



State of Oregon Department of Agriculture

Confined Animal Feeding Operation (CAFO)
Proposed New Large Tier II CAFO registration to the
WPCF CAFO General Permit #01-2015 for
JS Ranch Poultry facility

Response to Public Comments

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I. SUMMARY

The Oregon Department of Agriculture (ODA) provided a public notice and comment period on a proposed new Confined Animal Feeding Operation (CAFO) in ODA Area 4 (South Willamette Valley, Oregon). On August 19, 2021, the agency issued a Public Notice. On September 20, 2021, the agency re-issued a Public Notice. On October 20, 2021, a virtual public hearing was held via Go-To Meeting video conferencing platform. The public comment period was open for a total of 66 days and closed at 5:00pm, PST, October 25, 2021. ODA received a total of 130 comments (some commenters submitted more than one comment) on the proposed permit registration.

- 42 of the comments were form letters/emails opposed to issuing the permit registration.
- 71 people provided individual written comments (16 in favor and 55 opposed).
- Five Groups / NGOs submitted comments. (One in favor and four opposed).
- 114 people attended the virtual public hearing.
- 17 oral comments were provided at the hearing (3 in favor and 13 opposed).

The permit registration being considered is to the Oregon Water Pollution Control Facility (WPCF) CAFO General Permit #01-2015. This permit application package consists of

three documents: An WPCF General CAFO permit application, a signed Land Use Compatibility Statement and an Animal Waste Management Plan (AWMP), also described as a Nutrient Management Plan (NMP). The permit and the AWMP/NMP by reference, provide the required conditions, controls, limits and monitoring necessary for environmental protection associated with the facility and its operations

Summary of oral comments:

The oral comments received at the public hearing were largely opposed to the proposed poultry facility citing: Potential negative impacts to ground and surface water; air quality concerns; perceived nuisance issues from an agricultural livestock production system including odor, flies and increased truck traffic; that the facility doesn't fit the neighborhood character, that the proposed facility has unresolved road access issues and that the proposed poultry production system would cause animal welfare concerns.

16 commenters were in favor of the facility citing: positive economic impacts; good management of manure and water resources; use of best management practices that are sustainable; and creation of a local food production facility.

Responses to these concerns can be found below.

Comments that address issues that are beyond the scope of the permit:

Many of the comments including the form emails, addressed the following areas of concern: 1) Air Quality; 2) Worker Safety, and 3) Animal Health/Welfare, 4) Antibiotic use/resistance, and 5) other miscellaneous issues. ODA acknowledges these concerns, but they are either not within ODA's authority, or are addressed through other agency regulatory mechanisms other than a water quality permit. However, a summary addressing each concern is found below.

1. Air Quality

Comments included concerns that air emissions from the poultry facility would include Greenhouse Gas emissions, would include potential pollutants such as ammonia and impact criteria air pollutants. Commenters stated that nitrogen compounds emitted from the poultry building fans would all deposit in surface waters and should be controlled with the proposed water quality CAFO Permit. All these comments were related to air emissions and the impacts of the proposed poultry facility on air quality.

The comments regarding air quality are beyond the scope of the proposed WPCF CAFO General Permit #01-2015. The Permit only regulates discharges to ground waters of Oregon. Department of Environmental Quality (DEQ) is the Oregon Agency responsible for implementing the Clean Air Act (CAA) and issuing air quality permits where required. ORS 468A.020(1)(a) exempts agricultural operations from most air quality laws. Currently, the only requirements for CAFOs in Oregon to obtain an air quality permit from DEQ is for: 1- combusting biogas from a digester or, 2- operating an animal mortality incinerator. The JS Ranch application does not include a digester or incinerator. If a digester or incinerator is added as part of the waste treatment facilities at a future date, the agencies would review the proposal and require the appropriate air permit.

JS RANCH intends to implement a list of water quality best management practices (BMP) and many of those practices also have a benefit for air emissions. BMPs consist of both structural and management practices. Some of structural BMPs to be implemented include:

- *Storing feed in sealed structures.*
- *Covered manure and compost storage facilities.*
- *All litter and manure will remain in the barns or manure /litter/compost storage barn until export.*

Some of the management BMPs to be implemented include:

- *Advanced ration formulation for protein source, amount and starch content that has been shown in research trials to reduce emissions by up to 40%.*
- *Frequent collection of manure from barns to minimize exposure and emissions.*
- *Maintaining high production efficiency to minimize animal numbers.*
- *Maintaining ideal moisture conditions in the interior of the poultry barns to keep the litter dry.*
- *Provide new sawdust for each flock to separate manure deposited by the birds from the compacted floor of the barn.*
- *Apply amendments to litter that retain a higher percentage of ammonia in the litter.*

- *Greenhouse Gas (GHG) and Criteria Air Pollutants: DEQ Air Programs monitor air pollutants to determine status with National Ambient Air Quality Standards (NAAQS). When ambient monitoring reveals a NAAQS violation, DEQ takes*

necessary steps to identify the pollutant sources and to implement strategies to retain compliance with the standards. Currently, the DEQ monitoring station in closest proximity to the proposed poultry production system is located in Albany, Oregon. The air quality data from the Albany monitoring site is found in the 2020 DEQ Air Quality Report found here [2020 Oregon Air Quality Monitoring Annual Report](#).

2. Overall Human Health Concerns

Commenters expressed concern about the facility's impact on human health generally and specifically on disease control, risks of developing antimicrobial resistance.

ODA can only address concerns about the effect of CAFO facilities on human health that are within the regulatory scope of the proposed WPCF CAFO General Permit #01-2015 registration. The WPCF Permit prohibits and regulates discharges of pollutants from a CAFO facility to ground waters of Oregon.

With regard to comments about worker safety, the agencies note that in Oregon, worker safety is overseen by the Oregon Occupational Safety and Health Administration (OR OSHA). All pertinent worker safety regulations would be addressed by OR OSHA. Persons with concerns about worker safety may contact Oregon OSHA or visit their website for more information: <http://osha.oregon.gov/Pages/index.aspx>.

3. Animal Health and Welfare

Commenters expressed concern about, the effects of confinement of birds at the proposed facility, and animal cruelty generally.

Animal health and welfare concern comments are beyond the scope of the proposed WPCF CAFO General Permit #01-2015 registration. The WPCF Permit regulates discharges to ground waters of Oregon and only contains provisions that protect groundwater quality (ORS 468B 215(3)). Any animal welfare concerns, including any alleged violations of Oregon animal welfare laws, would be handled by the local sheriff's office or the Oregon Humane Society; <http://www.oregonhumane.org>. The Oregon Humane Society has Humane Special Agents who are certified police officers commissioned by the Oregon State Police to investigate animal crimes.

4. Antibiotic Use / Resistance

Commenters expressed concern that the use of antibiotics or antimicrobial agents in CAFO facilities leads to antibiotic resistant pathogens.

WPCF permits govern the discharge of waste from CAFO facilities but does not authorize the agency to regulate the use of antibiotics or antimicrobials within the facilities themselves.

Notwithstanding the above, the agency notes that the Federal Food and Drug Administration (FDA) has recently enacted new regulations that restrict all animal antibiotic use to only those materials prescribed by a licensed veterinarian under an active Veterinarian/Client Relationship. Since January 1, 2017, FDA prohibits any growth promotion use of antibiotics in food animals. Finally, the USDA also conducts surveillance of slaughter facilities to check for antibiotic residues in animal carcasses and rejects any carcass that violates any FDA standards.

With regard to comments about the use of pharmaceuticals as this use may affect public health generally, these comments are beyond the scope of the proposed WPCF CAFO General Permit #01-2015 registration, except insofar as pharmaceutical use could impact water quality. With regard to comments about pharmaceuticals that may be contained in waste, see response to comments below.

5. Miscellaneous comments that address issues that are beyond the scope of the permit

Say “No” to Foster Farms in Oregon

Commenters expressed concern permitting Foster Farms for the operation of a new large poultry production system and concern that a new Mega Poultry production system will put pressure on remaining family scale poultry production system farms. Commenters state that Foster Farms processing facility in California was the subject of a lawsuit.

These comments, which address an incorrect Permit applicant and agricultural economics are beyond the scope of the proposed WPCF CAFO General Permit #01-2015 issued pursuant to Oregon laws governing water quality. Foster Farms is not the CAFO Permit applicant. This Permit application does not allow or include any poultry processing infrastructure or activities. Foster Farms processing facilities legal cases do not have any bearing on this CAFO Permit application decision.

Deny Mega Poultry production system

Commenters stated that modern science tells us that there is no reason for humans to consume meat (chicken) and that it is detrimental to our health.

These comments related to human dietary concerns, are beyond the scope of the proposed WPCF CAFO General Permit #01-2015, which governs the discharge of pollutants into waters of the State.

Foster Farms processing facility in CA responsible for salmonella outbreak.

Foster Farms is not the applicant for the CAFO Permit registration and has no direct role in CAFO Permit compliance. The Foster Farms California processing operation is not the subject of this Oregon CAFO permit application or Notice.

Foster Farms processing facility in CA sued for water use.

Foster Farms is not the applicant for the CAFO Permit registration and has no direct role in CAFO Permit compliance. The Foster Farms California processing plant water litigation has no bearing on the Oregon CAFO Permit application or Notice.

ODA must require other agencies to conduct a public process for their respective permits or approvals.

Each agency, government or jurisdictional authority that is involved with issuing JS Ranch a Permit or approval (other than ODA's CAFO Permit registration) have their own respective processes, Statutes, Rules and authority that guide their operations. ODA has no authority or ability to require another agency, government or jurisdictional authority to hold public hearings or involve the public in their decision-making activities. Commenters need to bring these concerns directly to each agency, government or jurisdictional authority with whose process they have concern with.

ODA has coordinated with several state and federal agencies regarding this CAFO Permit application and process and their involvement and process. A list of agencies include but are not limited to: Linn County government, ODEQ, OHA, OWRD, ODFW, USFW, USACE and USEPA.

CAFO Permit Cannot be considered until road access permit granted by Linn County Road Department.

The Linn County Road Department has required the CAFO applicant to obtain a Road Access Permit. This process is controlled solely by Linn County government and ODA has no role in the process. ODA will condition the CAFO Permit (CAFO Construction phase, Step 1) with the condition that ODA will require proof of the Linn County Road Access Permit prior to allowing the CAFO construction to begin.

The Santiam River is an active dynamic river system that will erode land until it reaches and destroys the proposed CAFO facility.

The WPCF CAFO General Permit #01-2015 does not allow any discharge into ground waters of the state. The CAFO is prohibited from any discharge to any surface waters because it will not be registered to an NPDES CAFO Permit. If the river system dynamics do in fact cause the river to move to within 100 feet of the CAFO production area, ODA will require the WPCF CAFO permittee to obtain an NPDES CAFO Permit or cease operations and decommission the poultry production system.

Prior experience living close to a dairy CAFO and alleged groundwater pollution from the dairy CAFO impacted a drinking water well.

Other permitted CAFOs compliance status or history is not part of this Notice and is not responsive to the question of issuing a CAFO Permit registration to this proposed poultry CAFO. The well water pollution allegations listed in this comment were disproven in legal proceedings.

2020 Santiam Canyon Fire impact on watershed where proposed CAFO would be located.

This comment is beyond the scope of the proposed WPCF CAFO General Permit #01-2015.

NGO Coalition (see page 22)

The NGO coalition commented about the potential of the facility to emit ammonia, greenhouse gases and other air pollutants, as well as expressing concern about the use of pharmaceuticals on the facility that they assert develops antimicrobial resistant pathogens that could ultimately threaten public health.

See above responses regarding concerns about air emissions from CAFO facilities and above responses addressing comments about antibiotic resistance.

II. Responses to Recurring Themes

Various comments included in this document addressed the same or similar concerns. In this section, the Agency included some general responses to these comments. Responses to such comments below will be referenced to responses in this section.

2. Several commenters expressed concern for sufficiency of protective measures in the permit and the sufficiency of monitoring.

The WPCF CAFO Permit (Permit) registration proposed for this facility is designed to control all production areas so that no discharge occurs to groundwater. This Permit registration does not allow any land application of litter, compost or process wastewater. The Permit includes protective groundwater requirements that prohibit discharge of nutrients and bacteria to ground water. In response to comments received, ODA has required the following enhanced conditions to be added to the WPCF CAFO General Permit: Poultry building floor construction compaction standard, static ground water level monitoring wells, and drinking water well serveillance nitrate monitoring.

The Permit prohibits discharges to ground waters. The facility is not located adjacent to surface water and cannot land apply any litter, compost or mortality compost to any crop field at the CAFO site. The Permit contains numeric effluent limits restricting any ground water discharge that may occur to the quantitation limit of 0.1 mg/L for nitrate and the quantitation limit of 2 cfu/100 ml for bacteria (cfu-colony forming units). The permit also prohibits discharges to ground water of total Kjeldahl nitrogen (TKN) and total phosphorus of 0.2 mg/l and 0.1 mg/l, respectively.

The proposed facility must sample and provide actual analytical results from samples of litter and compost to any individual or entity receiving litter or compost exported from JS Ranch.

The required drinking water well monitoring plan will require annual monitoring for nitrate and E.coli bacteria from any well located on the property that provides drinking water.

3. The following response addresses comments regarding the potential for stormwater or wastewater runoff to surface waters of the state.

JS RANCH does not propose to discharge to any surface waters. The proposed CAFO will not have any conveyance or pipe that discharges directly into any surface waters. JS Ranch is not allowed to land apply any litter, compost, mortality compost or process wastewater to any land located at the site. Stormwater generated by precipitation that falls on the site is allowed to leave the site as overland flow and infiltration into the soil. An NPDES CAFO Permit is not required for this activity because agricultural stormwater is exempted from NPDES regulation in 40 CFR 122.23(e). Agricultural stormwater generated by poultry broiler facility is exempt from NPDES regulation and is not a violation of Clean Water Act (CWA) is described in the Alt case. (Alt, et al. v. United States Environmental Protection Agency, et al., No. 2:12-CV-42, 2013 U.S. Dist. LEXIS 152263 (N.D. W.V. Oct. 23, 2013).

The Permit prohibits any discharge from the CAFO production area to any ground waters of the state. The facility does not propose to have any wastewater treatment works that directly discharge to any surface waters of the state. The Santiam River is over 1,400 feet to the north of the facility at its closest point. Due to the distance of the facility from surface water sources and the intervening topography, if a direct discharge from the proposed CAFO production area occurred, it is not likely to reach these surface waters. The proposed CAFO will not land apply any litter or compost to fields that are part of the CAFO. There is no mechanism or pathway for the proposed CAFO to discharge directly to surface waters.

4. Some commenters expressed concern about the quantity and legality of water being used by the poultry production system.

The agencies coordinated the Permit development and review with the Oregon Water Resources Department (OWRD) to ensure that the amount of water necessary to operate the facility was available. The water use proposed by the facility is derived from long-standing existing water rights or are exempt by OWRD. OWRD is responsible for all water right activities and has reviewed the JS RANCH Permit, AWMP and Water Supply Plan for the proposed poultry production system operations. Prior to beginning operations, OWRD and the applicant need to approve the JS Ranch Water Supply Plan as required by ODA.

All water use at the proposed facility is subject to OWRD regulatory authority and state legislative or federal drought declarations that may impact water use. JS

RANCH will have to operate in compliance with any applicable federal or state statutes or rules governing water appropriation and use.

III. Water Quality WPCF Permit comments

Provided below is ODA's response to the specific comments for the permit registration. The persons or organizations that provided comments are named in bold (or indexed numerically to the enclosed list of commenter names) followed by a summary of their comments. The Agencies' response is provided in italics immediately following each comment.

Proposed facility requires an Individual NPDES CAFO Permit

The proposed JS Ranch does not require an Individual CAFO NPDES Permit. The facility generates solid litter and compost and stores all litter and compost in a covered storage building with a concrete floor. No litter or compost will be land applied to any fields on the proposed CAFO. The small amount of process wastewater generated is stored in sealed tanks and is not allowed to be land applied. There is no bird grazing/foraging or outdoor uncovered, bare ground confinement areas. All birds are confined inside poultry growing buildings with elevated, compacted floors covered with absorbent sawdust to collect and contain all the manure excreted by the growing birds. The proposed facility has no direct discharge infrastructure and is prohibited from discharging. 100% of the litter and compost produced at the facility is exported.

The facility is designed for and has operational characteristics so that it will not experience any discharge to surface waters. The proposed CAFO WPCF Permit prohibits any discharge to ground waters. Since there is no nexus between the proposed facility and surface waters of the US, NPDES CAFO Permit coverage is not required (except for the construction phase where greater than one acre of land is exposed due to earth moving and construction activities and a 1200C Permit is required for those activities). Additionally, the proposed facility cannot land apply litter, compost or process wastewater. The facility operator has documented history of CAFO Permit compliance at another CAFO facility that ODA permits, and the proposed facility does not propose to use any experimental treatment or utilization systems, an NPDES Individual CAFO Permit is not warranted.

Contamination of ground water due to litter discharging to ground water below the poultry barn floors. Poultry barn floors need to be concrete.

Several commenters stated that manure excreted by the chickens housed in the poultry barns will cause groundwater pollution. Manure excreted by broiler chickens housed in climate-controlled poultry barns contains ~74% moisture. The manure is deposited on a sawdust absorbent layer on top of a compacted earth floor that meets or exceeds a 1.0×10^{-5} cm/sec permeability standard. The temperature is maintained at levels in the buildings so the manure rapidly dries to 20 to 30% moisture content. When litter (the combination of manure and sawdust) is removed from the poultry barns, the moisture content averages 20%. Litter is removed after each flock. Manure / litter is present in the poultry barns for a total of 270-280 days each year. Little or no manure / litter is present in the poultry barns for 85 to 95 days each year. Prior to each new flock, fresh sawdust is spread in the poultry barns.

The poultry barn floors are constructed of compacted rock fill and compacted soil overlaying the rock. The compacted earth floor must meet or exceed a 1.0×10^{-5} cm/sec permeability as a CAFO Permit condition. The compacted earth floor is covered sawdust as an absorbent material prior to birds being introduced into the barn. The elevation of the finished compacted floors is always above the existing ground level outside of the poultry barns. The concrete poultry barn foundations will not allow stormwater to enter the barns laterally and the elevated, compacted, barn floors protected with sawdust collects the excreted manure and isolates it from discharging to groundwater.

Dry manure and litter cannot discharge through the floors of the poultry barns or pose a risk to groundwater. Ground water cannot flow up through the poultry building floors and come into contact with manure/litter. The CAFO Permit registration for this facility requires static groundwater level monitoring wells to ensure that groundwater levels below the poultry barns does not come within 2' of the compacted earthen floor surface.

Land Use Compatibility Statement (LUCS) was prepared incorrectly by Linn County staff.

ODA requires a completed LUCS as part of a complete CAFO Permit application prior to Public Notice. ODA received a completed, signed LUCS for the JS Ranch proposed chicken raising operation on August 11, 2020. The LUCS was issued by Linn County Planning Department. ODA has no land use regulatory authority and any concern with the LUCS would

need to be addressed directly to the Linn County Land Use authority or the Oregon Land Use Board of Appeals (LUBA)

Proposed Facility will negatively impact climate through air and water emission pathways.

The pathways for pollutants to reach ground waters are well regulated by the proposed WPCF CAFO General Permit and accompanying S4.E, Order on Permit Modification. The water quality permit cannot contain air quality regulations. DEQ does not require air permits for agricultural facilities in Oregon.

Animal Waste Management Plan (AWMP or NMP) not complete and does not address required items.

ODA extended the public notice period after posting the complete AWMP/NMP. The public comment period was open for at least 35 days after the complete AWMP/NMP was posted. The NMP posted on September 20, 2021, is complete and contains the required items. Additionally, ODA is requiring an updated site map to match the DEQ 1200 C Permit site map submitted by the applicant.

Plans submitted to ODA for the CAFO Permit differ from plans submitted to DEQ for 1200c Stormwater Permit.

ODA requires the applicant to submit the same site plan that DEQ approves in the 1200C, Construction Stormwater Permit to replace the site plan if the NMP. The addition of a shavings storage building shown in the 1200C Permit site plan does not change the maximum number of birds in the proposed NMP or increase litter, compost, or mortality amount or the nutrient content of the litter, compost, or mortality materials. The Stockpile noted in the site plan submitted for the 1200 C Permit is not a stockpile for litter, compost, or mortality compost, it is a soil stockpile regulated under the 1200 C Permit issued by DEQ.

LUCS Limited only to local land use laws. ODA must ensure other local, state and federal (land use) laws are met.

The agencies rely on the County's Land Use Compatibility Statement determination that the proposed land use is consistent with local plans and local land use regulations. OAR 340-018-0050. The facility siting is not a change in land use as the proposed production area is currently zoned Exclusive Farm Use (EFU) and has been since 1972. A poultry production

system operation is an outright permitted use in the EFU zone. The LUCS also is compliant with the statewide land use planning requirements.

Site is inappropriate for an Industrial Chicken Operation. Will Impact: A. Santiam River Wildlife Habitat. B. Recreational Use. C. Surface Water Quality. D. Drinking Water Quality. E. Wetlands and Floodplain. F. Stormwater Generation, Flow and Management. G. Unlined, compacted native soil earthen floors in Poultry Houses. H. Water usage, Water Rights.

The proposal is not for an industrial chicken operation, it is for an agricultural chicken operation. A. The Santiam River wildlife habitat is adequately protected because the river is ~1,400 feet away from the proposed chicken operation. The operation cannot land apply any litter, compost, mortality compost or process wastewater to any lands on the CAFO and all the chickens are housed in fully enclosed buildings all the time. B. The proposed chicken operation will not impact recreational use on the Santiam River based on facts described in A. C. The proposed chicken operation is prohibited from discharging to surface waters and ground waters and has no conduit to discharge to surface waters. D. The proposed chicken operation is prohibited from discharging to ground water and has numeric groundwater discharge effluent limits listed in the Permit. The limits are protective of groundwater uses. E. The proposed chicken operation will not impact wetlands. Department of State Lands conducted a wetland determination and found that the site plan submitted to DEQ for the 1200-C Permit did not include any construction in a wetland and that the proposed construction did not require a removal-fill Permit from DSL. The proposed site is not in the 100-year flood plain. F. The proposed chicken operation will need an NPDES 1200-C Construction Stormwater Permit issued by DEQ that is effective during the construction period. After the expiration of the 1200-C Permit, any un-contaminated stormwater can leave the site through existing natural flow paths. G. ODA is requiring the chicken building to be constructed with a compacted earthen floor that meets or exceeds 1×10^{-5} cm/sec liquid permeability. All compacted chicken building floors are covered (lined) with sawdust to separate litter from the earthen floor and absorb any free liquid. H. The operator will provide a water supply plan that is signed by OWRD, the state agency that regulates water quantity in Oregon.

Air Quality.

The CAFO WPCF General Permit is not the proper vehicle to address Air Quality issues. DEQ is the EPA Clean Air Act (CAA) delegated permitting authority. Agricultural operations in Oregon are exempt from CAA permitting.

The region of Oregon where the proposed poultry facility would be located is currently in compliance with CAA Ambient Air Quality requirements.

In reference to the Maryland CAFO Permit court case regarding air deposition from poultry operations (Case No.:482915-V, slip op. (Md. Cir. Ct., Mar. 11,2021), the court's decision is applicable only in Maryland. It is an interpretation of Maryland state law, and MDE's adoption of CWA permitting authority. Currently, it is unclear whether MDE will attempt to appeal that decision through the Maryland state court system.

Climate Crises.

Issuing a CAFO Permit for this poultry CAFO is consistent with the Oregon Climate Response EO 20-004 (2020). Properly regulated modern livestock production systems with pollution controls are an important part of diverse, local and regional food production system. Supporting a diverse, local and regional food production system reduces fossil fuel use by reducing transportation distances for farm to table products. The poultry production system as proposed provides a local, organic source of fertilizer that can enhance soil health in regional crop systems.

Road Access.

The Applicant must have legal road access in order to construct and operate the CAFO. ODA will condition the CAFO Permit registration so that the applicant must have a Linn County Road Department Road Access Permit and submit a copy to ODA before starting any Step One, CAFO facility construction. ODA receipt of the Road Access Permit will satisfy this condition.

Proposed Facility will result in an Endangered Species Act Take.

There is no Federal ESA nexus with this proposed facility or Permit. The WPCF Permit does not allow any discharge to ground water. The facility is not allowed to land apply any litter, compost, mortality compost or process wastewater and no birds will be allowed outside to interact with any wildlife. ODA reviewed the recent EPA Maui Decision (County of Maui, Hawaii v Hawaii Wildlife Fund et al. No.18-260) on surface and ground water connections and because of the operational characteristics of the proposed CAFO, NPDES Permit requirements do not apply. The proposed facility is prohibited from discharge to surface waters of Oregon or Waters of the US and is not required to obtain a NPDES CAFO Permit.

ODA staff reviewed the proposed WPCF CAFO Permit and the scope of the proposed poultry facility with ODFW. ODFW provided no comments or concerns about the facility or the Permit issuance to ODA.

Proposed Facility Permit must comply with DEQ Three Basin Rule

OAR 340-041-0350; The Three Basin Rule: Clackamas, McKenzie (above RM 15) & the North Santiam.

OAR 340-041-0350 (8)

(b) The Department may issue WPCF permits for new industrial or confined animal feeding operation waste discharges provided:

(A) There is no waste discharge to surface water; and

(B) All groundwater quality protection requirements of OAR 340-040-0030 are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held prior to Commission action on the request.

The WPCF CAFO registration for the proposed poultry facility does not allow any waste discharge to surface water and does not allow any land applications of litter, compost, mortality compost or process wastewater, which is not typical of WPCF Permits. ODA will require compliance monitoring of static groundwater levels underlying the CAFO production area to confirm that there is no discharge to groundwater from the litter deposition areas in the poultry production barns. The groundwater monitoring will be contained in an Order on Permit described in S4.E. ODA will issue the Order as part of the WPCF CAFO General Permit registration issuance to JS Ranch.

1. Environmental concerns.

Refer to general response: II. Responses to Recurring themes (2).

NGO Coalition:

1. CAFO Pollution is a significant threat to Oregon's Waterways.

The agencies agree that CAFOs generate and must manage large quantities of potential pollutants and for those reasons have required JS RANCH to obtain an WPCF CAFO General Permit #01-2015. The Permit contains limitations and requirements that prevent specific discharges and protects ground waters of Oregon. Additionally and in response to comments ODA is issuing an Order on Permit Modification to JS ranch that adds additional monitoring requirements to the General WPCF CAFO Permit registration for JS Ranch. The additional requirements are Static groundwater level monitoring wells, drinking water well surveillance monitoring and a construction compaction standard for the poultry barn floors.

Also refer to general response: II. Responses to Recurring Themes (2).

2. Permit violates state laws and policies aimed at protecting people of color and low-income communities.

ORS 182.545(1) is the state statute that requires natural resource agencies to consider the effects of actions on under-represented communities, including people of color and low-income communities. ODA and DEQ complied with the statute.

Specifically, the statute requires natural resource agencies to (1) consider the effects of actions on EJ issues, (2) hold hearings at times and locations that are convenient for affected communities, (3) engage in public outreach in the affected communities, and (4) create a citizen advocate position to encourage public participation, that the agencies consider EJ issues and inform the agency of the effect of its decisions on traditionally under-represented communities.

The agencies also used an EJ demographic data/query resource, EJSCREEN, phone calls and visits to community leaders to identify under-represented communities. Combining both public comment intervals, the initial and extended public comment periods included the following:

- The Notice was published in the Albany Democrat-Herald, which is a regional newspaper that would reach readers located in the area where the facility is proposed.*
- The agencies posted the Notice to their respective web sites and to interested parties who requested GovDelivery notifications that is maintained by ODA's Publication and Web Specialist.*

- *The hearing was held virtually so that many EJ community members could participate remotely while observing the state's COVID protocol.*
- *The agencies tribal coordinators have reviewed the CAFO Program activities and how to interface with tribal nations in Oregon.*
- *ODAs tribal liaison/citizen advocate provided all the Notice materials to the Oregon Tribes.*
- *Managers and communication specialists of the agencies had numerous discussions to ensure outreach that would include the under-represented community.*
- *The agencies have positions with assigned Citizen Advocate duties.*

The agencies did look at the potential impacts from the facility and were able to draw some conclusions. Specifically, this assessment included:

- *Identifying the demographics near the site and communicating with Environmental Justice groups (low-income and Hispanic communities).*
- *Working with the Oregon Health Authority to identify potential threats to public water supplies.*
- *Assessing the proximity of residential homes and communities to the proposed poultry production system.*

To identify demographics, ODA talked with people who commented on Environmental Justice issues, including local city and county officials and the Tribes. ODA then used the [EJSCREEN](#) tool to look at the demographics of people living and working within a 9.3-mile (15 km) radius of the site. The EJSCREEN tool indicated that there are no Hispanic or low-income communities within this radius.

To determine potential threats to public water supplies, ODA met with the Oregon Health Authority to identify any public water supply systems located in the vicinity of the proposed poultry production system. The poultry production system would generate nitrates (nitrogen in litter). The poultry production system poses a very minimal threat to both public and private drinking water supplies because all the litter, compost, mortality compost or process wastewater generated at the site will be exported. No land application of litter, compost, mortality compost or process wastewater is allowed at the site. The poultry barns are required to have floors compacted to a standard and new

absorbent material placed on the floors prior to each flock. The litter and compost storage building must have impermeable concrete floors.

The third part of the analysis looked at houses and communities close to the poultry production system. ODA used aerial imagery and mapping tools to measure straight-line distances from the poultry production system to the following communities: Scio (3.7miles), Jefferson (4.0 miles) and Albany (10.0 miles). All these communities are known to include populations of Hispanic and low-income people.

Aside from those communities, DEQ found very few houses or dwellings located within a six-square-mile radius of the proposed poultry production system. Interstate I5 is six miles from the poultry production system, with scattered homes located along the interstate.

ODA determined that very few people live in close proximity to the site, which reduces the likelihood of people being negatively impacted by emissions and odors. As for groundwater concerns, the approach is to require a permit that sufficiently protects water quality and prevents groundwater contamination as discussed above. This is done through pollution controls, effluent limits contained in the permit, groundwater level monitoring, drinking water well surveillance monitoring, prohibiting any land applications and reliance on best management practices.

3. Permit is legally deficient:

a. AWMP deficient and under protective of water quality.

The agency is requiring the applicant to amend the AWMP/NMP to address the following concerns:

The applicant will need to provide an updated facility site map that corresponds with and includes all structures and features included in the facility site map that is the subject of the final DEQ 1200C permit. It is important to note that the feature labeled "Stockpile" in the site plan JS Ranch supplied to DEQ in support of the 1200C Permit is a stockpile of excavated soil, not a stockpile of litter or compost. No compost or litter is allowed to be stored outside of the poultry production barns or the litter storage and composting barn.

The AWMP for this facility was developed with estimated numbers since actual test data is not available since the facility is not yet operable. ODA requires that the applicant

annually analyze samples of litter and compost as it is generated and must provide those actual data to all receives of exported litter and compost.

b. Anti-degradation review is inadequate.

Surface water. The EQC anti-degradation policy and the Federal regulations that implement it only apply to surface waters, in terms of the requirement for an anti-degradation review [340-041-0004(1)]. Refer to: II. Responses to Recurring Themes (3) for an explanation of discharge prohibition and the operational infeasibility of wastewater runoff to surface waters. The anti-degradation review sheet is used in conjunction with evaluation of a surface water discharge under an NPDES permit. DEQ's anti-degradation policy also emphasizes the prevention of groundwater pollution.

Groundwater. While a formal anti-degradation review is not required for groundwater, OAR 340-040 includes requirements that groundwater not be degraded as well. Permit limits on leaching below the crop root zone, no allowed land application of litter or compost and ground water monitoring at this facility all support minimization of potential groundwater contamination. The litter and compost storage facility must be constructed with a concrete floor to prevent nutrient leaching. The chicken houses must be constructed with compacted earthen floors that meet or exceed a permeability standard and static ground water levels will be monitored under the building floors to maintain a two-foot separation distance from seasonal high ground water levels.

a. Changes in land use pose a particular threat to groundwater quality at this site.

The agencies rely on the County's Land Use Compatibility Statement determination that the proposed land use is consistent with local plans and local land use regulations. OAR 340-018-0050. The facility siting is not a change in land use as the proposed production area is currently zoned Exclusive Farm Use (EFU) and have been since 1972. A poultry production system operation is an outright permitted use in the EFU zone. The site of the proposed operation has a long history of growing irrigated, agricultural crops such as alfalfa, vegetables, grass seeds. The CAFO permit requires protection of water quality.

2. The permit does not adequately address surface water impacts.

a. JS RANCH will likely discharge to surface water via groundwater.

The operating characteristics of the JS Ranch make it unlikely that the operation would impact surface water through a groundwater pathway. JS Ranch is required to:

- Contain all birds and litter and compost inside climate-controlled buildings at all times except during litter export or bird harvest.*
- Construct and maintain poultry barn floors to a minimum compaction standard of permeability 1×10^{-5} cm/sec or less.*
- Store litter, mortalities and compost in a roofed building with concrete floors.*
- Export all litter, compost and mortalities generated at the site.*
- Not land apply any litter, compost, composted mortalities or process wastewater generated at the site to any lands on the CAFO.*
- Maintain a two-foot separation distance between groundwater level and the compacted poultry barn floors.*
- Monitor static ground levels.*
- Monitor drinking water well quality.*
- The WPCF CAFO General Permit prohibits discharges to groundwater and surface water.*

b. JS RANCH will likely discharge to surface water via atmospheric nitrogen deposition.

Regarding deposition from the air, there are no state or federal air quality permit requirements for poultry production system farms to control or regulate air emissions of nitrogen. For water, the proposed water quality Permit does require monitoring of soil, and groundwater adjacent to and under the proposed facility and prohibits discharges to surface or ground waters.

Comments in Support of Permit

Northwest Chicken Council

Supports New CAFO Permit application.

Thank you for the comment.

Fifteen individuals provided general supporting comments including :

- Mr.Simon already operates a successful poultry facility with good compliance.

- Proposed facility is a valuable community addition.
- Mr. Simon is a good neighbor at his current operation.
- Proposed poultry facility is a good fit in the agricultural area.

Thank you for the comments

IV. Summary of changes to the JS Ranch NMP and Modification of the JS Ranch WPCF CAFO General Permit Registration

Prior to commencing CAFO facility construction, the permit holder shall amend the Nutrient Management Plan as follows:

- Submit an updated site plan that is identical to the site plan submitted to DEQ for the 1200-C Permit.
- Provide a record keeping format for recording the results of the static ground water level sampling.
- Provide a record keeping format for recording the results of the drinking water well surveillance sampling.

Along with the CAFO WPCF General Permit registration, ODA issued an Order on Permit Modification (S4.E) requiring the permittee to:

- Install two (2), ground water monitoring wells and monitor static ground water levels in the production area.
- Sample frequency for static ground water levels is monthly.
- Sample all drinking water wells on the property for nitrate levels.
- Sample frequency for drinking water wells is two times/year.
- Compact and sample all poultry barn floors to achieve at least 1×10^{-5} cm/sec permeability.

The agency requires that the operation of the facility be limited to only the number of animals that may be sustained by presently available legal sources of water supply and to

inform the agencies within 45 days of permit issuance on the amount of the presently available legal sources of water supply and the number of animals that may be sustained.

V. Index of Commenters

- Oral Commenters during the October 28, 2021, Hearing – Recording available upon request. See Attachment #1.
- Written Comments (71) – See Attachment #2
- NGO Coalition consists of Humane Voters | Oregon, Farmers Against Foster Farms, Willamette Riverkeeper, Center for Food Safety, Food and Water Watch, Friends of Family Farmers, Animal Legal Defense Fund and Center for Biologic Diversity.

J-S Ranch Public Notice Commenters

number	Name of commenter	Organization	Email address
1	Christina Ball-Blakely	Animal Legal Defense Fund	cblakely@aldf.org
2	Brian Posewitz	Humane Voters Oregon	brian@humanevotersoregon.org
3	Amy van Saun	Center For Food Safety	avansaun@centerforfoodsafety.org
4	Trisha Sharma	Northwest Environmental Defense Center	tsharma@lclark.edu
5	Multiple commenters	Deny J-S Ranch Chicken CAFO Permit	lalstad@q.com robertaanne1@gmail.com ladeneen66@gmail.com hanniganjb@comcast.net lindaeah@hotmail.com rjones553@yahoo.com andrea.laliberte@earthmetrics.com rmckissick@hortonworks.com graceswallow@aol.com petey711@hotmail.com plaeahn@peak.org skazz999w@hotmail.com sandraschomborg@yahoo.com sxsexton@gmail.com bobstovles@hotmail.com yo_kokomo@yahoo.com lizcarmine@yahoo.com andyourbirdcansing18@gmail.com ewh1960@gmail.com mazda63@comcast.net kisadancer@comcast.net margaret.sakoff@gmail.com lida.durant@gmail.com mkneuendorf@comcast.net homerjim82@gmail.com davidmewing@outlook.com bristinakeggen@gmail.com svensumati@me.com
6	Multiple commenters	Simon-J-S Ranch Comments	luzitabks@everyactioncustom.com sandra@everyactioncustom.com forbux@everyactioncustom.com oregonsoma@everyactioncustom.com lanekappes@everyactioncustom.com beatricekiddoux@everyactioncustom.com todd87701@everyactioncustom.com walkthemile@everyactioncustom.com hfmmarketdirector@everyactioncustom.com karijorgensen65@everyactioncustom.com gia@everyactioncustom.com hannahfswan@everyactioncustom.com janiceliza@everyactioncustom.com nancyvuill@everyactioncustom.com robinbrownwood69@everyactioncustom.com stacyloeb@gmail.com
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J-S Ranch Public Notice Commenters

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