
WA CAFO Permit Fact Sheet

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CAFO Fact Sheet 17: Motion for Summary Judgment

On December 7, 2023, the WA State Dept. of Ecology (Ecology) issued two new general permits for Concentrated Animal Feeding Operations (CAFOs) in our state. A “combined permit” covers facilities that discharge to both ground and surface waters. A “state only permit” covers facilities that only discharge to groundwater.¹

The permits took effect on January 6, 2023, and are in place until January 5, 2028. A coalition of environmental groups appealed the permits to the WA State Pollution Control Hearings Board (PCHB) on January 6, 2023.² On May 31, 2024, the coalition submitted a Motion for Summary Judgment (MSJ) to the PCHB. This Fact Sheet introduces that motion.

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Here is an outline of the MSJ. The entire document is attached.

INTRODUCTION

STATEMENT OF THE CASE

- A. Concentrated Animal Feeding Operations Can Significantly Harm the Environment and Communities
- B. Washington and Federal Law Require Ecology to Protect the Environment and Communities from CAFOs
- C. Ecology Continues to Issue Unlawful CAFO Permits

STANDARD OF REVIEW

¹ WA Ecology. Concentrated Animal Feeding Operation General Permit. <https://ecology.wa.gov/regulations-permits/permits-certifications/concentrated-animal-feeding-operation>

² FOTC. Notice of Appeal. [http://www.friendsoftoppenishcreek.org/cabinet/data/CAFO%20Appeal%205%202022%20CAFO%20Permits%20Notice%20of%20Appeal%20\[162023%20sig\].pdf](http://www.friendsoftoppenishcreek.org/cabinet/data/CAFO%20Appeal%205%202022%20CAFO%20Permits%20Notice%20of%20Appeal%20[162023%20sig].pdf)

ARGUMENT

- A. The CAFO GP Fails to Ensure the Permittees Will Not Discharge Toxics in Toxic Amounts (Issues 1, 4, 6 & 8)
 - B. The CAFO General Permit Does Not Include Adequate Monitoring TO Ensure Compliance With Its Effluent Limitations (Issues 1, 9 & 10)
 - 1. The CAFO GP fails to require monitoring from each facility that discharges to groundwater (Issue 10)
 - 2. The CAFO GP lacks adequate surface water monitoring requirements to ensure the permittee will comply with the permit's terms and conditions and to protect water quality (Issue 9)
 - C. The CAFO GP Fails to Ensure the Permittees Will Not Discharge Toxics in Toxic Amounts (Issues 1, 4, 6 & 8)
 - D. The CAFO General Permit Does Not Include an AKART Requirement for Solid Waste Storage Areas and Composting Areas, which Ecology Admits (Issues 1, 2, 3, 5 & 6)
 - E. The CAFO General Permit Violates the State's Anti-Degradation Principle for Groundwater (Issues 1, 3, 6 & 7)
 - F. Ecology Failed to Comply with Federal Law by Requiring the Development of Site-Specific Nutrient Management Plans Subject to Public Scrutiny Prior to Permit Issuance (Issues 1 & 11)
- CONCLUSION

And here are the issues that were raised on February 8, 2023, in the Appellants' List of Proposed Legal Issues, Witnesses, and Exhibits for Pre-Hearing Conference.

PROPOSED LEGAL ISSUES

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?

In follow-up Fact Sheets FOTC will describe more fully the rationale for our arguments.

We hope this information is enlightening and explains why environmental groups continue to pressure Ecology to protect the environment more aggressively from CAFO harms.

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