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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN

CHRISTINA EASTMAN, in her individual capacity, FARMERS AGAINST FOSTER FARMS, an Oregon nonprofit corporation; FRIENDS OF FAMILY FARMERS, an Oregon nonprofit corporation, AND WILLAMETTE RIVERKEEPER, an Oregon 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. 22CV34340

[REDACTED] FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hon. Rachel Kittson-MaQatish

This matter came before the Court on Petitioners’ and Respondents’ cross motions for summary judgment regarding Claims 1 through 3 of Petitioners’ Second Amended Petition for Judicial Review. The Court held a hearing on the motions on May 19, 2025. Attorneys Amy van Saun and Nadia Dahab appeared on behalf of Petitioners. Attorneys Shaunee Morgan and Sadie Forzley appeared on behalf of Respondents. After considering the motions and the arguments of counsel, the Court rules as follows:

FINDINGS OF FACT

1. Eric Simon, on behalf of J-S Ranch, applied for a Water Pollution Control Facilities (WPCF) General Permit on August 1, 2020, to construct and operate a Large Tier II

1 chicken Confined Animal Feeding Operation (CAFO) at 37225 Jefferson-Scio Dr. in Scio,
2 Oregon.

3 2. Respondents ODA and DEQ originally registered JS-Ranch to Water Pollution
4 Control Facilities (WPCF) General permit on May 26, 2022 (WPCF General Permit No. 01-2015
5 for ATR#995343).

6 3. J-S Ranch proposed to house up to 580,000 broiler chickens at a time, with six
7 flocks per year, for a total of nearly 3.5 million chickens per year. The operation was permitted
8 to generate approximately 4,500 tons of chicken manure, to be stored onsite until it was
9 exported.

10 4. J-S Ranch was permitted on a parcel of land that is 483 yards from the North
11 Santiam River, and less than one mile from nearby residences.

12 5. Petitioners challenged that permit before this Court in a Petition for Judicial
13 Review dated October 4, 2022.

14 6. On April 19, 2024, before this matter proceeded to trial, Respondents withdrew
15 the WPCF permit registration issued to Eric Simon for reconsideration under ORS 183.484(4).

16 7. The conditions for J-S Ranch's WPCF permit were never completed before
17 Respondents withdrew the permit.

18 8. On October 31, 2024, after providing for public participation through notice and
19 comment and a public hearing, Respondents issued a National Pollutant Discharge Elimination
20 System (NPDES) individual permit to J-S Ranch (No. INV-ORI010828), with an effective date
21 of November 20, 2024.

22 9. On December 30, 2024, Petitioners filed a Second Amended Petition for Judicial
23 Review to challenge the NPDES individual permit.

24 10. Before Respondents issued the NPDES individual permit to J-S Ranch, the
25 Oregon Legislature passed Senate Bill 85, signed into law on July 27, 2023. Senate Bill 85
26 imposed, among other things, the water quality and quantity requirements for new large CAFOs

1 and allowed counties to impose their own setback requirements for new large CAFOs where the
2 parcel of land is adjacent to a parcel of land with a residential structure. ORS 468B.212-216.

3 11. Senate Bill 85’s requirements include, specifically:

4 (a) Notice to neighbors within one-half mile of the parcel of land on which
5 the new CAFO is proposed, and ODA and DEQ consultation with federal
6 Tribes. ORS 468B.215(4)–(6).

7 (b) A water supply plan reviewed by the Oregon Water Resources Department
8 to determine whether the water uses identified in the plan are legally
9 authorized and available (including the 12,000 gals/day cap on the
10 stockwater exemption). ORS 468B.216; ORS 537.545(1)(a).

11 (c) A Land Use Compatibility Statement (LUCS) from the relevant county.
12 ORS 468B.212.

13 12. ODA’s administrative rules implementing Senate Bill 85, including OAR 603-
14 074-0010(21), took effect on September 25, 2024, before the J-S Ranch NPDES individual
15 permit was issued.

16 CONCLUSIONS OF LAW

17 As related to Claims 1 and 2, the Court denies Respondents’ motion for summary
18 judgment, and grants Petitioners’ cross motion for summary judgment. The Court concludes as
19 follows:

20 13. Through Senate Bill 85, the Oregon Legislature defined “new CAFO” and “new
21 large CAFO” as:

22 “[a] confined animal feeding operation that is seeking a permit under ORS
23 468B.050 to operate on a parcel of land on which no confined animal feeding
24 operation has previously operated.”

25 ORS 468B.215(1)(d).
26

1 14. Through its new administrative rules, ODA defined “new CAFO” as:
2 “[a] CAFO that is seeking a permit under ORS 468B.050 to operate on a parcel of
3 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.”

4 OAR 603-074-0010(21).

5 15. In Claim 1 of their Second Amended Petition for Judicial Review, Petitioners
6 challenge the definition of “new CAFO” in OAR 603-074-0010(21) as contrary to ORS
7 468B.215(1)(d) and ask this Court, pursuant to ORS 183.484(4), to declare the rule invalid.

8 16. In Claim 2 of their Second Amended Petition for Judicial Review, Petitioners
9 claim that J-S Ranch’s NPDES permit, issued after Senate Bill 85 took effect, was subject to that
10 law. Because it is undisputed that Respondents did not apply these requirements to J-S Ranch’s
11 NPDES permit, Petitioners ask this Court to set aside the NPDES permit.

12 **Claim 1**

13 17. The Court declares that ODA’s regulatory definitions of “new CAFO” and “new
14 large CAFO” conflict with the statutory definition set forth in ORS 468B.215(1)(d).

15 18. Using the analyses set forth in *Ross v. Springfield Sch. Dist. No. 19*, 294 Or 357,
16 367 n. 7, 657 P2d 188 (1982) and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009), the
17 Court looks to the plain text and context of ORS 468B.215(1)(d). The Court may also consider
18 legislative history.

19 19. ORS 183.484(4) defines “new CAFO” as one seeking a permit where no CAFO
20 has “previously operated.” OAR 603-074-0010(21), by contrast, defines “previously operated”
21 as having “been issued a WPCF or NPDES Permit.”

22 ~~20. The phrase “previously operated” is unambiguous and has an ordinary meaning~~
23 ~~that requires a CAFO to be in operation to be considered existing, that is, constructed, populated~~
24 ~~with livestock, and managing animal waste.~~

25 21. Oregon’s water quality laws are designed to ensure that the management of
26 animal waste from a CAFO does not lead to pollution of waters of the state. *See* ORS Chapter

1 468B; 33 USC §§ 1251, 1311, 1342. CAFO itself is defined in ODA’s rules as “[a]n operation
2 that engages in the feeding or holding of animals . . . ” meeting certain conditions. OAR 603-
3 074-0010(4).

4 22. The legislative history shows that the legislature did not intend an operation like
5 J-S Ranch to be excluded from Senate Bill’s 85 requirements.

6 23. The addition of the language of “ha[ving] been issued a WPCF or NPDES
7 Permit” goes beyond the statute, which did not define “new CAFO” as one that was previously
8 permitted, but rather one that previously operated. The regulation therefore conflicts with the
9 statute and exceeded ODA’s authority pursuant to ORS 183.484(4).

10 24. ODA’s regulatory definitions of “new CAFO” and “new large CAFO” at OAR
11 603-074-0010(21) are hereby declared invalid and are set aside.

12 **Claim 2**

13 25. The Court finds that when the J-S Ranch NPDES individual permit was issued
14 (on October 31, 2024), Senate Bill 85 had already passed into law and taken effect (on July 27,
15 2023). J-S Ranch was therefore required to comply with the requirements of Senate Bill 85, but
16 the NPDES individual permit did not apply those requirements to the facility.

17 26. Respondents’ justification for not applying the requirements to J-S Ranch—that
18 the NPDES individual permit was a “modification” of the prior WPCF general permit—does not
19 find support in Respondents’ governing regulations .

20 27. Respondents’ regulations for WPCF and NPDES permits do not provide for
21 modification of a WPCF general permit authorization to an individual NPDES permit.

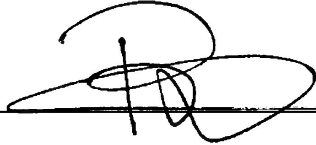
22 28. The Court rules that, as a matter of law, the NPDES permit issued for J-S Ranch
23 was a new permit, not a “modification” of the prior WPCF permit.

24 29. Because J-S Ranch is a “new large CAFO” under Senate Bill 85 and did not
25 comply with the requirements that apply to new large CAFOs under Senate Bill 85, this Court
26 holds invalid and sets aside the 2024 NPDES Individual Permit No. INV-ORI010828.

1 30. Because the J-S Ranch permit is invalidated, the remainder of Petitioners' claims
2 are moot.

3 IT IS SO ORDERED.

9/18/2025 9:56:37 AM

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Circuit Court Judge, Rachel Kittson-MaQatish

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10 Submitted by:

11 /s/ Nadia H. Dahab

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15 Attorneys for Petitioners
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1 **UTCR 5.100 CERTIFICATE OF READINESS**

2 In accordance with UTCR 5.100(1) & (2), I hereby certify that the foregoing proposed
3 order is ready for judicial signature because:

- 4 Each party affected by this order or judgment has stipulated to the order or judgment, as
5 shown by each party’s signature on the document being submitted.
- 6 Each party affected by this order or judgment has approved the order or judgment, as
7 shown by each party’s signature on the document being submitted or by written
8 confirmation of approval sent to me.
- 9 I have served a copy of this order or judgment on each party entitled to service and:
10 No objection has been served on me.
11 I received objections that I could not resolve with a party despite reasonable
12 efforts to do so. I have filed a copy of the objections I received and indicated
13 which objections remain unresolved.
14 After conferring about objections, the parties agreed to independently file any
15 remaining objections.
- 16 Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
17 otherwise.
- 18 This is a proposed judgment that includes an award of punitive damages and notice has
19 been served on the Director of the Crime Victims’ Assistance Section as required by
20 subsection (5) of this rule.

21 DATED this 31st day of July, 2025.

22 By: /s/ Nadia H. Dahab
23 **Nadia H. Dahab**, OSB No. 125630
24 SUGERMAN DAHAB
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Attorneys for Petitioners

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused to be served the foregoing **PETITIONERS'**
3 **[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW** on the following
4 named person(s) on the date indicated below:

5 Shaunee Morgan
6 Sadie Forzley
7 Assistant Attorney General
8 OREGON DEPARTMENT OF JUSTICE
9 1000 SW Market St.
10 Portland, OR 97201
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by Overnight Delivery
 by Facsimile
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 by OJD File & Serve
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9 Attorneys for Respondents

12 DATED this 31st day of July, 2025.

13 /s/ Nadia H. Dahab
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