

CAFO Regulations

Concentrated Animal Feeding Operations (CAFO) raise large numbers of animals in confined spaces, mechanically bringing feed to the animals and removing waste. CAFOs are legally defined in the Clean Water Act (CWA). Here is a description of major federal laws regarding CAFOs with descriptions of loopholes that allow CAFOs to pollute and escape regulation.

1. 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.
2. Every five years Congress writes a new farm bill that spends billions of dollars to support agriculture and provide safe food for the nation's poor. Recent Farm bills provide massive subsidies to corporate farms, especially CAFOs and neglect small farmer. There are supports for corn, soybeans, cattle, dairy, and poultry, but not for fruits and vegetables.
3. The EPA enforces the nation's Clean Water Act by issuing National Pollutant Discharge Elimination System (NPDES) permits for any business that discharges pollutants into rivers, streams, or lakes. Almost all factories have NPDES permits. But a loophole in the law says EPA must prove that a Factory Farm (CAFO) actually discharges before requiring a permit. A high likelihood of discharge is not enough.
4. CAFOs do not have to report emission of air pollutants such as ammonia, methane, hydrogen sulfide, or dust under the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA)
5. Congress has refused to appropriate funds that would allow the EPA to gather information on greenhouse gas emissions from CAFOs.
6. Despite the Packers and Stockyards Act, control of meat markets now rests with a few conglomerates
7. Recent Farm bills provide massive subsidies to corporate farms, especially CAFOs and neglect small farmers
8. Officials must prove a discharge to waters of the state before requiring National Pollution Discharge Elimination System (NPDES) permits for CAFOs
9. CAFOs are largely exempt from reporting requirements under the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA)

Our federal government could reduce pollution from CAFOs by applying the same laws to agriculture that apply to other businesses and by supporting all farms, not just a few large farms. Animal agriculture accounts for at least 11% of greenhouse gas emissions in the United States, and this percentage could easily be reduced by farming in more environmentally protective ways.

CAFO Regulations In Depth

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)

Agricultural Improvement Act of 2018 - The Farm Bill

Every five years Congress writes a new farm bill that allocates federal funding for agriculture. 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)

CAFOs benefit from the low cost animal feed produced with the help of farm subsidies. 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 CWA enforces policy by 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)

A second way the CWA regulates CAFOs is through restriction of discharge to impaired waters by estimating Total Maximum Daily Loads (TMDLs). 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 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)

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

Government has struggled to implement the Clean Air Act with respect to agriculture. During the Bush administration the EPA undertook a study of air pollution by CAFOs, 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 that study. “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)

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.

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 under EPCRA. (US EPA, 2021b)

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 for this purpose. (US EPA, 2022b)

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