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FEATURE ARTICLE

FACTORY FARMS MUCK UP RURAL AMERICA

By SUSAN POLL-KLAESSY

"Only when the last tree has died; and the last river been poisoned; and the last fish been caught will we realize that we cannot eat money."

– 19th Century Cree Indian saying.¹

The modern meat industry has turned the image of the idyllic American family farm of yesteryear into large scale confined animal feeding operations (CAFOs). CAFOs are large "agriculture enterprises where animals are kept and raised in confinement."² "Medium CAFOs" can raise up to 9,999

sheep or swine, and some “large CAFOs” can raise millions of animals on one site.³

But unlike other factories and businesses, “agriculture is one of the least regulated industries we have,” according to Deborah Williams, assistant counsel for the Illinois Environmental Protection Agency.⁴

Chris Chinn, former chair of the American Farm Bureau’s Young Farmer and Rancher Committee, blames consumers for the notion that “agriculture is no longer seen through nostalgic, rose-colored glasses.”⁵ Complaining that “society misunderstands our farming practices,” Chinn accuses consumers of knowing very little about the industry.⁶

But American consumers have a long history of demanding to know where their food comes from and refusing to tolerate harmful industry practices. More than 100 years ago, Upton Sinclair’s *The Jungle* exposed readers to the horrifying working conditions and shockingly unsanitary practices prevalent in the meat-packing industry.⁷ As a result, U.S. meat sales dropped by half and the ensuing public outcry for government action led to sweeping reforms.⁸ Today, consumers are still fighting the meat industry for answers; a video of workers torturing sick cows prior to slaughter recently spurred the largest beef recall in the nation’s history.⁹

As health and safety hazards continue to plague the meat-packing industry, consumers are increasingly raising questions about what happens before the animals are brought to slaughter. In 2001, Eric Schlosser’s *Fast Food Nation* examined the fast food industry from beginning to end, turning a renewed spotlight on factory farms and exposing readers to agribusiness concepts like animal confinement and manure lagoons.¹⁰

On factory farms, animals are reduced to “animal units” trapped in extremely tight quarters, often in their own feces, and some never see the light of day.¹¹ Because these conditions can lead to disease, large quantities of hormones and antibiotics are frequently injected into the animals.¹² Additionally, air pollution from CAFOs has been linked to respiratory and gastrointestinal disease in people living near these facilities.¹³ There also are concerns about pollution of the nation’s waterways.¹⁴

Along with the billions of dollars CAFOs generate, they also generate millions of tons of manure.¹⁵ According to the U.S. Environmental Protection Agency (EPA), this manure contains several potentially harmful pollutants.¹⁶ (See Figure 1.)

What's in the Manure? (Figure 1)	
1.	Nutrients such as nitrogen and phosphorous
2.	Organic matter
3.	Solids, including the manure itself and other elements mixed with it such as spilled feed, bedding and litter materials, hair, feathers and animal corpses
4.	Pathogens (disease-causing organisms such as bacteria and viruses)
5.	Salts
6.	Trace elements such as arsenic
7.	Odorous/volatile compounds such as carbon dioxide, methane, hydrogen sulfide, and ammonia
8.	Antibiotics
9.	Pesticides and hormones

Source: *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 493 (2nd Cir. 2005), citing National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2960, 2976-79 (proposed Jan. 12, 2001).

What happens to all that manure?

“We don’t make farms treat waste through municipal systems,” explains Senior Assistant Attorney General Jane McBride of the Illinois Attorney General’s Office.¹⁷ Instead, CAFOs store the manure in massive “lagoons” and then spread it onto their fields as fertilizer in a process called “land application”.¹⁸

Properly managed and applied, manure can be a natural and useful fertilizer.¹⁹ “[W]hen improperly managed [this manure] can pose substantial risks to the environment and public health,” according to federal environmental regulations.²⁰ Improper or excessive land application is the most common way these pollutants run off into nearby waterways or leach into the soil and ground water.²¹ Sixty percent of the nation’s water pollution comes from farms, according to McBride.²²

HOW THE CLEAN WATER ACT REGULATES FACTORY FARMS

The United States first regulated water pollution with the Federal Water Pollution Control Act of 1948, which was substantially amended in 1972 and 1977 in response to growing public concern for controlling water pollution.²³ Now commonly known as the Clean Water Act (CWA), this legislation governs water pollution in the United States and is administered by the EPA.²⁴

The CWA prohibits the discharge of a pollutant by any person from any point source to navigable waters unless authorized by permit from the National Pollutant Discharge Elimination System (NPDES).²⁵ The CWA defines "point source" as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged," and specifically includes CAFOs as a point source.²⁶ Under the CWA, all large CAFOs were required to obtain NPDES permits because of their potential to discharge pollutants into the waterways.

But not all point sources produce an actual discharge, according to Don Parrish, senior director of regulatory relations for the American Farm Bureau Federation.²⁷ Parrish compares the permitting process to getting a driver's license.²⁸ You only have to obtain a license if you plan to drive, according to Parrish.²⁹

Similarly, an NPDES permit should only be necessary if you discharge pollutants. "The Herculean assumption the EPA made was that [all CAFOs] discharge," Parrish contends.³⁰ After all, it is not "a permit to operate [a CAFO]; it is a permit to discharge [pollutants]," stated Parrish.³¹

However, just as there are consequences for driving a car without a license, CAFOs cannot legally discharge pollutants without a permit. Even a first-time offender may be subject to fines of \$2,500 to \$25,000 for each day a CAFO operates without a permit and up to a year in jail.³²

Parrish argues that this result was too harsh on CAFOs in the event of accidental discharge.³³ However, McBride explains why these steep penalties were necessary, saying that operators are in business at their own risk.³⁴ After all, "we're talking about raw sewage – manure – and quite a lot of it."³⁵

In addition, the NPDES permits must include a Nutrient Management Plan (NMP) detailing the CAFO's plan for handling the manure that is generated on-site to minimize harmful run-off into waterways.³⁶ The NMP is then subject to a mandatory public notice and a public comment period.³⁷ While the goal of these regulations was to reduce pollution, parties on both sides of the issue agree that they were far from perfect in achieving that goal.³⁸

THE COURTS WEIGH IN ON FACTORY FARMS

In 2005, the Second Circuit of the U.S. Court of Appeals put the EPA regulations into limbo with the decision in *Waterkeeper Alliance, Inc. v. EPA*.³⁹ In this landmark case, environmental groups and farm lobbyists challenged the EPA regulations regarding CAFOs.⁴⁰ The Second Circuit overturned existing regulations and sent the EPA back to the drawing board to come up with new regulations consistent with its ruling.

On March 7, 2008, the EPA released new proposed CAFO regulations to address the court's findings in *Waterkeeper*.⁴¹ The principal changes included: "1) a voluntary option for CAFOs to certify that they do not discharge or propose to discharge; and 2) a framework for identifying terms of the NMP relating to rates of land application."⁴²

The first change would allow CAFOs to apply for a certification, stating that they do not currently discharge nor do they propose to discharge, and are therefore not required to apply for an NPDES permit.⁴³ This provision would protect properly certified CAFOs from liability in the event of an unforeseen accidental discharge.⁴⁴ Under the new provision, the CAFO would not be liable for the daily fines and penalties associated with a violation of the duty to apply for a permit, but its certification would no longer be valid.⁴⁵

The second change would provide alternative approaches for specifying terms of the NMP regarding rates of manure application.⁴⁶ The NMP must include "protocols to land apply manure, litter or process wastewater . . . that ensure appropriate agricultural utilization of the nutrients."⁴⁷ The proposed framework would also impose supplemental annual reporting requirements for permitted CAFOs.⁴⁸

According to Ben Grumbles, EPA Assistant Administrator for Water, the proposed changes “will increase stewardship and deliver better environmental results for communities and watersheds.”⁴⁹ Grumbles added that the “high priority regulation will include flexibility with accountability so livestock operators can choose the most effective way to prevent water pollution and improve manure management.”⁵⁰

WHAT IS AT RISK AND WHO IS AFFECTED?

McBride emphasizes the broad impact of water pollution from factory farms, saying “anyone who wants to use the waterways is affected.”⁵¹

But rural communities have even more at stake. Williams points to rural families’ dependency on the water that comes from their own unregulated wells, whereas city-dwellers get their water from highly regulated municipal treatment centers.⁵²

“Some 47 percent of the U.S. population depends on ground water . . . for its drinking water supply,” according to Kevin McCray, executive director of the National Ground Water Association.⁵³ “In rural areas, the number is about 96 percent.”⁵⁴

McBride also pointed to how communities are “ripped apart” by the controversial nature of these CAFOs in their neighborhoods.⁵⁵

One such battle is waging in Jo Daviess County, Illinois, where a proposed mega-dairy facility would occupy land near a scenic stream feeding into a fishing river in a park.⁵⁶ On one hand, the new facility may bring jobs to the area; however, many local activists wonder whether the massive water use, rapid spill risks and loss of the aesthetic and recreational landscape are worth the trade-off.⁵⁷

“Some people just don’t like changes in their community,” Parish said, while noting that citizens can address their concerns by exercising their right to sue.⁵⁸ However, lawsuits initiated by citizens are relatively uncommon, according to Williams, perhaps because of the resources needed for taking on large CAFOs.⁵⁹

Parrish dismisses CAFO opposition, saying that “people can vote with their dollars” by shopping at places like Whole Foods, which offer organic, free-range and locally grown produce.⁶⁰

WHAT DOES THE FUTURE HOLD FOR FACTORY FARMS?

The Farm Bureau now suggests CAFOs use independent auditors as protection from liability, but this practice is still relatively new and is not yet widely accepted.⁶¹ Parrish threatens that too much regulation and oversight of CAFOs will push operations off-shore.⁶²

Williams acknowledges that profitability is an issue, but reiterates that “agriculture is one of the least regulated industries.”⁶³

The CAFO problem also has garnered attention during the presidential primary season. Senators Hillary Clinton and Barack Obama proposed stricter regulation of CAFOs and more local authority on where new CAFOs can be located.⁶⁴

Senator John Edwards was even more aggressive, supporting a moratorium on all new CAFOs and their environmental destruction.⁶⁵

Moratorium initiatives are also supported by environmental groups like the Sierra Club⁶⁶ and local family farmers who can no longer compete with big agribusiness.⁶⁷

Despite the increased awareness and political attention, however, some activists use a more alarmist tone.

“If society wants a means of producing food, then a few, large farms is one way to do it,” said Cheryl Tevis of Successful Farming Magazine. “But if society wants a clean, thriving rural place to live and work and raise children, then you have to rethink this formula.”⁶⁸

NOTES

1 Iowa Citizens for Community Improvement, *available at* <http://www.iowacci.org/Issues/farming/factory%20farm%20campaign/ffcampaign.htm> (last visited Mar. 13, 2008).

2 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding operations, 68 Fed.Reg. 7176, 7179 (Feb 12, 2003) (codified at 40 C.F.R. Parts 9, 122, 123 and 412).

3 40 C.F.R. §122.23(b)(6); 40 C.F.R. §122.23(b)(3).

4 Telephone interview with Deborah Williams, Assistant Counsel for the Illinois Environmental Protection Agency (Mar. 3, 2008).

5 Chris Chinn, *My Little Corner of the World*, American Farm Bureau (Feb. 18, 2008), available at <http://www.fb.org/index.php?fuseaction=newsroom.focusfocus&year=2008&file=fo0218.html>.

6 *Id.*

7 Bryan Hayes, *Sinclair's 'The Jungle' Turns 100*, PBS News Hour (May 10, 2006), available at http://www.pbs.org/newshour/extra/features/jan-june06/jungle_5-10.html.

8 *Id.*

9 Miriam Falco, *USDA: Reinspection Of Downed Cattle Was Key Issue In Beef Recall*, CNN (Feb. 20, 2008), available at <http://www.cnn.com/2008/HEALTH/02/20/downer.cattle/index.html>.

10 See generally Eric Schlosser, *Fast Food Nation* (Houghton Mifflin, 2001).

11 The Sierra Club, available at <http://www.sierraclub.org/factoryfarms/>.

12 *Id.*

13 The Sierra Club, *Supra* note 7.

14 *Id.*

15 *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 493 (2nd Cir. 2005).

16 *Id.* at 494 (citing National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2960, 2976-79 (proposed Jan. 12, 2001)).

17 Telephone interview with Jane McBride, Senior Assistant Attorney General for the Illinois Attorney General's Office (Mar. 3, 2008).

18 *Waterkeeper*, 399 F.3d at 494.

19 *Id.*

20 *Id.*

21 *Id.*

22 McBride Interview, *Supra* note 16.

23 "The 1977 amendments: Established the basic structure for regulating pollutants discharges into the waters of the United States; Gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry; Maintained existing requirements to set water quality standards for all contaminants in surface waters; Made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions; Funded the construction of sewage treatment plants under the construction grants program; Recognized the need for planning to address the critical problems posed by nonpoint source pollution." History of the Clean Water Act, available at <http://www.epa.gov/lawsregs/laws/cwahistory.html>.

24 *Waterkeeper*, 399 F.3d at 490-91.

25 See 33 U.S.C. §§ 1311(a), 1342.

26 33 U.S.C. § 1362(14).

27 Telephone interview with Don Parrish, Senior Director of Regulatory Relations for the American Farm Bureau Fed'n (Mar. 3, 2008).

28 *Id.*

29 *Id.*

30 *Id.*

- 31 *Id.*
- 32 Clean Water Act §309.
- 33 Parrish Interview, *Supra* note 25.
- 34 McBride Interview, *Supra* note 16.
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*
- 38 Parrish Interview, *Supra* note 25; McBride Interview, *Supra* note 16; Williams Interview, *Supra* note 4.
- 39 See *Waterkeeper*, 399 F.3d 486.
- 40 See *Id.*
- 41 EPA Concentrated Animal Feeding Operations Supplemental Notice of Proposed Rulemaking, (Mar. 2008), available at http://www.epa.gov/npdcs/regulations/cafo_supp_fact_sheet.pdf.
- 42 *Id.*
- 43 *Id.*
- 44 *Id.*
- 45 *Id.*
- 46 *Id.*
- 47 *Id.*, 40 CFR 122.42(e)(1)(viii).
- 48 *Id.*
- 49 *EPA Proposes to Supplement Feedlot Rule, Allow CAFOs to Certify They Do Not Discharge*, 39 Env't Rep. (BNA) No. 10, at 447 (Mar. 7, 2008).
- 50 *Id.*
- 51 McBride Interview, *Supra* note 16.
- 52 Williams Interview, *Supra* note 4.
- 53 Kevin McCray, Editorial, *Ground Water: Out of Sight, But Not Out of Mind*, National Ground Water Ass'n, (Mar. 2008) available at <http://www.ngwa.org/public/awarenessweek/awareeditorial.aspx>.
- 54 *Id.*
- 55 McBride Interview, *Supra* note 16.
- 56 Dale Bowman, *A Smelly Situation Hits Jo Daviess*, Chi. Sun-Times, Feb. 24, 2008.
- 57 *Id.*
- 58 Parrish Interview, *Supra* note 25.
- 59 Williams Interview, *Supra* note 4.
- 60 Parrish Interview, *Supra* note 25.
- 61 *Id.*
- 62 *Id.*
- 63 Williams Interview, *Supra* note 4.
- 64 Carrie Dann, *What's That Smell? How Pig-Farm Politics Are Mucking Up Iowa's Race For President*, MSNBC (Dec. 10, 2007), available at <http://www.msnbc.msn.com/id/22188559/>.
- 65 *Edwards Campaign To Unveil "Hogs For Edwards" At Iowa State Fair Parade Today* (Aug 8, 2007), available at <http://www.johnedwards.com/news/press-releases/20070808-hogs-for-edwards/>
- 66 The Sierra Club, *Supra* note 7.
- 67 Iowa Citizens for Community Improvement, *Supra* note 1.
- 68 *Id.*