

WASHINGTON DEPARTMENT OF ECOLOGY ISSUES PRELIMINARY DRAFT GENERAL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

By Sarah E. Mack and James A. Tupper
Tupper Mack Wells PLLC

Published in *Western Water Law & Policy Reporter*
Volume 19, No. 10
August/September 2015
www.argentco.com

On August 11, 2015, the Washington Department of Ecology (“Ecology”) released a preliminary draft of an updated general permit for Concentrated Animal Feeding Operations (CAFOs), facilities that confine and feed large numbers of cattle, pigs, chickens, or other animals. The existing CAFO permit, which is supposed to be up for renewal every five years, expired in 2011. Ecology’s proposed changes to the permit are intended to provide greater protection for surface water and ground water from pollution by animal manure. If adopted, Ecology’s proposal will significantly expand the number of CAFO facilities required to obtain permit coverage.

What is a CAFO?

An “animal feeding operation” or “AFO” is a facility where animals (other than aquatic species) are stabled or confined and fed or maintained for a total of at least 45 days in any 12-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. AFOs are grouped into large, medium, and small categories, based on the number of animals. For example, up to 199 dairy cows would be considered a small AFO, 200 to 699 dairy cows a medium AFO, and 700 or more dairy cows a large AFO.

Ecology proposes to define as “CAFOs” the following types of AFOs: (1) any large AFO; (2) any medium AFO with a discharge to surface or ground water; and (3) any AFO that Ecology designates as a CAFO. Two or more AFOs under common ownership will be considered a single AFO/CAFO for the purpose of determining

the size category based on number of animals, if the AFOs adjoin each other or if they use a common area or system for the disposal of wastes.

CAFOs and Water Pollution

CAFOs generate large amounts of manure, and typically dispose of it by placing it in manure storage lagoons or applying it to fields as fertilizer. Improper lagoon management or excessive land application can cause manure to flow into surface waters or seep into groundwater. Bacteria, pathogens, and nitrogen from manure can harm the health of fish-bearing waters and shellfish beds, and can contaminate groundwater used for drinking water supplies.

In 2010, the U.S. Environmental Protection Agency (EPA) conducted a study to identify potential sources of nitrate contamination in groundwater and residential drinking water wells in the Lower Yakima Valley, which is home to several large dairy farms. In its 2013 report on that study, EPA explained that a dairy with 2,500 cows has a waste load similar to that of a city with 411,000 people. EPA's report states:

Given the historic and current volumes of wastes generated and stored by dairies, and the application of nitrogen-rich fertilizers including dairy waste in the Lower Yakima Valley, it is expected that dairies are a likely source of high nitrate levels in downgradient drinking water wells. . . . the dairy lagoons are likely leaking large quantities of nitrogen-rich liquid into the subsurface.

In May 2015, several dairy producers in eastern Washington agreed to an historic settlement in a federal court lawsuit over water pollution from the improper application and storage of manure. In *Community Association for Restoration of the Environment v. Cow Palace, LLC, et al.*, U.S. District Court (E.D. Wash.) No. 13-CV-3016-TOR, the court ruled on summary judgment that improperly-handled dairy manure is a solid waste rather than a beneficial farm product. The *Cow Palace* case is also the first time a federal court has applied the Resource Conservation and Recovery Act (RCRA) to farm animal waste. Under the settlement, the dairies have committed to more stringent protocols for managing manure, including double-lining manure storage lagoons, limiting field application, and groundwater monitoring.

Updating Washington's CAFO Permit

The old CAFO permit, which expired in 2011, is part of a dual-agency livestock program administered by Ecology and the Washington Department of Agriculture. This is an unusual arrangement in water quality regulation; Ecology issues the permit but the Department of Agriculture has primary responsibility for inspections and enforcement of the permit.

The old CAFO permit covered facilities that have or had a discharge to waters of the state. According to the Western Environmental Law Center, this represented only one percent of the CAFOs in Washington. Facilities that were covered under the old CAFO permit at the time of its expiration are allowed to operate under the terms of the expired permit during the update process. Environmental organizations, already critical of Ecology for the restricted scope of permit coverage and lengthy delays in updating the permit, have urged adoption of the manure management protocols from the *Cow Palace* settlement as a baseline requirement.

After convening several months' worth of meetings and "listening sessions" with industry representatives and environmental interest groups, Ecology released a preliminary draft of the new permit. "The changes we are proposing move us toward greater protections to our surface waters and groundwater," said Heather Bartlett, manager of Ecology's Water Quality Program. "This preliminary step affords everybody with an extra opportunity to learn about the changes we are considering before we get into the more formal public review process. We're collecting feedback and asking for help to fill in some gaps."

The most significant change is the proposed expansion of the permit coverage requirement to many facilities not presently covered. In addition to facilities with documented manure discharges to surface or ground water, Ecology would require permit coverage for facilities with unlined or clay-lined manure lagoons, which are presumed to cause manure seepage into groundwater. According to margin notes in the draft preliminary permit:

The Water Quality Program has determined that a lagoon with two layers of synthetic geomembrane liner with a leak detection and

capture system between the layers (if installed, maintained, and operated properly) does not have a discharge that requires a permit. Other lagoon designs are known to leak, which in certain areas is a discharge. In areas where there are known groundwater impacts from nitrate, or where the groundwater is susceptible to impacts from nitrate, Ecology has determined that the leakage from lagoons that are not double lined with leak detection requires a permit.

Ecology would also require permitted CAFOs to submit information about their manure lagoons, including when and how they were constructed. The proposed permit establishes basic management practices to protect water quality, including lagoon maintenance, runoff controls, fencing to keep animals out of surface water, and restrictions on land application of manure. The permit would require manure to be tested for nutrient content prior to land application, as well as soil sampling and testing in the fields where manure is applied. The permit sets an end-of-season nitrate benchmark for soil that, if exceeded, would trigger response actions. According to Ecology, the permit would give each facility “the flexibility to determine how best to meet the permit requirements at its site.”

Ecology will continue to discuss the permit with industries, interest groups, tribes, and other agencies during the coming months, and is accepting public comments on the preliminary draft through September 18, 2015. Ecology intends to issue a formal draft permit later this year.

Conclusion and Implications

Industry trends toward sustainable farming practices, consumer demand for environmental responsibility, and the recent *Cow Palace* settlement have combined to make inevitable a more stringent CAFO permit. Environmental groups have demanded universal permit coverage for all medium and large CAFOs, mandatory surface water and groundwater monitoring, synthetic lining of manure lagoons, and riparian habitat buffers. Whether Ecology’s preliminary proposal can support agricultural communities in Washington while satisfying environmental groups remains to be seen.

For the text of the preliminary draft permit, see:

<http://www.ecy.wa.gov/programs/wq/permits/cafo/docs/preliminaryDraftCAFOPermit2015.pdf>.

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