater and Stormwater Discharge Permit Fee Program Report to the legislature State Fiscal Years 2020-2021*. <https://apps.ecology.wa.gov/publications/documents/2110060.pdf>

⁴ Ecology failed to publish NPDES permits for CAFOs between 2011 and 2016, another example of neglect.

Expenditures have exceeded revenues for years. This limited evidence shows that fees from NPDES permits have been insufficient to cover necessary costs to administer NPDES programs for CAFOs in Washington State, and that expenditure to administer NPDES permits for CAFOs in Washington State have been insufficient to complete the complex tasks involved. The result is a violation of RCW 90.48.465 and a failure of Ecology's NPDES permits to protect the waters of Washington State.^{5,6}

For Twenty Years Ecology Failed to Increase Fees for Dairies

RCW 90.48.465 (4) says:

The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

For over twenty years the NPDES fees for dairies have remained at \$.50 per animal unit. Ecology has not increased the rate per animal in accordance with the fiscal growth factor as provided for in the law. Consequently WA dairies have enjoyed an unfair economic advantage over other types of animal agriculture in the market place. This is contrary to the WA State Constitution, Article 1, Section 12.

The Friends of Toppenish Creek request that former Ecology Directors Jay Manning, Ted Sturdevant, and Maia Bellon be called upon to explain this error.

The current proposed fee schedule increases fees for dairy animals from \$0.50 per animal unit to \$0.52 per animal unit in 2024. The justification is the Fiscal Growth Factor. But the starting point is the WA Economy in 1999. If Ecology chooses to continue with increases that began at \$0.50 per animal unit, the fee rate for dairies will always be twenty years behind the times.

A dollar in 2000 would be worth \$1.75 today.⁷ A fee of \$0.50 per animal unit in 2000 would equal \$0.87 today. The Friends of Toppenish Creek request that current Ecology Director Laura Watson explain this decision that gives WA dairies a distinct economic advantage.

⁵ Three of the five dairies in the EPA "Dairy Cluster" in Yakima County have NPDES permits. The EPA has spent millions trying to mitigate groundwater pollution from these facilities. <https://www.epa.gov/wa/lower-yakima-valley-groundwater>

⁶ The remaining two dairies have well demonstrated discharges to groundwater but have not been required to obtain permits. Decommissioning of lagoons on these facilities that were constructed into a draw years ago show massive leakage of pollutants into the groundwater that likely led to nitrate levels as high as 234 mg/L in a nearby monitoring well. <http://www.friendsoftoppenishcreek.org/cabinet/data/Manure%20Lagoons%20Leak%20LYV.pdf>

⁷ CPI Inflation Calculator. <https://www.in2013dollars.com/us/inflation/2000>

Conclusion

This evidence strongly suggests collusion between the WA State Dept. of Ecology and the WA Dairy Industry to give this form of animal agriculture benefits not enjoyed by others, at the expense of the environment.

Sincerely,

Friends of Toppenish Creek

Friends of Toppenish Creek

3142 Signal Peak Road

White Swan, WA 98952

Appendix A.

CAFOs with NPDES Permits in March 2023 – Ecology PARIS					
Name	Permit Number	County	# Milk Cows	# Heifers	# Beef Cattle
JLS Dairy	WAG994367	Benton	900	120	
Willamette Egg Farm	WAG994351	Grant			
PAR 4 Cattle Feeders	WA4400003	Grant			10,750
El Oro Cattle Feeders	WA4400001	Grant			44,205
Coulee Cattle Feeders	WA4400004	Grant			10,854
Beef Feeders Northwest	WA4400002	Grant			17,316
Danielson Farms	WAG994396	Island	470	410	
Keller Dairy	WAG994453	King	905	148	
JV Dairy	WAG994364	Whatcom	1235		
Carbee Harold Farm	WAG994410	Whatcom		190	
Bel Lyn Farms	WAG440001	Whatcom	450	136	
View Point Dairy	WAG994516	Yakima	2000	70	
T& D Dairy (Destiny Dairy)	WAG994378	Yakima	2200	150	
Sunnyside Dairy	WAG994442	Yakima	7691	250	
Spring Canyon Ranch	WAG994346	Yakima			
SMD Dairy	WAG015029	Yakima		2500	
Skyridge Farms	WAG015020	Yakima	3250		
Maple Grove Dairy	WAG994347	Yakima			
J & K Dairy	WAG994344	Yakima	2900	2900	
George DeRuyter & Son	WAG994350	Yakima	5100	4830	
DBD Dairy	WAG015000	Yakima	5216	424	
Cow Palace	WAG994354	Yakima	8200	400	
Total			40,517	12,528	53,045