

AMERICAN PUBLIC HEALTH ASSOCIATION CALLS FOR NATIONAL MORATORIUM ON NEW AND EXPANDING CONCENTRATED ANIMAL FEEDING OPERATIONS

ACTION 3: REQUIRING ENFORCEMENT OF THE CLEAN WATER ACT AS IT PERTAINS TO CAFOS

In light of the wide-ranging negative health and environmental impacts associated with Concentrated Animal Feeding Operations (CAFOs), as well as serious social and environmental justice concerns, the American Public Health Association adopted a new policy resolution. The [Precautionary Moratorium on New and Expanding CAFOs](#) calls for federal, state and local governments, including public health agencies, to impose a national moratorium on new and expanding CAFOs until additional scientific data on the attendant risks to public health have been collected, uncertainties resolved, and 12 action steps outlined in the resolution have been taken. This document is one of a series of briefs concerning the action steps that must be met before the APHA's call for a moratorium will be lifted. This document focuses on Action Step 3, and provides additional information pertinent to this action step.

Action Step 3 requires:

The federal government enforces the Clean Water Act as it pertains to CAFOs.

CAFOs are a leading contributor of pollutants in lakes, rivers, and reservoirs in the United States.¹ These pollutants include nutrients such as nitrogen and phosphorus, as well as bacteria, organic matter, solids, salts, trace elements, and pharmaceuticals.²

Overview of the Clean Water Act as it pertains to

CAFOs: Farms classified as CAFOs are subject to National Pollutant Discharge Elimination System (NPDES) permitting under the Clean Water Act because they are usually “point sources” of pollution.³ Under the Clean Water Act, point sources are prohibited from discharging pollutants to US waters except as authorized by an NPDES permit. The Clean Water Act requirement specifies that only CAFOs that “discharge or propose to discharge” must get a NPDES permit. “Propose to discharge” means a CAFO is “designed,

constructed, operated or maintained” in such a way that a discharge “will occur.”⁴ CAFOs that *do not*, or *do not intend* to discharge may still apply for a permit. Any unpermitted CAFO is subjected to significant Clean Water Act penalties if discharge occurs.⁵

All permitted CAFOs must submit a Nutrient Management Plan (NMP) as part of the permit application that is available for review by the public prior to incorporation into the facility's final permit. CAFOs with permits must then submit annual reports that include, among other items, a description of (i) crops planted and yield from each field, (ii) the nitrogen and phosphorus content of manure/wastewater that is applied to soil and the amount of manure/wastewater/chemical fertilizer applied to each field, and (iii) the total amount of plant-available nitrogen and phosphorous from all sources.⁵

The Environmental Protection Agency is responsible for administering the NPDES program. The EPA has the option to authorize states to implement and enforce federal environmental laws. Once a state is authorized to implement a federal law, it assumes the day to day responsibilities of running the federal program. However, the EPA has oversight to ensure that state programs conform to federal requirements. There are several methods the EPA and state authorities can use to monitor compliance with environmental regulations, including inspection, monitoring of permits, records, annual reports, and a CAFO's self-disclosure of pollution.⁵

RECOMMENDED POLICY CHANGES

The federal government should enforce the Clean Water Act as it pertains to CAFOs. This can be achieved through (i) more stringent permitting requirements, (ii) increasing the number of inspection and enforcement staff, which would allow more frequent inspection of CAFO facilities and stricter monitoring of permits, records, and reports, and (iii) stricter oversight by the Environmental Protection Agency of state programs to ensure that they conform to federal requirements.

The EPA should make the federal "floor" as protective as possible, such that state laws must be equally as stringent or more stringent than the federal law.⁷ Furthermore, state employees who enforce CAFO regulations and permits consistent with the Clean Water Act should receive extensive training by the EPA to ensure consistent enforcement.⁸

Even states with high numbers of animal feeding operations have very few resources dedicated to CAFO regulation. Permitting statutes should mandate fees to cover the costs of implementing and enforcing

The EPA's lack of oversight has contributed to inconsistent implementation of the Clean Water Act as it pertains to CAFOs. States vary widely in capacity and the philosophy that they bring to bear on their implementation responsibilities. This divergence among states is a significant source of inconsistency in the enforcement of the Clean Water Act as it pertains to CAFOs. Many states do not properly regulate issuance of NPDES permits.⁶ Federal laws allow states to have permitting requirements that are more stringent than federal laws, but not less.

NPDES permit requirements. The Clean Air Act, for example, mandates that EPA and state authorities assess fees to cover the costs of administering and enforcing the Title V permit program.⁶ The Clean Water Act should contain similar provisions. These fees should be used to increase the number of EPA inspection and enforcement staff.

To aid in the aforementioned changes, the EPA must work with other federal and state agencies to gather comprehensive data on large and medium-sized CAFOs.

Lastly, in addition to these recommendations for the government to enforce the Clean Water Act as it pertains to CAFOs, the following additional actions should be taken: (1) The EPA revise its interpretation of the Agricultural Stormwater Exemption to exclude CAFOs from the exemption; and, (2) the EPA consider co-permitting of integrators under the Clean Water Act, as they are owners of the animals on the facility and control the operations.

The Johns Hopkins Center for a Livable Future is an interdisciplinary academic center based within the Bloomberg School of Public Health's Department of Environmental Health and Engineering and is a leader in public health research, education, policy and advocacy that is dedicated to building a healthier, more equitable and resilient food system. The opinions expressed herein are our own and do not necessarily reflect the views of The Johns Hopkins University.

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