

From: [Adam Warthesen](#)
To: [Bartlett, Heather \(ECY\)](#); [Jennings, Jonathan \(ECY\)](#)
Cc: [Melissa Hughes](#); [Morgan, Jason T.](#)
Subject: CROPP Cooperative follow-up letter RE: Draft CAFO renewal
Date: Monday, November 16, 2015 9:02:26 AM
Attachments: [Organic Valley letter to Dept of Ecology November 16, 2015.pdf](#)

Dear Heather and Jonathon,

Hope things are well.

Attached is a letter from CROPP Cooperative regarding the Washington state CAFO – NPDES permit renewal that the Department of Ecology is working on. The letter, in part, is a follow-up from our conversation on October 2.

Last week we held our regional meetings in the state and this topic continues to be of particular interest. The regional meetings provided the best opportunity for farmer-member input on the letter which we hope you find informative and helpful.

If you have any questions, please feel free contact myself.

In the coming month we'd like to arrange a phone call just to get clear on the timeline Ecology is considering for permit renewal.

Might you have availability the week of Dec. 13?

Look forward to hearing back from you.

Sincerely,

Adam Warthesen

Government Relations Coordinator

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To learn about Organic Valley: [Who We Are](#)



November 16, 2015

Heather Bartlett
Jon Jennings
Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504

**Re: Comments on Preliminary Draft Concentrated Animal Feeding Operation
General Permit**

Dear Heather and Jon:

I am writing to you on behalf of the CROPP Cooperative which does business as Organic Valley regarding Ecology's Preliminary Draft Concentrated Animal Feeding Operation General Permit ("Draft CAFO Permit"). I previously spoke with you both on October 1, 2015 regarding some of the concerns regarding the Draft CAFO Permit raised by Organic Valley's members. This letter is intended to follow up on that conversation and provide a more detailed explanation of the concerns of Organic Valley's members.

Organic Valley's Interests

Organic Valley is a farmer-owned cooperative consisting of family farms in 35 states. Organic Valley markets the certified organic products produced by our members. Organic Valley is a cooperative which seeks to enable a farming future emphasizing ecological and economic sustainability and to practice environmental awareness and cooperative principles in all aspects of production, handling, marketing and operations.

Organic Valley represents 31 family-run organic dairy farms in Washington State (the "State"). These are family farms, typically with about 165 milking cows. The largest Organic Valley member in the State has about 690 milking cows, and the smallest member has about 55 milking cows. All of these organic dairies manage manure in lagoons, and all of their lagoons are in compliance with the Dairy Nutrient Management rules administered by the Washington State Department of Agriculture. A large percent of these lagoons were developed or updated in partnership with the Natural Resource Conservation Service.

Organic farming practices naturally focus on soil protection; healthy soil is essential for developing cropping systems (which incorporate resource conserving crop rotations) and pasture management necessary for organic dairy farming. Organic farming is based on the development of biological diversity and the maintenance and replenishment of soil fertility. In compliance with National Organic Program regulations, Organic Valley's members do not, and



cannot, use synthetic fertilizers or conventional pesticides. They must instead rely on natural fertilizers like manure and sound stewardship practices to achieve production goals and combat disease and pest pressure. Organic farms are more than the sum of their parts. In our experience they represent high achieving conservation farming systems which do not contaminate groundwater or surface water with synthetic fertilizers, pesticides or manure.

As alluded to above, the ability to graze dairy cattle on pasture is a critical element of organic dairy farming. All Organic Valley members are bound to a Pasture Policy¹ as well as the National Organic Program pasture requirements. Producers are required to develop a Farm Pasture Plan that ensures adequate pasturing and requires that all pasturing “**must be managed to prevent degradation of soil and water quality.**” Among other requirements, all cows must be provided a minimum of 120 days on pasture during each grazing season, 30 percent of the cow’s dry matter intake must come from the grazed pasture, and the stocking rate on the pasture may not exceed 4,000 pounds per acre (about three to four full-grown cows per acre). The goal of the Pasture Plan is to maximize the pasture component of the total feed used in the farm system. On average Organic Valley members are closer to achieving 50 to 60 percent of dry matter intake for milking cows from pasture.

Organic Valley’s members are deeply concerned that the Draft CAFO Permit will make organic dairy farming untenable in the State. As detailed below, the Draft CAFO Permit will impose significant costs on small and medium-scale farms and will impair the use of organic farming practices while providing no material benefit to the environment. Accordingly, Organic Valley requests that the Draft CAFO Permit be modified to make it optional, rather than mandatory, for these dairies to seek coverage under the Draft CAFO Permit, and that permit coverage is only required if Ecology determines that discharges from a specific lagoon are having a negative impact on waters of the State.

As currently constructed we believe the expanded scope of the Draft CAFO Permit is unwarranted and duplicative with existing state regulations.

Detailed Comments

A. Organic Dairy Farms Do Not Present a Risk to Waters of the State.

The State’s small and medium-scale organic dairy farms do not present a credible risk to the waters of the State. The farms do not have point source discharges to surface waters of the State that would require a National Pollution Discharge Elimination System permit under the Clean Water Act (“CWA”). As for potential non-point discharges, Organic Valley’s members

¹ Organic Valley, CROPP COOPERATIVE Pasture Plan, <http://www.organicvalley.coop/why-organic/pasture/pasture-policy/> (last visited Oct. 28, 2015).



manage their fields using the best stewardship principles, ensuring healthy organic soils and fields that are resistant to erosion. Runoff from those fields (or percolating to groundwater) is free of synthetic fertilizers, insecticides, pesticides and synthetic hormones. As for the lagoons operated by Organic Valley's members, all these members have lagoons that meet or exceed Dairy Nutrient Management rules.

B. Not All Lagoons Pose a Risk of Polluting the Waters of the State.

Despite the fact that these organic farms do not discharge to surface waters, the Draft CAFO Permit would still require these farmers to seek coverage if they have a manure lagoon that is not double lined, on the presumption that all such lagoons are leaking, and that all such leaks reach groundwater.

The mere possibility of leaking is not a sufficient basis to require coverage under the Draft CAFO Permit.

Organic Valley recognizes that Ecology's authority under RCW 90.48 is broader than the CWA and extends to discharges to groundwater. However, Ecology typically does not require permit coverage for other sources (e.g., Industrial Stormwater Discharges) absent some showing that a specific facility is "a significant contributor of pollutants to waters of the state."² The reasoning behind this provision is plain. Ecology's responsibility is to regulate discharges "that shall cause or tend to cause pollution" of the waters of the state.³ Not all discharges to the ground pose such a risk.

Ecology should take the same approach with respect to discharges from lagoons. Like the Industrial Stormwater Permit, a small or medium scale dairy that does not discharge to surface waters, and only discharges to the ground (by virtue of theoretical leakage), should not be required to obtain a general permit unless the facility is determined to be a significant contributor of pollutants to waters of the State. Requiring small and medium-scale dairies that have no discharge to surface water and little or no discharge to groundwater to obtain permit coverage is unduly burdensome and serves no useful purpose.

C. If Lagoons Are the Basis for Requiring Permit Coverage, Then the Permit Should Focus on Controlling Lagoons, Not Other Farming Practices.

Equally troubling, while the presence of a lagoon is the trigger that will require Organic Valley's members to obtain CAFO Permit coverage, a large percentage of the conditions and requirements of the CAFO Permit have nothing to do with lagoon operations. Soil testing in

² See Industrial Stormwater General Permit, Conditions S.1.B and S.1.C, <http://www.ecy.wa.gov/programs/wq/stormwater/industrial/ISGPFinal2015.pdf> (Jan. 2, 2015).

³ RCW 90.48.080.



fields, grazing setbacks, land application in fields, livestock mortality management, composting facilities, irrigation water management, field run-off and manure export all have nothing to do with lagoon discharges. There is a fundamental disconnect between requiring a permit because of lagoon discharges and then imposing conditions that have nothing to do with the threat posed (if any) by those lagoon discharges.

In addition to this disconnect it does not appear that Draft CAFO permit reflects years of precedence and practice in numerous states that evaluate risk thresholds by scale. An organic dairy of a several dozen cows does not pose the same threat to waters of the State or groundwater as would an operation with several thousand animals. Regulating them under the same permit structure is not appropriate or logical.

D. The Permit Setbacks for Manure Application Are Inconsistent with Organic Farming Practices.

Not only does the Draft CAFO Permit stray from issues related to lagoon discharges, but it also imposes restrictions that can seriously undermine organic farming practices. The Draft CAFO Permit requires “[a] minimum 100-foot land application setback, measured horizontally from the top of the bank, from all surface waters, wellheads, drains, open tile lines, or other conduits to surface or ground waters.” This provision will take significant (and vaguely defined) portions of farms out of organic production or greatly reduce their productive capacity.

In instances where crops are harvested, such as corn silage, a primary means used by organic farmers to fortify soils for the next year’s crop is through agronomic applications of manure. The soil must be maintained using manure fertilizers, since Organic Valley members cannot substitute commercial synthetic fertilizers to meet plant growth needs. As a result, the proposed 100-foot setback will effectively take those areas out of production or greatly limits their productive capacity. The 35 foot setback for manure application on ground with vegetative cover also creates hardships. This loss of productive grazing land will hit our organic farmers especially hard given their pasture obligations. While some farms may be able to compensate for loss of pasture productivity by securing feed grown elsewhere or grazing more intensely on the available forage, Organic Valley’s members may not do so. They are subject to strict requirements to produce 30 percent of their dry matter intake from grazing and are limited to 4,000 pounds per acre. Accordingly, notwithstanding the fact that these farmers already employ high levels of stewardship consistent with sustainable farming practices, the setback will force them to reduce their herd size. For farmers with pasture that has even a seasonal ditch or temporary wetlands running through it, the loss of productive land could be extreme.

In addition to the required setbacks, Organic Valley’s members have great anxiety over how waters of the State will be determined and exercised within the agency or in a judicial context. Just because Ecology does not consider some farmed areas to be wetlands, or certain ditches to



be a “conduit” to the waters of the state, does not mean that environmental groups or the federal courts will agree. Thus, the full extent of these setbacks remains highly uncertain.

E. The Cumulative Costs of Compliance with the Draft CAFO Permit Are Prohibitive.

Organic Valley understands that Ecology has received numerous comments from affected farmers on the costs of complying with the permit (including comments from some of Organic Valley’s members) detailing concerns with the costs of producing a Manure Pollution Prevention Plan, conducting a lagoon analysis, conducting soil and manure testing, and the many other provisions of the permit.

Without repeating all of those concerns here, one area of concern for Organic Valley’s members are the soil and manure testing requirements. Typically, Organic Valley members sample their manure once per year, and conduct soil sampling once per year. Typical costs for these practices range between \$700 and \$3,000, depending on the number of fields. In practice, members will apply *light* applications of manure as many as three times a season to ensure the soil remains healthy and productive.

The Draft CAFO Permit would increase these costs three fold by requiring sampling of both the lagoon and the fields *each* time prior to application. These repeated testing procedures are unnecessary, as past testing practice has shown little variable in soil or lagoon testing results. Moreover, the repeated testing is also impracticable given the restraints applicable to sound manure application. Application can only occur in a window where it has not rained for three days, and where rain is not expected for another three days. These windows are often difficult to predict (and short lived), and requiring testing prior to each application may make application impracticable.

These costs, along with the many other costs of permit compliance, cannot be practically absorbed by small or medium-scale farmers like Organic Valley’s members. These organic farms are already labor intensive and operate on small margins. A dairy with 165 cows cannot absorb these compliance costs.

Conclusion

For the reasons discussed above, Organic Valley respectfully requests that the agency considers significantly narrowing the scope of the CAFO Permit. Instead of sweeping in all dairies with a lagoon, the permit should include only those facilities with (a) a discharge to surface waters and/or (b) a discharge to groundwater that is a significant contributor to pollution of the waters of the State.



Small and medium-scale organic dairies do not present a credible risk to the waters of the State, but as currently drafted, compliance with the CAFO Permit is expensive, burdensome, and may ultimately result in organic farms ceasing to operate in the State.

We hope to maintain a dialogue with the department of Ecology as we bring forward and respond to the concerns of our Washington State farmer-owners regarding this permit renewal. If you have any questions or additional information to share please feel free to contact myself.

Sincerely,

Adam Warthesen
CROPP Cooperative
Government Relations Coordinator