

**From:** [Matt Plowman](#)  
**To:** [Jennings, Jonathan \(ECY\)](#)  
**Subject:** cafo comment  
**Date:** Friday, September 18, 2015 8:41:21 AM  
**Attachments:** [Comments on preliminary 2015 cafo 9-18 j&d Edits.pdf](#)

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Thank-You, Matt

# Draft

September 18<sup>th</sup>, 2015

Heather Bartlett, Water Quality Program Manager  
Washington Department of Ecology  
c/o Jon Jennings  
PO Box 47696  
Olympia, WA 98504-7696

Re: Comments on Preliminary Draft Concentrated Animal Feeding Operation (CAFO) General Permit

Dear Ms, Bartlett,

Thank you for the time and work that you and your staff have put into this preliminary draft of the NPDES CAFO Permit. Please accept the following comments and suggestions on behalf of the Washington State Dairy Federation. We have marked the page number and section of each comment. If there are any questions about the comments we are glad to clarify with you or your staff.

We will start with some general observations before we get into the line-by-line comments.

Your staff indicated in a meeting this summer that there were going to be obvious problems with this permit and they wanted those flaws pointed out. There are several big issues with this permit draft and we point them out and reiterate at the end. But from an overall perspective the issues that jump to top of mind are:

- The determination that all farms with manure lagoons are discharging is a stunning assumption and especially problematic in the absence of data to support that conclusion.

(Please share or make available all science and data that was used to support the conclusion that lagoons leak pollutants into groundwater.)

From that determination, Ecology proposes that all livestock farms with lagoons be required to get a permit, triggering permit coverage for hundreds of farms across the state. That would lead to a huge volume of paperwork, new reporting, new rules, new conditions, new planning and engineering requirements and numerous areas of duplication. All this work overlaps and duplicates much of the existing conservation work done by farmers via NRCS, Conservation Districts and Washington State Department of Agriculture.

Based on conversations with dairy farmers across the state, we are gravely concerned about losing a significant percentage of farmers who simply cannot and/or will not comply with the terms and conditions of this permit as drafted.

We do not believe the environment or water quality will benefit or improve ANYWHERE if dairy farms choose to exit the business. Many of our dairy farms – especially those close to urban areas – are under financial pressure to sell to developers. Conversion of dairy farms to urban sprawl, means the accompanying loss of local food producers, jobs, organic nutrient suppliers, protectors of a significant percentage of wildlife habitat, especially waterfowl habitat. We are not being irrationally alarmist, land conversion out of dairy is a very real option that producers are already pondering and one your agency MUST consider according to RCW 90.48.450.

Our specific concerns are as follows:

Our suggested changes are [in blue italics](#).

Page 5.

S1.A It is mentioned in the margin that WAC 173-226 applies to any general permit holder in Washington State. These rules governing General permits in Washington State total 21 pages of additional rules for the development, implementation and operation of General Permits in Washington State.

- *First suggestion is that future communications regarding this permit should include a link to those rules and printed materials should include all sections of this rule that Ecology will be requiring farmers to comply with. These rules appear to be absolutely included by reference as part of the terms and conditions that must be followed by all CAFO permit holders.*
- *Language should clarify that hearings and other provisions relate to general permits and not individual farm operations.*

Questions-

What are all the relevant and applicable sections?

What sections do not apply or are discretionary?

- *If in fact all appropriate sections of WAC 173-226 must be applied and followed by every farm permit holder then it needs to clearly state that in the permit – not in the margin.*

We have concerns and questions about WAC 173-226 apparently included in this rule:

- a. When must permit holders or applicants publish Notice of Public Notification by Permittee (2 Notices in local newspaper)? Is this only at initial application or more often?
- b. Regarding the public hearing for new individual applications for general permit or previous permit holders with an increase in effluent. Any person may request that Ecology hold a

public hearing on any permit application. Is it automatic that there will be a public hearing? Are there limitations on scope and subject matter at these public hearings? Where are the public hearings typically held?

- c. Regarding the section allowing Individual general permit appeals (terms and conditions appealable within 30 Days) If Ecology approves a general permit and the terms and conditions, then does Ecology provide any supporting communication on behalf of the permit holder to the courts about the validity and reasoning for approval? Please explain how the Department of Ecology supports its decisions if their decision is appealed.
- d. Regarding SEPA requirement (New applicants must certify they have met “ applicable SEPA requirements” under State Environmental Policy Act (SEPA) WAC 197-11) in their initial application or for operations previously covered with an increase in effluent volume.)
  - Please explain what terms and conditions farmers must “certify” they have complied with? How is a farmer supposed to effectively retroactively certify they have followed all SEPA conditions in the past? When SEPA may not even have applied to the farmer?
- e. Regarding section 173-226-250 Enforcement that appears to be included in the Permit by reference.
  - Does inclusion of this enforcement section in the NPDES permit then also allow third party enforcement because it is part of a federal permit system? This WAC enforcement and right of entry section is intimidating enough to make many farms reevaluate their future alone, inclusion of provision to allow third party litigation on all potential terms, conditions and penalties that Ecology has not acted on makes this permit a litigation weapon.
  - *We suggest clarifying language that the SEPA conditions must be met only if they apply to the situation.*

Page 5

S2.A

How precisely did Ecology “determine” that all lagoons - other than double lined – leak pollutants into waters of the state in violation of state law? This appears to be a determination of guilt by assumption and theory and not based on science, or evidence. Where is there any data to support this assumption? See attached Journal of Environmental Science study by S. Baram. This study indicates that properly managed lagoons result in Coupled Nitrification and Denitrification (CND) in the vadose zone under a lagoon due to saturated and unsaturated soil conditions in and immediately under the lagoon liner and achieves 90-100% denitrification or conversion of nitrate to N<sub>2</sub> gas. Note the discussion on the need for some saturation in the vadose zone to achieve conditions for denitrification.

Please see attachments included with these comments on two lagoon systems in Washington that show no evidence of leakage to groundwater and provides data, from Washington State, that shows precisely the findings that the science referenced above says you should find. That is:

A. Leakage to vadose zone is so small that monitoring shows it doesn't move into groundwater and even if it did then

B. under lagoon soil test data shows that nitrification then denitrification works to convert ammonia and ammonium to nitrate to inert N<sub>2</sub> gas.

## So where is the discharge? Of what?

We are concerned about synthetic liners, including double liners, providing the needed protection. Recently we were informed that two lined lagoons in Washington State were performing so poorly they were removed and clay was installed. Plastic ages – clay does not. Plastic tears, clay does not. Clay and soil measured in feet is not as susceptible to mechanical damage as a plastic layer measured in hundredths of inches. Soil filtering properties were highlighted in a recent Skagit County Herald article. ([http://www.goskagit.com/all\\_access/cleaner-water-the-focus-of-coming-development-rules/article\\_7aaddb60-ee49-591a-b02d-0688b7e9422c.html](http://www.goskagit.com/all_access/cleaner-water-the-focus-of-coming-development-rules/article_7aaddb60-ee49-591a-b02d-0688b7e9422c.html))

The standard in Washington for a discharge of pollutant is found in RCW 90.48.020 is not one molecule, or a bunch of molecules, or a trace – it is:

*...as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. RCW 90.48.020*

**Please supply the scientific evidence that any lagoons on livestock farms are “creating a nuisance” in waters of the state? Or actually discharging to waters of the state? (Referencing RCW 90.48.160)**

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### Federal Designation questions

The determination that all CAFO’s are discharging appears also to be contradictory to clear language regarding designating AFOs as CAFOs in the Clean Water Act.

The following is from “Compiled CAFO Final Rule. Published on July 30, 2012.  
([http://water.epa.gov/polwaste/npdes/upload/cafo\\_final\\_rule2008\\_comp.pdf](http://water.epa.gov/polwaste/npdes/upload/cafo_final_rule2008_comp.pdf))

#### SS 122.23 (c)

(c) How may an AFO be designated as a CAFO? The appropriate authority (i.e., State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a **significant contributor of pollutants** to waters of the United States.

#### (1) Who may designate?

(i) Approved States. In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO’s discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:

- (i) The size of the AFO and the amount of wastes reaching waters of the United States;
- (ii) The location of the AFO relative to waters of the United States;
- (iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
- (iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
- (v) (v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

- (i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or
- (ii) Pollutants are discharged directly into waters of the United States, which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Given the Federal rules we have the following questions-

1. The Director has not conducted on site inspections on any dairy farms with the intention of determining if the AFO is a CAFO. So how is it that undesignated AFOs can arbitrarily now become a CAFO under this federal permitting scheme?
2. What is “significant discharge” to WOTUS or Waters of the State?
3. Based on what evidence associated with lagoons has the Director determined that AFO and CAFO’s with lagoons are discharging?
4. The Federal Language above indicates that the AFO must be discharging to WOTUS. Why does the “designation” process outlined above not need to be followed?
5. Can Ecology simply delete portions of the Federal rule – like the designation procedure – as it sees fit?
6. Do permit requirements like “on-site inspections”, or “actual discharges”, or “determinations of significant discharge” still apply to the state to follow and at levels not less than the federal CAFO rules? Eliminating these sections seems contrary to protecting everyone’s rights and renders the federal rule making a useless waste of time.
7. It appears

the state is trying to make the Federal CAFO rules fit into a new state regulatory scheme. It seems to miss the point of being a “combined” permit by deleting sections of federal rule.

We must ask the extent to which Ecology will apply their determination of discharges under 90.48.160. Would the department next determine that all soil-applied fertilizer is discharging either under RCW 90.48.160 or 90.48.080? The process and conclusion of such reasoning raise questions far beyond the operation of lagoons.

- If a theoretical leakage factor [such as  $10 \times 10^{-7}$ ] is considered actual leakage,
- and the leakage is then assumed to reach Waters of the State (without evidence to support that assumption)
- and the leakage is then assumed to have contaminants –without evidence of that either
- and this is then considered a discharge of pollutants. Where does that reasoning stop?

Concrete and double synthetic liners have theoretical leakage rates. Fertilizer on golf courses, yards and gardens leaks through soil. Septic tanks are designed to leak (they have drain or “leach” fields). According to the proposed application of RCW 90.48.160 any commercial or industrial operation that disposes pollutants into Waters of the state must get a permit. Therefore every commercial or industrial business (operation) that has a septic tank must get a permit. (Yes there is an exemption for “domestic sewage only”, but not for sewage for commercial or industrial septic systems)

Given the conclusion of Ecology’s logic-

**Any** “commercial or industrial source” (see RCW 90.48.160) that allows water or dust, or sediment with **any** contaminant, **any** pollutant in **any** amount, to get in **any** water of the state at **any** level at **any** time.

Would need a general permit.

**Ecology seems to be using the opportunity of updating the federal/state CAFO permit under state and federal law to make an unsupported determination that one sector of our society needs a permit. And it seems clear that the steps to reach this determination would easily be applied to nearly any agricultural or rural activity that is not part of a municipal wastewater treatment service.**

Ecology participated with NRCS in 1994 and 2004 and agreed on update language to NRCS 313 Lagoon standards. So now how can Ecology arbitrarily determine that standards they agreed to - NOW require a permit?

(See attached September 14, 2004 letter from John Storman)

**Change** – Please supply all scientific data, studies and references used in the determination that the leakage rates to the vadose zone actually move into waters of the state and that that water actually contains pollutants.

**Change** *Farms needing permit coverage are those farms that opt for coverage or those farms that propose to discharge and have actual, significant, verified evidence based discharges to waters of the state as determined by actual inspections by the Director of Ecology or designee or WSDA under a Memorandum of Understanding. All CAFO determinations should be conducted according to at least the minimum conditions for determining that an AFO is a CAFO under Federal CAFO rules.*

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Page 6

S2.B

Permit applicants must publish notice of application in public paper once a week for two weeks. This is burdensome to the applicants and does not appear to serve a purpose of protecting environmental attributes or any public interest.

Please explain why this is proposed.

S2.C .2 –

**Change** Clarify that public hearings and comment section only applicable to applications for coverage by new operations or increased discharges (as per WAC 173.226.130)

Page 8

S2.F (1) b.

As a condition to terminate permit coverage the “Permittee must demonstrate that there is no longer a discharge to waters of the state.”

How are we supposed to demonstrate there is no discharge to waters? Ecology didn’t find it necessary to show proof/evidence a farm had a discharge in the first place! So how can a farm attest that they no longer have a discharge?

Attached is data from a Yakima farm that did core drilling. The data shows a massive drop in nitrate between first foot and second and then to minute levels at third foot. The nitrate level immediately below the lagoon simply shows they had no discharge possibility– zero. But the farm had to go out of business, dry and clean out the lagoon and then have the core sample taken that showed they were not discharging.

Because the Ecology assumption that lagoons leak something to groundwater is not based on data or evidence. And because the assumption is that there was a pollutant of any amount in that leakage. Therefore there is a discharge subject to their jurisdiction - not based on evidence or facts but on theoretical specifications.

And because everything has a theoretical permeability rate and might theoretically get to waters of the state...then there is simply no scientific or legal standard to support how we then prove we are innocent.

**To terminate coverage you give us the option of:**

- A. Get out of the livestock business or,**
- B. Require us to prove absolute zero. Not possible!**

S3.A

Discharges authorized must not cause or contribute to violations of four more sets of rules that must be complied with

- WAC 173-201A – Surface Water Quality Standards (State)
- WAC 173-200 – Groundwater Quality standards (State)
- WAC 173-204 – Sediment Management Standards (State)
- 40 CFR 131.36 – National Toxics Rule (Federal)

Please explain how and where farms will need to comply with each of these rules, and how this will be applied to farms with permits.

Page 9 S3.A (2)

Stipulates AKART - The permit needs to clarify the differences or similarities between AKART and BMP's. Farmers, NRCS, WSU Extension, conservation districts, state and federal conservation programs, farm plans and the 2006 permit all use the term BMPs to refer to not only management practices but also physically constructed things and actions.

***Change - Previous permit stipulated NRCS FOTG or alternative, equally effective BMPs. Federal Rule stipulates BMPs in a farm plan. Revert to previous and current Federal conditions referencing BMPs. Please reference NRCS FOTGs as acceptable.***

Page 9 S3.B

Compliance with local TMDL-

Why is this section in there? TMDLs are a surface water program for point sources and yes CAFOs are point sources BUT in this case the compliance standard for a CAFO operation regarding surface water is “no discharges except for beyond 24 hr/25 year events.”

S3.B (1) adds paperwork and reporting that will be confusing for our farmers especially given the second sub section...

S3.B (2) says that compliance in a TMDL area ***is the terms of the permit***.....so again why do dairy farmers need to follow the activities of a TMDL to report on the fact that they are in compliance and have already done their part....

This appears to do nothing more than to add paperwork.

***Change – Delete this unnecessary section.***

S3.C

- The term “Wastewater water control facilities” is not defined and term is not really appropriate for a CAFO permit.

[Change – to lagoon \(which is defined but needs clarified See comment on lagoons in definition section page 41 \)](#)

-Ecology review of Engineering documents - WAC 173-240

Adds an unbelievable complex set of rules and requirements on a farm. Additionally it starts with a vague term “prior *to constructing or modifying...*” then adds the WAC requirement a farmer must undergo every time they “modify” their facilities.

- What does “constructing or modifying,” mean?
- Ecology does not specify what standards we must use or what standards Ecology will use to review plans, designs and engineering reports. What changes will Ecology seek and what standards will be used for such demands?
- Why is Ecology ignoring NRCS and Conservation District standards and resources?
- Does Ecology even have staff available and trained to perform the functions in WAC 173-240-110 through 173-240-180? If so, when and where have these staff been trained for this purpose? Does Ecology have engineers, farm planners, and technicians capable of reviewing and approving hundreds of construction or modification plans and operation manuals?
- Can Ecology change or modify a plan that has been stamped by an engineer?
  
- Why is this necessary?
  - It is utterly ridiculous to require an engineer to do an engineering report ( 173-240-160) 180 days prior to (apparently any) modification or construction on our manure systems (unless ecology waives the engineer requirement).
  - Why, What is and when is operation and maintenance manual required?

[This is an unbelievable, illogical, complex, expensive, and vague. It is possibly potentially a violation of engineering laws and an unacceptable bureaucratic waste of time.](#)

Permitees already certify in the permit that they are operating, managing and maintaining the manure system in good working order to **prevent pollution** by using BMP’s. An engineer, or NRCS or trained Conservation District staff currently oversee, design, monitor or certify construction on many practices.

[Change –Delete the section on engineering.](#)

Page 10

S4

General observations – The requirement to develop a Manure Pollution Prevention Plan (MPPP) within 6 months as outlined in S4 is onerous. Every dairy farm in the state has developed Nutrient Management Plans over the past 17 years - many completely rewritten several times. The

provisions included in this draft for a MPPP includes some similarities, but also numerous additional requirements.

The current Nutrient Management Plans that dairy farms have implemented have PROVEN to be effective in controlling pollution. No other sector of Agriculture or rural land use is required to do farm plans – let alone now to add a new second set of plans and paper work. Such requirements are not placed on crop farms, cattle ranches, orchards, lawn maintenance and hobby farms, just to name a few.

In essence, Ecology is proposing that the MPPP plans duplicate and exceed the requirements that are met by the most highly-regulated sector of Washington agriculture. Rather than improve environmental outcomes, this requirement is likely to result in dairies converting to other less-regulated agriculture or – worse yet – to take their land completely out of agricultural use.

The goal that was expressed to us was to keep the time and expense of this permit to a minimum necessary. The Requirement to develop a MPPP fails the test of keeping complications to a minimum.

***Change*** *Replace the MPPP requirement with a current “Farm Plan” - designed for current land and animals on the operation.*

***Change-*** *Ecology must work with the Department of Agriculture, the Conservation Commission and the US Natural Resources Conservation Service (NRCS) to eliminate the duplications and unnecessary additions.*

These conditions are an over-reach (see following specifics regarding S4). We have farm plans already. They work; they are effective! There are a few additional federal CAFO requirements to add to existing plans.

We are gravely concerned about the loss of farms that simply cannot tolerate this wasteful, bureaucratic duplication and lack of coordination between Ecology and other state agencies as well as federal partner NRCS.

S4.A (3) Again, replace the term AKART with the term BMP and/or FOTGs. The previous permit used the term BMP, also referenced use of NRCS FOTG or equivalent BMP's. The use and references to the Field Office Tech Guide practices and BMPs are synonyms in farm country. We know of no list of AKART practices for agriculture. Federal CAFO guidelines use term BMP.

***Change–*** *Replace with language referencing BMP's, Farm Plans and NRCS FOTG's and consistent with Federal CAFO guidelines.*

S4.B

S4.B (1) “The permittee must modify the MPPP whenever there is a change in design, construction, operation or maintenance of the CAFO.”

Very vague –“whenever” is a huge word.

**Change** See previous permit (July 21, 2006) {page 15 D.(1)} for better wording on when the farm plan (MPPP) should be updated. Generally update only when a change is significant enough it will substantially affect the ability of producer to prevent pollution. Reporting for reporting sake is a waste of time for both the farmer and the department. NRCS farm plans are generally designed to 110% of producer capacity. Please check with NRCS on when they recommend updates. WSDA and Conservation Districts all design to 110%. Farms with changes beyond that level should update.

Contact Department of Agriculture for confirmation and guidance on when they tell producers to get an update for other reasons.

S4.B (2) “MPPP narrative must include documentation to explain and justify the pollution prevention decisions made for the facility.”

We have no idea what this means or how farmers will do this.

**Change** Remove this sentence and replace whole MPPP reference with Farm plan language similar to previous permit and federal CAFO guideline language.

S4.B (3)

What is an example of a local regulatory agency? Where is there an MOU or delegated authority to any local agency to inspect farms for the terms and conditions of this permit?

(3)a. Seven days is extremely short if the revisions are major and violations non existent.

**Change** - Develop ranges or guidance to allow more time if FARM PLAN revisions are needed post inspection and there is no threat of significant discharge.

Page 11

S4.C Minimum Components of a MPP

Goes way beyond Minimum Federal Elements. Mapping is likely impossible and unachievable.

**Change** - Replace with language consistent with FEDERAL guidelines.

Page 12

S4.C1. (b) What if there are no engineering plans for structures. There are dairy farms that have been in operation for over 100 years in this state. Blueprints, design plans will not likely be available for every structure.

It appears that a farmer will be in violation if plans are not found for everything?

**Change** - Eliminate

A requirement to measure actual flow rates on all pumps is a waste of time. Some farms have flow meters - some do not, actual flow rates can and do vary on same pump depending on pressure, manure consistency, temperature, water content, etc.

***Change - Eliminate***

S4.C2 The prohibition on manure tracked on roadways is impossible. I.E. If a farmer and his tractor drives out on road way in the middle of no where, miles from running water and one piece of manure falls off the tractor. That is a permit violation - punishable with a \$10,000 per day or subject to a citizen suit even if there was no chance of ever discharging anything to any waters, ever. Regardless of the lack of harm or risk, the farmer could still end up in court. This is a pollution discharge elimination permit! This section is impossible and creates an enforcement nightmare for farmers.

***Change- Either eliminate this language or reference the requirements of existing farm plans to keep manure out of waters of the state.***

Page 13

S4.C. 3 a (2) Vegetation Control. – Caution and clarification is needed here. Bare dirt around a lagoon in eastern Washington is common practice, bare dirt in western Washington is a bad practice that will increase erosion of lagoon sides.

***Change to “Vegetation must be “managed” to prevent damage to lagoon integrity.”***

S4.C 3. a. (5) No “solids” on lagoon surface is an impossible requirement.

***Change. Eliminate “solids on lagoon surface” reference. Impossible standard and in some cases is contrary***

(6) Emergency procedures plan. – More bureaucracy. There has been one lagoon breach in the past umpteen years. It was a breach due to an engineering oversight of a historical drainage system. Why should every permitted farm in the state undergo this exercise?

***Change. Eliminate this section.***

Page 14

S4.C 3 a (9)

***Change: Define natural background levels. Is it in reference to normal agricultural areas locally or pre-Columbian in exact location, or native local undisturbed soils, or under alder trees? This requires a change to provide clarity.***

S4. C 3 b (1.) & d. (1) solid manure storage and Feed storage –

Many farms use a filter strips, treatment and uptake areas below compost and feed storage areas.

***Change: Feed storage and compost area options should include allowing for filter strips, uptake zones or created wetlands, etc. around compost and feed storage areas.***

Page 15

S4.c (6) Prohibits grazing within 35 feet of Waters of the state. This goes beyond Federal definition

1. The Federal Permit says confined animals must not come in contact with WOTUS or a “conveyance” to WOTUS or Waters of state.
2. Ecology includes Wetlands in Waters of State. Ecology has, as far as we know, refused to recognize the federal determinations of “prior converted” pastured and farmed wetlands...so this could/will be 35 feet from the edge of historical wetlands that have been farmed or pastured since before December 1985. This would include lands that have been farmed or pastured for the past 30-100 years.

**Change** –

- *Eliminate this 35 foot requirement. Use Federal Language in CAFO guidance: “Confined animals shall not have direct contact with waters of the state.”*
- *Define conveyance*

Page 15

S4.C (7) Chemical handling-

( a.) This language goes beyond Federal CAFO guidance and references “cleaning agents.” Why ? We use cleaners in parlors every day. Does FIFRA even apply to cleaning products used on dairy equipment?

**Change** to language mirroring federal CAFO rule language.

Page 16

S4.C (7) .e Emergency procedures for chemical spills.

Where is the authority to require this? No such section in Federal CAFO rule.

**Change** - *Eliminate*

Page 17

S4.c (9) Manure nutrient testing

No reference to how often. Most farms conduct at least annual testing.

**Change** – *Clarify testing at least annually*

S4.c(10) Soil testing.

Lacks clarity and creates an unbelievable and useless testing paradigm given the testing requirements of S5.C. Spring tests to three feet in Western Washington and Eastern Washington are a waste of time, expensive and no value in determining anything.

**Change** to an annual Fall test to 1 foot on similar cropped and managed fields with similar soil types.

S4.c (11) Land application

Why written permission to apply manure to neighboring land?

**Change** – *Delete this*

“Nutrient budgets developed by Ecology” Why is Ecology developing nutrient budgets? There are plenty of them out there. Why not allow farmers to use existing tools?

*Change to* - follow nutrient budgets calculated to show and achieve agronomic fertilization rates.

“Manure may not be applied to ...dormant crops or bare fields ...generally from October 15 to TSum 200.”

The goal is to not pollute. Fixed, prescriptive dates based on opinion like this one do not help.

Grass based winter applications are appropriate on field by field basis. Conservation Districts and NRCS have a standard for these applications that dairy producers have use successfully for years to both not pollute and to grow better crops. Eastern Washington some years has weeks or whole months in late winter and early spring before Tsum 200 in which field preparations are appropriate and a blessing. Very careful, precise late summer and fall applications before soil and air temperatures decline are essential good forage production but also to prevent excess fall soil nitrate levels... Arbitrary blanket prohibitions do not work and in this case are just wrong in some cases.

*Change – Delete dormant crops and bare field (There are plenty of times when it is a best management practice to apply to dormant crops like late march on alfalfa fields or grass fields.*

*Change -- Delete October 15 – TSUM 200.*

“Manure incorporated within 24 hours of application” doesn’t work for no-till and doesn’t work in many cases on a farm. Obviously it cannot be incorporated into a permanent crop like grass. The goal is to not pollute. This arbitrary prescription is unnecessary.

*Change – Delete*

“Prior to applying manure to fields manure and soil samples must be collected.”

Vague – how often, every field, each time?

*Change – Annual Fall tests sufficient to help inform, and prove or improve agronomic rate applications.*

“No manure applied until after 24 hours” of ANY previous rain. Why? What if it is a .01 inch rain in the summer after a long drought? (This is nonsense, as it already says no applications to saturated fields above).

*Change – Delete*

No applications within 3 days of forecasted precipitation event of ½ inch.

This is again a prescriptive, unworkable edict.

*Change – replace with “ manure shall not be applied to fields when immediate weather forecast indicates rain is expected to cause significant risk of runoff from fields.”*

## S4.C (11)

### Matrix for Nitrates

3 foot Nitrate benchmark.

This is horribly expensive and it penalizes farms that have no reasonable way of affecting a high nitrate level.

It is useless in many cases. (Spring tests on west side will always show little residual Nitrate due to leaching and/or anoxic – denitrifying conditions at 3 feet, ...if you can get to three feet.

East side under proper management will show the same nitrate levels for years because the nitrates don't move and farmers will be measuring the same nitrates, but still paying for more testing and having to farm according to a matrix that won't result in any changes to those nitrate levels. This matrix penalizes a producer that may have higher levels in soil but has good management practices. We are also very concerned about high organic matter soils and the variability in fall tests due to varying mineralization.

***Change** – Completely re-write. Consult with WSU, WSDA, Conservation Districts, private consultants for a more useful, possible and practical set of soil testing conditions that farmers can use to make informed useful decisions.*

Page 21

### Field run-off Prevention Management

- What is a conduit?
- There appears to be a mistaken reference to S4 C.14.a &b.
- Given the above reference it is confusing language as to if it is one or both of the buffers on all application fields adjacent to waterways, wetlands or conveyance.
- 

***Change** – correct reference and clarify that the language is meant to read “or”*

***Change** – Add back in the language from federal rules to allow the following “**alternative practices compliance alternative. As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100 foot setback.**”*

Page 22

### Monitoring

#### S5.A Operations

Adds monthly inspections of buffers to list of monitoring – *More regulation beyond Federal rules. !!!!*

**Change** – Delete

Page 22-23

S5.B Manure Sampling – Describes a prescriptive sampling procedure developed by Ecology based on what guidance? No consistency with conservation districts, private firms? Why?

**Change** – *Manure must be sampled and tested using appropriate sampling procedures as outlined in federal rules and the NRCS 590, as well as following the training or guidance from WSDA, and/or land grant publications as referenced in NRCS 590 FOTG guidance for sampling protocols.*

Page 24

S5 B. (3) Uses EPA test method. Why this method? What is the basis of this? Why not pounds of N or nitrate or ammonium per 1000 gallons for slurry? Why not Nitrate Tests?

It is our understanding that TKN – Total Kjeldahl Nitrogen is not used by anyone in agriculture.

**Change** – *Consult with land grant universities, NRCS, conservation districts and private consultants (such as certified crop advisors) for appropriate manure test methods and protocols (including actual sampling as discussed earlier). Specifically remove requirement for TKN, Ph and organic matter as those are non-standard and of no value.*

S5.C (1) Soil sampling

Needs clarification, wording seems to imply that Ecology wants soils tests on every field before every application. And fall tests as well on every field. This is way beyond anything currently required anywhere in the US.

Why test every field to three feet in the spring and fall if the tests show nitrates are low or if a trend line doesn't change over time? This section needs to be informed by agronomists and soil scientists.

A spring three-foot sample for nitrate in Western Washington is useless. Suggest field trials to learn what value a three foot sample has rather than forcing every permittee to engage in a very expensive, mostly worthless set of testing. Discussions are need with soil scientists and agronomists that understand soils and leaching, nitrification, denitrification and mineralization in eastern and western WA/Oregon and BC.

A fall baseline and trends might be helpful. But 3-foot sample in the Spring and Fall will also be inconclusive, exorbitantly expensive and difficult to pull to get information that may not be actionable or result in any change when on the eastside there is little to no downward migration and on westside where soil water conditions can change rapidly.

**Change** – *Need to work with WSDA, CDs, WSU, NRCS to get achievable, realistic and affordable testing procedures that producers can actually use to act upon.*

*(We also suggest collaboration with WSU and maybe the Yakima GWMA on trials to better understand when, how where deeper soil sampling might be informative and helpful for farmers to better understand fertilization practices and procedures.)*

Page 25

S5. C (2) – Soil sample analysis.

Why are you using EPA test methods? Why not WSU or NRCS? Analysis should be done after learning what WSU, OSU and British Columbia guidelines suggest, along with what commercial agronomists and labs are doing. EPA guidance does not require or reference this specific test. There are standard protocols amongst the land grant universities, NRCS, the conservation districts and private consultants.

***Change** – Allow farmers to use standard protocols from above sources. See previous 2006 permit and current Federal Rules for specific language.*

Page 25

S5.D Monitoring beyond Permit requirements.

Why is this section in the permit? We find no mention of this in Federal CAFO rules.

***Change** – Explain or eliminate.*

Page 27

S6. A Operations and maintenance

The first two bulleted points on top of page 27 are repetitive.

***Change** - Eliminate one of them*

Why the addition of requiring mortality numbers? This is not required in Federal rules.

***Change** – Delete*

Manure Export Records.

Why the assessors parcel number and acreages and crops grown? What is the purpose for recoding this data? What is the intended use of the data?

Farmers do not carry around parcel numbers. This will make export, and therefore recycling of these nutrients, more difficult. These are public records and many neighbors will not take manure if this information is believed to be harmful or detrimental to their farms.

Given the litigation and the behavior of EPA over the past five years, these fears are not unfounded.

This will make neighboring crop farmers very reluctant to use manure sourced nutrients.

This is beyond federal CAFO rules and may have the effect of making exporting and recycling our nutrients more difficult.

***Change** – Delete the requirement for parcel number, acreage and crops grown. Stick with federal CAFO rule language. Name, tests, volume; the agreement to use” at agronomic rate and not cause run off” is appropriate.*

Page 28 S7.A & B.

What is the basis of requiring the permitted farmer to provide a copy of the MPPP (FARM PLAN) to anyone who asks? Where in federal or state law is this required of an NPDES holder? What are the rules and laws that require a private farmer to now be responsible for performing as a public entity and supplying public records to anyone who wants?

Where is there a reference, allowance and clear guidance for a farmer to protect confidential business information?

***Change** – Open public record act applies to NPDES permit but with the allowance for protection of confidential business information. Please clarify language in the permit as to when and from whom the public may request information and clarify what information is confidential business information.*

Page 29

S7.B

Mapping requirement in this section seems duplicative to other mapping requirements.

***Change** – Delete*

Ecology should not develop a nutrient budgeting tool. There are tools already available from land grant universities, NRCS, conservation districts, WSDA, private firms, and other states.

***Change** – Allow farmers to identify, choose and use existing or available nutrient budgeting tools. Ecology should not limit it, but examples include Idaho 1 plan, CAFOWeb, NRCS, Oregon/ Washington template when/if developed by WSDA and ODA, etc.*

S7.C One Time Lagoon Report.

Why not allow producer to report with NRCS or CD or consulting engineer records on construction and design plans if those records are available to a producer? In this draft, there is no recognition of NRCS FOTG practices that Ecology consulted and agreed to.

***Change** – Delete*

Page 36-37

G 16 Appeals –

***Change** – Remove the references to Mosquito Control general permit and replace with CAFO terminology.*

Page 38

## Appendix A Definitions.

Missing in the definition of BMP is how the term BMP is different than the use of AKART. Using both AKART and BMP is confusing but they are used interchangeably with this draft. The previous permit and current EPA CAFO rules use the term BMP.

***Change** – Stay consistent with other agencies and drop the use of AKART. (EPA, NRCS, WSDA, conservation districts, Conservation Commission, land grant universities and farmers across the US use the term BMP.)*

***Change** – the permit must recognize and allow for NRCS FOTG practice standards or equivalent alternatives.*

*\*\* (Specifically in this section but missing overall and notably absent from this permit is any reference to the NRCS FOTG. Total abandonment and lack of recognition of NRCS standards is very disappointing. NRCS and conservation districts have been helping farmers develop farm plans and conservation systems for 8 decades. The work we have done with them should be considered in this process. Yet there is nothing but silence as to recognition of the BMP's and FOTG's that dairy farmers have implemented for many years.)*

Page 41- Lagoon – Current definition of lagoon is vague. It could be read to include a storage barn, bin or container. It also could be read to include catch basins at the bottom of fields that catch irrigation runoff for pump-back.

Federal rule uses term “process wastewater”.

**Change-** “Lagoons are containment structures used to store liquids, such as manure and process waste waters.”

Page 43.

Please explain what a sanitary control area is in plain English. The WAC language is jargonistic.

Page 44-

Waters of the state definition seems incomplete. We have numerous questions that need clarification:

- Does Ecology consider wetlands waters of the state?
- What is the current Ecology definition of a wetland?
- Does Ecology recognize “Prior Converted Wetlands” as defined and delineated by NRCS under Federal Swamp-buster rules?
- If not, then when is a historical wetland no longer considered part of the waters of the state?
- How far back in time must a wetland have been farmed or pastured for it to no longer be a wetland (and therefore Waters of the state) for regulatory purposes?
- Is water standing in a field after a rain considered to be part of the waters of the state?
- How much and for how long must water stand in field depressions to constitute waters of the state?
- Does Ecology consider snow waters of the state?
- How small a water body is considered waters of the state?

*Change – to provide clarification on Ecology definition, policies and jurisdiction regarding scope of Waters of the State.*

The definition of Waste is very broad. It appears that a permitted farm with a garbage can with paper towels in it would be included in the broad definition of a structure to store waste materials (see current draft definition of a lagoon and concerns above).

*Change – Please clarify this definition.*

That concludes our specific comments.

In reading this draft permit, we cannot help but notice the lack of acknowledgement by Ecology of the standards and the people and programs at NRCS, at the Conservation Commission, the local Conservation Districts, the land grant universities and the Department of Agriculture.

There are tremendously knowledgeable people at these agencies and departments. Ecology simply does not have the staff nor expertise to implement this permit without the assistance and reliance on the programs and human resources available from those organizations.

The Department of Agriculture is obligated by state law to perform many of the functions that Ecology duplicates, replicates or embellishes in this draft permit. Yet there are only two passing references in margins about coordination with WSDA. Why?

Failure to recognize the technical capacity and enforcement capacity of WSDA to oversee, implement and regulate dairy farms in the past and the future under this permit is very disconcerting.

The Dairy Nutrient Management Program has clearly been a stellar success in helping dairy farms comply, improve, maintain and become leaders in protecting water quality in the agricultural areas of our state.

Dairy farms are protecting water quality in our state while providing food, jobs, habitat, paying taxes, etc.

We recognize there are always ways to improve operations, embrace new understandings, and develop new technologies.

In fact, Washington dairy farms have been recognized with national innovation awards in recent years for their work to use less energy on the farm and turn dairy nutrients into sources of renewable, fertilizer, fiber and electrical energy.

Our dairy farmers continue to support research on efficient buffers, creating more uses for dairy nutrients, generation of clean energy, and more.

The data bears out the fact that Washington has dairy farmers are excellent stewards of the land and water upon which they farm and live. Not only are our farmers stewards of the environment in which they operate, they LIVE in the environment in which they operate.

We have lost farms in the past because of the cost of implementing upgrades on their farms.

We share Ecology's goal of protecting water quality, but we also want to make protecting water quality possible for a dairy farmer that wants to continue operating.

Keeping this permit as simple as possible means relying upon, and coordinating with, existing successful programs, practices and people.

This permit should allow a farm that chooses to get it the opportunity to build on their existing practices and the historically successful aspects of their conservation work.

The current draft doesn't give enough recognition to the successful foundation already built on farms by many fine folks over many, many years.

We are as always ready to assist in any way to answer questions, help build understanding as we develop a permit that is protective and possible to implement.

Sincerely,

A handwritten signature in black ink that reads "Dan Wood". The signature is written in a cursive style with a large, stylized "D" and "W".

Jay Gordon  
Director of Policy & Government Relations  
Washington State Dairy Federation

Dan Wood  
Executive Director  
Washington State Dairy Federation

Attachments will be referenced at the end of these comments.

**From:** [Matt Plowman](#)  
**To:** [Jennings, Jonathan \(ECY\)](#)  
**Subject:** Leaking Lagoons  
**Date:** Wednesday, August 26, 2015 9:46:08 PM

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Jon

I'm writing to oppose the new proposal saying all lagoons are assumed to leak. From what I've read not all lagoons leak, I know the yakima area had problems and found lagoons had leaked but it depends on soil type. My farm for example has lots of native or natural clay, our lagoons are NRCS certified/engineered and clay lined. I feel good about my lagoon along with all the clay under and around it. I hope the decisions made are based on science and expect a government agency will not base laws on one case and emotion with a blanket treatment for all.

Thank-You, Matt