

## **CAFO Legislation and Regulation**

The storage of a CAFO's massive production of untreated animal manure and its application to fields used to grow feed for the confined animals causes harm to water, soil, air, and neighbors of CAFOs. Additionally, the chemical fertilizers and techniques in use deplete CAFO field topsoil structure and can also cause harm to waters of the state.

These CAFO harms were recognized by the Clean Water Act of 1972. CAFOs were defined as point sources of pollution and therefore permit regulations were developed. Other legislation was deemed necessary to produce a safe, fair, and unpolluting food supply system for the United States.

After World War II U.S. government policy encouraged a monumental increase in meat, dairy, and egg consumption and promoted the means to supply it. Many of the best intentions of legislation to protect our environment have been ignored or weakened by agricultural exemption and regulatory concessions to corporate pressure.

### **Agricultural Improvement Act of 2018 - The Farm Bill**

Every five years Congress writes a new farm bill that allocates federal funding to support agriculture and provide safe food for the nation's poor. The Farm Bill is a package of legislation that has a large impact on farm income, how and what types of foods are grown. The cost of the 2018 Farm Bill was about \$428 billion, allocated to: Nutrition 76%, Crop Insurance 9%, Commodities (risk management for wheat, rice, corn, oats, barley, sorghum, cotton, peanuts, soybeans, legumes, wool, & honey) 7%, Conservation 7%, and Other 1%. (USDA, 2019a).

Recent Farm bills provided massive subsidies to corporate farms, especially CAFOs, while neglecting small farmers and small meat processors. There is financial support for corn, soybeans, cattle, dairy, and poultry, but not for fruits and vegetables.

CAFOs benefit from the low-cost animal feed produced with the help of farm subsidies on their own property or elsewhere. Dairy benefits directly from multiple dairy support programs in the Farm Bill while meat and egg producers do not. (USDA, 2019b). The next Farm Bill will be crafted in 2023.

### **Federal Water Pollution Control Act (the Clean Water Act) 33 U.S.C. §§ 1251-1388**

The Clean Water Act (CWA) has been the nation's strongest tool for regulation of CAFOs, which are classified as point sources of pollution. The United States Environmental Protection Agency (USEPA) enforces the nation's Clean Water Act. The CWA addresses CAFO regulation by:

1. Requiring National Pollutant Discharge Elimination System (NPDES) permits for CAFOs that discharge to surface waters. The EPA delegates NPDES administration to most states, and administers the program in Idaho, Massachusetts, New Hampshire, and New Mexico. Some states have General Permits that regulate CAFO discharge to groundwater.

In 2011 the Fifth Circuit Court ruled that the Environmental Protection Agency (EPA) cannot require all CAFOs to obtain NPDES permits. Regulators must now prove a discharge before requiring a permit. (Fifth Circuit Court, 2011)

“The CAFO regulations specify nine minimum requirements that must be included in an NMP, to the extent that they are applicable, for any CAFO seeking permit coverage. 40 CFR § 122.42(e)(1)” [https://www3.epa.gov/npdes/pubs/cafo\\_permitmanual\\_chapter5.pdf](https://www3.epa.gov/npdes/pubs/cafo_permitmanual_chapter5.pdf)

The most egregious flaw in USEPA CAFO regulation is that a CAFO with an approved Nutrient Management Plan (NMP) is assumed by EPA to generate little or no runoff of manure nutrients to surface water. EPA then further says that if any manure runoff does enter surface water, it is considered "agricultural stormwater runoff" that is exempt from regulation. Thus, qualified CAFOs are considered “zero discharging”, and regulators must prove a discharge to waters of the state before requiring NPDES permits with water and soil pollution prevention requirements for CAFOs. A high likelihood of discharge is not enough to require a CAFO to get a permit.

2. A second way the CWA regulates CAFOs is through restriction of manure discharge to impaired waters by estimating Total Maximum Daily Loads (TMDLs) of a particular pollutant. In theory each entity that discharges to an impaired water body can only discharge a designated amount of the targeted pollutant. TMDLs have been developed for manure or fertilizer nutrients, sediment, pH, temperature, dissolved oxygen, pesticides, harmful chemicals, and pesticides. Although states are required to identify impaired waterways and develop TMDLS, there is no requirement for enforcement. The EPA believes that TMDL programs are effective for point sources but less so for non-point sources. (Copeland, 2014) Some states may assume that CAFOs do not discharge and thus are not subject to TMDL management requirements.

In the impaired waters with TMDL’s in many states, all of the CAFOs in the watershed are listed as “non-discharging” sources and have no bearing on the process, as the CAFOs are not considered as contributors to the pollution that caused the TMDL. This “no potential to discharge” designation undermines the whole purpose of TMDLs and leaves many streams and lakes in the US seriously polluted.

**Federal Air Pollution and Control Act (the Clean Air Act), 42 U.S.C. §§ 7401-7671q**

The Clean Air Act is generally implemented by states under EPA approved State Implementation Plans (SIPs), agreements between the EPA and state regulatory agencies or local air agencies. EPA oversight addresses six criteria air pollutants: Particulate Matter (PM 2.5 and PM 10), ozone, sulfur dioxide, nitrogen dioxide, lead, and carbon monoxide. (US EPA, 2021a). Activists argue for the inclusion of ammonia in the list due to the adverse impacts from CAFO operations and the climate changing impacts of increased reactive nitrogen in the ambient air. (Sutton et al, 2011). This has not yet occurred.

Government has struggled to implement the Clean Air Act with respect to agriculture. During the Bush administration the EPA studied air pollution by CAFOs, in the National Air Emissions Monitoring Study (NAEMS) that was funded by the National Pork Producers Council. But the EPA has not finalized any emission estimating methodologies for animal feeding operations based on NAEMS. “Until the EPA develops sound methods to estimate emissions, the agency cannot reliably determine whether animal feeding operations comply with applicable Clean Air Act requirements.” (US EPA OIG, 2017)

**Comprehensive Environmental Response, Compensation, and Liability Act  
(CERCLA) 42 U.S.C. §§ 9601-9675, and  
Emergency Planning and Community Right-to-Know Act  
(EPCRA) 42 U.S.C. §§ 11001-11050**

CERCLA and EPCRA require reporting of the release of hazardous substances above certain reporting limits. Air emissions from large CAFOS include hazardous air pollutants, greenhouse gases, and reactive nitrogen. In 2018 the Fair Agricultural Reporting Method Act (FARM Act) exempted reporting of air emissions from animal waste under CERCLA. In 2019 the EPA signed a final rule exempting reporting of air emissions from animal waste such as ammonia, methane, hydrogen sulfide, or dust under EPCRA. (US EPA, 2021b). Thus, CAFOs are not held accountable for hazardous air pollutants that are known to impact the health of Americans, especially those in close proximity.

**Resource Conservation and Recovery Act 42 U.S.C. §6901 et seq**

The Resource Conservation and Recovery Act (RCRA) is the major statute governing disposal of solid and hazardous waste in the United States. This is an increasing problem. Under certain circumstances waste disposal by CAFOs may be classified as dumping solid waste. (US EPA, 2022a)

The Law Offices of Charlie Tebbutt have successfully sued large CAFO dairies for disposing of manure as waste under RCRA. The Ninth Circuit Court stated: “In

conclusion, this Court finds no genuine issue of material fact that Defendants' application, storage, and management of manure at Cow Palace Dairy violated RCRA's substantial and imminent endangerment and open dumping provisions and that all Defendants are responsible parties under RCRA." (Ninth Circuit Court, 2015)

### **Mandatory Greenhouse Gas Reporting 40 CFR Part 98 Subpart JJ Manure Management**

This statute requires reporting of greenhouse gas emissions (carbon dioxide, methane, nitrous oxide and other) above a certain threshold. Subsection JJ covers emissions from manure management. (Code of Federal Regulations, 2022) The EPA is not implementing subpart JJ (manure management) of 40 CFR Part 98 because Congress has prohibited expenditure of funds that would allow the EPA to gather information on greenhouse gas emissions from CAFOs. (US EPA, 2022b).

### **Packers and Stockyards Act (PSA) 7 U.S.C. §§ 181–229c**

The purpose of the Packers and Stockyards Act (PSA), passed by Congress in 1921, was "to assure fair competition and fair-trade practices, to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory, and monopolistic practices...." (USDA, 2021a).

Nevertheless, over the last half century, the United States has seen "vertical integration" of the meat and poultry industries. Vertical integration happens when one company takes over multiple stages of production that formerly belonged to independent companies. Market control of beef and poultry now rests with five large conglomerates. (USDA, 2021b).

The Packers and Stockyards Act is supposed to guarantee fair competition and trade practices for farmers and ranchers. But the market share in recent years has shifted in favor of large conglomerates. Additionally, despite the Packers and Stockyards Act, control of meat processors now rests with a few conglomerates. The unwillingness of the Federal government to address this inequity places independent producers who use much more environmentally sound practices at a serious competitive disadvantage.

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