



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Concentrated Animal Feeding Operations

A Survey of State Policies



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INTRODUCTION

The specialization and industrialization of American agriculture during the past several decades has resulted in an increased number of agricultural facilities that house and feed a large number of animals in a confined area. These facilities, known as concentrated animal feeding operations (CAFOs), offer a more efficient system to feed and house animals through specialization, increased facility size and close confinement of animals. They also pose increased environmental and health problems for neighboring properties and communities. Because more waste is generated in CAFOs than other less-dense animal farm facilities, the potential for greater air, water and land pollution increases in nearby areas. In 2003, the U.S. Environmental Protection Agency (EPA) projected that the nation's 257,000 animal feeding operations annually produced more than 500 million tons of manure.¹ EPA estimated that CAFOs accounted for more than half of this amount.²

States Without NPDES Authority for CAFOs

- Alaska (application for authority currently pending before EPA)
- Idaho
- Massachusetts
- New Hampshire
- New Mexico
- Oklahoma

When appropriately applied to soil, animal manure can fertilize crops and restore nutrients to the land. When improperly managed, however, animal wastes can pose a threat to human health and the environment. Potential pollutants associated with animal wastes include nutrients (such as ammonia, nitrogen and phosphorus), organic matter, solids, pathogens, antibiotics, odorous or volatile compounds, and trace elements (such as arsenic and copper).³ According to the Centers for Disease Control and Prevention, these pollutants can directly affect human health and can encourage the growth and development of potentially harmful plants and organisms.⁴

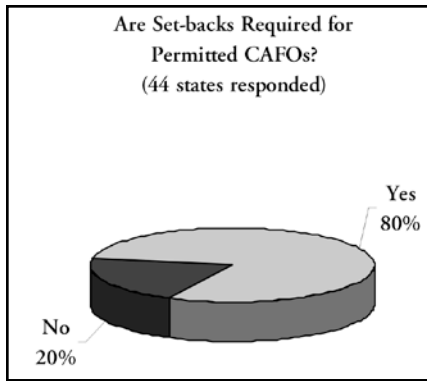
Due to the increased occupational, environmental and community hazards posed by CAFOs, state, local and federal authorities regulate them. The federal Clean Water Act prohibits discharges of pollutants from point sources into U.S. waters without a permit. Section 502 of the act specifically includes CAFOs in the definition of "point source." Therefore, CAFOs that discharge wastes into waterways must obtain a National Pollutant Discharge Elimination System (NPDES) permit, which limits the amount and types of pollutants that can be released.

State CAFO Administration

Number of States Reporting

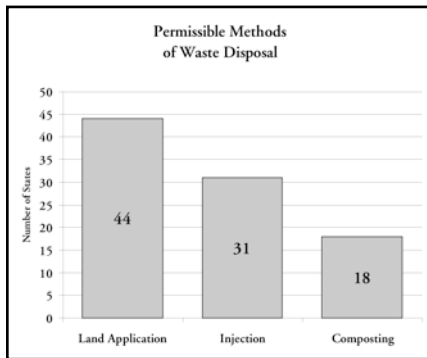
- 100% state funding - 7
- 100% federal funding - 3
- 100% fee-based funding - 3
- Mixed funding base - 17

Under Section 402(b) of the Clean Water Act and 40 C.F.R. Part 123, states can be granted NPDES permitting authority from EPA by adopting federal requirements as state law; as of

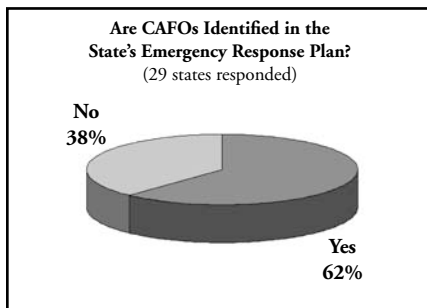


January 2008, 44 states have permitting authority for CAFOs.⁵ EPA retains NPDES permitting authority in Alaska, Idaho, Massachusetts, New Hampshire, New Mexico and Oklahoma. (Alaska's request for permitting authority is pending before EPA.)

Despite uniform federal requirements, state permitting programs vary considerably. Many requirements in state programs go beyond federal NPDES standards. Oregon, for instance, regulates a larger number of facilities than is required by federal rules. In addition, some states that have adopted federal requirements rely on separate state permitting programs to regulate CAFOs. Virginia, for example, permits facilities under a state pollution abatement program rather than under the state-adopted NPDES authority. Even in states such as Oklahoma, where EPA has retained NPDES permitting authority, CAFOs are subject to separate state regulations that are enforced in addition to NPDES requirements.

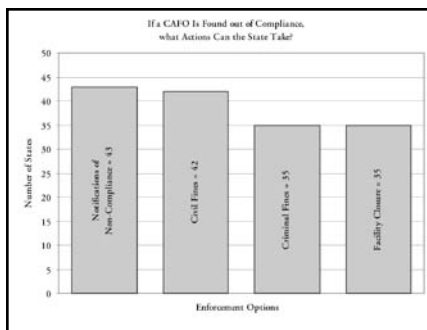


The resulting patchwork of laws vary greatly from state to state. To gain a better understanding of these laws and how they are administered, the National Conference of State Legislatures (NCSL) and the Pew Commission on Industrial Farm Animal Production (PCIFAP) undertook a two-part project to research and survey state efforts on the public health, environmental, rural community, and animal welfare concerns that have resulted from industrialized animal feeding operations.



The first part of this project resulted in the May 2007 publication of *Confined Animal Feeding Operations: State Policies*. This document, which updated a 1999 Colorado State University agricultural and resource policy report, reviews state statutes, regulations and policies that affect animal feeding operations. The publication focuses particularly on assistance and management tools for animal feeding facilities provided by states, and on regulations that address CAFO-related environmental, health and safety, and waste management concerns.

The second part of this project involved gathering information about the administration of state CAFO laws and policies. NCSL and PCIFAP surveyed state administrators to assess state CAFO regulations to evaluate resources available to state agencies regarding CAFOs, and to determine how implementation of CAFO-related laws and regulations can be improved.



The survey consists of three parts. Part one addresses permitting. These questions ask about the state's basic permitting conditions and requirements, including the overall number and density of permits, whether set-backs are required from residences and water sources, and the allowable methods of waste disposal. Respondents indicated that, in 35 of 44 states, set-backs are required; almost half (17 of 38 states) require set-backs from other properties, and more than two-thirds (30 of 43 states) require set-backs from water sources. Land

application proved the most accepted form of disposal; all 44 states permit the practice. In 31 of 39 states responding, injection is permitted, and ponding is allowed in 25 of the 37 states. Questions about required monitoring of waste and odor discharges into the air, land and water, revealed that it is required in very few states, with the exception of releases into water sources; this is monitored in 34 of 40 states.

Part two addresses agency enforcement of existing regulations. This section explores the extent to which the state agency can and does enforce CAFO regulations and seeks to identify barriers to full agency implementation of relevant laws. Questions address the frequency and type of inspections, the source of funding for CAFO enforcement, and the human and financial resources available to the state compared to the human and financial resources needed for complete compliance with statutory requirements. In this part, 42 of 44 states reported they can impose civil fines, 35 of 40 states can impose criminal fines, and 35 of 40 states can close the operation.

Part three addresses how CAFO administration fits into the larger public-, animal- and environmental-health regulatory framework. Questions ask how CAFOs are integrated into the state’s emergency response plan and infectious disease planning, protection and prevention systems—for instance, will a state be able to determine if a disease originated in a particular CAFO? (Twenty-two states say they can and seven have linked a disease outbreak to a CAFO facility). Finally, the survey asks about existing CAFO-related animal health and humane treatment laws.

The online survey was sent to state agency contacts in the 50 states at the end of August 2007. In some states, individual interviews were conducted to solicit responses to survey questions or clarify answers. Responses were received from state program administrators in 47 states; New Hampshire, Rhode Island and South Dakota did not respond. Some survey questions were not answered, because survey respondents were instructed to leave blank any portion they could not answer. Answers to survey questions, along with notes from individual interviews of state CAFO administrators, were used to compile the following state summaries.

