



# How Concentrated Animal Feeding Operations (CAFOs) Harm Independent Ranches and Farms

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May 20, 2024

## Introduction

Independent ranchers and farmers, including many members of Farm-to-Consumer Legal Defense Fund, are routinely investigated by federal and states agencies, and required to have various licenses and permits for their small, diversified businesses. Yet federal and state law allow for enormous, industrial food operations that cause environmental damage and produce unhealthy food. This article intends to introduce the problems of CAFOs and the impact they have on smaller, independent producers.

## Definition of and Regulation of CAFOs

Federal regulations define Concentrated Animal Feeding Operations as a lot or facility where animals are confined and fed or maintained for a total of 45 days in any 12-month period, and crops, vegetation or forage growth are not sustained over any portion of the lot or facility (i.e., non-diversified facilities). Under federal law, large CAFOs are those with 700 or more dairy cows, 1,000 or more non dairy cattle, 2500 swine weighing 55 points or more or 10,000 swine weighing less than 55 pounds, or 30,000 laying hens or broilers.<sup>1</sup> According to the Environmental Protection Agency, there are more than 21,000 large CAFOs across the United States, each on average confining 1200 cattle or 4588 pigs.<sup>2</sup>

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<sup>1</sup> 40 CFR § 122.23.

<sup>2</sup> Alexis Andiman, Kara Goad, *Pollution from the Largest, Dirtiest Meat -and-Dairy Production Facilities Worsens Injustice. We're Calling for Change*, Earthjustice, December 13, 2022, <https://earthjustice.org/experts/alexis-andiman/pollution-from-largest-dirtiest-meat-dairy-facilities-worsens-injustice>, citing NPDES CAFO Permitting Status Report, July 20, 2022.

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The EPA defines a CAFO as a “Concentrated” Animal Feeding Operation, and regulates such operations for pollutants, most notably manure.

We know, of course, that manure has natural benefits when applied in appropriate concentrations. But at concentrations beyond the carrying capacity of the land, manure can become a hazard. Notably, manure lagoons have overflowed during hurricanes in the Southeast killing large numbers of fish. And people who live downwind of CAFOs must endure an unpleasant stench.

The problem with language comes in when CAFOs in some jurisdictions became redefined as “Confined” Animal Feeding Operations. CAFO animals ARE usually “confined.” The problem with language comes in when CAFOs in



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CAFOs routinely discharge into water sources pollution including nitrogen, phosphorus, disease causing pathogens and pharmaceuticals.<sup>3</sup>

At the federal level, CAFOs are regulated by the Clean Water Act which requires permits to discharge pollutants from all “point sources” to Waters of the US, pursuant to the National Pollutant Discharge Elimination System (NPDES).<sup>4</sup> States similarly have permit requirements for discharge into state waters. The statutory system contains a number of exclusions that ultimately allow large CAFOS to create both extreme water and air pollution without little if any government oversight.<sup>5</sup>

## Harm Caused by CAFOs

Waste from CAFOs, which often produce more manure than can be used in local crops, is causing substantial harm to the environment. The waste runs off into water sources, leaches into soil and groundwater, leading to overgrowth of algae and causing harm to other water-based organisms. CAFOs likewise cause air pollution, as manure emits ammonia, which when combined with other air pollutants can cause heart and lung disease. The widespread use of antibiotics has led to antibiotic-resistant bacteria, creating untreatable illness.<sup>6</sup>

It cannot be ignored that animals kept in CAFOs are treated horrifically. Animals are much more likely to become ill, often cannot walk, are treated with unnecessary pharmaceuticals, and lack the ability to breathe fresh air, and develop on pasture as they have historically. Researchers have found numerous physiological and psychological problems which in turn

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CAFO animals ARE usually “confined.” This is necessary to feed the animals on land which cannot feed them, and to collect excess manure the land cannot absorb. However, animal confinement isn’t a problem until it reaches the scale of an EPA-defined CAFO.

Still, a few jurisdictions seem to have made a jump once renaming has been done, assuming that confinement is the problem and try to regulate any animal confinement as a CAFO.

Redefining a CAFO from a “concentration” issue to a “confinement” issue seems wrong-headed at best, and perhaps disingenuous. As a first step toward creating better regulation, let’s make sure we get our language right.

<sup>3</sup> *Id.*

<sup>4</sup> 33 U.S.C. §§ 1131 (1), 1342(a), 1362(12).

<sup>5</sup> D. Lee Miller, Gregory Muren, *CAFOS: What we Don’t Know is Hurting Us*, National Resources Defense Council (September 2019), <https://www.nrdc.org/sites/default/files/cafos-dont-know-hurting-us-report.pdf>

<sup>6</sup> Courtney Lindwall, *Industrial Agricultural Pollution 101*, National Resources Defense Council (July 21, 2022), <https://www.nrdc.org/stories/industrial-agricultural-pollution-101>



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produces inferior meat.<sup>7</sup> Independent producers often raise their animals humanely on pasture, without use of antibiotics, yet are then often required to drive them hundreds of miles to the nearest slaughter and processing facility, if they are lucky enough to get appointments for slaughter.

Disturbingly, U.S. policy encourages these operations in a number of ways. For example, through the farm bill, the USDA subsidizes corn production used as livestock feed in CAFOs, in contract to the pastured grazing used by independent producers.<sup>8</sup> State Right-to-Farm laws, which often help to Farm-to-Consumer Legal Defense Fund members and independent producers, were enacted to prevent nuisance actions from being brought against CAFOs for the water and air pollution caused in their communities.<sup>9</sup>

### **Impact of CAFOs on Smaller Independent Producers**

In addition to the harm described above to animal welfare, the environment, and society in general, CAFOs also substantially harm the smaller and /or independent producers. First and foremost, the independent regenerative farms must charge more for meat produced from the operation because of the higher input expenses and lack of scales of economy in their operation. Consumers should support these operations as they are producing healthy, happy animals, leading to better tasting and nutritious food. It is all too often very difficult for the local regenerative rancher or farmer to compete with the unhealthy and cheap food system caused by the prevalence of U.S. CAFOs.

Independent producers also struggle to obtain slaughter and processing services. Selling meat typically requires bringing animals to a USDA slaughter facility or a state facility with requirements “greater than or equal to” a USDA facility. This often means transporting pasture raised animals hundreds of miles, causing stress to the animals and greater harm to the environment.

Read more on the solution of using meat shares and custom slaughter facilities in FTCLDF’s Meat Share Primer.

Last, the few rules that do apply to CAFOs, such as the EPA NPDES permit, are being applied to smaller producers in the same manner as large industrial operations, without any scale appropriate considerations. For example, a small, diversified farm can actually use the manure it

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<sup>7</sup> Jack Talboy, et. al., *Do Concentrated Animal Feeding Operations (CAFOs) or ‘Factory Farms’ Negatively Impact the Health and Welfare of Livestock?* Debating Science Blog, U. of Massachusetts Amherst Blog (April 19, 2016).

<sup>8</sup> See Gene Baur, *Why is Healthy Food So Expensive in America? Blame the Farm Bill That Congress Always Renews to Make Burgers Cheaper Than Salad*, FORTUNE (July 21, 2023), <https://fortune.com/2023/07/21/why-healthy-food-so-expensive-in-america-blame-farm-bill-congressalways-renews-make-burgers-cheaper-salad-gene-baur/> [<https://perma.cc/77F7-K573>]; Jon Devine & Valerie Baron, *CAFOs: What We Don’t Know Is Hurting Us*, NAT’L RES. DEF. COUNCIL (Sept. 23, 2019),

<sup>9</sup> N. Willima Hines, *CAFOs and U.S. Law*, 107 Iowa L. Rev. Online 19 (2022).



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produces to fertilize crops yet often must obtain water discharge permits as though directly polluting state or federal waters. The runoff that occurs in large CAFOs does not occur or have the same impact in smaller operations that can better manage manure production. More importantly, government agencies often impose costly requirements on smaller operations, challenging the economic viability of the smaller operation.

### **Raw Dairy Experience in Oregon**

In January 2023, the Oregon Department of Agriculture released a white paper in which it found that “most raw dairies in Oregon must” obtain a “Confined Animal Feeding Operation (CAFO) permit as required by federal or state law.”<sup>10</sup> First of all, as described above, the federal law governs “Concentrated Animal Feeding Operations,” not “confined operations,” and does not require a permit of a small raw dairy operation in Oregon. Second, the ODA was certainly stretching to suggest that a small raw dairy satisfied the definition of a “confined” operation that required a permit. The state also argued that some potential runoff concerns even from the emptying of one cleaned bucket required a state water permit. In January 2024, four raw dairy farmers, represented by the Institute for Justice filed a lawsuit and the department has backed off, for now. In March of 2024, ODA announced that it was withdrawing the policy set forth in the January 2023 white paper and states that that is not requiring small dairy operations to obtain CAFO permits. The ODA may consider rulemaking and it is still not clear just what operations are required to obtain permits. When the January 2023 white paper was released, FTCLDF and its allies were also concerned for small poultry and even equestrian operations.

### **A Better Way**

U.S. and state policies favor industrial agriculture, including the use of CAFOs in producing food for the American consumer. Such operations are profiting handsomely and hardly require government subsidies and policy support. Instead, federal and state governments should look to scale-appropriate food safety legislation, and support for independent producers.

This includes support for the PRIME Act, and support for on-farm slaughtering and processing of meat for sale to local consumers.

<https://www.farmtoconsumer.org/?s=PRIME+act>

<https://www.farmtoconsumer.org/?s=On+farm+slaughter>

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<sup>10</sup> Oregon Department of Agriculture White Paper, January 2023.