

#### **COMMITTEE ON ANIMAL LAW**

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#### RE: Docket ID No. EPA-HQ-OECA-2009-0274

Washington, DC 20503

Dear Sir or Madam:

The Committee on Animal Law (the "Committee") of the New York City Bar Association (the "City Bar") submits this comment in support of the National Pollutant Discharge Elimination System ("NPDES") Electronic Reporting Rule proposed by the Environmental Protection Agency ("EPA") as it is related to Concentrated Animal Feeding Operations ("CAFOs"). That rule would require electronic reporting instead of current paperbased NPDES reports.<sup>1</sup>

The City Bar is an independent non-governmental organization of more than 24,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local animal anti-cruelty legislation, as well as legislation concerning environmental and public health protection relating to animals.<sup>2</sup>

<sup>2</sup> See, *e.g.*, Report on proposed legislation to amend the New York State Agriculture and Markets Law, in relation to the confinement of animals for food producing purposes (April 2014), <u>http://www2.nycbar.org/pdf/report/uploads/20071742-CommentonConfinementforFood.pdf</u>; see also, *e.g.*, Report on Antibiotics for Medical Treatment Act of 2013 (January 2014), <u>http://www2.nycbar.org/pdf/report/uploads/20072637-PreservationofAntibioticsforMedicalTreatment.pdf</u>.

<sup>&</sup>lt;sup>1</sup> 78 FR 46006-46116 (July 30, 2013), <u>http://www.gpo.gov/fdsys/pkg/FR-2013-07-30/pdf/2013-17551.pdf</u>, and 79 FR 71066-71081 (Dec. 1, 2014), <u>http://www.gpo.gov/fdsys/pkg/FR-2014-12-01/pdf/2014-27918.pdf</u>. (All internet citations herein last visited January 28, 2015).

We limit our comment to that portion of the proposed rule that would require CAFOs to electronically report NPDES information to the EPA. As discussed in more detail below, CAFO facilities are harmful to farm animal welfare and are recognized as a significant contributing factor in major human health and environmental concerns, including air and water pollution, global warming and antibiotic-resistant diseases. The Committee supports the proposed rule because it would improve the ability of federal and state regulators, as well as concerned citizens and affected communities, to better monitor and enforce issues of animal welfare, environmental pollution and human health by increasing the availability, accuracy and timeliness of CAFOrelated information.

#### Standard CAFO Practices Are Harmful to the Welfare of Farm Animals

CAFOs are characterized by the housing of large numbers of animals in very crowded conditions, often resulting in extreme methods of confinement. For example, annually about one million calves raised for veal and six million breeding sows (female pigs) in the U.S. are confined in small crates barely larger than the size of their bodies.<sup>3</sup> In addition, approximately 98% of egg-laying hens in the United States spend their lives confined in wire battery cages which make it impossible for them to spread their wings or turn around.<sup>4</sup> Such intensive confinement methods are inherently cruel, as they deprive animals of the ability to engage in natural behaviors, such as lying down, standing up, fully extending their limbs, or turning around freely, which creates conditions of boredom and stress as well as physical illness. At least six states have banned certain intensive confinement practices.<sup>5</sup>

### CAFOs Are a Major Source of Air and Water Pollution

The prevalence of CAFOs is one of the hallmarks of modern day farming.<sup>6</sup> CAFOs produce immense amounts of untreated waste that must be stored and properly disposed. The quantities of waste and manure generated are often greatly in excess of that which can biodegrade or be absorbed by the land. It is estimated that manure production at a single CAFO

<sup>&</sup>lt;sup>3</sup> See Humane Society of the United States, *An HSUS Report: The Welfare of Animals in the Veal Industry* (July 2012), <u>http://www.humanesociety.org/assets/pdfs/farm/hsus-the-welfare-of-animals-in-the-veal-industry.pdf</u>; see also, Farm Sanctuary, *The Welfare of Cattle in Dairy Production: A Summary of the Scientific Evidence* (April 2011). See *An HSUS Report: Welfare Issues with Gestation Crates for Pregnant Sows*, Humane Society of the United States, <u>http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Gestation-Crates-for-Pregnant-Sows.pdf</u>.

<sup>&</sup>lt;sup>4</sup> The average space allotted per bird is approximately 61 square inches, which is smaller than a standard piece of 8 <sup>1</sup>/<sub>2</sub> by 11 inch paper. See United Egg Producers, *United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks*, <u>http://www.unitedegg.org/information/pdf/UEP 2010 Animal Welfare Guidelines.pdf</u>; see also American Society for the Prevention of Cruelty to Animals, *Birds on Factory Farms*, <u>http://www.aspca.org/fight-cruelty/farm-animal-cruelty/birds-factory-farms</u>.

<sup>&</sup>lt;sup>5</sup> See Art. X, §21, Fla. Const.; Ariz. Rev. Stat. §13-2910.07; 2007 Or. Laws Chapter 722; Colo. Rev. Stat. §35-50.5; California Health & Safety Code §§ 25990-25994; 7 MRSA §4020; Or. Rev. Stat. § 632.850.

<sup>&</sup>lt;sup>6</sup> See, *e.g.*, U.S. Department of Agriculture Economic Research Service, *Confined Animal Production and Manure Nutrients*, Agriculture Information Bulletin No. 771, <u>http://www.ers.usda.gov/media/481105/aib771\_1\_pdf</u>, finding that as of 1997, approximately 54% of all livestock in the U.S. were housed in 5% of the nation's CAFO facilities.

can range from 2800 tons to 1.6 million tons a year,<sup>7</sup> and that U.S. livestock produce up to 300 million tons of waste annually.<sup>8</sup> Such waste contains many different types of pollutants, including heavy metals, hormones and antibiotics, as well as nutrients like nitrogen and phosphorus, gases such as nitrous oxide, methane and carbon dioxide, and pathogens such as *E. Coli* and *Salmonella*. CAFO emissions contribute significantly to air pollution, global warming,<sup>9</sup> and water pollution.<sup>10</sup>

## CAFOs are a Major Source of Antibiotic-Resistant Bacteria

CAFOs also pose a significant risk to public health resulting from the overuse of antibiotics for livestock. It has been estimated that up to 70% of all antibiotics sold in the United States are given to healthy food animals.<sup>11</sup> The widespread use of intensive confinement methods for food-producing animals in CAFOs is a primary reason for the administration of non-therapeutic antibiotics to manage and prevent disease induced by such conditions.<sup>12</sup> The overuse of antibiotics in animal agriculture has been widely recognized as a primary cause of the proliferation of antibiotic-resistant bacteria. For example, the Centers for Disease Control and the Food and Drug Administration ("FDA") have identified the widespread use of antibiotics in food-producing animals as a significant factor in the emergence and transmission of antibiotic-resistant bacteria to humans.<sup>13</sup> Since an estimated 75-90% of all antibiotics administered to

<sup>10</sup> CAFOs are defined as "point sources" of pollutants under the Clean Water Act (see 33 U.S.C. 1342, 1362(14)) and have been found to pollute over 25,000 miles of river and streams and 269,000 acres of lakes, reservoirs and ponds in the US. EPA, *Specific State Probable Sources that make up the National Agriculture Probable Source Group*",

http://iaspub.epa.gov/tmdl waters10/attains nation cy.source detail?p source group name=AGRICULTURE.

<sup>11</sup> Pew Report, *supra* at 5.

<sup>12</sup> *Id.* at note 4, at 58, noting that "[i]ndustrial farm animal production systems are also highly dependent on intensive animal confinement, which commonly requires the use of antimicrobials to prevent disease, not just to treat it."

<sup>&</sup>lt;sup>7</sup> See U.S. Gov't Accountability Office, GAO-08-944, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern* (2008), <u>http://www.gao.gov/new.items/d08944.pdf</u> (hereinafter, the "GAO Report").

<sup>&</sup>lt;sup>8</sup> 76 FR 65431-65458 (Oct. 21, 2011), <u>http://www.gpo.gov/fdsys/pkg/FR-2011-10-21/pdf/2011-27189.pdf</u> (hereinafter, the "Proposed CAFO Reporting Rule").

<sup>&</sup>lt;sup>9</sup> See Pew Commission on Industrial Farm Animal Production, *Environmental Impact of Industrial Farm Animal Production* (2008), <u>http://www.ncifap.org/\_images/212-4\_EnvImpact\_tc\_Final.pdf</u>; see also, Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Food Animal Production in America* (2008), <u>http://www.ncifap.org/\_images/PCIFAPFin.pdf</u> (hereinafter referred to as the "Pew Report"); see also *Industrial Food Animal Production in America: Examining the Impact of the Pew Commission's Priority Recommendations*, Johns Hopkins Center for a Livable Future, Fall 2013, <u>http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/\_pdf/research/clf\_reports/CLF-PEW-for%20Web.pdf</u>; *Livestock's Long Shadow*, Food and Agriculture Organization of the United Nations (2006), <a href="http://ftp.fao.org/docrep/fao/010/a0701e/a0701e00.pdf">http://ftp.fao.org/docrep/fao/010/a0701e/a0701e00.pdf</a>.

<sup>&</sup>lt;sup>13</sup> See U.S. Department of Health and Human Services, Center for Disease Control and Prevention, *Antibiotic Resistance Threats in the United States, 2013*" (April 23, 2013), 6, <u>http://www.cdc.gov/drugresistance/threat-report-2013/pdf/ar-threats-2013-508.pdf</u> (noting "the link between antibiotic use in food-producing animals and the occurrence of antibiotic-resistant infections in humans"); see also U.S. Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Guidance for Industry, *The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals* (April 13, 2012),

livestock is excreted through manure<sup>14</sup>, the discharge of such non-metabolized drugs from CAFO facilities into the nation's water supply is a significant public health concern.

# The Proposed Rule is Necessary to Improve Enforcement of Environmental and Animal Protection Laws, and Increase Transparency and Public Oversight

The current paper-based reporting system is inefficient, inadequate and antiquated. It requires the EPA and state agency regulators to process enormous amounts of paperwork, including collecting, redacting and scanning reports, and then inputting relevant information into databases. This time-consuming process has a greater potential of leading to errors (such as incomplete information and other inaccuracies), delays the availability of information to the public, and also wastes scarce human resources. The NPDES permitting and inspection program is the EPA's primary means of furthering the purposes of the Clean Water Act<sup>15</sup> with respect to CAFOs, and requires accurate, complete and timely collection of data to ensure effective monitoring of pollutant discharge and enforcement of applicable rules and restrictions. However, under the current paper-based system, the EPA has acknowledged that it lacks even some basic information about CAFOs, including reliable data on the number of CAFOs in the U.S.,<sup>16</sup> and has concluded that the environmental impact of CAFOs on water supplies "may be due, in part, to inadequate compliance with existing regulations or to limitations in CAFO permitting programs."<sup>17</sup>

An electronic reporting system is faster, more efficient, and user friendly (allowing searchable text), enabling government regulators, as well as concerned citizens and affected communities, to better monitor and enforce issues of animal welfare, environmental pollution and human health by increasing the availability, accuracy and timeliness of CAFO-related information.

For the aforementioned reasons, the Committee supports the proposed rule.

Sincerely,

CULT

Christine Mott Chair, Committee on Animal Law

http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM216 936.pdf.

<sup>14</sup>See J.C. Chee-Sanford et al., "Occurrence and Diversity of Tetracycline Resistance Genes in Lagoons and Groundwater Underlying Two Swine Production Facilities," *Appl. Environ. Microbiol.* 67:1494–1502, http://aem.asm.org/content/67/4/1494.full.pdf+html.

<sup>15</sup> The purpose of the CWA is to "restore and maintain the chemical, physical and biological integrity of the nation's waters" and to "eliminate[]" "the discharge of pollutants into navigable waters". 33 U.S.C. 1251(a).

<sup>16</sup> See GAO Report, *supra* note 7 at pp. 49-50.

<sup>&</sup>lt;sup>17</sup> Proposed CAFO Reporting Rule, *supra*.