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# WA CAFO Permit Fact Sheet

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For Immediate Release: February 1, 2024

Contact: Friends of Toppenish Creek at 509-874-2798

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## CAFO Fact Sheet 15: State Environmental Policy Act & NPDES Permits

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Today FOTC presents our perception of what the WA State Environmental Policy Act (SEPA) means for Ecology’s National Pollutant Discharge Elimination System (NPDES) general permits for concentrated animal feeding operations (CAFOs).

RCW 43.21C, Washington’s State Environmental Policy Act or SEPA, is designed to protect the environment by requiring a thorough assessment of impacts before issuing permits for construction, or before adopting regulations, policies, and plans. SEPA applies to “projects” such as building a wastewater treatment plant or to “non-projects” such as writing zoning codes or general permits. SEPA rules are found in WAC 197-11.

When a project or non-project proponent begins planning, the proponent initiates conversations with a “lead agency” that is authorized by law to evaluate whether the project will have a significant environmental impact. The proponent must answer questions in a structured “environmental checklist” and the “lead agency” makes a “threshold determination” that assigns the project or non-project to one of three categories: determination of non-significance (DNS), mitigated determination of non-significance (MDNS), or determination of significance (DS).

If the proposal receives a DNS or MDNS classification, it may proceed. If the proposal receives a DS the “lead agency” must complete an “environmental impact statement” (EIS), which is a more in depth study.

*An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures that would avoid or minimize adverse impacts or enhance environmental quality. WAC 197-11-400(2)*

Some National Pollutant Discharge Elimination System (NPDES) permits are subject to SEPA review. Individual NPDES permits apply only to a single project, while general permits are generic permits that may be used for all proposals of a similar type

In the case of NPDES permits for CAFOs the WA State Department of Ecology (Ecology) is both the “proponent” and the “lead agency” which sounds problematic but is not unusual. Ecology answered questions on the SEPA checklist for CAFO NPDES permits, reviewed their own answers, and issued a determination of non-significance (DNS). Ecology treats the 2022 NPDES general permits for CAFOs as non-project by answering questions in section D of the Environmental Checklist.<sup>1</sup>

After reading answers in the checklist<sup>1</sup> we believe that Ecology should have issued a determination of significance and prepared an EIS. Here are some reasons why:

- Ecology answers 44 questions in the SEPA check list with “unknown”.
- On page 4/20 the check list asks for a general description of the site (geographic area) (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.

Ecology replies: “Unknown. The draft CAFO general permits apply to existing and new CAFOs located in Washington State. Therefore, the site topography will depend on the location of the facility.”

But Ecology does have general descriptions of the sites for the > 250 existing CAFOs. Ecology knows that some existing CAFOs are located next to rivers and streams, in flood plains, near communities. This information is relevant when the lead agency (Ecology) evaluates impact on waters of the state.

- On page 5/20 the check list asks, “What types of emissions to the air would result from the project (proposal) (i.e., dust, automobile, odors, and industrial wood smoke) during construction and when the project (proposal) is completed?”

Ecology answers: “The draft CAFO general permits apply to existing and new CAFOs located in Washington State. The draft permits do not propose to cause or contribute to air emissions from CAFOs.” And then Ecology lists six qualifiers that describe air emissions from CAFOs, such as:

- Ammonia, nitrous oxide, nitric oxide, and methane from animal housing.
- Dust
- Enteric fermentation
- Volatile organic compounds, ammonia, hydrogen sulfide, methane, nitrous oxide, and carbon dioxide from liquid manure storage.
- Particulate matter, volatile organic compounds, ammonia, carbon dioxide, and nitrous oxide from solid manure storage.
- Spreading manure on crop fields releases ammonia, nitrous oxide, and nitric oxide.

To our reading this means that NPDES CAFO permits authorize activities that produce air emissions.

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<sup>1</sup> WA Ecology. SEPA Register 202203141 – Concentrated Animal Feeding Operation Permits. <https://apps.ecology.wa.gov/separ/Main/SEPA/Record.aspx?SEPANumber=202203141>

- On page 6/20 the check list asks, “Is there any surface water body on or in the immediate vicinity of the site (geographic area) (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)?”

Ecology replies: “Unknown. The draft CAFO general permits apply to existing CAFOs located in the State of Washington. The location, size, and type of water body will vary depending on the facility.”

But Ecology does know the location of the over 250 existing dairies in Washington State. Ecology knows which dairies are next to rivers and streams, which dairies are in flood plains. Ecology has the knowledge and ability to describe impacts on surface waters from existing CAFOs.

- On page 11/20 the check list asks, “Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this project (proposal)? If so, describe.”

Ecology replies: Unknown. “The draft CAFO general permits apply to existing CAFOs located in Washington State. Therefore, potential environmental health hazards depend on the facility covered under the CAFO general permits.”

But Ecology is aware of the extensive literature describing environmental health hazards related to CAFOs, both nationwide and in Washington State. Instructions for completing the check list advise including this type of information.

- In Supplemental Sheet D for Non-Project Actions Ecology answers 4 out of 7 questions with this statement:

*The draft CAFO general permits require that permittees implement best management practices to reduce and prevent impacts from wastewater discharges.*

*The following are examples of best management practices required by the draft CAFO general permits:*

- *Restrictions on the application rate and timing of waste to land application fields.*
- *Divert clean water from manure-contaminated surfaces to reduce the need for storage or treatment.*
- *Maintain adequate storage space for waste generated during the storage period in structures designed and maintained to handle animal waste.*
- *Soil and manure testing to ensure fertilizer applications are not made in excess of crop requirements.*
- *Practices at the edges of land application fields that trap, treat, or remove pollutants.*

It is one thing to say that best management practices are required. It is another to describe monitoring and enforcement. The permits only require self-reporting. There are few people who call the authorities and say, “I have broken the law” or “I have violated the conditions of my permit.”

- On page 18 of 20 the check list asks: How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Ecology answers: “Wastewater discharges to surface and groundwater already occur at CAFOs that were in operation before the issuance of the draft CAFO general permits. The main goal of the draft CAFO general permits is to prevent discharges of pollutants to water. Nutrient and bacteria pollution resulting from the collection, storage, and application of animal waste on CAFOs are the target pollutants in the draft CAFO general permits.”

FOTC opinion: We are well aware that discharges to groundwater and surface water occur on the > 230 unpermitted CAFO dairies in Washington State. We wonder why these facilities are not required to apply for permits.

NPDES permits for CAFOs would potentially increase discharges to water if there are no clauses in the permits authorizing Ecology to identify discharges, monitor discharges, and act against those who violate their permits. If the NPDES permits for CAFOs are weak, which they currently are, then the permits give permittees legal cover that allows them to pollute Washington waterways and groundwater.

The environmental checklist for CAFO NPDES permits provides evidence of related pollution and this is sufficient to trigger a determination of significance and require development of an environmental impact statement. A properly done EIS would give policy makers information for understanding the impact of CAFOs on Washington waters. This would help policy makers formulate strong protective rules and regulations.

Thank you for reading.

*Friends of Toppenish Creek*

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](mailto:jeanmendoza@icloud.com)