



CLEAN, FLOWING WATERS FOR THE WEST

The Center for
Environmental Law & Policy

August 17, 2009

Robert Koster
Air Quality Program, ERO
4601 N. Monroe
Spokane, WA 99205

Sent via e-mail to: rkos461@ecy.wa.gov

**Re: Comment on Easterday Ranches feedlot draft air quality permit
(preliminary determination/notice of construction)**

Dear Mr. Koster,

This letter is submitted on behalf of the Center for Environmental Law & Policy and Five Corners Family Farmers. We are concerned about Ecology's preliminary determination approving the construction and operation of a new 30,000-head cattle finishing feedlot proposed by Easterday Ranches, Inc. near Eltopia, Washington.

Ecology's preliminary determination approving the construction of the Easterday feedlot inadequately accounts for several important factors, including the nuisance that will result from the increased odors and flies accompanying a feedlot operation of this scale; inadequate monitoring of particulate matter, ammonia, and hydrogen sulfide; the exceedance of ASIL standards according to Ecology's monitoring; the failure to model cumulative air toxics emissions in the area; and the failure to consider the cumulative air quality impacts of existing dairies, feedlots, and industrial facilities in the area.

Because of these inadequacies, described in detail below, we ask that Ecology reconsider and amend or withdraw its preliminary determination of approval for the Easterday Ranches feedlot.

1) The draft air quality permit is flawed because it fails to adequately account for the nuisance that will result from the increased odors and flies

WAC 173-400-040(4) requires that, "Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum." While the draft air quality permit discusses measures to reduce fugitive dust, it fails to discuss how odor and nuisance created by the feedlot will be controlled, and to what level. Ecology has not sufficiently considered the unreasonable interference with neighboring property owner's use and enjoyment of their property that will result from the increased odors and flies that

accompany feedlot operations of this scale. Because of this failure, Ecology has failed to require Easterday Ranches to implement sufficient Best Available Control Technologies to reduce odors to a reasonable minimum.

Instead, Ecology apparently expects Easterday Ranches to abide by a "good neighbor policy" whereby Easterday will voluntarily implement practices to reduce these odors. We have not seen a written description of the "good neighbor policy," which was discussed at the air quality hearing in Connell on August 7, 2009. Given the controversy generated by this project proposal and the adversarial stance Easterday has taken with neighboring property owners, such an expectation is unreasonable.

2) The air quality monitoring station is improperly situated to monitor emissions coming off of the Easterday feedlot

WAC 173-400-105(2) states that "Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology."

To implement the public policy expressed in the Washington Clean Air Act, the Department of Ecology has adopted a comprehensive scheme of regulation which includes ambient air quality standards, generally applicable emission standards and the imposition of technology requirements on a case by case basis. WAC 173-460 et. seq. The WAC establishes ambient air quality standards for particulate matter (173-470), sulfur oxides (173-474), carbon monoxide, ozone, and nitrogen dioxide (173-475), radionuclides (173-480), and fluorides (173-481). http://www.ecy.wa.gov/programs/air/pdfs/Monitoring_link.pdf. Additionally, WAC 173-460 gives Ecology the authority to regulate ammonia and hydrogen sulfide. While Ecology is not required to monitor for ammonia and hydrogen sulfide, "industrial sources are responsible for monitoring these types of emissions as part of their operating permit requirements." from 8/4 email correspondence from between Sean Hackett, CELP, and Sean Lundblad, Ecology Air Quality Program Quality Assurance Specialist.

The draft NOC for the Easterday proposal does not require Easterday to perform any air quality monitoring. Instead of onsite monitoring, air quality monitoring will be done at the Mesa-Pepiot Way Monitoring Station which is approximately 5-6 miles upwind from the proposed feedlot operation. This is problematic because this station is situated west/northwest from the proposed feedlot and prevailing winds typically come from the southwest. As a result, the monitoring data that will be coming from Mesa Elementary will not accurately reflect the feedlot emissions.

3) The draft air quality permit fails to require monitoring of toxics such as ammonia and hydrogen sulfide.

Pursuant to WAC Ch. 173-460, Ecology has the authority to regulate ammonia and hydrogen sulfide. While Ecology is not required to monitor for ammonia and hydrogen sulfide, "industrial sources are responsible for monitoring these types of emissions as part of their operating permit requirements." (from 8/4 email correspondence from Sean Lundblad, Ecology Air Quality Program Quality Assurance Specialist). While the pH for the pen floor and the lagoons will be monitored, neither the draft air quality permit nor the technical

support document imposes a self-monitoring requirement on Easterday Ranches to ensure that air toxics standards are not exceeded.

Ecology identified the Mesa School monitoring station as the source for ambient air quality monitoring. This station, however, does not suffice as a mechanism to monitor air toxics. Along with the improper placement of this monitoring station, discussed above, Ecology's records indicate that the Mesa station's purpose is to monitor smoke. The station is not equipped to monitor the toxic air pollutants that will actually be emitted by the feedlot. <https://fortress.wa.gov/ecy/enviwa/Default.htm>

CELP is concerned about comments made by Ecology at a August 7, 2009 public workshop regarding the draft air quality permit. Specifically, Ecology staff indicated that onsite air quality monitoring for the feedlot operation will not be required as it would be "too expensive" and the science of the monitoring equipment is "not reliable." If it is not possible to measure toxics emission from a facility, what is the point of imposing emission limits? If monitoring to ensure public health protection is not possible, then the permit should not be issued.

While there may be uncertainty of current feedlot emissions and the measurement of different gases or particulates has proven to be difficult (because of the differences among facilities, variations within a facility caused by differences in building management, and the interactions among buildings caused by the altered wind-flow regime induced by buildings in close proximity to one another), methods of on-farm emission measurements have improved significantly over the past 10 years. See Heber and Bogan 2006, Workshop on Agricultural Air Quality: Study and Regulation of Agricultural Air Quality in the US (this document is contained in Ecology ERO Air Quality Program's Library. The experience gained from the various monitoring studies over the last decade undermines the argument that onsite air quality monitoring should not be required because the science of the monitoring equipment is unreliable.

One study indicated that micrometeorological techniques are acceptable choices for measuring trace ammonia losses because they: (1) integrate over large areas, (2) do not disturb the surface or affect aerodynamic transport, and (3) can conceptually be operated for long periods on a near continuous basis. See Ham, Baum, DeRouchey, 2006, Workshop on Agricultural Air Quality: The Surface Boundary Layer of a Cattle Feedlot- Implications for Long-term Measurement of Ammonia Fluxes.

Another study developed a new method to estimate in-situ emissions from a range of manure storage types in order to address the variability associated with emissions. See Hill et al., 2006, Workshop on Agricultural Air Quality: A Methodology For Estimating Ammonia Emissions From Farm Manure Storage Using Passive Sampling and Atmospheric Dispersion Modeling.

The aggregate lesson to be taken from these studies is that, though there are technical and analytical problems associated with monitoring agricultural air quality, advancements in the field have invalidated the argument that onsite monitoring should be discarded because of unreliability.

Rather than requiring Easterday Ranches to bear the burden of finding a monitoring solution, it appears that the only recourse available to the public and neighbors is to install their own emissions stations. It is a violation of Ecology's duty to the public to protect air

quality to shift the cost of an industrial operation away from the operator and onto the pocketbooks of third parties.

If Ecology determines that it can issue the NOC (see Comments 4 and 5), we request that Ecology amend the NOC to require on-site monitoring of air toxics emitted from the feedlot, as well as ambient air monitoring to address cumulative air toxics impacts. If it is Ecology's position that the monitoring of air toxics emissions from the Easterday feedlot is too difficult, expensive or unreliable, then we request that Ecology decline to issue the NOC for the facility.

4) The draft NOC indicates that the feedlot will exceed the ASIL for ammonia.

Ecology's regulations establish the Acceptable Source Impact Limits (ASIL) for ammonia at 70.8 micrograms per cubic meter on a 24 hour average (see WAC 173-460-150). The last page of the technical support document for the Easterday NOC sets the ASIL at 100 micrograms per cubic meter on a 24 hour average and 73.92 as the "Modeling Result," and concludes that the feedlot will meet the emission standard.

The emission modeling for the feedlot is predicted to exceed the regulatory ASIL requirement. We therefore request that Ecology rescind the draft NOC and decline to issue an air operating permit to Easterday Ranches until it can be demonstrated that air quality standards can be met.

5) The draft NOC does not incorporate modeling of cumulative air toxics.

In addition, it appears that the modeling for ammonia or hydrogen sulfide prepared for the draft NOC did not consider the cumulative air quality impacts associated with the multiple feedlots, dairies and other animal operations now located in the airshed. See Comment 6 below for information about potential sources of cumulative impacts.

We request that modeling for the Easterday facility include a cumulative air quality impacts analysis that first identifies and then considers all of the sources of ammonia and hydrogen sulfide located upwind of the Easterday feedlot and the general locality in order to determine the cumulative loading of air toxics and threats to public health associated with such loading.

6) Ecology failed to meet its obligation to consider the cumulative impacts of the proposed Easterday feedlot operation, nearby dairies and feedlots, and other industrial facilities.

SEPA's procedural provisions require the consideration of "environmental" impacts. Impacts may be direct, indirect, or cumulative. WAC 197-11-792. SEPA does not expressly define "cumulative impacts" but NEPA decisions may be used to help interpret SEPA issues. NEPA defines cumulative impact as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR § 1508.7.

Neither Easterday's Environmental Checklist, the MDNS issued by Franklin County, the Conditional Use Permit issued by Franklin County, nor the Preliminary Determination on Notice of Construction issued by the Department of Ecology contain any mention of the

cumulative impacts of a feedlot operation and multiple dairies on the local environment. Also, when discussing potential environmental impacts, none of the referenced documents discussed the extent to which the proposed feedlot operation might serve as a precedent for future actions, the extent to which several marginal impacts when considered together may result in significant adverse impacts, or the extent to which the range of the probable impacts likely to result from the feedlot were carefully considered. Agency decision makers in this case have considered only the narrow, limited environmental impact of the immediate, pending feedlot operation and closed their eyes to the ultimate probable environmental consequences of the feedlot and existing dairies.

Cumulative impacts of multiple feedlots are a major concern for the Pasco-Connell corridor. According to Department of Agriculture information, there are 14 dairies in Franklin County. See Attachment 1. Odors from one of them, Coulee Flats, can be smelled at the Easterday site and neighboring properties. There are two extremely large feedlots located in the Wallula area and many others in the Pasco-Eltopia-Connell area. Odors from these facilities can be smelled at the Easterday and neighboring properties. There are many dairies and animal facilities in the lower Yakima Valley. It is incumbent on the Department of Ecology to determine the number of facilities and the size of the airshed. There are industrial plants in the region which emit air toxics, including the Tyson rendering plant and the Boise paper facility. There are both natural and human-caused air quality events that affect particulate matter, including dust storms and field burning. To our knowledge, Ecology has not considered the impacts associated with these multiple, existing sources of air quality degradation, and is therefore out of compliance with SEPA.

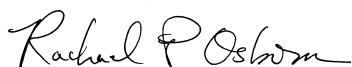
We therefore request that Ecology re-evaluate the SEPA analysis for the Easterday proposal and prepare a supplemental environmental review that considers the cumulative impacts of the Easterday proposal, combined with all existing and reasonably foreseeable future impacts, on the surrounding airshed. Only with proper SEPA analysis can the public be assured that all adverse environmental impacts of the proposal are properly avoided and/or mitigated.

Conclusion

For the foregoing reasons, we request Ecology withdraw its preliminary determination of approval for the Easterday feedlot and decline to issue a new NOC until cumulative air quality impacts have been assessed, the modeling (both for on-site and cumulative emissions) indicates that air quality standards will be met, and appropriate conditions to control odor and nuisance as well as effective, public health-protective monitoring requirements are incorporated into the NOC.

Thank you for the opportunity to provide public comment on the Easterday Ranches draft air quality permit.

Yours very truly,



Rachael Paschal Osborn
Executive Director

Attachment

County	Business Name	Ftype	Mature Animal Range	Dairy Heifer Ranges
Franklin	Zurcher Dairy	Dairy	700 to 1,699	150 to 299
Franklin	Thomasson Double T Dairy	Dairy	200 to 699	150 to 299
Franklin	Five D Farms	Dairy	3,700 to 4,699	3,000 to 3,999
Franklin	Azevedo & Sons Dairy LLC	Dairy	700 to 1,699	150 to 299
Franklin	Ruby Ridge Dairy	Dairy	1,700 to 2,699	300 to 999
Franklin	Coulee Flats Dairy	Dairy	3,700 to 4,699	50 to 149
Franklin	Ruby Ridge Dairy #2	Dairy	1,700 to 2,699	300 to 999
Franklin	Dan-Maur Farms	Dairy	200 to 699	50 to 149
Franklin	C & V's Working Girl Dairy LLC	Dairy	200 to 699	50 to 149
Franklin	K & D Farms Inc	Dairy	200 to 699	300 to 999
Franklin	CC & H Enterprises Inc	Dairy	700 to 1,699	300 to 999
Franklin	Van Rijn Farms	Dairy	700 to 1,699	300 to 999
Franklin	Davidson Brothers Dairy Inc.	Dairy	700 to 1,699	50 to 149