



February 17, 2021

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Directors Taylor and Whitman,

The Stand Up to Factory Farms Coalition urges the Department of Agriculture (“ODA”) and Department of Environmental Quality (“DEQ”) to deny the individual CAFO permit sought by Easterday Farms Dairy, LLC,¹ in light of the multi-million-dollar financial scandal and bankruptcies in which the applicant’s agent and affiliated companies are currently embroiled.

As your Departments are no doubt aware, recent Washington state court filings allege that Cody Easterday—through the business entity Easterday Ranches, Inc.²—has orchestrated over a span of years a \$225 million “cattle rustling” scheme in order to offset \$200 million in financial losses

¹ See Easterday Application to Register (ATR) to the Oregon CAFO General Permit (Jul. 1, 2019).

² While Easterday Ranches, Inc. is a separate entity from applicant Easterday Farms Dairy, LLC, our understanding is that they have overlapping ownership, and that Cody Easterday is a principal in both. Moreover, both utilize the same Pasco, WA address as their principal place of business. See OR Sec’y of State Corporate Division, *Easterday Farms Dairy, LLC Business Entity Data*, available at: http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=2040248&p_srce=BR_INQ&p_print=FALSE; WA Corporations and Charities Filing System, *Easterday Ranches, Inc. Business Information*, available at: <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation>. Easterday Farms Dairy, LLC, has apparently changed its name to Easterday Dairy, LLC, but we refer to it here by its former name for simplicity and because the former name is the name on the Oregon permit application.

he suffered on the commodities trading market.³ The ensuing lawsuit initiated against the company has exposed its dire financial condition, which in the face of over \$236 million in debts, has filed for chapter 11 bankruptcy.⁴ Another affiliated entity, Easterday Farms, a Washington general partnership, has more recently filed for bankruptcy.⁵ While it has yet to be determined to what extent the Easterdays' Oregon holdings will be entangled in this controversy, and while the allegations made by Tyson Fresh Meats, Inc. ("Tyson") have yet to be resolved, ODA and DEQ need not and should not wait to act. Based upon Cody Easterday's failure to disclose the precarious financial situation of his affiliated companies, your departments are authorized to deny the Easterday permit application immediately. We ask that you exercise your discretion to do so. Your agencies should also immediately investigate the allegations made by Tyson – including, at a minimum, reviewing the court filings and interviewing Cody Easterday and witnesses from Tyson – and deny the permit application based on Cody Easterday's actions if the allegations are substantially true.

Pursuant to the Federal Clean Water Act, National Pollutant Discharge Elimination System ("NPDES") permitting authorities have expansive discretion to terminate a permit during its term, or deny a permit renewal application based upon the permittee's "noncompliance . . . with any condition of the permit" or "the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts."⁶ Additionally, a "permittee's misrepresentation of *any* relevant facts at *any* time" can trigger a permit denial.⁷

This discretion to deny NPDES permits is also separately codified in Oregon state law, which provides "at any time, the Department of Environmental Quality may refuse to issue, modify, suspend, revoke or refuse to renew any permit" based on a number of circumstances, including if it finds "a material misrepresentation or false statement in the application for the permit" or a "failure to comply with the conditions of the permit."⁸ By concealing the dire financial condition of its affiliated entities from ODA and DEQ, Easterday Farms Dairy, LLC (the applicant for the NPDES permit) has failed to disclose facts relevant to the permitting of the proposed Easterday mega-dairy in Oregon. If Cody Easterday – a principal of Easterday Farms Dairy and, as we understand it, the company's primary contact with the agencies – has in fact engaged in the false-billing scheme alleged by Tyson, that would be a further material fact that Easterday Farms Dairy failed to disclose to the agencies.

Moreover, if Cody Easterday engaged in a massive false-billing scheme in order to shore up his vast financial losses (as alleged by Tyson), that should disqualify his dairy company from

³ Franklin County (Washington) Superior Court, Case No. 21-2-50034-11; *see also* Thomas Clouse, *200,000 allegedly missing cows are at the center of major Washington cattle operation's bankruptcy*, Seattle Times (Feb. 2, 2021), available at: <https://www.seattletimes.com/business/200000-allegedly-missing-cows-are-at-center-of-bankruptcy-of-major-washington-cattle-operation/>.

⁴ United States Bankruptcy Court for the Eastern District of Washington, Case No. 21-00141-WLH11.

⁵ United States Bankruptcy Court for the Eastern District of Washington, Case No. 21-00176-WLH11.

⁶ 40 C.F.R. § 122.64(a) (applicable to state NPDES programs via 40 C.F.R. § 123.25).

⁷ *Id.* (emphasis added).

⁸ O.R.S. § 468.070(a)-(b).

operating a mega-dairy in Oregon because it would speak directly to his ability—or lack thereof—to responsibly and lawfully operate a mega-dairy in Oregon. ODA has consistently justified its decision to move forward with the permitting of this 30,000 head CAFO based upon its belief that the Easterday family can and will “provide responsible management and other resources to achieve and maintain CAFO compliance going forward.”⁹ The bankruptcy filings show that it can do neither. The Tyson allegations, if substantially true, would confirm that. As such, Cody Easterday’s failure to disclose the information described above warrants permit denial.

Moreover, the Departments should investigate the impact of Cody Easterday’s failure to disclose the alleged gross mismanagement of corporate assets on the current CAFO permit issued to Easterday Farms Dairy, LLC. When ODA approved the transfer of the Individual CAFO Permit OR995129 to Easterday Farms Dairy, Easterday “agree[d] to be bound by and to pay and perform, observe and discharge all the duties and obligations” set forth therein.¹⁰ This permit provides that “failure of the permittee to disclose fully all relevant facts, or misrepresentations of any relevant facts by the permittee during the permit issuance process and during the life of the permit,” constitute grounds for revocation or termination.¹¹ For the reasons stated above, the Departments should investigate whether Easterday Farms Dairy is in non-compliance with this permit condition, further justifying a denial of the proposed permit currently under consideration.

Finally, to the extent that Easterday Farms Dairy, LLC continues to construct or modify essential manure management equipment to ensure compliance with its CAFO permit, the agencies have serious cause for concern regarding the company’s ability to finance any such plans going forward. Per OAR 340-052-0035, DEQ and ODA may explicitly reject a permittee’s plan for the construction, installation, or modification of disposal systems, including “agricultural waste systems,”¹² when the permittee’s financing plan “does not provide reasonable assurance of adequate funding.”¹³

News outlets have widely reported that Easterday Farms Dairy has committed to investing \$15 million to achieve and maintain full environmental compliance at the CAFO site.¹⁴ Based upon recent ODA approval of plans to replace faulty manure management infrastructure necessary to safely operate,¹⁵ it appears that this multi-million-dollar commitment has yet to be fully realized.

⁹ George Plaven, *Regulators satisfied with cleanup at controversial Oregon dairy*, East Oregonian (Jan. 3, 2020), available at: https://www.eastoregonian.com/news/local/regulators-satisfied-with-cleanup-at-controversial-oregon-dairy/article_94a987d5-c0ec-5512-8de8-7363265e44c7.html.

¹⁰ ODA, Letter transferring Oregon CAFOS NPDES Individual Permit No. OR995129 (Apr. 6, 2020).

¹¹ Individual CAFO Permit OR995129 at 20. (Mar. 31, 2017).

¹² See OAR 340-052-0010(3) (defining “disposal system” to include “agricultural waste systems.”).

¹³ OAR 340-052-0035(7).

¹⁴ See e.g., George Plaven, *Cleanup permit transferred to new owners of controversial dairy*, East Oregonian (Apr. 7, 2020), available at: https://www.eastoregonian.com/news/agriculture/cleanup-permit-transferred-to-new-owners-of-controversial-dairy/article_3e819ecc-bbad-5fa8-84f0-9033085bffe5.html.

¹⁵ See ODA, Letter granting Easterday’s Construction Approval Request for wastewater drain pipe replacement MA# 1000257 (Aug. 13, 2020).

As Easterday Ranches, Inc.'s bankruptcy illustrates, corporate entities managed by Cody Easterday may be in serious financial jeopardy. At bare minimum, DEQ and ODA should suspend permit issuance and halt all further approvals of construction plans until they can determine that Easterday Farms Dairy, LLC has the financial resources to properly construct and maintain necessary waste systems.

As DEQ and ODA have recognized, responsible management and reliable capital are vital for the environmentally compliant operation of CAFOs. The recent bankruptcy of Easterday Ranches, Inc. and Easterday Farms, and the allegations by Tyson, call into question whether Easterday Farms Dairy is capable of either. We respectfully request your Departments deny the pending Easterday CAFO permit application and, in so doing, protect Oregonians from getting caught up in the mismanagement and financial ruin plaguing other Easterday entities.

Sincerely,

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Food & Water Watch

Lauren Goldberg
Columbia Riverkeeper

Amy Wong
Friends of Family Farmers

Kristin Ostrom
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Jennifer Hauge
Animal Legal Defense Fund

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