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**To:** [Jennings, Jonathan \(ECY\)](#)  
**Subject:** FOTC comments on the CAFO General Permit  
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**Attachments:** [Comments on the CAFO General Permit for WA State III.docx](#)

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Good Morning Jon,

Here are comments from the Friends of Toppenish Creek regarding the CAFO general permit. Would you mind responding to let me know that you received them?

Thanks very much.

Jean Mendoza



## Friends of Toppenish Creek

### Comments on the CAFO General Permit for WA State

Washington State has failed to protect the waters of the state. Washington State has failed to comply with the requirements of the Clean Water Act and the Safe Drinking Water Act as related to confined animal feeding operations (CAFOs). Since 2003, under the Memorandum of Understanding between the WA State Department of Agriculture and the Washington State Department of Ecology, the dairy industry in the Yakima Valley has flourished with an infusion of tax payer monies, tax breaks, and a regulatory system that looks the other way while dairies pour more and more pollutants into the soil, the groundwater and the surface waters.

Please keep Section 12 of the Washington State Constitution in mind as you work to craft and effective CAFO General Permit. The Constitutions says:

***SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED.*** *No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.*

### Suggested Modifications to the Proposed CAFO General Permit

Please consider these suggestions written with intent to protect small farmers, people who live near Washington CAFOs and the tax paying public.

**Fee Structure:** The CAFO General Permit is designed to minimize discharges to waters of the state by concentrated animal feeding operations, a very serious problem. Permit costs should be proportionate to the potential to pollute.

For many years there were more cattle than people in rural areas. The total number of cows in Yakima County has not changed a great deal over the past one hundred years. Although there was likely bacterial pollution of streams when animals grazed freely the abrupt increase in nitrate and phosphorous pollution only occurred when high producing dairy cows came to be confined in small areas and large amounts of manure piled up. Mature milk cows produce much more manure with higher amounts of nitrate and phosphorous than other cattle. Why should producers who manage their operations in a balanced manner with sufficient land for manure application suffer because others choose to place too many cows on too small an area? They should not. Dairies with sufficient land, perhaps two acres per cow, should not be classified along with those who have many cows per acre. Two cows produce twice as much manure as one cow. The fee structure for the CAFO General Permit should be based on the number of cows in an operation and the capacity of available land to utilize the nutrients they produce. Anything different unfairly penalizes small dairies in a very competitive market place.

**Funding for the NPDES Program:** Given the uncertainty of funding for Washington State programs and the documented need for better monitoring we strongly protest any plan of action that depends on temporary funding of any kind. For example, recent legislation has added two dairy inspectors to the Dairy Nutrient Management Program for only two years. This is not helpful. It is our observation that temporary programs that are not highly visible are the first to be cut during economic downturns. With this in mind we recommend strong language that describes how the NPDES program will be funded and sustained. It must be immune to budget cuts and legislative pruning.

We believe that, like other private enterprises, the dairy industry should pay for most of the governmental programs that keep the industry's actions safe for all. Over the years tax payers have supported multiple voluntary programs to help the dairy industry perform in environmentally safe ways. Sadly, some large operators have simply chosen to ignore their own nutrient management plans. The public is currently spending millions of dollars to address the consequent problems and there is no end in sight. We recommend a lean and mean program in which those who pollute are the ones who pay for regulation and cleanup.

**Protecting Neighbor's Rights:** People who live in rural areas are accustomed to barnyard smells and understand the importance of handwashing and other protective measures. When manure from a CAFO pours over a fence line onto a neighbor's property, when dead calves are found in drainage ditches and people's driveways, when families learn that their well water is not safe to drink, when polluted water

contaminates streams where people fish and swim, there is an intrusion on individual rights. Please add a section to the CAFO General Permit that provides for notification of rural neighbors concerning how to report a permit violation along with an explanation of neighbors' rights.

**A Watershed Approach:** In spite of major improvements to irrigation systems in the Lower Yakima Valley the loads of nitrogen and phosphorous in the four LYV agricultural drains have stayed the same or increased since 1997, according to a study by the Roza-Sunnyside Joint Board of Control. It is likely that the easy corrections have been done and other solutions are very costly. It is possible . . . no, it is probable that the number of cows in CAFOs that the valley can sustain has been reached and increasing herd sizes will overwhelm the watershed. Dairies in this area could comply with all the requirements of the CAFO General Permit and the total levels of nitrate in groundwater and phosphorous and nitrogen in drainage could still increase. With this in mind we recommend that the WA Department of Ecology add a watershed approach as outlined in section 3.3.2 of the NPDES Permit Writer's Manual for CAFOs. It is reasonable to refuse an application for an NPDES permit simply because there are too many CAFOS, too close together. Many states and local governments have successfully imposed these limits. We also recommend more stringent requirements and monitoring for CAFOs that locate in critical aquifer recharge areas and other sensitive locations. If a dairy chooses to build a lagoon next to a major agricultural drain in an area with a four foot water table there should be protective monitoring in place and it seems unfair to ask tax payers to fund such a project.

**Buffers:** It is our understanding that representatives from agriculture prefer a decrease in the required buffers around surface waters, wellheads, drains, open tile lines, and other conduits. It is our understanding that they prefer a decrease in the required land application setbacks. We strongly support the buffers and setbacks as written in the draft permit. Research clearly tells us that this is the most effective way to protect the surface waters from runoff.

In the event that the size of buffers and setbacks is decreased we request close and well defined monitoring of each affected body of water along with periodic assessments to ensure that fish and wildlife are not negatively impacted. We request bonding of those producers who choose the smaller buffers and setbacks to cover the costs to tax payers if monitoring shows a negative impact. We request a clear and easily enforceable pathway for correction if reduced buffers and setbacks are detrimental to the environment and public health. The appropriate steps must be taken before any defensive litigation takes place since prolonged court action with ongoing pollution can result in serious, sometimes

irreversible damage to the environment. Protection of waters of the state and public health should be the top priority.

**Reliance on Best Management Practices:** It is our observation that Best Management Practices are poorly defined and the effects are difficult to quantify. We recommend that the Department of Ecology and others should spend some time analyzing and rating BMPs associated with Concentrated Animal Feeding Operations. Please note this quote from the Western Washington Hearings Board in *ARD v. Shelton* 980209995 (FDO 8-10-98): “If BMPs are relied upon for protection of (Critical Areas) some form of monitoring and enforcement must be included to ensure that the plans are actually implemented and followed.” In addition, there are Best Management Practices for dairies that protect water quality at the expense of air quality. These BMPs should not count toward NPDES compliance. There should be a stipulation in the permit that allows for a public challenge of BMPs and withdrawal of BMPs on the grounds that air pollution is the result. Composting of manure comes to mind in this respect.

**CAFO Composting of Manure Solids:** Regarding the qualification, “If the Permittee has an agreement with another party to compost the Permittee’s manure solids on-site, sale of the composted solids as a product by the third party is not required to be tracked as part of manure export.” All composters should comply with the same requirements to protect air and water as dairies. It is necessary to document the volume of compost exported in order to understand nitrogen and phosphorous balance from a watershed and systems perspective. This information must be public record.

**Concentration of Animals:** A CAFO with four cows per acre in pens and corrals will have twice the input of nitrogen to the ground and twice the potential for groundwater contamination as one with two cows per acre. A CAFO with a thousand cows will require twice the lagoon space to store manure over the winter months as one with five hundred. We recommend a matrix that analyzes impact to groundwater based on the number and concentration of animals. Operations with insufficient lagoon capacity and higher concentration of animals pose a higher risk to the environment and health. They require closer scrutiny. Those at highest risk should post a bond to cover spills, over application and leakage that result in property damage, harm to fish and wildlife, and negative impacts on public health.

Numbers and concentration of cows must be public record. Public safety should have priority over privileged information. Over the past decade the public was assured that the Washington State Department of Agriculture would protect the public and the environment while simultaneously protecting confidential information including these statistics. WSDA only protected business and

completely failed to prevent the ground and surface water pollution we now experience in the Yakima Valley. This must not continue. If it does the associated long term costs on all levels will escalate.

**Option for land application response to nitrate benchmark:** Given the egregious over application of manures to cropland in the Yakima Valley the Matrix to Address Land Application is totally inadequate. We suggest an expanded matrix with harsher consequences when producers and growers blatantly ignore their own commitments to protect the water.

**Suggested Fall Soil Test Matrix Response**

Depth of Sample	< 15 ppm	15 – 30 ppm	31 – 45 ppm	46 – 65 ppm	66 – 85 ppm	86–105 ppm	106 - 150	151 – 200	> 200 ppm
1 ft Depth	0	0	1	3	4	5	6	7	8
2 ft Depth	0	1	2	4	5	6	7	8	9
3 ft Depth	0	2	3	5	6	7	8	9	10
Deeper	0	3	4	6	7	8	9	10	11

Total Score	Required Action Level
≤ 1	No Action
2 – 3	Light Action
4 – 5	Modest Action
6 – 7	Light Aggressive Action
8 – 9	Modest Aggressive Action
10 – 11	Heavy Aggressive Action
≥ 11	Criminal Charges

Light Action: See DOE recommendations

Modest Action: See DOE recommendations

Light Aggressive action: See DOE recommendations

Modest Aggressive Action: Light action plus \$50,000 fine

Heavy Aggressive Action: Modest action plus \$100,000 fine

Criminal Charges: Heavy Aggressive action plus jail time

**Conclusion:** The Friends of Toppenish Creek are committed to the well-being of the Yakima Valley for generations to come. We see great dangers associated with concentrated animal feeding operations and consider a strong CAFO General Permit to be a major tool for addressing these problems. If the State of Washington continues to promote business and trade, then government has an obligation to analyze the long term effects of these policies. With this in mind, please consider a quote from the Journal of Dairy Science (von Keyserlingk et al, J. Dairy Science, Issue 96, pages 1 – 21): “We identified several factors affecting the sustainability of the US dairy industry, including climate change, rapid scientific and technological innovation, globalization, integration of societal values, and multidisciplinary research initiatives. Specific challenges include westward migration of milk production in the United States (which is at odds with projected reductions in precipitation and associated limitations in water availability for cattle and crops). . . .”

Thank you for reading and protecting our waters.

*Jean Mendoza*

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