

Washington Appellate Court Rejects Ecology's Concentrated Animal Feeding Operation (CAFO) Permits Authorizing Pollution of State Waters, Finds Ecology Failed to Account for Climate Change

June 29, 2021

Seattle, Washington -- Today, as record-setting heat threatens the sustainability of Washington's water resources, a three-judge panel of the Washington Court of Appeals unanimously invalidated the Washington State Department of Ecology's waste discharge permits, which authorized CAFOs in the state to pollute Washington's surface and groundwater resources. The Court ruled that Ecology unlawfully allowed CAFO manure storage lagoons "to continue to operate and potentially discharge contaminants into groundwater indefinitely," finding that "a fair-minded person" would "question whether the permits contain" modern pollution control technologies for factory farms. The Court further faulted Ecology for keeping citizens in the dark about CAFO pollution, reasoning that the state permits "contain inherent contradictions that would render them unenforceable," including Ecology's derogation of its "responsibility to consider the impacts of climate change" under the State Environmental Protection Act, the landmark legislation guaranteeing Washingtonians the fundamental and inalienable right to a healthful environment.

This is the first time a Washington state court has ruled in favor of protecting the drinking water and health of citizens who live in CAFO-contaminated areas, such as the Lower Yakima Valley and Whatcom County, and the decision will have far-reaching impacts. The Court made clear that Ecology must issue CAFO permits that prevent further contamination of Washington's water and require meaningful monitoring proving that a CAFO is not polluting our natural resources.

The successful legal challenge was brought by Puget Soundkeeper Alliance, Community Association for Restoration of the Environment, Friends of Toppenish Creek, Sierra Club, Waterkeeper Alliance, and Center for Food Safety.

In her decision, Judge Cruser wrote for the unanimous Court that:

- **The permits fail to require All Known, Available, and Reasonable Technology to prevent groundwater pollution from manure lagoons and composting areas.**
- **The permits fail to prevent pollution from tile drains that seep into Washington rivers and streams.**
- **The permits failed to require adequate monitoring of discharges to surface and ground water.**
- **The permits denied public participation in development of facility-specific nutrient management plans.**

- **Ecology failed to consider the effects of climate change in authorizing discharges to Washington waters.**