

Discussion of Draft Ranges for Reporting Certain Farm Plan Information
May 18, 2006
DRAFT Meeting Notes

Present:

Jack Field

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Fred Colvin, John Larson

Nora Mena, Jeff Canaan

Who and what does the rule apply to?

Discussion compared the plans and records affected by SSB 6617 compared to those affected by HB 2520. The distinction will need to be clear prior to going out for public review of any draft ranges rule language.

1. We all agreed that any plan or records related to permitted CAFO facilities are fully disclosable, ~~and are subject to CBI.~~ (I wasn't there for this part but I'm not sure how CBI applies. I've been told that the effluent limits can't be excluded from public review and the NMP is the effluent limit.)
2. I think we said we needed AAG review of this point. Voluntary plans under SSB 6617 include all plans whether required by some local or state rule (i.e, Critical Areas Ordinance, Dairy Nutrient Management Act) UNLESS the plan is developed/required for compliance with Chapter 90.48 RCW. This translates into plans required for any AFO through formal enforcement action (Administrative Order) in order to prevent/control discharges to waters of the state.
 - Plans or updates developed as a result of a referral by Ecology or WSDA will not be affected until/unless an administrative order is issued to the producer to get a plan or to update an existing plan.
 - Where an Administrative Order under Chapter 90.48 RCW regarding a farm plan is issued to a non-livestock facility for the control of pollutants, the plans and records related to the plan are no longer exempt from disclosure.
3. Disclosure in ranges would apply to the following plans, records and reports for facilities that are not under the CAFO permit:
 - Any plans, inspection records, complaint forms, enforcement documents, reports, etc. held by Ecology, WSDA, or other agency for a facility whose plan was developed by a private consultant. Presumably, WSDA or Ecology would not have plan related information on such a facility unless there was some sort of complaint and related compliance action. Any plans, inspection records, complaint forms, enforcement documents, reports, etc. for a dairy or AFO who has received an administrative order under Chapter 90.48 RCW to get a plan developed or updated. This would include any records and reports held in CD files regarding the facilities plan.

add in - request for notification for some PDC for specific facilities

- Where an existing plan is required to be updated, only information in the portion of the plan updated will be subject to disclosure (Is this legally defensible?).
- Does language in SSB 6617 limit disclosure of plans to just the information provided in ranges so that other information such as the record of decision is not discloseable?
- If a facility meeting the voluntary plan exemption is subject to a complaint inspection that does not result in any enforcement action, is the information in the complaint inspection documentation exempt or subject to disclosure in ranges?
- Any plans, inspection records, complaint forms, enforcement documents, reports, etc. for a non-livestock farm that has received an administrative order under Chapter 90.48 RCW to get a plan developed or updated. Information subject to disclosure in ranges only includes the acres and crop yields (Is this inclusion of non-livestock facilities legally defensible?)
- At the time that WSDA water quality activity with livestock facilities is covered by a statute different than Chapter 90.48 RCW, the disclosure statute should be amended to include the additional chapter reference.
- Other local jurisdictions may have plans and related records and reports containing information that is subject to disclosure in ranges. This would be associated with such requirements as development permits and Critical Area Ordinance administration.

Who needs to adopt rules for disclosure in ranges?

1. WSDA is directed in statute to “adopt rules to implement this section in consultation with affected state and local agencies.”
2. No other agency is directed to adopt rules, however, the statute doesn’t include that all affected agencies will use the ranges/rules that WSDA adopts. That may mean that each affected agency should adopt their own rules so that they can release the information in ranges as intended. There is a difference of interpretation on this point.
3. Local and state agencies that may have the plans and records intended to be subject to disclosure in ranges include WSDA, Ecology, each Conservation District, each County.
4. Having more than one agency adopt rules leaves the possibility that different rules would be adopted in different jurisdictions (Is further legislative word-smithing needed to allow one set of rules to apply to all local and state agencies?).

Draft ranges and the methodology used to develop them

I thought the explanation of the methodology was key. It should be included or attached.

Suggested changes:

1. Combine the dairy heifers in with the beef cattle due to similarities in management and outputs. Heifer only operations are basically feedlots.

2. Initial concern that the first two ranges should be split into smaller numbers. After discussion looking at the other 4 areas of information, the concern seemed to be addressed.
3. Keep the first two ranges as they are but for dairy and beef make third range larger – up to 4,999 animals and make subsequent ranges cover 5000 animal spread. At 25,000 animals, increase spread in range to 'X + 120%X'. (Presume that other livestock categories should follow suit proportionately)
4. Yield is the fifth area of information to release in ranges. The draft shows this as production and should be switched to actual yield instead.

General assessment of methodology:

1. Once the animal numbers are set, the methodology described by Jeff makes sense for developing the ranges for the other four areas.
2. Some interest in handling east side facilities differently from west side. Discussion indicated that the variability within the operations, east or west, can be as high as the variability between east and west side conditions.
3. While the methodology averages out variability, it still creates a consistent benchmark to compare to.
4. The nutrient ranges are based on the nitrogen content of manure produced rather than the total nutrient load including other process materials, or the phosphorus. This was determined to be a reasonable approach to identify when nitrogen would be a concern. Nitrogen was recognized as the primary nutrient of concern and manure produced as the largest source of nitrogen.

