

# The EPA's Failure to Track Factory Farms

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## Executive Summary

Concentrated animal feeding operations (CAFOs) are facilities that raise large numbers of livestock in confined conditions, leading to high concentrations of manure and water pollution. In the spring of 2013, the U.S. Environmental Protection Agency (EPA) released documents in response to a Freedom of Information Act (FOIA) request that detailed the EPA's internal process for proposing a CAFO reporting rule, known as the "308 Rule" under Section 308 of the Clean Water Act (CWA).

The 308 Rule would have required all CAFOs nationwide to submit basic information to the EPA, including: the owner name and contact information, the location as defined by latitude and longitude or street address, the National Pollutant Discharge Elimination System (NPDES) permit coverage, the maximum number and type of each animal in confinement, and the acres of land available for land application of manure. The EPA proposed the rule in October 2011 and withdrew it under industry pressure in July 2012.

The documents provided through the FOIA request reveal the EPA's failure to collect data about CAFOs across the nation as well as critical weaknesses in the CAFO permitting process.

**Permitting Is Incomplete:** As of 2011, the EPA estimated that only 41 percent of NPDES-defined CAFOs actually had NPDES permits.

### Records Are Scattered and Incomplete:

- 22 states submitted CAFO records to the EPA's internal Integrated Compliance Information System database. Nine of those states had significant records shortfalls.
- 15 states had no CAFO data available in any EPA system or via other electronic public access.

**State Permitting Regulations Are Outdated:** As of the EPA's reporting in 2011, only 32 percent of the 38 states that granted permits for CAFOs had up-to-date regulations. Nearly half of permitting states met only a decade-old standard, and 16 percent did not even meet that standard.

Neither the EPA nor any other federal agency collects comprehensive data on the number of CAFOs or their size or location. This lack of data impairs the EPA's ability to enforce permitting requirements, identify sources of severe water quality problems, and evaluate CAFOs' overall impact on water

quality. The EPA has facility-specific information for other point source polluting industries and shares that information in public databases, such as the Toxics Release Inventory, but the agency has not achieved the same level of transparency for CAFOs.

The proposed 308 Rule would have required all CAFOs nationwide to submit basic information to the EPA, such as the location, contact information, number and type of animals, permit status, and land available for waste application. The EPA inexplicably withdrew the 308 Rule, claiming that the agency would rely on existing data sources, but this analysis demonstrates that those sources are weak and incomplete.

The EPA's own findings contradict its rationale for withdrawing the 308 Rule, and the EPA does not otherwise justify its change in position. That's why Food & Water Watch, Iowa Citizens for Community Improvement, the Environmental Integrity Project, the Center for Food Safety and the Humane Society of the United States are suing the EPA to force it to do what it should have done in the first place: create an accurate, publicly available database of all CAFOs in the United States.



## Introduction

In the spring of 2013, three environmental organizations obtained documents from the U.S. Environmental Protection Agency (EPA) through the Freedom of Information Act (FOIA). The documents related to the EPA's process of gathering data about concentrated animal feeding operations (CAFOs). Those documents were shared with several organizations, including Food & Water Watch. On April 4, 2013, the EPA took the uncharacteristic move of asking for the original set of documents back due to pressure from the livestock industry and Congress, offering a limited subset of the documents as a replacement.<sup>1</sup> Food & Water Watch declined to return the original documents to the EPA.

CAFOs are facilities that raise large numbers of livestock in confined conditions, leading to high concentrations of waste and water pollution.<sup>2</sup> The documents obtained from the FOIA request detailed the EPA's recent rulemaking process, known as the "308 Rule," that would have required basic data collection about CAFOs under Section 308 of the Clean Water Act (CWA). These hundreds of documents provided from the FOIA request reveal the EPA's failure to collect data about these large industrial livestock facilities across the nation as well as weaknesses in the CAFO permitting process.

The release of documents was met with outraged responses from meat industry and livestock organizations, which claimed violations of privacy.<sup>3</sup> These organizations have missed the point: CAFOs discharge pollutants into national waters, and they should be treated like any other polluting facility under the CWA. Federal regulation should include National Pollution Discharge Elimination System (NPDES) permits for all CAFOs and create a public national database with basic information about the ownership, operation and location of these facilities and their scale. Releasing this data should not be controversial. But to make matters worse, the EPA has failed for decades to even collect it, under pressure from the livestock and poultry industry to hide their facilities from public view.

Food & Water Watch, Iowa Citizens for Community Improvement, the Environmental Integrity Project, the Center for Food Safety and the Humane Society of the United States are suing the EPA to force it to do what it should have done in the first place: create an accurate, publicly available database of all CAFOs in the United States. It is impossible to regulate CAFO facilities effectively without even compiling a list of how many exist. The EPA should reissue the 308 Rule as a critical step in reducing pollution from CAFOs.

## CAFOs Are a Major Source of Water Pollution

According to the EPA, agriculture remains a major source of water pollution.<sup>4</sup> States have identified animal feeding operations specifically as the polluters of almost 20,000 miles of riv-

ers and streams and over 250,000 acres of lakes, reservoirs and ponds.<sup>5</sup> While livestock waste in appropriate quantities can serve a useful purpose as fertilizer for crops, the huge concentration of animals in CAFOs leads to excessive concentrations of waste.<sup>6</sup> Large-scale commercial livestock and poultry operations produce an estimated 500 million tons of manure each year, more than three times the sewage produced by the entire U.S. human population.<sup>7</sup> Yet, unlike human waste, livestock waste from CAFOs is untreated and is usually applied directly to fields as fertilizer, often at rates that exceed those necessary to fertilize crops.<sup>8</sup>

Many studies have found that CAFO waste contaminates nearby bodies of water with numerous pollutants, including nitrogen, phosphorus, hormones, antibiotics and pathogens.<sup>9</sup> According to the Government Accountability Office (GAO), "manure and wastewater from animal feeding operations can adversely impact water quality through surface runoff and erosion, direct discharges to surface water, spills and other dry-weather discharges, and leaching into the soil and groundwater."<sup>10</sup>

## History of Weak Regulations and Poor Tracking

The CWA, passed in 1972, gave the EPA the authority to regulate any entity discharging pollution into national waterways, including CAFOs. The EPA has considered CAFOs a "point source" of water pollution since the 1970s.<sup>11</sup> The EPA initially focused its efforts on industrial sites and sewage treatment plants, leaving CAFOs virtually unregulated for years.<sup>12</sup> The EPA began requiring National Pollutant Discharge Elimination System (NPDES) permits for some CAFOs in 2003, with revisions made to the regulations in 2008.<sup>13</sup>

The permits, issued by the EPA or a state agency under the EPA's authority, set "specific limits and conditions" on how CAFOs discharge waste into local bodies of water.<sup>14</sup> The 2008 CAFO regulations include significant weaknesses, foremost among them relying on individual CAFO operators to determine if they discharge or intend to discharge and thus whether they should apply for a permit.<sup>15</sup> According to a 2003 GAO report, however, "EPA officials believe that most large operations either discharge or have a potential to discharge animal waste to surface waters and should have discharge permits."<sup>16</sup>

Just as worrisome as the inconsistent permitting is the lack of information the EPA possesses about CAFOs. Neither the EPA nor any other federal agency collects comprehensive data on the number of CAFOs or their size or location. Without that information, the EPA simply cannot regulate CAFOs effectively.<sup>17</sup> The lack of data affects the EPA's ability to enforce permitting requirements, identify sources of severe water quality problems, evaluate CAFOs' overall impact on water quality and promote best management practices on CAFOs.<sup>18</sup> Attempts by the EPA to mitigate this situation, such as compiling estimates based on NPDES permits issued to CAFOs, have



not been successful.<sup>19</sup> The GAO recommended in 2008 that the EPA “complete its efforts to develop a comprehensive national inventory of permitted CAFOs and incorporate appropriate internal controls to ensure the quality of the data.”<sup>20</sup>

## Counting CAFOs: The Proposed CAFO Reporting Rule (308 Rule)

The 2008 CAFO permitting rules changed the legal threshold for when a CAFO must apply for an NPDES permit. The EPA left it up to CAFO operators to determine, and thereby limited the number of CAFOs likely to obtain NPDES permits.<sup>21</sup> As a result, those CAFOs not seeking permits would not have to provide basic information to their state permitting authority or the EPA through the permitting process.

Several environmental organizations filed a lawsuit against the EPA to challenge the 2008 CAFO rule. As part of the Settlement Agreement, the EPA agreed to propose a CAFO information collection rule under Section 308 of the CWA.<sup>22</sup> The Proposed CAFO Reporting Rule (“308 Rule”) acknowledged the shortcomings of the EPA’s data collection, including the impossibility of ensuring compliance with the law without that data.<sup>23</sup> The EPA also notes, “*unlike many other point source industries, EPA does not have facility-specific information for all CAFOs in the United States*” (emphasis added).<sup>24</sup> In other

words, it is possible for the agency to collect such information for polluting facilities. It simply hasn’t been done for CAFOs.

On October 21, 2011, the EPA published the 308 Rule, which included two potential EPA actions to collect information from CAFOs. The first proposal would have required all CAFOs nationwide to submit basic information to the EPA; the second proposal would have required the EPA to select focus watersheds and then request basic information from CAFOs located in those watersheds. The EPA also solicited comments on alternative ways for the agency to obtain the necessary information about CAFOs and meet the objectives of the 308 Rule.<sup>25</sup> The Settlement Agreement required data to be collected on up to 14 areas of interest, but the rule covered only five because the EPA considered the other information to be obtainable from other sources.<sup>26</sup> The EPA estimated that approximately 20,000 facilities would have had to report information under the 308 Rule.<sup>27</sup>

### Withdrawal of the Rule

Instead of following through and finalizing the rule, however, the EPA punted by withdrawing the rule in July 2012. In the official withdrawal notice, the EPA claims that the agency will use “existing sources of information, including state NPDES programs, other regulations, and other programs at the federal, state, and local level,”<sup>28</sup> but as our analysis of EPA

documents obtained through the FOIA request demonstrates (and the EPA already stated in the original 308 Rule), those sources are woefully inadequate. By bailing on the 308 Rule, the EPA maintains the status quo of not even knowing how many CAFOs there are in the United States.

## CAFO Data: Incomplete and Disorganized

### NPDES Permit Shortfalls

The EPA is supposed to regulate CAFOs under the CWA. The EPA delegates its authority to the states, which are supposed to issue permits to CAFOs. The resultant patchwork system is ineffective at best, with most CAFOs operating without permits. According to an EPA file dated the end of 2011, an estimated 41 percent (approximately 7,600 out of 18,500) of NPDES-defined CAFOs actually had NPDES permits. At the state level, the estimated number of permitted CAFOs ranges from 0 to 100 percent. Thirteen states reported permitting fewer than 10 percent of estimated CAFOs, including states with large numbers of CAFOs such as Iowa, Illinois, North Carolina, Arkansas and Oklahoma.<sup>29</sup>

But it appears that the problem is even more fundamental than failure to regulate these facilities. Food & Water Watch’s analysis of the FOIA documents reveals broad gaps in the EPA’s knowledge of even the most basic information about CAFOs. According to EPA estimates from 2011, there are just over 18,500 “facilities defined as CAFOs under NPDES.” Yet, another document with estimates from the U.S. Department of Agriculture (USDA) indicates the number of large and medium-sized CAFOs to be much higher, just over 47,000 facilities.<sup>30</sup>

An internal EPA draft, “Charting the CAFO Universe,” indicates that current sources of data about CAFOs are incomplete. The USDA Census of Agriculture, for instance, collects

cumulative data by county, but it does not provide site-specific information.<sup>31</sup> States that implement NPDES permits must provide that information to the EPA, but only eight states were known for certain to collect all the information covered in the 308 Rule.<sup>32</sup> Not all states submitted data into the Integrated Compliance Information System (ICIS), the EPA’s electronic database of NPDES-permitted CAFOs, or even maintain records in an electronic form at all.<sup>33</sup> And while data on NPDES-permitted CAFOs is useful, it does not address the problem of identifying and permitting unpermitted CAFOs.

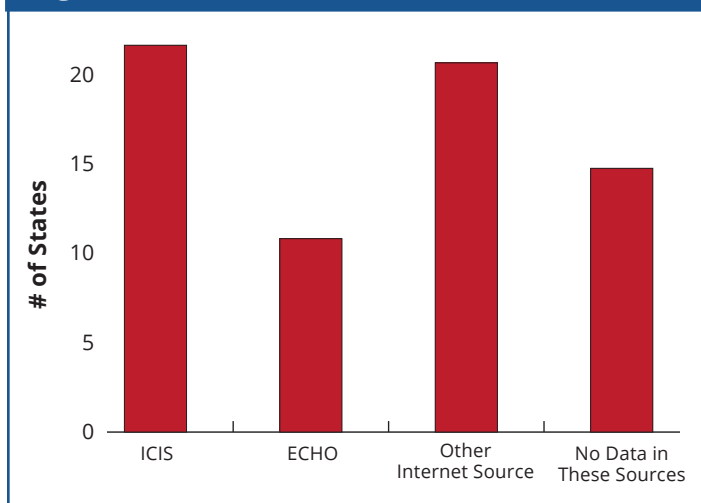
### CAFO Records by Source

The EPA analyzed CAFO records from various sources as part of the preparation for the 308 Rule. The agency found that only 22 states submitted files for the EPA’s ICIS database. The ICIS data is available only to the EPA and other government officials.<sup>34</sup> In the public domain, 11 states submitted files to the EPA’s Enforcement and Compliance History Online (ECHO) system, and 21 states have CAFO records available on the Internet on sites other than ECHO. The EPA reports that 15 states have no CAFO data available in ICIS, ECHO or via other electronic public access.<sup>35</sup> (See Figure 1.)

### ICIS: The EPA’s Internal Database

Twenty-two states have CAFO records in the EPA’s ICIS database. These records contain information about NPDES-permitted CAFOs, not unpermitted CAFOs. According to ICIS data from May 2010, 40 percent of states with CAFO records in ICIS had fewer files in the system than their total number of NPDES-permitted CAFOs. The total estimated shortfall is nearly 2,500 CAFO records.<sup>36</sup> (See Figure 2.)

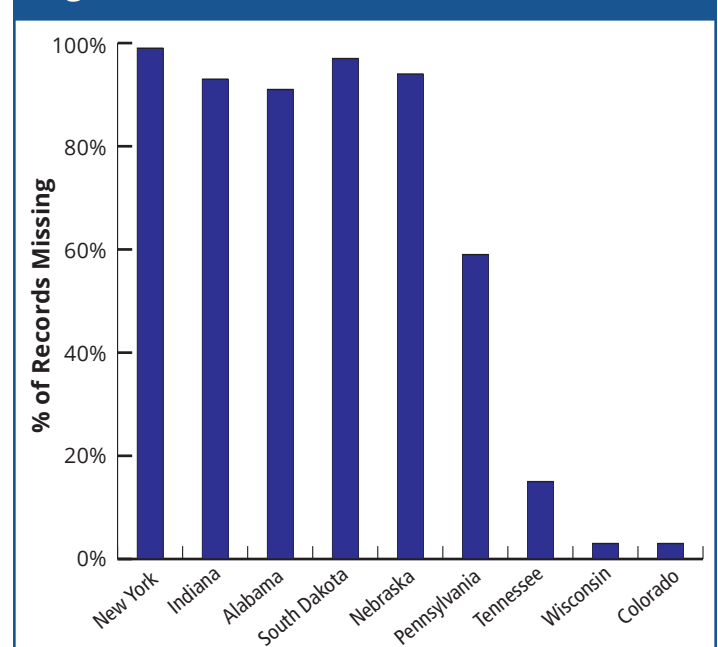
**Figure 1: Data Sources for CAFO Records**



Because some states are in more than one system, the total number of states is greater than 50.

Data Source, Fig. 1 and 2: Food & Water Watch analysis of data in documents released through Freedom of Information Act, on file at Food & Water Watch.

**Figure 2: CAFO Records Shortfalls in ICIS**



The number of NPDES-permitted CAFOs per state is as reported by EPA Regional Offices.

## ECHO and Other Public Sources

The FOIA records included a separate analysis by the EPA of the CAFO records available in the public domain, including ECHO and other Internet sources. Thirty-two states had CAFO records publicly available. The EPA did not compare the number of CAFO records in these sources against the estimated universe of CAFOs or total NPDES-permitted CAFOs from these states, so it is unclear if the number of CAFO records in each file is complete. No set of records contained all five areas of interest listed in the 308 Rule.<sup>37</sup> Those include: owner name and contact information, location as defined by latitude and longitude or street address, NPDES permit coverage, maximum number and type of each animal in confinement, and acres of land available for land application of manure.<sup>38</sup> (See Figure 3.)

Food & Water Watch’s analysis of files of records contained in the FOIA documents found inconsistencies with the EPA’s analysis, which reinforces the need for a centralized set of records.<sup>39</sup>

### The EPA’s Reliance on States Is Insufficient

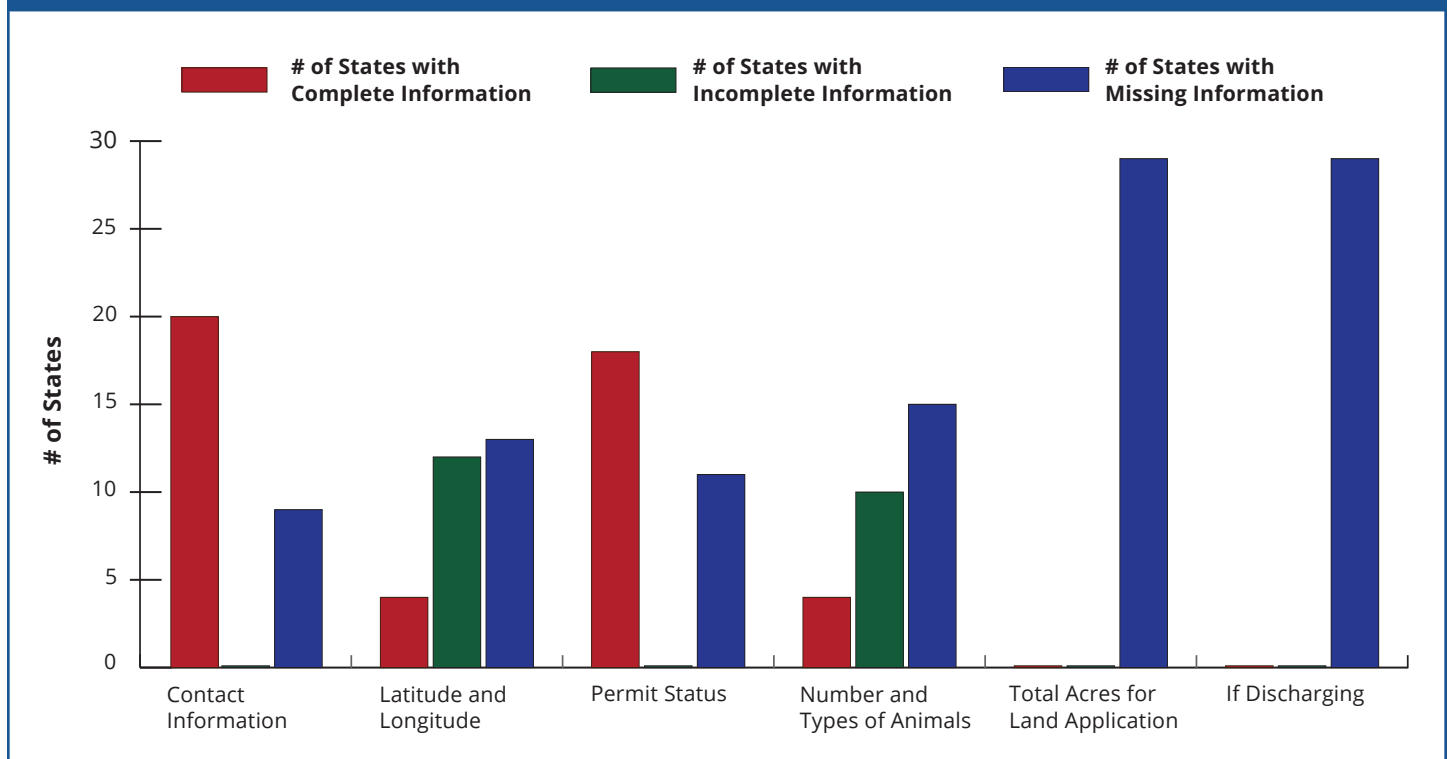
When withdrawing the proposed 308 Rule, the EPA stated that it could gather data necessary to regulate CAFOs from existing state records. Relying on states for accurate data presents challenges not only because of inconsistent permitting and data collection, but also because the states’ NPDES permitting requirements are

in most cases not up to date. Of the 38 states that permit CAFOs, their regulations vary in what set of federal CAFO permitting rules they meet. As of the EPA’s reporting in 2011, just under a third of permitting states have up-to-date NPDES permitting regulations. Nearly half of permitting states meet only a decade-old standard, and 16 percent do not even meet that standard.<sup>40</sup> (See Figure 4 on page 6.)

States’ comments on the 308 Rule reveal conflicting approaches to collecting CAFO data, and even hostility on the part of some states to sharing information with the federal government. On one hand, as the EPA reported, “Generally, state and state association commenters questioned the need for new regulations in light of states already having the information the EPA was seeking by virtue of existing CAFO programs at the state and local level.”<sup>41</sup> These claims of having complete information are patently false given that state NPDES-permitting programs lack information for *unpermitted* CAFOs.

The completeness of the data notwithstanding, states expressed a variety of other concerns should the rule be finalized. Comments from states included concerns about the burden of implementing the rule, about data collection serving as a distraction from permitting tasks, about the EPA’s authority to require information sharing from the states, and about CAFO operators’ privacy.<sup>42</sup> In comments from the South Dakota Secretaries of Environment and Natural Resources and Agriculture, the state officials bold-

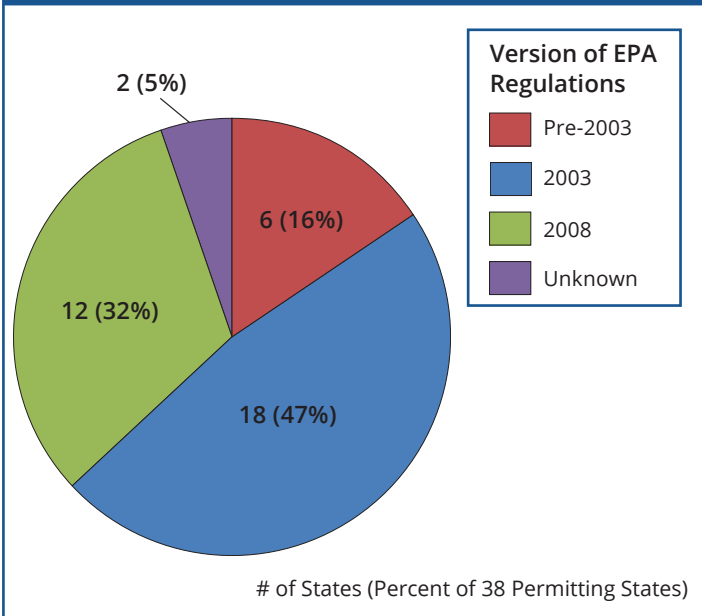
**Figure 3: CAFO Record Details in Publicly Available Sources**



Three states did not provide information on what data their records contained.

Data Source: Food & Water Watch analysis of data in documents released through Freedom of Information Act, on file at Food & Water Watch.

**Figure 4: Status of State Permitting Regulations**



Data Source: Food & Water Watch analysis of data in documents released through Freedom of Information Act, on file at Food & Water Watch.

ly declare, “we will not provide this information to EPA unless South Dakota producers request us to do this for them,” but they indicate that anyone can come in person to the Department of Environment and Natural Resources office during regular business hours to see the paper files should they be so motivated.<sup>43</sup>

The 308 Rule withdrawal notice indicates that the EPA signed a Memorandum of Understanding (MOU) with the Association of Clean Water Administrators (ACWA) to facilitate collection of existing CAFO data from the states.<sup>44</sup> Notably, the ACWA “urged EPA not to finalize the rule.”<sup>45</sup> According to the final MOU, the ACWA will “foster a dialogue between the EPA and ACWA members to facilitate the exchange of information.”<sup>46</sup> It is unclear how such an effort is any more likely to yield a comprehensive database of CAFOs than a finalized rule. The MOU neither meets the terms of the Settlement Agreement nor furthers the collection and publication of CAFO records.

In July 2013, the EPA proposed a new rule that would require that all reports from NPDES-permitted CAFOs be submitted electronically with the goal of greater transparency as well as cost savings for state governments.<sup>47</sup> While a useful step, this new proposed rule does not adequately replace the provisions of the withdrawn 308 Rule.

## Privacy Concerns and CAFO Data in the Public Domain

Livestock and poultry organizations and some members of Congress have raised concerns about releasing the business locations of CAFOs to the public.<sup>48</sup> Eight industry trade

groups, including the American Farm Bureau, National Cattlemen’s Beef Association and National Pork Producers, wrote to the EPA to express “deep concern” and “outrage” over perceived violations of personal privacy due to the FOIA release.<sup>49</sup> The industry groups assert that releasing data about CAFOs threatens farm families and increases the risk of bioterrorism against the food supply.<sup>50</sup> A letter from the Republican senators on the Environment and Public Works Committee shares similar rhetoric about the FOIA release, claiming that the EPA “has shown no regard for the privacy and safety of private citizens, and businesses” (sic).<sup>51</sup>

These claims simply do not bear out in real life, as information about individual CAFOs, including location, already exists in the public domain. In a written response to Congressional questions at an oversight hearing, the EPA noted that: “[T]here is an extensive amount of CAFO facility-specific location information already available on the Internet from certain State permitting programs that provide the facility’s name, city, and animal numbers, as well as maps with location data on individual CAFOs. EPA is not aware of instances where such publicly available information has put CAFO owners and operators at risk.”<sup>52</sup>

Iowa offers one example of a state with many CAFOs that provides public information about them on the Internet. The Iowa Department of Natural Resources Animal Feeding Operations database contains many of the areas of interest from the 308 Rule, including owner name, facility location, number and type of animals, and whether or not the facility has an NPDES permit.<sup>53</sup> The database includes the NPDES permit number and expiration date for those that have permits.

Additionally, Iowa reports compliance information in this database, allowing community members to examine any violations attributed to nearby facilities.<sup>54</sup> While Iowa faces problems with its CAFO regulation system,<sup>55</sup> Iowa’s database demonstrates a significant level of transparency that already exists in a state with a large number of CAFOs. North Carolina, another state with high numbers of CAFOs, offers a map of its livestock facilities along with permitting information.<sup>56</sup>

Livestock and poultry organizations claim that CAFO locations should not be released because the operators and their families often live at or near the facilities.<sup>57</sup> In effect, the industry is asking for special treatment, but having any home-based business can come at some cost to family privacy.<sup>58</sup> Other home-based businesses are not hidden from public scrutiny. For instance, in nearly all states, in-home child-care providers must obtain a license and be inspected regularly.<sup>59</sup>

CAFOs have the potential to discharge large volumes of waste into local bodies of water. Any facility with the potential for such pollution deserves public scrutiny. Consider the case of Freedman Farms in Columbus County, North Carolina. Its operator intentionally released over 324,000 gallons of untreated hog waste into a stream over the course of a few days, an action so egregious it yielded over a million dollars in fines and a jail sentence.<sup>60</sup>

In northwest Iowa in 2010, the EPA took legal action against several medium-sized, unpermitted beef CAFOs that discharged manure into impaired creeks in violation of the CWA. The EPA required that these facilities obtain NPDES permits and improve their facilities to manage wastewater.<sup>61</sup>

Without permits, these CAFOs fell through the regulatory cracks until their polluting activities were so egregious as to attract notice. Claims of personal privacy ring hollow against the potential for and actual ecological damage that occurs through CAFO discharges.

## EPA Provides Complete, Public Information for Other Polluting Industries

### *Toxics Release Inventory Program*

In order to understand just how unregulated CAFOs are, it is useful to consider how other industries that generate pollutants are regulated. The EPA's Toxics Release Inventory Program (TRI) monitors the release of toxic industrial chemicals through annual self-reporting of the amount of chemicals released into the air, water or land, including off-site pollution. The TRI monitors over 650 of the toxic industrial chemicals with negative health or environmental impacts used in the United States.<sup>62</sup> These chemicals include those found in CAFO waste, including nitrogen compounds that lead to nitrate in water and phosphorous.<sup>63</sup>

A wide range of manufacturing facilities must report their use of toxic chemicals, but not CAFOs, where the pollutants occur in livestock waste.<sup>64</sup> The TRI Program monitors pollutant releases from animal slaughtering and meat processing facilities,<sup>65</sup> but not pollutants generated throughout the animals' lives in CAFOs. It monitors dairy product manufacturing,<sup>66</sup> but not raising dairy cattle in confinement and managing the resulting waste. It monitors fertilizer manufacturing,<sup>67</sup> but not CAFOs, whose livestock generate gallons upon gallons of animal waste used as fertilizer.

The nearly 21,000 TRI facilities reported 4.09 billion pounds of industrial chemicals released in 2011. Sixty percent was disposed of on land on-site; 5 percent was disposed of in on-site surface water discharges.<sup>68</sup> Most CAFO waste is applied to land as fertilizer, yet the EPA does not track applications directly.

The TRI makes polluting industries' data publicly available.<sup>69</sup> The average citizen can locate polluting industries in their state, county or zip code with an interactive map and information about the types and quantities of toxic chemicals released. Individuals can search by geographic location, by chemical or by industry.<sup>70</sup> Fact sheets include the top polluters, the most common pollutants, amounts of pollutants and how the pollutants are disposed of.<sup>71</sup> The maps include direct links to profiles of each facility including name, TRI identification number,



address, latitude and longitude, phone number and toxic release data submitted to the EPA<sup>72</sup> — in other words, the very type of data that the EPA does not have in complete form for CAFOs, let alone in a publicly available electronic database.

## Efforts to Reinstate the 308 Rule

When the EPA proposed the 308 Rule, the agency lacked basic information about the number and scale of CAFOs across the United States. Since the EPA abandoned its rule-making process, the agency remains in the exact same position.

While proposing a rule does not obligate the EPA to adopt it, the law states that the EPA may not withdraw the rule without reasoned justification.<sup>73</sup> The EPA's own findings contradict its rationale for withdrawing the 308 Rule, and the EPA does not otherwise justify its change in position. That's why Food & Water Watch, in partnership with Iowa Citizens for Community Improvement, the Environmental Integrity Project, the Center for Food Safety and the Humane Society of the United States, are suing the EPA to force it to do what it should have done in the first place: create an accurate, publicly available database of all CAFOs in the United States. It is long past time that CAFOs be treated like any other polluting industry and be held fully accountable for their discharges. Reinstating the 308 Rule is an important step toward that goal.

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**Food & Water Watch** works to ensure the food, water and fish we consume is safe, accessible and sustainable. So we can all enjoy and trust in what we eat and drink, we help people take charge of where their food comes from, keep clean, affordable, public tap water flowing freely to our homes, protect the environmental quality of oceans, force government to do its job protecting citizens, and educate about the importance of keeping shared resources under public control.

