



June 23, 2023

Ben Rau
Watershed Planning Unit Supervisor
WA State Dept. of Ecology

Dear Mr. Rau,

Friends of Toppenish Creek is a 501 C (3) non-profit from the Yakima Valley.

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 appreciate this opportunity to comment on Draft Chapter 11, *Livestock Management-Animal Confinement, Manure Handling & Storage*, of Ecology's *Voluntary Clean Water Guidance for Agriculture*.

But first:

FOTC is seriously concerned that Ecology's efforts to protect ground and surface water may be too little and too late to turn back the many impacts of climate change including impairment of water quality. We strongly urge Ecology to take a more aggressive approach regarding climate change and global warming and water pollution before the aquifers are irreparably contaminated and endangered species become extinct.

Ecology's 2023 *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution* states on page 46, "enforcement authority under state law provides a regulatory backstop. This regulatory backstop is necessary because there must be reasonable assurance that the abatement strategies for nonpoint sources will actually take place." FOTC does not witness any regulatory backup in South Yakima County where concentrated feeding operations (CAFOs) frequently ignore recommendations for best management practices designed to protect water quality.

FOTC asks Ecology to seriously consider the position of FOTC and others who believe that raising farm animals in confined animal feeding operations (CAFOs) is a failed experiment.^{1, 2, 3} Ecology should abandon costly efforts to shore up this method of farming that damages the environment and increasingly relies on public funding to

survive.^{4, 5, 6} CAFOs produce such large quantities of manure that it is not feasible to prevent pollution of the ambient air and nearby groundwater or surface water.⁷ There are estimates of costs to producers to follow these guidelines, but to the best of our knowledge there is no accounting of the costs to people, taxpayers, and the environment when animal agriculture does not follow these guidelines.

FOTC is concerned that the voluntary measures outlined in Chapter 11, *Livestock Management-Animal Confinement, Manure Handling & Storage*, only provide the appearance that best management practices will protect Washington waters. Meanwhile industrial agriculture continues business as usual which means treating the land, the waters, the air, and the people who live close to the land like chattel.^{8, 9, 10} There are no provisions in this non-point source (NPS) plan for surveillance to determine how many operations implement best management practices and how effective these efforts are at improving water quality.

Here are specific comments about this newest draft chapter:

The term “animal confinement area” is not well defined. This term appears to include sacrifice areas and feedlots. Does it include operations in which cows or other animals are confined in barns? Heavy traffic areas? Compost bedded pack barns? Milking parlors? Quarantine and hospital areas? Animal transport? At times the document conflates heavy use areas and animal confinement areas.¹¹ Is there a distinction?

The glossary does not provide an adequate description of compost bedded pack barns. Does the bedded pack allow the use of fiber from composted manure as bedding?¹² Does Ecology have ethical concerns about requiring animals to sleep on their own excrement. Has Ecology consulted animal rights groups regarding this practice?

For dairy CAFOs removal of manure from barns and sheds can be done by flushing which requires significant quantities of water or by scraping. Different BMPs apply to each method. Should Ecology evaluate manure management in barns and sheds by flushing or scraping and recommended ways to avoid pollution of groundwater and surface water from these actions?

Does the recommendation not to locate animal confinement areas next to surface waters apply to the entire production area?¹³ This happens frequently in Washington State. Historically small farms have grown into CAFOs without regulatory oversight, so CAFOs that never received approval for siting are now found next to waterways. If CAFOs place animal confinement areas next to surface waters, is there regulatory backup that requires monitoring for pollution of the rivers and streams?

FOTC suggests that *Chapter 11, Livestock Management-Animal Confinement, Manure Handling & Storage*, of Ecology’s *Voluntary Clean Water Guidance for Agriculture* should address:

- Pollution from storage of animal feed, especially silage.
- Pollution from flushing and scraping manure from milk parlors and barns.
- Quantification of atmospheric deposition on surface waters due to emissions of ammonia, particulate matter, hydrogen sulfide, volatile organic compounds, and methane from animal confinement areas and manure composting operations.
- Methodology for surveillance and measurement of discharges to groundwater, surface waters, and the ambient air.
- Methodology for measurement of the effectiveness of riparian buffers and vegetative strips on individual operations.
- Impact of uncovered composting operations that are located on bare ground.
- Potential disposal of animal carcasses, including unwanted calves, in manure bi-digesters.
- Management of calf feeding operations.
- Management of manure digesters.
- Open storage of lime used to treat manure in cow pens
- Benefits of manure solids separators.
- Benefits of pasture based dairying.

There is an incorrect statement in Appendix B on page 50:

AFOs that meet the regulatory definition of a concentrated animal feeding operation (CAFO) are regulated under the National Pollutant Discharge Elimination System (NPDES) permitting program. The NPDES program regulates the discharge of pollutants from point sources to waters of the United States and CAFOs are point sources, as defined by the CWA [Section 502(14)]. This guidance only applies to non-permitted operations.

There are over 250 CAFOs in Washington State but only about 25 have NPDES permits.¹⁴ This means that at least 225 unpermitted CAFOs in Washington State are theoretically treated as non-point sources.


The Clean Water Act and the WA Water Pollution Control Act, RCW 90.48, provide tools that citizens may use to protect waters of the state. Here is an example of how this system fails.

Since July 2021 FOTC has submitted complaints to Ecology's Environmental Report Tracking System (ERTS) because an unpermitted Yakima CAFO dairy with several thousand milk cows composts manure in the same pens where dairy cows live. This practice overlays leaching of pollutants from pens on top of leaching from compost. This practice reduces the surface area available to animals for rest and relaxation by half. The ERTS system referred our complaint to the WSDA Dairy Nutrient Management Program (DNMP). To date the DNMP has never responded to this specific complaint. Instead WSDA has sidestepped the issue by stating that the dairy complies with their dairy nutrient management plan.¹⁵

The Dairy Nutrient Management Act, RCW 90.64, requires dairies to write dairy nutrient management plans (DNMPs), but these plans are not available to the public. Indeed, these plans are not shared with Ecology. The WSDA Dairy Nutrient Management Program reviews DNMPs every two years when inspectors visit dairies, yet there is no legal requirement for dairies to follow their own plans.¹⁶ Evidence from the Yakima Valley proves that some dairies do not follow their own plans.^{8, 9, 10}

This incident and others demonstrate a failure of the State of Washington to regulate non-point source pollution from CAFOs. *Chapter 11, Livestock Management-Animal Confinement, Manure Handling & Storage*, of Ecology's *Voluntary Clean Water Guidance for Agriculture* does not satisfy requirements that Ecology must protect groundwaters and surface waters from agricultural pollution.

Please note that FOTC has been excluded from the preparation of Chapter 11 and other components of Ecology's Voluntary Clean Water Guidance for Agriculture. We are only allowed to listen and not speak at twice yearly meetings of the Ag and Water Quality Advisory Committee. Meanwhile the dairy industry has a seat at the table and provides substantive advice to the those who write these guidelines.

Sincerely,

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¹ Putting Meat on the Table. PEW Charitable Trusts. 2008.
<https://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/putting-meat-on-the-table>

² Booker Introduces Package of Bills to Reform U.S. Food System. 2023.
<https://www.booker.senate.gov/news/press/booker-introduces-package-of-bills-to-reform-us-food-system>

³ Big Ag Is Hiding in Plain Sight and It's Making Us Sick. Natural Resources Defense Council. 2019. <https://www.nrdc.org/bio/valerie-baron/big-ag-hiding-plain-sight-and-its-making-us-sick#:~:text=CAFOs%20are%20a%20major%20contributor,waste%2C%20fuel%20the,e%20algae%20outbreaks.>

- ⁴ The Truth about Industrial Agriculture. Family Farm Action Alliance. 2021. <https://farmaction.us/wp-content/uploads/2021/07/Truth-Report.pdf>
- ⁵ Invited Review: Sustainability of the U.S. Dairy Industry. Journal of Dairy Science. 2013. <https://www.sciencedirect.com/science/article/pii/S0022030213004761>
- ⁶ The Dirty Dairy Racket. Food and Water Watch. 2023. https://www.foodandwaterwatch.org/wp-content/uploads/2023/01/RPT2_2301_EconomicCostofDairy-WEB.pdf
- ⁷ Voluntary Clean Water Quality Guidance. Chapter 11, *Livestock Management-Animal Confinement, Manure Handling & Storage*. Table 6, page 34.
- ⁸ CARE, et al., v. Austin Jack DeCoster, et al. Law Offices of Charlie Tebbutt. 2022. <http://charlietebbutt.com/cases.html>
- ⁹ CARE and Center for Food Safety v. George DeRuyter & Sons Dairy, et al. 2016. <http://charlietebbutt.com/cases.html>
- ¹⁰ CARE and Center for Food Safety v. Cow Palace, et al. 2015. <http://charlietebbutt.com/cases.html>
- ¹¹ Voluntary Clean Water Quality Guidance. Chapter 11, *Livestock Management-Animal Confinement, Manure Handling & Storage*. page 21.
- ¹² Basic Information about Anaerobic Digestion (AD). U.S. Environmental Protection Agency. 2023. <https://www.epa.gov/anaerobic-digestion/basic-information-about-anaerobic-digestion-ad>
When properly processed, dewatered digestate can be used as livestock bedding or to produce products like flower pots.
- ¹³ NPDES New Combined General Permit for Concentrated Animal Feeding Operations. WA Ecology. 2023. Page 64. <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Concentrated-animal-feeding-operation>
Production Area Definition:
The locations making up a CAFO facility that are used for animal confinement, manure, litter, feed, and process wastewater storage, product processing facilities (e.g. milking parlor, egg washing, feed mixing), and other areas used for the storage, handling, treatment, processing, or movement of raw materials, products, or wastes. This includes manure stockpiled on fields.
- ¹⁴ Notice of Appeal to the WA State Pollution Control Hearings Board. Western Environmental Law Center. 2022. <https://westernlaw.org/wp-content/uploads/2023/01/2022-CAFO-Permits-Notice-of-Appeal-Final.pdf>
- ¹⁵ Environmental Report Tracking System (ERTS). Friends of Toppenish Creek. 2022. <http://www.friendsoftoppenishcreek.org/issues/data.html>

¹⁶ Implementation of Dairy Nutrient Management Training Program for Farmers. WSDA. 2017. Page 6.

https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=634-DNMP2017LegReport_b2479af1-2fc9-4218-8200-1a0118e3063b.pdf

There is no penalty for failure to follow or update an NMP.