

State of Oregon  
Department of Agriculture  
Department of Environmental Quality

Memorandum

**To:** Neil Mullane, Water Quality Division Administrator, DEQ  
Ray Jandl, Natural Resources Division Administrator, ODA

**Date:** June 29, 2009

**From:** Wym Matthews, CAFO Program Manager, ODA  
Ranei Nomura, Policy Analyst, Western Region, DEQ

**Subject:** Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009

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**Comment period** ODA and DEQ provided a public comment period for the proposed renewal of Confined Animal Feeding Operation (CAFO) NPDES General Permit #01-2009 from February 2 to March 16, 2009.

Note: ODA and DEQ issued a previous proposal to renew the general permit on September 11, 2008; however, the U.S. Environmental Protection Agency (EPA) adopted new federal regulations on November 20, 2008 that needed to be incorporated into the renewal. As a result, ODA and DEQ developed a new proposal to include federal requirements for public notice when certain types of changes to animal waste management plans are proposed and corrected minor errors to the 2008 proposal. The new proposal was noticed to the public on February 2, 2009 with instructions that previous comments would not be considered and needed to be resubmitted.

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**Public hearing** A public hearing was held on March 9 in Salem at ODA Headquarters, 635 Capitol Street NE, Salem, at 6 p.m. Four persons attended the hearing. No oral comment was given at the hearing.

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**Organization of public comments and response** Three written sets of comments were received during this comment period. One set of comments was received after the public comment period closed so it was not considered for the record but is noted in the list of commenters at the end of this document. Comments are summarized in the following categories and responses provided accordingly: *General Comments, General Permit Coverage, Permit Conditions, Permit Monitoring Requirements, and Off-Site Manure Transfer.*

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## Summary of Comments and ODA/DEQ Response

### GENERAL COMMENTS

1. The Oregon Cattlemen's Association continues their support and approval of the draft Permit No. 01-2009.

#### ***ODA/DEQ Response:***

ODA and DEQ appreciate the support and participation of the Oregon Cattlemen's Association in the development and implementation of CAFO NPDES General Permit #01-2009.

### GENERAL PERMIT COVERAGE

2. The method of subdividing small and medium CAFOs into "State" category and "Federal" category is confusing and unnecessary. (Oregon Dairy Farmers Association)

#### ***ODA/DEQ Response:***

The subdivision between small and medium confined animal feeding operations is necessary to clarify that small confined animal feeding operations are required to obtain general permit coverage only if they have waste water control facilities or disposal systems for wet wastes. Medium confined animal feeding operations, on the other hand, are required to obtain general permit coverage if they have waste water control facilities or disposal systems for either wet *or* dry wastes. The categorization between state and federal categories was initially developed to distinguish between public notice requirements for confined animal feeding operations that were not addressed by the 2008 EPA regulations for "concentrated" animal feeding operations (73 Federal Register 70418, Nov. 20, 2008). For more information on why DEQ developed these additional public notice requirements, see sections 6.4 (S1.H Public Notice and Participation Requirement) and 6.6 (S3.D Animal Waste Management Plan (AWMP) Updates) in the general permit evaluation report.

In response to this comment, ODA and DEQ made the following minor changes to the general permit and evaluation report to clarify the universe of permit coverage:

- a) Emphasis was added to the definition of *medium confined animal feeding operation* to highlight that wet waste *or* dry wastes operations need permit coverage.
- b) References to *state* and *federal* were removed because they were not needed; the use of the terms *small or medium confined* and *small, medium, or large concentrated operations* remain and adequately describe the differences in CAFOs.
- c) The description of discharge for *small and medium concentrated animal feeding operations* in *Table 1: CAFOs Requiring Permit Coverage* was changed to better reflect the definitions in 40 CFR §122.23.
- d) To accommodate the revisions made to the descriptions of *small and medium concentrated animal feeding operations* in *Table 1*, the reference to the definition of waters of the U.S. at 40 CFR §122.2 was added to the general permit.

In addition, the following statements were added to the general permit to better explain why permit coverage is required and what the permit covers:

- a) *Pursuant to ORS 468B.200, it is the policy of the State of Oregon to protect the quality of the groundwater and surface waters of Oregon by preventing animal wastes from discharging into waters of the state. To implement this policy, ORS 468B.050(1)(d) requires that any person who owns or operates a CAFO listed in S1.A.2 below obtain a permit from ODA and DEQ. As a result, there is no state process to certify that a CAFO does not discharge or propose to*

*discharge to waters of the state and permit coverage is required regardless of discharge status. Coverage under this general permit is required for all CAFOs listed in S1.A.2 unless application is made for an individual permit or an individual permit is required by ODA and DEQ. (See general permit condition S1.A.1 of S1.A When is a Permit Required?)*

- b) *Consistent with ORS 468B.200, ODA and DEQ developed this general permit to prohibit routine discharges of manure, litter, and process waste water from CAFO operations to waters of state. Discharges of manure, litter, or process waste water to waters of the state are only expected to occur under extreme weather conditions and as limited by the conditions of this general permit. Further, 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. (See general permit condition S1.D.1 of S1.D Permit Coverage.)*

3. A State small or medium facility should not be required to remain under the Federal category once the discharge was corrected. This is especially true for a CAFO operator that has a history of compliance, the discharge was an accident and the CAFO operator mitigated the discharge such that contamination was a minimum. The Oregon Department of Agriculture has the ability to apply special monitoring conditions to a permitted CAFO by using permit condition S4.E.1 should they feel that the CAFO requires extra regulation. (Oregon Dairy Farmers Association)

***ODA/DEQ Response:***

To address this concern, language was added to general permit condition S1.3.C.f to clarify that a small or medium confined animal feeding operation will be categorized as a concentrated operation if a discharge to waters of the U.S. not allowed by this general permit occurs and the operator does not or cannot make the change(s) necessary to prevent future discharges to the satisfaction of ODA.

4. ODA should continue to require all state-defined CAFOs to apply for an NPDES permit because the permitting scheme will ensure that all CAFOs have nutrient management plans and monitoring requirements that are protective of state surface and ground waters. Failing to require all Oregon CAFOs to apply for and obtain NPDES permit coverage also unnecessarily subjects those operations to the very real risk of third-party litigation. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

ODA and DEQ continue to require that CAFOs regulated by ORS 468B.050(1)(d) and 40 CFR §122.1(b)(2)(i) obtain coverage under Oregon's CAFO NPDES General Permit #01-2009. As previously allowed by the general permit and continued in the renewal, a CAFO may apply for an NPDES or Water Pollution Control Facilities individual permit (general permit condition S1.A.2) or be required to obtain an individual permit pursuant to OAR 340-045-0033(10). No changes were made to the permit in response to this comment.

5. Facility-specific NPDES permitting is preferable to a one-size-fits-all general permitting scheme. ODA should require CAFOs to obtain individual permits because the proposed general permit fails to account for varying locations, soil conditions or other site-specific characteristics. The federal regulations stipulate that a category of sources can be covered by a general permit only if the facilities "involve the same or substantially similar types of operations; discharge the same types of wastes or engage in the same types of sludge use or disposal practices; require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; [and] require the same or similar monitoring." 40 C.F.R. § 122.28. Under the Clean Water Act (CWA), individual permits should be required for CAFOs because the general permit would not take into account the water quality and designated uses of the waters surrounding a particular CAFO. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

ODA determines whether an applicant will be allowed to register to the general permit or required to obtain an individual permit based on the CAFO's location, size, method of waste management, and other related factors. As discussed in the general permit evaluation report, the use of a general permit for regulating Oregon CAFOs is appropriate because the waste characteristics from different CAFOs are substantially similar. In addition, the limitations on discharge and land application, required best management practices, and other requirements for CAFOs covered by the general permit are similar as well. Site-specific conditions are adequately addressed by the general permit requirement for the operator to develop and implement a site-specific animal waste management plan (AWMP). The AWMP is also reviewed and approved by ODA to ensure that it is adequate to deal with site-specific conditions. Other states and EPA have successfully issued general permits for CAFOs and there is no prohibition against doing so provided the CAFOs meet the criteria for permit coverage established by the general permit. In any event, OAR 340-045-0033(9) provides a mechanism for ODA to revoke general permit coverage and require an individual permit instead or for any interested person to petition ODA to require a facility be placed under an individual permit. No changes were made to the permit in response to this comment.

6. ODA should refuse to issue NPDES permits, general or individual, to new CAFO operations that would be located in impaired watersheds. This prohibition would be similar to the Three Basin Rule that places restrictions on certain activities, including the approval of new CAFOs, which would result in the discharge of waste into the sub-basins of the Clackamas, McKenzie and North Santiam Rivers to "preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life." OAR 340-041-0350. This rule emphasizes legitimate concerns given the history of water pollution associated with CAFOs, that these facilities degrade water quality. Any new CAFO located in an impaired watershed would invariably discharge waste and other contaminants that would only exacerbate existing pollution problems. A moratorium on CAFOs in impaired watersheds is the only way to ensure the State Agencies fulfill their legal obligation to "take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by . . . [r]equiring the use of all available and reasonable methods necessary," ORS 468B.020. Any permit for an existing CAFO that is located in an impaired watershed should not only be an individual permit, but should also require additional monitoring, large buffers between the facility and any surface waters, and other measures to minimize the prospects of contributing to the increased impairment of these waters. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

ODA determines whether an applicant will be allowed to register to the general permit or be required to obtain an individual permit based on the CAFO's location, size, method of waste management, and other related factors, such as whether the operation is located within a basin regulated by OAR 340-041-0350. ODA and DEQ disagree that a CAFO in an impaired watershed would invariably discharge wastes and exacerbate existing problems. CAFOs required to obtain general permit coverage comply with Oregon's antidegradation policy as discussed in the general permit evaluation report because the general permit prohibits discharge in most cases and allowable discharges must not cause or contribute to a violation of state water quality standards (see *Section 4 Applicability of Antidegradation Policy and TMDLs*). As the evaluation report states, OAR 340-041-0350(5) allows renewal of permits within the Clackamas, McKenzie, and North Santiam subbasins provided there is no increase in discharge load. Since the proposed permit requires that wastes be applied on land at agronomic rates and discharge is essentially prohibited, there will be no environmentally significant increase in discharge load. New CAFOs in these subbasins are allowed to register under the general permit provided that their waste loads are applied on land at agronomic rates because application on

land at agronomic rates is not considered an increase in wasteload pursuant to OAR 340-041-0350(5)(c). Consistent with ORS 468B.020(2)(b), the general permit is one of the available and reasonable methods used by DEQ and ODA to prevent pollution and protect water quality. No changes were made to the permit in response to this comment.

### **PERMIT CONDITIONS**

7. The CAFO permit does not provide adequate requirements to protect water quality because the terms do not provide an outright prohibition on the discharge to surface and ground waters. The CAFO permit does not provide enforceable standards that aid permittees in eliminating discharges to achieve the CWA's goal of zero discharges to waterways. ODA should incorporate more stringent discharge limitations to ensure that CAFOs do not impair the water quality of Oregon's waters. Northwest Environmental Defense Center (NEDC) urges ODA to repeal the 25-year, 24-hour storm exception for all CAFOs because this exception will result in the risk of significant harm to public health and the environment when the inevitable storm event occurs. EPA explains in the preamble to its January 2001 proposed CAFO rules that the 25-year, 24-hour storm discharge exemption is an engineering standard for storm water detention devices. See Preamble, NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations; Proposed Rule, 66 Fed. Reg. 2960, 3006 (Jan. 12, 2001). It is not appropriate to automatically carry over this exemption to another form of waste technology, especially given the fact that there are alternatives available to contain the waste under these circumstances. EPA also acknowledges that "[s]ection 101(a) of the Clean Water Act states that elimination of discharges down to zero is to be achieved where possible." *Id.* The proposed 25-year, 24-hour storm exemption would undercut efforts to contain the manure of all animal types that strive to achieve a zero discharge standard by encouraging less ambitious waste treatment technologies that allow discharges in certain circumstances. (Northwest Environmental Defense Center)

#### ***ODA/DEQ Response:***

The general permit is protective of water quality because it requires that the permittee meet both the federal technology-based effluent limitation for concentrated animal feeding operations and a water quality-based effluent limit. The federal technology-based effluent limitation requires that structures and practices be designed and operated to prevent discharge to surface waters except during rainfall events that are greater than 25-year, 24-hour rainfall event and the water quality-based effluent limit prohibits the permittee from violating state water quality standards. Additionally, to qualify for the rainfall exception, the permittee must be able to demonstrate to ODA that all waste management and storage facilities are designed and constructed to contain all manure, litter, and process waste water including the runoff and direct precipitation from a 25-year, 24-hour storm event and that the facilities were properly operated and maintained during the exception event. To further protect water quality, the general permit also requires CAFOs to develop AWMPs and comply with land application limits (e.g., application at agronomic rates) and various management practices (e.g., requirements for setbacks, soil monitoring, inspections, recordkeeping, and reporting) and smaller confined animal feeding operations to comply with EPA effluent limit guidelines (ELGs), which were developed for large concentrated animal feeding operations. As the commenter correctly asserts, the 2001 preamble describes the 25-year, 24-hour rainfall event as an engineering standard used for construction of storm water detention structures; however, the preamble also describes how the 25-year, 24-hour rainfall event is used in the ELGs. In developing ELGs, EPA performs extensive reviews of existing treatment technologies to develop effluent limitations based on best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), best available technology economically achievable (BAT), and new source performance standard (NSPS). As a result of this extensive review, ODA and DEQ believe that the ELGs developed by

EPA are appropriate. For more information on EPA's process, the commenter is directed to *Development Document for the Final Revisions to the NPDES Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations* (EPA-821-R-03-001, December 2002).

In reviewing this comment, ODA and DEQ determined that general permit condition S2.B.1, which allows the storm exception for all CAFOs, except new source swine, poultry, and veal large concentrated animal feeding operations, was incomplete. As a result, S2.B.1 was amended to clarify that the production area must be operated in accordance with the applicable inspection, maintenance, recordkeeping, and reporting requirements of this permit to allow for the storm exception. No other changes were made in response to this comment.

8. ODA should provide further guidance and measureable and enforceable requirements on the proper application of waste to help permittees comply with this permit term and actually minimize surface water impacts. In the absence of more specific guidance, this permit term will not provide a meaningful reduction in pollutant loading from land applications, the most common CAFO pollution problem. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

The general permit provides specific guidance on the proper application of all wastes clearly identified in the permittee's AWMP and includes requirements for monitoring, inspection, recordkeeping, and reporting of CAFO activities. In addition to the land application limitations in the general permit that clearly describe when and how applications are to be made, the general permit requires the permittee to develop and implement an AWMP according to specific guidelines and consistent with Natural Resource Conservation Service (NRCS) Conservation Practice Standard *Nutrient Management Code 590* for Oregon. Further, the AWMP is reviewed and approved by ODA to ensure that the appropriate protocols are developed for land application of waste and pollutants are not discharged to groundwater or surface water. In reviewing this comment, ODA and DEQ determined that the requirement to include the timing of manure, litter, and process waste water applications as an AWMP element was mistakenly omitted from the proposed permit. As a result, this requirement was added to the final permit at S3.C.3.g.vi. In addition, *S2.I Maintaining Compliance if System Fails* was revised to clarify that the permittee must control all application and discharges upon reduction, loss, or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided regardless of the reason for failure (i.e., the second sentence of S2.I referred to failures due to power loss and was deleted). No other changes to the general permit were made in response to this comment.

9. ODA should eliminate the allowance for permittees to apply manure, litter, or process waste water to frozen soil. Winter is the least efficient time to fertilize the soil and is the season where permittees are at the highest risk of unauthorized discharges. Manure does not easily infiltrate frozen soil because of its impermeability. When combined with increased precipitation or the thawing of snow, the likelihood of runoff being discharged into protected waters dramatically increases. S2.C(4) fails to adequately mitigate this risk of discharge. If ODA chooses to keep this provision and take the environmental gamble, the Agencies should conduct a field-by-field inspection before winter applications, such as Michigan's CAFO general permit requires. ODA proposes no such provisions and leaves this determination to the individual producers via their AWMPs. This self-regulation and the exception to the prohibition on frozen soil application are inadequate to protect our waters in the colder months. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

Frozen soil conditions are not a statewide occurrence in Oregon and generally are not as severe in duration as conditions experienced in the Midwest and northern states. As a result, ODA and DEQ believe that applications to frozen soil may be made if the CAFO has specific procedures for applying and monitoring frozen soil applications that are approved by ODA prior to any such application being made. These procedures would be included in the CAFO's AWMP, which the public will have a chance to review and comment on prior to ODA granting approval. The general permit requires that the permittee describe the field(s) where application to frozen soils is expected, estimate the waste amounts and types to be applied and the timing of applications, and provide aerial photo(s) identifying all areas and surface water bodies within 1,000 ft. of the boundaries of the receiving field(s), soil map(s) identifying soil types for receiving field(s), and topographic map(s) for receiving field(s). The permittee is also required to describe the structural practices in place to ensure that no discharges to surface water occur during application and after the soil thaws, the method used to determine when soil is frozen, and management practices to be followed when planning an application and during and after applications to frozen soil, including monitoring and reporting requirements to ensure that there is no discharge to surface waters and groundwater and frozen soil application procedures are being followed.

Typical monitoring of frozen soil applications must include periodic visual assessments to ensure that runoff of applied manure to surface waters does not occur and excessive application of manure is prevented (allowable manure application amounts on frozen soil are much less than applications made to non-frozen soils to prevent runoff should it rain or temperatures warm and melt snow). In addition, ODA has historically conducted inspections of permitted CAFOs on an annual basis and expects to continue this frequency in the future. These inspections provide ODA with knowledge of specific field conditions to further assess the risk of unauthorized discharges from potential applications to frozen soil. If ODA determines that the CAFO's procedures are insufficient or the risks of such applications reaching groundwater or surface water are too high, applications to frozen soil are not allowed. No changes were made to the general permit in response to this comment; however, ODA and DEQ intend to update ODA's *Internal Management Directive for Frozen Soil* to provide further guidance to staff on reviewing AWMPs that propose frozen soil applications.

10. The CAFO permit language for the setback requirement does not ensure that setbacks will provide actual environmental benefits. The permit does not define "vegetated buffer" or provide guidance on the setback requirement, thus ODA should clarify the scope of this requirement to avoid confusion and implementation of non-beneficial buffers. ODA has allowed for an exception for permittees to utilize any excuse to avoid the setback or vegetated buffer requirement. Yet, ODA has not provided any guidance as to what circumstances a permittee could argue that a setback or vegetated buffer should not be used. There is no language in the permit as to what such "demonstration" is necessary or how this exception correlates to water quality protection or CWA compliance. Yet, the federal guidelines describe a more specific definition of an "alternative," stating that a CAFO may demonstrate the prescribed buffers are unnecessary "because implementation of alternative conservation practices or field specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback." 40 C.F.R. §412.4. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

The definitions of setback and vegetative buffer and the language further describing the guidelines for alternatives were added to the general permit. The general permit evaluation report was also modified to reflect this change.

11. Permittees are required to “provide adequate storage capacity for solid and liquid wastes at all times” but the permit fails to emphasize the mechanisms by which to do so. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

S2.E.1 of the general permit requires that the permittee provide adequate storage capacity for solid and liquid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the land application limitations of the general permit. S2.E.2 of the general permit also requires the permittee to design, construct, operate, and maintain all waste storage facilities consistent with its AWMP and that new and modified construction of waste facilities be approved in advance and prior to construction by ODA in conformance with ORS 468B.055 and OARs 340-051 and 603-074. OAR 340-051 provides additional guidelines on the design and operation of animal waste control facilities. ODA will also review the permittee’s specific calculations for storage capacity, which are required to be in the permittee’s AWMP by S3.C.3(a) of the general permit, to determine if the storage capacity is adequate for the site-specific characteristics of each CAFO. ODA also uses the Oregon Animal Waste Management (OWRAM) software from NRCS as a tool to determine if storage facilities are adequately sized and will change to NRCS Oregon Oneplan software once it has been finalized. No changes were made to the general permit in response to this comment.

**PERMIT MONITORING REQUIREMENTS**

12. The CAFO permit neither satisfies the state and federal regulatory requirements for monitoring, nor provides ODA with information sufficient to determine whether or not the management practices of a specific CAFO are meeting the requirements of the CWA. EPA regulations, applicable to NPDES permit programs administered by delegated states, require all NPDES permits to specify the “required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity.” 40 C.F.R. § 122.48(b) (emphasis added.) All applicable reporting requirements must be based on the impact of the regulated activity and as specified in § 122.44. *Id.* at §122.48(c). The requisite detailed monitoring includes each pollutant found to represent a threat to water quality and the mass (or other measurement) of each pollutant limited in the permit. *Id.* at §122.44(i).

- The permit should incorporate monitoring and reporting requirements that reflect the wide range of pollutants that CAFOs can, and do, discharge to surface and ground waters of the state. Instead of unlawfully exempting CAFOs from traditional monitoring, record keeping and reporting requirements in the event of pollutant discharges, ODA should consider mandating that the requirements imposed on other industrial dischargers be similarly required in the CAFO general permit. There is no reason to treat CAFOs differently than any other discharger in any other industry. The waste must be analyzed for at least the following parameters: pH, nitrogen, ammonium, phosphorous, BOD, percent solids, hormones, antibiotics, pathogens, heavy metals, and other site-specific pollutants of concern.
- The permit should require more soil tests on at least an annual but preferably a quarterly basis, more frequent monitoring of land application areas, water quality monitoring in drainage ditches and in any stream, river, or lake that borders a CAFO or land application area, sampling at drainage tiles, and groundwater beneath the production and land application areas. Monitoring should occur before manure applications, after major storm events, and quarterly throughout the permit term, and analyzed for at least the following parameters: concentrations of total nitrogen, total phosphorus, total zinc, total copper, pH, ammonia, fecal coli form, and other pollutants likely to be discharged. Monitoring results should be reviewed regularly by agency staff.

(Northwest Environmental Defense Center)

***ODA/DEQ Response:***

The monitoring requirements in the general permit adequately reflect the level of monitoring needed to determine compliance with the narrative effluent limitations required by 40 CFR Part 412 Concentrated Animal Feeding Operations Point Source Category. The monitoring requirements are also consistent with monitoring requirements developed by EPA in 40 CFR §122.42(e) and 40 CFR Part 412 to satisfy 40 §CFR 122.44(e)(2)(i). Discharges from CAFOs are different from traditional industrial and municipal point source discharges and the monitoring requirements for CAFOs were developed to address these differences. Unlike industrial and municipal point source waste water discharges, CAFOs do not continuously discharge from a single outfall and discharges are not typically planned events; they are usually associated with very large storm events, inadequate maintenance, or accidents due to equipment failure or operator error. As a result, discharge locations may be diffuse and difficult to monitor. Additionally, CAFOs are located in agricultural areas, which can complicate sample results with possible pollutant contributions from adjacent non-CAFO agricultural sources. EPA also considered instream monitoring requirements for concentrated animal feeding operations for its 2003 rulemaking (68 Federal Register 7176, Feb. 12, 2003) but rejected establishing such requirements because of the difficulty of designing and implementing an effective surface water monitoring program through a national rule that would be capable of detecting, isolating, and quantifying the pollutant contributions reaching surface waters from individual concentrated animal feeding operations. EPA also believed that the addition of instream monitoring did not, by itself, achieve any better controls on the discharges from concentrated animal feeding operations than the controls imposed by the 2003 EPA regulation. To address the difficulties in sampling CAFO discharges, the general permit does allow ODA to impose additional monitoring requirements if deemed necessary by site-specific conditions (general permit condition S4.E.1). ODA and DEQ also added a provision to the proposed renewal of the general permit that allows ODA to require groundwater and/or surface water monitoring from CAFOs that have more than two discharges within a 24 month period if deemed appropriate by ODA (general permit condition S4.E.2). ODA and DEQ believe these conditions for additional monitoring are the best way to address the challenges of characterizing discharges from CAFOs and their impacts. No changes were made to the permit in response to this comment.

13. Without monitoring groundwater, CAFOs, ODA, and the public will have no method to learn about groundwater contamination and threats to public health. ODA should make groundwater monitoring a non-discretionary permit requirement to fulfill Oregon's policy of preventing groundwater contamination. ORS 468B.155. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

ODA has required groundwater monitoring at several large concentrated animal feeding operations in Groundwater Management Areas (GWMAs) as part of an individual permit requirement or through the *S4.E Additional Monitoring* condition in the general permit. In addition, DEQ currently monitors wells throughout the state to evaluate trends in groundwater quality. ODA and DEQ do not believe it is necessary to require groundwater monitoring at all CAFOs regardless of size and location. No changes were made to the permit in response to this comment.

**OFF-SITE MANURE TRANSFERS**

14. It is important for the department to abide by permit conditions S4.C.D.2 as written in the permit for manure export. The department must not require additional requirements for manure export (unless the department sees the need to establish a special permit condition but only after review of permittee's case file and on a case by case basis). Inspection of export manure should only occur if

the department receives a water quality complaint and that the inspection should be completed by the local Agriculture Water Quality Specialist (unless the exported manure is received by another permitted CAFO operation). (Oregon Dairy Farmers Association)

15. The AWMP requirements fail to provide for adequate handling and regulation of manure that is transferred off-site. ODA must ensure that waste transferred off-site does not degrade Oregon waterways or jeopardize human health. ODA must insure that animal waste from CAFOs is properly regulated from the point of its creation to the place where the waste is ultimately applied, whether it is on-site or off. To ensure that the off-site transfer of CAFO wastes does not create a loophole for CAFOs to evade land application requirements based on soil uptake, the recipient of the waste must be identified and regulated via the CAFOs' AWMP to ensure that the recipients of the waste apply them in accordance with proper agricultural practices. The recipient should provide a certification to the CAFO supplying the waste that acknowledges that its waste application activities are subject to both the CAFO general permit and the supplier-CAFO's AWMP. The recipient's failure to comply with the terms and conditions in the CAFO general permit and the supplier's AWMP must remain the responsibility of the CAFO permit holder as the CWA is a strict liability statute. Furthermore, it is essential for the CAFO to maintain export information, transport records, and to provide the manure hauler or manure recipient with site-specific management information. These provisions must be included to prevent CAFOs from evading liability under the CWA by simply transporting wastes off site. (Northwest Environmental Defense Center)

***ODA/DEQ Response:***

The general permit requirements for transfer or export of manure, litter, or waste water off-site are sufficient to track such actions and consistent with EPA regulation. Once manure, litter, or waste water is exported or transferred off-site to a third party that party is responsible for compliance with state and federal regulations, which may include solid waste, compost, and fertilizer requirements, as well as compliance with the CWA and applicable state Agricultural Water Quality Management Area rules. No changes were made to the permit in response to these comments.

**List of Commenters**

1. Jim Krahn, Executive Director, Oregon Dairy Farmers Association, 10505 SW Barbur Blvd., Portland, OR 97219
2. Kay Teisl, Executive Director, Oregon Cattlemen's Association, 3415 Commercial St. SE, Ste. 217, Salem, OR 97302
3. Elizabeth Zultoski, Northwest Environmental Defense Center, 10015 SW Terwilliger Blvd., Portland, OR 97219
4. *Submitted after close of comment period:* Lesley Adams, Rogue Riverkeeper, Klamath-Siskiyou Wildlands Center, PO Box 102, Ashland, OR 97520

**Attendance at March 9, 2009 Public Hearing**

1. Roger Beyer, 39486 S. Cooper Rd, Molalla, OR 97038
2. Pete Castleberry, 10015 Terwilliger Blvd, Portland, OR 97219
3. Bernie Faber, Oregon Dairy Farmers Association, 7550 Wallace Rd, Salem OR 97304
4. Kathy Hessler, 10015 Terwilliger Blvd, Portland, OR 97219