

From: [Ellicott Dandy](#)
To: [Jennings, Jonathan \(ECY\)](#)
Cc: [Bellon, Maia \(ECY\)](#); [Piazza, Millie \(ECY\)](#)
Subject: OneAmerica Comment Letter - CAFO permit
Date: Tuesday, August 23, 2016 1:12:24 PM
Attachments: [OneAmerica Comment Letter - CAFO draft permit.pdf](#)

Hi Jon,

I was unable to submit OneAmerica's comments through the comment box on the website (I got an error message), so I'm attaching them here. I hope the technology issue isn't causing too much trouble on your end!

I wanted to thank you again for providing an interpreter at the public hearing in Yakima and for recently posting a Spanish-language summary of the permit on your website. If there is an opportunity to more directly engage communities in Central Washington about the implications of this permit, please let me know how we can collaborate.

Please don't hesitate to get in touch with me about this or any other environmental justice issue.

Best,

Ellicott Dandy | Economic & Environmental Justice Advocacy Manager | [OneAmerica](#)
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Washington State Department of Ecology
Water Quality Program
Attn: Jon Jennings, Maia Bellon
CC: Millie Piazza
PO Box 47696
Olympia, WA 98504-7696

August 15, 2016

Dear Director Bellon and Mr. Jennings,

Thank you for the opportunity to comment on the Department of Ecology's draft State Waste Discharge Permit for Concentrated Animal Feeding Operations (CAFO). OneAmerica is Washington's largest immigrant and refugee advocacy organization, working with communities across the state to advocate on a spectrum of policy issues impacting their lives.

Last summer we surveyed over 500 of our community members throughout the state to better inform our priorities as an organization. In reviewing the results, we learned that nearly 70% of respondents in the Yakima area identified air and water pollution as their top concern. Many reported that they were, or had been, unable to drink their tap water because of unsafe levels of nitrates and noted particular concern over the high occurrences of miscarriage, birth defects, and poor infant health in their community, which are all associated with elevated levels of nitrates in drinking water. Throughout the 2015 Legislative Session in Olympia, we fought hard to oppose bills HB2840 and SB6568, as well as last-minute budget negotiations—all championed by the dairy industry lobby—that would have directed the Department of Ecology (Ecology) to create a state-only permit as an option for CAFOs that discharge to groundwater. This state-only option would have eliminated several provisions crucial to protecting our communities from the harmful effects of manure pollution, but the democratic process prevailed and both the State House and Senate rejected the harmful legislation. We are deeply disappointed to see Ecology taking administrative action to weaken its own permit in similar ways, and we respectfully ask that Ecology withdraw this draft and re-issue a permit that is better equipped to protect human health and the environment. We insist that the new version of the permit must be informed by an Environmental Justice Impacts Analysis and that Ecology conduct a robust stakeholder engagement process with overburdened communities whose drinking water quality depends on strong nitrate pollution prevention measures.

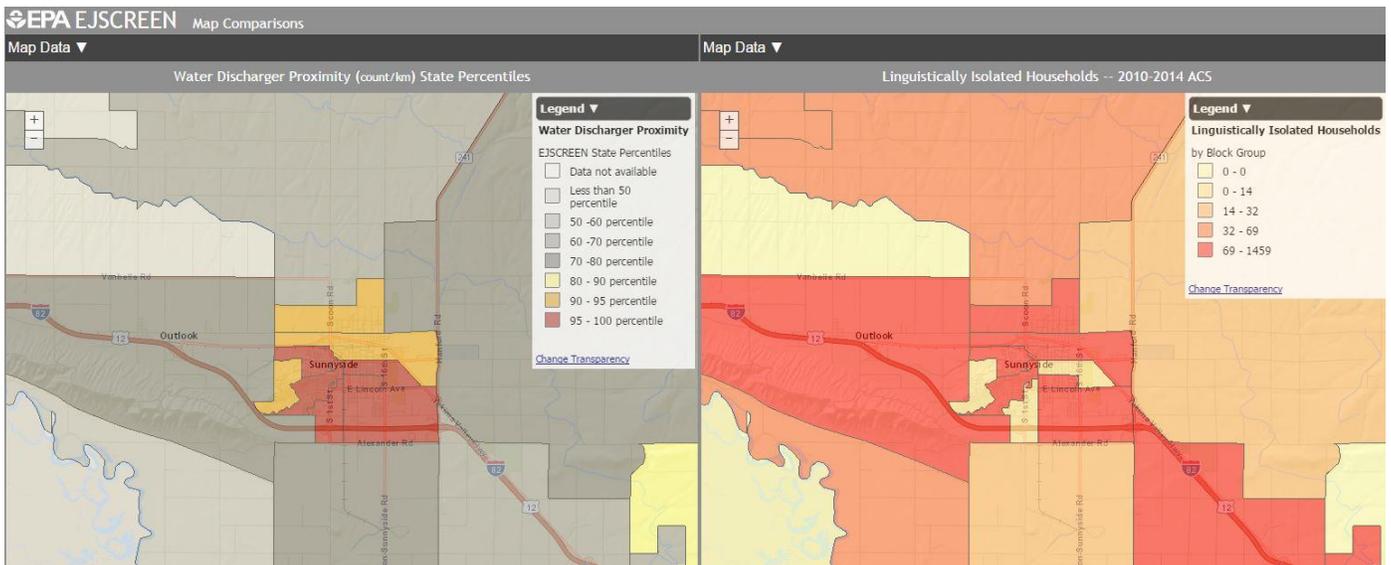
Identifying Environmental Justice Communities

The demographic characteristics of communities dependent on groundwater for drinking water in the Lower Yakima Valley make this permit a very serious environmental justice issue. In a 2010 report on Lower Yakima Valley Water Quality Ecology, in collaboration with other executive agencies and the US Environmental Protection Agency, identified that environmental justice considerations are essential to achieving their shared goal to, "see that all persons have access to safe drinking water supplies," upon review of extensive evidence that manure and dairy farms are the main cause of unsafe levels of nitrate in area drinking water.¹ OneAmerica finds that Ecology has ignored its own recommendations, as neither the development process nor the content of the permit have

¹ Washington State Department of Ecology, Washington State Department of Agriculture, Washington State Department of Health, the Yakima County Public Works Department, and The US Environmental Protection Agency. "Lower Yakima Valley Groundwater Quality: Preliminary Assessment and Recommendations Document." February 2010. <https://fortress.wa.gov/ecy/publications/documents/1010009.pdf>.



adequately addressed the very clear environmental justice impacts associated with CAFO discharge to groundwater through both manure lagoons and, perhaps more threateningly, crop application.² We believe that without a thorough demographic analysis of communities impacted by the pollutants regulated under this permit, Ecology is ill-equipped to develop a permit that meets its obligation under the Clean Water Act to, “to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health.”³ We will use the small but overburdened community of Sunnyside, Washington, as a case study, but urge the Department of Ecology to conduct its own thorough environmental justice analyses of affected communities throughout the state, with particular attention to environmental justice communities including tribes in the Lower Yakima Valley, the Skagit Valley, and in areas where manure leakage from CAFOs could contaminate groundwater and therefore negatively impact drinking water quality.



Sunnyside, WA: Water Discharger Proximity and Linguistically Isolated Households

Source: www.ejscreen.epa.gov/mapper

Sunnyside hosts several CAFOs that could be subject to this weak permit. The demographic makeup of the area fits EPA’s description of an environmental justice community. The 2010 Census found that over 82% of Sunnyside residents were Hispanic and nearly a third are foreign born.⁴ A side-by-side comparison (see above) of proximity to water discharger facilities and concentration of linguistically isolated households using EPA’s EJSCREEN shows that the same census block groups closest to water discharge units also fall between the 81st and 99th percentiles for linguistic isolation statewide.

These communities are also generally low-income; the local median household income is nearly 43% below the state median household income.⁵ Moreover, those census blocks affected by water discharge facilities also encompass some of the highest concentrations of low-income residents. Indeed, Block Group #530770020022 scores in the 99th percentile for water discharge proximity, and 72% of its residents live at or

² Environmental Protection Agency. “Guidance on Considering Environmental Justice During the Development of Regulatory Actions.” May, 2015. <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.

³ RCW 90.48.0101: Policy Enunciated. <http://app.leg.wa.gov/RCW/default.aspx?cite=90.48.010>.

⁴ United States Census Bureau. “QuickFacts: Sunnyside City, Washington.” <http://www.census.gov/quickfacts/table/RHI125215/5368750.00>.

⁵ Ibid.

below 200% of the Federal Poverty Level. Fifteen percent of those residents also live in linguistically isolated households, and in nearby census blocks equally affected by water discharge permits, as much as 40% of the population is linguistically isolated.⁶ The community also scores in the 86th percentile nation-wide for renter-occupied households; in an area where many depend on private wells for drinking water that are not tested by the state, well water monitoring for nearly half of all local households is subject to the whim of landlords.⁷

A 2013 Community Health Needs Assessment conducted by the Sunnyside Community Hospital and Clinics scored every community in Yakima County in the highest quintile statewide for unmet need in health care. The assessment found that residents throughout Yakima County are uninsured at a rate two and a half times the national benchmark, and that “a significant portion of residents” live in a food desert. The county has a fertility rate nearly 50% above the State’s, and teen birth rates are more than twice the State’s rate.⁸

Perhaps most alarmingly, Yakima, Benton, and Franklin counties have reported cases of anencephaly, a fatal neural tube defect, at a rate over four times the national average since 2010.⁹ The Washington State Department of Health has commissioned an investigation into this cluster and has yet to conclusively identify the cause. However, studies published in *Environmental Health Perspectives* and the *American Journal of Epidemiology* have found that high levels of nitrate in a mother’s drinking water increase risk of anencephaly in the fetus four-fold.¹⁰

Recommendations

The Department of Ecology must analyze the potential impacts of a weak CAFO discharge permit to human health in the context of these and other local conditions in areas with a high concentration of CAFOs across the state in order to make adequately informed decisions about the permit. Ecology has already conducted an Economic Impact Analysis of the permit for small businesses; we argue that Washington State residents dependent on the Department of Ecology for clean water deserve no less.¹¹ Please conduct an Environmental Justice Impact Analysis of this permit that compares the public health risks to environmental justice communities under this permit to those under the most stringent CAFO permit in statute elsewhere, including an NPDES permit. The analysis should include socioeconomic and demographic factors to weigh the risks of a weak discharge permit.

An Environmental Justice Impact Analysis would likely suggest that the socioeconomic characteristics of Sunnyside describe a population that would have more trouble than the average Washington community in confronting the negative health consequences of elevated nitrates as a result of manure pollution. For instance, the extra measures to protect themselves, such as buying bottled water, are more economically stressful on low-income household budgets. The elevated cancer risk associated with exposure to high levels of nitrates in drinking water could be especially devastating for uninsured low-income families, and the high fertility rate renders the risk for neural tube defects and blue baby syndrome particularly threatening to this population.¹²

⁶ Environmental Protection Agency. EJSCREEN. www.ejscreen.epa.gov/mapper.

⁷ Affordable Housing Online. “Sunnyside.” <http://affordablehousingonline.com/housing-search/Washington/Sunnyside/>.

⁸ Sunnyside Community Hospital and Clinics. “Community Health Needs Assessment.” October, 2013.

<http://sunnysidehospital.org/wp-content/uploads/2013/11/Sunnyside-Community-Hospital-and-Clinics-CHNA-Report.pdf>.

⁹ Washington State Department of Health. “Anencephaly Investigation: Investigation and Outreach Updates.”

<http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/BirthDefects/AnencephalyInvestigation/InvestigationandOutreachUpdates>.

¹⁰ Brender et al. *Environmental Health Perspectives*. “Prenatal Nitrate Intake from Drinking Water and Selected Birth Defects in Offspring of Participants in the National Birth Defects Prevention Study.” September, 2013.

And Croen et al. *American Journal of Epidemiology*. “Maternal Exposure to Nitrate from Drinking Water and Diet and Risk for Neural Tube Defects.” 2001. <http://aje.oxfordjournals.org/content/153/4/325.full.pdf+html>.

¹¹ Washington State Department of Ecology. “Economic Impact Analysis: *Concentrated Animal Feeding Operation General Permit*.” July 2016. <https://fortress.wa.gov/ecy/publications/documents/1610018.pdf>

¹² Weyer et al. *Epidemiology*. “Municipal drinking water nitrate level and cancer risk in older women: the Iowa Women’s Health Study.” May, 2001. <http://www.ncbi.nlm.nih.gov/pubmed/11338313>.

Ecology may find that such disparities in local health outcomes in the context of an environment prone to nitrate contamination in groundwater render traditional thresholds for pollution risks unrealistically high for this population. A study cited by the United States Geological Survey finds that the risk of groundwater nitrate contamination in the Lower Yakima Valley is among the highest nationwide. The area has two major risk factors: the area's high levels of nitrogen application in agriculture and its characteristically well-drained soil.¹³ Industry advocates suggest other sources of nitrogen, including human waste, might be responsible for groundwater contamination, but the Environmental Protection Agency found that 65% of all nitrogen in the Lower Yakima Valley comes from Dairy (58%) and other livestock (7%). On-sight sewage, by contrast, accounted for 3% of the area's nitrogen.¹⁴

These conditions necessitate extreme vigilance and extra precaution in preventing nitrate pollution, and Ecology and should investigate nitrate pollution thresholds in the context of the aforementioned social and economic risk factors as well as existing negative public health conditions, including the area's anencephaly cluster. Until the Department of Health can conclusively rule out a causal relationship between the area's high levels of nitrate in drinking water and the anencephaly cluster, it would be unconscionable for the Department of Ecology to allow a major source of this pollutant to proceed without, at the very least, implementing all known and reasonable technologies (AKART) for pollution prevention, per the Water Resources Act of 1971.¹⁵

Title VI Compliance

In addition to the permit's lack of protections for environmental justice communities, Ecology may very well find that its own rulemaking process has already excluded them in its failure to meet their linguistic needs. Despite language access requirements articulated in Executive Order 12898 and guidance for compliance with Title VI of the federal Civil Rights Act for agencies including Ecology that receive federal funding, the Department failed to provide any permit-related documents or outreach materials in languages other than English until I personally requested them for a public hearing. A thorough survey of the CAFOs section of the Department's website yielded no option for translation until I personally requested translated documents.¹⁶ Per EPA's Title VI compliance guidance, the Department of Ecology must translate materials to languages spoken by at least 5% of the affected population or 1000 people, whichever is smaller.¹⁷ The Sunnyside neighborhoods with 15-40% linguistically isolated households far surpass that threshold, and according to sources in the area, the information has not gotten to these communities.

We find that the Department of Ecology is failing in its obligation to adequately inform these communities in their own language of a permit that will affect the quality of their drinking water. The Department of Ecology employs a full-time translator to enable Title VI compliance. This decision not to translate materials despite dedicated resources is a decision to only selectively inform the public, and such picking and choosing which Washingtonians to inform—and which to leave in the dark—could constitute discrimination on the basis of national origin.¹⁸ We assume the Department of Ecology will hasten to correct this grave error and conduct robust,

¹³ Nolan et al. "Nutrients National Synthesis Process: A National Look at Nitrate Contamination of Groundwater." *Water Conditioning and Purification*. January 1998. http://water.usgs.gov/nawqa/nutrients/pubs/wcp_v39_no12/#FIG1

¹⁴ United States Environmental Protection Agency. "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington." March 2013. https://www3.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_march2013.pdf.

¹⁵ "General Declaration of Fundamentals for utilization and management of waters of the state." RCW 90.54.020(3)(b). <http://app.leg.wa.gov/RCW/default.aspx?cite=90.54.020>.

¹⁶ Washington State Department of Ecology. "Concentrated Animal Feeding Operation General Permit." <http://www.ecy.wa.gov/programs/wq/permits/cafo/index.html>. Screenshot images of web pages available upon request.

¹⁷ Federal Registry. "Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance); Notice." June 27, 2000. https://www.epa.gov/sites/production/files/2013-09/documents/frn_t6_pub06272000.pdf

¹⁸ "Lau v. Nichols, U.S. 563 (1974)." *FindLaw for Legal Professionals*. Thomson Reuters Business, 2009.

intentional, and culturally appropriate in-language outreach to the linguistically isolated communities it has excluded from this process, with at least as much effort as it put forth to engage with dairy industry interests.

Pollution prevention measures

The permit ignores the best available technology and science and asks communities to bear the risk of contamination. In an earlier draft of the same permit issued in August of 2015, Ecology determined that, “if the CAFO has a lagoon that does not have a double *geomembrane liner* with a leak detection system between the liner layers that it is discharging to groundwater.”¹⁹ In its public comments on that same draft, the Washington State Department of Health supported that finding and concurred that unlined manure lagoons must be “subject to a NPDES permit.”²⁰ The current permit makes no such acknowledgment and fails to require adequate prevention measures. Per Ecology’s own findings from just last year and the State Board of Health’s concurrence, we strongly recommend that this permit require manure lagoons to be lined with double geomembrane liners to prevent leaks, and that they include a leak detection system between the layers. We also recommend that Ecology explore the possibility of requiring the use of above-ground storage structures.

Monitoring

The permit’s monitoring requirements are woefully inadequate. The requirement to test soil at no deeper than two feet (S4.K) disregards widely accepted standards of soil testing to at least three feet. Indeed, the Lower Yakima Valley Groundwater Advisory Committee, in partnership with the South Yakima Conservation District, conducts deep soil testing to a depth of six feet. The 2015 draft of this permit recommended soil testing to three feet and implemented an enforceable soil standard for nitrate of 15ppm.²¹ Ecology must reinstate this testing standard and the pollution limit.

Moreover, Ecology’s own hydrologists find that even deep soil testing is an ineffective monitoring tool for groundwater quality. The Literature Review on Manure and Groundwater Quality published for this permit explains, “Standard soil tests are not accurate tools for quantifying the risk of nitrate leaching,” and that, “a low soil nitrate concentration may or may not indicate impacts to groundwater quality” because it, “does not account for nitrate that has already leached to groundwater, nor does it account for nitrogen mineralization over time.” In fact, one of its key findings is that, “Groundwater monitoring is identified as the only way to measure impacts to groundwater quality.”²² The lack of groundwater monitoring requirements for a permit *intended to protect groundwater* borders on the absurd, especially given the high occurrence of elevated nitrate levels in wells served by aquifers in close proximity to CAFOs.²³

Per the recommendations of Ecology’s own scientists and agreement among the scientific community that, “groundwater monitoring is the only way to definitively determine impacts to groundwater quality from residual soil nitrate,” this permit must incorporate regular groundwater monitoring to ensure CAFOs are not contaminating drinking water. Alternatively, if universal groundwater monitoring is not possible, Ecology must selectively monitor groundwater under the following conditions: near the largest CAFOs; near CAFOs that have previously violated, intentionally or otherwise, the terms or conditions of this permit; when a high density of private drinking water wells is in close proximity to one or more CAFOs, and; near unlined manure lagoons. We also urge Ecology to support the expansion of local efforts, or initiate their own, to provide free testing of private

¹⁹ State of Washington Department of Ecology. “PRELIMINARY DRAFT Concentrated Animal Feeding Operation General Permit.” August 3, 2015. <http://www.ecy.wa.gov/programs/wq/permits/cafo/docs/preliminaryDraftCAFOPermit2015.pdf>.

²⁰ Washington State Board of Health. “NPDES Permit Comments.” October 2, 2015. <http://www.ecy.wa.gov/programs/wq/permits/cafo/docs/commentsOct2015/sboh.pdf>.

²¹ State of Washington Department of Ecology. “PRELIMINARY DRAFT Concentrated Animal Feeding Operation General Permit.”

²² State of Washington Department of Ecology. “Manure and Groundwater Quality: Literature Review.” June 2016. <https://fortress.wa.gov/ecy/publications/documents/1603026.pdf>.

²³ Washington State Department of Ecology et al. “Lower Yakima Valley Groundwater Quality: Preliminary Assessment and Recommendations Document.”

wells with a focus on reaching renters in non-owner-occupied housing units as well as owners and renters in linguistically isolated households. Such support could be financial or through technical assistance.

Enforcement and Penalties

While the Department of Ecology and the Washington State Department of Agriculture have yet to officially update their Memorandum of Understanding, Department of Ecology officials have publicly acknowledged that the Washington State Department of Agriculture will enforce this permit. This leaves far too much regulatory authority in the hands of an agency that cannot legally enforce the Clean Water Act to protect human health.

The permit excludes residents' rights to protect themselves through the courts. Without the possibility of a third-party lawsuit, the inevitable negative impacts of the permit's inadequate pollution prevention and monitoring measures will go unaddressed. In other words, by imposing such loose restrictions on the management of these pollutants and preventing redress through litigation, Ecology effectively leaves the stewardship of human health to the whims of dairy farmers who have not historically prioritized the health of their neighbors over their own profits. In its revisions to the permit, Ecology must instate an option for a third party's right to sue, especially for residents dependent on private well water.

The permit does not impose adequate penalties or consequences to deter noncompliance. Section G14 of the draft permit describes a course of action for, "anyone who is found guilty of *willfully* violating the terms and conditions of this permit..." (emphasis mine). While not unheard of in existing regulation, the burden of proof of a "willful" violation is far too high for a permit that excludes third-party lawsuits. This burden of proof requires the enforcement agency to prove malevolent intent of a violator, which will be impossible in many cases. The Washington State Clean Water Act imposes no such burden of proof on the Department for enforcing violations, and instead assess penalties on "every person who violates the terms or conditions of a waste discharge permit..."²⁴ This permit should be consistent with existing state procedures. Additionally, the standard of violating "terms *and* conditions" (emphasis mine) imposed in the permit is also too high; to remain consistent with state law, the standard should be "terms *or* conditions." In addition to restoring the third party right to sue, the Department must change the conditions for penalty to: "anyone who is found guilty of violating the terms or conditions of this permit..."

Thank you for considering our comments. We strongly encourage the Department of Ecology to re-draft this permit with the meaningful involvement of communities like Sunnyside to create a permit designed to protect their health. We appreciate all that you do to protect the health of Washington's communities and its natural resources, and we continue to encourage you to do so as equitably as possible.

Sincerely,



Ellicott Dandy
Environmental Justice Advocacy Manager
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²⁴ RCW 90.48.144: Violations-Civil Penalty-Procedure. <http://app.leg.wa.gov/RCW/default.aspx?cite=90.48.144>.