

Comments on the Preliminary Draft of the Concentrated Animal Feeding Operation (CAFO) General Permit

Informal Public Comment Period July 15 – August 6, 2004

Ecology held an informal public comment period on the CAFO permit to gather input from stakeholders. A copy of the preliminary draft was distributed at a meeting of the CAFO Permit Advisory Committee on July 15. Notice of the informal public comment period was sent to numerous people through e-mail. A formal public comment period will be held in the fall. This document was compiled on August 10, 2004. Comments received after that date were read, but not included in this document.

The following people and organizations sent in comments during this informal public comment period:

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| 1. Agri Beef Co. (Agri Beef) | 12. People for Puget Sound (PfPS) |
| 2. Art's Fryer Farms | 13. Deborah Shulke (Shulke) |
| 3. Beef Northwest (Beef NW) | 14. Simplot * |
| 4. Bryon Bentson (Bentson) | 15. Van Boven Calf Ranch |
| 5. John Bosma (Bosma) | 16. Washington Cattle Feeders Association (WA Feeders) |
| 6. Victor Jensen (Jensen) | 17. Washington Cattlemen's Association (WCA) |
| 7. Joe Harrison, WSU (Harrison) | 18. Washington Fryer Commission (WFC) |
| 8. Belinda Hovde (Hovde) | 19. Washington State Dairy Federation (WSDF) |
| 9. Katie's Place Farm | 20. Washington State Department of Agriculture (WSDA) |
| 10. LaDon Linde | |
| 11. Mesonsides Dairy | |

* Simplot's comments were imbedded in a version of the draft permit. Since those comments could not be easily converted into the format of this document, they were not included. Please see Simplot's letter for their comments.

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General

(WSDA) Given the limited resources of most producers and of the state compliance program for CAFOs it makes sense to us that the permit be as effective as possible in setting requirements that contribute directly to the ability of producers to maintain good operations and to identify and correct problem areas in a timely manner.

(WSDA) Due to the reliance on numerous references to sections of the federal CAFO rule, it would help to have an appendix with each of the referenced sections.

(Agri Beef) (WA Feeders) The proposed permit seems to acknowledge this fact by the use of non-scientific terminology like “significant contributor of pollution” or regulating secondary actions like application dates rather than impacts to the regulated waters. The proposed program should not remove “operational discretion” and replace it with artificial benchmarks when operational discretion is part of responsible operations and the key to success effective waste management.

(Agri Beef) As Ecology notes in the draft fact sheet, the federal Clean Water Act requires an NPDES permit with respect to any discharge of pollutants to surface waters, and the EPA effluent limitation guidelines for CAFOs specifically addresses only surface water protection. On the other hand, the scope of Ecology’s draft general permit extends to protection of ground water quality as well. Ecology cites the state Water Pollution Control Act, 90.48 RCW, as its legal authority for protection of ground water quality. The introduction of ground water quality effluent limitations and other ground water provisions into the general permit is not intended to expand the scope of citizen suits under federal law. Therefore, the general permit should clearly identify those provisions which are included for purposes of ground water protection and which, therefore, are based in state law rather than the federal Clean Water Act. These include, at a minimum, Conditions S1.B, S3.A2(j) and S4.C. In appropriate circumstances, alleged violations of those conditions may give rise to an enforcement action by the WSDA or Ecology. However, they are not subject to a federal Clean Water Act citizen suit by a private party.

(Agri Beef) (WA Feeders) In general terms, we also caution against the concept of having two regulatory agencies responsible for the administration of this permit. Often times different agencies and the personnel within those agencies have different interpretations of circumstances causing the CAFO to be caught somewhere in the middle. We feel it is important to have clearly stated lines of authority as they relate to the administration of this permit and that they are clearly communicated within this document. We currently have some question regarding the respective roles and authority of the Department of Agriculture and the Department of Ecology.

(Agri Beef) We also caution against drafting a permit that is so burdensome that it drives Agricultural entities out of the state. Due to the relatively low fixed-cost nature of most feedyard operations, it is not inconceivable that if placed at a severe regulatory disadvantage that many would seek to do business elsewhere. This is a trend that we have certainly seen in other industries. Given our significant investment in the state, we would hate to see this happen in Washington.

(PfPS) We continue to have significant concerns with the direction the draft is taking, many of which we have raised in the permit advisory committee. Finally, there are issues which, as a matter of policy, we believe ought to be addressed. While we understand the need to strike a balance in drafting the permit, it must function to protect the public’s interest in preserving water quality. In an effort to make the permit more “user friendly,” we think that it is becoming less protective of water quality and allowing for less public oversight of decision making.

(PfPS) Failure to make the farm plans available, failure to fix standards for developing farm plans, and, finally, failure to insure water quality monitoring makes it virtually impossible for the public to hold agencies or applicants accountable when the permits fail to protect the resource. This is unacceptable to us. Moreover, these defects raise a number of legal issues, including impermissible delegation of authority from the Department of Ecology, failure to comply with requirements for permit modification, failure to meet AKART requirements, and inconsistency with federal Clean Water Act public involvement policies and requirements.

(WFC) The Fryer producers note with some interest that our brothers in the dairy business have been under a mandated management planning process for several years. Much has been learned in that time. We hear there has been great success

and that the rumored “problems” don’t ever seem to be proven. Until someone can show factual widespread problems;-as opposed to isolated, explainable incidents we ask-- why the need for a fundamnetal departure from what has worked?

(WCA) The WCA opposes the implementation of new regulations on beef cattle producers beyond current federal regulations.

(Art’s Fryer Farms) While I am sympathetic to the need for water quality in the state and will commit along with my fellow poultry producers to help insure clean and safe water for our communities, I feel the draft contains many points that are excessively restrictive, unmanageable and unreasonable.

(Beef NW) We remain concerned about the references to both the Department of Ecology and the Department of Agriculture in the administration of this CAFO permit. Two departments, both carrying similar and yet distinctive roles in the administration of this permit, will ultimately leave industry uncertain as to who does have responsibility and what the expectations are. It is difficult enough trying to work with one Department on an issue let alone two. Reports sent inadvertently to one department do not necessarily make their way to the other and result in intra-departmental grappling and confusion ensuing. Where will this leave the industry? Because WSDA is seeking delegation of authority from EPA, and in the end this permit will ultimately be administered by the Department of Agriculture, why shouldn’t all references herein be to that Department with an MOU between the two departments? This is the Oregon model and it works well there. If delegation occurs within the 5 year life of the permit, what authority will the referenced Department of Ecology have and yet they will remain listed in the permit? Certainly Ecology has a place in the drafting and crafting of this permit, but final reference in the permit document should be in the Department of Agriculture and its’ Director.

S1.Effluent Limitations

S1.A. Surface Water Effluent Limitations

(PfPS) S1.A. – The federal regulations, in 40 CFR 412.31(a), state that a discharge is allowed only when the design storm is exceeded *and* when the permittee is in compliance with the requirements found in S1.D of the draft permit. S1.A. fails to include the second criteria. We suggest you insert additional language to the last sentences of S1.A.1. and 2. as follows: “and the permittee is in full compliance with condition S1.D”

(Hovde) Fact Sheet – Section G – How is Ecology or Dept of Ag planning on figuring out if there has been at 25 yr rainfall event or a 100 yr rainfall event, as described by this permit, so as to determine if such event was the cause of a discharge at the appropriate type of facility, which would lead to a permit possibly being required? In the past (a) the potential CAFOs did not track rainfall amounts, (b) the US NRCS and Conservation Districts did not track rainfall amounts and (c) Ecology did not track rainfall amounts, for any specific potential CAFOs. When contacting the National Weather Service, they were extremely complex to get the rainfall information from (by Ecology) and so this led to a situation where there may have been 25 yr or 100 yr events which were the cause of discharges, however, the information for a specific operational location was so hard to obtain, that this could not be determined. Thus, if Ecology inspectors did not know if there was, or wasn’t a 25 yr, or 100 yr event, it could not be determined if a permit was, or wasn’t needed by a potential CAFO. The farmer could argue that his operation was exempt because there had been a 25 yr event or 100 yr event (and Ecology couldn’t prove that there had been one, or had not been one). NOTE - For a farmer to argue this, they must have a completely approved farm plan and be implementing it however. Most of the National Weather Service information about 24 yr or 100 yr events are for large scale areas and so it is very hard to pinpoint what rainfall is occurring in any specific potential CAFO location. Further, how is Ecology or Dept of Ag planning on dealing with snow that falls and ultimately turns into water when it melts? Is there some type of plan that would show snow equivalents for rainfall? When snow melts it can lead to runoff, especially in Eastern WA, and thus water quality problems. Further, there can be combined “rain on snow” events with similar situations, but most likely in Western WA. Currently it does not appear that snow fall is even considered as part of the 25 yr or 100 yr event criteria. This needs to be dealt with and inspectors and potential CAFO operators need a clear method of determining when a 25 yr or 100 yr rainfall event occurs for the potential CAFO location, in coordination with the National Weather Service information.

(Mesonsides Dairy) With the adoption of the Dairy Nutrient Management Act, RCW 90.64, and acceptance of nutrient management plans on virtually all dairies statewide, the design/operations envelope for everyone in Washington is measured against a single, simple standard: NO DISCHARGE. Why then proceed with an NPDES permit as well as CAFO Regulations?

NPDES permits by definition are not needed in Washington, see RCW 90.64. There are a number of reasons why we do not want them, here are just a few:

1. Possession of an NPDES permit permits no knock inspections by EPA 24/7,365. While we have nothing to hide from inspections, we also believe strongly in our private property and privacy rights. Such inspections have the potential to be onerous, costly, and very disruptive to our operations. All of this costs us money!
2. Mere possession of such a permit also implies that there is a lack of commitment to RCW 90.64; by design, operations or both. This public perception is a critically important issue for all dairies, and particularly those of larger size who have become the object of attention by so called animal rights or anti-diary activists.
3. Because of the above, there is the potential this could be used against us in any harrassment type litigation. This again could cost us a lot of money! It is important for all regulators to absolutely acknowledge that we are a FOR PROFIT enterprise; without our good financial health and returns, there are no sources of fees, taxes, etc. to feed your and the many other State, Local and Federal agencies.

S1.B. Ground Water Effluent Limitations

(PFPS) S1.B. – While we support the general requirement which prohibits process wastewater discharges from reducing existing ground water quality, we are concerned with the language which allows Ecology to make a determination about the public interest and AKART and then exempt the applicant from the general requirement . This appears to be a method of modifying the permit without following permit modification procedures. We do not object to the exception per se, but suggest that such a determination should be subject to public oversight.

(PFPS) S1.B. – Exempting contaminant concentrations from the groundwater standards “if those contaminants will not cause pollution of any ground waters below the root zone” appears to violate WAC 173-200-060, which generally sets the point of compliance for groundwater standards as “in the groundwater as near the source as technically, hydrogeologically, and geographically feasible” and says that compliance shall be maintained “from the uppermost level of the saturated zone extending vertically to the lowest depth that could potentially be affected”.

(Hovde) Fact Sheet – Section F- For ground water it appears that this is a battle between US NRCS guidelines that are used to generate nutrient management plans and Ecology/Dept of Ag. US NRCS guidelines do not currently protect ground water, or even surface water in some cases. Since Ecology/Dept of Ag relies upon US NRCS as the nutrient management planning experts, the nutrient management plans allow a variety of activities that end up being considered AKART but yet, still are not protective of surface or ground water. US NRCS guidelines need to be evaluated at a National level for all nutrient management plans generated nationwide, not just within WA State. From the wording in this current section, it appears that if AKART is used, and groundwater contamination still occurs, then it is OK to contaminate groundwater. This is unacceptable and other industries are not allowed to do this as far as I’m aware. If other industries are allowed to do this, then this is an overall problem for WA State’s groundwater in general, not just from CAFOs, or potential CAFOs.

(Beef NW) Overall, this section of the second draft has moved a bit toward a common sense approach concerning groundwater effluent limitations, unlike the previous draft. We would urge the department to continue in this line of reasoning. The practice of micro-managing an entire industry with tedious sampling, monitoring practices and burdensome laboratory analysis, interpretive, and reporting costs that are insisted on by some to insure against every conceivable cause and effect with few real results, simply deprive that industry the ability to remain cost competitive.

S1.E. Unauthorized Discharges

(Beef NW) As stated in our earlier comments to the first draft, “clean up” needs to be struck from this text because of the vague consequences of such language. “Clean up” of an unauthorized discharge could likely be construed by some well meaning group to include any residues of that discharge into a body of water receiving such a discharge, which of course, is

not practical yet could be enforced because of the language. Why was the previous comment regarding this issue left unanswered?

S2. Permit Coverage

S2.A. Permit Required

(Hovde) Fact Sheet – Section J – All CAFOs are required to develop and implement nutrient management plans. What happens to all potential CAFOs? Are they also required to develop and implement nutrient management plans? If so, what are the specific dates that potential CAFOs need to develop and implement their nutrient management plans by?

(Hovde) Fact Sheet – Section P – In question 9 it indicates that anyone who has met the criteria for CAFO (at any time) but has not applied will be subject to enforcement. How does Ecology or Dept of Ag intend to determine if a potential CAFO actually met CAFO criteria in the past and is subject to enforcement for not applying for permit? Many of the case files for each potential CAFO may show information about past discharges that could be used for this purpose. Is there a statute of limitations on the past discharges? Or do ANY type of past discharges, no matter how old, lead to enforcement now, if the potential CAFO doesn't apply for CAFO permit now?

S2.B. General Permit Coverage

(WSDA) S2B4 Revise language to more clearly reference application areas as part of the permit: ...and handling and application areas of the permitted facility.... OR ...including transfer facilities and land application activities and areas ...
Rationale: Ensure that application areas are clearly covered in the permit.

(Agri Beef) (WA Feeders) S2.B. The EPA has recently updated rules for Confined Animal Feeding Operations. CAFOs are regulated under an NPDES permit which is a zero discharge permit that requires the implementation of a site-specific Nutrient Management plan. The State Waste Discharge Permit is for discharge of waste from industrial, commercial and municipal operations into ground and surface waters. There is not a need for both a Waste Discharge Permit and a Nutrient Management Plan.

(PFPS) S2.B.3. – Incorporating into the permit a schedule of compliance would be a permit modification for which permit modification procedures should be followed. In addition, until such a time as Department of Agriculture receives a delegation to carry out the program, this determination must be made by Ecology.

(Hovde) Fact Sheet – Section L – I am very happy to see a Compliance Schedule in this new draft permit (one didn't exist in the last permit). However, even though it is written as simply as possible, it will still be confusing for the regulated community. The compliance schedule should also include the following items if no companion order will be used with each permit (these below items were normally placed into the companion orders in the past. Companion orders were issued with every permit in the past):

1. Compliance dates specified - that the nutrient management plan should be developed by, and certified/implemented by (if this applies to a new facility that hasn't done a plan before, or, if a plan is still not done and not implemented for an old facility).
2. The following language should be placed into the compliance schedule "At all times, while covered by NPDES and SWD General Permit, No. WAG 01-XXXX: Upon request (Operator's Name), (Landowner's Name – if appropriate), (Other Name of involved party – if appropriate) and (Operation Name), shall immediately provide a complete copy of the most recent Conservation District approved, or certified, Nutrient Management Plan to the Dept of Ecology and/or Dept of Agriculture and all associated records related to any portion of the nutrient management plan". (Note – since this information has routinely been extremely difficult or impossible to obtain from CDs and US NRCS since when records housed in US NRCS offices (that's usually where CDs are located so this applies to CDs too) then records can't be released to Ecology or Dept of Ag, even though US NRCS officials have said that they could be. It is a FOIA problem that remains and by putting the above language into the permit compliance schedule, this would dramatically help on the ground staff from Ecology or Dept of Ag get what they

need to properly evaluate the situation on a specific operation without having to fight FOIA issues (FOIA = Federal Freedom of Information Act).

3. This wording originally came from the Attorney General's office and should be in the compliance schedule as far as I'm aware. "Immediately cease all discharges to waters of the state, which includes ground water and surface water".

(Hovde) Fact Sheet – Section L – In the past a companion order was issued with each permit. Will this same process still be done in the future when issuing CAFO permits? Or will all items that used to be part of the past companion orders, now be just part of the general CAFO permit compliance schedule?

S2.C. Individual Permit Coverage

(Hovde) Fact Sheet – Section C – How it is determined which operations will receive a general CAFO permit or an individual permit? What kind of site specific situation would lead to a facility being issued an individual permit? This should be defined better, both for the regulated community and also for the field staff who has to implement this permit.

(Hovde) Fact Sheet – Section F – Even though the main effluents being regulated under this permit are process wastewater and manure, there are many other wastewater streams that affect Water Quality on CAFOs and potential CAFOs (potential CAFOs may not meet CAFO definitions, even though they are an animal operation, until discharges occur that meet CAFO criteria). How are potential CAFOs handled when they have multi-water quality permit type issues? Do they just get ignored by Ecology's stormwater permit program or the industrial permit program, or any other permit program? Or if they have stormwater permit discharges, are they issued a stormwater permit and managed by Ecology until they may meet CAFO criteria and then their CAFO permit includes stormwater permit language in it (so it becomes a CAFO permit and a stormwater permit all in one)? Or if they have industrial permit discharges, or any other permit program discharges, are they issued those types of permits until they may meet CAFO criteria and then their CAFO permit includes industrial or other permit language in it (so it becomes a CAFO permit and an industrial permit or other permit all in one)? If this were to occur, the next question would be, who then would manage the permit if it was both a CAFO and stormwater permit? Ecology or Dept of Ag? Likewise, if it was a CAFO and industrial permit, or other permit? Ecology or Dept of Ag? What if it needed to be a CAFO, stormwater, industrial and other permit all in one? Ecology or Dept of Ag? Has this issue been thought through clearly?

There are multiple water quality waste streams on potential CAFO operations and until they actually meet the CAFO criteria, they appear to be free from needing to apply for stormwater permits, industrial permits or other permits that any other non-potential CAFOs must apply for, just because they are a potential CAFO operation (some potential CAFOs see their legal risk and have applied for stormwater or industrial permit, however, Ecology has not yet issued such permits (as far as I'm aware) to CAFOs, or potential CAFOs, due to lack of man power to do this work, money to do this work and the claim that this is a small amount of facilities and that they can be covered by CAFO permit as these facilities fall into the CAFO category (even if they CURRENTLY have need for stormwater, industrial, or other permits now and might never end up being a CAFO). However, the CAFO permit does not include current stormwater permit criteria/requirements or other industrial permit criteria/requirements. Even if only a small number of operations exist that require these additional permits, some of these operations have the potential to significantly harm water quality from their operations in areas of the operation that has nothing to do with what the CAFO permit regulates). This issue has routinely been ignored in WA State's CAFO program in the past. Multiple permits are not normally issued to a single facility since it causes confusion about which permit should regulate the operation. It is unclear about how best to handle this situation, but it seems that these operations should be issued the necessary stormwater, industrial or other permits if needed until such time that they may be deemed a CAFO. At the time they may become a CAFO, their old stormwater, industrial or other permits may need to be cancelled and they may need to be issued special individual CAFO permits that combine the CAFO permit criteria with any other necessary stormwater, industrial permit, or other permit criteria (unless language for these things is placed in this general permit with the intent to have it apply to those facilities that have that situation only). Then it would need to be decided if these individual CAFO permits (or general CAFO permits if this language placed into the general permit) would be managed by Ecology or Dept of Ag (which permit would be the lead permit? CAFO, Stormwater, Industrial or other type of permit?). That would have to be determined internally between the two agencies.

Potential CAFOs in WA State have been shown to have the following multi-permit issues/operations on them that may require a NPDES and/or State Waste Discharge Permit, whether they ever become a CAFO or not. Many potential CAFOs

are highly diverse in their operations and do not necessarily just follow a clear path about being one type of facility, or another type of facility. These potential CAFO operations need to be properly regulated and permitted, even if the overall facility does not currently meet the CAFO permit criteria, or may never meet the CAFO permit criteria. This is required by 40 CFR and Ecology is the delegated authority to implement these permits no matter if these potential CAFOs ever become CAFOs or not.

Here are some possible additional operations (not all inclusive list below) that have been found on WA State potential CAFOs, or actual CAFOs (these types of operations are usually located on-site with a dairy operation in most instances, however, in stormwater examples, those could apply to any type of potential CAFO statewide):

- a. **STORMWATER PERMIT CANDIDATE?** Stormwater problems that don't necessarily meet CAFO criteria, however, still could cause a water quality problem, especially when these items are stored on facilities within close proximity to rivers, streams, lakes etc. – clean or waste oil on-site, fuels for farm equipment, waste batteries from farm equipment, other waste type material from vehicles or other mechanical operation on the dairy, mercury from dairy mercury manometers, vehicle or tractor shops where farm equipment is repaired on-site and in which there are all the standard vehicle repair items and clean or waste products from these shops may not be disposed of properly and pose a water quality risk especially in flood prone areas, other agricultural chemicals/fertilizers/products/soaps/detergents on-site for normal operations but could cause water quality problems if not handled properly, various vet medications or other pharmaceuticals for animals, old (and possibly now illegal?) agricultural products (such as DDT).
- b. **INDUSTRIAL PERMIT CANDIDATE?** Dairy milk processing operations – bottling milk, buttermilk, chocolate milk, making a variety of milk products such as sour cream, yogurt, cottage cheese, ice cream and others, etc. When these operations are located on the site with a potential CAFO the wastewater from the dairy milk processing side of things usually is combined with the other animal wastewater and all goes to the manure waste storage ponds and then is land applied to fields. A dairy milk processing plant wastewater can significantly increase the amount of wastewater produced by an operation and it can change the wastewater characteristics as well, depending upon what the dairy milk processing operation is using for clean up, or what type of items they are producing. If producing ice cream, there can be significantly more oils/solids in their operational wastewater. For these types of operations, the wastewater characteristics are not always carefully looked at by the Conservation Districts or US NRCS when land application plans are developed. Because of this situation, surface or ground water could be in danger from land application that is not geared for the appropriate wastewater characteristics, or the sheer amount of wastewater produced from such operations.
- c. **INDUSTRIAL PERMIT CANDIDATE?** Cheese making operation or Ice Cream making operations – similar issues to (b) above. When these operations are located on site with a potential CAFO the wastewater from the cheese making operation or ice cream making operation side of things usually is combined with the other animal wastewater and all goes to the manure waste storage ponds and then is land applied. Butter and ice cream operations can have significantly more oils/solids in their wastewater. For these types of operations, the wastewater characteristics are not always carefully looked at by the Conservation Districts or US NRCS when land application plans are developed. Because of this situation, surface or ground water could be in danger from land application that is not geared for the appropriate wastewater characteristics, or the sheer amount of wastewater produced from such operations.
- d. **OTHER PERMIT CANDIDATE?** – There may be other types of diverse activity on potential CAFOs that would need to be permitted by other types of water quality permits through Ecology. In some instances, there have been municipal wastewater operations on-site with a dairy operation (one example – Monroe Honor Farm Dept of Corrections Facility in Monroe, Snohomish County). Other operations may include composting operations handled routinely by Ecology's Solid Waste Program. The wastewater from the composting operations have routinely been routed to the manure waste storage ponds and then subsequently land applied to fields. Depending upon the county where the potential CAFO exists, there may be county requirements for the composting operation in addition to the state requirements for the composting operation. That is a solid waste issue, but the wastewater from the composting operation continues to be a joint issue between Ecology Solid Waste Section and Ecology Water Quality section that must be dealt with somehow on potential CAFOs or with those operations designated as CAFOs.

S2.D. Definition of a “Concentrated Animal Feeding Operation”

(Agri Beef) (WA Feeders) S2.D3(d) As written, an operation can be deemed a CAFO if it is determined to be a “significant contributor of pollution” this includes but is not limited to a facility directly discharging pollutants that causes or

contributes to a violation of state Surface Water Quality Standards, state Ground Water Quality Standards or RCW 90.48. The term “Significant Contributor of Pollution” is extremely ambiguous, especially when considering the many potential factors that can contribute to ground water pollution and the fact that much of the ground water pollution experienced today is the result of practices utilized decades ago. In addition, this statement seems to indicate that there is existing technology available to quantify the impact that one operation has on ground water. This is simply not true and places all CAFO operations at the mercy of arbitrary interpretations of subjective standards.

S2.E. Other Definitions

(Agri Beef) S2.E9. Third party certification should be considered for all CAFO’s regardless of species. Provisions should be made for nutrient management plans to be approved by either local conservation districts, Department of Agriculture personnel or Department of Agriculture approved third party consultants.

(WA Feeders) S2 E9. Third party certification should be considered for all CAFO’s regardless of species. Nutrient Management plans can be approved by Department of Agriculture personnel or state certified third party consultants.

(PFPS) S2.E.17. and 18. – In the definition of the two design storms, the phrase “equivalent regional or state rainfall probability information developed therefrom” must be, at a minimum, defined. We would not support an approach which allows permittees to develop their own site-specific design storm parameters.

(WSDF) S2 E. (9) We submit that it is the responsibility of the producer to develop, finance, implement and manage a nutrient management plan. The plan should be certified as implemented by the producer and approved by the inspecting agency when field conditions and the plan can be compared and the plan fulfills the conditions of this permit and meets the federal CAFO rules. Therefore: the language of the second bullet is unacceptable, we suggest the second bullet simply read; “A CAFO will submit certification when the plan is implemented, the nutrient management plan is complete and all practices in place. The permitting authority shall approve producer nutrient management plans when the plan meets the terms and conditions in this permit and visual inspection by the department or it’s designee has confirmed the operation is in compliance.”

(WA Feeders) S2 E3 b. As written, indicates that manure applied to farm ground during times of the year that fall outside the dates of the nutrient management plan would be considered a violation of this permit. A Nutrient Management Plan must be flexible and focus more on conditions existing at the time of application rather than dates.

S3.Nutrient Management Plans

S3.A. Plan Elements

(WSDA) S3A1b. Add: ...approved by the Department of Agriculture in consultation with appropriate technical experts.
Rationale: Clarify that WSDA will use a technically competent process to determine equivalent protection from alternative practices.

(WSDA) S3A4. Change: ...established by the Washington Conservation Commission under RCW 90.64.026(2) or other agency designated by the legislature.
Rationale: Recognizes that dairy plan elements may be established in the future by an agency other than the Commission.

(Agri Beef) (WA Feeders) S3.A1. This section provides for continued innovation and improvement in surface and groundwater protection. It is imperative that industry and the Department of Agriculture have the latitude to implement improved methods as they are warranted.

(PfPS) First, the draft permit does not make clear whether farm plans will be available to the public. Since the permit requires compliance with farm plans, an approach which makes perfect sense, the possibility that farm plans might not be available to the public means that the public cannot determine whether the applicant is complying with his or her permit.

All farm plans, as well as any modifications of farm plans, should be on file at either the Department of Ecology or the Department of Agriculture and available to the public for review.

(PfPS) Second, the permit does not clearly identify what standards apply to the development of farm plans. While the previous draft stated that NRCS Guidelines would serve as standards for BMP's, the new version allows for Department of Agriculture staff to approve BMP's which are roughly "equivalent" to the NRCS standards. While we don't object to the use of "best professional judgement," we don't feel that Department of Agriculture staff have the technical expertise to make these determinations. Nor are we comfortable with a consultant hired by the applicant (and therefore with at least the appearance of a conflict of interest) making this judgment. Finally, this approach raises concerns about impermissible delegation of authority.

(PFPS) S3.A. – 40 CFR 123.36 requires Ecology to establish technical standards for nutrient management plans that must be consistent with 40 CFR 412.4(c)(2). The permit should track these requirements. As mentioned above, we object strongly to the "equivalency" determination. The approach here again raises issues about impermissible delegation of authority to Department of Agriculture. This approach may also violate state requirements for an AKART determination by Ecology.

(PFPS) S3.A.2. – Allowing already-permitted dairy CAFOs until 12/31/06 to implement nutrient management plans is backsliding since the existing dairy permit requires such plans to have already been implemented.

(PFPS) S3.A.2. – The 12/31/06 deadline is a compliance schedule, but the regulatory requirements for compliance schedules (i.e., milestone dates consisting of no less than annual reports, certificates of compliance with compliance schedule requirements) are absent.

(PFPS) S3.A.3.d. – Frequency requirement for inspection of land application equipment is "periodically", which is so vague as to be meaningless.

(WFC) [W]e are still going to show through performance that we are doing a good job. That does not include public access to our individually tailored management plans or testing results that we and our consultants use. PERIOD. When an inspector comes to our operation everything will be available to them—they are free to discuss items with us and or our consultants. But nothing is leaving the farm for public access. A Revenue auditor doesn't leave a place of business with that businesses accounting records or checkbook and make them available to the public---this is no different".

(WFC) To reiterate: We insist that anyone with recognized expertise be able to create the plan in concert with the operator- and that with the aid of a checklist the department inspector will determine that the required elements are present in the plan. From there on we wish to be judged on a performance basis, not a paper shuffling exercise.

(WSDF) S3.A (1). Amend the first sentence to specify that the FOTG referenced here is the Nutrient Management Conservation Practice Standard, Code 590 dated April 1999.

(WSDF) S3A (4) Delete, This legislative requirement was met by dairy farms on December 31, 2003. The prevailing requirement by CAFO's is to meet the new federal CAFO rules, this checklist is not germane to this permit.

(Hovde) Fact Sheet – Section M – as stated previously above, the US NRCS lays out the federal guidelines for the criteria within nutrient management plans. This criteria doesn't always jive with Ecology's water quality standards (ground water, surface water), or with AKART, BMP, BPT, BCT or BAT etc. Ecology needs to work out these issues with US NRCS (most likely via US EPA since US NRCS doesn't want to have a conversation from a Federal (US NRCS) to State level (Ecology). US NRCS would pay more attention if there was a Federal (US NRCS) to Federal (US EPA) discussion on this topic.

(WCA) Our membership's farm plans are personal and should remain confidential. Cattlemen use information listed in their farm plans on a daily basis to sustain their livelihood. Many items in a farm plan are thought to be personal information, such as herd size and facility capacity. Questioning producers about herd size and facility capacity could be construed as an invasion of privacy by some individuals. Without exception farm plans should not be open to the public; confidentiality is essential.

(Mesonsides Dairy) On the issue of public notice...there is no need for such a thing, for this segment of ag, or for that matter on any other industry. There is AMPLE public notification anytime there is a SEPA filed for expansion or new construction. This is handled by the local County planning departments. Why on earth would you even consider the terrible waste of precious public and private resources inherent in this proposal, when it is absolutely redundant and unnecessary!

(Van Boven Calf Ranch) I want to take this opportunity to thank you specifically for opting to leave out the requirement to submit a copy of our farm plan to the Department of Ecology. We encourage the support to keep requirement out of the permit, as it is private, personal information that is only of real benefit to those who are not operating or making decisions on how to run the farm.

(LaDon Linde) First of all, I would like to thank you for removing the requirement that all farmers submit their farm plans to the department. That is very private business information, and I assure you that there are some who would simply use our farm plans against us in a fishing expedition for citizen lawsuits. We have an obligation to manage our land and waste correctly, but we should have no obligation to provide private business details to uninvolved citizens, or anyone that matter. I have no right to have access to the check registers of environmentalists to ensure that their taxes are paid. To me, the issue is the same. Inspectors should have on-farm access to the farm plans. I might add that in our area, our local farmers have made dramatic progress in cleaning up our local river.

(Bosma) I note that you have deleted the requirement that farm plans be filed with the department. I appreciate this revision and believe that this will avoid many unnecessary and frivolous law suits as environmental activists would try to construe a farm plan as a rule or regulation. Farm plans are a management tool, which along with many other tools is used to insure compliance with law and regulation and the practice of good environmental stewardship. These plans are available for inspections by the regulatory agencies much the same as books of account and financial records are available to an IRS agent. However these plans, like financial records, should never become a part of the public domain and any regulatory requirement to do so would be a serious intrusion in the privacy of an individual and a restriction of his individual rights.

(Bentson) Whether or not your agency requires a farm plan is immaterial, every day and every year we work and plan on how to put our manure where it does the most good, on our crops, we do not pollute.

(Bentson) I am told the "environmentalists" want to review and have copies of our farm plans and records, the same plans they didn't care to learn about or understand for the past 50 years are now supposed to be open for judgment by a lawyer in Seattle or Portland or Eugene. Our farm is already judged! If the environmentalists want a farm to judge they should go buy their own.

(Schulke) We would like to express our concern regarding the tying of our nutrient management plans to this permit. The intent of the nutrient management plan is to protect the water of our state. We are in agreement with good stewardship of our shared water resources. We also want to be allowed to use our manure as fertilizer in a responsible manner that is protective of the environment. The nutrient management plan is a tool to use guiding our practices to this end. It should not become a public record document. We are certainly willing to review it with a knowledgeable and qualified inspector, but we do feel that it should be passed around and possibly used in an adversarial manner by untrained individuals. Please show us respect by allowing our planning devices to remain separate from this permit, so that wrong conclusions are not blown out of proportion.

S3.B. Plan Compliance

S3.C. Plan Updates

(WSDA) S3C2. Change: The CAFO reduces or changes the field areas so that there is a net reduction in the nutrient capacity of fields compared to what is covered by the nutrient management plan for land application;

(Agri Beef) (WA Feeders) S3.C2. Formal changes to the nutrient management plan are not warranted for changes in fields designated for application that are outside the control of the CAFO operator. Only changes to those fields under the control of the CAFO operator should be considered as formal changes to the Nutrient Management Plan. We suggest that you

modify this language to read: “the CAFO reduces or changes the field areas under their direct control that are specified in the nutrient management plan used for land application.

(Agri Beef) (WA Feeders) Many CAFO operations have the opportunity to market their manure to outside third parties. This practice should be encouraged, as it will ultimately lead to better stewardship practices and improved utilization of the product. The practice of marketing manure to third parties will result in changing application sites from year to year. It is not economically feasible for an operator to hire a third party nutrient management planner to amend the nutrient management plan every time a new party purchases or agrees to receive manure. Instead, record-keeping practices required by the EPA’s new regulations for CAFOs should be sufficient to document compliance with the Nutrient Management plan.

(Agri Beef) (WA Feeders) We agree with maintaining the Nutrient Management Plans on site at the facility. We also ask you to make reference to the fact that the annual reporting form, as outlined by the EPA, should suffice for any public records requests.

(WSDF) S3.C (2.) Nutrient Management Plan Updates. This section (2) is problematic. Farms add, swap, sell, buy or change field management for a variety of reasons every year. It is going to be very costly to both the producer and the state regulatory agency to do a formal plan update, submit certification and gain approval of a modified plan every time a new field is rented, or a particular field does not require manure fertilizer applications in a particular year. Suggest deleting language, the intent and substance of this subsection is addressed in S4.

S4. Record Keeping, Reporting, and Environmental Monitoring

S4.A. Record Keeping

(PFPS) S4.A.2.a.(i) – The exemption for medium and designated CAFOs from recordkeeping requirements for S1.D.1. inspections appears to contradict 40 CFR 412.37(b), which includes no such exemption.

(WA Feeders) S4 A2 aii. This should be addressed in the nutrient management plan. Weekly records are not needed in all circumstances. For example, runoff water holding ponds in Eastern Washington need not be monitored during the dry portion of the year.

S4.B. Reporting

(PFPS) S4.B.1. – The violation reporting requirement here is more limited than that required by 40 CFR 122.41(l)(6), in which a written submission is required within 5 days of “any noncompliance which may endanger health or the environment.” The rule goes on to specify what the submission must address. The draft permit here requires information only for written submissions related to discharges in violation of the permit.

(PFPS) S4.B.3. – The draft permit requires annual reports submitted to the Department of Agriculture. This conflicts with the 40 CFR 122.42(e)(4) requirement that they be submitted to “the Director”, meaning the Director of Ecology (because Ecology, not Agriculture, has the approved state program).

(WSDF) S4.B (3). h. Soil sampling results, comparisons and analysis are all part of a nutrient management plan, used to assist in management decisions and changes in field management. These records should be included in section S3.A. (3)c and S4.A.2.b. (v)

(These sections stipulate that soil testing protocols and results will be part of the contents of a nutrient management plan and that these record keeping requirements must be kept for five years and included in the nutrient management plan.) We cannot accept submitting these soil tests, comparisons, and trends to the department for these reasons:

A. This is not required in the federal rules.

B. We are unwilling to recommend to any producer that they submit these test results in annual reports to any agency. (This is a testing regime originally designed to be non-regulatory, see comments below). We believe these records are for use by the farmers, and while they contain confidential business information we understand they must be available upon request by the enforcement and oversight agency as one aspect of the effort to evaluate/inspect and oversee the performance of the farm.

C. These tests are just one part of the entire farm planning process, when submitted or taken individually they lack context. Our goal is to develop a permit that allows the livestock farms of this state to use manure as a fertilizer in a responsible manner that is protective of the environment. A farmer's nutrient plan that includes periodic testing, evaluation and corrective actions is the basis of achieving this goal. The second and third leg of this stool is a strong technical assistance program and regular inspections backed by strong enforcement to encourage appropriate environmental stewardship performance.

D. These field soil records, tests and analysis should be judged as part of the entire plan by trained inspectors, farm management consultants and the farmers. We see no benefit to submitting these records to agency HQ when these records should be part of the field and performance evaluation inspections.

E. This testing program is still very questionable and we are not comfortable with the science and rationale of these tests at this point, a fall soil test has proven to be beneficial to assist producers with developing better agro-eco stewardship practices, but it is still a blunt tool.

(WA Feeders) S4 B3 h. Sampling data is proprietary and should be kept on site and available to Department of Ag personnel. This is also referred to in S4 C2 f.

S4.C. Environmental Monitoring

(WSDA) S4C. We continue to have concerns with the focus and extent of requirements regarding groundwater protection in this draft NPDES permit. Groundwater is not a part of the federal permit and the proposal goes far beyond the current permit requirements for dairies. In light of those livestock operators that will be covered by this permit with no previous permit experience, the new requirements pose a major hurdle. We fear this will result in great difficulty in implementing all portions of the CAFO permit. This will result in slower planning and implementation efforts that will delay real water quality improvements that can be gained. In addition, tools found in NRCS Practice Standards, Technical Notes and Guidance or Extension Publications are important aids for operators in managing the dynamic soil, manure and cropping interactions on their facilities. Use of these same tools for triggering regulatory actions poses a disincentive for good management by compromising the ability of managers to gather the most useful information without potentially increasing their risk for enforcement action.

(WSDA) S4C2a. Add: ...using appropriate NRCS Conservation Practice Standards, Technical Notes and Guidance and local soil surveys when available.)

Rationale: Good information on local ground water tables is available in local soil surveys done by USGS or other technical experts.

(WSDA) S4C1b(iii). Remove Ammonium from list of analytical results to be reported.

Rationale: This soil test information is not useful for evaluating water quality conditions.

(WSDA) S4C2c. Change ...the nutrient management plan should be reviewed along with implementation records. If implementation has followed the plan, then the plan should be revised....

Rationale: In some cases the plan is still appropriate but management actions have not followed the plan resulting in the high N levels. Consequently, there should be some discretion in determining whether the cause is a problem with the plan or the implementation.

(Agri Beef) While there is no automatic requirement for ground water monitoring, the Department of Ecology is given broad discretionary power to require operations to monitor ground water. As such, the proposed permit attempts to take an existing "point source surface water regulation" and apply it to groundwater without defining or developing the groundwater science, classification, measurements, standards, and points of compliance that will be employed. These issues are highly technical and have taken years to develop in the regulation of surface waters. The proposed permit seems to recognize that none of these benchmarks are in place, making most aspects of this regulatory program premature.

(Agri Beef) S4.C1. The intent of the environmental monitoring requirements is to ensure that the application manure, litter or process wastewater to land application areas does not impair ground water quality. This needs to be clarified as follows: The first sentence of Condition S4.C1 should be amended to read: “Large CAFO’s must use soil monitoring to demonstrate that a nutrient management plan and its implementation, is effectively treating nutrients in the soil of land application areas to protect ground water quality.” The first sentence of S4.C2 should be amended to read: “Large CAFO’s that apply manure, litter or process wastewater to land application areas may use soil monitoring every 5 years to demonstrate compliance.....”

(Agri Beef) S4.C2. We strongly disagree with the annual soil-sampling requirement of “Large CAFO” operators. This section seems to conflict with S3 A3c which refers to sampling once every 5 years. The recently adapted EPA regulations require all CAFO operations to conduct soil sampling only once every five years. This requirement adds additional cost and burden to operators in the State of Washington. In addition, this entire provision as it relates to “Large CAFO’s clearly gives the Department of Ecology broad latitude to impose arbitrary Ground Water Monitoring restrictions on them. Standards imposed on Large CAFO operations in the state of Washington should be consistent with Federal adopted standards. Furthermore, any reference to specific nutrient concentration thresholds should be addressed in a site specific nutrient management plan.

(Agri Beef) S4.B3(h). Sampling data is proprietary and should be kept on site and available to Department of Ag personnel. This is also referred to in S4.C2 f.

(Harrison) In section C. Environmental Monitoring, Subsection 2 b it refers to the use of Extension Bulletin EM3382-E. Under C. 2 b. iii. It states that soil test results should be for nitrate/nitrite nitrogen and ammonium nitrogen. It is not appropriate to consider ammonium nitrogen when using the EM3382-E bulletin.

(Harrison) In section C. Environmental Monitoring, 2 e. Notes., ii – it states “decreasing trend in soil nitrogen”. This should refer to soil nitrate-nitrogen.

(Harrison) In section C. Environmental Monitoring, Subsection 1, it states that ground water monitoring, or other compliance actions as determined by the Department, will be required. In the event that the producer is not able to meet the fall soil nitrate guidelines stated in the permit (soil nitrate levels below 45 ppm in 3 of 5 years), they would be required to sample ground water. The requirement to conduct ground water monitoring will afford the Department and the livestock producer no information from which to make management changes to attempt to correct management that may contribute to impaired ground water quality. An alternative to consider in the event of consistently elevated soil nitrate levels would be a more intensive evaluation of the manure-soil-crop cycle. This could be achieved by requiring those with consistently high levels of fall soil nitrate to implement, with the assistance of a trained nutrient management specialist (WSU, NRCS, Conservation District Staff, private consultant), an intensive evaluation of their manure-soil-crop cycle. This would involve collecting actual application data of manure at each application, an analysis of manure at each application, actual yield weights at each harvest, and nutrient content evaluation of each cutting of forage. This approach is documented in VanWieringen et al., 2004. Manure management effects on grass production, nutritive content, and soil nitrogen for a grass silage based dairy farm. Journal of Environmental Quality. 33:in press. This mass balance approach should afford the opportunity to provide the producer with detailed information on their operation which could be used to justify making management changes to protect water quality.

(PfPS) Third, the permit no longer requires any water quality monitoring. The original draft did, at least, contain requirements for ground water monitoring. We objected to the fact that the permit failed to address surface water monitoring. The latest version of the permit no longer even requires ground water monitoring. The soil monitoring approach will, at best, lead to delays in water quality monitoring. The draft also contains broad monitoring exemptions which could seriously compromise compliance efforts.

(PFPS) S4.C. – WAC 173-226-090(c) states that “monitoring for compliance with limitations imposed pursuant to WAC 173-226-070 shall be no less than once per year.” WAC 173-226-070 requires the inclusion in the permit of limitations necessary to meet water quality standards and ground water quality standards – such as the limitations in S1.A. (“any discharge in compliance with S1.A.1. and S1.A.2. shall not cause or contribute to a violation of the wqs ...”) and S1.B. (“discharges shall not cause or contribute to a violation of the State Ground Water Quality Standards”). For this reason, “monitoring for compliance” with these effluent limitations must be required at least once annually for all permittees with these discharges. In addition, state regulations may require more frequent monitoring based on WAC 173-226-090(1)(a)

and (b) (“any discharge authorized ... may be subject to such monitoring requirements as may be reasonably required Each effluent ... pollutant required to be monitored ... shall be monitored at intervals sufficiently frequent to yield data that reasonably characterizes the nature of the discharge ...”). The exemptions contained in S.4.C.2.d. will, in a large number of cases, lead to a five year delay in imposing water quality monitoring requirements. We can assume that there will then be even more delays before management practices are adjusted. Delaying improvements for this length of time is not acceptable when there might be significant public health, environmental, and/or economic impacts associated with the discharge. C.2.d.iii is particularly disturbing in that it will result in broad geographic exemptions for monitoring in areas which have over 20% organic matter. This section also contains no direct references to required surface water quality monitoring. The draft should be revised to include a new section which contains requirements for surface water quality monitoring for fecal coliform.

(WFC) More disturbing is the departments approach, while well meaning, of using documents and information intended for management guidance to create regulatory bars or hurdles. Perhaps the problem is that most everyone is new to this area, nevertheless in an effort to fast track this process you have managed to ignore the science and “common knowledge” in agriculture and are proposing to implement an unworkable and ridiculous process. It is well known and understood that nitrate testing in western Washington is not particularly helpful or germane. Its use by farmers and their consultants is but one of many snapshot tools for effective management—we believe the authors of the different guidance documents on this subject would be very upset that their work would be proposed for use as a regulatory tool.

(WSDF) S4.C Environmental Monitoring -- This section is problematic for several reasons, however we understand the intent, which is to utilize the principles of fall soil nitrate testing to monitor, evaluate and correct management practices that are elevating nitrates in the soil. The basis for this regulatory language is the guidance documents that OSU and WSU have produced to assist farmers (see: Post Harvest Nitrate Testing for Manured Cropping Systems West of the Cascades, May 2003, at: <http://eesc.orst.edu/agcomwebfile/edmat/EM8832-E.pdf>). This testing regime involves fall soil sampling for nitrates and then retrospectively evaluating practices that can be improved to reduce these fall soil nitrate levels. The concerns are:

1. This regime was not intended to be regulatory and therefore caution is prudent before making these guidelines regulatory standards. This regime was not and is not recommended by the universities to be adopted as a regulatory policy (see attached email).
2. Fall soil nitrate tests are notoriously variable, affected by crop rotation patterns, spring, summer and fall soil moisture and temperature, crop type, irrigation amounts, timing, rates and style of practices, total crop yield, crop protein levels. Soil characteristics such as soil organic matter, soil PH, soil type, soil density, total nitrogen application rates and inorganic nitrogen application rates, timing and characteristics of these organic and inorganic nutrient applications.
3. These tests are useful as a blunt tool for evaluating retrospectively nutrient management and for guiding prospective management changes to nutrient application rates. However, because there are so many variables impacting fall soil nitrate levels, a consistent historical context must be established and a good understanding of all the soil nitrate variables must be factored in before prudent management changes can be undertaken or recommended. We suggest the following language: S4.C (2) c should state “When analytical results show nutrient management concentrations higher than 30ppm Nitrate, the application rates in the nutrient management plan should be evaluated by the producer and/or a qualified nutrient management planner to determine and plan for appropriate changes and modifications to reduce residual nutrient levels and risk to ground water quality.

(WSDF) S4 C.(2.) (f) DELETE and move these records to include in S3 (3) (c)

(WA Feeders) Of general concern, the proposed permit appears to attempt to take an existing “point source surface water regulation” and apply it to groundwater without defining or developing the groundwater science, classification, measurements, standards, and points of compliance that will be employed.

(Hovde) Fact Sheet – Section P – In question 21 it indicates that a variety of monitoring, including soil monitoring, would only be required for Large CAFOs. This type of monitoring should also be required for any size CAFO (medium or otherwise). All potential CAFOs should be doing this type of monitoring as part of their nutrient management plans. If it is only going to be required for Large CAFOs it should be explained why this is so.

(Hovde) Fact Sheet – Section P – In question 23 it states that only after a 5 year period where there have been 3 years of soil monitoring showing high nutrient levels which are not decreasing will compliance actions or ground water monitoring be required. Thus, it appears that not until the next CAFO permit is issued would compliance actions or ground monitoring be required for those CAFOs that showed problems. What happens to CAFOs that show ever increasing ground water

problems within the first 3 years of this 5 year permit cycle? Will they receive compliance actions or be required to monitor ground water at the end of the first three years? Or will they be allowed to wait until a total of 5 years is completed before this requirement kicks in? I would argue that if these results are shown within the first three or four years on any CAFO, that these operations should immediately receive a compliance action and be required to monitor ground water and not be allowed to wait until 5 years have passed before this requirement kicks in for them (aka the next permit cycle of this CAFO permit).

(WCA) The WCA believes that all components of the law should be based on sound science. We Do Not endorse the use one specific set of guidelines when interrupting the soil nutrient levels. A single set of guidelines for fall soil tests for soil nutrients is unacceptable since soil testing is site specific and can be affected by environmental variances. Soil nutrient levels and crop nutrient requirements vary from site to site. Some factors that influence soil nutrient conditions are, soil types and the crop being grown. Cattlemen are concerned that these tests will be singled out and used as the only method to interrupt compliance with the nutrient management plan.

(Mesonsides Dairy) On page 14, there is a discussion of the linkage between high nitrates and CAFO operations. As I said earlier, with the enactment and compliance with RCW 90.64, the potential for CAFO operations to contribute to any potential high nitrate or other ground water quality issue has greatly diminished. On the other hand, the report makes no reference to commercial ag use of nitrogen, which we all know is in fact the PRIMARY issue at hand. There is also no reference to partially treated human waste, which for your information, flows into the Yakima River from Yakima to Benton City in the amount of 12-14 million gallons a day. If the State's goal was water quality, doesn't that look to you like a very logical and easy place to start?

(Mesonsides Dairy) ON the issue of environmental monitoring, we are not at all interested in expanding the influence of your, or any other agency in this arena. If you talk to any qualified and experienced hydrogeologist, they will tell you of the extremely complex nature of understanding groundwater quality, potential for pollution, and most importantly attempting to link a single CAFO operation to short or long term groundwater quality trends. It makes no more sense in our current regulatory environment - with approved and inspected DNMA plans to focus on a Dairy than it does on the City of Sunnyside, Wycoff Farms, etc. There is a fundamental issue here of fairness where it appears that at least 2/3 of the stakeholders are given a pass while all the regulatory focus is put on one small segment of the ag industry.

(Van Boven Calf Ranch) Regarding Section S4.C Environmental Monitoring, I do not endorse the use of mandatory reporting of fall soil test monitoring to the Department of Ecology. These numbers, if not taken as a whole over a period of time, AND included with other factors regarding the farm use and other types of monitoring, could result in total misinformation of the true scope of the situation. Given that the public will be allowed to access these documents without proper education, or perhaps environmental lawyers could use them for opportunistic ways to promote frivolous lawsuits upon farmers. Farms know how to manage themselves, if given the proper tools and guidance, they do not need sue-happy environmentalists dictating their BMPS's.

(LaDon Linde) Second, I have no desire to have groundwater monitoring wells installed on my farm. They are expensive, and I'm just trying to pay my bills right now. I don't have any extra money to spare. Besides, local water tests show that we are making great progress here, as I have already stated.

(LaDon Linde) Finally, regarding soil tests. I assume that they are part of everyone's farm plan, which is fine. I don't like a requirement that they be sent to the department, thereby becoming a public document. It is fine to let inspectors have access to those test results, but no farther. They are a tool, but they present only a snapshot in time, and don't give a complete story. For example, they may vary by local soil type and composition. It could also be problematic where local nitrogen levels may be high due to the practices of a previous landowner (we have just such a case). The levels are declining but still high, although through no fault of our own. I don't want to be penalized for past mistakes of another farmer.

(Jensen) The "Environmental Monitoring" and fall nitrates is a concern.

(Bosma) The additional concerns I have relate to the environmental monitoring and the reporting requirements for soil tests. Although in Central Washington we would not be subject to the ground water monitoring requirements (because of the low water table in this area), I am concerned that such requirements are ill advised. We test our soils for nitrates as well as other elements, both in the fall and in the spring as a management tool for our farming operation. Our experience with these tests is that they are highly variable and imprecise, and although they serve a function as one of the tools we use, they are not

suitable as a regulatory bar. It would require a lot better sampling protocols as well as safeguards for the handling of samples and proven test procedures to make these tests suitable for regulatory purposes. Additionally it would require an extensive test history for determine safe levels as well as migration to ground waters. For the same reason, I am very concerned about requiring such imprecise tests to be filed with the department where they will be in the public domain. These tests are useful tools, but not intended as absolute values, and each test must be viewed in the context of other tests in the same proximity and the history of all these tests over the years. Adopting such a rule would invite a flurry of environmental law suits as activists and their advocates try to use such test as justification for their actions.

(Shulke) We also object to submitting soil tests, comparisons and trends to the Washington State Department of Ecology because this standard is not required in the federal CAFO rules. The scientific value of these tests are still questionable with results needing to be evaluated on an individual basis with a wider view to developing and maintaining agro-eco stewardship practices. They are worthy measures to consider when making management decisions under the consultation of experts, but they should not be used against farmers in a regulatory trap.

(Beef NW) S4C 1 and 2 — We highly recommend refining these sub-sections to clarify that these Environmental Monitoring requirements need only to apply to land application areas that are under the control of the CAFO. As worded it might be construed as soil samples need taken somewhere on the CAFO even for CAFO's that export all nutrients.

S5.Waste Storage Facilities

(WSDF) S5 Waste storage Facilities -- We accept the national NRCS standard 313, delete "for Washington" in line three.

(Hovde) Draft Permit – Condition S5 – In the past some potential CAFOs were not required to obtain manure waste storage ponds when their nutrient management plans were developed by Conservation District and US NRCS staff. These potential CAFOs were allowed, by their nutrient management plans, to apply to fields all year long as the method of handling their wastewater. This caused risk and in some cases documented discharges to surface water and risk to ground water. Will this still be allowed for either potential CAFOs or permitted CAFOs?

(Hovde) Draft Permit – Condition S6 – In the past, Conservation Districts (CDs) and US NRCS were VERY slow to update existing nutrient management plans, or operators did not inform CDs or US NRCS of necessary plan updates. Many times these changes were not found out until an Ecology inspector determined them. This section should include a deadline for when plan updates should be completed, after a change has occurred on the facility, so as to keep the most updated, accurate nutrient management plans in effect and not have outdated plans for operations. It may even be beneficial to consider that PRIOR to any changes on a CAFO, that some type of written notification, by the CAFO, to the CD, US NRCS and Ecology/Dept of Ag should occur so that there is a record of when changes occur on site and then when subsequent written plan updates for these changes finally occur. This would keep the pressure on both the operator and the CD and US NRCS office in question, to properly and timely update plans. This way, operators are held accountable, and also CD and US NRCS staff are also held accountable so that operators aren't held hostage by old outdated plans that CD and US NRCS staff won't update, or can't update due to man power or funding issues. This would lead to better protection of water quality as well since plans would be updated quickly and then operators would know better how to operate their altered operation. This was an on-going complaint of operators about the CDs and US NRCS process for developing nutrient management plans.

General Conditions

(Agri Beef) We do not understand the authority for the sweeping effort to "criminalize" the permit terms and conditions. This is a particular concern when the permit itself presents a moving target and a minefield of potential violations that are couched in non-scientific and non-specific language. If there are specific violations that carry criminal sanction, they should be specifically defined and readily identifiable. Ecology should obtain a formal opinion from the Attorney General as to the scope and limits of its authority to draft criminal provisions in this manner. If that authority exists, the specific provisions of the criminal code should be cited.

(WA Feeders) Also, if there are specific violations that carry criminal sanction, they should be specifically defined and readily identifiable. Ecology should obtain a formal opinion from the Attorney General as to the scope and limits of its authority to draft criminal provisions in this manner. If that authority exists, the specific provisions of the criminal code should be cited.

(Hovde) Draft Permit – Condition G11 – I see that from this section that now if a permittee fails to do what is required in this section that their general permit is revoked and they can apply for individual permit. What happens if they obtain an individual permit and do the same things that lead to revocation of their individual permit? Do they ever end up with a compliance action for this situation? Also see my comments in comment #23 below that further relates to this issue.

(Hovde) Draft Permit – Condition G12 – Section D – what is unacceptable pollution? Is this defined somewhere?

(Katie's Place Farm) G4 on the permit draft needs to include the following wording: Any representative of DOE or DOA entering upon a property shall comply with all biosecurity practices of that property, including but not limited to wearing protective clothing and disinfecting vehicle tires.

Fact Sheet

(Hovde) Fact Sheet – Section J – Regarding groundwater – it states that discharges aren't allowed except in certain circumstances. What are these circumstances?

(Hovde) Fact Sheet – Section J – it states that surface water quality monitoring could be required (via compliance actions) if it is shown that surface water could be impacted by (contaminated) groundwater. Is there any instances where compliance actions would require surface water monitoring, independent of any ground water situation?

(Hovde) Fact Sheet – Section P – In question 1, no mixing zones are allowed, however, in the first question, it appears that a mixing zone may be allowed in certain circumstances. How can this be? It appears to be a contradiction. This should be clarified.

(Hovde) Fact Sheet – Section P – In question 5 it does not mention the severe air quality issues that can occur when farmers add waste sheetrock/drywall (reused from waste construction debris for animal bedding) into their manure ponds. It generates toxic gases. There is an Ecology Focus Sheet on this matter from Ecology's Solid Waste Program. This topic should be mentioned in this air quality section of the fact sheet and the Focus Sheet mentioned if needed.

(Hovde) Fact Sheet – Section P – In question 9 it indicates that anyone who has met the criteria for CAFO (at any time) but has not applied will be subject to enforcement. How does Ecology or Dept of Ag intend to determine if a potential CAFO actually met CAFO criteria in the past and is subject to enforcement for not applying for permit? Many of the case files for each potential CAFO may show information about past discharges that could be used for this purpose. Is there a statute of limitations on the past discharges? Or do ANY type of past discharges, no matter how old, lead to enforcement now, if the potential CAFO doesn't apply for CAFO permit now?

(Hovde) Fact Sheet – Section P – In question 20, it still does not answer the question posed about WHO does the monitoring if required. Who will do the groundwater monitoring? The potential CAFO, the permitted CAFO, or Ecology, or some other person/agency?

(Mesonsides Dairy) The table showing Animal Unit conversions simply cannot be correct; how can a 1,400 pound milking cow equal .9 AUM, while a calf is more than half that, at .5 AUM? I have looked at a large variety of data showing calves at about .2 AUM that seems to be much closer to the actual reality.

Other

(Hovde) Additional Comment - This permit doesn't address goat milk operations and so not sure if they are also being considered for this permit if needed. There was at least one goat milk operation that I was aware of at the time I did this work. There may also be goat milk cheese operations too.

(Hovde) Additional Comment – How will the following situation be handled by Ecology/Dept of Ag now? When potential CAFOs or permitted CAFO go out of business and leave wastewater or other on-site wastes that could lead to water quality problems if not managed properly? They no longer have animals but they still have wastewater and wastes on-site. The animals were their source of revenue so now they don't have money. The claim is usually that they have no money to resolve the pollution issues. They also argue that they don't have money to pay permit fees and then their permit is revoked for lack of permit fee payment. They aren't going to try to apply for an individual permit (as the next option in this draft permit), so what happens to them then? This must be addressed somehow prior to permit cancellation for those that are CAFOs. Potential CAFOs are an entire other problem since they were never under permit to begin with but can still end up with the same problems when they go out of business.

(Hovde) Additional Comment – In the past, money from penalties issued to CAFOs or potential CAFOs was routed to help fund Conservation District and US NRCS nutrient management plans. Is this still the case? Or is this penalty money being used for other things now? If so, what? Has past penalty money ever been collected (it was a significant amount of money as I recall)?

(Hovde) Additional Comment – Overall this permit is much better than the prior permit. However, with only 2 or 3 Dept of Ag inspectors for the entire state, I question how they will manage existing CAFO permits and issue/manage new CAFO permits, especially considering the increased complexity of this draft CAFO permit. This workload needs to be considered (I assume by Dept of Ag). How will they also have time to do standard inspections, respond to complaints and also issue enforcement needed? This will be extremely difficult in my opinion based upon all the new detail in this draft CAFO permit.

(Jensen) Ecology needs to take notice to the things laid out by the WSDF

(Bentson) Second thought is your agency shouldn't try and tell us how to farm, it's insulting, we work too hard, have too much blood and sweat equity at stake, with too many years of experience to have much patience for a government agent trying to tell us how to farm. If there's a problem, let us know what it is, then get out of the way let me fix it.

(Katie's Place Farm) Please know that my fellow farmers and I consider ourselves to be environmentalists. We're certainly not getting rich growing food for our fellow citizens -- we do it for our love of land and animals. We are gravely concerned that it will soon be so complicated to raise food domestically that all the farmers will go away and we'll have to import our food from other countries who trash the land for profit. Are the advocates of these extreme permit requirements aware that Brazil is nipping at the United States' heels in fryer production? Brazil, where bajillions of acres of rainforests have been cleared? Please let us continue doing what we do so well: being careful stewards of the land.