

1 **POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 FRIENDS OF TOPPENISH CREEK,
4 PUGET SOUNDKEEPER ALLIANCE,
5 CENTER FOR FOOD SAFETY, SIERRA
6 CLUB, WATERKEEPER ALLIANCE,
7 FOOD & WATER WATCH,

8 Appellants,

9 v.

10 WASHINGTON STATE DEPARTMENT
11 OF ECOLOGY,

12 Respondent.

PCHB No. 23-002

ORDER ON SUMMARY JUDGMENT

13 **I. INTRODUCTION**

14 This matter comes before the Pollution Control Hearings Board (Board) on a motion for
15 summary judgment filed by Appellants Friends of Toppenish Creek, Puget Soundkeeper Alliance,
16 Center for Food Safety, Sierra Club, and Waterkeeper Alliance (collectively, Appellants).
17 Appellants ask the Board to vacate and remand two Department of Ecology (Ecology) General
18 Permits for Concentrated Animal Feeding Operations (CAFOs). In response, Ecology agrees that
19 remand is appropriate on certain issues. On these issues, the Board GRANTS Appellants' motion
20 for summary judgment. However, on three other issues, which are disputed, the Board DENIES
21 Appellants' motion for summary judgment as detailed below.

The Board deciding this matter was comprised of Board Chair Michelle Gonzalez, Board
Member Christopher G. Swanson, presiding, and Board Member Gabriel Verdugo. Attorneys

1 Andrew Hawley and Daniel C. Snyder represented Appellants. Attorney Amy Van Saum
2 represented Center for Food Safety. Assistant Attorneys General Julian Beattie, Adam L. Levitan,
3 and Dylan Stonecipher represented the Department of Ecology.

4 In ruling on this Motion, the Board considered the following materials:

- 5 1. Appellants Friends of Toppenish Creek *et al.*'s Motion for Summary Judgment
6 (*Motion*);
- 7 2. Declaration of Daniel C. Snyder in Support of Appellants' Motion for Summary
8 Judgment, with Exs. Nos. 1-12 (*Snyder Decl.*);
- 9 3. Department of Ecology's Response to Appellants' Motion for Summary Judgment
10 (*Response*);
- 11 4. Declaration of Chelsea Morris in Support of Department of Ecology's Response to
12 Appellants' Motion for Summary Judgment, with Exs. A-B (*Morris Decl.*);
- 13 5. Appellants Friends of Toppenish Creek *et al.*'s Reply (*Reply*);
- 14 6. Second Declaration of Daniel C. Snyder in Support of Appellants' Motion for
15 Summary Judgment, with Exs. 13-14 (*Second Snyder Decl.*); and
- 16 7. The Board's file in this matter.

17 II. BACKGROUND

18 This case involves CAFOs and the Clean Water Act (CWA). A CAFO is an agricultural
19 facility that confines and feeds animals in a designated space that is not otherwise used to produce
20 crops or vegetation. 40 C.F.R. § 122.23(b). CAFOs may house animals such as dairy cows, sheep,
21

1 hens, or other types of livestock and poultry. See *Wash. State Dairy Fed'n v. Dep't of Ecology*, 18
2 Wn. App. 2d 259, 266, 490 P.3d 290 (2021).

3 Ecology has regulatory authority over CAFOs under the federal CWA and Washington's
4 Water Pollution Control Act (WPCA), ch. 90.48 RCW. CAFOs produce by-products "including
5 manure, litter (manure produced by poultry), and process wastewater . . ." *Wash. State Dairy*
6 *Fed'n*, 18 Wn. App. 2d at 266. These by-products contain nutrients such as nitrogen and
7 phosphorous. *Id.* at 267. Their storage and use can result in discharges of these and other
8 "pollutants" to state and federal jurisdictional waters. *Id.* This triggers regulatory authority under
9 the CWA and the WPCA.

10 CAFO discharges occur mainly through two pathways. First, CAFO operators convert
11 manure and litter by-products into fertilizer and spread them on croplands. *Id.* at 266. From there,
12 rainfall can cause nitrogen, phosphorous, and other pollutants to seep into groundwater or flow
13 into surface water, resulting in discharges to state and federal waters.¹ Second, CAFO operators
14 store manure and litter by-products in lagoons and upright tanks over the winter. *Id.* These storage
15 facilities can leak, causing nitrogen and phosphorous discharges into groundwater and/or surface
16 water. *Id.* at 266-67.

18 ¹ These discharge mechanisms are described in more detail in *Wash. State Dairy Fed'n*, 18 Wn. App. 2d at
19 267: "In a process called 'mineralization,' organisms within soil break down organic nitrogen and convert it to an
20 inorganic form that a plant can then use. Phosphorous must similarly undergo a mineralization process to convert the
21 organic form of the nutrient to one that is available for plant uptake. Manure, however, is an 'imbalanced fertilizer,'
meaning the amount of nutrients provided by the manure does not equal the amount of nutrients the crop needs or is
able to use. As a result, excess nitrate, which is 'highly mobile' in soil, migrates below the root zone where it will
leach into groundwater and eventually reach surface water. Phosphorous binds to soil and is unlikely to leach into
groundwater, but it can move off-site in runoff from fields and reach surface water."

1 Under the CWA, these discharges are illegal without a National Pollutant Discharge
2 Elimination System (NPDES) permit. 33 U.S.C. § 1311(a). Likewise, under the WPCA, these
3 discharges are illegal without a state permit from Ecology. RCW 90.48.160.

4 Ecology has elected to provide both NPDES and WPCA permit coverage for CAFOs by
5 issuing two general permits. “A general permit, unlike an individual permit issued for a single
6 point source or to a single facility, is one that applies to multiple facilities that conduct the same
7 kind of discharge activities from the same type of point source.” *Wash. State Dairy Fed’n*, 18 Wn.
8 App. 2d at 270 (citing WAC 173-226-030(13)-(14)). Ecology issued two general permits for
9 CAFOs in January 2017. *Id.* at 265.

10 However, these permits were successfully challenged on appeal, and the Court of Appeals
11 remanded them to Ecology for rewriting in June 2021. *Id.*

12 Ecology duly rewrote its two CAFO general permits and reissued them in January 2023.
13 *See Morris Decl., Ex. A; Snyder Decl., Ex. 6 p. 41* (numbered as page 32). The first of these two
14 permits is called the Combined Permit. *See Snyder Decl., Ex. 6 p. 41* (numbered as page 32). The
15 Combined Permit authorizes discharges to groundwater and surface water under the federal
16 NPDES program and the WPCA. *Id.* The second permit is called the State-Only Permit. *Id.* It
17 authorizes discharges to groundwater under the WPCA and prohibits discharges to surface water.
18 *Id.* Together, we refer to these two permits forthwith as the (“CAFO General Permits”).

19 This appeal challenges the newly issued CAFO General Permits. Appellants argue that the
20 CAFO General Permits fail to meet the requirements of the CWA and the WPCA. We address
21 each of Appellants’ arguments below.

1 **III. ANALYSIS**

2 **A. Standards of Review.**

3 The Board reviews Ecology's CAFO General Permits *de novo*. WAC 371-08-485(1).
4 Summary judgment is appropriate if there are no genuine disputes of material fact and one side is
5 entitled to judgment as a matter of law. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d
6 1068 (2002). In making this inquiry, the Board construes all facts and reasonable inferences in the
7 light most favorable to the non-moving party. *Id.*

8 Relevant here, summary judgment is subject to a burden-shifting scheme. The initial
9 burden is on the moving party to show they have satisfied the summary judgment standard.
10 *Atherton Condo. Apartment-Owner Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516,
11 799 P.2d 250 (1990). If the moving party succeeds, the nonmoving party must present evidence
12 demonstrating that material facts are in dispute. *Id.*

13 It is noted that the Court of Appeals decision in *Wash. State Dairy Fed'n v. Dep't of*
14 *Ecology*, 18 Wn. App. 2d at 266, was an Administrative Procedure Act appellate review under
15 chapter 34.05 RCW. Thus, the court applied various standards for review of the record, including
16 determining whether the record contained "substantial evidence" to support a factual finding. In
17 contrast, in this review of the record provided by the parties on summary judgment, the Board
18 must apply the summary judgment standard to factual issues (no genuine disputes of material fact
19 and construing all facts and reasonable inferences in the light most favorable to the non-moving
20 party). Absent a showing that these standards are met, the Board cannot decide the matter on
21 summary judgment and must, instead, remand it or set the matter for hearing.

1 **B. Agreed Issues.**

2 In their motion papers, the parties agreed on the correct legal outcome for four of the seven
3 issues raised by Appellants. The Board addresses these issues first.

4 1. Failure to Require Nutrient Management Plans (Issues 1, 2, 3, 4, 11).

5 First, Appellants argue that the CAFO General Permits violate federal law because they do
6 not require permittees to prepare a site-specific “Nutrient Management Plan” (NMP). *Motion, pp.*
7 *14-17*. Specifically, Appellants contend that 40 C.F.R. § 122.42 requires CAFOs to prepare such
8 a plan, and that this matters because an NMP would require site-specific analysis of the potential
9 for nitrogen and phosphorous transport from each individual field fertilized with CAFO by-
10 products. *Id.* Indeed, the CAFO General Permits, on their face, do not appear to contain any
11 mandate to prepare an NMP. Appellants cite evidence to suggest the CAFO General Permits do
12 not require any kind of field-specific assessment to determine the risk of nitrogen and phosphorous
13 discharge. *Id.*

14 Ecology argues in response that it does require permittees to prepare something
15 substantially similar to an NMP: a “Manure Pollution Prevention Plan” (MPPP). *Response,*
16 *pp. 7-8*. Ecology asserts that it is “strongly implied” that permittees must conduct field-specific
17 risk analyses to determine the potential for nitrogen and phosphorous transport. *Id.*

18 However, Ecology also acknowledges that “these permit provisions could state the
19 requirement more plainly.” *Id., p. 8*. Accordingly, Ecology concedes that the Board “should
20 remand the CAFO Permits and direct Ecology to clarify that MPPPs must explicitly document the
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1 outcome of field-specific nutrient transport assessments in accordance with federal regulations.”

2 *Id.* Appellants, in turn, agree that this is the correct outcome. *Reply*, p. 3.

3 As such, the Board orders that, on remand, Ecology must clarify that MPPPs must
4 explicitly document the outcome of field-specific nutrient transport assessments in accordance
5 with federal regulations.

6 2. Groundwater Monitoring (Issue 10).

7 Next, Appellants argue that the CAFO General Permits do not contain adequate
8 groundwater monitoring requirements. *Motion*, pp. 18-27. In particular, they argue that all CAFOs
9 must be required to monitor groundwater discharges to ascertain their impact on groundwater
10 quality. *Id.*, pp. 19-24. The CAFO General Permits require groundwater monitoring only for
11 medium and large CAFOs in “nitrate priority areas.” *Id.*, p. 19. Appellants argue that state and
12 federal law also require groundwater monitoring for small CAFOs and for medium and large
13 CAFOs outside of nitrate priority areas. *Id.*, pp. 20-24.

14 Ecology responds by noting that these dischargers do, in fact, have to conduct monitoring.
15 *Response*, pp. 9-10. Nevertheless, Ecology concedes that “the current permits arguably fall short
16 of the requirements imposed upon Ecology by the Court of Appeals” *Id.*, p. 10. With this in
17 mind, Ecology recognizes that the CAFO General Permits “should include an explicit groundwater
18 monitoring requirement at small CAFOs in nitrate priority areas and all sizes of CAFOs outside of
19 nitrate priority areas.” *Id.*, p. 11.

1 However, Ecology requests that the Board not further constrain its discretion to impose
2 groundwater monitoring requirements on remand beyond the constraints already in place under
3 the Court of Appeals decision and state and federal law. *Id.*

4 Appellants appear to disagree with this approach and ask the Board to “direct Ecology to
5 impose groundwater monitoring requirements on all CAFOs sufficient to ensure that no facility
6 “unknowingly violate[s] groundwater standards’ despite complying with permit conditions.”
7 *Reply, p. 4.*

8 But this language has its source in the Court of Appeals opinion, from which it is directly
9 quoted. The Court of Appeals opinion speaks for itself and imposes constraints on Ecology that
10 Ecology already acknowledges and that do not require further elucidation by the Board at this time.
11 Thus, the Board agrees with Ecology that further constraints on its discretion are not necessary.
12 To the extent Appellants are asking the Board to further clarify the Court of Appeals opinion to
13 address hypothetical permit conditions Ecology has not created yet (and that therefore are not
14 before the Board), the Board declines to do so.

15 Therefore, the Board orders that, on remand, Ecology include an explicit groundwater
16 monitoring requirement at small CAFOs in nitrate priority areas and all sizes of CAFOs outside of
17 nitrate priority areas. Ecology should do so within the parameters established in the Court of
18 Appeals opinion.

19 3. Public Scrutiny of NMPs/MPPPs (Issues 1, 11).

20 Appellants argue that the CAFO General Permits wrongfully excuse some permittees from
21 public notice and comment requirements. *Motion, pp. 33-35.* They point out that federal

1 regulations require NMPs to go through public notice and comment. *Id.*, pp. 33-34 (citing 40
2 C.F.R. §§ 122.21-23). They acknowledge that Ecology tried to fix this problem in the 2023
3 iteration of the CAFO General Permits but argue that, even now, permittees that obtained coverage
4 under the previous General Permit are not required to go through public notice and comment for
5 their MPPPs. *Id.*

6 In response, Ecology acknowledges this shortcoming and requests that the Board “remand
7 the Combined Permit and direct Ecology to require permittees whose MPPPs have not yet been
8 subject to public notice to comply with the public notice requirements in Condition S2.A.”
9 *Response*, p. 21.

10 Accordingly, the Board orders that, on remand, Ecology must require permittees whose
11 MPPPs have not yet been subject to public notice to comply with the public notice requirements
12 in Condition S2.A.

13 4. Numeric Permeability Threshold for Solid Materials Storage Facilities (Issues
14 1, 2, 3, 5, 6).

15 Appellants argue that the CAFO General Permits fall short of state and federal
16 requirements because they do not establish a numeric permeability threshold for solid materials
17 storage facilities. *Motion*, pp. 28-31. During winter months, CAFOs typically store manure and
18 litter in storage facilities. *See Wash. State Dairy Fed’n*, 18 Wn. App. 2d at 266-67. These storage
19 facilities have the potential to leak and discharge into groundwater or surface water. *Id.* Therefore,
20 state and federal law require the use of best available technologies to limit the amount and impact
21 of potential discharges. *Id.* at 275-79. Specifically, Ecology must include permit conditions that

1 “apply and insure compliance” with “technology-based treatment requirements” reflecting “all
2 known, available, and reasonable methods of prevention, treatment, and control,” also known as
3 “AKART.” *See id.*; WAC 173-226-070(1). The CAFO General permits do require that solid
4 materials storage facilities be made of either “impervious” materials or “low permeability” soil
5 pads. *Motion, p. 29* (citing *Snyder Decl., Ex. 4, (Condition S4.C.2.a)*). But the permit does not set
6 a numeric standard for how to determine if a soil pad is “low permeability.” *See id.* Appellants
7 argue that Ecology’s failure to set numeric criteria or establish a test for “low permeability” puts
8 the permits out of compliance with the AKART requirement. *Id., pp. 29-30.*

9 Ecology agrees. Specifically, Ecology “acknowledges that inclusion of a numeric
10 permeability threshold for soil pads is warranted to ensure compliance with the AKART standard.”
11 *Response, p. 18.* Ecology requests that the Board “remand the CAFO Permits and instruct Ecology
12 to develop a numeric permeability threshold for soil pads.” *Id.*

13 This result is warranted by law, so the Board orders that, on remand, Ecology must develop
14 a numeric permeability threshold for soil pads.

15 **C. Disputed Issues**

16 Moving beyond these four agreed issues, there are three issues on which Appellants and
17 Ecology disagree. For all three of these issues, the Board finds that there are disputed issues of
18 material fact that make summary judgment inappropriate.

19 **1. Surface Water Monitoring (Issue 9).**

20 Appellants argue that the CAFO General Permits do not contain adequate monitoring
21 requirements with respect to surface water discharges. *Motion, pp. 24-27.* In *Washington State*

1 *Dairy Fed'n*, the Court of Appeals held that Ecology must require permittees to monitor potential
2 surface water discharges when applying manure or litter as fertilizer on croplands. *Wash. State*
3 *Dairy Fed'n*, 18 Wn. App. 2d at 300. In response to this holding, Ecology added new surface water
4 discharge monitoring provisions to the 2023 version of the CAFO General Permit. *See Snyder*
5 *Decl. Ex. 4, pp. 16, 28, 30, 44.*

6 The question now before the Board is whether the new set of monitoring provisions meets
7 the requirements of state and federal law. State and federal law require discharge permits to include
8 monitoring conditions sufficient “to assure compliance with permit limitations.” *See, e.g., 40*
9 *C.F.R. § 122.44(i)(1)(i); Wash. State Dairy Fed'n*, 18 Wn. App. 2d at 301. In other words, will the
10 monitoring provide enough data and information to determine whether the permittee is violating
11 its permit?

12 This is a question of fact. *See Nat. Res. Def. Council v. Texaco Ref. & Mktg.*, 20 F. Supp.
13 2d 700, 709 (D. Del. 1998) (stating that interpretation of a permit provision is a question of law
14 but weighing testimony and evidence to determine whether a monitoring program is sufficient to
15 satisfy the requirements of the Clean Water Act); *Puget Soundkeeper Alliance v. Dep't of Ecology*,
16 PCHB No. 07-053, 07-054 (consolidated) (Nov. 30, 2007, Order on Motions.) (denying summary
17 judgment based on disputed facts pertaining to reasonableness of changes to and adequacy of
18 NPDES permit monitoring program); *Wash. State Dairy Fed'n v. Dep't of Ecology*, PCHB No.17-
19 016(c) (May 10, 2018, Order on Partial Summ. J.); *Community Ass'n for Restoration of the Env't*
20 *(CARE) v. Dep't of Ecology*, PCHB No.06-057 (Aug. 01, 2007, Order on Motions (Partial Summ.
21 J.)).

1 This fact is heavily disputed between the parties. Appellants assert that “the Permits contain
2 no monitoring requirements to identify if and when a facility is discharging in the first place”
3 *Motion, p. 25.* They claim the monitoring requirements are “not a reasonable substitute for regular
4 monitoring.” *Id.* They say the monitoring conditions are “too limited” and “a release could occur
5 for days or weeks before a visual inspection is required.” *Id., p. 26.* In support of these contentions,
6 Appellants cite declaration testimony, deposition testimony, and documentary evidence. *Reply,*
7 *pp. 9-13.* In short, Appellants contest this point as a matter of factual reality.

8 Ecology does the same. Ecology highlights relevant permit conditions and puts forth
9 testimony on specific points of fact related to whether the CAFO General Permits’ monitoring
10 conditions are adequate to ensure compliance with respect to both (1) the permit’s surface water
11 discharge prohibition; and (2) adequate characterization of discharges that do occur. *Response,*
12 *pp. 13-14.* Ecology goes into detail about how the monitoring regime will provide adequate
13 information to assess permit compliance, even arguing that Ecology is entitled to summary
14 judgment on certain monitoring issues. *Id.*

15 Ecology and Appellants have diametrically opposed viewpoints on this material factual
16 question, and both of those viewpoints are supported by ample record evidence. The Board
17 therefore DENIES summary judgment on this issue.

18 2. Whole Effluent Toxicity (WET) Limits (Issues 1, 4, 6, 8).

19 Next, Appellants argue that Ecology erred by not including a WET limit in the CAFO
20 General Permits. A WET limit is a permit condition that requires sampling and characterization of
21 effluent discharges. *See WAC 173-205-030 - 070.* WET limits place a cap on toxicity levels along

1 various chemical parameters that are relevant to the permitted facility. *See id.* The idea is to prevent
2 toxic water from entering the environment and lowering water quality. Appellants argue that the
3 CAFO General Permits needed to include a WET limit and failed to do so. *Motion, pp. 27-28.*

4 However, WET limits are not required for every NPDES permit. Ecology’s regulations set
5 forth a list of situations that call for WET limits. WAC 173-205-040(1), (2).

6 Appellants have not identified which of these situations they believe applies here. Thus,
7 they have not met their initial summary judgment burden to show that a WET limit is required as
8 a matter of law or as a factual matter. Moreover, if they did identify which criteria they think are
9 met, the nature of the criteria is such that it would likely raise an additional material factual dispute.

10 Appellants do, however, point out that Ecology may not have complied with its own
11 regulations. WAC 173-205-030(1) requires that Ecology “evaluate all NPDES permit applications
12 in accordance with WAC 173-205-040 to determine if the discharge needs an effluent
13 characterization for toxicity as described in WAC 173-205-050.” That same WAC provision
14 mandates that “[t]he determination to require or not to require whole effluent toxicity
15 characterization in a permit shall be explained in the fact sheet of the permit” WAC
16 173-205-030(3).

17 The fact sheet for the CAFO General Permits does not appear to include an explanation or
18 determination regarding the need for WET limits or effluent characterization. As a result, it is
19 difficult to determine on the record before the Board whether Ecology has evaluated the CAFO
20 General Permits to determine whether WET limits and effluent characterization are required.

1 Nevertheless, the fact remains that Appellants carry the initial burden on summary
2 judgment, and they have not met that burden here. There are facts and legal points that remain
3 unresolved and that the Board cannot resolve on the current record. The Board therefore DENIES
4 summary judgment on this issue.

5 3. Antidegradation and Adaptive Management (Issues 1, 3, 6, 7).

6 The last issue the parties dispute relates to violation of the state’s antidegradation policies.
7 Antidegradation policies are “no backsliding” policies that are designed to, at a minimum, maintain
8 existing levels of water quality in our state’s waters. Washington’s groundwater antidegradation
9 policy is found in WAC 173-200-030 and states that “existing and future beneficial uses shall be
10 maintained and protected and degradation of groundwater quality that would interfere with or
11 become injurious to beneficial uses shall not be allowed.” WAC 173-200-030(2)(a). The policy
12 also states that, when groundwater is of higher quality than water quality standards, “contaminants
13 that will reduce the existing quality thereof shall not be allowed to enter such waters” unless
14 Ecology determines it is justified by an “overriding consideration of the public interest”
15 WAC 173-200-030(2)(c).

16 These policies arise here because of the Court of Appeals decision in *Washington State*
17 *Dairy Federation*. In that case, the Court of Appeals held that the 2017 CAFO General Permits
18 were problematic with respect to antidegradation. 18 Wn. App. 2d at 297-98. Specifically, the
19 Court of Appeals held that the permits “allow CAFOs to discharge to groundwater in ways that
20 risk violation of Washington’s antidegradation policies” *Id.* at 297. As an example to support
21 this generalized holding about the CAFO General Permits as a whole, the Court of Appeals said

1 “CAFOs are permitted to land apply nutrients to fields tested as presenting a ‘very high’ risk to
2 groundwater for up to three consecutive years before the CAFO is required to cease land
3 application on those fields.” *Id.*

4 The parties now dispute how this holding applies to the 2023 CAFO General Permits.
5 Ecology did rewrite portions of the permits in an effort to cure the antidegradation problem
6 identified by the Court of Appeals. Among other changes, Ecology shortened the period of time
7 that permittees are allowed to use fertilizer on land where such use presents a “very high risk” to
8 groundwater. *See Snyder Decl., Ex. 4, pp. 30-34.* But Appellants argue that the 2023 permits
9 nevertheless suffer from the same flaw as the 2017 permits. *Motion, pp. 31-33.* Appellants assert
10 that two years is no different from three years: the fact remains that Ecology allows discharges to
11 groundwater that pose a “very high risk” to groundwater, and that violates antidegradation policies.
12 *Id.; Reply, pp. 4-8.*

13 At its core this is a factual issue. Whether these permits violate antidegradation policies
14 depends in some instances on whether the permits allow “degradation of groundwater quality that
15 would interfere with or become injurious to beneficial uses.” WAC 173-200-030(2)(a). In other
16 instances, it may depend on whether discharges will “reduce the existing quality” of groundwater
17 that exceeds water quality criteria. WAC 173-200-030(2)(c). It is not as simple as saying that, as
18 a legal matter, a “very high risk” to groundwater in a specific and defined regulatory context
19 necessarily implies interference with beneficial uses or a reduction of existing quality. *See WAC*
20 *173-200-030(2)(a).* It may, or it may not.

1 The parties dispute this factual issue. Ecology maintains that it has made enough changes
2 to the newest iteration of the permit that the permit no longer violates anti-degradation policies.
3 *Response, pp. 18-20.* Appellants cite evidence to the contrary. *See Reply, pp. 4-8.* The Court of
4 Appeals’ holding is sufficiently broad and generalized (i.e., not specific to the “very high risk”
5 issue) that it oversimplifies the matter to say (as Appellants do) that a “very high risk” to
6 groundwater in a certain context translates directly to a violation of anti-degradation policies. This
7 is a nuanced factual issue that would require testimony at a hearing. It is not an issue that can be
8 tidily disposed of on summary judgment.

9 The Board therefore DENIES summary judgment on this issue.

10 IV. ORDER

11 The Board GRANTS Appellants’ motion for summary judgment with respect to the four
12 agreed issues identified above. The Board DENIES Appellants’ motion for summary judgment
13 with respect to the three disputed issues identified above. The Board REMANDS the CAFO
14 General Permits to Ecology for rewriting consistent with this order pursuant to WAC
15 371-08-540(2).

16 SO ORDERED this 6th day of February, 2025.

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18 **POLLUTION CONTROL HEARINGS BOARD**

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CHRIS SWANSON, Presiding Officer
Board Member

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MICHELLE GONZALEZ, Chair



GABRIEL VERDUGO, Board Member

This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days. *See* Administrative Procedures Act (RCW 34.05.542) and RCW 43.21B.180.

You are being given the following notice as required by RCW 34.05.461(3): Any party may file a petition for reconsideration with the Board. A petition for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final decision. WAC 371-08-550.