



June 10, 2016

Maia Bellon
Director WA State Dept. of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Dear Director Bellon:

The Friends of Toppenish Creek (FOTC) is a 501 C (3) non-profit environmental advocacy group in south central Washington State where air pollution threatens public health. In our community air quality issues are addressed by the Yakima Regional Clean Air Agency (YRCAA) under authority of the Revised Code of Washington, RCW 70.94; the Washington State Implementation Plan (SIP) for the Yakima Regional Clean Air Agency; and Regulation 1 of the Yakima Regional Clean Air Authority.

The YRCAA has failed to protect public health and the environment. This letter is a request to the WA State Dept. of Ecology for a formal review of the YRCAA under RCW 70.94.405 Air pollution control authority—Review by department of program. The purpose of the requested review is to “determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible.” Our rationale is described in the pages that follow.

Respectfully,

The Friends of Toppenish Creek

(b) (5) Privacy, (b) (7)(C) Enforcement Privacy

White Swan, WA 98952

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

cc. Yakima Regional Clean Air Agency

U.S. Environmental Protection Agency

Table of Contents

Overview	4
RCW 70.94.405	7
Definition – Good Faith.....	7
Definition – Effective	8
Yakima Regional Clean Air Agency Mission Statement	8
YRCAA does not follow the agency’s Mission Statement – YRCAA is Ineffective	9
1. Adopt rules that limit pollution, issue permits to ensure compliance, and inspect pollution sources.....	9
2. Administer an Agricultural Burning Plan to preserve air quality in Yakima County, protect public health and safety, and to ensure agricultural burning, as may be necessary, continues in a safe, regulated fashion.....	9
3. Inventory and assess the health risks of toxic air emissions.....	10
4. Monitor the county's air quality with a variety of air quality monitoring stations.....	10
5. Prepare Clean Air Plans to identify how much pollution is in our air, where it comes from, and how to control it most effectively.....	11
6. Analyze the air quality impact of new businesses and land development projects.....	11
7. Respond to public complaints and inquiries (A)	12
7. Respond to public complaints and inquiries (B)	16
8. Work with other government agencies to ensure their decisions coordinate with good air quality programs.....	16
9. Inform the public about air quality conditions and health implications.....	18
Policy for Beef Emissions but not for Dairy Emissions.....	19
Rule Making – Ban on Manure Spraying.....	20

Rule Making Requirements according to the Yakima Regional Clean Air Agency Administrative Code Part B	23
False Information to the Board	24
Board Composition	25
Work Group Composition	26
Air Quality Management Policy and Best Management Practices for Dairy Operations	27
Advisory Groups	32
Does Not Serve the People.....	33
Does Not Fine Dairies.....	34
Conclusion.....	35
References	36

Overview

There is a 360 square mile area in the Lower Yakima Valley with about 60 industrial sized dairies and over 110,000 milk cows. The Darigold Plant in Sunnyside, WA has recently expanded their processing capacity from 5 million to 8.5 million pounds of milk per day. This will require milk from 152,000 high producing cows. Dairy operations also require calf rearing facilities (only half are female), replacement heifers, dry cows, and bulls, thus substantially increasing the total number of animal units. There is a feedlot in Sunnyside with capacity for 100,000 head of beef cattle. There are approximately 300,000 animal units in the area.

Dairies in this area store manure (urine and feces) in multi-million gallon, uncovered lagoons. Each high producing milk cow produces as much manure as 18 to 25 human beings. This means that, based on milk cow numbers alone, this 360 square mile area has the equivalent of a city with a population of 1.8 to 3.8 million people and no sewage treatment system. (WA Dept. of Ecology, 2010). Mixing feces and urine, an inevitable consequence of keeping many animals in close quarters, promotes the formation of ammonia. Besides the dangers from ammonia by itself, this air pollutant contributes substantially to the formation of fine particulate matter (PM 2.5). Yakima County is at risk for non-attainment due to high PM 2.5 readings. (YRCAA, 2016)

The preferred methods of manure disposal are land application and composting. Either method results in a loss of over half the ammonia in manure to the ambient air. (Rotz, 2004). Rates of emissions vary depending on adherence to best management practices (BMPs). Under optimal conditions there is still emission of toxic air pollutants and greenhouse gasses. Three milk cows maintained under best management will emit 50% more pollutants than two milk cows maintained in the same conditions.

A 2010 study by scientists at Washington State University measured emissions of air pollutants from two well-managed dairy barns in the Lower Yakima Valley. This study looked at only one aspect of dairy management – barns where milk cows are housed and maintained in one type of dairying – but the results are informative. The researchers found ammonia emissions of about 45 lbs per cow per year, hydrogen sulfide emissions of .87 to .92 lbs per cow per year and volatile organic compound emissions of 42 to 83 lbs per cow per year. Other studies have

addressed the additional emissions from lagoons & ponds; from land application of manures. (Ramirez – Dorronsoro et al, 2010; Rotz, 2004).

These numbers tell us that industrial dairies in the Lower Yakima Valley should be reporting emission of hazardous air pollutants and toxic air pollutants according to RCW 70.94.161, WAC 173–400–110, WAC 173–400–150 and Regulation 1 of the Yakima Regional Clean Air Agency Article 4.

A 2014 University of Washington study of asthmatic children in the Lower Yakima Valley found, “that ambient ammonia concentrations were elevated in the southern half of the Yakima Valley where most AFO’s were located. At the monitoring site with the highest density of surrounding AFO’s, the 75th percentile of 24-hour ammonia concentrations was 101 $\mu\text{g}/\text{m}^3$, exceeding the EPA reference concentration for chronic inhalation exposure of 100 $\mu\text{g}/\text{m}^3$.” (Loftus et al, 2015)

Nevertheless, the Yakima Regional Clean Air Agency contributed to and defends reports in local newspapers that declare, “Study Finds Low Ammonia Emissions at Area Dairies” and “Although research reveals small amounts of ammonia emissions from farms, experts say these emissions are insignificant and do not pose an overall threat to public health.” (Attachment G). There is a pattern, as we will show, of believing assertions from animal agriculture regarding human health and rejecting the conclusions of others who devote their careers and lives to the study of medicine and public health.

According to the Washington State Department of Health (2016), for large counties, Yakima County has the highest rates for asthma hospitalizations, hospitalizations due to myocardial infarction and for preterm births. For the period from 2010 to 2014:

- Only Lincoln County has a higher rate of hospitalizations for asthma
- Only Lewis and Columbia Counties have higher rates of hospitalization for MI
- Only Adams County has a higher percentage of pre-term births

All three of these markers of public health have been related to higher levels of PM 2.5 in many, many peer reviewed research studies. (Please see Attachment R, a listing of the literature)

Pro dairy initiatives, statements, actions and failures to act have become such a major part of YRCAA daily operations that citizens no longer believe government protects us, our children, and the many vulnerable adults who live in Yakima County. Bias on the part of YRCAA has morphed into collusion. This is especially appalling given that many of the victims are low income people who often speak limited English and have few resources to defend themselves. The Friends of Toppenish Creek are not rich either. We cannot afford attorneys but we will do our best to state the legal reasons why Ecology should investigate YRCAA under RCW 70.94.405 Air pollution control authority—Review by department of program.

RCW 70.94.405

Air pollution control authority—Review by department of program.

At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department.

Definition – Good Faith

The meaning of *good faith*, though always based on honesty, may vary depending on the specific context in which it is used. A person is said to buy in good faith when he or she holds an honest belief in his or her right or title to the property and has no knowledge or reason to know of any defect in the title. In section 1-201 of the Uniform Commercial Code *good faith* is defined generally as «honesty in fact in the conduct or transaction

concerned." Article 2 of the U.C.C. says «good faith in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." Similarly, Article 3 on negotiable instruments defines *good faith* as «honesty in fact and the observance of reasonable commercial standards of fair dealing," a definition which also applies to the provisions of Article 4 on bank deposits and collections and Article 4A on funds transfers. The U.C.C. imposes an obligation of good faith on the performance of every contract or duty under its purview. The law also generally requires good faith of fiduciaries and agents acting on behalf of their principals. There is also a requirement under the National Labor Relations Act that employers and unions bargain in good faith. (Lawyer.com, n.d.)

Definition – Effective

Effectiveness: The closeness of actual results achieved to meeting expectations. Effectiveness ignores expenditure, while efficiency measures worth of results. Efficiency is weighing results against costs over time, and effectiveness is weighing expectations against results over time. (Black's Law Dictionary online, n.d.)

Yakima Regional Clean Air Agency Mission Statement

According to the YRCAA website, this is the agency mission:

Our mission is to protect the people and the environment of Yakima County from the effects of air pollution. The Yakima Regional Clean Air Agency is committed to achieving and maintaining healthful air quality throughout our jurisdiction. This is accomplished through a comprehensive program of planning, regulation, enforcement, technical innovation, and promotion of the understanding of air quality issues.

As part of our clean air strategy, we do the following:

- Adopt rules that limit pollution, issue permits to ensure compliance, and inspect pollution sources.

- Administer an Agricultural Burning Plan to preserve air quality in Yakima County, protect public health and safety, and to ensure agricultural burning, as may be necessary, continues in a safe, regulated fashion.
- Inventory and assess the health risks of toxic air emissions.
- Monitor the county's air quality with a variety of air quality monitoring stations.
- Prepare Clean Air Plans to identify how much pollution is in our air, where it comes from, and how to control it most effectively.
- Analyze the air quality impact of new businesses and land development projects.
- Respond to public complaints and inquiries.
- Work with other government agencies to ensure their decisions coordinate with good air quality programs.
- Help individuals and businesses understand and comply with federal, State, and local air pollution control laws.
- Inform the public about air quality conditions and health implications.
- Issue permits to build, alter and operate equipment to companies under our jurisdiction that either cause, contribute to, or control air pollution.

YRCAA does not follow the Agency's Mission Statement – YRCAA is Ineffective

1. Adopt rules that limit pollution, issue permits to ensure compliance, and inspect pollution sources. The agency has not enacted rules or issued permits that limit the emission of hazardous and toxic air pollutants, specifically ammonia, methane, nitrous oxide, oxides of nitrogen, hydrogen sulfide and various volatile organic compounds from large Yakima County dairies. This failure to act has taken place in spite of the knowledge that Yakima County dairies emit these chemicals in amounts that exceed statutory guidelines. (Ramirez-Dorransoro et al, 2010; Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, & National Research Council, 2003). In fact Regulation 1 for the Yakima Regional Clean Air Agency Appendix L (2002) specifically lists these chemicals as recognized hazardous air pollutants. YRCAA has the delegated responsibility for implementing WAC 173 – 460 which states the acceptable source impact level (ASIL); the small quantity emission rate

(SQER); and de minimis emission values for these pollutants. These pollutants are measureable when they come from landfills and they are measureable when they come from barns and lagoons.

2. Administer an Agricultural Burning Plan to preserve air quality in Yakima County, protect public health and safety, and to ensure agricultural burning, as may be necessary, continues in a safe, regulated fashion. The YRCAA admonishes citizens who use wood for home heating that the wood must contain no less than 20% moisture. The agency even suggests that citizens purchase a meter so they can check the moisture content of their firewood. . (YRCAA, 2015, page 11). Meanwhile entire orchards are bulldozed and burned after only a month of drying time.

3. Inventory and assess the health risks of toxic air emissions. YRCAA has refused repeated requests by citizens to conduct air monitoring or estimation of amounts of toxic air emissions from Yakima County dairies in spite of the fact that measurements have been successfully performed in Yakima County dairy barns by scientists from Washington State University. (Ramirez – Dorronsoro et al, 2010). YRCAA has no one on staff with expertise in medicine or public health and has refused repeated citizen requests to work with experts in these specialties in order to evaluate the increased risks to Yakima County residents.

On one occasion, during the Dec. 8, 2011 board meeting for the YRCAA, citizen (b) (6) Privacy, (b) (7)(C) Enforcement told Director Gary Pruitt, “I’m concerned that you haven’t addressed the human health issue.”

Mr. Pruitt replied, “It’s not our job.”

4. Monitor the county's air quality with a variety of air quality monitoring stations.

YRCAA has a history of refusing to monitor air quality in the Lower Yakima Valley and relying on a Federal Reference Monitor (FRM) in the middle of the City of Yakima to evaluate air quality for the people who live south of Ahtanum Ridge and the Rattle Snake Hills. A monitor was finally placed in Sunnyside in 2014 and it broke down. In the fall of 2015 YRCAA placed another FRM monitor in Sunnyside for a six month trial period. On one occasion that monitor was non-functional for ten days waiting for YRCAA to replace a battery. This is the sum of agency activity in the Lower Yakima Valley.

Nancy Helm, EPA Region X Tribal Air Team Lead has stated, in an e-mail to Yakima Valley citizen [REDACTED] (b) (6) Privacy, (b) (7)(C) Enforcement Privacy “I don’t think I have ever seen an air quality problem solved without first characterizing it using monitoring data and other observations.” We are still at the starting block. After 20 plus years we have only begun to collect very basic data. The question to ask is this, “Who benefits from this failure to act?”

YRCAA has refused to give credence to air monitoring that was done by citizens in the period between 2005 and 2007 with a state of the art portable monitor that collected data showing high levels of pollutants in homes near dairies. The monitoring system that the citizens used is the same as the system subsequently used by the National Agricultural Air Emissions Study. YRCAA has ignored air monitoring data gathered by the University of Washington in a 2014 study of asthmatic children. (Loftus et al, 2015; Loftus, 2014). YRCAA has ignored air monitoring data from John Hopkins University that found bovine allergens in homes near dairies. (Williams et al, 2011).

YRCAA has refused repeated requests from citizens to monitor for ammonia, volatile organic compounds, ozone, and hydrogen sulfide. We find no evidence that YRCAA or the Yakima Health District monitor for criteria pollutants at the boundaries of dairy composting operations, or impose air quality guidelines as required by WAC 173 – 350 – 220 (1) (c), WAC 173-350-220 (3) (a), WAC 173-350-220 (3) (b), WAC 173-350-220 (3) (d) and WAC 173-350-220 (4) (a). If they do follow these requirements, which we seriously doubt, there is no evidence that the gathered data is included in analysis using “a variety of air quality monitoring stations”.

5. Prepare Clean Air Plans to identify how much pollution is in our air, where it comes from, and how to control it most effectively. YRCAA refuses to do this. In the fall of 2015 the Friends of Toppenish Creek approached YRCAA with a request to address, categorize, quantify and analyze agricultural air emissions. (See attachment A). YRCAA declined to do this and declined an offer of assistance from FOTC. (See Attachment B).

It is possible that YRCAA does not have the capacity to do this. Currently there are only two staff member with training in environmental science: Dr. Hasan Tahat, an environmental engineer and a new hire with a Master’s Degree in Environmental Science. When [REDACTED] (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Executive Director for FOTC, talked to the board about increases in reactive nitrogen in the atmosphere and climate change Director Pruitt dismissed her concerns and stated that 78% of the ambient air is nitrogen and it has never caused problems. (Hear tape of YRCAA Board Meeting, August, 2015).

6. Analyze the air quality impact of new businesses and land development projects.

YRCAA participates in State Environmental Protection Act (SEPA) reviews for Yakima County zoning and permit applications under Title 19 of the Yakima County Code. In 2016 there have been six applications from dairy operations. Some of the applications have been approved. The dairy Environmental Impact Statements (EIS) uniformly provide the same information when asked to describe air emissions: “During construction equipment motor exhaust, limited fugitive soil dust. During normal operations, some fugitive feed and soil dust, equipment motor exhaust, and emissions associated with animals. No identified changes from previous activities.” There is absolutely no mention of ammonia, methane, nitrous oxide, oxides of nitrogen, hydrogen sulfide and various volatile organic compounds. It appears that YRCAA does not inform Yakima County about requirements to address these pollutants under WAC 173 – 460. (Yakima County, 2016).

We find no evidence that YRCAA performs a New Source Review of dairy operations as required by Regulation 1 of the Yakima Regional Clean Air Agency Article 4, Yakima Regional Clean Air Agency Administrative Code Part B Section 6, the Washington State Implementation Plan (SIP) for the Yakima Regional Clean Air Agency and WAC 173 – 400 – 110.

7. Respond to public complaints and inquiries (A): Here is an example of how YRCAA responds to citizen complaints:

On Thursday, April 7, 2016 at 8:04 PM (b) (6) Privacy, (b) (7)(C) of Moxee called in a complaint of horrible odors at his home near the (b) (6) Privacy, (b) (7)(C) Dairy in Moxee. The call went to voice mail. Apparently YRCAA staff did not listen to voice mails during normal business hours on the following day, Friday, April 8.

On Saturday, April 9 at 6:10 PM (b) (6) Privacy, (b) (7)(C) Enforc left another message stating that the odors were still horrible.

Both messages were recorded as received at 8:00 AM on Monday, April 11, four days and two days after the events.

According to YRCAA complaint records 3256 and 3257 (Attachment C) the first complaint was investigated on Monday, April 11 at 3:00 PM, four days after the event and the second complaint was investigated on Tuesday April 12 at 3:00 PM, three days after the event.

The investigator on April 11 recorded an odor level of 2 using a “sniff” test, and assigned the case a Response Level 4 which means,

Site inspection not required. Correspond with the source to advise of the complaint, to inform of the applicable rules and to discuss the potential for enforcement action. A phone call or a fax may be helpful but, it should be followed up in writing. (Attachment D, YRCAA Code B, Page 5-6)

On Tuesday, April 12 at 8:38 AM (b) (6) Privacy, (b) (7)(C) Enforc called in a complaint to YRCAA regarding the odors she experienced while visiting the (b) (6) Privacy, (b) (7)(C) Enforc around 5:00 PM on Saturday, April 10.

The 3 PM investigation on April 12 was conducted by Keith Hurley, Kelsey Sanford and (b) (6) Privacy, (b) (7)(C) Enforc from YRCAA accompanied by dairyman, (b) (6) Privacy, (b) (7)(C) Enforc They recorded an odor level of 2 on the property and stated that odor was undetectable at the property line. The investigators did not visit the (b) (6) Privacy, (b) (7)(C) Enforc home where the complaint originated, where there is evidence of fecal dust and flies. They did not talk to the complainant. Instead they traveled to (b) (6) Privacy, (b) (7)(C) Enforc home on top of the hill and again recorded no odor. Again the complaint was assigned a Response Level 4.

Please note that dairy odors wax and wane depending on farm activities and weather conditions which are not recorded in YRCAA complaints. In the evening of April 12, the same day as the second investigation, (b) (6) Privacy, (b) (7)(C) Enforc called in a complaint and left a message on the answering machine of one of the three investigators, (b) (6) Privacy, (b) (7)(C) Enforc On April 13, she sent an e-mail message that said, in part,

In my foncon to your office on Tuesday, 4.12.16, I also mentioned that it would be nice if you would respond to a courtesy return phone call to me, as your phone message indicates that you will 'get back' to the caller....to date - I have never received a phone call (or visit) in regards to your (or anyone at YRCAA) investigation of my complaints.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy did receive an e-mail response this time. The reply told her that the man she contacted, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy was no longer a complaint investigator. In fact he had not been a complaint investigator since 2014.

Over a period of 16 years, during which time the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy have made numerous complaints about odors and flies and manure spraying during high winds, YRCAA has never visited their home. The (b) (6) Privacy, (b) (7)(C) Enforcement Privacy believe that the intense odors are due to toxic chemicals in the air with a very real potential to exacerbate health problems. YRCAA has never tested the air to rule out hazardous pollutants. According to the flow chart on page 5-6 of YRCAA code B, a health related complaint in progress requires a Response Level 1 defined as, "Attempt same day site inspection. Request backup if not available for same day response."

Another valley resident, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also lives near a dairy. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy has complained repeatedly over a period of 19 years and YRCAA has only visited his home once, when investigators were lost and could not find an illegal fire.

According to Yakima Regional Clean Air Agency Administrative Code Part B, Sections I through II investigator are expected to gather evidence:

5.8 Evidence

Evidence is the data used by the Agency to support or establish the truth of an allegation. It can be any information or proof which clarifies or helps establish the truth. During the course of an inspection, compliance staff may make observations, conduct interviews, obtain statements, obtain or copy documents, take photographs and collect samples. All of these may become evidence. There are five different types of evidence:

a. Testimonial

Observations made from personal knowledge, derived from a person's sense of smell, touch, sight, taste or hearing;

b. Direct

The object, item or thing itself (e. g., physical material samples);

c. Documentary

A document having significance due to its content (e. g., reports, logs, notifications, manuals);

d. Demonstrative

Something other than the above which is prepared or selected to support, illustrate or otherwise make some fact clearer or easier to understand (e. g., photographs, diagrams, maps, summaries, video tapes); and

e. Judicially Noticed

Matters about which there could be no dispute and become evidence by virtue of their being officially noticed by an administrative or court judge (e. g., YRCAA regulations, scientifically accepted facts, geographic locations, matters of common knowledge).

5.8.1 Evidence Collection

An inspection is the process whereby evidence is legally collected and documented. The Agency's case is dependent on the evidence gathered during an inspection. It is imperative that sufficient evidence be gathered to support a finding and that all pertinent circumstances supporting a compliance determination be clearly documented in the body of an inspection report. Responsibilities in the collection of evidence include:

a. Substantiating facts with items of evidence, including samples, photographs, copies of documents, statements from witnesses and personal observations;

b. Collecting evidence in a manner that can be substantiated in legal proceedings;

c. Documenting the collection of supporting evidence in a clear and detailed manner; and

d. Maintaining the chain of custody and integrity of physical samples.

The following sections are divided into the first four of five types of evidence discussed previously (judicially noticed evidence is only substantiated by courts of law). In each section the most common forms of evidence collection are addressed along with procedures for collection, preservation and documentation. (Emphasis added)

It is informative to view tapes from the March 8, 2012 meeting of the YRCAA Board of Directors. At that meeting [REDACTED] brought dated pictures that clearly depicted a dairy in his neighborhood that violated best management practices (BMPs) including spraying manure into the air during high winds. He shared the pictures with the board and this was the reply from Chairman, Tom Gasseling: “The problem for me with the pictures is, quite frankly, I don’t know what they are. You can tell me what it is. I can’t tell if it is shit, sawdust, or what is blowing.”

7. Respond to public complaints and inquiries (B): Public comments received regarding the draft *Air Quality Management Policy and Best Management Practices for Dairy Operations* are enlightening. For example:

I am a farmer residing and operating in the western end of Benton County. I spend a great deal of time doing business in and out of the eastern end of Yakima County and, as a result, travel past several 500+ cow dairy operations. It is with significant pleasure that I come to realize you and the YRCAA are trying to address the issue of emissions from these operations. I have repeatedly experienced such overwhelming ureaic emissions along the county road as to cause me concern over whether I was even going to manage to exit the other end of the cloud. In my personal opinion these emissions are often so bad as to present a driving hazard. I would like to point out that these experiences came in direct connections with the sprinkler application of liquid wastes at the dairy sites. Somehow that aeration process or the spraying of that waste through the circulating air and especially during the warmth of Summer exacerbates the already bad situation at hand. These experiences have only served to make me wonder how people living in homes within such emission areas can even tolerate it. Their lives and fortunes have been affected in many instances. In light of a general acceptance of the issue of people suffering from second hand smoke from a cigarette smoker, we definitely face a situation with these dairy emissions of something far more hazardous to the health. I would leave it to your expertise to address the greater issues but offer this letter as a suggestion that all sprinkler application of liquid wastes be ended as a matter of public health, itself.

Many more, similar comments are available in Attachment H. YRCAA ignored them.

8. Work with other government agencies to ensure their decisions coordinate with good air quality programs. Air quality significantly impacts human health. We see no evidence that YRCAA works closely with the Yakima Health District or the WA State Dept. of Health. In fact, when citizens requested a ban on spraying manure into the air during inversions YRCAA invited/notified the following groups/agencies about public meetings:

- Two people from the Dept. of Ecology
- Two people from WSDA
- Two people from EPA
- One person from the South Yakima Conservation District but no one from the North Yakima Conservation District
- One person from the Whatcom County Conservation District
- People from other WA State Clean Air Agencies
- Mayors from Yakima County
- Yakima County Commissioners
- One person from WSU

YRCAA did not notify/invite anyone from

- The Yakima Health District
- The American Lung Association
- The Yakima Valley Farmworkers Clinics
- The Yakima Neighborhood Health Clinics
- The Yakima County Medical Society
- The Yakima Valley Nurses Association
- The Yakama Nation
- Indian Health Services
- The WA State Dept. of Health
- The University of Washington
- The Lung and Asthma Center of Central Washington
- Yakima Pediatrics Associates

- The Pacific Northwest Medical School
- Heritage University (Attachment F)

Most members of the public believe that dairy pollution issues are well managed by the Washington State Department of Agriculture (WSDA) Dairy Nutrient Management program (DNMP). Dave Caprille, the former public relations officer for YRCAA, once told members of the Friends of Toppenish Creek that nutrient management plans (NMPs) and Natural Resources Conservations Services (NRCS) guidelines address air quality issues. In truth those programs primarily look at water issues. In addition the DNMP has no enforcement authority. (Attachments E & G). The fact that Mr. Caprille did not know this speaks to the agency level of understanding regarding dairy management issues.

9. Inform the public about air quality conditions and health implications. Some major air quality research has been done in Yakima County. For example, in 2014 the Washington State Dept. of Ecology published The Yakima Air Wintertime Nitrate Study (YAWNS) Final Report. This study analyzed unexpectedly high levels of nitrate particulate matter in South Central Washington during winter months. The study found (page 5) that

High ammonia emissions from agricultural sources in the area lead to elevated atmospheric concentrations, which drives virtually all available nitric acid into the particulate phase, and results in a condition where any additional nitric acid production would lead directly to greater particulate nitrate levels.

Aside from a single presentation at an YRCAA board meeting and one article in the Yakima Herald Republic there has been no further publicity or discussion. Air winter nitrates are not discussed at YRCAA board meetings and are not discussed in any of the YRCAA work groups.

As noted above, some important asthma related research has been conducted in Yakima County. This research is not discussed either. Neither the YAWNS study nor the asthma research appears on the YRCAA web page. There are no presentations to interested or impacted groups.

However, YRCAA found the time to contribute to an article entitled *Study Finds Low Ammonia Emissions at Area Dairies* that appeared in both the Toppenish Review Independent and the Yakima Business Times. There was no cited author so the Friends of Toppenish Creek

contacted editor Randy Luvaas. Mr. Luvaas stated that the article was approved by YRCAA and WSU. The second paragraph of the article states:

The Yakima Regional Clean Air Agency continues to work on improving air quality with local residents and businesses, including farms. Although research reveals small amounts of ammonia emissions from farms, experts say these emissions are insignificant and do not pose an overall threat to public health.

To date YRCAA has refused to clarify for the public that there is a very real public health threat from atmospheric ammonia in the Yakima Valley. In fact when [REDACTED] a long time nurse and doctoral student of public health tried to educate board member and County Commissioner Rand Elliott about the difference between OSHA and NIOSH work place standards and minimum risk levels (MRL) for the general public he replied,

[REDACTED], it seems to me you are taking exception to the claim that ambient ammonia is not a health hazard. It appears to me the article bases that claim on the work of Pius Ndgwa of WSU. At least from the article, he seems qualified to make such a statement. The fact you disagree does not disprove his claim. I don't see any need for further action at this time.

Policy for Beef Emissions but not for Dairy Emissions

In 1993 YRCAA developed a policy for dust management in Beef Feedlots. In 2001 the agency developed a similar policy for emissions from calving and dairy heifer feeding operations. For over 20 years beef producers were subject to registration and monitoring while dairies were not. In our opinion Section 12 of the Washington State Constitutions applies:

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Since 2011 YRCAA has been developing an *Air Quality Management Policy and Best Management Practices for Dairy Operations*. There are provisions in this policy for dust management in dairy feedlots. The provisions are less stringent than those for beef feedlots. For example, beef feedlots are required to confine their animals in even smaller spaces during evening hours to prevent running, playing and generating dust. Beef feedlots are required to spray corrals with water to keep the dust down. Dairy feedlots are not required to follow either of these practices. (YRCAA, 1993, 2001, 2013)

Rule Making – Ban on Manure Spraying

In early 2013 a group of citizens submitted a petition with fifty signatures that asked YRCAA to “adopt a regulation, pursuant to its authority under the Washington Clean Air Act, to prohibit all dispersal and land application of manure and effluent during any burn ban.” (Attachments I, J, K & L)

Upon receiving the petition the YRCAA promptly posted the names and locations of all who signed it on the agency web site. The petition was accompanied by a list of over a hundred pieces of research that document the adverse health effects due to air pollution near concentrated animal feeding operations. (Attachment M). This list has never been posted on the agency web site.

In June, 2013 Director Gary Pruitt recommended to the YRCAA Board that they should deny the petition. (Attachment N). He said that he had consulted with the Washington State Department of Agriculture and the South Yakima Conservation District and concluded that:

1. No specific statutory authority exists for YRCAA to prohibit any activity, which isn’t already prohibited within an applicable statute, other than certain wood stove use and certain outdoor burning;
2. The Dairy Nutrient Management Act regulates the land application of manure which must be made at agronomic rates (applying the right amount, at the right time, in the correct location, using the right source);
3. No evidence exists which would support the rationale that emissions from land application are sufficient to cause adverse health effects during periods when burn bans are in effect;
4. Such a rule could cause groundwater problems due to inadequate storage and subsequent

excessive precipitation; and

5. Such a rule could cause an unreasonable economic burden if manure had to be transferred to others and commercial fertilizer purchased to replace it.

We do not understand how the rule could cause the excessive precipitation cited in item 4. Please note that there is abundant evidence that shows manure is not applied at agronomic rates in the Yakima Valley. (Tebbutt Law, 2014). Mr. Pruitt did not consult with any experts on human health and ignored the 106 health related documents submitted by the petitioners. (Attachment M).

The YRCAA convened two public meetings to discuss the issue. The agency sent invitation letters to the fifty petitioners, over fifty dairymen and about fifty other “interested parties”. (Attachment F). There were no letters of notification to the people who live near dairies. The YRCAA did not publicize the meetings in the Spanish speaking media so the Friends of Toppenish Creek paid for notices in the newspaper, El Sol, and sound bites on Radio KDNA, La Voz Del Campesino. There were no invitations to the Yakima Health District, to health care providers, to the Department of Health or to scientists from the universities who study the impact of agricultural air pollution on human health.

The YRCAA authored a discussion paper for the meetings that said,

It is not certain that the rule is needed and it is assumed as to what it might accomplish. Since there is a very low probability that land application would occur during the times burn bans are declared, very little might be accomplished by the rule. (Attachment Q)

Sometime in August, 2015 the Washington Dairy Products Commission sent the YRCAA a letter and literature review authored by Dr. Nichole Embertson of the Whatcom Conservation District. (Attachment O). The paper was posted on the YRCAA website. It reviewed forty pieces of research and concluded:

Limited data is available on the direct effects of land application of dairy manure on public (not worker) health, but data extrapolated from studies looking at emission rates of ammonia, dust (including bioaerosol), and odor from land application methods, OSHA.NIOSH exposure limit thresholds, and dairy manure application practices in

Yakima, concludes that there is likely no significant benefit to public health from exclusions of land application of dairy manure in the Yakima Region, particularly during burn bans. Of the emissions from land applied dairy manure that have the potential to effect (sp) local atmospheric conditions and communities, only ammonia is of significance due to its potential to react with nitrous (?) and sulfuric acids in the atmosphere to chemically form PM_{2.5}. Of lesser significance is course (sp) particulate matter and odor which tend to be either low due to the moisture content and application methods of manure or not a substantiated threat to human health in the Yakima Regions, respectively. It is recommended that the use of best available land application practices continue to be employed with land applying manure in the Yakima Region to reduce any excess emissions.

There were many, many inaccuracies in the Literature Review. (See Attachment P for rebuttal). For example, “. . . manure is not typically applied from November to February to the crops grown in dairy production in Yakima, WA.” This is simply untrue. Year round application is one of the main reasons that citizens requested a ban on manure spreading during inversions.

Dr. Embertson stated, “Downwind measures of ammonia from applied manure rarely exceed concentrations in parts per billion (ppb) (Williams et al, 2011)”. The referenced study had nothing to do with wind direction or manure application. It did not even mention these parameters. Dr. Williams, the study lead author, states, “This does not represent my work.” (Personal conversation, Aug. 2013).

Here is a timeline for the Sequence of Events re Petition to Ban Manure Spraying

April 29, 2013 Letter from Attorney George Fearing to YRCAA

May 31, 2013 Letter of Clarification from George Fearing to Gary Pruitt

June 6, 2013 Executive Memorandum to the YRCAA Board of Directors re Petition

June 18, 2013 Pre Proposal Statement of Inquire CR 101 from Gary Pruitt

July 3, 2013 Mailing to dairymen, petitioners and certain interested parties

July 11, 2013 Presentation to YRCAA Board of Directors by Attorney Brian Davis on behalf of petitioners

July 24, 2013 Public Meeting in Union Gap

July 30, 2013 Public Meeting in Granger

August 12, 2013 Executive Director tells the YRCAA board of Directors that he sent a letter to petitioner stating that the Board has ceased the rulemaking process in accordance with RCW 34.05.335.

Sept. 4, 2015 Director Pruitt actually sends letter to petitioners.

Rule Making Requirements according to the Yakima Regional Clean Air Agency Administrative Code Part B

Section 8 Planning, Part 8.1 Preface of administrative Code Part B provides a process for developing rules and policies:

This planning Policy establishes a defined planning procedure to maximize opportunities for enhanced public, city, tribal and other stakeholder participation toward developing rules, air quality control strategies and positions on State and Federal air quality issues. Control strategies and issues which may be reviewed through this Policy include, but are not necessarily limited to, preparing:

- ☐ Rule and Regulation Proposals;
- ☐ Proposed Fiscal Year Budgets;
- ☐ Response to proposed federal regulations (e.g., proposed new Ambient Air Quality Standards);
- ☐ Response to proposed State and Federal regulations;
- ☐ Short and long term YRCAA program goals; and
- ☐ State Implementation Plan Revisions.

The process is rather lengthy and it appears that YRCAA chose a shorter route using RCW 34.05.335.

However, Part 8.7 Rule Development and Adoption states:

The purpose of this subsection is to define procedures for development, revision or repeal and adoption of YRCAA rules and regulations. All rulemaking must follow the planning policy previously outlined in this section and RCW 34.05, the Administrative Procedures Act. (Emphasis added)

YRCAA simply failed to follow the required planning procedure as required by the agency's own administrative code. (See Attachment D). Among other shortcomings YRCAA failed to:

1. Gather basic data
2. Hold discussions with the Washington State Department of Ecology and EPA to identify;
 - i. Potential coordination issues, merits and process, and
 - ii. Potential State Implementation Plan (SIP) revisions.
3. Complete a planning stage as required by part 8.2.2
4. Distribute information to the Yakama Nation and the American Lung Association.

False Information to the Board

According to the Washington State Implementation Policy for Yakima County (U.S. EPA, 2016, page 59):

SECTION 2.03 - MISCELLANEOUS PROVISIONS

A. No person shall willfully make a false or misleading statement to the Board as to any matter within the jurisdiction of the Board.

Dr. Nichole Embertson, an advisor to the YRCAA concerning the *Air Quality Management Policy and Best Management Practices for Dairy Operations*, dairy nutrient management specialist from the Whatcom County Conservation District and author of the Literature Review described above, made many false statements in her literature review as documented in *Response to Review: Summary of the Existing Science Regarding Public Health Effects from the Spreading of Dairy Manure, With an Emphasis on Effects in Eastern Washington and the Yakima Basin*. (Attachments O and P). At the March and April board meetings for YRCAA [REDACTED] brought this information to the attention of the board and asked for corrective actions. Nothing was done. YRCAA continued to work with Dr. Embertson and accept her advice.

Board Composition

For many years a Yakima Valley farmer, Tom Gasseling and a Moxee Fertilizer manufacturer served on the YRCAA Board of Directors. Both had air quality permits from the agency and neither recused himself when items that related to their businesses came up for votes.

People from the community have repeatedly asked to serve on the board and been denied. Since January, 2014 Dr. Stephen Jones has served as Yakima County Representative #1. He was appointed by the Yakima County Commissioners. He is a dairy nutritionist and earns a significant portion of his income from consulting to the industry. We believe that this board member has a conflict of interest and should not participate in decision making regarding dairies that contribute to pollution of the ambient air in Yakima County.

RCW 70.94.100 (6) states “Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.”

WAC 173-400-220 (2) Disclosure states: “Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or

consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.”

Furthermore, 70.94.430 (4) states, “Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than five thousand dollars.”

Dr. Jones served on the work group that developed the 2013 *YRCAA Air Quality Management Policy and Best Management Practices for Dairy Operations*. He participated in a meeting of that group that took place on a Yakima County dairy where No Trespassing signs were posted, thus preventing anyone from the public or the press from attending. Dr. Jones cited two prominent Yakima County dairymen as references in his application to serve on the YRCAA board of directors. (Attachment R)

As the following three examples below show, Dr. Jones has not declared a conflict of interest during discussions of dairy related issues by the YRCAA board of directors. He has unfairly and inappropriately voted on motions regarding the *YRCAA Air Quality Management Policy and Best Management Practices for Dairy Operations*.

1. On June 14, 2014, Dr. Jones voted on the YRCAA 2015 Budget that included revenue and expenditures related to dairies.
2. On November 13, 2014, Dr. Jones voted on permit fees for the coming year. Dr. Jones moved to accept the dairy policy implementation report and the board concurred.
3. On November 19, 2015, Dr. Jones voted on revisions to the 2016 YRCAA budget. That budget included items related to dairies.

Workgroup Composition

During the process that led up to development of the *Air Quality Management Policy and Best Management Practices for Dairy Operations* YRCAA engaged in many discussions with representative from the dairy industry. Citizens challenged the makeup of the group because there was no public representation.

At the April 12, 2012 meeting of the YRCAA Board of Directors, Director Pruitt told the board that he had asked environmentalist (b) (6) Privacy, (b) (7)(C) Enforcement P to serve on the work group and she declined because she was too busy preparing for cherry harvest. (b) (6) Privacy, (b) (7)(C) Enforcement P attended the May 10, 2012 board meeting and told the board that she had not talked with the director and never received an invitation to participate; she would have gladly participated and would still like to be part of the group. The director then revised his statement and said the intent was to ask her and that he had left a voice message on her answering machine asking her to call him.

Mr. Pruitt did not appoint (b) (6) Privacy, (b) (7)(C) Enforcement P to the workgroup after the May 2012 board meeting. YRCAA chose to appoint a former YRCAA Director, Tom Silva, as the public representative to the work group. Mr. Silva attended few meetings, did not communicate with the public and attended no YRCAA board meetings.

Air Quality Management Policy and Best Management Practices for Dairy Operations

After a lengthy development process the YRCAA adopted an *Air Quality Management Policy and Best Management Practices for Dairy Operations* in July 2013. The stated reasons for the policy (page 2/8) are:

There are many dairy operations in Yakima County which YRCAA has recognized as significant air pollution sources. YRCAA's primary air quality concern regarding dairy operations is the generation of fugitive air emissions from feed, urine, manure and other sources.

In recent years, most dairy operators have instituted various practices to control fugitive air emissions. Such practices are also good animal husbandry and good neighbor practices. Air quality management practices can require a significant commitment of time and resources by owners and operators.

Since air emissions from dairy operations are considered to be fugitive emissions (cannot feasibly be collected and passed through a control device), mitigation must be accomplished by prevention rather than control. This policy is intended to use existing

regulations and clarify what constitutes "reasonable precautions" to minimize air emissions from dairy operations. The primary means to accomplish this is to identify pollutant-specific and system-specific best management practices (BMPs) for minimizing emissions and to cause these practices to be implemented according to flexible, site-specific Air Quality Management Plans.

This policy applies only to dairy operations where cows are confined for feeding and milking and the potential for significant emissions of air pollutants exists. 100% of the air emissions from dairy operations cannot be eliminated. This policy and all BMPs contained in this policy have been tested, proven to be effective in mitigating air emissions, and found to be economically and technically feasible.

The stated purpose of the policy (page 3/8) is:

The purpose of this policy is to provide guidance and establish requirements for effective prevention and control of air emissions from dairy operations. Objectives to achieve the purpose are:

1. To achieve sufficient prevention of emissions from dairy operations to assure compliance with applicable laws and regulations;
2. To achieve prevention of emissions by describing a menu of system and pollutant specific best management practices (BMPs) for dairy operations that will be implemented through the use of flexible, site-specific Air Quality Management Plans;
3. To clarify what constitutes "reasonable precautions to prevent" emissions as required by WAC 173-400-040(3); and
4. To inform owners and operators about effective measures for the prevention of air emissions and provide a means by which dairy operations can demonstrate that they are taking reasonable precautions to protect the air quality in Yakima County.

The development of this policy was partially funded by the Washington Dairy Products Commission in the form of a \$30,000 grant to Washington State University.

There is no baseline data for ambient air pollution levels at the beginning of the project or for onsite air pollution levels. YRCAA was aware of the air quality data gathering that had been done in the Lower Yakima Valley in two dairy barns in 2010. The lead scientist for that data gathering, Dr. Pius Ndegwa, was an advisor to the *Air Quality Management Policy and Best Management Practices for Dairy Operations*.

Nevertheless, YRCAA maintained and continues to maintain that they can document improvement in air quality by measuring how completely dairies implement certain prescribed BMPs; that they cannot and should not perform air testing. Here are some reasons why that assumption is invalid:

1. If a dairyman cleans his barns, pens and corrals and moves all the manure off his property onto a neighboring property, even if it is just across the road, he receives a high score. The amount of manure does not change; emissions to the ambient air may increase due to manure handling; and the dairyman is “doing a good job”.

2. The nineteen references for the policy do not provide an adequate measure of improved air quality for many of the BMPs:

- In 2012 10 out of 19 studies were > 10 years old
- In 2012 5 out of 19 studies were > 15 years old
- Only 9 out of 19 studies were done in the United States
- Only 8 out of 19 studies were specific to dairy cattle
- None of the studies looked specifically at volatile organic compounds or at NO_x
- Only one study specifically addressed composting
- Only one study specifically addressed pasture
- Quantitative data showed wide variability depending on numerous co-factors. In other words it is not possible to state the amount of air pollution reduction due to any BMP.
- Many of the improvements in air quality are found only in laboratory conditions

3. The policy makes no allowance for the difference in emissions using flush systems and scrape systems of manure removal. There is a difference in emissions. (Rotz, 2004)
4. The policy does not distinguish between aerobic and anaerobic lagoons. There is a difference.
5. Composting and stacking manure is a major source of air emissions (Rotz, 2004). There is only one BMP in the score card that addresses this problem. It states “Properly manage stockpiled manure”. Half, or even more, of the ammonia in manure may volatilize during composting and there is only one BMP that addresses this activity.
6. The criteria used in site inspections are not sufficiently objective to actually measure any improvement in management practices. In many cases the ratings are simply the opinions of the YRCAA observers.
7. In other cases the ratings are based entirely on the dairy records and depend on the honesty of those who record numbers. There is no way to verify this data.
8. Emissions from dairy barns are measurable. They are not fugitive emissions.
9. If dairies implement Best Available Control Technology (BACT) they install covers on lagoons. When lagoons are covered emissions are measurable and are not fugitive. Air emissions from landfills are not considered fugitive emissions.

We seriously question whether the YRCAA has the legal authority to clarify state law, whether YRCAA has the statutory power “To clarify what constitutes ‘reasonable precautions to prevent’ emissions as required by WAC 173-400-040(3)”

We ask why YRCAA used RCW 34.05.313 to guide the development of this policy. In *Air Quality Management Policy and Best Management Practices for Dairy Operations* (page 1/8) YRCAA states:

The pilot project was conducted as contemplated in RCW 34.05.313, which states in part: “During the development of a rule or after its adoption, an agency may develop methods for measuring or testing the feasibility of complying with or administering the rule and for identifying simple, efficient, and economical alternatives for achieving the goal of the rule. A pilot project shall include public notice, participation by volunteers who are or will be subject to the rule, a high level of involvement from agency management, reasonable completion dates, and a process by which one or more parties may withdraw from the process or the process may be terminated.”

This is not a rule. It is a policy. Because it is only a policy it cannot be enforced but YRCAA proposes that it will “clarify what constitutes "reasonable precautions to prevent" emissions as required by WAC 173-400-040(3)”. At the very least the difference between rule and policy is clouded. At the worst, the YRCAA has colluded with big dairy to create an unenforceable policy that shields the industry from environmental safeguards.

YRCAA chose to follow RCW 34.05.313 in the development of *Air Quality Management Policy and Best Management Practices for Dairy Operations*, but the agency did not follow its own Code B for rule development. If YRCAA had followed Administrative Code B, Section 8:

They would have included:

- a. Public participation prior to proposal of a rule;
- b. Staff development in conjunction with Ecology, EPA, and stakeholders;
- c. Filing notice of the proposed rule with the state code reviser; and
- d. Consideration of adoption by the YRCAA Governing Board. (page 8-6)

They would have included a pre-notice inquiry that:

- i. Identifies the statutory authority for adoption of the rule;
- ii. Discusses why the rule may be needed and what it might accomplish;
- iii. Identifies other agencies that regulate the subject of the rule;
- iv. Discusses the rule development process; and

- v. Specifies the public participation process in the decision to adopt the rule. (page 8-6)

They would have submitted a draft to Ecology and requested assistance with:

- i. Draft rules prepared by the Project Officer will be submitted to the Ecology Rule Evaluation Section, under signature of the Director as soon as possible;
- ii. Ecology will review relevant proposed rules to assure the rules minimally conform to SIP requirements, CAA requirements, and other requirements of State law;
- iv. Ecology will provide written comments within 15 working days of receipt of the draft rule; and
- v. All written comments by Ecology regarding the adequacy of proposed rules will be provided by the Executive Director or his/her designee and will be the official Ecology staff position. (page 8-7)

As noted earlier, we are not attorneys and would have difficulty proving collusion, but there are indications that this has taken place. The U.S. Legal Dictionary (2016) says:

Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive, and involve fraud or gaining an unfair advantage over a third party, competitors, consumers or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

We do know that the *Air Quality Management Policy and Best Management Practices for Dairy Operations* was created in secret meetings that the public was not able to attend.

We do know that YRCAA consulted with the South Yakima Conservation District and the Washington State Department of Agriculture prior to making a recommendation in an executive memorandum regarding a citizen petition. The agency did not consult with the Department of Ecology, the Environmental Protection Agency or the Washington State Department of Health.

In addition YRCAA has accepted the opinions of experts on animal nutrients over opinions from people who work in public health.

Advisory Groups

In order to receive EPA funding and support for efforts to mitigate PM 2.5 air pollution the Yakima Clean Air Agency needs to demonstrate community involvement. In a document *PM Advance Path Forward – 2015 Update* YRCAA described a community based Task Force saying,

“The group has met routinely since August of 2014 and has participated in the control strategy development and selection of additional reduction measures and programs. Additional reduction measures and programs to be implemented immediately are detailed in Appendix F. The group will remain active and will meet no less frequently than semi-annually.”

In fact the Task Force only met three times in 2014 and once in January, 2015. After the group approved the plan and it was sent to the EPA meetings stopped. Notes from an YRCAA board meeting on Feb. 13, 2014 say, “There was discussion by Board and staff concerning the time period when the PM Advance Plan would be updated. Staff responded annually.” But this is not happening. There are no apparent plans to update the plan with community participation. The group has not met for a year and a half.

In the fall of 2013 YRCAA convened both an Agricultural Task Force and a Dairy Task Force in order to demonstrate community involvement surrounding dairy air emissions. Meetings took place throughout 2014. The Agricultural Task Force last met on Jan. 13, 2015 and the Dairy Task Force last met on April 14, 2015. The agency gave no reason for calling the meetings to a halt, but retains the appearance of involving the public.

At the last meeting of the Dairy Task Force [REDACTED] (b)(6) Privacy, (b)(7)(C) Ed. 1 representing the public, noted that the *Air Quality Management Policy and Best Management Practices for Dairy Operations* does not take into account manure emissions offsite. YRCAA staff countered that this is not the purpose

of the policy. (b)(6) Privacy, (b)(7)(C) Enf. Privacy also representing the public, asked for a section in the document that describes impacts on public health. “It was tentatively decided that staff would put together a Statement of Basis type document. This document would be posted to the Agency website.” This has not happened, another example of YRCAA being less than honest.

Does not serve the People

The YRCAA has no authority on the Yakama Reservation (YRCAA, 2015, p. 2/35). But the agency collects monies every year from Wapato (\$2,016), Toppenish (\$3,582), Harrah (\$258) and from Yakima County (\$34,164 countywide) for services to the 31,000 people who live on the reservation. (YRCAA, 2016, p. 17/44).

A major remediation for air pollution in Yakima County is a change out program that helps homeowners to replace outdated wood stoves with more efficient, EPA certified stoves. This program is not available to people who live on the reservation. The YRCAA document *PM Advance Path Forward – 2015 Update* states, “Depending on household income, and until such funding no longer remains, up to 100% of the cost for high-use households, located within all designated Urban Growth Areas of Yakima County (excluding all areas located within the exterior boundaries of the Yakama Indian Reservation), will be covered by YRCAA.”

The City of Toppenish, located within the exterior boundaries of the Yakama Reservation, has the lowest median household income in Yakima County and the worst documented air quality. This city struggles with budget deficits every year. In the 2016 Budget for Toppenish, City Manager Lance Hoyt stated,

“The 2015 Budget strategy of increasing City Utility Rates to 33%, not filling 3 police officers, 1 fire fighter and 1 dispatcher positions, and holding to crucial/necessary spending only in the last four months of 2014 have all proven essential to meet our goal of providing a healthier fund balance. The preliminary budget that was first presented to me was out of balance by approximately \$176,000 as compared to < \$1,000,000. The budget was balanced using conservative anticipated revenue and expenditure estimates.”

The low income people in this city who need assistance and relief from significant air pollution are ineligible for the woodstove change out program. The City of Toppenish could put

\$3,582 to good use. This is \$3,582 every year that Toppenish must pay out (loses) and \$3,582 worth of services that citizens should receive but do not.

Meanwhile YRCAA has sufficient funds to pay out annual bonuses to staff. These bonuses are not based on achievement but are simply and automatically approved because the Director has the attention of the board, and the Director does not advocate for or prioritize low income and minority people. At the same time YRCAA uses demographic data from Toppenish and other lower valley communities to write needs statements that emphasize the poverty levels in Yakima County. This documented suffering secures federal and state assistance for the agency but the agency does not funnel that money to those who are most in need. (YRCAA, 2015; YRCAA 2016).

Does Not Fine Dairies

Citizens have asked the YRCAA why they do not fine dairies for air pollution. The agency replies that they do in fact levy fines against dairies. Through a public records request citizens have learned the nature of these fines. They are described below:

YRCAA Enforcement Actions against Yakima County Dairies

Facility	Date	Violation	Fine	Waived
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2009	Burning Prohibited Materials during Stage II Burn Ban	\$2,000	\$1,500
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2010	Burning without Permit	\$1,150	\$750
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2012	Dust	\$2,000	
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2009	Burning Prohibited Materials without Permit	\$1,270	\$1,270
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2010	Burning Prohibited Materials including Asbestos without Permit	\$6,012	\$2,012
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2010	Burning Prohibited Materials without Permit	\$4,000	\$2,000
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2011	Burning Prohibited Materials	\$5,500	\$4,000
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2011	Asbestos Demolition without Notice of Demolition	None	
(b) (5) Privacy, (b) (7)(C) Enforcement Action	2012	Burning Prohibited Materials during a Stage II Burn Ban	\$2,490	

(b) (5) Privacy, (b) (7)(C) Enforcement Priv	2013	Burning during a Stage II Burn Ban	\$4,250	\$1,250
(b) (5) Privacy, (b) (7)(C) Enforcement Priv	2013	Fugitive Dust	None	
(b) (5) Privacy, (b) (7)(C) Enforcement Priv	2014	Burning Prohibited Material (Metal, PVC, Treated Lumber)	\$2,250	\$250
(b) (5) Privacy, (b) (7)(C) Enfor	2015	Burning Prohibited Material without Permit	None	
(b) (5) Privacy, (b) (7)(C) Enforcement Priv	2015	Failure to Register	None	
(b) (5) Privacy, (b) (7)(C) Enfor	2014	Failure to Register	None	
(b) (5) Privacy, (b) (7)(C) Enfor	2014	Failure to Register	None	

There were two fines for dust and one was against a beef feedlot. YRCAA does not take action against dairies that spray and spread manure during high winds or inversions. YRCAA requires beef feedlots to water their pens and control dust but does not impose the same requirements on dairies. YRCAA does not levy fines against dairies that do not follow their own nutrient management plans.

Conclusion

In 2005 Les Ornelas, who was then Director for the YRCAA, addressed a group of Yakima County dairymen saying, (Attachment S),

Now, I receive the largest number of odor complaints currently for my jurisdiction against feedlots, dairies, other kinds of chicken farmers, and other sorts of activities like this. We have people in the field who have been trained to evaluate odors, to be able to discern from a level 1, 2, 3 or 4 (4 typically is the one that causes a gag reflex). We go out and respond to all these numerous complaints every year and we have not yet issued a citation to any of the dairy people on odors in Yakima County, even though we have hundreds and some years over a thousand complaints.

In that same year the City of Sunnyside contemplated a request to deactivate the YRCAA. In part this proposal stemmed from YRCAA's failure to help the city in efforts to address strong odors from animal feedlots and dairies. (Attachment T)

Nothing has changed. The air pollution continues. In our opinion it has worsened but that is hard to prove because the responsible agency refuses to do air quality testing.

It is time to take a close look at the YRCAA and evaluate whether the agency is effective and whether it acts in good faith. That is our request to the Department of Ecology. We look forward to hearing from you at the earliest possible date.

The Friends of Toppenish Creek

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List of Attachments (Will be sent electronically)

Attachment A: Message to YRCAA

Attachment B: Director Response regarding Global Warming

Attachment C: Complaints # 3256 & 3257

Attachment D: YRCAA Administrative Code Part B

Attachment E: WSDA Agency Discussion Fact Sheet

Attachment F: Mailing List for Public Meeting

Attachment G: Article from Toppenish Review Independent

Attachment H: YRCAA Dairy Pilot Project Public Comments

Attachment I: Petition to YRCAA

Attachment J: Petition Letter I to YRCAA

Attachment K: Petition Letter II to YRCAA

Attachment L: Letter from YRCAA re Petition

Attachment M: Research Related to Concentrated Animal Feeding Operations and Health

Attachment N: Executive Memorandum re Citizen Petitions

Attachment O: Literature Review from the WA Dairy Products Commission

Attachment P: Response to Literature Review

Attachment Q: Discussion Paper for public Meeting

Attachment R: Research re Fine Particulate Air Pollution and Selected Health Problems

Attachment S: 2005 Statement by YRCAA Director

Attachment T: Daily Sun News re YRCAA in 2005

Attachment U: Resume for Dr. Steve Jones