

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

ACTION 7: REQUIRING FEDERAL ZONING GUIDELINES MANDATING A PRE-PERMIT ENVIRONMENTAL IMPACT STUDY AND HEALTH IMPACT ASSESSMENT

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 7, and provides additional information pertinent to this action step.

Action Step 7 requires:

The federal government develops baseline federal zoning guidelines for food animal production facilities that set a framework for state regulation and require a rigorous, pre-permit environmental impact study and a health impact assessment. The guidelines do not prevent states and counties from enacting even more comprehensive zoning laws. The required impact study includes an assessment of the cumulative effects of food animal production facilities located in vulnerable low income, minority, and economically distressed communities.

Overview of the National Environmental Policy Act (NEPA): In the United States, the National Environmental Policy Act (NEPA), Section 102(2)(c), directs federal agencies to include an Environmental Assessment

with every proposal for legislation or major federal action significantly affecting the human environment.¹

The assessment must address:

- ▶ The environmental impacts of the proposed action
- ▶ Unavoidable adverse impacts of the proposal
- ▶ Alternatives to the proposed action
- ▶ The relationship between local short-term uses versus maintenance and enhancement of long-term productivity
- ▶ Irreversible/irretrievable commitments of natural resources.²

The International Association for Impact Assessment defines an environmental impact assessment as “the process of identifying, predicting, valuating, and miti-

gating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.”³

NEPA differs from action-enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act, as it does not impose substantive mandates. The purpose of an environmental impact assessment is to assess the expected impact of a proposed activity on the environment before a decision is made to implement the proposal, and to develop and assess measures to avoid or minimize those impacts if the proposal is adopted.³

NEPA affects private parties only when there is a federal “handle” on a proposed private action: e.g., required federal permits, licenses, grants, loans, or use of federal resources. Thus, under current law, an environmental impact assessment is only required for CAFOs when federal permits, licenses, grants, loans, or federal natural resources will be used for the construction or expansion of the CAFO; and, under 81 Fed. Reg. 51274, 51281, only when the CAFO is considered to be large. However, review of small and medium-sized CAFOs generally only requires environmental screening worksheets.⁴

The Trump administration has proposed significant changes to NEPA that would make it easier for federal agencies to approve infrastructure projects without

considering their environmental impact. Specifically, the law would broaden the category of projects that will be exempt from NEPA regulations, and would no longer require federal environmental review of construction projects that do not receive “substantial government funding.”⁵

Overview of Health Impact Assessments: A health impact assessment uses a combination of tools to judge a policy, program, or project for its potential effects on the health of a population, and the distribution of those effects within the population. Recommendations are produced by decision-makers and stakeholders, and choices are made about alternatives, with the aim of maximizing the proposal’s positive health effects and minimizing the negative health effects.⁶ The impact assessment process consists of screening, scoping, appraisal, reporting, and monitoring.⁶ A Health Impact Assessment is *not* currently required under NEPA.

Overview of Federal Zoning Guidelines: State planning laws and local zoning ordinances are used to regulate land use. Many states have adopted legislation that exempts CAFOs from zoning regulations. “Right to farm” statutes seek to “limit the circumstances under which agricultural operations can be deemed nuisances,” and thus provide a shield from liability for CAFOs.⁷ Zoning guidelines do not currently exist for CAFOs at the federal level.⁷

RECOMMENDED POLICY CHANGES

The federal government should:

- 1) **Strengthen NEPA** by:
 - a) Rejecting the Trump administration’s changes to NEPA
 - b) Adding a Health Impact Assessment to NEPA, so that NEPA includes both an Environmental Impact Assessment and a Health Impact Assessment
- 2) Develop federal **zoning guidelines** for food animal production facilities that set a framework for state regulation and provide additional public health protection for

individuals living and working near these facilities. The federal government has the ability to enact zoning guidelines that apply to federal CAFOs, and all privately owned CAFOs, when the government has a federal handle on the CAFO: e.g., federal permits, licenses, grants, loans, or uses federal lands or resources (equivalent to NEPA affecting private parties when there is a “federal handle” on the private action). With this change, a vast majority of CAFOs would thus be covered by the federal zoning guidelines.

These guidelines should act as a *baseline*, such that states and counties are not prevented from enacting more comprehensive zoning laws. Furthermore, the federal zoning guidelines should require an assessment under the strengthened NEPA (refer to proposal 1).

alone). Federal zoning guidelines would fit well as a section under 43 C.F.R. § 1601, where the federal environmental impact statement policy is located.⁸

Federal zoning guidelines should be embedded in an existing law (though the guidelines may also stand

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For more information contact: Sarah Goldman (sgoldm17@jhu.edu)

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