

# State appeals court orders Ecology to strengthen CAFO permit requirements.

Phil Ferolito, Yakima Herald Republic, July 1, 2021

The Washington State Court of Appeals has ordered the state Department of Ecology to rewrite its confined animal feeding operation permits, saying they don't protect groundwater.

The court's decision Tuesday overturns an earlier one by the state's Pollution Control Hearing Board, which upheld Ecology's permits.

The permits are intended to ensure CAFOs do not pollute surface and groundwater. Several CAFOs are dairies.

In 2017, Ecology devised the permits for dairies and CAFOs that have discharged pollutants into surface and groundwater.

But some environmental groups objected to the permits, saying they didn't do enough to protect drinking water. Those groups included several from the state's west side, as well as two local organizations, Friends of Toppenish Creek and the Community Association for Restoration of the Environment. They were collectively known as Soundkeeper.

The court found the permit conditions did not incorporate all known methods and safeguards to prevent pollution, including groundwater monitoring.

"We agree with Soundkeeper that the permits do not impose sufficient surface or groundwater monitoring requirements on CAFOs. Without water quality monitoring, the permits, as written, contain inherent contradictions that would render them unenforceable," the court wrote in its 53-page opinion.

Ecology officials on Thursday said the permits are up for review anyway and they weren't sure how the court's decision will impact any revisions.

"We're still going through the court decision and figuring out our next step," said spokeswoman Colleen Keltz.

Environmental attorney Charlie Tebbutt said that for years, his clients have argued for groundwater monitoring, something Ecology's own scientists have suggested.

"One of the main points was that Ecology ignored its own scientists about the need for groundwater monitoring," Tebbutt said. "That is an argument we have been making to Ecology and the PCH since 2005."

Furthermore, the court found Ecology failed to make CAFO's manure management plans —

referred to as nutrient management plans — subject to public review as required by the Clean Water Act.

“Although nutrient management plans must include site specific information, and the nutrient management plans must be submitted for public review and comment, Ecology has reimagined the permitting process such that the public does not have an opportunity to comment on site-specific issues,” the opinion said.

CAFO operators are only required to obtain the permits if they have been found to discharge pollutants into surface or groundwater.

Statewide, there are 26 CAFOs that operate under permits, and 10 are in Yakima County, said Keltz.

Tebbutt said his read of the court’s ruling would subject all CAFOs to permits because of the surface and groundwater monitoring requirements.

“If Ecology properly follows the clear direction of court of appeals, that means that all facilities will have to perform groundwater monitoring. Which means they all will be subject, or should be subject, to the permit,” he said.

Concerns about water pollution being tied to CAFOs and dairies have long been a subject of contention in Yakima County, where several dairies entered agreements to improve operations after an EPA study linked a handful of Lower Valley dairies to excessive levels of nitrates in groundwater.

Nitrates naturally occur in soil, but concentrations can be elevated by heavy use of fertilizers — including animal waste — leaky manure storage ponds and faulty septic tanks.

High nitrates can be harmful to pregnant women, infants and the elderly, according to the Centers for Disease Control and Prevention.

Ecology expected to release a draft of its revised permits for public review later this month, but the court’s decision has put that on hold, Keltz said.

“Now we’re going to have to take this decision into account,” she said.