



Gaps in Oregon Law regarding regulation of CAFOs

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While industry must abide by local, state, and federal regulations designed to protect communities from contamination and ensure that water and air are adequately protected from pollutants, in Oregon, agriculture has largely been afforded a broad brush exemption from many of those same rules.

Historically, Oregon has worked to protect farms from burdensome regulations. Yet as operations have grown in size and scale, the state has not modernized its rules to ensure that contaminants from large-scale operations are adequately mitigated.

This is particularly true with concentrated animal feeding operations or “CAFOs,” which have been exempt from many of the regulations that any other non-agricultural industries are required to adhere to.

This memo is designed to give you an overview of some of the regulatory loopholes that large-scale poultry CAFOs are exploiting in Oregon.

Inadequate Regulations for proposed poultry CAFO sizes

Oregon’s laws are not equipped to adequately mitigate the environmental and community impact from poultry operations that are the size of those being proposed today.

For decades, 4-5 broiler barns per operation were standard, and in many cases, farmers would build a few poultry houses to add supplemental income to their other farm enterprises. However, modern poultry production operations are increasing in size and it is now commonplace for a single operation to include 8-10 broiler chicken barns and to be the sole enterprise at the site. To mitigate the impacts of larger operations, some states have capped the number of barns at a single location.

The poultry operations that are being proposed in Oregon are among some of the largest poultry operations in the country. J-S Ranch will have 11 barns, Hiday is proposing 16, Evergreen Ranch is proposing 16, and the Aurora site will have 12. Not only will there be a large number of barns at each site, but the barns will be much larger than what has been historically built.

According to the National Agricultural Statistics Service, in the 1980s chicken houses were about 16,000 square feet, or 400 feet long and 40 feet wide. Today’s chicken houses are over twice the size and are on average 36,000 square feet, or 600 feet long and 60 feet wide.

Below is a table outlining the size difference between a typical older operation and what is being proposed at JS Ranch in Scio, the smallest of the four proposed sites:

	Old Barns	New Barns	JS Ranch
Barn Size and birds per barn	400x 40 with 20,000 birds	600x60 with 40,000 birds	652x60 with approximately 48,333 birds each
Number of barns per operation	4	10	11
Birds per facility per flock	80,000	400,000	580,000
x 6 flocks/year - total number of birds per year	480,000	2,400,000	3,480,000

More birds means more manure that is produced and must be managed. This increased number of birds per barn also means there are more trucks on the road, more feed that is required, more water needed, and more emissions released from these mega-poultry houses.

The animal numbers in the proposed poultry expansion in Oregon are 10-13 times larger than the baseline animal number contemplated by Oregon’s National Pollutant Discharge Elimination System (NPDES) permit program for “dry waste” broilers.

At the same time that federal, state, and local laws have relaxed, CAFO numbers, size, and density have increased. Existing laws define mega-poultry operations as a permitted agricultural activity and allow for the siting of these industrially-sized facilities on exclusive farm-use zoned land, without consideration of impacts. As a result these operations are being proposed in rural communities, next to schools, churches and on the banks of waterways, with threatened species.

Federal Laws pertaining to CAFO Regulation

Is Oregon’s surface and ground water protected from CAFOs under federal law?

No and the state is only informed (and a permit is only required) when CAFOs preemptively say they are going to discharge pollutants.

- o The Environmental Protect Agency (EPA) under the Clean Water Act regulates CAFOs as National Pollutant Discharge Elimination System (NPDES) point sources and requires all CAFOs to have permits because of CAFOs discharge pollutants.
- o In 2012, the EPA was sued by the industry for this requirement. As a result, Oregon began to follow the less restrictive approach, only requiring NPDES permits for CAFOs that “propose” to discharge (instead of those that “actually” discharge to waters of the state, which is all CAFOs).

Is Oregon’s air protected from CAFO emissions under federal law?

No, CAFO emissions are not actively regulated in any state by federal law.

- The EPA under the Clean Air Act has the authority to regulate CAFO emissions.
- In 2003, the EPA entered into a private agreement with industry that exempted CAFOs from air emission laws until new emission estimating methodologies were established.
- As of 2023, no emission methodologies have been finalized and CAFO emissions are not regulated in any state, including Oregon.

What are some additional federal laws CAFOs could be regulated under?

- o Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Emergency planning and Community Right to Know Act (EPCRA) Hazardous Substance Reporting
 - CERCLA and EPCRA requirements do not apply to CAFOs because In 2018, the EPA amended their hazardous substance reporting rules to exempt CAFOs.
- o NEPA Environmental Review
 - Some CAFOs that receive federal funding may be subject to NEPA review.
 - However, NEPA environmental reviews are rarely undertaken by CAFOs. CAFOs and integrators, in response to public pressure for thorough NEPA review, have turned more to private funding, thus escaping NEPA’s public information, participation, and environmental analysis requirements.

Oregon’s CAFO Permitting Process

In Oregon we have significant gaps in our own NPDES and Water Pollution Control Facility (WPCF) permitting that allow CAFOs to continue to pollute unregulated. These gaps are in direct opposition to the goals and intent of these regulations. The table below outlines the goals of Oregon’s NPDES and WPCF permitting process as compared to its function.

	NPDES ¹	WPCF ²
Goal	Prohibit discharges to surface waters	Prohibit discharges to groundwater
Function	Permits actually function as “permits to pollute”, allowing discharges to surface water of CAFO processes, wastes, and operations under certain terms and conditions	Permits actually function to allow discharges to groundwater of manure, litter, or process wastewater under certain terms and conditions
Examples of exceptions	Pollution must not exceed effluent limits, even though the Clean Water Act prohibits pollution from occurring in the first place.	Pollution only needs to be “contained” even though the permit’s goal is to “prevent” pollution from occurring in the first place.
	Production area pollution is allowed when certain rainfall events cause overflows at certain waste management facilities.	Production area pollution must be “managed” to “minimize impacts” to groundwater.

¹ See, e.g. NPDES General Permit # 01-2016 (Exp. Feb. 28, 2021, administratively extended) § S2A., S2.B., S2.C.

² WPCF General Permit # 01-2015 (Exp. Sept. 30, 2025) Sections S2.A, S2.B, S2.C.

	Production area pollution is allowed when other inspection, maintenance, recordkeeping, reporting requirements are met.	Seepage is allowed if it does not exceed ODA-approved rates.
	Waste storage and land application seepages are allowed if they do not violate state groundwater quality protection standards.	
	Land application agronomic rates must be followed.	
	Pre and post rainfall applications allowed in lieu of storage overflow.	

Oregon’s Draft Permitting Process

After the Oregon Department of Agriculture (ODA) shut down the Lost Valley mega-dairy in 2018, the ODA amended their CAFO permitting process.

- ODA’s 2021 Draft CAFO NPDES Permit introduced Large Tier 1 and Tier 2 categories into the permitting framework. ODA has not finalized this permit as of 2023.
- For dry litter broiler operations, Large Tier 1 is 125,000-349,999 and Large Tier II is 350,000 or more. From a numbers standpoint, the proposed Foster Farms operations should be categorized as Large Tier II.

However, only a few additional provisions of the 2021 Draft Permit apply to Tier II CAFOs and only apply to NPDES permits. ODA approaches dry litter broiler operations as WPCF permittees and thus the tier 1 and tier 2 approach does not apply to these proposed Foster Farm operations. In the Tier II process, which does not apply to these Foster Farms operations, the requirements include:

- o Two-step permitting process for Tier II requiring ODA approval at construction phase and prior to populating with animals for operation.³
- o Notice of water supply source or quantity changes for Tier II.⁴

Other Oregon Laws the benefit CAFOs not Communities

Doesn’t Oregon’s Land Use Plan regulate where CAFOs can go?

Not really. The goal of the [state land use plan](#) is to protect Oregon’s agricultural lands and high valued soil.. Even though the proposed Foster Farms operations are more industrial in nature, they are not classified as such under the state land use law and instead are defined as agriculture and considered an outright permitted use on lands zoned as exclusive farm use (EFU) including on high-valued soils.

How does Oregon’s Right to Farm Law protect new CAFOs over existing farms?

Right to farm (RTF) laws were originally established to protect existing farmers from nuisance complaints and legal action from neighbors who may have recently moved to a farming area and were not used to the sounds and smells of a working farm. But in recent decades, with the increased size of

³ Draft CAFO NPDES General Permit # 01 (Sept. 16, 2022) S1.C.5 and S2.F

⁴ Draft CAFO NPDES General Permit # 01 S3.C.3 and S4.D.3

CAFO facilities, RTF laws are now used to protect new CAFOs and similar large-scale factory-style operations from opposition by existing neighbors. In Oregon, the state's RTF was scaled back in 1995 without regard for the size of incoming operations or who owned it. This means that Oregon's RTF law is currently working to protect CAFOs and not the small farmers and ranchers that were farming in the area first.

How do CAFOs exploit the Livestock Watering Groundwater Exemption?

Oregon's Livestock water exemption, like Oregon's Right to Farm law, was originally intended to ensure that Oregon homesteaders and family-scale ranchers could water their livestock from wells without needing a special groundwater certificate - or water right - to do so. When the stock watering exemption was put in place, the modern size and proliferation of CAFOs was unfathomable and as a result, the number of animals that could use the exemption was never capped.

Currently CAFOs are able to withdraw an unlimited amount of Oregon's groundwater without a permit or regulatory oversight, as would be required by other non-livestock agriculture and non-agricultural industries. As other states are tightening up restrictions on groundwater withdrawal, Oregon's exemption for livestock watering is attractive to CAFOs and integrators looking to expand their operations.

Local Gaps in CAFO Regulation in Oregon

Oregon county governments do not have authority to regulate the siting of CAFOs on exclusive farm use (EFU) zoned areas because CAFOs are a permitted agricultural activity and allowed outright on EFU land. Further, at the county or local-jurisdictional level there is not a public noticing requirement for new or expanding operations. In many counties, ag buildings do not require permits and are exempt from preemptive fire mitigation technology, such as fire sprinklers. This is of particular concern for CAFOs that are extremely fire prone and are sitting closer to forested areas.

How do communities find out about an impending CAFO?

- o There are no public notice requirements for CAFOs when acquiring land or financing, building utilities, structures, roads, or access permits.
- o There are no public notice requirements for land use compatibility statements (LUCS) submittal, review, or allowance.
- o Where there is public notice, such as on water rights applications, it occurs swiftly and without easy access to information to know whether the applicant is a CAFO.
- o Many communities report finding out about an impending CAFO after seeing construction on the property.
- o There is a public-noticing requirement during the CAFO permitting process, however, The Oregon Department of Agriculture has more than demonstrated that they view the public comment as simply proforma.