



March 21, 2019

Chair Senator Michael Dembrow
Senate Committee on Environment and Natural Resources
Re: Hearing on SB103, SB104, and SB876

Chair Dembrow and Members of the Committee:

We urge you to support SB103 and send it to the full Senate with a “do pass” recommendation. We do not support SB876 because this bill will not create the change we need to avoid another Lost Valley Farm disaster and will not protect Oregon’s communities, farmers, animals, and environment. Please accept this testimony on behalf of Center for Food Safety (CFS).

Background and Credentials

CFS’s mission is to empower people, support farmers, and protect the earth from harmful industrial agriculture. CFS promotes truly sustainable, ecological farming as the only way both feed humanity and protect our health, rural economies, and the environment that sustains us. Through groundbreaking legal, scientific, and grassroots action, CFS protects and promotes the public’s right to safe food and a healthy environment. CFS has nearly one million members nationwide and tens of thousands in Oregon.

CFS has long had a program to address industrial animal agriculture, or Animal Factories, through which it seeks to enforce federal and state environmental protection laws (including the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and more) and improve the regulatory system to protect our environment and people from the pollution, public health disasters, and economic harms from animal factories. This work includes enforcement of these laws, especially the CWA and RCRA, against mega-dairies that pollute surrounding communities and endanger public health, as well as work at the regulatory and legislative levels to improve protections at the outset. CFS commented on the proposed CWA NPDES permit for Lost Valley and has actively worked to ensure this mega-dairy follows Oregon and federal law since it was proposed. When it became clear that Lost Valley would continue to grossly violate its permit, and the state’s legal action against the owner Greg te Velde was insufficient to stop the endangerment, hundreds of CFS members called on the state to revoke the NPDES permit in June, 2018. Throughout the Lost Valley catastrophe, CFS has worked to represent the interests of its members and the public to prevent pollution and negative public health impacts from any new or expanded mega-dairies in Oregon, including any Lost Valley successor.

TESTIMONY ON SB103

Weak rules have allowed industrial mega-dairies to push family farmers off the land, pollute Oregon’s air and water, and threaten animal welfare. Oregon is not historically a factory farm state,

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and we cannot allow Oregon to become the next hotbed for factory farm production when we have seen the dire effects of such policies in other states. The Lost Valley disaster revealed that we need a “time out” on any new or expanded mega-dairies until Oregon acts to protect its communities and special places.

We are concerned that Oregon is now a magnet for these mega-dairy facilities, posing increased risks to human health and the environment. As the mega-dairy industry in Oregon grows, smaller family farms are displaced in favor of industrial operations that house thousands of cows in confined spaces and overproduce cheap milk (with costs externalized to Oregonians). These factory farms create colossal volumes of waste, pollute the air and water, contribute to climate change, threaten animal welfare and wildlife, and undermine the economic vitality of our rural communities.

When it comes to animal waste and overproduction of milk, size does matter.

SB103 would put into effect a moratorium on “mega-dairies,” defined in the bill, until protections for air and water and family farms are put into place. It is important to recognize that these massive dairies with thousands of cows are simply not the same as smaller dairies, and to the contrary cause outsized problems. Large confined animal feeding operations (CAFOs) are a major source of water pollution, including ground and surface water, and air pollution, given their collection of massive amounts of animal waste in a single location. In 2018, Oregon’s large dairy CAFOs produced 5 billion pounds of manure — 42 times the waste produced by the population of Portland.¹ Lost Valley alone was going to produce 187 million gallons of wastewater each year at full capacity. However, this waste is not treated like municipal waste, and its concentration on a relatively small parcel of land spells serious air and water pollution concerns for the surrounding community.

Mega-Dairies = Massive Water Pollution

Contaminants in animal waste include excess nutrients, pathogens and bacteria, and the pharmaceuticals that confinement operations need to quell disease outbreaks among overcrowded animals. Excess nitrogen in cow waste turns to nitrates, and excess levels in drinking water threaten public health by causing a range of health issues from “blue baby syndrome” to reproductive and cardiovascular problems, to cancer.² To deal with the excessive waste accumulated in a mega-dairy, operators often use the “lagoon and spray” system, collecting waste in open pits called “lagoons” and spraying it onto fields (or exporting it to farms to be sprayed on those fields). However, these lagoons are designed by their very nature to leak, contaminating groundwater, while the spray system

¹ ODA, *Oregon AFO Spreadsheet 2018* (2018). Available on file at CFS; EPA, *Risk Assessment Evaluation for Concentrated Animal Feeding Operations*, 9, EPA/600/R-04/042, (May 2004); World Population Review, *Portland, Oregon Population 2018*, at 2.

² Expert Report of Robert Lawrence, M.D., *Community Association for Restoration of the Environment, Inc. and Center for Food Safety, Inc., v. Cow Palace, LLC* (E.D. Wash. No. CV-13-3016-TOR), available at <http://charlietebbutt.com/files/CP/238%20-%20Expert%20Report%20of%20%20Robert%20Lawrence.pdf>.



to use with waste often results in over-application to fields and crops that cannot utilize all the nutrients, which then leach into groundwater or runoff to surface water.³

It is not a question of whether mega-dairies cause mega-sized pollution. They do. Not even including the potential for spills from lagoons and production areas, the regular operation of massive lagoon and spray operations results in groundwater contamination with dangerous nitrates. The Lower Umatilla Basin Groundwater Management Area (GWMA) was designated as such for unsafe levels of nitrates in groundwater nearly 3 decades ago. In the 2011 Sources Report, the state found that Threemile Canyon, a 70,000 head mega-dairy, was a major source of the nitrates plaguing the GWMA.⁴ Indeed, CAFOs (mainly Threemile) contribute over 50% of the nitrates in the area.⁵ Since 2001, when Threemile was permitted, the GWMA continues to have dangerous levels of nitrate contamination in the groundwater that the surrounding communities use for drinking and farming. This was once of the many reasons that over 4,000 commenters urged Oregon Department of Agriculture to deny Lost Valley's permit, as it was replacing a poplar tree farm (which is a nitrate sink) with a major new source of nitrates in an area *already contaminated at unsafe levels*. The lack of strong enough regulations to prevent such an illogical (and ultimately disastrous) choice is exactly why a moratorium is now needed to ensure that such a misstep is not made again.

Mega-Dairies = Biggest Emitters of Ammonia and Methane

Mega-dairies are also major air pollution sources, but like all CAFOs have historically escaped regulation under the federal Clean Air Act, despite emitting toxic air pollutants like ammonia, hydrogen sulfide and particulate matter, which are known to cause respiratory symptoms and nuisance odors, and even increase rates of childhood asthma.⁶ These emissions also harm Oregon's environment. According to the DEQ, livestock manure is "by far the most significant source of ammonia" in the state, and contributes to regional haze.⁷ The haze resulting from mega-dairy ammonia emissions is harming the iconic Columbia River Gorge National Scenic Area.⁸ In 2005, before Threemile was even operating at full capacity (50,000 compared to 70,000 head), the mega-

³ *CARE and Center for Food Safety v. Cow Palace, et al.*, 80 F. Supp. 3d 1180, 1196, 1223-26 (E.D. Wash. 2015).

⁴ DEQ, *Estimation of Nitrogen Sources, Nitrogen Applied, And Nitrogen Leached to Groundwater in the Lower Umatilla Basin Groundwater Management Area* (June 13, 2011), <https://www.oregon.gov/deq/FilterDocs/gw-lubgwma-nitrogen.pdf>.

⁵ *Id.* at 11.

⁶ National Academies of Science, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, 54 and 67, Washington, DC: National Academies Press (2003); Hribar, Carrie, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, at 5 to 6, National Association of Local Boards of Health (2010); Michigan Department of Environmental Quality, CAFO subcommittee of the Toxics Steering Group, *Concentrated Animal Feedlot Operations (CAFOs) Chemicals Associated with Air Emissions*, at 9 (May 10, 2006); Von Essen, Susanna G. and Brent W. Auvermann, *Health effects from breathing air near CAFOs for feeder cattle or hogs*, at 56 and 60, *Journal of Agromedicine*, Vol. 10, No. 4 (2005); Pavilonis, Brian T., *Relative exposure to swine animal feeding operations and childhood asthma prevalence in an agricultural cohort*, at 75 and 77, *Environmental Research*, Vol. 122 (April 2013); Sigurdarson, S. T., and J. N. Kline, *School proximity to concentrated animal feeding operations and prevalence of asthma in students*, at 1487 to 1489, *Chest Journal*, Vol. 129, No. 6 (June 2006).

⁷ Oregon Department of Environmental Quality, *Oregon Regional Haze Plan: 5-Year Progress Report and Update*, I, 21, (February 2016).

⁸ Flatt, Courtney, *Mega-dairy air pollution threat puts environmentalists on alert*, at 2, *EarthFix* (April 11, 2017).

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dairy reported ammonia emissions that ranked among the highest reported in the nation, of any other industrial source.⁹ Mega-dairies are also a significant source of methane, a powerful greenhouse gas, and nitrous oxide.¹⁰ Despite the fact that in Oregon, agriculture is the leading source of methane emissions,¹¹ the current cap and trade legislation being considered this session will not address this source at all. Given the public health, environmental, recreational, and climate impacts from mega-dairies, we have no time to waste in getting an air emissions program up and running in the state. SB103 would set up such a program, based on the Dairy Air Task Force recommendations from over 10 years ago (which were agreed to by the industry at the time).

Mega-Dairies = Overproduction and Devastation to Family Dairies

Massive operations like Lost Valley also flood the market with cheap milk. Consolidation and overproduction by these massive producers drives down prices and pushes family farmers off the land.

Since Threemile was permitted, Oregon lost 9 family dairies a month through 2007.¹² This consolidation is visible in Oregon: From 1997 to 2012, the average size of large dairy CAFOs in Oregon nearly doubled, while the total number of dairy cows in the state more than tripled.¹³ The Get Big or Get Out paradigm only drives family dairies out of business and lets profits flow to a few corporate interests.¹⁴ On the other hand, small businesses allow rural economies to thrive. SB103 would require ODA to conduct a study on impacts of industrial dairies on small and medium sized dairies, and identify state policies to lessen impacts. If Oregon wants to be a family farm state, it must act now to keep small and midsize dairies on the land.

Mega-Dairies = Mega Water Use

These massive operations use enormous amounts of water, on the order of millions of gallons of groundwater to flush manure from barns, water cattle, and run milking operations. For example, when Lost Valley was at only *one third* of its permitted size, it was using nearly one million gallons of water per day.¹⁵ And taking groundwater from an area closed to new withdrawals for decades using a permit loophole.

⁹ See Food & Water Watch, *Air Pollution From Oregon's Large Dairies*, 3 (March 2017), http://www.centerforfoodsafety.org/files/fs_1702_oregoncafo-final_10705.pdf.

¹⁰ U.S. EPA, *Greenhouse Gas Emissions: Overview of Greenhouse Gases*, www.epa.gov/ghgemissions/overview-greenhouse-gases.

¹¹ Oregon Global Warming Commission, *2018 Biennial Report to the Legislature: For the 2019 Legislative Session*, 37, (2018).

¹² Kathleen Bauer, *Big milk: Big issues for local communities*, 2, Edible Portland (November 1, 2017).

¹³ Food & Water Watch, *Air Pollution From Oregon's Large Dairies*, 2 (March 2017).

¹⁴ Abe Voelker, *How the Dairy Crisis Killed My Family's Farm*, Civil Eats (March 14, 2019), <https://civileats.com/2019/03/14/how-the-dairy-crisis-killed-my-familys-farm/>.

¹⁵ Loew, Tracy, *State officials let mega-dairy use loophole to tap endangered Oregon aquifer*, Statesman Journal (March 22, 2018).



It is beyond logic to permit these massive water users in places with already-over used aquifers and low-flowing rivers and streams. At a time when most of Oregon's surface water and much of the groundwater is already overallocated,¹⁶ we need a time out on these types of enormous water users until we can ensure a consistent supply of this crucial resource for Oregon's existing water users, including homes, farms, and wildlife.

TESTIMONY ON SB876

Sadly, SB876 will not accomplish any of the above fixes that are desperately needed *now*, to prevent future mega-dairy disasters and avoid Oregon becoming a magnet for these operations. It is not surprising when the biggest (although not the only) violator in recent Oregon CAFO history, Lost Valley, had a seat at the table that created this bill. SB876 is akin to putting a band-aid on a bullet wound and will not go nearly far enough to fix the weak laws and regulations that allowed Lost Valley in the first place, nor will it prevent future mega-dairies from coming to Oregon to use scarce water resources, pollute them and contaminate the air with toxic emissions, and further drive the decline of family-scale dairies.

That is why we urge you not to support SB876 and not to pass it out of committee. SB876 will not put a moratorium on new or expanded mega-dairies, which is the time out we need to avoid further contamination of crucial groundwater resources. SB876 will not create an air emissions control program, which policymakers and stakeholders have recognized is necessary for over a *decade*. SB876 will not protect scarce, overallocated groundwater resources which are seriously threatened by the massive water users that are mega-dairies. SB876 will not provide for the study of impacts of the consolidation in the dairy industry and impacts that mega-dairies are having and could continue to have on small and midsize family farmers. Nor would SB876 provide for study of the animal welfare impacts associated with crowded, confined cattle at mega-dairies.

SB876 requires individual permits for mega-dairies in groundwater management areas, but Lost Valley was issued such a permit in the LUB GWMA and it did not prevent the negative consequences. More importantly, it is a dangerous and irresponsible policy to locate additional (and massive) sources of nitrates in existing groundwater management areas. And individual permit will not prevent this. Nor will requiring the two-step process of approval for construction before final permit issuance in SB876. CFS along with other public interest groups urged the state to take action when Lost Valley was building its CAFO infrastructure prior to receiving its permit, unlawfully pursuant to ORS 468B.050(1)(d), and the state could have stepped in but choose not to. Additional authority to stop the illegal construction of CAFOs prior to receiving permits is not a bad thing, but a moratorium will provide the clearest authority for ODA to say no to new or expanded mega-dairy permits until protections are in place. An insurance or bond requirement for mega-dairies will only help to reimburse state and taxpayer dollars after the fact, and will not prevent pollution in the first place. While fines for permit violations can be paid, the detrimental impacts to public health and the environment cannot be undone through insurance or bonds. Allowing mega-dairies to put more

¹⁶ Montesano, Nicole, *Agriculture use strains limited water resources*, at 4, 9, Yamhill Valley News Register (August 21, 2015).

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ammonia and methane into the air cannot be taken back by dollars after the fact. Legislators must act to protect the people and environment of Oregon *before* further degradation happens.

SB876's tweaks to the existing permit system and after-the-fact money will not stop the problem before it happens. We know enough to act now and not wait for another polluting mega-dairy to show us the error of our ways. SB876 simply does not go nearly far enough to solve the systemic issues that lead to Oregon opening its doors to the disastrous Lost Valley (not to mention older mega-dairies that continue to contribute to pollution in the state).

Thank you for your attention to this crucial issue.

Sincerely,

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