

# PUBLIC COMMENT

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**From:** Jean Mendoza  
**Sent:** Saturday, April 9, 2022 7:53 PM  
**To:** DOH WSBOH Health Disparities Council  
**Subject:** EJ in Yakima County  
**Attachments:** FOTC Letter re Climate Commitment Act II.docx; FOTC Letter re Climate Commitment Act III.docx

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External Email

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Dear Governor's Council,  
Please read the Friends of Toppenish Creek comments on Ecology's planned implementation of the Climate Commitment Act.  
Thank you.  
Jean Mendoza



April 5, 2022

Caroline Mellor  
CCA Environmental Justice Planner  
[Caroline.Mellor@ecy.wa.gov](mailto:Caroline.Mellor@ecy.wa.gov)

Claire Boyte-White  
CCA Communications Lead  
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Dear WA State Department of Ecology,

Thank you for this opportunity to comment on the WA Climate Commitment Act & Community Engagement. Friends of Toppenish Creek is a non-profit environmental organization that has been working for over a decade to improve water and air quality in the Lower Yakima Valley. We address these issues through public education, interaction with politicians and government agencies and the courts.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is fluid and cursive.

Jean Mendoza

Executive Director, Friends of Toppenish Creek  
3142 Signal Peak Road  
White Swan, WA 98952

## Friends of Toppenish Creek Comments on the WA Climate Commitment Act Community Engagement - Living Next to a Dairy

March 30, 2022: Spring in the Yakima Valley. A family arrives together to harvest asparagus, just as they have done for many years. Sunlight spreads across the hills and towns. Birds welcome the day.

As the family starts to work, a neighboring dairy begins spraying manure into the air and the smells of springtime morph into the smells of urine and feces. Do Jose and Maria really want to teach their children that a strong work ethic means breathing filth? Can asparagus farmer Kenneth Holestine pay enough to compensate for the days and years subtracted from the family's lifespans due to working in polluted air? Where are the dairy's promises of being a good neighbor?

In the 1970's many Yakima Valley farmers milked small herds of dairy cows and sold the milk to local creameries. There were everyday farm odors and barnyard jokes about the smells. People laughed.

One dairy, north of the small city of Mabton and next to the Yakima River, grew to a few hundred cows and spilled so much manure on the roads that school children walked through manure to reach the school bus and mailmen finally refused to deliver mail. Yakima County closed the dairy in the 1980's due to public health concerns.

At that time dairymen from California, under pressure from environmental consciousness, set their eyes on the Yakima Valley where regulations are few and are not enforced. The Viega family arrived dripping money and purchased the shuttered dairy. Neighbors petitioned Yakima County not to issue a new permit, but officials only saw the money. When Berniece Holestine worried about contamination of her domestic well the officials told her to dig a deeper well.

The Veigas obtained a permit to drill a 106 foot deep dairy supply well and withdraw 16.5 acre feet per year for 350 milk cows and 70 dry cows. The previous dairy had a permit to withdraw 0.5 acre feet of water per year.

The number of cows increased. In 1994 the Veigas deepened the well to 830 feet and tapped into the basalt aquifer. There is no record of a permit to do this, but Ecology certified the well after it was drilled. At that time there was no requirement for meters on wells, so Ecology does not know how much water was actually withdrawn.

The Veigas have since sold the dairy to Gary Visser, DVM. The number of cows is now in the thousands.

In 2015, Randy Vasquez, a night shift worker on the Riverview Dairy drowned in one of the manure storage ponds. In most parts of the nation an investigation would include air testing at the site for methane and hydrogen sulfide. In Yakima County the investigation simply involved an autopsy that found stimulants in Mr. Vasquez' blood. This result was well publicized with the unproven inference that he was just another drug user. The WA Dept. of Labor and Industries valued his life at \$2,200.

In 2016 FOTC asked the Yakima Health District (YHD) and the WA Dept. of Health (DOH) for opinions on the health impacts from spraying manure into the air during inversions and burn bans. The YHD deferred to the DOH. After no response for five years FOTC submitted a public records request for follow-up. DOH stated that they have no records of conversations related to manure spraying.

WAC 173-350-220 requires exempt composters of animal manure to register with and report to local health jurisdictions. Manure composting involves turning the compost from time to time and this generates massive amounts of fecal dust. In 2021, the YHD informed FOTC that “many facilities, including exempt composters, are supposed to submit a notice of intent – many have not. Also, many facilities, including exempt composters, are supposed to submit an annual report – many have not.”

On March 12, 2021, eight neighbors of Riverview Dairy signed a petition regarding dust and manure track-out from Riverview Dairy. Agencies including the Yakima Regional Clean Air Agency, WA State Dept. of Ecology, and WA State Dept. of Agriculture Dairy Nutrient Management Program wrote responsive letters describing their policies and procedures. WSDA conducted an inspection of the dairy on March 15 and found that the dairy is doing everything required in their dairy nutrient management plan. Nothing changed.

On March 23, 2021, the Friends of Toppenish Creek (FOTC) sent a letter to Ecology’s National Pollutant Discharge Elimination System (NPDES) Team with concerns that Riverview is discharging pollutants into the Yakima River. Ecology referred the complaint to WSDA and the DNMP declared the dairy is doing nothing wrong. Regarding FOTC’s offer to test the river water, Ecology stated they only accept testing by their own people, and they do not plan to do that testing.

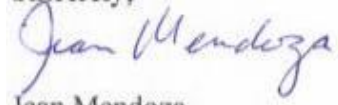
On June 16, 2021, FOTC sent Ecology a letter stating reasons why the Riverview Dairy should have an NPDES permit. A major reason is that the WSDA classified Riverview manure lagoons at high/medium risk for discharge in 2015. The lagoons are clay lined, within ¼ mile of the river, and constructed in soils that are excessively drained. The water table is 10 to 25 feet. WSDA simply replied that their 2015 evaluations are not valid. To date, neither Ecology nor WSDA has provided an alternative evaluation plan. The manure lagoons are not properly evaluated so there is no evidence of discharge. Case closed.

On January 4, 2022, FOTC and Kenneth Holestine informed Ecology that the Riverview Dairy is burying dead cows close to the Yakima River and removing dirt from a natural berm that prevents flooding of cropland on the small peninsula created by a horseshoe bend in the river. The complaint ended up at Yakima Public Works. Inspector Janna Jackson drove by the area and saw no problem from the road. She talked by phone to operator Jason Smeenk who said the dairy does not bury cows near the river and does not remove dirt from the berm. Jackson closed the case.

On February 18, 2022, FOTC sent Ecology and WSDA pictures of manure tracking from the Riverview Dairy. Four days later WSDA’s dairy inspector drove by the dairy and found no evidence of manure on the road. Case closed.

We have good laws to protect Washington air and water. But the laws are not enforced.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is written in a cursive style with a large initial "J" and "M".

Jean Mendoza

Executive Director, Friends of Toppenish Creek  
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## FOTC Comments on the WA Climate Commitment Act & Community Engagement

### **Facts that Ecology already knows or should know about the Lower Yakima Valley.**

About 38% of all Washington milk cows are housed in Yakima County, mostly in a 273 square mile area in the Lower Yakima Valley (LYV).<sup>1</sup>

Out of all Washington farm animals, milk cows are responsible for 44% of nitrous oxide from manure management, 93% of methane from manure management, and 63% of methane from enteric fermentation.<sup>2</sup> Greenhouse gas emissions from manure management are increasing in Washington State.<sup>3</sup>

Along with greenhouse gasses dairies produce large amounts of ammonia, hydrogen sulfide, and volatile organic compounds that lead to creation of fine particulate matter and odor.

The Yakima Valley likely has the highest levels of fine particulate matter in Washington State.<sup>4</sup>

The population near Yakima County Dairies is about 80% Latino and has a lower per capita income than the rest of WA State and the rest of Yakima County. About 25% of the population in the Lower Yakima Valley (LYV) does not speak English or speaks English poorly.<sup>5</sup>

### **Overarching Concern: Ecology is so slow gathering data and taking action that conditions have changed by the time interventions are begun.**

For example, Ecology gathered data for the Yakima Air Winter Nitrate Study (YAWNS) in 2013. Ecology stated that the agency would use this data to develop modeling to predict air pollutant levels. At the time of this writing, nine years later in 2022, the modeling necessary for follow-up is not yet completed.<sup>6</sup>

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<sup>1</sup> Lower Yakima Valley Groundwater Management Area. <https://www.yakimacounty.us/541/Groundwater-Management>

<sup>2</sup> WA State Inventory Tool – Carbon Dioxide, Methane, and Nitrous Oxide Emissions from Agriculture Module. Available on request or at <http://www.friendsoftopenishcreek.org/issues/air.html>

<sup>3</sup> Washington State Greenhouse Gas Emissions Inventory: 1990-2018. Available at <https://apps.ecology.wa.gov/publications/documents/2002020.pdf>

<sup>4</sup> Particulate Pollution in Washington’s Air. Available at <https://ecology.wa.gov/Air-Climate/Air-quality/Air-quality-targets/Air-quality-standards/Particle-pollution>

<sup>5</sup> U.S. Census Data – Washington State. Available at <https://data.census.gov/cedsci/all?q=Washington%20state>

<sup>6</sup> Response to public records request and Personal communication - WA State Dept. of Ecology, March 2022

## **Failure of Ecology to comply with the intent of the Climate Commitment Act regarding engagement of overburdened communities**

Ecology held two Air Quality Listening Sessions for Yakima County on March 24, 2022. Ecology asked community organizations to use Ecology's announcement of the meetings when sharing information about the Listening Sessions. FOTC requested a translation of the announcement into Spanish. Ecology told us they are working on the translation but did not provide translations prior to the sessions.

FOTC has submitted a public records request to learn how Ecology publicized the Listening Sessions for people who speak English less than well, and for people who do not use the internet. The Listening Sessions are advertised on Ecology's website in English with a request in English for people to participate in a survey. There is a proviso, in English, that says the survey is available in Spanish. FOTC does not consider this a good faith attempt to reach overburdened and marginalized people in Yakima County.

The Yakima Regional Clean Air Agency, one of Ecology's "partners" did not advertise the Listening Sessions on their website. The YRCAA Interim Director did not inform the YRCAA Board of Directors about the Listening Sessions at the March 10, 2022 YRCAA Board Meeting.

### **Air pollution in Yakima County is not a new problem.**

At the Listening Sessions Ecology stated that the agency will focus on criteria pollutants when spending \$4 million on statewide air testing. Ecology said the Listening Sessions will help the agency determine where to place air monitors. Ammonia, hydrogen sulfide, and volatile organic compounds are precursors to criteria pollutants. Ozone and PM<sub>10</sub> are criteria air pollutants. Yet, Ecology informs FOTC that:

- "H<sub>2</sub>S and sulfate are not the subject of any active modeling investigations in Yakima County."
- "Ecology does not estimate VOC contributions to ozone and particulate matter levels in Yakima County."
- "Ecology does not estimate PM<sub>10</sub> emissions from manure composting."
- "Ecology does not assess the impact of methane emissions on ozone levels in Yakima County."<sup>7</sup>

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<sup>7</sup> FOTC submitted a public records request on March 3, 2022 for: Copies of Ecology's current climate models for temperature, winds, humidity, and precursor emissions for Yakima County; Copies of current ANO<sub>3</sub> modeling for Yakima County (Sunnyside, Toppenish, and Yakima); Copies of models that predict hydrogen sulfide emissions and conversion rates to sulfur dioxide in Yakima County; Ecology's numerical modeling to determine the pathway for reducing the available nitric and/particulate nitrate pool; Ecology's current assessment of VOC levels in Yakima County and the contribution of VOCs from Yakima dairies; Ecology's estimate of VOC contribution to ozone levels and particulate matter levels in Yakima County; Ecology's current health classification scheme for air pollutants, especially with respect to Yakima County; Ecology's modeling studies that estimate ammonia levels from all sectors in Yakima County (Sunnyside, Toppenish, and Yakima); Ecology's estimate of PM<sub>10</sub> emissions from the > 500 acres of manure composting operations in Yakima County; Ecology's estimation of methane emissions and assessment of the impact of methane emissions on ozone levels in Yakima County. On March 31, 2022, Ecology replied: "Your public records request has been reviewed and we did not find any records responsive to your request."



In 2009 then Air Pollution Control Officer (APCO) Gary Pruitt informed the Yakima Regional Clean Air Agency (YRCAA) that Yakima County was in danger of non-attainment.<sup>8</sup>

In 2013 about 20 citizens told the YRCAA about air pollution and odor in the Lower Yakima Valley during comments regarding YRCAA dairy air policy.<sup>9</sup>

In 2013 citizens petitioned the YRCAA to ban spraying of manure into the air during inversions and burn bans. The request was denied.<sup>9</sup>

In 2015 Ecology published the Yakima Air Winter Nitrate Study (YAWNS) that documented high levels of PM<sub>2.5</sub> in Yakima County during winter months.<sup>10</sup>

In 2015 studies by the University of Washington found decreased respiratory function in asthmatic children during periods when ammonia levels in the ambient air were elevated.<sup>9</sup>

In 2016 and again in 2019 FOTC asked Ecology to investigate the YRCAA under their Powers and Duties in the WA Clean Air Act, RCW 70A.15. Ecology declined to investigate.<sup>9</sup>

In 2019 the Latino Community Fund analyzed a survey of 700 Yakima County residents (500 in English, 200 in Spanish). According to the community, the top 3 activities that have a negative impact on the environment are land pollution, air pollution, and climate change.<sup>11</sup>

In 2019 FOTC completed a study that found ammonia levels in the LYV were 66 times higher than levels in the Upper Yakima Valley.<sup>9</sup>

In 2021 FOTC asked the Yakima County Commissioners to dissolve the YRCAA and sent a copy of this request to Ecology. The reasons are laid out clearly, including alleged violations of WA laws regarding the air quality.<sup>9</sup>

In 2021 neighbors of a LYV dairy petition both Ecology and YRCAA to protect them from air pollution from the dairy. To date nothing has changed.<sup>12</sup>

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<sup>8</sup> Air Quality om Yakima County – the Ramifications of PM 2.5 “non-attainment” status. Available at <https://www.yakimacleanair.org/resources/education.html>

<sup>9</sup> FOTC Dissolve the Yakima Regional Clean Air Agency. Available at <http://www.friendsoftoppenishcreek.org/issues/air.html>

<sup>10</sup> Yakima Air Winter Nitrate Study (YAWNS) Available at <https://ecology.wa.gov/DOE/files/a6/a67789dd-aed4-461e-b138-e77537dd1952.pdf>

<sup>11</sup> Latino Community Fund Community Ecology Report. Available at <http://www.friendsoftoppenishcreek.org/cabinet/data/EPA%20Air%20Attachment%2020%20LCF%20Ecology%20Analysis%20Report.pdf>

<sup>12</sup> Copy of petition available on request

## **Local and state air control agencies in Yakima County protect the dairy industry**

In 2019 between July 19 and July 29 a LYV resident contacted the YRCAA nine times to file complaints regarding dust and odor from a dairy that threatened family health. The YRCAA finally responded on July 29 by making a phone call to the dairy to inform the dairy that a complaint had been lodged.<sup>9</sup>

The YRCAA does not enforce:

RCW 70A.15.2000(6): Board member conflict of interest

WAC 173-400-260: Board member conflict of interest

RCW 70A.15.1005: Declaration of public policies and purposes

RCW 70A.15.2270: Annual fees from operating permit program source to cover cost of program

RCW 70A.15.3060: State financial aid-Application for-Requirements

RCW 70A.15.3050: Emission control requirements

RCW 70A.15.3150: Penalties

RCW 70A.15.4530: Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter

The YRCAA does not register Yakima County dairies and has no permitting, monitoring, or reporting program for Yakima County dairies, despite the fact that these facilities are the largest emitters of air pollutants in the LYV.<sup>9</sup>

## **Concentrated Animal Feeding Operation (CAFO) dairies drain public funds and escape responsibility for adverse side effects from their operations**

The health impacts from air pollution in the LYV have never been quantified, although studies by the University of Washington document the impact on asthmatic children and the Environmental Protection Agency (EPA) confirms a dose response relationship between levels of fine particulate matter in the ambient air and cardiac disease.

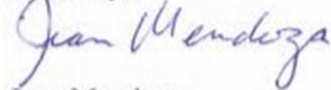
The EPA has spent millions studying water pollution from a cluster of LYV dairies. Washington taxpayers spent well over \$2.3 million on the subsequent Lower Yakima Valley Groundwater Management Area (LYV GWMA). Now the program projects expenditure of around \$100 million to implement the resulting plan.<sup>1</sup>

Speaking at a convention of Oregon dairymen this year, economist David Kohl stated, “Basically, the government put us on steroids. Now we’re going to have to cut our teeth as we move forward”. He stated that federal cash represented about 72% of dairy farmers’ net income in 2020.<sup>13</sup>

Other sources say that government support of U.S. dairies was equivalent to 45% of the U.S. cost of production of milk or 71% of the market returns in 2015. Other sources describe a glut of 1.4 billion pounds of cheese in storage due to mandatory purchases of surplus cheese by the government.<sup>14</sup>

This may sound like an attack on the dairy industry. It is not. FOTC asserts that WA state and local governments must be realistic about the environment and economics and consider all the facts while implementing the Climate Commitment Act. Dairies in Yakima County receive massive taxpayer subsidies and do not pay for their air emissions. Is this acceptable?

Sincerely,



Jean Mendoza

Executive Director, Friends of Toppenish Creek  
3142 Signal Peak Road  
White Swan, WA 98952

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<sup>13</sup>Capital Press, Dairies must look beyond government help, economist says. Available at [https://www.capitalpress.com/state/oregon/dairies-must-look-beyond-government-help-economist-says/article\\_6487210a-9f5b-11ec-9e84-3fe36c23b3be.html?utm\\_source=newsletter&utm\\_campaign=daily-ag-updates-newsletter&utm\\_medium=email&utm\\_content=headline](https://www.capitalpress.com/state/oregon/dairies-must-look-beyond-government-help-economist-says/article_6487210a-9f5b-11ec-9e84-3fe36c23b3be.html?utm_source=newsletter&utm_campaign=daily-ag-updates-newsletter&utm_medium=email&utm_content=headline)

<sup>14</sup>How CAFOs milk the public. Available at <http://www.friendsoftoppenishcreek.org/cabinet/data/FOTC%20How%20CAFOs%20milk%20the%20public%20and%20pollute%20the%20environment.pdf>