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Via Electronic Mail

July 14, 2014

Washington State Board of Health
c/o Mike McNickle
E-mail: Mike.McNickle@sboh.wa.gov

Re: Follow-Up & Additional Recommendations re: Keeping of Animals – WAC 246-203-130 Rulemaking

Honorable Members of the Board,

Thank you for providing us with the opportunity to address the Board regarding the public health impacts of factory farms or concentrated animal feeding operations (“CAFOs”) at your last meeting on June 11, 2014. We understand that you continue to evaluate what role the Board of Health should play in regards to protecting the public from these facilities. We are writing to supplement the oral and written testimony we provided at the June 11 hearing as well as to respond to some information, and some misinformation, that was provided to you at the hearing by other participants. In addition, we are submitting proposed language for how WAC 246-203-130 could be amended so that it fulfills the Board’s statutory responsibility to protect public health from harm due to the keeping of animal manure.

1. CAFOs are contaminating drinking water resources.

The government employees who testified provided you with some information regarding the contamination of groundwater and drinking water from factory farms in the state of Washington. For example, Tom Eaton of EPA shared with you the most recent data from the Lower Yakima Valley demonstrating that 61% of the 181 wells that were tested exceeded the 10 mg/L nitrate drinking water standard. There was some discussion of the nitrate contamination of the Sumas-Blaine Aquifer that underlies much of northern Whatcom County, but the public health crisis in this area was not adequately revealed. This area of the state is significant, and deserving of the Board of Health’s attention, because “over the last 30 years, this area has had one of the highest percentages of water supply wells in the state failing to meet the drinking water standard for nitrate (29% of wells tested had concentrations greater than 10 mg/L as nitrogen.)”¹ The vast majority of other studies of ground and drinking water contamination in and around CAFOs in the state of Washington have confirmed that CAFOs are contaminating

¹ Ecology, Nitrogen Dynamics at a Manured Grass Field Overlying the Sumas-Blaine Aquifer in Whatcom County , Publication No. 14-03-001 (March 2014).

drinking water resources. For a thorough description of the studies regarding CAFOs and ground water contamination, please see the attached letter that we sent to Kelly Susewind, the Ecology employee who addressed the Board at the June 11, 2014 hearing. (Attachment 1). This letter also supports our request that you ask Ecology to require groundwater monitoring as part of the next iteration of the Washington CAFO General NPDES/State Discharge Permit. We are happy to provide you with copies of any of the studies referenced in this letter.

2. Existing Agency Authority Does Not Protect Drinking Water or Public Health.

All of the ground and drinking water contamination that has been tied to CAFOs in the state of Washington has occurred while EPA, Ecology and Agriculture have been implementing their existing authority that you heard testimony about on June 11, 2014. This fact alone undercuts any argument that there is no place for the Board of Health in protecting the public from public health impacts associated with the keeping of animal manure. For example, you heard testimony from Tom Eaton of the EPA that his testimony was going to be brief because of his agency's "limited" role over CAFOs in the state of Washington. To date, EPA is the only government agency that has taken any steps, as limited as they have been, to protect public health from contaminated drinking water and they have done that in the Lower Yakima Valley using their Safe Drinking Water Act emergency authority. The Board's duties and responsibilities under the Safe Drinking Water Act are clearly spelled out in the interagency agreement the Board has with EPA. Therefore, EPA's authority to address CAFO pollution should not be considered a barrier to the Board's duty to protect the public from animal manure.

You heard testimony from Kelly Susewind from the Department of Ecology that CAFOs are largely exempt from the solid waste regulatory program. His testimony shows that the proposed change to the keeping of animals regulation that defers to the state's solid waste statute, RCW 90.64, as a means to address CAFO drinking water pollution, is nonsensical. While we support the notion that CAFOs should be fully regulated as solid waste management facilities under RCW 90.64, if the implementing agency believes that they are not, the Board should not blindly reference this statute as is done in the proposed rulemaking unless and until Ecology agrees to regulate CAFOs under RCW 90.64 as a means to protect public health from ground and drinking water contamination.

Mr. Susewind's testimony also made it clear that the WA CAFO permit issued by Ecology is not being utilized in a manner that achieves the Board's statutory obligation to "adopt rules and standards for prevention, control and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains." RCW 43.20.050(2)(c). Not only did the permit expire in 2011, but only 1% of CAFOs are covered by the present permit. Notably, none of the five dairies in the Lower Yakima Valley that EPA identified as the "likely sources of the high nitrate levels in the drinking water wells downgradient of the dairies" are

covered by the WA CAFO General Permit, even though the facilities are unquestionably discharging into waters of the state.² Furthermore, Mr. Sussewind made it very clear that Ecology's inspection and enforcement authority is not only limited (on average Ecology issues a statewide total of two penalties and 5 enforcement orders per year), but constrained by the political backlash that occurs whenever Ecology attempts to implement its authority to protect waters of the state from agricultural sources of pollution.³ Notably, Mr. Sussewind acknowledged the drinking water problems in Whatcom and Yakima counties and made it clear that Ecology did not believe the existing keeping of animals regulation overlapped with their authority or created any unnecessary redundancy. Mr. Sussewind's testimony also makes it clear that it is imperative that the Board of Health urge Ecology to issue a new CAFO General Permit that requires universal coverage for all medium and large CAFOs and contains groundwater monitoring. In March of 2014, Ecology issued a study of the nitrate contamination in the Sumas-Blaine Aquifer that confirmed "groundwater monitoring is the only available way to determine the amount, or the concentration of, nitrate that actually reaches the water table"⁴

The most concerning, and frankly offensive, testimony came from the Washington Department of Agriculture, the agency charged with promoting the agricultural industry. It is disturbing to hear Ms. Morgan claim that environmental protection is only now given more of an emphasis than it has historically. The statutory scheme that the legislature has concocted by enacting the Dairy Nutrient Management Act is a proverbial case of the fox watching the hen house and improperly delegates federal Clean Water Act authority to an agency that knows and

² EPA, *Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington* (EPA-910-R-12-003).

³ As an example of Ecology's failure to implement the permit program, on July 7, 2009, Ecology employee Ron Cummings sent an email to Ecology staff listing sixteen dairies in the Puget Sound area for which he had "received information about indicating a [pollution] problem and/or facilities [Ecology is] working to get covered under the CAFO permit (Puget Sound Region)." Email from Ron Cummings to Ecology Staff re: EPA – CAFOs in Puget Sound (July 7, 2009) (Attachment 2). NONE of these sixteen CAFOs ever received a permit from Ecology, in direct violation of Ecology's federal and state statutory obligation to require point source discharges of pollutants into waters of the state to be covered by a NPDES/State discharge permit. 33 U.S.C. § 1311; RCW 90.68.160 (waste disposal permit required for disposal of solid or liquid waste material into waters of the state); RCW 90.64.020 (Ecology has authority to require any CAFO to have a permit if it is a significant contributor of pollution to the surface and ground waters of the state).

⁴ Ecology, *Nitrogen Dynamics at a Manured Grass Field Overlying the Sumas-Blaine Aquifer in Whatcom County*, Publication No. 14-03-001 at xxvii (March 2014); *Id.* at 79 ("This suggests that fall soil nitrate monitoring [required by the Dairy Nutrient Management Act], even when conducted at high frequency, is not a reliable predictor of groundwater responses to nutrient management activities.").

cares little about clean water, but rather facilitates pollution through virtually nonexistent oversight.⁵ The public health crisis that has been documented in the Lower Yakima Valley and Whatcom County has occurred while the Department of Agriculture has had the primary authority to ensure that dairy operations in the state are complying with the law.⁶ RCW 90.64 (Dairy Nutrient Management Act). One need only look at the documented pollution from dairy facilities all across the state to recognize that the Department of Agriculture has utterly failed to protect public health, let alone the environment. Ms. Morgan's and Ms. Prest's claims of the agency's success in protecting the environment should be given no credence whatsoever. As one study concluded, "improvements in the dairy industry's nutrient management alone have not resulted in improvements to groundwater quality, based on the broad scale network used in this study. Better management of all nutrient sources may be necessary to achieve improved groundwater quality."⁷ Ecology's studies in the Sumas-Blaine Aquifer have demonstrated that the nitrate groundwater contamination has occurred due to "[o]verapplication [of manure] by dairy farmers *in spite of nutrient management plans*."⁸ One telling example of Department of

⁵ See Letter from Lummi Indian Business Council to Dennis McLerran (EPA) (May 27, 2010) (Attachment 3) (containing fecal coliform data from the Nooksack River to illustrate that pollution from agricultural operations has gotten worse since 2003, the date dairies were required to have Nutrient Management Plans under the Dairy Nutrient Management Act).

⁶ In an attempt to convince you that dairies do not pollute the groundwater, you heard testimony that raspberry farms are the primary cause of the high nitrates in ground and drinking water in Whatcom County. While raspberry and other agricultural operations certainly contribute nitrates to the groundwater, Ecology has made it clear that the primary cause is the overapplication of manure by dairy farms. Ecology, Nitrogen Dynamics at a Manured Grass Field Overlying the Sumas-Blaine Aquifer in Whatcom County, Publication No. 14-03-001 (March 2014); *see also* Ecology, Nitrate Trends in the Sumas Blaine Aquifer, Publication No. 08-03-018 at 27 (July 2008) (recognizing that "[b]oth dairy farms and raspberry fields are potential sources of nitrogen in groundwater" but stating that raspberries take up just "5% of the agricultural area in Whatcom County" compared to a much larger area utilized for dairy lagoons (0.2%) and manure application fields (66%)); *see also* Ecology Environmental Assessment Program, Focus on Groundwater Quality in Whatcom County, Publication No. 12-03-005 (May 2012) (identifying the causes for high groundwater nitrate in the Sumas-Blaine Aquifer) (Attachment 8); *see also* Attachment 10 (emphasis added) ("The report indicates that current agricultural practices, *in particular the timing and rate of manure application to grass fields, are likely impacting groundwater nitrate*.").

⁷ Ecology, Nitrate Trends in the Sumas Blaine Aquifer, Publication No. 08-03-018 at 56 (July 2008).

⁸ See Sumas Blaine Briefing Paper for Rob with Barb Carey Edits (Feb. 20, 2009) (Attachment 9) (emphasis added); *see also* Draft Ecology MMM Communications Notes, Manure Report with Barb Carey Edits (Jan. 18, 2013) (Attachment 10) ("The study results show that when manure application is out of balance with crop uptake, groundwater is impacted with nitrate levels above

Agriculture's ineptitude, among a plethora of available examples, comes from the *CARE v. Nelson Faria Dairy* case in which Federal District Judge Lonny Suko received evidence of a Department of Agriculture inspection report that astoundingly concluded that the dairy had an "excellent record keeping system" and had "good use of nitrate" while Judge Suko found that, at the same points in time, the dairy over-applied manure causing significant local groundwater contamination.⁹

Most importantly, Ms. Morgan testified that the Department of Agriculture supports a "non-regulatory" or voluntary approach to compliance with water pollution laws. The Department of Agriculture takes this ludicrous position in spite of the fact that in December 2013, the U.S. Government Accountability Office issued a report confirming that agricultural runoff is one of the leading causes of impairment of water bodies in this country and that under the voluntary approach to nonpoint source pollution "EPA has estimated that at historical funding levels and water body restoration rates, it would take longer than 1,000 years to restore all the water bodies that are now impaired by nonpoint source pollution [including agricultural pollution]."¹⁰ Ms. Morgan and the Department of Agriculture may have the patience to wait 1000 years for clean water, but the public cannot. It cannot be disputed that the "voluntary/non-regulatory" approach to water pollution simply does not work. Ecology staff similarly believes that voluntary compliance measures are ineffective.¹¹ Moreover, if that is the approach that the Department of Agriculture plans to continue to take, then there is no basis for asserting that

the safe level for drinking water (Even when in balance, nitrate in shallow GW was above the MCL). The study recommends careful attention to nitrogen mass balance at forage crop fields receiving manure application. *Also the study indicates that current targets for fall soil nitrate are not adequate to prevent exceedence [sic] of the nitrate MCL in groundwater.*").

⁹ Compare *CARE v Nelson Faria Dairy*, December 30, 2011 Memorandum of Decision at 17 (Attachment 4) ("Faria's manure management practices are the predominant source of the nitrate contamination found in the monitoring wells and, correspondingly, local groundwater. These practices include consistent over-application of manure to fields located adjacent to, and nearby, the Dairy.") with July 20, 2011 Letter from Dan McCarty of Dept. of Ag to Nelson Faria (Attachment 5).

¹⁰ United States Government Accountability Office, Report to Congressional Requestors, "Clean Water Act: Changes Needed if Key EPA Program Is to Help Fulfill the Nation's Water Quality Goals," GAO 14-80 (December 2013).

¹¹ See Email from Steve Hood (Ecy) to Ron McBride (Ecy) & Melissa Gildersleeve (Ecy) re: 2014 Puget Sound Action Agenda – COB March 11, 2014 (Attachment 6) ("Our inability to proceed with enforcement beyond warning letters or to issue permits to agricultural sources of pollution have reduced Ecology's role to voluntary compliance that we have demonstrated is ineffective.").

implementing the Board of Health's statutory authority to prevent, control and abate health hazards and nuisances related to the disposal of animal manure somehow conflicts with what the Department of Agriculture is doing. If the Department of Agriculture believes that the industry is full of people searching for laws to voluntarily comply with (a notion that has been proven false), then the Board of Health is obligated to step up and protect public health.

Many of the claims that the Department of Agriculture makes regarding the industry's compliance are false (as is illustrated by the rampant pollution documented to come from these industrial agricultural facilities) and others are impossible to verify. That is because agricultural operations that are not covered by Clean Water Act permits are allowed to conceal information regarding: (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. RCW 42.56.610; 90.64.190. Furthermore, "farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit" are "exempt from disclosure" under Washington state law. RCW 42.56.270(17)(a). Therefore, the only way to ascertain the success of the Department of Agriculture's dairy inspection and enforcement program is to look at the ground water and drinking water data. The data gathered in the Lower Yakima Valley and Whatcom County, as well as the data described in Attachment 1 and from the Nooksack River, confirms the lack of success of the Department of Agriculture's "efforts" to protect the environment.¹² Withholding farm plans from public review is especially egregious because the farm plan is the only mechanism in place to ensure that the landowner farms in a way that is "conserving, monitoring, or enhancing renewable natural resources" RCW 89.08.560. The confidential treatment of information regarding pollution that comes from agricultural operations makes it even more imperative that the Board implement its own statutory authority to protect public health from these ubiquitous dangers.

¹² In fact, the head of the Dairy Nutrient Management Program, Virginia Prest, is in constant contact with the Jay Gordon, Executive Director of the Washington State Dairy Federation, over matters including ongoing and unpermitted discharges from CAFOs (e.g., Snookbrook Farms), non-public versions of draft NPDES permits, legislative agendas of the dairy industry (meetings joined by Julie Morgan), requests to help interview prospective inspectors, and many more examples that show how intertwined the relationships of the regulators and the supposedly regulated community really are. *See* Attachment 7 (series of text messages and emails between Virginia Prest, WSDA and Jay Gordon, Executive Director of the Washington State Dairy Federation).

3. The Board Cannot Ignore Its Statutory Directive to Prevent, Control and Abate Health Hazards and Nuisances Related to the Disposal of Animal Manure

As you are aware, the Washington State Board of Health has significant legal authority to protect public health. RCW 43.20.050. The legislature has made it clear that the Board plays a vital role ensuring that animals are kept in a way that does not threaten public health and the environment. This role is codified in the Board's statutory obligation to "adopt rules and standards for prevention, control and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains." RCW 43.20.050(2)(c).¹³ Within this statutory enactment is the legislature's finding that animal manure can ***and does*** constitute a public health hazard, sufficient to convey to this Board significant authority to prevent, control and abate health hazards caused by animal manure. This authority is broad and not limited in terms of the type of animal excreta, the number of animals generating the excreta, or if there are other sources of law that apply to the animal excreta in question. It makes no sense for the Board to narrowly interpret this statutory authority, or defer to other agencies to implement its authority, especially considering that the largest factory farms pose the greatest risk to human health and the environment and the demonstrable failure of the other agencies to address this public health crisis.

4. Recommendation to Revise WAC 246-203-130

As we have indicated in our previous comments and recommendations, the Board is legally required to keep a regulation on the books to address manure generated by the keeping of animals given the Board's statutory mandate to "adopt rules and standards for prevention, control and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains." RCW 43.20.050(2)(c). There are numerous ways in which the Board can exercise its authority to improve the existing WAC 246-203-130 so that it accomplishes its goal of preventing, controlling and abating health hazards and nuisances caused by the keeping of animal manure.

A. Define "Health Hazard" and "Nuisance"

At the hearing, some witnesses expressed the position that it is unclear under what circumstances manure can constitute a "health hazard" or "nuisance." This position is untenable.

¹³ Because the Board's authority to address nuisances and health hazards from animal manure is a statute, the Board does not have the authority to simply get rid of the keeping of animal regulation, as one of the speakers testified.

The Board of Health has the expertise and primary authority to define public health hazards. Simply because the pollution source is animal manure does not mean that the Board no longer has the expertise to define what constitutes a hazard to human health. Unless and until the Legislature takes this authority away, the Board is legally obligated to implement it. Surely, drinking water contaminated with any form of pollutant in violation of drinking water standards constitutes a health hazard. Similarly, manure that is stored in a way that allows contaminants to leach into the environment constitutes a health hazard.

The concept of a “nuisance” has been defined and enforced by courts of law for centuries and the Board should not question its ability to prevent, control and abate nuisances caused by the keeping of animal manure.

The deepest doctrinal roots of modern environmental law are found in principles of nuisance. The infinite variety of wrongs covered by this amorphous theory is well known to any student of the law, but deserves emphasis here. There is simply no common law doctrine that approaches nuisance in comprehensiveness or detail as a regulator of land use and of technological abuse. Nuisance actions have involved pollution of all physical media – air, water, land – by a wide variety of means.

* * *

Nuisance theory and case law is the common law backbone of modern environmental and energy law.¹⁴

An example from the sixteenth century provides a good illustration of how it is not an impossible task to ascertain when animal manure is kept in a way that constitutes a health hazard or nuisance.

One of the first nuisance cases, reported by Fitz Herbert in the sixteenth century, involved city officials who permitted swine to run loose distributing their dung in the alleys and lanes resulting in the air being so “corrupted and infected” that a “dreadful terror” afflicted the masters and scholars residing there. Upon a complaint a writ was issued directing that the streets and lanes be cleansed and “for the future kept clean of dung and dunghills.” The threat of contempt apparently sufficed to overcome any claims that technology was unavailable to

¹⁴ W. Rodgers, Jr. Handbook on Environmental Law, § 2.1 (1977).

restrain healthy swine; that the problem could be met by increasing the height of the stack on the piggery; or that odors were without a remedy absent a scientifically reliable technique for measuring the offense. A disagreeable stench, recognizable by anyone with a functioning nose, was thought to justify resort to the best techniques available to sweeten the air.¹⁵

We urge you to take this opportunity to define the terms “health hazard” and “nuisance” given that those terms are critical to successful implementation of this regulation. You need not do so in a vacuum given the Board’s expertise in identifying “health hazards” and because several sources of law that inform what constitutes a nuisance. For example, Washington state law defines a nuisance as “the obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property” RCW 7.48.010. “Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.” RCW 7.48.120. “A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.” RCW 7.48.130.

The legislature has declared that the following activities are public nuisances: “It is a public nuisance: (1) To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others; and (2) To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street, or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others; (3) To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water” RCW 7.48.140. Indeed, other sources of Washington law declare that when animal manure from CAFOs pollutes the water, it shall be declared a nuisance. “The establishment or maintenance of any slaughter pens, stock feeding yards, hogpens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the (1) sources from which the supply of water for the inhabitants of any city or town is obtained, or (2) where its water is stored, or (3) the property or means through which the same may be conveyed or conducted so that such water would be

¹⁵ *Id.*

polluted or the purity of such water or any part thereof destroyed or endangered, is prohibited and declared to be unlawful, and is declared to constitute a nuisance, and may be abated as other nuisances are abated.” RCW 35.88.030.

Finally, the Board can also look to sources of federal law when defining what constitutes a nuisance under these circumstances. A nuisance arises if the pollution source presents an imminent and substantial endangerment to public health or welfare or the environment. *See, e.g.*, 42 U.S.C. § 7603 (Clean Air Act Emergency Powers). In fact, Congress wrote its own “private nuisance” provisions into other environmental laws such as Section 7002 of the Resource Conservation and Recovery Act (“RCRA”), which is a subtitle of the Solid Waste Disposal Act. 42 U.S.C. § 6972(a)(1)(B). Under RCRA, the operative terminology again is “imminent and substantial endangerment to health or the environment.” *Id.* We ask that you define the terms “health hazard” and “nuisance” as part of your legal obligation set forth in RCW 43.20.050(2)(c).

B. Define Manure Storage Requirements That Protect Public Health

We agree with some of the speakers who suggested that manure storage requirements should be set forth in water quality permits issued by Ecology for these facilities. However, as Ecology recognizes, only 1% of CAFOs in this state are covered by permits - permits that are supposed to be designed to protect surface and ground water resources (including drinking water). Therefore, mere reliance on RCW 90.48 does nothing to protect public health. The Department of Ecology made it clear that the solid waste requirements set forth in RCW 90.64 similarly impose little to no requirements on factory farms, let alone serve as a means to protect public health. Finally, the Dairy Nutrient Management Act, RCW 90.64, contains no manure storage requirements that adequately protect public health and the environment, as the studies Ecology conducted in the Sumas-Blaine aquifer and documented pollution from these facilities make clear. Therefore, we recommend that the Board expand upon its existing language to make it clear that all animal excreta “must be kept in a covered watertight pit or chamber so that it does not discharge to waters of the state and shall be removed at intervals sufficiently frequent to maintain a sanitary condition that protects public health and the environment and does not constitute a health hazard or nuisance.”

C. Maintain Requirement Preventing Manure From Contaminating Drinking Water

Finally, there is absolutely no reason for the Board to remove the requirement that “manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.” By adopting this change, the Board implies that it is perfectly legal

and appropriate to allow manure to contaminate drinking water. This proposed change would directly violate the Board's statutory mandate to "adopt rules and standards for prevention, control and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains." RCW 43.20.050(2)(c).

Again, we greatly appreciate the opportunity to address the Board on public health issues associated with the keeping of animals. We are happy to provide you with any additional information that you require and we respectfully ask you to implement the recommendations that we have already provided to you so that present and future generations of Washingtonians can exercise their rights to access clean and health drinking water. The Board has the statutory authority to address this public health crisis, and it is high time to use it.

Respectfully Submitted,

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Enc.

Cc: Center for Environmental Law & Policy, Center for Food Safety, Community Association for Restoration of the Environment, Friends of Toppenish Creek, Concerned Citizens of the Yakama Reservation, Animal Legal Defense Fund, Martha and Dean Effler, MD, FAAP in Yakima, WA, Citizens for Sustainable Development, Jim and Lynda Dyjak and Puget Soundkeeper Alliance.