



Friends of Toppenish Creek

May 2, 2022

Washington State Board of Health
PO Box 47990
Olympia, WA 98504-7990

Dear WA BOH,

We are the Friends of Toppenish Creek from Yakima County.

Friends of Toppenish Creek is dedicated to protecting the rights of rural communities and improving oversight of industrial agriculture. FOTC operates under the simple principle that all people deserve clean air, clean water and protection from abuse that results when profit is favored over people. FOTC works through public education, citizen investigations, research, legislation, special events, and direct action.

People who live near animal feeding operations suffer from pollution of drinking water, air pollution, and infectious disease. State and local officials appear helpless to address this public health issue.

The magnitude of problems related to manure management has increased many fold since the introduction of concentrated animal feeding operations (CAFOs) to animal agriculture. Law makers who wrote rules to minimize health impacts from livery stables could not have envisioned storing animal excreta in million gallon lagoons or tossing it into the air to compost.

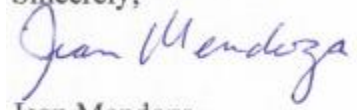
Remember that each mature milk cow excretes over 120 lbs of feces and urine every day. Multiply this by thousands of cows and that is a lot of manure.

A possible solution to this serious problem is to authorize citizen lawsuits against polluters when they cause or contribute to human illness or death. There is precedent for holding people responsible when they create conditions that harm others.

By herself, a woman whose husband dies from E-coli 0157 has little hope of winning against a multi-million dollar corporation that flaunts the law. But a change in the rules could make it possible to hold responsible parties accountable, by providing for cost recovery in litigation.

Thank you for seriously considering this option.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is written in a cursive style with a large initial "J" and "M".

Jean Mendoza

Executive Director, Friends of Toppenish Creek
3142 Signal Peak Road
White Swan, WA 98952

Rationale for Citizen Lawsuits to Protect Public Health from Manure Pollution

Legal Authority:

RCW 43.20.050

Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules.

(2) In order to protect public health, the state board of health shall:

(c) 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;

WAC 246-203-130

Keeping of animals.

(1) Any person, firm or corporation is prohibited from keeping or sheltering animals in such a manner that a condition resulting from same shall constitute a nuisance.

(2) In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least once a week during the period from April 1st to October 1st and, during the other months, at intervals sufficiently frequent to maintain a sanitary condition satisfactory to the health officer. Manure on farms or isolated premises other than dairy farms need not be so protected and removed unless ordered by the health officer.

(3) Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.

Facts:

Human and animal excreta carry pathogens that endanger human and animal health. This is why we teach children to wash their hands after they go to the bathroom.

People who live in close proximity to animal feeding operations suffer from pollution of drinking water, air pollution and infectious disease.

The WA DOH and local health agencies do not monitor pollutants from AFOs, do not surveil for related health impacts, do not investigate complaints or health impacts, do not control discharges and emissions, and do not assist those whose health has been harmed. The WA State Dept. of Ecology and the WA State Dept. of Agriculture do very little, and specifically do not evaluate impacts on human health. It appears that the agencies lack the resources to characterize, assess, and evaluate health impacts from AFOs.

People who live in close proximity to AFOs spend millions of dollars out of pocket to purchase safe drinking water, address health impacts such as asthma, cardiovascular and lung disease, and infections.

Taxpayers spend millions of dollars to subsidize AFO actions to reduce and mitigate pollution, and to keep AFOs in business.

Cost benefit analysis of the proposed WAC 246-203-130 does not address costs to citizens, only costs to business.

Meeting legal standards to prove health hazards is expensive. In reality, a citizen who suffers illness or even death due to sloppy manure management does not have the financial resources to prove a cause and effect relationship. Public health agencies rarely make these connections.

Current WA rules and regulations do not protect citizens from the adverse health impacts of air and water pollution from improper manure management.

Proposed change to the Draft WAC 246-203-130:

One solution to this problem is provision for citizen lawsuits against those who damage public health. Such lawsuits could be allowed by provisions similar to those in the Clean Water Act. Citizens could seek injunctive relief (court orders prohibiting the pollution from continuing), civil penalties, and reimbursement of legal costs and attorneys' fees.

Proposed addition to WAC 246-203-130:

Any citizen may commence a civil action on his own behalf or on behalf of dependents:

1. Against any person, or collective of persons, who are alleged to discharge pollutants into a drinking water aquifer, or the ambient air in amounts that inflict illness or death.
2. Against responsible officials for failure to perform an act or duty to investigate negative health impacts from airborne or waterborne pollutants from animal manure.

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate.

Arguments:

People who live near animal feeding operations where large amounts of manure are (mis)managed suffer documented adverse health impacts, but state and local officials appear helpless to change this situation. Citizen lawsuits could play a role in providing relief. Citizen lawsuits could realistically be undertaken if attorneys and expert witnesses could reasonably expect payment for their services.

Criteria for proving adverse health impacts will undoubtedly be subject to intense debate, but this obstacle is not insurmountable.