



State of Oregon Department of Environmental Quality

Public Comments

Dairy Air Emissions Rulemaking Petition

This document is a compilation of written comments received during public comment period for the Petition to Promulgate Dairy Air Emissions Regulatory Program. The public comment period was open from October 3, 2022 until 4 p.m., October 23, 2022.

The comments have been organized into three categories, comments in support of the petition, comments opposed to the petition, and those that are neutral.

Neutral.....	2
Opposed.....	25
Support.....	109

KUOPPAMAKI Heather * DEQ

From: Troy Downing <bigbuck12345@hotmail.com>
Sent: Sunday, October 23, 2022 3:34 PM
To: PETITION Dairyair * DEQ
Subject: air petition thoughts
Attachments: Dear Oregon Environmental Quality Commission.docx

October 20, 2022

Dear Oregon Environmental Quality Commission,

I have had the privilege of working with Oregon's dairy industry, Oregon DEQ, Oregon Department of Agriculture, and a dozen of Oregon's USDA-NRCS staff on Natural Resource issues in the state for the past 33 years. This spring I retired from Oregon State University as Dairy Extension Specialist. Over my career I have been actively involved in helping Oregon's dairy industry adapt and implement Oregon's CAFO permit requirements, I have had the opportunity to work with ODA and DEQ numerous times even when we initially developed the CAFO program we know and use today. During the initial development, the leadership of the Oregon Dairy Industry (at that time the Executive Director was Jim Krahn) demonstrated phenomenal leadership and vision to move the industry forward and create a CAFO program that would be seen as leading the nation. This was accomplished and is still recognized today as being an extremely effective regulatory program. This was only possible by the hard work and joint leadership demonstrated by ODA, DEQ and the Oregon Dairy Farmers Association.

In 2008 the Oregon legislature created the Oregon Dairy Air Task Force. This group was challenged to look at emissions from dairies in the state and determine what if anything could or should be done. Even though I was not officially on the committee, I attended every meeting and even presented an educational program during one session. At the conclusion of the work, it was clear that measuring and monitoring emissions was extremely expensive and challenging. Oregon itself had some of the cleanest air in the nation. We acknowledged emissions were occurring and especially ammonia was a nutrient of concern, but we could not even decide what problem we were potentially solving if we created any regulation. The chairperson wrote a report that put a little more critical spin on the situation than I described but had the same conclusions. We essentially had no clear idea what problem we were trying to solve. We also had no easy way to monitor emissions and the legislature did not have the resources for helping us improve our understanding. This issue was taken very serious by the Oregon Dairy Industry. The Oregon Dairy Farmer Board committed resources and proposed to Oregon State University that a researcher be hired to help us understand if we had issues in the state and if we did what feasible solutions could be determined. This type of progressive leadership has been a flagship characteristic of the Oregon Dairy Farmers Association. At this time, they also asked me to write an Extension publication on Best Management Practices to Reduce Emissions on Dairies and provide educational seminars promoting these practices. In 2009 the publication was produced and is still available today.

<https://catalog.extension.oregonstate.edu/sites/catalog/files/project/pdf/em8982.pdf> Since 2009, I worked to improve our understanding of dairy emissions to producers throughout the state. I believed that through education we could adopt practices as they became available.

Senate Bill (SB) 197 was introduced in the 2017 legislative session. The bill would have required the Environmental Quality Commission (EQC) to adopt by rule a program for regulating air contaminant emissions from dairy confined animal feeding operations. The program, to the extent possible, was supposed be based on the recommendations of the Oregon Dairy Air Quality Task Force's final report prepared on July 2008. The bill would have also authorized the EQC

and the Oregon Department of Agriculture (ODA) to enter into a memorandum of understanding for ODA to operate the program.

The bill did not move out of the assigned committee, the Senate Committee on Environment and Natural Resources. Instead, ODA was asked to prepare a report on the air emission mitigation best management practices (BMPs) implemented at Three mile Canyon Farms (TMCF) and newly operating Lost Valley Farm (LVF), look at new and developing BMPs, evaluate benefits of cropping systems to mitigate emissions, and identify opportunities for incentives to promote the development and implementation of BMPs by Oregon dairy sector. Wym Matthews and I worked on this report together, and we used two regionally available dairy air evaluation tools as a strategy to assess the performance of these larger operations. The report can probably still be accessed by contacting Mr. Matthews, but it essentially showed that by using these two air monitoring tools that both dairies were doing well at reducing emissions and Three Mile Canyon was extremely well managed and had significantly reduced air emission compared to other dairies in the state. During this evaluation I concluded that Three Mile Canyon probably had the lowest carbon footprint of any dairy in the state.

I have had the opportunity to read the petition asking the Environmental Quality Commission to come up with regulations against the larger dairies in our state. It was sponsored by many of the same groups that have been critical of our dairy industry, our CAFO program, Oregon Department of Agriculture and Oregon Department of Environmental Quality and sponsored SB197. There is never any recognition of the great work of the Oregon Department of Agriculture, the Oregon Department of Environmental Quality, EPA and the Oregon Dairy Farmers Association to create such a fantastic CAFO program. The cooperation demonstrated over the years by ODFA, ODA and DEQ can and will be what can address emissions in the future. It makes no sense to not bring these groups together to talk about this issue and see if anything makes sense.

I obviously have concerns about regulation on issues that are not clearly measured and monitored, feasible to reduce or that clearly are causing significant harm to our air sheds. It seems obvious that these petitioners don't recognize the GHG reductions seen on our larger dairies but rather want to paint them as being horrible polluters. If we have 10 dairies in an area milking 200 cows or two dairies milking 1000 cows then mathematically we could have similar emissions in the same airshed. Size is really not even an argument that makes sense.

Addressing emissions from livestock operations is a priority with many research programs nationally and internationally and as best management practices become available, they soon get adopted. It is clear reading this petition that the writers are not sure what problem they are solving, nor do they suggest how things could be changed in a meaningful way. I am concerned that this effort seems to only be focused on the largest facilities. I wonder if we have tools or best management practices that reduce emission why we wouldn't be encouraging them for the entire industry.

It is also well known that nationally EPA has been studying national air emissions. If we have any regulations coming nationally it makes sense that Oregon be consistent with federal regulations.

In conclusion, thank you for allowing me to share my thoughts. Oregon has an amazing history of the Oregon Dairy Farmers, ODA and DEQ working collaboratively to position our industry for success. I think this needs to be in the fore front of any conversation. I think we need to stay focused on what problem we hope to solve and seriously assess if any regulatory tool can be effective at meeting its goals. Air emissions are complex and difficult to measure and monitor. And lastly, I have concerns focusing just on our largest dairies. This feels like its more an anti-large dairy effort than one coming from people who care about air quality. If I can ever be of assistance do not hesitate to ask.

Sincerely,

Troy Downing

KUOPPAMAKI Heather * DEQ

From: Fritz Skirvin <fskirvin@msn.com>
Sent: Wednesday, October 12, 2022 11:30 AM
To: PETITION Dairyair * DEQ
Subject: Dairy Prtition

I offer the following after reading the petition. Also, I am aware the the EQC must take some action within a set time frame.

DEQ ought to ask the AG if the Right to Farm Bill prevents any or all of the requested action. Secondly, since dairies and other CAFOs exist throughout this country, the EQC should forward the petition to the EPA. If any information is needed re my comments, feel free to contact me.

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: Jackie Rice <hiddencreek3@icloud.com>
Sent: Friday, October 14, 2022 10:22 PM
To: PETITION Dairyair * DEQ
Subject: Email we sent a few minutes ago about dairy air pollution

Noticed that we made an error in our email address at the end of our e-mail we just sent about regulating dairy air pollution. Correct: Dr. Jackie Rice and Dr Karen Eason (hiddencreek3@gmail.com)—left the 3 out of the email address.

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: Anne Campbell <cinnamonredhead1@gmail.com>
Sent: Monday, October 3, 2022 4:12 PM
To: PETITION Dairyair * DEQ
Subject: Emmisions

So I don't understand why you don't give dairies grants for a poop burning steam plant to produce electricity and get rid of the excess.

Anne Campbell
5416711186

Sent from [Mail](#) for Windows

KUOPPAMAKI Heather * DEQ

From: JOHN ALTSHULER <tomailakai@comcast.net>
Sent: Thursday, October 20, 2022 9:32 AM
To: PETITION Dairyair * DEQ
Subject: Factory Farms

We all know that Monopolies do not work for the population only for big business. Limit competition causing a general population to pay more or what they buy and in this case with dairy forms also create biohazards by nature of the business and the business owners unwillingness to go the extra mile to contain some of the contamination. I did not think factory farms are a viable way going forward for animals or for any other kind of production. Big business is ruining this country and there need to be some sort of federal controls on how big someone can get. Remember AT&T in the bills? We always end up finally realizing this let's not make this mistake over and over again. Let's just go right to the heart of it and deal with the problem and fix it once and for all.

Sincerely,
John Altshuler

KUOPPAMAKI Heather * DEQ

From: Art Poulos <art@laterravita.com>
Sent: Sunday, October 23, 2022 3:07 PM
To: PETITION Dairyair * DEQ
Subject: Fwd: Nations leading public health organization

----- Forwarded message -----

From: Art Poulos <art@laterravita.com>
Date: Sun, Oct 23, 2022 at 3:04 PM
Subject: Nations leading public health organization
To: <DairyAir.Petition@deq.oregon.gov>

“The American Public Health Association (APHA) enacted a new policy statement advising federal, state, and local governments and public health agencies to impose a moratorium on all new and expanding concentrated feeding animal operations (CAFOs).” This is what they have to say. Why are you not listening and talking action? The DEQ is incredibly ineffective to the point of incompetence.

<https://clf.jhsph.edu/about-us/news/news-2019/nations-leading-public-health-organization-urges-halt-all-new-and-expanding>

KUOPPAMAKI Heather * DEQ

From: Larry von Seeger <vonseeger.l@gmail.com>
Sent: Saturday, October 8, 2022 1:58 PM
To: PETITION Dairyair * DEQ
Subject: Large Dairy Farms

Having lived near a large dairy farm I would like to share my experiences. I live one mile north of Coburg in a small development called Pioneer Valley Estates. There are 40 homes in our development. When we first moved here in 1970 the dairy was small but over the years it became huge. They had an uncovered manure lagoon and sprayed liquid manure on fields surrounding our homes using huge sprinklers. More than once my neighbor whose house backs one of those fields had to have the dairy send someone to power wash the back of his house because of strong wind blowing manure on the back of his house. On the days they sprayed manure and several days afterwards, none of us could open windows or spend time on our patios. Some of our homes have no air conditioning. Because of the liquid manure leached into our aquifer we would have spikes in the nitrates in our drinking water and the city of Coburg would post notifications on our doors to not drink our water without boiling it and to not let young children drink it regardless of boiling.

Also I appealed our property taxes and won because of the high number of house flies attracted by the liquid manure. There was talk one time of covering the lagoon and capturing the methane gas for the use for power production. That never happened.

In the last few years we have been very fortunate due to two major changes related to the dairy and our source of water. The huge herd of dairy cows have been sold and the farm now only raises a small number of heifers and our water source is no longer a well located directly across the road from the dairy. Our water source is the wells that the city of Coburg uses and the water is pumped one mile north to our homes.

Just because we no longer suffer the problems related to being located near a large dairy doesn't mean there aren't other people suffering these related problems.

Lawrence von Seeger
91741 Winnebago St.
Eugene, OR 97408

Sent from my iPad

KUOPPAMAKI Heather * DEQ

From: Art Poulos <art@laterravita.com>
Sent: Sunday, October 23, 2022 3:04 PM
To: PETITION Dairyair * DEQ
Subject: Nations leading public health organization

“The American Public Health Association (APHA) enacted a new policy statement advising federal, state, and local governments and public health agencies to impose a moratorium on all new and expanding concentrated feeding animal operations (CAFOs).” This is what they have to say. Why are you not listening and talking action? The DEQ is incredibly ineffective to the point of incompetence.

<https://clf.jhsph.edu/about-us/news/news-2019/nations-leading-public-health-organization-urges-halt-all-new-and-expanding>

KUOPPAMAKI Heather * DEQ

From: Polly Kreisberg <pkreisberg@gmail.com>
Sent: Sunday, October 23, 2022 6:56 PM
To: PETITION Dairyair * DEQ
Subject: NO to mega dairies

Oregon should not approve this use of agricultural land . Mega dairies create environmental hazards to clean water, are cruel to animals, and do not use agricultural land appropriately. Many states have regulations against these inhumane animal factories, they are finding loopholes in Oregons weak polices to develop these businesses. We can do better.
Vote NO. Polly Kreisberg

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: Fern Walker <fernbluewalker@gmail.com>
Sent: Wednesday, October 19, 2022 9:27 PM
To: PETITION Dairyair * DEQ
Subject: Please

Please stop mass producing cows that live terrible lives of abuse and die in horrendous ways. You are creating air pollution and torturing innocent animals.

KUOPPAMAKI Heather * DEQ

From: BILL and KATHLEEN PHELAN <BWPKAP@msn.com>
Sent: Friday, October 7, 2022 8:32 AM
To: PETITION Dairyair * DEQ
Subject: Proposed Rulemaking for Dairies

Thank you for the opportunity to comment and voice my concerns.

The agricultural community takes so many risks and their profit margins are very small. Protecting our air and water is important. However, I do not agree that trying to fine, fee or charge them in a quantifiable way based on the number of animals or the amount of product they produce is not something that I can get behind. Helping them with ways to collect and use the refuse from the animals is a positive step depending on how you "help" them. Help is not making rules and nickel and diming them into bankruptcy under the guise of climate change protections or any title you would like to give it. This industry already has so many rules and requirements that they have to follow. Making it harder for them to function and make a profit is not something that should be a side effect of these proposed rules or requirements.

I would like to see the proposed rules before the next meeting. Can someone please send me what is being proposed to this point?

Thank you,

Kathleen Phelan
(503)929-3901
4577 Poinsettia St NE
Salem, OR 97305

KUOPPAMAKI Heather * DEQ

From: Dana Adams <dana@rngcoalition.com>
Sent: Friday, October 21, 2022 5:31 PM
To: PETITION Dairyair * DEQ
Subject: RNG Coalition Comments on Dairy Air Emissions
Attachments: 221023 RNG Coalition Comments on Dairy Air Emissions Rulemaking 2022.pdf

Good afternoon,

Please see the attached document for the RNG Coalitions comments on the petition for a dairy air emissions rulemaking program.

Thank you,

Dana Adams
Legislative Policy Manager
Coalition for Renewable Natural Gas

C: 517-914-7171
O: 916- 588-3033

www.rngcoalition.com

October 23, 2022
Submitted via email to DairyAir.Petition@deq.oregon.gov

Heather Kuoppamaki
Senior Air Quality Engineer
Oregon Department of Environmental Quality
700 NE Multnomah St.
Portland, OR 97232-4100



RE: Comments on Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Ms. Kuoppamaki,

The Coalition for Renewable Natural Gas (RNG Coalition)¹ submits these comments in response to the *Request for Comments on Petition to Promulgate Dairy Air Emissions Regulatory Program* (Petition) by the Oregon Department of Environmental Quality (DEQ).² The petitioners wish to establish a dairy emissions program to regulate air emissions from large dairy confined animal feeding operations (CAFOs).

In our comments below we express concern that the Petition excludes anaerobic digestion (AD) with productive energy use (e.g., RNG production) as a Best Management Practice. We also express a preference for incentives—in place of, or in addition to, mandatory controls considered in the Petition—for deployment of dairy RNG at the state level.

About the RNG Coalition

The RNG Coalition is the trade association for the RNG industry in North America. Our diverse membership is comprised of leading companies across the RNG supply chain, including recycling and waste management companies, renewable energy project developers, engineers, financiers, investors, organized labor, manufacturers, technology and service providers, gas and power marketers, gas and power transporters, transportation fleets, fueling stations, law firms, environmental advocates, research organizations, municipalities, universities, and utilities. Together we advocate for the sustainable development, deployment, and utilization of RNG, so that present and future generations have access to domestic, renewable, clean fuel and energy in Oregon and across North America.

Importance and Cost Effectiveness of Methane Emission Reductions

We would like to preface our comments by highlighting that Oregon is not the only governmental body that is prioritizing methane emission reductions. Short Lived Climate Pollutant reduction, of which methane is the most prominent, has risen to the top of the climate protection agenda around the world. Some examples include:

¹ For more information see: <http://www.rngcoalition.com/>

² <https://www.oregon.gov/deq/rulemaking/Documents/DairyAirPN.pdf>

Global Methane Pledge:

*Rapidly reducing methane emissions from energy, agriculture, and waste can achieve near-term gains in our efforts in this decade for decisive action and is regarded as the single most effective strategy to keep the goal of limiting warming to 1.5°C within reach while yielding co-benefits including improving public health and agricultural productivity.*³

UNEP Global Methane Assessment:

*According to scenarios analysed by the Intergovernmental Panel on Climate Change (IPCC), global methane emissions must be reduced by between 40–45 per cent by 2030 to achieve least cost-pathways that limit global warming to 1.5° C this century.*⁴

*Reducing human-caused methane emissions is one of the most cost-effective strategies to rapidly reduce the rate of warming and contribute significantly to global efforts to limit temperature rise to 1.5°C.*⁵

International Energy Agency (IEA)

*Tackling methane emissions is one of the most significant opportunities available for limiting the near-term effects of climate change. Reducing methane has a major and immediate climate benefit.*⁶

US Environmental Protection Agency (EPA):

*Because methane is both a powerful greenhouse gas and short-lived compared to carbon dioxide, achieving significant reductions would have a rapid and significant effect on atmospheric warming potential.*⁷

California Air Resources Board's Short Lived Climate Pollutant Reduction Strategy:

*The science unequivocally underscores the need to immediately reduce emissions of short-lived climate pollutants (SLCPs), which include black carbon (soot), methane (CH₄), and fluorinated gases (F-gases, including hydrofluorocarbons, or HFCs).*⁸

Environmental Defense Fund:

*Cutting methane emissions is the fastest opportunity we have to immediately slow the rate of global warming, even as we decarbonize our energy systems.*⁹

³ <https://www.globalmethanepledge.org/>

⁴ UNEP Global Methane Assessment. Summary for Decision Makers. 2021, Executive Summary, p.6. https://wedocs.unep.org/bitstream/handle/20.500.11822/35917/GMA_ES.pdf.

⁵ UNEP Global Methane Assessment (full report). 2021. Executive Summary, p. 8.

<https://www.ccacoalition.org/en/resources/global-methane-assessment-full-report>.

⁶ IEA. Curtailing Methane Emissions from Fossil Fuel Operations: Pathways to a 75% cut by 2030. October 2021. Page 10. <https://www.iea.org/reports/curtailing-methane-emissions-from-fossil-fuel-operations>.

⁷ EPA Website, Importance of Methane. <https://www.epa.gov/gmi/importance-methane>

⁸ CARB. Short-Lived Climate Pollutant Reduction Strategy. March 2017. Page 1, Executive Summary.

<https://www.epa.gov/gmi/importance-methane>.

https://ww2.arb.ca.gov/sites/default/files/2020-07/final_SLCP_strategy.pdf.

⁹ Environmental Defense Fund. *Methane, A crucial opportunity in the climate fight.*

<https://www.edf.org/climate/methane-crucial-opportunity-climate-fight>.

The rationale for this newfound urgency to achieve methane emission reductions is simple: multiple international, national, and state authorities recognize that methane emission reduction is the best, most cost effective, near-term GHG reduction strategy that can create significant climate benefits in the next few decades.

Methane emission reduction is also critical considering recent studies that indicate that the concentration of methane in the atmosphere is increasing at an alarming rate.¹⁰ There is no more effective and immediate step we can be taking as a planet to address climate change now than to aggressively and rapidly reverse emissions of fugitive methane from all sectors.

Anerobic Digestion is a Best Management Practice that Achieves Methane Mitigation Along with Other Benefits

Anerobic digestors at dairies capture fugitive methane emissions associated with manure management while also offering an opportunity to displace fossil fuels through productive energy use of the biogas—either through production of power or through pipeline injection of renewable natural gas. Given this simple fact, we are concerned that the Petitioners have chosen not to include AD with productive energy use as a “best management practice” in the Petition.

The Petition cites the US EPA’s *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems* as the source from which the DEQ should selected best management practices from, but does not include anaerobic digesters as a best management practice,¹¹ despite the fact that anaerobic digesters are recommended by the EPA and USDA within the Reference Guide, which characterizes anaerobic digestion as providing “maximum odor reduction, but most importantly, captures methane, which has a global warming impact that is 20 times greater than carbon dioxide (CO₂).”¹² Furthermore, the Petition states that best management practices should be chosen and promoted by the US EPA’s AgSTAR program, which already supports biogas recovery from digesters as viable form of methane abatement and as having the most relative methane reductions of all manure management options (including those recommended by the Petitioners).¹³

The Petition highlights three items of concern regarding AD as a solution to emissions from dairies: on-site combustion, local air pollutants, and the implications of the ammonia content in resulting digestate from a digester. We believe these items can all be addressed practically. First, nitrogen cycle issues (and nutrient management generally) related to digestate use are more complex than described in the Petition, and can be impacted by storage practices and method of land application of the digestate. Concerns about increased ammonia emissions due to digestate application can also be addressed by

¹⁰ See “Increase in atmospheric methane set another record during 2021”, National Oceanic and Atmospheric Administration, Press Release, April 7, 2022. <http://noaa.gov/news-release/increase-in-atmospheric-methane-set-another-record-during-2021>.

¹¹ See Appendix A and footnote 14 of the Petition.

¹² *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*, p. 45, September 2017, US Department of Agriculture & US Environmental Protection Agency, https://www.epa.gov/sites/default/files/2017-01/documents/web_placeholder.pdf

¹³ *Practices to Reduce Methane Emissions from Livestock Manure Management*. United States Environmental Protection Agency. <https://www.epa.gov/agstar/practices-reduce-methane-emissions-livestock-manure-management>.

complementary technology for further digestate processing, such as those that remove ammonia from the digestate stream and concentrate it into an aqueous solution.¹⁴

Second, air pollution from on-site combustion is not a concern if captured biogas is cleaned and then injected into the pipeline system for storage and off-site use in the form of Renewable Natural Gas.¹⁵ This is a key driver of why the RNG Coalition, while supporting all productive energy use from biogas (including onsite combustion for power generation if that is the only viable option), has long promoted pipeline injection as a preferred option where feasible.

Third, injecting renewable natural gas into the pipeline system would displace the use of fossil fuels and thus not increase total combustion. In fact, local air quality benefits can occur when renewable sources of methane are captured, cleaned, and used as a substitute for diesel (for example in medium- and heavy-duty near zero emission natural gas trucks). Dairy RNG used in vehicles simultaneously displaces fossil fuels and reduces emissions of both toxic diesel particulate and smog-forming oxides of nitrogen in near-zero emission natural gas trucks. Finally, trucks fueled with renewable natural gas emit zero diesel particulates, which is a pernicious and toxic air contaminant.

None of the best management practices recommended by the Petition provide the same co-benefits offered by anaerobic digestion. Dairy digesters have been promoted historically (even before the strong focus on methane discussed above) because they help reduce hydrogen sulfide, odors, prevent the propagation of flies, and reduce the exposure of farm residents and nearby communities to disease vectors. Digesters with proper nutrient management systems help to promote soil health by converting the nutrients in manure to forms more accessible to plants that can directly replace fossil-fuel derived chemical fertilizers.¹⁶

California is Strongly Pursuing Digesters with Productive Energy Use

The Petition holds up air quality regulation of dairies in California under the Clean Air Act as an important example for Oregon¹⁷ but does not highlight that California is, in fact, also using AD as a primary control strategy for dairy manure methane. The issue is especially notable because, in California, agriculture (dominated by cattle activities) has historically accounted for over half the state's methane emissions.¹⁸

California law sets a methane reduction target of 40% below 2013 by 2030.¹⁹ In a recent analysis of progress towards that target, the California Air Resources Board (CARB) cites anaerobic digestion as a primary means to reduce dairy methane emissions, improve water quality, and to meet the mandated

¹⁴ Sedron Technologies, Varcor System. <https://www.sedron.com/varcor/>

¹⁵ As a reminder of the local air quality benefits of pipeline-injected RNG, see Figure 32 from the 2016 US EPA study entitled *Evaluating the Air Quality, Climate & Economic Impacts of Biogas Management Technologies*.

<https://nepis.epa.gov/Exe/ZyPDF.cgi/P100QCXZ.PDF?Dockkey=P100QCXZ.PDF>

¹⁶ <https://www.epa.gov/agstar/benefits-anaerobic-digestion>.

¹⁷ Petition at 25.

¹⁸ <https://ww2.arb.ca.gov/applications/greenhouse-gas-emission-inventory-0>

¹⁹ California Senate Bill 1383 (Chapter 395, Statutes of 2016).

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1383.

emissions reduction target.²⁰ This is a powerful and important finding. California’s dairy industry, with the help of California Climate Investment (CCI) grants from the Dairy Digester Research and Development Program (DDRDP), the Alternative Manure Management Program (AMMP), the LCFS, and the Federal Renewable Fuel Program (RFS), has voluntarily set itself on a course to meet the methane reduction challenge. The achievements of the California dairy industry are, in terms of both emission reduction and cost effectiveness, one of the state’s most successful climate protection initiatives.²¹

In Oregon, we must do everything we can to reduce methane emissions from dairy operations. The best way to ensure that such emissions are addressed is to allow the dairy industry to use proven tools to successfully reduce emissions. With the success of anaerobic digesters on Californian dairies as an example, and Oregon’s own strong starting point for incentive programs (as discussed below), it makes zero sense to exclude anaerobic digestion as a best management practice, as the Petition recommends.

Incentives for AD to RNG Should be Preferred Over Mandatory Control Requirements to Prevent Economic Leakage

Almost all types of emissions control come with a real cost—either through adoption of a specific control technology or due to changes in practice. These costs can possibly adversely incentivize businesses to relocate to other jurisdictions which do not impose similar costs. We believe that DEQ must take seriously statements from dairy farmers that they may shift herds out of state, should the approach proposed in the petition be adopted.

“Economic leakage” in the environmental context occurs when a regulatory environment in one jurisdiction drives the migration of a key business sector to another region without similar regulations. This can lead to simply shifting the pollution location without any global reduction in GHGs. This is particularly likely to occur in markets with the demand for the product is steadily increasing, such as the dairy market.²² Although demand for liquid beverage milk is declining, and milk substitutes have emerged, US supply and demand for total milk products (both per capita and in aggregate) continues to grow.^{23,24}

Dairy farmers are already attracted to states they perceive to have fewer restrictions, lower labor, energy, and land costs, and governments which welcome and support them. Large new dairies are being built in states like South Dakota, Idaho, Kansas, and Texas—all states that have not made efforts to reduce GHG emissions and address the very real challenge of climate change in the way Oregon has. Allowing dairy activity to shift from Oregon to these states (and then importing milk product) is not a

²⁰ *Analysis of Progress Toward Achieving the 230 Dairy and Livestock Sector Methane Emissions Target*, p. 22, March 2022, California Air Resources Board, <https://ww2.arb.ca.gov/sites/default/files/2022-03/final-dairy-livestock-SB1383-analysis.pdf>.

²¹ *Ibid*, p. 17, Table 3.

²² Office of Environmental Farming and Innovation, California Department of Food and Agriculture, March 29th Workshop Presentation, Slide 3, Dr. Amrith Gunasekara, Manager.

²³ USDA, *Dairy Products: Per Capita Consumption, United States (Annual)*, last updated 9/30/22. https://www.ers.usda.gov/webdocs/DataFiles/48685/pconsp_1.xlsx?v=4825

²⁴ USDA, *US Milk Production and Related Data*, last updated 8/15/22. https://www.ers.usda.gov/webdocs/DataFiles/48685/quarterlymilkfactors_1.xlsx?v=4825

positive outcome for Oregon’s environment or its economy. The Petition does not appear to address the potential shift of dairy herds to other states or the resulting increase in overall GHG emissions globally.²⁵

To avoid the potential for economic leakage, Oregon should use incentives rather than (or in conjunction with) any mandates to promote emissions control. Emissions reductions achieved by the capture, cleanup, and beneficial reuse of RNG produced from dairy manure have already been proven in response to incentive-driven frameworks.

Oregon is already equipped with a good base-set of initial incentives. The existing Oregon Clean Fuel Program provides strong incentives for the construction of dairy digesters for vehicle fuel product. Unfortunately, the fleet of vehicles that can use this gas in-state is small. Utility procurement of renewable natural gas, as allowed by Senate Bill 98 of 2019,²⁶ is expected to become another important driver of dairy digester RNG projects. If there is a market for biomethane from anaerobic digestion being used as a best management practice, dairies will have both the incentive and the wherewithal to invest in methane reduction. Grant-based incentives, similar to the California programs described above could be another effective tool.

When speaking to incentives, we must emphasize that incentivizing anaerobic digestion as a manure management method does not incentivize manure production by dairy farmers by increasing herd size. Dairy RNG, at current transportation GHG market prices, generates only a small fraction of the gross revenue that is created by milk-sales. What is more, only a small share of that revenue goes to the farmer—the majority will be distributed to cover the costs of the digester developers, the gas marketer, the credit broker, end users (e.g., fleets adopting natural gas trucks), the investors, and the banks. Meaning that the farmer does not make enough additional revenue from biomethane to justify increasing herd size. However, the additional revenue from RNG production is critical to help defray the cost of an anaerobic digester to the farmers and encourage the transition to a model of sustainable agriculture.

Conclusion

Investment in dairy manure digesters with productive energy use is one of the most effective and readily available opportunities to achieve immediate fugitive methane emissions reductions from Oregon’s dairies. It should be considered a best management practice for methane reduction not only for that immediate benefit, but also because of its ability to produce a low carbon fuel that can be used to displace fossil fuels, thereby reducing particulate matter and other health-damaging emissions in agricultural communities (relative to flaring, power production, or diesel truck use).

States such as California demonstrate the success of anaerobic digestion in the dairy sector. Oregon, with its Clean Fuel Program, has a strong base from which to incentivize the use of digestors by

²⁵ Mandatory controls would be less likely to drive leakage if implemented at the federal, rather than the state, level because trade protections could be established to prevent imports from regions without similar GHG requirements. Even in this case, AD with productive energy use would remain the best available control technology for many farms and the costs would remain significant for the average farmer.

²⁶ Oregon Senate Bill 98 of 2019.

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/SB98>.

promoting RNG use to decarbonize other sectors, which will avoid economic leakage and reduce global GHG emissions.

Sincerely,

/s/

Sam Wade

Director of Public Policy
Coalition for Renewable Natural Gas
1017 L Street #513
Sacramento, CA 95814
530.219.3887
sam@rngcoalition.com

KUOPPAMAKI Heather * DEQ

From: Janet Halladey <janethalladey@gmail.com>
Sent: Sunday, October 23, 2022 11:35 AM
To: PETITION Dairyair * DEQ

KUOPPAMAKI Heather * DEQ

From: Fritz Skirvin <fskirvin@msn.com>
Sent: Monday, October 3, 2022 11:03 AM
To: PETITION Dairyair * DEQ
Subject: Where is the petition?

Sent from my iPhone

From: [Joy Joling](#)
To: [PETITION Dairyair * DEQ; Joy Joling](#)
Subject: Air Quality Petition
Date: Wednesday, October 19, 2022 1:48:08 PM

For the public comments on Dairy Air Emissions Petition
Petition contact: Heather Kuoppamaki, 503-407-7596

As a resident of Oregon, I do not support this petition.

1. Air emissions from animals cannot be regulated by the government. Animals produce gas, feces, urine, etc. No government tax will stop an animal doing what nature calls it to do.
2. Dairy cows' waste is used as a natural fertilizer. It is free. This is a great incentive to not use chemical fertilizers. Regulating its use will only cause more chemically made fertilizer use.
3. Some petitioners involved have the wrong worldview concerning the value of animals and humans. Some of the listed groups believe that animals are of the same importance as people. This is not true. Animals are a gift to the human race. These petitioners are using the DEQ to close as many farms as possible. They do not have an appropriate concern for humans that are harmed by this petition.
4. The state must acknowledge, as it has in the past, the difference between factory emissions and natural emissions.
5. All of life is made of gases. The scientific community is just discovering ways that plant life contributes to absorbing toxic gases, all to no effect on them. Plants that utilize even metals in the soil, bacteria that take in copper and produce gold as a byproduct, are both examples of modern discoveries of processes that have been going on for millenia unbeknownst to man. If the gases are a result of natural processes, the state does not "help" by inserting itself under the assumption that it knows better. Nature has consistently humbled proud man by its ability to clean up!
6. I cannot afford more expensive milk and dairy products. This petition will raise prices. Higher prices will cause me not to buy dairy products. This will cause some farms to go out of business and the supply to go down, raising prices. (See CA or NL as proof)
7. The USA has the least amount of butter in reserve that it ever has had. This is because of the rising costs of dairy farming this last year. Farmers sell off cows, some farms close, price of butter is up a dollar from last year at my WINCO. (See The Wall Street Journal for more info.)

I request the petition to be denied.

Sincerely,
Joy Joling

From: [Clint Morinaka](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comment on Dairy Air Emissions Petition
Date: Monday, October 3, 2022 1:10:16 PM

Re: Dairy Air Emissions Petition

Dismiss this petition which is another waste of our tax dollars. It is another attack on our Farmers and ironically a renewable source of energy biogas.

Clint Morinaka
Portland, Or

From: [Mike Freese](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [KUOPPAMAKI Heather * DEQ](#)
Subject: Comments: Dairy Air Emissions rulemaking petition
Date: Friday, October 21, 2022 3:18:30 PM
Attachments: [Threemile Canyon Farms DEQ Air Petition Comment Letter Oct. 23 2022.pdf](#)

Please find attached comments from Threemile Canyon Farms opposed to the Dairy Air Emissions rulemaking petition. If you have any questions, please don't hesitate to contact me.

Sincerely,

Mike Freese
Romain Freese, LLC: Lawyers & Lobbyists
T: (503)226-8090 • C: (503) 991-2785 • RFlawlobby.com

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October 23, 2022

Heather Kuoppamaki
Oregon Department of Environmental Quality
700 NE Multnomah St.
Portland, OR 97232
SENT VIA EMAIL: DairyAir.Petition@deq.oregon.gov

Re: Threemile Canyon Farms Comments on Dairy Air Petition

Environmental Quality Commissioners:

Thank you for the opportunity for Threemile Canyon Farms to comment on the “Petition to Promulgate Dairy Air Emissions Regulatory Program.” Because the petition proposes rules that exceed DEQ’s authority and funding capacity, creates costly requirements for dairy farms, and fails to grant the authority to the Oregon Department of Agriculture to administer, **we recommend that the Environmental Quality Commission deny the application.**

Threemile Canyon Farms is a recognized leader in sustainable agriculture, combining dairy operations with conventional and organic crop farming to create a closed-loop system where nothing is wasted. Our zero-waste, values-driven operations reflect our commitment to protecting the environment, caring for our animals, and supporting our team members and our community. And while we share petitioners’ goals of reducing emissions from all sources, we do not support the petition as it will create significant and unnecessary costs on dairies and provide little to no actual air quality benefits.

For purposes of background, Threemile Canyon Farms was designed and built to protect all natural resources, including air quality. Threemile’s geography is approximately 145 square miles and 17 miles from the nearest town, Boardman, Oregon. When the farm was created, the 180-acre dairy operation was strategically built in the middle of the 93,000-acre farm – miles away from neighboring communities. The dairy barn and milking parlor locations ensure our cows are not disturbed by traffic and other ambient noises. The overall farm design has proven to be a success –utilizing a closed loop system, growing nearly 40,000 acres of crops, using fewer off-farm inputs and producing each gallon of high-quality milk – in the most efficient and truly sustainable way possible. In short, we are far more than a dairy, but the dairy is a central piece to our operation, providing world-class milk to a world-class cheesemaker and utilizing nutrients to help grow more than 15,000 acres of organic and conventional crops.

It is important to note that petitioners’ arguments are not new, novel or otherwise tell the whole story. For years, our innovative and sustainable farm has been the target of unfounded criticism and called derogatory names like “mega-dairy” and “industrial-dairy”. We are neither. We are an



innovative, progressive, and sustainable farm that is integrated in our community and proud of our union and non-union team members.

Despite the unfounded criticism, Threemile took a leadership role and volunteered to have a regulator – Oregon Department of Agriculture (ODA) – and Oregon State University (OSU) – complete an audit of our air quality Best Management Practices (BMPs), which demonstrated that our dairy operation is exceeding policymakers’ expectations for our on-farm sustainability practices. As a result, the 2017 Legislature directed and funded the university and agency to “*evaluate and report on the air emission mitigation best management practices (BMP)****” at Threemile Canyon Farms. These BMPs were based on the Idaho Dairy Ammonia Control Practices Program and the Yakima (WA) Regional Clean Air Agency’s (YRCAA) Air Quality Management Policy and Best Management Practices for Dairy Operations. Results of the evaluation showed that Threemile Canyon Farms was “in compliance with each program.” Frustratingly, petitioners continue to ignore the facts and instead choose to pursue policies that are not good for the state.

Let us be clear, Threemile does and will continue to meet and exceed air quality BMPs regardless of any regulatory framework. As recommended by the 2008 Dairy Air Task Force, we continue to believe that voluntary BMPs are the most effective and efficient way to help dairies of all sizes reduce on-farm emissions. An important component to any BMP program is technical assistance. Because science and technology continue to evolve, it’s critical that the state provide technical assistance to help design BMPs that can actually and meaningfully reduce on-farm emissions at a realistically affordable cost and that do not compromise animal welfare nor conflict with clean water protections. To do this work right, the state will need to make considerable investments in research and qualified staff who can work collaboratively with the other regulatory programs that impact food safety, animal welfare, employee safety, and water quality and quantity. All of which are missing from the petition.

Below, we have outlined the numerous steps Threemile Canyon Farms is already doing to protect air quality, most of which likely far exceed any required dairy BMPs across the country:

Threemile has implemented air quality best management practices and has been recognized for its progressive investment in air quality protection

- Threemile exceeds compliance with air quality best management for dairy operations. According to the Oregon Department of Agriculture (which evaluated air emission mitigation best management practices on Threemile in 2017), Threemile is meeting compliance with air quality programs in Oregon’s neighboring states of Idaho and Washington.
- Threemile’s methane digester is a big part of the farm’s long-standing sustainable farming tradition, converting dairy waste into a clean, renewable energy source – Renewable Natural Gas (RNG). Through its operation, the digester extracts methane gas from dairy manure to improve air quality and produce fuel.



- Anaerobic digestion for methane production almost completely controls odors from manure.
- While RNG is fully interchangeable with natural gas in terms of its use, its production is considered superior to natural gas because it is carbon negative.
- Multi-million-dollar infrastructure investments have allowed the farm to significantly reduce ammonia emissions through impervious flushable wastewater and systems to reduce the amount of time water stays in lagoons.
- We worked cooperatively with the Oregon Department of Agriculture and the Oregon Department of Environmental Quality to create a Class III pollution permit that lays out exacting standards for our farm and dairy that exceed any previously existing ones.
- We participated in the Dairy Air Quality Task Force and have been recognized by the DEQ for our continuous adaptation and voluntarily implementation of a number of those recommendations, including the quick turnover of the lagoons, and our effluent application practices (meaning: we apply freshwater following effluent and immediately incorporate it into the soil after application).

Animal air emissions are reduced through a healthy and balanced diet

- Threemile is on the frontlines of using nutrition science to control air emissions of cows through diet. First and foremost, we are constantly looking at opportunities to help improve dairy cow health, but with that often comes reduced emissions. Meaning, we can produce the most milk with the fewest GHG emissions.
- The balanced rations are composed of commodities raised on the farm — corn, alfalfa, and other feed crops — supplemented with culls, peelings, and other leftovers from processing our commercial potato and other crops. Utilizing on-farm crops reduces transportation emissions.
- To help in this effort, our farm voluntarily participates in Validus animal welfare certification. This independent company uses a detailed assessment and audit process that follows stringent animal welfare guidelines to ensure socially responsible on-farm practices. Threemile participates in four Validus animal welfare audits annually and has scored above 95% on its animal health.

We use organic fertilizer application which reduces reliance on traditional fertilizer

- As part of our closed loop system, our dairy provides an abundant supply of nutrient-rich manure, which we separate and dilute into a low-odor effluent. That “green water” is then pumped through our precision irrigation system and applied to our crops on a circle-by-circle basis.
- Using this natural fertilizer at carefully monitored agronomic rates dramatically reduces our use of fossil fuel-based fertilizers on all crops while increasing production of our certified organic crops.
- Our farm is an acknowledged leader in "green-water" application and was awarded the US Dairy Sustainability Award in 2020.



- When we use traditional fertilizer, we comply with BMPs to ensure maximum absorption by the crop and lower emissions.

Threemile’s sustainable farming practices reduce GHG emissions, helping the state achieve its carbon reduction goals

- Threemile has been a constant investor in innovative solutions that reduce our carbon footprint.
- Our methane digester converts manure (nutrients) into a clean, renewable energy source, sequestering approximately 136,000 metric tons per year of CO₂.
- This is equivalent to the annual greenhouse gas emissions from 28,875 passenger vehicles, or CO₂ emissions from 16,285 homes’ energy consumption, or carbon sequestration by 160,061 acres of forest land.
- On the farm, we use low-tillage practices and plant cover crops, enhancing our soil’s ability to naturally capture carbon.
- The sum total of the digester, crop plantings and farming practices makes Threemile a significant contributor in helping Oregon move toward a lower carbon emitting future.

Finally, Threemile team member safety is our number one priority. We follow all OSHA regulations, maintain safety protocols and procedures, and always operate with safety at top of mind. Our team members receive routine, extensive training in health and safety precautions throughout our farming operation. When working in the digester, team members must wear proper PPE and carry a multi-gas detector to determine if hazardous levels of biogas are present.

In conclusion, we strongly disagree with petitioners that DEQ can or should grant the petition because: (1) the petition goes well beyond what the Dairy Air Task Force recommended, (2) our dairy has demonstrated it meets and/or exceeds the air BMPs from neighboring state programs, (3) DEQ does not have the expertise or resources to implement such a rule, and (4) the proposed approach is excessively costly compared to the recognized task force recommendations.

We respectfully request that the EQC deny the petition.

Sincerely,

Bill Antilla

Bill Antilla
President
Threemile Canyon Farms

From: [Rep Gomberg](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions Petition Comment
Date: Sunday, October 23, 2022 3:52:59 PM
Attachments: [Rep Gomberg Comment on Petition to Promulgate Dairy Air Emissions Regulatory Program 10 23.pdf](#)

Hi Heather,

Thank you for the opportunity to provide public comment. I've attached a letter from Representative David Gomberg regarding the Dairy Air Emissions Petition.

Please let me know if you have any questions!

Best,

Luke Harkins (he/him)
Chief of Staff, HD 10
State Rep. David Gomberg
900 Court St. NE, H-480
Salem, Oregon 97301
C: 971-678-3609
O: 503-986-1410

DAVID GOMBERG
STATE REPRESENTATIVE
DISTRICT 10



HOUSE OF REPRESENTATIVES

October 23, 2022

Kathleen George, Chair Oregon Environmental Quality Commission
Attn: Stephanie Caldera 700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Dear Chair George and Members of the Commission,

I am writing to share concerns I have regarding the Dairy Air Emissions Petition. While I feel strongly about the need for thoughtful and measured regulatory responses to harmful greenhouse gas emissions and particulate matter, I am requesting the Environmental Quality Commission reject the petition at this time.

It is no secret that dairy has been a cornerstone of my legislative district. And with our dairy farms put in the unfortunate economic position as price-takers within the agricultural sector, I have great concerns for the financial impacts any potential rulemaking on our local farmers.

The 9th Circuit U.S. Court of Appeals decision under *Food & Water Watch, Inc., et al. v. USEPA* poses serious questions about the future of federal rulemaking for CAFOs under the Clean Water Act. Additionally, with the EPA currently studying national air emissions with the intent to promulgate new rules, anything DEQ does in the meantime will need to be changed or repealed if it conflicts with new federal regulations. This poses a financial risk to dairy farms that may begin investing in monitoring and mitigation practices to align with DEQ regulations.

I am further concerned about DEQ's ability to stand-up a new regulatory program given the Department's recent challenges managing existing regulatory issues. And with the abrupt departure of former DEQ Director Richard Whitman in late September, I am concerned that this transitional period is not the appropriate time to develop new rules regulating an industry already facing volatile economic pressures.

I too would like to see steps taken to reduce methane emissions, ammonia, and particulate matter from CAFOs in Oregon. However, addressing emissions from CAFOs needs to be delicately balanced with the input of our local dairy communities – not rushed in a manner that may pose a detrimental threat to our struggling agricultural sector.

Thank you for the opportunity to provide this feedback.

Warm Regards,

Representative David Gomberg
Oregon House District 10

From: [Ward Barker](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions Petition
Date: Monday, October 10, 2022 9:53:44 PM

Here's a perfect example of experts who know nothing trying to make more regulations to solve something that someone with zero experience claims is a problem. This is what's known as "government overreach".

We don't need more regulations that only serve to throttle businesses. Such a proposal will only drive out dairy farmers, drive up their costs, drive up the prices the consumer pays... just as every other proposal has done.

Most of you can't see past the ends of your noses. These regulations are (1) a complete waste of taxpayer monies on the front end, (2) an unnecessary and expensive burden on the affected industry, AND (3) a waste of consumer dollars on the back end as well... and since the taxpayer is also the consumer, guess who gets hit twice with the bill?

--

Sent from my Android phone with [WEB.DE](#) Mail. Please excuse my brevity.

From: [Michael Blankenship](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions rule making petition
Date: Tuesday, October 11, 2022 10:43:59 AM
Attachments: [Outlook-ejnllkq0.jpg](#)
[Dairy Air Emissions Petition.docx](#)

I deny the petition to promulgate dairy emissions regulatory program.

See attachment for further comment.

[Michael Blankenship](#)
[Water Quality & Invasive Weed Ast. Coordinator](#)

[Tillamook County Soil & Water Conservation District](#)

4000 Blimp Blvd Ste. 200, Tillamook, OR 97141
Office: 503-457-9017 Ex: 9017
Mobil: 971-772-4045
Web: www.tillamookcountyswcd.org



Dairy Air Emissions Petition

Agriculture is the number one vital part of this country. There has always been a high standard held for food safety and regulations in the agriculture sector. I personally value people's health, land, and choices to decide how farmers choose the best practices. For Dairy, CAFOs have really done a good job with setting standards that protect the producer and the consumer, along with the environment.

I have been part of my 4th generation dairy farm and personally understand the importance of following the guidelines and aiming for the best product for the consumer. "If it's not good enough for me to drink, it's not good enough for other people to drink it". In the state of Oregon, our state has the cleanest water and air quality amongst most states in the U.S. That is accomplished by good stewards of the land and not by the state's regulations. Farmers are making personal decisions to conserve for the future, to pass farms down to the next generation.

Portland and other large cities in the State of Oregon that emit pollutions (Smog) is a concern that needs to be addressed. If there is an air quality issue, then fix major concerns first. Farmers need the path of least resistance to continue to farm into the future. The cost of farming cannot continue to raise. The profit gain for the producer is not matching the inflation that the U.S. has bestowed upon the American citizen, including the farmers.

The decision to promulgate dairy emissions regulatory program needs to be denied, I deny the petition. I am not in support of The Oregon Department of Environmental Quality making this ruling, or Environmental Quality Commission.

Michael Blankenship

10/11/2022

From: [Rep Weber](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Petition - Letter from legislators
Date: Sunday, October 23, 2022 1:32:23 PM
Attachments: [Dairy letter.pdf](#)

Good afternoon:

Attached please find a letter from legislators regarding the “Petition to Promulgate Dairy Air Emissions Regulatory Program”. Please contact my office should you have any questions.

Regards,

Rep Suzanne Weber
House District 32
Rural Northwest Oregon
503-300-4493

October 21, 2022

Kathleen George, Chair
Oregon Environmental Quality Commission
Attn: Stephanie Caldera
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Dear Chair George and Members of the Commission:

Thank you for the opportunity to provide public comment on the “Petition to Promulgate Dairy Air Emissions Regulatory Program”. As Legislators, we are concerned about the scope of this rulemaking and the potential harms it will cause our family-owned dairy farms. Additionally, we do not believe the Legislature has granted the agency(ies) the budget or position authority to move forward with this complex rule and rulemaking. As such, we request that the Environmental Quality Commission deny the petition.

Oregon’s dairy farms are critically important, not only to many of our Legislative Districts, but also to the state providing \$9.73 Billion in total economic impact, amounting to 3.8% of Oregon’s GDP. Proudly, we boast some of the most sustainable farms and recognized dairy product brands in the world. We support our dairy farms and dairy farmers.


We are aware the Commission received a petition that would create new, expensive mandates on family dairy farms across the state. The petition uses anti-agriculture language, and we disagree with the notion that such a program would apply only to “large” farms; it will apply to nearly all commercial family-owned dairies. Regulatory programs of this scale and of this nature require thoughtful, comprehensive, and data-driven analysis to be completed up front and a balancing of many variables in consultation with the legislature if we are to ensure the longevity and sustainability of Oregon’s dairy sector.

The rulemaking requested by petitioners is neither the right time nor right approach. The EPA is currently studying national air emissions and will use the data collected to promulgate rules aimed at reducing emissions from CAFOs (among other sources) if the data shows there is a risk to human health posed by CAFO air emissions. Anything DEQ promulgates in the meantime will need to be changed or repealed if it conflicts with the federal regulations. In addition, if our dairy farms invest in technology, monitoring, or other practice changes to meet regulations promulgated by DEQ before the federal guidelines are published and those actions end up being unnecessary or conflict with federal guidelines, this would be a significant waste of limited resources of these important businesses.

Finally, we understand implementing both the petition and the 2008 Dairy Air Task Force recommendations would require new staff and resources – neither of which has been approved by the legislature. DEQ has already taken on more work than they have the budget and staffing resources to do and should not take on anymore.

In conclusion, we ask that the EQC realize the agency’s limitations and authority and deny the expensive and unnecessary petition to regulate air emissions from Oregon’s dairy farms.

Sincerely,



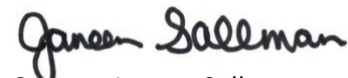
Senator Dick Anderson



Senator Lynn Findley



Senator Bill Hansell



Senator Janeen Sollman



Senator Elizabeth Steiner Hayward



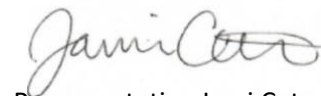
Representative Shelly Boshart Davis



Representative Vikki Breese Iverson



Representative David Brock Smith



Representative Jami Cate



Representative Jessica George



Representative Bobby Levy



Representative Rick Lewis



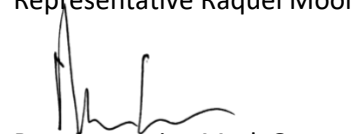
Representative Susan McLain



Representative Raquel Moore-Green



Representative Lily Morgan



Representative Mark Owens



Representative E. Werner Reshke



Representative Anna Scharf



Representative Suzanne Weber

From: [catherine Caudle](#)
To: [JOHNSON James * ODA](#); heather.kuoppanmaki@deq.oregon.gov; [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Petition
Date: Wednesday, October 5, 2022 6:04:01 PM

A special meeting is scheduled on this petition for 11/15/2022 regarding the regulation of dairy emissions. Per Oregon's long standing land use law "right to farm" the dairies are protected and any action by the DEQ would be stopped. Please review this long standing law that protects the uses of farm land including the "smells" associated with those uses here [State of Oregon: Natural Resources - Land Use and Right to Farm](#)

**State of Oregon: Natural Resources - Land Use
and Right to Farm**

Therefore, I must request that the DEQ deny the petition as it would be found unlawful.

Catherine Caudle
2187 NW Quince Place
Redmond Oregon 97756

From: [Tyler Thackeray](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Pollution
Date: Thursday, October 6, 2022 8:55:38 AM

To whom I may concern,

We are focusing on the wrong sources of air pollution. Dairies produce a very small amount of the world's air pollution. Why not focus our clean air initiatives on things that could have a greater impact. Not only that dairy farms are decreasing year after year. I don't think the goal is to rid the state of farmers however these kinds of initiatives are the reason more people are moving out of the state rather than in.

Thank you

Tyler Thackeray
503-930-9993

From: [sara walker](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air restrictions
Date: Wednesday, October 5, 2022 4:57:31 PM

I think this is a ridiculous proposal. I am absolutely against it.

From: [Joel Slegers](#)
To: [PETITION Dairyair * DEQ](#)
Subject: DairyAir
Date: Tuesday, October 18, 2022 11:11:08 PM

I oppose the dairy air quality petition.

As a family dairy farm, we use manure to fertilize our crops. Manure produced is used on site to grow crops. The alternative would be to truck in and spread chemical fertilizers; emitting more fossil fuel exhaust and allowing for more runoff of more easily degraded, non-organic chemicals.

Our product is produced and consumed locally. We are what's best in terms of air quality.

From: [Dave Wells](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Deny the petition to Promulgate Dairy Air Emissions Rules
Date: Friday, October 7, 2022 8:17:06 AM

Dear Oregon Environmental Quality Commission:

Please deny the current petition to promulgate dairy air emissions rules.

I live in Tillamook County, virtually the home of the dairy industry in Oregon, and have now for more than 40 years. Tillamook County is even known as "The Dairylands". Rule making and additional regulation is not the way to achieve the goals of the petitioners. Through cooperation and incentives with the Tillamook County Soil and Water Conservation District and USDA Natural Resource Conservation Service I have seen (and smelled) improvements in air quality achieved through voluntary means. This work continues.

Regulation carries with it the possibility of reducing federal funding available to promote improved dairy practices. Once something is mandated there is not/less possibility of Federal assistance to help achieve desired outcomes, it falls on the operator exclusively. Tree planting in Oregon is like that following a harvest. There is no direct financial assistance to replant in Oregon as it is the law, unlike other states where landowners can receive Federal assistance.

Again, please deny the current petition to promulgate dairy air emission rules.

Yours truly,

David Wells
Tillamook, Oregon

Sent from [Mail](#) for Windows

From: marvinsgardensandcattleco@gmail.com
To: [PETITION Dairyair * DEQ](#)
Subject: DEQ Dairy Air petition,
Date: Tuesday, October 4, 2022 8:52:03 AM

Deny the petition. The air quality from a Dairy and other agricultural products, such as marijuana, hemp, hog farms, beef feed lots is not necessary. Radical organizations that are hell bent on destroying Oregon's agricultural in Oregon by excessive regulation and taxation. These organizations have no idea what it takes to produce food and other agricultural products that feed our population. Forcing this industry to have regulated air quality will destroy the industry for the small operator and leave only the large commercial operations who can afford to meet the cost of implementing the regulation. Oregon will see the agricultural producers leave this State and establish their businesses in an Agricultural friendly State. The food costs in Oregon will continue to rise substantially with increased shipping costs. Over regulation, and policies that discourage small business and increase poverty and welfare dependency will destroy Oregon's agriculture. Sustainable agriculture and the by-products that agriculture produces can be renewable sources for sustainable energy.

Marvin Parker
Marin's Gardens and Cattle Company LLC

Sent from [Mail](#) for Windows

From: [Ian Anderson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Deq
Date: Friday, October 7, 2022 2:45:11 PM

No to any regulations for dairy air emissions programs to quantify and regulate air emissions on any dairy confined animal feeding operations.

Get [Outlook for iOS](#)

KUOPPAMAKI Heather * DEQ

From: Tami Kerr <tami.kerr@oregondairyfarmers.org>
Sent: Sunday, October 23, 2022 2:03 PM
To: PETITION Dairyair * DEQ
Subject: EQC Petition Comment and Legal Memo - Deny Petition for Lack of Statutory Authority
Attachments: EQC Petition Comments Cover Letter_ODFA.pdf; 2022-10-23 TT Dairy Air Petition comment letter[2]
[1].pdf

Thank you for the opportunity to provide comment.



Tami Kerr
Executive Director

Email: tami.kerr@oregondairyfarmers.org
Phone: 971-599-5269 | Mobile: 541-740-8880
1320 Capitol ST NE, Suite 160, Salem, OR 97301
www.OregonDairyFarmers.org



1320 Capitol Street NE
Suite 160
Salem, OR 97301
(971) 599-5269
oregondairyfarmers.org

October 23, 2022

Kathleen George, Chair
Oregon Environmental Quality Commission
Attn: Stephanie Caldera
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Dear Chair George and members of the Oregon Environmental Quality Commission:

The Oregon Dairy Farmers Association is submitting the attached memo regarding the Commission's authority to adopt by rule a dairy air emissions regulatory program rules as requested in the petition submitted by Food and Water Watch and 21 co-petitioners, dated August 17, 2022.

As you will see in the memo, per our counsel's legal analysis, the Commission must deny the Petition under ORS 183.390 for lack of statutory authority.

Thank you for the opportunity to provide comment.

Sincerely,

Tami Kerr
Executive Director
Oregon Dairy Farmers Association



Maureen McGee
maureen.mcgee@tonkon.com

503.802.5726
503.221.1440

direct
main

October 23, 2022

VIA EMAIL ONLY

Kathleen George, Chair
Oregon Environmental Quality Commission
Attn: Stephanie Caldera
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Oregon Environmental Quality Commission
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

**Re: Dairy Air Permitting Rule Petition Must Be Denied for Lack of
Statutory Authority**

Dear Chair George and members of the Oregon Environmental Quality
Commission:

Thank you for the opportunity to comment on the petition for rulemaking from Food and Water Watch and 21 co-petitioners, dated August 17, 2022, requesting that the Environmental Quality Commission adopt by rule a dairy air emissions regulatory program (the Petition). As you know, when reviewing a petition requesting adoption of rules under ORS 183.390 and OAR 137-001-0070, the Commission “shall consider” the statutory citation or legal basis for the rule, and shall either deny the petition in writing or initiate rulemaking no later than 90 days after the petition is received.

Here, the proposed rules in the Petition would far exceed (and in many instances conflict with) the EQC’s limited existing authority, under ORS 468A.020 (2)(b) and (c), to regulate dairy air emissions. Regardless of whether the Commission or the Department of Environmental Quality (DEQ) wishes to take up the substance of regulating dairy air emissions in the future, the Commission must deny the Petition under ORS 183.390 for lack of statutory authority.

While other commenters will likely highlight additional substantive policy and legal issues with the proposed rules in the Petition, this letter focuses only on the statutory authority question as it is dispositive in this instance.

I. BACKGROUND

Prior to 2007, Oregon law exempted all agricultural operations other than field burning in the Willamette Valley from regulation under the air pollution laws contained in ORS chapter 468, 468A and 468B.¹ In 2007, the Legislature adopted Senate Bill 235, which made three targeted changes to Oregon law that are all relevant to the Commission’s review of the Petition. First, SB 235 modified the agricultural exemption from the air pollution laws to, under ORS 468A.020 (2)(b), narrowly authorize the EQC to apply the air pollution laws to agricultural operations “to the extent . . . necessary to implement the federal Clean Air Act[.]”²

Second, SB 235 established a Task Force on Dairy Air Quality (Task Force), and narrowly authorized the Commission, in ORS 468A.020 (2)(c), and again only to the extent necessary and in the commission’s discretion, “to implement a recommendation of the Task Force on Dairy Air Quality . . . for the regulation of dairy air contaminant emissions.”³ That Task Force was convened in 2007 of diverse stakeholders from across Oregon, including environmentalists, agriculturists, higher education faculty and government employees from various agencies. Over the course of seven meetings, the Task Force studied the air emissions associated with dairy operations, including but not limited to, emissions regulated under the Clean Air Act.⁴ It also evaluated alternatives for reducing air emissions, and explored voluntary measures, including education, demonstration projects, and incentive options, together with regulatory or legislative options for emissions reductions. The Task Force issued its Final Report, including a recommendation for action contained in Section IV of the report, on July 1, 2008.⁵

Finally, the bill directed the DEQ and the Oregon Department of Agriculture (ODA) to enter into a Memorandum of Understanding (MOU) in order to implement the federal Clean Air Act (federal CAA) requirements for agriculture. In entering the

¹ *Oregon Dairy Air Quality Task Force, Final Report to the Department of Environmental Quality & Department of Agriculture*, July 1, 2008, at 3 (Task Force Final Report).

² Section 4, chapter 799, Oregon Laws 2007.

³ Sections 3 and 4, chapter 799, Oregon Laws 2007.

⁴ Task Force Final Report at 1.

⁵ *Id.*



MOU, the agencies are required to consider the desirability of having ODA serve as the lead agency responsible for administration of programs related to agriculture, as ODA has done for many years with regards to water pollution.⁶ That requirement is now codified at ORS 468A.790.

The Petition at issue here proposes rules that would broadly define “Regulated Dairy,” summarily declare every Regulated Dairy to be an air contaminant source, and subject each Regulated Dairy to regulation under a comprehensive new dairy air emissions program.⁷ The proposed rules would apply significantly enhanced requirements to the subset of Regulated Dairies with the potential to emit pollutants in excess of any federal CAA permitting thresholds, and would apply to any new or expanding Regulated Dairy as of the effective date of the rules.⁸ For existing facilities, the proposed rules would apply beginning 365 days following the effective date, with no voluntary or grace periods. The proposed rules would require permit renewal every five years.⁹

The proposed rules in the Petition would be wholly implemented and enforced by the DEQ, with no requirements for consultation or coordination with ODA and no provision for oversight by any entity other than the EQC.

II. ANALYSIS

A. The proposed rules exceed the EQC’s limited statutory authority to regulate dairies to “extent necessary to . . . implement the federal Clean Air Act.”

As stated above, the Commission’s authority to promulgate rules in this instance is limited to the authority granted in ORS 468A.020 (2)(b) and (c). Looking first to ORS 468A.020 (2)(b), the Commission has limited authorization under that

⁶ See ORS 468B.217; *Environmental Quality Commission and Oregon Department of Agriculture Memorandum of Understanding Related to the Confined Animal Feeding Operations Program* (July 2021), available at https://www.oregon.gov/oda/shared/Documents/Publications/NaturalResources/CAF_OMOU.pdf. Under ORS 468B.217, DEQ and ODA have entered an MOU that has vested ODA with the authority to implement this state’s Confined Animal Feeding Operation water quality permitting program since 1993.

⁷ The Petition, Proposed Rule Language section 3 (22) (defining “Regulated Dairy”); section 1 (finding and declaring Regulated Diaries to be air contamination sources).

⁸ *Id.* at Sections 4, 5(5).

⁹ *Id.* at Section 8.



provision to apply the air pollution laws to agricultural operations only “to the extent . . . necessary to implement the federal Clean Air Act.”

Here, the Petition acknowledges that the federal CAA will only apply when emissions are of a sufficient quantity to trigger federal permitting requirements.¹⁰ Nonetheless, the proposed rules in the Petition would require an air impact assessment and emissions permit for every existing and new or expanding Regulated Dairy, regardless of its emissions profile.¹¹ Regulated Dairies with “a potential to emit pollutants in excess of any federal CAA permitting thresholds” would, in addition to being required to obtain all requisite federal CAA permits, be required under their state dairy air emissions permit to implement all of a more stringent tier (“Tier 1”) of best management practices, and meet other enhanced state-based requirements.¹² The Petition acknowledges that, based on the data at petitioners’ disposal, it is possible that as few as roughly one-third of the dairies affected by the proposed rules could trigger any federal permitting requirements.¹³

Thus, instead of only applying permitting requirements to the “extent . . . necessary to implement” the federal CAA, the proposed rules expansively apply to a large swath of dairies that likely do not emit air pollutants in amounts sufficient to trigger federal permitting, and place various state requirements on all Regulated Dairies that are in addition to what federal law may require. Because the proposed rules go beyond the extent necessary to implement the federal CAA, the proposed rules exceed the Commission’s authority to adopt rules under ORS 468A.020 (2)(b).

Furthermore, whether regulatory actions are limited to the “extent . . . necessary” to implement a federal law must be considered in the context of federal implementation of that law. At this time, and as is recognized by petitioners, a

¹⁰ See the Petition at pg 24.

¹¹ The Petition, Proposed Rule Language at Section 4 (applicability), Section 6 (permit requirements).

¹² *Id.* at Section 6 (2) (requiring DEQ to promulgate and apply to dairies MACT pursuant to OAR 340-244-0210 (2); OAR 340-244-0210 (2) (requiring the state to promulgate MACT standards if the EPA fails to do so).

¹³ See the Petition at pg 14 (estimating that the proposed rules would apply to approximately 91 facilities); pg 28 (stating that only two Oregon dairies would exceed the thresholds to trigger PSD permitting requirements under the federal CAA for VOC emissions); pgs 30-31 (arguing that, depending on how calculated, somewhere between 33 and 69 Oregon dairies could emit VOCs sufficient to exceed the hazardous air pollutant (HAP) regulatory threshold for Title V permitting under the federal CAA).



consent agreement continues to be in place that provides safe harbor from federal enforcement of the federal CAA to certain members of the dairy industry that may be covered by the proposed rules in the Petition.¹⁴ That consent agreement recognizes the difficulty in assessing emissions from these facilities, and will therefore stay in place until the Environmental Protection Agency has developed new emissions modeling tools for the industry.¹⁵ Federal appropriations bills have also placed significant limits in recent years on federal implementation of the CAA with regard to agricultural operations. Most recently, the 2022 Consolidated Appropriations Act included, in the budget provisions for the Interior Department, a section providing that:

“Notwithstanding any other provision of law, none of the funds made available in this Act or any other Act may be used to promulgate or implement any regulation requiring the issuance of permits under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) for carbon dioxide, nitrous oxide, water vapor, or methane emissions resulting from biological processes associated with livestock production.”¹⁶

Carbon dioxide, nitrous oxide and methane emissions, however, would all be regulated under the proposed rules in the Petition.

While the CAA in the usual instance allows for states to regulate above and beyond what federal law requires, this situation is unique. Here, the legislature has clearly and significantly constrained the Commission’s authority with regard to agricultural operations, only authorizing rulemaking to the “extent ... necessary” to implement the federal CAA. Where the federal government itself is not currently implementing the CAA with regard to emissions subject to the Petition, stepping in to regulate above and beyond federal implementation exceeds the Commission’s authority under ORS 468A.020 (2)(b).

The Petition ultimately acknowledges that the proposed rules go well beyond the rulemaking authority granted in ORS 468A.020 (2)(b), stating that “insofar as the federal Clean Air Act does not provide the legal authority for any one aspect of the proposed permitting system, the Dairy Task Force recommendations provide the

¹⁴ See the Petition pg 25; 70 Fed. Reg. 4957, 4959 (Mar. 2, 2005).

¹⁵ 70 Fed. Reg. at 4959.

¹⁶ Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act of 2022, Title IV, H.R. 2471, 117th Congress, section 436 (2022).



necessary legal grounding.”¹⁷ In this assertion, however, the petitioners are again incorrect.

B. The proposed rules exceed the Commission’s statutory authority to implement “a recommendation” of the Dairy Air Task Force.

Because the Commission may not initiate the rulemaking requested by the Petition under ORS 468A.020(2)(b), the only remaining avenue is via the Commission’s authority under ORS 468A.020 (2)(c).

ORS 468A.020 (2)(c) authorizes the EQC, in its discretion, to regulate agricultural operations under the air quality laws to the extent necessary to “implement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions.” (Emphasis added). This authority, like the authority in ORS 468A.020 (2)(b), is quite narrow. It only authorizes the Commission to adopt, in its discretion, one recommendation by a specific Task Force that was convened beginning in 2007 and that ultimately issued its recommendation as part of a *Final Report to the Department of Environmental Quality & Department of Agriculture*, released on July 1, 2008 (the Task Force Final Report).

The Task Force members acknowledged and understood the unique power they had been granted under ORS 468A.020 (2)(c).¹⁸ In issuing the Task Force Final Report, the Task Force therefore took care to specify their intent that their one “recommendation,” as contemplated by ORS 468A.020 (2)(c), was a recommendation for development of an Oregon Dairy Air Emissions Program that “consists of and is guided by” the contents, “as a whole,” of Section IV of the Task Force Final Report.¹⁹ Section IV, in turn, set forth detailed guidance for the Commission, in collaboration with ODA, DEQ, and the Department of Human Services, to adopt an Oregon Dairy Air Emissions Program by rule.

¹⁷ The Petition at pg 33.

¹⁸ See, Statements of Andy Ginsburg, Oregon Task Force on Dairy Air Quality Kick-Off Meeting Approved Notes, January 11, 2008, at 2 (stating that “one unique feature of the Task Force is that you can create recommendations for the EQC to adopt a rule that is not otherwise required to comply with the CAA,” and that “very few Task Forces have this level of responsibility and authority.”).

¹⁹ Task Force Final Report at 8.



The proposed rules in the Petition deviate substantially from, and are at times at complete odds with, the guidance in Section IV of the Task Force Final Report. To highlight just a few (out of many) major discrepancies:

- Section IV (C)(3), (6) and (F) of the Task Force Final Report directs any program to start as a voluntary program for implementation of collaboratively-developed Best Management Practices (BMPs) by existing dairies, with tax incentives provided to encourage dairies to meet BMP targets established for Phase I and to create an incentive for early action, and with mandatory requirements for existing dairies phasing in after five years. The proposed rules under the Petition, however, provide DEQ with sole authority to develop BMPs,²⁰ provide no incentives for early action, do not include any voluntary or ramp up period, and contemplate full compliance and enforcement starting 365 days after the effective date of the proposed rules.²¹
- Section IV of the Task Force Final Report does not include any provisions for new monitoring or reporting requirements for dairies. Regardless, the proposed rules in the Petition include extensive monitoring and reporting requirements, enforceable through a Regulated Dairy's permit.²²
- ORS 468A.790 directs DEQ and ODA to enter an MOU to implement the federal CAA requirements for agriculture. In recognition of that provision, and of ODA's longstanding role in implementing water quality permitting for certain dairies, Section IV (C)(8) of the Task Force Final Report recommends that ODA be the state agency to "determine compliance provide technical assistance, and conduct any enforcement" for a dairy air permitting program. Regardless, the proposed rules in the Petition provide no role for ODA in either a regulatory or even a consulting capacity, and vest full implementation and enforcement authority with DEQ.
- Section IV (D) of the Task Force Final Report recommends establishment of a permanent Dairy Air Advisory Committee to advise and make recommendations about Program implementation details. No such committee is contemplated by the Petition.

²⁰ The Petition, Proposed Rules at Section 6 (2)(a).

²¹ *Id.* at Section 5 (5).

²² *Id.* at Section 6 (3).



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Kathleen George
October 23, 2022
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Because the proposed rules in the Petition differ so greatly from the recommendation in Section IV of the Task Force Final Report, they cannot be said to even marginally reflect the recommendation of the Task Force. ORS 468A.020 (2)(c) provides the Commission only with the narrow authority to adopt the recommendation of the Task Force. The proposed rules in the Petition do not reflect that authority, and the Petition must therefore be denied.

III. CONCLUSION

For the reasons set forth above, the Commission must deny the Petition under ORS 183.390 for lack of statutory authority.

If the Commission determines that pursuing development by rule of a dairy air emissions program is necessary, the Commission must do so not based on the proposed rules set forth in the Petition, but through a rulemaking process constrained by the dictates of ORS 468A.020 (2)(b) and (c).

Sincerely,

Maureen McGee

A handwritten signature in black ink, appearing to read "Maureen McGee".

Danny Newman

/s/ Danny Newman



KUOPPAMAKI Heather * DEQ

From: KUOPPAMAKI Heather * DEQ
Sent: Thursday, October 6, 2022 7:59 AM
To: PETITION Dairyair * DEQ
Subject: FW: Dairy Air Petition

Heather Kuoppamaki, P.E. | Senior Air Quality Engineer | Oregon Department of Environmental Quality | 700 NE Multnomah St. Suite 600, Portland, OR 97232 | heather.kuoppamaki@deq.oregon.gov | c: 503-407-7596

From: catherine Caudle <caudlecatherine@yahoo.com>
Sent: Wednesday, October 5, 2022 6:06 PM
To: KUOPPAMAKI Heather * DEQ <Heather.KUOPPAMAKI@deq.oregon.gov>
Subject: Fw: Dairy Air Petition

Please see below

----- Forwarded Message -----

From: catherine Caudle <caudlecatherine@yahoo.com>
To: james.johnson@oda.oregon.gov <james.johnson@oda.oregon.gov>; heather.kuoppamaki@deq.oregon.gov <heather.kuoppamaki@deq.oregon.gov>; DairyAir.Petition@deq.oregon.gov <dairyair.petition@deq.oregon.gov>
Sent: Wednesday, October 5, 2022 at 06:03:37 PM PDT
Subject: Dairy Air Petition

A special meeting is scheduled on this petition for 11/15/2022 regarding the regulation of dairy emissions. Per Oregon's long standing land use law "right to farm" the dairies are protected and any action by the DEQ would be stopped. Please review this long standing law that protects the uses of farm land including the "smells" associated with those uses here [State of Oregon: Natural Resources - Land Use and Right to Farm](#)

State of Oregon: Natural Resources - Land Use and Right to Farm

Therefore, I must request that the DEQ deny the petition as it would be found unlawful.

Catherine Caudle
2187 NW Quince Place
Redmond Oregon 97756

KUOPPAMAKI Heather * DEQ

From: Dean and Darlene Warrick <dndwar@gmail.com>
Sent: Thursday, October 6, 2022 12:02 PM
To: PETITION Dairyair * DEQ
Subject: Fwd: cows

----- Forwarded message -----

From: **Dean and Darlene Warrick** <dndwar@gmail.com>
Date: Thu, Oct 6, 2022 at 12:00 PM
Subject: cows
To: <DairyAir.Petition@deq.oregon>

I do not think we need another government agency TRYING to measure air quality around dairies. People need to take care of their own breathing. Darlene Warrick. Keizer

KUOPPAMAKI Heather * DEQ

From: Jim Welsh <jimwelsh69@yahoo.com>
Sent: Monday, October 17, 2022 11:23 AM
To: PETITION Dairyair * DEQ
Subject: I do not support adoption of Dairy Air Emissions rules

Oregon Department of Environmental Quality,

I strongly oppose the petition for rulemaking to adopt Dairy Air Emissions rules for the State of Oregon. If adopted, the proposed Dairy Air Emissions rules for the State of Oregon will devastate the dairy industry in Oregon.

I propose that the Oregon Department of Environmental Quality to drop any further movement on the Dairy Air Emissions rules for the State of Oregon, as the dairy industry in Oregon is already under a great deal of stress, and a rule like this would only serve to put them out of business or move to another state with a more favorable view of the dairy industry.

Thank you for your consideration.

Jim Welsh
jimwelsh69@yahoo.com

KUOPPAMAKI Heather * DEQ

From: Shelby Owsley-Oaks <shelbyowsley@gmail.com>
Sent: Tuesday, October 18, 2022 5:08 PM
To: PETITION Dairyair * DEQ
Subject: I oppose Dairy Air Regulations

I am a consumer of dairy products and I love local products. I care about security and safe food for Oregonians. I feel as if there is not enough research done on this topic to bring on such drastic regulations. I dont believe daiy emissions are a problem in Oregon, there is no data to suggest that.

Thank you,

Shelby

KUOPPAMAKI Heather * DEQ

From: Kevin Mannix <kevin@mannixlawfirm.com>
Sent: Thursday, October 20, 2022 9:24 AM
To: PETITION Dairyair * DEQ
Subject: Legislative Action on Air Quality

I am writing to express my opposition to the implementation of any dairy emissions regulations by DEQ at this time. Here are my specific concerns:

1. This is an issue best handled in collaboration with the Oregon Department of Agriculture. DEQ should engage in extensive work with the Department of Agriculture on this issue before even thinking about creation of DEQ's own regulations.
2. Oregon has general air quality issues relating to the forest fires and the burning of fossil fuels. DEQ needs to extensively review overall air quality issues before addressing any air quality problem caused by dairy air emission as opposed to emissions from other sources.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix

Attorney at Law

kevin@mannixlawfirm.com

KEVIN L. MANNIX, P.C. || MANNIX LAW FIRM || 2009 State St || Salem, OR 97301

Tel: (503) 364-1913 || Fax: (503) 362-0513 || Website: <https://www.mannixlawfirm.com>

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KUOPPAMAKI Heather * DEQ

From: George Patterson <geopatterson@gmail.com>
Sent: Thursday, October 6, 2022 10:01 AM
To: PETITION Dairyair * DEQ
Subject: Monitoring Dairies

I believe that monitoring megadairies would be a true waste of time and money. The first things that come to my mind--

- + Why would you need to monitor an entire dairy? Wouldn't it be easier to monitor a single cow and do the math?
- + If a megadairy is calculated to have emissions too high wouldn't you just find a way to spread the cows further apart?
- + The same number of cows are required to produce a certain amount of milk so why does it matter whether they are close together or further apart?
- + Cost efficiencies are realized with a megadairy model. Breaking them up would only increase the price of dairy products.

Regards,
George Patterson

KUOPPAMAKI Heather * DEQ

From: Ryan Hukill <Ryan@hukills.com>
Sent: Monday, October 3, 2022 5:54 PM
To: PETITION Dairyair * DEQ
Subject: No on any regulations for dairy air emissions

There should be no regulations established for a dairy air emissions program to quantify and regulate air emissions from large dairy confined animal feeding operations.

Ryan Hukill
Hukill's Inc.
Plumbing / Restoration/Drain Cleaning / Leak Detection
Fort Worth TX. / Medford OR. / Bend OR.
817-672-7555 / 541-734-9000. / 541-323-3000
C. 817-734-7404
Www.hukills.com

KUOPPAMAKI Heather * DEQ

From: L Giggles <Giggles4yo@msn.com>
Sent: Wednesday, October 5, 2022 9:56 AM
To: PETITION Dairyair * DEQ
Subject: No!!!

No to DEQ and the missions on dairy farmers

No to any regulations for dairy air emissions programs to quantify and regulate air emissions on any dairy confined animal feeding operations.

Sent from my U.S.Cellular© Smartphone
Get [Outlook for Android](#)

KUOPPAMAKI Heather * DEQ

From: Tim Kuenzi <ajdairy@gmail.com>
Sent: Sunday, October 23, 2022 3:37 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

I strongly ask you to deny this petition. I am hesitant to make comments out of fear of retribution from the “anti-farming” activists that have brought this erroneous petition before you. One of the joys of being a dairy farmer is having our own families and the families of our employees close by. Many of our employees have worked for us for over 20 years and have raised their families with the many opportunities that stable employment, housing and geographic permanence in education bring. What is called a “direct threat to public health” in the “Facts and Arguments” presented with the petition is not supportable by science or reality on the ground at any Oregon dairy farm. We and the families whose bread winners who work for our farm have raised our families in a wholesome and healthy environment and they have thrived. Employees kids have gone on to earn advanced college degrees. I highly doubt that a person trained in aeronautical engineering or health care would come home to picnic at such a lethally toxic place as the petitioners describe our farms. But we often see them enjoying a BBQ at our employee's homes. Another circular “Fact and Argument” from the petitioner states “Moreover, studies show that people in CAFO occupied communities suffer disproportionate levels of tension, anger, confusion, fatigue, depression, upper respiratory symptoms, and gastrointestinal ailments than neighbors of other types of farms and non-livestock areas.”

After reading the “Facts and Arguments” it is clear that activists are quoting activists and that they don't want us in business. Please let us continue to provide a good wholesome environment for our employees and their families.

They want to take away your ICE CREAM!

Tim Kuenzi
Oregon Dairy Farmer

KUOPPAMAKI Heather * DEQ

From: Andy Schumacher <ASchu79@hotmail.com>
Sent: Sunday, October 23, 2022 1:04 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

I am writing in opposition of creating stricter air quality restrictions for our dairy farmers. The petition to create new dairy air emission regulations does not provide documented, current evidence of an air quality problem in Oregon caused by dairy air emissions. DEQ's budget and policy priorities should be based on what achieves the best results for all Oregonians, not by groups that oppose Oregon dairies. I support our Oregon dairy farmers.

Andy Schumacher

KUOPPAMAKI Heather * DEQ

From: Robert Kircher <robertkircherfg@gmail.com>
Sent: Sunday, October 23, 2022 9:14 AM
To: PETITION Dairyair * DEQ
Subject: oppose dairy air emission regulations
Attachments: oppose dairy air emissions october 22.docx

please see attached opposition
thank you
Robert Kircher

October 22, 2022

Subject: Oppose Dairy Air Emissions Regulations

Dear Oregon Environmental Quality Commission:

I am writing today to address my concern over the proposed dairy air emission regulations. I am a first generation dairy farmer that got into this business at a young age. Dairy farming is getting harder and harder with higher input costs, labor issues, and more and more regulations on dairy farming. Dairy farming is a 24 hour a day, 7 days a week, 365 days a year job to produce high quality milk.

This petition does not provide any current evidence of an air quality problem in Oregon caused by dairy air emissions. Research has stated that each percentage of organic matter in our soils that we grow crops on to feed our cows has the ability to sequester up to 10 tons of carbon per year. Our soil is the back bone of our farms, if we do not take care of it we will not have feed for our animals.

I believe more research needs to be done with the department of agriculture. EPA is already studying the national air emissions, Oregon needs to be consistent with Federal regulations. How would this proposed program be implemented? Who will provide oversight? Is there funding to support a new program like this?

Dairies today are going out of business at an alarming rate especially in these inflationary times. Dairies today make far more milk per cow today making them much more efficient. Dairy farmers want to do the right thing. We are always proactive and continually improve our practices when informed by accurate science and research.

Dairy Farmers work hard to produce milk to feed the worlds people. Why would you go after the hard working farmers that feed this world? I believe there are other ways to help farmers rather than adding more and more regulations.

I appreciate the opportunity to comment on this proposed regulation.

Sincerely,

Robert Kircher

KUOPPAMAKI Heather * DEQ

From: apbs@aol.com
Sent: Sunday, October 23, 2022 8:32 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission

We all share an interest in improving the air quality of Oregon. Any regulation should be based on sound science and accurate measurement of air composition rather than establishing an arbitrary limit on the number of animals a dairy can house. Many factors affect air quality, cattle and manure management, crops grown on and around dairy farms, atmospheric conditions and dispersion of the animals. The dairies could be helped to improve emissions with scientific guidance.

Dairies of 700 are no longer economically sustainable as demonstrated by the exiting of smaller operations.

The number of dairy cows in Oregon has remained relatively stable for the last 50 years. Dairy farming is not a growing industry in Oregon and is shrinking in western Oregon.

Oregon dairies have been inspected and successfully regulated by Oregon Department of Agriculture CAFO (Confined Animal Feeding Operations) for environmental compliance for over 20 years.

Arie Slegers

KUOPPAMAKI Heather * DEQ

From: John Seymour <seymourj8@gmail.com>
Sent: Sunday, October 23, 2022 6:34 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

Our family has been caring for cows and the land of Oregon since the mid 1800s when we homesteaded where our farm stands today. As a 5th generation dairy Farmer looking to pass the farm along to the 6th generation, I care deeply about our animals and the environment.

I oppose the Dairy Air Emission Regulations as the petition does not provide documented, current evidence of an air quality problem in Oregon caused by dairy air emissions.

For generations, families like mine and other Oregon dairy farmers have been proactive and continually improve their practices when informed by science and research.

Thank you for your consideration.

Regards,

John Seymour

KUOPPAMAKI Heather * DEQ

From: Jacob Ruby <jacob.ruby22@gmail.com>
Sent: Saturday, October 22, 2022 6:00 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

As a fourth-generation dairy farmer who hopes to have many years and many future generations farming in the state of Oregon, I strongly oppose the obviously anti-agriculture and illogical dairy air emissions regulatory petition. Even though our family farm is not large enough to fall under the scrutiny of such a stifling proposal, the truth is that large operations in the state of Oregon are very well-run, nearly exclusively by good, family operators such as ourselves. Our state is being targeted as an inlet for more regulations that are anti-animal across the country and which will be applied to smaller and smaller farms as time moves on.

It is clear to me that this petition portrays an obvious ignorance regarding the dairy industry in Oregon. There are no 700-cow tie-stall dairies in Oregon, yet the petition clearly implies that animals are locked into individual pens in such barns. Many CAFOs have a very liberal allocation of pasture and use animal housing as a necessity for protection of the land and the animals due to the amount of rainfall in Oregon. The petition complains of cows being slaughtered too young and in the next sentence complains of cows not being fit for slaughter. The petition lacks any scientific evidence and thus supplements its claims with irrelevant, disingenuous, and highly-speculative claims regarding swine flu and coronavirus, which allegedly came from wild bats in China; not a dairy farm. Somehow racism even makes its way into the petition by implying that cow burps and flatulations desecrate Native American art and threaten people of color with their lives.

Lastly, this petition claims to be protecting me, a mid-size dairy manager. There is no one who cares more for the future of our soil, water, and climate than farmers. We discuss the weather constantly and we are the ones who till the soil and apply the water on our ground. It is our livelihood and our land only because we care for it for the long-run. This petition wishes to change that beyond reasonability. Climate change, soil quality, and water cleanliness affect us infinitely more than anyone else, and yet this petition attacks us and our livelihoods as well as the livelihoods of employees and their families due to strict naissance and ideology. As someone who devotes his life to caring for cows, I can firmly say that I oppose this petition.

Thank-you,
Jacob Ruby

KUOPPAMAKI Heather * DEQ

From: Sheryl Kuipers <sheryl.kuipers@gmail.com>
Sent: Saturday, October 22, 2022 5:29 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

I support Oregon family businesses, and nearly all Oregon dairy farms are multi-generational dairy farms. Oregon dairy farmers have been proactive and continually improve their practices when informed by science and research. This petition does not provide documented, current evidence of an air quality problem in Oregon caused by dairy air emissions.

Sincerely,
Sheryl Kuipers

Sent from [Mail](#) for Windows

KUOPPAMAKI Heather * DEQ

From: Marika Cowan <tsavoritesiren@gmail.com>
Sent: Saturday, October 22, 2022 2:49 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

I support Oregon family businesses, and nearly all Oregon dairy farms are multi-generational family businesses. Oregon dairy farmers have been proactive and continually improve their practices when informed by science and research. We have farmers who have won National level sustainability awards, and are one of the highest quality dairy product state producers. This doesn't seem like a necessary addition to the already stringent standards and requirements Oregon dairy farmers currently abide.

Sincerely,
M. Cowan

KUOPPAMAKI Heather * DEQ

From: Melissa Collman <melissa.m.collman@comcast.net>
Sent: Saturday, October 22, 2022 2:10 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Dairy Quality Commission,

I am a 4th generation dairy farmer and we have been farming on our home farm here in Oregon for almost 99 years. We have always strived to be good to our neighbors, land and communities. We work with Oregon Department of Ag closely and hold a nutrient management plan. We strive to follow science and do the right thing. With looking at the 5th generation it is becoming harder to see a future here in Oregon with how heavily we are already regulated along with the rising costs.

We find it alarming that this proposed regulation is being backed by anti-dairy groups. We don't need people who are fundamentally against animal ag making our rules. Please don't allow this regulation to move forward and instead ask the experts. Let the dairyman work with our state ag departments and make regulations and rules based on fact and science of real life Farms with the farmers at the table to weigh in.

Thank you for your time,

Melissa Collman
Cloud-Cap Farms

KUOPPAMAKI Heather * DEQ

From: Derrick Josi <derrickjosi@hotmail.com>
Sent: Saturday, October 22, 2022 11:25 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

I could write you a thousand reasons why I oppose this stupid regulation. I could tell you how it could destroy my fourth generation family dairy. Or how there's no data to pinpoint a need for this regulation, or how I'm tired of idiots with an agenda pushing more government oversight but I don't think it will make a difference. Honestly I think it's going to take people starving before Oregon gets a clue.

Derrick Josi

KUOPPAMAKI Heather * DEQ

From: Kristin Hogan <kristin.hogan@hotmail.com>
Sent: Thursday, October 20, 2022 9:11 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

The Oregon Dairy Industry really can't take another hit during this crazy time we are living in. Just with the high cost of feed is enough to make farms start going out of business and people really need to stop and think about what is happening. Do we not want food available for people to nourish their bodies? It is getting pretty scary out there and the Dairy industry is already one of the most regulated industries out there. We have so many regulations and paper work to do on top of taking care of our cows that is getting to be extreme. The Oregon Dairy Industry does not need another regulation to follow. I also don't believe the 175,000 cows that call Oregon home are the problem with air quality. Lets wait for EPA to get their conclusion from the current study they are in before we address something so serious with little knowledge.

If you have any questions please feel free to message me. We are a dairy farm in Tillamook and let me tell you it is getting harder and harder by the day!

Thanks for your time,

Kristin Killgore

KUOPPAMAKI Heather * DEQ

From: Scott Ruby <sruby@wwsires.com>
Sent: Wednesday, October 19, 2022 8:57 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

My family and I operate a small dairy farm in Oregon, and while our farm would not be directly impacted by the proposed dairy air emission regulations, we strongly oppose this petition. There are only a few dairy farms left in Oregon, and the vast majority of Oregon dairy farms are family owned and operated. Our farm is going into its fourth generation with my son joining the operation last year.

The Dairy Air Emission Regulations petition is fatally flawed for several reasons:

- The petition was created by activists whose agenda is to destroy animal agriculture and the farm families involved in animal agriculture. There were no air quality experts involved in the creation of this ridiculous petition.
- Oregon does not have an air quality problem related to dairy farms. There are fewer and fewer dairy cows in Oregon every year, and the number of dairy cows in Oregon today is 1/3 of the number that were in Oregon 100 years ago.
- This petition has no basis for support. The Oregon Department of Agriculture who monitors Oregon's Confined Animal Feeding Operations (CAFO's) was not involved with the development of this petition.
- The EPA is already studying national air emissions, and Oregon needs to be consistent with the federal regulations.

Please help support the hard-working family dairy farmers in Oregon by opposing the Dairy Air Emission Regulations petition.

Best regards,
Scott Ruby



37955 Fir Ridge Road
Scio, OR 97374

KUOPPAMAKI Heather * DEQ

From: sas slatercom.com <sas@slatercom.com>
Sent: Tuesday, October 18, 2022 6:26 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

I am a supplier of energy efficient LED lights, and one of my largest customer bases are Oregon Dairies. This is a group that is having difficulty surviving right now, with more burdensome regulations being dumped on them every year. Certainly, I want to drink clean water, and breath clean air, but running our industries out of business only ruins lives and puts family farms out of business.

For those who live next to a dairy, the odor can be irritating at times. But why would someone move up from California, get a good deal on a piece of land out in the country, and then complain about the odor of a dairy that is nearby – and has been there for 100 years...? I do not believe Oregon has an air quality problem caused by dairy air emissions and would want to see a HUGE amount of testing done on both a state and national basis before dumping another huge burden on family farms.

Result of overregulation in this manner will be much higher dairy prices, dairies only ran by super large mega-corporations, out of work family farmers (the folks who care about their animals), and no cleaner air or anything else... Please study the heck out of this before you decimate an industry and run a bunch of hard-working people out of work!

Thanks,
Scott

Scott Slater

Slatercom Lighting Solutions

Cell #: 541-974-4316

Email: sas@slatercom.com

Web: www.slatercom.com

KUOPPAMAKI Heather * DEQ

From: John Lee <john@northwestfarmbroker.com>
Sent: Tuesday, October 18, 2022 5:59 PM
To: PETITION Dairyair * DEQ
Subject: OPPOSE DAIRY AIR EMISSION REGULATIONS

Farmers are good stewards of the environment and provide essential food products to Oregonians. NO additional regulations.

Thank you,

--

John Lee
Principal Broker # 890100124
PO Box 15012, Salem, OR 97309
Lee Real Estate - Farm/Land/Investments
503-245-9090 (text or call)
john@northwestfarmbroker.com
www.northwestfarmbroker.com

KUOPPAMAKI Heather * DEQ

From: oaklea at wvi.com <oaklea@wvi.com>
Sent: Sunday, October 23, 2022 3:58 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emission Regulations

Dear Oregon Environmental Quality Commission,

We are an Oregon Dairy Farm that milks less than 700 cows but we oppose the Dairy air petition that has been proposed.

The petition does not provide legitimate, documented evidence of an air quality problem involving dairy farms. The EPA is studying national air emissions and Oregon needs to be consistent with federal regulations.

the petition was created by animal welfare activists, not air quality experts. they have their own agenda that has nothing to do with air quality.

the questions of" how will the program be implemented, who will provide the oversight and is there funding to support a new program" need to be answered.

Nearly all Oregon dairy farms are multi-generational family businesses, and our dairy supports several families through our employees. This is an extremely challenging time for producers and this needs to be opposed.

Betty Bielenberg
Aumsville, OR.

KUOPPAMAKI Heather * DEQ

From: Michele Ruby <michele@ruby-do.com>
Sent: Saturday, October 22, 2022 9:44 AM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emissions Regulation

Dear Oregon Environmental Quality Commission,

I'm deeply disheartened at the thought of DEQ policy being set by anti-dairy groups. While I work off our farm, my husband manages the family dairy farm that I grew up on, and that we raise our kids on and live on. We're proud of the continual improvement we make year after year, generation after generation on our land and in our multi-generational family farm. Currently, my mom, brother, nephew and husband all actively work on the dairy. Caring for our cows is literally our greatest joy and maintaining and preserving our natural resources so they have healthy pasture to graze is a top priority. We do all of this to provide a healthy, affordable and local supply of dairy products to the community we love. Regulations like this threaten our very ability to do this.

Let's find ways to collaborate verses placing blame on a group of earnest family farms. This should not be our burden to bear and I'm deeply opposed to a petition that DOES NOT provide documented, current evidence, of an air quality problem in Oregon caused by dairy air emissions.

Thanks for your time and consideration on behalf of one of Oregon's few remaining dairy farms.

Michele Ruby-Wilson

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: Cindy Schumacher <cjtroost@hotmail.com>
Sent: Sunday, October 23, 2022 12:54 PM
To: PETITION Dairyair * DEQ
Subject: Oppose Dairy Air Emissions Regulations

Dear Oregon Environmental Quality Commission,

I am writing in opposition of creating stricter air quality restrictions for our dairy farmers. The petition to create new dairy air emission regulations does not provide documented, current evidence of an air quality problem in Oregon caused by dairy air emissions. DEQ's budget and policy priorities should be based on what achieves the best results for all Oregonians, not by groups that oppose Oregon dairies. I support our Oregon dairy farmers and know they strive to become more sustainable every day!

Cindy Schumacher

From: [Steve Pierson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Oppose Dairy Air Emissions Regulations
Date: Sunday, October 23, 2022 2:48:44 PM

Dear Environmental Commission.

As a fifth generation Oregon dairy, we would like to respectfully submit our opposition to the dairy related air emissions regulations.

Oregon dairy farmers have been and will continue to be good stewards of our fragile environment.

Decades of proactive collaborative efforts to protect our beautiful state have resulted in Oregon being a leader Environmental sustainability.

Our hard work and effective management already reduced and probably eliminated the need of this type of oversight as there have been no documented cases of dairy related air quality issues.

Please don't let Environmental activists undo the positive relationship that Oregon dairy farmers and our state regulators currently enjoy as we continue to work together to safeguard our state as well as set a great example of cooperative results for other states to emulate.

Regards,
Steve Pierson
Sar-Ben Farms

KUOPPAMAKI Heather * DEQ

From: Daniel Frasier <daniel.frasie@gmail.com>
Sent: Monday, October 24, 2022 8:50 AM
To: PETITION Dairyair * DEQ
Subject: Oppose dairy air regulation

I oppose the dairy air regulations you guys are coming out with..talk to a real farmer..get feedback from..real farmers who the regulation might impact like..tilimook dairy to eberhards get rid of this regulation please and thank you

KUOPPAMAKI Heather * DEQ

From: Kathryn Walker <kathrynwalker940@yahoo.com>
Sent: Sunday, October 23, 2022 6:13 AM
To: PETITION Dairyair * DEQ
Subject: Opposition to petition to promulgate dairy air emissions regulatory program
Attachments: Opposition to Petition to Promulgate Dairy Air Emissions Regulatory Program (KW).pdf

Please find attached my comments in opposition to the petition to promulgate dairy air emissions regulatory program.

Please confirm receipt of this email.

Thank you,

Kathryn

October 23, 2022

Oregon Environmental Quality Commission
Oregon Department of Environmental Quality
700 NE Multnomah St
Portland, OR 97232

RE: Opposition to Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear EQC Members:

I am opposed to the petition to promulgate dairy air emissions regulatory program.

As someone who attended and observed every Oregon Dairy Air Quality Task Force meeting, the task force prepared a final report that outlines the structure, staging and funding for how the state would proceed around air quality as it relates to dairy farms. This final report was prepared by, and agreed to by consensus, by a group of stakeholders with diverse interests, including an organization that is part of the current Dairy Air Quality Petition. "Taken as a whole, they (the recommendations) represent an optimal balance between the competing interests and chart a clear and positive path forward for all Oregonians." (*Dairy Air Quality Task Force Final Report to the Department of Environmental Quality and Oregon Department of Agriculture, July 1, 2008*). The task force made modest recommendations that were to be staged over time as to not burden the state: requests for state agency resources (staff for DEQ, ODA and DHS), requests to fund research at Oregon State University, and requests to complete education and outreach - all of which the State of Oregon failed to execute. The Department of Environmental Quality was also part of the Oregon Dairy Air Quality Task Force and as such should be held accountable to all of the elements of the final report, not just what suits the agency or is easy implement.

Even though the state has authority to create a new program, what data does the state have as it relates to Oregon dairy farms and air quality? Although the petition eludes to emissions that may be generated by animal agriculture, it does not provide scientific evidence to support their suggestive claim. Did you know that Oregon dairy farm families continually invest in scientifically proven, best management practices that mitigate, protect and improve land, water and air quality? The point to this statement is that air quality emission, especially as it relates to dairy farms, is complex. That is why, the EPA is currently working to collect air quality data from modern farms across the country. This data collection is part of the National Air Emissions Monitoring Study. Data collected from this study will be used by EPA to develop modern air emission models This effort is expected to conclude next year. I highly encourage you to let the National Air Emissions Monitory Study be completed before any action, as it relates to dairy air quality, is taken by the EQC. For the state to create a new regulatory program without modern science to base it upon is arbitrary and irresponsible.

Thank for you this opportunity to share with you my opposition.

Sincerely,

Kathryn Walker

KUOPPAMAKI Heather * DEQ

From: M FALZONE <herbs4u@comcast.net>
Sent: Thursday, October 6, 2022 8:30 AM
To: PETITION Dairyair * DEQ
Subject: Opposition to proposed Dairy Air Quality rules

Greetings,

I wish to express my opposition to the proposal to establish regulations on large dairy operations. In my opinion the resulting regulations would as a minimum drive up the cost of dairy products without providing any real benefit to the consumer.

The proposed targeting of large operations appears to make the assumption that smaller operations will produce less air quality issues. If one assumes that the regulations on large operations result in these large operation making a move to become smaller operations with the same number of animals, this will not change the amount of emissions from the animals. The proposed regulations have the potential to have these larger scale operations either close down or leave the state. This would result in higher costs to provide the same services with no real benefit.

I urge the department to reject the proposal to establish regulations on the dairy industry.

Respectfully,
Mike Falzone
Salem Oregon

KUOPPAMAKI Heather * DEQ

From: Claire Lynn <claire@oregonfb.org>
Sent: Sunday, October 23, 2022 8:34 AM
To: PETITION Dairyair * DEQ
Subject: Oregon Farm Bureau Comments on Dairy Air Petition
Attachments: OFB Comments - Dairy Air Petition.pdf

Good morning,

Thank you for the opportunity to submit comments on the Dairy Air Petition. Attached are comments from the Oregon Farm Bureau.

Please let me know if you have any questions.

Thank you,

Claire Lynn | Government Affairs Associate
Oregon Farm Bureau
1320 Capitol St. NE, Suite 200, Salem, OR 97301
Cell: 541.999.6876 • **Office:** 503.399.1701 • **Fax:** 503.399.8082
claire@oregonfb.org • oregonfb.org



October 23, 2022

Environmental Quality Commission

SENT VIA EMAIL: DairyAir.Petition@deq.oregon.gov

Re: Oregon Farm Bureau Comments on the Dairy Air Petition

Chair George and Members of the Commission,

On behalf of our over 6,300 farming and ranching member families, the Oregon Farm Bureau Federation (OFB) respectfully asks the Commission to deny the petition to regulate dairy air emissions, which would impose unnecessary and costly new air emissions regulations on Oregon's family dairies.

Oregon's dairy farmers are some of the most forward thinking in the nation and have long worked to ensure they are good stewards in their communities. This petition would impose costly new mandates on a large number of Oregon's family-owned dairies in the state. Emissions from dairies are not an air quality issue in this state, and regulation of these family farmers is not necessary.

Small family dairies are targeted under this bill. Despite the premise of the petition to regulate so-called "mega dairies," the petition actually directs regulations at all Oregon dairies with 700 or more head of mature cattle. Given the significant input costs for a dairy, more than 700 head is needed to support any dairy farm that is supporting a full family, let alone the multiple family members often supported by multigenerational Oregon dairy farms.

Oregon dairies are not causing air quality issues in Oregon. State monitoring consistently shows that the vast majority of Oregon has outstanding air quality year-round. In areas where there are isolated air quality issues, they are primarily due to woodstove smoke and urban emissions, not animal agriculture.

It is important to note that much has been discovered about the low risk from Oregon dairies since 2008. For example, a study of dairy employees' air quality during an average workday found that none of the dairy's employees were exposed to any

impacts that exceeded human health standards. Dairies are safe to work on and are safe for their communities.

Oregon's dairy farmers are doing their part to protect the environment. Oregon's dairy farmers are ahead of the national curve. They were pioneers in voluntarily coming under the CAFO water quality program in the late 1970s and have continued to build on their record of environmental stewardship since then. For example, dairy farmers in Tillamook have worked with the conservation community on several salmon habitat restoration projects, and most have voluntarily adopted advanced protections to minimize risk of water or air quality impacts from their property. These efforts are in addition to the stringent measures required under the CAFO water quality permits.

Importantly, many of the same elements that dairies are implementing to protect water quality also protect the air quality around the dairy and ensure that emissions from dairies are not a health risk. Oregon's dairymen and women are doing their best to protect the environment, from the smallest dairies to the largest.

DEQ policy and funding priorities should not be set by anti-dairy groups. DEQ's budget and policy priorities should be based on what achieves the best results for all Oregonians, not by groups that oppose Oregon dairies. In the years since the Dairy Air Task Force provided its recommendations, the legislature has consistently determined that dairy air emissions were not a priority issue for DEQ, instead focusing priorities on key issues around urban air emissions, water quality, and toxics reduction. Given that emissions from dairies are not a significant source of human health risk in Oregon, OFB believes that DEQ correctly allocated its money and time to other priorities. Accepting this petition would force DEQ to devote time and resources to rulemaking on a very low-priority issue heading into a legislative session.

The Dairy Air Task Force did not require any action. In its report the 2008 Task Force made note of significant uncertainties in the science around potential emissions from dairies. Since that time, there has been considerable research into air quality from dairies. And this research has concluded that the contribution of dairies to air quality is much lower than early studies suggested. During that same time period, Oregon dairy farmers have continued to build upon their record of strong stewardship, adopting technologies such as digesters, which help ensure that air in Oregon remains among the cleanest in the nation.

Today, it is clear that action to further regulate dairies is not necessary.

Oregon's family run dairies are operating in a way that is protective of human health and the environment, and OFB respectfully urges the Commission to deny this petition. The petition unnecessarily directs DEQ to take up an issue of low priority that would burden a large number of Oregon's dairies.

Thank you for the opportunity to comment, and please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Claire Lynn". The signature is written in a cursive style with a large initial 'C' and a long, sweeping tail on the 'y'.

Claire Lynn
Government Affairs Associate
Oregon Farm Bureau

KUOPPAMAKI Heather * DEQ

From: twsmith999@gmail.com
Sent: Thursday, October 6, 2022 12:44 PM
To: PETITION Dairyair * DEQ
Subject: Oregon SHOULD NOT regulate Dairies regarding air pollution

I believe it is economically wrong and inappropriate for Oregon to regulate large-scale dairy or any other large-scale types of animals-for-food businesses related to reduction of air pollution.

Large dairies (or feedlots, etc.) provide scale-of-operation economic benefits that are vitally important for the residents of Oregon with respect to the cost and availability of food. To 'tax' large scale food production businesses with an 'air pollution tax' will artificially favor small-scale economically fragile (less competitive) and more expensive food production, at consumer's expense.

If you instead focus on air pollution as a general issue, you will find that there are significantly greater sources of pollution going on in Oregon. Forest fires that are allowed to burn for months, industrial pollution that is unmitigated by scrubbers or more efficient equipment, and new electric vehicle subsidies that place demands on our electrical grid that can only be handled by building polluting or extremely expensive new non-hydro power plants.

This is a wrong priority for government regulation!

Thank you for inviting comment.

Regards,

Terry W. Smith
Springfield, Oregon

KUOPPAMAKI Heather * DEQ

From: cliffordsmith@comcast.net
Sent: Thursday, October 6, 2022 9:27 AM
To: PETITION Dairyair * DEQ
Subject: Petition

Have we lost our collective minds?
A great big NO on this ridiculous petition.

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: cathy.taddei@everyactioncustom.com on behalf of Cathy Taddei
<cathy.taddei@everyactioncustom.com>
Sent: Friday, October 21, 2022 5:31 PM
To: PETITION Dairyair * DEQ
Subject: Please DENY the dairy air emission petition!

Dear Oregon DEQ,

I am writing to urge you to deny the petition to regulate dairy air emissions in the state of Oregon.

The “conservation” lobby believes in magical food sources that don’t invoke nature. Please do not allow this attack on our food supply to proceed.

Sincerely,
Cathy Taddei
1115 1st St NE Bandon, OR 97411-9316
cathy.taddei@tahoo.com

KUOPPAMAKI Heather * DEQ

From: catherine Caudle <caudlecatherine@yahoo.com>
Sent: Thursday, October 6, 2022 10:29 AM
To: heather.kuoppamaki@deq.oregon.gov; PETITION Dairyair * DEQ; JOHNSON James * ODA
Subject: Re: Dairy Air Petition

So is this a circular argument? They can enact the rules but right to farm precludes there enforcement. Seems enacting them is a waste of time.

Catherine

On Thursday, October 6, 2022 at 09:46:55 AM PDT, JOHNSON James * ODA <james.johnson@oda.oregon.gov> wrote:

Oregon's "Right to Farm" law precludes local governments and special districts from regulating farm use for nuisance or trespass. It does not preclude state or federal government from such enacting such regulation.

Jim Johnson, Land Use and Water Planning Coordinator
Oregon Department of Agriculture – Natural Resource Programs
635 Capitol St NE, Salem, OR 97301-2532
503.986.4706 | [Oregon.gov/ODA](https://www.oregon.gov/ODA)

Please note my new email address: james.johnson@oda.oregon.gov

From: catherine Caudle <caudlecatherine@yahoo.com>
Date: Wednesday, October 5, 2022 at 6:04 PM
To: JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>, heather.kuoppamaki@deq.oregon.gov <heather.kuoppamaki@deq.oregon.gov>, PETITION Dairyair * DEQ <DairyAir.Petition@DEQ.oregon.gov>
Subject: Dairy Air Petition

A special meeting is scheduled on this petition for 11/15/2022 regarding the regulation of dairy emissions. Per Oregon's long standing land use law "right to farm" the dairies are protected and any action by the DEQ would be stopped. Please review this long standing law that protects the uses of farm land including the "smells" associated with those uses here [State of Oregon: Natural Resources - Land Use and Right to Farm](#)

State of Oregon: Natural Resources - Land Use and Right to Farm

Therefore, I must request that the DEQ deny the petition as it would be found unlawful.

Catherine Caudle

2187 NW Quince Place

Redmond Oregon 97756

KUOPPAMAKI Heather * DEQ

From: JOHNSON James * ODA
Sent: Thursday, October 6, 2022 9:47 AM
To: catherine Caudle; heather.kuoppamaki@deq.oregon.gov; PETITION Dairyair * DEQ
Subject: Re: Dairy Air Petition

Oregon's "Right to Farm" law precludes local governments and special districts from regulating farm use for nuisance or trespass. It does not preclude state or federal government from such enacting such regulation.

Jim Johnson, Land Use and Water Planning Coordinator
Oregon Department of Agriculture – Natural Resource Programs
635 Capitol St NE, Salem, OR 97301-2532
503.986.4706 | Oregon.gov/ODA

Please note my new email address: james.johnson@oda.oregon.gov

From: catherine Caudle <caudlecatherine@yahoo.com>
Date: Wednesday, October 5, 2022 at 6:04 PM
To: JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>, heather.kuoppamaki@deq.oregon.gov <heather.kuoppamaki@deq.oregon.gov>, PETITION Dairyair * DEQ <DairyAir.Petition@DEQ.oregon.gov>
Subject: Dairy Air Petition

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State of Oregon: Natural Resources - Land Use and Right to Farm

Therefore, I must request that the DEQ deny the petition as it would be found unlawful.

Catherine Caudle
2187 NW Quince Place
Redmond Oregon 97756

KUOPPAMAKI Heather * DEQ

From: JOHNSON James * ODA
Sent: Thursday, October 6, 2022 11:31 AM
To: catherine Caudle; heather.kuoppamaki@deq.oregon.gov; PETITION Dairyair * DEQ
Subject: Re: Dairy Air Petition

Regulation includes enforcement/implementation. See ORS 30.934 for the statutory citation. There is no reference to limitations on state or federal regulation. You may wish to discuss with your legal counsel should you have further questions.

Jim Johnson, Land Use and Water Planning Coordinator
Oregon Department of Agriculture – Natural Resource Programs
635 Capitol St NE, Salem, OR 97301-2532
503.986.4706 | Oregon.gov/ODA

Please note my new email address: james.johnson@oda.oregon.gov

From: catherine Caudle <caudlecatherine@yahoo.com>
Date: Thursday, October 6, 2022 at 10:29 AM
To: heather.kuoppamaki@deq.oregon.gov <heather.kuoppamaki@deq.oregon.gov>, PETITION Dairyair * DEQ <DairyAir.Petition@DEQ.oregon.gov>, JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>
Subject: Re: Dairy Air Petition

So is this a circular argument? They can enact the rules but right to farm precludes there enforcement. Seems enacting them is a waste of time.

Catherine

On Thursday, October 6, 2022 at 09:46:55 AM PDT, JOHNSON James * ODA <james.johnson@oda.oregon.gov> wrote:

Oregon's "Right to Farm" law precludes local governments and special districts from regulating farm use for nuisance or trespass. It does not preclude state or federal government from such enacting such regulation.

Jim Johnson, Land Use and Water Planning Coordinator
Oregon Department of Agriculture – Natural Resource Programs
635 Capitol St NE, Salem, OR 97301-2532
503.986.4706 | Oregon.gov/ODA

Please note my new email address: james.johnson@oda.oregon.gov

From: catherine Caudle <caudlecatherine@yahoo.com>

Date: Wednesday, October 5, 2022 at 6:04 PM

To: JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>, heather.kuoppamaki@deq.oregon.gov <heather.kuoppamaki@deq.oregon.gov>, PETITION Dairyair * DEQ <DairyAir.Petition@DEQ.oregon.gov>

Subject: Dairy Air Petition

A special meeting is scheduled on this petition for 11/15/2022 regarding the regulation of dairy emissions. Per Oregon's long standing land use law "right to farm" the dairies are protected and any action by the DEQ would be stopped. Please review this long standing law that protects the uses of farm land including the "smells" associated with those uses here [State of Oregon: Natural Resources - Land Use and Right to Farm](#)

State of Oregon: Natural Resources - Land Use and Right to Farm

Therefore, I must request that the DEQ deny the petition as it would be found unlawful.

Catherine Caudle

2187 NW Quince Place

Redmond Oregon 97756

KUOPPAMAKI Heather * DEQ

From: Leslie Seeberger <muddymuleranch@yahoo.com>
Sent: Tuesday, October 18, 2022 6:12 PM
To: PETITION Dairyair * DEQ
Subject: Really another attack on Oregon Farmers?

Oregon does not have a air quality problem! What stinks is cannabis farms who provide no legitimate product and waste water and farm land. It is a disgrace how the democrat party continues to attack everything Americans stand for. So no on another attack on Oregon dairy's!

Leslie Seeberger

KUOPPAMAKI Heather * DEQ

From: Loren Emang <lorenemang@icloud.com>
Sent: Monday, October 3, 2022 11:17 AM
To: PETITION Dairyair * DEQ
Subject: Regulating Dairy Farm Air emissions

Hi DEQ,

Oregon already has lots of regulations over agricultural businesses. We do not need even more red tape -preventing Ag businesses from surviving in Oregon. Most Dairy farms are away from cities and the local plant life is happy to help clean up the air.

I would much rather Dairy Farmers spend their time taking care of their herds than chasing after yet another regulation. They are already working with the plants that they grow to feed the cows, more regulations just slow down their work and waste finances and working hours that could be better spent elsewhere.

We are better off giving them trees to plant than making up more rules to follow. We have lost enough Ag businesses already. Let's stick to regulating cities, and leave the farmers that feed us alone. If we really want to help we should offer to give them free trees to plant and help them find new ways to grow more green things to help us survive instead of shutting down more of our local food suppliers.

Salem used to be orchards on the West side as far as you could see. Now its all pavement, how about shrinking cities and growing more food instead of shrinking food and growing more cities, and keep the regulations for town instead of nature's natural processes.

Thanks,

Loren

KUOPPAMAKI Heather * DEQ

From: Devon Morales <Devon@crosswaterstrategies.com>
Sent: Friday, October 21, 2022 4:06 PM
To: PETITION Dairyair * DEQ
Cc: Trevor Beltz; Paul Snyder; Dan Jarman; Sarah Buchanan
Subject: Tillamook County Creamery Association comment on Petition to Promulgate Dairy Air Emissions Regulatory Program
Attachments: 2022.10.21 TCCA Dairy Air Quality Comments - signed.pdf

Dear Ms. Kuoppamaki,

Please see attached letter respectfully submitted on behalf of Tillamook County Creamery Association in response to the Department of Environmental Quality's request for public comment on the Petition to Promulgate Dairy Air Emissions Regulatory Program.

Please feel free to reach out to me with any questions.

Thank you,
Devon

--

Devon Morales, Vice President
Crosswater Strategies
(415) 847-0289
devon@crosswaterstrategies.com





October 21, 2022

Kathleen George, Chair
Oregon Environmental Quality Commission
Attn: Stephanie Caldera
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Dear Chair George and members of the Oregon Environmental Quality Commission:

We appreciate the opportunity to provide comment to the Oregon Environmental Quality Commission (EQC) regarding the August 17, 2022 Petition to Adopt a Dairy Air Emissions Program to Quantify and Regulate Large Dairy CAFO Air Emissions (Dairy Air Petition). We recognize that the EQC must take an action on the Dairy Air Petition within 90 days of the date received to deny the petition, initiate rulemaking based on what is in the petition or take some other action. Although ORS 468A.020 granted EQC authority to go to rulemaking to implement the recommendations of the 2008 Task Force on Dairy Air (TFDA) or to regulate air contaminant emissions from agricultural operations to the extent necessary to implement the federal Clean Air Act, the EQC should deny the Dairy Air Petition during the November 15, 2022 Commission meeting for all the following reasons:

First, EQC and DEQ are in a significant period of transition and this type of complex policy work demands experienced, focused, and consistent leadership to be at the helm. As you know, the current EQC was appointed by Governor Brown, who will be leaving office in less than three months. The next Governor may choose to change the composition of the EQC shortly after taking office. Moreover, the administrator of the DEQ recently stepped down, which may change yet again under a new executive administration. Given the uncertainty of future leadership for the agency and considering all the competing demands for agency resources at this time, neither the DEQ nor the EQC is able to take on this kind of monumental policy shift right now.



Second, petitioners do not cite any evidence dairy CAFOs in Oregon are releasing greenhouse gas emissions or other criteria pollutants in a manner that exceeds any clean air standards. Before regulations are established to control dairy air emissions or place requirements on dairy CAFOs in Oregon designed to mitigate emissions, it is imperative to first develop data about actual emissions and sources of the emissions. Taking the requested action without further data collection would be arbitrary and capricious.

Third, this petition for rulemaking in Oregon is premature given the US Environmental Protection Agency's (EPA) ongoing work at the federal level. The EPA is in the middle of an extensive "National Air Emissions Study" that will, among other things, develop "scientifically credible methodologies for estimating emissions from animal feeding operations." EPA is expected to use the methodology it develops to gain a better understanding of emissions from CAFOs. The federal work will inform what Oregon and other states must do to measure and possibly mitigate dairy emissions.

To the extent Oregon develops and adopts regulatory requirements that conflict with federal requirements, the Oregon requirements would be rendered moot by this federal action. This would be especially harmful to Oregon dairies with exceedingly limited resources if investments made in technology, monitoring, or other practice changes to meet regulations promulgated by DEQ prove unnecessary or conflict with federal guidelines finalized shortly thereafter. It will be a waste of time and resources for the EQC to undertake this work before the EPA completes its work.

Finally, the proposed regulatory program is inconsistent with the recommendations drafted by the TFDA. It creates new expensive monitoring requirements for dairy farms not included in the TFDA recommendations, mandates best management practices rather than starting with voluntary implementation, and places DEQ in the lead for administering the program and enforcement, rather than the Oregon Department of Agriculture as recommended by the TFDA.

As a leader in Oregon's dairy community and an ally in the fight to combat climate change, we are committed to achieving GHG neutrality by 2050. We stand ready to be a productive participant in conversations about protecting Oregon air quality for



all its residents. Unfortunately, the rulemaking proposed by the petitioners is not being requested at the right time and is not the right approach for our state.

For all the foregoing reasons, we urge the EQC to deny the Dairy Air Petition at the November 15 Commission meeting.

Thank you for your time and consideration.

Sincerely,

Trevor Beltz

Manager of Government Relations and Public Affairs
Tillamook County Creamery Association

KUOPPAMAKI Heather * DEQ

From: Judith Bent <jbent02jbent@gmail.com>
Sent: Thursday, October 20, 2022 12:41 PM
To: PETITION Dairyair * DEQ

So who comes up with these stupid ideas. Next you will want to apply this to all animals in the state both domestic and wild as well as on people for the amount of emission they put out. I am sure people emission out number the dairy farm. Again how stupid

KUOPPAMAKI Heather * DEQ

From: Lisa Mellinger <lisanm2001@yahoo.com>
Sent: Wednesday, October 19, 2022 6:59 PM
To: PETITION Dairyair * DEQ

I do not agree! It's all lies!!! Cows do not cause pollution! This is all political lies

Sent from my iPhone

KUOPPAMAKI Heather * DEQ

From: DAVID Schliebe <dschliebe1@gmail.com>
Sent: Thursday, October 6, 2022 8:28 AM
To: PETITION Dairyair * DEQ

DEQ is overreaching again. They know nothing about this industry and how hard it is to even make money milking cows. This is what happens when new people move into a new state. They try to convert it into what they left. Normally a crap hole. Leave the farmers alone. Most farmers follow the laws. This proposal would be so costly it would run them all out of business. Which is probably the goal anyway.

From: [Adriana Voss-Andreae](#)
To: [PETITION Dairyair * DEQ](#)
Subject: dairy air emission petition must be granted
Date: Friday, October 21, 2022 12:34:23 PM

Dear Oregon DEQ,

I write to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the state.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these dairy operations contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

Every Oregonian deserves clean air.

Sincerely,
Adriana Voss-Andreae

From: [Amanda Hughes](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulating methane emissions
Date: Thursday, October 20, 2022 8:58:16 AM

Hello @ DEQ,

I urge you to regulate emissions from large dairy farms as part of the state's mission to reduce our greenhouse gas emissions. Air quality is of utmost concern re: climate change and having healthy air (especially for vulnerable groups). Lots of research lately shows we can reduce the methane produced by cows in various ways- including dietary changes.

Thank you,
Amanda H
Hillsboro, OR

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Grant the Dairy Air Emission Petition
Date: Wednesday, October 19, 2022 1:14:20 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

*Thank you,
Amelia Kintz*

From: [Angelia Sousa](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air
Date: Wednesday, October 5, 2022 7:31:58 PM

Good evening,

I live in Millersburg and I do believe you need to work on air quality near dairies!

The smell is horrible usually in the evening or early am. It's hard to enjoy summer evenings on the patio or a early morning cup of coffee on the patio. So, yes, you do need to monitor the air quality.

Nothing like the smell of cow shit that's being pumped on a field on a hot summer day - said no one ever!

If you have questions please feel free to contact me.

Angie Sousa

Sent from my iPhone

From: [Flyinghorse](#)
To: [PETITION Dairyair * DEQ](#)
Subject: I SUPPORT REGULATING EMISSIONS FROM DAIRY FARMS
Date: Wednesday, October 5, 2022 12:43:11 PM

As a resident of Portland, Oregon, I completely support any effort to regulate emissions from dairy farms in the state. All industrial-scale agriculture and livestock companies must be prevented from polluting the air, the soil and water.

Anne Kiley

From: [Anne Raunio/Scott Gilbert](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please institute a dairy air emissions regulatory program
Date: Tuesday, October 18, 2022 10:40:14 AM

Dear Oregon DEQ,

We are writing in support of the institution of an air quality program for large dairy confined animal feeding operations. Air pollution is a well recognized problem impacting all of us who live and breathe Oregon air. It also clearly impacts many less-resourced communities even more adversely, and it is contributing to driving small family farms out of existence. All of us living in the state share the burdens of ill health, smog, and increased medical expenses from this neglect. Please step up and do your job and help make and keep the air in our state breathable and safe.

Sincerely,
Anne Raunio and Scott Gilbert
Portland, OR 97201

From: [Anne Schagen](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate mega-dairies
Date: Sunday, October 23, 2022 9:32:23 AM

This seems like a no-brainer! Once again profit is beating out the welfare of animals and people. Climate change is real and methane is a huge contributor.

Anne Schagen
Portland

From: [Art Poulos](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Stop hiding your heads in the sand
Date: Sunday, October 23, 2022 2:52:30 PM

The detrimental health effects to humans living in close proximity to large CAFOs is well documented both within the USA and abroad.

In Linn County two very large chicken CAFOs are being proposed. One of them is within half a mile of an elementary school.

The DEQ continues to act irresponsibly towards these inappropriate sitings by refusing to acknowledge the health risk to neighbors and by its unwillingness to take action to prevent the ODA from approving them without any air quality safeguards for neighbors.

Stop hiding your head in the sand and deliver on your fiduciary responsibility towards the residents of Oregon.

We expect legislation to be developed and implemented immediately to protect us and future generations from the flagrant abuse these large farms feel free to exercise on our air quality and way of life.

When are you at the DEQ going to do something? Why are you requesting public comment when you know what needs to be done? You are an embarrassment to yourselves and Oregon.

Stop wasting our time and do your job.

Art Poulos

Art Poulos
Farmer
43550 Thomas Creek Drive
Scio, OR 97374

Written Testimony

The EPA defines a large broiler operation as one that has 125,000 chickens per year. The operations we are talking about are on average 30 times this size. A large tier-2 broiler dry-waste operation is set at 300,000 birds by the ODA. These proposed operations are over 10 times this size. In fact, they are going to be some of the largest in the nation.

With these extremely large operations come extremely large risks for the environment and rural communities.

We need practical, common-sense legislation to mitigate these risks. This is what I propose.

These very large chicken operations should not be permitted to be sited within 2 miles of a school, community center, or church.

In addition, they should not be permitted to be sited within 2 miles of any waterway, river, creek, or wetland.

These new rules can be easily administered by the ODA as part of the CAFO-permitting process.

There are likely to be upward of 20 of these very large operations in the Willamette Valley. The three current proposals and their proposed sitings demonstrate a complete lack of common sense and concern for our rural communities by their operators. I don't know a rational farmer who would think these sitings are a good idea.

Evergreen Ranch in Jordan is a ½ mile from Lourdes Charter School which has been operating for 125 years and has sent thousands of rural kids to college. Their barns will be within 50 feet of a home for adults with disabilities. It will be within a ½ mile of our church. Oh, and by the way, it is on a bluff above Thomas Creek in an area that has groundwater issues.

J-S Ranch is on the North Santiam. A river notorious for its movement and flooding.

The proposed operation off Shaff Road is within 2 miles of our Stayton public schools and Regis St. Mary Catholic school.

This is an assault on rural communities and our way of life.

Will the legislature, the DEQ, and the ODA apologize to parents when sports games are canceled because of air quality issues? Will you apologize when Lourdes Charter School closes its doors? And who will be responsible when our children have breathing issues and lung disease?

This is a disaster waiting to happen and we will hold the legislature, the ODA, and the DEQ responsible for their impotence, lack of action, and unwillingness to enact common-sense rules.

The ODA tells us they can't be held responsible for accidents. They use the analogy of issuing a driver's license by the DMV. Most folk know that a 16-year-old who has just passed his driving test should not get into a semi-truck and drive down the I5 at full speed during rush hour.

Despite assurances from the chicken council and the operators, we all know better. And we should do better to protect our children and the Oregon we love.

No large chicken operation can be sited within 2 miles of a school, community center, or church.

No large chicken operation can be sited within 2 miles of a waterway, river, creek, or wetland.

From: [Bala](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate air pollution from CAFOs
Date: Friday, October 14, 2022 8:48:21 PM

Hello,

I am writing to register my support for the petition to regulate air pollution arising from dairy CAFOs.

These factory farms are a huge source of greenhouse emissions that impact the climate as well as make it unsafe for residents in nearby towns.

Frankly, I am shocked to learn that they do not have any air pollution regulation under current Oregon DEQ regulations.

I fully support drafting regulations to control pollution arising from these farms.

Thank you
Bala Seshasayee
Hillsboro, OR

From: [Bart King](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please adopt Dairy Air Emissions standards
Date: Wednesday, October 5, 2022 4:32:57 PM

Hello,

I wanted to express our family's support of air emission standards with regard to the ones suggested in the recent petition. It only seems fair, and not to be selfish, but as residents of the Willamette Valley, we'd like to have our air be as breathable as possible.

Thank you,

Bart King

From: [Ben Reed](#)
To: [PETITION Dairyair * DEQ](#)
Subject: We need to do everything we can to better our environment, so please regulate emissions!
Date: Friday, October 21, 2022 1:42:58 PM

Dear Oregon DEQ,

Environmental politics are taking a back seat to many other issues we're dealing with today. Those other issues are important, and need to be addressed, but by no means does this insinuate that we can simply let the state of our planet take a back seat.

We have more advanced technology today than we've ever had before, and yet we don't expect companies and corporations in the dairy industry to adopt newer technologies that could spare our atmosphere from greenhouse gasses. We don't expect them to research and develop more efficient means of completing their tasks. Why have we sat, complacent, as they continue to tarnish our environment, negligent of any consequences as long as they get their money? Why have we allowed their greed to have any impact on our air and our quality of life without doing anything to step in?

Now is the chance to make meaningful changes. We must take steps immediately in order to save our environment. Even if those steps land on a few toes, the consequences of the affected parties' anger will be far, far easier to deal with than the consequences of remaining indifferent to the future of our planet. With the record-breaking warmth we've had year after year, it's clear that our inaction is already leaving its mark. We must act now, and we must set a precedent for other states, and further, other countries, to follow suit. If we don't take the lead, then who will?

Please don't let the future of our planet be benched yet again to avoid uncomfortable confrontations. We have a duty to do the right thing, and there is little question as to what is and isn't right in this situation.

Sincerely,
Ben Reed

From: [Benton Elliott](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Public Comment Urging Adoption Of A Dairy Air Emissions Program to Quantify and Regulate Large Dairy CAFO Air Emissions
Date: Tuesday, October 18, 2022 10:58:50 AM

Mega-dairies produce enormous amounts of toxic chemicals and heat-trapping gases that fuel climate change and harm human health. I join with Oregonians requesting the Oregon Environmental Quality Commission promulgate a new rule quantifying and regulating air emissions from large dairy concentrated animal feeding operations. Thank you for protecting Oregon's natural environment and the health of all Oregonians.

Benton Elliott

Eugene, Oregon 97401

From: [Beverly White](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate Dairy Air Emissions
Date: Sunday, October 23, 2022 1:57:39 PM

I am a fourth-generation Oregonian, a member of a sixth-generation-and-counting Oregon family. I support regulation of dairy air emissions because of the harms caused by mega dairies. They are a detriment to Oregon's air and water quality in general, and a specific threat to their neighbors' air quality, water quality and quality of life. For the sake of, and to protect, Oregon's clean air, clean streams and rivers, animal welfare and local communities, I urge Oregon DEQ to do your job. Regulate dairy air emissions.
Beverly White

From: [Bob Weir](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy farms
Date: Thursday, October 6, 2022 8:56:43 AM

Please begin regulating dairy farm emissions as proposed.

Global climate change is an existential threat to the planet and our childrens future.

Please take steps yo mitigate this threat.

[Sent from Yahoo Mail on Android](#)

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Operations
Date: Thursday, October 6, 2022 8:59:32 AM

I guess I'm shocked that large, concentrated dairy operations haven't been regulated. The methane emissions of ruminants have been known for decades, possibly even centuries. Yes, they must be regulated as point source pollution. They must develop methods to reduce methane, bacterial, and chemical pollutants.

I know from dairy farmers in Washington state that manure spreading tends to make farmland become contaminated with selenium, among other chemicals, thereby making the land unsuitable for ongoing production.

Bob Woods

From: [Brooke Thompson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emission Petition
Date: Wednesday, October 19, 2022 12:45:36 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you,

Brooke Thompson

From: [Byron Kimball](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Public Comment on Dairy Air Emissions rulemaking petition
Date: Sunday, October 23, 2022 9:29:32 PM

To whom it may concern,

I urge the Oregon Environmental Quality Commission to affirm the petition, put forward by petitioners including Food & Water Watch, requiring the implementation of a dairy air emissions program.

Research indicates that methane emitted by dairy cows and other livestock is responsible for up [to 6% of global greenhouse gas emissions](#). Yet, without procedures in place to monitor the specific impact of Oregon's cattle populations and/or the operations of CFAOs within our state, Oregon will be ill-equipped to address or mitigate emissions within our own state.

Thus, implementation of a dairy air emissions program to monitor and then regulate the impact of greenhouse gases emitted by state dairy producers is critical to ensuring Oregon meets our state's greenhouse gas reduction goals while also ensuring healthier air for communities across our state.

Regards,
Byron Kimball, he/him/his

From: [Callie Loser](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comment for dairy air petition
Date: Wednesday, October 19, 2022 12:20:23 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you,

Callie Loser

From: [carolyn price](#)
To: [PETITION Dairyair * DEQ](#)
Subject: GRANT DAIRY AIR EMISSION PETITION
Date: Wednesday, October 19, 2022 3:49:55 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

It is also inhumane to treat cattle in this manner . They suffer greatly They are not machines they are living feeling sentient beings and they have a life just like people if you spend any time around them They are defenseless. An indicator of the quality of a society is how it treats its animals and defenseless members. I urge you to help move Oregon and the US to a higher quality and humane.

Sincerely

carolyn [ricde

From: [Carolynn Kohout](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Petition: Dairy Air Emissions" Practices
Date: Thursday, October 20, 2022 6:08:34 PM

Dear Oregon Environmental Quality Commission,

Grant the petition on regulating dairy air emissions
- in the state of Oregon.

Large dairy factory farms emit
- ammonia,
- hydrogen sulfide and
- particulate matter,
all of which can cause
- chronic respiratory disease and
- death.

Nationwide,
air emissions from livestock production
- are responsible for 12,400 deaths per year
- more than the deaths attributed to pollution from coal-fired power plants.

These emissions disproportionately affect
- vulnerable communities.
More than 1/3 of Oregon's dairy cows
- are in Morrow and Umatilla counties,
- having the state's highest percentage of Latinx residents.

Communities surrounding these factory farms are
- low-income and
- suffer some of the highest air pollution burdens
- in the state.

These factory farms also produce
- a staggering amount of planet-warming methane gas.

In Oregon agriculture
- is the leading source of methane emissions.

Oregon lawmakers have long-known
- of the threat posed by air pollution
- from large dairy factory farms.

A state-convened task force recommended
- Oregon take immediate steps to curb dairy air pollution
- as far back as 2008.

Despite the urgent recommendation to act,
- THIS source of air pollution remains unregulated.
Unacceptable!

EVERYONE deserves clean air.
large dairy factory farms
- must be held accountable

- for their air pollution.

By granting the dairy air emission petition,

you will be protecting

- the health of Oregonians and

- our environment.

SEIU Climate Justice Committee member

Sincerely,

Carolynn Kohout

From: [Carroll Johnston](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Petition to adopt Dairy Air Emissions rules
Date: Tuesday, October 18, 2022 10:49:44 AM

Dear Environmental Quality Commission:

I strongly support the petition to adopt dairy air emissions rules as proposed by Food and Water Watch and 21 co-petitioners. However, I suggest the following.

Section 8(5) of the Food and Water Watch, et.al., petition should at the very end add the words “or the renewal application is otherwise acted upon” so that last sentence would then be “If the renewal application is timely submitted, and the Department does not reissue the permit prior to the existing permit’s expiration date, the permit shall be administratively continued until such time that the renewal is issued or the renewal application is otherwise acted upon.” Without that addition or something similar, the only options are to renew the permit or continue the administrative extension. There would be no option to deny the renewal.

The definition of a “regulated dairy” needs to be comprehensive enough to not allow evasion of the permit process by a corporate farm entity if they simply set up multiple operations that each have fewer than 700 cows. If the aggregate number of cows owned by an entity in Oregon (or at least within a single region of Oregon) equals or exceeds 700, the owner should be subject to the permit process even if no single separate operation they own exceeds the 700-cow limit. Also, my personal perspective is that DEQ should apply some sort of pollutant mitigation efforts (perhaps short of full blown permitting requirements) for farms that have considerably fewer than the number of cows that trigger the permit requirement. One might reasonably assume that two farms with 350 cows each can cause the emission of just as much pollutants as one farm with 700 cows.

The petition identifies multiple locations, such as milking parlors or manure ponds, where air pollutants may be measured and regulated by a permit. However, I do not recall seeing any wording that addresses methane emissions coming directly from the digestive tracts of the cows when they are outside an enclosed area such as a milking parlor. The permits should require use of methane-reducing feed additives as described at this link: <https://www.agric.wa.gov.au/climate-change/carbon-farming-reducing-methane-emissions-cattle-using-feed-additives> . In fact the use of such additives should be promoted/incentivized on farms even smaller than those that meet the requirement to have a dairy air quality permit, provided that no harmful unintended consequences are found that supersede the beneficial effects.

Carroll Johnston

From: [Celia Kilsby](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Fwd: Regulate Dairy Air Emmissions
Date: Sunday, October 23, 2022 10:00:18 AM

Environmental Quality Commission Members,

We support regulating dairy air emissions for environment and animal welfare, and public health and safety. The impact these mega-dairies have on our environment, and the conditions of the animals enclosed in such enormous numbers is not only cruel but also harms nearby residents and pollutes our air from methane and chemical by products.

It is far past the time to end this practice.

Celia and Richard Kilsby

From: [Cheryl T. Conway](#)
To: [PETITION Dairyair * DEQ](#)
Subject: petition
Date: Monday, October 17, 2022 7:37:28 PM

To DEQ and EQC members:

How can anyone think filling the air with ammonia, hydrogen sulfide, and dust is benign? So much research has already verified the long-term health consequences of these compounds and particulates. Let's stand up for healthy communities by writing significant restrictions on large animal operations into law.

Thank you for your work.

Cheryl Conway
Astoria, OR 97103

From: [C Jenks](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Emissions
Date: Saturday, October 8, 2022 5:23:55 PM

You should look at the You Tube videos <https://youtu.be/8nJcftXKNfo> and others with dairies doing different things to control smell and pollution.

Consider some of these things when formulating rules for farms!

Chris Jenks

From: [Chris Roehm](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comments for Mega Dairy Petition
Date: Sunday, October 23, 2022 9:57:38 AM

My name is Chris Roehm. I live in Forest Grove, OR and I'm commenting to urge you to grant the petition to regulate dairy air in Oregon. I live about a quarter mile from Dairy Creek in western Washington County. A few of my neighbors are small family dairy farms but it used to be that most of the farms in this neighborhood milked cows and raised families. The death of family dairy farms and the rise of mega dairies are linked in that mega dairies' economic model undercuts the cost structure of dairying and drives smaller operators out of business. Part of this unfair practice is sanctioned by the State of Oregon when it allows concentrated pollution of the soil, ground water and AIR by mega dairy operations.

In 2008 the Oregon Legislature convened a task force about the regulation of air pollution from dairies in the state and that task force recommended the measures asked for in the current petition. Please follow the recommendations of the legislature's task force and thereby level the playing field for family scale farming while cleaning up the soil, water, and AIR for all Oregonians.

Thanks!

--

Chris Roehm
Square Peg Farm

From: [chris shank](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions rule making petition
Date: Wednesday, October 19, 2022 9:24:40 PM

The Oregon Environmental Quality Commission should grant the petition received from Food & Water Watch and 21 co-petitioners to adopt Dairy Air Emissions rules that are included in the petition. The EQC should initiate rule-making proceedings.

Sincerely,

Chris Shank
Dallas, OR

From: [Christina Choate](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate dairy emissions
Date: Wednesday, October 5, 2022 3:13:14 PM

To the members of the Oregon Environmental Quality Commission,

It is extremely important to me that Oregon do everything in its power to control air pollution and carbon emissions. While we can't control Oregon wildfires, we CAN control our dairy farms. Please regulate toxic emissions from Oregon dairies.

These dangers are scientific facts, reported by Health Boards across the US as well as the CDC. I urge everyone on the EQC and DEQ to read this report, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities": https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf

Thank you
Christina Choate
Corvallis, OR

From: [Courtney L Dillard](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Support for program to quantify and regulate air emissions from large dairy CAFOs
Date: Tuesday, October 18, 2022 7:34:04 PM

Dear Oregon Environmental Quality Commission,

I write to express my support for the proposed program to quantify and regulate air emissions from large dairy CAFOs in Oregon. While there are many controversial issues connected to these operations, including animal cruelty (separating of mothers and calves and tight confinement), air quality concerns are those most apparent to the communities living near operations of this sort. Recently my husband and I drove through parts of the state with dairy CAFOs and the stench was overwhelming, even from the highway. I encourage you to recognize that these industrial animal agriculture operations present a new environmental quality concern that falls within your purview and should be both measured and regulated.

Sincerely,
Courtney Dillard

From:
To: [PETITION Dairyair * DEQ](#)
Cc: ["Dan Hoynacki"; "John Zielinski"](#)
Subject: Dairy Air Emissions
Date: Monday, October 3, 2022 12:10:36 PM
Attachments: [image003.png](#)

Hello Heather Kuoppamaki –

My only comment at this point is to ask why this air quality regulation is only being established for dairy operations when there are other large scale animal production facilities that manage waste such as chickens? Seems like it should be about the air, not the animal.

Thanks!

Dan Hoynacki

Dan Hoynacki

Caretakers USA



Caretakers of the Environment International/USA
Aumsville, Oregon 97325

“We can’t change the world by looking at it or judging it; but we can change the world by how we choose to live in it.”

- Paraphrased from ‘The Aeronauts’ on Prime.

From: [Carolyn Shelby](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please clean up the air in mega dairy farms
Date: Wednesday, October 19, 2022 11:20:15 AM

It's not fair to the cows or us humans.--

"Everyone is entitled to his own opinion, but not to his own facts."

- Daniel Patrick Moynihan

From: [Dave Zumbrunnen](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulating air pollution from dairies
Date: Saturday, October 8, 2022 7:45:45 AM

I am a mechanical engineer and have visited large dairy farms in Minnesota. These are no different from other large industrial activities where raw materials are inputs and wastes of various types are outputs, along with desired products. I support strongly proposed rules that regulate airborne and waterborne emissions from dairy farms to ensure practices are used that reduce adverse impacts on the environment and on people and animals. An absence of rules make possible exploitive practices to the detriment of society.

Dave Zumbrunnen, PhD

From: [David Ewing](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Factory Farm "Dairy" Air Pollution
Date: Friday, October 14, 2022 5:41:03 PM

Hello,

Please adopt new rules to regulate air pollution from large factory dairies in Oregon. Large factory dairies are a significant source of air pollution, including greenhouse gas emissions, and they have avoided regulation for too long.

Animal agriculture is Oregon's #1 source of methane pollution. We cannot address climate change and clean air without addressing this super polluting gas. Therefore, it is critical for the State to set standards and start regulating this industry which appears to get a free pass? How can the State seriously address climate change, wildfires and air pollution when animal agriculture gets a free pass to pollute?

Thanks,

David Ewing
Bend, OR. 97702

From: [David Stone](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [Lisa Arkin](#);
Subject: Dairy air pollution
Date: Tuesday, October 4, 2022 10:23:02 AM

All pollution producers must be regulated, especially those that produce vast quantities of methane.

Without stringent regulations, Oregon attracts polluters from states with strong regulations.

- Rules must be science based.
- Rules must protect the public, not the profits of the permittee.
- Rules must be written in plain English, Spanish and Russian and posted on site.
- Applicants must prove they are operationally and financially capable of performing on an on-going basis.
- All permits must be conditional on compliance with all rules.
- All permits must be limited to a ten year period, after which the permit holder must re-apply. No permit can be renewed for applicants who have more than 10 violations.
- Violation reporters must not be threatened or punished for submitting reports.
- Rules must be enforced with on-going monitoring, 24/7, not by periodical sampling.
- Emission standards must protect surrounding neighborhoods within 5 miles.
- Monitoring devices must be placed all the way around the site.
- Emission standards must protect on-site workers, 24/7.
- Emission monitoring results must be available to the public 24/7 on an easily accessible and understood website.
- Violators must be shut down immediately.
- DEQ staff must be available 24/7 to enforce rule violations.
- No polluters must be permitted within 5 miles of each other so violators can be clearly identified.
- Fines for violations must be high enough so that they are not just considered a cost of doing business.
- Repeat violators must be shut down permanently.
- Size of operation (number of animals) must be limited .
- Proposed fines for violations must be reported to the public monthly.
- The public must be allowed to comment on appeals and proposed settlements.
- Results of appeals must be reported to the public as the cases are settled.
- Cost of enforcement (rule-making, monitoring devices and staffing, and enforcement) must be included in the cost of all permits.
- Deposit must be collected from permit applicant to cover potential fines, so a permittee cannot escape paying, like the Baxter company is doing.

From: [David Zupan](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [Susan](#)
Subject: Comments on petition to create a dairy air emissions regulatory program in Oregon
Date: Saturday, October 22, 2022 10:33:00 PM

Dear DEQ,

My wife and I are grandparents who are strongly in favor of the petition to adopt Dairy Air Emissions rules. We were shocked to learn a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008 and yet almost nothing has been done. Given what we see as an urgent need to take action on the climate crisis, it is alarming to learn in Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. It is unacceptable that large dairy factory farms in Oregon produce a vast amount of planet-warming methane gas, and they must be held responsible for their air pollution. Everyone deserves clean air. Please prioritize the health of Oregonians and our environment over the profits of corporate factory farms by granting the dairy air emission petition.

Sincerely,

David Zupan & Susan Curtin

From: [Deborah Carey](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy farm emissions
Date: Wednesday, October 5, 2022 3:17:53 PM

To the members of the Oregon Environmental Quality Commission,

It is extremely important to me that Oregon do everything in its power to control air pollution and carbon emissions. While we can't control Oregon wildfires, we CAN control our dairy farms. Please regulate toxic emissions from Oregon dairies.

These dangers are scientific facts, reported by Health Boards across the US as well as the CDC. I urge everyone on the EQC and DEQ to read this report, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities": https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf

Thank you, Deb Carey
Corvallis, OR

Climate change is an existing emergency for all life. Do something.

Deb Carey

From: [Denisa Estokova](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Action
Date: Wednesday, October 19, 2022 12:25:58 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Denisa

From: [Denise Holley](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate dairy emissions
Date: Saturday, October 22, 2022 9:26:00 AM

I think we all like cows and the products they provide for us, although many of us now choose soy or almond milk.

But cows produce methane gas that is warming our planet to dangerous levels. Please encourage dairy farmers to find ways to cut back on these emissions and still produce their milk products.

Denise Holley
Redmond, Oregon

From: [Diana Pierce](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Farm Regulation
Date: Saturday, October 8, 2022 7:53:39 AM

Hello

I encourage you to regulate air pollution from large scale dairy farms. They contribute significantly to methane pollution in our air thus degrading our air quality and contributing to climate change.

Thank you
Diana Pierce

From: [Don Curry](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Should large Dairies be treated like factories
Date: Saturday, October 8, 2022 7:46:29 AM

To me, it seems obvious that large commercial dairies *should be treated* like factories in terms of air or water pollution standards.

I don't think there is a need to go into an in-depth argument about fairness or global warming or any other topic. Commercial farms are a business and should be treated as such.

Thank you

Don Curry

From: [Jackie Rice](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Should Oregon regulate dairy air pollution ?
Date: Friday, October 14, 2022 10:14:39 PM

Large dairies in Oregon are emitting a number of by-products which can affect the health of not just a few, but many Oregonians. When dairies were small enterprises, the need for regulations was obviously not so apparent; but, these megadairies, without regulations, have the potential to pollute waterways, to make people sick from the chemicals and particulate matter emitted, to lower property values and affect quality of lives for those nearby because of the stench and other factors. It would be very naive to think that the owners of these businesses would self-regulate in a manner that would protect water sources and the environment and people in their geographical vicinities. Please act now to get control of this situation before it becomes too large of a problem to successfully handle. In other words, please see the problem and be pro-active. Since the problems could affect total water sources for many parts of our state, you are dealing not only with those who live near the megadairies (which in itself is very important), but with many people in distant towns and cities. The article in the Statesman Journal on this topic indicated that “..Oregon’s megadairies collectively release more than 17 million kilograms of methane each year, equivalent to the emissions from 318,000 cars”. That fact alone, in a time when climate change is at a critical point, should bring home the need for regulating the dairy air pollution. The strong probability of water pollution makes regulations covering that area equally important. We are hoping that the interests of the citizens of Oregon will be of more concern to you than the interests of the big business owners of these megadairies. Thank you for your consideration in this manner.
Dr. Jackie Rice and Dr Karen Eason—(Salem, OR)

Sent from my iPhone

From: [DRESDEN Skees-Gregory](#)
To: [PETITION Dairyair * DEQ](#)
Subject: I support adoption of Dairy Air Emissions rules
Date: Sunday, October 23, 2022 3:12:19 PM

Oregon Department of Environmental Quality,

I strongly support the petition for rulemaking to adopt Dairy Air Emissions rules for the State of Oregon. If adopted, the proposed rule will improve the air quality and living conditions for farmed animals, farm workers and residents living in nearby communities.

Recent research reveals that Oregon's factory farms collectively release over 17 million kilograms of methane every year, equivalent to the emissions of 318,000 cars. They also emit ammonia, hydrogen sulfide and particulate matter, all of which can cause chronic respiratory disease and death.

Nationwide, studies show that emissions from industrial livestock operations cause 12,400 deaths every year, killing more people than pollution from coal-fired power plants.

Raising animals in crowded, unnatural conditions indoors surrounded by their own waste affects air quality inside and around the facilities, negatively impacting the animals' welfare and causing issues like respiratory diseases.

These emissions disproportionately impact vulnerable communities. Factory farms are usually situated in lower-income areas, forcing residents to suffer some of the highest air pollution burdens in the state.

I encourage the Oregon Department of Environmental Quality to recommend that the Environmental Quality Commission move forward with this essential rulemaking.

Thank you for your consideration.

Sincerely,

DRESDEN Skees-Gregory

From: [Eileen Sherry](#)
To: [PETITION Dairyair * DEQ](#)
Date: Wednesday, October 19, 2022 1:41:52 PM

Stop polluting our air with your manure piles.

From: [ElizabethLyon](#)
To: [PETITION Dairyair * DEQ](#)
Subject: regulating dairy emisisions
Date: Saturday, October 8, 2022 10:12:03 AM

My question is why wouldn't DEQ be obligated to monitor emissions from dairy farms? Cows EMIT. The worst kind of gas. It is up to the dairy farmer to use known scientific captures or diversions of methane gas—for the greater good.

DEQ should monitor, and issue citations to offenders.

Elizabeth Lyon

From: [Elizabeth Voth](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Oregon DEQ and EQC: Grant the Petition to regulate Dairy Air Emissions!
Date: Monday, October 17, 2022 1:35:33 PM

Dear Heather Kuoppamaki,

My name is Elizabeth Voth and I am a resident of Silverton.

I urge you to regulate dairy air emissions in the state of Oregon to preserve our valuable natural resources. As you know, what is in the air comes down in rain and becomes a permanent legacy in our water and soil.

I am personally invested in this because I have worked on small-scale farms for years and have seen first-hand how good management has positive environmental benefits.

On the other hand, large dairy factory operations (which are NOT farms) emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death to nearby residents.

PLEASE CONSIDER HOW ALL OF US ARE AFFECTED by such short-sighted business practices.

It can be seen by anyone who takes a drive through our rural community that small-scale farms can manage pasture rotation that does not overwhelm the regenerative power of healthy forage and soil.

Please BE THE GATEKEEPER we need by prioritizing the health of Oregonians and our environment over the profits of predatory factory operations by granting the dairy air emission petition!

THANK YOU!!!

Sincerely,
Ms. Elizabeth Voth

From: [Ellen Rifkin](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Air pollution caused by dairy farms
Date: Monday, October 17, 2022 8:49:26 PM

Dear Oregon Environmental Quality Commission:

Everyone deserves clean air. Scientific studies in Oregon have demonstrated for almost two decades that large dairy farms release emissions that endanger both human health and the environment. The ammonia, hydrogen sulfide, and particulate matter cause respiratory illnesses, and the methane released by these farms contributes to our increasingly hot, dry, fire-prone climate.

Everyone is endangered by the conditions of these farms, and especially the Latinx residents of Morrow and Umatilla Counties, where over one third of Oregon's dairy cows are confined.

Large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you for your attention.

Sincerely,
Ellen Rifkin
Eugene, Oregon

From: [Emerald Goldman](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Curb dairy air pollution!
Date: Thursday, October 20, 2022 9:52:24 AM

To the Oregon Environmental Quality Commission:

This is so important. Factory farms are significant contributors to global warming. Oregon used to be a leader in environmental protection. Help us become leaders in the field again by requiring factory farms to curb their toxic emissions.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

This is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,

Emerald Goldman

From: [Emily Herbert](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Yes, to DEQ regulating Dairy Air Emissions
Date: Thursday, October 20, 2022 7:23:02 AM

Dear Oregon Environmental Quality Commission,

When I first moved back to Oregon, my state of birth, in 1980, I was shocked and curious to read that Oregon had high levels of asthma and lung disease, even in young children. Politicians have known that polluted air is harming and killing Oregonians for years and not acted because of the power of Big Agriculture and Industries. It is time to support the people harmed most by concentrated pollution from mega dairies in Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - *that's more deaths than caused by pollution from coal-fired power plants.*

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the state.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, **agriculture is the leading source of methane emissions**, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

This is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you for your Service to Oregonians,

Emily Herbert, Ph.D.
97232

From: [Emily Miller](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [KUOPPAMAKI Heather * DEQ](#)
Subject: Comment re Dairy Air Emissions Petition
Date: Saturday, October 22, 2022 11:58:52 AM
Attachments: [2022.10.22 Dairy Air Petition Comment.pdf](#)

Dear Ms. Kuoppamaki,

The undersigned organizations respectfully submit the attached comments in response to the Oregon Department of Environmental Quality's request for comments on the Petition to Promulgate a Dairy Air Emissions Regulatory Program. Please don't hesitate to reach out if you have any questions.

Sincerely,

Emily Miller

On Behalf of:

Food & Water Watch
Animal Legal Defense Fund
Beyond Toxics
Center for Biological Diversity
Center for Food Safety
Columbia Riverkeeper
Human Voters Oregon
Mercy for Animals
Northwest Environmental Defense Center
World Animal Protection

--

Emily Miller
Staff Attorney
[Food & Water Watch](#) and [Food & Water Action](#)

Fight like you live here.

October 22, 2022

Heather Kuoppamaki, P.E.
Senior Air Quality Engineer
Oregon Department of Environmental Quality
700 NE Multnomah St, Suite 600
Portland, OR 97232

SUBMITTED VIA Email to DairyAir.Petition@deq.oregon.gov

Re: Petition to Promulgate Dairy Air Emissions Regulatory Program

The undersigned organizations (collectively, “Commenters”) respectfully submit these comments in response to the Oregon Department of Environmental Quality’s (“DEQ” or “the Agency”) request for comments on the Petition to Promulgate a Dairy Air Emissions Regulatory Program (“Petition”). Commenters are among the twenty-two advocacy organizations that submitted the Petition to the Environmental Quality Commission (“EQC”) in August, and represent a broad array of environmental, community, and animal welfare interests.

Air pollution from very large dairy concentrated animal feeding operations (“Dairy CAFOs”)¹ threatens the health and well-being of Oregonians, degrades the environment, and fuels the climate crisis. Yet this industry’s harmful air emissions have gone unchecked for decades. Imposing common-sense regulations on the State’s largest dairies to control and reduce the pollutants they emit is essential for curbing these negative impacts.

We deeply appreciate the thorough review that DEQ is conducting on the facts and arguments detailed in the Petition, and strongly urge the Agency to recommend that EQC adopt the regulatory program as proposed. To aid in the Agency’s review, Commenters submit the following information and recommendations, addressing specific questions that DEQ has posed to Petitioners. First, Commenters address the applicability of the federal Clean Air Act to certain Dairy CAFOs, which fall within the meaning of a stationary source subject to regulation. Second, Commenters recommend emissions modeling tools that DEQ and dairy operators can use to estimate emissions and guide DEQ determinations of which best management practices a facility must adopt. Third, Commenters explain why it is necessary for DEQ to retain core authorities over program administration, rather than delegate to the Oregon Department of Agriculture (“ODA”). Fourth, Commenters provide further explanation of which Dairy CAFOs will likely be subject to the program, and estimate costs associated with implementation of required best management practices. Finally, Commenters detail various funding sources upon which DEQ can rely to develop and administer the program.

¹ In these comments, Dairy CAFO refers to dairy operations that confine 700 or more mature cows and that also have liquid manure handling systems. *See* Petition at 6.

I. Dairy CAFOs are Sources of Air Pollution Subject to Clean Air Act Regulation
A. The Legal Definition of “Stationary Source” applies to CAFOs, as Confirmed by EPA and Federal Courts

Clean Air Act permitting programs apply to “stationary sources,” which the Act broadly defines as “any source of an air pollutant” excluding internal combustion engines for transportation and certain nonroad engines.² United States Environmental Protection Agency (“EPA”) regulations further refine the meaning of this term, defining a “stationary source” as “any building, structure, facility, or installation which emits or may emit a regulated [New Source Review] pollutant.”³ “Building, structure, facility or installation” means “all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.”⁴

A Dairy CAFO is made up of a combination of “buildings,” “structures” and “facilities” that house cows, manure, and/or feed, all of which emit Clean Air Act pollutants. These pollutant-emitting buildings and structures include, but are not limited to freestall barns, manure storage lagoons, open corrals with flushed alleys, milking barns, and feed storage facilities. Together, these components comprise the dairy facility and are collectively a stationary source within the meaning of the Clean Air Act.

Through Clean Air Act enforcement actions taken against CAFOs, EPA has definitively confirmed that these facilities are indeed stationary sources that can be subject to Clean Air Act permitting requirements. For instance, in 2001 EPA took action against a series of hog CAFOs located in Missouri for failure to obtain preconstruction and operating permits in violation of the Clean Air Act.⁵ These hog CAFOs consisted of “multiple sites,” including barn structures, lagoon systems, and land application fields.⁶ The terms of the Animal Feeding Operation Consent Agreement and Final Order that EPA entered into with thousands of CAFOs nationwide also confirm the stationary source status of these operations. In this agreement, EPA explains that CAFOs emit several pollutants regulated under the Clean Air Act “from many different areas” including “animal housing structures, (e.g. barns, covered feed lots) and manure storage areas (e.g. lagoons, covered manure piles).”⁷ EPA then goes on to plainly state that such participating CAFOs are stationary sources that *must* apply for and obtain Clean Air Act permits and install Best Available Control Technology if their emissions exceed major source permitting thresholds.⁸

² 42 U.S.C. § 7602.

³ 40 C.F.R. § 51.165(a)(1)(I).

⁴ *Id.* at § 51.165(a)(1)(ii).

⁵ See Consent Decree, *Citizens Legal Environmental Action Network, Inc. v. Premium Standard Farms, Inc.*, Case No. 97-6073-CV-SJ-6, ¶ 4(c) (W.D. Mo. 2001), available at: <https://www.epa.gov/sites/default/files/documents/psfcd.pdf>.

⁶ *Id.* at ¶ 1(b).

⁷ Animal Feeding Operations Consent Agreement and Final Order at 70 Fed. Reg. 4958, 4959 (Mar. 2, 2005).

⁸ *Id.* at ¶ 28(C)(a), 70 Fed. Reg. at 4964. See also *id.* at ¶ 20, 70 Fed. Reg. at 4963 (clarifying that “the term ‘Source’ shall have the meaning given to the term ‘stationary source’ in the implementing regulations of the Clean Air Act at 40 C.F.R. 52.21(b)(5) through (6)”). See also Petition at 25 (discussing the terms of this agreement).

Federal courts in California and Idaho have reached the same conclusion specifically as it pertains to Dairy CAFOs. In *Ass'n of Irrigated Residents v. C & R Vanderham Dairy*, the Eastern District of California found a dairy comprised of freestall barns, corrals with flushed lanes, feed storage facilities, manure lagoons, and a milk barn, each of which held pollutant emitting cows, manure or feed, and which were located on one more contiguous or adjacent properties was a stationary source within the meaning of the Clean Air Act.⁹ Likewise for a different California dairy comprised of eight freestall barns, six manure lagoons, corrals with flushed alleys, a milking barn, and feed storage facilities.¹⁰

The Idaho District Court similarly concluded that the stationary source definitions, “would label the [at-issue] Dairy as a ‘stationary source’ or ‘facility,’” as long as the activities at the Dairy “release into the outdoor atmosphere any dust, gas, odor, particulate matter, or combination thereof.”¹¹ As established in the Petition, Dairy CAFOs and the “buildings, structures [and] facilities” they are comprised of do indeed release high levels of gases, odors, and particulate matter into the atmosphere. They are therefore stationary sources that can be regulated through Clean Air Act permits.

Many stationary sources emit both fugitive¹² and non-fugitive emissions, and the fact that Dairy CAFOs can be sources of fugitive emissions—via land application fields for example—does not change the fact that they are also stationary sources of pollution. Regardless of fugitive sources that may exist on a Dairy CAFO, there are clearly also “structures,” “buildings,” and “facilities” on site that emit non-fugitive regulated pollutants.¹³ Indeed, the Clean Air Act explicitly contemplates situations in which stationary sources emit fugitive emissions, as discussed below. Thus, the mere fact that a Dairy CAFO may have both fugitive and non-fugitive emission sources on site does not preclude it from being a stationary source subject to regulation.

B. Clean Air Act Permitting Requirements Can Apply to Fugitive Emissions, Though They are Not Always Considered in the Major Source Analysis

Depending on the Clean Air Act program at issue, fugitive emissions may or may not be considered when determining whether a stationary source’s emissions have exceeded a major source threshold. Generally speaking, for unlisted source categories like Dairy CAFOs, fugitive emissions are not counted when determining whether a stationary source exceeds “major source” thresholds for Title I preconstruction permits or Title V operating permits.¹⁴ However, once a source is determined to be “major” for a particular pollutant, “all emissions (including fugitive

⁹ 2007 U.S. Dist. LEXIS 70890, 1:05-CV-01593, *19-20 (E.D. Cal. Sep. 24, 2007).

¹⁰ See *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 2005 U.S. Dist. LEXIS 36769, Civ. F 05-00707, *29-31 (E.D. Cal. Dec. 2, 2005).

¹¹ *Idaho Conservation League v. Boer*, 362 F.Supp.2d 1211, 1214–15 (D. Idaho 2004).

¹² Fugitive emissions are defined as “those emissions that could not reasonably pass through a stack, chimney, vent or other functionally-equivalent opening.” 40 C.F.R. § 70.2.

¹³ See, e.g., *Association of Irrigated Residents v. Fred Schakel Dairy*, 460 F. Supp. 2d 1185, 1189 (E.D. Cal. 2006) (explaining that “the enteric emissions from cows in the freestall barns and the milking barn, emissions from decomposing feed, and emissions from decomposing manure in the manure lagoons and compost piles are non-fugitive emissions in that they can reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.”).

¹⁴ See 40 C.F.R. § 70.2 and 71.2.

emissions), are included in all subsequent analysis, including [permit] applicability for other individual pollutants, best available control technology analyses, and air quality impact analyses.”¹⁵

Moreover, there are scenarios in which a Dairy CAFO would *have* to include fugitive emissions in its major source analysis. For instance, when it comes to hazardous air pollutants like methanol, “an owner or operator of a source must include the fugitive emissions of all hazardous air pollutants (‘HAPs’) listed under section 112(b) of the Act in determining whether the source is a major source for purposes of section 112 and Title V, regardless of whether the source falls within a listed source category.”¹⁶ Additionally, the EPA has recently proposed a rule that would require sources to count both fugitive and non-fugitive emissions when determining whether a “major modification” has exceeded Title I major source thresholds.¹⁷

II. High Quality Process-Based Emission Models and Emission Factors are Available to Estimate a Dairy CAFO’s Air Emissions

The State legislature has given DEQ broad authority to regulate air pollution. Specifically, it has expressly authorized the Agency to require reporting of air emission levels in whatever manner it sees fit¹⁸ and impose emission control requirements as it deems necessary.¹⁹ DEQ has relied on this authority to dictate which air quality impact models and techniques are appropriate for use in its current air permitting program,²⁰ and its broad power to do so in the Dairy CAFO context is no different.

There are a number of high-quality, user friendly emissions models and emission factors available to enable dairy operators to estimate emissions and guide DEQ in its best management practice determinations. Commenters recommend several of them below.

¹⁵ Reconsideration of Fugitive Emissions Rule, 87 Fed. Reg. 62322, 62326 (Oct. 14, 2022). *See also* EPA Guidance re Counting GHG Fugitive Emissions in Permitting Applicability, 3 n.4 (Dec. 19, 2013) (confirming that “fugitive emissions are included when comparing GHG emissions to the 75,000 TPY subject to regulation threshold . . . because once there is a determination that the source is a PSD major source for another regulated NSR pollutant, the evaluation of GHG emissions (or emissions of any other pollutant) is no longer part of the threshold applicability determination for the source.”).

¹⁶ *See* EPA Guidance re Clarification of Fugitive Emissions Policy, 3 (Mar. 6, 2003) (citing *National Mining Ass’n v. EPA*, 59 F.3d 1351 (D.C. Cir. 1995)).

¹⁷ 87 Fed. Reg. 62322.

¹⁸ O.R.S. § 468A.050.

¹⁹ O.R.S. § 468A.025(4)

²⁰ *See, e.g.*, O.A.R. § 340-225-0040 (setting air quality modeling rules); O.A.R. § 340-225-0045 (setting emission impact analysis rules for maintenance areas). Indeed, if it so chooses, DEQ can always establish a “preferred” model, while also allowing operators the flexibility to demonstrate the efficacy of another emissions model on a case-by-case basis. *See* O.A.R. § 340-225-0040 (allowing in appropriate circumstances for preferred models to be “modified or another model substituted” with DEQ approval).

A. Process-Based Models

Two process-based models developed by USDA are the “Integrated Farm Service Model”²¹ and the “Dairy Gas Emission Model.”²² Both models predict ammonia, hydrogen sulfide, volatile organic compounds, and greenhouse gas emissions from dairy operations²³ through easy-to-use software that is customizable to an operation’s specific design and management characteristics (including herd information, crop production and acreage, cow housing types, feed storage methods, and manure handling and application practices), and Oregon-specific weather data.²⁴

The models provide daily and annual emission estimates for each pollutant, broken out by various emission source categories, including cow housing, manure storage, and field application. In addition to emission estimates, the Integrated Farm System Model also provides farm performance and economic metrics of the Dairy CAFO. Not only can these models be used to estimate baseline emissions of a facility based on current (or expected) design characteristics and management practices, but they can also help to quantify emission reduction estimates upon implementation of certain best management practices.

B. California Emission Factors and Research

In addition to these process-based models, Commenters also support DEQ’s use of emission factors and research developed by California regulators, who have administered a robust dairy air emissions program since 2005. California’s dairy-specific emission factors estimate volatile organic compounds and particulate matter on a per-cow basis for the various emission source categories of a Dairy CAFO.²⁵ Additionally, studies commissioned by the California Air Resources Board have estimated methanol emissions from cow, manure, and feed sources.²⁶

California regulators derived these emission factors from studies conducted both in and outside of California,²⁷ and Commenters are aware of no legal challenges to the use of these emission factors and research by out-of-state regulators. To Commenters knowledge, the only

²¹ USDA, Agricultural Research Service, Integrated Farm System Model, available at:

<https://www.ars.usda.gov/northeast-area/up-pa/pswmru/docs/integrated-farm-system-model/>.

²² USDA, Agricultural Research Service, Dairy Gas Emission Model, available at:

<https://www.ars.usda.gov/northeast-area/up-pa/pswmru/docs/dairy-gas-emissions-model/>.

²³ See the ISFM and Dairy GEM Reference Guides for information on model design and emission parameters,

available at: <https://www.ars.usda.gov/ARUserFiles/80700500/Reference%20Manual.pdf> (IFSM) and

<https://www.ars.usda.gov/ARUserFiles/80700500/DairyGEMReferenceManual.pdf> (Dairy GEM).

²⁴ See IFSM and Dairy GEM training videos walking through the use and customization features of the software,

available at: <https://vimeo.com/38194901> (IFSM) and <https://vimeo.com/38194902> (Dairy GEM).

²⁵ See Air Pollution Control Officer’s Revision of the Dairy VOC Emission Factors, SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DIST. 5 (Feb. 23, 2012) [hereinafter VOC Emission Factors],

[https://www.valleyair.org/busind/pto/emission_factors/2012-Final-Dairy-EE-Report/FinalDairyEFReport\(2-23-](https://www.valleyair.org/busind/pto/emission_factors/2012-Final-Dairy-EE-Report/FinalDairyEFReport(2-23-12).pdf)

[12\).pdf](https://www.valleyair.org/busind/pto/emission_factors/2012-Final-Dairy-EE-Report/FinalDairyEFReport(2-23-12).pdf); SJVAPCD, Dairy and Feedlot PM10 Emission Factors (Oct. 14, 2017),

http://www.valleyair.org/busind/pto/dpag/FYIDairy_Feedlot_PM10_Emission_Factors_Revised_10-24-2017.pdf

[hereinafter PM Emission Factors].

²⁶ See Frank Mitloehner, Volatile Fatty Acid, Amine, Phenol, and Alcohol Emissions from Dairy Cows and Fresh Waste, U.C. DAVIS (May 31, 2006); Huawei Sun et al., Alcohol, Volatile Fatty Acid, Phenol, and Methane Emissions from Dairy Cows and Fresh Manure, 37 J. Env’t Quality 615–622 (2008); Charles Krauter & Donald Blake, Dairy Operations: An Evaluation and Comparison of Baseline and Potential Mitigation Practices for Emissions Reductions in the San Joaquin Valley, CAL. AIR RESOURCES BD. 22–34 (May 1, 2009).

²⁷ See, e.g., PM Emission Factors at 1–4 (relying on California and Texas-based research).

legal actions involving California's dairy emission factors occurred in the program's infancy, and neither of these matters directly challenged an approved California emission factor.

The first case, *Ass'n of Irrigated Residents v. C&R Vanderham Dairy*, is only tangentially related to California's VOC emission factors.²⁸ There, a dispute arose because the air district used an older emission factor to calculate the dairy's potential to emit VOCs, but one month later updated the emission factor such that it showed a higher potential to emit.²⁹ However, the issue did not affect the outcome of the case because the court found that using either factor, the dairy was still required to install BACT in order to comply with the Clean Air Act.³⁰

The other case, *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, involved dairy methanol emissions, and was brought before any air district determination had been made regarding the dairy's major source status.³¹ There, the citizen plaintiff alleged that a California dairy was a major HAP source operating without a permit in violation of the Clean Air Act.³² After the suit was filed, the air district analyzed the dairy's emissions and issued a retroactive "Authority to Construct" permit, in which it found the dairy was not a major source of methanol, based on emission research from 2005 (pre-dating any of the CARB-commissioned methanol studies recommended herein).³³ The court allowed the case to proceed notwithstanding the air district's retroactive determination, but the case ultimately settled without reaching the issue of whether the dairy was a major source.³⁴

But even if there were examples of challenges to California's emission factors, Oregon law grants DEQ broad authority to select the emissions estimating tools necessary to establish a regulatory program.³⁵ The clear discretion the Legislature provided the Agency on such matters would effectively preclude any challenge to its choice of appropriate emissions models and factors.

C. EPA's Future Emission Estimating Methodologies

Though EPA emission estimating methodologies for CAFOs are supposedly forthcoming, Commenters strongly urge DEQ to neither wait for nor utilize these methodologies if finalized. EPA has been unsuccessfully attempting to develop statistical models that estimate CAFO emissions of ammonia, hydrogen sulfide, PM, and VOCs for the past 17 years. However, its tortured process has been hindered by the very small sample size and poor design and implementation of its National Air Emissions Monitoring Study ("NAEMS"), equipment failures, and resulting lack of usable or representative data. Commenters attach a Petition recently submitted to EPA for DEQ's consideration, which lays out the fatal flaws and continued

²⁸ 2007 U.S. Dis. LEXIS 70890, 1:05-CV-01593 (E.D. Cal., Sep 25, 2007).

²⁹ *Id.* at *4-5.

³⁰ *Id.* at *65-70.

³¹ 2008 U.S. Dist. LEXIS 25257, 1:05-CV-00707 (E.D. Cal., Mar. 28, 2008).

³² *Id.* at *11-12.

³³ *Id.* at *18, 20-2.

³⁴ See *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 2017 U.S. Dist LEXIS 154439 (Sep. 21, 2017).

³⁵ O.R.S. § 468A.025(4) & 468A.050.

inadequacies of the emission estimating methodologies development, why the process will not yield useful modeling tools, and the reasons EPA should abandon the process entirely.³⁶

Initial draft models were deemed utterly unusable by the scientific community. Indeed, a decade ago, EPA's own Science Advisory Board lambasted the emission models as being unfit for national use, incapable of predicting emissions beyond the few farms studied, and calling on EPA to change course and focus on process-based models that relied on a broader dataset than that yielded by the flawed NAEMS process.³⁷ In its more recent drafts, rather than attempting to address the issues identified by the Science Advisory Board, EPA appears to be ignoring those recommendations in a push to put process over substance in order to finalize emission estimating methodologies, no matter how scientifically indefensible they might be.

Not only are the models themselves fundamentally flawed and incapable of producing scientifically sound emissions estimates, but they are prohibitively difficult to use. The draft Dairy model released in June 2022 would require dairy operators to run literally hundreds of calculations per pollutant, using daily-changing data points, in order to come up with annual emission estimates.³⁸ For all of these reasons, and those outlined in the attached Exhibit A, Commenters caution the Agency against using these models or allowing EPA's process to justify further delay. Far superior models are available today.

III. Given the Technical Expertise Needed to Develop and Administer the Program, Commenters Urge DEQ to Maintain Full Authority Over It

Given the technical complexities involved in developing an air permitting program, assessing air emission models, and determining best management practices that will effectively yield emission reductions, Commenters strongly recommend that DEQ maintain full authority over any program development and administration, rather than delegate to the Oregon Department of Agriculture ("ODA"). In directing EQC and ODA to enter into a memorandum of understanding relating to agricultural air quality regulation, the State Legislature gave EQC substantial discretion, including discretion to consider "the desirability of having the State Department of Agriculture serve as the lead agency responsible" for program administration.³⁹

Program delegation to ODA would not be desirable for three main reasons. First, ODA lacks the institutional knowledge and technical expertise necessary to administer a complex air permitting system. Second, administration of agricultural air quality regulations poses a direct conflict with ODA's mission and purpose, which is to develop and promote agricultural markets. Commenters attach a report on ODA's enforcement of the Clean Water Act program for CAFOs for DEQ's consideration, which explains ODA's lack of expertise and conflict of interest when it comes to environmental regulation.⁴⁰ For both of these reasons, repeating the ill-conceived

³⁶ Animal Legal Defense Fund et. al. v. EPA, *Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations* (Oct. 26, 2021), attached hereto as Exhibit A.

³⁷ See Ex. A at 15.

³⁸ EPA, Development of Emissions Estimating Methodologies for Dairy Operations Draft, 8-1-8-4 (June 2022).

³⁹ O.R.S. § 468A.790(2)(e).

⁴⁰ See Animal Law Clinic Lewis & Clark Law School, *Revised Report on the Enforcement of the Clean Water Act As it relates to CAFOs by Oregon's Department of Agriculture* (2012), attached hereto as Exhibit B.

delegation of significant CAFO water pollution authority to ODA in the air pollution context would compromise the program from the outset.

Furthermore, ODA is fundamentally prohibited from administering Clean Air Act requirements unless expressly authorized by EPA to do so. EPA has only authorized two agencies to administer Clean Air Act programs in Oregon: DEQ and the Lane Regional Air Protection Agency.⁴¹ Thus, DEQ *cannot* delegate its Clean Air Act responsibilities to ODA absent EPA authorization, and the requisite codification of that delegated authority in EPA regulations. The fact that other states with comparable air permitting programs have *not* delegated authority to non-authorized agencies underscores this point. Indeed, administration of the California dairy air program, which incorporates elements of both federal and state law, lies with the state agency and regional air districts authorized by EPA to implement the Clean Air Act.⁴² Because the program proposed here would likewise include elements of federal Clean Air Act and state-based regulation, DEQ must follow suit and retain program administration authority.

IV. Only the Largest of Dairy Operations Will Be Subject to the Program and Its Implementation Costs Will Be Economically Feasible

As explained in the Petition, the goal of the proposed program is to target the minority of large Dairy CAFOs responsible for the lion's share of the State's dairy air pollution. To this end, the program as proposed would only apply to Dairy CAFOs confining 700 or more mature cows, which also utilize liquid manure handling systems. This size threshold coincides with existing state standards for what is considered a "Large" CAFO.⁴³ The requirement that such facilities also use liquid manure systems further focuses the program on high emitters, because this form of industrial waste management is known to exacerbate air emissions.⁴⁴

In our original submission, we estimated that approximately 91 facilities would fall within the definition of a "Regulated Dairy." However, after receiving updated information from ODA regarding which dairy operations meet all of the proposed regulatory criteria, Commenters now anticipate the rule would apply to only 37 Dairy CAFOs⁴⁵ (15 percent of dairies statewide), while still addressing the majority of dairy air emissions (these facilities confine 56 percent of the States' dairy cows).

⁴¹ See 40 C.F.R. 40 C.F.R. § 60.4(a)(39); *Id.* at § 61.04(b)(39); *Id.* at § 63.99(a)(38). See also EPA, Clean Air Act Permitting Authorities in Oregon, available at: <https://www.epa.gov/caa-permitting/clean-air-act-permitting-authorities-oregon>.

⁴² See Cal. S.B. 700, Section 1(b) (2003) (expressing the intent of the legislature "to require the State Air Resources Board and air quality management districts and air pollution control districts in the state" to regulate agricultural sources of air pollution).

⁴³ See OAR § 603-074-0010(9)(c) & (d) (defining "Large" Tier I and Tier II CAFOs as over 700 mature dairy cattle).

⁴⁴ See EPA/USDA, *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*, 35 (Sep. 2017) ("The decomposition of manure solids during the anaerobic storage of liquid or slurry manures often causes odors and may lead to increased emissions of NH₃, VOCs, H₂S, and CH₄.").

⁴⁵ See ODA, List of Oregon Dairy Operations over 700 mature cows with liquid manure handling systems (received Aug. 30, 2022), attached hereto as Exhibit C.

A cost analysis of the Petition’s recommended best management practices demonstrates that these large operations could readily absorb the reasonable cost of program implementation.⁴⁶ The Dairy CAFOs at issue here are multi-million-dollar operations with millions of dollars in operating costs and overhead every year. In 2021, the USDA estimated the annual average operating and overhead costs for Dairy CAFOs with 1,000 cows was approximately \$5.4 million.⁴⁷

The costs associated with the proposed program are modest by contrast. Many of the suggested practices, like changes in feed handling and management, and increased cleaning of animal housing, would not require the purchase of any new equipment or infrastructure, but rather the allocation of labor to such tasks.⁴⁸ Where best management practices would require new equipment or infrastructure—including purchase of weatherproof structures for grain storage, solid waste separator systems, lagoon covers, or biofilters⁴⁹—such costs are also comparatively reasonable.⁵⁰ For instance, for a 700-cow operation, a solid waste separator system would cost approximately \$3,500–4,200. An impermeable lagoon cover with a 20-year lifespan would cost between \$3,500–5,600 for a 120-foot diameter manure lagoon. In other words, implementing these practices will not break the bank.

V. In Addition to Any Funds Appropriated by the Legislature, DEQ Can Also Fund the Program Through Federal Grants and Permitting Fees

Commenters anticipate the development and administration of the proposed air program will not require prohibitively large appropriations, in part due to the small universe of facilities subject to regulation. The CAFO water program provides a useful comparison. The 2021–2023 budget allocated approximately \$2.8 million to the CAFO water program, which applies to 515 CAFOs.⁵¹ In combination with permit fee revenue⁵² and the occasional civil penalty assessed for permit violations,⁵³ program funding comes to roughly \$6,000 per CAFO. By contrast, because

⁴⁶ See Food & Water Watch, *Oregon Dairy Farm Best Management Practice Cost Research* (Oct. 11, 2022), attached hereto as Exhibit D.

⁴⁷ See USDA, Economic Research Service, *Milk Cost of Production Estimates by Size of Operation* (Oct. 3, 2022), available at: <https://www.ers.usda.gov/webdocs/DataFiles/52180/MilkSizes2016base.xlsx?v=6989.4> (estimating operating costs and overhead in 2021 at \$25.80 per 100 pounds of milk sold, averaging costs between the 500-999 cow category and 1,000-1,999 cow category); USDA, *Milk Production Report* (Feb. 23, 2022), 13, available at: <https://downloads.usda.library.cornell.edu/usda-esmis/files/h989r321c/7d279w693/f7624g40c/mkpr0222.pdf> (documenting milk production per cow in Oregon averaged 20,976 pounds for 2021). (20,976 pounds-milk x 1,000 cows) x (\$25.80 / 100 pounds-milk) = \$5,411,808 in annual operating costs and overhead for a 1,000-cow dairy.

⁴⁸ See Ex. D at 1 (recording hourly wages of farm and ranch worker labor in Oregon averaged \$14.13 per the Bureau of Labor Statistics).

⁴⁹ Note that Commenters do not support the use of anaerobic digesters or the production of factory farm gas as best management practices. See Petition at 20, n.57 and accompanying text; Appendix A, n.14 and accompanying text.

⁵⁰ Ex. D at 1-2.

⁵¹ See *2021-2023 Legislative Adopted Budget*, OR. DEPT. OF AGRIC., 149 (Mar. 29, 2022), <https://www.oregon.gov/oda/shared/Documents/Publications/Administration/21-23LAB.pdf> (appropriating \$2,470,083 in General Funds and \$354,385 in Other Funds to the CAFO program).

⁵² Large dairy CAFOs (700 or more dairy cows) application fees total over \$102,000 and annual permitting fees total over \$80,000. See FWW Analysis of Excel File obtained via Oregon Times.

⁵³ For example, in 2020, 6 Notice of Assessment of Civil Penalty (NACP) were issued for discharge or other permit non-compliance for a total of \$43,064 and 5 NACPs were issued for administrative permit violations for a total of \$4,480. See *Confined Animal Feeding Operation (CAFO) Program: 2020 Annual Report*, OR. DEPT. OF AGRIC., 19 (2020), <https://www.oregon.gov/oda/shared/Documents/Publications/NaturalResources/CAFOReport2020.pdf>.

the proposed air program would currently only apply to 37 Dairy CAFOs—a mere 7 percent of CAFOs regulated under the water program—it would require far fewer resources. Assuming similar per-CAFO costs, the Agency would only need approximately \$222,000 to administer the much smaller program following initial program development.

In addition to future legislative appropriations, DEQ could also fund program development and implementation through a number of federal funding sources. These sources include:

- *Clean Air Act Section 105 Grants:* Through the Clean Air Act, states are eligible to receive federal grant awards “to administer programs that prevent and control air pollution or implement national ambient air quality standards.”⁵⁴ Through this funding source the EPA Regional Administrator can provide up to 60 percent of the approved implementation costs, though revenue collected via a State’s Title V operating permit program may not be used to meet the cost share requirements.⁵⁵
- *Climate Pollution Reduction Grants:* The Inflation Reduction Act presents another funding opportunity. Section 60114 provides \$5 billion in grants for state planning and implementation of programs, policies, measures, and other investments that will achieve greenhouse gas emission reductions.⁵⁶ The congressional appropriation allocates \$250 million for planning grants, and \$4.75 billion for implementation grants.⁵⁷

Once operational, the program could be fully funded through permit fee revenue, depending on the fee class assigned to Dairy CAFOs. DEQ has broad authority to establish by rule a schedule of fees for any class of air contamination source subject to permitting or reporting requirements, as long as such fees are based on the anticipated cost of developing and implementing the program.⁵⁸ Thus, the Agency is empowered to recoup costs, “including but not limited to the cost of processing registrations, compliance inspections, and enforcement.”⁵⁹

At its discretion, DEQ can therefore set permit fee schedules, including application fees and annual fees for Dairy CAFO sources. For ease of reference, below is DEQ’s current permit fee schedule for Air Contaminant Discharge Permits.

Application Fees	
Short Term Activity ACDP	\$4,500.00
Basic ACDP	\$180.00
Assignment to General ACDP	\$1,800.00

⁵⁴ 42 U.S.C. § 7405; 40 C.F.R. § 35.140

⁵⁵ 40 C.F.R. § 35.145

⁵⁶ EPA, *Inflation Reduction Act Overview – Climate and Clean Air-related Provisions*, 7 (Sep. 2022), available at: <https://www.epa.gov/system/files/documents/2022-09/IRA%20Overview.pdf>.

⁵⁷ *Id.*

⁵⁸ O.R.S. § 468A.050(3)–(4).

⁵⁹ *Id.*

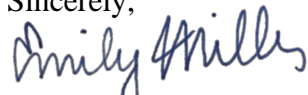
Simple ACDP	\$9,000.00
Construction ACDP	\$14,400.00
Standard ACDP	\$18,000.00
Annual Fees	
Short Term Activity ACDP	\$0
Basic ACDP - #1-7	\$648.00
Basic ACDP - #8	\$1,469.00
General ACDP – Fee Class One	\$1,469.00
General ACDP – Fee Class Two	\$2,644.00
General ACDP – Fee Class Three	\$3,818.00
General ACDP – Fee Class Four	\$734.00
General ACDP – Fee Class Five	\$245.00
General ACDP – Fee Class Six	\$490.00
Simple ACDP – Low Fee	\$3,917.00
Simple ACDP – High Fee	\$7,834.00
Standard ACDP	\$15,759.00
Cleaner Air Oregon Annual Fees⁶⁰	
Basic ACDP - #1-7	\$151.00
Basic ACDP - #8	\$302.00

VI. Conclusion

As explained in detail in the Petition, the proposed Dairy Air Emissions rule would work to reduce harmful emissions associated with the State’s largest, highest-emitting dairies, thereby improving air quality and public health, and advancing Oregon’s climate goals. Not only is DEQ empowered to act under both federal and state law, but it also has tools, resources, and funding opportunities available to develop and implement this much-needed program. As such, we urge the Agency to recommend that EQC grant the Petition in full and adopt the Dairy Air Emissions Program as proposed.

Thank you for considering our comments.

Sincerely,



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⁶⁰ Starting in 2020, all facilities with DEQ air permits are required to pay an annual Cleaner Air Oregon fee. *Cleaner Air Oregon Permitting Requirements*, OR. DEPT. OF ENV’T QUALITY, <https://www.oregon.gov/deq/air/aqPermits/Pages/CAO-reg.aspx>; see also *Cleaner Air Oregon Annual Fees*, Or. Admin. R. 340-216-8020, Table 2.

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On Behalf of:

Food & Water Watch
Animal Legal Defense Fund
Beyond Toxics
Center for Biological Diversity
Center for Food Safety
Columbia Riverkeeper
Humane Voters Oregon
Mercy for Animals
Northwest Environmental Defense Center
World Animal Protection

EXHIBIT A

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ANIMAL LEGAL DEFENSE FUND, BUFFALO RIVER WATERSHED ALLIANCE (ARKANSAS), CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR FOOD SAFETY, CENTER ON RACE, POVERTY, & THE ENVIRONMENT (CALIFORNIA), CLEAN WATER FOR NORTH CAROLINA (NORTH CAROLINA), EARTHJUSTICE, ENVIRONMENTAL INTEGRITY PROJECT, FARM AID, FRIENDS OF THE EARTH, FRIENDS OF FAMILY FARMERS (OREGON), FRIENDS OF TOPPENISH CREEK (WASHINGTON), FOOD ANIMAL CONCERNS TRUST, FOOD & WATER WATCH, GOVERNMENT ACCOUNTABILITY PROJECT, HUMANE SOCIETY OF THE UNITED STATES, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (IOWA), INSTITUTE FOR AGRICULTURE & TRADE POLICY, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, NORTH CAROLINA CONSERVATION NETWORK (NORTH CAROLINA), PUBLIC JUSTICE, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, SOUTHERN ENVIRONMENTAL LAW CENTER, AND WATERKEEPER ALLIANCE

Petitioners,

v.

MICHAEL REGAN, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

PETITION TO RESCIND THE AIR CONSENT AGREEMENT
AND ENFORCE CLEAN AIR LAWS AGAINST ANIMAL FEEDING OPERATIONS

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I. INTRODUCTION

Rural communities deserve a safe, prosperous, and plentiful food system rooted in dignity and respect. In this system, Black, Indigenous, Latino, Asian, and white communities enjoy clean land, air, and water where independent family farms and renewable energy build diversified, local, and thriving rural economies. Sadly, past administrations have prioritized the interests of corporate-controlled industrial agriculture over the well-being of rural communities. Corporate integrators, trade groups, and other powerful titans of industry, have flourished while communities and farmers have suffered through years of pollution, hollowed out Main Streets, and declining economic opportunities. This has led to what any neutral observer would decry as undemocratic oppression and exploitation. Our government has the duty and authority to protect the health and well-being of our communities by enforcing federal air pollution laws, which do not exempt this industrial system.

Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs.¹ Nearly *14,000* AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010.² Yet, as of the date of this letter, EPA has yet to finalize *any* EEMs or end the Air Consent Agreement. As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority.

¹ Notice of Animal Feeding Operation Consent Agreement & Final Order, 70 Fed. Reg. 4957 (Jan. 31, 2005) [hereinafter 2005 Notice]; *see also id.* at 4962 Appendix 1: Air Consent Agreement [hereinafter 2005 Air Consent Agreement].

² EPA OIG, IMPROVING AIR QUALITY: ELEVEN YEARS AFTER AGREEMENT EPA HAS NOT DEVELOPED RELIABLE EMISSIONS ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES, Report No. 17-P-0396, at 5 (Sept. 19, 2017) [hereinafter 2017 OIG REPORT], available at https://www.epa.gov/sites/default/files/2017-09/documents/epa_oig_20170919-17-p-0396.pdf.

Pursuant to the right to petition the government provided in the First Amendment to the U.S. Constitution³ and the Administrative Procedure Act,⁴ Petitioners formally submit this petition to EPA to put an end to the enforcement amnesty. The Petitioners collectively represent millions of citizens from across the United States, including many individuals adversely impacted by CAFO air pollution in their communities.

We request your written response regarding this unacceptable dereliction of duty within **30 days** of receiving this Petition. We ask that you rescind the Air Consent Agreement, take all actions consistent with President Biden's executive orders to enforce all applicable laws against AFOs, and prioritize environmental justice in enforcement and climate actions. If you instead wish to continue the policies of the past three administrations, please set forth the reasons for refusing to grant this petition.

II. AIR POLLUTION FROM AFOs HAS SERIOUS HEALTH IMPACTS ON SURROUNDING COMMUNITIES.

Air pollution is the largest environmental mortality risk factor in the United States, and agriculture—particularly industrial animal production—is a major contributor to reduced air quality.⁵ According to a recent study published in the Proceedings of the National Academy of Sciences of the United States (PNAS), air pollution from U.S. agriculture includes direct emissions of fine particulate matter (PM_{2.5}) and PM_{2.5} precursors such as ammonia (NH₃), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and volatile organic compounds (VOCs).⁶ This pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products.⁷ Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production, with the remaining 20 percent

³ U.S. CONST. amend. I.

⁴ 5 U.S.C. 553(e).

⁵ J. Stanaway et al., *Global, Regional, & National Comparative Risk Assessment of 84 Behavioural, Environmental, & Occupational, And Metabolic Risks or Clusters of Risks For 195 Countries & Territories, 1990-2017*, 392 LANCET 1923 (2018), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2932225-6>; J. Lelieveld et al., *The Contribution Of Outdoor Air Pollution Sources To Premature Mortality On A Global Scale*, 525 NATURE 367 (2015); S. Bauer et al., *Significant Atmospheric Aerosol Pollution Caused By World Food Cultivation*, 43 GEOPHYS. RES. LETT. 5394 (2016), <https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068354>.

⁶ N. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PNAS e2013637118, 1 (2021), <https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf>.

⁷ *Id.*

attributable to plant-based foods.⁸ The majority of deaths—12,400 deaths each year—are attributable to ammonia acting as a PM_{2.5} precursor.⁹ The study noted that on-farm emission reduction interventions, such as improved livestock waste management and fertilizer application practices, combined with dietary shifts toward more plant-based foods, could dramatically reduce the number of mortalities caused by this industry.¹⁰

Another recent study found that poultry AFOs in Pennsylvania were a major risk factor for pneumonia.¹¹ The authors observed that “[e]xposure to air pollutants such as particulate matter . . . reduc[es] the lung’s defenses against bacterial pathogens, thereby increasing susceptibility to respiratory infections.”¹² In addition, the authors also noted that

As a source of air pollution, industrial food animal production can compromise respiratory health. These large, homogeneous, densely packed livestock operations emit particulate matter, endotoxins, and other pollutants, which spread downwind through ventilation fans and emissions from decomposing manure. Adverse effects on lung function and increased respiratory symptoms have been reported among individuals living near [industrial food animal production], particularly among susceptible groups.

The study found a 66 percent increase in the odds of being diagnosed with community-acquired pneumonia among people living closest to high-density poultry operations, demonstrating that “residing closer to more and larger poultry operations was associated with [community-acquired pneumonia], a cause of significant morbidity and mortality.”¹³

EPA is culpable for many of these deaths and illnesses. For nearly two decades, EPA’s sustained approach of ignoring pollution generated by the AFO industry under the guise of the Air Consent Agreement has resulted in the emission of significant amounts of unchecked air pollution, including ozone, PM_{2.5}, nitrogen oxides, sulfur dioxide, and VOCs—pollutants that EPA is required to regulate under the Clean Air Act (CAA). To make matters worse, during this

⁸ *Id.* at 2.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ M. Poulsen et al., *High-Density Poultry Operations & Community-Acquired Pneumonia in Pennsylvania*, 2 ENV’T. EPIDEMIOLOGY e013 (June 2018), https://journals.lww.com/environepidem/Fulltext/2018/06000/High_density_poultry_operations_and.5.aspx.

¹² *Id.* at 1.

¹³ *Id.* at 6.

same period EPA moved to exempt the industry from having to comply with two critical pollution reporting statutes: the Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹⁴ resulting in reduced public access to the information that affected communities need to protect themselves, and likely in turn contributing to greater mortality in communities surrounding these operations.

In 2013, scientists at John Hopkins University analyzed the practical public health impacts of EPA's efforts to limit public access to information about pollution from AFOs.¹⁵ As the authors summarized:

Despite literature associating AFOs with compromised air quality and residential proximity to AFOs with adverse health outcomes, availability of information concerning AFO airborne hazardous releases ranged from limited to nonexistent across the states that we examined These data gaps compromise the ability of public health officials and scientists to characterize exposures and risks, and limit their ability to implement and evaluate interventions when appropriate. The lack of data also means that information on AFO hazardous releases is not available to residents of affected communities.¹⁶

EPA's failure to address harmful emissions, compounded by its efforts to keep citizens in the dark about AFO pollution, has contributed to serious public health impacts.

¹⁴ CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (exempting airborne hazardous releases from animal waste at farms (including AFOs) from CERCLA and EPCRA reporting requirements); *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017) (vacating EPA's 2008 rule and rejecting EPA's argument that the reporting requirements serve no regulatory purpose); Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements, 83 Fed. Reg. 37444 (Aug. 1, 2018) (incorporating revisions enacted by the FARM Act, which exempts farms from CERCLA release reporting requirements, despite the D.C. Circuit's vacatur of the 2008 final rule in *Waterkeeper Alliance v. EPA*); Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right to Know Act 84 Fed. Reg. 27,533 (June 13, 2019) (adding the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of CERCLA); see also EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Oct. 21, 2021), <https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms>.

¹⁵ T. Smith et al., *Availability of Information about Airborne Hazardous Releases from AFOs*, 8 PLOS ONE e85342 (2013), <https://doi.org/10.1371/journal.pone.0085342>.

¹⁶ *Id.* at 7.

III. THE AIR CONSENT AGREEMENT SHIELDS AFOs FROM EPA ENFORCEMENT ACTIONS.

A. Rather than Enforce the Law, EPA Worked with Industry to Craft the Air Consent Agreement.

In the early 2000s, after years of dereliction by AFO operators of their obligation to seek CAA permits and report emissions under CERCLA and EPCRA, EPA took a series of legal actions designed to bring delinquent AFOs into the CAA permitting program.¹⁷ Those legal actions constitute the last time EPA meaningfully enforced the CAA against AFO polluters.

Instead of continuing to use litigation or other comparable methods to move AFOs into compliance with their obligations under the CAA, EPA spent three years crafting a backroom deal with representatives of the pork industry, egg producers, and other AFO industry groups for a “safe harbor” against enforcement in the form of a release and covenant not to sue for potential violations of the CAA, CERCLA, and EPCRA. As outlined in a memorandum sent to EPA officials in June 2002, industry representatives offered to fund a nationwide air emissions monitoring study to collect emissions data from AFOs in exchange for enforcement protection.¹⁸ The industry’s June 2002 safe harbor proposal formed almost verbatim the Air Consent Agreement that EPA published for voluntary enrollment in early 2005.¹⁹

Under the Agreement secretly negotiated with industry representatives, EPA promised not to sue AFOs for violating CAA permitting requirements or CERCLA/EPCRA reporting requirements in exchange for AFOs paying a nominal civil penalty to fund the nationwide air emissions monitoring study.

¹⁷ See, e.g., Press Release, Dep’t of Justice, Ohio’s Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities (Feb. 23, 2004), https://www.justice.gov/archive/opa/pr/2004/February/04_enrd_105.htm; 2017 OIG REPORT at 17 (“[M]onitoring conducted as part of an EPA enforcement case in 2003 demonstrated . . . total PM emissions of 550 and 700 tons per year at two large egg-layer AFOs,” significantly “exceed[ing] the 250-tons-per-year permitting threshold for PM emissions.”); see also Press Release, Dep’t of Justice, Government Reaches Settlements with Seaboard Foods and PIC USA (Sept. 15, 2006), https://www.justice.gov/archive/opa/pr/2006/September/06_crm_625.html; Press Release, Dep’t of Justice, Nation’s Second Largest Hog Producer Reaches Settlement With U.S. & Citizen’s Group (Nov. 1, 2001), https://www.justice.gov/archive/opa/pr/2001/November/01_enrd_604.htm.

¹⁸ 2002 Industry Safe Harbor Proposal.

¹⁹ See *id.*; 2005 Notice at 4958.

B. The Air Consent Agreement Provided a Safe Harbor from Enforcement of Federal Law Pending the Finalization of EEMs.

The Air Consent Agreement outlines two main sections: (1) the Consent Agreement, and (2) the Monitoring Fund. The Consent Agreement includes the main terms of the Agreement between participating AFOs and the government, including a safe harbor under which the government releases and covenants not to sue participating AFOs for civil violations of the CAA; section 103 of CERCLA; and section 304 of EPCRA.²⁰ In exchange for this enforcement forbearance from EPA, participating AFOs agreed to pay a nominal penalty, as well as a payment of \$2,500 per facility, into a fund known as the Monitoring Fund, which was then to be used to finance the two-year National Air Emissions Monitoring Study (NAEMS).²¹

The Agreement's safe harbor provision covers two substantive Clean Air Act permitting programs, the Title V operating permit program, and applicable State Implementation Plan (SIP) requirements for VOC, ammonia, hydrogen sulfide, and particulate matter. First, it includes the requirements applicable to new and expanding major stationary sources under Parts C and D of Title I, Prevention of Significant Deterioration (PSD) and New Source Review (NSR).²² Second, it includes operating permits required under Title V for major stationary sources.²³ Third, it includes any SIP requirements that regulate the rate, quantity, or concentration of the covered air pollutants.²⁴

In all three permitting programs, the severity of the air pollution in a given air basin determines whether a stationary source exceeds a certain tons per year threshold and thus must obtain a permit under PSD, NSR, and Title V as a major stationary source. This threshold ranges from 10 tons per year in an extreme ozone nonattainment area to 250 tons per year in an area that attains the applicable National Ambient Air Quality Standard.

²⁰ 2005 Air Consent Agreement at ¶¶ 7–23.

²¹ *Id.* at ¶ 53.

²² *Id.* at ¶ 26; 42 U.S.C. §§ 7470-7515.

²³ 2005 Air Consent Agreement at ¶ 26; 42 U.S.C. §§ 7661–7661f.

²⁴ 2005 Air Consent Agreement at ¶ 26.

The Agreement's safe harbor provision covers two reporting requirements: section 103 of CERCLA,²⁵ and section 304 of EPCRA. EPCRA contains a general requirement that facilities that "release" more than a threshold quantity of an "extremely hazardous substance" must report that release to local emergency response agencies, and that those reports must be made available to the public.²⁶ Immediate release reporting under EPCRA provides local and state emergency responders with information critical to appropriately assessing and safely responding to citizen complaints of suspicious or noxious odors. EPA lists ammonia and hydrogen sulfide as "extremely hazardous substances" under EPCRA and lists a reportable quantity of 100 pounds per day. The Air Consent Agreement's safe harbor provision continues to exempt participating AFOs from EPA enforcement for failing to report these releases.

According to EPA, its reason for exchanging a safe harbor from enforcement of the CAA, CERCLA, and EPCRA for a two-year monitoring study was to timely "collect data and aggregate it with appropriate existing emissions data; analyze the monitoring results; and create tools (e.g., tables and/or emission models) that AFOs could use to determine whether they emit pollutants at levels that require them to apply for permits under the CAA or submit notifications under CERCLA or EPCRA."²⁷ And further, because the monitoring study would be "designed to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located," it would ultimately be used "to produce a scientifically sound basis for measuring and estimating air emissions from AFOs" through EEMs.²⁸ Thus, EPA provided that the reason for the Agreement was to ensure "the achievement of real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector."²⁹

To that end, once the final EEMs are published the participating AFOs would have a defined amount of time to apply the EEMs to their operations and determine whether any CAA, CERCLA, or EPCRA statutory obligations apply, and, if so, bring their operations into

²⁵ Subsequently, the Fair Agricultural Reporting Method (FARM) Act expressly exempted reporting of air emissions from animal waste at a farm from CERCLA section 103. *See* Pub. L. 115-141 § 1101-03 (codified at 42 U.S.C. § 9603(e) (2018)).

²⁶ 42 U.S.C. § 11004(a).

²⁷ 2005 Notice at 4960.

²⁸ *Id.*

²⁹ *Id.* at 4961.

compliance with those requirements.³⁰ Once a participating AFO complies with each of those requirements, “the statute of limitations for all claims covered by the release and covenant not to sue . . . will be tolled from the date this Agreement is approved by the [Environmental Appeals Board] until . . . 120 days after Respondent files the required certification . . . or December 31, 2011,” whichever is earlier.³¹ In the alternative, if EPA determines that it cannot develop EEMs, then it should notify participants that the Air Consent Agreement, including its enforcement amnesty, will come to a close.³² As the amnesty tolling provision suggests, EPA anticipated that the terms of the Air Consent Agreement would be met and the Agreement fulfilled before 2012 at the latest.³³

The Air Consent Agreement embodies a highly unusual enforcement philosophy inconsistent with the Clean Air Act’s enforcement scheme. EPA alleged violations prior to any investigation, assessed civil penalties without considering civil penalty factors, and invited participants to enter into the Agreement after it had already been negotiated for years with the industry. By its own terms, the Agreement deferred enforcement until the Agency developed EEMs, which EPA expected to complete within 18 months of completing NAEMS.

C. The Environmental Appeals Board and the D.C. Circuit Court of Appeals Allowed EPA to Implement the Air Consent Agreement.

To enter the Air Consent Agreement, an AFO owner or operator needed only to inform EPA of its election to participate and provide EPA with certain information regarding the size and number of AFOs that they designated for inclusion. In total, nearly 2,600 participants, representing 13,900 AFO facilities in 42 states, entered into the Air Consent Agreement.³⁴ “According to the EPA, these 13,900 AFOs comprise more than 90 percent of the largest AFOs in the United States,” and included participants from across the broiler chicken, egg layer, hog, and dairy industries.³⁵

³⁰ 2005 Air Consent Agreement at ¶ 28.

³¹ *Id.* ¶ 31.

³² *Id.* ¶ 38.

³³ *Id.*; *see also* 2017 OIG REPORT at 5 (providing that “[b]ased on . . . original expectations, . . . AFOs would have obtained any necessary permits and installed emission controls by 2010”).

³⁴ 2017 OIG REPORT at 6.

³⁵ *Id.*

In 2006, EPA’s Environmental Appeals Board (EAB) approved individual Consent Agreements in batches. In addition to ratifying the Agreements, EAB affirmed EPA’s authority to enter into the Agreement as an administrative enforcement action.³⁶ The relevant penalties and monitoring funds were collected from individual participants as well as from the National Pork Board, which provided at least \$6,000,000 towards payment of these fees on behalf of hog producers rather than the producers paying those fees themselves.³⁷ The NAEMS process then began in earnest in 2007—the year NAEMS monitoring should have been completed according to the original timeline. It continued for three years, rather than two, and “completed in early 2010, about 2 years later than originally expected.”³⁸

Several environmental and community groups challenged the Air Consent Agreement as a rulemaking that violated the CAA, CERCLA, EPCRA, and public notice and comment requirements. The D.C. Circuit Court of Appeals denied the groups’ consolidated petitions for review, holding that the Agreement is an enforcement action not subject to judicial review.³⁹

In its briefing before the D.C. Circuit, EPA took the legal position that the safe harbor was a “limited covenant not to sue” that would last approximately three and a half years until 2010.⁴⁰ The court took EPA at its word, concluding that the Agreement “merely defers enforcement” and a “limited deferral subject to enforcement conditions works no change in the agency’s substantive interpretation or implementation of the Acts.”⁴¹ The court also rejected the

³⁶ See, e.g., *In re Consent Agreements & Proposed Final Orders for AFOs*, 2006 WL 478143 (EAB Jan. 27, 2006) (finding that first twenty Agreements were administrative penalty orders subject to Board review).

³⁷ Initially, the National Pork Board was enjoined from contributing \$6,000,000 on behalf of producers because the contribution was found to violate the Pork Act and contravene public policy, but this decision was reversed by a second administrative law judge allowing the National Pork Board to pay farmer’s fees associated with EPA’s Air Emission Study. See *In re: McDowell*, 65 Agric. Dec. 795 (U.S.D.A. 2006) *rev’d*, *In re: McDowell*, 67 Agric. Dec. 1230, 1232 (U.S.D.A. 2008) (“revers[ing] the ALJ’s Initial Decision [and granting Administrator’s motion to dismiss] [because] Petitioners lack standing, the Second Amended Petition fails to state a legally cognizable claim, and the National Pork Board’s payment of the per-farm-fee associated with EPA’s Air Emissions Study is in accordance with the Pork Act and the Pork Order”).

³⁸ 2017 OIG REPORT at 11; 10 (“Based on the original expectations for completion of the tasks in the Notice, the NAEMS monitoring would have been completed in 2007, and the EPA would have begun publishing EEMs in 2009.”); 12 (Figure 4) (comparing expected and actual NAEMS development timeline).

³⁹ *Ass’n of Irrigated Residents v. EPA*, 494 F.3d 1027, 1031 (D.C. Cir. 2007).

⁴⁰ See EPA’s Brief at 11-12, 23, 28, (D.C. Cir. Feb. 2, 2007).

⁴¹ *Ass’n of Irrigated Residents*, 494 F.3d. at 1033.

groups’ contention that EPA had abdicated its enforcement duty because the court believed the limited deferral “is part of the agency’s attempt to ensure that AFOs comply with the Acts.”⁴²

Had the court understood that EPA would extend its “limited” deferral for over ten years to 2021 and beyond—straight through the Obama and Trump Administrations—then that unbound deferral would undoubtedly have affected the court’s analysis.

D. EPA Has Relied On The Air Consent Agreement To Deny Petitions To Regulate Air Emissions from AFOs.

To make matters worse, in addition to using the Air Consent Agreement and EEM process as a shield against adequately enforcing the CAA or EPCRA against AFO polluters, EPA is using the Agreement as an excuse to deny or ignore every administrative petition related to AFO air pollution that has been filed with the Agency since 2005. EPA is also allowing AFOs to use the Agreement to keep citizens from enforcing EPCRA.

Since 2005, EPA has received several administrative rulemaking petitions to address AFO emissions, including a 2009 petition to list and regulate AFOs as a source category under CAA Section 111 (2009 CAFO Source Petition),⁴³ and a 2011 petition to regulate ammonia as a criteria pollutant under CAA Sections 108 and 109 (2011 Ammonia Petition).⁴⁴ According to a report by EPA’s Office of the Inspector General (OIG), discussed further below, “EPA staff told [OIG] they did not plan to evaluate the need for additional regulations as laid out in these petitions until the EEMs are finalized.”⁴⁵

For the 2009 CAFO Source Petition, EPA’s refusal to engage with the subject matter of the petition came in the form of a denial of the petition in 2017.⁴⁶ As noted in the denial signed by former EPA Administrator Scott Pruitt, EPA explicitly denied the petition not on the

⁴² *Id.* at 1035.

⁴³ The Humane Soc’y of the U.S., Petition to the U.S. EPA to List Concentrated Animal Feeding Operations Under CAA Section 111 (B)(1)(A) (Sep. 21, 2009).

⁴⁴ Environmental Integrity Project, Petition to the U.S. EPA for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109 (Apr. 6, 2011).

⁴⁵ 2017 OIG REPORT at 18.

⁴⁶ Denial of Petition to List Concentrated Animal Feeding Operations Under Clean Air Act, 82 Fed. Reg. 60,940 (Dec. 26, 2017).

substance of the request,⁴⁷ but rather due to the “ongoing budgetary uncertainties” and EEM process.⁴⁸ Acknowledging the findings of the 2017 OIG Report, the denial letter then goes on to say that EPA will conduct a systematic planning process as identified in that report by April 2018 and establish milestones for issuing updated draft EEMs by July 2018.⁴⁹ A comprehensive set of draft or final EEMs still has yet to be issued, but EPA continues to use the EEM process as a convenient excuse not to take further action to *actually address* and limit air pollution from concentrated animal feeding operations (CAFOs), as this petition would have enabled.

With respect to the 2011 Ammonia Petition, EPA has failed to respond—even as the evidence of harm continues to mount.⁵⁰ As mentioned above, public health scientists have drawn clear connections between ammonia from animal production and thousands of annual PM-related deaths, and have also shown that living in close proximity to AFOs is associated with pneumonia.⁵¹ Another study found significant associations between Pennsylvania CAFOs and asthma.⁵² The authors of the ammonia study noted that industrial food animal production facilities “are a source of odors and several air pollutants, including particulate matter, hydrogen sulfide, and ammonia,” and “these air pollutants and odors have been associated with asthma exacerbations.”⁵³ The role of ammonia in exacerbating water quality impairments has also become more clear over time. It now appears that AFOs emit more ammonia—and more ammonia deposits closer to the source of emissions than previously thought.⁵⁴ This means that

⁴⁷ Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass’n of Irrigated Residents, at 2 (Dec. 15, 2017) (“This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A).”).

⁴⁸ *Id.* at 1–2.

⁴⁹ *Id.* at 8–9.

⁵⁰ Although the petitioners challenged EPA’s failure to respond in 2015 (re-filed in 2016), petitioners voluntarily dismissed the complaint in 2017. See Notice of Voluntary Dismissal, *Environmental Integrity Project et al. v. EPA*, Case No. 16-cv-02203-ABJ (D.D.C. Jan. 17, 2017).

⁵¹ See *supra* Part II.

⁵² S. Rasmussen et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania, 2005-2012*, 14 INT’L J. ENV’T. RESH. PUB. HEALTH 362 (2017).

⁵³ *Id.*

⁵⁴ See, e.g., ENV’T INTEGRITY PROJECT, AMMONIA EMISSIONS FROM POULTRY INDUSTRY MORE HARMFUL TO CHESAPEAKE BAY THAN PREVIOUSLY THOUGHT (2018), <https://environmentalintegrity.org/wp-content/uploads/2017/02/Ammonia-Report.pdf>; see also ENV’T INTEGRITY PROJECT, POULTRY INDUSTRY POLLUTION IN THE CHESAPEAKE REGION (2020), <https://environmentalintegrity.org/wp-content/uploads/2020/04/EIP-Poultry-Report.pdf>; J. Baker et al., *Modeling & Measurements of Ammonia from Poultry Operations: Their Emissions, Transport, & Deposition in the Chesapeake Bay*, 706 SCI. TOTAL ENVIRONMENT 135290 (Mar. 2020), <https://www.sciencedirect.com/science/article/pii/S0048969719352829>.

ammonia is a central contributor to algae blooms, dead zones, and other impairments in large estuaries like the Chesapeake Bay.

In addition, EPA continues to allow AFOs to use the Air Consent Agreement and EEM development process to keep citizens from enforcing statutes such as EPCRA⁵⁵ against AFOs.⁵⁶ Although EPA can prevent the Agreement from being used as an affirmative defense in EPCRA citizen enforcement suits, the agency has opted not to do so. As a result, EPA is allowing this Agreement to stand in the way of effective enforcement of this statute against AFO polluters, regardless of the amount or persistence of that pollution.

IV. EPA’S MONITORING STUDY WAS FLAWED, UNDERMINING EPA’S ABILITY TO DEVELOP VALID EEMs.

A. EPA Limited the Size and Geographic Scope of its Study, Despite the Entry of Nearly 14,000 AFOs into the Agreement.

In announcing the Air Consent Agreement and NAEMS Protocol, EPA claimed that “[m]onitoring will occur at facilities across the country to get a representative sample of the facility types,” and the NAEMS “protocol will provide sufficient data to get a valid sample that is representative of the vast majority of the participating AFOs.”⁵⁷ EPA intended to use the results of this monitoring study “to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located.”⁵⁸ However, the study fell far short of achieving this goal for a variety of reasons,

⁵⁵ In 2019, EPA finalized a rule exempting AFOs from their reporting obligations under EPCRA section 304. *See* Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions From Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act, 84 Fed. Reg. 27,533 (June 13, 2019). That rulemaking has been challenged in federal court by a coalition of environmental and environmental justice groups, including many of the signatories here. *Rural Empowerment Association for Community Help, v. EPA*, Case No. 18-02260-TJK (D.D.C. 2019). Following the D.C. Circuit’s decision in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017), we expect the court to overturn EPA’s 2019 rule, and therefore believe that AFOs may use the Air Consent Agreement to hamper citizen suit enforcement of EPCRA.

⁵⁶ *See, e.g., Humane Soc’y of the United States v. Hanor Company of Wisconsin, LLC*, 289 F. Supp. 3d 692 (E.D. N.C. 2018).

⁵⁷ 2005 Notice at 4960; *see also id.* at 4968 (Attach. B to App. 1: NAEMS Protocol).

⁵⁸ *Id.* at 4960.

including the industry's role in selecting sites, the small number of selected sites, and EPA's flawed site selection methodology.⁵⁹

From the onset, the design and implementation of the study was limited because industry exerted significant control on the pool of potential study sites. Although "EPA acknowledged that emissions data should be collected for every type of animal feeding operation and practice," EPA officials concluded that the industry should be responsible for site selection,⁶⁰ deferring to industry yet again.

Records obtained by the Environmental Integrity Project under the Freedom of Information Act confirm that AFO owners and operators played a major role in selecting the sites in NAEMS.⁶¹ For example, Perdue broiler facilities did not participate in the Air Consent Agreement. Perhaps as a direct consequence, NAEMS did not include a single broiler site in the Mid-Atlantic, despite incredible industry concentration in the region.⁶² Further, Tyson Foods, one of the largest meat producers in the United States, directly sponsored the data collection at its broiler sites in Kentucky.⁶³

Moreover, despite almost 14,000 AFOs receiving enforcement protection under the Agreement, the NAEMS study itself only included 27 sites at 20 AFOs in 10 states.⁶⁴ The small

⁵⁹ See GAO, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION & A CLEARLY DEFINED STRATEGY TO PROTECT AIR & WATER QUALITY FROM POLLUTANTS OF CONCERN 37–39 (2008) <https://www.gao.gov/assets/gao-08-944.pdf> ("[T]he National Air Emissions Monitoring Study may not provide the data that EPA needs to develop comprehensive protocols for quantifying air emissions from [AFOs] for a variety of reasons.") [hereinafter 2008 GAO Report]; see also *id.* at 7 ("[A]s currently structured, the study may not provide the scientific and statistically valid data it was intended to provide and that EPA needs to develop air emissions protocols.").

⁶⁰ *Id.* at 38–39 ("According to EPA officials, the industry identified those monitoring sites that they believed best represented the type of operations and manure management practices that are in their various animal sectors.").

⁶¹ Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing email from Heber to Nizich (Aug. 9, 2006) (stating that "the National Milk Producers Federation approved these site selections for the NAEMS"))).

⁶² See PEW, *Big Chicken: Pollution & Industrial Poultry Production in America* (July 26, 2011), <https://www.pewtrusts.org/en/research-and-analysis/reports/2011/07/26/big-chicken-pollution-and-industrial-poultry-production-in-america>; see also EPA, *2012 Monitored AFOs*, <https://archive.epa.gov/airquality/afo2012/web/html/index.html>.

⁶³ IOWA STATE UNIV. & UNIV. OF KENTUCKY, FINAL PROJECT REPORT ON SOUTHEASTERN BROILER GASEOUS & PARTICULATE MATTER EMISSIONS MONITORING (Dec. 2009) (describing emissions monitoring results of two Tyson broiler production houses located on two separate farm sites in western Kentucky), <https://archive.epa.gov/airquality/afo2012/web/pdf/ky1bsummaryreport.pdf>.

⁶⁴ See 2017 OIG REPORT at 7; see also *2012 Monitored AFOs*, <https://archive.epa.gov/airquality/afo2012/web/html/index.html>.

number of sites selected led the Government Accountability Office (GAO) to raise concerns in 2008, before the completion of NAEMS, that “the study did not include a sufficient number of monitoring sites to establish a statistically valid sample.”⁶⁵ As explained in GAO’s report, “[w]ithout such a sample . . . EPA will not be able to accurately estimate emissions for all types of operations.”⁶⁶

EPA also failed to select geographically representative sites. When designing NAEMS, EPA purportedly intended to study a statistically significant number of representative sites and generate “scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located.”⁶⁷ Yet the study design fell far short of anything capable of achieving this. Primary Investigators for the sites were selected before the NAEMS sites themselves, limiting the role of representativeness in the site selection process since investigators needed to be proximately located to NAEMS sites.⁶⁸ As GAO observed:

[T]he monitoring study does not include the 16 combinations of animal types and geographic regional pairings recommended by EPA’s expert panel. The panel recommended this approach so that the study sample would be representative of the vast majority of participating animal feeding operations, accounting for differences in climatic conditions, manure-handling methods, and density of operations. However, EPA approved only 12 of the 16 combinations recommended by the expert panel, excluding southeastern broiler, eastern layer, midwestern turkey, and southern dairy operations.⁶⁹

Atmospheric conditions, facility age and design, feed, and other variables may significantly impact air emissions.⁷⁰ Therefore, a statistically significant study should include multiple sites representing as many different sets of climate and geographic conditions as possible. This was simply not possible with such a small number of sites.

⁶⁵ 2008 GAO Report at 7, 38–39.

⁶⁶ *Id.*

⁶⁷ 2005 Notice at 4960; *see also* 2008 GAO Report at 36.

⁶⁸ Letter from Tarah Heinzen, Env’t Integrity Project, to EPA Docket Center, (June 11, 2012) (citing Heber, “Site Selection Procedure” (Jun. 10, 2005)).

⁶⁹ 2008 GAO Report at 37–38.

⁷⁰ *See* 2005 Notice at 4977 (listing several “influences on emissions” provided by producer, rather than collected by study).

B. EPA Failed to Generate Adequate Data to Develop EEMs.

In response to the initial announcement of the Agreement and NAEMS, experts and community groups raised concerns about the protocol, even before EPA had selected sites or initiated monitoring.⁷¹ While the study was ongoing, GAO again warned EPA that NAEMS may not “provide data of sufficient quantity and quality” to establish the planned EEMs.⁷² But EPA ignored those concerns. Consequently, EPA’s NAEMS study did not generate the data needed to develop comprehensive protocols for quantifying air emissions from AFOs. In 2013, years after EPA concluded the monitoring study, EPA’s Scientific Advisory Board (SAB) confirmed the concerns raised by GAO in 2008 regarding the small number of sites in the study and the quality of the data.⁷³

In reviewing EPA’s draft EEMs, which the SAB ultimately found unsuitable for national use, SAB panel members noted that the California broiler data sets for Total Suspended Particles and PM_{2.5} had less than 10 percent completeness, while that entire site had only 20 percent completeness during the fall.⁷⁴ EPA also had problems receiving data from contractors and excluded data due to changes in monitoring method. Short monitoring periods at certain sites in combination with missing or invalidated data has resulted in a much smaller than anticipated dataset from which to develop EEMs.

Moreover, EPA’s unnecessarily restrictive data completeness requirements further limited the availability of usable data. The NAEMS protocol required 75 percent of any hour’s data to be valid to accept the hour’s data, and 75 percent of any day’s hours to accept the day’s data.⁷⁵ The 2013 SAB Report noted the study’s low data completeness rates, questioning EPA’s

⁷¹ Many of the signatories submitted comments regarding EPA’s flawed 2005 Air Consent Agreement and NAEMS Protocol. *See, e.g.*, Comments by B. Newell et al., Center on Race, Poverty & the Environment et al., EPA-HQ-OAR-2004-0237-0476 (Mar. 1, 2005).

⁷² 2008 GAO Report at 7.

⁷³ EPA SCI. ADVISORY BD., REVIEW OF EEMs FOR BROILER AFOs AND FOR LAGOONS & BASINS AT SWINE & DAIRY AFOs 2 (Apr. 19, 2013), available at [https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/\\$File/EPA-SAB-13-003-unsigned%20.pdf](https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned%20.pdf), [hereinafter 2013 SAB REPORT] (“In summary, the SAB concludes that the EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.”).

⁷⁴ *Id.*

⁷⁵ *Id.*

decision to require a “too stringent and unnecessary” 75 percent completeness despite the study’s frequent failure to meet that goal.⁷⁶

Though EPA has acknowledged the problems with its completeness criteria,⁷⁷ it has failed to rectify the issue. When issuing the August 2020 draft swine EEMs, EPA conceded that completeness requirements for its open area/source data should be lowered, but only to 52 percent.⁷⁸ However, EPA then released draft poultry EEMs in August 2021 that retained the 75 percent completeness requirement for all data sources.⁷⁹ The completeness criteria for swine barn emission data have also remained unchanged, and EPA maintains that “the potential need to revise this value for barn source emissions will be assessed at a later date, if appropriate.”⁸⁰ Yet no such assessment has taken place.

The more EPA evaluates the data, the more problems it uncovers. For instance, in the draft swine EEMs released in August 2020, EPA discovered new issues with ventilation and moisture interference, resulting in the invalidation and removal of numerous ammonia, hydrogen sulfide, and particulate matter measurements from the dataset.⁸¹ The revision included the removal of all open source ammonia emissions data from one of only four monitoring sites.⁸² This continued reduction of the dataset, which is already too small to provide a complete representative sample, only further compromises EPA’s ability to establish accurate EEMs.

⁷⁶ *Id.* at 26.

⁷⁷ See EPA, QUALITY ASSURANCE PROJECT PLAN: DEVELOPMENT OF EEMs FOR AIR EMISSIONS FROM AFOS 15 (Mar. 13, 2018) [hereinafter 2018 QAPP], available at https://www.epa.gov/sites/default/files/2018-03/documents/final_eem_qapp_v0.0_for_web_0.pdf.

⁷⁸ *Id.* EPA, DEVELOPMENT OF EEMs FOR SWINE BARNS & LAGOONS, DRAFT 3-1 to 3-4. (Aug. 2020), [hereinafter 2020 Draft EEMs for Swine Barns & Lagoons] available at https://www.epa.gov/sites/default/files/2020-08/documents/development_of_emissions_estimating_methodologies_for_swine_barns_and_lagoons.pdf.

⁷⁹ EPA, DEVELOPMENT OF EEMs FOR BROILER OPERATIONS, DRAFT 5-3 to 5-4 (Aug. 2021) [hereinafter 2021 Draft EEMs for Broilers], available at <https://www.epa.gov/sites/default/files/2016-06/documents/afobroilereemreport2012draft.pdf>; DEVELOPMENT OF EEMs FOR EGG-LAYING HOUSES & MANURE SHEDS, DRAFT 2-2 (Aug. 2021) [hereinafter 2021 Draft EEMs for Poultry Houses & Manure Sheds], https://www.epa.gov/system/files/documents/2021-08/development_of_emissions_estimating_methodologies_for_egg_layer_houses_and_manure_sheds.pdf.

⁸⁰ 2018 QAPP at 15.

⁸¹ 2020 Draft EEMs for Swine Barns & Lagoons at 3-2 and 4-2.

⁸² *Id.* at 3-16 and 3-17.

C. EPA Failed to Finalize EEMs Following the Completion of NAEMS.

Following the completion of NAEMS in 2010, three years later than expected, the initial terms of the Air Consent Agreement provided that EPA had 18 months to evaluate the data collected through the study and publish emission unit-specific estimating methodologies.⁸³ In 2012, EPA published draft EEMs for 8 of the 36 emission sources and pollutants described in the Agreement.⁸⁴ Those draft EEMs, which covered broiler AFOs and lagoons and basins at swine and dairy AFOs, were noticed for public comment and submitted to the agency's Scientific Advisory Board (SAB) for review and feedback.⁸⁵

The response to the draft EEMs from both the public and EPA's own SAB was highly critical and called into question NAEMS design and methodology, the data generated, EPA's statistical approach, its treatment of the available data, and the agency's ability to use the draft to accurately estimate air pollution from facilities not otherwise included in the study itself.⁸⁶ The SAB lambasted EPA for its approach to the NAEMS process and the data collected, concluding—among other things—that the draft EEMs developed by EPA should not be applied on a national scale because “EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.”⁸⁷

The SAB recommended that “EPA not apply the current versions of the statistical and modeling tools for estimating emissions beyond the farms in EPA's data set,” and provided “recommendations for how the agency may expand the data set and the applicability of the

⁸³ 2005 Air Consent Agreement at ¶ 32 (“EPA will publish [EEMs] within 18 months of the conclusion of the monitoring period . . .”).

⁸⁴ See 2017 OIG REPORT at 11; EPA, DEVELOPMENT OF EEMs FOR LAGOONS & BASINS AT SWINE & DAIRY AFOs, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Swine & Dairy AFOs], available at [https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/\\$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf](https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf); EPA, DEVELOPMENT OF EEMs FOR BROILER OPERATIONS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Broilers], available at <https://www.epa.gov/sites/default/files/2016-06/documents/afobroilereemreport2012draft.pdf>.

⁸⁵ Notice of Availability: Draft Documents Related to the Development of EEMs for Broiler AFOs and Lagoons & Basins for Swine & Dairy AFOs, 77 Fed. Reg. 14716 (Mar. 13, 2012); see also Comments Submitted in Response to Notice of Availability, <https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0015/comment>.

⁸⁶ Many of the signatories submitted comments regarding EPA's flawed 2012 Draft EEMs. See, e.g., Comments Submitted by R. Lawrence, Center for a Livable Future, [EPA-HQ-OAR-2010-0960-0037](https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0037) (Jun. 11, 2012); T. Heinzen, Environmental Integrity Project et al., [EPA-HQ-OAR-2010-0960-0026](https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0026) (Jun. 11, 2012).

⁸⁷ 2013 SAB REPORT at 2.

models.”⁸⁸ For example, SAB recommended that EPA expand its dataset by collecting data from monitoring efforts outside of the NAEMS, and using NAEMS data that were initially excluded due to EPA’s data completeness criteria.⁸⁹

The SAB also advocated for a process-based modeling approach to EEM development, noting that “[p]rocess-based models would be more likely to be successful in representing a broad range of conditions than the current models because [they] represent the chemical, biological and physical processes and constraints associated with emissions.”⁹⁰

In short, the SAB told EPA to go back to the drawing board and revise its process for developing EEMs based on the data gathered through NAEMS. EPA has responded to some of SAB’s concerns, but not all. As a result, EPA has yet to finalize any EEMs or bring any participating parties into compliance with the CAA, CERCLA, and EPCRA. Nor has EPA revoked the safe harbor provision established in the Air Consent Agreement.

D. EPA Has Failed to Consider Available Information from Peer-Reviewed Studies.

Given the clear flaws in NAEMS design and implementation, which yielded non-representative and incomplete data, it was incumbent upon EPA to expand the scope of AFO emission data it relied on to ensure accurate EEMs. However, the draft EEMs continue to rely exclusively on the limited NAEMS data, rather than incorporating findings from numerous peer-reviewed AFO emissions studies. The small number of sites in each livestock sector and the data gaps and technical problems experienced during NAEMS heighten the importance of outside research. EPA’s decision to limit available information will result in inadequate EEMs.

From 2007 to 2010, EPA collected emissions data at 27 sites across 20 AFOs. The data were originally published in 2011 and finalized in 2012. EPA relied exclusively on these data to develop the 2012 draft EEMs for broilers and lagoons/basins at swine and dairy AFOs, as well as the 2020 and 2021 draft EEMs for swine and poultry AFOs. However, the Air Consent

⁸⁸ *Id.*

⁸⁹ *Id.* at 1.

⁹⁰ *Id.* at 2.

Agreement requires that EPA consider *all* relevant information when developing EEMs, not just the data collected at a small sample of AFOs during the monitoring study:

The term “Emissions-Estimating Methodologies” means those procedures that will be developed by EPA, based on data from the national air emissions monitoring study *and any other relevant data and information*, to estimate daily and total annual emissions from individual Emission Units and/or Sources.⁹¹

Although the Agreement clearly provides that EPA must consider “relevant data and information” *other* than the monitoring data, EPA has elected to interpret this term so narrowly as to exclude all information not derived from NAEMS. In 2011, EPA asked the public to submit information relating to the agency’s development of draft EEMs for broiler confinement facilities and lagoons/basins at swine and dairy AFOs.⁹² Despite receiving several relevant, peer-reviewed emissions studies in response to the call for information, EPA ultimately concluded that none of the studies were relevant to the EPA’s draft EEMs.⁹³

In an attempt to justify EPA’s narrow reading of the Air Consent Agreement and exclusion of outside data, the 2012 draft EEMs for Swine and Dairy AFOs state that “none of the articles previously obtained by the EPA to support emissions factor development used remote sensing techniques to measure lagoon emissions.”⁹⁴ This explanation is inadequate. EPA did not explain why it preferred remote sensing techniques over other techniques. Nor did it explain why the techniques used in the outside studies were incompatible with the remote sensing data. Similarly, in the 2012 draft EEMs for Broilers, EPA disregarded peer-reviewed poultry emissions studies solely because the researchers used different methods.⁹⁵

Since the publication of the 2012 draft EEMs, EPA has reaffirmed its commitment to relying exclusively on NAEMS data. In 2018, after nearly a decade of delay and inaction, EPA decided to put off any investigation into the “potential need for additional non-NAEMS data”

⁹¹ 2005 Air Consent Agreement at ¶10 (emphasis added); *see also* 2005 Notice at 4960 (“EPA will use the data generated from the monitoring *and all other available, relevant data* to develop [EEMs]”) (emphasis added).

⁹² *See* Call for Information Related to the Development of EEMs for AFOs, 76 Fed. Reg. 3060 (Jan. 19, 2011); *see also* Comments Submitted in Response to Call for Information, <https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0001/comment>.

⁹³ 2012 Draft EEMs for Swine & Dairy AFOs Table 3-3, 2012 Draft EEMs for Broilers Table 3-14 (Feb. 2012).

⁹⁴ 2012 Draft EEMs for Swine & Dairy AFOs at 3-14.

⁹⁵ 2012 Draft EEMs for Broilers at 4-13 to 4-23.

until a “later stage” in the project “if appropriate.”⁹⁶ The 2020 draft EEMs for Swine AFOs used peer-reviewed studies only to inform the selection of possible model parameters.⁹⁷ But the Air Consent Agreement requires EPA to use available data to *develop* the EEMs.⁹⁸

EPA’s continued exclusion of clearly relevant data from the EEM development process violates the Air Consent Agreement and confirms that continuing the already protracted EEM development process would be futile. Moreover, EPA cannot develop adequate EEMs based exclusively on the outdated and incomplete NAEMS monitoring data collected from 2007 to 2010 because the industry has changed considerably since the monitoring study concluded over a decade ago.⁹⁹ Furthermore, new studies regarding air emissions from AFOs have been published in recent years, revealing important insights about the emissions generated from various AFO sources and their impacts on local communities.¹⁰⁰ Without the addition of recent outside studies, any EEMs developed by EPA will fail to accurately estimate emissions from AFOs.

E. The 2017 OIG Report Urged EPA to Either Finalize the EEMs or End the Agreement.

In 2017, six years after all EEMs were supposed to be finalized, OIG released a report on EPA’s actions to evaluate air emissions from AFOs, focusing on the Air Consent Agreement and NAEMS.¹⁰¹ As with the SAB, OIG was highly critical of EPA’s extreme delay in developing EEMs following the completion of NAEMS, noting that “competing priorities [have] resulted in the EPA’s Office of Air and Radiation putting the EEM effort largely on hold” to the extent that “the EPA stopped funding the contract for NAEMS analysis.”¹⁰² OIG also expressed concern

⁹⁶ 2018 QAPP at 14.

⁹⁷ 2020 Draft EEMs for Swine Barns & Lagoons at 13-1 to 13-2.

⁹⁸ 2005 Notice at 4960.

⁹⁹ Over the past nine years alone, significant changes to the hog, dairy, broiler, and egg-laying industries can be observed in particular state CAFO expansion trends. For instance, the number of CAFOs operating in Iowa, a state dominated by the hog industry, has increased by 136 percent since 2011. There are 43 percent more CAFOs operating in Wisconsin, where the dairy industry is most prevalent, than what existed in 2011. In Delaware, a broiler-focused state, the CAFO industry has grown by 838 percent. And Ohio, a state dominated by egg-laying operations, has seen a 33 percent increase. See EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2011 (Dec. 31, 2011), https://www.epa.gov/sites/default/files/2015-08/documents/npdes_cafo_rule_implementation_status_-_national_summary_endyear_2011_0.pdf; EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2020 (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf.

¹⁰⁰ See discussion, *supra* Part I.

¹⁰¹ 2017 OIG REPORT at 1.

¹⁰² *Id.* at 10.

about the lack of EPA agricultural air expertise and committed resources, noting that the agency “did not have staff with combined expertise in agricultural emissions, air quality[,] and statistical analysis.”¹⁰³

Although EPA completed NAEMS in early 2010, EPA has yet to finalize the EEMs to make CAA and CERCLA/EPCRA compliance determinations under the terms of the Air Consent Agreement. OIG expressed concern that although the civil enforcement protections were initially planned to expire in 2012, all 14,000 AFOs that participated in the Agreement continue to enjoy civil enforcement protections, and EPA has put several important actions on hold pending development of the EEMs.¹⁰⁴ In short, as OIG concluded, “EPA’s ability to characterize and address AFO air emissions is unchanged since its 2005 Agreement with the AFO industry intended to produce reliable emissions estimation methods.”¹⁰⁵

To continue moving the EEM process forward, OIG recommended that EPA conduct adequate systematic planning—something that the agency should have done *before* conducting NAEMS or preparing the draft EEMs.¹⁰⁶ “Based on the results of systematic planning,” EPA should “determine and document the decision as to whether the EPA is able to develop scientifically and statistically sound emission estimating methodologies for each originally planned emission source and pollutant combination.”¹⁰⁷ After conducting those reviews, OIG recommended that EPA should “[f]or the emission source and pollutant combinations for which the Office of Air and Radiation determines it can develop scientifically and statistically sound emission estimating methodologies, establish public milestone dates for issuing each draft emission estimating methodology” and “[f]or any emission source and pollutant combinations for which the Office of Air and Radiation determines it cannot develop emission estimating methodologies, notify Air Consent Agreement participants of this determination, and that the release and covenant not to sue for those emission sources and pollutant types will expire in accordance with paragraph 38 of the 2005 Air [Consent] Agreement.”¹⁰⁸

¹⁰³ *Id.* at 16.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 18.

¹⁰⁶ *Id.* at 22.

¹⁰⁷ *Id.* at 23.

¹⁰⁸ *Id.*

Since the OIG report was published in 2017, EPA has continued to drag its feet regarding EEM development, despite the clear course correcting path that OIG laid out for the Agency. While EPA maintains that it has timely implemented all OIG recommended actions,¹⁰⁹ in reality, the only action that EPA has completed in good faith is the very first on the list—publishing a planning document to guide future EEMs development.¹¹⁰ As for the remaining four OIG recommendations, EPA has either failed to comply altogether or implemented them in such a half-hearted way so as to undermine their whole purpose, namely, to prevent any further delay.

According to OIG’s corrective action timeline, based on the results of EPA’s systematic planning, EPA was to “document the decision” as to which EEMs could be developed and which could not no later than June 30, 2018.¹¹¹ Yet when the June deadline came, all EPA had decided was that, “for now,”¹¹² it would move forward with developing EEMs for all pollutants and all source categories, even while holding out the possibility that “emission source categories might be revised during subsequent stages of EEM development” upon further investigation.¹¹³ In other words, instead of making any real effort to narrow the scope of feasible EEMs, as OIG intended, the Agency simply made a placeholder determination to proceed as originally planned to check an item off its OIG to-do list. Conveniently, this also allowed EPA to hold off on implementing another OIG action—ending enforcement amnesty for affected Air Consent Agreement participants—since only a finalized decision to abandon certain EEMs could trigger this requirement.¹¹⁴ However, this did not stop the Office of Enforcement and Compliance Assurance from certifying that this action, which has yet to occur, was “complete.”¹¹⁵

Moreover, because EPA opted to move forward with the development of all originally planned EEMs, EPA was required to “set public milestone dates” for issuance of all draft EEMs

¹⁰⁹ See Memorandum from W. Wehrum, Assistant Administrator, *OAR-18-000-9472 - Certification Memo for Office of Inspector General (OIG) Report No. 17-P-0396* (July 30, 2018) ED_004549_00036447-00001 (certifying completion of OAR corrective actions); M. Badalamente, *Certification of Performance Audit* (Apr. 2, 2019) ED_004549_00036462-00001 (certifying completion of OECA corrective action) [hereinafter OECA Certification Memo].

¹¹⁰ See 2018 QAPP at 14.

¹¹¹ 2017 OIG REPORT at 23.

¹¹² Email from Tim Sullivan to Lauren Kabler Re: 2017 OIG Report, ED_005459-00036448-00003 (Sep. 20, 2018).

¹¹³ 2018 QAPP at 16.

¹¹⁴ 2017 OIG REPORT at 23.

¹¹⁵ OECA Certification Memo at 1-2 (paradoxically stating OECA’s action is “complete” because OECA stands ready to implement it “within 60 days of OAR finalizing its determination”).

and to keep the public informed of the status of EEM development.¹¹⁶ While EPA did set publicly available issuance dates (yet another box checked), it has made no effort to meet these self-imposed deadlines. In fact, every time a deadline nears, the Agency updates the schedule to give itself more time. In the agency's revised schedule for developing EEMs, EPA committed to issuing draft EEMs beginning in September 2019 and ending no later than November 2020.¹¹⁷ However, after revising the schedule more than five times in just two years, with the most recent schedule slide occurring just this past August, EPA now lists the date for issuing all draft EEMs as May 2022.¹¹⁸ While OIG required EPA to "set public milestone dates," it surely did not intend for EPA to push back the dates whenever the agency failed to meet an upcoming deadline. The purpose of the updated schedule was to prevent continued delay and uncertainty regarding EPA's development process. As of the date of this letter, EPA continues to delay the EEMs and fall behind its own updated timeline.

V. EPA SHOULD TERMINATE THE AIR CONSENT AGREEMENT BECAUSE EPA HAS FAILED TO PRODUCE VALID EEMs.

A. EPA Should Abandon the Fundamentally Flawed NAEMS and EEMs Development Process in Favor of Existing Models.

As discussed above, EPA cannot rely on the NAEMS data collected at 20 AFOs from because these data are not representative of current emissions from AFOs across the country. At this stage in the EEM development process, EPA cannot correct the flaws in NAEMS and EEM design or implementation. And although EPA has acknowledged the issues limiting the applicability of the data and affecting its current efforts to establish legitimate EEMs, it has failed to sufficiently address those issues. Moreover, EPA already has process-based models and emissions factors that it can use for the purposes of estimating emissions from AFOs and making compliance determinations. Where such methods are available, EPA should immediately adopt the methods as the default EEMs.

¹¹⁶ 2017 OIG REPORT at 23.

¹¹⁷ See Archived EPA Webpage: *National Air Emissions Monitoring Study* (Jul. 3, 2018), <http://web.archive.org/web/20180703144202/https://www.epa.gov/afos-air/national-air-emissions-monitoring-study>.

¹¹⁸ See EPA, *National Air Emissions Monitoring Study* (last visited 10/22/2021) <https://www.epa.gov/afos-air/national-air-emissions-monitoring-study>.

In 2013, nearly a decade ago, EPA’s Science Advisory Board recommended that the EPA “consider developing EEMs at a variety of levels of complexity to provide options for producers with different levels of data availability.”¹¹⁹

Models of varying complexity should be developed based on the level of input provided by a given producer (e.g., one model may be developed considering the composition of a feed ration, while a less complex model using default industry values could be used if a producer does not wish to or cannot disclose information regarding feed rations).¹²⁰

This SAB recommendation is critical. As discussed above, data limitations often make the implementation of EEMs impractical or impossible. To implement the 2020 and 2021 draft EEMs for swine and poultry AFOs, AFO operators would essentially have to run multiple statistical models for each emissions source, each day of the year, using actual daily data points, like animal inventory, average animal weights, ambient air temperature, and wind speed, to estimate annual emissions.¹²¹ This is problematic in at least two ways. First, it would be difficult for potential sources and regulators to acquire and process the large amount of data required to generate annual emissions estimate. Second, since the draft EEMs require actual input data, they cannot readily be used to estimate future emissions from proposed (or existing) sources.

The current forms of the EEMs are thus inconsistent with the CAA, which asks proposed and existing sources to provide emissions estimates in the form of annual emission potential (an upper-bound estimate that does not require daily model iterations).¹²² EPA therefore needs EEMs that utilize default assumptions. The SAB strongly recommended this approach, but EPA unfortunately continues to ignore it.¹²³

EPA has also recommended this simplified approach in other contexts. For example, in 2019, EPA published guidance for estimating animal waste emissions for purposes of complying

¹¹⁹ 2013 SAB REPORT at 2, 4.

¹²⁰ *Id.* at 14

¹²¹ *Id.*

¹²² If implemented, the 2020 Draft EEMs for Swine AFOs would not produce Potential to Emit (PTE) estimates. These estimates provide critical information in determining how the CAA applies at a given facility, and if a facility is a “major source.” The draft EEMs instead prescribe the use of actual animal inventories and will not determine if facilities are “major sources” as required.

¹²³ 2013 SAB REPORT at 14 (“The EPA should create a modeling approach that can be defined using default parameters that can be simply attained and that would reflect the heterogeneity of AFOs.”).

with CERCLA and EPCRA.¹²⁴ Some of the methods recommended in this guidance were simple emissions factors (e.g., pounds per animal per day).¹²⁵ Other recommended methods were in the form of worksheets that used a combination of site-specific information (e.g., animal housing type and maximum permitted capacity) and default parameters (e.g., animal-specific nitrogen excretion rates and ammonia loss factors). The worksheets are notable for two reasons. First, the worksheets generate “peak” pollutant emissions, based on maximum/permitted animal capacity, which is consistent with CAA “potential to emit” requirements. Second, the worksheets are easy to implement with limited data because they incorporate default parameters.

In sum, EPA already estimates emissions, and recommends that others do so, using methods that are consistent with the CAA and SAB guidance and are easy to implement. Yet it continues to insist on developing flawed EEMs that fail all of these criteria. This is flagrantly arbitrary and unreasonable, and only serves one purpose—to continue to protect a large source of air pollution from regulation.

B. EPA Overstates the Difficulty of Developing Process-Based Models, Which the Agency Is Already Using in Other Contexts.

Since the beginning of the EEM development process, the scientific community has recommended that EPA pursue a process-based approach. In 2003, the National Academies of Sciences (NAS) concluded that the “use of process-based modeling will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs.”¹²⁶ Ten years later, in 2013, EPA’s Science Advisory Board made the same recommendation.¹²⁷ Today, nearly two decades after the NAS first recommended a process-based approach, and despite the fact that EPA is already using process-based models in other contexts, EPA maintains that it cannot yet develop process-based EEMs.

¹²⁴ EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Aug. 27, 2021), <https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms>.

¹²⁵ See, e.g., EPA, *Calculation Worksheet: Ammonia and Hydrogen Sulfide from Dairy Operations* (2009) available at https://www.michigan.gov/documents/deq/deq-ess-cafo-worksheet-dairyemissions_266406_7.pdf.

¹²⁶ NAT’L RSCH. COUNCIL, *AIR EMISSIONS FOR ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS*, 103 (2003).

¹²⁷ 2013 SAB REPORT at 10-13.

EPA concedes that its statistical approach is flawed, and now describes the statistical approach as an “interim” solution until more reliable process-based models can be developed.¹²⁸ EPA suggests that this approach “follow[s] the expert recommendations and [is] consistent with the Air [Consent] Agreement.”¹²⁹ This is simply not true—EPA is *not* following the Air Consent Agreement or the SAB recommendations, both of which emphasize the need for data from outside of NAEMS. The SAB reminded EPA that process-based models would require the Agency to consider outside information:

Developing a rigorous process-based EEM will require extensive data beyond the range of values, conditions, and types of farms available in the NAEMS data set. To address this data gap the EPA should consider using data collected through mechanisms outside the consent agreement, including data published in peer-reviewed literature, raw data from key studies, data that support key literature, and additional data that the EPA has collected since receiving data in response to the Call for Information on AFOs and emissions.¹³⁰

EPA has not done this. The delay in developing process-based EEMs is almost entirely due to EPA’s failure to collect or consider the necessary data.

More broadly, it is important to consider EPA’s track record. EPA’s chosen course of action, developing interim statistical models, has already taken more than 16 years and is *still* not complete. If this is EPA’s *interim* solution, how many more decades will it take before EPA can meet its “long term” goals of developing process-based EEMs? At this rate, the industry is changing faster than the EEM development process, and whatever EPA develops will immediately be outdated. Given EPA’s history of protracted delay, it makes no sense to continue developing flawed “interim” EEMs while EPA contemplates a plan for someday, maybe developing legitimate EEMs. The problem of air pollution from AFOs deserves actual solutions, not more wheel-spinning.

Developing process-based models will not require more time than completing its flawed statistical models. EPA is already using process-based models (and other models) to estimate AFO emissions and has acknowledged that process-based models accurately predict NAEMS

¹²⁸ See, e.g., 2020 Draft EEMs for Swine Barns & Lagoons at 1-8 to 1-9.

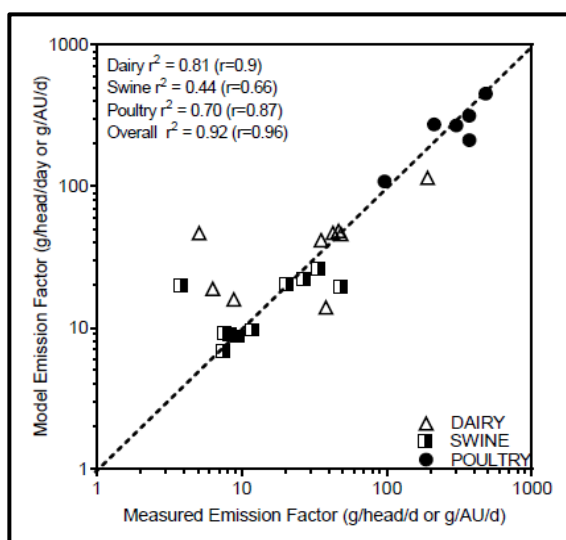
¹²⁹ *Id.* at 1-8.

¹³⁰ 2013 SAB REPORT at 14.

emissions based on NAEMS input data. Ironically, although EPA claims to be interested in any “suitable model[s] available in literature to use,”¹³¹ it ignores the high-quality process-based model being used *by EPA* in its National Emissions Inventory (NEI).

As part of its NEI, the Agency estimates ammonia emissions from dairy, beef, poultry, and swine operations using a process-based model developed by Carnegie-Mellon University (CMU).¹³² This model has been evaluated against NAEMS monitoring data, and one author observed that “the process-based [Farm Emissions Models] perform reasonably well in predicting the magnitude of ammonia emissions, their seasonal cycle, and farm-to-farm variability.”¹³³ It is particularly noteworthy that the CMU model “was able to differentiate between farms and practice,” as shown in the figure below.¹³⁴

Figure 1: Comparison of Process-Based Model Predictions and NAEMS Monitoring Data



¹³¹ 2018 QAPP at 19.

¹³² EPA, 2017 NATIONAL EMISSIONS INVENTORY: JANUARY 2021 UPDATED RELEASE, TECHNICAL SUPPORT DOCUMENT 4-61 (2021); A. McQuilling & P. Adams, *Semi-Empirical Process-Based Models For Ammonia Emissions From Beef, Swine, & Poultry Operations In The United States*, 120 *ATMOS. ENVTL.* 127 (Nov. 2015).

¹³³ A. McQuilling, *Ammonia Emissions from Livestock in the United States: From Farm-Level Models to a New National Inventory*, at 51 (Jan. 2, 2016) (Ph.D dissertation Carnegie Mellon University), https://kilthub.cmu.edu/articles/thesis/Ammonia_Emissions_from_Livestock_in_the_United_States_From_Farm-Level_Models_to_a_New_National_Inventory/6714665.

¹³⁴ *Id.* at 75, 80.

As explained by the author, “this result shows the model’s skill in capturing big picture emissions as well as the ammonia emissions variability driven by practices in addition to meteorology which has been shown in both seasonal and daily evaluations.”¹³⁵

Another model that EPA at least acknowledges is the U.S. Department of Agriculture’s Farm Systems Model, which includes process-based models for estimated ammonia and hydrogen sulfide emissions from dairy operations. The model has even been shown to accurately predict ammonia emissions from NAEMS dairy barns and manure storage structures.¹³⁶

If these models are good enough for EPA’s emissions inventory and do a reasonable job of predicting NAEMS emissions, then they should be good enough for estimating emissions from AFOs for the purpose of applying for CAA permits or reporting qualifying releases. For example, if the question is whether a facility emits more than a certain threshold, such as 10 or 100 tons of ammonia per year,¹³⁷ then the CMU model is sufficient. This is particularly true where we already know that many AFOs emit well above the higher threshold.¹³⁸

EPA’s foot-dragging is based on the deeply flawed premise that the Agency won’t know how much pollution AFOs emit until after the agency’s planned EEMs are complete. This premise is false. EPA has a variety of options for estimating emissions, and these options are in fact better than the EEMs—they are more consistent with CAA requirements and SAB recommendations, and they are accurate enough to provide the kinds of information that the industry, regulators, and residents need to comply with the law. EPA has no legitimate basis for dragging this process out any longer.

¹³⁵ *Id.* at 80.

¹³⁶ 2018 QAPP at 19; *see also* C. Rotz et. al., *Ammonia emission model for whole farm evaluation of dairy production systems*, 43 J. ENV’T. QUAL. 1143 (2014).

¹³⁷ *See, e.g.*, 42 U.S.C. §§ 7412(a)(1) (definition of “major source” of hazardous air pollutants); § 7479(1) (definition of “major emitting facility”); § 7602(j) (definition of “major emitting facility”).

¹³⁸ *See, e.g.*, Notice of Lodging of Consent Decree Under CERCLA, 69 Fed. Reg. 11,649 (Mar. 11, 2004). The company subject to this Consent Decree, Buckeye Egg Farm L.P., reported ammonia emissions of over 800 tons per year from one facility, over 375 tons per year from a second facility, and “nearly 275” tons per year from a third facility. *Id.* at 11,649–50.

VI. IF EPA DECIDES TO PROCEED WITH THE FLAWED EEM DEVELOPMENT PROCESS, IT MUST IMMEDIATELY RESCIND THE SAFE HARBOR PROVISION.

As explained above, EPA’s failure to regulate air pollution from AFOs causes both significant health impacts and a dearth of information available to impacted individuals about pollutant releases and impacts. Additionally, AFO air pollution and the resulting odors are diminishing the quality of life and depressing property values in communities across the nation.¹³⁹ EPA must immediately rescind the enforcement protections granted to AFOs. In addition, EPA must rely on external sources and public input when developing any draft EEMs based on the agency’s inherently flawed monitoring data and development process.

A. EPA Should Immediately Rescind the Safe Harbor Provisions of the Air Consent Agreement.

Although EPA has the authority to rescind the safe harbor provisions of the Air Consent Agreement at any time, it has refused to do so, choosing instead to grant extended immunity to AFOs that emit significant air pollution and cause adverse public health impacts in surrounding communities. EPA’s continued refusal to enforce the law against AFOs is an abdication of its enforcement authority. It contradicts congressional intent and strips affected communities of their legal and procedural remedies to address increased air emissions from AFOs. Thus, EPA should take immediate action to rescind the safe harbor provisions of the Air Consent Agreement.

B. EPA Should Not Finalize Any EEMs Without Robust Public Participation.

If EPA proceeds with its protracted EEM development process, it must prioritize public participation. During the decades-long process of developing the EEMs, the Agency has primarily engaged the AFO industry. EPA intends to hold a “stakeholder review period” once new draft EEMs are available but the timing of this review period is currently unknown.¹⁴⁰ It is

¹³⁹ See, e.g., Y. HONG & P. EBNER, PURDUE ANIMAL SCIENCES, IMPACT OF CFO ODOR & ODOR SETBACK MODELS, (JAN. 2017), https://ag.purdue.edu/cfo/Documents/ID-485_CFO_2017.pdf; ROMAN KEENEY, PURDUE EXTENSION, COMMUNITY IMPACTS OF CAFOS: PROPERTY VALUES (2008), <https://www.extension.purdue.edu/extmedia/ID/ID-363-W.pdf>.

¹⁴⁰ See EPA, *National Air Emissions Monitoring Study: Timeline for the Release of AFO Emission Models*, (last visited Oct. 25, 2021), <https://www.epa.gov/afos-air/national-air-emissions-monitoring-study>.

unclear who EPA considers “stakeholders” in this process, but presumably this “stakeholder review period” involves EPA releasing all EEMs simultaneously for a 30-day public comment period. This would be a wholly inadequate means to engage the public, especially in comparison to the extensive influence that industry groups have had throughout the EEMs process. A robust notice and comment opportunity is necessary to meaningfully engage *all* stakeholders and ensure that the EEMs do not exacerbate health impacts and inequalities.

Rural communities experiencing the detrimental effects of AFOs lack access to complete information about the impacts and regulation of AFOs, and rarely are provided with a forum to voice their concerns and seek remedies from the government. Rather, EPA has frequently used the EEMs process as a shield to avoid meaningfully responding to and acting on AFO air pollution concerns raised with the Agency. A transparent and accessible notice and comment period for the EEMs will provide a necessary—albeit much-delayed—opportunity for the Agency to hear from the stakeholders most impacted by EPA’s decisions regarding EEMs.

Furthermore, the complexity and abstract nature of environmental modeling presents unique and significant barriers to full public participation.¹⁴¹ EPA should take steps to overcome and mitigate these barriers. For example, a comment period of 90 days would provide impacted communities and advocacy groups the time needed to assess the impacts of the EEMs and engage in outreach to ensure that all interested parties are aware and informed. The complex nature of the EEMs also means that groups and members of the public likely will need to engage experts to review the EEMs and develop technical comments, necessitating a longer comment period. EPA should also hold public listening sessions with content aimed at meaningfully engaging the public in EEMs development, such as layperson explanations of the process of developing the EEMs and the EEMs’ impacts and limitations. Similarly, EPA should ensure members of the public are able to hear each other’s comments.

¹⁴¹ See generally J. Fine & D. Owen, *Technocracy & Democracy: Conflicts Between Models & Participation in Environmental Law & Planning*, 56 HASTINGS L.J. 901 (2005), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3590&context=hastings_law_journal.

Robust public participation in the finalization of any EEMs is also necessary for EPA to comply with the President’s Executive Orders pertaining to environmental justice.¹⁴² AFO air pollution is an environmental justice issue—“people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality” are far more likely to be exposed to AFO air pollution and suffer the health, quality of life, and financial consequences.¹⁴³ The Biden Administration has pledged to make environmental justice a priority and directed EPA to “assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.”¹⁴⁴ Agencies are further tasked with “evaluat[ing] opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.”¹⁴⁵ The finalization of the EEMs is an important opportunity for EPA to advance these objectives, and the failure of EPA to ensure meaningful public participation in the EEMs would contravene the Administration’s directives.

The petitioners, as well as many other groups that work with rural communities impacted by AFOs, also could provide EPA with valuable information and context. Two petitioners are environmental justice organizations, which work with communities adversely affected by AFO air pollution, including in North Carolina and California. Many of the petitioners have sought to engage with EPA on the issue of air pollution from AFOs for well over a decade, including challenging the Agreement at the EAB and in the D.C. Circuit, submitting the 2009 CAFO Source Petition, and submitting the 2011 Ammonia Petition. The petitioners have also extensively worked with, and represented in legal actions, members of communities directly

¹⁴² See Exec. Order No. 13985, Advancing Racial Equity & Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/pdf/ehp0115-000317.pdf>.

¹⁴³ See *id.* See also 2017 OIG REPORT at 3, see also K. Donham et al., *Community Health & Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV’T. HEALTH PERSPECTIVES (2007).

¹⁴⁴ Exec. Order No. 13985; see also Exec. Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed Reg. 7629 (Feb. 16, 1994) (“[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . .”).

¹⁴⁵ Exec. Order No. 13985.

impacted by AFO pollution. Therefore, the petitioners possess extensive expertise that would be valuable in the process of finalizing the EEMs.

VII. CONCLUSION

The Air Consent Agreement has been an unmitigated failure. During EPA's extended amnesty and fundamentally inadequate NAEMS process, jurisdictions like California have estimated emissions and permitted AFOs with readily available data.¹⁴⁶ The SAB has demonstrated that EPA's NAEMS and EEM development processes reflect the principle of "garbage in, garbage out." EPA has blown far past its 2007 "limited" deferral representation to the D.C. Circuit and its 2017 response to the OIG, landing rural communities in a purgatory of legalized air pollution. Further delay only demonstrates EPA's abdication of its enforcement responsibility and will not yield a better outcome.

We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law. The reality is that facts and science change over time, and emissions assumptions will also change over time. There is no end to that process. However, EPA can, and routinely does, estimate emissions from many sources of air pollution, including AFOs, using the best science available. The Agency must do the same here. EPA must end the Air Consent Agreement, immediately publish the best currently available emissions methods or emissions factors for each pollutant, and enforce the CAA.

The petitioners therefore petition EPA to rescind the Air Consent Agreement granting enforcement protections to nearly 14,000 AFOs. In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute.

¹⁴⁶ EPA, based on its CAA oversight, has actual knowledge of jurisdictions like California, including the San Joaquin Valley Unified Air Pollution Control District, with AFO permitting programs and State Implementation Plan programs applicable to such facilities.

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EXHIBIT B

**Revised Report on the
Enforcement of the
Clean Water Act
As it relates to CAFOs
By Oregon's Department of Agriculture**

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I. INTRODUCTION

The Animal Law Clinic (Clinic) at Lewis and Clark Law School, at the request of and with assistance from Friends of Family Farmers (FFF), a nonprofit that promotes and protects socially responsible agriculture in Oregon, reviewed Oregon Department of Agriculture's (ODA) handling of the state's management of the federal National Pollutant Discharge Elimination System (NPDES) program with respect to Concentrated Animal Feeding Operations (CAFOs). The Clinic wrote this report based on independent research, information from ODA files and documents from Region 10 Environmental Protection Agency's (EPA) response to a Freedom of Information Act (FOIA) request. While the report is concerned with Oregon's federal CWA program, as distinct from its state program, in practice is unclear whether ODA itself makes the distinction between the two. The report details: 1) the lack of requisite EPA authorization for ODA to administer the federal program; 2) ODA's lack of resources and ability to administer the federal program; and 3) the inherent conflict of interest in ODA's role to both regulate and promote agriculture.

II. OREGON NPDES PROGRAM

A. HISTORY

Section 402 of the Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES).¹ This program mandates a permitting system to limit water-borne pollutants discharged from point sources into navigable surface waters of the United States.² The Environmental Protection Agency (EPA) administers the federal permit program except to the extent that a state may receive authorization from EPA's Administrator to administer the national program within its state.³ The CWA defines concentrated

¹ 33 U.S.C. § 1342.

² 33 U.S.C. § 1342(a).

³ 33 U.S.C. § 1342(b).

animal feeding operations (CAFOs) themselves as point sources, serving to bring all CAFOs that discharge to the waters of the United States under its umbrella.⁴

The modern version of CWA, also known as the Federal Water Pollution Control Act of 1972, contains provisions whereby states can apply for and be authorized to manage the NPDES permit program.⁵ In March of 1973, Oregon sought EPA authorization to administer the federal NPDES program. Its application sought to make the Oregon Department of Environmental Quality (DEQ) the implementing agency. In September 1973, EPA granted Oregon this authorization in response to DEQ's application, based on the assertion that DEQ would administer the program.⁶

Applications for NPDES programs require details regarding how an NPDES program will be carried out in that state.⁷ Oregon's application stated that Oregon would be "acting by and through its Department of Environmental Quality"⁸ – "the official water quality control agency in the State of Oregon."⁹ The application contained a letter from Oregon's then-Governor, asserting that DEQ "has overall responsibility for this effort..."¹⁰

The CWA requires all states seeking NPDES authorization to submit to EPA a "full and complete description of the [proposed] program."¹¹ Central to this description in Oregon's application was the assertion that DEQ would oversee the program. Oregon's application references an already-established "cooperative joint DEQ-EPA approach" for reviewing and issuing backlogged

⁴ 33 U.S.C. § 1362(14).

⁵ 33 U.S.C. § 1342(b).

⁶ *US EPA Permitting for Environmental Results NPDES Profile: Oregon and Indian Country*, Last updated September 27, 2005, Last accessed April 5, 2011.

http://www.epa.gov/npdes/pubs/oregon_final_profile.pdf

⁷ 33 U.S.C. § 1342(b) ("...the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish...").

⁸ Oregon NPDES Program Application, p. 1.

⁹ Oregon NPDES Program Application, p. 1.

¹⁰ Oregon NPDES Program Application, p. 27.

¹¹ 33 U.S.C. § 1342(b).

permits.¹² The initial submission goes on to propose that even its standard, non-backlogged “procedure for processing of NPDES applications” involve an active role by EPA. It suggests that: EPA receive and complete applications for processing; that EPA and DEQ jointly review and concur with field recommendations, as well as with proposed permits and proposed notices or other proposed actions; that they jointly review applicant comments and revise proposed permits as they agree is necessary; that they jointly evaluate public comments and prepare documents for the recommended action; that they jointly evaluate the hearing record and prepare final recommended actions; and, finally, that EPA send its recommended actions to its regional headquarters for concurrence.¹³ This section of the application concludes with this thought: “The success of this proposed procedure for permit issuance will be dependent on the assistance provided by the Oregon Operations Office of EPA.”¹⁴ ODA is not mentioned anywhere in the application.

In 1988, in conflict with its original submission to EPA, Oregon DEQ and ODA entered a memorandum of agreement (MOA) granting ODA an active role in overseeing a “Confined Animal Feeding Operation waste management program.”¹⁵ Citing the right of state agencies bound to perform duties imposed on them to “cooperate” with other agencies,¹⁶ the agreement named ODA as DEQ’s “agent” for purposes of performing numerous federal NPDES duties: receiving and reviewing applications for coverage under the general CAFO permit, negotiating with violators regarding the terms of their consent order, reviewing “plans and specifications for CAFO waste collection and disposal systems,” responding to and resolving all complaints and violations, and conducting at least one inspection per year of previous violators.¹⁷

¹² Oregon NPDES Program Application, p. 1.

¹³ Oregon NPDES Program Application, p. 9.

¹⁴ Oregon NPDES Program Application, p. 17.

¹⁵ 1988 MOA between DEQ & ODA, p. 1.

¹⁶ O.R.S § 190.110.

¹⁷ 1988 MOA between DEQ & ODA, p. 2-3.

One statute included in Oregon's application, for purposes of evidencing DEQ's legal authority, does allow "cooperation" between DEQ and other agencies or bodies.¹⁸ However, the same statutory scheme that allows "cooperation" explicitly includes a list of bodies allowed to enforce rules promulgated by the state Environmental Quality Commission (EQC), and ODA is not among those listed.¹⁹ From the date of EPA's approval, DEQ transferred much of the administration of the program to ODA, such as the authority to act as DEQ's agent, review permit applications, and respond to and resolve complaints. ODA was later responsible for general permit issuance and enforcement. Subsequent memorandums of understanding (MOUs) between ODA and DEQ/EQC reinforce DEQ's administrative oversight role and DEQ's deferral of all complaints and suspected permit violations to ODA. Instead of simply cooperating with each other, DEQ has transferred much of its federal NPDES permitting, compliance and enforcement duties to ODA, without seeking EPA approval for a major program modification.

Besides requiring a description of the intended method for carrying out an NPDES permitting program, CWA also requires all state applications for authorization to provide evidence of "adequate authority to carry out the proposed program."²⁰ Oregon's application cited only DEQ's legal authority, making no mention of ODA's capacity. In this way, Oregon clearly stated that DEQ would, in conjunction with EPA, oversee the federal NPDES program. EPA granted approval to DEQ not ODA. After receiving authorization for a DEQ-headed program, there is no record that Oregon later sought the necessary authorization from EPA to amend its program so as to be headed jointly by DEQ and ODA, or even largely by ODA. Further, as will be discussed below, on April 1, 1983 EPA amended regulations regarding state program²¹ revisions that

¹⁸ O.R.S. § 449.035 (as provided in the application on or near p. 210 (unnumbered)).

¹⁹ O.R.S. § 449.064 (as provided in the application on or near p. 211 (unnumbered)).

²⁰ 33 U.S.C. § 1342(b).

²¹ The term "state program" is used by EPA in the federal regulations and refers to the state's management of the federal NPDES program, not to any state authorized permit program. See 40 C.F.R. § 123.62(c).

required states with approved programs to notify EPA of any NPDES program transfer between state agencies.²² Subsequently, on January 4, 1989 EPA added rules regarding state agency program-sharing which allowed conditional sharing of NPDES duties but both DEQ and ODA would have been responsible for filing program submissions.²³ No evidence of such a request was present in the EPA FOIA documents reviewed or in the ODA records examined

Whether or not authorization for ODA participation was sought, it appears, based on provisions and caveats found in various statutes, regulations and the Oregon general CAFO permit, that it was never granted. EPA is still working with DEQ as the state agency with authorization to handle federal NPDES matters.

However, Oregon and its agencies involved continue to operate as though ODA has authority to not only cooperate with DEQ on federal CAFO NPDES matters, but to take the lead.

In 1993, the Oregon legislature passed S.B. 1010, which became the Agricultural Water Quality Management Act, authorizing ODA “to require any landowner whose land is located within an area subject to a water quality management plan to perform those actions on the landowner's land necessary to prevent and control water pollution from agricultural activities and soil erosion.” It also allowed ODA to “enter into agreements with any agency of this state, including but not limited to a soil and water conservation district, or with any agency of the federal government, for the purposes of carrying out the provisions of ORS 568.900 to 568.933 including the development of a plan.”²⁴ Also in 1993, the legislature passed S.B. 1008, directing ODA to enter into an MOU with EQC to “perform any function of the EQC or the DEQ relating to the control and prevention of water pollution from a confined animal feeding operation.”²⁵ This

²² 40 C.F.R. § 123.62(c) formerly 48 F.R. 14146 (April 1, 1983).

²³ 40 C.F.R. § 123.1(g)(1).

²⁴ O.R.S. §§ 568.900 – 568.933; (formerly S.B. 1010, 67th Or. Legis. § 263 (1993)).

²⁵ O.R.S. § 468B.217.

legislation did not address the fact the authority for CWA enforcement for federal permits derived from the EPA, and thus could not be changed without EPA approval, and not by a state legislature.

In 1994, ODA entered into another MOA (this time with EQC) to define its role in the statewide CAFO waste management program. It was given all the same tasks as in the prior MOA, but with increased enforcement power: it was to “take prompt enforcement action against [violators],” “adopt enforcement rules and civil penalty schedules,” and “impose civil penalties.”²⁶ In 1995, an additional MOU between the same parties charged ODA with developing and maintaining a database of all permit activities.²⁷ Also in 1995, the legislature went even further, directing “the State Department of Agriculture [to] develop and implement any program or rules that directly regulate farming practices... that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones... or other agricultural lands in Oregon...”²⁸

In 2001, in clear recognition that EPA approval of a program change was both required and absent, the legislature directed ODA and DEQ to pursue EPA authorization for a transfer of federal CAFO NPDES authority from DEQ to ODA such that ODA could finally “assume all permitting and enforcement responsibilities for confined animal feeding operations.”²⁹ However, at the same time, the law also purported to allow ODA to take control of Oregon’s CAFO NPDES program: “The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act... and any federal regulations or guidelines issued pursuant to the Act, relating to the control and

²⁶ 1994 MOA between ODA & EQC, p. 3.

²⁷ 1995 MOA between ODA & EQC, p. 6.

²⁸ O.R.S. § 561.191.

²⁹ H.B. 2156, 71st Ore. Legis. § 248 (2001).

prevention of water pollution from livestock and other animal-based agricultural operations.”³⁰

In 2002, ODA and EQC updated their previous MOU, citing an anticipated transfer of NPDES authority from EPA to ODA. This MOU divided ODA’s responsibilities into pre-authorization and post-authorization time periods, but allowed ODA to “receive and review permit applications,” “assign [permit] coverage,” “take prompt enforcement action,” and “impose civil penalties” even before receiving the anticipated EPA authorization.³¹

In December 2009, the state MOU was again updated, this time granting ODA the power to “perform the CAFO related functions of DEQ and the EQC”³² despite still acknowledging “the anticipated delegation of NPDES permitting authority to ODA.”³³ Like the previous MOU, it was divided into pre-and post-authorization time periods, but the pre-authorization period granted ODA virtually all federal NPDES permitting powers. For example, ODA was allowed to receive, review, and issue general permits. ODA was also to review and approve or reject waste management plans, including developing “its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications.”³⁴ The MOU also allowed ODA to enter onto premises for inspection, to implement enforcement procedures, and to provide technical and financial assistance to CAFO operators.³⁵

B. CURRENT STATUS

While explicitly recognizing that EPA authorization is necessary for CWA enforcement, Oregon continues to act as if it is not. This leads to a gap between

³⁰ O.R.S. § 468B.035(2).

³¹ 2002 MOU between ODA & EQC, p. 3-4.

³² 2009 MOU between ODA & EQC, Section II, p. 1.

³³ 2009 MOU between ODA & EQC, Section VIII (A)(3), p. 4.

³⁴ 2009 MOU between ODA and EQC, Section VIII (A)(9), p. 4.

³⁵ 2009 MOU between ODA and EQC, Sections VII and VIII, p. 3 – 4.

what is legally authorized, and the current practice. Currently, (in practice, but not legally) DEQ and ODA share federal NPDES duties in Oregon: DEQ oversees all facets of the federal NPDES program besides those that are CAFO-related.³⁶ The CAFO-related water quality permitting program is jointly overseen by DEQ and ODA, and while state statutes as well as internal ODA and DEQ documents indicate that DEQ remains the sole agency authorized by EPA to oversee the federal NPDES program,³⁷ ODA has been authorized by Oregon's legislature since 2005 to issue general CAFO permits even separate from DEQ.³⁸ ODA has in fact been issuing CAFO general permits jointly with DEQ, the most recent having been issued in 2009.³⁹ Beyond permitting, ODA enjoys virtually exclusive control over all other aspects of the federal CAFO NPDES scheme, including inspections, monitoring, advising livestock operations and enforcement. In fact, the 2009 MOU between ODA and EQC makes no distinction among the various facets of the permitting program, but rather "authorizes ODA to perform the CAFO related functions of DEQ and the EQC."⁴⁰ None of this changes the fact that EPA has not authorized these changes.

Most recently, in April 2010 EPA and Oregon entered into an MOA that detailed the roles and responsibilities of EPA and DEQ regarding the NPDES program. ODA is not mentioned anywhere in the agreement, nor is there any reference to DEQ sharing its authority with another agency. Instead, the agreement states that DEQ assumes authority of the Oregon NPDES CAFO program "as originally authorized in the 1973 MOA and its amendments..."⁴¹ DEQ and EPA are to cooperate and coordinate together, essentially in "partnership"⁴² for DEQ to administer the program with EPA's oversight. In addition, DEQ agreed to ensure that any proposed revisions of the program are

³⁶ O.R.S. § 468B.048; O.R.S. § 468B.030; O.R.S. § 468B.035.

³⁷ Attachment 1 – Oregon DOJ report to US EPA on the status of Oregon's NPDES Permit Program, October 27, 2010.

³⁸ O.R.S. § 468B.050(1),(2) (formerly S.B. 45, 73rd Ore. Legis. §523 (2005)).

³⁹ Oregon CAFO NPDES General Permit 01-2009.

⁴⁰ 2009 MOU between ODA and EQC, Section II, p. 1.

⁴¹ 2010 MOA between DEQ and EPA, 6.

⁴² 2010 MOA between DEQ and EPA, Section 1.0, p. 1.

submitted to EPA for approval⁴³ and DEQ agreed to notify EPA of any legislative actions that may amend DEQ's authority or that may affect DEQ's ability to implement the program.⁴⁴ ODA administers the majority of federal NPDES duties, an arrangement that differs substantially from the 2010 MOA. Accordingly, DEQ should have notified EPA that ODA, instead of DEQ, is administering the NPDES program and applied for the necessary EPA authorization for such a change.

III. ANALYSIS

A. NO EPA AUTHORIZATION FOR ODA INVOLVEMENT

1. Initial EPA Authorization to DEQ

The CWA requires each state seeking to administer the federal NPDES permit program to file an application with EPA's Administrator, documenting its legal authorities and describing the state's capabilities for administering an effective program. Specifically, the state must submit a "full and complete description of the program it proposes to establish and administer under State law"⁴⁵ and it must submit a statement from the attorney general assuring that the state's laws "provide adequate authority to carry out the described program."⁴⁶ EPA's Administrator must then "approve each submitted program unless he determines that adequate authority does not exist" to meet certain program requirements.⁴⁷ A central requirement is the ability to issue permits that are targeted, effective, adhered to, and can be terminated or modified for cause.⁴⁸ In addition, the program must be able "to abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement."⁴⁹

⁴³ 2010 MOA between DEQ and EPA, Section 3.0, p. 3.
⁴⁴ 2010 MOA between DEQ and EPA, Section 9.0, p.28.
⁴⁵ 33 U.S.C. § 1342(b).
⁴⁶ 33 U.S.C. § 1342(b).
⁴⁷ 33 U.S.C. § 1342(b).
⁴⁸ 33 U.S.C. § 1342(b)(1).
⁴⁹ 33 U.S.C. § 1342(b)(7).

At the time of its March 1973 application, DEQ did not possess full legal authority to administer the program per CWA submission requirements – this was admitted in its application. If it did not manage to meet all CWA criteria by the time of its authorization by EPA, the authorization itself could have been invalid. Oregon Governor Tom McCall, in a letter to EPA constituting part of Oregon’s program proposal, admitted “the state of Oregon intends to achieve full compliance with the requirements of Section 303(e) of the Act by July 1, 1975.”⁵⁰ However, the Clean Water Act’s section 303 for “water quality standards and implementation plans” are essential to developing and carrying out targeted and effective NPDES permits, as permit-enforced effluent levels must sometimes take into account water quality standards (in addition to technology-based standards).⁵¹

Hence, this central criterion for program approval was admittedly undermined with this deficiency. Oregon’s application also stated that it was awaiting two state bills affording it “basic legal authorities to meet NPDES requirements.”⁵² Once these passed, it claimed, DEQ would modify its rules for permit issuance as well as civil penalties so as “to be consistent with approved procedures and NPDES requirements.”⁵³ Of the two bills, only one dealt with the issue at hand. It proposed to authorize the “Environmental Quality Commission to implement within the jurisdiction of this state provisions of Federal Water Pollution Control Act.”⁵⁴ The bill passed on May 30, 1973. EPA then approved Oregon’s NPDES program in September 1973.⁵⁵ However, the program’s legal authority was still in question, as it does not appear that Oregon had come into compliance with CWA § 303(e) (at that time or since). Thus, DEQ’s authorization from EPA to manage the NPDES program may possible be invalid because Oregon did not meet the application requirements at the time. Clearly, ODA did

⁵⁰ Oregon NPDES Program Application, p. 25.

⁵¹ 40 C.F.R. § 122.44.

⁵² Oregon NPDES Program Application, p. 20.

⁵³ Oregon NPDES Program Application, p. 20.

⁵⁴ H.B. 2436; Oregon NPDES Program Application, p. 379.

⁵⁵ *US EPA Permitting for Environmental Results NPDES Profile: Oregon and Indian Country*, Last updated September 27, 2005, Last accessed April 5, 2011.

not and does not meet these requirements, so it is not an appropriate agency to receive authority under the program should EPA wish to grant it.

1. Incomplete Attempt to Transfer Authority to ODA by DEQ/EQC and Oregon Legislature
i. Application Process

While Oregon law allows agencies to cooperate with other willing but non-authorized agencies⁵⁶ (and in fact ODA and DEQ cite this as authority for an NPDES power share in their 1988 MOA), CWA requires authorization from the EPA for any agency to administer the federal NPDES program, and provides clear prerequisites for obtaining such authorization, including an application process.⁵⁷

The CWA does not expressly address state agencies sharing federal NPDES duties except for a partial permit program, (which will be discussed in more detail below) wherein one agency's program covers merely "a portion of the discharges into the navigable waters in such State."⁵⁸ However, this arrangement was not part of the CWA until 1989, and was not part of Oregon's application and hence was not an option when Oregon applied for NPDES program authority in 1973.⁵⁹ Oregon could still have proposed this special arrangement later, but it would have been obliged to submit a program revision to EPA for approval, as CWA requires "a full and complete description of the program [the state] proposes to establish..."⁶⁰ Oregon's application made no such mention of this option nor did it ask for the authority to change the arrangement later with a new submission. Rather, it expressly stated multiple times through the application that DEQ would oversee the NPDES program.⁶¹ And though the application did

⁵⁶ O.R.S. § 190.110.

⁵⁷ 33 U.S.C. § 1342(b).

⁵⁸ 33 U.S.C. § 1342(n).

⁵⁹ 54 F.R. 246-01 (January 4, 1989).

⁶⁰ 33 U.S.C. § 1342(b).

⁶¹ Oregon NPDES Program Application, pp.1, 5-6, 27.

mention other agencies with whom DEQ may “cooperate,” ODA was not among these.⁶²

Assuming that DEQ decided only after submitting its program application and obtaining authorization to transfer its CAFO duties to ODA, either Oregon, or one or both agencies – was obliged to seek EPA approval for the change.⁶³ This is because the “full and complete description of the program” would have changed dramatically, as a new agency with its own legal authority, or lack thereof, would have been involved.

EPA regulations also dictate procedures states must follow to administer the NPDES program. Since April 1, 1983, Federal Rules have required:

“States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies. The new agency is not authorized to administer the program until approved by the [EPA] Administrator...”
[emphasis added].⁶⁴

DEQ was (and is) the sole agency authorized to administer the federal NPDES permitting program based on Oregon’s 1973 application. At the time DEQ purportedly transferred its program duties to ODA via their 1988 MOU, Oregon should have applied to EPA for a program revision as required by EPA’s regulations. As the rule states, ODA is not authorized to administer the program until approved by EPA. There is no application for program revision on record, and thus, the attempted transfer of federal NPDES program responsibilities from DEQ to ODA is invalid.

⁶² Oregon NPDES Program Application, p. 2-3.

⁶³ 33 U.S.C. § 1342(b).

⁶⁴ 40 C.F.R. § 123.62(c).

Additionally, since January 4, 1989, EPA regulations have expressly allowed general sharing of NPDES duties provided “each agency [has] Statewide jurisdiction over a class of activities or discharges”⁶⁵ but if more than one agency is responsible for issuing permits, each must submit a formal application.⁶⁶ According to their current state legislative mandate and their most recent MOU, DEQ and ODA share CAFO permitting responsibilities.⁶⁷ Hence, assuming DEQ wanted to transfer NPDES duties to ODA after January 4, 1989, both DEQ and ODA would have been required to submit an application for such a change to the EPA for approval. If they began sharing responsibilities prior to this date, it is conceivable that EPA would apply the law retroactively and expect them to submit an entirely new application for EPA approval based on this rule. However, neither of these actions have been taken.

In 1988, DEQ and ODA entered into an MOA naming ODA as DEQ’s “agent” for purposes of the “Confined Animal Feeding Operation waste management program.”⁶⁸ Hence, sometime between 1973 and 1988, DEQ changed the plan outlined in its approved application to EPA for implementing Oregon’s federal NPDES program but did not seek additional approval from EPA for this change. EPA’s authorization was based on Oregon’s original submission that DEQ administer the program. Even if EPA wanted to allow such a change, it has no discretion to do so, as its own rules required a new application and review process. Moreover, Oregon could not unilaterally affect the change in program management because the power to grant authority to administer the program stems from EPA. Neither the state of Oregon, nor the EPA has completed the necessary steps for authorizing ODA to administer the federal NPDES permit program, whether jointly with DEQ or on its own.

⁶⁵ 40 C.F.R. § 123.1(g)(1) (“NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges.”).

⁶⁶ 40 C.F.R. § 123.1(g)(1) (“When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.”) as published in the Federal Register on January 4, 1989 at 54 F.R. 246-01.

⁶⁷ O.R.S. § 468B.035; O.R.S. § 468B.050(1),(2); O.R.S. 468B.217(2)(a); 2009 MOU between ODA and EQC.

⁶⁸ 1988 MOA between DEQ & ODA, p. 1.

ii. Conflicting Mandates

Compounding the confusion are Oregon's contradictory mandates to ODA, which, at times, assume authority ODA simply does not possess. In 1993, the legislature passed the Agricultural Water Quality Management Act, permitting ODA "to require any landowner whose land is located within an area subject to a water quality management plan to perform those actions on the landowner's land necessary to prevent and control water pollution from agricultural activities and soil erosion." It also allowed ODA to "enter into agreements with any agency of this state..."⁶⁹ Also in 1993, the legislature directed ODA to enter into an MOU with EQC to "perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the control and prevention of water pollution from a confined animal feeding operation."⁷⁰ In 1995, the Oregon legislature declared that "the State Department of Agriculture shall develop and implement any program or rules that directly regulate farming practices... that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones... or other agricultural lands in Oregon, including but not limited to rules related to... protection of the quality of surface or ground water..."⁷¹

Collectively, these laws reveal the legislature's belief that ODA was capable of managing CAFO-related federal NPDES duties. However, in 2001, the legislature passed H.B. 2156, directing ODA and DEQ "to pursue [EPA] approval of the transfer of the permitting program implemented pursuant to [The Clean Water Act's NPDES program] as it relates to confined animal feeding operations, from the Department of Environmental Quality to the State

⁶⁹ O.R.S. § 568.900 – 568.933 (formerly S.B. 1010, 67th Ore. Legis. §263 (1993)).

⁷⁰ O.R.S. § 468B.217 (formerly S.B. 1008, 67th Ore. Legis. § 567 (1993)).

⁷¹ O.R.S. § 561.191 (formerly S.B. 502, 68th Ore. Legis. § 690 (1995)).

Department of Agriculture” such that ODA can “assume all permitting and enforcement responsibilities for confined animal feeding operations.”⁷²

Thus, the legislature acknowledged that ODA in fact had no authority to oversee the federal NPDES program. Further confusing things, however, the same legislation included a provision allowing ODA to control the federal NPDES program while *awaiting* authority from EPA: “The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act... and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations.”⁷³ These mandates are confusing at best; completely contradictory at worst. Even though the legislature granted state authority to ODA, the legislature also recognized the lack of federal authority, which is a prerequisite to management of the federal NPDES program.

The Oregon legislature is not the only body to have taken it upon itself to assign ODA broad and untenable authority. As noted above, EQC and DEQ have similarly assigned ODA a broad range of NPDES duties without proper authorization. However, these mandates, like their statutory counterparts, reveal a fundamental confusion regarding the extent of ODA’s authority. While the most recent MOU between ODA and EQC, dated December 2009, “authorizes ODA to perform the CAFO related functions of DEQ and the EQC,”⁷⁴ some provisions require it to consult with DEQ (such as “on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act”)⁷⁵ or even to wait for full authority from EPA before beginning any substantive work. Hence, even assuming that ODA possessed some level of EPA authorization, these

⁷² H.B. 2156, 71st Ore. Legis. §248 (2001).

⁷³ O.R.S. § 468B.035.

⁷⁴ 2009 MOU between ODA and EQC, p. 1.

⁷⁵ 2009 MOU between ODA and EQC, p. 4.

contradictions reveal an authority that is not being exercised in keeping with its mandates.

The 2009 MOU incorporates by reference the language of Oregon's contradictory 2001 law in an attempt to provide authority for the attempted transfer of federal CAFO NPDES program duties to ODA.⁷⁶ However, the MOA later acknowledges that the very same law provides no such authority, stating that: "In 2001, the legislature again amended the CAFO statutes... the purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA *at such time as the transfer is approved by EPA*"⁷⁷ [emphasis added]. In addition, a list of ODA's "roles and responsibilities" found in the MOU begins: "*Prior to EPA approval of NPDES program delegation to ODA, ODA will...*"⁷⁸ [emphasis added]. One of the specific responsibilities listed in this same MOU is "develop and implement administrative rules that are appropriate for *the anticipated delegation of NPDES permitting authority to ODA.*"⁷⁹ [emphasis added]. Further, in a letter dated October 27, 2010, Oregon acknowledges that the transfer of authority to ODA from EPA has not taken place.⁸⁰ The only federal authorization thus far is from EPA to DEQ. There has been no federal authorization to ODA to administer the federally delegated NPDES program.

This fundamental lack of clarity regarding ODA's powers and role is a problem even apart from that of ODA lacking EPA authorization. DEQ's own administrative rules only add to the confusion by assigning NPDES permitting authority solely to the "Director"⁸¹ but defining "Director" as "the Director of the Department of Environmental Quality or the Director's authorized designee."⁸²

⁷⁶ 2009 MOU between ODA and EQC.

⁷⁷ 2009 MOU between ODA and EQC, p. 3.

⁷⁸ 2009 MOU between ODA and EQC, p. 3.

⁷⁹ 2009 MOU between ODA and EQC, p. 4.

⁸⁰ Attachment 1 – Oregon DOJ report to US EPA on the status of Oregon's NPDES Permit Program, October 27, 2010.

⁸¹ O.A.R. 340-045-0015.

⁸² O.A.R. 340-045-0010(4).

The rules for the Department of Agriculture appear at first glance to defer to DEQ's interpretation, stating that CAFO permits "will be issued under the applicable provisions of [the chapter pertaining to DEQ],"⁸³ but then go on to define "Director" as either the director of DEQ or the director of ODA.⁸⁴

Regardless of whether state legislative or agency action purported to grant ODA authority to manage the CAFO NPDES program, state action alone is legally insufficient because EPA is the source of authorization for state management of federal CWA programs. As discussed above, neither ODA, nor any other agency, applied for EPA approval and, as will be discussed in the following section, EPA did not grant approval for ODA's administration of the program. As such, ODA is not authorized to conduct the federal NPDES program.

iii. No Program Approval

As a separate problem, even if EPA wanted to, it has no discretion to allow ODA to administer the federal NPDES program without following CWA program authorization requirements.

To be a valid transfer of NPDES program authority, ODA's proposed program would have had to meet the same nine criteria required of DEQ for its initial application. These requirements include the ability to:

- (1) issue permits that are targeted, effective, adhered to, and can be terminated or modified for cause;
- (2) "inspect, monitor, enter, and require reports" of the facilities it oversees at least to the extent required by CWA;

⁸³ O.A.R. 603-074-0012.

⁸⁴ O.A.R. 603-074-0010(5).

- (3) “insure that the public... receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;”
- (4) “insure that the Administrator receives notice of each application;”
- (5) insure that any state affected by the permit may submit written recommendations regarding any permit application;
- (6) insure that no permit will be issued if anchorage and navigation of navigable waters would be substantially impaired;
- (7) “abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;”
- (8) insure, to the extent relevant, that any permit for discharge from any publicly owned pretreatment works includes certain conditions; and
- (9) insure, to the extent relevant, that any industrial user of any pretreatment works comply with CWA.⁸⁵

The CWA is clear that for a state to be granted authority to administer the federal permit program a full and complete program description, adequate legal authority, and the above nine criteria need to be met.⁸⁶ ODA did not meet these requirements and thus, even if EPA knew of the attempted transfer to ODA by DEQ, EPA could not waive the legal requirements that are set out in CWA for approval to administer the NPDES program.

As discussed above, the Federal Rules explicitly require EPA approval whenever an approved state-run water program is transferred from the approved agency to another agency⁸⁷ If more than one agency is issuing NPDES permits, each agency must submit a separate application before EPA will begin formal review.⁸⁸ There is no record that Oregon submitted a program revision request to EPA for the transfer of the federal NPDES program from DEQ to ODA. EPA only

⁸⁵ 33 U.S.C. §§ 1342(b)(1) – (9).

⁸⁶ 33 U.S.C. § 1342(b).

⁸⁷ 40 C.F.R. § 123.62(c), formerly 48 F.R. 14146, (April 1, 1983).

⁸⁸ 40 C.F.R. § 123.1(g)(1).

granted authorization to DEQ and without separate approval, ODA is not authorized to administer the program.

Not only does ODA lack approval from EPA to run the program, ODA also lacks authorization for a partial permit program. There is no evidence that Oregon or its agencies filed an amended program submission with EPA meeting CWA requirements to request a partial permit program. Such a permit program may take the form of either a “major category partial permit program” or a “major component partial permit program.”⁸⁹ The former may only be approved if it “represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State” and if, in addition, the Administrator determines that it “represents a significant and identifiable part of the State program required by” CWA’s provisions for state permit programs.⁹⁰

Alternatively, a major component partial permit program is a partial and *phased* program “covering administration of a major component (including discharge categories) of a State permit program.”⁹¹ It also may only be approved if the Administrator determines that it “represents a significant and identifiable part of the State program.” Additionally, approval requires the state to submit, and the Administrator to approve, a plan for the state to assume administration of the remainder of the program by phases falling into required parameters.⁹² There is no evidence from the results of the FOIA request that Oregon proposed either partial permit program to EPA.

Even if Oregon had submitted either partial permit proposal, EPA’s Administrator would have been obliged to engage in a substantive review of each agency’s capacity to oversee “at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of

⁸⁹ 33 U.S.C. § 1342(n)(2).

⁹⁰ 33 U.S.C. § 1342(n)(3).

⁹¹ The language “State program” is used by the CWA to denote state management of the federal program and is not the state’s own internal non-CWA program. See 33 U.S.C. § 1342.

⁹² 33 U.S.C. § 1342(n)(4).

the permit program...⁹³ If Oregon proposed a “major category” partial permit program, the Administrator also would have needed to find evidence of ODA’s program constituting “a complete permit program” covering “all of the discharges under the jurisdiction of a department or agency of the State” and representing “a significant and identifiable part of the State program” required by CWA.⁹⁴ Alternatively, if Oregon proposed a “major component” partial permit program, the Administrator would have needed to be convinced that ODA’s phased program covered the “administration of a major component (including discharge categories) of a State permit program” as well as represented “a significant and identifiable part of the State program.”⁹⁵ There is no evidence of any program application from ODA,⁹⁶ and there is no analysis of ODA’s capacity to administer either partial permit program. Thus, it follows that there can be no EPA approval of such.

ODA’s lack of authority to carry out the program is further evidenced by EPA’s repeated outright requests for ODA to submit formal program revisions as per 40 C.F.R. § 123.62. In 2001, EPA stated “a long-term resolution” of ODA’s lack of authority is that “Oregon *will* initiate NPDES program revision procedures to obtain *formal approval for a transfer of NPDES authorities over CAFOs from DEQ to ODA.*” [emphasis added].⁹⁷ In 2003, EPA again refers to ODA’s need to submit “a *formal NPDES program revision* that acknowledges the transfer of the CAFO portion of Oregon’s NPDES program from DEQ to ODA.”⁹⁸ [emphasis added]. Even though the revision relates only to the CAFO portion of the permit, “...the *procedures in which the [ODA] will need to follow are the same as if the state agency was applying for authorization to implement a comprehensive NPDES program.*” [emphasis added]. In 2005, EPA reiterates that ODA has yet to submit its NPDES program modifications and that ODA is not directly

⁹³ 33 U.S.C. § 1342(n)(2).

⁹⁴ 33 U.S.C. § 1342(n)(3).

⁹⁵ 33 U.S.C. § 1342(n)(4).

⁹⁶ O.R.S. § 468B.035; O.R.S. § 468B.050(1),(2); O.R.S. 468B.217(2)(a); 2009 MOU.

⁹⁷ Attachment 2 – EPA letter to ODA, June 13, 2001.

⁹⁸ Attachment 3 – EPA letter to ODA and DEQ, October 30, 2003.

authorized to administer CWA CAFO program until the revision is submitted, reviewed and approved.⁹⁹

The state of Oregon and ODA acknowledge ODA's absence of authority as well. In April 2002, ODA recognized that it had "not yet submitted a modified program description and Attorney General's Statement."¹⁰⁰ As recently as October 2010, the Oregon Department of Justice (DOJ) acknowledged that while the Oregon legislature has authorized "DEQ and ODA to seek EPA's approval to allow ODA alone to operate the state's NPDES program as it applies to [CAFOs, t]hat transfer has not taken place."¹⁰¹ This is problematic as previously explained because: (1) action by a state legislature alone is legally insufficient to authorize an agency to administer the program; (2) CWA's allowance of conditional program sharing mandates each agency submit a formal application;¹⁰² and (3) federal regulations require states to seek EPA approval whenever they propose to transfer all or part of any program from the approved State agency to any other State agency.¹⁰³

To support its contention that it received EPA approval, ODA might refer to its September 2003 MOA with EPA, signed by L. John Iani, Regional Administrator of EPA Region 10 and Katy Coba, Director of ODA, in which EPA recognized ODA as the "primary agency" for CAFO NPDES activities.¹⁰⁴ Some of ODA responsibilities included enforcing and promulgating rules to regulate CAFOs, conducting inspections, submitting annual reports, and reviewing and approving Animal Waste Management Plans (AWMPs). However, despite EPA's acknowledgment of ODA's role, the MOA also directed ODA "to pursue EPA

⁹⁹ *US EPA Permitting for Environmental Results NPDES Profile: Oregon and Indian Country*, http://www.epa.gov/npdes/pubs/oregon_final_profile.pdf, Last updated September 27, 2005, Last accessed April 5, 2011.

¹⁰⁰ Attachment 4 – ODA letter to EPA, April 17, 2002.

¹⁰¹ Oregon DOJ report to US EPA on the status of Oregon's NPDES Permit Program, October 27, 2010.

¹⁰² 40 C.F.R. § 123.1(g)(1).

¹⁰³ 40 C.F.R. § 123.62(c).

¹⁰⁴ 2003 MOA between ODA and EPA.

approval of the transfer of the primary administration of the CAFO program from ... DEQ to ODA...”¹⁰⁵ As discussed above, EPA’s acknowledgement of ODA’s role in the federal NPDES program does not constitute proper approval as neither CWA requirements nor federal regulations can be waived. Moreover, the agreement may have expired, as term of the agreement was five years and there was no indication in the records reviewed that this term was extended.

What is more, EPA subsequently asked DEQ in two separate letters (December 2009 and May 2010) to provide a revised program description¹⁰⁶ and to clarify its relationship with ODA, addressing the current division of labor between it and ODA.¹⁰⁷ Thus, it is clear that despite an affirmative duty and repeated EPA requests, Oregon has not submitted the application for approval of shared authority between DEQ and ODA or for sole ODA responsibility.

Both EPA and ODA have acknowledged ODA’s lack of federal authority to manage the federal NPDES program. In the most recent MOA in April 2010 between DEQ and EPA, DEQ is again required to “ensure that any proposed revision of the NPDES program is submitted to EPA for approval.”¹⁰⁸ Notably, and despite the documents mentioned above, according to the agreement *all* responsibility for the NPDES program is carried out by DEQ; ODA is not mentioned anywhere in the agreement. All evidence points to the lack of federal authority for ODA to manage the NPDES program. Yet it continues to attempt to manage this program, even in the face of acknowledgements by the state legislature, EPA, DEQ and state Department of Justice that it lacks such legal authorization.

B. LACK OF CAPACITY AND RESOURCES

¹⁰⁵ 2003 MOA between ODA and EPA, p. 1.

¹⁰⁶ Attachment 5 –EPA letter to DEQ, December 15, 2009.

¹⁰⁷ Attachment 6 – EPA letter to DEQ, May 25, 2010.

¹⁰⁸ April 2010 MOA between DEQ and EPA, § 3.01(3).

ODA wants to assume federal CAFO NPDES duties, but it has proven itself unable to perform them. Specifically, ODA lacks requisite programs, knowledge, and resources to meet minimum NPDES requirements.

1. Lack of Civil Enforcement Authority of Federal Program

As discussed above, CWA requires all state authorized federal NPDES programs to have full legal authority to implement various programs.¹⁰⁹ These include an effective permitting program;¹¹⁰ opportunities for public participation;¹¹¹ an inspection and monitoring component;¹¹² and a robust enforcement program.¹¹³

However, while ODA has been granted broad power within the state, it lacks the necessary authority to carry out the programs listed above. The CWA requires that all NPDES programs have adequate authority “to abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.”¹¹⁴

ODA’s civil enforcement power is questionable. Its civil powers appear restricted to injunctions¹¹⁵ and “civil penalties” i.e. fines.¹¹⁶ Of these, only injunctions are accompanied by an explicit right to go to court.¹¹⁷ Beyond this, the precise scope of ODA's powers is unclear. In part, the confusion stems from the fact that CWA employs the term "civil penalty" without defining it and, in turn, the

¹⁰⁹ The file review did not distinguish between times ODA was acting with federal versus state authority and ODA records were not clear as to distinctions inspectors may be making.

¹¹⁰ 33 U.S.C. § 1342(b)(1).

¹¹¹ 33 U.S.C. § 1342(b)(3).

¹¹² 33 U.S.C. § 1342(b)(2).

¹¹³ 33 U.S.C. § 1342(b)(7).

¹¹⁴ 33 U.S.C. § 1342(7).

¹¹⁵ O.R.S. § 561.280.

¹¹⁶ O.R.S. § 568.933; O.R.S. § 468B.230(1).

¹¹⁷ O.R.S. § 561.280 ("In addition to the other remedies provided by law, the State Department of Agriculture may apply to the circuit court for, and such court shall have jurisdiction upon a summary hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of a law under the jurisdiction of the department.").

state mandates on which ODA relies repeat this phrase, also without providing any definition. Case law provides no further clarification. However, based on the context in which the phrase is used in the Code, "civil penalty" appears to refer to a fine. There is no language explicitly allowing ODA to go to court to collect fines, or to sue for a violation of the NPDES permit program, however there is no language explicitly barring it from doing so either.

The only provisions somewhat on point come from the state Code's statutes on environmental quality. However, these provisions raise two concerns. First, they do not fall under ODA-specific provisions, but rather seem to require DEQ enforcement. Second, while the first provision appears to support civil enforcement authority, the latter (although admittedly encompassing a more narrow scope, as it deals only with "additional civil penalties") seems to stand for the alternative. Together, they present a confusing picture. The first provision appears in a statute on general civil penalties, and appears to indicate that the ODA may access courts: *"Where any provision of ... ORS chapters 468, 468A and 468B provides that each day of violation of ... a section of ORS chapters 468, 468A and 468B constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or complaint, or information, in several counts."*¹¹⁸ However, the second provision,¹¹⁹ found in laws concerning environmental quality enforcement proceedings -- specifically "additional civil penalties," refers to the Administrative Procedures Act, which provides only that an agency seeking to collect a civil penalty may file with the county clerk -- it says nothing about going to court¹²⁰ and in fact makes clear that the provision creates no new authority in an agency to

¹¹⁸ O.R.S. § 468.997.

¹¹⁹ O.R.S. § 468.140.

¹²⁰ O.R.S. § 183.745(6) ("When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.").

impose civil penalties.¹²¹ However, just as this provision cannot create new authority, neither can an agency's independently-existing civil authority be removed.¹²²

It is important to note that the state places express limits on all penalties (i.e. fines) issued by ODA both for lands within agricultural or rural areas subject to water quality management plans, and for subsequent penalties against CAFOs.¹²³ Penalties issued by ODA against CAFOs are also reduced by any civil penalty imposed by EQC, DEQ, or U.S. EPA provided the penalties are against the same person and for the same violation.¹²⁴ Similarly, ODA-issued penalties against landowners who violate water quality management plans are also reduced by the amount of any civil penalty imposed by EQC or DEQ against the same person for the same violation.¹²⁵ In contrast, full EPA enforcement powers are much broader with the power to bring civil, criminal or administrative actions generally.

Upon finding a violation of a federal NPDES permit, EPA has the option to issue an order to comply, bring a civil action directly or notify the state in which the violation occurred and let the state enforce the permit.¹²⁶ Additionally, unlike the limits imposed on ODA, there are no express limits on fines sought by EPA in civil cases against permit violators.¹²⁷ In administrative actions, there are specific classes of penalties available to EPA, with a maximum penalty of \$125,000.¹²⁸ In comparison, ODA's enforcement authority is below that of the EPA.

¹²¹ O.R.S. § 183.745(8) ("This section creates no new authority in any agency to impose civil penalties.").

¹²² O.R.S. § 183.745(9) ("This section does not affect: (a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or (b) The ability of an agency to collect a properly imposed civil penalty under the provisions of O.R.S. 305.830.").

¹²³ O.R.S. § 568.933(3); O.R.S. § 468B.230(3).

¹²⁴ O.R.S. § 568.933(8).

¹²⁵ O.R.S. § 468B.230(7).

¹²⁶ 33 U.S.C. § 1319(a)(3).

¹²⁷ 33 U.S.C. § 1319(b).

¹²⁸ 33 U.S.C. §1319(g)(2)(B).

Finally, even if ODA were to possess adequate enforcement authority, it would be unqualified to wield such power, as it appears confused by its civil and administrative enforcement powers. At the very least, ODA representatives do not seem to have a common understanding about their enforcement authority. When asked in a recent meeting whether ODA possesses any civil enforcement powers whatsoever, an ODA representative stated that she was unsure, but that in any event, ODA would have no interest in pursuing civil action. However, upon being given the example of an administrative agency crossing into the civil realm following the appeal of an administrative case, the representative stated that ODA in fact has such power. In response to a second example – that of seeking an injunction – the representative stated that ODA possesses this power as well.¹²⁹ Such confusion reveals an additional problem beyond ODA simply possessing limited enforcement powers. Again, despite any confusion, there is no history of strong civil enforcement by ODA.¹³⁰

Additionally, ODA's criminal enforcement authority stems from the state DOJ or the county District Attorneys offices' ability to prosecute criminal offenders but it seems that its current system falls short of the "robust enforcement" called for in CWA.^{131 132}

¹²⁹ Lisa Hanson, ODA Deputy Director, October 12, 2010 meeting with ODA.

¹³⁰ After this report was first released in November 2011, ODA issued a statement announcing it levied 16 fines in 2011 for CAFO violations amounting to \$17,336. *ODA issues civil penalties for CAFO violations in 2011*, February 8, 2012.

http://www.oregon.gov/ODA/Pages/news/120208nrd_penalties.aspx. Last accessed July 22, 2012.

¹³¹ 33 U.S.C. § 1342(b)(7).

¹³² Since this report was released in 2011, a few convictions have been reported – On February 24, 2012, CAFO operator William Holdner was convicted of two counts of felony water pollution in the first degree and 25 misdemeanor counts of water pollution in the second degree. Holdner was sentenced to five days in jail and ordered to pay \$300,000 in fines for water pollution and illegally operating a CAFO without a permit. Mitch Lies, *Rancher gets five days, \$300,000 fine*, April 26, 2012. <http://www.capitalpress.com/print/ml-Holdner-sentenced-033012>. Last accessed July 22, 2012.

On April 11, 2011, Volbeda Dairy was fined \$30,000 and placed on three years probation for for three counts of second degree water pollution. "The case ... is believed to be the first criminal prosecution of an Oregon dairy for an environmental violation." Mitch Lies, *Judge Fines Dairy \$30,000*, April 14, 2011. Last accessed July 22, 2012.

2. Lack of Programs

i. Lack of Public Participation

Although it lacks the necessary authority, ODA has maintained that it in fact has the authority and duty to implement the federal NPDES program in Oregon. Despite that, ODA has simply failed to implement various necessary facets of the federal NPDES scheme. The first requirement is public participation. The CWA requires each NPDES-administering program to have authority to “insure that the public... receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.”¹³³ Though ODA may generally provide notice and hearing opportunities on the renewal of the general permit, ODA’s regulations have no public participation requirement and merely state that the agency will investigate public complaints.¹³⁴

The most recent CAFO general permit ODA jointly issued with DEQ states “Prior to approving new permit coverage, renewing permit coverage, or approving proposed substantial changes to an [Animal Waste Management Plan] AWMP, ODA will provide public notice and participation,”¹³⁵ consisting of public notice, a comment period, an opportunity for a public hearing, and written responses to relevant comments. The permit limits public hearings to situations in which written requests are received from at least 10 people, or from an organization(s) representing 10 or more people. DEQ’s regulations also require public notice and participation in all new permit actions, as CWA requires.^{136 137}

¹³³ 33 U.S.C. § 1342(b)(3).

¹³⁴ O.A.R. 603-074-0016(1) (“Complaint” means information provided by a person concerning possible violations of O.R.S. Chapter 468 or 468B or any rule, order, or permit adopted thereunder).

¹³⁵ Oregon CAFO NPDES General Permit 01-2009.

¹³⁶ O.A.R. 340-045-0027.

¹³⁷ Although DEQ regulations require public notice and participation, there is no link on its website to the general permit.

However, it is cause for concern that while according to various mandates, ODA has been put in charge of the federal CAFO NPDES permit program, the only public participation provisions outside of permit provisions are provided by DEQ. Hence, it is not clear that ODA's regulations meet the CWA standard. ODA's regulations state that "permits for Confined Animal Feeding Operations will be issued under the applicable provisions of OAR chapter 340, division 45," presumably meaning that DEQ's more detailed provisions will be implemented.¹³⁸ However, DEQ's permitting rules are to be implemented by the "Director,"¹³⁹ which it defines as "the Director of the Department of Environmental Quality or the Director's authorized designee."¹⁴⁰ This would seem to limit ODA's ability to be involved in the permitting process. For its part, however, ODA defines "Director" as either the director of DEQ or the director of ODA.¹⁴¹

DEQ's rules require the Department, presumably meaning DEQ, to provide public notice and an opportunity for comment for set period of time before issuing new or renewal general and individual permits.¹⁴² These rules are promulgated by DEQ and make no mention of ODA, so it is not clear whether ODA regulations satisfy CWA public participation requirements. Additionally, while DEQ and ODA did have public meetings and comments prior to adoption of the last new general permit,¹⁴³ the public participation for the general permit is less meaningful because it does not address public concerns for specific individual uses of the general permit.

Another troubling aspect of the lack of public participation is Oregon's representational standing rules to challenge NPDES permits which may not meet

¹³⁸ O.A.R. 603-074-0012(1).

¹³⁹ O.A.R. 340-045-0015.

¹⁴⁰ O.A.R. 340-045-0010(4).

¹⁴¹ O.A.R. 603-074-0010(5).

¹⁴² O.A.R. 340-045-0027(1)(c)-(d) and (2)(c)-(d); O.A.R. 340-045-0033(5); O.A.R. 340-045-0035(3), (6), and (7).

¹⁴³ EPA commented on and approved the General Permit on June 10, 2009.

http://www.oregon.gov/ODA/NRD/docs/pdf/2009cafoeval_fs.pdf?ga=t Last accessed September 15, 2011.

the minimum federal requirements for program approval. CWA mandates that a federally approved state-administered NPDES program provide opportunities for public participation.¹⁴⁴ EPA regulations explicitly require all states seeking to administer a federally approved NPDES program to “provide an opportunity for judicial review in state court for the final approval or denial of permits that is sufficient to provide for, encourage, and assist public participation in the permitting process.”¹⁴⁵

Public participation in the NPDES permitting process is closely tied to the opportunity for permit challengers to seek judicial review, as will be explained below. EPA “... believes broad standing to challenge permits in court [is] essential to meaningful public participation in NPDES programs.”¹⁴⁶ A citizen’s ability to participate in permitting decisions, such as public comments and public hearings on proposed permits, may be seriously compromised without the opportunity to challenge agency decisions in court and directly contradicts CWA mandate that a proper NPDES program provide for, encourage, and assist public participation in the permitting process. For example, a state agency may not adequately consider comments from a public that it is not judicially accountable to. Further, limited access to judicial review could have a chilling effect on public participation, as citizens may view such participation as fruitless. Also, inadequate public participation may increase the likelihood that the state-issued federal permits are inadequate to protect the environment.¹⁴⁷

¹⁴⁴ 33 U.S.C. § 1342(b)(3); and 33 U.S.C. 1251(e): Congressional declaration of goals and policy: “*Public participation* in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under [the CWA] *shall be provided for, encouraged, and assisted by* the Administrator and the States.”¹⁴⁴ (emphasis added).

¹⁴⁵ 40 C.F.R. §123.30; Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act, 61 F.R. 20972 (May 8, 1996).

¹⁴⁶ Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act. 61 F.R. 20976 (May 8, 1996). The U.S. Court of Appeals for the Fourth Circuit has also recognized that “broad availability of judicial review is necessary to ensure that the required public comment carries its proper purpose. The comment of an ordinary citizen carries more weight if officials know that the citizen has the power to seek judicial review of any administrative decision harming him.” *Virginia v. Browner*, 80 F.3d 869 (4th Cir. 1996) (upholding EPA’s denial of Virginia’s proposed Title V CAA permitting program).

¹⁴⁷ Proposed Rule 60 F.R. 14588 and Final Rule 61 F.R. 20972.

Oregon's NPDES permitting program may fall below the federally required standard for public participation and judicial review. In 1998, EPA published a Notice of Deficiency, which found Oregon's requirements for judicial standing to challenge state-issued permits under the Title V Clean Air Act (Title V or CAA)¹⁴⁸ below the minimum federal requirements for program approval.¹⁴⁹ Federal regulations require states to provide an opportunity for judicial review in state court of the final approval or denial of permits "that is sufficient to provide for, encourage, and assist public participation in the permitting process."¹⁵⁰

In its Notice of Deficiency, EPA concluded that a 1996 Oregon Supreme Court decision, *Air Contaminant Discharge Permit Application of Willamette Industries, Inc. Local No. 290 v. Ore. Dep't of Env'tl. Quality*, 919 P. 2d 1168 (1996) (*Local 290*), should be interpreted to mean that representational standing is not allowed under Oregon Administrative Procedures Act (APA). In *Local 290*, the union brought challenges under the State APA against air and water discharge permits issued by DEQ. The Oregon Supreme Court found that based on the statutory construction of the APA,¹⁵¹ the union did not have standing to challenge DEQ's actions and that an organization has standing to bring a lawsuit on behalf of its members only if the organization itself is adversely affected or aggrieved. EPA concluded that *Local 290's* restriction on representational

¹⁴⁸ 42 U.S.C. § 7661 - 7661f.

¹⁴⁹ Notice of Deficiency for Clean Air Act Operating Permits in Oregon. 63 F.R. 65783 (November 30, 1998).

¹⁵⁰ 40 C.F.R. § 123.30. The regulation also provides in part: "A State will meet this standard if State law allows an opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit (see § 509 of the Clean Water Act). A State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits (for example, if only the permittee can obtain judicial review, if persons must demonstrate injury to a pecuniary interest in order to obtain judicial review, or if persons must have a property interest in close proximity to a discharge or surface waters in order to obtain judicial review.)"

¹⁵¹ O.R.S. § 183.484(3) states: "The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury."

standing to persons “adversely affected or aggrieved,” limited judicial review of Title V permits thus rendering Oregon’s Title V permitting program deficient.

Oregon’s federal NPDES program may be similarly deficient in light of *Local 290*’s representational standing limits. While EPA interpreted the limits on representational standing in *Local 290* as to Oregon’s Title V program, *Local 290* applies to limit judicial review of NPDES permits as well. First, the union in the case brought challenges to both NPDES and Title V permits. The Court’s holding that the State APA provided standing to those “adversely affected or aggrieved,” not to those filing actions as representatives, was not circumscribed to judicial review of Title V permits. Second, EPA specifically pointed out in its Notice of Deficiency that Oregon’s representational standing limits may pose a problem for continued EPA approval of Oregon’s NPDES program¹⁵² as well as CAA permits. The EPA Notice also stated that restoring representational standing to challenge NPDES permits would obviate the need for further inquiry into whether *Local 290* poses a problem for continued EPA approval of Oregon’s NPDES program.¹⁵³ However, challengers seeking judicial review of NPDES permits may still lack representational standing because Oregon’s statutory revision extending standing to organizations seemingly only applies to Title V permits. The statute provides “organizational standing to seek judicial review of final orders in Title V permit proceedings;” NPDES permit proceedings are not mentioned even though in its original Notice of Deficiency, EPA addressed its concern over both Title V and CWA permits.¹⁵⁴ Thus, Oregon’s representational standing rules may still fall

¹⁵² Notice of Deficiency for Clean Air Act Operating Permits in Oregon. 63 F.R. 65783, 65784. (November 30, 1998).

¹⁵³ 63 F.R. 65784.

¹⁵⁴ Clean Air Act Approval of Revisions to Operating Permits Program in Oregon, 67 F.R. 39630 (June 10, 2002).

O.R.S. § 468.067 provides: (1) Notwithstanding ORS 183.480 and 183.484, an association or organization has standing to seek judicial review of any final order, as defined in ORS 183.310, of the [DEQ] or of the [EQC] that relates to a proceeding described in subsection (2) of this section if:

(a) One or more members of the association or organization is adversely affected or aggrieved by the order;

(b) The interests that the association or organization seeks to protect are germane to the purpose of the association or organization; and

short of the minimum requirements as it relates to a federally approved NPDES program.

EPA also requires opportunities for public participation in the “state enforcement process.” This may be accomplished by either allowing intervention as of right in all civil and administrative actions, or else by providing assurance that either the agency or the appropriate enforcement authority will investigate all citizen complaints and respond to them, as well as not oppose permissive intervention, and, finally, publish notice of any proposed settlement and receive comments thereto.¹⁵⁵ The state’s mandate to ODA on enforcement makes no mention of this.¹⁵⁶ Similarly, ODA’s CAFO regulations on enforcement make no mention of a private right of action or notice and comments on settlements, allowing only for Notices of Noncompliance (NONs), plans of correction (POC), and Notices of Civil Penalty Assessment.¹⁵⁷ With regard to civil penalties, ODA states only that “in addition to any other penalty provided by law, the *department* may assess a civil penalty against the owner or operator...”¹⁵⁸ [emphasis added]. For its part, DEQ makes no mention in its rules of a private right of action. Neither agency’s rules state that it will investigate all citizen complaints and respond to them, nor that it will allow for permissive intervention, nor publish notice of any proposed settlement. Moreover, the general CAFO permit makes no mention of any such provisions. Hence, the state program appears to fall

(c) The nature of the claim and the relief requested do not require that the members of the association or organization who are adversely affected or aggrieved by the order participate in the judicial review proceedings.

(2) Subsection (1) of this section applies to a permit proceeding pursuant to Title V of the Clean Air Act, 42 U.S.C. 7661 to 7661f, as implemented under ORS chapter 468A.

An association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members. Citing *Warth v. Seldin*, 422 U.S. 490. Pp. 342-343. *Hunt v. Washington Apple Advertising Comm’n*, 432 U.S. 333, 341-345 (1977).

¹⁵⁵ 40 C.F.R. § 123.27(d).

¹⁵⁶ O.R.S. § 468B.230.

¹⁵⁷ O.A.R. 603-074-0040.

¹⁵⁸ O.A.R. 603-074-0070.

short of federal requirements regardless of whether the state wishes authority to be vested in DEQ, ODA or both.

ii. Lack of Investigation of Complaints

The authorized agency is charged by EPA with encouraging the public to report NPDES violations – another requirement designed to encourage public participation in the NPDES program.¹⁵⁹ However, the state mandate to ODA on complaints and investigations is silent on this point, and neither agency’s regulations make mention of it.¹⁶⁰

In practice, ODA does not have a good record of investigating all complaints or encouraging the public to report violations. ODA’s records show numerous formally filed complaints with no documented follow-up.¹⁶¹ For example, a complaint about Robert and Debra Churnside Farm regarding potential run-off, mud, manure, and lack of vegetation has a note a month later (presumably from an internal ODA source) asking whether an inspection was ever done and noting that a case number was never assigned. No update is written in the file.¹⁶² Another complaint filed against GDD Farm included the inspector’s written note that Wym (Matthews, CAFO manager at ODA,) would be

¹⁵⁹ 40 C.F.R. § 123.26(b)(4) (“Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.”).

¹⁶⁰ O.R.S. § 468B.225.

¹⁶¹ Some examples (From ODA Files) –

Volbeda Dairy - A complaint was filed on August 4, 2009 for a lagoon breach and for solids pushing toward a creek. July 11, 2008 – Complaint that dairy was pumping manure directly into creek and into storm drain flowing into creek.

Wendell Sparling – Complaint in May 2008 of a broken pipe leaving irrigation water to flow directly into creek.

Triple T Calf Barn – Complaint in May 2008 of manure piled outside, dead calves in the river, and possibly no permit.

Double LL Stables – Complaint in 2008 of a manure pile left out in rain continuously.

Pacific Natural Foods – Complaint in December 2008 of spilling manure onto road and of dumping urine on wetlands next to ditch that drained into the Willamette.

T. Taylor Farm – Complaint in April 2009 that farm was possibly operating beef and pig CAFO.

May 2009 – Complaint was assigned to “Chris.” No follow-up noted.

¹⁶² Robert and Debra Churnside Farm - March 7, 2008; March 26, 2008 note on the form.

consulted, yet there was no documentation of the consultation or response by Wym or anyone else at ODA.¹⁶³

In discussing lack of follow-up with ODA, their response was that not all enforcement activity is reflected in the files. However, while this may be true, it leaves an unclear picture at best of enforcement. The records also fail to reflect what actions are taken if or when violations are found, or if the violators are brought into compliance.

Complaints against certain farms are repeatedly submitted.¹⁶⁴ At times, ODA issues these farms Notices of Noncompliance (NONs) and Water Quality Advisories (WQA)¹⁶⁵ with no explanation of the result. In one instance, ODA received a complaint in May 2008 that Jack & Kim Snell Farm had an overflowing manure tank. ODA responded to this initial complaint by issuing a NON. ODA received the same complaint seven months later (December 22, 2008). However, there is no subsequent action documented.¹⁶⁶ In another situation, a complainant reported Hiday Poultry Farms in October 2008 for piling manure behind chicken houses. At the time ODA found a violation. A different complainant reported the same problem seven months later (May 29, 2009). But after the second

¹⁶³ GDD Farm - February 2009.

¹⁶⁴ Hoodview Dairy – Complaint on July 21, 2008 that the big gun was spraying within 40 feet of a neighbor’s blueberry farm. No follow-up recorded besides a note on complaint form saying Wym was contacted and that he will call the complainant. February 26, 2009 – Complaint that surface water samples exceed limits. Note on complaint form says Tessa will conduct unannounced visit and sample the waters. No follow-up listed. Lee Valley Dairy – Complaint on September 17, 2009 of application area running into creek tributary. September 21, 2009 – same complaint again. No specific follow-up listed. October 14, 2009 – NON issued for too many animals, violating discharge limits, and for curbs allowing flush water to escape.

¹⁶⁵ Hazenberg Dairy – Complaint on November 9, 2009 of direct pollution via an underground ditch to a lake that went into the Willamette, and for using a big gun for application. No follow-up recorded. December 23, 2009 - NON was issued for lack of depth marker. July 2008 – Complaint of filling in a floodplain and manure in the ditches. No follow-up recorded.

¹⁶⁶ Jack & Kim Snell – Complaint on December 22, 2008 of an overflowing manure tank. No follow-up recorded. May 2008 - Same complaint again. A NON was issued.

complaint, again, no follow-up was recorded. Notably, ODA recently issued this farm a WQA for the same issue on February 10, 2010.¹⁶⁷

ODA acknowledges difficulties due to the limited number of inspectors available to cover all CAFOs and the broad number of facilities regulated under the general permit. Given this resource shortage, complaints serve to bring potential violators to ODA's attention.¹⁶⁸ Unfortunately many complainants report that ODA is unresponsive and dismissive of their concerns.¹⁶⁹ It is not uncommon then, for complainants to give up reporting discharges despite witnessing continuous problems.¹⁷⁰

To the extent that ODA does respond to complaints, its records show many instances of investigations with no follow-up or cursory notations with no explanation.¹⁷¹ In some instances ODA suggests that complainants contact other resources¹⁷² or that someone else is handling the problem.¹⁷³ Some complainants have indeed resorted to calling the state police or city or county commissions to address the problems,¹⁷⁴ despite ODA's claims that it is responsible for NPDES issues relating to CAFOs.¹⁷⁵

¹⁶⁷ Hiday Poultry Farms – Violation found on October 2008 for manure piled behind chicken houses. May 29, 2009 - Same complaint from someone else. February 10, 2010 - WQA issued for same issue.

¹⁶⁸ July 14, 2010 meeting with ODA.

¹⁶⁹ Interviews with Complainants #1; #3; #4; #9; #10; #11; #16.

¹⁷⁰ Interview with Complainant #11

¹⁷¹ Maria Harkey – Complaint in February 2008 for mud, manure, noise. Form has “follow-up 2/7/08” written on it with no explanation of the result.

Noris Dairy – Complaint on January 11, 2010 for plate cooler water discharging into field. Form has “follow-up 2/7/08” written on it with no explanation of the result. March 24, 2009 – Complaint of water escaping from barn, flooding field. Note on complaint form two days later suggests complainant contact someone else.

Kelley's Pig Farm – Complaint in March 2009 of pigs in swale and contaminated runoff. April 9, 2009 - investigation but no follow-up recorded.

¹⁷² Noris Dairy - March 24, 2009 complaint; interview with Complainant #9.

¹⁷³ Ocean Trails Riding Stables - Internal email sent by Wym Matthews to Carol Devore on July 17, 2009 – Department of AGWC was responding; July 7 and July 12, 2009 (by two different complainants); and Interview with Complainant #16.

¹⁷⁴ Interviews with Complainants #11 and #16.

¹⁷⁵ O.R.S. § 468B.217.

iii. Lack of Inspections and Monitoring

In addition to failing to carry out public participation requirements and failing to record complaint follow-up, ODA also fails to implement various inspection and monitoring requirements. The CWA requires that any NPDES program have adequate authority “to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of [the Clean Water Act, which is titled “Inspections, Monitoring and Entry provisions].”¹⁷⁶ ODA appears to have been granted this authority by the state.¹⁷⁷ However, CWA’s specific monitoring provisions require permitted CAFOs to use such monitoring equipment and sample such effluents as the Administrator may reasonably ask of them. It also requires them to establish and maintain all records, and make all reports, as the Administrator reasonably asks of them. Beyond records and reports, they must provide any other information the Administrator may reasonably require.¹⁷⁸

EPA largely defers to each particular permit regarding the monitoring that must be done, and the information that must be kept.¹⁷⁹ However, it stipulates that each permit must require recordkeeping sufficient to attest to the implementation of the following things: the weekly depth of all manure and process wastewater in any liquid impoundments,¹⁸⁰ each farm’s nutrient management plan,¹⁸¹ the storage design for manure, litter and process wastewater, including calculations documenting its adequacy,¹⁸² actions taken to correct any deficiencies,¹⁸³ proper management of mortalities¹⁸⁴ (permit states that each Animal Waste Management Plan (AWMP) should to the extent possible

¹⁷⁶ 33 U.S.C. § 1342(b)(2)(B).

¹⁷⁷ O.R.S. §§ 561.275; 561.265; 561.200.

¹⁷⁸ 33 U.S.C. § 1318(a)(1)(A).

¹⁷⁹ 40 C.F.R. § 122.41; 40 C.F.R. § 122.42(e)(1)(ix).

¹⁸⁰ 40 C.F.R. § 412.37(b)(2).

¹⁸¹ 40 C.F.R. § 412.37(c); 40 C.F.R. § 122.42(e)(1).

¹⁸² 40 C.F.R. § 412.37(b)(5); 40 C.F.R. § 122.42(e)(1)(i).

¹⁸³ 40 C.F.R. § 412.37(b)(3).

¹⁸⁴ 40 C.F.R. § 412.37(b)(4); 40 C.F.R. § 122.42(e)(1)(ii).

include procedures for this), appropriate diversion of clean water from production areas,¹⁸⁵ detailed records of any overflow incidents,¹⁸⁶ no direct contact of animals with U.S. waters (but permit states that each AWMP should to the extent possible include procedures for this),¹⁸⁷ proper disposal of all contaminants,¹⁸⁸ planned conservation practices (permit states that each AWMP should to the extent possible include procedures for this),¹⁸⁹ protocols for properly testing manure, litter, process wastewater and soil,¹⁹⁰ and protocols for land application in accordance with the given nutrient management plan.¹⁹¹

Under the federal definition, facilities that are CAFOs (*concentrated* animal feeding operations¹⁹²) must adhere to these provisions. In contrast, Oregon applies the broader state definition of CAFOs as *confined* animal feeding operations,¹⁹³ which encompasses a greater number of facilities. A state is free to set NPDES permit requirements that are more stringent than the federal standard.¹⁹⁴ Thus, more facilities are required to get NPDES permits in Oregon and once the permit applies, the CAFO is required to meet all of the permit protocols.

However, in the general permit they jointly issue, ODA and DEQ fail to stringently require some of these protocols. Specifically, the permit fails to require all but large CAFOs to sample the nitrogen and phosphorous levels of their manure, litter, and process wastewater, both land-applied and exported. Smaller CAFOs are only required to sample soil from their land application areas.¹⁹⁵ Further, mortality management, contact between animals and U.S. waters, and

¹⁸⁵ 40 C.F.R. §§ 122.42(e)(1)(iii), (ix).

¹⁸⁶ 40 C.F.R. § 412.37(b)(6).

¹⁸⁷ 40 C.F.R. §§ 122.42(e)(1)(iv), (ix).

¹⁸⁸ 40 C.F.R. §§ 122.42(e)(1)(v), (ix).

¹⁸⁹ 40 C.F.R. §§ 122.42(e)(1)(vi), (ix).

¹⁹⁰ 40 C.F.R. §§ 122.42(e)(1)(vi), (ix).

¹⁹¹ 40 C.F.R. §§ 122.42(e)(1)(viii), (ix).

¹⁹² 40 C.F.R. 122.23, 33 U.S.C. § 1362(14).

¹⁹³ O.A.R. 603-074-0010(3). For purposes of this report, the difference in definitions is relevant as to which livestock facilities must apply for a permit.

¹⁹⁴ 33 U.S.C. § 1370.

¹⁹⁵ Oregon CAFO NPDES General Permit 01-2009.

projected future conservation practices are only accounted for to the extent that each AWMP “must, to the extent applicable” include protocols for maintaining these records.¹⁹⁶

Additionally, the permit requires only large CAFOs to record the weather conditions 24 hours prior to, at the time of, and 24 hours after, land application, despite the fact that land application at agronomic rates is dependent on weather, and is a key component to any nutrient management plan.¹⁹⁷ Finally, the general permit requires only large CAFOs to report actions taken to correct any deficiencies discovered during inspections, despite the fact that all CAFOs are subject to equipment deterioration and malfunction.¹⁹⁸ These distinctions in requirements based on size of the facility are not warranted under EPA regulations. Highlighting the need to hold smaller facilities accountable, EPA requested in an October 2003 letter that ODA include smaller AFOs in its annual reports because “EPA’s inspectors have observed over the past several years that within Region 10 some of these smaller operations present some of the more significant water quality issues.”¹⁹⁹

3. Lack of Knowledge

ODA appears to fundamentally misunderstand the various aspects of the NPDES program, including necessary scientific principles. This undermines its ability to play a helpful role in the NPDES scheme (assuming it could be validly granted such a role).

ODA takes issue with the very construct of the NPDES program. Its belief that the bulk of pollution originates from non-point sources causes it to question

¹⁹⁶ Oregon CAFO NPDES General Permit 01-2009, p.12.

¹⁹⁷ Oregon CAFO NPDES General Permit 01-2009, p.17.

¹⁹⁸ Oregon CAFO NPDES General Permit 01-2009, p.17.

¹⁹⁹ Attachment 7 – Letter from L. John Iani, EPA Region 10 Administrator to Katy Coba, ODA Director, October 15, 2003.

the efficacy of NPDES, which is a point-source-based program.²⁰⁰ Furthermore, it suspects that CAFO producers may not be able to control the myriad minor discharges putting them just over the maximum-allowable discharge threshold due to weather fluctuations and the fact that animal waste is not controllable in the same way factory effluent can be in terms of shutting off valves or smokestacks to control discharges.²⁰¹ One example of this is ODA's suspicion that the fecal levels found in Oregon waters may in fact be primarily from the waste of wild birds. It believes that the wild bird waste may be significantly distorting total bacterial counts.²⁰² This belief has been shared with recent complainants, and more recently, has been acted upon by ODA. A 2008 letter from ODA to a complainant who had reported possible pollution from a dairy, states:

"The fifth sample was taken above the area where manure could have entered the river. This upstream sample did violate water quality standards... The most probable explanation for the violation of water quality standards in the fifth sample is that wildlife manure was present in the watershed and the water."²⁰³

More recently, using Microbial Source Tracking (MST) ODA has tested water samples from Hoodview Dairy and concluded that any E. coli comes mostly from birds who must track cow manure onto the dairy's roofs, from which it runs off. ODA claims that CAFOs are not responsible for such run-off, as they cannot be expected to restrict birds from their land.²⁰⁴ However, there are several concerns around this form of testing. First, it is a relatively new method – one which a scientist at the laboratory conducting the tests for ODA has stated takes

²⁰⁰ July 14, 2010 meeting with ODA.

²⁰¹ July 14, 2010 meeting with ODA.

²⁰² July 14, 2010 meeting with ODA.

²⁰³ Attachment 8 – Letter from Wym Matthews, ODA CAFO Program Manager to complainant Robert Collier, regarding Moss Creek Dairy, July 24, 2008.

²⁰⁴ Attachment 9 – Letter from Ray Jaindl, ODA Natural Resources Division Administrator to Dale Skiles concerning Hoodview Dairy, September 20, 2010.

a couple of years to rely upon, as a reliable base must first be established.²⁰⁵ In contrast, ODA appears to have begun relying on its results immediately, without using baseline testing, using them to inform its policy. In addition, ODA appears to selectively test particular E. coli samples for DNA results. For example, a recent complainant alleges that two 2010 tests taken roughly two weeks apart at Hoodview Dairy produced markedly different E. coli counts: 11,000²⁰⁶ and 1,200, respectively. It is alleged that ODA used only the second, much lower, sample to conduct additional testing for DNA sources.²⁰⁷ Finally, it is worth investigating whether it is the case, as has been alleged, that E. coli samples taken closer to CAFO fields tend to show lower returns than those samples taken further downstream.²⁰⁸ Given that the volume of waste produced by a dairy compared with that of wild animals is quite different, it is hard to imagine that wildlife pose the pollution problem.

An August 2011 E. coli outbreak in Oregon strawberries was also attributed to deer droppings found on one farm.²⁰⁹ Wildlife excrement may pose a threat to human health, but it is unknown how many deer carry the harmful bacterium strain or why incidents of E. coli contamination from deer have not previously been reported. According to one report, “It has been known since 1995 that deer can carry E. coli, but investigators don't know why it hasn't, until now, shown up in strawberries anywhere in the United States.”²¹⁰ The state senior epidemiologist was also unsure why the same E. coli strain turned up in

²⁰⁵ Alleged statement by Hyatt Green of OSU Water Lab, as conveyed by Complainant # 4.

²⁰⁶ Attachment 10 – Water sample report dated March 29, 2010.

²⁰⁷ Interview with Complainant #4.

²⁰⁸ Attachment 11 – Water sample report dated June 1, 2010. E. coli measured at the western edge of the lagoon tested at 1,100 MPN/100 ml versus farther downstream which measured only 740 MPN/100 ml/.

²⁰⁹ Lynne Terry, *Oregon confirms deer droppings caused E. coli outbreak tied to strawberries*, The Oregonian, August 17, 2011, http://www.oregonlive.com/washingtoncounty/index.ssf/2011/08/oregon_confirms_deer_droppings.html

²¹⁰ Jonathan J. Cooper, *Deer droppings proven cause of E.coli outbreak*, Capital Press, August 17, 2011, <http://www.capitalpress.com/orewash/AP-OR-E-coli-strawberries-081711>

three separate locations on the farm because “they have not done much testing.”²¹¹

Despite relying on this science in one setting, ODA also cites its present uncertainty over DNA sources as justification for currently focusing less on violators whose discharges exceed the allowable *E. coli* limit by only a small fraction, in favor of pursuing the few but more egregious violators.²¹² However, waters with *E. coli* levels above EPA limits violate CWA regardless of whether the discharge is from larger or smaller violators and whether the violation is egregious or not.

Similarly, ODA does not believe that monitoring water levels at individual facilities is useful – rather, it chooses to test river segments into which facilities’ discharges may run.²¹³ This approach leads ODA to conclude that if a river’s overall water quality is good, there must be no worrisome discharges in the area. This approach hampers ODA finding the source(s) of waters that are contaminated: ODA itself admits that when overall water quality is not good, it is difficult to determine which facility may be contributing because all it knows is the location along the river where the given sample was taken.²¹⁴ However, despite admitting as much, ODA insists that it would be problematic to have volunteers help with limited resource issues by monitoring individual facilities (volunteers currently monitor overall water body levels along some river and stream segments in the state and report the results regularly to ODA).²¹⁵

Further, ODA classifies nearly every farm with livestock as a CAFO for NPDES purposes, which obligates ODA to inspect them all. According to EPA,

²¹¹ Lynne Terry, *Oregon confirms deer droppings caused E. coli outbreak tied to strawberries*, The Oregonian, August 17, 2011, http://www.oregonlive.com/washingtoncounty/index.ssf/2011/08/oregon_confirms_deer_droppings.html

²¹² July 14, 2010 meeting with ODA.

²¹³ July 14, 2010 meeting with ODA.

²¹⁴ July 14, 2010 meeting with ODA.

²¹⁵ July 14, 2010 meeting with ODA.

an animal feeding operation is either a “significant contributor of pollutants to waters of the United States” or else houses a large number of animals: at least 200 dairy cows, 300 veal calves, 300 other cattle, and so forth. The fewest of any species needed in order to qualify as a CAFO is 150 horses.²¹⁶ By contrast, ODA’s definition of a CAFO provides:

- (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state; or
- (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR § 122.23.²¹⁷

The term “concentrated” is not defined, creating no minimum requirement for number of animals. As a result, ODA defines almost every farm housing animals as a CAFO, obliging itself to inspect each on a regular basis. ODA has admitted as much, and stated recently that it may need to realign its definition with that of the federal government.²¹⁸

Finally, ODA believes it is incapable of taking certain actions to punish violators. For example, it maintains that it cannot confiscate animals when necessary, nor have someone else do so, from farms operating with revoked permits.²¹⁹ It handles this conflict by simply allowing violating farms to continue

²¹⁶ 40 C.F.R. § 122.23(b)(2).

²¹⁷ O.A.R. ADC 603-074-0010(3).

²¹⁸ July 14, 2010 meeting with ODA.

²¹⁹ July 14, 2010 and October 12, 2010 meetings with ODA.

operating, although it has been exploring alternatives.²²⁰ ODA is correct that neither federal nor state law allows it (or DEQ, for that matter) to impound animals solely due to NPDES permit revocation. Nor does case law mention this topic. However, ODA has been not only allowed, but charged, to pass all rules necessary to administer and enforce all laws it is charged with overseeing. An Oregon legislative mandate clearly charges it with compiling all relevant rules into a pamphlet for distribution.²²¹ Hence, ODA had, and continues to have, an opportunity to address this concern.

Moreover, a CAFO with a revoked permit is not entitled to continue with its current farming practices, regardless of whether it retains animals, because these practices are not protected by the law unless permitted through NPDES.²²² ODA has various methods available to it to ensure that a farm without an NPDES permit does not in fact continue operating as a CAFO. First, it may seek, with a show of cause, “a temporary or permanent injunction restraining any person from violating any provision of a law under the jurisdiction of the department.”²²³ Second, ODA (from the state’s perspective) may enter a CAFO’s land to determine the source of any water pollution as well as “compliance with a statute, rule, standard or permit condition relating to the control or prevention of water pollution from the operation.”²²⁴ Hence, they would arguably be able to monitor a farm whose NPDES permit was revoked to ensure it ceased all animal-rearing activities.

Finally, with regard to the animals themselves, state animal control officers are authorized to impound animals abandoned or otherwise neglected by a farm. Hence, if a permit revocation leads to animal neglect, others besides ODA will be

²²⁰ July 14, 2010 and October 12, 2010 meetings with ODA.

²²¹ O.R.S. § 561.190 (“The State Department of Agriculture is authorized and directed to make any and all rules and regulations necessary for the administration or enforcement of any law with the administration or enforcement of which the department is charged... Such rules and regulations shall be compiled and printed in pamphlet form for distribution.”).

²²² O.R.S. § 468B.050(1); O.A.R. 340-045-0115(1),(2).

²²³ O.R.S. § 561.280.

²²⁴ O.R.S. § 468B.217.

authorized to impound any affected animals²²⁵ – as such, ODA ought to carry out permit revocation when necessary.

ODA is mistaken regarding other areas of the law as well. It believes it is limited in its ability to deny permits. Specifically, it claims that it may not deny an initial permit based on siting concerns (besides those strictly related to zoning), and that it may not deny a permit renewal due to prior permit violations.²²⁶ However, ODA appears mistaken on both counts. Regarding siting, ODA claims it may only deny a permit to a CAFO seeking to build outside of an exclusive farm use zone believing it cannot regulate siting decisions within exclusive farm use zones. But Oregon law requires ODA to “develop and implement any program or rules that directly regulate farming practices ... for the purpose of protecting water quality... *applicable to areas of the state designated as exclusive farm use zones.*”²²⁷ [emphasis added]. Hence, just because a CAFO is sited in an exclusive farm use zone does not mean it cannot be regulated by ODA, as appropriate and including permit denial, in order to protect against water pollution.

Additionally, ODA’s own rules require that “[a]ll confinement areas, manure handling and accumulation areas and disposal areas and facilities must be *located*, constructed, and operated such that manure, contaminated drainage waters or other wastes do not enter the waters of the state at any time... ;”²²⁸ “A person constructing or commencing to operate a confined animal feeding operation... shall first submit detailed plans and specifications... and other necessary information to the Department and obtain approval for the proposed facility and operation from the Department in writing: ... (b) Topographic map of the proposed site showing *the natural drainage pattern and the proposed surface water diversion and area and roof drainage control system or systems*; ... (d)

²²⁵ O.R.S. § 167.345(2).

²²⁶ October 12, 2010 meeting with ODA.

²²⁷ O.R.S. § 561.191(1).

²²⁸ O.A.R. 340-051-0020(1).

Information regarding the occurrence of usable groundwaters and typical soil types in the area of the proposed site and disposal areas; (h) *Any additional information* that the Department may reasonably require to enable it to pass intelligently upon the effects of the proposed confined animal feeding operation;²²⁹ and, finally, “[i]n interpreting and applying these rules the Department may consider *variations in soils* and climate... ”²³⁰ [emphasis added]. In fact, ODA’s own CAFO General Permit 01-2009 takes this same approach, as it states “The permittee must *site*, design, construct, operate, and maintain all waste storage facilities consistent with the AWMP.”²³¹ Despite all of this, siting is left out of the list of variables taken into consideration when deciding whether to grant a permit.

Further, permits have been issued to farms located in environmentally-sensitive areas, such as floodplains. While an adequate AWMP would address this concern, ODA does not always require this paperwork as it ought to and it may fail to properly review the submitted plans. Bar MC Feedlot and Windy Ridge Dairy are two farms with navigable water bodies bordering their land, but have no such acknowledgment in their AWMPs.²³² Cowan Dairy is an example of a farm with fields established directly on floodplains, yet still allowed to operate.²³³

ODA’s claim that it may not deny a renewed permit to an offender contradicts CWA itself, which makes the authority to terminate or modify permits for cause a prerequisite for all state-managed federal NPDES programs. If ODA had CWA-derived authority, it would include the power to revoke or deny permits for cause. Acceptable causes include “violation of any condition of the permit.”²³⁴ EPA rules highlight this concept in required language that must be included in all

²²⁹ O.A.R. 340-051-0015.

²³⁰ O.A.R. 603-074-0005.

²³¹ Oregon CAFO NPDES General Permit 01-2009.

²³² ODA Files.

²³³ ODA Files.

²³⁴ 33 U.S.C. § 1342(b)(1)(C)(i).

NPDES permits: “The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application”²³⁵ and “[t]his permit may be modified, revoked and reissued, or terminated for cause.”²³⁶

Separate from EPA authority, state authority includes the power to revoke permits as well. ODA’s own CAFO General Permit 01-2009 contains support for refusing permit renewal for cause: “[t]he permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application;”²³⁷ “This permit may be modified, revoked and reissued, or terminated for cause;”²³⁸ “Modification or revocation of coverage under this permit as it applies to any person may be initiated by ODA;”²³⁹ and, finally, “[a]fter notice, registration under this permit may be modified or revoked as it applies to any person for cause as follows: (a) Violation of any terms or conditions of the permit...”²⁴⁰

Despite all of this, ODA continues to renew permits for, and allow expanded building by, offenders, indicating a severe misunderstanding of its state duty, not to mention CWA requirements. One way in which farms often violate their permit is by initiating building without ODA’s permission. Yet despite such a severe infraction, ODA’s response is often to simply issue, through a Notice of Noncompliance and Plan of Correction (NON/POC), a deadline by which to apply, or to submit building plans. There is often no order to cease building, and there is almost never an administrative order or penalty. Since

²³⁵ 40 C.F.R. § 122.41(a).

²³⁶ 40 C.F.R. § 122.41(f).

²³⁷ Oregon CAFO NPDES General Permit 01-2009.

²³⁸ Oregon CAFO NPDES General Permit 01-2009.

²³⁹ Oregon CAFO NPDES General Permit 01-2009.

²⁴⁰ Oregon CAFO NPDES General Permit 01-2009.

2006, at least 10 CAFOs have begun unapproved building projects, yet ODA has issued an administrative order against only one – RSC Dairy – for expanding its above ground liquid manure tank in 2009. Despite this infraction, the dairy was simply told to retroactively submit its construction plans and an approval request form. No fine was issued. Such automatic retroactive approval does not allow for a serious assessment of potential impact on water quality and does not encourage facilities to take CWA regulations seriously.

Numerous such examples abound,²⁴¹ but one of the most egregious includes Zehner Farms. In late July 2008, an ODA inspection found “ongoing unapproved construction” to expand a lagoon. An NON/POC was issued ordering the farm to “consult technical assistance to design lagoon expansion” and to “submit plans and timeline for lagoon expansion.” A deadline was set, but no order was given to halt construction. Two and a half months later (October 2008), an inspection found a storage pond being constructed without permission. Again, an NON/POC was issued instructing the farm to submit its engineered designs and plans for ODA approval by a stated deadline, but no administrative action was brought, and no fine issued. Over a year later (December 2009), a third inspection found that the original unapproved lagoon expansion had in fact continued, and no design information was ever submitted, despite more than a year passing since ODA ordered the facility to retroactively submit its construction plans. Despite this blatant disregard, ODA once again chose not to issue penalties but instead relied on its standard response, issuing yet another NON/POC which this time gave the farm over six additional months to complete paperwork already more than a year overdue.

Besides engaging in approved construction projects, farms violate CAFO rules in numerous other ways, yet are often approved not just for renewed permits, but for increased herd sizes as well. In fact, in 2000, an ODA employee stated in an email to fellow employees that he had informed the operator of

²⁴¹ ODA Files.

Threemile Canyon Farms that “ODA has never, to my knowledge, had an operator reduce his herd size”²⁴² On January 15, 2004, Threemile Canyon Farms (a.k.a. Willow Creek Dairy) was found to have manure escaping from its facility. There was also evidence of overflows from two of its emergency overflow ponds. Yet, despite this critical inspection report, ODA approved, *on the very same day*, a herd increase. Similarly, in 1997, ODA signed off on a herd increase proposed by Rickreall Dairy less than three months after issuing it a WQA.

4. Lack of Resources

By its own admission, ODA is incapable of meeting the many requirements of a comprehensive NPDES program. First, it has too few inspectors for the number of farms it monitors: ODA classifies nearly every Oregon farm as a CAFO for NPDES purposes, bringing some 565 farms under its jurisdiction. However, it employs only six inspectors, and attempts to inspect each farm roughly every 10 months, with high-risk farms receiving more frequent oversight. This forces each inspector to conduct some 80 inspections per year—too many to maintain a high level of quality.²⁴³ Additionally, these calculations are just based on annual inspections. They do not account for additional inspections required to follow-up on complaints and repeated inspections for egregious violations. Nor do they include educational, administrative or other duties of the inspectors.

ODA also admits that limited time and money force it to choose between enforcing on-the-ground compliance and paperwork compliance. It has sided with on-the-ground compliance, overlooking various paperwork violations by CAFOs.²⁴⁴ ODA acknowledges that the current paperwork requirements for

²⁴² “I noted to him that ODA has never, to my knowledge, had an operator reduce his herd size, but that it was not out of the question.” Internal email among ODA staff, October 27, 2000.

²⁴³ July 14, 2010 meeting with ODA.

²⁴⁴ July 14, 2010 meeting with ODA.

CAFOs are already the “bare minimum.”²⁴⁵ However, it admits that its inspectors often help farms fill out the requisite papers, sometimes by taking information gained through on-the-ground inspections and inserting it into incomplete annual reports.²⁴⁶ Indeed, its own records reflect this reality. A 2008 inspection report for Danish Dairy states “*Helped draft letter to EPA.*” An inspector at the same farm reported the following year “*Met to help develop materials for proposed construction.*” Similarly, in 2007, ODA ordered Mira Farms to develop an AWMP which it then helped it develop and subsequently, and not surprisingly, accepted.

ODA asserts that farms’ lack of compliance with paperwork requirements does not necessarily reflect producers’ lack of compliance on the ground.²⁴⁷ For example, an ODA representative stated in a July 2010 meeting that some producers keep records scrawled on feed bags or barn walls – and that ODA gladly accepts such calculations as valid records. Not only does this fall short of EPA’s requirement that farms make certain paperwork on-site and available to inspectors,²⁴⁸ but the danger in this is that it treats paperwork compliance and on-the-ground compliance as mutually exclusive when, in fact, paperwork is meant to reflect the very situation that is occurring on the ground. In fact, a CAFO’s truthfully-completed paperwork is a method of self-reporting and as such presents one of ODA’s only opportunities to assure on-the-ground compliance given the limited inspection resources.

ODA also maintains two separate information databases which do not always contain identical information: while ODA keeps electronic files on individual CAFOs, many conversations with these farms occur between an ODA inspector and the farm operator, either by phone or in person, and are never noted in either system. Advice and sometimes warnings may be given to farms during these conversations, creating an important record that ought to be

²⁴⁵ July 14, 2010 meeting with ODA.

²⁴⁶ July 14, 2010 meeting with ODA.

²⁴⁷ July 14, 2010 meeting with ODA.

²⁴⁸ 40 C.F.R. § 412.37(c).

consistently maintained.²⁴⁹ ODA recognizes this problem and noted it is moving to a more comprehensive computer database system.

Additionally, as mentioned earlier, ODA admits to leaving CAFOs largely to their own devices when it comes to establishing methods to avoid discharging. It terms this approach “adaptive management” – producers are told they may not discharge, but are not told how precisely to achieve compliance, nor limited in the methods they may try. As a result, very few restrictions are placed on producers – an approach meant to encourage and recognize diversity among Oregon’s farms. However, ODA admits that this system is both harder to teach farmers, as well as harder to enforce, than a more prescriptive approach.²⁵⁰ While some flexibility is useful to account for variances in geography and production, clarity and consistency is also needed to set a foundation for prevention and enforcement.

In an effort to address its lack of resources, in June 2011 the Oregon legislature approved ODA’s 2011 – 2013 budget, which raises the previous flat \$25 annual permit fee to a tiered fee schedule according to the number of animals confined in the CAFO.²⁵¹ However, the proposal to shift the cost burden to suspected violators by charging operators follow-up inspection fees²⁵² was not included in the final approval.²⁵³

5. ODA’s Inconsistent Performance of NPDES Duties

In addition to lacking legal authority and resource capacity to meet federal NPDES oversight requirements, ODA also appears unwilling to perform certain

²⁴⁹ July 14, 2010 meeting with ODA.

²⁵⁰ July 14, 2010 meeting with ODA.

²⁵¹ *ODA Director Pleased with Legislatively Approved Budget*, June 10, 2011.
<http://oregon.gov/ODA/news/110610budget.shtml>.

²⁵² Mitch Lies, *Oregon Proposes CAFO Fee Increase*, Capital Press, July 22, 2010,
<http://www.capitalpress.com/content/ml-cafo-fee-increase-072310>.

²⁵³ O.A.R. § 603-074-0020.

central NPDES mandates. It displays a level of complacency simply out of line with what is required of an NPDES permitting agency.

The ultimate purpose of the NPDES program is to prevent or halt polluting discharges to navigable surface waters. Hence, a discharge from a facility is perhaps the most obvious NPDES violation. All NPDES rules as well as the rules contained in each farm's NPDES permit are meant to support this ultimate goal of no discharges. Should an accidental discharge occur, it is to be recorded in the CAFO's required paperwork and reported to ODA within 24 hours.²⁵⁴ In addition, the farm is to take all possible measures to stop the flow as soon as possible.²⁵⁵ Tragically, discharges of pollutants to surface waters are common, and discharging farms often fail to report (sometimes complaints come from neighbors or are even noticed during an inspection) or take the required remedial measures.

Further, ODA does little to deter farms to reduce their discharges. Discharges occur in several ways. Most commonly, farms discharge as a result of either leaky or overflowing equipment, land application exceeding agronomic rates, or improper channeling of wastewater (including manure escaping out of, or running off of, barns and other facilities). Over-application is all too common. Since 2007, at least 11 farms have over-applied waste to their fields on at least 17 separate occasions.²⁵⁶ These are the ones noted; it is impossible to tell how many such discharges actually occurred.

Most worrisome is that ODA has rarely brought administrative actions and, when it has, almost never assessed fines. This pattern applies even to farms that have repeatedly offended. For example, in February 2008, the Gary Shull Dairy,

²⁵⁴ 40 C.F.R. § 412.37(b)(6) (requirement to record); 40 C.F.R. § 122.41(l)(6)(ii) (requirement to report).

²⁵⁵ 40 C.F.R. § 412.37(a)(3).

²⁵⁶ ODA Files.

which had a history of exceeding agronomic rates,²⁵⁷ was found to be over-applying its waste, leaving its fields saturated to the point of standing water. An administrative order was issued over a year later for this along with many other violations. A fine was assessed – a hopeful sign. However, six months after the initial violation, the farm was again found to be applying waste in violation of its AWMP. A mere NON/POC was issued. Nine months later, it was once again caught exceeding agronomic rates. ODA again chose only to issue an NON and not pursue the issue any further.

Another chronic offender, Mayfield Dairy, has been found discharging, either through run-off from barns or from over-application (sometimes ODA's reports fail to state the precise source) over 10 times since 2008. During this time, ODA has issued it seven NON/POCs and seven administrative orders. All but one order had no fine attached. On September 1, 2009, following six months of issuing administrative orders involving no fines,²⁵⁸ and significant community protest, a fine was finally assessed for all previous violations dating back to March 26, 2008.²⁵⁹ However, three months later, another discharge was discovered (this time due to off-season application), and while an administrative order was issued, no fine was attached.²⁶⁰ Rather, ODA issued a Notice of Permit Registration Modification requiring Mayfield to retain a consultant to conduct water quality tests. Mayfield was finally fined \$20,000 for “manure-related violations” in May 2010.²⁶¹

ODA is aware of the tendency of permitted CAFOs to discharge through over-application, as internal correspondence reveals. In 2008, ODA sent a letter

²⁵⁷ July 2003 WQA issued for not land-applying at agronomic rates.

²⁵⁸ March 30, 2009; April 15, 2009; June 12, 2009.

²⁵⁹ ODA Files – Mayfield Dairy was issued an administrative penalty of \$9,630 on September 1, 2009 for violations from March 26, 2008 – April 29, 2008, and from April 25, 2009 – May 7, 2009.

²⁶⁰ Administrative Order dated December 18, 2009.

²⁶¹ Scott Learn and Eric Mortenson, *Manure smells like trouble at 2 Oregon CAFO dairies owned by New Seasons' founder*, May 29, 2010.

http://www.oregonlive.com/environment/index.ssf/2010/05/post_15.html. Last accessed July 22, 2012.

to Threemile Canyon Farms reviewing the results of its annual report against those of previous years. It informed the farm that *“In general, these reports show that there appeared to be more problems with managing nitrogen (N) and irrigation water compared to 2006”* and went on to explain that *“the 2007 report shows 140 fields had increased N levels at five (5) feet compared to the 2006 report, representing a 60 percent increase...”*

Discharges as a result of equipment malfunction or misuse are also common. Since 2007, at least 24 separate discharge events have occurred due to seepage or overflow from manure transfer lines, tanks, lagoons and irrigators.²⁶² ODA issued administrative orders in roughly half of these cases, relying on NON/POCs for the remainder. Of the 24 incidents mentioned above, 11 resulted in administrative orders.²⁶³ However, only four carried penalties,²⁶⁴ one of which was held in abeyance and only enforced once the farm failed to adhere to orders. In that case, the initial penalty assessment only occurred following four violations, only two of which it addressed.²⁶⁵

The number of farms with problematic run-off in just the last few years is significant. ODA records reveal, however, that some farms have continuing problems in this arena, and even after being unable to prevent or change their

²⁶² ODA Files.

²⁶³ ODA Files.

²⁶⁴ L&L Holsteins – In October 2009 a \$580 fine was issued for an overflowing above ground liquid manure tank and for not reporting the discharge.

December 10, 2010 – A \$2,040 penalty previously held in abeyance for the above ground liquid manure tank and below ground liquid manure tank both repeatedly violating the limits.

Nes-Till Farms – In June 2009 a \$960 fine was issued for an above ground liquid manure tank overflowing into a ditch that flowed to a river and excessive E. coli found.

Riverfront Dairy – In June 2009 a \$640 fine was issued for a big gun malfunctioning and continuously applying to one area and excessive E. coli found.

²⁶⁵ L&L Holsteins – In January 2008 a NON/POC was issued for a broken pump causing manure to pool on field and no report of the discharge.

May 23, 2008 – An NON/POC was issued for above ground liquid manure tank being clogged and completely full, 5/23/08

June 12, 2009 – An inspection reported 3 feet of solids in above ground liquid manure tank. A \$2,040 penalty was issued for the most recent violation plus not having application records. But the fine was held in abeyance pending further violation.

December 10, 2010 – An above ground liquid manure tank and below ground liquid manure tank both in violation triggered the previously-assessed \$2,040 penalty.

behavior, ODA often does little to punish their discharges. For example, OSU Dairy has a long history of discharges dating back to at least 1992, when DEQ fined it \$3,000. Twice in 1995, it experienced spills, yet it appears that ODA did not issue NON/POCs. In 1999, it again had a spill along with mysterious seepage. In 2006, OSU again discharged, this time finally receiving an administrative order. In April 2008, ODA found more problems. It warned OSU through a WQA of various leaks, including a leak in its flush system. OSU did not properly fix this problem, as two months later its flush pump line blew, discharging pollutants to surface water. ODA did issue an administrative order but failed to assign a fine, despite OSU's long history of warnings and violations, and despite the fact that with regard to this most recent discharge, OSU was clearly warned two months prior and given an opportunity to prevent the discharge.²⁶⁶

Another recent example of a chronic discharger is Rock Ridge Dairy. From 2007 to 2009, it was found discharging at least five times. In one ten-month span alone (from November 27, 2007 through September 29, 2008,) it was at least four times found to be creating run-off from its land application. Yet inexplicably, even after three violations, ODA failed to levy a fine, choosing to simply issue an administrative order containing a warning. Finally, when the same problem was discovered yet again later that month, a \$6,240 fine was assessed. The farm later was made to pay only \$4,680 of this, the remainder held in abeyance contingent upon no additional discharges for one year, and meeting all ODA orders.²⁶⁷

Despite clear rules that dischargers must record and report all such incidents,²⁶⁸ this often does not happen. ODA sometimes discovers discharges through citizen complaints, or during routine inspections. This creates a major

²⁶⁶ ODA Files.

²⁶⁷ ODA Files.

²⁶⁸ 40 C.F.R. § 412.37(b)(6) (requirement to record); 40 C.F.R. § 122.41(l)(6)(ii) (requirement to report).

barrier to effective enforcement, as ODA aims to allow CAFOs as much leeway as possible, entrusting them to self-monitor and self-report to a large extent. In this regard, one would expect that violations of this trust would be seriously punished. However, ODA tends to rely only on NON/POCs and administrative order warnings to respond to such incidents, generally focusing only on the discharge and not even addressing the failure to report. From 2006 through 2008, at least 12 incidents of non-reported discharge were discovered, including three farms with repeated offenses. Yet ODA brought only eight administrative actions, and all but three involved no fines. Two of the three fines assessed were for multiple previous violations, and one of these – for two violations merged together – totaled a mere \$570.²⁶⁹ Unbelievably, one of the incidents incurring no fine involved a center pivot irrigator at Threemile Canyon Farms negligently left on for seven hours without being checked. As it turned out, it was stuck and unable to pivot, causing discharge over 18,000 gallons of manure to one point on the field. This resulted in two standing ponds of manure spread across 1¼ acres of land. Making matters worse, the incident was never reported to ODA and was not discovered until weeks later.²⁷⁰

One reason for chronic, repeat discharges appears to be ODA's lax follow-up, which does little to deter farms from re-offending. ODA's records reveal numerous instances of WQAs, NON/POCs, and even administrative orders going unacknowledged by farms, and ODA doing little in response.²⁷¹ This applies to all manner of violations. One area of significant deficiency is operations reporting compliance (referred to by ODA as "paperwork"): ODA has allowed farms to linger indefinitely without current animal waste management plans and without submitting annual reports. For example, in January 2008, ODA issued Classen Dairy a NON/POC for not having an AWMP. The NON/POC extended its deadline by four months.²⁷² It is unclear from the record what happened next, but

²⁶⁹ ODA Files.

²⁷⁰ ODA Files.

²⁷¹ ODA Files.

²⁷² NON/POC issued January 25, 2008.

at some point, another deadline of February 1, 2009 was issued – possibly for yet another, more updated version of the AWMP.²⁷³ Come that date, the AWMP was still not complete. ODA did nothing for three months. Finally, in May 2009, ODA issued a NON/POC, but only to further extend the deadline to June.²⁷⁴ The June deadline passed and still the farm had no AWMP. That August, one year and eight months later, ODA issued an administrative order, but only to repeat the instructions already given numerous times: to submit an AWMP. No fine was issued.²⁷⁵

ODA has also allowed farms to ignore its warnings regarding ongoing manure mishandling. In February 2008, ODA issued Ever-May Farms a NON/POC for applying manure too near surface water.²⁷⁶ Ten months later, it discovered manure piles not being kept on pads, and missing berms. It issued another NON.²⁷⁷ Two months later, ODA found solid manure being stored on bare ground, and issued a third NON.²⁷⁸ Eight months later, it once again discovered mishandled manure piles, and a badly maintained manure lagoon. Another NON was issued – the fourth in less than two years.²⁷⁹ Five months later, still more manure mismanagement was discovered – this time over-application and evidence of run-off. This time, ODA issued a Water Quality Advisory.²⁸⁰ This was never followed up with an administrative action of any sort.

ODA does not efficiently regulate offenders as there are no regular consequences attached to violations. NONs, Administrative and Civil Orders, as well as penalties are inconsistently meted out.²⁸¹ As a result, ODA's regulatory

²⁷³ As referenced in NON/POC issued May 13, 2009, extending the deadline to June 12, 2009.

²⁷⁴ NON/POC issued May 13, 2009.

²⁷⁵ Administrative Order signed on August 10, 2009.

²⁷⁶ NON/POC issued February 14, 2008.

²⁷⁷ NON/POC issued December 8, 2008.

²⁷⁸ NON/POC issued February 26, 2009.

²⁷⁹ NON/POC issued October 12, 2009.

²⁸⁰ WQA issued March 5, 2010.

²⁸¹ Over the course of seven years, Van Beek farm was cited four times for various offenses – a complainant reported a dead animal pit too close to a stream; liquid application was done on bare ground; composting manure was uncovered; and runoff ran from the roof through the manure

power is diluted and does little to prevent discharge or dissuade violators. For example, some repeat violators are given multiple WQA warnings before ODA issues a more serious response. Myrtle Lane Dairy failed to submit an annual report for one year. ODA issued three WQAs with no effect before finally issuing an NON.²⁸² At times violations may not incur any corrective action. For example, ODA failed to issue an NON to Konyon Dairy despite an operator reported discharge in 2002. Pressure from a plugged pipeline caused a ground pipe to explode causing manure to flow into an irrigation canal. However, an NON was not issued even though the dairy had also discharged two years previously. In 2000, ODA found the dairy's E. coli levels to be too high, noting that it was likely due to a spill that occurred the same morning. An NON was not issued at that time either.²⁸³

Moreover, ODA's response does not seem to correlate with the severity of the violation. Instead of treating an offense by issuing the appropriate sanction, ODA seemingly allows some farms more leeway than others. At Volbeda Dairy, for example, five inspections over the course of a month found violations, yet ODA issued no fines. This dairy chronically caused run-off from manure piles into ditches, and subsequently into the creek. Inspectors repeatedly find the same freeboard and seepage violations in its lagoons. Notably, during at least three inspections, several E. coli tests violated limits. Yet despite these offenses, no NONs were issued. A note on each inspection states ODA can issue a civil penalty if the farm does not comply. However, no penalties were ever issued.²⁸⁴

area. In these instances ODA issued the farm a WQA. ODA did not mete out a more serious sanction.

²⁸² Myrtle Lane Dairy – Had no annual report one year. Three WQA's were issued before an NON finally issued.

²⁸³ Konyon Dairy – On April 4, 2002 the operator reported a discharge caused by a plugged pipeline to a separator. Pressure caused a ground pipe to explode which caused manure to flow into an irrigation canal. No NON was issued. February 8, 2000 - E. coli levels are too high, likely because of a spill the same morning. No NON was issued.

²⁸⁴ Volbeda Dairy – The operator reported a discharge due to a broken flush valve. An NON was issued on July 30, 2008. February 11, 2009 - Complaint of ditch dumping. February 12, 2009 - Inspection found compost pile running to the ditch and the same freeboard violations from January 29, 2009 (seeping lagoon and E. coli over limits). No NON issued. February 5, 2009 -

Contrast this with the situation with RSC Dairy, which was recently issued a penalty of \$12,000 for discharging into surface waters. The fine was based on violations found in January 2010 by a joint EPA and ODA inspection.²⁸⁵

There are problems when ODA issues NONs as well. Issuance can be irregular with seemingly no explanations. Roaring River Dairy was cited for manure slopping over the curb of the tank caused by a bursting pipe. Six months later, manure was still escaping. A year after the first violation, gutters and diversions needed repair and the farm's application exceeded agronomic rates. In all three situations, only an NON was issued.²⁸⁶ An incongruous NON was issued to Gary Shull Dairy in 2008. The farm suffered from a broken pipe, ramp, drain allowing for possible discharge, and ground oversaturated from improper application. But the NON written the same day failed to include the above-mentioned violations. Eventually, the violations including several others from the same day, led to an administrative fine.²⁸⁷

Contrast this with the situation at Fir Ridge Holstein Farm who did not face a fine despite multiple discharge violations, including waste flowing from the facility into the holding and freshwater ponds, E. coli amounts over limitations, and application exceeding agronomic rates. A follow-up three months later, the inspector found overflow and liquid manure contacting bare soil among other

Follow-up noted that no records were kept and the containment systems were not meeting requirements. No NON was issued.

²⁸⁵ *Oregon Dairy Pays \$12,000 for Alleged Animal Waste Discharges*, EPA Press Release, June 21, 2011. <http://yosemite.epa.gov/opa/admpress.nsf/0/56C018622F93CF34852578B6005D772F>

²⁸⁶ Roaring River Dairy was only issued NONs. February 2008 - Inspection noted that manure was escaping from various areas, a burst manure tank pipe caused the spill, manure slopping over curb, and the dairy had no records available. An NON was issued. August 2008 - Notes that manure escaped over curb and the curb needs repair. An NON was issued. February 10, 2010 - Notes that application exceeds the agronomic rate and the gutters and diversions need repair. An NON was issued.

²⁸⁷ Gary Shull Dairy – On February 12, 2008 an inspection reported a broken pipe, a broken ramp, a drain that allows for possible discharge, and saturated ground after application. None of these violations were included in an NON written the same day, but eventually led to an administrative fine of \$5,070 on March 2, 2009.

problems. The farm subsequently faced a civil order for these violations and for not submitting a discharge report, but never faced a fine.²⁸⁸

Threemile Canyon Farms, a chronic offender discussed previously, also serves as another example of an ODA sanction falling short of the severity of the violation. The operator did not report a discharge of more than 18,000 gallons of manure. Incredibly, when ODA learned of the spill, it only issued an NON, no administrative or civil orders, or fines.²⁸⁹

Yet another example of ODA's laissez-faire approach to enforcing its orders is allowing farms to continually eschew their duty to repair malfunctioning equipment. For all of 2008 and most of 2009, ODA issued repeated warnings to Parrish Gap Dairy for malfunctioning manure tanks, yet ultimately failed to curtail the violations. In January 2008, the dairy's below-ground liquid manure tank (BGLMT) overflowed due to a broken pump. ODA issued an NON/POC ordering the farm to repair its pump.²⁹⁰ The following January, the tank's broken pump again caused an overflow. (It can only be assumed that it was never fixed). A second NON was issued.²⁹¹ The following month, an administrative action was brought levying a fine for both violations plus two more which had occurred in the meantime involving manure mishandling (presumably due to having to compensate for the broken pump).²⁹² Despite this penalty, the farm's pump remained broken, causing it to re-offend with another overflow a mere two

²⁸⁸ Fir Ridge Holstein Farm – On March 5, 2009 inspection noted that waste was flowing into ponds, application exceeded agronomic rates, and E. coli tested over limits. Orders issued with no status. March 12, 2009 - Follow-up notes problems were not fixed. June 13, 2009 - 2nd follow-up notes waste was overflowing, liquid manure was coming into contact with bare soil, and there were missing/broken gutters/curbs. May 13, 2009 - Routine inspection found more problems. June 15, 2009 – A civil order was issued for not having a discharge report and other violations. ODA said they can fine if the farm does not comply.

²⁸⁹ Threemile Canyon Farms – A December 17, 2007 inspection noted that application exceeded agronomic rate because the center pivot left the irrigator on, discharging 18,000+ gallons manure, and forming two ponds covering 1¼ acres. The farm did not report the spill. An NON was issued but no fine. January 9, 2008 - ODA may issue penalty and take other actions if farm doesn't comply.

²⁹⁰ NON/POC issued January 14, 2008 ("Repair pump at below ground liquid tank so that manure system is operational.").

²⁹¹ NON/POC issued March 24, 2009.

²⁹² Administrative penalty for \$1,800 signed on April 27, 2009.

months later. Rather than increase penalties or try a new approach altogether, ODA simply issued another NON/POC.²⁹³ However, the dairy continued to ignore requests to fix its pump, and precisely one month later, another overflow occurred. ODA simply issued yet another NON.²⁹⁴ In total, from what the records indicate, the dairy's BGLMT pump had remained broken for roughly a year and a half, and had caused at least four documented overflows during this time.

ODA similarly abrogates its duties when it comes to ensuring that all new facility construction and modification is approved before beginning. Making matters worse, when it discovers unapproved construction, it tends to simply issue an NON/POC modifying the date by which building plans must be submitted rather than halting all building and/or issuing penalties.

In July 2008, Zehner Farms was cited for expanding its manure lagoon without permission. The resulting NON referred to "*ongoing* unapproved lagoon expansion," [emphasis added] was evidently an ongoing violation, however there is no earlier record of this issue in ODA's file.²⁹⁵ In any event, the NON/POC directed the farm to get technical assistance, submit plans and a timeline for expansion, and to only fill the lagoon to its original capacity. A deadline of October 1, 2008 was set for consulting technical assistance, and a deadline of October 31 was set for submitting all plans. Nothing was said about halting construction pending approval, and no punishment was assigned. The deadline for gaining technical assistance was ignored, and on October 14, 2008, ODA issued the farm another NON/POC. The second deadline was also missed, but ODA remained silent until December, when it finally issued an NON/POC for failing to submit design plans. However, despite issuing repeated warnings over the course of more than a year, ODA still refrained from issuing a penalty.

²⁹³ NON/POC issued June 1, 2009.

²⁹⁴ NON/POC issued July 1, 2009.

²⁹⁵ NON/POC issued July 28, 2008.

Properly completed paperwork is a key component of the NPDES program. Various paperwork requirements are placed on both permitted CAFOs and on the CAFO permitting agency. Permitted CAFOs must submit annual reports²⁹⁶ -- something required since 2002.²⁹⁷ Indeed, CWA requires all NPDES programs to have legal authority to “require reports.”²⁹⁸ Further, it requires the Administrator to “require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports ... as he may reasonably require and to ensure that its permits require compliance with these rules.”²⁹⁹ Finally, EPA requires all permittees to report the results of their regular monitoring at whatever interval is specified in their permit.³⁰⁰ The annual reports, once submitted, are copied and distributed to all state inspectors, who are to investigate any missing, incomplete, or otherwise suspicious forms.³⁰¹ However, ODA often fails to ensure the reports are submitted on time, if at all. Since 2006, at least 30 permitted CAFOs have failed to file annual reports by the deadline,³⁰² with at least four farms missing the deadline two years in a row,³⁰³ and one farm failing to meet the deadline three years in a row.³⁰⁴ Of these, at least 15 appear to have failed entirely to submit a report, as none appears in ODA’s files.

Furthermore, federal regulations require permittees to provide numerous details in their annual reports,³⁰⁵ and while the general CAFO permit repeats all

²⁹⁶ 40 C.F.R. § 122.42(e)(4); Oregon CAFO NPDES General Permit 01-2009, p. 18.

²⁹⁷ Quote by ODA Deputy Director Lisa Hanson from Mitch Lies, *Panel Debates Effectiveness of State’s CAFO Program*, July 15, 2010. <http://www.capitalpress.com/oregon/ml-cafo-oregon-071610>. Last accessed July 22, 2012.

²⁹⁸ 33 U.S.C. § 1342(b)(2)(B).

²⁹⁹ 33 U.S.C. § 1318(a)(4)(A).

³⁰⁰ 40 C.F.R. § 122.41(l)(4).

³⁰¹ July 14, 2010 meeting with ODA.

³⁰² ODA Files.

³⁰³ DeVos Dairy (CY 2007, CY 2008); Hyline Feeders (CY 2007, CY 2008); JR Simplot (CY 2008, CY 2009); Jim Kirsch (CY 2007, CY 2008).

³⁰⁴ Furtado Dairy (CY 2006, CY 2007, CY 2008).

³⁰⁵ 40 C.F.R. § 122.42(e)(2). (Requirements include the number and type(s) of animals; estimated total manure, litter and process wastewater; total land application acres covered by the nutrient management plan; total number of acres under the CAFO’s control which were used for land application; all discharges occurring from the production area, with details of each incident; a statement indicating whether a certified professional developed or approved the nutrient management plan; each field’s plantings and yields; nitrogen and phosphorous levels in the

enumerated requirements, submitted reports are often incomplete and/or inaccurate. Incomplete forms have entire sections left blank³⁰⁶ or are not signed.³⁰⁷ Inaccurate reports are more prevalent, with the main reporting errors relating to the maximum number of animals for which the farm is permitted, the actual number of animals present over the past year, and the total manure and litter generated over the last year.³⁰⁸ It is sometimes difficult to determine how many animals a farm is permitted for, as ODA paperwork is not always consistent. Examples include an accepted AWMP not matching the relevant permit,³⁰⁹ AWMPs with an increase in the number of animals but no rise in manure amounts,³¹⁰ as well as different inspection reports for a single facility listing varying numbers of animals under the same AWMP.³¹¹

For its part, ODA is to complete annual inspections of each farm, resulting in annual inspection reports.³¹² Although annual inspection reports constitute only one page, ODA frequently neglects to provide vital information therein. This compromises ODA's own ability to determine whether a CAFO is in compliance with its permit, as the report addresses such key operational aspects as the number of animals for which a facility is permitted, as well as the number it currently maintains; the condition of all animal facilities as well as manure and silage containment facilities; the condition of all manure application areas; and

manure, litter and process wastewater, with supporting calculations; and the actual amounts of waste applied to fields).

³⁰⁶ Allen Dairy (year is incomplete); Beef Boardman NW (CY 2008 contains no estimate of process wastewater); Fred Esplin Feedlot (CY 2005 is incomplete and unsigned); Mautz Feedlot (CY 2007 fails to list animal numbers); Volbeda Dairy (CY 2006 report contains no estimate of process wastewater).

³⁰⁷ Fred Esplin Feedlot (CY 2005).

³⁰⁸ Cloud Cap Farms (CY 2004-2007); D&B Poultry (year unknown); Gamble Farms (year unknown); Hiday Poultry (2006-2008); Hollands Dairy (CY 2005, CY 2006); K Diamond Ranch (CY 2008); Keltic Pride Dairy (year unknown); Murata Poultry (year unknown); Norton Cattle Company (year unknown); Perrin Farms (years?); Hiday Poultry Farms (CY 2006-2008); Volbeda Dairy (CY 2006-2008).

³⁰⁹ Holmgren Dairy (CY 2004).

³¹⁰ Keltic Pride Dairy.

³¹¹ Keltic Pride Dairy (CY 2006-2008); Thomas Angus Ranch (CY 2008, CY 2009).

³¹² Each permitted facility receives an annual inspection from a "Livestock Water Quality Specialist."

http://www.oregon.gov/ODA/NRD/cafofaq.shtml#What_types_of_permits_are_there_in_Oregon_, Last updated March 29, 2011, Last accessed June 1, 2011.

the status of its AWMP and overall record-keeping. While inspectors are meant to examine paperwork, production areas, application areas, confinement areas and storage facilities for compliance,³¹³ annual inspection reports often lack any indication of what, if anything, a given inspector examined on-site. Additionally, they often lack sufficient analysis to come to a conclusion regarding a farm's compliance. For example, inspection reports and their corresponding WQAs or NON/POCs ought to note whether a farm is in compliance with its (AWMP) and, if not, why not. However, in at least three recent cases, ODA has issued WQAs or NON/POCs stating that an updated AWMP is necessary, but with no correlating explanation as to why or what problem may exist.³¹⁴

Further, annual inspections do not always occur. For example, ODA failed to inspect Morgan Avenue Feeders in both 2007 and 2008, despite finding violations in 2006. For the most part, however, ODA's failures manifest as performing incomplete inspections and/or incomplete reports. Reports sometimes fail to show which farm records, if any, the inspector reviewed. They also sometimes fail to reflect inspection of production areas and/or application areas. Some of this may be due to crucial information not being shared with inspectors, failure to properly record information, lack of time for a complete inspection or other reasons.

Permitted operators are responsible for making particular information available to inspectors, but only upon request, putting the onus on inspectors to ask for particular records.³¹⁵ Required data includes samples and measurements of soil and manure taken by the farm for monitoring purposes, as well as any other records required by their permit.³¹⁶ Yet inspectors often note on annual inspection reports that the required data was not available even when requested.

³¹³ ODA "Confined Animal Feeding Operation Facility Inspection Report."

³¹⁴ Bobcat Holsteins (200 WQA states "AWMP not reflective of current operations."); Reata Ranches (March 2008 NON/POC states "AWMP needs an update"; Sun Valley Jersey Farm (March 2008 NON/POC states "AWMP needs update").

³¹⁵ 40 C.F.R. § 122.41(i), (j); 40 C.F.R. § 122.42(e)(2); C.F.R. § 412.37(b).

³¹⁶ 40 C.F.R. § 122.41.

Since 2008, over 50 CAFOs have been found by ODA to not have the required data available for inspection.³¹⁷ The overwhelming majority of the missing records relate to manure application – one of the bases for determining a farm’s compliance with its permit. However, records have also been noted missing for manure samples,³¹⁸ soil samples,³¹⁹ manure export,³²⁰ livestock mortalities,³²¹ and on-site inspections.³²²

In fact, some farms have been noted to be missing numerous categories of records, and sometimes even to maintain no required records whatsoever.³²³ ODA often fails to respond to such cases with an NON/POC³²⁴ or even with a WQA warning. Even when ODA does respond by issuing NON/POCs in these cases, fines are rare. In fact, of the 53 farms which have been found since 2008 to have violated the record-keeping rules, only four have been issued administrative orders. In three of the cases, no fine was assessed: only the threat of a possible fine for further noncompliance.³²⁵ In the fourth case, a fine was assessed, but this was for two violations, the first of which had not been punished. Later, the fine was waived by consent order on condition of good behavior.³²⁶ Such lenient measures not only encourage previous violators to

³¹⁷ ODA Files.

³¹⁸ Danish Dairy (2004, 2008); Martin Dairy (2008).

³¹⁹ Captein Dairy (2008); Danish Dairy (2004, 2008); Mike Oppedyke (2009).

³²⁰ Atsma Dairy (2008); Ever May Farms (2008); Martin Dairy (2008); OSU Dairy Center (2008); Van Beek (2009).

³²¹ Martin Dairy (2008).

³²² Rod Zehr Dairy Heifer (EPA inspection, 2008); Volbeda Dairy (2009); Williams Dairy Heifer (2009).

³²³ Cloverfield Dairy (2008); County Lane (2008); Ever May Farms (2009); Fir Ridge Holstein Farm (2009); Gary Shull Dairy (2008); Roaring River Dairy (2008); Van Beek (2008)

³²⁴ Brelage Pacific Dairy (WQA issued, 2008); Heimdahl Dairy (WQA issued, 2008); OSU Dairy Center (WQA issued, 2008); Ott Dairy (WQA issued, 2008); Pete DeHaan (inspection report with no accompanying warning, 2009); Rock Ridge Dairy (inspection report with no accompanying warning, 2009); Threemile Canyon Farms (inspection report with no accompanying warning, 2008); Volbeda Dairy (inspection report with no accompanying warning, 2009); Williams Dairy Heifer (WQA issued, 2008).

³²⁵ Fir Ridge Holstein Farm (2008); Mayfield Dairy (2009); Moisin Dairy (2010).

³²⁶ L&L Holsteins (2009).

reoffend,³²⁷ but they may also invite others to seek similar competitive advantages.

In addition to crucial records not being made available to inspectors, they are sometimes not kept at all. This appears to sometimes be the result of required monitoring and testing not being done by permittees. EPA requires permittees to perform a number of routine inspections, including visual inspections of various storm water channeling devices, water lines, and manure, litter, and process waste water impoundments, as well as to conduct tests on, and measurements of, any manure applied to their land.³²⁸ However, such inspections are often simply not done. Since 2008, at least eight CAFOs have been found to have failed to perform some, if not all, monitoring and inspections duties.³²⁹ Two of these findings were revealed during EPA inspections.³³⁰ One farm was found in violation twice in four years.³³¹ Yet in not a single case has ODA issued a fine or even brought a civil action threatening to do so. Rather, it has restricted itself to issuing WQAs and NONs/POCs.

The EPA also requires the permitting agency to submit (through its EPA state director) quarterly, semi-annual, and annual reports to the appropriate EPA Regional Administrator.³³² These reports are to include a statistical report on “nonmajor NPDES permittees” detailing “the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and

³²⁷ Ever May Farms (NON/POC in 2008; NON/POC in 2009); Van Beek (NON/POC with no fine in May 2008; trip report in September 2008; NON/POC with no fine in March 2009); Volbeda Dairy (February 2009 follow-up inspection to two previous inspections found that inspection records were still not being kept. However, no NON/POC issued); Williams Heifer Dairy (WQA in March 2008; NON/POC in February 2009 but no fine).

³²⁸ C.F.R. §§ 412.37(a)(1), (b).

³²⁹ ODA Files.

³³⁰ Bezates Feedlot, 2008 (“It is unclear whether these inspections were actually being conducted.”); Double M Ranch, 2008 (“The facility could not provide records of inspections at the time of inspection and according to Mr. Sullivan the facility had not started to conduct inspections.”).

³³¹ Danish Dairy (2004, 2008).

³³² 40 C.F.R. § 123.45.

number of permit modifications extending compliance deadlines”³³³ as well as “a separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule...”³³⁴ The CWA places these requirements in context with the broad requirement that “any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction.”³³⁵

Additionally, ODA requires AWMPs for each permitted facility, and its administrative rules require that any AWMP approved by ODA be abided by, at risk of civil penalty.³³⁶ ODA’s general CAFO permit #01-2009 requires each permittee to develop an AWMP according to the terms of the permit,³³⁷ as well as specified ODA rules³³⁸ and the May 2009 National Resources Conservation Service (NRCS) conservation practice standard guidance 590 for Oregon. Far from being mere paperwork, AWMPs serve as representations of actual NPDES permit compliance as carried out by farms: “Upon registration to this permit, the permittee must implement its current ODA-approved AWMP developed for its CAFO... Failure to comply with the ODA approved AWMP constitutes a violation of the terms and conditions of this permit.”³³⁹ The purpose of AWMPs is to ensure that a CAFO’s plan for disposing of animal waste falls within NPDES parameters – in short, that the surrounding environment can handle the proposed waste load: “The permittee must ensure that its AWMP is adequate for the proposed or existing population of animals [and] reflective of the proposed or existing operation...”³⁴⁰

³³³ 40 C.F.R. § 123.45(c)(1).

³³⁴ 40 C.F.R. § 123.45(c)(2).

³³⁵ 40 C.F.R. § 123.41.

³³⁶ O.A.R. 603-074-0070(4)(c)(A).

³³⁷ Oregon CAFO NPDES General Permit 01-2009 (“the general permit only authorizes the discharge of pollutants resulting from the processes, wastes, and operations that have been clearly identified in the permittee’s AWMP approved by ODA.”).

³³⁸ O.A.R. 340-051.

³³⁹ Oregon CAFO NPDES General Permit 01-2009.

³⁴⁰ Oregon CAFO NPDES General Permit 01-2009.

Yet AWMPs often lack crucial substantive information. Since 2008, farms have submitted AWMPs lacking information on nutrient management plans,³⁴¹ storage volume,³⁴² actual acreage used for application,³⁴³ application areas' crop yields and application rates,³⁴⁴ the production and handling of process wastewater,³⁴⁵ and how the farm plans to protect sensitive areas on or bordering its land such as streams and creeks.³⁴⁶ Some reports are turned in without signatures, rendering them invalid.³⁴⁷ Further, some ODA inspection reports simply note that AWMPs are incomplete or not updated to reflect the farm's current operations.³⁴⁸ Of all of these violations, however, only one – the case of the unsigned AWMP – has resulted in an administrative order, and even this incurred no fine.³⁴⁹

Also, ODA often approves AWMPs containing clearly erroneous data. Most common are mistakes regarding animal numbers. AWMPs sometimes list a different maximum allowable number of animals from that listed on the farm's permit or in the farm's plan.³⁵⁰ Similarly, CAFOs may confuse their maximum allowable number of animals (the number for which they are permitted) with their actual number of animals, skewing the results.³⁵¹

Beyond submitting defective AWMPs, some farms fail to even submit one. Submitting an un-approvable AWMP falls into this category, as functionally, it produces the same result as submitting nothing at all. In 2008 and 2009, at least eleven farms were found to be operating without a current AWMP.³⁵² In at least

³⁴¹ Rickreall Dairy (2000).

³⁴² Holmgren Dairy (as of March 2, 2010).

³⁴³ Barker's Dairy (2008).

³⁴⁴ Lochmead Farms (2009).

³⁴⁵ Cloud Cap Farms (as of March 2, 2010).

³⁴⁶ Bar MC Feedlot (as of March 3, 2010).

³⁴⁷ Kostic Dairy (2009).

³⁴⁸ Mann's Guernsey Dairy (2008); Willamette Egg (not updated from 2004 to 2009).

³⁴⁹ Kostic Dairy (August 15, 2009).

³⁵⁰ Holmgren Dairy (2004 AWMP); Pete DeHaan (2007); Peter Jensen (2008).

³⁵¹ Willamette Egg.

³⁵² C&N Dairy (2008); Classen Dairy (2008, 2009); Eugene Livestock Auction (2009); Featherland Farms (brooder) (AWMP was out of date from June 2007 until administrative action in July 2008);

two of these cases, CAFOs went over a year without a valid AWMP. In the case of Classen Dairy, ODA issued an NON/POC in January 2008 for lack of an AWMP. In May of 2009, the dairy was again cited for lacking an AWMP. ODA responded by issuing another NON/POC, extending the AWMP submission deadline for three additional months. In August 2009, the issue was finally elevated to the status of an administrative order, but no fine was issued. In the case of Olson Road Farm, the farm continued operating for over two years (March 2007 until July 2009) without a valid AWMP. Yet ODA, upon finally bringing an administrative action in August 2009, chose to further extend the deadline rather than issue a fine.

Finally, farms frequently violate their AWMPs and this is discovered either during an inspection or as a result of their annual report. Yet all too often, no penalty is imposed, offering the farm little incentive to improve. Besides discharging pollutants to surface water, the most common violation is probably exceeding one's maximum allowed number of animals. Since 2003, at least 14 CAFOs have been found on at least 17 separate occasions to be reporting more animals than they are allowed.³⁵³ ODA's standard method of handling such violations is issuing an NON/POC, as it did in all but two of the 17 cases. However, no administrative action was brought in any of these cases, even for the three farms that were repeat violators, despite the fact that two of the re-offenses came on the heels of the original offense.³⁵⁴ Other violations include constructing unapproved waste handling and storage systems (usually for manure or wastewater),³⁵⁵ disposing of waste in unapproved ways,³⁵⁶ engaging

Featherland Farms Hatchery (2008); Heat of the Rogue Heifer (2008); Hightide Holsteins (2008); Kostic Dairy (2009); Mayfield Dairy (2009); Mira Farms (2008); Olson Road Farm (2009).

³⁵³ ODA Files.

³⁵⁴ Cowan Dairy (2004 NON/POC; 2007 NON/POC); Gary Shull Dairy (2003 inspection report; 2004 NON/POC); Lee Valley Dairy (2008 NON/POC; 2009 NON/POC).

³⁵⁵ Barker's Dairy (built a new waste facility, 2008); Cowan Dairy (manure holding system did not match AWMP, 2007); Danish Dairy (unapproved construction of silage pit and barn (2006); Fairview Chad Acres (waste storage not in keeping with its AWMP, 2008); Featherland Farms Hatchery (AWMP does not reflect wastewater system, 2008); Noris Dairy (unapproved manure storage construction, 2008); Rickreall Dairy (Added new silage bunkers and flush tank, and

in unapproved mortality management,³⁵⁷ failing to install or maintain particular parts or facilities,³⁵⁸ failing to seed proper areas at proper times,³⁵⁹ and failing to maintain proper agronomic rates.³⁶⁰ Other farms have been cited for violations that were not adequately explained in ODA's WQAs or NON/POCs – a problem in and of itself, as ODA inspectors are meant to provide full detail in all inspection reports and other forms.³⁶¹ This is crucial for clarity to the offender and for follow-up by ODA.

Still more troublesome is that ODA allows certain farms to operate even without NPDES permits.³⁶² ODA's lax enforcement sometimes takes years to result in penalties. For example, Holdner Farms was first issued a Civil Order in February 2007 for failing to have a permit. According to ODA records, almost a full year later the farm was still operating without a permit. At that time, a perfunctory NON was issued that stated "Complete and submit the ATR [application to register] to the Department by" and "Submit an AWMP to the Department for your facility by" and neither date is filled in. However, the NON essentially had no force because the farm did not have to comply before any deadline. One year later, in February 2009, ODA issued a second NON/POC for the same violations found in 2007. The POC required Holdner to apply for a

modified the solids settling cell all without ODA approval, 1999); Sun Valley Jersey Farm (liquid storage violates its AWMP, 2009).

³⁵⁶ Barker's Dairy (AWMP did not reflect actual acreage used for land application, 2008); Mayfield Dairy (land application being done in areas not allowed by the AWMP, 2009); Pete DeHaan (land application being done on unapproved fields, 2007); Riverfront Dairy (AWMP does not match land application acreage, 2008); Troost Dairy (not operating the separator as planned).

³⁵⁷ Elsinghorst Dairy (dead animals were not removed according to the AWMP, 2009); Wildlife Safari (AWMP does not match the farm's mortality management, 2008).

³⁵⁸ Moisan Dairy (two animal waste holding ponds are missing cement weirs, and a third is missing a depth marker, 2009); Mrs. O'Poodles (curbs and roofs are not being maintained according to the farm's AWMP, 2008).

³⁵⁹ Spencer Dairy (Fall seeding did not happen in accordance with AWMP, 2009).

³⁶⁰ Heimdahl Dairy (2008 WQA states "AWMP needs to be updated with current acreage."); Wildlife Safari (AWMP does not match wastewater agronomics nor computations, 2008).

³⁶¹ Bobcat Holsteins (2009 WQA states "AWMP not reflective of current operations."); Ott Dairy (2008 WQA states "Update AWMP to reflect current management.").

³⁶² Michael Brandt-Drury - July 29, 2008 - no permit and potential run-off.

Rocking Eleven Ranch - April 2008 - NON - no permit.

Olson Road Farm - (date unknown) no permit.

Simon Ranch - (date unknown) - no permit.

Johnson Feedlot - (date unknown) - no Application to Register.

permit and to stop placing waste where it can drain into surface water. It was not until December 2009, almost three years after the initial violation, that ODA assessed a penalty of \$1,940.³⁶³ Four years later, Holdner was finally convicted of two counts of felony and 25 misdemeanor counts of water pollution and operating without a permit. He was sentenced to five days in jail and ordered to pay \$300,000 in fines of which \$225,000 could be reduced if he complied with certain court-ordered timelines.³⁶⁴

However, more commonly, ODA relaxes fee deadlines to the point that farms continue to operate without a valid permit.³⁶⁵ For example, Steve Gage farm failed to pay the renewal fee in June 2008. It then submitted an inadequate AWMP in November of 2008. But ODA did not issue a penalty (\$50) until June 2009 when the payment was a year overdue.³⁶⁶ Not only do ODA's own records reveal lax enforcement, EPA inspections revealed at least three farms operating without a permit in 2008.³⁶⁷

Beyond paperwork and on-the-ground enforcement, ODA fails to meet federal NPDES requirements in other ways. For example, E. coli is the main standard by which ODA measures water pollution. Federal law requires a holding time for E. coli samples of six hours at a maximum.³⁶⁸ However, ODA sometimes

³⁶³ ODA Files. Holdner Farms - February 2007 - Civil Order - No permit.

January 3, 2008 - NON - Still no permit.

February 2009 - NON/POC - Still no permit and placing wastes where they can drain into surface water.

December 2009 - \$1,940 penalty - Still no permit application received.

As of August 2011 the Attorney General has taken action in this case.

³⁶⁴ *Scappoose Man Fined \$300,000 in Water Pollution Case*, March 22, 2012.

<http://www.doj.state.or.us/releases/2012/rel032212.shtml>. Last accessed July 22, 2012.

Mitch Lies, *Rancher gets five days, \$300,000 fine*, April 26, 2012.

<http://www.capitalpress.com/print/ml-Holdner-sentenced-033012>. Last accessed July 22, 2012.

³⁶⁵ M&M Dairy – June 2009 – Civil Order – Failed to pay permit renewal fee – June 2008 – June 2009 – Included a note that ODA may issue a fine. But no record whether it ever did.

D&L Dairy - January 14, 2010 - Civil Order but no fine - No permit from August 7, 2009 to January 8, 2010 because failed to pay permit fee or late fee.

³⁶⁶ Steve Gage - June 2008 - Failed to pay renewal fee due June 2008.

November 2008 - Submitted inadequate AWMP.

June 2009 - \$50 penalty assessed.

³⁶⁷ DeLong Farm, Derek Pearson's Feedlot, and Harper Ranch per ODA records.

³⁶⁸ 40 C.F.R. § 136.3.

relies on samples processed significantly outside of this time limit. On January 7, 2009, ODA took E. coli samples at Mayfield Dairy, which were not analyzed by a laboratory until the next day. Other laboratory results and complainant testimony³⁶⁹ appear to reveal similar situations of ODA not following EPA water testing protocols. ODA's inconsistent execution of NPDES provisos such as requiring CAFOs to comply with permits, keeping accurate records, issuing regular and proportional consequences to violators, leaves Oregon with a NPDES program that falls short of CWA standards.

C. CONFLICT OF INTEREST

ODA's website states that "ODA has a three-fold mission: food safety and consumer protection; protecting the natural resource base; and marketing agricultural products." Oregon's legislature has indeed charged it with these disparate duties, asking it to regulate CAFOs,³⁷⁰ develop agricultural markets (through its Agricultural Development Division),³⁷¹ promote agricultural resources³⁷² and to manage natural resources to prevent water pollution (under its Natural Resources Division).³⁷³

However, marketing agricultural products demands different priorities than protecting the environment. While marketing is based largely on efficiency and price points, conservation is ultimately based on safety measures and enforcement. Production must sometimes be forcibly altered, diverted or halted, and producers must at times be sanctioned in order to achieve enforcement goals. In fact, sanctions are a linchpin of the NPDES program,³⁷⁴ as deterrence is a central tool in the larger effort to prevent CAFO-derived water pollution. ("The goal is to emphasize the value of deterrence and to establish a minimal national

³⁶⁹ Interviews with Complainants #4 and #5.

³⁷⁰ O.R.S §§ 468B.035, 468B.217, 468B.230, 561.191.

³⁷¹ O.R.S. §§ 561.020, 576.013.

³⁷² O.R.S. § 561.020,

³⁷³ O.R..S. § 561.400.

³⁷⁴ 33 U.S.C. § 1342(7).

consistency by taking actions across the country...”)³⁷⁵ Under its promotional duties, ODA must “assist in the establishment and development of new markets and... maintain or expand existing domestic and foreign markets for farm and food commodities produced or processed in this state” as well as “assist in the development and improvement of farm and food commodities and their values and uses...”³⁷⁶ Such pointed tasks seem only to invite a conflict of interest.

History reveals that such a conflict is cause for concern. An example can be found in the dual mandate once held by the Federal Aviation Administration (FAA). Under the Federal Aviation Act of 1958,³⁷⁷ the FAA was asked to both promote airline commerce and protect fliers from safety risks.³⁷⁸ These two mandates often conflicted³⁷⁹ – a concern finally brought to Congress’s attention by President Clinton’s Secretary of Transportation. In 1996, Congress amended the law, removing the mandate to promote the aviation industry, while strengthening the mandate to protect customers.³⁸⁰ ODA faces a similar quandary to that of the FAA prior to its conflicting mandates being separated: it is being asked to both *encourage* an industry and *restrain* it. Both tasks cannot be done well by a single agency. EPA would do well to clarify that ODA in fact possesses no NPDES authority. DEQ is in a better position to address a water quality program that includes CAFOs, rather than addressing all other sources of discharge except CAFOs. This would resolve some of the conflict ODA now faces.

³⁷⁵ *Interim Guidance to Strengthen Performance in the NPDES Program*, U.S. Environmental Protection Agency, June 22, 2010, p. 2, at <http://www.epa.gov/oecaerth/resources/policies/civil/cwa/interim-guid-npdes-062210.pdf>.

³⁷⁶ O.R.S. § 576.013.

³⁷⁷ Pub. L. No. 85-726.

³⁷⁸ Mark C. Niles, *On the Hijacking of Agencies (and Airplanes): The Federal Aviation Administration, “Agency Capture”, and Airline Security*, 10 AMUJGSPL 381, 407 (2002).

³⁷⁹ Lea Ann Carlisle, *The FAA v. The NTSB: Now That Congress Has Addressed the Federal Aviation Administration’s “Dual Mandate,” Has the FAA Begun Living Up To Its Amended Purpose of Making Air Travel Safer, or Is the National Transportation Safety Board Still Doing Its Job Alone?*, 66 JALC 741, 741 (2001).

³⁸⁰ 49 U.S.C.A. § 40101(a), (d).

Case law reveals that courts generally attempt to address such conflicting mandates. In *Commonwealth Of Massachusetts v. Clark*,³⁸¹ the U.S. District Court found that, like ODA, the Secretary of the Interior was subject to two conflicting mandates: to protect an environmental resource and to encourage economic and resource development. However, the resource to be protected – the off-shore marine environment – was the same resource to be developed (for oil and gas leasing). Finding that “the risk to an enormous and important tract of the Atlantic Ocean bed is of relatively greater risk to the public interest than a delay in the hasty leasing of those lands in the absence of any indication that any, let alone large quantities, of non-renewable resources will be there,” the Court preliminarily enjoined the Secretary of the Interior and the Department of the Interior from conducting an oil and gas lease sale.³⁸² Similarly, in *Kelley v. Butz*, the U.S. District Court preliminarily enjoined the U.S. Forest Service from spraying trees with a defoliant – an act that would have fulfilled its mandate under the Organic Act, but which did not meet the requirements of the National Environmental Policy Act (NEPA), its other mandate.³⁸³

ODA’s mandate to promote Oregon’s agriculture also bears an inherent risk associated with an agency promoting a private interest: the possibility of “agency capture.” Capture occurs when “a regulated entity” manages to “succeed, through lobbying or other influential devices, in replacing what would otherwise be the public-policy agenda of the agency with its own private and self-serving agenda.”³⁸⁴ Because ODA’s allegiance is arguably already split between its mandates, it is not hard to imagine that it may be more subject to capture than it would be otherwise. Were it to be swayed by the private agricultural interests it is meant to serve and promote, this would make it even harder for ODA to serve the competing interests of the environment and citizens.

³⁸¹ *Com. of Mass. v. Clark*, 594 F.Supp. 1373 (D. Mass. 1984).

³⁸² *Com. of Mass. v. Clark*, 594 F.Supp. 1373 (D. Mass. 1984).

³⁸³ *Kelley v. Butz*, 404 F.Supp. 925 (W.D. Mich. 1975). – no longer good on at least one point of law.

³⁸⁴ Mark C. Niles, *On the Hijacking of Agencies (and Airplanes): The Federal Aviation Administration, “Agency Capture”, and Airline Security*, 10 AMUJGSPL 381, 390 (2002).

There is evidence that ODA has in fact been successfully captured by, or is at least unduly lenient toward, CAFOs. Administrators and staff of ODA's Natural Resources division (which oversees the CAFO program), refer generally and repeatedly to the CAFOs overseen by ODA as their customers or clients.³⁸⁵ While such statements merely cast doubts on ODA's ability to remain impartial, other ODA statements and records indicate actual, undue preference not to regulate farms which borders on partnership.

Some of ODA's approach appears to be informed by a fear of upsetting or angering farms under its control. Along the same lines, ODA is apparently cognizant of political stakes and appears at times to be motivated by such concerns. For example, an internal email among ODA staff in 2000, regarding Rickreall Dairy's at-the-time failing nutrient management plan, states "This is a very complicated and politically sensitive case."³⁸⁶ An email on the same topic a few days earlier expressed concern that requiring further action by Rickreall's operator could cause upset: "If their revised plan ... shows nutrient balance requires fewer than 4200 animals, we will be in the position of having to talk about reducing permitted numbers – this is almost certain to cause greater upset than Mr. Kazemier is already experiencing as a result of our requirements."³⁸⁷ Finally, with regard to the same situation, an ODA employee stated one week later, "The addition of land is significant and Louie Kazemier stressed to me that they paid \$1.5 million for this land." ODA appears to feel that it owes something to these farmers, and must find a way to allow them to continue operating as they desire.

ODA also appears to view farms as partners with whom it must negotiate. With regard to the same Rickreall Dairy situation, an ODA inspector stated in an email to fellow ODA employees, "*Louie and I agreed that he still needed to*

³⁸⁵ July 14, 2010 meeting with ODA.

³⁸⁶ Internal email among ODA staff, October 27, 2000.

³⁸⁷ Internal email among ODA staff, October 20, 2000.

submit a Nutrient Management Plan...” as though ODA needed the farm operator’s approval. The inspector went on to state, *“The timing issue (how long before an operation has to “achieve” demonstrated nutrient balance) that I mentioned in my earlier note on this subject is certainly pertinent to how we will negotiate with Rickreall Dairy.”*³⁸⁸ Even paperwork appears to be up for negotiation. In a recent meeting, an ODA administrator stated that the Rock Ridge and Mayfield dairies, which are owned by one entity and operated as one dairy, expressed a desire to operate under two separate NPDES permits in order to avoid the large CAFO designation and the attendant regulations, and that ODA complied with this wish.³⁸⁹

ODA’s decisions about whether to issue NON/POCs also appear influenced by farms. In 1995, ODA honored Rickreall Dairy’s wish of not issuing an NON/POC in response to a violation.³⁹⁰ The year prior, ODA had drafted an NON/POC against Rickreall but later failed to issue it. This reversal is noted in ODA’s database but not explained.³⁹¹

Another facet of this partnership appears to be helping farms complete required paperwork – even to the extent of adding missing information to submitted forms. ODA inspection reports from Danish Dairy in 2008 and 2009 state, respectively, “Helped draft letter to EPA”³⁹² and “Met to help develop materials for proposed construction.”³⁹³ In 2007, Mautz Feedlot submitted an annual report without providing its current number of animals; ODA filled in this information itself (according to notes in the file). Again, ODA is working more as a

³⁸⁸ “Louie and I agreed that he still needed to submit a Nutrient Management Plan (or equivalent) that represented his nutrient management relative to his newly acquired land base.” Internal email among ODA staff, October 27, 2000.

³⁸⁹ Ray Jaindl, ODA Natural Resources Division Administrator, July 14, 2010 meeting with ODA.

³⁹⁰ “ODA’s Chuck Craig sent letter to Louie Kazemier, Rickreall Dairy. Letter met Louie’s request of no NON...” ODA electronic files, June 30, 1995.

³⁹¹ “Drafted NON based on March 2, 1994 investigation. Division never sent NON.” ODA electronic files, March 24, 1994.

³⁹² Danish Dairy inspection report, November 12, 2008.

³⁹³ Danish Dairy inspection report, April 22, 2009.

promoter or protector on behalf of clients than a regulator requiring compliance with federal and state rules.

Much of this may be due to ODA's self-professed "adaptive management" approach to overseeing CAFOs. The goal is to leave CAFOs largely to their own devices and restrict them as little as possible. It is reasonable to recognize that a one-size-fits-all permit does not account for different-sized operations with, among other things, different types and number of animals. However, total flexibility ignores the need for a standard system of regulation and enforcement, which ensures that the mandates of CWA are being followed.

At a July 2010 meeting, an ODA representative stated that "the point of a performance-based program is having flexible guidelines." However, she admitted that such an approach increases the challenges involved in enforcement.³⁹⁴ We see the results of this confusion in ODA's attempts to set limits for farms which are not consistently enforced. In 2000, internal emails among ODA staff sought to determine how to manage a dairy whose land application chronically exceeded nutrient limits. One ODA employee raised the concern:

*"If we have a producer with nutrient management "problems", what are reasonable time scales for allowing them to get into compliance? If we could figure this out ourselves, we'd do ourselves a great favor. Mike Gangwer likes to write down that it takes "years" to get a management program worked out and operating at a level to balance nutrients. Unfortunately, it is a sad fact that much of Mike's own data, from farms he's been working with for years, shows that the high goals he sets are not being achieved."*³⁹⁵

³⁹⁴ Lisa Hanson, ODA Deputy Director, July 14, 2010 meeting with ODA.

³⁹⁵ Internal email among ODA staff, October 26, 2000.

The email went on to present several possible scenarios for managing the farm, revealing an ad-hoc approach which seems out of line with the EPA's intent for the NPDES program. Such internal confusion does little to ensure that NPDES standards are being met, and it undermines any attempt by ODA to instill confidence among farmers and the public by presenting itself as capable, consistent and reasonable.

It's not ODA's job to bring farms along slowly. The job they wish to take on is that of protecting water quality and they (or DEQ) could do this more efficiently by enforcing regulations and letting producers decide how best to come into compliance. They would provide more incentive to do this quickly if enforcement and penalties were clear, quick, consistent and certain. One barrier to ODA's ability to do this may be the conflict it faces trying to both promote and regulate facilities at the same time.

IV. CONCLUSION

The CWA NPDES permit program limits the amount of pollutants discharged by CAFOs (and other point sources) into U.S. waters. In 1973 EPA authorized Oregon to administer the federal NPDES program based on the state's application, which stated that DEQ would administer the program with no mention of ODA involvement.

In a 1988 MOU, DEQ began sharing its federal CAFO NPDES duties with ODA. Under the purported authorization of additional MOUs and conflicting state mandates, ODA took over program administration, management and enforcement from DEQ. However, ODA's administration of the federal CAFO NPDES program is problematic in three respects: (1) ODA lacks the necessary legal authority, including specifically EPA authority; (2) it lacks the necessary programs, capacity, resources and willingness to effectively manage the program; and (3) it suffers from an inherent conflict of interest.

A. RECOMMENDATIONS

First, EPA should start proceedings to withdraw Oregon's program approval to administer the federal NPDES program per 40 C.F.R. §123.63.

Second, EPA should immediately investigate ODA's current administration of the federal NPDES permit program.

Third, in the alternative, if EPA does not withdraw Oregon's program, it should clarify that DEQ should clearly assume full responsibility for the federal NPDES CAFO program, as DEQ is the authorized agency. ODA has demonstrated its ineffectiveness in running the program within the existing framework. Not only is DEQ in a better position to take on program administration and enforcement, it is not saddled with conflicting duties to both regulate as well as promote agriculture and natural resources, as ODA is.

Fourth, EPA (or DEQ in the alternative) should institute a moratorium on issuing new federal NPDES permits and on approving new buildings on CAFOs until CWA compliance is insured at currently permitted facilities.

V. ATTACHMENTS

- Attachment 1 – Oregon DOJ report to US EPA on the status of Oregon’s NPDES Permit Program, October 27, 2010.
- Attachment 2 – EPA letter to ODA, June 13, 2001.
- Attachment 3 – EPA letter to ODA and DEQ, October 30, 2003.
- Attachment 4 – ODA letter to EPA, April 17, 2002.
- Attachment 5 –EPA letter to DEQ, December 15, 2009.
- Attachment 6 – EPA letter to DEQ, May 25, 2010.
- Attachment 7 – Letter from L. John Iani, EPA Region 10 Administrator to Katy Coba, ODA Director, October 15, 2003.
- Attachment 8 – Letter from Wym Matthews, ODA CAFO Program Manager to complainant Robert Collier, regarding Moss Creek Dairy, July 24, 2008.
- Attachment 9 – Letter from Ray Jaindl, ODA Natural Resources Division Administrator to Dale Skiles concerning Hoodview Dairy, September 20, 2010.
- Attachment 10 – Water sample report dated March 29, 2010.
- Attachment 11 – Water sample report dated June 1, 2010. E. coli measured at the western edge of the lagoon tested at 1,100 MPN/100 ml versus farther downstream which measured only 740 MPN/100 ml/.

EXHIBIT C

Oregon Dairies with 700+ Mature Cows and Liquid Manure Handling Systems

MA#	Business Name	Facility City	Facility County Name	Facility State	Mature Animals	Total Permitted Animals	Area	Lagoon Yes/No
1000251	GOLDEN MIST DAIRY LLC	TILLAMOOK	TILLAMOOK	OR	760	760	AREA 1	Yes
63337	GIENGER FARMS INC	TILLAMOOK	TILLAMOOK	OR	1300	2150	AREA 1	Yes
1000049	COUNTRY LANE DAIRY	CARLTON	YAMHILL	OR	1045	1500	AREA 2	Yes
181309	DIAMOND VALLEY DAIRY	SALEM	POLK	OR	1240	1600	AREA 2	Yes
1000119	MIERSMA DAIRY	SALEM	YAMHILL	OR	1700	2400	AREA 2	Yes
62677	VAN BEEK DAIRY FARMS LLC	MONROE	BENTON	OR	1800	2700	AREA 2	Yes
63256	PLATT'S OAK HILL DAIRY LLC	INDEPENDENCE	POLK	OR	1900	5155	AREA 2	Yes
63725	FOREST GLEN OAKS INC.	DAYTON	YAMHILL	OR	2690	3840	AREA 2	Yes
63258	RICKREALL DAIRY LLC	RICKREALL	POLK	OR	3000	6000	AREA 2	Yes
63738	SLEGERS INC	DAYTON	YAMHILL	OR	3300	4500	AREA 2	Yes
63121	DEJAGER DAIRY LLC	JEFFERSON	MARION	OR	950	1700	AREA 3	Yes
63100	AJ DAIRY LLC	MOUNT ANGEL	MARION	OR	1325	1975	AREA 3	Yes
63139	HESSE & SONS DAIRY LLC	JEFFERSON	MARION	OR	1423	1575	AREA 3	Yes
186618	PLATT'S TURNER DAIRY	TURNER	MARION	OR	1850	2700	AREA 3	Yes
1000187	BSP INC	SILVERTON	MARION	OR	2150	2950	AREA 3	Yes
63138	HAZENBERG DAIRY	SAINT PAUL	MARION	OR	2800	5400	AREA 3	Yes
62943	NOBLE FAMILY FARM	GRANTS PASS	JOSEPHINE	OR	850	1630	AREA 4	Yes
62977	LOCHMEAD FARMS INC	JUNCTION CITY	LANE	OR	950	1800	AREA 4	Yes
180604	FICHER DAIRY	MYRTLE POINT	COOS	OR	1100	1300	AREA 4	Yes
156821	DANISH DAIRY LLC	COQUILLE	COOS	OR	1200	2400	AREA 4	Yes
1000006	VALLEY FALLS FARM, LLC	ALBANY	LINN	OR	1200	1200	AREA 4	Yes
1000050	POZZI DAIRY	COQUILLE	COOS	OR	1350	1550	AREA 4	Yes
1000259	BROWNSVILLE CALF RANCH	EUGENE	LANE	OR	1800	2000	AREA 4	Yes
1000131	HESSE BROS FARMS LLC	ALBANY	LINN	OR	2745	3045	AREA 4	Yes
62965	SOLID ROCK DAIRY LLC	BONANZA	KLAMATH	OR	840	1720	AREA 5	Yes
156431	MATNEY WAY DAIRY	KLAMATH FALLS	KLAMATH	OR	950	1250	AREA 5	Yes
62962	HOLLAND'S DAIRY, INC	KLAMATH FALLS	KLAMATH	OR	1040	2000	AREA 5	Yes
62958	BONANZA VIEW DAIRY INC	BONANZA	KLAMATH	OR	1295	4585	AREA 5	Yes
62960	JD DAIRY LLC	KLAMATH FALLS	KLAMATH	OR	1330	2575	AREA 5	Yes
1000132	COLD SPRINGS DAIRY	HERMISTON	UMATILLA	OR	2600	3600	AREA 5	Yes
161636	MEENDERINCK DAIRY, LLC	HERMISTON	MORROW	OR	3000	3000	AREA 5	Yes
1000016	WINDY RIDGE LLC	BONANZA	KLAMATH	OR	3540	8040	AREA 5	Yes
184050	SAGE HOLLOW RANCH LLC	HERMISTON	MORROW	OR	3600	8700	AREA 5	Yes
172212	JVB DAIRY	IONE	MORROW	OR	3870	7200	AREA 5	Yes
1000198	TMCF COLUMBIA RIVER DAIRY LLC	BOARDMAN	MORROW	OR	28000	28000	AREA 5	Yes
179666	TMCF SIXMILE DAIRY LLC	BOARDMAN	MORROW	OR	36100	36100	AREA 5	Yes
1000276	VAN BERKUM DAIRY LLC	VALE	MALHEUR	OR	1200	2200	AREA 6	Yes

EXHIBIT D

Oregon Dairy Farm Best Management Practices

Cost Estimates for Several Key Components of Recommended BMPs to reduce emissions
October 11, 2022

Additional Labor Costs

- Labor costs are already allocated to tasks like feed management, feed handling, flushing milking parlors, cleaning corrals, and manure application. Several of the suggested best management practices may require additional dairy farms to allocate additional labor to these tasks.
- The U.S. Bureau of Labor Statistics estimates the median hourly wage for Oregon Farmworkers on Farms and Ranches to be \$14.13 per hour.¹
- Additional labor costs will vary between farms.

Weatherproof Structure for Grain Storage

- Estimates for several types of feed storage structures are listed in the table below.²

Feed Storage	Estimated Cost per Unit
Vertical silo	\$1.40 per cubic foot
Horizontal silo concrete walls	\$0.52 per cubic foot
5" concrete feed storage pad with #4 rebar ($\frac{1}{2}$ "), 18" on center	\$4.00 per square foot
Asphalt feed storage pad	\$2.30 per square foot
Bulk feed bin	
3 ton	\$1,200 each
6 ton	\$1,500 each
9 ton	\$2,200 each
12 ton	\$3,000 each

Solid Separating Floor Design

- Costs will vary based on the existing structure in place and the specific requirements of modifying existing floors to allow fecal material to remain in place while urine is removed.
- Building a slatted floor tank to store manure under a shelter costs about \$1.50 per cubic foot.³
- Note from the source: "Accurate costs can only be determined by obtaining competitive bids for equipment and buildings from suppliers and builders and should include materials, installation labor, and project management costs."⁴

Solid Waste Separator

- Managing manure using coarse solid-liquid separation costs approximate \$5-6 per cow per year.⁵ Approximately \$3,500 - \$4,200 per year for a 700-cow facility.

Manure Lagoon Cover

- Average annual cost estimates for permeable and impermeable manure storage coverings are listed below. Actual costs will vary based on the size of the manure lagoon or pile.⁶

Table 1. Average annual cost of manure storage covers based on storage size. Annual cost is the summation of lost opportunity cost of capital at 8% (based on installed price per square foot over the expected operational life of the cover, excluding gas handling equipment), depreciation, maintenance and repair, and disposal at the end of useful life.

Storage Size	Permeable Geotextile Cover Installed Cost and Expected Life			Impermeable Cover Installed Cost and Expected Life	
	\$0.35/square foot 5 years	\$1/square foot 5 years	\$1/square foot 10 years	\$3/square foot 20 years	\$5/square foot 20 years
100' Diameter (0.18 Acre)	\$ 1,500	\$ 2,800	\$ 1,500	\$ 2,400	\$ 3,900
120' Diameter (0.26 Acre)	\$ 2,200	\$ 4,000	\$ 2,200	\$ 3,500	\$ 5,600
200' Diameter (0.72 Acre)	\$ 5,900	\$ 11,100	\$ 6,200	\$ 9,700	\$ 15,700
1 Acre	\$ 8,200	\$ 15,400	\$ 8,600	\$ 13,500	\$ 21,800
2 Acres	\$ 16,400	\$ 30,700	\$ 17,200	\$ 27,000	\$ 43,600

Biofilters for Freestall Barns

- Construction Costs - Mechanically Ventilated Buildings: Horizontal biofilters construction costs estimate (includes fans, media, watering system, ductwork, and labor estimates):⁷
 - \$60 to \$250 per 1000 cubic feet per minute (cfm) airflow treated
 - \$28 to \$118 per dairy cow space (assuming 470 cfm per dairy cow space)
 - $700 \times 28 = \mathbf{\$19,600}$ (minimum one-time investment for a 700-cow operation)
 - \$2 per dairy cow space = \$1,400 (annual cost for a 700-cow operation)

- Construction Costs - Naturally Ventilated Buildings: Construction costs (not including the increased costs of upgrading fans and electricity costs) will likely be much lower due lower airflow from these structures. In naturally ventilated buildings, fans are used for ventilation during cold months, when typical building ventilations rates are 50 cfm per animal space rather than 470 cfm per animal space in warm weather.⁸
 - \$60 to 250 per 1000 cubic feet per minute airflow treated
 - \$3 to \$12.50 per 1000 dairy cow space (assuming 50 cfm per dairy cow space)
 - $700 \times 3 = \mathbf{\$2,100}$ (minimum one-time investment for a 700-cow space)
 - Pit fans and ventilation costs are included in the estimates above, however fans cost an estimated \$100 - \$700 per fan, depending on the size and type.⁹

- Maintenance Costs: Maintenance costs will include additional electrical cost for fans to compensate for the pressure drop of a biofilter as the media compacts over time, and the cost of replacing the media every 3-5 years.¹⁰

Biofilters for Compost (static pile and forced aeration) and Lagoons

- The airflow rate required for biofilters to filter covered manure storage is about 0.01cfm per square foot of surface area.¹¹
- Construction costs for new biofilters for mechanically ventilated buildings average \$60 to \$250 per 1000 cfm vented. Maintenance costs (mainly electrical costs for running fans) average at \$4.50 per 1000 cfm.¹²
- Costs will vary depending on the size of the compost pile/lagoon, and the specifics of adding ventilation and fans to properly vent the manure lagoon or compost pile.

Vegetative and Wooded Buffers

- Container plugs (saplings) cost \$0.25 to \$0.80 per tree.¹³
- The number of trees needed and labor costs for planting and water will vary.
- Costs will vary based on the type of tree, the stock type (bare root, container plugs, container, cane, or whip cutting, pole cutting, ball and burlap) and how many trees are needed for a given farm.

Endnotes

¹ Bureau of Labor Statistics (BLS). Occupational Employment and Wage Statistics Survey. "May 2021 OEQS Research Estimates." Accessed September 2022.

² Kammel, David W. University of Wisconsin Extension Dairy Team. "Building Cost Estimates-Dairy Modernization." Updated Fall 2015 at 4.

³ *Ibid.* at 6.

⁴ *Ibid.* at 1.

⁵ Hart, Melissa. "Manure separation systems: Comparing costs with opportunities." *AgProud*. January 6, 2017.

⁶ Sheperd, Tim et al. Cornell University. Dairy Environmental Systems Program. "Covers for Long-Term Dairy Manure Storages. Part 2: Estimating Your Farm's Annual Cost and Benefit. Updated November 2015.

⁷ Liu, Zifei. Kansas State Research and Extension. "Design and Management of Biofilters for Odor Reduction of Livestock Facilities." MF3387. November 2017 at 4 and 5.

⁸ Schmidt, David et al. University of Minnesota Extension. Agriculture, Food and Natural Resources. "Biofilters for Odor Control." 2000 at 3 and 15.

⁹ Hamby Dairy Supply. Barn Cooling Fans. Available at <https://hambydairysupply.com/barn-cooling-fans/>; QC Supply. Accessed October 2022; Agriculture Fans for Poultry and Livestock. Available at: <https://www.qcsupply.com/farm-livestock/fans-ventilation-controls.html>. Accessed October 2022; Kammel (2015) at 5.

¹⁰ Lui (2017) at 4 and 5.

¹¹ *Ibid.* at 3.

¹² *Ibid.* at 4 and 5.

¹³ Withrow-Robinson, Bard et al. Oregon State University Extension. "A guide to riparian tree and shrub planting in the Willamette Valley: Steps to Success." EM 9040. October 2011 at 8.

From: [Emmitt Black](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Everyone deserves clean air!
Date: Friday, October 21, 2022 12:59:39 PM

*Dear Oregon Environmental Quality Commission,
As an Oregonian my whole life, I've seen massive environmental changes,
and unfortunately not for the better. Emissions from large factory dairies
contribute significantly to climate change and pose significant public health
risks. If you care about the health of Oregonians and our environment
over the profits of factory farms, then show us by granting the Dairy
air emission petition.
Thank you for your time,
Emmitt Black*

Sent from my iPhone

From: [Estelle Voeller](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please clamp down on harmful dairy air emissions!Monday,
Date: October 17, 2022 1:29:24 PM

Dear Heather Kuoppamaki,

I'm a longtime resident of Jackson County and aware that we need to reduce greenhouse gasses as soon as possible for our future generations. I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon. Oregon lawmakers appointed a task force in 2008 which recommended immediate steps to curb dairy air pollution. Despite the urgent recommendations to act, large dairy factory farm air pollution remains virtually unregulated.

I also care about people being treated respectfully, and am concerned about additional air pollution that affects the health of Oregonians in the vicinity of the large factory farms. They emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from confined livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants. These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

The large amount of methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon. The biggest polluters in the agriculture sector are giving all animal farms and ranches a bad name. It is time to implement right-sized, common sense, best management practices to limit their emissions.

This continuing bad behavior of very large factory farms is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,
ms Estelle Voeller

From: [Chris Lazarus](#)
To: [PETITION Dairyair * DEQ](#)
Subject: REGULATE POLLUTION FROM LARGE DAIRIES
Date: Friday, October 14, 2022 4:00:33 PM

Please adopt new rules to regulate air pollution from large factory dairies in Oregon. Large factory dairies are a significant source of air pollution, including greenhouse gas emissions, and they have avoided regulation for too long.

Eva C Lazarus



October 21, 2022

Heather Kuoppamaki
Oregon Department of Environmental Quality
700 NE Multnomah St.
Portland, OR 97232
Via email to: DairyAir.Petition@deq.oregon.gov

RE: Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Ms. Kouppamaki,

Friends of the Columbia Gorge (“Friends”) has reviewed and submits these comments on the Petition to Promulgate Dairy Air Emissions Regulatory Program. Friends is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area. Thank you for this opportunity to comment.

Friends, as a signatory to the petition, believes that this is a very important and long overdue rulemaking. One of the problems that mega-dairies cause is negative effects on the air quality in the National Scenic Area. This includes an increase in hazy days, danger to human health for Gorge communities and visitors, and harms to natural biota of the Gorge.

Friends was involved with the 2007 Dairy Air Quality Task Force. That task force came up with common-sense recommendations for establishing best management practices to reduce emissions from mega-dairies. In the years since, the Oregon Department of Environmental Quality (DEQ) has declined to do a rulemaking to effectuate these recommendations. Now Stand Up to Factory Farms (SUFF) has petitioned the EQC to direct DEQ to engage in a rulemaking to require mega-dairies to follow these requirements so that their emissions do not further damage the protected resources of the Gorge. The proposed rule focuses on the largest, most industrial operations. As proposed, the program would apply to only 37 facilities, yet would control emissions from 84 percent of the Oregon’s dairy cows.

Oregon mega-dairies are responsible for damage to the residents, visitors, and the protected resources of the Columbia River Gorge National Scenic Area. Mega-dairies emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause

chronic respiratory disease and even death. Ammonia is also a significant driver of dangerous fine particulate pollution. Dairy workers are exposed to these toxic fumes and face the risk of asphyxiation, while Gorge communities are likely to suffer chronic health impacts from emissions. According to a recent study, livestock emissions are responsible for more deaths in the U.S. than coal plants – largely due to fine particulate matter. However, DEQ does not yet regulate these emissions from mega-dairies.¹

The Columbia River Gorge National Scenic Area is already severely impaired by air pollution, especially particulate pollution. As a result, haze is a major problem in the National Scenic Area which harms its scenic beauty. The Forest Service has documented that over the last 20 years visibility impairment occurs on at least 95% of the days that have been monitored in the National Scenic Area. Simply put, particulate matter and ammonia emitted by mega-dairies are a major component of haze pollution that effects the Gorge.

In addition, nearly three-fourths of all Oregon's mega-dairies are in Morrow County which has the state's highest percentage of Latinx residents. The level of concentrated waste from the hundreds of thousands of cows creates an undue burden of air pollution on already overburdened communities in Morrow County.

The Oregon Department of Agriculture reports that Oregon mega-dairies produced 2.5 million tons of manure in 2018 which is more than the waste produced by the population of the Portland-Vancouver metropolitan area. At mega-dairies, methane off-gasses from the enormous manure lagoons where the waste is stored. As a result, livestock production is a leading source of methane gas emissions in the United States and manure management is the fastest growing source of methane emissions. This is because factory farms with their massive polluting manure lagoons are rapidly replacing family farms that don't have manure lagoons. Even facilities that use biogas digesters do not avoid these climate change impacts. Instead, digesters create a market for manure, enriching mega-dairies over family farms. Climate change has major effects on the protected resources of the National Scenic Area and mega-dairies are a contributor.

In addition, the Management Plan for the Columbia River Gorge National Scenic Area requires that Gorge “[a]ir quality shall be protected and enhanced, consistent with the purposes of the National Scenic Area Act.” NSA Management Plan at p. 118. Pursuant

¹ Neither does the Oregon Department of Agriculture (ODA) and that should remain the case with DEQ administering the program. DEQ already has the expertise to perform air quality permitting – expertise that does not exist at ODA. Staffing up a program and developing the in-house expertise at ODA for 37 facilities in the state (versus over 500 for the water quality permitting that ODA currently does) simply does not make sense. In addition, ODA's mission includes the “promotion of agriculture.” The promotion of agriculture is at direct odds with administering a program to ensure that air quality is protected and enhanced. DEQ should administer the program.

to this requirement, the Columbia River Gorge Commission approved the *Columbia River Gorge Air Study and Strategy* (Sept. 2011). It adopts thresholds for significant impacts to visibility and an overall goal of “continued improvement” in visibility in the National Scenic Area which is consistent with the National Scenic Area Act’s requirement to protect and enhance air quality in the Gorge.

DEQ is *required* by state law to adhere to the adopted thresholds in the Strategy. ORS 196.155 (“[a]ll state agencies . . . are hereby directed and provided authority to carry out their respective functions and responsibilities in accordance with the compact executed under ORS 196.150 to 196.165 and the Columbia River Gorge National Scenic Area Act.”). It is time for DEQ and the EQC to take this mandate seriously by regulating mega-dairy emissions.

Therefore, Friends asks the EQC to grant the rulemaking petition so that DEQ can engage in this important work.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven D. McCoy', written in a cursive style.

Steven D. McCoy
Staff Attorney

From: [Garlynn Woodsong](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Rulemaking from Food & Water Watch and 21 co-petitioners to adopt Dairy Air Emissions rules included in the petition.
Date: Monday, October 3, 2022 10:17:19 AM

Hello,

I support the petition for rulemaking from Food & Water Watch and 21 co-petitioners to adopt Dairy Air Emissions rules included in the petition. In a climate crisis, we need to regulate all sources of GHGs that contribute to climate change, so we can work together to establish sustainable pathways to emissions reductions and sequestration.

Sincerely yours,
Garlynn Woodsong

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Grant the petition to regulate dairy Air emissions
Date: Tuesday, October 18, 2022 12:03:58 PM

Dear Oregon Environmental Quality Commission,

I am writing to urge you to ***grant the petition to regulate dairy air emissions in the state of Oregon, that has been submitted on behalf of the Stand Up to Factory Farms coalition.***

Oregon lawmakers have long known about the threats of air pollution emitted by large dairy factory farms - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, ***large dairy factory farm air pollution remains virtually unregulated.***

In this time of critical time of our climate and air quality crises, it is imperative to urgently respond and create rules that will help curb both Methane emissions and other toxic air pollutants that are concentrated in large dairy factory farms.

The proposed rules included in the petition would establish a dairy air emissions program to quantify and regulate air emissions from large dairy confined animal feeding operations (CAFOs). DEQ does not currently regulate air emissions from most agricultural sources, which include dairy CAFOs.

Together, we must all ***do all we can*** to be responsible for our environment, current and future generations.

Thank you,
Harriet Cooke MD, MPH

From: [CEE Indivisible](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comments in Support of the Petition for a Dairy Air Emissions Regulatory Program
Date: Friday, October 21, 2022 3:13:29 PM

We are a group made up of residents across Oregon that is known as the Climate Energy Environment (CEE) Team of the Consolidated Oregon Indivisible Network (COIN), <https://www.coinoregon.org/2022/cee> COIN is a network of Oregon Indivisible groups with thousands of members across the state. On behalf of COIN, CEE supports programs at the federal and local levels that promote environmental sustainability. We are guided by an environmental and economic justice lens that incorporates diversity, inclusion, transparency, and democratic principles.

We are writing in support of the Petition for DEQ to adopt the dairy air emissions program to quantify and regulate air emissions from large dairy concentrated animal feeding operations or CAFOs. While COIN group members across Oregon have diverse interests, we are all concerned about air quality and its impact on public health and safety as well as our natural environment and animals.

Nearly 15 years ago the Dairy Task Force, established by 2007 legislation, “strongly” urged DEQ and ODA to issue regulations in the face of the environmental and public health threat from large dairy CAFO emissions such as ammonia, methane, nitrous oxide, and more. You have before you in the Petition the work of the Dairy Task Force which appears to have been largely ignored. This despite the Task Force representing Oregonians with a diversity of interests - government officials, Oregon State University scientists, dairy industry representatives, family farmers, public health professionals, and environmental experts.

Also, it is disturbing, as Petitioners point out, contrary to Gov. Brown’s Executive Order No. 20-04 to reduce and regulate greenhouse gas emissions (GHG) emissions, DEQ has taken no action to address planet-warming GHG, methane and nitrous oxide, from large dairy

CAFOs. DEQ does not regulate the GHG from dairy CAFOs in its proposed Climate Protection Program. Yet, the Petition shows it's well-documented that in Oregon, agriculture is the leading source of methane emissions. Large dairy CAFOs produce an incredible amount of methane gas. Animal agriculture is responsible for releasing over 3 million metric tons of carbon dioxide equivalent each year. That means without regulation large dairy CAFOs will continue to contribute to a drier, hotter climate and catastrophic impacts of climate change like drought and dangerous wildfires. It makes no sense that dairy CAFO air emissions would not be regulated.

The Petition documents very well the public health danger from unregulated large dairy CAFOs, not only to workers in the vicinity but across communities. These CAFOs are the cause of more deaths nationally than from pollution from coal-fired power plants, not to mention untold suffering from respiratory and gastrointestinal illnesses and from impacts on mental health. These serious health hazards alone are reasons enough for DEQ to implement a regulatory program for large dairy CAFO emissions.

In Oregon it is communities of color and low income communities that suffer the greatest air quality threat and disproportionately bear the consequences of unregulated large dairy CAFOs. More than one third of Oregon's cows used for dairy are confined in CAFOs in Morrow and Umatilla Counties which have the highest percentage of Latinx residents in the state. The communities around these CAFOs are low income as well. The Petition documents the environmental injustice of failing to regulate air emissions from large dairy CAFOs.

There are also hundreds of family farmers trying to do the right thing for public health, the environment, and the animals by raising cows on pasture. They are at risk of serious health and economic impacts from these unregulated CAFOs. Family farmers are struggling as it is with the impacts of climate change. DEQ's failure to address air pollution from dairy CAFOS and its impact on the environment will make it that much harder for these farmers already dealing with worsening fires, smoke,

and drought.

All Oregonians deserve clean air. It is more important than ever that DEQ take action to hold large dairy CAFOs responsible for their air pollution. These CAFOs are choosing a model that is incentivized because they don't pay the true cost of their business model. And in issuing regulations, we urge DEQ to make sure the standards and penalties are meaningful and sufficient to protect public health and the environment. There must be sufficient FTE and processes to measure compliance and ensure enforcement.

Submitted by,

The Climate Energy Environment (CEE) Team of Consolidated Oregon Indivisible Network (COIN)

From: [Helen Caswell](#)
To: [PETITION Dairyair * DEQ](#)
Subject: the dairy air emission petition
Date: Friday, October 21, 2022 4:12:10 PM

Dear Oregon DEQ,

In some ways, I cannot believe public comment is necessary for you to reach an opinion.

Scientists around the globe - the United Nations! - say the most urgent issue of our time is CLIMATE CHANGE.

I and my grandparents have lung issues and if you looked in the sky last week, you saw smoke. Forest fire weather. The air emissions from dairy cows adds volume to our atmosphere. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

But you know all this! The question is will you prioritize your own children and grandchildren, or if you will listen to the woes of dairy farmers as told by industry and lobbyists who want fast money and care nothing for the deadly impact they leave behind.

I hold YOU accountable for your decision. And whatever it is, do not characterize it as "difficult to reach" or say "there were two sides."

It is your responsibility, DEQ, to act responsibly on behalf of those of us who do not sit in your chair.

Sincerely,
Helen Caswell

From: [J. Chris Kidney](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Farms
Date: Wednesday, October 19, 2022 2:20:53 PM

Dear Oregon Environmental Quality Commission,

Air pollution from large factory dairies contribute significantly to climate change and pose significant public health risks.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by **granting the dairy air emission petition.**

Thank you,

J C Kidney

From: [Jane Marsh](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comment on Mega Dairy Regulation - I hope you consider my comments
Date: Sunday, October 23, 2022 5:49:58 PM

Dear Oregon Environmental Quality Commission,

I realize that comments were to be cut off at 4 PM, but I am hoping you will consider mine (at 5:48 PM on 10/23/22).

As an Oregon taxpayer, I am writing to strongly request you grant the petition to regulate dairy air emissions in the state of Oregon.

Mega dairies – also known as factory farms - are problematic on many levels – environmental, health, humane; damages to water, air, land. For this particular action, we want action by the state to regulate and oversee these operations. and the air pollution they create.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, emissions from livestock production are responsible for more deaths than caused by pollution from coal-fired power plants!

There are more than 17,000 annual deaths attributable to pollution from farms across the United States, according to research published in May, 2021, in the Proceedings of the National Academy of Sciences. <https://www.pnas.org/doi/10.1073/pnas.2013637118>

Furthermore, air emissions disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties. The communities surrounding these factory farms are predominantly low-income, and suffer some of the highest air pollution burdens in the State by virtue of their adjacency to these mega dairy operations.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these dairy operations contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon and the planet itself.

It is not “new news” that large dairy factory farms are a threat to air quality. But even with study and urgent recommendations from a state-convened task force to take immediate steps to curb dairy air pollution as far back as 2008 large dairy factory farm air pollution remains virtually unregulated.

This is unacceptable. Large dairy factory farms must finally be held accountable for their air pollution. I am tired of polluters being allowed to contaminate and destroy the land, air and water that all of us, including wildlife, depend on – and effectively get away with it. Enough!

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition. Please be a leader on these important issues. Oregonians are depending on you, and the nation is too.

Thank you.

Jane Marsh

From: [Janet Dahlgren](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulating air pollution from dairies
Date: Saturday, October 8, 2022 7:51:34 AM

Yes! I believe the state should regulate air pollution from confined-animal dairies.

Janet Dahlgren
Eugene

Sent from my iPad

From: [Janice Howard](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Environmental Pollution
Date: Monday, October 17, 2022 9:25:09 AM

To Whom It May Concern,

Dairy farms should operate under enforcement of standards that protect our air and water. It is unlikely that they will police themselves unless legislation is written and funded to do so. The output of methane gas is significant and harms our environment, not to mention the quality of life for the nearby residents and the poor animals being raised on an "agri-business" farm.

Thank you for the work that you do.

Sincerely,

Janice Howard
Eugene, OR

From: [jean miller](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy emissions petition
Date: Sunday, October 23, 2022 12:16:42 PM

I support proposed rules which would require the OEQC to establish a dairy emissions program, with the aim of quantifying and regulating agricultural emissions.

Jean Miller

Sent from [Mail](#) for Windows

From: [Jennifer Vahl](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy emissions
Date: Thursday, October 6, 2022 8:00:36 PM

Hello,

I absolutely believe this dairy emission regulation program should be enacted. Too many industries already are doing irreversible damage to our state by claiming they will suffer too much economically if regulated - but my children and loved ones need breathable air more than we need higher profits for large dairy farmers.

If they cannot control their emissions and still remain profitable, then their business model is irretrievably flawed and can't continue in a world where climate change is real and devastating.

Please accept the proposal and enact the regulations.

Jennifer Vahl

[Sent from Yahoo Mail on Android](#)

From: [Jessica Gibson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions rulemaking petition - public comment
Date: Thursday, October 20, 2022 10:06:42 AM

To Whom It May Concern,

It's past time that Oregon regulates emissions from dairy producers. If the poor air quality from wildfires has shown us anything, it's that we've got to do what we can to improve air quality for Oregonians. Regulating these emissions is just one critical part of this.

Thanks,

Jessica Gibson, Eugene

From: [Jess](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emission Petition
Date: Wednesday, October 19, 2022 3:50:45 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you

Jessica Stowell

From: [Jill Riebesehl](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Air quality for mega-feed lots
Date: Tuesday, October 4, 2022 9:02:41 AM

As our state gets increasingly populated, we are having to make changes to accommodate. One included allowing building more structures on single-family lots. Another would be this request for public response on CAFOs (concentrated animal feeding operations). I lived in the town of Zillah, WA and can testify to the utter degradation of air quality from long-ago practices of letting potato peels rot in lagoons. Nothing smells worse than rotten potatoes, except perhaps chicken manure. This comment does not even address harm to our waterways.

Large chicken-growing corporations think they can degrade Oregonians' standard of living and get away with it. I am here and now requesting controls over such inhumane endeavors.

Jill Riebesehl

From: [Jim Self](#)
To: [PETITION Dairyair * DEQ](#)
Subject: air polution
Date: Saturday, October 8, 2022 4:33:36 AM

I am in favor of regulation of the dairy industry even though I dearly love many of their products. I know that we must do all that we can to deal with climate change.

Jim Self, Eugene

From: [J Stembridge](#)
To: [PETITION Dairyair * DEQ](#)
Subject: CAFO regulations
Date: Thursday, October 6, 2022 6:16:37 PM

Dear DEQ,

Thank you for encouraging community participation regarding the question "Should DEQ regulate mega-animal facilities?"

Our answer is a firm, clear, resounding "YES!"

Why do we feel so strongly about mega-animal air pollution needing regulation?
Because mega-CAFOs are a polluting industry just like other industries you regulate that spew poisons into the air we all breathe

You are the agency designated by the State of Oregon to regulate industry that degrades our environment.

Thank you for your work. You are needed now. Please do step up.

Be courageous! Do your job!

Sincerely,
Joan and Jim Stembridge

From: [Joan Moore](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Air Pollution From Dairies
Date: Saturday, October 8, 2022 7:53:13 AM

I strongly support the effort to establish common sense, enforceable regulations to limit air pollution generated by dairies in Oregon.

Joan Moore
Eugene, OR

Sent from [Mail](#) for Windows

From: [Jocelyn Wagner](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulation of Emissions from Mega dairy AND CHICKEN Operations
Date: Sunday, October 23, 2022 3:23:46 PM

Sirs & Madams,

I am writing to urge that you not only grant the petition to regulate emissions from large scale dairy operations, but also expand it to include emissions from mega chicken operations as well as other mega livestock operations.

There have been multiple studies, including that which was conducted by the Pew Commission on Industrial Farm Animal Production by a grant to the Johns Hopkins Bloomberg School of Public Health, which document deleterious environmental effects on the local region's air, water, and soil resources by these mega operations.

I am particularly concerned that Oregon has no regulations for emissions coming from these oversized chicken operations that are seeking to be sited in the Willamette Valley where many of us in these small communities have voiced objection but it seems that because we are small we can be overlooked in matters of environmental justice. Please add your weight to our efforts.

Thank you,

Jocelyn H. Wagner

From: [John T](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions
Date: Tuesday, October 11, 2022 9:45:45 AM

First of all, you should change the title, because when you say it aloud, it sounds like 'derriere emissions'... unless you want a bunch of immature people giggling... ;)

As far as regulating dairy HELL YES! We do NOT want these dairy farms at all! They HEAVILY pollute the air, water, lands, and resources surrounding them, especially because 'cow farts and belches' are one of the leading causes of methane emissions, thus contributing heavily to climate change.

And then there's the absolutely disgusting and cruel treatment of the animals. I could show you videos and former employee statements that would turn you away from dairy products for life.

People aren't made to drink cow's milk anyhow. It's meant to bring a newborn calf to 300 pounds in a relatively short time. Gee, I wonder why everybody's obese and have health issues.

The hell with monetary reasons, people's addiction to dairy, etc.. The health of people and our environment are WAY more important than a glass of milk, especially when there's a plethora of alternatives now.

Please say NO to ANY more dairy farms, and we would love to see the current ones, especially Tillamook's 'partner' farms, HEAVILY regulated, if not closed down!

-John T

From: [JOSHUA WELCH](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy regulations
Date: Wednesday, October 5, 2022 6:16:56 PM

The dairy industry is an indisputable environmental wrecking ball, driving climate change, air pollution, water pollution, and soil pollution. Not to mention a house of horrors for the non-human animals. To add to the stupidity, we're subsidizing it with tax dollars. Our species is destroying the lovability of the planet. We MUST stop the madness!!! Almost forgot, dairy is fueling our health crisis by contributing to higher rates of cancer, diabetes, and cardiovascular disease. This industry would not exist in a decent society.

Joshua Welch

From: [solace dances](#)
To: [PETITION Dairyair * DEQ](#)
Subject: dairy air emissions
Date: Tuesday, October 18, 2022 9:23:12 AM

Dear Oregon Environmental Quality Commission,

I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these dairy operations contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

A state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

This is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Best,

Juanita J. Rinas

"The need to run wild, the sense of adventure and exploration, the excitement in discovering the world of nature around me (and in me) were not acceptable in a grown woman. I go into the wilderness and rediscover the home within, to make sense of a life that didn't fit" parenthetical addition mine, quote: China Garland

From: [Judith Barrington](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Clean air
Date: Tuesday, October 18, 2022 9:20:28 AM

Protect our air from dairy pollution!

From: [Judy Breen](#)
To: [PETITION Dairyair * DEQ](#)
Subject: I support regulation of Dairy Air Emissions
Date: Sunday, October 23, 2022 10:25:11 AM

I write in support of the petition to regulate dairy air emissions at mega-dairies. These facilities are a grave threat to air quality and are often located in Latino communities that disproportionately bear the brunt of this pollution. It is time to right this wrong.

Regards,
Judith Breen
Portland, OR

From: [JudyR](#)
To: [PETITION Dairyair * DEQ](#)
Subject: regulate air emissions
Date: Sunday, October 23, 2022 11:44:14 AM

Dear EQC members,

I strongly urge you to establish a program to regulate air emissions from large dairies and animal operations. While ranching previously was considered a non-point source emitter, such large congregate "ranches" need to have pollution regulated and overseen as the point-source emission sites that they are.

Sincerely,

Judy Roumpf
Northeast Oregon native; Portland resident

From: [Julian Pscheid](#)
To: [PETITION Dairyair * DEQ](#)
Subject: In support of the petition to regulate dairy farm emissions
Date: Tuesday, October 18, 2022 7:59:35 AM

Dear DEQ officials,
I'd like to voice my support for the regulation of dairy farm emissions. Greedy farming operations are polluting the environment at the cost of Oregonians, and the DEQ should have oversight to protect the public. Please take this into consideration.

Thank you,
Julian Pscheid
Portland, OR

From: [Julie Blackman](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Grant the Dairy Air Quality Petition!
Date: Wednesday, October 12, 2022 4:31:17 PM

To the Oregon Environmental Quality Commission:

Given the emphasis that the State of Oregon places on emission reduction it is rather astonishing to me that the DEQ ignores the long-standing issue of emissions from large dairy factory farms in the state.

As a citizen I try to do everything in my personal power to curb usage, reduce emissions and live as a responsible citizen of planet Earth. However, when I see the state DEQ again and again undermine the efforts of the citizenry by ignoring the low-hanging fruit of dairy and other industrial emissions producers, I truly have to wonder whether my efforts really count for anything, as well as how committed the state truly is to controlling emissions.

Please, clean up your act. You are beholden to the citizens of the state; do your job.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,

Julie Blackman

From: [Karen Fletcher](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please include all large farming emissions
Date: Sunday, October 23, 2022 11:53:14 AM

In your assessments - not only dairy but chicken and other farms as well. Thank you.

Karen Fletcher

From: [Karen Perkins](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Protect our air from pollution from factory farms
Date: Tuesday, October 18, 2022 10:36:44 PM

Large dairy farms produce outrageous amounts of methane gas. This must be regulated. Oregon lawmakers have known about this problem since 2008. Now is a time where the climate concerns override the desires of those who promote factory farms. Please move on this quickly.
Karen Perkins, Eugene OR

From: [K Ramsden](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy air pollution
Date: Thursday, October 6, 2022 9:03:37 AM

I strongly believe that the air pollution/methane emanating from dairies should be drastically reduced and eliminated. It's important for everyone to take responsibility for their actions and decisions regarding the pollution they cause. While we all benefit from dairies, we already pay for that benefit in dollars, tax breaks, and accommodations that lower quality of life and further degrade our communities and planet. Corporate profit must stop taking priority over people, climate, and our planet.

Further, mega-dairies are destructive, produce less than healthy products and eliminate competition. Their carbon footprint is huge. Smaller dairies dispersed throughout the country use fewer resources, provide higher quality products at lower prices.

Please require dairies to stop polluting and please ENFORCE it.

Karen Ramsden

From: [Kathy Birch](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Oregon DEQ and EQC: Grant the Petition to regulate Dairy Air Emissions!
Date: Monday, October 17, 2022 3:38:15 PM

Dear Heather Kuoppamaki,

I am against the lack of regulation on factory farms of dairy production because I believe in clean air and water for me and for fellow citizens who live closest to them but

hey

we are All downstream.

I have farmland in another state and thus follow progressive agriculture press.

I know americans like cheap food but the state must show leadership in requiring safe farms and educating the public what higher costs in the store are actually about

ie

environmental safety

and responsible stewardship of water and air.

get it done with for starters regulations proposed years ago.

who paid to have those ignored?

eater retired nurse mother voter

kathy birch

Sincerely,

ms Kathy Birch

From: [Kay](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Confined Cows
Date: Thursday, October 6, 2022 8:00:17 AM

Hello,
Confining cows and keeping them in these facilities is cruel. Imagine how it is for them to smell their feces and urine all day. These facilities should be illegal. At the least, the emissions, which adversely affect the Earth's climate, should be closely monitored, decreased, and eliminated.

Thank you for your work on this humanitarian issue.

Very truly yours,
Kay Kinsley

Be kind to your future self.

From: [Kendra Kimbirauskas](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Petition Comments
Date: Sunday, October 23, 2022 11:05:38 AM

Dear EQC,

Thank you for this opportunity to provide comments.

In 2017, I was appointed by Governor Ted Kulongoski to the Oregon Dairy Air Quality Task Force (DAQTF), which was established by the Oregon Legislature earlier that year. It was with great honor that I represented farmers and ranchers who were very concerned about the impact that air emissions from Threemile Canyon Farms was having on public health, the quality of life for neighbors and the Columbia River Gorge.

Before I get into my comments, it is important for you to know that I am quite familiar with agriculture. I currently raise hogs, beef cattle, poultry and goats on about 70 acres in Linn County. I am also very familiar with dairy, as I grew up on a dairy farm and spent many hours during my formative years milking cows with my dad.

I saw first hand and felt the struggles of dairy farming, as my dad and other farmers in my community were faced with low milk prices. Many dairy farmers, including my dad, couldn't survive the milk prices of the 80s. Despite the fact that many small and medium sized farms have gone out of business over the years, the number of cows has increased in fewer but larger farms.

The issues raised during the 2007 Legislature were not about the impact that small and medium farmers had on Gorge Air quality — it was specifically about the fact that Threemile Canyon Farms' 55,000 cows at the time was putting 5.6 million pounds of ammonia gas into the air each year and that those emissions were contributing to acid haze and rain on the eastern end of the Gorge. Further, the state had no tools to require the operation to mitigate or reduce these harmful emissions.

Untreated liquefied manure releases over 160 toxic gases. In addition to ammonia, there are other gases such as Hydrogen Sulfide, CarbonDioxide, Carbon Monoxide and Methane. These gases are not only an annoyance, they can be hazardous to workers, neighbors and overall public health.

The Oregon Dairy Air Quality Task Force was set up specifically to come up with recommendations to address emissions while easing in an air quality program for dairies. As you can imagine, there were many that were skeptical that such a diverse set of stakeholders — small farmers, environmentalists, the dairy industry, legislators, academics and agency representatives - would agree on anything. However after seven months of building trust and working relationships while examining the science, we came up with a set of recommendations in 2008 that everyone agreed to.

The Task Force came to a consensus and 'strongly' recommended that beginning in 2009, the Oregon Environmental Quality Commission, working with Oregon Department of Agriculture, DEQ and Oregon public health agencies, adopt rules to address emissions. The program was

to be informed by ongoing input from stakeholders, new scientific information, and it was to be scale-appropriate, first voluntary and then mandatory. The Task Force described the proposed program and timeline as ‘an optimal balance between the need to protect air quality and ensure the viability of Oregon's dairies.’

In 2008 the late Marty Myers from Threemile Canyon Farms, then ODA Director Katy Coba and Andy Ginsburg from DEQ reported back to the legislature on the Task Force process and the recommendations. The late Senator Bates said that the process that led to the consensus Task Force recommendations represented ‘the best of Oregon’ and I believe that to be true. We were a set of diverse stakeholders coming from different places and we put forward a plan for a program that had everyone's support. In fact, at our first Task Force meeting in January 2008, Senator Betsy Johnson was asked what process success looks like and she said:

This task force will work the best when participants represent Oregonians, not just their entrenched positions. We must be willing to come to the middle, see each other's perspective and come together on recommendations. We should work to be proud of the process, as well as the outcome.

I believe we did just that and I am proud of the outcome. However, what I am not proud of is that here we are 15 years later and nothing has been done to move forward with the rules we all agreed to. The consensus Task Force recommendations were the culmination of hard work, compromise and countless hours of time from stakeholder representatives, including volunteers like me.

The EQC should grant the petition to establish an air program for mega livestock operations in Oregon, however, now it should not be limited to emissions from mega dairies. The recent influx of proposals for mega poultry operations, that are known-to-be sources of ammonia gas, will site millions of chickens throughout the Willamette Valley. This is another threat to Oregon’s air quality. Unmitigated emissions from all large livestock over a certain scale, and regardless of species, present legitimate health concerns for workers and neighbors. This is an issue that the EQC should take seriously.

My recommendation would be to engage in a rulemaking process that uses the recommendations of the DAQTF as a basis to create an air program for all Tier 2 concentrated animal feeding operations (CAFOs), regardless of species. To ensure that small and medium-sized agricultural operations would not be impacted, consideration should be given to exempt these facilities from any requirements.

Thank you,

Kendra Kimbirauskas

Shimanek Bridge Farm

Scio, Oregon

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From: [Kim Davis](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Petition to Promulgate Dairy Air Emissions Regulatory Program
Date: Thursday, October 6, 2022 11:24:05 AM

I am writing to express my enthusiastic support for the proposed rules that would establish a dairy air emissions program to quantify and regulate air emissions from large dairy confined animal feeding operations!

As an Oregonian who is deeply concerned about both our public health and climate changes related to air quality and greenhouse gas emissions, I think these recommended rules are long past due. It is now well known that dairy operations are leading contributors to our statewide methane emissions which has a deleterious effect on global warming.

Any expressed opposition to the adoption of these rules could only be presented by parties striving to protect their financial bottom lines, who have different mandates than those of the general population of Oregon. We can no longer afford to put profits over people or the planet.

On behalf of our grandchildren, thank you for adopting these proposed rules to better regulate dairy air emissions.

Sincerely,

Kim Davis
97306

From: [Kim Critelli](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Petition Testimony
Date: Thursday, October 6, 2022 7:28:37 PM

Dear DEQ,

It is long past due that we human beings need to start monitoring and controlling how much damage we cause to the environment during our daily lives in order to protect ourselves. Business that cause most of the damage do not feel inclined to perform this duty on their own. Therefore, I ask you as a fellow human and an Oregonian, that you will use the powers of your office to their fullest extent to monitor and control all pollutants from all farms from every source and every form they may take. Thank you for your time.

Sincerely,
Kimberly Critelli
Portland, Oregon

From: [Kyle Elwood](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [Kyle Elwood](#)
Subject: Petition for DEQ dairy air regulation petition
Date: Monday, October 17, 2022 7:21:29 PM

Dear Oregon Environmental Quality Commission,

I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these dairy operations contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

Climate change, local and regional environmental impacts resulting from the status quo is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Kyle Elwood

From: [Kylie Brooks](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Public comment for submission
Date: Wednesday, October 12, 2022 10:42:50 AM

Hello,

I am writing to share my support of regulating air emissions from large dairies in Oregon. It should be the DEQ's responsibility to regulate emissions from these sources. They are too large to ignore and threaten the health and safety of our community (especially children and minority groups who do not have the privilege to speak up). Agriculture should no longer be exempt from air quality standards.

Thank you,

Kylie Brooks
Homeowner in SE Portland, OR

From: [Lacey Haight](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emission Petition Comment
Date: Wednesday, October 19, 2022 12:15:18 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. The persistent smoke haze in the air these last few weeks has made this increasingly apparent. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Lacey Haight

From: [Wautlet](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comment
Date: Thursday, October 6, 2022 7:00:38 AM

DEQ

The health and general welfare of the public through clean air is extremely important. Being raised in Wisconsin during the 50's, family dairies were 35 to 50 cows. Now those family farms have been replaced by the mega dairies with thousands of animals per operation. Ground water pollution, air pollution, heavy truck traffic on roads has resulted. A drive by one of the open manure lagoons or during liquid manure spreading will tell you the air is not healthy.

One more item. Crop waste burning in Marion County, East of Salem, goes on every fall during the height of fire season. The huge plumes of smoke drop ash in the resevoirs causing algae bloom and air pollution to young and older citizens. These crop waste burnings are man made. No burning regulations are generally put in place for Salem during fire season while crop waste burning gets a pass.

Eugene, Lane Co. banned crop waste burning for public health reasons years ago.

Thanks for the opportunity to express my opinion.

Larry Wautlet

Sent from my Galaxy

From: [Lau G C](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Request
Date: Wednesday, October 19, 2022 2:18:15 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Laura Arias

Sent from my iPhone

From: [Laura Rost](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate dairy air emissions
Date: Tuesday, October 18, 2022 12:54:32 PM

Dear Heather Kuoppamaki,

My name is Laura and I live in Milwaukie.

Please grant the petition to regulate dairy air emissions in Oregon. I am very concerned about the impact of dairy emissions both on human health and environmental health.

Large dairy factory farm air pollution remains virtually unregulated.

It is time to implement right-sized, common sense, best management practices to limit their emissions.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death.

Nationwide, air emissions from confined livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you for your time.

Sincerely,
Ms. Laura Rost

From: [Lee Zucker](#)
To: [PETITION Dairyair * DEQ](#)
Subject: The Dairy Air Quality Petition must be taken seriously
Date: Thursday, October 20, 2022 8:45:11 PM

Dear Oregon Environmental Quality Commission,

Please, please grant the petition on regulating dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year — that's more than the deaths attributed to pollution from coal-fired power plants.

These emissions disproportionately affect vulnerable communities. More than one-third of Oregon's dairy cows are confined in Morrow and Umatilla counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are low-income and suffer some of the highest air pollution burdens in the state.

These factory farms also produce a staggering amount of planet-warming methane gas. In Oregon agriculture is the leading source of methane emissions.

Oregon lawmakers have long known of the threat posed by air pollution from large dairy factory farms. In fact a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, this source of air pollution remains unregulated. Unacceptable! Everyone deserves clean air, and large dairy factory farms must be held accountable for their air pollution.

By granting the dairy air emission petition, you'll be protecting the health of Oregonians and our environment.

Sincerely,
Lee Zucker

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Yes!
Date: Friday, October 14, 2022 11:25:14 AM

Yes, the state should regulate air pollution from large dairies!

Lin Bauer
Dallas, Oregon

[Sent from the all new AOL app for Android](#)

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Air emission
Date: Thursday, October 20, 2022 7:25:10 AM

Please grant the dairy air emission initiative governing factory farms as they pose a serious health risk to Oregonians and the pollution that they create. *Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks.*

Thank you,

Linda Lowe
Medford Oregon

From: [lizzy james](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate air emissions
Date: Friday, October 21, 2022 8:35:24 PM

Dear Heather Kuoppamaki,

My name is Lizzy James and I am a resident of Portland. I am writing to urge you to grant the petition to regulate air emissions in the state of Oregon. I am personally invested in this because i care about clean water and air. Beyond my personal convictions, the facts support Oregon stepping up to regulate its biggest air polluters.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from confined livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants. These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

The large amount of methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon. The biggest polluters in the agriculture sector are giving all animal farms and ranches a bad name. It is time to implement right-sized, common sense, best management practices to limit their emissions.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

This is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,
Mr. lizzy james

From: [Lora Byxbe](#)
To: [PETITION Dairyair * DEQ](#)
Subject: daisy air
Date: Monday, October 17, 2022 6:33:59 PM

Yes - dairy air submissions need to be regulated.

Lora Byxbe

From: [Louise Ross](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulation of Air Emissions from Oregon's Factory Dairies
Date: Saturday, October 22, 2022 10:54:58 AM

Honorable Members of the Oregon Environmental Quality Commission:

I am certain that each of you can imagine the quantity (huge) of air that is discharged by hundreds of cows in a confined area.

I am also certain that each of you can imagine what kinds of gases (ammonia, methane) those are.

Do you want to breathe this air? I don't.

Do you want those emissions to continue to pollute the air and contribute to climate change? I don't.

You have the power and the responsibility to make a difference. I respectfully request that you begin the rulemaking process to regulate the air emitted from Oregon's factory dairies.

Thank you for taking the time to study and rule on this important matter.

L Ross
Salem

Sent from my iPhone

From: [Lucie Gouin](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Petition Comment
Date: Sunday, October 23, 2022 3:44:22 PM

To whom it may concern at DEQ,

I support the Dairy Air Petition wholeheartedly as a farmer, as a mother, and as an advocate for community health.

YES to set standards and monitor emissions from large dairy CAFOs.

But let's not stop there: YES to set standards from *any* large animal CAFO in Oregon, whether Tier 1 or Tier 2, whether a dairy, broiler, egg-laying hens, or hog operation.

Now is the time to act. We are seeing increased pressure already in CAFO applications in the mid Willamette valley. As CA is stricken by worsening drought conditions, it is inevitable that Oregon will see an influx of CAFO operations. It is imperative that EQC and DEQ not turn a blind eye because the status quo is the easy option and suits the ODA and the Farm Bureau who only represents large-scale agribusiness interests. It is imperative the EQC and DEQ meet their responsibility to protect the health of Oregonians and not turn a blind eye.

Have you driven past a large CAFO? I have, just recently (Hiday Farms, 33741 Midway Dr Se in Albany). I went out of my way a little to do so. Why? because I wanted to retain an open mind in light of all the research I have done on the harm CAFO emissions inflict on neighbors and neighboring watersheds. The CAFO looked pristine. However, within a few breaths of rolling down my car window, my body went into a full respiratory crisis (sneezing, wheezing, sinuses overflowing) that lasted 10 minutes after instantly departing the CAFO site.

There is ample and consistent research regarding the toxicity of CAFOs on the human respiratory system. I will give one example. In 2019, the APHA (the American Public Health Association, the largest organization to represent health professionals in the world) issued a well-researched warning about the deleterious effect of CAFOs on nearby communities. Let me quote a passage from their statement:

“Workers and community members living near CAFO operations face increased exposure to air pollution from these operations, which can cause respiratory conditions including asthma, eye irritation, difficulty breathing, wheezing, sore throat, chest tightness, nausea, bronchitis, and allergic reactions. Toxic air emissions include particulates, volatile organic compounds, and gasses such as hydrogen sulfide and ammonia. Odors associated with air pollutants from large-scale operations have been shown to interfere with daily activities, quality of life, social gatherings, and community cohesion and to contribute to stress and acute increased blood pressure. It is important to note that many of these risks are borne disproportionately by low-income communities where CAFOs are often clustered [...] raising serious social and environmental justice concerns.”

Setting air emission limits for large CAFOs and enforcing them can be a source of income to defray monitoring costs. The initiative will also repay itself in public healthcare savings over the years, saving us precious tax dollars.

Now is the time to act. And let's make sure the emissions limits are set at a protective level, not well above.

Lucie Gouin

From: [Lynda Lanker](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Yes--The state should regulate air pollution from dairies
Date: Saturday, October 8, 2022 8:07:08 AM

I am in favor of implementing regulation. Dairies are businesses and the state regulates many other types of businesses' harmful emissions. The awareness of methane as a highly effective element in global warming leaves us no reasonable excuse for allowing the methane pollution by dairies to continue unchecked.

Thank you,

Lynda Lanker
Eugene, OR

From: [Lynn](#)
To: [PETITION Dairyair * DEQ](#)
Subject: CAFOs
Date: Thursday, October 6, 2022 9:43:04 AM

These farms, with hundreds and sometimes 70 thousands of animals producing tons of manure each year, are sources of air pollutants including ammonia, hydrogen sulfide, nitrous oxide, methane, particulate matter and volatile organic compounds.

Please regulate them as you would any other industry.

Sent from my iPhone

From: [Madeline Pommier](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Oregon DEQ and EQC: Grant the Petition to regulate Dairy Air Emissions!
Date: Friday, October 21, 2022 6:08:58 PM

Dear Heather Kuoppamaki,

My name is Madeline Pommier and I am a resident of Portland. I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

Nobody has the right to ruin Oregon for others or harm our beautiful state. It's no secret that these farms have the potential to create huge negative impacts on our environment and our health. Please consider the residents of Oregon and grant this petition.

Sincerely,
Ms Madeline Pommier

From: [Madronna Holden](#)
To: [PETITION Dairyair * DEQ](#)
Subject: approve the Dairy Air Petition
Date: Friday, October 21, 2022 9:12:03 AM

We need this for the sake of the climate AND our lungs.. we have enough sources of pollution we can't control at present, such as wildfires. Time to control what we can.

Thank you,

Madronna Holden

From: [Margaret Theisen](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulations must apply to dairies
Date: Saturday, October 8, 2022 8:22:29 AM

Greetings,

It is clear that given the level of pollution emitted by large dairies they should be immediately regulated for pollutants. Please ensure public health and safety by doing so.

Margaret Theisen

From: [Maggi Treece](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Yes, grant the petition
Date: Sunday, October 23, 2022 7:03:37 PM

It is difficult to believe that this is necessary, but it clearly is. The harm being done by mega-dairies is unconscionable, and as they won't correct that harm themselves, it must be quantified and corrected by the rest of us.

Grant the petition.

Margaret Treece

Sent from my iPhone

From: [Marie Wakefield](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Factory dairy farms
Date: Wednesday, October 19, 2022 12:31:51 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Marie Wakefield

From: [Marilyn Matteson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulating air emissions from large dairies
Date: Sunday, October 23, 2022 2:55:23 PM

I urge the DEQ to regulate emissions from Oregon's 11 huge dairies that emit large quantities of methane. I have read that feeding seaweed to cows lowers the amount of methane they emit. Whether or not this is a workable solution, DEQ needs to require these massive dairies to regulate and possibly stop the methane emissions from cows.

Thank you,
Marilyn Matteson
Beaverton, OR 97007

From: [Mary Anne Cassin](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Mega dairy regulation
Date: Sunday, October 23, 2022 1:02:23 PM

Thank you for taking comments on this important issue. As seniors who have grown up and love dairy products, we are horrified by the industrialization of this product. It really has reached the point of ridiculousness, especially given the state of the world in terms of climate change. Between the impacts to our water, air, and the animals themselves, it is time to change our ways. Please write strong rules, NOW, that will get us closer to a sustainable model of did production that isn't strictly extractive.

From: [Matt Weber](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Petition
Date: Saturday, October 8, 2022 6:20:35 AM

I want to endorse the idea of regulations requiring large dairy farms to reduce emissions.

I would be curious to see how many ideas to reduce emissions are relatively low cost, compared to the profits of these "megadairies." Have DEQ or any of the organizations responsible for the petition investigated the potential reduction in emissions that could follow from the introduction of seaweed into cattle feed, for instance?

<https://caes.ucdavis.edu/news/feeding-cattle-seaweed-reduces-their-greenhouse-gas-emissions-82-percent>

From: [Melanie Bailey](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Petition
Date: Sunday, October 23, 2022 6:24:29 PM

This petition must continue. Small dairy farms are bad enough with cow belching cows and tons of manure in addition to acres of GMO corn and soy, but these mega farms have got to be regulated. It's cruel and harmful to the animals and the environment and humans when they ingest the products. Why Oregon ever allowed them is beyond me. Money, of course. I live in Tillamook and am ashamed of the Cheese Factory and the farms I pass daily, but I shudder to think I'd have a mega dairy to drive by. They have to go!!! Or be highly regulated if Oregon doesn't have the wisdom to outlaw them. Shame on us!

From: [Melissa Martin](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions rulemaking petition
Date: Wednesday, October 12, 2022 5:09:02 PM

DEQ/EQC should grant the petition and begin rulemaking on dairy air emissions. Large confined, dairy operations are a huge source of air and water pollution and it is out of line with other state policies to not regulate these emissions. Rulemaking proceedings would help to ensure regulations are based on science/good analysis and are done with the public good in mind.

Sincerely,
Melissa Martin

Heather Kuoppamaki, P.E.
Senior Air Quality Engineer
Oregon Department of Environmental Quality
700 NE Multnomah St, Suite 600
Portland, OR 97232
DairyAir.Petition@deq.oregon.gov

Re: Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Oregon Environmental Quality Commission,

Mercy For Animals is a 501(c)(3) organization with over 3,000 members and staff in Oregon dedicated to constructing a more just and sustainable food system. Mercy For Animals recently joined 21 other organizations in petitioning the Environmental Quality Commission to adopt dairy air emissions rules that would establish a dairy air emissions program to quantify and regulate air emissions from large dairy confined animal feeding operations (CAFOs). Accordingly, Mercy For Animals asks that you grant the petition to regulate dairy air emissions in the state of Oregon.

I. Animal Welfare

The majority of cows in dairy CAFOs live almost their entire lives indoors, with nearly 40 percent of farms confining cows in cruel tie stalls barely larger than their bodies, rendering the animals unable to turn around.¹ Cows eat, sleep, urinate, defecate, and give birth in these stalls. They rarely have access to the outdoors and are prevented from expressing many natural behaviors, such as grazing.² When cows are no longer of use, whether because they can no longer be impregnated, their production drops, or they become a financial burden because of illness or injury, they are sold for slaughter.³

Intensively confined cows more often suffer from clinical diseases such as mastitis, metritis, and lameness. In 2013, about 2.33 million dairy cows (or one in four) suffered from mastitis, a serious disease affecting a cow's mammary glands.⁴ And that same year, 16.8 percent of U.S. dairy cows suffered from lameness, not including the more than 200,000 "downer" cows unable to walk.⁵

Unregulated air emissions from dairy CAFOs worsen conditions for farmed animals by exposing cows to high levels of pollutants such as ammonia or particulates. These emissions also drive climate change, which results in more extreme and frequent weather events, which in turn, harms the animals.⁶

¹ H.W. Barkema et al., *Invited Review: Changes in the Dairy Industry Affecting Dairy Cattle Health and Welfare*, 98 J. Dairy Sci., 7426 (2015).

² R. Mandel, H.R. Whay, E. Klement & C.J. Nicol, *Invited Review: Environmental Enrichment of Dairy Cows and Calves in Indoor Housing*, 99 J. Dairy Sci., 1695 (2016).

³ United States Department of Agriculture, *Dairy 2014: Health and Management Practices on U.S. Dairy Operations*, 2014, 15 (2018).

⁴ *Id.* at 8.

⁵ *Id.*

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2367646/>

II. *Public Health*

Environmental justice and our food system are inextricably linked, and low-income people and communities of color are most impacted by system failures. CAFOs are disproportionately located in communities of color and low-income communities.⁷ Consequently, these communities often experience higher rates of air pollution. Several studies demonstrate that those who work in and reside near CAFOs face increased levels of allergic and respiratory symptoms and disease.⁸ No community should suffer health harms for private profit.

As such, Mercy For Animals urges the Environmental Quality Commission to grant the petition to regulate dairy air emissions in the state of Oregon.

Respectfully,

Mercy For Animals

Alex Cerussi
State Policy Manager

⁷ Christine Ball-Blakely, "CAFOs: Plaguing North Carolina Communities of Color," *Sustainable Development Law and Policy Brief* 18, no. 1 (2017): 4–6.

⁸ Amy A. Schultz et al., "Residential Proximity to Concentrated Animal Feeding Operations and Allergic and Respiratory Disease," *Environmental International* 130 (September 2019): 1–9; María Cambra-López et al., "Airborne Particulate Matter from Livestock Production Systems: A Review of an Air Pollution Problem," *Environmental Pollution* 158, no. 1 (January 2010): 1–17; Kelley J. Donham et al., "Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations," *Environmental Health Perspectives* 115, no. 2 (February 2007): 317–20.

From: [Michael Burdick](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate large dairy air emissions
Date: Thursday, October 6, 2022 2:32:24 PM

Hello,

Large dairies emit tremendous amounts of methane which is one of the most potent greenhouse gases. It is long past time that DEQ began regulating air emissions at large dairies. This proposal seems reasonable and I hope it is approved.

Best,
Michael Burdick

Please note that in this message I am speaking for myself only and not representing any organization.

From: [Michael Cairns](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy air pollution
Date: Thursday, October 6, 2022 7:43:52 AM

Of course DEQ needs to monitor and regulate air pollution from dairies. The powerful greenhouse gas, methane, as well as other harmful pollutants are emitted to our air from Oregon dairies. As a COPD sufferer, I am harmed by this pollution daily.

From: [ferniesdad](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Better regulate megadairy pollution
Date: Sunday, October 9, 2022 10:54:35 AM

Please insist on better regulation for pollution from megadairies in Oregon.

These industrial dairies are beyond farm uses and should be regulated as industries. They contribute to groundwater pollution, air pollution, health and safety issues and are a huge source of methane, which is one of the worst greenhouse gases. It is beyond time that we started to regulate big ag as an industry, These are NOT mom and pop farms with 10 cows we are talking about.

In addition, the people most often damaged by these dairies are the people who work there and live in close proximity to them. They are victims of these industries and they need better protection, especially for children who live nearby. Many of these people live in near poverty and have little choice in jobs or housing. Oregon recently passed Environmental Equity Rules, we need to start living by these!

The US has seen significant environmental issues with CAFO operations, such as lagoon dike failures, groundwater nitrate pollution and increases in asthma and other respiratory illnesses. Lets not have these damages come to Oregon, they cannot be correctly repaired or mitigated after the fact.

Please do your part to protect Oregon. These rules are past due and it is time to act now,

Thank you for the opportunity to provide comments.

Michael Koivula
Springfield

From: [Michael Mooney](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions
Date: Thursday, October 6, 2022 9:11:08 AM

I support regulation of air emissions from dairy operations in Oregon.

I live near a dairy in rural Marion County and can speak to the numerous negative air quality events we have experienced over the last 25 years.

The emissions from manure lagoons, general operation, and using large sprinkler guns to spread liquified manure for fertilizer and irrigation of pastures causes horrible air quality. I can just imagine what an air quality monitor would reveal located downwind of this operation.

As a bicyclist I have rode past dairies near Talbot that also use these large sprinklers to spread liquified manure. The first time I was unaware of what these dairy operators were doing and rode right into a cloud of manure droplets and was overcome by the toxic vapors. I likened it to sticking your head in a septic tank.

As a resident of an agricultural area, I am amazed at scope of air quality hazards emitted from dairy operations and the antiquated and completely unnecessary practice of burning grass seed stubble fields.

Sincerely,

Michael Mooney

From: [Michelle Casey](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate Air Pollution
Date: Wednesday, October 19, 2022 5:00:53 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

--

Michelle L. Casey (*she/her*)

October 21, 2022

Kathleen George, Chair
Oregon Environmental Quality Commission
700 NE Multnomah St, Suite 600
Portland, Oregon 97232

Re: Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Chair George:

The undersigned legislators urge you to **grant the Petition to Adopt a Dairy Air Emissions Program to Quantify and Regulate Large Dairy CAFO Air Emissions** to protect Oregonians and our environment from dangerous and unregulated air pollution. We **support funding** for an air quality program to address air emissions from large dairy concentrated animal feeding operations (CAFOs).

In the last two decades, Oregon has seen a sharp increase in large dairy CAFOs and a corresponding loss of smaller family-scale dairies. These large CAFOs—including mega-dairies—can pose serious threats to air and water quality, as well as to animal welfare and local quality of life. They emit an array of dangerous gases, including the powerful greenhouse gas methane. By emitting unchecked toxic pollutants into the air, these operations disproportionately harm the health of nearby low-income communities and communities of color, threatening already vulnerable populations with increasing rates of respiratory illness and death, and lower quality of life.

It is our duty as representatives of the public and stewards for future generations of Oregonians to address this significant source of climate pollution and to protect public health. Indeed, Governor Brown's recent Climate Executive Order No. 20-04 directed both ODA and DEQ to use "any and all discretion vested in them by law" to regulate greenhouse gases to reduce them by (1) at least 45% below 1990 emissions levels by 2035 and (2) at least 80% below 1990 emissions levels by 2050. Addressing large dairy CAFO emissions is a necessary part of meeting that goal.

DEQ has the authority to regulate air emissions from large dairy CAFOs under both the federal Clean Air Act and state law. Indeed, over 14 years ago we passed a bill to address

dairy air quality and formed a task force to study the air emissions from dairies.¹ That Dairy Air Quality Task Force “strongly” urged the agencies to initiate regulatory action to address the threat of dairy CAFO air pollution.

Especially because the federal government has been slow to act on this industry’s climate pollution and its disproportionate impact to environmental justice communities, the state agencies must take up the mantel of environmental and public health protection and grant the petition.

Sincerely,

Representative Rob Nosse
Senator Michael Dembrow
Representative Zach Hudson
Representative Khanh Pham
Representative Maxine Dexter
Senator Jeff Golden
Senator Chris Gorsek
Representative Wlnsvey Campos
Senator Deb Patterson

¹ Dairy Air Quality Task Force Recommendations, 2008,
<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/7119>.

From: [Nancy Miller](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please.prioritize the health of Oregonians by agreeing to regulate dairy air emissions in the state of Oregon
Date: Friday, October 21, 2022 1:01:01 PM

Dear Oregon DEQ,

I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the state.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these dairy operations contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

This is unacceptable. Everyone deserves clean air and large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,
Nancy Miller

From: [Noah Aynes](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy pollution
Date: Monday, October 17, 2022 11:16:44 PM

Pollution and dairy pollution is wack.

Sent from my iPhone



NORTHWEST ENVIRONMENTAL DEFENSE CENTER
10101 S Terwilliger Blvd., Portland, OR 97219
Phone: 503.768.6673 | Web: nedc.org

October 23, 2022

SUBMITTED VIA EMAIL to: DairyAir.Petition@deq.oregon.gov

Oregon Department of Environmental Quality
Attn: Heather Kuoppamaki
700 NE Multnomah St.
Portland, OR 97232

Re: Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Ms. Kuoppamaki,

The Northwest Environmental Defense Center (“NEDC”) respectfully submits the following comments on the Oregon Department of Environmental Quality’s (“DEQ”) proposed promulgation of a dairy emissions regulatory program. NEDC fully endorses this petition, and urges the DEQ to adopt the proposed rule. Air pollution from dairy CAFOs causes significant harm to surrounding communities. One study in Wisconsin found that residents living under two miles from a CAFO (90% of which were dairy CAFOs) had a higher probability of having asthma, uncontrollable asthma, and lung and nasal allergies than those who lived five miles from a CAFO.¹ The detrimental effects of CAFOs are not limited to harms to public health, but also implicate the health and wellbeing of the animals living inside of these operations, contribute significantly to climate change, and have a disproportionate impact on marginalized communities living and working near or within CAFOs.

I. Failing to regulate the air pollution from dairy CAFOs has grievous animal welfare implications.

Dairy CAFOs are significant sources of air pollution. The Oregon Dairy Air Quality Task Force identified ammonia, nitrous oxide, nitrogen oxides, methane, volatile organic compounds, hydrogen sulfide, particulate matter, methanol, and odors as air pollutants originating from CAFOs.² In the United States, dairy cattle in CAFOs spend the majority of their lives in indoor

¹ Amy A. Shultz et al., *Residential proximity to concentrated animal feeding operations and allergic and respiratory disease*, 130 ENVIRONMENT INTERNATIONAL, Jun. 2019, at 1, 4.

² OREGON AIR QUALITY TASK FORCE, FINAL REPORT TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY & DEPARTMENT OF AGRICULTURE 6 (Jul. 1, 2008).

confinement, breathing in these pollutants. Data collected from the USDA in 2008 showed that almost 64% of all dairy farms in the U.S. were conventional operations, and 91.5% of these had more than 500 cows.³ The larger a dairy farm is, the more likely their cows are kept inside without access to pasture or fresh air.⁴ The 2008 study revealed that over 80% of cows in the United States were raised in a conventional dairy operation.⁵

Animals require appropriate environmental conditions to survive and grow. However, industrialized operations promote the introduction of hazardous pollutants into the air that humans and animals breathe. These pollutants, in high concentrations, have directly harmful effects on animal welfare, especially in confined facilities.⁶ As facilities become increasingly industrialized, their rate of air pollution increases. The effect of these pollutants is borne by the animals themselves, resulting in a multitude of health problems. However, regulation of air emissions provides a unique opportunity for Oregon to address the environmental and public health implications of industrialized dairy CAFOs head on.

The harm that dairy cows experience in CAFOs, however, extends far beyond the pollutants they breathe whilst in confinement. Mastitis, a painful inflammation of the mammary gland, is a frequent affliction of dairy cows and is commonly caused by trauma or unhygienic conditions.⁷ Within conventional zero-grazing operations, dairy cows face increased risks of mastitis, as well as metritis, dystocia, ketosis, retained placenta, bacterial infections, and higher incidence of lameness.⁸

Rates of milk production are increasing year after year in the U.S., with a 10% increase from 2012 to 2021.⁹ The endless cycle of repeated impregnation, birth, and production of milk inflicts a physical toll upon these cows, which is evidenced by their stunted lifespan and poor condition at slaughter. 75% of cows arriving at slaughter that are unable to walk are dairy cows.

³ HUMANE SOCIETY OF THE U. S., HSUS REPORT: THE WELFARE OF COWS IN THE DAIRY INDUSTRY 4, <https://www.humanesociety.org/sites/default/files/docs/hsus-report-animal-welfare-cow-dairy-industry.pdf> (last visited Oct. 16, 2022). 79.9% of conventional dairy farms have between 100 and 499 cows. These numbers may in fact be higher now considering the consolidation in the dairy industry. See James M. Macdonald, Consolidation in U.S. Dairy Farming, USDA (July 2020). By 2017, over half of the nation's cows were raised on 2000 farms across the country, each farm having herds of over 1000 cows.

⁴ *Id.*

⁵ *Id.*

⁶ Tonshuai Liu et al., *A critical review of advancement in scientific research on food animal welfare-related air pollution*, Journal of Hazardous Materials Volume 408 (Apr. 2021).

⁷ Wei Nee Cheng & Sung Gu Han, *Bovine mastitis: risk factors, therapeutic strategies, and alternative treatments*, 33 ASIAN-AUSTRALASIAN J. ANIM. SCI. 1699, 1699 (Nov. 2020).

⁸ R. Mandel et al., *Invited Review: Environmental enrichment of dairy cows and calves in indoor housing*, 99 J. DAIRY SCIENCE 1695, 1696 (Mar. 2016).

⁹ *Milk: Production per Cow by Year*, U.S. DEPT. OF AGRIC. (USDA) (Feb. 2022), https://www.nass.usda.gov/Charts_and_Maps/Milk_Production_and_Milk_Cows/cowrates.php.

¹⁰ Cows typically have a natural lifespan of 20 years or more, but the average dairy cow often lives less than five years.¹¹

In addition to the physical harm cows experience on dairy CAFOs, cows also suffer psychologically. According to a 2001 USDA study, only a mere 5.4% of dairy calves on U.S. dairy farms spent more than 24 hours with their mothers before being separated.¹² As herd animals, cows have a strong intrinsic motivation to socialize, and research shows that isolation of calves causes behavioral and social development issues.¹³ Compared with isolated calves, “socially housed calves are less fearful, perform better in a cognitive test, and have increased competitive success at the feed bunk.”¹⁴ Given the suffering dairy cows face on dairy CAFOs, regulating the emissions in which they spend their lives is a long-overdue step towards protecting the welfare of these animals.

The aforementioned health effects exemplify the inherent unsustainability of CAFO operations. This rulemaking provides an invaluable opportunity to address animal welfare, environmental and public health concerns that stem from industrialized CAFO facilities.

II. Failure to immediately regulate dairy CAFO emissions jeopardizes the economic livelihood of Oregon’s small dairy farmers.

Because large CAFOs have historically gone relatively unregulated, they are able to produce substantially more dairy for a significantly lower cost than Oregon’s smaller dairy operations.¹⁵ Just one CAFO profiting from this scheme is Threemile Canyon Farms, located in Boardman, OR, which claims to have 33,000 dairy cows.¹⁶ Tillamook, which has built its brand on producing milk and cheese products through its “farmer-owned co-op” of local dairy farms, relies on large CAFOs like Threemile and other megadairies for two thirds of its milk supply.¹⁷

The ability of CAFOs to avoid costs is actively running small farmers out of business, who cannot hope to produce milk as cheaply as large CAFOs. Threemile, for example, has implemented a closed-loop system to increase efficiencies that would be near-impossible for small dairy farmers to replicate: grain for feed is grown onsite, and multiple methane digesters

¹⁰ HUMANE SOCIETY OF THE U.S., *supra* note 3, at 8.

¹¹ HUMANE SOCIETY OF THE U.S., *supra* note 3, at 1.

¹² USDA, DAIRY 2002, at 30 (2002).

¹³ Joao H. C. Costa et al., *Key animal welfare issues in commercially raised dairy calves: social environment, nutrition, and painful procedures*, 99 CANADIAN J. ANIM. SCI. 649, 652 (Sept. 2019).

¹⁴ *Id.*

¹⁵ Winston Ross, *Milking Profits*, OREGON BUSINESS (Nov. 6, 2017), <https://www.oregonbusiness.com/article/farms-forests/item/18065-milking-profits>.

¹⁶ *Dairy*, THREEMILE CANYON FARMS, <https://www.threemilecanyonfarms.com/partnerships/dairy> (last visited Oct. 16, 2022).

¹⁷ Ross, *supra* note 12.

convert manure into energy that is used in farm operations.¹⁸ Even as the dairy industry consolidates, milk production continues to increase.¹⁹ The number of licensed dairy farms fell by more than 50% between 2002 and 2019 across the country, and 77,000 farms with fewer than 100 cows were lost nationwide from 1992 to 2006.²⁰

Oregon is no exception to the trend of industry consolidation. Oregon lost 300 dairy farms between 1990 and 2017 while herd sizes doubled, and dairy operations with more than 1000 cows expanded from 8 to 25 in 2012.²¹ Already struggling, small farms in Oregon were hit especially hard during the COVID-19 pandemic, leading to more small dairy operations closing for good.²² The implementation of regulation around air pollutants from CAFOs would help put small dairy farmers with significantly smaller environmental impacts, on equal footing.²³ Groups like Oregon Dairy Farmers Association deny the existence of any air problems in Oregon.²⁴ However, Oregon Dairy Farmers Association's associate membership includes companies closely connected to large CAFOs, like Tillamook, Umpqua Dairy, and Darigold owners Northwest Dairy.²⁵ Oregon Dairy Farmers Association's claims are also not supported by the findings of the air quality task force.

III. Oregon CAFOs' contributions to climate change are undeniable, and there is a lack of meaningful ways to address CAFO emissions absent regulation.

CAFOs, as large emitters with no demonstrated method of meaningfully reducing emissions, are fundamentally unsustainable operations. Livestock operations are estimated to make up 40% of U.S. methane emissions, and 10% of overall emissions.²⁶ Cattle production dominates these emissions, contributing 62% of all methane emissions within the livestock

¹⁸ Ross, *supra* note 12.

¹⁹ Macdonald, *supra* note 3.

²⁰ *Id.*; Ross, *supra* note 12.

²¹ Ross, *supra* note 12.

²² Malik Patterson, *Local Jacksonville Dairy Farm Decides to Close its Doors*, NEWS10 (May 8, 2022), <https://ktvl.com/news/local/local-jacksonville-dairy-farm-decides-to-close-its-doors>.

²³ Sheraz Sadiq, *Nearly Two Dozen Advocacy Groups Call on Oregon to Regulate Emissions from Large Dairy Farms*, OPB (Sept. 22, 2022), <https://www.opb.org/article/2022/09/22/nearly-two-dozen-advocacy-groups-ask-state-to-regulate-emissions-from-large-dairy-farms>.

²⁴ *Id.*

²⁵ *Associate Members*, OREGON DAIRY FARMERS ASSOC., <https://oregondairyfarmers.org/associate-members> (last visited Oct. 12, 2022).

²⁶ PETER H. LEHNER & NATHAN A. ROSENBERG, *FARMING FOR OUR FUTURE: THE SCIENCE, LAW, & POLICY OF CLIMATE-NEUTRAL AGRICULTURE* 41 (2021) (citing data from the Environmental Protection Agency, noting that the agency's methodology excludes on- and off-site fossil fuel combustion for transportation and electricity). Methane is also estimated to be 80 times more powerful as a GHG than CO₂ over a 20-year period. U.N. ENV'T PROG., *Methane Emissions are Driving Climate Change: Here's How to Reduce Them* (Aug. 20, 2021), <https://www.unep.org/news-and-stories/story/methane-emissions-are-driving-climate-change-heres-how-reduce-them>.

industry.²⁷ Most importantly for Oregon, dairies are responsible for many of the largest increases in methane emissions, with overall methane emissions increasing by 122% between 1990 and 2020.²⁸

While large dairy producers tout technological innovations as solutions to their methane production, the benefits of these technological “fixes” are often unproven, and these fixes have not been widely adopted for cost or efficiency reasons.

1. Biogas Digesters

Biogas digesters, for instance, capture methane from manure pits to be used as fuel.²⁹ These digesters are incredibly expensive to implement, but are especially popular among dairies.³⁰ Because biogas digesters are subsidized by the federal government, this paradoxically encourages larger CAFOs because digesters need a threshold amount of manure to be viable. In turn, CAFOs expand in order to qualify for these subsidies, producing an ever-increasing amount of methane.³¹ In addition, it is unclear whether biogas digesters lead to significantly fewer greenhouse gas (GHG) releases. Burning biogas releases the same air pollution as fossil fuels, ultimately resulting in GHGs released into the atmosphere.³²

2. Feed Alteration

Industrial animal agriculture farms have also proposed feed alteration as a mechanism to limit the enteric fermentation of cattle to lower methane emissions. Researching and deploying new diets could purportedly reduce the percentage of volatile organic compounds within cattle manure, thereby reducing the portion of manure that produces methane.³³ A number of substances—from 3-nitrooxypropanol to seaweed—have been proposed as feed additives, with

²⁷ *Global Livestock Environmental Assessment Model (GLEAM)*, U.N. FOOD AGRIC. ORG., www.fao.org/gleam/results/en (last visited Oct. 23, 2022).

²⁸ *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020*, EPA, at 2-20 (July 13, 2022), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020>.

²⁹ *Sierra Club Guidance: Methane Digesters & Concentrated Animal Feeding Operation (CAFO) Waste*, SIERRA CLUB, https://www.sierraclub.org/sites/www.sierraclub.org/files/methane_digesters.pdf (adopted by the Env'tl. Quality Strategy Team Oct. 26, 2004).

³⁰ Aaron Smith, *What's Worth More: A Cow's Milk or Its Poop?*, AG DATA NEWS BLOG (Feb. 3, 2021), <https://asmith.ucdavis.edu/news/cow-power-rising>. Biogas costs about 4 times more to produce than extracted natural gas. *Id.*

³¹ *Id.* 3,000 cows are needed to make an on-site biogas digester fiscally feasible. Alessandra Bergamin, *Turning Cow Poop into Energy Sounds like a Good Idea—But Not Everyone Is on Board*, DISCOVER (Apr. 11, 2021), <https://www.discovermagazine.com/environment/turning-cow-poop-into-energy-sounds-like-a-good-idea-but-not-everyone-is-on>.

³² Bergamin, *supra* note 31.

³³ A.N. HRISTOV ET AL., MITIGATION OF GREENHOUSE GAS EMISSIONS IN LIVESTOCK PRODUCTION - A REVIEW OF TECHNICAL OPTIONS FOR NON-CO2 EMISSIONS 14–35 (Pierre J. Gerber et al. eds, 2013), <https://www.unclearn.org/wp-content/uploads/library/fao180.pdf>.

varying results as to their success in curbing methane emissions.³⁴ Even if additives provide some level of methane reductions, there are several barriers to their widespread implementation, including lack of approval by regulators and lack of understanding of long-term health effects for animals.³⁵

3. Regenerative Grazing

For industrial operations that involve some level of grazing, “regenerative grazing” is posed as an offset for cattle emissions. Generally, regenerative grazing involves managing grazing in a way that increases the soil carbon sequestration potential, as compared with poorly managed land.³⁶ While there is some evidence that regenerative grazing could meaningfully increase the sequestration potential of soils, no studies have found that the increase in carbon sequestration could amount to a total offset of methane emissions produced in an industrial operation.³⁷

Because none of these mechanisms, even taken together, have the potential to successfully mitigate significant emissions from industrial dairies, these operations continue to be unsustainable, producing substantial amounts of methane and contributing intensely to climate change. Accordingly, it is imperative that DEQ exercises its rulemaking authority and adopts rules regulation air emissions from dairy CAFOs.

IV. Oregon’s CAFOs’ pose ambient air quality concerns, which will continue to affect environmental justice communities and farm workers, absent meaningful regulation.

Environmental Justice is defined by the Oregon DEQ to be “the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.”³⁸ Fair treatment means that no group of people should bear a disproportionate share of negative environmental consequences, including consequences resulting from industry and commercial operations.³⁹ Meaningful involvement in the development, implementation, and enforcement of environmental laws includes

³⁴ *Id.*

³⁵ Sandra Vijn et al., *Key Considerations for the Use of Seaweed to Reduce Enteric Methane Emissions from Cattle*, 7 FRONT. VET. SCI. 1–9, 2 (2020).

³⁶ *Managed Grazing*, PROJECT DRAWDOWN (2022), <https://drawdown.org/solutions/managed-grazing>.

³⁷ Jason Rowntree, et. al., *Ecosystem Impacts and Productive Capacity of a Multi-Species Pastured Livestock System*, 4 FRONTIERS IN SUSTAINABLE FOOD SYS. 1 (2020) at 2.

³⁸ *Environmental Justice*, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ), <https://www.oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx> (last visited Oct. 19, 2022).

³⁹ *Id.*

consideration of the concerns of all participants involved in the agency’s decision-making process.⁴⁰

Oregon DEQ considers environmental justice to be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process.⁴¹ NEDC student volunteers urge DEQ to promulgate the dairy emissions regulatory program in furtherance of its commitment to principles of environmental justice.⁴² The dairy emissions regulatory program is needed to improve air quality and public health, improve worker health and safety, and to work towards eliminating the disproportionate impacts that air pollution from CAFOs have on minority and low-income communities.

a. Clean Air

CAFOs can be extremely detrimental to both human health and the environment.⁴³ A recent study published in the National Academy of Sciences shows that over 17,000 annual deaths in the U.S. are attributable to pollution from farms.⁴⁴ Of these deaths, around 80% are due to air pollution from animal agriculture.⁴⁵ Further, emissions from animal agriculture now account for more annual deaths than pollution from coal-fired power plants.⁴⁶ Harmful air pollutants produced from industrial animal agriculture operations include ammonia, hydrogen sulfide, methane, and particulate matter.⁴⁷ The decomposition of animal manure is the main cause of these gaseous emissions, while particulate matter is caused by the movement of animals.⁴⁸ Repeated exposure to particulate matter can have significant adverse health effects in humans, including chronic bronchitis, chronic respiratory symptoms, decline in lung function, and organic dust toxic syndrome.⁴⁹ While CAFOs present adverse health effects for all people, children are especially at-risk because they take in 20-50% more air than adults, and their bodies are still developing.⁵⁰ Researchers in North Carolina have found that the closer a child lives to a

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* “DEQ is committed to the principles of environmental justice and to ensuring that the agency’s actions – including permitting, cleanup, policy and planning, outreach and education, and compliance and enforcement – address the interests of Oregon communities, especially minority, low-income and other traditionally underrepresented communities, as much as state and federal laws allow.”

⁴³ CARRIE HRIBAR, NATIONAL ASSOCIATION OF LOCAL BOARDS OF HEALTH, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 2 (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

⁴⁴ Nina G. G. Domingo et al., *Air quality-related health damages of food*, 118 PNAS 1, 1 (May 10, 2021), <https://www.pnas.org/doi/10.1073/pnas.2013637118>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See* Costa et al., *supra* note 13.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ MICHAEL T. KLEINMAN, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, THE HEALTH EFFECTS OF AIR POLLUTION ON CHILDREN (2000), <http://www.aqmd.gov/docs/default-source/students/health-effects.pdf>.

CAFO, the greater the risk that they have asthma.⁵¹ Further, the schools that are closer to CAFOs often are attended by students of lower socioeconomic status.⁵² Particulate matter is of especially great concern because exposure over a long period of time can lead to decreased lung function.⁵³

The two major air pollutants emitted by CAFOs are ammonia and hydrogen sulfide.⁵⁴ The EPA estimates that up to 80% of US emissions of ammonia are from livestock waste.⁵⁵ Ammonia emissions contribute to acid rain and impair visibility.⁵⁶ The Oregon Department of Environmental Quality has identified ammonia emissions from dairy CAFOs to be a significant contributor to regional haze in the Columbia Gorge National Scenic Area.⁵⁷ Air pollution of ammonia also contributes to water pollution through redeposition in rain.⁵⁸

Exposure to low concentrations of ammonia over extended periods may have a negative impact on health.⁵⁹ Symptoms of long-term exposure include eye, nose, and throat irritation, headache, nausea, diarrhea, hoarseness, sore throat, cough, chest tightness, nasal congestion, palpitations, shortness of breath, stress, drowsiness, and alterations in mood.⁶⁰ Regulation of exposure to ammonia is incredibly important at agricultural facilities because of the longer exposure times.⁶¹ Additionally, ammonia emissions from agriculture operations are responsible for 30% of fine particulate matter (PM_{2.5}) in the United States⁶² and is the pollutant with the biggest impact on formation of the pollutant.⁶³ Exposure to fine particulate matter can cause illnesses such as chronic obstructive pulmonary disorder, lung cancer, and has been documented as a leading risk factor to premature mortality.⁶⁴ Exposure to PM_{2.5} can also have adverse effects

⁵¹ Julia R. Barrett, *Hogging the Air: CAFO Emissions Reach into Schools*, 114 ENVTL. HEALTH PERSPECTIVES A 241, A 241 (Apr. 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1440820/#:~:text=Of%20the%20226%20schools%20included,reported%20noticeable%20livestock%20odors%20indoors.>

⁵² Maria C Mirabelli et al., *Race, Poverty and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations*, 114 ENVTL. HEALTH PERSPECTIVES 591, 591 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1440786>.

⁵³ Michigan Department of Environmental Quality Toxics Steering Group, *Concentrated Animal Feedlot Operations Chemicals Associated with Air Emissions* (May 10, 2006), https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder1/Folder50/CAFOs-Chemicals_Associated_with_Air_Emissions_5-10-06.pdf?rev=ac7b6d7bb56c4b85a378ce8fb9a30442.

⁵⁴ Tara Heinzen, *Stopping the Campaign to Deregulate Factory Farm Air Pollution* 17 N.Y.U. ENVTL. L. J. 1482, 1485 (2009).

⁵⁵ *Id.* at 1494.

⁵⁶ *Id.* at 1495.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Katie E. Wyer et. al., *Ammonia emissions from agriculture and their contribution to fine particulate matter: A review of implications for human health*, 323 J. ENVTL MGMT 1, 6 (2022), <https://www.sciencedirect.com/science/article/pii/S0301479722018588>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 1.

⁶³ *Id.* at 2.

⁶⁴ *Id.*

on lung development in children and can cause respiratory irritation in people with pre-existing conditions such as asthma.⁶⁵

b. Worker Safety

The air quality impacts of CAFOs have been shown to spread past the confines of individual operations, demonstrated by the harms previously described in the surrounding communities.⁶⁶ However, CAFOs pose the greatest health risk to the workers within these operations, as they are exposed to immediate particulate concentrations at a much higher rate than the general public.⁶⁷ Beyond readily visible machine related injuries and animal related injuries,⁶⁸ CAFOs also pose long term health impacts for its workers associated with the concentrated VOC and particulate matter exposures in the workplace.⁶⁹

CAFO operations expose workers to roughly 150 unique and harmful gasses, which stem from the management of animals themselves, animal feed, and animal manure.⁷⁰ These gasses include, *inter alia*: Hydrogen Sulfide; Volatile Organic Compounds (VOCs); Particulate Matter; and Endotoxins.⁷¹ In the instance of Hydrogen Sulfide (H₂S), the issue of immediate concentration is critical: Ambient exposure presents less risk, but, anaerobic environments (like in Cattle Manure Storage Units), exposure to H₂S can lead to serious health effects and even sudden death.⁷² However, workers are not exposed to toxins in isolation— they are exposed to a complex mixture of these gasses, particulate matter, and other airborne particles (including microorganisms, antibiotics, and pulmonary irritants).⁷³ Volunteers exposed to just several hours within a swine CAFO suffered nasal stuffiness, moderate chills, and other health effects in that short time span.⁷⁴ Though the combined effects of these particulates are relatively unstudied, we do have knowledge of many of these particulates in isolation.⁷⁵ As repeatedly demonstrated through peer reviewed articles, the individual impacts alone warrant regulation— and these combined effects should too, based on their compounded impact on workers' health.

⁶⁵ *Id.* at 6.

⁶⁶ HRIBAR, *supra* note 43.

⁶⁷ Dick Heederik et al., *Health effects of airborne exposures from concentrated animal feeding operations* 115 ENVIRONMENTAL HEALTH PERSPECTIVES 298 (2007).

⁶⁸ Machine and animal related injuries refer, respectively, to physical injuries caused by farming equipment (including tractors rolling over, being run over, or electrocuted) and from animals themselves (including, *inter alia*, kicks and bites). F. M. Mitloehner & M. S. Calvo, *Worker health and safety in concentrated animal feeding operations*, 14 J. AG. SAFETY & HEALTH 163, 164 (2008).

⁶⁹ *Id.*

⁷⁰ *Id.* at 170.

⁷¹ *Id.*

⁷² *Id.* at 173

⁷³ *Id.*

⁷⁴ D. Cole et al., *Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects*, 108 ENVTL HEALTH PERSPECTIVES 685 (Aug, 2000).

⁷⁵ Mitloehner, *supra* note 68, at 164.

Research conducted by the United States Department of Agriculture suggests that the average CAFO size increased by 3% from 2000 to 2005 (measured in numbers of animals),⁷⁶ while the average number of farm workers tasked with managing these operations decreased by around 12%. This imbalance suggests that the remaining farm workers will spend more time in each CAFO, thereby increasing their exposure to the aforementioned health hazards.⁷⁷ This growth in farm size and decrease in workforce is made possible by advances in modern technology— but industrialization does little to change the physical risk, health exposure or labor demand placed upon workers who remain at the CAFO.⁷⁸ A 2002 study by the National Safety Council found that farm work is the second most dangerous profession, only after mining— with an average of 21 fatalities per 100,000 farm workers.⁷⁹ Further, the same study stated that farm workers “endure twice as many injuries and are six times more likely to suffer fatal injuries than the average American worker.”⁸⁰

In furthering this plea for regulation, the demographic makeup of these workers should merit consideration. While working in a CAFO comprises a health risk for anyone, these risks are compounded by socioeconomic status, minority status, and differences in access to health care. A United States Department of Labor study from 2006 found that about 70% of all farm workers in the nation are foreign born individuals, many of whom cannot read or speak English, and who have family incomes below the federal poverty level.⁸¹ As of July 1, 2022, the minimum wage for farm workers in Oregon is set to be \$13.50 per hour.⁸² With low wages, and facing rapid inflation, it follows that the largest barrier to receiving health care here is its sheer cost— especially when workers are not provided health insurance through employment.⁸³ With low wages and high potential for costly medical bills, the regulation of air pollutants emanating from Dairy CAFOs is of the utmost importance to protect agricultural workers from chronic illnesses. In 1997, Oregon DEQ adopted an Environmental Justice Policy with the intent of guiding the agency to, *inter alia*, “vary their analysis of affected population by a variety of factors including population concentration, cumulative exposure to hazards, and different patterns of use of resources. Staff should also be encouraged to address human health, economic, and social effects whenever possible.”⁸⁴ With an explicit policy goal of taking Environmental

⁷⁶ *Id.* at 166.

⁷⁷ *Id.*

⁷⁸ *Id.* at 167.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Minimum Wage for Agricultural Workers*, NATIONAL AGRICULTURAL LAW CENTER, <https://nationalaglawcenter.org/state-compilations/agpay/minimumwage/#:~:text=The%20Fair%20Labor%20Standards%20Act,wage%20of%20%247.25%20per%20hour> (last visited Oct. 23, 2022).

⁸³ Pauletta Cha and Joy Collins, *Health Care Access among California’s Farmworkers*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (April, 2022), <https://www.ppic.org/publication/health-care-access-among-californias-farmworkers>.

⁸⁴ *Environmental Justice: Principles and Implementation*, OREGON DEQ (1997). <https://www.oregon.gov/deq/FilterDocs/DEQeJpolicy.pdf>.

Justice issues seriously, the DEQ ought to regulate air quality emissions in order to respond to the exposure hazards and varied patterns of use on and near CAFO's.

c. Impacts on Minority and Low-Income Communities

CAFOs are disproportionately located in areas populated by people of color and/or people with low income.⁸⁵ This is a form of environmental injustice that can have negative impacts on community health.⁸⁶ Low-income communities and communities that have experienced institutional discrimination on the basis of race are more susceptible to impacts of CAFO emissions as a result of inequitable housing, low income, and lack of access to medical care.⁸⁷

In Oregon, these health impacts are blatantly apparent in the Umatilla and Morrow counties.⁸⁸ These counties are home to some of Oregon's largest Dairy CAFOs, including Threemile Canyon Farms located in the Boardman area.⁸⁹ Furthermore, the communities surrounding these CAFOs farms are often inhabited by a high percentage of low-income residents and people of color.⁹⁰ These communities are overburdened by not just environmental hazards but also socioeconomic factors that magnify the health risks that result from CAFOs.⁹¹ Using the EPA's Environmental Justice Screening and Mapping Tool, which combines environmental and demographic indicators to characterize an area's environmental justice index, we can identify the environmental justice burdens impacting the Boardman area outside of Threemile Canyon Farms. As compared to the rest of the state, the Boardman area communities bear a disproportionately high pollution burden, ranking in the 80-90th percentiles for various environmental hazards.⁹²

Figure 1: Boardman Demographic Indicators⁹³

Demographic Index	Percentile
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⁸⁵ Kelley J. Donham et. al., *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, ENVIRONMENTAL HEALTH PERSPECTIVES (2007).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Petitioner's *Petition to Adopt a Dairy Air Emissions Program to Quantify and Regulate Large Dairy CAFO Air Emissions*, at 17.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Kelley J. Donham et. al., *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, ENVIRONMENTAL HEALTH PERSPECTIVES (2007).

⁹² According to EPA, state percentiles "tell you what percent of the [state] population *has an equal or lower value*, meaning less potential for exposure/risk/proximity to certain facilities, or a lower percent minority." *See How to Interpret a Standard Report in EJScreen*, EPA (Feb,18, 2022), <https://www.epa.gov/ejscreen/how-interpret-standard-report-ejscreen>.

⁹³ EJScreenReport (Version 2.1) for User Specified Area: City of Boardman, EPA 1 (last accessed October 18, 2022) [hereinafter Boardman EJScreen Report].

People of Color	96%
Low Income	89%
Unemployment Rate	22%
Linguistically Isolated	96%
Less than High School Education	86%
Under Age 5	78%

Figure 2: Boardman Area Environmental Justice Indexes⁹⁴

Environmental Justice Index	State Percentile
Particulate Matter 2.5	93%
Ozone	99%
Air Toxics Cancer Risk	89%
Air Toxics Respiratory Hazard Index	96%
Superfund Proximity	91%
Risk Management Plan (RMP) Facility Proximity	98%
Hazardous Waste Proximity	80%
Underground Storage Tanks	86%
Wastewater Discharge	84%

Recent research indicates that 75% of exposure to particulate matter disproportionately affects racial-ethnic minorities.⁹⁵ This reflects a pervasive and systemic environmental disparity affecting minority communities at all income levels.⁹⁶ The pathogens generated by the CAFOs pose a serious risk of harm to public health and the environment, and proximity to these farms has been related to negative health consequences across various populations.⁹⁷

⁹⁴ *Id.*

⁹⁵ Exposure ranges from varying emissions source types. Tessum, C. et al., “PM_{2.5} pollutants disproportionately and systematically affect people of color in the United States,” SCIENCE ADVANCES (April 28, 2021), <https://www.science.org/doi/10.1126/sciadv.abf449>.

⁹⁶ *Id.*

⁹⁷ SURAJ GHIMIRE, DISTRIBUTIONAL EFFECTS OF EXPOSURE TO CAFOs: A MULTI-LEVEL ANALYSIS (2022).

However, the majority of CAFOs appear to be most common in areas with extreme poverty rates and a substantial make-up of minority populations.⁹⁸ Close proximity to CAFOs has been frequently associated with declines in local social and economic indicators, particularly in these minority and low income communities, which further disrupts and undermines the socioeconomic and social foundations of community health.⁹⁹ Community members that live near these operations face increased exposure to air pollution, which is known to exacerbate respiratory conditions, which include asthma, difficulty breathing, wheezing, sore throats, chest tightness, bronchitis, and allergic reactions.¹⁰⁰ The odors from air pollution contributed to by CAFOs have also been shown to hinder daily activities, social gatherings, and community cohesion, as well as contribute to stress and acute increased blood pressure.¹⁰¹ The majority of these health and social interferences disproportionately burden minority and low income communities within the areas surrounding these operations.¹⁰²

Not only are these communities the most likely to be impacted, impacts in minority communities are insufficiently monitored by industry and regulatory authorities. .¹⁰³ This lack of monitoring perpetuates cycles of threats to environmental and public health threats, with no real opportunities for communities to either evaluate their own exposure, or hold polluters accountable. Implementing a regulatory program to oversee CAFOs would be a significant positive step towards reducing the environmental inequity reinforced by particulate matter emitters, as industry, regulatory and community actors have more pathways to information and accountability

While all low-income community members are at risk from CAFOs emissions, children are particularly susceptible to the health effects.¹⁰⁴ This is because children, on average, take in more air per unit of body weight than adults.¹⁰⁵ For example, if a child is partaking in a school sport involving high levels of exertion, they will likely take in 20-50% more air, and thus more air pollutants, than would an adult in comparable activity.¹⁰⁶ This is particularly troubling because a child won't typically respond physically to air pollutants from CAFOs in the same way as adults might.¹⁰⁷ As previously mentioned, an average adult's exposure to CAFOs will

⁹⁸ *Id.*

⁹⁹ APHA LEAD., PRECAUTIONARY MORATORIUM ON NEW AND EXPANDING CONCENTRATED ANIMAL FEEDING OPERATIONS (Nov. 5, 2019).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Sharon E. Edwards, et al., *Making the environmental justice grade: the relative burden of air pollution exposure in the United States*, 8 INT J ENVTL RES. PUBLIC HEALTH 1755–71 (May 25, 2011), <https://doi.org/10.3390/ijerph8061755>.

¹⁰⁴ KLEINMANN, *supra* note 50.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

likely induce blatant symptoms such as coughing, chest pain, sore throats, and headaches.¹⁰⁸ In children, on the other hand, their physical symptoms are less apparent.¹⁰⁹ This is dangerous because these symptoms are a natural signal from the human body to seek protection from an environmental pollutant and without these symptoms, children may not seek the shelter they need. Despite not experiencing coughing or chest pain, children may still have a loss of lung function and stunt lung development into adulthood.¹¹⁰

V. Conclusion

CAFOs pose multifaceted threats to the health and safety of humans and the environment. CAFOs create abhorrent conditions for farmed animals and an anti-competitive environment for small farmers— leading to many calling for their regulation. These practices emit greenhouse gasses, particulate matter, and other VOC's that pose threats to the workers in the immediate vicinity and to the ambient air of the surrounding community. Further, the location of CAFOs in Oregon near minority and low-income communities creates a plethora of further environmental justice inequities.

In order to provide teeth to the commitment of DEQ to take Environmental Justice seriously, DEQ should adopt this proposed rule and begin regulating the air emissions of CAFOs.

Respectfully submitted,

NEDC Student Volunteers:

/s/Cameron Quackenbush

/s/Caitlin Stiltner

/s/Kenji Blum

/s/Toni Langowski

/s/Emily Komie

/s/Gabrielle Stewart

/s/Evelyn Mailander

/s/Jaycie Thaemert

/s/James Cole

/s/Suzannah Smith

/s/Paige Punzalen

¹⁰⁸ APHA LEAD, *supra* note 99.

¹⁰⁹ KLEINMANN, *supra* note 50.

¹¹⁰ *Id.*

/s/Bailey Grinter

/s/Rawleigh Harris

/s/Nicholas Snyder

/s/Antonia Langowski

/s/Mary Stites, NEDC Legal Fellow

From: [Pamela Perry](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate Mega Dairies
Date: Sunday, October 23, 2022 12:25:56 PM

This would be a fine time to design and implement some regulations for air quality and animal welfare for these sentient creatures before we completely destroy this planet. Corporations aren't going to regulate themselves.

Sincerely,

Pamela Perry

From: [Paul Hoobyar](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy emissions regulations
Date: Saturday, October 8, 2022 6:48:21 AM

I support the proposed ruling that requires large CFOs to obtain a permit from DEQ for methane and other emissions from their operations.

Thanks

Paul Hoobyar
Sent from my iPad

From: [Peter Bergel](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please Regulate CAFOs Stringently
Date: Thursday, October 6, 2022 8:30:14 PM

To DEQ's Regulators:

CAFO operations absolutely need to be stringently regulated.

Oregon's megadaires collectively release more than 17 million kilograms of methane each year, according to Food and Water Watch – an organization whose information I tend to trust. As you know, methane is a much more potent greenhouse gas than carbon dioxide. Oregon has set some reasonable targets for dealing with GHGs but if we allow industries like CAFOs to operate as they do now, there is little chance we will achieve those targets. Your name contains the words "environmental quality." Please act to protect our environmental quality, as your agency was designed to do.

Then there is the matter of those who work in the CAFO industry. Oregon owes their health the consideration it gives to other workers, i.e. that they are protected from work-related hazards. Being exposed to the various poisons CAFOs emit is inevitably going to damage their health, so please do your job and at least provide regulations that protect them.

Peter Bergel

From: [Peter Wolton](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy air quality
Date: Tuesday, October 4, 2022 10:33:37 AM

The planet is dying!

Please monitor and reduce the emissions from CAFO's.

Close all CAFOs, they are a disgrace

Thanks,

Peter Wolton
Salem, OR

From: [Rachel H](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Support!
Date: Tuesday, October 4, 2022 7:21:16 AM

I support this petition to monitor and regulate emissions from large agricultural sources.

We need to do everything we can to reduce pollution and any cause contributing to global climate change.

I hope you will vote in favor of this petition.
Thank you!

Sincerely,
Rachel Huffine

From: [Ralph](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Require Air Quality Standards for Dairy
Date: Wednesday, October 19, 2022 9:45:08 PM

Please approve air quality regulations to protect local airshed and environment at large.

Ralph McDonald
Co-Chair
SHiNA Neighborhood Association

Sent from my iPhone

From: [reidshepard](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Pollutio
Date: Wednesday, October 5, 2022 4:00:39 PM

I strongly encourage the immediate adoption of strict regulations around the air quality and pollutants caused by large scale dairies. These companies cause a disproportionate amount of harm to the communities around them, contribute enormously to carbon emissions, and encourage the use of food products that are strongly linked to breast cancer, heart disease, and other preventable illnesses.

The current lack of regulation is a de facto subsidy for an industry that has taken so much from our natural well being and continues to threaten the health of employees subjected to the concentrated toxins and pollutants associated with the work environment.

Please act with an extreme urgency to rein in this industry.

Reid Shepard

Sent with [Proton Mail](#) secure email.

From: [Renee Windsor-White](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions rulemaking petition - Public Comment
Date: Friday, October 14, 2022 8:38:21 PM

Please adopt new rules to regulate air pollution from large factory dairies in Oregon. Large factory dairies are a significant source of air pollution, including greenhouse gas emissions, and they have avoided regulation for too long.

In addition to treating animals inhumanely, large factory dairies pollute our air, warm our climate, and threaten our health. They produce toxic air pollutants like ammonia and fuel climate change by emitting huge amounts of methane. Regulating these emissions would help people and would also lead to more humane treatment of animals by discouraging high concentration and intensive confinement of dairy cows, by incentivizing more humane production methods such as pasture grazing, by reducing harm to animals from climate change, and of course by making the air cleaner for dairy cows and for people and other animals in the areas around the dairies.

Thank you for your attention to this comment.

Sincerely,
Renee Windsor-White
Lebanon OR

From: [retheresa](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy challenges
Date: Wednesday, October 5, 2022 3:44:13 PM

Not only should the air pollution be regulated...but also the unlimited pumping of ground water by mega livestock operations

Sent from my Verizon, Samsung Galaxy smartphone

From: [Richard Saylor](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Air pollution
Date: Saturday, October 8, 2022 10:08:43 AM

I live in Alpine Oregon. The local dairy, albeit small, releases so much hydrogen sulfide that there are days I can't work outside. I am asthmatic and the pollution released causes such irritation that I can barely breathe. I believe that all Oregon dairies should be subject to air pollution regulation.

Sent from [Mail](#) for Windows

From: [Richard Woods](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate CAFO emissions
Date: Wednesday, October 5, 2022 3:33:31 PM

Of course Oregon should regulate dairy or confined animal feeding operation (CAFO) emission of pollutants. We need to recognize and account for pollutants from multiple sources to assist in addressing their contributions to climate change and its attendant effects of Oregon's environment.

Richard Woods

From: [Rob Oberdorfer](#)
To: [PETITION Dairyair * DEQ](#)
Subject: comment on petition to regulate diary air emissions
Date: Wednesday, October 19, 2022 12:13:48 PM

Dear Oregon Environmental Quality Commission,

The dairy industry is a significant contributor to climate change and air quality and need to be closely regulated to keep the worst players from poisoning our air for profit. Please prioritize the health of Oregonians over the industry's lobbying by granting the dairy air emission petition.

Thank you for your time and consideration.

Rob Oberdorfer
Portland, Ore.

From: [Robert Burch](#)
To: [PETITION Dairyair * DEQ](#)
Subject: DEQ
Date: Saturday, October 8, 2022 10:00:06 AM

Why aren't you doing it now? Oregonians have to breathe the air!

Of course DEQ should regulate them and shut them down if non compliant!

From: [Robert JR Kratz](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Clean air
Date: Sunday, October 23, 2022 3:17:17 PM

Come on people, do your job. If you can't or won't protect us and the environment, then we will find someone who will.
This is too important to keep your head in the sand.

From: [Roberta A](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Pollution
Date: Thursday, October 6, 2022 12:30:56 PM

Hello,

This is to notify you that I want dairy farms regulated better. They pollute our air with methane. This planet needs everyone, farmers included, to do their part to keep all sources of air pollution under control.

Thank you.

Roberta Cade

From: [Roxanne Magnuson](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Oregon DEQ and EQC: Grant the Petition to regulate Dairy & All Agricultural Air Emissions!
Date: Tuesday, October 18, 2022 8:22:40 AM

Dear Heather Kuoppamaki,

Good Morning!

My name is Roxanne and I am a resident of Lyons, OR. and I to urge you to

Grant the petition to regulate all agricultural air emissions in the state of Oregon.

I am personally invested in this because we who live here would like this area to remain and become even more of a healthy place to raise our families. We all need safe food, clean air & clean water. It's the responsibility of the DEQ to make sure that all, ALL, the farms and food producers maintain these three environmentally sensitive things that we all must have in order to survive. Beyond my personal convictions, the facts support Oregon stepping up to regulate its biggest air polluters.

Large factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from confined livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

You Can Smell The Stink From A Mile Away!!

These air emissions also disproportionately impact the communities in which they are located. Over one third of Oregon's livestock animals are confined in Horrible, muddy, stinky factory environments.

The large amount of methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon. The biggest polluters in the agriculture sector are giving all animal farms and ranches a bad name. It is time to implement right-sized, common sense, best management practices to limit their emissions.

Taking Water From The Aquifers That The Rest Of Us Who Live Here Need, Just To Make \$\$\$ For The Shareholders Is, Or Should Be, Criminal! It's Certainly Rude & UnAmerican!

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution As Far Back As 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated.

Why Are You Not Doing Your Job??

This is unacceptable. Everyone deserves clean air and large factory farms must be held responsible for their air pollution.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank You for your prompt & responsible action,
-Roxanne Magnuson

From: [Ruth Gundle](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Protect our Air from Dirty Farm Pollution
Date: Tuesday, October 18, 2022 7:32:24 AM

Large dairy farms are a source of serious pollution—toxic chemicals and heat-trapping gases that fuel climate change and harm human health. This has been known as far back as 2008. It's time to regulate it to protect the health of our communities and our environment.

It's time to adopt new rules that would regulate mega dairy air emissions in Oregon.

Ruth Gundle

From: [Ryan Rooper](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Grant the Dairy Air Quality Petition!
Date: Tuesday, October 18, 2022 3:56:23 PM

To the Oregon Environmental Quality Commission:

Businesses get to expense their costs of doing business, so they should be paying the total cost of the business activity.

The concept of the non business taxpayer paying for the Cleanup of Superfund sites is a major disservice to everyone.

Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,

Ryan

Rooper

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Proposal to regulate air pollution from large dairy operations.
Date: Tuesday, October 4, 2022 11:30:48 AM

Of course air pollution from dairy operations should be regulated. Even a small dairy on the way from Salem to McMinnville sometimes smells because the cows are confined to a building and are not free to wander into a pasture.

I urge DEQ to develop regulations to stop air pollution from dairies.

Sally Hollemon

From: [Sam Jensen](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Public Comment in Favor of Petition
Date: Wednesday, October 5, 2022 3:10:29 PM

I am commenting in favor of the petition to begin the process of regulating dairy emissions in Oregon.

Thank you,
Sam Jensen

From: [Sandy Miller](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Air quality
Date: Friday, October 14, 2022 3:20:11 PM

Please grant the petition to establish limits on the emissions from large-scale dairy farms. These emissions harm the environment and exacerbate the problem of climate change, which affects us all now, and in the future.

From: [Sara Grusing](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Methane is 25x as potent as a greenhouse gas as carbon dioxide
Date: Monday, October 17, 2022 9:28:10 AM

Methane (produced in large quantities by cows in "livestock enteric fermentation" look it up) is 25x as potent as a greenhouse gas as carbon dioxide. In the past two centuries, methane emissions have more than doubled. However, methane has a shorter half-life than carbon dioxide, meaning our efforts to curb methane emissions will pay off sooner and stronger than efforts to curb carbon emissions.

Please please please make companies pay for their external costs. We need to make polluters pay to even the playing field for more environmentally friendly companies so that the young people living now have a shot at a livable future.

<https://www.epa.gov/gmi/importance-methane>

Sara Grusing MPH CPH

From: [Sarah Vostal](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Climate/Air
Date: Thursday, October 20, 2022 7:18:05 AM

Please prioritize the health of Oregonians and our environment over profit of factory farms by granting the dairy air emissions petition.

Thank you,
Sarah Vostal

From: [Shawn Fontain](#)
To: [PETITION Dairyair * DEQ](#)
Date: Sunday, October 9, 2022 2:54:23 PM

I agree with this petition. Oregon should care about the health of all of it's citizens, and put that concern above the profits of mega-dairys.

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate dairy air quality
Date: Sunday, October 23, 2022 12:11:11 PM

To Whom It May Concern:

My children's children rely on your bold action today, to mitigate air pollution from mega dairies across Oregon. There should be no reason why mega dairies emit such a large amount of methane; estimated at 17 MILLION kilograms yearly! Unacceptable! And many of them are in high-percentage Latino communities, also unacceptable! Not to mention the terrible living conditions for these cows.

The cost to farmers should not be a deterrent to stricter rules, as the emissions lead to irrevocable harm to our earth. The goal of the regulations should focus on vast reductions in methane emissions, and should hold the mega-dairies (and dairy consumers; if prices need to rise, so be it) accountable to the stricter standards.

Thank you for accepting public comment on this important issue.

Shawna Henarie
Toledo, OR

From: [Sherry Macias](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy air emission petition
Date: Wednesday, October 19, 2022 1:19:06 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Sherry Macias



SRAP
Socially Responsible
Agriculture Project

October 23, 2022

Via Email DairyAir.Petition@deq.oregon.gov
Heather Kuoppamaki (heather.kuoppamaki@deq.oregon.gov)
Oregon Department of Environmental Quality
700 NE Multnomah Street
Portland, Oregon 97232

Re: Comments on Petition to Adopt Dairy Air Emission Proposed Rules

Dear Oregon Department of Environmental Quality and Members of the Oregon Environmental Quality Commission:

Socially Responsible Agriculture Project (SRAP) is a 501(c)(3) nonprofit organization. For more than 20 years, SRAP has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations, and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. SRAP offers free support, providing communities with the knowledge and skills to protect their rights to clean air, water, and soil and to a healthy, just, and vibrant future. SRAP submits these preliminary comments in support of the Food & Water Watch et al.'s Petition to Adopt Dairy Air Emissions Proposed Rules.

SRAP's Work with Communities Across the U.S.
Demonstrates an Immediate Need for Oregon to Regulate Dairy CAFO Emissions

SRAP has worked with communities across the United States, including communities in Oregon. One of SRAP's core programs is its Community Support Program, which provides strategic and technical support to help communities confronted with industrial livestock operations navigate regulatory and permitting processes, engage lawmakers, publicize their stories, and build coalitions to reject industrial animal agricultural practices and advocate for a socially responsible food

future. In the last two years, SRAP has received several requests for assistance from communities affected by existing, expanding, or newly proposed dairy operations. One of the frequent concerns SRAP hears from communities regarding industrial dairies is that, unlike swine or poultry operations that experience at least a *minimal* amount of downtime when livestock is sent to slaughter, cows at industrial dairy operations remain on-site 365 days a year. Thus communities never experience any “break”, even if only for a day or a few hours, in the effects of air pollution from industrial dairies.

SRAP also has a Water Rangers Program, training community members to conduct their own environmental sampling, spearheaded by Goldman Environmental Prize Winner Lynn Henning. Ms. Henning lives and farms 300 acres within 10 miles of 12 concentrated animal feeding operations (CAFOs) in Michigan; most of these nearby CAFOs are industrial dairy operations. Ms. Henning began documenting the practices and problems caused by the CAFOs near her farm by conducting water quality sampling in the late 1990s, and using air “sniffers” to assess air pollution. Due to this environmental sampling and data detection work, Michigan residents developed a body of data on CAFOs – mostly dairies - beyond that held by Michigan’s own regulatory agencies. As a result of Ms. Henning’s work, the state then levied hundreds of citations against Michigan CAFOs for environmental violations.¹ Because poor air quality has so consistently been a problem in communities affected by industrial dairies, SRAP anticipates that requests for community science training will eventually extend beyond water testing to also include air quality monitoring.

In 2015, SRAP issued a groundbreaking report, “The Rap Sheets: Industrial Dairies in Kewaunee County, Wisconsin” (“SRAP Wisconsin Rap Sheets”).² Based entirely on public records, the SRAP Wisconsin Rap Sheets profiled 16 industrial dairies in Wisconsin and identified numerous regulatory failures of the state agency, which thereby threaten public health and the environment. As profiled in the SRAP Wisconsin Rap Sheets, in Kewaunee County 14 dairy CAFOs and one beef cattle CAFO produced untreated waste equivalent to 924,882 humans.³ SRAP’s review identified hundreds of manure management failures and a host of other operational problems, but narrowed its focus down to nearly 30 manure management “bad practices” at industrial dairies that were regularly contributing to ongoing water and air quality violations.⁴ To simply even begin to address these bad practices and their impacts, SRAP issued 12 recommendations for Wisconsin industrial dairies,⁵ including:

- The creation of statewide ambient air quality standards that address airborne pollutants emanating from CAFOs such as ammonia, hydrogen sulfide, and methane; and

¹ See <https://www.goldmanprize.org/recipient/lynn-henning/#recipient-bio>.

² SRAP “The Rap Sheets: Industrial Dairies in Kewaunee County, Wisconsin” (2015) <https://sraproject.org/wp-content/uploads/SRAP-Rapsheet-2015.pdf>.

³ See SRAP Wisconsin Rap Sheets at 6.

⁴ Id. at 7.

⁵ Id. at 12.

- Public agency and community partnerships for community watchdogs to track manure spreading, and water and air quality problems.

SRAP has long been interested in, and recognized, industrial dairies' air quality impacts on local communities. Many of the community groups across the U.S. that SRAP has worked with over the years confirm the concerns with industrial dairy air. For example:

Wisconsin

- Kewaunee Cares, based in Kewaunee County, Wisconsin with approximately 16 dairy CAFOs, had to ask the American Lung Association for assistance in stopping the practice of manure spray irrigation, which sprays raw, untreated liquid manure onto fields.⁶

New York

- A coalition of groups in New York state issued a report in 2005 called “The Wasting of Rural New York State: Factory Farms and Public Health” (the “New York Report”), called for air regulations and permits, which would include regular on-site and ambient air monitoring and reporting, enforceable air emissions permit limits, and an enhanced public participation plan for air permitting.⁷ The New York Report, in discussing air pollution, cited a Cornell University study which identified dairy farms' practices including manure odors, road spills, and water pollution as top complaints from neighbors and officials, and culled several studies linking factory farms with air pollution.⁸
- The New York Report further profiled several dairies and the air pollution effects on neighbors:
 - Connie and Scott Mather were forced to leave their 10 acre organic farm when the Willet Dairy expanded to become a 7,500 cattle and calf operation. The Willet Dairy located at least 6 storage pits a few hundred feet from the Mather's home.⁹ The Willet Dairy also spread manure, conducted year-round aerial spraying of manure, on fields adjacent to the Mather's home. The “air often stinks like rotten eggs and ammonia on the Mather property.”¹⁰
 - Gregg Kaczmarczyk lived next to a 1-acre 699 head open-air dairy operation, where he documented between 15 and 22 bad air days a

⁶ See <https://kewaunee cares.wordpress.com/>

⁷ See “The Wasting of Rural New York State: Factory Farms and Public Health” (2005) at https://atlantic2.sierraclub.org/sites/newyork.sierraclub.org/files/conservation.issues/Wasting_NYS_Report.pdf at 5.

⁸ Id. at 8-9.

⁹ Id. at 10.

¹⁰ Id.

month. Mr. Kaczmarczyk described the odors as “overwhelming”, “penetrat[ing] the walls of my house, even in winter”, making him “ill in my own house.”¹¹

Michigan

A local organization in Michigan, Environmentally Concerned Citizens of South Central Michigan (“ECCSCM”) has documented “Stench Alerts” since 2003. ECCSCM has *conservatively* documented 4,712 various incidents – several rising to the level of violations - of environmental laws and regulations, including numerous violations of state and federal air quality laws.¹² Some of selected descriptions of industrial “dairy air” problems include:

- December 23, 2021: New Flevo Dairy manure application – a 10 mph wind carried the “awful stench” to blanket homes where people were inside celebrating the holidays.¹³
- August 9, 2021: multiple industrial dairies were applying manure regularly in late summer to prepare for lower lagoon levels for winter storage; the stench was “miserable” and carried the “dairy air” from Adrian, Michigan, to west of the Hillsdale County line,¹⁴ a distance of at least 18 miles.
- May 19, 2019: describing four industrial dairies’ ongoing manure applications as creating “foul air everywhere” that was “[e]ye-watering, throat-burning, gut-wrenching, nasty” and “[t]he air stunk for miles around.”¹⁵
- And from 2003 to 2011, ECCSM received numerous reports of dairy “stench” occurring “daily and nightly”; “[n]eighbors needing to cover faces when enjoying their outdoor activities, daily headaches. No fresh country air here”; neighbors “had to shut windows this evening, turn on the A/C (the ones lucky enough to have air conditioning), and hope the wind shifts by morning”; “[i]n calm air, emissions spread across several square miles”; neighbors reporting “[i]t’s hard not to throw up”; neighbors removing “a 16 month old baby from a home because the emissions and stench were entering the home even through air conditioning”; a neighbor’s “eyes watered on the way to the bird feeder”; “we could no longer walk with our one year old granddaughter in her stroller on our property. My husband is recovering from open heart surgery and part of his rehab is walking. The emissions were so unbearable that he could not take the risk of walking on the back of our farm in fear for his health”; reports of swimming at local lakes in the summer that “smelled like manure” “even though it was coming from the air”; reports of residents that could “taste”

¹¹ Id at 17.

¹² See <https://nocafos.org/violations>.

¹³ See <https://nocafos.org/stench-alerts-2021>.

¹⁴ Id.

¹⁵ See <https://nocafos.org/stench-alerts-2019>.

manure and ammonia “in the air”; “air is saturated with the smell of raw dairy sewage”.¹⁶

- Many of these reports also cross different air conditions – such as dry air, humid air, windy or still conditions, foggy or clear days, day air or night air. Several of these reports also overlap with holidays when neighbors would normally be outside, such as the Fourth of July and Halloween.

ECCSCM has also identified industrial dairies’ “worst” practices which create the most risk for air pollution to the community. These include, for example, pumping out manure lagoons; removing manure from the bottom of lagoons; spraying untreated waste onto fields (many of which are tile-drained in Michigan); spraying liquid waste on snow-covered, frozen ground; spewing liquid waste from an open-end dragline; and spraying liquid waste into the air (using pivot spray guns, pivot irrigators, or fan-spraying from tanker trucks).¹⁷ Even the dairy lagoons themselves, with no spreading occurring, infiltrate homes with odors a mile away.¹⁸

While many different practices at industrial dairies are driving sources of odors and air pollution,¹⁹ these practices must be regulated, monitored, and enforced to protect and *improve* air quality and to reduce odors at industrial dairies and beyond their borders. SRAP fully supports the Petitioners’ request for immediate regulation of dairy CAFO air emissions.

*Oregon’s Rules Must Further Adjust Limitations for Cumulative Effects,
Including for Wildfire Smoke*

In preparing to regulate industrial dairy air emissions, SRAP encourages the EQC and DEQ to factor in the cumulative effects and impacts of the dangers of air pollution from a *variety* of sources on Oregonians’ public health and on the environment. *See, e.g.*, 2008 Oregon Dairy Task Force Report at 6-7 (“Air emissions from dairies, together with emissions from many other sources, contribute to [] environmental effects”).²⁰ Several cumulative environmental impacts are identified in the Petition, for example the groundwater contamination crisis in Morrow County, and the health and socio-economic disparities in Boardman and Hermiston. SRAP believes that these disparities exist in other communities in Oregon, adding additional stressors on rural family dairy farming, for example in the Santiam River Basin, the Willamette Valley, and in the Tillamook Regions.

¹⁶ See <https://nocafos.org/stench-alerts-2003-to-2011>.

¹⁷ See, e.g., <https://nocafos.org/contamination>; see also R.S. Dungan, “Fate and Transport of Bioaerosols Associated with Livestock Operations and Manures.” *J. Anim. Sci.* 2010 Nov.; 88(11):3693-796.

¹⁸ See, e.g., <https://nocafos.org/stench-alerts-2003-to-2011> (incident dated July 17, 2007).

¹⁹ See, e.g., SRAP Wisconsin Rap Sheet at 7 and specific examples at id. at 24, 77, 92 (ponding, pooling, runoff, overapplication, tracking mud and manure on roads, field tile discharges, failure to incorporate manure into fields, and manure injections into fields).

²⁰ See Oregon Dairy Air Quality Task Force, Final Report to the Department of Environmental Quality and Department of Agriculture (July 1, 2008) available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/7119>.

Oregon's heavily forested landscape means we are at-risk for wildfire. The reality of our world now is that all Oregonians are touched in some way by the increasing number of significant wildfires since approximately 2002.²¹ Many Oregonians now regularly experience air quality levels above 100, 200, and even 300 and 400 ppm for PM2.5 due to wildfire smoke. Wildfire smoke contains numerous other pollutants from burned debris, and is a complex mixture of air pollutants with different chemical compositions; it can travel long distances and can temporarily degrade air quality and harm human health.²² *See also* DEQ Air Quality Monitoring Annual Report for 2020 at 31 (wildfire smoke contains NO₂ and VOCs, which is on top of the human-caused emissions).²³

Wildfire smoke can occur for days and weeks at a time. The scope of future wildfires' impacts on Oregonians is unknown, but wildfires are likely to continue to affect us for decades to come. As DEQ's Air Quality Monitoring Annual Report for 2020 confirms, Fall 2020 saw the entire state blanketed in thick wildfire smoke for weeks.²⁴ As we write these comments, Oakridge, Oregon is still suffering from the Cedar Creek Fire smoke that started August 1, has only seen approximately 2 days below approximately 170 for PM2.5 in the last month, and the town has colloquially been re-named "Smokeridge." Many of our wildfires occur during the summer and fall, precisely when Oregon's farmers are outside working to support the state's agriculture industry. The state must regulate industrial dairy emissions with these other factors in mind to best protect residents by maintaining and improving Oregon's air quality. *See, e.g.*, Oregon's Statewide Land Use Planning Goals (Goal 6).

The air pollution emissions from industrial dairy operations, in contrast, are entirely *measurable, controllable, adjustable, and predictable*. SRAP recommends that DEQ and EQC prepare stringent industrial dairy air emissions control regulations for all of Oregon so populations already exposed to air pollution from wildfire smoke (past, present, and future) are not even further harmed by utterly manageable air pollution from industrial dairies.

²¹ See, e.g. Z. Price and H. Rein, "Oregon Wildfires: 20 of the state's biggest since 2002." The Statesman Journal (July 20, 2021) at <https://www.statesmanjournal.com/story/news/2021/07/20/oregon-wildfires-20-biggest-since-2002/7985470002/>.

²² See Congressional Research Service, Insight Report, "Wildfire Smoke: Air Quality Concerns and Management" (Feb. 10, 2021) available at https://www.everycrsreport.com/files/2021-02-10_IN11528_35e65a26fc801e27d9c220055582a362bdec2e50.pdf.

²³ Oregon DEQ, Air Quality Division. Oregon Air Quality Monitoring Annual Report: 2020 (Dec. 2021) at <https://www.oregon.gov/deq/aq/Documents/2020AQMonitoringReport.pdf>.

²⁴ *Id.* at 1, 30-31 (noting air monitors at Detroit Lake, Lyons, Mt. Hood knocked out by wildfire).

Conclusion

SRAP works with communities across the U.S. affected by *all* kinds of pollution stemming from industrial livestock operations, whether it be dairy, beef, swine, poultry (broiler), or egg layers, whether it be operations to grow the animals or slaughter them, or whether it be operations to “process” the animal waste into compost, or into methane gas. As a matter of principle, SRAP advocates for pollution emissions from *all* of these operations to be regulated to more strongly protect and *improve* air quality, public health, and the environment. The disturbing trend, however, is that there are an increasing number of industrial dairy CAFOs, and even “mega” dairies in certain parts of the U.S., including Oregon. Of the 21 facilities on Oregon Department of Agriculture’s (ODA) current 2022 CAFO enforcement list, nearly all of them are dairies. In 2021, approximately half of the 37 CAFOs on the ODA’s enforcement list were dairies. While the focus of the enforcement actions are based on the Clean Water Act NPDES permit program, several of the practices identified as actionable for enforcement are *also* practices that directly contribute to air pollution. For example, failing to comply with animal waste management plans, waste storage capacity requirements, land application agronomic rate limitations, and prohibitions against applying waste to saturated soils.

SRAP hopes that the examples and experiences shared with DEQ and the EQC above provide context for how important it is to stringently regulate emissions from industrial dairies, and to do so expeditiously. We support DEQ and EQC moving forward with immediately regulating Oregon’s industrial dairies’ air emissions.

Sincerely,

s/ Elisabeth Holmes
Elisabeth Holmes
Senior Counsel
elih@sraproject.org

s/ Teresa Mitchell Clausen
Teresa Mitchell Clausen
Regional Representative
teresam@sraproject.org

From: [Stella Richards](#)
To: [PETITION Dairyair * DEQ](#)
Date: Monday, October 17, 2022 10:16:31 PM

The dairy air emissions rules should be taken into full amount and followed as outlined in the proposed petition. Granting the petition is incredibly important to move forward in the process of creating clean farming practices. As a member of the Oregon and farming community I highly encourage that these rules be put into place.

Best regards,
Stella Richards

From: [Stephen Maynard](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comment
Date: Wednesday, October 19, 2022 6:26:54 PM

I just learned about the comment period today and am not able to provide a terribly thoughtful answer. I will say I worked on dairy farms in Vermont in my youth - all family run and all providing milk to the Vermont Cabot Creamery. I learned what it is like to run a farm and appreciate the hard work and narrow margins involved.

I also believe that climate change related to agriculture is an issue that needs to be understood better and properly regulated. I believe farms can produce efficiently and enhance the environment. I support any effort to understand the impact of farming on the climate and improve outcomes.

I support the petition.

Stephen F. Maynard BS MS

From: [Kat](#)
To: [PETITION Dairyair * DEQ](#)
Subject: dairy emissions petition
Date: Sunday, October 23, 2022 2:17:26 PM

We are concerned not only about emissions from mega dairy farms but also about emissions from industrial chicken farms. We hope you grant the petition for regulating emissions from dairy farms and include regulations for large scale poultry operations as well.

Thank you,
Steve and Kathleen Confer

Sent from [Mail](#) for Windows

From: [SUSAN COPENHAFER](#)
To: [PETITION Dairyair * DEQ](#)
Subject: air regulations
Date: Monday, October 10, 2022 10:24:00 AM

I agree that large dairy confined operations should be air regulated in an effort to help reduce air pollution.

The size of such dairy operations should also be limited to help reduce the air pollution they cause.

Susan Copenhafer

From: [Susan Murbach](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Factory farm dairy emissions
Date: Monday, October 17, 2022 7:20:01 PM

Dear DEQ,

Please help large corporate dairy farm to clean up their pollution. Integrate a whole system approach for new regulations to help our environment and how help how dairy cows are treated.

Sincerely,

Susan Murbach

From: [Suzanne Scopes](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulation
Date: Sunday, October 23, 2022 7:11:24 PM

Hello,

I am writing to support regulation of dairy air emissions. Oregon's mega-dairies emit a great amount of methane and pollution. This will affect the local communities as well as greatly contribute to climate change and global warming.

As an Oregonian for 40 years, I care about the health of our communities, as well as about animal welfare and climate change. Regulating the air emissions of mega-dairies is a very important step for Oregon to take now.

thank you.

Suzanne Scopes ND

From: [T T](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulation of Air Pollution from Factory Farms
Date: Thursday, October 20, 2022 5:41:08 AM

I'm writing to ask that you please grant the dairy air emission petition. The amount of pollution and emissions from large factory dairies are a HUGE contributor to climate change and have negative impacts on all our health as citizens. Please do right by humans, animals, and the earth alike and protect our health more than you protect the profits of factory farms!

Please grant the dairy air emission petition.

Thank you.

From: [Tami Davies](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please grant the dairy air emission petition
Date: Wednesday, October 19, 2022 12:17:51 PM

Hello,

Animals are sentient creatures, and if dairy farms can worsen air quality for the distant human population, imagine how unhealthy and miserable is for them all cooped up and surrounded by ammonia from urine and feces 24/7! (I have an idea since I used to clean our 10 horse trailer after a two day trip and it was miserable being in that trailer to clean it because the smell was so incredibly strong!!)

Thank you for granting the Dairy Emission petition!

Tami Davies
Canby, OR

From: [tcclark7](#)
To: [PETITION Dairyair * DEQ](#)
Subject: regulating air pollution from dairies
Date: Saturday, October 8, 2022 7:25:05 AM

Yes, definitely the state should regulate pollution produced by dairies. Why shouldn't all forms of air pollution be regulated and the health of citizens be protected!

From: [Teresa Mueller](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate dairy air emissions
Date: Monday, October 17, 2022 7:53:34 PM

Dear Oregon DEQ Commission,

I request that you grant the petition to regulate dairy air emissions in our state.

Large factory farms produce gasses and emissions that contribute to chronic diseases, affecting communities of people who cannot live at a sufficient distance from the farms.

The methane gas produced from giant dairy farms contributes greatly to climate change. In fact, agriculture is the leading source of methane emissions in Oregon. My family is terrified at the speed of climate change right now. Every year we breathe terrible smoke from catastrophic sized forest fires. We have dairy farms to blame in part for the heat and dryness of our once green state.

Dairy air pollution could have been legislated against back in 2008. I have to ask myself what great corporate interests keep us from regulating pollution that is hurting citizens daily and contributing greatly to the climate crisis.

Teresa Mueller

From: [Teryn Yazdani](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [Lisa Arkin](#)
Subject: Public Comments re: Petition to Promulgate Dairy Air Emissions Regulatory Program
Date: Friday, October 21, 2022 3:29:59 PM
Attachments: [FINAL_BT Comments re-Petition to Promulgate Dairy Air Emissions.pdf](#)

Good afternoon,

Please accept these comments on behalf of Beyond Toxics regarding the Petition to Promulgate Dairy Air Emissions Regulatory Program. Please confirm receipt of these comments via email at your earliest convenience.

Thank you for your time and consideration on this important matter.

Sincerely,
Teryn Yazdani

--

Teryn Yazdani - *She/Her/Hers*
Staff Attorney & Climate Policy Manager
Beyond Toxics



October 21, 2022

Oregon Department of Environmental Quality (DEQ)
ATTN: Heather Kuoppamaki
700 NE Multnomah St.
Portland, OR 97232
Email: DairyAir.Petition@deq.oregon.gov

Via Email to: DairyAir.Petition@deq.oregon.gov

RE: Petition to Promulgate Dairy Air Emissions Regulatory Program

Dear Oregon DEQ and Environmental Quality Commission,

Please accept these comments from Beyond Toxics and its members to be included in the record for the Petition to Promulgate Dairy Air Emissions Regulatory Program. Beyond Toxics has been an active public interest participant in legal processes and policy decisions related to air toxics and climate issues in Oregon for over twenty years. We work to guarantee environmental protection and health for all communities as well as individual residents, regardless of their income, status, or background. Our organization emphasizes environmental justice and community engagement, which is why we joined as one of the 22 co-petitioners joining Food and Water Watch to demand the EQC take immediate action to address the dangerous air pollution emitted by mega-dairies across the state. On behalf of thousands of Beyond Toxics members, we request that the Oregon Environmental Quality Commission (EQC) grant this petition for rulemaking and direct the Oregon Department of Environmental Quality (DEQ) to begin rulemaking on this issue.

This petition for rulemaking, if granted, would fill a large regulatory gap in Oregon relating to harmful air toxics and climate-forcing emissions. For over a decade, Oregon's lawmakers have acknowledged the threat of air pollution from large dairy factory farms. Despite this, they failed to take action to address and reduce dairy air pollution to the detriment of communities located near these facilities, the climate, and our environment. DEQ must regulate large dairy factory farm air pollution swiftly to prevent further harm and degradation.

Mega-Dairies are Large Emitters of Air Toxics and Threaten Public Health.

Beyond Toxics urges the EQC to grant this petition due to the harmful impacts that large dairy confined animal feeding operations (CAFO) emissions have on the health of both surrounding communities and mega-dairy farm workers. According to Food and Water Watch's May 2022 study, "[n]ationally, air pollution from farms may be linked to 17,900 deaths each

year.”¹ This is higher than the death rate from coal plant-related pollution.² Air pollution from factory farms has severe health impacts that need regulatory oversight immediately.

As highlighted in the petition for rulemaking, some of the highest emissions from CAFOs include ammonia, hydrogen sulfide, and particulate matter.³ Each of these pollutants is a respiratory irritant and can severely impact the health of residents located near facilities—particularly those with existing chronic respiratory issues like asthma. Particulate matter (PM) is of specific concern since all particulate matter emissions pose a significant risk to human health; however, smaller particulates (under 10 micrometers) pose the greatest threat. PM_{2.5} can travel deep into human respiratory tracts and even enter the bloodstream to impact the nervous system and the lungs.⁴ High exposure leads to several long- and short-term health conditions including but not limited to asthma, premature death for those with heart and lung disease, nonfatal heart attacks, irregular heartbeat, decreased lung function, increased irritation of airways, increased coughing, difficulty breathing, and reproductive issues. Additionally, pollutants like ammonia, when in the atmosphere, bind to other gases like sulfur dioxide (SO₂) and nitrogen dioxide (NO_x), to form ammonium-containing fine PM.⁵ Hydrogen sulfide also poses severe health threats; prolonged exposure can cause eye irritation, respiratory inflammation, dizziness, headache, weakness, irritability, insomnia, and stomach upset.⁶ In addition to health impacts, exposure to these pollutants can severely impact livability. Hydrogen sulfide emissions, for example, produce an odor that is akin to rotten eggs, even at low concentrations.

Mega-dairies also produce high concentrations of volatile organic compounds (VOCs) which negatively impact human health.⁷ VOCs have a vast array of short- and long-term health effects⁸ and contribute to creating ground-level ozone. Ground-level ozone can worsen asthma,

¹ See Attach. A, Oregon’s Mega-Dairies, Mega-Pollution and Mega-Climate Consequences (2022) at 3.

² *Id.*

³ Dairy Air Petition for Rulemaking at 15.

⁴ *Health and Environmental Effects of Particulate Matter (PM)*, EPA, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last accessed Oct. 20, 2022) (describing the impacts and health implications of exposure to PM).

⁵ Susan Guthrie, et al., *The impact of ammonia emissions from agriculture on biodiversity* (2018), <https://royalsociety.org/~media/policy/projects/evidence-synthesis/Ammonia/Ammonia-report.pdf> (last accessed Oct. 20, 2022).

⁶ *Hydrogen Sulfide*, CDC, <https://www.cdc.gov/niosh/topics/hydrogensulfide/default.html> (last accessed Oct. 20, 2022) (describing the health impacts of exposure to hydrogen sulfide).

⁷ See Attach. A, at 3.

⁸ See e.g., Ogbodo JO, et al., *Volatile organic compounds: a proinflammatory activator in autoimmune diseases* (2022) at 2, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9373925/pdf/fimmu-13-928379.pdf> (“Volatile organic compounds enter the human system through three major routes, such as lungs (inhalation), dermal contact (absorption), and mouth (ingestion). The accumulative effect of the inhalation of VOCs causes different adverse health effects starting from the epithelial lining of the respiratory tract and mucous membrane. The negative effect of VOCs is occupationally linked due to long-term exposure leading to nausea, anxiety, headache and chronic conditions

COPD, and emphysema.⁹ Beyond Toxics urges the EQC to grant this petition and address the serious health impacts of mega-dairy air emissions.

Mega-Dairies Have Disproportionate Impacts on Environmental Justice Communities.

As highlighted in the petition for rulemaking, the disproportionately high siting of CAFOs in low-income communities and communities of color is a massive environmental justice (EJ) issue that the DEQ must address. Under ORS § 182.545(1), each natural resource agency shall “[i]n making a determination whether and how to act, consider the effects of the action on environmental justice issues.” DEQ is one of the named “natural resource agencies” listed in ORS § 182.535, defined for ORS §§ 182.535–182.550. Further, the 2021 Oregon Legislature passed Senate Concurrent Resolution 17 which states “all state agencies are responsible to respond to the health, environmental, economic[,] and climate crisis we face, and are accountable to build a just, equitable, and resilient future to secure health and well-being for all people.”¹⁰ Thus, the DEQ has a legal duty to consider and take action on the environmental injustices that have resulted from its failure to regulate mega-dairy CAFO air emissions.

DEQ must address the historic and continual disproportionate overburdening of environmental justice communities near mega-dairy CAFOs immediately. In Oregon, large mega-dairies like Threemile Canyon Farms (TMCF) in Boardman and several other large dairy CAFOs in Morrow County are in rural, low-income, and predominantly Latinx communities.¹¹ These communities are already overburdened with other environmental pollution. As noted in the petition for rulemaking, “these communities shoulder some of [Oregon’s] highest pollution burdens, consistently ranking in the 80–90th percentiles for numerous environmental hazards as compared to the rest of the State.”¹² Additionally, these communities often face water quality issues due to close proximity to dairy CAFOs and factory farming. Nitrates from fertilizers and

such as damage to the liver, skin, and respiratory and nervous systems.”) (last accessed Oct. 20, 2022).

⁹ See e.g., *Why you should care: air quality and health*, MINNESOTA POLLUTION CONTROL AGENCY, <https://www.pca.state.mn.us/air/why-you-should-care-air-quality-and-health> (last accessed Oct. 21, 2022) (describing the human health impacts of PM and ground-level ozone/VOCs emissions); see also *Volatile Organic Compounds’ Impact on Indoor Air Quality*, EPA, https://www.epa.gov/indoor-air-quality-iaq/volatile-organic-compounds-impact-indoor-air-quality#Health_Effects (last accessed Oct. 21, 2022) (describing health impacts of VOCs).

¹⁰ See S. Con. Res. 17, 81st Or. Legis. Assemb. (2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SCR17/Enrolled> (last accessed Oct. 21, 2022).

¹¹ See Attach. A, at 1 (“Mega-dairies like TMCF are often located in rural, predominantly Latinx communities—making this an issue of environmental racism and justice. Morrow County in eastern Oregon houses nearly 70 percent of all Oregon’s cows living on mega-dairies. The county has nearly triple the proportion of Hispanic/Latinx residents as the state as a whole . . . In the city of Boardman, home to TMCF, more than two-thirds of residents are Latinx. Because of structural racism and a lack of government regulation, these communities are burdened with contaminated air and water caused by pollution from TMCF and other factory farm operations.”)

¹² Dairy Air Petition for Rulemaking at 17–18.

leaked animal waste from manure lagoons infiltrate groundwater and threaten the health and safety of these communities by contaminating drinking water.¹³ Further, these water quality concerns have health implications separate from those caused by CAFO air pollution. For example, increased nitrates in drinking water can increase the risk of thyroid disease and many types of cancer.¹⁴

These EJ communities also bear the brunt of decreased quality of life, increased public health harms, reduced access to healthcare, and reduced property values due to the siting of CAFOs. The cumulative impacts of mega-dairies on frontline EJ communities' health and well-being must be immediately addressed. Failure to regulate these facilities' air pollution exacerbates the many other health and environmental concerns these communities shoulder. For these reasons, Beyond Toxics urges the EQC to grant this petition and urges the DEQ to begin the rulemaking process to address these serious environmental justice concerns.

Mega-Dairy Emissions Have Severe Climate and Environmental Implications.

Finally, as highlighted in the petition for rulemaking, mega-dairy CAFOs are large emitters of methane—a highly potent and climate-forcing greenhouse gas. As highlighted in Food & Water Watch's study, the annual methane emissions from Oregon's mega-dairies combined are at least equivalent to the emissions from 318,000 passenger vehicles.¹⁵ Oregon is already experiencing the dire effects of climate change through drought, increasingly severe and prolonged fire seasons, heat domes in the summer months, species loss, loss of biodiversity, and more. The far-reaching impacts of climate change affect the health and safety of all Oregonians but particularly impact vulnerable, frontline, and BIPOC communities that experience the worst of the climate crisis. Climate change also has far-reaching economic impacts that touch every sector and facet of life. Regulating the high methane emissions from large dairy CAFOs—in addition to all other air emissions—is vital to curbing the climate crisis.

Conclusion

In conclusion, Beyond Toxics requests the EQC act and grant this petition for rulemaking. Thank you in advance for your time and consideration of these comments.

Sincerely,

Teryn Yazdani,
Staff Attorney and Climate Policy Manager
Beyond Toxics

Lisa Arkin,
Executive Director
Beyond Toxics

¹³ Attach. A, at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

Attachment A

Oregon's Mega-Dairies, Mega-Pollution and Mega-Climate
Consequences (2022)

Oregon's Mega-Dairies, Mega-Pollution and Mega-Climate Consequences

Massive dairy factory farms, known as mega-dairies, produce enormous amounts of heat-trapping gases that are warming the planet and fueling Oregon's historic drought and wildfires. In Oregon alone, mega-dairies are responsible for spewing more than 17 million kilograms of planet-warming methane gas every year — equivalent to the yearly emissions from driving 318,000 passenger cars.¹ The air and water pollution and climate chaos that these facilities create are hurting communities now and will do so for years to come. We need a moratorium on new and expanding mega-dairies to ensure a safe and livable future for all Oregonians.

Water Contamination and Environmental Justice

Food & Water Watch is calling for a moratorium on new and expanding mega-dairy operations, defined as dairies confining more than 2,500 cows. These industrial operations confine animals in lots or pens instead of raising cows on well-managed pastures, which offers the opportunity to significantly reduce greenhouse gas emissions.² Oregon has 11 of these mega-dairies, which together house more than 100,000 cows (as of December 2021). Even more facilities are permitted to be mega-dairies but are not yet operating at full capacity.³

The largest mega-dairy in operation in Oregon is Threemile Canyon Farms (TMCF). Located in Boardman, TMCF houses more than 55,000 dairy cows just for milking, as well as over 14,000 additional animals that serve as “fattening cattle” on feedlots.⁴ As mega-dairies like TMCF open their doors, smaller, family-scale dairies disappear across the state, unable to compete with these factory operations.⁵

Mega-dairies like TMCF are often located in rural, predominantly Latinx communities — making this an issue of environmental racism and justice.⁶ Morrow County in eastern Oregon houses nearly 70 percent of all Oregon's cows living on mega-dairies.⁷ The county has nearly triple the proportion of Hispanic/Latinx residents as the state as a whole — 38 percent compared to 13 percent, respectively. In the city of Boardman, home to TMCF, more than two-thirds of residents are Latinx.⁸ Because of structural racism and a lack of government regulation, these communities are burdened with contaminated air and water caused by pollution from TMCF and other factory farm operations.⁹

Mega-dairies have wreaked havoc on communities in eastern Oregon for years. Nitrate from fertilizers and animal waste infiltrates groundwater and threatens the health of those who drink it. The Oregon Department of Environmental Quality (DEQ) identified the Lower Umatilla Basin in northeastern Oregon (home to TMCF and several other mega-dairy facilities)¹⁰ as having dangerously elevated nitrate levels. Groundwater quality sampling done in 2015 by DEQ found that nearly half of all wells tested had nitrate concentrations that the U.S. Environmental Protection Agency has determined “present serious health concern(s) for infants and pregnant or nursing women.”¹¹ Nitrate in drinking water also increases the risk of thyroid disease and several types of cancer.¹² Communities in the Lower Umatilla Basin rely heavily on groundwater, for both public water systems and private wells.¹³ Years of testing and voluntary plans to reduce nitrate concentrations in groundwater have failed to address the problem in this region.¹⁴

The notorious Lost Valley mega-dairy, which housed a staggering 30,000 cows, was forcibly shut down after repeated violations that threatened local drinking water.¹⁵ Despite the disaster at Lost Valley, another company, Easterday Dairy, is awaiting permit approval to open another nearly 30,000 cow mega-dairy facility on the same Lost Valley site.¹⁶ The Easterday Facility would produce close to 6 million cubic feet of solid manure a year and almost 12 million cubic feet of wastewater, threatening nearby groundwater and air quality.¹⁷

Catastrophic manure spills can and do happen in Oregon. In April 2017, Tony Silveira Dairy released 190,000 gallons of untreated manure into the Tillamook River during a manure tank malfunction.¹⁸ In July 2019, more than 300,000 gallons of manure spilled into the same river after an aerobic digester with manure from dairy farms malfunctioned. These spills threaten fisheries, water quality and people's health.¹⁹

Mega-Emissions from Mega-Dairies

Due to the intensive confinement of animals on factory farms, these facilities produce more manure, more pollution and more planet-warming gases than smaller farms. The manure management practices used by larger operations also increase emissions.²⁰ One estimate found that one ton of manure from large dairy farms produces more than twice as many heat-trapping emissions as one ton of manure from small dairy farms.²¹ Mega-dairies typically flush untreated manure and waste into large cesspools, called lagoons.²² This practice of mixing wet waste and solid manure in lagoons for long periods of time, a common occurrence on industrial-scale farms, is a major source of methane.²³ Manure is stored in these lagoons until it is applied as fertilizer on fields. But even then, these operations often produce much more manure than crops can absorb, resulting in over application and runoff into local waterways.²⁴

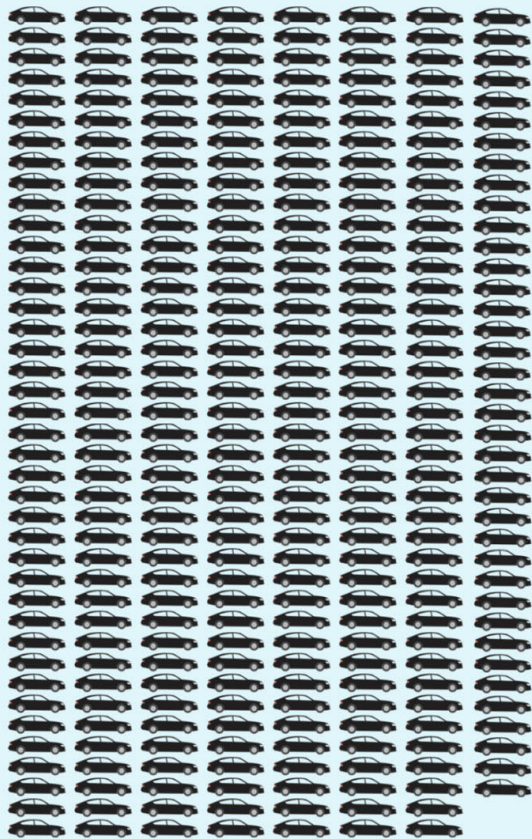
FIG. 1: Oregon's Methane Emission Equivalencies – Cows Vs. Cars

Annual methane emissions from Oregon's mega-dairies combined...



produce the CO₂ equivalent of

318,000 passenger vehicles.



 = 1,000 vehicles

Nationally, air pollution from farms may be linked to 17,900 deaths each year, and pollution from food production kills more people than pollution from coal plants.²⁵ The health of those who work on large dairy farms is particularly at risk from inhalation of pollutants. Researchers have found that dairy workers experience myriad lung conditions such as asthma, chronic obstructive pulmonary disease (COPD), chronic bronchitis and cancer.²⁶

Pollutants of concern from large dairy farms include ammonia, hydrogen sulfide, methane, volatile organic compounds, nitrogen oxides, particulate matter and odors.²⁷ Methane and nitrous oxides are powerful climate-warming gases.²⁸ Methane is released during the cow's digestive process and during the storage and management of manure on factory farms, due to the farms' practice of mixing liquid and solid wastes.²⁹ In Oregon, agriculture is the leading source of methane emissions.³⁰ Food & Water Watch conservatively estimates³¹ that the 11 mega-dairy facilities operating in the state produce over 17 million kilograms of planet-warming methane every year.³² This is equivalent to the emissions from 318,000 passenger vehicles³³ — more than all the registered passenger vehicles in Marion County combined.³⁴

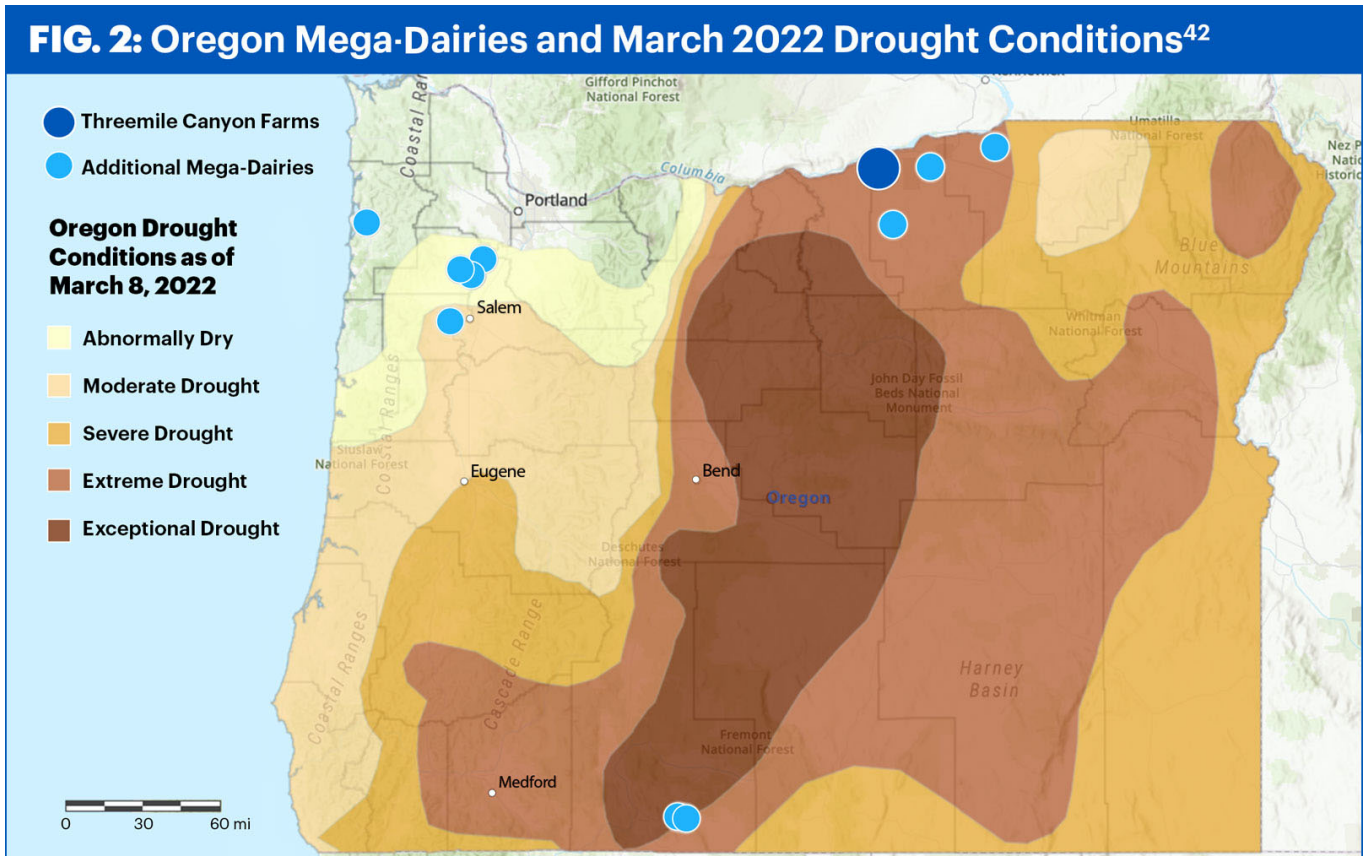
Mega-consequences

Oregon is already experiencing the impacts of a changing climate. Average annual temperatures have increased by 2.2 degrees Fahrenheit compared to temperatures in 1895 and are expected to rise as much as 8.2 degrees Fahrenheit by the 2080s without significant emissions reductions.³⁵ Hotter temperatures and climate

change-induced heat waves particularly threaten the health and safety of farm workers across the agricultural industry in Oregon.³⁶ Warmer temperatures also lay the foundation for a future plagued by extreme droughts and massive wildfires.

Like much of the western United States, Oregon is experiencing a historic mega-drought. The frequency and intensity of droughts have been increasing due to human-caused climate change, resulting in the 2000-2022 period being the driest 22 years Oregon has seen in over 1,200 years.³⁷ As of March 2022, 75 percent of the state was experiencing severe drought, 16 percent of which was classified as exceptional drought (See Figure 2).³⁸ Some scientists are now warning that mega-droughts are the new normal in Oregon and other parts of the west, suggesting that this region may be entering a perpetual state of drought.³⁹

Year-round dry conditions, exacerbated by the water-intensive practices of mega-dairies, have major consequences for agriculture, drinking water, fisheries and wildfires. The Chinook Salmon run is on the verge of collapse; limited water and disputed allocations mean that Indigenous communities are facing both the collapse of cultural resources and increased racism in disputes over water allocation.⁴⁰ And households in rural communities across the state are seeing their drinking water wells run dry.⁴¹



SOURCES: ESRI, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS

Water Use During a Drought

Operating industrial-scale mega-dairies uses a tremendous amount of water. Water is needed to grow feed for the cows, move manure into storage systems, wash the cows and buildings, and provide cows with drinking water. Food & Water Watch estimates that Oregon's 11 mega-dairies consume **8.2 million gallons of water a day** just for drinking water and washing cows and buildings.⁴² This amount of water could meet the average indoor daily water needs of over 124,000 Oregonians.⁴³ In a year, this is enough water to fill nearly 5,000 Olympic-sized swimming pools.⁴⁴

Wildfires


Planet-warming gases released by mega-dairies contribute to a drier, hotter climate, which alongside a history of poor land management policies designed to limit natural burning is leading to catastrophic wildfire conditions in Oregon.⁴⁵

Studies predict that this will only worsen if we do not reduce our greenhouse gas emissions.⁴⁶

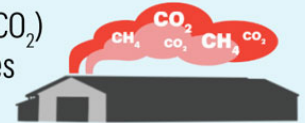
Wildfires themselves also fuel climate change; one estimate puts Oregon's wildfire emissions during the summer of 2021 at around 17 million tons of carbon dioxide — the warming equivalent of driving 3.7 million passenger cars for one year.⁴⁷ Mega-dairies augment this dangerous feedback loop where mega-dairy emissions contribute to warming, which increases the intensity and frequency of wildfires, which produce lots of carbon dioxide emissions, which in turn fuels more warming.⁴⁸

Exposure to wildfire smoke increases the risk of disease and death.⁴⁹

FIG. 3: Oregon Mega-Dairies' Dangerous Emissions Feedback Loop

 Mega-dairies use a tremendous amount of water to grow feed, water and wash cows, and move manure to storage systems.

Planet-warming gases like carbon dioxide (CO₂) and methane (CH₄) released by mega-dairies contribute to a drier, hotter climate.



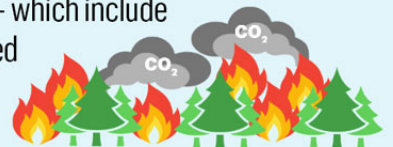
Alongside poor land management policies, hotter, drier climate is leading to catastrophic wildfire conditions in Oregon.

The resulting wildfires continue to fuel climate change by releasing additional CO₂ into the atmosphere at dangerous levels.



Mega-dairies augment this dangerous feedback loop with their continued emissions further increasing warming, which in turn increases the frequency and intensity of wildfires.

This ongoing cycle not only fuels climate change, but also affects the well-being of residents who are increasingly exposed to the health hazards associated with wildfires — which include everything from air pollution-induced lung and heart problems to anxiety and post traumatic stress disorder.



Wildfires release harmful particulate matter — a dangerous pollutant associated with heart disease, respiratory illnesses, reduced lung function in children and premature death.⁵⁰ Smoke from wildfires may compound the devastating impacts of the COVID-19 pandemic; studies have linked exposure to fine particulate matter to higher COVID-19 infection and mortality rates.⁵¹ Wildfires are also associated with negative mental health outcomes like anxiety, depression and post-traumatic stress disorder.⁵²

People of color, people with fewer resources, farmworkers, unhoused people and first responders often face higher risks of exposure to air pollution from wildfire smoke.⁵³ In Oregon, wildfires (compounded by the COVID-19 pandemic) “revealed substantial, pre-existing inequities in access to social, physical environmental, cultural, and economic support systems.”⁵⁴ Black and Indigenous people in Oregon are already hospitalized for asthma at much higher rates than other race and ethnicity groups, according to the Oregon Health Authority. Wildfire smoke will likely continue to exacerbate this disparity.⁵⁵

Profiting From Pollution: Factory Farm Gas Is Not a Solution

Rather than address the sources of climate pollution, some dairy corporations and state officials are making plans to further burden frontline communities with the dangerous false solution of factory farm gas. Factory farm gas is produced when mega-dairy facilities use bacteria to break down constituents of manure into gas that is primarily composed of methane.⁵⁶ Bacteria and other microorganisms “eat” away at manure through a process called anaerobic digestion, producing methane, carbon dioxide and other gases.⁵⁷ This gas can then be treated, compressed and mixed with fracked gas and pumped through leak-prone pipelines.⁵⁸ Despite claims that digesters reduce emissions,⁵⁹ burning factory farm gas releases carbon dioxide and other pollutants including smog-forming nitrogen oxides, ammonia and hydrogen sulfide,⁶⁰ potentially offsetting other reductions in greenhouse gases.⁶¹

Rural communities like those in Morrow County are already overburdened by pollution from industrialized agriculture and mega-dairies. Factory farm gas threatens to make this problem worse. It entrenches our reliance on fossil fuels by building infrastructure such as pipelines.⁶² In many parts of the United States, communities on the frontlines of mega-dairies and factory farm gas infrastructure are disproportionately people of color and/or low income. They face serious physical health, mental health and daily life impacts living near industrialized agriculture — and now factory farm gas facilities exacerbate these risks.⁶³

Mega-dairies profit from the dirty factory farm gas business while ignoring the problem of pollution and endangering farmers and frontline communities.⁶⁴ Facilities in Oregon can reap profits from multiple subsidy and tax-credit programs both in Oregon and in California. For

example, TCMF and its digester project received \$7.6 million in tax credits from Oregon's previous Bovine Manure Tax Credit program,⁶⁵ another \$10 million in tax-exempt financing from Oregon Private Activity Bonds and potentially millions more from the California Low Carbon Fuel Standard program.⁶⁶ Oregon should require mega-dairies to reduce pollution, not incentivize them to expand despite known harms to Oregon's environment and communities.

The State Has Failed to Act

Recent reports from the United Nations stress that reductions in methane from sources like mega-dairies and factory farms are key in slowing climate chaos and will produce climate benefits in the short term.⁶⁷ Yet, the DEQ has failed to adopt regulations for mega-dairy air emissions — despite a 2007 state law directing it to work with the Oregon Department of Agriculture to address this pollution.⁶⁸ Following the enactment of this law, the state convened a Dairy Air Quality Task Force, which produced consensus recommendations to adopt regulations to reduce mega-dairy air pollution.⁶⁹ The state has failed to act on any of the Task Force recommendations for over a decade.

Governor Brown's March 2020 Executive Order further stated that the Oregon Environmental Quality Commission (EQC) must use "any and all discretion vested in them by law" to achieve the state's greenhouse gas reduction goals.⁷⁰ Yet although the EQC has authority to regulate mega-dairy emissions, the resulting Climate Protection Program Rule approved in December 2021 neglected to address emissions from mega-dairies.⁷¹

Conclusion and Recommendations

The numerous problems that mega-dairies create and the incalculable damage that they inflict on Oregon are not going away without strong action from the state's leaders. Touting factory farm gas as a solution is only entrenching pollution among frontline communities. Oregon's legislature must take strong action to protect our air, water and health, beginning with a moratorium on new and expanding mega-dairies.

Food & Water Watch recommends that Oregon:

- Enact an immediate moratorium on new mega-dairies, and on the expansion of existing ones;
- Adopt regulations requiring mega-dairies to reduce their emissions of methane and other harmful air pollutants; and
- Reject the incentivizing of air pollution through factory farm gas and focus on real solutions to climate change like wind and solar.

Endnotes

- 1 Food & Water Watch (FWW) analysis of Oregon Department of Agriculture (ODA). AFO Data. December 2021. On file with FWW; Oregon Dairy Air Quality Task Force (ODAQTF). "Technical Support Document for the Dairy Air Quality Task Force Report." 2008 at 68 and 70; U.S. Environmental Protection Agency (EPA). "Understanding Global Warming Potentials." Available at <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>. Accessed November 2021; EPA. "Greenhouse Gas Equivalencies Calculator." Energy and the Environment. Available at <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>. Accessed March 2022.
- 2 ODA §603.074.0010; Delgado, Jose et al. "Conservation practices to mitigate and adapt to climate change." *Journal of Soil and Water Conservation*. Vol. 66, No. 4. July/August 2011 at 121 A.
- 3 FWW analysis of ODA. "OR AFO Spreadsheet 2021." 2021. On file with FWW.
- 4 *Ibid.*
- 5 Bauer, Kathleen. "Big milk: Big issues for local communities." *Edible Portland*. November 1, 2017 at 2.
- 6 Gittelsohn, Phoebe et al. "The false promises of biogas: Why biogas is an environmental justice issue." *Environmental Justice*. May 2021 at 2.
- 7 FWW analysis of ODA (2021).
- 8 U.S. Census Bureau. "Quick Facts: Oregon; Morrow County, Oregon." Available at <https://www.census.gov/quickfacts/fact/table/OR,morrowcountyoregon/MAN450212>. Accessed February 2022; Census Reporter. American Community Survey 5-Year Estimates. Boardman, OR. Available at <https://censusreporter.org/profiles/16000US4107200-boardman-or>. Accessed February 2022.
- 9 DEQ. [Fact sheet]. "Nitrate in Drinking Water." Updated May 2020; Burkholder, JoAnn et al. "Impacts of waste from concentrated animal feeding operations on water quality." *Environmental Health Perspectives*. Vol. 115, No. 2. February 2007 at 308 and 310; Gittelsohn et al. (2021) at 2 and 6.
- 10 Lower Umatilla Basin Groundwater Management Area Committee. DEQ. "Lower Umatilla Basin Groundwater Management Area: Maps." Available at <https://lubgwma.org/maps>. Accessed February 2022.
- 11 Lower Umatilla Basin Groundwater Management Area Committee. DEQ. "Second Lower Umatilla Basin Groundwater Management Area Local Action Plan." October 28, 2020 at 2, 14 and 34 to 36.
- 12 Burkholder et al. (2007) at 310; Ward, Mary H. et al. "Drinking water nitrate and human health: An updated review." *International Journal of Environmental Research and Public Health*. Vol. 15, No. 7. 2018 at 1; DEQ (2020).
- 13 Lower Umatilla Basin Groundwater Management Area Committee (2020) at 1.
- 14 *Ibid.* at 3; DEQ (2020); FWW et al. "Petition for Emergency Action Pursuant to the Safe Drinking Water Act § 1431, 42 U.S.C. § 300i, to Protect Citizens of the Lower Umatilla Basin in Oregon From Imminent and Substantial Endangerment to Public Health Caused by Nitrate Contamination of Public Water Systems and Underground Sources of Drinking Water." January 16, 2020. On file with FWW.
- 15 Loew, Tracy. "Oregon megadairy Lost Valley Farm fined \$187,320 for 224 environmental violations." *Statesman Journal* (OR). October 16, 2018; Plaven, George. "Waste permit revoked for controversial Oregon Dairy." *Capital Press* (OR). June 27, 2018; Flatt, Courtney. "A year's worth of controversy hasn't put this Oregon dairy under... yet." *Oregon Public Broadcasting. EarthFix*. May 31, 2018; Loew, Tracy. "Oregon sues to shut down new mega-dairy, citing repeated manure spills." *Statesman Journal* (OR). February 28, 2018.
- 16 Plaven, George. "New application submitted for Easterday Dairy." *Capital Press* (OR). July 30, 2021.
- 17 Plaven, George. "Easterday family plans to re-open state's second largest dairy." *Capital Press* (OR). July 9, 2019.
- 18 Loew, Tracy. "Massive manure spill closes Tillamook Bay." *Statesman Journal* (OR). April 19, 2017.
- 19 Kavanaugh, Shane Dixon. "Manure spill splashes 300,000 gallons near Tillamook Bay." *Oregonian*. July 23, 2019; Dorsey, Hilary. "Massive manure spill in Tillamook Bay." *Tillamook Headlight Herald*. July 24, 2019.
- 20 Aguirre-Villegas, Horacio A. and Rebecca A. Larson. "Evaluating greenhouse gas emissions from dairy manure management practices using survey data and lifecycle tools." *Journal of Cleaner Production*. Vol. 143. February 1, 2017 at 172.
- 21 *Ibid.* at 177.
- 22 FWW. "Factory Farm Nation: 2015 Edition." 2015 at 21.
- 23 Holly, Michael A. et al. "Greenhouse gas and ammonia emissions from digested and separated dairy manure during storage and after land application." *Agriculture, Ecosystems and Environment*. Vol. 239. February 2017 at 415; Aguirre-Villegas and Larson (2017) at 172; Gerber, P. J. et al. (2013). *Tackling Climate Change Through Livestock: A Global Assessment of Emissions and Mitigation Opportunities*. Rome: Food and Agriculture Organization of the United Nations at 20.
- 24 FWW (2015) at 21.

- 25 Kaplan, Sarah. "Air pollution from farms leads to 17,900 U.S. deaths per year, study finds." *Washington Post*. May 10, 2021; Domingo, Nina G. G. et al. "Air quality-related health damages of food." *PNAS*. Vol. 118, No. 20. 2021 at 1.
- 26 Reynolds, Stephen J. et al. "Systematic review of respiratory health among dairy workers." *Journal of Agromedicine*. Vol. 18. 2013 at abstract.
- 27 ODAQTF. "Technical Support Document for Dairy Air Quality Task Force Report." 2008 at 32 to 38.
- 28 EPA. "Greenhouse Gas Emissions: Overview of Greenhouse Gases." Available at <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> and on file with FWW. Accessed February 15, 2017.
- 29 Aguirre-Villegas and Larson (2017) at 172; Gerber et al. (2013) at 23 to 27.
- 30 Oregon Global Warming Commission. "2018 Biennial Report to the Legislature: For the 2019 Legislative Session." 2018 at 37.
- 31 Hayek, Matthew N. and Scot M. Miller. "Underestimates of methane from intensively raised animals could undermine goals for sustainable development." *Environmental Research Letters*. Vol. 16. June 2021 at abstract and 3 to 6.
- 32 FWW analysis of ODA (December 2021); ODAQTF. (2008) at 68 and 70; EPA. "Understanding Global Warming Potentials."
- 33 EPA. "Greenhouse Gas Equivalencies Calculator."
- 34 Oregon Department of Transportation. Driver and Motor Vehicle Division. "Oregon Motor Vehicle Registrations by County." As of December 31, 2019.
- 35 Dalton, Meghan et al. "State of Climate Science." In Dalton, M. and E. Fleishman (Eds.). (2021). *Fifth Oregon Climate Assessment*. Corvallis, OR: Oregon State University at 11 to 12.
- 36 Abbott, Chuck. "Oregon adopts heat safety tile to protect farm labor and other workers." *Successful Farming*. July 9, 2021.
- 37 Borenstein, Seth. AP Science Writer. "West megadrought worsens to driest in at least 1,200 years." *Oregon Public Broadcasting*. February 14, 2022; O'Neill, Larry et al. "Drought." In Dalton and Fleishman (2021) at 37 and 39.
- 38 Hartman, Adam. National Drought Mitigation Center. "Oregon." U.S. Drought Monitor. March 15, 2022.
- 39 Parks, Bradley W. "Oregon and the West may be stuck in a perpetual drought, study says." *Oregon Public Broadcasting*. March 17, 2022; Stevenson, Samantha et al. "Twenty-first century hydroclimate: A continually changing baseline, with more frequent extremes." *PNAS*. Vol. 119, No. 12. March 2022.
- 40 Raff, Jeremy. "'If the fish die, the people die': Water wars in America's West." *Al Jazeera*. November 10, 2021; Baker, Mike. "Amid historic drought, a new water war in the west." *New York Times*. June 1, 2021; The Klamath Tribes. "Restoring Fish and a dying lake...". Available at <https://klamathtribes.org/restoring-fish-and-a-dying-lake>. Accessed June 2021; Office of Senator Mike McGuire (California). [Press release]. "Senator McGuire holding hearing on drought devastation, dead baby salmon, and why repeating the mistakes of the past could lead to extinction." July 23, 2021.
- 41 Feller, Alexandra. "More Klamath Basin wells go dry as groundwater decline persists." *KGW8 (OR)*. August 9, 2021.
- 42 FWW analysis of ODA (December 2021); Mekonnen, Mesfin M. and Arjen Y. Hoekstra. University of Twente, The Netherlands. "A global assessment of the water footprint of farm animals." *Ecosystems*. Vol. 15. 2012 at 406 and 408; United States Department of Agriculture (USDA). National Agricultural Statistics Service. "2020 State Agriculture Overview: Oregon." Accessed November 2021.
- 43 Note: Calculation uses average indoor water usage in Corvallis, 66 gallons per person per day. City of Corvallis, Oregon. "Water Conservation." Available at <https://www.corvallisoregon.gov/publicworks/page/water-conservation>. Accessed March 2022.
- 44 Fédération Internationale de Natation. "Part X: FINA Facilities Rules 2017-2021." September 22, 2017 at 7 to 8.
- 45 Zhuang, Yizhou et al. "Quantifying contributions of natural variability and anthropogenic forcings on increased fire weather risk over the western United States." *PNAS*. Vol. 118, No. 45. 2021 at abstract; Holz, Andrés et al. "Wildfire." In Dalton and Fleishman (2021) at 47 and 48; Abatzoglou, John T. et al. "Compound extremes drive the Western Oregon wildfires of September 2020." *Geophysical Research Letters*. Vol. 48, Iss. 8. April 2021 at 2.
- 46 Holz et al. (2021) at 53 to 55.
- 47 Fountain, Henry. "California's wildfires had an invisible impact: High carbon dioxide emissions." *New York Times*. Updated September 27, 2021; EPA. "Greenhouse Gas Equivalencies Calculator."
- 48 Aguirre-Villegas and Larson (2017) at 172; Temple, James. "The pandemic slashed the West Coast's emissions. Wildfires already reversed it." *MIT Technology Review*. July 27, 2021; Xu, Rongbin et al. "Wildfires, global climate change, and human health." *New England Journal of Medicine*. Vol. 382. No. 22. November 2020 at 2173 to 2174.
- 49 Burke, Marshall et al. "The changing risk and burden of wildfire in the United States." *PNAS*. Vol. 118, No. 2. January 2021 at 2; Reid, Colleen E. et al. "Critical review of health impacts of wildfire smoke exposure." *Environmental Health Perspectives*. Vol. 124, No. 9. September 2016 at abstract.
- 50 Masri, Shahir et al. "Disproportionate impacts of wildfires among elderly and low-income communities in California from 2000–2020." *International Journal of Environmental Research and Public Health*. Vol. 18, Iss. 8. April 2021 at 2; Flannigan, Mike et al. "Implications of changing climate for global

- wildland fire." *International Journal of Wildland Fire*. Vol. 18, Iss. 5. 2009 at 493; California Air Resources Board. "Inhalable particulate matter and health (PM2.5 and PM10)." 2021. Available at <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>. Accessed June 2021; Wisckol, Matrin. "Wildfires made California air quality among worst in the world, even during the pandemic." *Orange County Register* (CA). March 16, 2021.
- 51 Wu, Xiao et al. "Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis." *Science Advances*. Vol. 6, Iss. 45. November 4, 2020 at abstract; Kiser, Daniel et al. "SARS-CoV-2 test positivity rate in Reno, Nevada: Association with PM 2.5 during the 2020 wildfire smoke events in the western United States." *Journal of Exposure Science and Environmental Epidemiology*. Vol. 31. July 2021 at 1, 4 and 5.
- 52 Rosenthal, A. et al. "Health and social impacts of California wildfires and the deficiencies in current recovery resources: An exploratory qualitative study of systems-level issues." *PLoS ONE*. Vol. 16, Iss. 3. March 26, 2021 at 2.
- 53 Ho, Tia H. et al. "Public Health." In Dalton and Fleishman (2021) at 142.
- 54 *Ibid* at 137.
- 55 Oregon Health Authority. "Prevention and Health Promotion: Asthma Hospitalizations." OHA 9153 D. August 2019; Ho et al. (2021) at 142.
- 56 Anderson, Larry G. "Effects of using renewable fuels on vehicle emissions." *Renewable and Sustainable Energy Reviews*. March 2015 at 163 to 164; Environmental and Energy Study Institute (EESI). "Biogas: Converting Waste to Energy." October 2017 at 1; EPA. "How does AD work?" Available at <https://www.epa.gov/anaerobic-digestion/basic-information-about-anaerobic-digestion-ad>. Accessed April 2019.
- 57 EESI (2017) at 1; EPA. "How does AD work?"
- 58 Baldino, Chelsea et al. International Council on Clean Transportation. "The Potential for Low-Carbon Renewable Methane in Heating, Power, and Transport in the European Union." Working Paper 2017-26. October 2018 at 9; Murray, Brian C. et al. Nicholas Institute for Environmental Policy Solutions, Duke University. "Biogas in the United States: An Assessment of Market Potential in a Carbon-Constrained Future." NI R 14-02. February 2014 at 7; Gittelsohn et al. (2021) at 4.
- 59 Smithfield Foods. [Press release]. "Smithfield Foods announces landmark investment to reduce greenhouse gas emissions." October 25, 2018; Ouzts, Elizabeth. "Using biogas to clear the air near hog farms." *Environmental Health News*. November 16, 2017.
- 60 Kuo, Jeff. California State University, Fullerton. "Air Quality Issues Related to Using Biogas From Anaerobic Digestion of Food Waste." Prepared for California Energy Commission. CEC-500-2015-037. March 2015 at 2, 9 and 10.
- 61 USDA et al. "Biogas Opportunities Roadmap." August 2014 at 6; Jørgensen, Peter Jacob. (2009). *Biogas — Green Energy*. Denmark: Faculty of Agricultural Sciences, Aarhus University at 4.
- 62 Gittelsohn et al. (2021) at abstract.
- 63 Wing, Steve and Jill Johnson. The University of North Carolina at Chapel Hill. Department of Epidemiology. "Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians." August 29, 2014 at 2 and 7; Gittelsohn et al. (2021) at 4 to 8.
- 64 Gittelsohn et al. (2021) at 9.
- 65 ODA. Bovine Manure Tax Credit Program. Available at <https://data.oregon.gov/Revenue-Expense/Bovine-Manure-Tax-Credit-Program-Dept-of-Agriculture/cdnv-r4ea/data>. Accessed February 2022.
- 66 Plaven, George. "Environmental group seeks to invalidate green energy credits for dairy digester." *Capital Press* (OR). January 24, 2022; Parks, Bradley W. "Mega-dairy accused of violating Oregon air pollution rules while seeking clean energy credits in California." *Oregon Public Broadcasting*. January 27, 2022; Loew, Tracy. "2 Oregon daily manure digesters cited for air quality violations." *Statesman Journal* (OR). Updated December 22, 2021.
- 67 United Nations Environment Programme. [Press release]. "Global Assessment: Urgent steps must be taken to reduce methane emissions this decade." May 6, 2021; Harvey, Fiona. "Reduce methane or face climate catastrophe, scientists warn." *Guardian*. August 6, 2021.
- 68 Flatt, Courtney. "Mega-dairy air pollution threat puts environmentalists on alert." *Oregon Public Broadcasting*. April 11, 2017; Oregon Revised Statutes (ORS) § 468A.020; ORS § 468A.790.
- 69 Flatt (2017); ORS § 468A.020; Plaven, George. "Boardman megadairy up for further review." *East Oregonian*. October 5, 2016; Oregon Administrative Rule 603-074-0005. ODA Confined Animal Feeding Operation Program; ODAQTF. "Final Report to the Department of Environmental Quality and Department of Agriculture." 2008 at 3, 4 and 8; Loew, Tracy. "Second mega-dairy proposed for Oregon." *Statesman Journal* (OR). July 25, 2016.
- 70 Office of Governor Kate Brown. State of Oregon. Executive Order NO. 20-04. March 10, 2020 at 5.
- 71 OR DEQ 27-2021. Chapter 340. Department of Environmental Quality. Greenhouse Gas Emissions Program 2021 Rulemaking. Effective date: December 16, 2021.

From: [Theodora Tsongas](#)
To: [PETITION Dairyair * DEQ](#)
Cc: [Theodora A Tsongas](#)
Subject: Comment on the Dairy Air Petition
Date: Sunday, October 23, 2022 3:26:22 PM

Comment on Petition to Promulgate Dairy Air Emissions Regulatory Program

To: Oregon Department of Environmental Quality

October 23, 2022

Via email: DairyAir.Petition@deq.oregon.gov.

I am an environmental health scientist/epidemiologist with a career in public health at federal and state agencies including regulatory agencies (Federal EPA and OSHA/DOL) developing public health standards and guidance to control exposures to environmental contaminants. I am a member of the Healthy Climate Action Team of Oregon Physicians for Social Responsibility and the Environment Section of the American Public Health Association.

I am commenting today because I am appalled that pollution from large dairy factory farms (confined animal feeding operations) is virtually unregulated in Oregon. We have known for years that these operations pollute our air and water, fuel climate disruption by emitting large amounts of methane, and threaten the health and well-being of communities nearby as well as those of the rest of the region and the planet.

Yet, in spite of the well documented harms to people and ecosystems, DEQ does not currently regulate air emissions from most agricultural sources, which include dairy CAFOs. WHY?

Is DEQ a part of the State of Oregon, whose governor has issued an Executive Order 20-04 directing all agencies to prioritize reduction of greenhouse gas emissions while giving close attention to reducing adverse impacts on vulnerable populations and communities and to expedite rulemaking?

Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic and acute respiratory disease, cardiovascular disease and death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year - that's more deaths than caused by pollution from coal-fired power plants.

These air emissions also disproportionately impact vulnerable communities. Over one third of Oregon's dairy cows are confined in Morrow and Umatilla Counties, which have the state's

highest percentage of Latinx residents. The communities surrounding these factory farms are also low-income, and suffer some of the highest air pollution burdens in the State.

Large dairy factory farms also produce a staggering amount of planet-warming methane gas. In Oregon, agriculture is the leading source of methane emissions, and animal agriculture is responsible for over 3 million metric tons of carbon dioxide equivalent every year. The methane emitted by these farms contribute to a drier, hotter climate that is leading to catastrophic drought and wildfire conditions in Oregon.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses - in fact, a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, nothing has been done to protect the people of Oregon from the pollution and its multiple adverse health impacts!! What is the so-called Department of Environmental Quality doing with our tax dollars? It is allowing our health care costs to skyrocket due to its inability to do its job and allowing the adverse health impacts and adverse impacts on the climate that aggravate the already degraded environment by permitting these unhealthy CAFO operations to hold the people of this state hostage. This is unacceptable!

I therefore strongly urge the Environmental Quality Commission to grant the dairy air emission petition and direct the Department of Environmental Quality to initiate and expedite rulemaking to control this unnecessary pollution and prioritize the health of Oregonians and our environment over the profits of factory farms.

Thank you for this opportunity to comment and for your attention to my concerns.

Theodora Tsongas, PHD, MS

Portland, Oregon

From: [TJ Schaffer](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Agricultural air pollution
Date: Thursday, October 6, 2022 3:41:42 AM

In my opinion rule making in this instance needs to engage a threshold concentration of pollutants, based on offensive odors and distinguishing toxic odors. The dairy operation, near Rickreal qualifies and should be included in regulation because of offensive odors, if not also included because of toxic odors that should satisfy a threshold for regulation.

I happen to know that inexpensive active carbon filtration does remove offensive and toxic odors (e.g. skunk odor). So, there is a reasonable means to remove offensive and toxic chemicals from the air. Electrostatic HVAC filtration does NOT work well for skunk odor. So technical chemistry language would be required in the law.

Marion County needs to regulate offensive odors that are generated near educational institutions, e.g. Cascade Schools.

I'd be pleased to contribute to the technical discernment.

Thoughtfully, TJ Schaffer

From: [Tobin Weaver](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Petition to regulate Dairy Air Emissions
Date: Tuesday, October 18, 2022 9:17:26 PM

Dear Heather Kuoppamaki,

My name is Tobin Weaver and I am a city dweller in Portland. Yet I care deeply about the health of the agricultural land, water and air in our beautiful state. I am writing to urge you to grant the petition to regulate dairy air emissions in the state of Oregon.

This should be a no-brainer. We have to move to a more sustainable agricultural system, just like we have to move to electric cars in the city. Large dairy factory farms emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. The large amount of methane emitted by these farms contributes to climate change which is setting up to be catastrophic for farming. That Oregon has given a free pass to large corporate farming entities to mine value out of the state by damaging and polluting their surroundings breaks my heart. Please grant the petition to regulate dairy air emissions in our state.

Oregon lawmakers have long known the threat air pollution emitted by large dairy factory farms poses. A state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, large dairy factory farm air pollution remains virtually unregulated. The time to correct this oversight is now. Large dairy factory farms must be held responsible for their air pollution. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Sincerely,
Ms. Tobin Weaver

From:
To: [PETITION Dairyair * DEQ](#)
Subject: Do the right thing....
Date: Saturday, October 15, 2022 3:05:16 PM

...and if you don't quite know what that is, just search your heart and it will tell you.

Farms used to look a lot different than they do today, right? Please do what you are capable of to provide protection for the next generation. Your children deserve a good breath of fresh air at least as much as you and I have had the privilege of taking.

From: [Valjohnstone](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate Air Emissions
Date: Sunday, October 23, 2022 11:33:59 AM

To: Department of Environmental Quality
Re: Methane emissions

We all know that our climate is in a state of crisis, and the Oregon dairy industry is not helping. In fact, it's making it worse. Each year, the mega-dairies in Oregon release more than 17 million kilograms of methane which contribute to global warming. Also, the cows on these dairies are kept in inhumane conditions.

For the sake of environmental and animal welfare, I urge you to support the petition to regulate dairy air emissions.

Thank you.
Valerie Johnstone

Val Johnstone

From: [Victoria Koch](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulate Dairy Air Emissions
Date: Tuesday, October 18, 2022 8:13:32 AM

I strongly ask you to please regulate the Dairy Air emissions. Thank you, Victoria Koch

Sent from my iPhone

From: [Wayne Brooks](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Mega sized dairy air petition
Date: Sunday, October 23, 2022 3:16:24 PM

I am sorry if my letter is late as we are traveling in Canada but I have commented to my state rep. Ken Helm many times. A dairy should be treated as a group trying to build a city would be treated. Cows produce about 50 pounds of waste per day so 32000 cows produce about 1,000,000 pounds per week ongoing. If I wanted to build a city that produced waste of that amount you would say where is the water treatment plant ,, where is the waste treatment plant. Where will this magical dairy put their waste and how will they affect their neighbors water , air and waste streams. You work for the people of Oregon and not just a person who will employ a very few persons. It is time to get with it , is the Earth and climate and drought a problem and if it is get on board with solutions and if it is not explain to us how you explain this to your friends, family and grandchildren.

Wayne Brooks

From: [Wendy Smith Novick](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate dairy air emissions!
Date: Wednesday, October 19, 2022 12:17:52 PM

I know you are considering a petition to regulate air emissions from mega dairies. No doubt you have received many emails enumerating the many toxic emissions from these mega dairies that impact climate change. I will not repeat them here. I will just implore you to consider the message this would send to the residents in Oregon under the age of 40 for whom this would a positive and empowering step toward addressing our state's contribution to doing everything to fight climate change. Also it would be a big step in regaining Oregon's leadership in efforts to protect our environment.

Please support the petition to regulate air emissions from mega dairies.

Sincerely

Wendy Smith Novick

From: [Wendy Tsien](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Regulating toxic emissions from Oregon large-scale dairies
Date: Saturday, October 8, 2022 1:00:58 PM

I strongly urge the Oregon Department of Environmental Quality to put in place and maintain real and meaningful regulations regarding animal welfare and toxic emissions from large-scale dairies in Oregon.

Currently, large-scale dairies in Oregon are not adequately regulated, and for the health and well-being of the animals and people in those dairies and for the surrounding communities, that must change. We Oregonians deserve to feel pride in the way we care for people, animals and the environment in our beautiful state. In order to justify that pride, large-scale dairies in Oregon must be comprehensively and effectively regulated!

Thank you for your attention.

Sincerely,

Wendy Tsien

Six comment themes that contained very similar comments were received in support of the petition. A representative comment was selected for each of these themes and is presented here.

The number of individual commenters for each comment theme is summarized below.

Comment Theme	Individual Commenters
1	1071
2	188
3	115
4	32
5	5

Comment Theme 1

From: millylittle@everyactioncustom.com on behalf of [Satomi Honda](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Grant the Dairy Air Quality Petition
Date: Saturday, October 22, 2022 1:15:49 AM

Dear Oregon Environmental Quality Commission,

I urge you to grant the petition on regulating dairy air emissions in the state of Oregon.

Large dairy factory farms emit ammonia, hydrogen sulfide and particulate matter, all of which can cause chronic respiratory disease and even death. Nationwide, air emissions from livestock production are responsible for 12,400 deaths per year — that's more than the deaths attributed to pollution from coal-fired power plants.

These emissions disproportionately affect vulnerable communities. More than one-third of Oregon's dairy cows are confined in Morrow and Umatilla counties, which have the state's highest percentage of Latinx residents. The communities surrounding these factory farms are low-income and suffer some of the highest air pollution burdens in the state.

These factory farms also produce a staggering amount of planet-warming methane gas. In Oregon agriculture is the leading source of methane emissions.

Oregon lawmakers have long known of the threat posed by air pollution from large dairy factory farms. In fact a state-convened task force recommended Oregon take immediate steps to curb dairy air pollution as far back as 2008. Despite the urgent recommendation to act, this source of air pollution remains unregulated.

That's unacceptable. Everyone deserves clean air, and large dairy factory farms must be held accountable for their air pollution.

By granting the dairy air emission petition, you'll be protecting the health of Oregonians and our environment.

Sincerely,
Satomi Honda
Portland, OR 97206
millylittle@yahoo.com

Comment Theme 2

From: rubydeb5@yahoo.com@mg.gospringboard.io on behalf of [Debra Smith](#)
To: [PETITION Dairyair * DEQ](#)
Subject: I support adoption of Dairy Air Emissions rules
Date: Friday, October 21, 2022 9:45:17 AM

Oregon Department of Environmental Quality,

I strongly support the petition for rulemaking to adopt Dairy Air Emissions rules for the State of Oregon. If adopted, the proposed rule will improve the air quality and living conditions for farmed animals, farm workers and residents living in nearby communities.

Recent research reveals that Oregon's factory farms collectively release over 17 million kilograms of methane every year, equivalent to the emissions of 318,000 cars. They also emit ammonia, hydrogen sulfide and particulate matter, all of which can cause chronic respiratory disease and death.

Nationwide, studies show that emissions from industrial livestock operations cause 12,400 deaths every year, killing more people than pollution from coal-fired power plants.

Raising animals in crowded, unnatural conditions indoors surrounded by their own waste affects air quality inside and around the facilities, negatively impacting the animals' welfare and causing issues like respiratory diseases.

These emissions disproportionately impact vulnerable communities. Factory farms are usually situated in lower-income areas, forcing residents to suffer some of the highest air pollution burdens in the state.

I encourage the Oregon Department of Environmental Quality to recommend that the Environmental Quality Commission move forward with this essential rulemaking.

Thank you for your consideration.

Sincerely,

Debra Smith
14561 Southeast Garland Lane
Milwaukie OR, 97267-2955

Comment Theme 3

From: [Blaine Ackley](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Comments on Petition to Promulgate Dairy Air Emissions Regulatory Program
Date: Wednesday, October 19, 2022 9:14:57 AM

Dear Environmental Quality Commission,

Oregon mega-dairies are responsible for damage to the residents, visitors, and the protected resources of the Columbia River Gorge National Scenic Area. Mega-dairies emit ammonia, hydrogen sulfide, and particulate matter, all of which can cause chronic respiratory disease and even death. Ammonia is also a significant driver of dangerous fine particulate pollution. Dairy workers are exposed to these toxic fumes and face great risk of asphyxiation, while Gorge communities are likely to suffer chronic health impacts from emissions. According to a recent study, livestock emissions are responsible for more deaths in the U.S. than coal plants — largely due to fine particulate matter. However, DEQ does not yet regulate these emissions from mega-dairies.

The Columbia River Gorge National Scenic Area is already severely impaired by air pollution, especially particulate pollution. As a result, haze is a major problem in the Gorge which harms its scenic beauty. The Forest Service has documented that over the last 20 years, visibility impairment occurs on at least 95% of the days that have been monitored in the National Scenic Area. Simply put, particulate matter and ammonia emitted by mega-dairies are a major component of haze pollution that effects the Gorge.

In addition, nearly three fourths of all Oregon's mega-dairies are in Morrow County which has the state's highest percentage of Latinx residents. The level of concentrated waste from the hundreds of thousands of cows creates an undue burden of air pollution on already overburdened communities in Morrow County.

The Oregon Department of Agriculture reports that Oregon mega-dairies produced 2.5 million tons of manure in 2018 which is more than the waste produced by the population of the Portland-Vancouver metropolitan area. At mega-dairies, methane off-gasses from the enormous manure lagoons where the waste is stored. As a result, livestock production is a leading source of methane gas emissions in the United States and manure management is the fastest growing source of methane emissions. This is because factory farms with their massive polluting manure lagoons are rapidly replacing family farms that don't have manure lagoons. Even facilities that use biogas digesters do not avoid these climate change impacts. Instead, digesters create a market for manure, enriching mega-dairies over family farms. Climate change has major effects on the protected resources of the National Scenic Area and mega-dairies are a contributor.

Also, the Management Plan for the National Scenic Area requires that Gorge "[a]ir quality shall be protected and enhanced, consistent with the purposes of the National Scenic Area Act." NSA Management Plan at p. 118. Pursuant to this requirement, the Columbia River Gorge Commission approved the Columbia River Gorge Air Study and Strategy (Sept. 2011). It adopts thresholds for significant impacts to visibility and an overall goal of "continued improvement" in visibility in the National Scenic Area.

DEQ is required by ORS 196.155 to adhere to the adopted thresholds in the Strategy. ("[a]ll state agencies . . . are hereby directed and provided authority to carry out their respective functions and responsibilities in accordance with the compact executed under ORS 196.150 to

196.165 and the Columbia River Gorge National Scenic Area Act.”) It is time for DEQ to take this mandate seriously by regulating mega-dairy emissions.

Therefore, I ask that the EQC grant the rulemaking petition so that DEQ can engage in this important work. Thank you for considering this comment and your efforts in this.

Regards,
Blaine Ackley
655 NE 67th Ave
Hillsboro, OR 97124

Comment Theme 4

From: [Connie Williams](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Dairy Air Emissions
Date: Sunday, October 23, 2022 11:20:04 AM

Dear EQC,

I am writing to ask that you not only grant the petition to regulate emissions from large scale dairy operations but you extend the rule process to include all large, tier two livestock operations, regardless of species.

I am particularly concerned that Oregon has no regulations for emissions coming from mega chicken operations that are seeking to be sited in the Willamette Valley.

Thank you,

Connie Williams

39095 Shelburn Drive

Scio, OR 97374

(503) 569-2404

Comment Theme 5

From: [Danielle](#)
To: [PETITION Dairyair * DEQ](#)
Subject: Please regulate air pollution from factory dairies
Date: Wednesday, October 19, 2022 1:38:10 PM

Dear Oregon Environmental Quality Commission,

Emissions from large factory dairies contribute significantly to climate change and pose significant public health risks. Please prioritize the health of Oregonians and our environment over the profits of factory farms by granting the dairy air emission petition.

Thank you.

Danielle