IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

WILLAMETTE RIVERKEEPER, an Oregon nonprofit corporation, CENTER FOR FOOD SAFETY, a California nonprofit corporation, ANIMAL LEGAL DEFENSE FUND, a California nonprofit corporation, and FOOD & WATER WATCH, a Washington, D.C. nonprofit corporation; Petitioners, v. OREGON DEPARTMENT OF AGRICULTURE, an agency of the State of Oregon, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Oregon; Respondents.	Case No. **PETITION FOR JUDICIAL REVIEW** (Administrative Procedure Act - ORS 183.484 – Review of Order in Other Than Contested Case) Fee Authority: ORS 21.135(2)(g) Not Subject to Mandatory Arbitration

Petitioners Willamette Riverkeeper, Center for Food Safety, Animal Legal Defense Fund, and Food & Water Watch (collectively, "Petitioners") bring this petition for judicial review pursuant to ORS 183.484 to challenge a final order in an other than contested case issued by Respondents Oregon Department of Agriculture (ODA) and Oregon Department of Environmental Quality (DEQ and, collectively with ODA, "Respondents" or "the agencies").

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Petitioners seek judicial review of the Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit #01-2026, issued by the agencies on May 15, 2026 ("2026 General Permit" or "the Permit"). The Permit replaces a former general NPDES permit for CAFOs, 2016 NPDES General Permit (01-2016), which the agencies issued in 2016 and which expired in 2021 ("2016 General Permit").

The 2026 General Permit does not comply with state and federal laws, regulations, and standards designed to protect water quality and beneficial uses like drinking water, recreation, and wildlife habitat. Specifically, it fails to require pollution monitoring; fails to regulate hydrologic discharges; fails to regulate aerial deposition discharges; and fails to include adequate water quality protections by, among other things, regulating all pollutants present in CAFO waste. In support of this petition, Petitioners allege as follows:

PARTIES

1.

Willamette Riverkeeper ("Riverkeeper") is an Oregon domestic nonprofit corporation with thousands of members across the Pacific Northwest. Riverkeeper focuses on protecting the water quality and ecosystem of the Willamette River and its tributaries. Riverkeeper's work includes habitat restoration, Clean Water Act compliance, Superfund cleanup, and river education. Riverkeeper advocates for keeping the river clean and safe, ensuring public access for recreation, protecting wildlife, and ensuring a clean drinking water supply. For years, Riverkeeper has been involved in litigation and legislative efforts to prevent CAFOs from further polluting the Willamette River. Riverkeeper leverages the Clean Water Act to help ensure that the Willamette River's water quality is the best it can be, and a general permit that lawfully implements the Clean Water Act and state laws is critical to Riverkeeper's mission.

2.

Center for Food Safety (CFS) is a membership-based nonprofit corporation headquartered in San Francisco, CA, and with an office in Portland, Oregon. For over twenty-

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five years, since its founding in 1997, CFS has worked to empower people, support farmers, and protect the environment from the harmful impacts of industrial agriculture. Among others, CFS has a flagship program on animal factories. As a membership organization, CFS represents nearly a million members in every state throughout the country, including thousands of farmers and community members in Oregon. CFS has worked for years in Oregon to ensure that CAFOs in Oregon comply with state and federal water quality protections, and to improve those legal protections for community members, animals, farmers, and the environment of Oregon. CFS has a strong interest in federal and state water quality protections and works to advance the intention behind these laws.

3.

Animal Legal Defense Fund (ALDF) is a national nonprofit membership organization founded in 1979 to protect the lives and advance the interests of animals through the legal system. ALDF has more than 300,000 members and supporters nationwide, including in Oregon. One of ALDF's central goals is advocating for effective oversight and regulation of industrial animal agriculture. ALDF achieves this goal by, among other things, filing lawsuits, administrative comments, and rulemaking petitions. Through these efforts, ALDF is deeply invested in reforming the agricultural system.

4.

Food & Water Watch (FWW) is a national, nonprofit membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. Achieving strong implementation of federal and state clean water laws to effectively regulate factory farm water pollution, in Oregon and nationally, is a priority issue for FWW. FWW has campaigned and litigated in numerous states to improve regulation of

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CAFO water pollution and has maintained staff and run campaigns in Oregon for most of its over 20-year history. FWW has more than 1.6 million members nationally, including more than 52,000 in Oregon.

5.

DEQ is an administrative agency of the State of Oregon. Pursuant to ORS chapter 468B, its implementing regulations, and OAR chapter 340, division 45 ("Regulations Pertaining to NPDES and WPCF Permits"), DEQ is authorized to issue permits, including NPDES permits, which are waste discharge permits issued under the federal Clean Water Act's NPDES program. OAR 340-045-0010(13); 33 USC § 1342.

6.

ODA is an administrative agency of the State of Oregon. Pursuant to ORS chapter 468B, its implementing regulations, the Environmental Quality Commission and ODA Memorandum of Understanding Relating to the Confined Animal Feeding Operation Program, and OAR chapter 603, division 74 ("Confined Animal Feeding Operation Program"), ODA is authorized to issue permits, including NPDES permits.

7.

Petitioners are adversely affected and aggrieved by the 2026 General Permit because it will lead to further degradation of Oregon's waterways and drinking water, which all Petitioners have an interest in protecting.

8.

Petitioner Willamette Riverkeeper's mission to protect and restore the Willamette River and its tributaries is impeded by a general permit that does not adequately protect ground and surface waters in the Willamette Basin from a high polluting industry that is actively looking to expand in the Willamette Valley.[1] Riverkeeper relies on the citizen suit provision of the Clean

[1] https://willametteriverkeeper.org/.

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Water Act to enforce Clean Water Act compliance and a general permit that lawfully implements the Clean Water Act and state laws is critical to Riverkeeper's ongoing efforts to protect and restore the Willamette River Basin's waterways. Without an adequate general permit, the Willamette River and its tributaries will suffer from ongoing pollution from CAFOs that will not be able to be corrected through the Clean Water Act. A sufficient monitoring requirement in the general permit is vital for catching pollution early on when it can still be abated to prevent it from harming the ecosystem, aquatic life, and drinking water that directly ties to Riverkeeper's mission. Riverkeeper and its members will be adversely affected by the agencies' issuance of the 2026 General Permit, which will harm Oregon's water resources and ecosystems and threaten public health.

9.

CFS's mission is to address and prevent the harms of industrial agriculture to communities, public health, farmers and farmworkers, and the ecosystems on which we all rely.[2] A major part of CFS's work to fulfill that mission has focused on animal factories (or CAFOs) to prevent their pollution of our air, water, and climate, harm to surrounding communities' health and economy, inhumane treatment of animals, harm to farmworkers, and destruction of family-scale farms. To that end, CFS has spent resources engaging in legislative advocacy to improve Oregon's protection for our environment, people, and animals, including a major role in passing SB 85 in 2023, as well as legal advocacy when individual operations are unlawfully permitted or are violating water quality protection laws. The Oregon Legislature was clear in passing SB 85 that reform of our water quality, water quantity, air, and climate protections are necessary to deal with the pollution caused by industrial-scale factory farms, including particularly mega-sized operations (*i.e.*, 2,500 or more mature dairy cows). CFS is thus furthering that legislative interest by challenging the deficient Permit. CFS and its members will be adversely affected by the

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[2] https://www.centerforfoodsafety.org/.

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agencies' issuance of the 2026 General Permit, which will harm Oregon's water resources and ecosystems and threaten public health.

10.

FWW's mission is to fight for sustainable food, clean water, and a livable climate for all, protecting people from the corporations and other destructive economic interests that put profit ahead of everything else.[3] Since its founding, FWW has recognized that CAFO water pollution is a major, under-regulated source of waterway impairment nationally, and that this under-regulation is driving not only water pollution but climate change, runaway agricultural consolidation, harms to family farmers and rural communities, and threats to public health and animal welfare. In short, allowing unlawful CAFO pollution to persist undermines every aspect of FWW's mission. As a result, working to hold agribusiness interests accountable for their pollution and other harms has always been one of FWW's priority issues. FWW was the first national environmental organization to call for a ban on factory farms, and for several years FWW has campaigned in support of federal legislation to ban large CAFOs and in support of state legislation to adopt moratoria on factory farms. Since approximately 2016, FWW has dedicated significant time and resources to advocating for stronger water protections from the CAFO industry in Oregon, including opposing Lost Valley Farm and Easterday Farms, leading a petition for emergency U.S. Environmental Protection Agency action to address nitrate groundwater contamination in the Lower Umatilla Basin Groundwater Management Area, campaigning in support of CAFO moratorium legislation, and successfully advocating for passage of SB 85. FWW and its members will be adversely affected by the agencies' issuance of the 2026 General Permit, which will harm Oregon's water resources and ecosystems and threaten public health. Like CFS, FWW is furthering the Oregon Legislature's interest in stronger protections to address CAFO water pollution by challenging the Permit.

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[3] https://www.foodandwaterwatch.org/.

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11.

ALDF's mission is to protect the lives and advance the interests of animals through the legal system.[4] One of the ways ALDF achieves this mission is by advocating for the effective regulation of industrial animal agriculture, including CAFOs and slaughterhouses. CAFOs pollute and profit while communities, farmed animals, wildlife, and ecosystems pay the price. Unlawful lack of effective regulation functions as a subsidy for this harmful industry, encouraging its continued expansion and consolidation. CAFO pollution degrades air and water resources and is a major cause of the climate crisis. CAFO water pollution degrades wildlife habitat, including habitat that is critical for the survival of endangered and threatened species. Accordingly, ALDF's advocacy—through litigation, legislation, regulatory advocacy, and communications—includes holding federal and state governments across the country accountable for effective environmental regulation of CAFOs, as required under federal and state law. In Oregon, ALDF has expended significant time and resources to collaborate with CFS, FWW, and other organizations on regulatory and legislative advocacy, including by furthering the passage of SB 85 and opposing new and expanding CAFOs and one chicken slaughterhouse. ALDF is also engaged in advocacy through litigation in Oregon, with its case against Tillamook County Creamery Association currently pending in this Court. The 2026 General Permit will allow CAFO water pollution to continue in Oregon, further exacerbating conditions that are already dire for animals, including endangered and threatened wildlife, and ecosystems. It will also continue functioning as a subsidy for industrial animal agriculture in Oregon, inviting additional and expanded CAFOs and slaughterhouses that ALDF will have to expend resources to oppose through litigation, legislation, regulatory advocacy, and communications. ALDF and its members will be adversely affected and aggrieved by the 2026 General Permit, which will harm Oregon's water resources and ecosystems, including wildlife habitat, and threaten public

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[4] https://aldf.org/about-us/.

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health. Like CFS and FWW, ALDF is furthering the Oregon Legislature's interest in stronger protections to address CAFO water pollution by challenging the Permit.

JURISDICTION AND VENUE

12.

This Court has jurisdiction to review this petition pursuant to ORS 183.480 and ORS 183.484. The final order for purposes of judicial review encompasses the 2026 General Permit, which constitutes a final agency order because it is a "final agency action expressed in writing," not arising from any of the four categories described in ORS 183.310(2)(a). *See* ORS 183.310(6)(b). Nothing about the agencies' determination is preliminary or tentative.

13.

The petition is timely. It is filed within 60 days of May 15, 2026, the date ODA and DEQ issued the 2026 General Permit. *See* ORS 183.484(2).

14.

Venue is proper in the Multnomah County Circuit Court pursuant to ORS 183.484(1) because Petitioners Riverkeeper and CFS reside or have a principal place of business in Multnomah County.

LEGAL AND FACTUAL BACKGROUND

CAFOs

15.

CAFOs are industrial facilities that confine large numbers of animals and their waste in relatively small areas. Rather than grazing animals on pasture, CAFOs feed them in confinement.

16.

To manage the resulting animal manure, CAFOs confining pigs, cows, and other animals often liquefy it and store it in large, anaerobic cesspools in the ground called "lagoons," along

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with process wastewater. They may also store waste in above-ground tanks or pits beneath confinement structures.

17.

CAFOs typically manage waste impoundment capacity by periodically drawing down the manure and process wastewater mixture and spreading or spraying it on fields. Some CAFOs may compost solids.

18.

CAFOs confining chickens or other birds often manage the resulting manure by combining it with feathers and other waste products. This mixture is called "litter."

19.

CAFO waste contains a variety of pollutants. Common ones include biochemical oxygen demand (BOD), total suspended solids (TSS), nutrients (nitrogen and phosphorus compounds), and fecal bacteria. CAFO waste can also include pathogens, pharmaceuticals, chemicals, metals, salts, and other contaminants.

20.

Some CAFOs use anaerobic digesters, which purport to capture methane from waste. The remaining substance is called "digestate," which is chemically distinct from waste that has not been through an anaerobic digester. CAFOs typically dispose of digestate by spreading or spraying it on fields. Some CAFOs may compost solids.

21.

The U.S. Department of Agriculture has found that the nitrogen and phosphorus in digestate pose a greater threat to both surface and ground water quality than the nitrogen and phosphorus in undigested manure, because digestate nutrients and other pollutants are more soluble, and thus more susceptible to runoff.

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CAFO Water Pollution

22.

CAFO waste is a major source of water pollution nationally and in Oregon.

23.

Upon information and belief, Oregon has more miles of designated impaired rivers and streams than any other state in the country. *E. coli* and other fecal bacteria, which originate from CAFOs, are two of the contaminants causing this impairment. For example, in the Tillamook Bay Watershed, each of the five major rivers and many streams are contaminated by fecal bacteria. DEQ has identified CAFOs and their land application of waste as major sources of this contamination.

24.

Surface water contamination by CAFO pollution prevents many bays, rivers, streams, and other waterways from achieving high enough water quality to support beneficial uses like shellfish harvesting, recreational swimming, wildlife habitat, and even drinking water.

25.

CAFO pollution has also contaminated Oregon's groundwater. DEQ has designated three Groundwater Management Areas (GWMAs) due to widespread nitrate contamination: the Southern Willamette Valley GWMA, the Lower Umatilla Basin GWMA, and the Northern Malheur County GWMA. DEQ has identified manure from CAFOs as one of the main sources of this nitrate contamination.

26.

CAFO pollution reaches water via a variety of pathways. For example, it reaches groundwater from production areas via seepage from waste impoundments (including lagoons), mortalities management areas (where CAFOs collect dead animals), and composting areas.

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27.

CAFO pollution from land application areas can reach groundwater via seepage or pollutant loss through soil cracks or other preferential pathways. Risks of seepage below crop root zones are especially high when CAFOs overapply waste or crops are not present to uptake nutrients.

28.

CAFO land application pollution pathways to surface water include runoff from land application areas, either overland or through tile lines or preferential pathways, and seepage that reaches surface waters through hydrologically connected groundwater. Again, these risks are higher when crops are not present or when CAFOs overapply waste.

29.

CAFO production areas pollute surface waters through overflows, leaching, and spills from waste impoundments, raw materials and compost areas, and other production area facilities, as well as through hydrologic discharges resulting from production area contamination of hydrologically connected groundwater.

30.

A single large dairy CAFO near Boardman, Oregon, Lost Valley Farm, experienced more than 200 violations between 2017 and 2019, including for overflowing waste lagoons and leaking waste storage facilities, before the agencies finally required its closure.

31.

Following its closure, Easterday Dairy attempted to operate another mega-dairy on the site, but also failed to maintain regulatory compliance and was ultimately shut down and decommissioned. As of 2024, monitoring wells still showed nitrate levels above background limits. The site is in the Lower Umatilla Basin GWMA, designated for nitrate contamination above health-based limits.

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32.

Digesters at CAFOs in Oregon can also experience waste spills and malfunctions that threaten water quality. In 2019, a cow manure digester at the Port of Tillamook Bay malfunctioned, and nearly 400,000 gallons of waste overflowed from the facility. More than 160,000 gallons of the waste discharged into a nearby creek.

33.

CAFOs also discharge to surface water via aerial deposition of emitted pollutants. Aerial deposition is the discharge of solid or gaseous waste or pollutants from CAFOs, including ventilation fans in barns, uncovered outdoor piles of waste or feed, feedlots, or open-air lagoons. These pollutants include nitrogen in its gaseous form, ammonia, as well as solid waste like particulate matter (PM), including PM 2.5 and PM 10. When ammonia, PM, or other pollutants are emitted into the atmosphere, they are transported by winds and can be carried short or long distances before being deposited back on the ground near or into surface waters.

34.

Upon information and belief, research and modeling show that much of the ammonia emitted by CAFOs deposits on land or in water relatively near the source. Some ammonia that does not rapidly deposit is instead converted to fine particulate matter before it is ultimately deposited.

35.

Aerial deposition of CAFO pollutants can significantly impair water quality in Oregon's rivers, lakes, bays, and estuaries, harming aquatic ecosystems and human health, and can account for significant portions of new nitrogen inputs into coastal or other aquatic ecosystems.

36.

Aerial deposition of nitrogen in the form of ammonia can cause acidification, harmful algal blooms, reduced oxygen, and toxicity, all of which can significantly impact aquatic life (such as through fish kills), recreation and tourism, and drinking water quality.

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37.

Excess nitrogen in waterways can cause high concentrations of certain types of algae (like cyanobacteria) that in turn can produce toxic compounds, resulting in harmful algal blooms (HABs). HABs can cause sickness and death in humans, pets, and other animals who come into contact with or drink the water, and can result in hypoxia (or low oxygen levels) in water bodies, killing fish and other wildlife.

38.

In Oregon, there are several documented instances of dogs dying and people falling ill because of HABs, which occur in the Willamette River and its tributaries every summer. HABs also disrupt recreation, can poison drinking water supplies, and harm grazing cows and other farmed animals.

39.

Climate change exacerbates the problem because higher temperatures and lower water levels (due to less snowpack and drought) combine with excess nutrients from CAFOs to form algal blooms, including potentially the toxic variety.

Oregon CAFOs

40.

According to ODA's 2025 Annual CAFO Report, as of December 31, 2025, ODA's CAFO Program included 473 permitted CAFO facilities, 328 of which were registered under the 2016 General Permit. Although this permit expired in February 2021, the agencies administratively extended it until the approval of the Permit at issue. As of June 30, 2026, on information and belief (according to the ODA spreadsheet of animal feeding operations provided on that date), only three CAFO facilities have individual NPDES permits (permits written specifically for the operation).

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41.

According to ODA's spreadsheet, of the CAFOs registered under the 2016 General Permit, 109 are in the Large Tier, with 37 designated Large Tier II and 72 operations designated as Large Tier I. Large CAFOs hold very large numbers of animals, meaning more manure, litter, and/or process wastewater for the operation to manage. A Large Tier I dairy has between 700 and 2,499 mature dairy cows, and a Large Tier II has 2,500 or more cows. For beef feedlots, Large Tier I has between 1,000 and 3,499 cows, and Large Tier II has 3,500 or more cows. For chickens raised for meat, Large Tier I includes between 125,000 and 349,999 birds, and Large Tier II is 350,000 birds or more. OAR 603-074-0010(9).

42.

According to ODA's latest spreadsheet, as of June 30, 2026, the prior NPDES permit allowed Oregon CAFOs to confine a total of up to 8,107,206 animals, with 7,370,638 of those (91% of all permitted animals) allowed in Large CAFOs. All sizes of CAFOs permitted under the general NPDES permit actually confine 5,758,409 animals, with 5,501,398 of those (96% of animals) confined in Large CAFOs. Thus, the impact of the NPDES general permit and its potential to stem or unlawfully allow water pollution across the state are substantial.

43.

According to ODA's 2025 Annual CAFO Report, of the 328 CAFOs registered under the 2016 General Permit, 82 CAFOs were in Area 1 of the CAFO Program, which is Tillamook County. There were 42 CAFOs registered in Area 4, which includes Lane, Linn, and Benton Counties and encompasses the Southern Willamette Valley GWMA. There were 14 CAFOs registered in Area 5, which includes Morrow and Umatilla Counties and encompasses the Lower Umatilla Basin GWMA. There were 80 CAFOs registered in Area 6, which includes Malheur County and encompasses the Northern Malheur County GWMA.

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44.

Oregon surface waters and groundwater are degraded from CAFO waste, in significant part, because the prior NPDES general permits were insufficiently protective to prevent CAFO pollution from various practices and pathways.

Oregon CAFO Permitting Requirements

45.

CAFOs in Oregon are regulated pursuant to state and federal laws that aim to protect water quality. *See* ORS 468B.200; OAR 340-051-0010(8); 33 USC § 1311(a). Oregon prohibits water pollution unless permitted; specifically, no person shall "cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means," or "discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission." ORS 468B.025(1). Waste discharge permits issued under ORS 468B.050 shall not be violated. ORS 468B.025(2).

46.

Under Oregon state law, unless they hold a permit from the DEQ or ODA, a person may not "[c]onstruct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized." ORS 468B.050(1)(d). Permits may be individual or general in nature. ORS 468B.050(2).

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47.

Oregon defines "waters of the state" to include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. ORS 468B.005(10); OAR 340-051-0010(8).

48.

Oregon statutes define "pollution" as "such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof." ORS 468B.005(5). Oregon statutes further define "wastes" to include "industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances, that will or may cause or tend to cause pollution of any waters of the state." ORS 468B.005(9); OAR 340-045-0010(10) ("industrial waste" includes liquid and gaseous waste from "any process of industry, manufacturing, trade, or business.").

49.

Oregon state law also establishes an anti-degradation policy for groundwater "so that the highest possible water quality is maintained" to support "existing or potential beneficial uses for which the natural water quality of the groundwater is adequate." OAR 340-040-0020(2-3). To ensure adequate protection of groundwater, Oregon law requires point sources to employ "the

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highest and best practicable methods to prevent the movement of pollutants to groundwater." OAR 340-040-0020(11). To determine the highest and best practicable methods, "available technologies for treatment and waste reduction, cost effectiveness, site characteristics, pollutant toxicity and persistence, and state and federal regulations" are considered, among other factors. *Id*.

50.

The federal Clean Water Act (CWA) prohibits the discharge of pollutants into waters of the United States, except when in compliance with an NPDES permit. 33 USC § 1251. The Act defines "discharge of a pollutant" as any addition of any pollutant to navigable waters from any point source. *Id*. § 1362(12). "Concentrated animal feeding operations" are specifically identified in the CWA's definition of "point source," demonstrating Congress's intent to control and reduce discharges of pollution from CAFOs through the NPDES program. *Id*. § 1362(14). The Act defines "pollutant" to include "biological materials," "chemical wastes," and "agricultural waste," and thus includes animal waste and its constituents, process wastewater, and ammonia and other emissions from a CAFO. *Id*. § 1362(6). Navigable waters are "waters of the United States." *Id.* § 1362(7).

51.

The federal CWA also applies to discharges to surface waters through hydrologically connected groundwater and other indirect discharges that satisfy certain factors. The United States Supreme Court has held that if a discharge to a water of the U.S. via groundwater is "the functional equivalent of a direct discharge" to that water of the U.S., then the CWA applies and the discharge is unlawful unless authorized by a valid NPDES permit. The time of pollutant transport and distance from the point source to the water of the U.S. are the most important factors in determining whether a functionally equivalent discharge has occurred in most cases, but not necessarily every case. Other factors include the nature of the material through which the pollutant travels, the extent to which the pollutant is diluted or chemically changed as it travels,

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the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source, the manner by or area in which the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

52.

Like most states, Oregon has been delegated authority to implement the federal CWA's NPDES program in the state. The CWA provides a federal floor of minimum regulation, above which states are free to regulate water pollution more strictly. Thus, Oregon must regulate CAFOs as point sources by issuing NPDES permits. Oregon state law also mirrors the federal definition of "point source" by including "concentrated animal feeding operation" within Oregon's definition. ORS 468B.005(4). Oregon state regulations further define a discharge as "placing wastes into public waters, on land, or otherwise into the environment in a manner that affects or may tend to affect the quality of public waters," OAR 340-045-0010(5), and "pollutant" as "industrial, municipal, and agricultural waste discharged into water," OAR 340-045-0010(18).

53.

The CWA authorizes the U.S. Environmental Protection Agency (EPA) to issue permit conditions "necessary to carry out the provisions of the [CWA]." 33 USC § 1342(a)(1). It further instructs EPA to develop effluent limitation guidelines to impose technology-based restrictions on pollution discharges for each category of point source pollution. 33 USC §§ 1314(b), 1314(e), 1316(b). NPDES permits incorporate technology-based effluent limits for a point source's pollutants of concern or, where more stringent protections are needed to maintain water quality standards in the receiving water, water quality-based effluent limitations.

54.

For pollutants with no effluent limitation guidelines, federal regulations require case-by-case effluent limitations based on permitting agencies' best professional judgment (BPJ). 40 CFR § 125.3. The agencies may establish BPJ limits based on the same factors the CWA

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requires EPA to consider in developing effluent limitation guidelines, and these can be numerical limitations or best management practices (BMPs).

55.

EPA has adopted regulations applicable to all CAFO NPDES permits. *See* 40 CFR §§ 122.23, 122.42(e), 412.1-4. The regulations impose restrictions on discharges from CAFO production areas and land application areas.

56.

One of the key elements of EPA's regulatory scheme for CAFOs is the requirement to adopt and implement a nutrient management plan (NMP), which is supposed to contain BMPs designed to achieve compliance with permit effluent limits at both the production and land application areas. NMPs are required for any permit issued to a CAFO, and must "at a minimum, contain[n] best management practices necessary to meet the requirements of this paragraph and applicable effluent limitations and standards, including those specified in 40 CFR part 412." 40 CFR § 122.42(e). Any permits must require compliance with the terms of the CAFO's site-specific NMP. *Id.* § 122.42(e)(5).

57.

EPA generally prohibits CAFO production area discharges, with limited exceptions for some extreme precipitation events for certain facilities. CAFO NMPs must ensure adequate waste storage, proper management of mortalities, diversion of clean water from the production area, appropriate disposal of chemicals, and other practices to prevent production area discharges. 40 CFR § 122.42(e)(1).

58.

EPA has further established effluent limitation guidelines for Large CAFOs, which impose additional BMPs and technology-based effluent limits for Large CAFOs in several

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livestock sectors, addressing nitrogen, phosphorus, and fecal coliform. *See* 40 C.F.R. § 412, Subparts A-D.

59.

For dairy cows and cattle, EPA's regulations describe the effluent limitations attainable by the application of the best practicable control technology currently available (BPT), which is the least protective technology standard that the Act may apply. 40 CFR § 412.31. For Large CAFO productions areas at existing and new CAFOs, no discharge of manure, litter, or process wastewater is allowed, except when attributable to precipitation causing an overflow from the production area, if it is designed, constructed, operated and maintained to contain the runoff and direct precipitation from a "25-year, 24-hour rainfall event." *Id.* §§ 412.31, 412.32, 412.33, 412.35.

60.

Existing large hog and chicken CAFOs must meet the same 25-year, 24-hour production area standard as dairy cow and cattle CAFOs. New large hog and chicken CAFOs must meet a zero-discharge limit from the production area regardless of precipitation events, unless it has obtained a site-specific technical evaluation from the permitting agency based on, among other things, recent climate data.

61.

EPA defines "Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event, and 100-year, 24-hour rainfall event" as "precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source." 40 CFR § 412.2(i).

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62.

EPA's regulations also impose effluent limitations on CAFO land application areas, which CAFOs must achieve through their NMPs and additional BMPs. NMPs must use field-specific assessments of the potential for nitrogen and phosphorus transport from each field, and which address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. *Id*. §§ 122.42(e)(1), 412.4(c). NMPs must also identify appropriate site-specific conservation practices needed to minimize nitrogen and phosphorus runoff, such as buffers. While NMPs are intended to enable CAFOs to comply with permit effluent limits, this approach, which relies primarily on allowing application at a crop's "agronomic rate," only addresses nutrient pollutants and is based on maximizing crop yield rather than minimizing discharges of pollutants.

63.

The CWA requires that all NPDES permits, including CAFO permits, contain representative effluent monitoring and reporting requirements capable of assuring compliance with all effluent limitations contained in the permit. 33 USC §§ 1318(a), 1342(a)(2). Permitting agencies "shall require" permitted point sources to "install, use, and maintain such monitoring equipment or methods" requisite to "determin[e] whether [they] are in violation" of an applicable effluent limitation or other effluent standard. *Id.* § 1318(a)(A)(iii).

64.

EPA regulations further specify that all NPDES permits "shall include conditions" requiring representative monitoring "[t]o assure compliance with permit limitations." 40 CFR §§ 122.44(i)(1), 122.41(j)(1). Additionally, permits "shall specify" the "type, intervals, and frequency [of monitoring] sufficient to yield data which are representative of the monitored activity." *Id.* § 122.48(b). Monitoring requirements are in addition to, and separate from, permit

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conditions establishing the BMPs and pollution control technologies used to achieve compliance with permit limits. *See id.* § 122.41(e).

2026 General Permit

65.

On November 13, 2025, ODA issued a Notice of Public Participation Opportunity on the proposed 2026 General Permit ("Draft Permit"). ODA held a virtual public hearing on December 16, 2025. The public comment period closed on January 21, 2026.

66.

Petitioners submitted written comments on the Draft Permit on January 21, 2026. According to ODA's Response to Public Comments, the agencies received five oral comments and 646 written comments, including Petitioners' written comments. According to the Response to Comments, all five oral comments opposed the Draft Permit because the Draft Permit would not sufficiently protect Oregon's water resources. These oral comments raised concerns regarding water quality, pollutant discharges, and land application of nutrients. Also according to the Response to Comments, all 646 written comments, including Petitioners' comments, also opposed the Draft Permit. Written comments, including Petitioners' comments, raised concerns that the Draft Permit would not sufficiently protect Oregon water resources, discussing issues such as water quality, aerial emissions, pollutant discharges, land application of nutrients, construction standards, water usage, and manure exports.

67.

The agencies issued the final 2026 General Permit on May 15, 2026, along with their Fact Sheet and their Response to Public Comments.

68.

The 2026 General Permit imposes several prohibitions and effluent limitations, generally prohibiting discharges to waters of the state with limited exceptions. It imposes, with a narrow exception for some facilities, a zero-discharge production area effluent limitation for surface

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waters. Section S2.B. It imposes BMPs and NMP requirements and a land application effluent limitation that application rates cannot exceed agronomic rates and land application must not violate the state Groundwater Quality Protection Rules. Section S2.C. Where the Permit allows a surface water discharge, the Permit imposes numeric effluent limitations of zero for *E. coli*, Nitrate plus Nitrite Nitrogen, and Total Phosphorus. Section S2.A.

69.

The 2026 General Permit did not include changes addressing Petitioners' comments on the Draft Permit. The 2026 General Permit did, however, remove a provision the agencies had proposed in Section S2.C.3 of the Draft Permit, which would have prohibited the land application of manure, litter, or process wastewater on fields within twelve inches of the water table. The agencies further weakened the 2026 General Permit by relaxing the 2016 General Permit's prohibition on application of manure, litter, and process wastewater to frozen soil, by narrowing the definition of "frozen soil."

Deficiencies in the 2026 General Permit

70.

The 2026 General Permit does not comply with state and federal laws, regulations, and standards designed to protect water quality and beneficial uses. It fails to require pollution monitoring, fails to regulate hydrologic discharges, fails to regulate aerial deposition discharges, and otherwise fails to include adequate water quality protections.

Failure to Require Pollution Monitoring

71.

The 2026 General Permit contains a section entitled "Monitoring Requirements," Section S4.A, but does not in fact contain the required representative pollution monitoring requirements that demonstrate whether a CAFO is in compliance with the Permit's discharge limits.

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72.

Instead, the Permit requires violation monitoring after an unlawful discharge takes place and is identified, and annual or even less frequent testing of nutrient levels in soil and animal waste.

73.

The Permit's violation monitoring is only required after a CAFO has identified an unlawful discharge and this monitoring is limited to a one-time sample collection of the impacted waterway. This is plainly not representative of the CAFO's activities, which can lead to discharges by several pollution pathways, nor is it capable of assuring compliance with all effluent limitations contained in the permit. It has no bearing at all on determining whether a CAFO is in violation in the first instance.

74.

The Permit's soil and waste testing requirements are not discharge monitoring at all; these provisions relate to the nutrient content of soil on the field and waste before it is land-applied, rather than determining what pollutants are discharged from the CAFO into a waterway from actual land application activities.

75.

This leaves several primary CAFO discharge pathways without the required monitoring. First, the Permit lacks monitoring of land application area discharges even though CAFOs can discharge by surface runoff, subsurface transport through preferential flow paths and tile lines, and hydrologic discharges from leaching of waste into groundwater that flows into waters of the U.S. or waters of the State. Second, the Permit lacks monitoring of production area hydrologic discharges, such as seepage from waste impoundments, mortalities management areas, or composting areas into groundwater that flows into waters of the U.S. or waters of the State. Third, the Permit lacks monitoring of discharges that occur via aerial deposition.

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76.

The Permit's "Additional Monitoring Requirements" section, S4.E, does not cure these deficiencies, and in fact does not contain monitoring requirements at all. This section merely grants the agencies discretionary authority to impose discharge monitoring requirements, and only in the case of repeat bad actors.

77.

The 2026 General Permit's failure to require representative monitoring of all CAFO discharges and effluent limitations violates the CWA and Oregon's water quality protection laws and is unsupported by substantial evidence.

Failure to Regulate Hydrologic Discharges

78.

As discussed above, NPDES permits must regulate hydrologic discharges by imposing technology-based effluent limits to control these discharges and requiring representative monitoring of these discharges. The 2026 General Permit will authorize hydrologic discharges from CAFOs and fails to regulate them as required.

79.

The Permit does not contain adequate compost and lagoon standards or NMP requirements to prevent all hydrologic discharges.

80.

The Permit also fails to require CAFOs to determine whether they will discharge hydrologically, and it does not require any subsurface or other monitoring to ensure compliance with production area and land application area effluent limitations.

81.

Instead, the Permit leaves this entire discharge pathway unregulated. The Permit's failure to regulate hydrologic discharges violates the CWA and Oregon's water quality protection laws and is not supported by substantial evidence.

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Failure to Regulate Aerial Deposition Discharges

82.

Aerial deposition of pollutants meets the definition of "discharge" under Oregon's water quality protection law definition of "pollution." ORS 468B.005(5); OAR 340-045-0010(5), (10), (18), (31).

83.

As a state delegated to administer the federal CWA permit program, Oregon is authorized to impose requirements more stringent than federal law and EPA's CWA regulations, and it has plainly done so.

84.

The federal CWA also covers aerial deposition of pollutants from CAFOs as direct or the "functional equivalent" of direct discharges of pollutants into waters of the U.S. Ammonia and PM are examples of pollutants under the CWA, which are discharged from CAFOs (point sources), and travel through the air to be deposited into waters of the U.S. The fact that this transport medium is air does not negate aerial deposition being either a direct discharge or the functional equivalent of one.

85.

The 2026 General Permit does not account for discharges of pollutants via aerial deposition. On page 4 of their Response to Comments, the agencies incorrectly stated that "aerial emissions are beyond the scope of the proposed general permit" because the permit "regulates CAFO impacts to waters of the state."[5]

[5] The agencies claim that DEQ is also responsible for implementing the Clean Air Act, but that agricultural operations are exempted from most air quality laws. Oregon law does provide for the application of air quality laws to dairies, ORS 468A.020(2)(c), and regardless, the agencies' point is irrelevant because aerial discharges to waterways are not exempt from water quality laws.

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86.

Because the Permit fails to address aerial deposition, it violates the CWA and Oregon's water quality protection laws and is unsupported by substantial evidence.

Inadequate Water Quality Protections

87.

The Permit fails to include adequate water quality protections. It lacks best professional judgment limits for pollutants of concern in CAFO waste, such as pharmaceuticals; lacks adequate lagoon, composting, and silage standards; relies on outdated rainfall frequency data; relies on agronomic rates to calculate CAFO waste application onto fields rather than using rates calculated to minimize the potential for nutrient runoff to waterways; offers coverage to CAFOs using anaerobic digesters without accounting for (or even acknowledging) the unique threats such digesters present to water quality; abandons the 12-inches-to-groundwater provision that was in the 2016 General Permit, allowing CAFOs to apply waste to fields with groundwater near the surface; and allows CAFOs to apply waste to frozen ground, inviting nutrient runoff to waterways.

Lack of Best Professional Judgment Limits for Pollutants of Concern

88.

NPDES permits must regulate all pollutants of concern, and permit writers must impose limits for pollutants that do not have effluent limitation guidelines based on their best professional judgment (BPJ). 33 USC § 1314(b); 40 CFR §§ 122.44(a)(1), 123.25, 125.3.

89.

CAFO waste often contains pathogens, pharmaceuticals, heavy metals, salts, and other harmful pollutants. Yet the Permit only imposes effluent limits for *E. coli*, Nitrate plus Nitrite Nitrogen, and Total Phosphorus. Section S2.A (prohibiting the discharge of manure, litter, or process wastewater to waters of the state except as allowed under Section S2.B, governing production areas, and Section S2.C, governing land application, and in accordance with the

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effluent limitations in Section S2.A.1 for *E. coli*, Nitrate plus Nitrite Nitrogen, and Total Phosphorus).

90.

Similarly, the Permit only imposes BMPs for these pollutants by relying on NMPs as the Permit's primary pollution control mechanism even though there is no agronomic rate or agronomic purpose for non-nutrient pollutants in CAFO waste.

91.

The Permit's lack of BPJ limits for several CAFO pollutants of concern violates the CWA and Oregon's water quality protection laws and is not supported by substantial evidence.

Inadequate Lagoon, Composting, and Silage Standards

92.

As detailed above, Oregon law requires point sources to employ the highest and best practicable methods to prevent the movement of pollutants to groundwater.

93.

While the Permit states that "[a]ll manure, litter, and process wastewater authorized by this permit must be managed in a manner that will prevent a violation of the Groundwater Quality Protection Rules (OAR Chapter 340, Division 40)," the Permit is completely devoid of enforceable requirements addressing seepage from waste storage and other production area facilities for many CAFOs. Section S2.A.4; *see* Sections S2.B; S2.D.

94.

Additionally, federal law requires the best practicable control technology currently available (BPT) when groundwater is hydrologically connected to surface water, such that there is the functional equivalent of a direct discharge of pollutants into the surface water. The Permit purports to prohibit such hydrologic discharges, Section S2.B, but lacks any technology requirement to actually prevent them.

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95.

The Permit only briefly and indirectly acknowledges the risk of groundwater contamination and hydrologic discharges from waste impoundments. It requires waste storage facilities to not exceed seepage design rates approved by the Department, pointing to the "design specifications" provision in the permit ("Waste Storage Facilities"). However, this provision does not include or even cite to any approved seepage design rates, nor does any other provision of the Permit. *See* Sections S2.B.4; S2.D. Instead, it merely reiterates the requirement to comply with the Groundwater Quality Protection Rules. The permeability standard and associated technology requirement must be clear, enforceable, sufficient to comply with state and federal law, and spelled out in the Permit.

96.

The Permit does require new and modified waste storage facilities to be approved by the Department prior to construction, Section S2.D.3, and that newly constructed earthen liquid lagoons in GWMAs be double lined with a synthetic liner and have leak detection. Section S2.D.5.

97.

The Permit fails to require this technology for any other CAFO. Double synthetic lined lagoons with leak detection and depth markers are BPT and the highest and best practicable method, as made clear by the Permit's requirement of this industry-standard technology for new lagoons in GWMAs.

98.

For composting and silage areas, the Permit similarly fails to require established practices to reduce pollution, such as lined collection ditches or strip drains to collect stormwater and other liquids generated there.

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99.

Many best-practice technologies are already mandatory for some CAFOs under the Permit (new construction in a GWMA), and individual CAFOs under consent decrees in other states. Rather than only applying these best-practice technologies to some facilities, the Permit must adequately protect state waters from pollution from all facilities. The Permit's failure to require the best practicable and BPT technologies violates the CWA and Oregon's water quality protection laws and is unsupported by substantial evidence.

Improper Reliance on Outdated Rainfall Frequency Data

100.

The Permit requires that CAFOs "must not discharge" to surface waters from the production area except, for certain facilities, in the event of a "25-year, 24-hour" rainfall event. Section S2.B.1. Thus, this rainfall event determines the standard for design, construction, operation, and maintenance of CAFO production areas to ensure that all production area facilities, including lagoons, have adequate storage capacity and can comply with the "must not discharge" requirement.

101.

If production areas and waste storage facilities are so designed, constructed, operated, and maintained, discharges of pollutants that would otherwise violate the Permit are exempted.

102.

The Permit defines the "25-year, 24-hour rainfall event" like EPA's regulations, saying the term is defined by the 1961 National Weather Service Technical Paper No. 40, but adding "or equivalent regional or state rainfall probability information developed from a more current dataset."

103.

Oregon does have equivalent and far more current, and therefore accurate, data than the extremely outdated Technical Paper No. 40. Portland partnered with the University of

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Washington's Climate Impact Group and created an online tool to show how precipitation and extreme rainfall event probabilities have shifted since 1970, and how they are anticipated to shift through 2099.[6] The information provided is not only up-to-date but uses the latest climate models to ensure adjustments for future accuracy, for a wide variety of extreme weather patterns inclusive of 25-year, 24-hour rainfall events. Reliance upon updated data is necessary because studies of regional climate model simulations have found consistent increases in extreme precipitation over the Pacific Northwest.[7]

104.

Because the Permit does not require use of an up-to-date rainfall dataset, like the University of Washington's, it fails to ensure that CAFO production areas and waste storage facilities are actually designed with a capacity for at minimum a 25-year, 24-hour rainfall event and capable of complying with EPA's and the Permit's own effluent limitations. The Permit's failure to require use of accurate rainfall frequency data violates the CWA and Oregon's water quality protection laws and is not supported by substantial evidence.

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[6] Climate Impact Group, Heavy Precipitation Projections for use in Stormwater Planning (2021), https://cig.uw.edu/projects/heavy-precipitation-projections-for-use-in-stormwater-planning/.

[7] Estimates of Twenty-First-Century Flood Risk in the Pacific Northwest Based on Regional Climate Model Simulations in: Journal of Hydrometeorology Volume 15 Issue 5 (2014).

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Improper Reliance on Agronomic Rates

105.

The Permit relies on NMPs to limit CAFO discharges from both the production and land application areas. On land application areas, the NMP imposes limits on the amount of waste that a CAFO can apply based on the calculated agronomic rates of the crops intended to uptake the nutrients in the waste. Sections S2.C; S3.C.2(g).

106.

This approach is based on applying as many nutrients as expected crop yields could utilize. Because agronomic rates are determined based on maximizing crop yields, they are not calculated to minimize the potential for nutrient runoff to waterways. EPA has acknowledged that having an NMP does not guarantee improvements in water quality and that recommended agronomic rates often surpass crop uptake needs and threaten water quality. EPA's regulations require CAFO NMPs use "realistic production goals" and "minimiz[e] nitrogen and phosphorus movement to surface waters." 40 CFR § 412.4(c)(1). The Permit's NMP approach violates these federal CAFO effluent limitations and Oregon's water quality protection laws and is not supported by substantial evidence.

Improper Application to Digestate

107.

The Permit contemplates allowing CAFOs utilizing anaerobic digesters to seek coverage. Section S3.C(2)(i).

108.

The Permit does not impose any specific requirements for these facilities to ensure they will comply with the Permit's effluent limitations, such as additional NMP or effluent monitoring requirements.

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109.

The Permit fails to account for digesters' distinct risks to water quality, including the risks of spills and malfunctions, the differences in waste characteristics and pollutant profiles between digestate and undigested CAFO waste, and the increased solubility and runoff risk of nutrients in digestate.

110.

Authorizing CAFOs using digesters and disposing of digestate to use the same NMP and agronomic rate approach as CAFOs without digesters violates federal CAFO effluent limitations requiring CAFOs to minimize transport of nutrients to surface waters, 40 CFR §§ 122.42(e)(1); 412.4(c)(1), and Oregon's water quality protection laws and is not supported by substantial evidence.

Abandonment of 12-Inches-to-Groundwater Provision

111.

The Draft Permit contained a provision in Section 2.C prohibiting the land application of manure, litter, or process wastewater on fields within twelve inches of the water table.

112.

The agencies abandoned this provision in the final Permit, rendering it insufficient to protect groundwater—including in GWMAs—and hydrologically connected surface waters.

113.

The 2026 General Permit therefore violates both state and federal law, including the state's anti-degradation policy for groundwater. The agencies' abandonment of this provision is not supported by substantial evidence.

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The Permit's Prohibition on Application on Frozen Soil is Not a True Prohibition

114.

The 2026 General Permit purports in Section 2.C to prohibit the application of manure, litter, or process wastewater onto frozen soil.

115.

But the Permit's definition of "frozen soil" renders this provision no prohibition at all: "'Frozen soil' means soil with a frozen surface crust of 2 inches or deeper, or if the soil is at or below zero degrees Celsius (32 degrees Fahrenheit)."

116.

The Permit thus allows application onto fields covered with frozen soil, so long as that frozen soil is less than two inches thick.

117.

EPA has prohibited land application onto frozen ground in neighboring Idaho's NPDES general permit for CAFOs because studies show that such applications cannot occur at an agronomic rate; such applications enhance and facilitate runoff; and no BMPs adequately control nutrient runoff under such conditions.

118.

The agencies' failure to truly prohibit land application onto frozen soil in the Permit is not supported by substantial evidence and will result in runoff to surface waters in violation of both state and federal law, including effluent limitations requiring CAFOs to minimize transport of nutrients to surface waters. *See* 40 CFR §§ 122.42(e)(1); 412.4(c)(1).

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CLAIM FOR RELIEF

(Petition for Judicial Review Under ORS 183.484)

119.

Petitioners incorporate paragraphs 1 through 118 by reference.

120.

The CWA prohibits the discharge of pollutants into waters of the United States, except when in compliance with an NPDES permit. 33 USC § 1251. "Discharge of a pollutant" is any addition of any pollutant to navigable waters from any point source. 33 USC § 1362(12). "Concentrated animal feeding operations" is in the CWA's definition of "point source." 33 USC § 1362(14).

121.

Oregon law prohibits the pollution of any waters of the state, including all surface and groundwaters, ORS 468B.025; ORS 468B.005(10), absent compliance with a lawful permit. ORS 468B.050. Oregon also defines "point source" as including "concentrated animal feeding operation[s]." ORS 468B.005(4). Oregon administers both its own water quality protection laws and the federal CWA, and this intertwined scheme prohibits the discharge of wastes from point sources (like CAFOs) into waters of either the state or the United States unless in compliance with a lawful NPDES permit.

122.

The Permit ignores several ways that CAFOs discharge and fails to impose limits on these discharges, in violation of the CWA and Oregon's water quality protection law. 40 CFR §§ 122.23, 122.42(e), Part 412.1-4; ORS 468B.025, ORS 468B.005(4), (5), (9), (10), ORS 468B.050.

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123.

This includes but is not limited to the failure to regulate hydrologic and aerial deposition discharges, in violation of the CWA and Oregon's water quality protection law. *Cnty of Maui v. Haw. Wildlife Fund*, 590 U.S. 165 (2019); 40 CFR §§ 122.23, 122.42(e), Part 412.1-4; ORS 468B.025, ORS 468B.005(4), (5), (9); (10); ORS 468B.050; OAR 340-045-0010(5), (10), (18), (31).

124.

The Permit further fails to impose representative effluent monitoring requirements on all CAFO discharges, in violation of the CWA and Oregon's water quality protection law. 33 USC §§ 1318(a), 1342(a)(2); 40 CFR §§ 122.41(e), (j)(1); 40 CFR § 122.44(i)(1); 40 CFR § 122.48(b); ORS 468B.025; ORS 468B.005(4), (5), (9), (10); ORS 468B.050.

125.

The Permit further fails to adequately protect water quality where it does impose limitations, violating the core requirement of both the federal CWA and Oregon's water quality protection law and regulations. 33 USC § 1311(a); *Cnty of Maui v. Haw. Wildlife Fund*, 590 U.S. 165 (2019); 40 CFR § 125.3; 40 CFR § 122.42(e)(1); 40 CFR § 412.2(j); 40 CFR § 412.31; 40 CFR § 412.32; 40 CFR § 412.33; 40 CFR § 412.35; 40 CFR § 412.4(c)(1); ORS 486B.025, ORS 468B.005(4), (5), (9) (10), ORS 468B.050; ORS 468B.200; OAR Chapter 340, Divisions 40, 41, 42, 45, 51.

126.

The Permit fails to impose BPJ limits on all pollutants of concern, instead only restricting discharges of nitrogen, phosphorus, and *E. coli*.

127.

The Permit fails to require adequate standards for waste impoundments and composting facilities, instead authorizing the use of facilities that will allow illegal discharges to groundwater and hydrologically connected surface waters.

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128.

The Permit allows the use of outdated rainfall data to determine waste storage capacity, failing to ensure that CAFOs will only have production area discharges in the event of a true 25-year, 24-hour storm event.

129.

The Permit imposes inadequate NMP requirements that are based on maximizing crop yields rather than protecting water quality and therefore will not prevent or minimize nutrient and other discharges to waterways and groundwater.

The Permit fails to adopt appropriate requirements for CAFOs using digesters and applying digestate, improperly assuming that these facilities will comply with all effluent limits by following plans designed for undigested CAFO waste.

130.

The Permit unlawfully and arbitrarily abandoned a proposed restriction on waste application on land with very shallow groundwater, allowing practices that will lead to illegal groundwater contamination and hydrologic discharges to surface water.

131.

The Permit adopts an irrationally narrow definition of "frozen soil," allowing land application on frozen soil that is less than two inches deep and that will threaten surface water runoff and groundwater contamination.

132.

For the reasons explained above in paragraphs 1–131, in issuing the 2026 General Permit, the agencies erroneously interpreted the CWA and Oregon's water quality protection laws; acted outside the range of discretion delegated to them; exercised their discretion in such a way that violates statutory provisions; and acted without substantial evidence. ORS 183.484(5)(a), (b), and (c).

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PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court, exercising its authority under ORS 183.484, 183.486, and 183.497:

(a) Reverse, remand, set aside, or modify the 2026 General Permit to the extent it is inconsistent with Oregon law and the CWA and its implementing regulations, pursuant to ORS 183.484(5)(a);

(b) Remand the 2026 General Permit to the extent the agencies, in exercising their discretion by issuing the 2026 General Permit, acted outside the range of discretion delegated to them by law or otherwise violated a statutory provision, pursuant to ORS 183.484(5)(b);

(c) Set aside or remand the 2026 General Permit to the extent it is not supported by substantial evidence, pursuant to ORS 183.484(5)(c);

(d) Award Petitioners attorneys' fees and costs incurred in this matter, pursuant to ORS 183.497(1); and

(e) Grant such other relief that the Court deems just and equitable.

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DATED this 14th day of July, 2026.

By: /s/ Nadia H. Dahab

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