

SECONDARY LIABILITY

Could You Be Implicated in a CAFO Lawsuit?



**A Look at Who is Legally Responsible
When CAFOs Cause Harm**

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

Cover photo: USDA

Introduction

Confined animal feeding operations (CAFOs) have become a way of life in rural Iowa. Industrial farms, housing up to thousands of hogs, are widely criticized for the damage they do to the environment, health, economy, and quality of life of communities.

Numerous research studies conducted by leading universities over the last 15 years unequivocally demonstrate the harm CAFOs wreak. Neighbors of CAFOs, overwhelmed by the odor and other negative impacts on their lives, are becoming increasingly vocal. As a result, greater numbers of Iowans are fighting the proliferation of CAFOs in their neighborhoods.

Most factory farm owners and operators know they could be subject to lawsuits from residents who want to curtail the impacts of these operations on their lives. Such litigation can be very costly to CAFO owners and operators with court awards or settlements costing hundreds of thousands of dollars.

It is not commonly known that others working with CAFOs in secondary roles may also be subject to similar legal proceedings and potential liability. This booklet focuses on secondary liability, providing information on who is also legally responsible for damages caused by factory farms.

Jefferson County Farmers and Neighbors

Jefferson County Farmers and Neighbors (JFAN), a nonprofit educational organization comprised of rural and town residents and traditional family farmers created this booklet. 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 a comprehensive Good Neighbors Guideline, educating the community, providing legal support, and establishing itself as a presence in Jefferson County, JFAN has helped to relocate or deter several factory farms.

The Brick Gentry Law Firm of Des Moines, Iowa, a general practice law firm with experience in environmental law, wrote the legal section of this book through a grant from JFAN.

Who Is Liable for Harm Caused by CAFOs?

JFAN's booklet, *How to Protect Your Family and Home from Factory Farms**, examines the legal responsibilities of CAFO owners and operators. It also provides information on legal rights of neighbors who live near a factory farm.

However, there are others who work with CAFOs indirectly, and they also have a legal responsibility to ensure that damage is not caused to neighboring properties. These individuals are:

1. Landowners and operators that allow manure from a CAFO to be spread on their land
2. Transporters who deliver CAFO manure for spreading
3. Applicators of the CAFO manure.

Any individuals in the above three categories are potentially liable under Iowa law if they violate Iowa Department of Natural Resources regulations in any of the following manners:

Spreading Manure Beyond Regulated Distances

In 1987, Iowa courts addressed the use of CAFO-produced manure. At that time, the Courts held that spreading manure within several hundred feet of a neighbor's home could be unreasonable and constitute a nuisance. See *Valasek v. Baer*, 401 N.W.2d 33 (Iowa 1987).

A neighbor harmed by applied manure, could sue the CAFO operator, the land-owner of where the manure was applied, and the individual who applied the manure to the land.



Photo: USDA

This neighbor also could be entitled to a court injunction prohibiting this type of manure use and the Court could award the neighbor monetary damages caused by the manure application.

* This booklet is available online at <http://jfanowa.org/JFAN-Booklet.pdf>

Moreover, the neighbor could also hold the manure transporter liable for damages for his part in transporting the manure to the application site. In 1990, the Court ruled that a transporter could be liable for damages caused by an accidental manure spill. See *Weber v. IMT Insurance Company*, 462 N.W.2d 283 (Iowa 1990). 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 CAFO.

Improper Application of Manure

Iowa law requires that all CAFO-produced manure be disposed of in ways that do not pollute the land or groundwater. In an effort to avoid this kind of contamination, Iowa law establishes certain minimum distances for applying manure and for regulating where CAFOs of specific sizes may be sited. See the table on page 7 for specific information on these distances.



Liquid manure may not be applied to farmland within 750 feet of a business, church, school, or residence not owned by the landowner accepting the manure. However, manure may be applied to land within this “protected proximity” if the manure is injected directly into the ground or incorporated into the soil within 24 hours.

CAFO manure may also be applied up to 250 feet of a protected neighbor if the application is by low-pressure spray irrigation meeting certain requirements.

Manure should not be applied to frozen or snow-covered cropland, except where other adequate erosion control practices exist, such as terraces, conservation tillage, cover crops or contour farming. It is illegal to apply manure to land within 200 feet of a body of water unless the manure is injected directly into the soil and adequate erosion control measures, such as a proper buffer strip, are in place.

An individual could be subject to civil liability if violating separation distances when applying manure to the land.

The Iowa Supreme Court also has ruled that spreading manure slurry from a hog confinement operation on farmland approximately one-quarter mile south of an adjoining owner's home can create a nuisance warranting injunctive relief. See *Michael v. Michael*, 461 N.W.2d 334 (Iowa 1990).

In an earlier case the Iowa Court stated “we believe that it is reasonable to require the defendants to incorporate the slurry into the soil on the same date the material is spread. We believe that it is unreasonable to allow a nuisance, such as the spreading of slurry and the resulting odor, to continue for two days when the problem can be cured promptly.” Valasek v. Baer, 401 N.W.2d 33 (Iowa 1987).

These two Iowa court cases establish that Iowa courts understand that odor problems are associated with manure application and that they require manure to be applied in an appropriate and competent manner. Failing to do so can result in legal liability for all responsible parties.

Disclaimer

This pamphlet is intended to provide helpful information about the law. 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.

Iowa Department of Natural Resources Regulations

Separation Distances for Land Application of Manure from Open Feedlots & Confinement Feeding Operations, including SAFOs

Iowa law requires that all manure from an animal feeding operation must be land applied in a manner that will not cause surface or groundwater pollution. Chapter 65 of the Iowa Administrative Code (IAC) contains rules that govern land application of manure, including the separation distances summarized in Tables 1, 2 and 3 below. The separation distances are required by law and must be maintained between the protected area and the area where manure is applied. Distances apply to the type of manure and the method of application that is used.

In 2002, changes in Iowa Law added water sources (see definition on page 11) and protected wetlands as designated areas. Other changes required incorporation to occur on the same date as application (see Table 2).

CAUTION: *This document is only a summary of administrative rules contained in 567 IAC chapter 65; it is a guidance document and should not be used as replacement for the administrative rules. While every effort has been made to assure the accuracy of this information, the administrative rules will prevail in the event of a conflict between this document and the administrative rules.*

TABLE 1: Required separation distances (in feet) to buildings or public use areas by type of manure and method of manure application.

Building or Public Use Areas	Dry Manure	
	Surface Application	
	Incorporated within 24 hours	Incorporated after 24 hours or not incorporated
<ul style="list-style-type: none"> • Residence • Business • Church • School • Public use area 	0	0

Building or Public Use Areas	Liquid Manure (except irrigated)		
	Direct Injection	Surface Application	
		Incorporated within 24 hours	Incorporated after 24 hours or not incorporated
<ul style="list-style-type: none"> • Residence • Business • Church • School • Public use area 	0	0	750 ft. ¹

1. a) This separation distance applies only to liquid manure from confinement feeding operations. It does not apply to manure from open feed lots or dry manure. The required 750-foot separation distance also does not apply if any of the following exist:
 - 1) manure is injected or incorporated within 24 hours,
 - 2) a written waiver is issued by owner of the building or public use area benefiting from the required separation distance,
 - 3) manure comes from a small animal feeding operation (SAFO), or
 - 4) manure is applied by low pressure spray irrigation equipment (a 250-foot separation distance applies—see Table 3).
- b) Measure the separation distance from the applied manure to the closest point of buildings; and to the facilities where people congregate (for public use areas).

Table 2: Required separation distances (in feet) to designated areas by type of manure and method of manure application.

Designated Areas	Dry Manure	
	Surface Application	
	Incorporated on same date	Not incorporated
<ul style="list-style-type: none"> • Sinkhole • Water source • Cistern • Abandoned well • Designated wetland • Drinking water well 	0	200 ft. ² (50 ft. with buffer ³)
<ul style="list-style-type: none"> • High quality water resource 	0	800 ft. ^{2,4} (50 ft. with buffer ³)
<ul style="list-style-type: none"> • Unplugged ag drainage well • Ag drainage well surface inlet 	0	200 ft. ⁵

Designated Areas	Liquid Manure (except irrigated)		
	Direct Injection	Surface Application	
		Incorporated on same date	Not incorporated
<ul style="list-style-type: none"> • Sinkhole • Water source • Cistern • Abandoned well • Designated wetland • Drinking water well 	0	0	200 ft. ² (50 ft. with buffer ³)
<ul style="list-style-type: none"> • High quality water resource 	0	0	800 ft. ^{2,4} (50 ft. with buffer ³)
<ul style="list-style-type: none"> • Unplugged ag drainage well • Ag drainage well surface inlet 	0	0	200 ft. ⁵

2. The separation distance applies to both open feedlots and confinement feeding operations, regardless of size. The 200-foot or 800-foot separation distance does not apply if either of the following exist:

- a) if manure is injected or incorporated on the same date as the manure was land applied, it can be applied up to the edge of the designated area, or

b) if a 50-foot buffer is established around a designated area, manure can be applied up to the edge of the buffer (except a 200-foot separation distance must be maintained around an unplugged ag drainage well or an unplugged ag drainage well surface inlet).

3. Do not apply manure in the vegetative buffer.
4. Check with the DNR to see if you are adjacent to a high quality water resource, because an 800-foot separation distance will apply.
5. Manure shall not be applied within 200 feet of an unplugged ag drainage well or unplugged ag drainage well surface inlet, unless injected or incorporated on the same date.

Table 3: Required separation distances (in feet) for land application of *irrigated liquid manure*.

Protected Areas	Irrigated Liquid Manure	
	Low Pressure (≤ 25 psi)	High Pressure (>25psi)
Property Boundary Line	100 ft. ¹	100 ft. ¹
Buildings or Public Use Areas <ul style="list-style-type: none"> • Residence • School • Business • Public use area • Church 	250 ft. ²	750 ft. ³
Designated Areas <ul style="list-style-type: none"> • Sinkhole • Abandoned well • Designated wetlands • Cistern • Drinking water well • Water source 	200 ft. (50 ft. with buffer ⁴)	200 ft. (50 ft. with buffer ⁴)
----- <ul style="list-style-type: none"> • High quality water resource 	800 ft. ⁵	800 ft. ⁵
----- <ul style="list-style-type: none"> • Unplugged ag drainage well • Ag drainage well surface inlet • Agricultural drainage well area (watershed) 	No irrigation allowed ⁶	No irrigation allowed ⁶

1. a) Maintain at least 100 feet between the wetted perimeter (per manufacturer's specifications) and the property boundary line where irrigation is being used, and the actual wetted perimeter shall not exceed the property boundary line.
b) *If property includes* a road right-of-way (ROW), a railroad ROW or an access easement, use the boundary of the ROW or easement as the property boundary line.
2. a) This separation distance applies to liquid manure applied by low pressure spray irrigation equipment as defined below.
b) Measure the separation distance from the actual wetted perimeter of the manure to the closest point of buildings; and to the facilities where people congregate (for public use areas).
3. a) This separation distance applies to liquid manure from a confinement feeding operation. It does not apply to manure from open feed lots or dry manure. The required 750-foot separation distance does not apply if any of the following exist:
 - 1) manure is incorporated within 24 hours,
 - 2) a written waiver is issued by the owner of the building or public use area benefiting from the required separation distance,
 - 3) manure comes from a small animal feeding operation (SAFO), or
 - 4) manure is applied by low pressure spray irrigation (a 250-foot separation distance applies).b) Measure the separation distance from the actual wetted perimeter of the manure to the closest point of buildings; and to the facilities where people congregate (for public use areas).
4. Do not apply manure in the vegetative buffer.
5. Check with the DNR if you are adjacent to a high quality water resource, because an 800-foot separation distance will apply.
6. No manure can be applied by spray irrigation equipment within an ag drainage well area. An ag drainage well area includes all land where surface or subsurface water drain to the well directly or through a drainage system connected to the well.

Recommended separation distance for land application of manure
Recommended, but not required: avoid application within 200 feet of (and draining into) a surface intake for a tile line.

Definitions

Buffer: consists of an area of permanent vegetation cover, including filter strips and riparian forest buffers, which exists for 50 feet surrounding the designated area other than an unplugged ag drainage well or surface intake to an unplugged ag drainage well. Do not apply manure in the vegetative buffer.

Designated area: includes a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, designated wetland, or water source. Designated areas do not include terrace tile inlets.

Designated wetland: means land owned by the U.S. Government or DNR and designated as a protected wetland by the Department of Interior or the DNR. It does not include land where an ag drainage well has been plugged causing a temporary wetland or land within a drainage or levee district.

High quality water resource: means a high quality water or high quality resource water according Chapter 61 of the Iowa Administrative Code or a protected water area system as defined in Iowa Protected Water Areas General Plan (See list of high quality water resources by county.)

Low pressure spray irrigation equipment: discharges at a maximum pressure of 25 pounds per square inch (psi) and downward from a maximum height of nine feet.

Public use area: government-owned land (local, state or federal) with facilities that attract people for significant amounts of time (i.e. picnic grounds, campgrounds, shelters, lakes, etc.). Public use areas do not include highways, road right-of-ways, parking areas, recreational trails or similar areas that people pass through but do not congregate in. Note: cemeteries are included in public use areas, but may be privately owned or managed.

Small animal feeding operation (SAFO): an animal feeding operation that has an animal unit capacity of 500 or fewer animal units.

Water source: a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

Jefferson County Farmers & 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 preservation 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, barbeques, 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 re-sold 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.

JFAN

JEFFERSON COUNTY FARMERS & NEIGHBORS, INC.

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

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