

CAFOS AS A STATE RESPONSIBILITY: NAVIGATING THE EPA’S LANE WITHOUT HITTING THE FEEDLOTS

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ABSTRACT

Concentrated Animal Feeding Operations (CAFOs) occupy a central and often controversial position in agricultural and environmental law. While environmental advocacy groups frequently frame CAFOs as primary contributor to pollution and rural community harm, CAFOs are increasingly challenged through litigation, rulemaking petitions, and expanded state regulatory efforts. Using a state-by-state analysis, this Note examines how differing statutory frameworks, permitting structures, and enforcement priorities shape CAFO

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regulations. The analysis further explores how environmental groups use rulemaking petitions and administrative processes to push for increased regulations on both the state and federal level. Ultimately, this Note contends the right lane forward is education, implementation, and dialogue, not regulatory expansion that leaves us spinning our wheels.

I. INTRODUCTION

On the outskirts of a small town in northern Iowa stood a Concentrated Animal Feeding Operation (CAFO) run by one of the proud American farmers who feeds the overwhelming majority of the population. That farmer adopted the CAFO model years ago to stay competitive in an industry where margins seem to shrink every year.¹ The CAFO offered efficiency, predictability, and the promise of financial stability—until recently.² That farmer constantly finds himself in the crossfire of public scrutiny and environmental policy shifts.³ Environmental policy groups are quick to point fingers at CAFO operators for the pollution they claim is originating from CAFOs.⁴ The reality of this situation is far more complicated. Some CAFO operators have incurred significant expenses installing waste management systems and other mechanisms to comply with regulations, which shrink their already small margins.⁵

Very few occupations exist that are as polarizing and essential to human life as farming and ranching. Those who support American agriculture have an immense amount of respect for agriculturists because they commit themselves to

1. Tyne Morgan, *2024 Could Go Down as the Worst Financial Year for Farmers Since 2007*, AGWEB (Oct. 21, 2024, at 08:44 CT), <https://www.agweb.com/news/policy/ag-economy/2024-could-go-down-worst-financial-year-farmers-2007> [<https://perma.cc/V2US-L5LT>].

2. MOST POL'Y INITIATIVE, CONCENTRATED ANIMAL FEEDING OPERATIONS 2 (2001), https://mostpolicyinitiative.org/wp-content/uploads/2021/01/ScienceNote_CAFOs.pdf [<https://perma.cc/BRR7-5RRA>]; see discussion *infra* Part IV.

3. See Lisa Held, *Inside the Rural Resistance to CAFOs*, CIVIL EATS (Mar. 3, 2020), <https://civileats.com/2020/03/03/rural-resistance-builds-in-communities-facing-the-fallout-from-cheap-meat-production/> [<https://perma.cc/2R2K-826X>].

4. Tom Harkin & James Merchant, *We've Seen the Consequences of CAFOs Up Close. Let's Talk About Solutions*, DES MOINES REG. (Sept. 9, 2024, at 09:09 CT), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2024/09/08/cafos-confined-animal-air-water-quality-consequences-solutions/75078538007/>.

5. See CLAUDIA COPELAND, CONG. RSCH. SERV., RL31851, ANIMAL WASTE AND WATER QUALITY: EPA REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) 12 (2010).

bettering their crop, land stewardship, and animal husbandry daily.⁶ Those who oppose agriculture characterize farmers as “bad” people who have no regard for the environment.⁷ American agriculturists have an enormous amount of pride in ensuring the general population has access to a wholesome, safe, and inexpensive product. This pride drives them through every decision when raising their crop and livestock.⁸

Over the last 100 years, the landscape of American agriculture has greatly changed.⁹ The number of farms has decreased, whereas animal numbers on those farms have increased.¹⁰ Under this new model, farmers realized they could produce more with less, which led to increased production and income while providing a cheaper product to the consumer.¹¹ “The benefits related to CAFOs are mainly economic in nature. On average, larger farms have lower production costs than smaller farms”¹² This rapid change on farms has also led to increased regulation at the federal, state, and local levels.¹³ Understanding the complexities that exist within the inner workings of the EPA, state environmental and agriculture agencies, and the Clean Water Act (CWA) requires an in-depth analysis of history, current state regulations, and the EPA’s role in regulating this area.

6. See Terri Moore, *Public Attitudes About Farmers and Farming: A Golden Opportunity*, FARMWEEKNOW (Mar. 2, 2021), https://www.farmweeknow.com/opinion/perspectives/public-attitudes-about-farmers-and-farming-a-golden-opportunity/article_53c3329e-3b96-11ea-a6cc-7bc7c1e134d0.html [<https://perma.cc/V9DF-SSCV>].

7. See Hadden Turner, *The Bad Farmer*, OVER THE FIELD (Jun. 13, 2024), <https://overthefield.substack.com/p/the-bad-farmer> [<https://perma.cc/KY2V-7J29>].

8. See Brandon Lipps & Pam Miller, *Farmers and Ranchers: The Foundation of Our Nation’s Nutrition Assistance Programs*, U.S. DEP’T OF AGRIC. (Oct. 11, 2019, at 10:00 CT), <https://www.usda.gov/about-usda/news/blog/farmers-and-ranchers-foundation-our-nations-nutrition-assistance-programs> [<https://perma.cc/G7CQ-PDU3>].

9. CAROLYN DIMITRY, ANNE EFFLAND & NEILSON CONKLIN, ECON. RSCH. SERV., U.S. DEP’T OF AGRIC., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY 1* (2005), https://ers.usda.gov/sites/default/files/_laserfiche/publications/44197/13566_eib3_1_.pdf?v=42917 [<https://perma.cc/93NQ-KGPJ>].

10. *Id.* at 2.

11. MOST POL’Y INITIATIVE, *supra* note 2, at 2.

12. *Id.*

13. See ENV’T PROT. AGENCY, NPDES PERMIT WRITERS’ MANUAL FOR CONCENTRATED ANIMAL FEEDING OPERATIONS 1-2 (2012), https://www.epa.gov/sites/default/files/2015-10/documents/cafo_permitmanual_entire.pdf [<https://perma.cc/PMJ3-D7DX>] (“EPA subsequently published revisions to the CAFO Rule in 2008 to address a 2005 decision by the U.S. Court of Appeals for the Second Circuit in litigation challenging the 2003 regulatory updates.”); see also Chen-Ti Chen & Gabriel E. Lade, *Environmental Regulation of Hog Feeding Operations*, AGRIC. POL’Y REV., Spring 2018, at 4, 5 (describing changes in federal and Iowa CAFO regulations).

This Note will entertain the background and history of CAFO regulation, give an overview of differences that exist from state-to-state regulation, and ultimately provide a public policy suggestion as this area of the law continues to face opposition. Part II of this Note discusses the background and history of the CWA and the states' role in regulating CAFOs.¹⁴ Part III of this Note addresses how difficult it can be for CAFO owners and operations to access information about regulations.¹⁵ Part IV delves into the public policy argument this Note makes.¹⁶ Lastly, Part V discusses the conclusion by consolidating the analysis into potential paths for future considerations.¹⁷

II. BACKGROUND AND HISTORY

A. *The Clean Water Act*

CAFOs were first designated as a point source of pollution in when Congress passed the CWA in 1972, authorizing the EPA to regulate point source pollution, which “included the term concentrated animal feeding operation.”¹⁸ In 1976, the EPA promulgated regulations defining CAFOs, thus defining which facilities were subject to regulation under the CWA.¹⁹ The EPA first began regulating CAFOs in the 1970s, which was in response to the change in the agricultural framework that was occurring around the same time.²⁰ The EPA derived their authority in regulating this area because CAFOs were considered a point source of pollution per the CWA.²¹ The laws were then revisited in 2003, 2005, and 2008 to address changes in response to court decisions that came out of the United States Court of Appeals for the Second Circuit.²²

Now, the federal rules establish a base level of environmental protections that each state's CAFO programs must meet or exceed.²³ Given that states are granted autonomy to carry out their own CAFO program, approaches and

14. See discussion *infra* Part II.

15. See discussion *infra* Part III.

16. See discussion *infra* Part IV.

17. See discussion *infra* Part V.

18. ENV'T PROT. AGENCY, *supra* note 13, at 2-1 to 2-2.

19. *Id.* at 2-2.

20. *Id.*; see also DIMITRY, EFFLAND & CONKLIN, *supra* note 9, at 2 (discussing significant changes in farming during the 20th century).

21. ENV'T PROT. AGENCY, *supra* note 13, at 2-1.

22. *Id.* at 1-2.

23. *Animal Feeding Operations - Compendium of State Permits and Programs*, U.S. ENV'T PROT. AGENCY (Apr. 22, 2025), <https://www.epa.gov/npdes/animal-feeding-operations-compendium-state-permits-and-programs> [<https://perma.cc/3KKL-23LP>].

requirements vary greatly from state to state.²⁴ Typically, states with larger livestock populations already go above what the federal rules require, while states with lower livestock populations go only as far as the federal rules require.²⁵ Cornerstones of the federal CAFO rules and the protections that are offered include: (1) which operations are required to obtain a permit; (2) Nutrient Management Plans (NMP); and (3) land application.²⁶

Once a state has been delegated authority, they are responsible for ensuring their CAFO program is implemented properly and meets the standard the federal rules require.²⁷ This section will demonstrate the efficacy of state implementation of federal CAFO regulations and ultimately provide the background needed to show that the federal rules should not be increased from a policy perspective.

B. Large Animal Numbers: Iowa and North Carolina

With this history in mind, a review of state regulations from large and small livestock producing states is necessary before a public policy argument may be made. This section will examine state regulations in areas with a high concentration of CAFOs and highlight states with unique provisions tailored to their specific needs.

When compared to other states, Iowa and North Carolina report some of the highest numbers of CAFOs.²⁸ Therefore, the risk of environmental harm from CAFOs in Iowa and North Carolina is high given the sheer number of CAFOs in the states.²⁹ Both states also receive heavy criticism from those opposed to CAFOs,

24. COPELAND, *supra* note 5, at 6–7.

25. Compare discussion *infra* Part II.B with discussion *infra* Part II.D.

26. 40 C.F.R. §§ 122.23(d), 122.42(e)(5), 412.4(c) (2026).

27. *Id.* §§ 122.23, 123; NPDES State Program Authorization Information, U.S. ENV'T PROT. AGENCY (Aug. 28, 2025), <https://www.epa.gov/npdes/npdes-state-program-authorization-information> [<https://perma.cc/H7DM-8DVC>].

28. U.S. ENV'T PROT. AGENCY, NPDES CAFO PERMITTING STATUS REPORT: NATIONAL SUMMARY, ENDYEAR 2024 at 1 (2025) <https://www.epa.gov/system/files/documents/2025-09/cafo-status-report-2024.pdf> [<https://perma.cc/V3X3-MWZE>] (noting Iowa has 3,938 CAFOs, the highest number in the country, and North Carolina has 1,222 CAFOs, the fourth highest in the country).

29. Grayson Lanza, *CAFO Lagoons in North Carolina: A Case Study in Advocacy and State Administrative Law*, CTR. FOR PROGRESSIVE REFORM (Aug. 8, 2024), <https://progressivereform.org/cpr-blog/cafo-lagoons-nc-case-study-advocacy-state-admin-law/> [<https://perma.cc/7RQP-5RRV>]; Madison McVan, *Large CAFOs are Known Polluters. Here's Why EPA Permits Only Cover One-Third*, IOWA CAP. DISPATCH (Nov. 21, 2022, at 12:50 CT), <https://iowacapitaldispatch.com/2022/11/21/large-cafos-are-known-polluters-heres-why-epa-permits-only-cover-one-third/> [<https://perma.cc/HZ23-CUHU>].

seemingly because of that increased risk of environmental harm.³⁰ Recognizing each state is CAFO dense, Iowa and North Carolina also go the furthest beyond the federal regulations when looking at all state regulations from a birds-eye view.³¹

1. Iowa

Iowa goes beyond the federal rules, especially in the area of facility construction, due to the increased oversight the Iowa Department of Natural Resources (IDNR) has over the CAFO construction process.³² When an operation is seeking to build a CAFO facility in Iowa, they must receive approval from the IDNR before construction can begin.³³ This initial approval ensures that setback requirements are met and CAFO features, such as manure storage facilities, comply with the rules set forth by the IDNR.³⁴ The IDNR oversees nearly every aspect of the construction process which goes beyond federal requirements.³⁵ This oversight can benefit farmers by ensuring compliance with regulations from the start, setting them up for long-term success.³⁶ This is just one of many examples of how Iowa goes beyond the federal rules.

2. North Carolina

Similar to Iowa's increased CAFO regulation, North Carolina has a provision where dry litter poultry systems or new animal operations that are required to be permitted per the federal rules "shall be designed, constructed, maintained, and operated so that there is no discharge of pollutants to waters of the State."³⁷ In comparison, the federal rules create an exception for facilities designed to contain runoff from a 25-year, 24-hour rainstorm, allowing for discharges in the event of such a storm.³⁸ While North Carolina regulations include a similar

30. Held, *supra* note 3.

31. Compare 40 C.F.R. § 122.2 (2026) with IOWA ADMIN. CODE r. 567-65 (West 2026) and 15A N.C. ADMIN. CODE 02T (West 2026).

32. See IOWA CODE ANN. § 459.303(1) (West 2026); *AFO Construction Permits*, IOWA DEP'T OF NAT. RES. (Nov. 17, 2025, at 08:55 CT), <https://www.iowadnr.gov/Environmental-Protection/Animal-Feeding-Operations/AFO-Construction-Permits> [<https://perma.cc/68TK-Q5UJ>].

33. *AFO Construction Permits*, *supra* note 32.

34. *Id.*

35. See *id.*

36. See generally *id.* (explaining the construction requirements for confinement feeding operations in Iowa).

37. N.C. GEN. STAT. ANN. § 143-215.10C(b1) (West 2026).

38. 40 C.F.R. § 412.13(b) (2026).

exception for “existing” animal waste systems, they make no such allowance for “new animal operation[s] or dry litter poultry facilit[ies].”³⁹ Another unique feature of North Carolina’s CAFO rules is that state rules apply to animal waste management systems with “250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system[,]” or to any “system that discharges to the surface waters of the State.”⁴⁰ These animal numbers are far lower than the federal rules.⁴¹

Although North Carolina faces criticism from environmental groups for having insufficient CAFO regulations, the state’s policies demonstrate a commitment to environmental protection beyond federal requirements. Measures such as the discharge prohibition during a 25-year, 24-hour storm and stricter animal unit thresholds are just two examples of how North Carolina has tailored its regulations to address state-specific concerns and enhance environmental safeguards.⁴²

C. Conditions and Regulations that Address State-Specific Concerns: Virginia, South Dakota, Ohio, and South Carolina

While Iowa and North Carolina are examples of states with large CAFO numbers and the increased regulations that come along with it, states like Virginia and South Dakota have fewer CAFOs.⁴³ However, this does not mean those states have not enacted specific regulations that address their state’s specific concerns. Given the agricultural demographic in these states, the respective rules address certain conditions that are unique to those states.⁴⁴ For example, there is a large presence of poultry growers in Virginia.⁴⁵ The Virginia Department of Environmental Quality (DEQ) oversees the CAFO program in Virginia and has

39. N.C. GEN. STAT. ANN. § 143-215.10C(b1).

40. *Id.* § 143-215.10B(1).

41. 40 C.F.R. § 122.23(b)(4)–(6).

42. N.C. GEN. STAT. ANN. § 143-215.10B(1), .10C(b1).

43. U.S. ENV’T PROT. AGENCY, *supra* note 28, at 1 (noting South Dakota has 437 CAFOs and Virginia has 206 CAFOs).

44. *See Broilers: Inventory by State, US*, NAT’L AGRIC. STATS. SERV., U.S. DEP’T OF AGRIC. (Apr. 23, 2024), https://www.nass.usda.gov/Charts_and_Maps/Poultry/brlmap.php [<https://perma.cc/E4MG-TAQQ>] (showing Virginia has 263.4 million head of broilers); SARAH CHADIMA, SOUTH DAKOTA AQUIFERS 2 (Ralph Davis ed., 1994) (“Most of [South Dakota] is underlain by one or more aquifer.”).

45. *Broilers: Inventory by State, supra* note 44 (showing Virginia has 263.4 million head of broilers).

created a separate general permit specifically for poultry CAFOs.⁴⁶ Species-specific general permits can also be found in North Carolina (swine) and Delaware (poultry).⁴⁷ Federal regulations authorize, but do not require, the use of general permits for CAFOs, which leaves their adoption and consideration of species- and state-specific environmental concerns to the discretion of the permitting authority.⁴⁸

A provision was enacted by South Dakota to address state-specific concerns related to manure storage structures.⁴⁹ When a manure storage structure is “located over a shallow aquifer[,]” groundwater monitoring wells “shall be installed around the containment structure” and water quality samples shall be taken on a quarterly basis.⁵⁰ “Most of the state is underlain by one or more aquifer.”⁵¹ South Dakota has recognized both the increased contamination risk posed by shallow aquifers and the prevalence of aquifers statewide.⁵² This is an example of a state’s general permit tailoring its requirements to a state-specific concern.

Continuing the trend of state-specific regulation, states respond to concerns prevalent within their borders, such as differing soil types, by implementing additional protective measures.⁵³ For example, Ohio has enacted specific guidelines and prohibitions for facilities attempting to operate in karst areas of

46. *Animal Agricultural Waste*, VA. DEP’T OF ENV’T. QUALITY (Nov. 16, 2025, at 13:35 CT), <https://www.deq.virginia.gov/our-programs/water/land-application-beneficial-reuse/animal-agricultural-waste> [<https://perma.cc/SY6M-66P6>].

47. *Permits, Applications and Reporting*, N.C. DEP’T OF ENV’T. QUALITY (Nov. 16, 2025, at 14:44 CT), <https://www.deq.nc.gov/about/divisions/water-resources/permitting/animal-feeding-operations/permits-applications-and-reporting> [<https://perma.cc/TVH4-RW59>]; *Concentrated Animal Feeding Operations (CAFO)*, DEL. DEP’T OF NAT. RES. & ENV’T. CONTROL (Nov. 16, 2025, at 13:50 CT), <https://dnrec.delaware.gov/water/commercial-government/npdes/cafo/> [<https://perma.cc/KP8T-DSB3>].

48. See 40 C.F.R. §§ 122.23(d), (h), 123.25(a)(6) (2026); U.S. ENV’T PROT. AGENCY, PRODUCERS’ COMPLIANCE GUIDE FOR CAFOs 1 (2003), <https://www.epa.gov/sites/default/files/2015-06/documents/compliance-cafos.pdf> [<https://perma.cc/J67P-EUZY>].

49. See *Drinking Water in South Dakota*, S.D. DEP’T OF AGRIC. & NAT. RES. (Feb. 2, 2026, at 22:43 CT), <https://danr.sd.gov/OfficeOfWater/DrinkingWater/WellheadProtection/default.aspx> [<https://perma.cc/R4KT-63JB>].

50. S.D. DEP’T OF ENV’T. & NAT. RES., GENERAL WATER POLLUTION CONTROL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS 27–28 (2017), <https://danr.sd.gov/Agriculture/Livestock/FeedlotPermit/docs/2017GeneralPermit.pdf> [<https://perma.cc/J3QS-8VCD>].

51. CHADIMA, *supra* note 44, at 2.

52. *Id.* at 6.

53. See OHIO ADMIN. CODE 901:10-2-02 (West 2026).

Ohio.⁵⁴ Like South Dakota's shallow aquifer provision, Ohio's regulation is designed to address environmental concerns that are unique to the state and have a more significant impact within the state.⁵⁵ Clearly, when states have had their own concerns or needs, they have addressed those needs by going beyond the federal rules.

Another state-specific provision addressing the needs of that state is South Carolina's no discharge allowance even in the event of a 25-year, 24-hour storm.⁵⁶ "South Carolina is one of the most vulnerable states in the nation to be impacted by hurricanes and tropical storms[,]” so the likelihood of an extreme storm event that could lead to an accidental discharge is much higher in a state like South Carolina.⁵⁷

Lastly, to conclude the discussion of state-specific provisions addressing certain concerns present in that state, the topic of winter application of manure provides an excellent example. There are states that outright ban manure application to frozen, saturated, or snow-covered ground.⁵⁸ In addition, a number of states have certain criteria or situations that would allow for land application of manure to frozen, saturated, or snow-covered ground, such as in the case of emergencies.⁵⁹

54. *Id.*

55. See S.D. DEP'T OF ENV'T. & NAT. RES., *supra* note 49, at 27–28; *Sinkholes & Karst Geology*, OHIO DEP'T OF NAT. RES. (Nov. 16, 2025, at 17:21 CT), <https://ohiodnr.gov/discover-and-learn/safety-conservation/geologic-hazards/karst> [<https://perma.cc/7Y7T-WHWN>].

56. S.C. CODE ANN. REGS. § 61-9.122.23(d), -43.100.90(B), -43.200.90(B) (West 2026).

57. *Hurricanes*, S.C. EMERGENCY MGMT. DIV. (Nov. 16, 2025, at 14:21 CT), <https://www.scemd.org/prepare/types-of-disasters/hurricanes> [<https://perma.cc/X3B7-4LN9>].

58. *VAAFM Announces Start of Winter Manure Spreading Ban*, AGENCY OF AGRIC. FOOD & MARKETS, STATE OF VT. (Dec. 15, 2023), <https://agriculture.vermont.gov/agency-agriculture-food-markets-news/vaafm-announces-start-winter-manure-spreading-ban> [<https://perma.cc/TV35-P95C>] (stating Vermont does not allow land application of manure between December 15 and April 1); Thomas Bass, *Using Manure as Fertilizer*, MONT. STATE UNIV. (Nov. 16, 2025, at 17:26 CT), https://animalrangeextension.montana.edu/natural/manure_fertilizer.html [<https://perma.cc/BRT8-82Q2>] (noting Montana does not allow for manure application to frozen, saturated, or snow-covered ground).

59. IOWA DEP'T OF NAT. RES., IOWA DEPARTMENT OF NATURAL RESOURCES MANURE APPLICATION TO PROTECT WATER QUALITY 1 (2025), <https://www.iowadnr.gov/media/5847/download?inline> [<https://perma.cc/G93V-DXB4>] (stating Iowa limits winter manure application except in emergency situations); Charles White & Robert Meinen, *The Do's and Don'ts of Winter Manure Spreading*, PENN STATE EXTENSION (Dec. 13, 2022), <https://extension.psu.edu/the-dos-and-donts-of-winter-manure-spreading> [<https://perma.cc/6586-JJVX>] (discussing Pennsylvania's limits on winter manure application on high slopes and fields with crop residue).

D. States with Low Animal Numbers: Alaska and Rhode Island

To conclude the state-by-state analysis, there are examples of states that only go as far as the federal rules require given the lack of animals in that state. Alaska does not have any CAFOs.⁶⁰ Alaska's CAFO rules essentially incorporate the federal rules by reference and do not add any of their own provisions.⁶¹ A similar conclusion can be drawn from Rhode Island, which also has zero CAFOs present in the state.⁶² Rhode Island's rules do not go further than the federal requirements because the risk of potential pollution is nearly nonexistent.⁶³ An increase in the federal regulations will absolutely cause a detriment to any CAFO operator looking to establish themselves in Rhode Island.

In order to understand where CAFO regulations are going, there must be an understanding of the current environment of CAFO regulations. This state-by-state analysis demonstrates that states are acting appropriately given the context of the federal rules. As demonstrated in Part II of this Note, many states' regulations go above what the federal rules require, including the states with some of the highest CAFO numbers, like Iowa and North Carolina, as demonstrated in Part II.⁶⁴ The policy argument for keeping the federal government and EPA out of the states will be discussed further in Section IV of this Note, but the background is essential to understanding the public policy argument that will be made.⁶⁵

III. ACCESS TO INFORMATION

CAFO regulations can be difficult to understand on a federal, state, and local level. For a state like South Dakota, where nearly every CAFO provision is included in the general permit, information is relatively easy to access.⁶⁶ However, for a state like Michigan, where information is scattered through statutes, rules, and in some cases, de facto requirements, it could prove to be difficult for a proposed CAFO operator to ensure they are complying with all requirements.⁶⁷

60. U.S. ENV'T PROT. AGENCY, *supra* note 28, at 1.

61. ALASKA ADMIN. CODE tit. 18 § 83.010 (West 2026).

62. U.S. ENV'T PROT. AGENCY, *supra* note 28, at 1.

63. *See id.* (showing zero CAFOs in Rhode Island); 250 R.I.C.R. 150-10-1.17(K) (West 2026).

64. *See* discussion *supra* Part II; U.S. ENV'T PROT. AGENCY, *supra* note 28, at 1.

65. *See* discussion *supra* Section IV.

66. *See generally* S.D. DEP'T OF ENV'T. & NAT. RES., *supra* note 49 (detailing the limitations, compliance responsibilities, and general requirements set forth in South Dakota).

67. *See Concentrated Animal Feeding Operation (CAFO)*, DEP'T OF ENV., GREAT LAKES, & ENERGY (Nov. 16, 2025, at 13:55 CT), <https://www.michigan.gov/egle/about/organization/water-resources/cafo> [<https://perma.cc/KD9S-HCDJ>]; *GAAMPs*, DEP'T OF

A. Built to Scale: How Support Programs Strengthen CAFOs

To address this exact issue, there are certain entities created that provide services to producers to ensure that their farm is complying appropriately with regulations.⁶⁸ An excellent example of this is the Coalition to Support Iowa's Farmers.⁶⁹ "The Coalition to Support Iowa's Farmers (the Coalition) was created by farmers in 2004 with the mission of working with farmers to advocate and help implement on-farm best-management practices that assist Iowa's farm families in raising livestock responsibly and successfully."⁷⁰ The Coalition is a collaborative effort that involves stakeholders such as the Iowa Beef Industry Council, Iowa Cattlemen's Association, Iowa Pork Producers Association, North Central Poultry Association, Iowa Turkey Federation, Midwest Dairy, Iowa Corn Growers Association, Iowa Soybean Association, and the Iowa Farm Bureau Federation.⁷¹

The Coalition encourages farmers to participate in advanced planning when building or expanding their operation.⁷² The existence of the Coalition demonstrates that farmers are generally not acting in bad faith when they are not complying with rules governing CAFOs.⁷³ Instead, it is simply difficult to fully understand the entirety of Chapter 65 of the Iowa Administrative Code, which governs CAFOs in Iowa.⁷⁴

Another program that provides helpful CAFO-related information is the Michigan Manure Hauler Certification program presented by Michigan State University in partnership with Michigan Farm Bureau Family of Companies.⁷⁵ A potential source of pollution that exists from CAFO operation is manure application.⁷⁶ Some states like Iowa and New York require manure applicators to obtain certification before they are allowed to apply manure or obtain a CAFO

ANIMAL SCI., MICH. STATE UNIV. (Nov. 16, 2025, at 14:05 CT), <https://www.canr.msu.edu/ans/research1/animal-behavior-welfare/gaamps> [<https://perma.cc/3KLA-RETQ>].

68. See, e.g., *Background & Mission*, COAL. TO SUPPORT IOWA'S FARMERS (Nov. 17, 2025, at 09:10 CT), <https://www.supportfarmers.com/about/> [<https://perma.cc/W7SB-LFLJ>].

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. See *id.*

74. See IOWA ADMIN. CODE r. 65 (West 2026).

75. *Michigan Manure Hauler Certification Program*, MSU EXTENSION ANIMAL AGRIC., MICH. STATE UNIV. (November 17, 2025, at 09:42 CT), <https://www.canr.msu.edu/animal-agriculture/Manure-Hauler-Training/> [<https://perma.cc/8XF6-E6WR>].

76. IOWA DEP'T OF NAT. RES., *supra* note 59, at 1.

permit, which is another example of states going above the federal rules.⁷⁷ Michigan's program provides insurance incentives to farmers that complete the program while also educating manure haulers on a variety of topics.⁷⁸ "The goals of the Michigan Manure Hauler Certification Program are to: prevent manure application problems before they occur[;] increase nutrient management plan implementation[;] demonstrate responsible manure application[;] increase the base level of manure management knowledge of all employees[;] [and] improve professionalism among manure applicators."⁷⁹ This resource provides yet another example of a state-level tool that could be implemented more broadly to help farmers understand and comply with existing regulations, rather than imposing additional regulatory burdens.⁸⁰

Federal consideration of CAFO-related programs need not be limited to stricter regulatory requirements but may also include measures aimed at improving understanding and compliance. Instead, making information easier to access and understand, while providing more services like the Coalition and Michigan Manure Hauler Certification Program to address the questions and ambiguities that exist surrounding CAFO regulations, will help achieve this goal.⁸¹

IV. INVESTING IN EFFICIENCY: THE POLICY CASE FOR CAFOS

A. The CAFO Delegation Debate

CAFOs have received a large amount of criticism from environmental groups claiming that states are not appropriately regulating CAFOs.⁸² But, as

77. *Commercial Manure Applicators*, IOWA MANURE MGMT. ACTION GRP., IOWA STATE UNIV. EXTENSION AND OUTREACH (November 17, 2025, at 10:29 CT), <https://www.extension.iastate.edu/immag/commercial-manure-applicators> [<https://perma.cc/5VGR-FQSJ>]; *Concentrated Animal Feeding Operations*, DEP'T OF ENV'T CONSERVATION, N.Y. STATE (November 17, 2025, at 10:28 CT), <https://dec.ny.gov/regulatory/permits-licenses/wastewater-stormwater-water-withdrawal/spdes-permit-program/concentrated-animal-feeding-operations> [<https://perma.cc/R4P6-HPVZ>].

78. *Michigan Manure Hauler Certification Program*, *supra* note 75.

79. *Id.*

80. *See id.*

81. *See* Madison McVan, *Information on Factory Farms is Spotty at Best. The Government Has Been Hogtied from Doing More*, INVESTIGATE MIDWEST (Feb. 25, 2021), <https://investigatamidwest.org/2021/02/25/information-on-factory-farms-is-spotty-at-best-the-government-has-been-hogtied-from-doing-more/> [<https://perma.cc/82RY-BNYC>].

82. Wally Taylor, *Proposed CAFO Rules Won't Protect Iowans or the Environment*, BLEEDING HEARTLAND (Feb. 20, 2024), <https://www.bleedingheartland.com/2024/02/20/proposed-cafo-rules-wont-protect-iowans-or-the-environment/> [<https://perma.cc/7VR7-UUVJ>].

demonstrated above, each state has the best understanding of its own agricultural demographic, and states have included additional safeguards where necessary to best address their own needs.⁸³

Rulemaking petitions have made their way directly to the EPA claiming that the states' delegation authority—the ability to administer their own NPDES program—should be taken away.⁸⁴ There have been several attempts across the country to strip a state's administration of their NPDES CAFO program with the argument that the state is not doing an adequate job of implementing the federal CAFO guidelines.⁸⁵ If the petitions were successful, it would have ultimately made the EPA the permitting authority in the state where the petition was attempted.⁸⁶ These petitions have caused state agencies, like the IDNR, to look at their current CAFO regulations with a fine-tooth comb, create a work plan, and identify areas where increased environmental protection and regulations could be appropriate.⁸⁷

On September 7, 2007, Iowa Citizens for Community Improvement, the Environmental Integrity Project, and the Iowa Chapter of the Sierra Club filed a Petition for Withdrawal of the NPDES Delegation from the State of Iowa.⁸⁸ This

83. See discussion *supra* Part II.

84. Alex Fulton, *Iowa DNR Refuses to Enforce the Clean Water Act, Sierra Club Petition Claims*, WE ARE IOWA (July 29, 2024), <https://www.weareiowa.com/article/news/local/iowa-sierra-club-petition-iowa-dnr-clean-water-act-wally-taylor-iowa-pork-producers-association/524-cbbf9d22-5db7-4845-945c-c9b2d8218b8b> [<https://perma.cc/FGM5-V5DL>].

85. See *generally* Petition for Withdrawal from Hugh Espey, Director, Iowa Citizens for Cmty. Improvement, Karla Raettig, Couns., Env't Integrity Project, & Neila Seaman, Director, Iowa Chapter of the Sierra Club, to Stephen Johnson, Adm'r, U.S. Env't Prot. Agency, & John Askew, Reg'l Adm'r, U.S. Env't Prot. Agency (Sept. 20, 2007), <https://www.epa.gov/npdes/npdes-state-program-withdrawal-petitions> [<https://perma.cc/J259-PJYU>] (on file with the U.S. Environmental Protection Agency) (scroll down to the search box, enter date of petition "20-SEP-07" into the search box, then click "go"; a record for the withdrawal petition will appear; click on the icon under "documents," which will open a popup window with the corresponding documents; click "download" on the document titled "WPD Iowa Petition 092007.pdf").

86. See Response to Petition from James B. Gulliford, Reg'l Adm'r, U.S. Env't Prot. Agency, to Hugh Espey, Exec. Dir., Iowa Citizens for Cmty. Improvement, Wallace Taylor, Legal Chair, Iowa Chapter of the Sierra Club, & Abel Russ, Att'y, Env't Integrity Project (Apr. 3, 2019) <https://www.epa.gov/npdes/npdes-state-program-withdrawal-petitions> [<https://perma.cc/J259-PJYU>] (on file with the U.S. Environmental Protection Agency) (scroll down to the search box, enter date of petition "20-SEP-07" into the search box, then click "go"; a record for the withdrawal petition will appear; click on the icon under "documents," which will open a popup window with the corresponding documents; click "download" on the document titled "IA.CAFO.Petition.Response.4.3.2019.pdf").

87. See *id.* at app. B.

88. Petition for Withdrawal from Hugh Espey, *supra* note 85, at 1.

petition outlined 31 separate allegations that Iowa's CAFO laws were violating standards established by the CWA.⁸⁹ These allegations ranged from authorization of illegal discharges,⁹⁰ NMP requirements being "less stringent than federal law,"⁹¹ failure to establish setbacks,⁹² and claims that construction permit standards did not meet the NPDES permit requirements.⁹³ There are a multitude of other issues these groups identified in the petition, but Iowa's regulatory framework was deemed to be satisfactory with respect to the adequacy review conducted as part of the withdrawal petition process.⁹⁴

This petition naturally sparked controversies within the agriculture-focused policy groups, and led to a 12-year review of the then-current Iowa CAFO programs.⁹⁵ In 2012, the EPA issued a preliminary report to determine whether the petitioner's allegations warranted a withdrawal of the NPDES program.⁹⁶ Ultimately, in 2019, the EPA issued their official response to the withdrawal petition and determined the allegations did not warrant initiating program withdrawal proceedings.⁹⁷

In the EPA's 2019 response, they specifically cite allegations that were made by petitioners and clearly state how the EPA worked with the IDNR to address each concern.⁹⁸ For example, on the issue of proper setbacks, petitioners contended that "IDNR does not include setback distances in its CAFO permits."⁹⁹ The EPA responded, "This allegation does not warrant the initiation of withdrawal proceedings."¹⁰⁰ The EPA stated that setbacks are sometimes not feasible in certain areas and the EPA will continue to work with the IDNR to develop implementation

89. *Id.*

90. *Id.* at 3–4.

91. *Id.* at 5–7.

92. *Id.* at 8.

93. *Id.* at 12.

94. See Response to Petition from James B. Gulliford, *supra* note 86, at 11–14 ("Allegation 5: IDNR fails to inspect and monitor activities subject to regulation. Response: This allegation does not warrant the initiation of withdrawal proceedings.").

95. See *id.* at 1 (indicating the EPA's review concluded in 2019); *EPA and Iowa Reach Agreement on CAFO Oversight*, NAT'L AGRIC. L. CTR. (Sep. 17, 2023), <https://nationalaglawcenter.org/epa-and-iowa-reach-agreement-on-cafo-oversight/> [<https://perma.cc/2Y98-QS37>].

96. Response to Petition from James B. Gulliford, *supra* note 86, at 1–2.

97. *Id.*

98. *Id.* at 1–14.

99. *Id.* at 6.

100. *Id.*

procedures for areas where these setbacks are not feasible.¹⁰¹ The final EPA response specifically addresses all concerns petitioners raised and had similar outcomes for each allegation.¹⁰²

The exercise that the EPA and IDNR participated in over this 12-year period was a seemingly positive outcome for the CAFO owners and operators in Iowa.¹⁰³ Ultimately, it led to a productive conversation between interested parties and forced the IDNR to update their practices and change regulations or law where necessary.¹⁰⁴ The overarching win for agriculture that can be concluded from this process is that Iowa was doing what they were supposed to be doing, which bolsters the argument that the oversight of CAFO regulations should be left to the states.

Now, even after the EPA and IDNR went through this process, there was another petition filed on July 24, 2024, by the Iowa Chapter of the Sierra Club that makes very similar claims to the original 2007 petition.¹⁰⁵ The 2024 petition states that Iowa's CAFO laws are not complying with the CWA.¹⁰⁶ Further action is pending, but based on the outcome of the 2007 petition, it is unlikely that anything substantive will come out of this petition because the 2007 petition review's conclusion was relatively recent.¹⁰⁷

B. Recent Examples of CAFO Oversight Expansion

While the instances occurring in Iowa could be considered a win for agriculture, this is not always the outcome. For example, in 2020, the Michigan Department of Environment, Great Lakes, and Energy (MEGLE), proposed and issued a new general permit for CAFOs in the state.¹⁰⁸ This new permit increased the discretionary conditions on CAFO owners and operators by placing limits on

101. *Id.* at 6–7.

102. *See generally id.* (describing work plan between EPA and IDNR to address remaining concerns from environmental groups).

103. *EPA and Iowa Reach Agreement on CAFO Oversight*, *supra* note 95.

104. *Id.*

105. Petition for Withdrawal from Wallace L. Taylor, Att'y, Sierra Club Iowa Chapter, to Michael Regan & Meg McCollister, U.S. Env't Prot. Agency (July 24, 2024) (on file with the Drake Journal of Agricultural Law).

106. *Id.*

107. *See* Response to Petition from James B. Gulliford, *supra* note 86, at 1–2.

108. *Mich. Farm Bureau v. Dep't of Env't, Great Lakes, & Energy*, 28 N.W.3d 629, at 643–44 (Mich. 2024).

phosphorous applications and increased setback requirements in comparison to the previous general permit the MEGLE had enacted.¹⁰⁹

Both new requirements went beyond what was required by the federal rule and placed an increased burden on CAFO owners and operators.¹¹⁰ However, increased regulations are not always the answer. Michigan Farm Bureau, along with seven agriculture advocacy groups and over 100 identified livestock farms challenged the new requirements present in the Michigan general permit.¹¹¹ In a decision by the Michigan Supreme Court, the aforementioned additional discretionary conditions were upheld by proxy because MEGLE now has the authority to promulgate additional requirements in the general permit.¹¹² Michigan Farm Bureau was critical of the decision and in response stated, “Many industry leaders say producers are fed up with state regulators and won’t know which permit to apply for.”¹¹³

The Michigan Farm Bureau’s opinion on this decision illustrates the concerns that this rule may negatively impact agriculture.¹¹⁴ Producers are stuck between a rock and a hard place because they do not want to disregard the ruling, yet the widespread confusion it has created leaves them with more questions than answers.¹¹⁵ For CAFO owners and operators, this decision only adds to the daily burdens they already face, making compliance even more challenging.

C. Think Outside the Box, or Just Use a Bigger Box

As demonstrated, there are numerous strategies for environmental groups to challenge state CAFO regulations. The final point of discussion in this Note’s public policy conclusion involves Food & Water Watch (FWW), the EPA, and American Farm Bureau Federation (AFBF) walking into the Ninth Circuit to argue

109. *Id.* at 638–39, 643–44.

110. *Id.* at 640–44.

111. *See id.* at 644.

112. *See id.* at 663 (holding that MEGLE’s general permit is not a rule with the force and effect of law, but rather “a statement explaining how EGLE plans to exercise its discretionary permitting power or . . . what discretionary conditions EGLE plans to prove are necessary . . . ;” and thus affirming that the lower court lacked jurisdiction); Mitch Galloway, *MI Supreme Court Sides with State in ‘Disappointing,’ ‘Creative Fiction’ CAFO Ruling*, MICH. FARM BUREAU FAM. OF COS. (Aug. 5, 2024), <https://www.michfb.com/about/news-media/mi-supreme-court-sides-state-disappointing-creative-fiction-cafo-ruling> [<https://perma.cc/VN5F-CYYD>].

113. Galloway, *supra* note 112.

114. *See id.*

115. *See id.*

on behalf of their respective stakeholders.¹¹⁶ There was an additional laundry list of environmental groups involved as well as the National Pork Producer's Council, United States Poultry and Egg Association, and United Egg Producers.¹¹⁷

In 2017, the environmental advocacy group FWW, who are outspoken in their disapproval of CAFOs, petitioned the EPA.¹¹⁸ They argued that federal regulations were insufficient to protect the environment from potential pollutants originating from CAFOs.¹¹⁹ FWW filed their petition with the EPA to revise the CAFO section of the CWA.¹²⁰ Their main arguments are that CAFOs discharging pollutants are not currently required to obtain a permit, and that the existing CAFO NPDES permits fail to sufficiently protect water quality.¹²¹

On August 15, 2023, the EPA responded by denying outright the petition for rulemaking, and instead took alternative steps to investigate the claims made by FWW.¹²² To investigate, the EPA committed to launching a comprehensive review of CAFO Effluent Limitation Guidelines (ELGs) as well as creating the Animal Agriculture Water Quality (AAWQ) subcommittee of the existing Farm, Ranch, and Rural Communities Federal Advisory Committee (FRRCC).¹²³

Importantly, in EPA's response to FWW's rulemaking petition, the EPA said, "EPA denies this petition for rulemaking at this time, and instead commits to pursuing the ELG detailed study and engaging with the AAWQ subcommittee to enable the [EPA] to make an informed, reasoned decision as to how best to address the valid concerns raised in the petition."¹²⁴ Environmental groups were

116. See *Food & Water Watch v. U.S. Env't Prot. Agency*, No. 23-2146, 2024 WL 4371122, at *1 (9th Cir. Oct. 2, 2024).

117. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations at 2, *Food & Water Watch v. U.S. Env't Prot. Agency*, No. 23-2146, 2024 WL 4371122 (9th Cir. Oct. 2, 2024). Petitioners included: Association of Irrigated Residents, Center for Food Safety, Concerned Citizens Against Industrial CAFOs, Don't Waste Arizona, Missouri Rural Crisis Center, Moms Across America Eastern Shore Chapter, Rio Valle Concerned Citizens, etc. *Id.*

118. Emily Miller, *EPA Isn't Tackling Factory Farm Pollution. We're Taking it to Court.*, FOOD & WATER WATCH (Nov. 3, 2022), <https://www.foodandwaterwatch.org/2022/11/03/epa-lawsuit-factory-farm-water-pollution/> [<https://perma.cc/WS7E-ALVV>].

119. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations, *supra* note 117, at 1.

120. *Id.*

121. *Id.* at 15.

122. Letter from Radhika Fox, Assistant Adm'r., U.S. Env't Prot. Agency, to Petitioners 1 (Aug. 15, 2023), <https://aglaw.psu.edu/wp-content/uploads/2023/08/4-Letter-EPA-Earthjustice-8.15.23.pdf> [<https://perma.cc/72ZM-QWVGJ>].

123. *Id.* at 1.

124. *Id.* at 7.

understandably dismayed by the outcome, given their well-documented criticisms of CAFOs.¹²⁵ Agriculture groups were not nearly as forthcoming with their opinions on the petition.¹²⁶ One article that does comment on the status of the petition was very fact-based and left much to be desired about how the agriculture community feels about the outcome.¹²⁷ Reading between the lines suggests that agriculture advocates were hesitant to celebrate the denial due to the uncertainty surrounding what could come of the ELG study and AAWQ subcommittee findings.¹²⁸

Given the environmental group's dismay at the outcome of their petition for rulemaking, FWW appealed the EPA's administrative law decision directly to the Ninth Circuit where FWW, EPA, and AFBF argued on behalf of their respective stakeholders.¹²⁹ FWW rested their argument on the idea that this is an immediate issue that EPA needs to take action on as soon as possible.¹³⁰ The EPA argued that they would like to hold off on the rulemaking process until the ELG study and AAWQ come back with their official recommendations.¹³¹ AFBF spent a majority of their time during oral argument attempting to fact check the claims made in the petition, especially regarding the inaccurate claims FWW made about the agriculture stormwater exemption and the number of unpermitted CAFOs.¹³²

Notably, Judge Bybee observed that FWW's request for the EPA to forego their study and instead undergo rulemaking was a very "awkward ask," stating, "We've got to stand back and give the agency the room to do what it's supposed to do."¹³³ Ultimately, the Ninth Circuit supported EPA's decision to research this

125. *EPA Denies Factory Farm Water Pollution Petition*, FOOD & WATER WATCH (Aug. 15, 2023), <https://www.foodandwaterwatch.org/2023/08/15/epa-denies-factory-farm-water-pollution-petition/> [<https://perma.cc/78MD-LZE8>].

126. See Brigit Rollins, *Enviro Groups Ask EPA to Revisit CWA CAFO Rules*, NAT. AGRIC. L. CTR. (Oct. 27, 2022), <https://nationalaglawcenter.org/enviro-groups-ask-epa-to-revisit-cwa-cafo-rules/> [<https://perma.cc/5W77-M8JW>].

127. See *id.* ("Whatever the outcome of this current lawsuit, it seems likely that there will be future action on this issue.").

128. See *id.*

129. *Food & Water Watch v. U.S. Env't Prot. Agency*, No. 23-2146, 2024 WL 4371122, *1 (9th Cir. Oct. 2, 2024).

130. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 23-2146 *Food & Water Watch, et al. v. United States Environmental Protection Agency*, at 01:20–17:31 (YouTube, Sep. 12, 2024), <https://www.youtube.com/watch?v=f7psgDyihOQ&t=80s> [<https://perma.cc/C5GR-CHUV>].

131. *Id.* at 14:44–30:23.

132. *Id.* at 30:30–36:28.

133. *Id.* at 14:05–14:30; Cami Koons, *Appeals Court Judge Calls Livestock Runoff Case Against EPA 'Awkward'*, IOWA CAP. DISPATCH (Sept. 12, 2024, at 15:39 CT),

topic, stating in the opinion, “Although EPA declined to open a rulemaking at this moment, it did not refuse to take *any* action with respect to its CAFO regulations.”¹³⁴ Overall, the conclusion of the Ninth Circuit, which is a historically anti-agriculture circuit, reinforces the notion that the EPA is doing their job with regards to the current state of CAFO regulations and taking the appropriate action where necessary.¹³⁵

D. Everyone Gets a Seat at the Table

If facilitated correctly, the AAWQ is a real opportunity for all interested parties to come together and have a productive conversation about their thoughts and concerns regarding the current CAFO regulatory framework. The EPA was sure to include in their response to the FWW petition that interests from both sides of the issue will be represented and based on the members of that subcommittee, and the EPA fulfilled that promise.¹³⁶ As with any controversy, it can be difficult to bring both sides together to reach a common understanding, especially when they have very strong views.

With both interests afforded the opportunity to explain their viewpoints and side of the story in a professional setting, the ultimate goal was to find common ground. Both sides actively advocated for their positions, and the meeting summary from the initial May 2024 subcommittee meeting confirms that this has indeed occurred.¹³⁷ Based on the May meeting notes, a pro-environmental member brought up that, “The manure being spread causes nitrate issues, and Iowa has been a contributor to the Gulf of Mexico dead zone, and parts of the state experience issues with nitrate in drinking water.”¹³⁸ In contrast, a pro-agriculture member said,

<https://iowacapitaldispatch.com/2024/09/12/appeals-court-judge-calls-livestock-runoff-case-against-epa-awkward/> [<https://perma.cc/NT5N-VNER>].

134. *Food & Water Watch*, 2024 WL 4371122, at *2.

135. See *id.*; e.g., Blake Hurst, *Ninth Circuit Dicamba Ruling Ignores Impact on Farm Economy*, MO. FARM BUREAU (June 11, 2020), <https://mofb.org/ninth-circuit-dicamba-ruling-ignores-impact-on-farm-economy> [<https://perma.cc/J5ME-5FAA>] (describing past examples of the Ninth Circuit ruling in favor of increased agricultural regulation at the expense of farmers).

136. Letter from Radhika Fox to Petitioners, *supra* note 122 at 2, 6–7. The AAWQ committee is comprised of 21 members; five members represent environmental entities, eight members represent agriculture entities, six members represent a government agency, and two members represent academia. See *Animal Agriculture and Water Quality (AAWQ)*, U.S. ENV’T PROT. AGENCY (Aug. 21, 2025), <https://www.epa.gov/faca/frcc-0> [<https://perma.cc/QJ9F-NW5B>].

137. *Animal Agriculture and Water Quality (AAWQ)*, *supra* note 136.

138. FARM, RANCH, & RURAL CMTYS. FED. ADVISORY COMM., ENV’T PROT. AGENCY, ANIMAL AGRICULTURE AND WATER QUALITY (AAWQ) SUBCOMMITTEE OF THE FARM, RANCH,

“in Pennsylvania, there is diverse animal agriculture and an increased interest in being connected with food sources.”¹³⁹ “The state has a requirement for NMPs for CAFOs and AFOs.”¹⁴⁰ The difference in viewpoints demonstrates that both sides were being afforded the opportunity to have their voices heard, and the conversation was going in a productive direction.

While there is no crystal ball to predict what official recommendations would have been offered from the AAWQ subcommittee at the end of their scheduled programming in August 2025, based on the information available, it was hopeful that suggestions could have been made to best address all concerns surrounding CAFOs.¹⁴¹ However, at the start of President Trump’s second term, widespread and sweeping changes occurred across the EPA.¹⁴² Since Trump has taken office, the AAWQ subcommittee was deemed inactive, and very little information about the subcommittee or its former purpose is readily available online.¹⁴³

Based on statements made by agricultural groups when the petition was denied, this action is likely deemed a win for animal agriculture.¹⁴⁴ Rather than allow another layer of recommendations that were likely to translate into stricter mandates, higher compliance cost, and greater uncertainty, the administration halted a process that CAFO operators may have perceived as disconnected from agricultural realities.¹⁴⁵ The decision reflected a governing philosophy that recognizes food production as a national priority and rejects the notion that

AND RURAL COMMUNITIES FEDERAL ADVISORY COMMITTEE (FRRCC) MEETING SUMMARY MAY 30-31, 2024, at 9, https://www.epa.gov/system/files/documents/2024-12/aawq-subcommittee-august-2024-final-meeting-summary_508-checked_clean.pdf [<https://perma.cc/YD4Q-N58V>].

139. *Id.* at 11.

140. *Id.*

141. See Letter from Radhika Fox to Petitioners, *supra* note 122, at 3.

142. *EPA Launches Biggest Deregulatory Action in U.S. History*, U.S. ENV’T PROT. AGENCY (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> [<https://perma.cc/2ATS-F3JF>].

143. *FRRCC Subcommittees*, U.S. ENV’T PROT. AGENCY (Jan. 22, 2026), <https://www.epa.gov/faca/frcc-subcommittees> [<https://perma.cc/8P2D-MCQF>] (showing AAWQ subcommittee as inactive).

144. See Todd Neeley, *EPA Launches CAFO Regulations Review*, W. LIVESTOCK J. (Aug. 18, 2023), <https://www.wlj.net/epa-launches-cafo-regulations-review/> [<https://perma.cc/JCK9-X9WX>].

145. See Todd Neeley, *Enviros Petition EPA on CAFO Regulation*, PROGRESSIVE FARMER (Oct. 26, 2022, at 18:54 CT), <https://www.dtnpf.com/agriculture/web/ag/news/article/2022/10/26/enviros-epa-require-cwa-permits-wet> [<https://perma.cc/JUW4-H2WX>].

environmental policy must be driven by expanding bureaucracy at the expense of rural economies and working producers.¹⁴⁶

E. Gazing into the Crystal Ball

Now that the AAWQ subcommittee is inactive, it is difficult to predict where this area of the law is going, or where it should go from here. However, with the available information, a well-informed recommendation can be made regarding the desired outcome. First, petitioners contend that the EPA's interpretation of the agriculture stormwater exemption is incorrect and should be reevaluated.¹⁴⁷ Second, petitioners misrepresent that there are thousands of CAFOs that go unregulated across the country.¹⁴⁸

With regard to the agricultural stormwater exemption, this exemption allows for farms to spread manure and other process wastewater on their fields, and, in the event of rainfall, where some of that manure may mix with the runoff, that runoff containing manure or process wastewater is not considered a CAFO discharge.¹⁴⁹ FWW takes issue with this because, technically, it would be a discharge, but it is exempted from the rule due to the unpredictable nature of the weather.¹⁵⁰ Another logical argument for this exemption is that manure and process wastewater are resources, and farmers use them as such.¹⁵¹ By having manure rich in nutrients to apply to fields, it decreases the need for synthetic fertilizers.¹⁵² Additionally, it would be extremely difficult for farmers to dispose of this nutrient any other way.¹⁵³

146. *See id.*

147. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations, *supra* note 117, at 22.

148. *Id.* at 23.

149. *Waterkeeper All., Inc. v. U.S. Env't Prot. Agency*, 399 F.3d 486, 496 (2d Cir. 2005).

150. *See id.*

151. *Id.* at 494.

152. Jincan Niu et al., *Manure Replacing Synthetic Fertilizer Improves Crop Yield Sustainability and Reduces Carbon Footprint Under Winter Wheat–Summer Maize Cropping System*, *J. ENV'T MGMT.*, May 2024, at 1, 9.

153. Marc Ribaud, *Managing Manure: New Clean Water Act Regulations Create Imperative for Livestock Producers*, *ECON. RSCH. SERV., U.S. DEP'T OF AGRIC.: AMBER WAVES* (Feb. 2, 2003), <https://www.ers.usda.gov/amber-waves/2003/february/managing-manure> [<https://perma.cc/2VFQ-ZKDE>].

States have addressed this issue based on the land application methods that are common to their state.¹⁵⁴ For example, spray irrigation is a common irrigation method used in North Carolina.¹⁵⁵ North Carolina has included setbacks for irrigation sites that use the spray irrigation method, even when the federal rule has no specific requirement.¹⁵⁶ This leads to increased environmental protection for an irrigation method that could be considered more likely to cause harm.¹⁵⁷ Another example of a safeguard states have placed on the agricultural stormwater exemption is that, absent emergency circumstances, if there is rain in the forecast, the state does not allow for application of manure to occur.¹⁵⁸

This is one of many examples of how even though the agricultural stormwater exemption exists, it does not mean that farmers are purposefully and willingly evading CAFO regulations by spreading manure at an irresponsible rate.¹⁵⁹ Additionally, just because these safeguards are not included in the federal rule does not mean that states have not addressed this issue on their own accord.¹⁶⁰ As a suggestion, the agricultural stormwater exemption should continue to stay in place because it accounts for the uncertainty that is involved with agriculture that goes far beyond a volatile market.¹⁶¹ While it is a possibility that they will come to a different result, at least the agriculture industry can have confidence that there

154. Tucker R. Burch et al., *Quantitative Microbial Risk Assessment for Spray Irrigation of Dairy Manure Based on an Empirical Fate and Transport Model*, ENV'T HEALTH PERSPS., Aug. 16, 2017, at 1.

155. *Id.*

156. Compare 15A N.C. ADMIN. CODE 02T.0506 (West 2026) with 40 C.F.R. § 412.4(c)(5) (2026).

157. See *id.* (increasing setbacks decreases contact between manure and water sources or public property which leads to decreased runoff).

158. MO. CLEAN WATER COMM'N, STATE OF MO. DEP'T OF NAT. RES., No. MOG 010000, MISSOURI STATE OPERATING PERMIT 13 (2023), <https://dnr.mo.gov/water/business-industry-other-entities/permits-certification-engineering-fees/wastewater/concentrated-animal-feeding-operation-cafo-mo-g010000> [<https://perma.cc/M5KZ-KSEW>].

159. IOWA DEP'T OF NAT. RES., *supra* note 59, at 1 (showing that there are protocols to follow for manure application to decrease manure runoff in water sources).

160. *Id.*; see also Leslie Johnson, *Choosing a Manure Application Rate*, INST. OF AGRIC. & NAT. RES., UNIV. OF NEB. (Apr. 22, 2024), <https://water.unl.edu/article/animal-manure-management/choosing-manure-application-rate/> [<https://perma.cc/EBN8-W5GF>] (showing an educational document Nebraska is using to help their farmers select a manure application rate).

161. See Shelby Myers, *Analyzing Farm Inputs: The Cost to Farm Keeps Rising*, FARM BUREAU: MKT. INTEL (Mar. 17, 2022), <https://www.fb.org/market-intel/analyzing-farm-inputs-the-cost-to-farm-keeps-rising> [<https://perma.cc/3Q4G-E9EU>].

are agriculture advocates that will cite to state requirements in an attempt to make the environmentalists understand why that exemption exists and is important.¹⁶²

Another alarming argument that FWW brought up in their petition was the alleged thousands of unpermitted, discharging CAFOs.¹⁶³ At the core of this argument is a stark lack of information for all involved parties given the EPA's use of the terms "projected" and "approximately" when estimating CAFO numbers in 2008.¹⁶⁴ It is nearly impossible to determine the number of CAFOs in the country, their discharge status, or their permit status without a massive effort on EPA's part.¹⁶⁵ This is an effort that the EPA might not have the budget, time, or other resources to take on.¹⁶⁶ FWW's brief claims that there are 10,000 unpermitted CAFOs illegally discharging.¹⁶⁷ When the original 2008 CWA CAFO rule was published, this number may have been realistic.¹⁶⁸ However petitioners fail to disclose the disclaimer the EPA attached to this number:

These figures may overstate the numbers of CAFOs needing NPDES permits in that the estimates of the number of discharging facilities in each sector make conservative categorical assumptions about the likelihood of a discharge based on broad operational profiles and do not account for more subtle stratifications within specific operational categories.¹⁶⁹

Here, the EPA acknowledges the fact that the number may not be accurate and, more importantly, they cite they would need an additional half million dollars to fairly and accurately represent the CAFO numbers.¹⁷⁰ Therefore, without the investigation process that was promised by EPA to FWW in their petition reply, why would EPA go through an argumentative and drawn out rule-making process

162. FARM, RANCH, & RURAL CMTYS. FED. ADVISORY COMM., ENV'T PROT. AGENCY, *supra* note 138, at 6.

163. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations, *supra* note 117, at 13.

164. See Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision, 73 Fed. Reg. 70418, 70469 (Nov. 20, 2008) (to be codified at 40 C.F.R. pts. 9, 122, 412).

165. *Id.*

166. *See id.*

167. Petitioner's Opening Brief at 55, Food & Water Watch v. U.S. Env't Prot. Agency, No. 23-2146, 2024 WL 4371122 (9th Cir., Oct. 2, 2024).

168. Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision, 73 Fed. Reg. at 70469.

169. *Id.*

170. *Id.*

without ensuring they have all the information to do so?¹⁷¹ Unless Congress wants to pour more money into the EPA to address this issue, absent a compelling, fact-based argument from the environmentalists, this should remain a state issue.

V. THE FUTURE OF CAFOs: KEY TAKEAWAYS AND FINAL THOUGHTS

Overall, the economic benefits of CAFOs are vast in nature, from producing a cheaper product, to providing more economic stability to those who dedicate their lives to feeding the country.¹⁷² Federal and state regulations adequately address most environmental concerns related to food production within this system.¹⁷³ While there is always room for improvement and advancements within the agriculture industry, the villainization of agriculturists by environmental groups has to end.¹⁷⁴ Instead of attacking CAFO owners and operators, finding common ground can be achieved through collaboration, cooperation, and respectful communication. The seven most expensive words in farming are “we have always done it this way,” and sometimes that expense might not always be monetary. Agriculturists and environmentalists can work together towards a better tomorrow, and it can all start with that CAFO operator in northern Iowa telling their story to reach a common understanding between all interested parties.

171. See Letter from Radhika Fox to Petitioners, *supra* note 122, at 3.

172. MOST POL'Y INITIATIVE, *supra* note 2, at 1.

173. See discussion *supra* Part II; Neeley, *supra* note 145.

174. Turner, *supra* note 7.