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**To:** [Moore, Bill \(ECY\)](#); [Jennings, Jonathan \(ECY\)](#)  
**Cc:** [Jayne Davis](#); [Wade Small](#)  
**Subject:** Preliminary Draft CAFO Permit Comments  
**Date:** Friday, October 02, 2015 1:28:40 PM  
**Attachments:** [CAFO Comments 09302015.pdf](#)

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Dear Mr. Moore and Mr. Jennings:

Please see the attached Agri Beef Co. comments regarding the preliminary draft of the Washington CAFO general permit.

Wade Small  
President  
AB Livestock LLC



October 1, 2015

Submitted Electronically

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***Agri Beef Co. Comments Re: Preliminary Draft CAFO General Permit***

Dear Mr. Moore and Mr. Jennings:

Agri Beef Co. has been dedicated to providing the highest quality meat products with a commitment to superior service, value and innovation for over 45 years. Founded in 1968, we are a family company that works with family-owned and operated farms and ranches throughout the Northwest. From ranch to table we are involved in every step of the beef lifecycle, including cattle ranching and feeding (AB Livestock), cattle nutrition (PerforMix Nutrition Systems) and beef processing (Washington Beef), sales and marketing (AB Foods) while preserving natural resources through recycling by-products, composting, water reclamation and bioenergy initiatives (AGRON Bioenergy). Agri Beef Co.'s model coordinates the efforts of all its business operations to responsibly produce the highest-quality meat products.

Agri Beef Co. is disappointed by the proposed Preliminary Draft CAFO Permit. As a landowner and as a company that depends on private land owner cattle ranchers and feeders throughout the Northwest, we strive to care for the air and the water. The well-being of our cattle, and our producer families, depend upon it. That care should not require excessive and unnecessary data collection and regulations that are uneconomical, redundant, or useless. Our comments follow.

**1. Permit Expansion based on Presumption of Lagoon Leakage is Unnecessary and Unsupported in the Record.**

Ecology is proposing a sweeping expansion of CAFO permit coverage that goes well beyond federal and State requirements. Under Section S.2A Ecology claims to have "determined" that all manure or clay lined lagoons discharge pollution to groundwater. This determination is unsubstantiated in three ways: (1) not all lagoons are in proximity to ground water; (2) if a lagoon lies above a groundwater source the assumption that suspected leakage would reach groundwater and qualify as "pollution" under RCW 90.48.020 is unsubstantiated; and (3) the scientific literature does not support the conclusion that manure-lined or clay-lined lagoons allow discharge above the level of regulatory concern.

If Ecology has scientific data to the contrary, that data should be made part of the record and subject to hearing along with the cost and benefit of expanding permit coverage to CAFO's that do not have the potential to discharge to surface water or groundwater.

We have a similar problem with the so-called "One-Time Lagoon Report" under Section S7.C. While Ecology staff have promised that the collection of this information is not directed at any plan or potential to require the construction of new lagoons or the imposition of new lagoon regulations, that reassurance is suspect and the regulatory purpose and authority to require this information is also questionable. In many cases, the information proposed does not exist and would be exorbitantly expensive or impossible to develop, collect, or document from historical records.

The false assumption that lagoons without geomembranes cause discharge of pollutants to waters of the State also makes termination of a permit under Section S2.F unworkable. First, the permittee could never overcome the presumption of theoretical groundwater contact. Second, the permittee could never exercise the option to operate without a permit, which is allowed under federal law for facilities with no potential to discharge.

Imposing unnecessary or duplicate requirements on the cattle feeding industry in Washington that do not apply in other states unnecessarily places Washington industry at a competitive disadvantage with no benefit to the environment.

**2. Many of the Provisions for the Manure Pollution Prevention Plan (MPPP) are Overly Burdensome and Unworkable; the Trigger for Mandatory Revision is Undefined or Unclear.**

Many of the provisions for MPPP proposed in Section S4 are overly burdensome and unworkable. Two of the proposed exceptions are significant and must be preserved.

Section S4.C Paragraph 14, "Manure Export" appropriately contains exemptions from manure application analysis and recordkeeping when the feedlot permittee has no control over land application or how the manure is used. In addition for "On-CAFO Composting by a Third-Party" the permittee is appropriately relieved of the requirement to track the manure export. These provisions are essential and should be expanded. For instance, the proposed permit should

assure that other arrangements for composting and commercial sale do not trigger analysis and recordkeeping beyond the point where the permittee has control over processing or end use.

We adopt by reference the additional comments provided by Washington Cattle Feeders Association regarding manure management and application requirements. We note that the discussion and strong consensus when the prior General Permit was adopted in 2006 was that the waste discharge permit standards should not be duplicative and inconsistent with Nutrient Management Plans. The proposed draft permit appears to scrap the progress that was already made on Nutrient Management Plans without any justification or explanation for greater recordkeeping, more testing, more restrictions, and greater potential inconsistency.

### **3. The Proposed Permit Arbitrarily Creates Buffer Zones, Setbacks, and Use Restrictions that have No Basis in Federal or State Law or Science.**

Washington law has unique procedures and protections for shorelines, wetlands, and the creation (and exemption) of buffer zones and full or partial use restriction. Washington law utilizes principals—like Best Available Science under the Growth Management Act—that are intended to avoid unnecessary restrictions or arbitrary standards. The record contains no basis for requiring the installation of a 35-foot vegetative buffer, grazing setbacks in non-CAFO areas of grazing lands, or 100 foot setbacks from the enumerated natural and man-made structures. For instance, a 100-foot setback from a cased and sealed irrigation well drawing water from an aquifer 200 feet in basalt is unjustified, whereas the same restriction on a hand dug shallow domestic well might be appropriate. The permit makes no effort to address buffers and setbacks consistently with actual need and the other regulatory programs that are already in place to address legitimate concerns. In this regard, the proposed setbacks and restrictions are arbitrary, unnecessary, and take land out of production at great expense and no environmental benefit.

### **4. Public Records Unintended Impacts.**

The proposed permit requires an unprecedented disclosure of business sensitive information and data collection well beyond the requirements of the regulatory program. Permittees are also required to keep sensitive records on transactions with customers and contractors, maps and plans of sensitive facilities, and identification of points of vulnerability. Section S7.A requires public access to the manure plan and *all* records created in support of the manure plan.

The records required, retained, and made available for public access must be reduced. The Washington Legislature has always been sensitive to the protection from public disclosure of sensitive information on agriculture and livestock. For instance, RCW 42.56.380 exempts from public disclosure all business related information submitted to the Washington Department of Agriculture under RCW 15.86.110. Under other exemptions, herd management records are protected from disclosure. RCW 42.56.380(9) and (11).

Without a similar legislative exemption the same—or similar—records would be released on demand to any member of the public. In this situation, Ecology needs to take two steps with the draft permit: (1) limit the information collected to essential information; and (2) work with

the industry and the Legislature to obtain public disclosure exemptions by statute for commercially sensitive agricultural and livestock information, similar to the exemptions obtained in support of other State agency programs that require disclosure of sensitive information.

## CONCLUSION

At Agri Beef Co., we are guided in our operations by the fundamental principles of **sustainability, total quality, animal well-being, and responsibility**. We share the goal of protecting water quality, but we all must make responsible decisions as we move into the future. This requires Ecology to ensure it is not duplicating requirements of other agencies or creating unnecessary regulation where there is no science proving such oversight will make any difference. The net effect of the proposed General Permit will **not** be an improvement to the environment, and instead places an enormous burden on businesses of time, financial resources, competitiveness, and liability. Ecology should rely on cooperative coordination with existing successful programs, practices and people.

We have not attempted to duplicate all of the comments and concerns that are being addressed by other farm and industry representatives. It is important to note that many of those representatives are small businesses who are our suppliers, contractors, and customers who will need the benefit of the required *Economic Impact Analysis* under WAC 173-226-120. Consideration of unnecessary economic impacts need to be addressed at this early stage in the development of the general permit, not as an afterthought, after the permit is completed.

Agri Beef Co. encourages you and your staff to carefully review and consider the information you receive during the comment period from the people who live and rely on the land for their livelihoods, and who operate businesses that successfully and sustainably contribute to the Washington State economy year after year.

Sincerely,



Jayne Davis  
Director of Corporate and Regulatory Affairs  
Agri Beef Co.