UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

ENFORCEMENT &
COMPLIANCE
ASSURANCE DIVISION

Reply To: 20-C04

RETURN RECEIPT REQUESTED

Ms. Holly Myers
Director
Office of Drinking Water
Washington Department of Health
P.O. Box 47822
Olympia, Washington 98504

Mr. Vincent McGowen
Program Manager, Water Quality Program
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504

Mr. Kyrre Flege
Acting Program Manager
Dairy Nutrient Management Program
Washington Department of Agriculture
1111 Washington Street Southeast
Olympia, Washington 98504

Ms. Lisa Freund
Public Services Director
Yakima County
128 North Second Street
Yakima, Washington 98901

Mr. Shawn Magee
Environmental Health Director
Yakima Health District
1210 Ahtanum Ridge Drive
Union Gap, Washington 98903

Re: October 26, 2021, Petition for Emergency Action Pursuant to Safe Drinking Water Act Section 1431 to Address Nitrate Contamination of Drinking Water in the Lower Yakima Valley, Washington

Dear Ms. Myers, Mr. McGowen, Mr. Flege, Ms. Freund and Mr. Magee:

On October 26, 2021, the U.S. Environmental Protection Agency (EPA or "Agency") received a Petition from the Center for Food Safety, Friends of Toppenish Creek and Food & Water Watch (collectively, "Petitioners"), requesting that EPA exercise its emergency powers under section 1431 of the Safe Drinking Water Act (SDWA) to address groundwater nitrate contamination that presents a risk to the health of residents of the Lower Yakima Valley (LYV), Washington. Generally, Petitioners request actions intended to protect the health of people who rely on the drinking water in the LYV.

EPA appreciates your assistance in providing information pertinent to the Agency's review of the Petition, including your participation in several meetings between EPA and state and local agencies in January and February 2022. Through these discussions, EPA better understands the State's efforts to address nitrate contamination in the LYV. On July 20, 2019, the Washington Department of Ecology ("Ecology") conditionally certified the LYV Groundwater Management

Area (GWMA) Program, including 64 recommended actions to accomplish the GWMA's goal: reducing nitrate contamination in groundwater to below the state drinking water standard. Currently, state and local agencies work to implement the GWMA Program's recommended actions.

EPA's immediate priority is to protect human health by ensuring that residents impacted by nitrate contamination are (1) identified; (2) provided notice in all applicable languages regarding their potential exposure to elevated nitrate concentration and information regarding the associated health risks; and (3) provided the opportunity to obtain alternative drinking water until nitrate contamination in groundwater falls below 10 mg/L, the maximum contaminant level (MCL). EPA recognizes that, since its inception, the GWMA has acted to further these immediate priorities. For example, the GWMA offered free nitrate sampling to private well owners in 2014 and 2017 and created several public awareness campaigns involving flyers, billboards and a website and in 2011 Yakima County Public Services installed 161 treatment units in residences with nitrate concentrations above the MCL. Nonetheless, nitrate contamination in the LYV persists and the protection of human health requires a broader and sustained response to ensure public awareness and access to safe water for all impacted residents.

Several of the GWMA Program's recommended actions will further EPA's immediate priorities regarding the Petition. For example, EPA understands that Ecology created a monitoring network of 136 domestic private wells; the Washington Department of Health (DOH) is working to access Foundational Public Health monies to assist the Yakima Health District in immediately providing potable water to owners of impacted wells; and the Yakima Health District is undertaking a study to assess the feasibility of permanent alternative sources of drinking water. We are seeking additional information regarding the GWMA Program's recommendations, plans and ongoing response efforts, as they relate to EPA's immediate priorities. Specifically, EPA requests a description of each agency's plans to identify impacted residents and provide them with information regarding nitrate exposure and the opportunity to obtain alternative water until nitrate concentrations in groundwater fall below the MCL. EPA is specifically interested in efforts to identify and conduct outreach to, not only impacted private wells with a single service connection, but also to any impacted Group B public water systems in the LYV. Given that any successful response to nitrate contamination in the LYV will require sustained efforts, EPA also requests that you identify the timing of each component of your agency's plan and immediate and long-term funding strategy.

Additionally, EPA requests information regarding DOH's efforts to ensure that regulated facilities in the LYV comply with SDWA requirements. Non-transient non-community water systems (NTNCWS) are public water systems that regularly serve at least 25 of the same people over six months per year. 40 C.F.R. § 141.2. Like all public water systems, NTNCWSs are required to comply with national primary drinking water regulations, including the MCL for nitrate. EPA requests that DOH, as the state agency with primary enforcement responsibility for public water systems, identify the commercial operations in the LYV, including concentrated animal feeding operations (CAFOs), to which NTNCWS requirements apply and provide a description of the compliance status of each of these public water systems.

ED_013735_00006610-00002

Through these requests for additional information, EPA hopes to learn to what extent efforts have satisfied EPA's immediate priorities.

EPA recognizes that, even after immediate access to drinking water is secured, the underlying problem – nitrate-contaminated groundwater – will continue to present a risk to human health and the environment. In June 2021, the Washington State Court of Appeals affirmed a 2018 decision by the Pollution Control Hearings Board (PCHB), remanding the CAFO General Permit to Ecology. EPA understands that the reissuance of the NPDES CAFO General Permit is a complex and prolonged effort; however, EPA will be reaching out for additional information on Ecology and Washington State Department of Agriculture's efforts to protect water quality in accordance with the Clean Water Act while the CAFO General Permit is being revised as well as information regarding Ecology's plans to revise the CAFO General Permit in response to the remand from the Washington State Court of Appeals, including (1) clarifications of requirements for repairing liquid manure lagoons and composting solid materials, (2) monitoring of surface water and groundwater, (3) revisions to the public review process for nutrient management plans and (4) clarifications of land application requirements.

EPA appreciates that nitrate contamination in the LYV is a complex problem, which the GWMA and its diverse membership have worked to resolve for many years. Thank you for your willingness to describe your past efforts and plans for future response actions. Your cooperation is valuable in EPA's goal to provide an appropriate response to the Petition. Given the urgency inherent in any situation involving drinking water contamination, we respectfully request your reply to this letter within 45 days. If you wish to discuss any portion of this letter, including the requests herein, please do not hesitate to contact me at kowalski.edward@epa.gov or (206) 553-6695 or your staff may contact Jeff KenKnight at kenknight.jeff@epa.gov or (206) 553-6641. I look forward to additional coordination with you as we continue to explore resolutions to this important issue.

Sincerely,

EDWARD KOWALSKI Digitally signed by EDWARD KOWALSKI Date: 2022.05.11 15:50:30 -07'00'

Edward J. Kowalski
Director

ED_013735_00006610-00003