



OPPOSE SB 85-4: Livestock Industry Response to SB 85 Amendment Framework

Oregon has one of the nation's most environmentally protective regulatory permitting programs for livestock feeding operations. Our producers have near-perfect compliance rates and provide top-quality care for their animal. Efforts to restrict our feedlots, dairies and chicken farms demonstrate a lack of understanding of the current regulatory structure and reflect the sentiment amongst a vocal minority of voters seeking to cease animal agriculture of any size. The Dash -4 amendment reaches far beyond the desires of a broad range of Oregon voters and consumers.

We believe in Oregon's program and the responsibility of our producers. We also agree with a balanced approach at fostering responsible animal agriculture production and closing regulatory "loopholes" that could be exploited by bad actors and recognizing opportunities that could bolster our permitting program. However, the Dash -4 Amendment framework fails to accommodate several significant needs for maintaining local production and proposes arbitrary regulation without scientific or policy basis. The proposal risks the supply to our regional food processing (which is already constrained) and places our produces livelihoods and local food supply at risk.

Problems with the Dash -4 Framework:

- Fails to recognize the need for Oregon livestock operations to modernize for efficiency, profitability and to meet growth in demand.
- Neglects to address consolidation of existing operations, a requirement as many farms are being forced out of business due to low commodity prices, high regulatory costs, new direct and indirect taxes, and pending increases in labor costs due to minimum wage increases and overtime requirements.
- Puts forward significant changes to Oregon water law and restricts some users current access to water.
- Proposes limits on access to stock water, despite two bills (SB 86 and 399) dying without any public hearing. The framework proposes arbitrary thresholds.
- Creates drastic land-use conditions and restrictions on land currently zoned exclusively for agricultural use, which is already under serious cost and availability pressures. Proposes half-mile buffers for dairies that ignore the existing scientific evidence on water discharge or air quality.
- Includes unnecessary and unclear changes to animal welfare statues, risking criminal liability for accepted, responsible, and ethical agricultural practices.

Opportunities for Program Change

- Create new statutory requirement that requires two additional steps in the permitting process, including a pre-application consultation process and a new occupancy review requirement (*See SB 1513, 2020*)
- Require a water supply plan to ensure adequate access to water to protect other water-users, ensure the CAFO can operate under strict environmental standards, as well as protect animal welfare.

- Enhance tracking of the application of nutrients from CAFO's on land within a Groundwater Management Areas to ensure all organic land applications of nutrients from CAFOs that are not covered by a nutrient management plan are done at agronomic rates.
- Implement reasonable protections for new exempt groundwater uses within Critical Groundwater Areas.

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[Acceptable Changes in Green; Opposed to Changes in Red, Notes highlighted]

Water Quality Permit

Section 1

- Existing language prohibiting discharges that could enter nearby water
- New language requiring an individual permit for any new large CAFO located in a Groundwater Management Area (GWMA), *provided that existing permit holders fee structure does not change solely due to location within a GWMA.*
- May also require other permits related to CAFOs. (*What does this mean?*)

Section 2

- Sets out the process for permitting a large new or expanding operation:
 - Individual seeking to apply for a new large permit must first request a preliminary consultation with DEQ, ODA, WRD, and others that DEQ and ODA deem necessary.
 - Applicant must submit a water supply plan. (See Section 7)
 - New or expanded parts of a CAFO operation cannot bring animals into the newly constructed facilities until ODA has inspected and certified that the construction and operational functions comply with the conditions of the water quality permit.
- Except as authorized by an NPDES or WPCF permit, restricts exporting of "liquid" manure or processed wastewater to recipients who have a nutrient application permit to land apply within a GWMA. This is a new permit that will need to be developed. *This cannot apply to dry or otherwise composted materials.*

Section 3

- These provisions apply to a new CAFO operation upon passage, to a large operation renewing on or after July 1, 2024, and to a small and medium operation renewing on or after July 1, 2025.

Nutrient Application Permit

Section 4

- Adds Section 5 to statute.

Section 5

- Establishes a permit for a receiver of exported material to condition the four agronomic Rs and hydrologic factors of an application. Describes the conditions of the permit that shall apply when applicable.
- Includes recordkeeping, inspections, and fees. *Provided that this applies to the applicant of nutrients, not any new requirements on CAFO permit holders*

Water Supply Plan

Section 6

- Adds Section 7 to statute.

Section 7

- Water Supply Plan must identify all the legally authorized water to supply the level and duration of all the described water needs for all of the CAFO's activities of operation.

- Water Supply Plan that includes use of stock water must use the animal water consumption guidelines provided by ODA to estimate the gallons per day that the confined animal feeding operation will use.
- DEQ or ODA shall consult with WRD for approval that the identified water sources are legally authorized and allowable.
- WRD shall provide an approval or denial to DEQ or ODA within 45 days of receiving a consultation request. (This will be prior to the public meeting on the application.)

WRD may require conditions, including (**but not limited to**) the following:

OWRD only has the authority delegated by statute. The Legislature should not say OWRD can require conditions and then grant a blank check. Say what conditions OWRD can “request” (not require) from the agency in charge of granting the CAFO permit, and leave it at that.

- Require that a change of use, place of use, or point of diversion be subject to a final order as legally authorized.
- For an expanding CAFO limit use of the stock water exemption to 12,000 gallons a day beyond their permitted use if the operation is located in a critical ground water area.
- May require the CAFO to install water metering and submetering devices and maintain quarterly water use data, of which WRD may request annual inspection. *While acknowledging the need to protect the resource, this is a significant topic implicating water law that should not be implemented without coordination and evaluation by other legislators and stakeholders, particularly those who have developed other proposals regarding measurement and recording.*
- Approval of a water supply plan shall be considered part of a permit issued under ORS 468B.050 and shall not be considered a final order or ruling by WRD.

Hauled Water

Section 8

- An operator may not haul water (or arrange for the hauling of water) to a CAFO for the primary purpose of watering animals. *Hauling water is necessary during summer months when temperatures are hot and existing infrastructure cannot meet the needs of animals. Demonstrating that the hauling of water is necessary at that time should not be required.*
- However, they may temporarily do so to ensure the health, welfare, or well-being of animals. *Why restrict hauled water just for emergencies?*
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Stockwater Exemption

Section 9

- Limits use of the stock watering exemption for new operations to 12,000 gallons per day.
- For an expanding confined animal feeding operation, as defined in ORS 468B.215, legally authorized stock-water may not exceed the 12,000 gallon per day limit as described under ORS 537.545 (1)(a) in addition to exempt

stockwater water use under ORS 537.545(1) described under subsection (2) of a person's existing permit issued to the confined animal feeding operation under ORS 468B.050 in areas: *Why is the limit the same outside of CGWAs? It seems overly restrictive if 12,000 gpd is available in the most restrictive groundwater areas for expansions. Arbitrary to restrict the exemption outside of Critical Groundwater Areas if the water supply plan is approved and yet allow for a higher threshold for expansions within a CWGA. This is a complex topic implicating existing water users property values, rights and access to water, and should not be addressed late in session, particularly when two stock water bills already died without public hearing (SB 86 and SB 399)*

- - Restrictively classified under ORS 536.340;
 - Withdrawn by the Water Resources Department from further groundwater appropriation under ORS 536.410; or
 - Designated as critical under statute or rule or order of the Water Resources Commission or the Water Resources Department.
- A newly-acquired operation seeking to expand beyond the 20% threshold is subject to the 12K gallon expansion limit during the first five years following its acquisition. *This will hurt Oregon's ability to meet consumer (and food processor) demands in the event that producers go out of business and there is limited ability to grow in current locations.*

Need time to review and understand the implications of these limitations, particularly when two stock water bills already died without public hearing (SB 86 and SB 399)

Air Quality

Section 10 (Presumably)

No later than December 31, 2023, DEQ shall report to the interim Senate Committee related to agriculture on the following:

- Findings from the US Environmental Protection Agency's "National Air Emissions Monitory Study" for animal feeding operations.
- The report shall summarize how the findings relate to or inform a better understanding of air contaminant emissions from animal feeding operation in Oregon.
- The report shall include a summary of existing statutory authorities the Environmental Quality Commission has relative to air contaminant emissions from dairy, poultry and swine agricultural operations. It may also identify a process to develop recommendations on reducing air contaminant emissions from animal feeding operations in Oregon, as a result of the findings from the EPA.
- *This should be ODA, in consultation with DEQ, not DEQ issuing the report. DEQ does not have the expertise to understand animal agriculture, nutrient management, or animal health. Report should also include evaluation of existing studies, including Maryland Department of Environment.*

Land Use **NO!**

Section 11 (Presumably)

- Application must successfully undergo a County LUCS analysis.
- The governing body of a city or county may determine the siting of a new operation is incompatible within ½ mile (or 880 yards to be consistent with other changes) of a nonresidential nonconforming use is a use that was initially lawfully established under the regulations applicable at the time of development but is no longer conforms with or is allowed due to new or changed land use regulations.
- New CAFOs can be sited no less than 100 yards from a property line of an adjacent property with a resident structure sited.
- New CAFOs can be sited no less than ½ mile from a fish-bearing stream.
- As a condition of a the LUCS, the CAFO applicant may be required to notify property owners within ½ mile of a the new purposed CAFO operation.

Animal Welfare **NO!**

Section 12 (Presumably)

Direct ODA to convene a work group to review best management practices, consider the appropriateness of including CAFOs in 167.335 (Exemption from ORS 167.315 to 167.333), and make recommendations to the appropriate legislative committees.

Oregon CAFO operations are humane, ethical and responsible. Any consideration of potential exposure to criminal liability for accepted and legal animal agricultural practices is unnecessary and unacceptable.

Captions

Section 12 (Presumably)

The captions are added for the convenience of the reader only. They will not be part of the actual statute.

Emergency Clause

Section 13 (Presumably)

SB 85 takes effect upon passage. Its provisions apply to any facilities that have not yet been permitted. ***Not necessary.***