
WA CAFO Permit Fact Sheet

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Environmental Coalition Challenges WA Ecology's NPDES Permit for Concentrated Animal Feeding Operations (CAFOs)

On January 6, 2023, a coalition of five environmental groups, Friends of Toppenish Creek, Puget Soundkeeper, Center for Food Safety, Waterkeeper Alliance, and Sierra Club, filed an appeal with the WA State Pollution Control Hearings Board regarding Ecology's newly issued WA State Discharge Permit and National Pollutant Discharge Elimination System (NPDES) permit for Concentrated Animal Feeding Operations (CAFOs). The PCHB has scheduled a hearing for February 2024.

A CAFO is an agricultural facility that keeps a large number of animals confined to a small, densely populated space. Unlike free-range farms where cows graze through a pasture, or chickens forage for food in fields, CAFOs bring feed to their animals who remain stationary.

The appellants believe that the permits are contrary to law because they are inconsistent with the requirements and intent of the federal Clean Water Act (CWA) and the WA State Water Pollution Control Act (WPCA). This is important for all Washingtonians because there are about 285 CAFO dairies in the state and these facilities discharge large amounts of pollutants to both ground and surface waters.

The federal Clean Water Act and state Water Pollution Control Act provide strong tools, protect human health and the environment from the impacts of pollution. These prohibit the discharge of pollutants to the waters of the state, which includes groundwater, unless those discharges comply with permits that limit the amount of pollutants that are discharged. These permits are required for any “point source” of pollution, defined by the U.S. Environmental Protection Agency (EPA) as “*any single identifiable source of pollution from which pollutants are discharged, such as a pipe....*” CAFOs are classified as point sources.

Ecology has issued two permits covering the discharges from CAFOs. The NPDES permit is required for any CAFO that discharges to surface waters, and the WA State General Discharge Permit for CAFOs addresses discharges to groundwater only.

Our appeal will focus on legal issues in the permits. We have studied the Permits’ fine print and conclude that ultimate implementation of the 2023 permits will be so weak that there is virtually no protection for Washington waters. To untangle the legal language and achieve permits that protect our environment, we need expert legal help. Appellants have contracted with the Western Environmental Law Center (WELC) to represent us and the public.

*The Western Environmental Law Center uses the power of the law to safeguard the public lands, wildlife, and communities of the western U.S. in the face of a changing climate. . . . As a public interest law firm, WELC does not charge **clients and partners** for services, but relies instead on charitable gifts from individuals, families, and foundations. . . . WELC integrates national policies and regional perspective with the local knowledge . . . to implement smart and appropriate place-based solutions.*

Because we have faith in public involvement, the Friends of Toppenish Creek will post weekly Fact Sheets that attempt to explain the legal issues in this case in words that lay people understand. We will include citations for those who have the time to study deeper.

You have received this Fact Sheet because you are on a list of potentially interested parties. If you do not want to receive further information, please contact Jean Mendoza at jeanmendoza@icloud.com

Legal Issues include:

1. Does the Combined National Pollutant Discharge Elimination System and State Waste Discharge General Permit (“Combined Permit”) comply with the application, informational, reporting, and procedural requirements of the federal Clean Water Act and implementing regulations for the issuance of National Pollution Discharge Elimination System permits to Concentrated Animal Feeding Operations?
2. Does the Combined Permit contain enforceable technology-based effluent limitations and standards that comply with the requirements of the federal effluent limit guidelines for Concentrated Animal Feeding Operations?
3. Does the Combined Permit meet the requirements of state and federal law for controlling discharges and pollution from Concentrated Animal Feeding Operations production areas, including all of the requirements for Nutrient Management Plans?
4. Does the Combined Permit meet the requirements of state and federal law for controlling discharges and pollution from Concentrated Animal Feeding

Operations land application areas, including all of the requirements for best management practices, Nutrient Management Plans, land application rates and practices, and the standards for agricultural stormwater exemption?

5. Do the Combined Permit and State Waste Discharge General Permit (collectively the “Permits”) apply and ensure compliance with enforceable technology-based treatment requirements and standards reflecting all known, available, and reasonable methods of prevention, treatment, and control required under state law?

6. Do the Permits apply and ensure compliance with enforceable effluent limitations and standards necessary to ensure that the discharge of pollutants from the permitted facilities will not cause or contribute to violations an excursion above of any State water quality standard, including State narrative criteria for water quality?

7. Do the Permits apply and ensure compliance with enforceable effluent limitations and standards necessary to ensure that the discharge of pollutants from the permitted facilities will not cause or contribute to a violation of the state’s Anti-Degradation Policies for surface water and groundwater?

8. Do the Permits include whole effluent limit toxicity limits in compliance with state and federal law?

9. Do the Permits require adequate monitoring of the facility and discharges of pollutants to surface water in compliance with state and federal law?

10. Do the Permits require adequate monitoring of the facility and its discharges of pollutants to groundwater in compliance with state and federal law?

11. Does the Combined Permit's requirements concerning Manure Pollution Prevention Plans comply with binding federal regulations for the development, modification, and public notice and comment on Nutrient Management Plans?
12. Did Ecology properly identify and disclose the facilities eligible for coverage under the Permits in compliance with state and federal law?
13. Did Ecology violate the State Environmental Policy Act ("SEPA") by failing to comply with SEPA's purposes, policies, and guidelines when developing and issuing the Permits?
14. Did Ecology violate SEPA by failing to develop an Environmental Impact Statement despite evidence of probable significant adverse environmental impacts?
15. Did Ecology violate SEPA by issuing a DNS that is clearly erroneous because it is not based on reasonably sufficient information to conclude that the issuance of the permits will not result in significant impact to any element of the environment?
16. Did Ecology violate SEPA by issuing a DNS that is clearly erroneous because it balances purported benefits of the permits against possible adverse impacts of their issuance?
17. Was Ecology's reissuance of the Permits categorically exempt from SEPA's threshold determination and EIS requirements based on RCW 43.21C.0383(1)?