



State of Oregon Department of Agriculture

Proposed Oregon CAFO Individual NPDES  
Permit  
for JS Ranch Poultry Facility

Response to Public

Comments

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**I. Summary of public comment process**

The Oregon Department of Agriculture (ODA) and the Oregon Department of Environmental Quality (DEQ) (collectively, the agencies) are proposing to issue an individual CAFO National Pollutant Discharge Elimination System (NPDES) permit to Eric Simon doing business as J-S Ranch, a Confined Animal Feeding Operation (CAFO).

ODA provided a public notice and comment period for the proposed CAFO Individual NPDES Permit in ODA Area 4 (South Willamette Valley, Oregon). On August 16, 2024, the agency issued a public notice. On September 16th, 2024, ODA hosted a virtual public hearing where 10 oral comments were made and one written comment was received. ODA continued to accept written comments from the public until 5:00pm on September 23, 2024. ODA received a total of 557 written comments on the proposed CAFO Individual NPDES Permit.

## **II. Summary of oral public comments**

### **Oral comment in favor**

One oral comment received at the virtual public hearing was in favor of the proposed permit and listed reasons that included adequate drainage on the property, adequate engineering and wastewater management systems to protect the Santiam River from discharge, and local economic investment from selling chickens locally through Foster Farms.

### **Oral comments in opposition**

Oral comments received at the virtual public hearing were largely opposed to the proposed permit based on concerns that the proposed permit should be considered a new permit and not a permit modification, should comply with new Senate Bill (SB) 85 requirements including Linn County 1-mile setback requirements and water supply plan requirements, is located on an inappropriate site near the North Santiam River and threatens beneficial uses while presenting flooding risks due to a high water table, contributes to air and water pollution through aerial deposition, lacks a sufficient Nutrient Management Plan (NMP) to ensure no discharge, lacks an adequate water quality monitoring plan to ensure no discharge, and lacks sufficient expert verification to confirm site suitability for the design plan and engineering specifications.

Responses to these concerns, as well as a description of permit modifications made in response to the comments, can be found below.

## **III. Responses to comments that are beyond the scope of the permit:**

Many of the comments addressed the following areas of concern: 1) air quality, 2) animal welfare, 3) avian influenza, 4) expired agricultural exemption building permit, 5) financial tradeoffs and putting people over profit, 6) food waste and food safety, 7) human health, 8) quality of life, and other miscellaneous issues. These concerns are acknowledged, but they are not within the NPDES permitting authority and are addressed through other agency regulatory mechanisms other than a water quality permit. A summary addressing each concern is found below.

### **1. Air quality**

Comments included concerns that air emissions from the poultry facility would include greenhouse gas emissions, dust, ammonia, and other pollutants that threaten air quality and contribute to the climate crisis, as well as gaseous waste substances that can contaminate waterways.

*The comments regarding air pollution and air quality are beyond the scope of the proposed CAFO individual NPDES permit. The proposed permit regulates discharges to waters of the state. DEQ is the Oregon agency responsible for implementing the Clean Air Act (CAA) and for issuing air quality permits where required. ORS 468A.020(1)(a) exempts agricultural operations from most air quality laws.*

*While the focus of the action at issue is a water quality permit, many of the water quality best management practices (BMP) planned by JS Ranch would also have a benefit of preventing air emissions. BMPs consist of both structural and management practices. Some of the structural BMPs to be implemented include:*

- *Storing feed in sealed structures.*
- *Covering manure and compost storage facilities.*
- *Storing all litter, compost, and manure in the barns until export.*

*Some of the management BMPs to be implemented include:*

- *Advanced ratio formulation for protein source, amount and starch content that has been shown in research trials to reduce emissions by up to 40%.*
- *Frequent collection of manure from barns to minimize exposure and emissions.*
- *Maintaining high production efficiency.*
- *Maintaining ideal evaporative conditions in the interior of the poultry barns to keep the litter dry.*
- *Provide new sawdust for each flock to separate manure deposited by the birds from the compacted floor of the barn.*

*Greenhouse Gas and Criteria Air Pollutants:*

*DEQ Air Programs monitor air pollutants to determine status with National Ambient Air Quality Standards (NAAQS). When ambient monitoring reveals a NAAQS violation, DEQ takes necessary steps to identify the pollutant sources and to implement strategies to retain compliance with the standards. Currently, the DEQ monitoring station in closest proximity to the proposed facility is located in Albany, Oregon. The air quality data from the Albany monitoring site is found in the 2020 DEQ Air Quality Report found here [2020 Oregon Air Quality Monitoring Annual Report](#).*

## **2. Animal welfare**

Commenters expressed concerns about the impact of large-scale confinement on animal health and wellbeing.

*Comments regarding animal health and welfare concerns are beyond the scope of the proposed CAFO NPDES individual permit. The proposed permit regulates discharges to waters of the state. Animal welfare concerns, including any alleged violations of Oregon animal welfare laws, would be handled by the local sheriff's office or the Oregon Humane Society; <http://www.oregonhumane.org>. The Oregon Humane Society has Humane Special Agents who are certified police officers commissioned by the Oregon State Police to investigate animal crimes.*

## **3. Avian influenza**

Commenters expressed concerns about the risk of avian influenza outbreaks resulting from

large-scale confinement of birds.

*Concerns surrounding the potential of a Highly Pathogenic Avian Influenza (HPAI) outbreak at the CAFO are beyond the scope of the proposed individual NPDES permit. The proposed permit regulates discharges to waters of the state. Outbreaks of HPAI, including any appropriate response activities, would be addressed by the State Veterinarian to ensure compliance with proper emergency response protocol.*

#### **4. Expired agricultural exemption building permit**

Commenters expressed concerns about the agricultural exemption building permit with Linn County being expired.

*Concerns surrounding the building permit are outside the scope of the proposed individual NPDES permit. The proposed NPDES permit regulates discharges to waters of the state. ODA and DEQ do not review building permits as part of the permitting process. Building permits are handled by the zoning authority. The facility is located in Linn County, and Linn County would be the entity responsible for issuing building permits and enforcing code requirements.*

#### **5. Financial tradeoff/people over profit**

Commenters expressed the importance of comparing the cost of prevention to the cost of response to both the facility operator and the community in the event of a discharge resulting from this facility, and the need to consider environmental justice factors and prioritize public concerns over corporate profit or government corruption.

*The CAFO individual NPDES permit regulates discharges to waters of the state. In line with that, the proposed permit enforces the requirements that the facility must follow to protect waters of the state of Oregon for beneficial uses. The permit conditions and requirements do not allow for discharge to waters of the state and provide assurances that a discharge of pollutants will not occur. Once a permit has been issued, it is the permittee's obligation to comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

#### **6. Food waste and food safety**

Commenters expressed concerns about this facility contributing to food waste issues and food safety outbreaks that could impact human health.

*Concerns surrounding the potential for food waste and food safety concerns are beyond the scope of the proposed individual NPDES permit. The proposed permit regulates discharges to waters of the state. Any food safety concerns would be addressed through the ODA's Food Safety Program or the Oregon Health Authority's Foodborne Illness Prevention Program.*

## **7. Human health**

Commenters expressed concern about the facility's impact on human health risks related to zoonotic, respiratory, gastrointestinal, and other infectious diseases.

*Concerns surrounding human health outside the scope of health impacts from water quality are beyond the scope of the proposed individual NPDES permit. The proposed permit regulates discharges to waters of the state and can only address concerns about the effect of CAFO facilities on human health that are within the regulatory scope of the water quality permitting program. This permit prohibits the discharge of pollutants from a CAFO facility to waters of the state to protect beneficial uses, which also protects human health and the environment.*

## **8. Quality of life**

Commenters expressed concerns over the potential effects on the neighborhood from a poultry CAFO including a reduction of property values, odor, and increased traffic.

*General quality of life impacts unrelated to water quality that could be the result of the facility are beyond the scope of the proposed NPDES permit. The proposed permit regulates discharges to waters of the state. The concerns raised in this comment relate more directly to land use which is regulated by the county and state land use system.*

## **III. Responses to recurring themes**

### **Written comments in favor**

Commenters expressed support for the proposed permit based on reasons that include the use of efficient resource management systems, updated technology systems that enhance animal welfare conditions, sufficient engineering specifications to manage drainage and flooding risks, generation of natural fertilizers, contributions to locally grown food supply, supporting small businesses, positive impacts on the community demonstrated through Eric Simon's other operations, and Eric Simon's history of operating a clean farm with responsible ethics.

## **9. Grant the Permit**

Several commenters encourage the agencies to approve and issue the permit.

*ODA and DEQ acknowledge that they have received your comments.*

### **Written comments in opposition**

Various comments included in this document addressed the same or similar concerns. This section includes some general responses to these comments. Responses to such comments below will be referenced to responses in this section.

## **10. Agricultural stormwater exemption**

Commenters expressed concern that the proposed permit violates the Clean Water Act because it extends the agricultural exemption to the production area.

*Agricultural stormwater discharges and return flows from irrigated agriculture are not point sources regulated by NPDES permits. Accordingly, stormwater generated by precipitation that falls on the site may leave as overland flow and infiltrate into the soil without permit coverage, even if it is within the production area. If stormwater is exposed to or contaminated by process waste, it no longer constitutes agricultural stormwater. The proposed permit prohibits all discharges, so the discharge of any contaminated stormwater would be a permit violation.*

*Once a permit has been approved, the permittee must comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

## **11. Antidegradation**

Commenters expressed concerns that the proposed permit violates state and federal antidegradation policy.

*Antidegradation requires that existing uses and levels of water quality necessary to protect those uses are protected and maintained. The proposed individual NPDES permit does not allow any discharge to waters of the state. Accordingly, the permit is consistent with the antidegradation policy. Please refer to Section 3.1 of the Fact Sheet for more information regarding antidegradation policy.*

## **12. Compliance with “no discharge”**

Commenters expressed concerns that the proposed permit fails to assure compliance with the no-discharge standard.

*Once a permit has been approved, the permittee must comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

## **13. Engineering specifications**

Commenters requested verification of design plan and engineering specifications with industry experts.

*Engineer stamped construction plans were submitted and included with the public notice. Although the agencies rely on the engineer as a subject matter expert, ODA and DEQ reviewed the engineered construction plans in conjunction with the NMP and administrative rules (including OAR-340-051, OAR-340-052, OAR-630-074) related to CAFO construction*

*requirements and review of plans and specifications and found the construction plans to be approvable. Additionally, ODA will conduct pre-population inspections to confirm that the construction or installation of the waste management system and relevant operational functions of the facility comply with the conditions of the proposed CAFO NPDES individual permit.*

#### **14. Exported waste plan**

Commenters asserted that the proposed permit should be denied because there are no contracts ensuring a final destination for all exported waste from the facility.

*The proposed NPDES permit regulates discharges to waters of the state. Conditions included in a permit must be within that regulatory scope. Please refer to Section 2.K Manure, Litter, or Process Wastewater Transfers in the proposed CAFO NPDES individual permit for information regarding waste export requirements.*

*Once a permit has been approved, the permittee must comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

#### **15. Grading worksheet**

Commenters suggested that the proposed permit should be denied because there is no “grading worksheet” provided with the permit documents to justify JS Ranch’s categorization as a “minor facility.”

*Based on the information provided by the applicant, the agencies determined that JS Ranch would be categorized under applicable rules as a minor facility. In response to this comment, the agencies also completed EPA’s industrial rating worksheet, and the result of that review is consistent with the prior determination.*

#### **16. Insufficient NMP**

Commenters expressed concerns that the proposed permit’s NMP is not sufficient to protect water quality based on factors including site elevation, subsurface drainage, and liquid storage structures and manure management.

*Site elevation:*

*The NMP has been reviewed by agency experts and determined to meet the requirements in 40 CFR 122.42. Regarding the concerns surrounding the site preparation elevation details and building foundation elevations, this information is included in the NMP. The engineered design for site development uses site elevation manipulation through fill and grading of the production area to create adequate distance between site groundwater and barn floors.*

*Subsurface drainage:*

*The drainage system uses surface collection and drainage to prevent site groundwater recharge. The two-foot separation is achieved through elevating the chicken house floors above the surrounding ground surface and diverting rainfall. The agencies determined adequate information is included in the NMP materials. The agencies recognized based on these comments that the phrase “system intended to manage seasonal high-water tables” was more reflective of expectations to ensure adequate distance is maintained between site groundwater and barn floors and this change is reflected in the proposed permit sections 3.C. and 4.A.*

*Liquid storage structures and manure management:*

*The Natural Resources Conservation Service (NRCS) Agricultural Waste Management Handbook contains guidance that supports compacted soil liners as a suitable alternative for liquid waste storage structure construction. It also describes the science behind compacted earth liners for liquid storage structures. This operation will handle wastes as dry solid material, but the system is designed to be protective enough to contain liquid waste and the construction requirements surpass the standards required in the NRCS Agricultural Waste Management handbook.*

*The animal housing has been engineered to function as a liquid storage structure. The structure and the plan to manage manure have been reviewed by agency experts and are determined to meet or exceed the standards developed for sensitive sites, and are protective of water quality.*

*Additionally, below-barn moisture monitoring addresses the concerns in the comments by alerting the permittee of any needs to repair or maintain the system. The barns are designed and engineered to be used as year-round manure storage as well as animal housing. No manure or wastewater application is approved for the site, and all manure/compost produced will be exported for final disposition, regardless of the length of time it is stored or composted. There is no authorized grazing of chickens at this facility, as detailed in the Manure and Waste Volumes section of the NMP. “Animals grazing” referenced in the NMP represents days that there are no chickens onsite as these are the periods between grows. Spreadsheet limitations required this so that the operation could be properly modeled and volumes of waste accurately determined.*

*These design requirements are sufficient to ensure that the facility will operate in a manner that avoids discharges under the currently expected climatic conditions.*

**17. Linn County setback requirement**

Commenters suggested that the proposed permit should be denied because it does not comply with the Linn County 1-mile setback requirement or that it is otherwise out of compliance with Linn County’s acknowledged comprehensive plan and land use regulations.



*With regard to local land use planning, ORS 197.180 requires that state agency actions affecting land use are consistent with acknowledged county comprehensive plans. With its application materials, the applicant provided a land use compatibility statement (LUCS) from Linn County certifying that the facility is consistent with the county comprehensive plan. A LUCS is a form developed to determine whether a permit will be consistent with local government comprehensive plans and land use regulations. JS-Ranch's LUCS contained a finding from Linn County that the activity or use was compatible with the acknowledged comprehensive plan and land use regulations. This proposed NPDES individual permit is a decision on reconsideration following the agency withdrawal of the prior permit under ORS 183.484(4), not consideration of a new permit application.*

### **18. Insufficient monitoring**

Commenters expressed concerns that the proposed permit's monitoring requirements are not robust enough to protect water quality and suggested the permit increase monitoring activities.

*ODA and DEQ recognize the concern for potential discharges to groundwater going undetected between monitoring activities. Therefore, the agencies have increased the required monitoring of the soil moisture sensors, as detailed in Section 4.A proposed NPDES individual permit from a weekly basis to a daily basis. The monitoring requirements are adequate to enforce the stringent design plans and engineering specifications required in the proposed permit and to capture any system failures to prevent and minimize water quality impairment.*

### **19. Proximity to North Santiam River**

Commenters expressed concerns that the proposed facility is located on an inappropriate site due to the flooding risks and a seasonal high-water table, and that its proximity to the North Santiam River makes it a threat to beneficial uses.

*Inappropriate site with high water table and flooding risks:*

*The agencies understand concerns about the proximity to water bodies like the North Santiam River. The design and engineering of the facility, coupled with the NPDES permit conditions, are protective of water quality by prohibiting any discharge of pollutants. The NMP and stormwater controls prevent pollutants from leaching into surface or groundwater, protecting designated beneficial uses.*

*Proximity to waterways does not affect siting of CAFO facilities where, as here, the proposed CAFO NPDES individual permit stipulates zero discharge to surface waters of the state or groundwater. The agencies have determined that the site is not in the 100-year floodplain and is outside the current FEMA flood map high risk zone. Additionally, the agencies have considered physical site features during the design evaluation and through onsite tours and inspections. Inspections will continue throughout the construction phase.*

*Threats to designated beneficial uses:*

*The facility is prohibited from discharging to surface waters. The proposed operation cannot land apply any litter, compost, mortality compost, or process wastewater, and all the chickens will be housed in buildings at all times. Based on these facts, the proposed chicken operation is not likely to impact beneficial uses for the North Santiam River.*

## **20. SB 85 requirements for New CAFOs**

Many comments addressed concerns over the description of this permit as a permit modification rather than a “new permit,” thus subject to the requirements of a “new CAFO” or a “new large CAFO” under SB 85.

*ODA and DEQ issued a WPCF permit that covered the facility on May 26, 2022. The permit went into effect and was not stayed pending a third-party challenge. On April 19, 2024, the agencies withdrew the order for reconsideration under ORS 183.484(4). The proposed individual NPDES permit publicly noticed on August 16, 2024, was the agencies’ proposed decision on reconsideration.*

*OAR 603-074-0010(21) defines a new CAFO “a CAFO that is seeking a permit under ORS 468B.050 to operate on a parcel of land on which no CAFO has previously operated. A CAFO is considered to have previously operated when it has been issued a WPCF or NPDES Permit.” Because, as described above, this facility had been permitted under a WCPF permit, it is not a new CAFO.*

## **21. SB 85 requirements – Water Supply Plan and water needs**

Commenters expressed the view that the proposed permit should be denied because it did not include a water supply plan as required by SB 85, violates SB 85 requirements pertaining to securing adequate water rights as part of the new water supply plan, and that the facility has inaccurately estimated its water needs to fall under the exemption in ORS 537.545(1)(a) (stockwater exemption) (f) (industrial or commercial purpose exemption).

*Water Supply Plan:*

*SB 85 requires any person that applies for a permit under ORS 468B.050 to submit a water supply plan with the application. However, SB 85 did not become effective until July 27, 2023. Because this facility submitted its permit application prior to the effective date of SB 85, a water supply plan in compliance with SB 85 was not required. On permit renewal, this facility will be required to submit a water supply plan in compliance with SB 85. That WSP will need to use the animal water consumptive guidelines the Department adopted in rule (OAR 603-074-0019) to estimate the gallons per day that the CAFO will use. However, as described in more detail below, this facility is not a new CAFO, so all groundwater used for stockwatering will be exempt from the requirement for a registration, certificate of registration, application for a permit, permit, or certification of completion or groundwater*

right certificate.

*Despite SB 85 not applying, JS-Ranch submitted a water supply plan which was included in the public notice for the proposed CAFO NPDES individual permit. Oregon Water Resources Department (OWRD) reviewed and approved the plan and suggested conditioning the permit to require metering for commercial/agricultural water used under the commercial/industrial exemption in ORS 537.545(1)(f).*

*Stockwatering exemption:*

*Prior to the passage of SB 85, no registration, certificate of registration, permit application, or certificate of completion of groundwater right was required to use groundwater for stockwatering purposes. SB 85 amended this exception such that it now only covers stockwatering use of 12,000 gallons per day or less at a new CAFO. See ORS 567.745(1)(a).*

*This limitation will not apply to this facility because it is not a new CAFO. ODA and DEQ issued a WPCF permit that covered the facility on May 26, 2022. The permit went into effect and was not stayed pending a third-party challenge. On April 19, 2024, the agencies withdrew the order for reconsideration under ORS 183.484(4). The proposed individual NPDES permit publicly noticed on August 16, 2024, was the agencies' proposed decision on reconsideration. OAR 603-074-0010(21) defines a new CAFO "a CAFO that is seeking a permit under ORS 468B.050 to operate on a parcel of land on which no CAFO has previously operated. A CAFO is considered to have previously operated when it has been issued a WPCF or NPDES Permit." Because, as described above, this facility had been permitted under a WCPF permit, it is not a new CAFO.*

*Agricultural industrial commercial exemption:*

*Although the limitations now contained in the stockwatering exemption in ORS 537.545(1)(a) do not apply to this facility, the 5,000 gallon a day limitation for any single industrial or commercial purpose does apply. See ORS 537.545(1)(f). JS-Ranch has estimated its water use needs and believes it would fall under this exemption.*

*ODA has conditioned the proposed permit in S5.A. to require water metering of the industrial/commercial use and allow access to the meter for periodic readings by ODA and OWRD. Once a permit has been issued, it is the permittee's obligation to comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

*While ODA and DEQ are responsible for enforcement related to permit violations, OWRD remains the agency responsible for ensuring water use is authorized and would be responsible for enforcement to curtail unauthorized use of water.*

## **22. Spillage plan and emergency response**

Commenters expressed concerns about limited response plans for addressing spillage events and emergencies.

*For information about responses to unauthorized discharges, please see Section 4 Monitoring, Inspection, Record Keeping, and Reporting Requirements of the proposed CAFO NPDES individual permit. The agencies determined that the permit conditions are adequate to address this concern.*

*Once a permit has been approved, the permittee must comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

### **23. Three Basin Rule**

Commenters suggested that the proposed permit should be denied because it violates the Three Basin Rule, OAR 340-041-0350, due to the facility's proximity to the North Santiam Sub-basin.

*The agencies reviewed this application for compliance with OAR 340-041-0350, given the limitations in the rule on issuance of NPDES permits for flows into the applicable basins. Based on a thorough review of the location of the facility and design, the agencies determined that while discharges are not allowed under the permit, any discharge in violation of the permit would flow into the South Santiam sub-basin. The facility will be graded to provide assurance that all stormwater and any discharge in violation of the permit would flow into the South Santiam sub-basin. Due to the location of the facility and any potential discharges not having any potential to enter into the North Santiam, the agencies determined that the Three Basin Rule would not limit permit issuance in this case.*

### **24. Water pollution**

Commenters expressed concerns regarding threats to water quality resulting from surface and groundwater contamination through runoff and leaching of nutrients, pharmaceuticals, antibiotics, and bacteria from the proposed facility into waterways.

*The proposed NPDES permit regulates discharges to waters of the state. The proposed facility has no direct discharge infrastructure, and the facility is designed for and has operational characteristics so that it will not cause any discharge to surface waters or groundwater. The facility generates solid litter and compost which will be stored in a covered storage building with a concrete floor. No litter or compost will be land applied to any fields on the proposed CAFO, nor will birds be permitted to graze outdoors. The small amount of process wastewater generated is stored in tanks until used in the composting process and is not allowed to be land applied. All birds are confined inside poultry housing barns with elevated, compacted floors covered with absorbent sawdust to collect and contain all the manure excreted by the growing birds. One hundred percent of the litter and compost produced at the facility will be exported.*

*Additionally, the permit conditions require monitoring and construction standards to prevent water quality violations.*

*Once a permit has been approved, the permittee must comply with the conditions of the permit. Any subsequent violations of the permit requirements are handled through compliance and enforcement procedures.*

#### **VI. Summary of changes to the proposed CAFO NPDES Individual Permit**

To address the concerns related to the need for a more robust water quality monitoring plan to ensure protection of water quality, ODA and DEQ increased monitoring of the soil moisture sensors, as detailed in Section 4.A of the proposed permit, from a weekly basis to a daily basis.

Additionally, as part of the comment review process, ODA and DEQ have revised language in sections 3.C. and 4.A. to more accurately depict the required system to maintain separation between poultry barn floors and groundwater as the “system intended to manage seasonal high-water tables.”