

White Paper: Raw Milk Dairies and CAFO Permit Requirements
January 2023

Issue: Most raw milk dairies in Oregon must be registered to a Confined Animal Feeding Operation (CAFO) Permit as required by federal and state law.

Background

Confined animal feeding operations are regulated under Oregon law to prevent manure and wastewater from contaminating surface or ground waters. Dairies meeting the state CAFO definition require a CAFO registration based on the farm's operational characteristics about the number of animals, length of confinement, and storage and utilization methods for manure and process wastewater. Operators owning no more than two producing dairy cows, or nine producing goats or sheep, are exempt from Food Safety and Fluid Milk License (FSD) requirements (ORS 621.012 (2)); most of the state's raw milk purveyors fall into this category by actual cow numbers or by herd-share arrangement. Many raw milk dairies may mistakenly interpret the FSD exemptions as extending to the requirement for a CAFO permit issued by the Oregon Department of Agriculture (ODA).

CAFO permit registrations are important for three reasons. First, to prevent water pollution. Second, to comply with the federal and state law. Third, to maintain a level playing field with all dairies holding Grade A Fluid Milk Licenses that bear the costs of compliance with water quality regulations.

Current Regulatory Framework

Two types of CAFO permits set operational provisions designed to prevent waste discharge to surface and ground waters and to meet federal and state water quality Rules. The National Pollution Discharge Elimination System (NPDES) General CAFO Permit incorporates all necessary items for compliance with discharges to waters of the US, administered by the Environmental Quality Commission (40 CFR § 112, 122, 123, and 412). Water Pollution Control Facilities general CAFO permits contain all necessary items for compliance with discharge prohibitions to Waters of the State. Under state law, ODA is directed to develop and implement programs and rules that directly regulate farming practices, as defined in ORS 30.930, that is, to protect water quality and... shall be designed to assure achievement and maintenance of water quality standards adopted by the Environmental Quality Commission (ORS 561.191(1) and (2)). For this reason, ODA issues CAFO permits that implement federal NPDES and state WPCF requirements on farmland. Alternatives to obtaining a water quality permit are found under ORS 468B.053.

Why Most Raw Milk Dairies are subject to CAFO permit requirements

Based on an initial search of raw milk for sale in Oregon, many raw milk dairies must initiate registration to a CAFO permit. As stated earlier, there may be confusion due to the rules for food safety and fluid milk license exemptions. Outreach and education about the CAFO requirements are necessary because "Any person owning or operating a confined animal feeding operation has a duty to seek coverage under the Oregon CAFO General [NPDES or WPCF] permit" (OAR 603-074-0014(2)).

Raw milk dairy operations fall under CAFO regulations because they entail animal confinement and manure handling. They use wastewater management systems to collect, transfer, store, treat, land apply manure, and process wastewater. As far as is known, raw milk dairies will generally be considered small CAFOs, defined as having fewer than 200 mature dairy cows and fewer than 3,000 milking goats or

sheep (OAR 603-074-0010). The confinement of animals is highly variable among operations, but all animals are technically confined during the milking process, whether in pens, lots, or buildings.

Dairy animal husbandry requires handling manure and, at minimum, managing process wastewater from cleaning milking equipment. Wastewater may also be generated from washing containers, sanitizing processing equipment, and cleaning facilities. Raw milk producers may also be cheesemakers or produce other value-added products generating additional process wastewater streams.

The department's initial search for raw milk sales found no facilities operating for fewer than four months per year. Some operations contacted noted seasonal fluxuations in production, but most acknowledged year-round operations. All wastewater systems, regardless of size are considered Water Pollution Control Facilities. Therefore, when associated with animal feeding operations, a permit is necessary to construct and operate a CAFO. Alternatives to obtaining a water quality permit are found under ORS 468B.053.

Notification

The Oregon Department of Agriculture has established a Raw Milk Dairy Outreach and Education Program to inform new, proposed raw milk dairy operations about CAFO Permit requirements and bring existing, currently unpermitted raw milk dairies into compliance with federal and state water quality regulations.