



How to Protect Your Family and Home From Factory Farms

A practical guide for dealing
with confined animal feeding
operations in your community

Created by Jefferson County
Farmers & Neighbors, Inc.,
Fairfield, Iowa 52556
P.O. Box 811
Fairfield, Iowa 52556
641-209-6600
www.jfaniowa.org
jfan@lisco.com

Table of Contents

Introduction	3
Jefferson County Farmers & Neighbors (JFAN)	3
Part One: Starting at the Beginning	
What is a CAFO?	4
Why Should I Be Concerned About CAFOs in My Community?.....	4
Part Two: What You Can Do to Fend Off CAFOs Before Pursuing Legal Action	
How Do I Keep CAFOs Out of My Community?.....	7
A CAFO Is Coming to My Neighborhood. What Should I Do?	8
If a CAFO Operator Persists in Constructing a Confinement.....	9
The Bigger Picture: Making Changes through the State Legislature.	11
Part Three: When All Else Fails ... Pursue Legal Action	
Step One: Know Your Legal Rights.	12
Iowa Statutes	12
Iowa Common Law: Nuisance	12
Iowa Common Law: Trespass.....	13
Environmental Legislation	14
Remedies for Various Stages of CAFO Development	14
Step Two: Determine Who is Responsible	15
Step Three: Gather the Facts.	15
Step Four: Contact a Lawyer	17
CAFO Action Checklist	18
Jefferson County Farmers & Neighbors Good Neighbor Guidelines	19

A downloadable version of this booklet may be found on the JFAN website at www.jfaniowa.org.

Front page background photo courtesy of Farm Sanctuary.

Introduction

If you're like some Iowans, you've created a comfortable home for you and your family in one of our many rural communities. You may be starting out, retired, or in the prime of life, enjoying the land, fresh air, and high quality of life that Iowa provides.

Then, a hog confinement moves next door.

You may feel angry, helpless, and that no one really cares about the harm you are forced to endure. Things like odor, flies, and spilled manure can be overwhelming, yet it seems there is nowhere you can go, and nothing you can do to stop it.

Everyone knows the hog industry is very powerful in Iowa and benefits from laws designed to protect hog facilities at the expense of neighbors who live near their operations. Neighbors that were there first.

So how do you handle a situation that's making your life miserable and possibility affecting your or your family's health?

How do you keep a proposed factory farm out of your neighborhood?

How can you, an individual resident, contend with the corporate agribusiness machine?

There is good news. There are steps you can take to deter factory hog farms and make them accountable for the harm they do.

This booklet will describe your legal rights and offer guidance for protecting your family, home, and health, as well as your property values.

Jefferson County Farmers & Neighbors (JFAN)

This booklet was created by Jefferson County Farmers & Neighbors, Inc. (JFAN), a nonprofit educational foundation comprised of rural and town residents and traditional family farmers. Founded in 2003, JFAN works to limit the proliferation of factory farms in Jefferson County and protect its residents' quality of life.

During its short tenure, JFAN has made significant strides in limiting local hog confinements. By developing the comprehensive Good Neighbor Guidelines, educating the community, providing legal fund grants, and establishing itself as a presence in Jefferson County, JFAN has helped to relocate or deter several factory farms.

The practical recommendations and suggestions offered in this booklet are the opinion of JFAN, based on its experience and efforts in protecting Jefferson County from the unrestrained growth of factory farms.

JFAN provided the Brick Gentry Law Firm of Des Moines a grant to research the legal issues discussed in this booklet.

Part One: Starting at the Beginning

What Is a CAFO?

A CAFO – confined animal feeding operation – is a giant livestock factory in which hundreds or thousands of animals are housed in large confinement buildings. The animals, predominantly hogs in Iowa, have little room to move and no opportunity to pasture.

In confinements, hogs eat and excrete right where they live, and their wastes fall through a slatted floor into vast lagoons beneath the building. These waste pits can store from hundreds of thousands to millions of gallons of liquid manure for months at a time, putrefying and emitting harmful ammonia and hydrogen sulfide gases, until the manure is spread on agricultural fields as fertilizer. Some of the fields can be miles away, affecting people not disturbed by the CAFO itself.

Why Should I Be Concerned About CAFOs in My Community?

Over 25 studies conducted over the last 15 years have produced indisputable evidence that CAFOs have a serious, detrimental impact on the health, safety, and quality of life of neighbors and county residents.

You can read more about these studies in a pamphlet published by the University of Iowa and the Institute for Agriculture and Trade Policy found at:

www.jfaniowa.org/reports/UI-CAFO-Public-Health-Summary.pdf

Some of the many problems arising from CAFOs include:

Health: Noxious odors from the ammonia and hydrogen sulfide produced by decomposing liquid manure can make you susceptible to respiratory problems, nausea, diarrhea, headaches, burning eyes, confusion, tension, depression, and fatigue. Children are especially susceptible to asthma. This is especially true of those living within 1 mile of a CAFO.

For more information on how CAFOs affect health, read “Putting CAFOs in Perspective” by Dr. Kendall Thu in JFAN’s Winter 2007 newsletter at:

www.jfaniowa.org/JFAN-newsletter-Winter-07.pdf

Since closely confined animals breed disease, hogs are fed a large amount of antibiotics. In fact, over 70% of all the antibiotics used in the US are fed to livestock.¹ The American Medical Association has warned that the rampant use of antibiotics in factory farms is contributing to the evolution of antibiotic-resistant bacteria, which it considers a serious impending health crisis.

Quality of Life: Many neighbors of CAFOs report that they become prisoners in their homes, unable to enjoy their yards, gardens, and outdoor activities because of the gagging, nauseating odors emanating from the facilities. What was once a haven becomes a living hell. Ask residents in any county heavily populated with CAFOs. You'll get an earful.

Environment: Animal feeding operations produce 100 times more manure than the amount of human sewage sludge processed in municipal wastewater plants in the United States.² In communities with CAFOs, water quality deteriorates as streams, creeks, and ponds become contaminated with increased levels of nitrogen, phosphorus, microbes, ammonia, and antibiotics from the liquid manure.



An aerial view of hog manure running off an agricultural field into a stream and wooded area

Photo: K. Hudson, Factoryfarm.org

Lagoon leaks and manure misapplied on fields have been known to pollute streams as well as well water of nearby residences. Agricultural runoff from spreading manure winds up in local waterways. All too common manure spills can dump a high volume of toxins into waterways causing serious water pollution and fish kills, making streams, ponds, and lakes unsuitable for recreational use.

Local Economy: Property owners see the value of their homes and property decrease as much as 30-40% when CAFOs move into an area.³ Every factory farm that opens forces an average of 10 family farms out of business.⁴ County economies can weaken as people move away, local businesses lose vitality, and sales and property taxes plummet.

In addition, the physical infrastructure of communities often declines as hog-laden tractor trailers drive over roads not built to accommodate their heavy weight and frequent trips. Repairs, which come out of county funds, put an increased burden on local taxpayers, driving up taxes and reducing local services as communities struggle to pay for the extra maintenance.

These are serious reasons to be concerned about a CAFO in your

If you would like to read additional articles and reports on health, environmental, and economic impact studies, the following web pages are good places to start:

www.jfaniowa.org (a list of articles appears in the right-hand column)

www.jfaniowa.org/reports.html

www.jfaniowa.org/links.html

www.jfaniowa.org/JFAN-newsletter-Winter-07.pdf

www.sierraclub.org/factoryfarms/resources/

neighborhood.

Notes:

(1) Union of Concerned Scientists. "Hogging It! Estimates of Antimicrobial Abuse in Livestock." www.ucsusa.org/food_and_environment/antibiotics_and_food/hogging-it-estimates-of-antimicrobial-abuse-in-livestock.html.

(2) Gerba, Charles P., and James E. Smith, Jr. "Sources of Pathogenic Microorganisms and Their Fate during Land Application of Wastes." *Journal of Environmental Quality* 34:1 (2004): 42-48.

(3) *Concentrated Animal Feeding Operations (CAFOs): Assessment of Impacts on Health, Local Economies, and the Environment, with Suggested Alternatives*. [White Paper] Institute of Science, Technology and Public Policy. Maharishi University of Management, Fairfield, IA, 2007.

(4) Shea, MD, MPH, Katherine; Karen Florini, JD; and Tamar Barlam, MD. "When Wonder Drugs Don't Work." Environmental Defense. Washington, DC, 2001.

Part Two: What You Can Do to Fend Off CAFOs Before Pursuing Legal Action

There are many steps you can take to deter a proposed CAFO, or even discourage one from entering your community, before heading toward costly litigation. We recommend you fully explore these options as your first line of defense.

How Do I Keep CAFOs Out of My Community?

1. Get Informed

First, learn as much as you can about factory farms. Start by visiting several websites, such as:

Jefferson County Farmers & Neighbors (JFAN): www.jfaniowa.org

Grace Factory Farm Project: www.factoryfarm.org

Iowa Dept. of Natural Resources: www.iowadnr.com/air/afo/afo.html

Iowa Citizens for Community Improvement: www.iowacci.org

Sierra Club: www.sierraclub.org/factoryfarms

Sustainable Table: www.sustainabletable.org/issues/factoryfarming

The Humane Farming Association: www.hfa.org/factory/index.html

You can also stay up-to-date on the factory farm issue by subscribing to several newsletters and electronic news digests. Visit www.factoryfarm.org/resources/periodicals/ to see a list of available publications.

Many informative reports have been written about CAFOs. You'll find some on the JFAN website as well as on the comprehensive Grace Factory Farm Project site.

2. Stay Alert

Larger CAFOs are required to file manure management plans and construction permits before they can be built. Check monthly with your local DNR (Iowa Department of Natural Resources) office, and weekly during the spring construction season, to see if anyone has filed a new application. See "Step Three: Gather the Facts" on page 15 for more information on applications.



Keep an eye out for suspicious buildings going up in your area.

Photo: Ron Nichols, USDA Photography Center

Smaller factory farms do not have to file permits. Keep an eye out for any suspicious activity in your county, which includes any new buildings that look like confinement operations.

If you see a suspicious building going up, or if you have found out that an application has been submitted, alert all your neighbors immediately. Hold meetings to discuss the situation, and determine a course of action.

3. Organize Your Community

Communities that are well organized and active are the most successful in keeping out CAFOs. For example, JFAN's activities in Jefferson County have prevented several confinements because operators felt it "wasn't worth the hassle" of dealing with disgruntled neighbors.



Informational meetings are an excellent way to educate your community and generate support for your efforts.

Join an existing grassroots organization that would be willing to take up the CAFO cause. Or form your own. To learn about existing organizations, visit www.cgrer.uiowa.edu/iowa_environment/environmental_groups/Environmental_groups.html.

Make sure your organization stays in touch with other local groups, and create working alliances whenever possible. Large numbers and a unified front are important when dealing with CAFOs.

Hold community-wide informational meetings to educate and alert residents about the factory farm issue. Follow up with organizational meetings to develop ongoing strategies for preventing CAFOs. Ask people who have been affected by CAFOs in their neighborhood to speak. They generally make moving presentations that make the issue real to listeners.

Stay visible in the public eye. Counties and communities that have successfully fought off CAFOs have been vocal and persistent.

A CAFO Is Coming to My Neighborhood. What Should I Do?

Learn as much as you can about the new facility from other neighbors, the DNR, and your own observations. The DNR can give you information on the owner's name, the location and size of the facility, and whether they have filed a manure management plan. For more information on researching the facility, see "Step Three: Gather the Facts" on page 15.

Once the owner is identified, open communication is generally the best initial approach. Arrange for a friendly, respectful, and private meeting between the potential CAFO operator and your group of neighbors to discuss your concerns.

Prepare your points and strategy ahead of time to maximize your effectiveness. A well thought-out presentation may discourage a farmer if he thinks he will run into a lot of opposition from the community.

JFAN's "Good Neighbor Guidelines," found on page 19, were created to help farmers and neighbors come up with appropriate sites for livestock confinements. Use them as a basis for discussion.

When a mutually respectful dialog is established, harmony between neighbors can be maintained.

If a CAFO Operator Persists in Moving a Confinement Forward....

Hold regular public meetings informing the community of the problem, and gather the support of other concerned citizens.

With your organization, develop a comprehensive and persistent strategy to oppose the CAFO. Network with other groups, and devise an overall approach that unites all organizations opposed to the CAFO.

Review the CAFO's manure management plan, and make sure it is sufficient. Many plans do not provide complete or accurate information. Some plans don't even adequately meet the needs of the land. Notify the DNR about any inconsistent findings.

Evaluate how the CAFO may affect the waterways in the area. Find out if there are any threatened or impaired watersheds in the vicinity of the CAFO. New or expanding CAFOs are prohibited in the drainage areas of impaired waterways unless strict standards are met. Research if the CAFO is proposed on highly erodable land. Assess and discuss the situation with your local DNR. Ask for a public hearing to discuss your concerns.

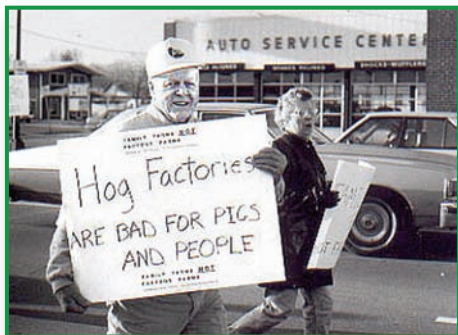
You can view the list of all Iowa's impaired waterways at http://wqm.igsb.uiowa.edu/WQA/303d/2006/draft_2006_Category-5_303d-list.pdf

Talk to your county supervisors about the problem, and ask them to hold a public hearing about the potential CAFO. Tell them you want the meeting to include a public comment period.

Follow up with a community-wide letter writing campaign directed toward your county supervisors. Ask them to recommend to the DNR that the CAFO's construction permit be denied.

If your county has adopted the Master Matrix, obtain a copy of the CAFO operator's Master Matrix scoring sheet from your county auditor. The Master Matrix is a 44-question scoring system that requires CAFO operators to

meet air, water, and community impact standards. Double-check the sheet to see if the applicant has filled it out accurately. Frequently, applicants tend to claim just enough points to pass the Matrix. If the applicant has claimed points in one or two categories to which he is not truly entitled, he may lose enough points to invalidate the application.



Activities that result in publicity can help increase awareness about the factory farm problem in your area.

Photo: Diane Halvorsen

A longer-term strategy involves evaluating other operating CAFOs to see if they are following through with all the promises made on their Master Matrix scoring sheet. If it's found that they have not met all their claims, the DNR should be notified so the operator can be forced to live up to his promises. Word gets around about community vigilance.

Send a formal letter to the operator's investors, including local banks and businesses, that are financing the operation. Remind them that they also depend on the rest of the community's support for their financial survival.

Talk to local farmers and ask them not to take "free" manure from CAFOs. If a CAFO owner has to truck manure long distances, he may think twice about his location. Also point out that taking manure may expose them to liability under the law. Give them a copy of JFAN's pamphlet on secondary liability which explains their risks.

Get press coverage from your local newspapers and radio stations. Develop a local and regional media list, and send out press releases reporting how the CAFO will harm your community and what your organization is doing to stop it.

Make your campaign as visible as possible with posters, T-shirts, bumper stickers, signs, fliers, and tables of information set up at community events.

It's crucial to raise funds to support your campaign strategy or potential litigation. Fundraising efforts will also create more publicity for your cause.

There are many more things you can weave into your strategy. The Grace Factory Farm project has compiled an excellent guide that you can print out in full at www.factoryfarm.org/guide.

One Important Point: Document all your activities, and save all your correspondence. If you need to pursue legal action, all your efforts will help during the litigation process.

The Bigger Picture: Making Changes through the State Legislature

Iowa's state laws concerning CAFOs favor corporate farms over the vast majority of innocent citizens and family farmers who struggle for existence. A 1946 law disallows counties from zoning land or buildings used for agriculture. In a long succession of cases interpreting this law, the courts have said that counties can't zone hog confinements regardless of their size and nature.

Public opinion is changing about the hog industry. The recent Iowa State University Annual Animal Industry Report for 2006 states:

"Pigs once viewed positively across Iowa may now be viewed negatively. Pigs in rural Iowa were once called "mortgage lifters," and pig manure odor was the "smell of money." But in 2004, the ISU Rural Life Poll found that when rural Iowa residents were asked their preferences about rural development activity, hog confinements ranked below prisons, solid waste landfills, slaughter plants, and sewage treatment plants as desirable rural development."

Mark Honeyman, Professor of Animal Science and

Mike Duffy, Professor of Economics, Iowa State University

You can read more in "Iowa's Changing Swine Industry," AS Leaflet R2158, found at: www.ans.iastate.edu/report/air/2006pdf/R2158.pdf

A law passed during the 1998 session went further, taking away counties' rights to make local decisions on agricultural matters. Clearly, something has to change at the state level.

As a constituent, make your voice and your voting power known to your state representatives. Demand a return to local control in conjunction with stronger factory farm regulations. Tell them you want greater funding for the DNR, whose job it is to ensure CAFO regulatory compliance. Keep in mind that strong legislation developed on a state-wide level could eliminate the need for costly local control battles every few years.

Write, call, and meet with your state legislators to present your concerns and demands. Talk with your county supervisors, and tell them you want them to lobby for tighter regulations and local control.

Join some of Iowa's activist organizations that lobby the legislature, and forge statewide campaigns. The larger these organizations become, the more they can challenge the agribusiness' stranglehold on the state legislature. A list of such organizations can be found at www.cgrer.uiowa.edu/iowa_environment/environmental_groups/Environmental_groups.html.

From letter writing to lobbying to organizing rallies, *get involved*, and encourage others to do so, as well. When legislators hear from enough people, their attention turns to their demands. With sustained efforts, you can help make changes through the state legislature.

Part Three: When All Else Fails... Pursue Legal Action

You have exhausted all your options and made your concerns known, but that neighborhood CAFO is still going through. Don't get discouraged – get legal. This next section will tell you how you can work with any local attorney to fight off CAFOs through the legal system.

Step One: Know Your Legal Rights

Iowa Statutes

Although the Iowa legislature has long favored agribusiness interests, it has been forced to pass some protection against facilities that are likely to cause environmental harm or nuisance to their neighbors. Iowa law requires facilities of a certain size (see page 16) to obtain a construction permit. Once built, the facility must operate within certain minimal standards. This legislation is codified in the Iowa Code, section 459.204-205 (2005).

Generally, liquid manure, including that which originates from a CAFO, may not be applied to farmland within 750 feet of a business, church, school, or residence not owned by the farmer. Farmers may apply manure to land within this “protected proximity” if the manure is injected directly into the ground or incorporated into the soil within 24 hours. See *Michael v. Michael*, 461 N.W.2d 334 (Iowa 1990). Farmers may also apply CAFO manure within 250 feet of a protected neighbor if applied by low-pressure spray irrigation meeting certain requirements.

Manure should not be applied to frozen or snow-covered cropland, except where land slopes are 4 percent or less, or where other adequate erosion control practices (such as terraces, conservation tillage, cover crops or contour farming) exist. Manure application to land within 200 feet of a body of water is prohibited unless the manure is injected directly into the soil and adequate erosion control measures are in place.

Violations of any of these statutes can be the basis of legal action. Keep in mind that these statutes do not apply to all facilities. However, there are legal remedies that do, and they are the most effective in protecting your property from harm from a confined animal feeding operation.

Iowa Common Law: Nuisance

There are two legal theories that provide additional legal protections to neighbors, and both have always been part of the common law of Iowa. One is called the law of nuisance. Nuisance is an activity that annoys and disturbs a property owner or tenant to the extent that continued use of the property is physically uncomfortable.

Typically, a nuisance is an activity that occurs after you have purchased or rented your property. In other words, the nuisance must come to you. You can't come to the nuisance and then complain about it.

Dating back to 1903, the Iowa Supreme Court has held that the unsanitary conditions and stench related to the presence of manure could so interfere with a neighbor's right to the quiet enjoyment of his life and property that it would constitute a nuisance.

In 1987, Iowa courts first addressed the land application of manure typically used by modern farmers, holding that spreading manure within several hundred feet of a neighbor's home is unreasonable and constitutes nuisance, and that a neighboring land owner harmed in such a manner will be entitled to a court injunction prohibiting this type of manure use. See *Valasek v. Baer*, 401 N.W.2d 33 (Iowa 1987). Remember, if nuisance is the basis of your claim, it may be important to establish that you were there before the facility was built.



Applying manure to cropland.

Photo: K. Hudson, Factoryfarm.org

In addition to damage caused by manure spills and runoff, neighbors of farmers who use liquid manure fertilizer may also hold a farmer liable for damage that results from manure transportation.

In 1990, a farmer was held liable when an accidental manure spill ruined a neighbor's crop of sweet corn. See *Weber v. IMT Insurance Company*, 462 N.W.2d 283 (Iowa 1990).

Iowa Common Law: Trespass

The other legal basis for protecting your property is the law of trespass. Trespass is defined as an unlawful interference with the property of another. Under Iowa common law, a person may not encroach upon your land. Activities like walking on another person's land, driving over it, building on it, or dumping rubbish on it would be examples of common law trespass.

An Iowa federal court has held that an action based on trespass could be brought against a hog facility. See *Dwight Ruter et al v. Pork Plus Inc.* (U.S. District Court for Northern District of Iowa 1998). The trespass action would be based on the encroachment of the particulates that carry odor from the hog facility to the neighbor's property. This is a relatively new theory of recovery, which has not yet been addressed by the Iowa Supreme Court.

Environmental Legislation

Both federal and state governments have passed legislation, which is touted as protecting the environment. Some of these laws are well known, such as the “Clean Air Act,” the “Clean Water Act,” etc. Unfortunately, it is difficult to sue under the provisions of these acts, and enforcement of the provisions that apply to agricultural activities is generally non-existent.

The most successful challenges of large confinement facilities in Iowa have been based on nuisance. It can be tried in state court, it is a legal concept easily understood by all lawyers and judges, and there is ample case law that supports your right to bring a nuisance action.

What is important to remember about both nuisance and trespass laws is that both apply to all facilities, regardless of size. Once the facility is determined to be a nuisance or responsible for a trespass, you are entitled to recover the damages you have suffered.

Remedies for Various Stages of CAFO Development

When you are confronted with the need to defend yourself and your family from the damages caused by a hog confinement facility, it will arise in one of the following three ways:

1. An existing facility is the source of the problem.
2. An existing facility is expanding, and the expansion is the problem.
3. A proposed facility is going to be built.

Under 1 and 2 above, the facility is already in existence, so your remedy will be limited to monetary damages.

In the case of number 3 above, if the facility has not yet been built, your remedy would be an injunction prohibiting the operators from going forward with the construction of the confinement. You may not be entitled



A CAFO can house up to thousands of animals living in very close quarters.

Photo: Farm Sanctuary

to damages because, until the facility is operating, there would be no damages. These cases are not filed too often because of the difficulty in proving the likelihood of damages that have not yet occurred. However, if you are selling your home and a proposed facility was announced, this could cause damage your ability to sell your home at its original market level.

Regardless of what stage the facility is in, if your action is based on nuisance, Iowa law requires that you first file for mediation. Unfortunately, many times the owner of the facility has no interest in accommodating neighbors, and the mediation turns out to be unproductive.

Step Two: Determine Who Is Responsible

When you are harmed by the construction and/or operation of a hog facility, there is usually more than one responsible party. The owner and the operator of the facility are liable for any damages caused by the wrongful operation of the facility. If the facility is sited on leased land, or if the land on which the manure application takes place is leased, both the operator and the landowner may be held responsible.

Recently, the Iowa Supreme Court ruled that an aggrieved property owner who is harmed by manure-related damage or nuisance may recover not only against a farmer, but also against the farmer's landlord. See *Tetzlaff v. Camp*, 715 N.W.2d 256 (Iowa 2006). To be liable, the landlord must know that the manure usage will take place and that the use will likely constitute a nuisance to neighbors.

In addition, any person who transports the manure would also be liable for any spills. If the facility is under contract with any other entities, those entities could also be liable depending on the amount of control they exercise over the facility operation.

To summarize, depending on the facts of your case, the property owner, the facility operator, the manure transporter, and/or the owner of the farmland where the manure is applied may be liable for the harm caused. Even the contract purchaser of the hogs may be liable if it exercises sufficient control over the operation.

Step Three: Gather the Facts

As soon as you identify a current or potential problem, gather together all available information on the facility. You need to know the size of the facility, the property owner, the facility operator, whose land is going to be used for manure disposal, and how the manure is going to be applied.

Lets start with the easy question first. Who owns the property? If you don't know, contact the County Assessor's Office and ask them to assist you in identifying the property owner. If you can furnish them with the location of the property, they will be able to identify the owner. A list of all county officials can be found on the website of the Iowa State Association of Counties at www.iowacounties.org. This site is useful because it will also give you the phone numbers for the County Board of Supervisors, the County Recorder, and the County Auditor.

Once you obtain the name of the property owner, you need to deter-

mine how many hogs the facility will process. Many of the state regulations do not apply unless the facility is over a certain size (see below). Of course, you can always start with the property owner where the facility is being sited.

Assuming the owner refuses to share any information about the facility, you should start by calling the County Auditor and ask if the County has adopted the Master Matrix. This is a scoring system used to evaluate the siting of a permitted confinement feeding operations (see page 9). Facilities that fall under this regulation must meet higher standards before they can be approved.

You should also ask the Auditor's office if it has information on a facility at the location you have identified and/or information on any proposed or actual operation under the name of the property owner. Next, contact the Animal Feeding Operations (AFO), which is a department within the Iowa Department of Natural Resources that regulates livestock facilities. The DNR has summarized the regulations as follows:

"Types of confinement feeding operations: Based on size and storage type, there are three basic categories of confinement feeding operations:

"Permitted - A construction permit is required prior to building, modifying or expanding all sizes of operations that use unformed storage. A construction permit is also required prior to building, modifying, or expanding an operation that uses formed storage if the final animal unit capacity will be 1,000 animal units or more. [1000 animal units = 2500 hogs.] See pre-construction requirements and design standards.

"Non-permitted - Formed Manure Storage - A construction permit is not required for building, modifying or expanding a confinement feeding operation with a proposed animal unit capacity from 501 to 999 animal units [this equates to 1252-2498 hogs] that uses formed storage. However, pre-construction requirements and design standards must be met before construction begins. See pre-construction requirements.

"Small - Formed Manure Storage - Neither a construction permit nor a manure management plan is required for small operations, 500 or less animal units [500 animal units = 1250 hogs], that use formed manure storage, but some pre-construction requirements apply. See requirements."⁵

Call the DNR at 515-281-5918 and ask to speak to someone in Animal Feeding Operations. Identify the county, the property location, and property owner's name. Ask the person what regulations apply to a facility in this location. Let him or her know if the county has adopted the Master Matrix. Find out if any applications for permits have been filed, and if so, obtain copies of them.

(5) See DNR website at www.iowadnr.com



A lawyer can help protect your rights should all preliminary efforts to resolve a CAFO fail.

Check out all of the information contained in the documents submitted by the facility operator to the DNR to verify accuracy. For example, make certain that farmland identified for manure disposal has not already been identified in a previous application. You can find the current requirements for confinement feeding operations as well as open feedlots on the DNR website at www.iowadnr.com/air/afo/afo.html.

To summarize, small operations (500 or less animal unit capacity) do not have to file a manure management plan, but must observe land application separation distances, correctly dispose of dead animals, retain all manure on site between periods of land application, and report any manure releases. Operations that plan to build or expand an existing site may be required to comply with the construction requirements, and operations sited within counties under the Master Matrix have additional responsibilities. Regardless of size, no operation can create a nuisance or a trespass against the property of another.

Step Four: Contact a Lawyer

A property owner who believes that a neighboring farmer may be using manure in an unlawful manner – or any manner which results in a nuisance or property damage – should not attempt to personally resolve the matter. Because the circumstances surrounding every case are unique, a local attorney should be contacted for advice before any action is taken. Using the cases and other material referenced in this booklet as a starting point, an attorney can help you enforce your rights and seek recovery for damages.

The legal action necessary to stop the harm and obtain compensation for whatever damages have been suffered is not complex. Almost every trial lawyer in Iowa is familiar with nuisance and trespass claims. And claims based on violations of statute are commonplace. Remember, no one can operate a facility on his or her property if that facility unreasonably prevents you from the use of your property.

Disclaimer:

This booklet is intended to provide helpful information about the law. However, this information is general, and is not intended to be a substitute for the advice of a lawyer. Small differences in individual circumstances can be very important in resolving legal problems, and the general guidance provided by this feature cannot take such differences into account. Please also realize that the law changes quickly and the timeliness and accuracy of the information contained in this article cannot be guaranteed. If you have a legal problem, do not attempt to solve it based on the information contained in this article—seek the advice of a qualified attorney.

CAFO Action Checklist

AVOID CAFOS

Get Informed:

- Read websites
- Subscribe to newsletters
- Read reports on CAFOs

Stay Alert:

- Check with DNR for new CAFO applications
- Watch for suspicious building activity in your county
- Alert neighbors and hold meetings when necessary

Organize:

- Join or create a grassroots group
- Network with other community organizations
- Hold informational meetings
- Hold organizational meetings

FEND OFF NEW CAFOS

- Learn about the facility
- Identify the owner
- Review JFAN's Good Neighbor Guidelines
- Meet with the owner
- Hold regular public meetings
- Develop a comprehensive strategy
- Network with other community organizations
- Review manure management plans
- Evaluate effect on waterways
- Demand county supervisors hold a public meeting with comment period
- Organize a letter writing campaign to your county supervisors
- Review Master Matrix of proposed CAFO
- Evaluate operating CAFOs for adherence to Master Matrix
- Send formal letter to investors, such as local bankers
- Petition farmers to not take free manure from CAFO
- Generate press coverage
- Stay visible with supporting materials
- Raise funds
- Document all activities

INFLUENCE STATE LEGISLATION

- Write and meet with state representatives
- Join some Iowa activist organizations

PURSUE LEGAL ACTION

- Review your legal rights
- Determine who is responsible
- Gather all available information on the facility
 - Owner
 - County Auditor
 - Animal Feeding Operation within DNR
- Contact a lawyer

Jefferson County Farmers and Neighbors Good Neighbor Guidelines

Introduction

Iowa has a long and strong agricultural tradition, with crop and livestock farming representing an important and integral part of the Iowa economy and its way of life. Unfortunately, the growth of modern, industrialized agriculture can carry with it undesirable side effects that impinge on the quality of life of Iowa residents.

Jefferson County Farmers & Neighbors (JFAN), a community coalition of rural and town residents and traditional family farmers, is continuing to work together with all segments of the County to protect our quality of life. JFAN promotes sound livestock practices that ensure a clean environment, good health, and the preservation of local property values.

Originally requested by local livestock farmers, JFAN created the “Good Neighbor Guidelines” for building acceptable livestock confinements within the County. Although JFAN is a strong supporter of sustainable farming methods and encourages all future operations to embrace these methods, the guidelines were developed to practically address these requests.

The guidelines have already been used to the satisfaction of both farmers and neighbors. It is JFAN’s desire that they continue to be adopted by anyone intending to build new confined livestock operations within the County, whether they be SAFOs (small animal feeding operations – less than 500 animal units, i.e., 1250 hogs) or CAFOs (confined animal feeding operations).

These guidelines do not override, but are meant to augment, all Iowa Department of Natural Resources (DNR) rules and regulations. While we believe the Master Matrix that has been adopted by the County falls short of appropriate guidelines, particularly in the way it is scored, we do support the spirit of the Master Matrix and believe its guidelines should apply to all confinement operations, regardless of size.

Finally, the Iowa Pork Producers Association has developed its own “Best Management Practices,” which we also strongly support and include, verbatim, in the best management practices section of these guidelines.

JFAN is not a regulatory body and cannot commit for the entire County. Ultimately, Iowa may enact strong local control laws, legislation that JFAN supports. In the interim, it is JFAN’s belief that if these guidelines are adopted by the local livestock community, the County will enjoy improved communications between livestock operators and residents, a safer and more enjoyable environment, and in areas where a CAFO/SAFO is acceptable to all, a smoother and less costly path to construction and operation for the landowner.

Guideline Points

1. Neighbor Notification and Approval

- a. Obtain approval of neighbors within one mile prior to construction – It is the neighbors closest to a CAFO/SAFO that are most directly impacted and most likely to object to an operation. Prior to construction, establish who the neighbors are within a one mile radius of the confinement, and notify them of site plans and any impact (odor, fan noise, air quality, etc.) the facility may have on surrounding properties. Obtain approval from 100% of these neighbors. (Article 36 of the Master Matrix)

2. Location and Concentration of CAFO/SAFO

- a. Build in your own backyard - Taking into account each of the guidelines listed in this section, the Operator should attempt to build in his or her own backyard first. Manure from the CAFO/SAFO should also be spread in his or her surrounding fields first.
- b. Site in low density areas - Siting should be aimed at locations in lowest population density areas of the County, as this will obviously minimize the impact of the operation on County residents.
- c. Limit the size of the operation - Operator should seek to limit the operation in a given area to a maximum of 1,200 hogs. One of JFAN's goals is that Jefferson County remains free of the large-scale hog confinements that have greatly impacted the quality of life for rural Iowans in neighboring counties.
- d. Ensure reasonable levels of hog concentration in an area. In general, operators should limit CAFO/SAFO construction so as to ensure that the concentration of hogs does not exceed 1,200 head per square mile. Rural neighbors are much more likely to accept a CAFO/SAFO if they have confidence that more will not follow later. There is obviously a significant difference between one 1,200-head facility in a given area and ten such facilities.
- e. Setbacks from towns and institutions:
 - i. Towns – Limit construction sites to areas at least three miles beyond the boundaries of any incorporated towns.
 - ii. Public institutions – Limit construction to no closer than two miles from any public use buildings or areas (e.g. recreational facilities, hospitals, schools, churches, etc.) and any concentrated residential or commercial areas that lie outside an incorporated town.
- f. Setbacks from water:
 - i. Maintain a minimum setback of 1,250 feet from any drainage way, water source, creek, stream, river, lake, well (abandoned or in use), reservoir, or other body of water (with the exception of ponds located on the operator's own property).
- g. Do not locate site on highly eroded land or land that has the potential for high erosion.

3. Handling of Manure and its Application

- a. Applicators should be certified according to DNR specification. This should apply for any size operation.
- b. To minimize odor and potential runoff problems, “knife in” all applications. Operators should avoid the use of sprinklers in any applications.
- c. Manure application setbacks:
 - i. Residential setbacks – Obtain approval of neighbor/resident regarding applications that are less than 1,250 feet from a residence.
 - ii. Waterway setbacks – In addition to DNR guidelines, Operator shall use due care and best practices such that any runoff will not negatively impact waterways.
- d. Notify neighbors at least three weeks prior to application. This will allow for neighbors to plan their outdoor activities accordingly (picnics, barbecues, etc.).
- e. Manure Spills – Clean up spills immediately on your property and others, especially public right of ways.

4. Best Management Practices - as written and published by Eldon McAfee, Iowa Pork Producers Association legal counsel, in the Iowa Pork Association magazine

- a. Make every attempt to get to know neighbors. Realistically assess the situation with neighbors before building or expanding an operation.
- b. Listen to and sincerely respond to neighbor concerns – even if they seem unfounded or beyond the producer's control at the time. Consider all reasonable suggestions to address the concerns.
- c. Meet with concerned neighbors to explain your operation. Participate in mediation if requested by neighbors. Never give up trying to resolve the situation.
- d. Be aware of and comply with – or better yet exceed – all legal requirements for the operation. Design and construct the operation to minimize its impact on neighbors. This includes locating as far from neighbors and public areas as possible, designing sites that are not visible to neighbors, and utilizing the latest design technology to minimize odor (e.g., tree shelter belts and biofilters). Work with advisors, such as a manure management specialist, attorney, or entomologist, to design and site your operation to minimize impact on neighbors.
- e. Stay current on new technologies and management practices to minimize odor, flies, etc. Attend meetings and seminars on these topics.
- f. Use best management practices, including keeping facilities as clean as possible, making sure manure storage structures are being operated according to current industry standards, and

- using products that reduce odor and flies in buildings and manure storage.
- g. Direct inject or incorporate manure within a short period of time following application. If manure must be applied and soil conditions will not allow injection or incorporation, contact neighbors beforehand and let them know your dilemma and why you can't inject or incorporate this time.
 - h. Avoid applying manure near neighbors, if possible. Notify neighbors prior to applying manure, and offer to postpone application if neighbors have special activities planned.
 - i. Apply manure when wind, temperature, and other weather conditions are less likely to cause odor to reach neighbors.
 - j. Apply manure as few times as possible throughout the year. This is a major advantage for newer confinement operations that have enough storage capacity to allow manure to be applied once each year.
 - k. Avoid manure on roads, and as much as possible, avoid leaving mud, etc. on roads. If neighbors live on gravel roads, offer to pay for application of products to keep dust down.
 - l. If more land is needed for manure application, consider offering the manure to neighboring farmers.
 - m. Although many producers are not interested in owning residential property, consider purchasing acreages that are for sale near your operation. The residence can either be rented out or resold with a deed restriction establishing a nuisance easement or covenant.
 - n. Require all manure applicators, input suppliers, livestock haulers, etc. to follow good neighbor practices. Most are more than willing to pay careful attention to their activities if they know of your neighbor's individual concerns. Inform employees about good neighbor practices and make sure they follow them.

**This educational booklet is published by
Jefferson County Farmers & Neighbors, Inc. (JFAN),
a 501(c)(3) nonprofit, tax-exempt educational foundation.**

P.O. Box 811
Fairfield, IA 52556
641-209-6600
www.jfaniowa.org
jfan@lisco.com

Legal Counsel

Brick, Gentry, Bowers, Swartz, Stoltze, and Levis, P.C.
Des Moines, IA

**Jefferson County Farmers & Neighbors, Inc. also publishes a
semi-annual winter and summer newsletter.**

JFAN

JEFFERSON COUNTY FARMERS & NEIGHBORS, INC.

For more information on JFAN, visit:
www.jfaniowa.org