

For Immediate Release: September 16, 2021

Contact: Tarah Heinzen, theinzen@fwwatch.org, (202) 683-2457

EPA Must Force Idaho Factory Farms to Monitor and Report Water Pollution: Ninth Circuit

Court Finds Permit Lacked Required Discharge Monitoring Requirements

Boise, Idaho -- Today the national advocacy group Food & Water Watch, along with Snake River Waterkeeper, won a Ninth Circuit challenge to EPA's statewide water pollution permit for concentrated animal feeding operations (CAFOs, or factory farms) in Idaho. The three-judge panel unanimously held that the permit arbitrarily let factory farms off the hook for monitoring their pollution discharges into waterways.

Simply put, CAFOs in Idaho will now be required to comprehensively monitor and report on their waste discharge and water pollution for the first time. This case may have broad implications for how pollution from the factory farm industry is regulated across the country in the future.

"Today's decision strikes a major blow against EPA's practice of granting illegal exceptions and special treatment to the factory farm industry," said **Tarah Heinzen, Legal Director at Food & Water Watch**. "Factory farms are a huge source of water pollution in Idaho and across the country, but without pollution monitoring, they have been able to pollute at will and hide this pollution from citizens and regulators. Monitoring is a critical first step towards holding factory farms accountable for illegal pollution."

"We are confident that this is the first domino to fall on the path to comprehensive pollution monitoring and accountability of America's ~~America's~~ corporate factory farm industry," **Heinzen added.**

CAFOs confine hundreds or thousands of animals and their waste, which they store in impoundments prone to leaching and ultimately dispose of on fields where it can run off into waterways. These facilities are a significant source of water pollution, including nitrates, pathogens, and pharmaceuticals, and have contributed to pollution impairments in waterways across Idaho. Because of this pollution risk, CAFOs are supposed to be regulated as "point sources" under the federal Clean Water Act, which requires polluters to follow permits that limit discharges and require monitoring to demonstrate if a facility is in compliance.

EPA's Idaho Permit did not require factory farms to monitor for discharges through waste impoundments or from land application fields, instead assuming that facilities would satisfy the permit's "zero discharge" limits. Food & Water Watch and Snake River Waterkeeper argued that this violated the Clean Water Act's requirement that permits contain "representative" monitoring capable of showing if a facility is meeting or violating its permit.

The Court agreed with the petitioners, holding that EPA's Idaho Permit is unlawful because without such monitoring, "there is no way to ensure that a CAFO is complying with the Permit's ... no-discharge requirement."

"This victory changes the face of permitting and accountability for an industry that has avoided the requirements of the Clean Water Act's pollution safeguards for far too long," said **Buck Ryan, Executive Director of Snake River Waterkeeper**. "The public deserves to know what is being put into waterways by the State's worst polluters, and with this decision we can begin to understand the actual levels of factory farm effluent being discharged into the Snake River in order to address their sources and ecological impact."

The Court vacated EPA's Idaho Permit, requiring the agency to draft a new permit with the monitoring provisions required by federal law. Because EPA and state agencies routinely omit monitoring in CAFO permits with similar pollution risks, today's decision will pave the way for similar requirements in CAFO permits across the country.

The Petitioners were represented in this case by Food & Water Watch and Earthrise Law Center at Lewis & Clark Law School.