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Wisconsin and the State of Dairy

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WISCONSIN AND THE STATE OF DAIRY

Wisconsin has earned the nickname America's Dairyland. While farming has maintained its popularity through the decades, the farms have changed. Small family farms were replaced by large factory farms called Concentrated Animal Feeding Operations (CAFOs). CAFOs benefit society by making meat and dairy cheaper. However, the factory farms are major polluters and nuisance producers, so the laws and regulations need to be tightened to hold CAFOs accountable.

This Comment explores how CAFOs rose to dominance due to Wisconsin's lenient Right to Farm (RTF) law and the potential solutions to the problems from CAFOs. This Comment begins by discussing the history of the RTF law and the growth of CAFOs in Wisconsin. The Wisconsin Legislature enacted the RTF, which gave farmers protection from frivolous lawsuits. This enactment likely helped the large farms, called CAFOs, to take over the countryside. Then, the Comment shifts focus to the emerging problems from CAFOs due to Wisconsin's inadequate regulations and concludes by proposing potential solutions to the various problems presented by CAFOs.

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I. INTRODUCTION

Plastered on Wisconsin's license plates are the words "America's Dairyland." For decades, farms, especially dairy farms, have been the heart of Wisconsin. Every Wisconsinite has or has heard someone who yelled, "Cow!" when driving past a field full of those spotted black-and-white animals. Dairy cows and other livestock filled small family farms for years. However, in recent years, large factory farms have replaced the local, multi-generational farms and received the same protections as those small farms under Wisconsin's RTF law.¹

RTF statutes are present in every state.² Most statutes emerged in the 1970s when the national sentiment was to protect the farmers.³ The laws preserved America's farmlands by protecting farmers from illegitimate lawsuits and providing farmers deference for their farming operations. Due to this protection, large farms called CAFOs have increased in number all over America.⁴ In Wisconsin, CAFOs have more than doubled since 2005, and as of 2021, Wisconsin is home to 332 CAFOs.⁵ In addition, some CAFOs are operating with expired permits due to the Wisconsin Department of Natural Resources (DNR) dealing with a backlog of permits.⁶ With the deference of the

1. See WIS. STAT. § 823.08 (2021–2022).

2. ALEXANDRA LIZANO & RUSTY RUMLEY, STATE RIGHT-TO-FARM PROVISIONS 1 (2019), <https://nationalaglawcenter.org/wp-content/uploads/2019/02/RTF-Provision-overview.pdf> [<https://perma.cc/PG6Z-69CQ>].

3. KONRAD PACZUSKI & RYAN LECLOUX, WIS. LEGIS. REFERENCE BUREAU, WIS. POL'Y PROJECT, THE RIGHT-TO-FARM LAW IN WISCONSIN 1 (2019), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_policy_project/wisconsin_policy_project_2_5.pdf [<https://perma.cc/66FZ-MVYT>].

4. FOOD & WATER WATCH, FACTORY FARM NATION 1 (2020), https://www.foodandwaterwatch.org/wp-content/uploads/2021/03/ib_2004_updfacfarmmaps-web2.pdf [<https://perma.cc/GV5M-K8NU>] (explaining that from the latest Agricultural Census in 2017, the increase in factory farms made it difficult for the small farms to survive; thus, the increase in factory farms led to the decrease in small, family run farms).

5. Wis. Legis. Fiscal Bureau, Concentrated Animal Feeding Operation Fees and Regulatory Positions, Paper No. 529 to J. Comm. On Fin., at 2–3 (May 2019), https://docs.legis.wisconsin.gov/misc/lfb/budget/2019_21_biennial_budget/102_budget_papers/529_natural_resources_concentrated_animal_feeding_operation_fees_and_regulatory_positions.pdf [<https://perma.cc/86V4-4VPE>].

6. Danielle Kaeding, *One-Third of Wisconsin CAFOs Operating Under Expired Permits*, WIS. PUB. RADIO (May 15, 2017, 1:15 PM), <https://www.wpr.org/one-third-wisconsin-cafos-operating-under-expired-permits> [<https://perma.cc/7Q2H-DFCN>].

law and lack of regulations, CAFOs seized the opportunity to take over the countryside.⁷

While the public views CAFOs in a negative light, the operations have economic benefits.⁸ The farms produce cheaper milk and meat options because CAFOs are more efficient to run than small farms.⁹ This increased efficiency stems from animal breeding improvements, mechanical innovation, formulated feed, and other technological agricultural advancements.¹⁰ In addition, CAFOs promote rural economic development through increased employment opportunities.¹¹ These advantages warrant the CAFOs receiving some protection under the law.

Even with the benefits, CAFOs are far from the cream of the crop. CAFOs are major polluters and nuisance producers.¹² The excess of manure is the leading cause of most environmental and health problems associated with CAFOs. Dairy and beef CAFOs, for example, produce an excess of manure, which seeps into the water and air.¹³ Nitrate, phosphorus, pathogens, and other harmful chemicals contaminate water sources.¹⁴ Air pollution develops through CAFOs' gaseous emissions or particulate substances.¹⁵ The water and air contaminants put the surrounding communities at a higher risk of developing health issues.¹⁶ While regulations exist to decrease water pollution, a lack of enforcement, along with commonly used exceptions to those regulations, allow CAFOs to continue their harmful practices without severe consequences. Thus, Wisconsin must form new regulations or strictly enforce its current regulations to control the pollution from CAFOs.

This Comment focuses on how CAFOs rose to dominance due to Wisconsin's lenient RTF law and the potential solutions to the problems from

7. FOOD & WATER WATCH, *supra* note 4, at 1 (“The five years since the last Agricultural Census (2012) have brought massive changes, including: 190 million more animals living on factory farms (a 14 percent increase).”).

8. ELENI BICKELL, MOST POL’Y INITIATIVE, CONCENTRATED ANIMAL FEEDING OPERATIONS 1 (2021), https://mostpolicyinitiative.org/wp-content/uploads/2021/01/ScienceNote_CAFOS.pdf [<https://perma.cc/4K3Q-5LYG>].

9. *Id.*

10. *Id.* at 3.

11. *Id.* at 2.

12. CARRIE HRIBAR, NAT’L ASS’N LOC. BDS. HEALTH, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 2 (Mark Schultz ed., 2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf [<https://perma.cc/BDJ5-9JXD>].

13. *Id.* at 4–5.

14. *Id.* at 2–4.

15. *Id.* at 5.

16. *Id.* at 4–5.

CAFOs. Part II discusses the history of the RTF law and the growth of CAFOs in Wisconsin. Part III focuses on the emerging problems from CAFOs due to Wisconsin's inadequate regulations. Finally, Part IV proposes potential solutions to the various problems presented by CAFOs.

II. BACKGROUND

A. The History of Wisconsin's Right to Farm Law

In 1982, Wisconsin's RTF law was enacted in response to a national sentiment aimed to protect farmers.¹⁷ The enactment was partially spurred by the Wisconsin Supreme Court deciding *State v. Quality Egg Farm, Inc.*, which involved a large poultry farm emitting a strong odor.¹⁸ The farm's neighbors brought a successful public nuisance lawsuit, so the poultry farm had to shut down.¹⁹ Farmers were concerned about the implications of *Quality Egg Farm*, as it set precedent making them susceptible to lawsuits for conducting their regular farming operations.²⁰ A few months after the decision, the legislature passed the original RTF law to insulate farmers from nuisance liability and prevent these farms from going out of business over a lawsuit.²¹ Originally, the law limited the remedies available to successful plaintiffs, which remains an aspect of today's version of the law.²² The farm could only be closed if the practice threatened public health and safety.²³

In 1995, the Wisconsin State Legislature strengthened the law's protections for farmers, which gave CAFOs the protection needed to rise to dominance.²⁴ Among several protections, the amended law restricted the types of nuisance claims a plaintiff could bring in two ways.²⁵ First, the plaintiff cannot come to the nuisance. Coming to the nuisance happens when a person moves near a farm, thereby voluntarily exposing themselves to the noises, smells, and other

17. Paczuski & LeCloux, *supra* note 3, at 3.

18. *State v. Quality Egg Farm, Inc.*, 104 Wis. 2d 506, 508–09, 311 N.W.2d 650 (1981).

19. *Id.* at 514; Paczuski & LeCloux, *supra* note 3, at 3.

20. Andrew C. Hanson, *Brewing Land Use Conflicts: Wisconsin's Right to Farm Law*, WIS. LAW., Dec. 2002, at 1, 12–13.

21. *Id.*; WIS. STAT. § 823.08(2) (1983–84).

22. WIS. STAT. § 823.08(2)(a) (1983–84); Paczuski & LeCloux, *supra* note 3, at 4.

23. Paczuski & LeCloux, *supra* note 3, at 4 (“The law explicitly stated that ‘closure shall not be available as a remedy unless the agricultural use or practice is a threat to public health and safety.’”).

24. Hanson, *supra* note 20, at 12–13.

25. *Id.* at 12.

annoyances accompanying a farm.²⁶ Second, a claim is barred if the operations do not threaten public health and safety.²⁷

Additionally, the amended law allowed farms to adjust in size or practice without being subject to nuisance liability.²⁸ For example, under the RTF law, a farm could change its operation from a small potato farm to a massive beef farm and maintain its protection since the land's original use was agricultural.

The 1995 amendments, moreover, limited the remedies available to plaintiffs—diminishing incentive for potential plaintiffs to pursue claims.²⁹ The law now provides four remedial restrictions.³⁰ First, the relief cannot substantially restrict the farm's agricultural use or practice.³¹ Second, to mitigate a nuisance, the court must consult the DNR or the Department of Agriculture, Trade, and Consumer Protection (DATCP) for remedial suggestions.³² Third, the farmer receives at least one year to implement the measures.³³ Fourth, the court cannot substantially or adversely affect the economic viability of the farm's agricultural use.³⁴ Even assuming a plaintiff's success, the law protected the farm from being shutdown completely. This new protection may have prevented legitimate nuisance claims from being heard because plaintiffs did not want to face a courtroom with the odds stacked against them.³⁵ With the public reluctant to act against the farmers, the farms could grow in size and take advantage of the new protections and the lack of legal pushback.³⁶

Wisconsin's current RTF law expands the range of permissible land usage for agricultural purposes, a change evidence in the amendments made in 1995.³⁷ While the law recognizes that agricultural practices create tension with other land usages, the law protects the technological advancements of the farming industry by supporting the growth and efficiency of agricultural production.³⁸ The legislature preserved the original enactment's intent by limiting the types

26. Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?*, 33 B.C. ENV'T. AFF. L. REV. 87, 95 (2006).

27. Hanson, *supra* note 20, at 12.

28. *Id.* at 60.

29. *Id.*

30. WIS. STAT. § 823.08(3)(b) (1995–96); Hanson, *supra* note 20, at 12.

31. WIS. STAT. § 823.08(3)(b) (2021–22); Hanson, *supra* note 20, at 13.

32. WIS. STAT. § 823.08(3)(b).

33. *Id.*

34. *Id.*

35. *See* Paczuski & LeCloux, *supra* note 3, at 5–6.

36. *Id.* at 5.

37. Paczuski & LeCloux, *supra* note 3, at 4.

38. *Id.* at 5.

of lawsuits and remedies available to plaintiffs.³⁹ Further, the legislature encourages local governments to safeguard farms through the implementation of protective measures in local zoning regulations.⁴⁰

Additionally, the law protects an array of farming practices that fall under agricultural use.⁴¹ The lawful farming practices include crop production, livestock keeping, forestry, beekeeping, fish farming, fur farming, aquaculture, and other agricultural uses.⁴² The law protects nearly all agricultural practices, old and new, if the practices are associated with the farm's agricultural production.⁴³ For example, farmers conducting controlled burns are protected because the practice is a normal custom in the agricultural industry.

After the law sets out the protected practices, the law explains the requirements for an agricultural practice to be considered a nuisance claim, which is what the plaintiff must prove to win a case.⁴⁴ The law affirms the deference given to farmers in the 1995 version by upholding that a person cannot come to the nuisance.⁴⁵ If the farmer's actions were done "without substantial interruption" before the plaintiff moved near the farm and the farmer's practices do not substantially threaten public health or safety, the plaintiff cannot bring a claim.⁴⁶ Similar to the law's older version, a change in practice is still protected, so that an old crop field converted into a large livestock farm maintains its legal protection under the RTF.

Regarding remedies, Wisconsin stands out as one of the few states that imposes restrictions on the types of remedies that may be awarded.⁴⁷ Indeed, the court must follow certain conditions for granting relief if a plaintiff succeeds in a nuisance case against a farmer.⁴⁸ Unless a substantial threat to public health and safety exists, the relief granted cannot significantly restrict or regulate the

39. *Id.* at 4.

40. WIS. STAT. § 823.08(1) (2021–22).

41. *Id.* §§ 91.01(2), 823.08(2).

42. *Id.* § 91.01(2).

43. *Id.* § 823.08(2).

44. *Id.* § 823.08(3).

45. *Id.* § 823.08(3)(a)(1).

46. *Id.* § 823.08(3)(a).

47. STEVE WEBER, PENN STATE L. AGRIC. L. RES. & REFERENCE CTR., OTHER STATES' APPROACHES TO RIGHT TO FARM LAWS 1 (2004), https://pennstatelaw.psu.edu/_file/aglaw/Right_to_Farm_Law_files/Article_Other_States_Approaches_To_Right_To_Farm_Laws.pdf [<https://perma.cc/FF8H-YHHC>]; AMANDA NICHOLS, SEA GRANT L. CTR., COMPARISON OF STATE RIGHT-TO-FARM LAWS THAT INCLUDE AQUACULTURE 6 (2018), <https://nsglc.olemiss.edu/projects/ag-food-law/files/rtf-comparison.pdf> [<https://perma.cc/5MLD-4UDK>].

48. WIS. STAT. § 823.08(3)(b).

farm's agricultural use.⁴⁹ In addition, a court order cannot substantially or adversely affect the farm's economic viability except for an activity that threatens public health and safety.⁵⁰ If the farmer must take action, the relevant public agency must suggest ways to mitigate the nuisance and give the farm a reasonable amount of time to comply.⁵¹ The law also protects farmers by awarding attorney fees and other legal costs if the farmer successfully defends the suit.⁵² The plaintiff incurs the farmer's litigation expenses to mitigate the effects of the lawsuit on the business.⁵³

Although only a limited number of cases address the RTF law, farmers generally prevail in these legal disputes.⁵⁴ In *Zink v. Khwaja*,⁵⁵ a neighboring landowner brought a private nuisance claim against a cranberry farm.⁵⁶ The court dismissed the claim because the evidence failed to establish that the operator caused flooding on the landowner's property. As a result, the farmer was awarded attorney's fees under the RTF.⁵⁷ Before the RTF's enactment, plaintiffs could bring valid claims and have a reasonable chance of winning their nuisance lawsuit. Now, plaintiffs are less likely to win a nuisance claim.⁵⁸ Hence, the RTF provides significant protections; protections that CAFOs capitalized on to ascend to dominance in rural areas (or the countryside).⁵⁹

B. Concentrated Animal Feeding Operations (CAFOs)

While the RTF has evolved in Wisconsin, its core principle remains the same: protect farmers. As the legal protection for farmers increased, the farms grew in size, and the Wisconsin livestock and dairy industries drastically changed.⁶⁰ In 1982, small farms dominated the Wisconsin countryside, but that landscape has been altered by the CAFOs. Large animal feeding operations, called CAFOs, have taken over the state's farming industry.⁶¹ A CAFO is

49. *Id.* § 823.08(3)(b)(1).

50. *Id.* § 823.08(3)(b)(3).

51. *Id.* § 823.08(3)(b)(2).

52. *Id.* § 823.08(4)(b).

53. *Id.* § 823.08(4).

54. *See, e.g., Zink v. Khwaja*, 2000 WI App 58, ¶ 1, 233 Wis. 2d 691, 608 N.W.2d 394; *State v. Zawistowski*, 2008 WI App 51, ¶¶ 1–2, 309 Wis. 2d 233, 747 N.W.2d 527; *Schuette v. Van De Hey*, 205 Wis. 2d 475, 477, 556 N.W.2d 127 (Ct. App. 1996).

55. *Zink*, 2000 WI App 58, ¶ 1.

56. *Id.* ¶ 5.

57. *Id.* ¶ 2.

58. *Paczuski & LeCloux, supra* note 3, at 12.

59. *See id.*

60. *Id.*

61. *Id.*

defined as a large-scale feeding operation comprising at least 1,000 animal units. These units can be achieved with 1,000 beef cattle, 700 milking cows, 125,000 broiler chickens, or a combination of various animals that collectively meet or surpass the 1,000-unit threshold.⁶² However, the DNR may classify a smaller farm as a CAFO if the farm discharges pollutants “to navigable waters or contaminates a well.”⁶³ Then, the small farm, regardless of animal units, is designated as a CAFO.

In Wisconsin, the CAFOs face backlash from local communities due to these operations being a major source of water contamination.⁶⁴ Kinnard Farms has become the heart of the controversy in Kewaunee County. The dairy farm emitted strong odors and contaminated water with nitrate, so the local residents petitioned the DNR for the farm to be closely regulated and capped at a certain number of animals.⁶⁵ The DNR capped Kinnard Farms at 8,000 animals, making the residents victorious.⁶⁶ However, Kinnard Farms pushed back against the DNR’s animal cap because the farm believed the restrictions were too expensive and that adding more animals to its herd could mitigate those costs.⁶⁷ The DNR and Kinnard Farms reached a settlement agreement to make Kinnard Farms comply with groundwater monitoring.⁶⁸ If Kinnard Farms makes the required changes within four years, the DNR will maintain its hands-off approach.⁶⁹ However, if the farm fails to comply with the requirements after the four years, the DNR can impose monitoring requirements.⁷⁰

62. U.S. GOV’T ACCOUNTABILITY OFF., 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 18 (2008); *CAFOS, Water Permits and NR 243*, WIS. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/CAFO/WPDESNR243.html> [<https://perma.cc/J6CE-89AW>]; EPA, RISK ASSESSMENT EVALUATION FOR CONCENTRATED ANIMAL FEEDING OPERATIONS 6 (2004) (“An animal unit is a 1000-pound animal, frequently taken as one market-weight beef animal.”).

63. *CAFOS, Water Permits and NR 243*, *supra* note 62, at 7.

64. Laura Schulte, *Massive Factory Farms Called CAFOs Are on the Rise as Small Family Operations Fade*, MILWAUKEE J. SENTINEL (May 31, 2022), <https://www.jsonline.com/story/news/local/wisconsin/2022/05/27/cafos-rise-wisconsin-what-know-factory-farms/9704281002/> [<https://perma.cc/BMZ5-EA5E>].

65. *Id.*

66. *Id.*; *Clean Wis., Inc., v. Wis. Dep’t Nat. Res.*, 2021 WI 71, ¶ 8, 398 Wis. 2d 386, 961 N.W.2d 346.

67. Schulte, *supra* note 64; Todd Richmond, *Wisconsin Environmental Regulators Settle Wastewater Lawsuit with Large Dairy Farm*, ASSOCIATED PRESS (May 16, 2023, 2:12 PM), <https://apnews.com/article/dairy-farm-kinnard-dnr-lawsuit-groundwater-dd0e3c16600912997136ffb81a6af6fd> [<https://perma.cc/8R8A-JA6P>].

68. Richmond, *supra* note 67.

69. *Id.*

70. *Id.*

CAFOs are not confined to a particular region of Wisconsin, and like Kinnard Farms, residents are trying to prevent the CAFOs from operating.⁷¹ In southwest Wisconsin, a similar problem is emerging.⁷² Small farms once monopolized the famous Driftless Area, but large-scale farming operations replaced those farms.⁷³ Crawford County, which borders Iowa, is home to the Roth Feeder Pig I (Roth I) farm, which possesses around 7,000 pigs, with another farm called Roth Feeder Pig II (Roth II) working through the permit process.⁷⁴ Roth II plans to house 8,610 swine and produce 140,000 piglets.⁷⁵ The farm wants to construct a composting area and three barns.⁷⁶ With this massive farm, the site expects to produce excess manure and wastewater, so two barns will have underground waste storage.⁷⁷

However, residents believe the CAFOs will pollute the groundwater and the Kickapoo River Watershed.⁷⁸ Local residents have been very vocal about their opinions, but despite this disdain, the DNR approved the CAFO's permit.⁷⁹ In 2020, Crawford County residents sent a letter to the DNR voicing concerns over the likely negative environmental impact and substantial risk to human life, health, and safety.⁸⁰ The permit requires Roth II to protect the water quality, avoid spills, not spread waste within one hundred feet of nearby waters, sinkholes, or private wells, and properly apply a manure and nutrient

71. John McCracken, *A Tiny Wisconsin Town Tries to Stop Pollution from Factory Farms. Then It Got Sued*, WIS. WATCH (Dec. 7, 2022), <https://wisconsinwatch.org/2022/12/a-tiny-wisconsin-town-ried-to-stop-pollution-from-factory-farms-then-it-got-sued/> [<https://perma.cc/YL83-9Y8N>]; see also Laura Schulte, *Crawford County Residents are Worried About Their Water*, MILWAUKEE J. SENTINEL, <https://www.jsonline.com/story/news/health/2021/08/04/proposed-hog-cafo-has-residents-wisconsins-driftless-area-worried/5373071001/> [<https://perma.cc/G8KK-Y2ST>] (Aug. 5, 2021, 9:39 AM).

72. Schulte, *supra* note 64.

73. *Id.*

74. *Id.*

75. Danielle Kaeding, *Amid Objections, DNR Approves Plans for Large-Scale Hog Farm in Wisconsin's Famous Driftless Area*, WIS. PUB. RADIO (May 10, 2022, 1:00 PM), <https://www.wpr.org/amid-objections-dnr-approves-plans-large-scale-hog-farm-wisconsins-driftless-area#:~:text=The%20Wisconsin%20Department%20of%20Natural,in%20the%20state's%20Driftless%20Area> [<https://perma.cc/5R7J-LQVK>]; Schulte, *supra* note 71.

76. Kaeding, *supra* note 75.

77. *Id.*

78. *Id.*

79. *Id.*

80. Letter from Adam Voskuil, Staff Attorney, Midwest Env't Advoc., to Preston Cole, Secretary, Wis. Dep't. Nat. Res. (Nov. 23, 2020), <https://midwestadvocates.org/assets/news/Roth-EIS-Request.pdf> [<https://perma.cc/23VH-P32W>] [hereinafter Voskuil Letter]; see also Hope Kirwan, *Crawford County Residents Call For DNR Review of Proposed Hog CAFO*, WIS. PUB. RADIO, <https://www.wisfarmer.com/story/news/2020/12/02/crawford-county-residents-call-dnr-review-proposed-hog-cafo/3805564001/> [<https://perma.cc/YA4J-4YDN>] (Dec. 9, 2020, 4:11 PM).

management plan.⁸¹ Despite the continued protests, Roth II had its livestock facility siting permit approved on August 9, 2022.⁸²

But hope for improved regulations may not be fruitless. In December 2022, a committee from the DATCP launched a review of the standards used by large livestock farms.⁸³ The purpose of the committee is to review the rules that set the standards for livestock facilities, like odor and air emissions.⁸⁴ The rules must protect public health but be cost-effective and promote the growth of the livestock industry, which balances farmers' and the public's interests.⁸⁵ The committee has met three times since the livestock siting law's enactment in 2006 and has never adopted a rule.⁸⁶ This committee hopes to address air quality and odor concerns.⁸⁷ However, the committee only gives suggestions, and it is the Wisconsin State Legislature's job to determine whether to make a change.⁸⁸ If this trend continues, it is unlikely the law and farming practices will change.

While the public opinion of CAFOs tends to be negative, the farms provide substantial benefits to society in four ways. First, CAFOs produce most of the nation's milk supply. Second, the farms are cheaper to run because they are more efficient and effective.⁸⁹ Third, meat-producing farms provide more affordable meat options because industrialized livestock farming creates large supplies of food.⁹⁰ Fourth, CAFOs provide economic opportunities in the labor market.⁹¹ While CAFOs are not without their problems, the solution to the public disdain is likely not eradicating the factory farms completely.

81. Kaeding, *supra* note 75.

82. Gillian Pomplun, *Land Conservation Committee Approves Roth Hog CAFO Permit*, SW NEWS (Aug. 18, 2022, 8:42 AM), <https://www.swnews4u.com/local/government/land-conservation-committee-approves-roth-hog-cafo-permit/> [<https://perma.cc/MU8K-SSDX>].

83. Danielle Kaeding, *Wisconsin Launches Latest Review of Standards to Regulate Siting and Expansion of Livestock Farms*, THE CHRONOTYPE (Dec. 23, 2022), https://www.apg-wi.com/rice_lake_chronotype/news/wisconsin-launches-latest-review-of-standards-to-regulate-siting-and-expansion-of-livestock-farms/article_4c3aef44-0163-5b8f-95c2-d55cd71ae9f2.html [<https://perma.cc/4Q5S-HLHR>].

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Bickell, *supra* note 8, at 2.

90. *Id.*

91. *Id.*

III. THE PROBLEMS

Since CAFOs have taken over Wisconsin's agricultural industry, the farms reap the benefit of the RTF law. While farmers benefit from the law, the surrounding communities and environment can pay the price. The environmental, health, and economic issues are evident from soil erosion, water overuse, chemical releases, and decreasing property values.⁹² In addition, only some water discharges are regulated through the state DNR and Clean Water Act,⁹³ which leaves air pollution, nuisances, and other prominent issues unregulated.

Most problems stem from the excess manure a farm produces. Excess manure is a common problem across all farms. However, CAFOs naturally produce more manure due to having more animals and being larger in size.⁹⁴ A CAFO has the potential to produce 1.6 million tons of manure a year, which is more than the annual amount of sanitary waste in most American cities.⁹⁵ Farmers can use manure to fertilize their fields, but the excess waste causes problems since farmers can only use a certain amount of manure without damaging their crops.⁹⁶ This excess manure must be properly stored, which protects the surrounding neighbors and environment from pollution and nuisances.

Two common methods emerged as ways to manage the excess manure.⁹⁷ The first common method uses manure as fertilizer.⁹⁸ The farms develop a nutrient management plan.⁹⁹ The plan ensures manure is kept away from the wells and surface water, which limits the amount of manure on each field.¹⁰⁰ Like most methods, manure as fertilizer is not a perfect solution. This method can only be done in certain seasons.¹⁰¹ During the winter, the field is frozen, so fertilizing is only an option during the other seasons.¹⁰² This limitation restricts

92. See Voskuil Letter, *supra* note 80, at 1–2.

93. WIS. ADMIN. CODE NR § 243.02 (Mar. 2023); *see also* 33 U.S.C. § 1362(14).

94. Hribar, *supra* note 12, at 2.

95. *Id.* (“Large farms can produce more waste than some U.S. cities—a feeding operation with 800,000 pigs could produce over 1.6 million tons of waste a year. That amount is one and a half times more than the annual sanitary waste produced by the city of Philadelphia, Pennsylvania.”).

96. *Id.*

97. *See id.*

98. CLAUDIA COPELAND, CONG. RSCH. SERV., RL31851, ANIMAL WASTE AND WATER QUALITY: EPA REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) 3 (2010).

99. *Id.* at 11.

100. *Id.*

101. *See* Raff & Meyer, *supra* note 97, at 165.

102. *Id.* (“[M]elting snow carr[ies] the manure to surface waterbodies. This form of water pollution is referred to as a non-point source pollution and is largely exempt from CWA regulation.”).

the amount of manure used, so some manure must be stored. Another risk is overapplication, which overloads the soil with macronutrients and micronutrients.¹⁰³ While farmers usually develop a strict fertilizer plan making overfertilization unlikely, the manure has potential to run into water, especially when a heavy rainstorm occurs.¹⁰⁴

The second method is storing the manure in lagoons.¹⁰⁵ The unused manure will either be spread on the field as fertilizer or remain in the lagoon.¹⁰⁶ The pits of standing manure create several problems for the surrounding community, which include attracting insects and causing pollution.¹⁰⁷ In addition, the lagoons can overflow or break, and the farms are protected from liability of those incidents.¹⁰⁸ Without proper regulations, the excess of manure will continue to pollute the environment, cause nuisances, and decrease the property values in the surrounding community.¹⁰⁹

A. Water Pollution

Water pollution from CAFOs is highly criticized by the surrounding communities.¹¹⁰ Pollutants released into water are heavily regulated for CAFOs, but water pollution is still a significant problem to surface waters and groundwater.¹¹¹ The water problems stem from manure being applied too frequently or in excess.¹¹² The runoff manure usually finds its way into rivers, streams, lakes, and other navigable waters.¹¹³ When the farmers put manure on the fields to aid crop production, the manure and chemicals seep into streams and lakes and can get into groundwater and underground wells.¹¹⁴ While

103. *Id.*

104. *Id.* at 161.

105. Hribar, *supra* note 12, at 3.

106. *Id.* at 2–3.

107. *Id.* at 8; Raff & Meyer, *supra* note 98, at 165.

108. Hribar, *supra* note 12, at 3; Raff & Meyer, *supra* note 98, at 165.

109. MIDWEST ENV'T ADVOCES., CAFO GUIDE FOR WISCONSIN COMMUNITIES 2 (2022), <https://midwestadvocates.org/assets/resources/cafo-guide.pdf> [<https://perma.cc/BW4Z-KFMH>].

110. See Jamie Rokus, *DNR Orders Gordondale Farms Near Nelsonville to Submit Monitoring Plan to Address Nitrates in Groundwater*, STEVENS POINT J. (Aug. 15, 2022, 2:55 PM), <https://www.stevenspointjournal.com/story/news/local/2022/08/15/dnr-orders-nelsonville-farm-submit-plan-address-nitrates-groundwater/10328018002/> [<https://perma.cc/Z52E-TAZ6>].

111. MIDWEST ENV'T ADVOCES., *supra* note 109, at 2.

112. ROBERT L. KELLOGG, DAVID C. MOFFITT & NOEL R. GOLLEHON, U.S. DEP'T AGRIC., ESTIMATES OF RECOVERABLE AND NON-RECOVERABLE MANURE NUTRIENTS BASED ON THE CENSUS OF AGRICULTURE 61 (2014), https://www.nrcs.usda.gov/sites/default/files/2022-10/ManRpt_KelMofGol_2007_final.pdf [<https://perma.cc/GG4E-EUN5>].

113. Hribar, *supra* note 12, at 4.

114. *Id.* at 3.

Wisconsin requires CAFOs to follow permits limiting the amount of manure discharge, these permits fail to account for the inevitable accidental release via storage units breaking and lagoons overflowing from unprecedented rainfall and flooding.¹¹⁵ Both problems cause its contents to spill into the surrounding area.

The agricultural sector is a major polluter of surface waters, which includes lakes, rivers, and reservoirs because the controls for runoff are relatively nonexistent.¹¹⁶ Farm discharge commonly happens because of heavy storms, flooding, or soil erosion.¹¹⁷ The contamination of surface waters impacts the environment and human health.¹¹⁸ When manure contaminates water, ammonia is often found in the surface waters surrounding CAFOs due to the nitrates and other nutrients building up.¹¹⁹ The buildup deprives the aquatic ecosystem of oxygen and kills freshwater life.¹²⁰ The ammonia overloads the surface waters and destroys the ecosystems by causing algae blooms.¹²¹ An algae bloom prevents sunlight from reaching the aquatic plants, which kills them.¹²² The dead plants, in turn, provide fuel for bacteria, and the new bacteria drains the water's oxygen supply.¹²³ The plants die, so the fish and aquatic plants lose an important food source.¹²⁴ This chain reaction leads to the destruction of habitats and potential drinking water.

Water problems have been at the forefront of the negative public opinion of CAFOs.¹²⁵ Several communities have pushed back against CAFOs through

115. *Id.*

116. KEENE KELDERMAN, ARI PHILLIPS, TOM PELTON, ERIC SCHAEFFER, PAUL MACGILLIS-FALCON & COURTNEY BERNHARDT, ENV'T INTEGRITY PROJECT, THE CLEAN WATER ACT AT 50: PROMISES HALF KEPT AT THE HALF-CENTURY MARK 11–12 (2022), <https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA-report-UPDATED-8.9.23.pdf> [<https://perma.cc/4T4P-P6TM>].

117. *See id.*

118. EPA: OFF. OF INSPECTOR GEN., 21-E-0264, EPA NEEDS AN AGENCYWIDE STRATEGIC ACTION PLAN TO ADDRESS HARMFUL ALGAL BLOOMS (2021), https://www.epa.gov/system/files/documents/2021-09/_epaog_20210929-21-e-0264.pdf [<https://perma.cc/X4W7-N6YY>].

119. Hribar, *supra* note 12, at 4.

120. *Id.*

121. *What is a Harmful Algal Bloom?*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <https://www.noaa.gov/what-is-harmful-algal-bloom> [<https://perma.cc/7FBE-QK7P>] (Apr. 27, 2016).

122. *Id.*

123. *Id.*

124. *Id.*

125. Kaeding, *supra* note 75.

informal protests and lawsuits.¹²⁶ On a smaller scale, the outskirts of Wisconsin Rapids show signs bringing attention to a CAFO's water usage and the people's concern about the farm destroying their water supply from Lake Petenwell. On a more formal scale, several plaintiffs have been victorious in lawsuits against CAFO farmers.¹²⁷

The *Clean Wisconsin* case was a significant victory for the residents against Kinnard Farms in the Town of Lincoln because the court stated the DNR had explicit authority to impose a maximum on the number of animal units and impose conditions on the monitoring of off-site groundwater. Gordondale Farms is another CAFO that was challenged by local residents. In 2020, residents faced health problems from nitrate and challenged Gordondale Farms' CAFO permit.¹²⁸ They challenged the CAFO's permit because "the requirements did not do enough to protect the village's drinking water."¹²⁹ The Wisconsin Supreme Court held that the DNR could consider runoff pollution when deciding on CAFO permits.¹³⁰ The DNR ordered Gordondale Farms to make an off-site groundwater monitoring plan to be approved by the DNR.¹³¹ While the head of Gordondale Farms complains the new plan will be expensive, this decision sparked the movement for better regulations on large factory farms.¹³²

In addition to polluting surface waters, CAFOs also affect groundwater. Groundwater is a major drinking source for Americans.¹³³ Four features make groundwater contamination more dangerous than surface water contamination. First, groundwater is more difficult to monitor, and the source of contamination is harder to pinpoint.¹³⁴ Second, groundwater can move laterally, affecting

126. See e.g., *Clean Wisconsin, Inc. v. Wis. Dep't of Nat'l Res.*, 2021 WI 71, ¶ 4, 398 Wis.2d 386, 961 N.W.2d 346; see also McCracken, *supra* note 71; Schulte, *supra* note 71; Rokus, *supra* note 110.

127. *Clean Wisconsin, Inc.*, 2021 WI 71, ¶¶ 1–2.

128. Rokus, *supra* note 110.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* ("Kyle Gordon, the head of Gordondale Farms . . . expects monitoring wells to cost his farm at least \$150,000 in addition to maintenance and testing. . . . To date, he said, the farm has spent about \$60,000 on attorneys, hydrogeologists and improving land management practices to minimize nitrate leaching, where nitrate moves from the soil to groundwater.").

133. *Groundwater Awareness Week*, CTRS. FOR DISEASE CONTROL & PREV., <https://www.cdc.gov/healthywater/drinking/groundwater-awareness-week.html> [https://perma.cc/6FWM-43YR] (Feb. 4, 2022) ("Groundwater . . . is an important source of water for public water systems and private wells in the United States. An estimated 145 million Americans get their tap water from a groundwater source.").

134. Hribar, *supra* note 12, at 3.

nearby surface waters and the groundwater itself. The contaminated water enters lakes, rivers, and other surface waters, resulting in the contaminated groundwater causing widespread health and environmental issues.¹³⁵ Third, pathogens survive longer in groundwater.¹³⁶ Pathogens usually thrive with the lower temperatures and protection from the sun.¹³⁷ Fourth, a pollution event can be a lingering source of contamination, even if the CAFOs close and the lagoons dry up.¹³⁸ The air exposure transforms ammonia into nitrate.¹³⁹ Nitrate is more mobile in the soil, so the pollutant reaches groundwater more easily than other pollutants.¹⁴⁰

A large portion of Americans' drinking water comes from wells or groundwater,¹⁴¹ which, when contaminated, can cause health issues.¹⁴² For example, water with elevated levels of nitrate prevents red blood cells from carrying oxygen, which can cause blue-baby syndrome.¹⁴³ If not caught, it can lead to death.¹⁴⁴ Furthermore, a pregnant mother consuming water with moderately high levels of nitrate can contribute to the occurrence of birth defects in her baby.¹⁴⁵ Studies also show an increased risk of colon, kidney, and stomach cancer.¹⁴⁶ Most of these health issues do not require a large consumption of nitrate,¹⁴⁷ so regulations must be enforced to protect people.

135. FRANK R. SPELLMAN & NANCY E. WHITING, ENVIRONMENTAL MANAGEMENT OF CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) 188 (2007).

136. *Water Quality Topics: Pathogens*, EPA, <https://www.epa.gov/wqclr/water-quality-topics-pathogens> [<https://perma.cc/4PE9-5W25>] (Aug. 29, 2023).

137. *Id.*

138. Hribar, *supra* note 12, at 4.

139. *Id.*

140. *Id.*

141. CTRS. FOR DISEASE CONTROL & PREV., *supra* note 133.

142. Michael Greger & Gowri Koneswaran, *The Public Health Impacts of Concentrated Animal Feeding Operations on Local Communities*, 33 FAM. & CMTY. HEALTH J. 373, 377–78 (2010).

143. JAVIER MATEO-SAGASTA, SARA MARJANI ZADEH, HUGH TURRAL & JACOB BURKE, FOOD & AGRIC. ORG. OF THE UNITED NATIONS & INT'L WATER MGMT. INST., WATER POLLUTION FROM AGRICULTURE: A GLOBAL REVIEW 3 (2017), <https://www.fao.org/3/i7754e/i7754e.pdf> [<https://perma.cc/DVB8-37M5>].

144. *Id.*

145. Anne Schechinger & Craig Cox, *America's Nitrate Habit Is Costly and Dangerous*, ENV'T WORKING GRP. (Oct. 2, 2018), <https://www.ewg.org/research/nitratecost> [<https://perma.cc/JD7A-5F2Q>].

146. *Nitrate*, NAT'L CANCER INST., <https://progressreport.cancer.gov/prevention/nitrate> [<https://perma.cc/B76N-R5DR>] (Aug. 2023).

147. See MINN. DEP'T OF HEALTH, NITRATE IN DRINKING WATER 1 (2021), <https://www.health.state.mn.us/communities/environment/water/docs/contaminants/nitratefactsht.pdf> [<https://perma.cc/L7TG-Z6KB>].

The federal and state governments have taken action to prevent water pollution through permits. The Clean Water Act of 1972 (CWA) regulates CAFOs by establishing guidelines for pollutants being released into state waters to make all U.S. water fishable and swimmable.¹⁴⁸ Over time, the CWA has evolved, and its new changes tend to delay federal requirements, weaken enforcement powers, and extend deadlines.¹⁴⁹ Under the current CWA, pollutant discharges are put into two categories. The first and more heavily regulated category is a point source.¹⁵⁰ A point source is “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”¹⁵¹ However, the definition of a point source explicitly excludes agricultural stormwater discharges and return flows from irrigated agriculture.¹⁵² A non-point source, in broad terms, is anything that is not a point source.¹⁵³ Common examples of non-point sources are excess fertilizer, field runoffs, and sediment flowing from construction sites.¹⁵⁴

Some CAFO discharges fall under the point source category, but the prominent issue is the non-point discharge. Non-point sources, which include most discharges from CAFOs, are mostly unregulated.¹⁵⁵ One result of the lack of regulation is that non-point sources are the “largest sources of impairments in waterways across the U.S.”¹⁵⁶ Thus, CAFOs have developed into a massive waste disposal problem.¹⁵⁷ A potential solution could be regulating CAFOs like large businesses, not farms,¹⁵⁸ because by deleting the agriculture exception under the CWA, the agricultural runoff would likely be classified and regulated

148. KELDERMAN, PHILLIPS, PELTON, SCHAEFFER, MACGILLIS-FALCON & BERNHARDT, *supra* note 116, at 4.

149. Robert W. Adler, *The Decline and (Possible) Renewal of Aspiration in the Clean Water Act*, 88 WASH. L. REV. 759, 772, 782–85 (2013).

150. See 33 U.S.C. §§ 1311–12, 1314, 1316.

151. *Id.* § 1362(14).

152. *Id.*

153. *Basic Information About Nonpoint Source (NPS) Pollution*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution#:~:text=NPS%20pollution%20is%20caused%20by,coastal%20waters%20and%20ground%20waters> [https://perma.cc/B3MU-AKFK] (Dec. 22, 2022).

154. *Id.*

155. See EPA, EPA-841-F-96-004A, NONPOINT SOURCE POLLUTION: THE NATION’S LARGEST WATER QUALITY PROBLEM (1996), <https://nepis.epa.gov> [https://perma.cc/CSG9-HABT] (search “841F96004A” and select the first result).

156. KELDERMAN, PHILLIPS, PELTON, SCHAEFFER, MACGILLIS-FALCON & BERNHARDT, *supra* note 116, at 8.

157. *Id.*

158. *Id.*

as a point source. Holding them to this higher standard would remove the loophole for agricultural runoff and keep the waters cleaner.¹⁵⁹

The EPA sets the minimum standard through the CWA that must be followed. The EPA established a national permit called the National Pollutant Discharge Elimination System (NPDES).¹⁶⁰ However, most states, including Wisconsin, developed their own permitting standard that uses the NPDES as a guide.¹⁶¹ In Wisconsin, CAFOs must apply for a Wisconsin Pollutant Discharge Elimination System (WPDES) permit.¹⁶² In general, the permit provides various requirements that CAFOs must follow and ensures the proper disposal of waste into Wisconsin's navigable waters.¹⁶³

A proper discharge occurs if three conditions are met.¹⁶⁴ First, precipitation causes an overflow of manure from the storage structure.¹⁶⁵ Second, the storage structure is properly designed to contain all manure and process wastewater from operation from a twenty-five-year, twenty-four-hour applicable rainfall event.¹⁶⁶ The Wisconsin Code defines a twenty-five-year, twenty-four-hour rainfall event as "a rainfall event measured in terms of the depth of rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 25 years." Third, the production area is in accordance with inspection, maintenance, and recordkeeping requirements.¹⁶⁷ This exception allows farms to discharge pollutants without consequences. On paper, these regulations are reasonable and enforceable. Nevertheless, issues have arisen with its enforcement. For example, many CAFOs currently operate with expired permits because the DNR is not efficiently renewing them.¹⁶⁸ In

159. *See id.*

160. *National Pollutant Discharge Elimination System (NPDES)*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/npdes> [<https://perma.cc/8WLY-VFH4>] (Oct. 19, 2023).

161. *Animal Feeding Operations – NPDES CAFO Permitting*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/npdes/animal-feeding-operations-mpdes-cafo-permitting> [<https://perma.cc/M884-XMLM>] (Aug. 15, 2023) ("Most states are authorized to issue NPDES permits."); *see generally NPDES Profile: Wisconsin and Indian Country*, U.S. ENV'T PROT. AGENCY, https://www3.epa.gov/npdes/pubs/wisconsin_final_profile.pdf [<https://perma.cc/JA38-LQXB>] (Jan. 4, 2005).

162. WIS. ADMIN. CODE NR § 243.12 (Nov. 2023).

163. *See id.* § 243.

164. *Id.* § 243.13(2) (prohibiting large dairy, livestock, or duck farms from dumping pollutants into navigable waters unless they meet three conditions).

165. *Id.* § 243.13(2)(a)(1).

166. *Id.* § 243.13(2)(a)(2).

167. *Id.* § 243.13(2)(a)(3).

168. Kaeding, *supra* note 6.

addition, the permit only applies to water pollution, so air, odor, traffic, lighting, and land use pollution are unregulated.¹⁶⁹

B. Air Pollution

Another major problem from CAFOs is air pollution. Air emissions from CAFOs can result from the application of fertilizer and manure, as well as through the release of hazardous chemicals from facilities' ventilation systems.¹⁷⁰ Two categories of emissions from CAFOs are gaseous emissions and particulate matter.¹⁷¹ Gaseous emissions typically arise from the decomposition of manure, while particulate substances are generated by the movements of animals within CAFOs.¹⁷² The resulting air pollution from CAFO emissions contributes to unpleasant odors, poses risks to human health, and plays a role in global warming.¹⁷³

Specifically, gaseous emissions directly affect human health and global warming. Common emissions from CAFOs are ammonia, hydrogen sulfide, and methane.¹⁷⁴ The first major air pollutant is ammonia, a colorless gas with a pungent odor.¹⁷⁵ The gas forms when "microbes decompose undigested organic nitrogen compounds in manure."¹⁷⁶ Ammonia emissions occur due to the concentration of livestock confined spaces as well as the production and use of fertilizers.¹⁷⁷ The increased ammonia in the atmosphere has increased health risks.¹⁷⁸ Ammonia irritates the respiratory tract, which can lead to severe coughing and chronic lung disease, along with potentially causing chemical burns to the skin and eyes.¹⁷⁹

Hydrogen sulfide is another common pollutant.¹⁸⁰ It emits an odor of rotten eggs and is produced by bacteria found in manure.¹⁸¹ In addition, the "settling of manure" can affect hydrogen sulfide production because the greater

169. See WIS. ADMIN. CODE NR § 243.13.

170. Greger & Koneswaran, *supra* note 142, at 373–74.

171. *Id.*

172. Hribar, *supra* note 12, at 5.

173. *Id.*

174. F. M. Mitloehner & M. S. Calvo, *Worker Health and Safety in Concentrated Animal Feeding Operations*, J. AGRIC. SAFETY HEALTH 163, 164 (2008).

175. Hribar, *supra* note 12, at 6.

176. *Id.*

177. Mitloehner & Calvo, *supra* note 176, at 171.

178. *Id.* at 174.

179. *Id.*

180. *Id.* at 173.

181. *Id.* at 170, 173; see also *id.* at 171 ("Manure stored in anaerobic lagoons or storage pits typically causes hydrogen sulfide production and emissions.")

molecular concentration of hydrogen sulfide results in a stronger gaseous release.¹⁸² Similar to ammonia, hydrogen sulfide can lead to health issues, often manifesting in inflamed membranes of the eyes and respiratory tract, loss of olfactory neurons, and, in extreme cases, death.¹⁸³

While the health issues associated with methane are concerning, its role as a greenhouse gas and its contribution to climate change amplify its environmental impact, making it a particularly dangerous pollutant.¹⁸⁴ In the United States, agriculture constitutes 11.2% of greenhouse emissions,¹⁸⁵ and large amounts of those emissions are related to manure.¹⁸⁶ Livestock, specifically through animals' digestive processes, account for over a quarter of the greenhouse gas emissions from the agriculture sector.¹⁸⁷ Cows use a fermentation process to digest their food, which forms cud.¹⁸⁸ Throughout this process, cows produce methane and contribute to greenhouse gas production.¹⁸⁹

Another source of methane emission comes from the management of livestock. Farmers treat and store the excess manure, and those processes can increase the production of greenhouse gases, like methane.¹⁹⁰ Excess manure is typically used in two ways: stored in lagoons or used as fertilizer.¹⁹¹ In lagoons, the manure breaks down without oxygen, which quickens the production of methane.¹⁹² Fertilizer applied to a field accounts for over half of greenhouse gas emissions from the agriculture sector. However, methane production is generally reduced.¹⁹³ Applying manure to the land exposes the manure to oxygen.¹⁹⁴ However, that leaves the soil with an abundance of nitrogen, which

182. *Id.* at 171.

183. Hribar, *supra* note 12, at 6.

184. *Id.* at 7.

185. *ERS Charts of Note: Climate Change*, U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/data-products/charts-of-note> [<https://perma.cc/Z2UK-FF47>] (Mar. 9, 2022) (select "Filter by Topic" dropdown menu and choose "Climate Change").

186. *Sources of Greenhouse Gas Emissions*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions#agriculture> [<https://perma.cc/L7T4-UNPF>] (Nov. 16, 2023).

187. *Id.*

188. *See id.*

189. *Id.*

190. *Id.*

191. Greger & Koneswaran, *supra* note 142, at 373–74.

192. Hribar, *supra* note 12, at 7.

193. *Sources of Greenhouse Gas Emissions*, *supra* note 186.

194. *Id.*

can emit another greenhouse gas, nitrous oxide.¹⁹⁵ To mitigate these problems, proper soil management and fertilizer plans can decrease gaseous emissions.¹⁹⁶

Particulate matter is the second broad category of air pollutants. Particulate matter encompasses “fecal matter, feed materials, pollen, bacteria, [and] fungi.”¹⁹⁷ The particles come from places around the farm, like animal feed, bedding material, dry manure, and unpaved roads.¹⁹⁸ The animals commonly stir up the particles with their movements, so the matter spreads through the air.¹⁹⁹ Repeated exposure to particulate matter is more likely to cause respiratory disease, and over time, the particles scar the airway, decreasing one’s lung functionability.²⁰⁰

The air pollutants from CAFOs can affect the air quality of entire communities, and each emission can severely damage a person’s health. As of now, CAFOs are exempted from the Clean Air Act unless a certain level of emissions happen within twenty-four hours.²⁰¹ Some argue that local communities and citizens can monitor the farm’s air pollution.²⁰² However, most people do not know what to look for or how to act. Therefore, unlike water pollution, the CAFOs emit high amounts of pollutants into the air without being subject to effective constraints, which leaves local communities dealing with poor air quality and limited options to address the issue.

C. Pathogens

Pathogens are another problem that can threaten the health and safety of humans and animals. Bacteria, viruses, and parasites can all be considered pathogens because a pathogen is an organism that infects its host.²⁰³ Like most environmental issues, manure plays a major role in a pathogen’s transmission

195. *Id.*

196. *Id.*

197. Hribar, *supra* note 12, at 6.

198. *Id.*

199. Mitloehner & Calvo, *supra* note 176, at 164.

200. Hribar, *supra* note 12, at 6.

201. *Id.* at 7 (“Only CAFOs that are classified as large are required to report any emission event of 100 pounds of ammonia or hydrogen sulfide or more during a 24-hour period locally. . . .”).

202. Dan Charles, *Farmers Fight Environmental Regulations*, NPR (Mar. 7, 2017, 4:57 AM), <https://www.npr.org/sections/thesalt/2017/03/07/518841084/farmers-fight-environmental-regulations> [<https://perma.cc/6WMN-8HQ3>].

203. See Paul Ebner, *CAFOs and Public Health: Pathogens and Manure*, PURDUE AGRIC., Aug. 2007 at 1, 1.

or formation.²⁰⁴ Manure contains over 150 pathogens that can impact human health and transmit in different ways.²⁰⁵

Some food-borne diseases originate from the bacteria found on livestock.²⁰⁶ For example, *Escherichia coli* (commonly known as *E. coli*) causes colibacillosis, and the symptoms include severe diarrhea and abdominal gas.²⁰⁷ And the symptoms may range from mild to life-threatening.²⁰⁸ Another pathogen, salmonella species, causes salmonellosis. Its symptoms include abdominal pains, diarrhea, nausea, chills, and fever.²⁰⁹

Pathogens pose a significant threat as they can lead to widespread outbreaks by spreading through water sources.²¹⁰ In Wisconsin, this transmission often comes through drinking water or incidental consumption through summer recreational water activities. Common symptoms of an outbreak include vomiting, fever, muscle pain, and, in severe cases, death.²¹¹ In areas around CAFOs, antibiotic-resistant bacteria can form due to the use of non-therapeutic antibiotics.²¹² An example of a non-therapeutic purpose is growth promotion, which helps make antibiotic-resistant pathogens.²¹³ These pathogens are dangerous because they have developed immunity to the antibiotics used at the CAFO.²¹⁴

A healthy human quickly recovers from most diseases. However, immunocompromised people and high-risk individuals are at an increased risk of severe illness, or even death.²¹⁵ High-risk individuals include infants, young children, pregnant women, and the elderly.²¹⁶ While pathogens exist on all

204. *Id.*

205. Hribar, *supra* note 12, at 8.

206. Ebner, *supra* note 205, at 1.

207. S.M. Lutful Kabir, *Avian Colibacillosis and Salmonellosis: A Closer Look at Epidemiology, Pathogenesis, Diagnosis, Control and Public Health Concerns*, 7 INT'L J. ENV'T RSCH. PUB. HEALTH 89, 89 (2010).

208. *E. Coli (Escherichia Coli)*, CTRS. FOR DISEASE CONTROL & PREV., <https://www.cdc.gov/ecoli/index.html> [<https://perma.cc/FR5P-3VBN>] (Dec. 1, 2022).

209. *Salmonella Infection*, MAYO CLINIC (Apr. 29, 2022), <https://www.mayoclinic.org/diseases-conditions/salmonella/symptoms-causes/syc-20355329> [<https://perma.cc/ZAV3-7KUK>].

210. *Id.*

211. Hribar, *supra* note 12, at 9.

212. *Id.* at 8.

213. DOUG GURIAN-SHERMAN, UNION OF CONCERNED SCIENTISTS, CAFOs UNCOVERED: THE UNTOLD COSTS OF CONFINED ANIMAL FEEDING OPERATION 5 (2008), <https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-full-report.pdf> [<https://perma.cc/EF55-HLG4>].

214. *Id.*

215. Hribar, *supra* note 12, at 9.

216. *Id.*

farms, the potential for a transfer from an animal to a human is increased on CAFOs.²¹⁷ More animals are confined to a smaller space, so a disease can easily spread among the herd and to a human.²¹⁸ The chain continues when the human goes into the community and interacts with more people. Thus, an outbreak is created. Another danger is that an asymptomatic animal can carry a disease.²¹⁹ The pathogen could spread through the community before the infection is discovered. While a lower risk exists for healthy individuals, pathogens are a silent threat that looms over a CAFO's neighbors.

D. Nuisances

Environmental issues are not the only problem caused by CAFOs. Nuisances, like insect vectors and odors, can affect the surrounding communities.²²⁰ The basic definition of a nuisance is “a condition, activity, or situation . . . that interferes with the use or enjoyment of property.”²²¹ Common examples are loud noises and foul odors, which are common to CAFOs. Under the RTF law, nuisances are protected because a neighbor who moved to the nuisance cannot bring a claim,²²² so the neighbors must endure smells and insects if the nuisance does not substantially threaten the neighbor's health or safety.

Insect vectors are one of two common nuisances from CAFOs. Due to the manure, the farms are ideal breeding grounds for insects. A vector is an organism that transmits a disease to humans or other animals.²²³ An insect vector means an insect is spreading the disease.²²⁴ Three types of insect vectors commonly live or breed on CAFOs: houseflies, stable flies, and mosquitoes. The houseflies breed in the manure, so the lagoons are ideal spots for them.²²⁵

217. Mary J. Gilchrist, Christina Greko, David B. Wallinga, George W. Beran, David G. Riley & Peter S. Thorne, *The Potential Role of Concentrated Animal Feeding Operations in Infectious Disease Epidemics and Antibiotic Resistance*, 115 ENV'T. HEALTH PERSPS. 313, 313 (2007).

218. Hribar, *supra* note 12, at 9.

219. *Id.*

220. *Id.* at 11.

221. *Nuisance*, BLACK'S LAW DICTIONARY (11th ed. 2019).

222. Paczusi & LeCloux, *supra* note 3, at 2, 11.

223. *What is a Vector?*, SACRAMENTO-YOLO MOSQUITO & VECTOR CONTROL DIST., <https://www.fightthebite.net/education/what-is-a-vector/#:~:text=A%20vector%20is%20an%20insect,%2C%20ticks%2C%20mites%20and%20fleas> [https://perma.cc/V7SA-2PXQ].

224. *See id.*

225. *What is a CAFO and Why You Need to Know About It*, NATUREMED (Apr. 12, 2019), <https://www.naturemedclinic.com/what-is-a-cafo-and-why-you-need-to-know-about-it/> [https://perma.cc/6BBY-ECHX].

Flies are nuisances but have little impact on human health.²²⁶ However, the flies agitate the animals and decrease their health.²²⁷ Recent studies show that houseflies near large poultry operations may help disperse drug-resistant bacteria.²²⁸ In addition, houseflies like human food, so pathogens and bacteria can spread to humans.²²⁹ Stable flies breed in decaying organic material around the farm.²³⁰ Like houseflies, stable flies annoy humans and animals. Mosquitoes breed in standing water, so they are commonly found at the edge of the manure pits. Mosquitoes spread diseases from animals to humans, like the West Nile Virus, among others.²³¹

Studies show that neighbors of CAFOs have a higher fly population than the average home.²³² The solution is to clean standing water and regularly remove manure or decaying organic matter.²³³ While this task increases a farmer's workload, it will keep communities safer and decrease risk of disease.

The other common nuisance is a CAFO's odors. The smell carries severe consequences due to the odors being a mix of gases, like ammonia and hydrogen sulfide.²³⁴ These gases cause lasting health issues if exposed to them for an extended period of time.²³⁵ The smell comes from the manure pits and worsens over time. And wind carries these odors away from the farms and into the neighborhood.

The unpleasant odors emitted by CAFOs can compel individuals and communities to modify their daily activities to cope with the adverse olfactory impact. These changes include keeping windows closed on a nice day, keeping children inside, deteriorating mental health, and increasing sensitization to smells. In short, a person lives their life differently because they want to decrease their exposure to the foul odor. These nuisances, however, are hardly regulated due to the protective RTF.²³⁶ As a result, farmers can generate unpleasant odors and attract harmful insects without fear of facing penalties.

226. Hribar, *supra* note 12, at 8.

227. *Id.*

228. *What is a CAFO and Why You Need to Know About It*, *supra* note 225.

229. Hribar, *supra* note 12, at 8.

230. *Id.*

231. *Mosquito-Borne Diseases*, CTRS. FOR DISEASE CONTROL & PREV., <https://www.cdc.gov/niosh/topics/outdoor/mosquito-borne/default.html> [<https://perma.cc/EGC5-M8PP>] (Mar. 21, 2016).

232. Susan Steeves & Ralph Williams, *Contained Animal Feeding Operations—Insect Considerations*, PURDUE AGRIC., July 2007, at 1, 1.

233. *Id.*

234. Hribar, *supra* note 12, at 5.

235. *See supra* Section III.B.

236. Paczuski & LeCloux, *supra* note 3, at 2.

E. Declining Property Value

Besides affecting the environment and human health, CAFOs have an undesirable economic consequence: the decline in property value for the surrounding communities. Two broad reasons lead to the decline in value.²³⁷ First, the increased possibility of nuisances related to odors and insects makes the property less than appealing. People fear they are losing use of their property.²³⁸ CAFOs can infringe on people's normal daily living, so buyers want a lower price to compensate for the inability to fully enjoy the land. A stick from the bundle of property rights is taken away: the right to use and enjoy one's property. Second, the risk of pollution drives people out of the area.²³⁹ People are aware that CAFOs pollute their air and water, so naturally, they want to get away from them. Overall, the negative opinions of, and effects from, CAFOs create disdain for living near one.

To state the general trend, the closer the property is to a CAFO, the more likely the property value is to drop. A 2015 study found that a property's value declines 26% if within three miles of a CAFO.²⁴⁰ While the exact impact fluctuates based on local opinions, studies consistently show a decrease.²⁴¹ The discrepancy is over the steepness of the decline.²⁴² In Wisconsin, Kinnard Farms lowered the surrounding property values, so the Wisconsin Department of Revenue (DOR) lowered the county's property tax.²⁴³ The DOR's review found that homes within a quarter mile of a CAFO sold for "13 percent less than their assessed value, and homes between a quarter of a mile and one mile . . . sold for 8 percent less."²⁴⁴ Therefore, the economic impact is primarily shouldered by individuals residing in close proximity to a CAFO.

237. Raff & Meyer, *supra* note 97, at 162.

238. Kelley J. Donham, Steven Wing, David Osterberg, Jan L. Flora, Carol Hodne, Kendall M. Thu & Peter S. Thorne, *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV'T HEALTH PERSPS. 317, 319 (2007).

239. *See id.* at 318.

240. Kally Leidig, *The Effect of CAFOs on Neighboring House and Land Values*, MIDWEST ENV'T ADVOC. (2020), <https://midwestadvocates.org/the-effect-of-cafos-on-neighboring-house-and-land-values#:~:text=According%20to%20a%20multitude%20of,%2C%20lose%20up%20to%2088%25> [https://perma.cc/98XD-XBV3].

241. *See id.*

242. *See id.*

243. Kara O'Connor, *Declining Property Values Highlight Need to Reform CAFO Regulations*, WIS. STATE FARMER (Dec. 5, 2017, 8:50 PM), <https://www.wisfarmer.com/story/opinion/2017/12/05/declining-property-values-highlight-need-reform-cafo-regulations/925781001/> [https://perma.cc/33WC-SH4H].

244. *Id.*

Through poor regulation and lack of regulation, CAFOs affect the environment, human health, and property values. CAFOs currently share the same benefits as smaller farms, which may be a reason the problems intensified to this point. With these issues, one thing is certain: something must be done to regulate these big farms. Figuring out the correct solution is a more difficult matter.

IV. SOLUTION

Various solutions, like zoning by the local government, enforcing legitimate claims, providing adequate legal remedies, and regulating pollutants, became debated answers across the country for dealing with the problems caused by CAFOs. While one action may not be enough to mitigate every environmental or health problem, regulations and enforcement must start somewhere. The solution should strike a balance between recognizing the benefits of CAFOs and ensuring adequate enforcement to protect the environment and health. Due to the benefits from CAFOs, the solution is not to shut the large farms down because they supply over half of the nation's milk supply and are cheaper to operate than small-scale farms.²⁴⁵ CAFOs must be properly regulated through laws, but the farmers deserve to work with little legal interference if complying with the regulations.²⁴⁶

Three key questions must be answered to find a solution. First, how much protection should CAFOs receive under the RTF? Second, which level of government should make the decisions about CAFOs? Third, how should the environmental and nuisance problems be addressed?

A. How Much Protection?

The first question is how much protection do CAFOs deserve under the RTF. This answer depends on who you ask. If local communities are asked, their general answer is to deny CAFOs protection under the law. However, if CAFO farmers are asked, they usually do not want anything to change. The farmers want to adhere to the current standards, which means the large farms are completely protected. These two options are at the extreme ends of the spectrum, and the answer likely lies in the middle. A third option does exist. CAFOs can remain protected under the RTF if the farms adhere to an environmental standard specifically set for CAFOs.

245. Schulte, *supra* note 64.

246. *Id.*

Some scholars suggest the answer to regulating CAFOs is to explicitly deny them protection under a state's right to farm laws.²⁴⁷ No state has gone that far, but some states have tightened their restrictions on CAFOs. For example, North Carolina enacted a stricter right to farm law after a lagoon filled with waste collapsed.²⁴⁸ Before the collapse, North Carolina had a lenient right to farm law, but after the collapse, new CAFOs must follow different guidelines.²⁴⁹ New hog CAFOs cannot use the traditional, cheaper waste storage because the farms have to use "environmentally superior technologies" to dispose of their waste.²⁵⁰ Enforcing stricter policies on CAFOs did slow down their growth, but it did not completely stop their expansion.²⁵¹ With North Carolina's law, the new CAFOs had to jump through many hoops to use "environmentally superior technologies." However, North Carolina balanced the scales with an amendment making it harder for plaintiffs to bring a nuisance lawsuit and banning the local governments from enforcing any health or environmental regulations.²⁵² As evident by North Carolina's example, a moratorium on CAFOs backfired and will likely face the same backlash in Wisconsin because, like North Carolina, Wisconsin's economy is heavily dependent on agriculture, and farmers have a loud voice when it comes to the enactment of laws.²⁵³

In addition, a complete exclusion from the RTF would have consequences for society. If CAFOs adhere to stricter standards without support from the state, the farms will either shut down or spend more money to comply. In both situations, the final product will become more expensive. Based on economics, when a decrease in supply occurs, which may happen if the agricultural industry loses significant sources of production, price will increase.²⁵⁴ As for an increase in spending on farming operations, the cost of production will increase the

247. Madeleine Skaller, *Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability*, 27 SAN JOAQUIN AGRIC. L. REV. 209, 224–25 (2018).

248. N. William Hines, *CAFOs and U.S. Law*, 107 IOWA L. REV. ONLINE 19, 41 (2022).

249. *Id.*

250. *Id.*

251. *Id.* at 43.

252. 2018 N.C. Sess. Laws 727.

253. *Wisconsin Agricultural Statistics*, DEP'T OF AGRIC., TRADE & CONSUMER PROT., <https://datcp.wi.gov/Pages/Publications/WIAgStatistics.aspx#:~:text=Wisconsin%20is%20one%20of%20the,on%2066%2C500%20acres%20in%202022> [https://perma.cc/SA8E-JKH2] (May 8, 2023) ("Wisconsin agriculture is a big economic driver contributing \$104.8 billion annually to [Wisconsin's] economy.").

254. See Jason Fernando, *What Is the Law of Supply and Demand?*, INVESTOPEDIA, <https://www.investopedia.com/terms/l/law-of-supply-demand.asp#toc-the-law-of-supply> [https://perma.cc/KH6Q-DY4U] (Mar. 13, 2023).

overall cost of the product because farmers want to break even on the cost the environmental regulations had on their operation.²⁵⁵

Completely excluding CAFOs from the RTF could make them more susceptible to frivolous lawsuits. Under this scenario, farmers will spend their time and resources defending themselves, which could affect the amount of meat or dairy produced. The state legislature should err on the side of more protection for CAFOs because the societal benefits will be difficult to replicate through smaller farms. Therefore, the solution to the CAFO problem is not completely denying the farms protection. CAFOs deserve protection if they operate in compliance with appropriate regulations.

The second option is to let the CAFOs continue their operations without changes to the laws and regulations. The total protection allows the CAFOs to pollute the environment with little oversight.²⁵⁶ If this system persists, nothing will change. CAFOs will continue to grow and dominate the countryside with no accountability for their actions because the RTF protects them from lawsuits.²⁵⁷ Potential plaintiffs will continue to be afraid to bring a claim because the current law has a fee-shifting provision. If the farmer wins, the plaintiff will have to endure the cost of bringing the lawsuit for themselves and the farmer.²⁵⁸ On the rare occasion that a plaintiff wins, the plaintiff is subject to inadequate protection because CAFOs are not subject to severe ramifications.²⁵⁹ The law protects farms from closing because it gives farmers reasonable time to mitigate the nuisance, and the remedy cannot substantially affect the farm's economic viability.²⁶⁰ Thus, complete protection cannot be the answer because nothing would change. CAFOs would continue to get away with pollution with little to no consequences.

The third option acts as a middle ground approach. A CAFO should get protection under the RTF if it adheres to environmental regulations set by the state or federal government. The RTF has evolved but failed to account for changes in the farming industry. At the time of the RTF's enactment, small

255. Farmers can easily pass production cost increases onto consumers because the price of agricultural goods is inelastic to the demand; consequentially, demand stays substantially the same regardless of price increases. *See* RONALD D. SANDS, CAROL A. JONES & ELIZABETH MARSHALL, GLOBAL DRIVERS OF AGRICULTURAL DEMAND AND SUPPLY 49 (2014) (noting that price elasticities of demand for agricultural products are at or near zero in the United States, indicating no or very little change in demand as price rises).

256. *See supra* Part III.

257. WIS. STAT. § 823.08(3) (2021–22).

258. *Id.*

259. *Id.*

260. *Id.*

farms dotted the countryside. However, the agricultural industry changed, which the Wisconsin State Legislature ignored or did not know how to counteract. The number of small farms decreased, but the remaining farms grew in size.²⁶¹ The CAFOs reaped the protections from the law. This third option acknowledges that CAFOs warrant protection but necessitates a distinct set of standards due to their substantial operational differences compared to smaller farms. The acknowledgement is rooted in the recognition that CAFOs tend to generate more pollution.

Wisconsin should codify a different standard for CAFOs to earn the protection of the RTF. The DNR sets Wisconsin's current standards.²⁶² This has proven to be an issue because CAFOs are currently under regulated. Codifying a requirement where CAFOs have to earn RTF protection would create a relatively permanent standard that CAFOs must follow. In addition, the law could allow plaintiffs to bring legitimate nuisance claims, which may force CAFOs to be environmentally conscious in their operation. This standard could limit the noise, smell, and other nuisances that farms' neighbors dislike. While plaintiffs are becoming more successful in bringing claims against CAFOs, which is seen through cases surrounding Gordondale Farms and Kinnard Farms,²⁶³ a codified set of rules would hold CAFOs accountable and make them act with caution out of fear of potential litigation.

In sum, the third option is the best option because it forces the CAFOs to earn the law's protection by their environmentally conscious actions. The other two options, total protection and total denial, are too extreme. Explicitly denying protection fails to consider the benefits of a CAFO. At a time when the prices of eggs and milk are increasing, the CAFOs keep the costs down. However, CAFOs are major polluters, so they do not deserve the same protection as small farms. CAFOs produce more pollution than a small farm, and regulations need to be made to address that problem. Therefore, the answer is to make the RTF protection contingent on compliance with environmental regulations. This option prevents CAFOs from enduring frivolous lawsuits while holding them accountable for their problems. CAFOs deserve protection, but the protection should be earned.

261. John Oncken, *The "Other" Story Behind the Decline in Farm Numbers in Wisconsin*, WIS. STATE FARMER (Jan. 19, 2022, 4:38 PM), <https://www.wisfarmer.com/story/opinion/columnists/2022/01/19/other-story-behind-decline-farm-numbers-wisconsin/9192910002/> [https://perma.cc/S5GF-TPDK].

262. WIS. ADMIN. CODE NR § 243.31 (Nov. 2023).

263. Rokus, *supra* note 110; Richmond, *supra* note 67.

B. Which Level of Government Should Decide?

The second question is which level of government should make decisions about CAFOs. The simple answer is that each level has a role to ensure adequate regulations. However, the difficult question to answer is what role should be delegated to each level. Local governments can relay information to state governments about what the citizens want and determine the best way to proceed, which could be through local zoning. Federal and state governments are important for tightening environmental standards. The federal government can set the maximum allowable amount of emissions, while the state government can decide to apply a stricter policy.

Currently, the Wisconsin Livestock Facility Siting Law prevents farmers from being zoned out of a particular city section.²⁶⁴ The law prohibits a political subdivision from preventing the creation or expansion of a livestock facility.²⁶⁵ However, the law lists several situations detailing when a political subdivision may prohibit a livestock facility—including violating an ordinance, building in a non-agricultural zone, and violating electric or plumbing codes.²⁶⁶ Yet, the RTF encourages local governments to reduce conflicts through zoning at the farmers' benefit.²⁶⁷ This contradiction makes the growth and expansion of CAFOs difficult to prevent.

The laws benefit farmers and fail to protect local citizens from the expanding farms. If the Wisconsin State Legislature removed the encouragement to zone in favor of farmers, zoning could benefit the farmers and expanding cities. Local governments could listen to their constituents and find a solution that benefits the conflicting sides. This solution potentially resolves some land conflicts.²⁶⁸ Through local government zoning, the municipalities decide what policies best fit their needs.

In addition, zoning creates design requirements that limit the dimensions of structures. Zoning dictates a building's height, yard size, and placement on the land.²⁶⁹ By leaving zoning to the municipality, regulations can be tailored to the communities, which could reduce nuisance claims. For example, the City of

264. See WIS. STAT. § 93.90(2)(b) (2021–22) (listing the factors the department should consider).

265. *Id.* § 93.90(3); *id.* § 93.90(1)(f) (defining “political subdivision” as “a city, village, town, or county”).

266. *Id.* § 93.90(2)(b).

267. See *id.*

268. Susanne A. Heckler, *A Right to Farm in the City: Providing a Legal Framework for Legitimizing Urban Farming in American Cities*, 47 VAL. U. L. REV. 217, 253 (2012).

269. *Id.* at 230.

Milwaukee likely would not want a farm in the middle of downtown, so the city could create strict noise standards and refuse to establish an agricultural zone. Farmers would realize that Milwaukee is not an ideal place to establish a dairy operation. On the other hand, rural towns can adopt lenient agricultural zoning laws. The farms can continue their daily work without interference. However, if the locals are displeased with some nuisance, the municipality can create regulations for CAFOs through zoning. Granting local governments the discretion to handle CAFOs allows them to acknowledge and safeguard the community's interest while ensuring the protection of farms.

However, local zoning is not without its flaws. A major detriment is that zoning laws could become overcomplicated. Local municipalities may scrutinize every detail of farming and create compliance issues. The farmers may become confused over what actions are acceptable or become susceptible to violating a regulation unintentionally. In addition, the creation of new zoning laws is time-consuming and raises disagreements within municipalities. A village may disagree over allowing a CAFO to be built. This method could lead to gridlock with no action being taken. While zoning will not appease every person, the neighbors of CAFOs would be heard, so local governments can decide how to move forward.

Overall, every level of government plays a role in determining how to deal with CAFOs. Local municipalities should play an active role in determining regulations by learning the interests of their citizens. While zoning laws may not address all issues, they provide communities with an opportunity to voice their concerns and participate in decisionmaking processes. Federal and state governments should focus on mitigating the pollution from CAFOs. The federal government should set the definitive ceiling for allowable emissions that each state must abide by, while state governments can develop stricter emissions standards for the state based on the state's interest.

C. Adequate Regulation of Pollutants

The final question is how pollutants should be regulated. CAFOs emit many pollutants, so environmental laws and regulations should be put into place. Local citizens can help gather information about CAFOs' pollution. However, the bulk of the responsibility falls on the federal and state governments since those levels maintain the resources available to determine acceptable standards and the authority to enact statutes and regulations.

Locals can, and should, voice concerns about CAFOs' pollution. Midwest Environmental Advocates advises locals on proper ways to monitor the

environment.²⁷⁰ Local citizens should monitor local waterways for changes in quality, sample groundwater, and keep an odor journal.²⁷¹ While citizen-based monitoring provides critical information about CAFOs' impact, most citizens lack the specialized knowledge for proper monitoring. Citizens do not have the same resources as any given state government. Unlike the DNR and other environmental agencies, citizens likely do not have training on gauging the number of pollutants or identifying the pollutants in the water or air. Expecting a citizen to sample groundwater assumes that locals know the correct procedures and when to inform the state government about a potential issue.

While locals can and should help, the state government must use its power and resources to control and monitor the areas. At the state level, certain standards should be created. First, CAFOs should be required to make a manure management plan. Second, the WPDES permit should be strictly enforced. Third, Wisconsin should develop regulations for air pollution and nuisances that CAFOs emit.

A manure management plan is necessary since manure is a major cause of the problems associated with CAFOs. The plan's goal is to dispose of manure in ways that reduce nitrous oxide and methane emissions by improving livestock management and controlling how manure decomposes. The EPA suggests three ways to obtain these goals.²⁷² First, manure should be handled as a solid or by directly depositing it on the field, instead of storing it as a liquid.²⁷³ While this method reduces the methane, the nitrous oxide will increase.²⁷⁴ Second, if storage is necessary, the manure should be stored in anaerobic lagoons.²⁷⁵ Anaerobic lagoons maximize methane production that could be used as energy.²⁷⁶ Third, farmers can adjust their feeding practices to reduce methane by improving pasture quality.²⁷⁷ The improvement could increase animal productivity and reduce methane emissions.²⁷⁸

Each suggestion has the promise to reduce emissions but implementation will be expensive, so farmer pushback is likely. The EPA can establish emissions limits, and farms can submit their manure management plans developed based on feasible options to the DNR or the state's designated

270. MIDWEST ENV'T ADVOCS, *supra* note 109.

271. *Id.*

272. *See Sources of Greenhouse Gas Emissions, supra* note 186.

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

agency. For their manure management plans, farmers can choose from the several options, combine some options, or possibly implement a different, yet effective, idea. Then, on a regular basis, the designated state agency should conduct on-site inspections to verify that the CAFO is following its plan. However, if the farm continuously fails to meet imposed standards, the agency can make certain regulations mandatory. Through this action, farms are granted discretion until they fail to meet the set standard. CAFOs get to control their operation within an approved governmental limit.

The second action is to enforce the WPDES permits. The permit system could gather information, so Wisconsin agencies can determine what pollutants should be their primary focus. Currently, Wisconsin requires each CAFO to apply for a WPDES permit, which the DNR must approve.²⁷⁹ The permit guarantees that the farm has a plan in place to safeguard Wisconsin's navigable waters. This plan typically involves constructing appropriate buildings or systems to effectively contain and manage manure.²⁸⁰

The permit regulates water pollution in three ways. First, it has a zero-discharge standard for runoff into navigable waters from animal production areas.²⁸¹ Animal production areas are where animals are housed and where manure and feed are stored.²⁸² Second, the DNR must review and approve the plans for reviewable facilities, which include manure storage and wastewater storage.²⁸³ Third, the CAFO must have a response plan for manure and non-manure spills.²⁸⁴ The permit continues to list other requirements that, if adhered to, protect Wisconsin's waterways.²⁸⁵ Through the permit system, the DNR can determine if the regulations are adequate and its course of action based on the amount of water pollution. If the waterways are untainted, the permit's standards are effective, so the DNR does not need to act. On the other hand, if the waterways and groundwater are contaminated, the state can implement stricter regulations.

On paper, these regulations are sufficiently protective of the environment. However, an issue arises with the ability to ensure compliance by the CAFOs. The DNR currently faces a backlog of permits, so an accurate analysis of the

279. Will Cushman, *CAFO Oversight in Wisconsin and Who Pays for It?*, WIS. STATE FARMER (June 19, 2019, 3:32 PM), <https://www.wisfarmer.com/story/news/2019/06/19/what-cafo-oversight-and-who-pays-wisconsin/1452486001/> [<https://perma.cc/UM9X-RU2Z>].

280. *Id.*

281. WIS. ADMIN. CODE NR § 243.12–.13 (Nov. 2023).

282. *Id.* § 243.15.

283. *Id.*

284. *Id.* § 243.13.

285. *Id.* § 243.15.

permit system is difficult to determine.²⁸⁶ The agency is making progress through the expired permits, but it is unable to ensure adequate oversight.²⁸⁷ In theory, the permit's standards may adequately decrease pollution, but the DNR lacks the staff to review permits and conduct site visits.²⁸⁸ In turn, the DNR pushed compliance responsibilities onto the CAFOs.²⁸⁹ The farmers must conduct daily, weekly, and quarterly inspections and annually submit them.²⁹⁰ These records leave a blind spot because they are recorded as hardcopies and not electronically entered by a DNR employee.²⁹¹ The system is moving to an electronic version, which will hopefully identify non-compliance.²⁹²

The agency has two broad options regarding the permits. The agency can enforce its current system and hire staff to decrease the backlog, or the DNR can implement a new system that efficiently regulates its current resources and employees. The WPDES system has the potential to guide Wisconsin to improve its regulations. However, the DNR must figure out how to support the system with its current resources.

Moreover, the permits only apply to water pollution, leaving air pollution and nuisances unregulated. Air pollution is a major issue, so the DNR or another agency must develop standards for CAFOs. To start, farms should be required to participate in mandatory reporting and should not be exempted from the Clean Air Act. If the exemption is removed, the government must balance the emissions needed for CAFOs' daily operations and the amount of environmentally harmful emissions. A cost-benefit analysis should be conducted to determine the best solution. The government should weigh the cost of farms emitting at a certain level with the benefit of farms producing at that level of emissions. This analysis will likely lead to a solution that allows CAFOs and government to compromise, so the farms remain profitable and operable.

As for nuisances and social issues, CAFOs must be held accountable for their actions, but the RTF makes this nearly impossible. Even if a plaintiff wins, CAFOs do not face severe consequences. The change can happen by amending the RTF or enacting a separate law for CAFOs. The reasonableness standard,

286. Kaeding, *supra* note 6.

287. Cushman, *supra* note 279.

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

which is commonly used in nuisance claims,²⁹³ should apply to CAFOs and farms in general. The protection from frivolous lawsuits can stay in place because the agricultural business is important in Wisconsin. However, farmers' actions should be examined, and the court or agency should determine if the CAFO can reasonably mitigate or control the nuisance. For example, the insect vectors could be stopped by requiring CAFOs to clean their standing water weekly. While this solution requires more labor, the neighbors will benefit. Thus, at the bare minimum, the law must be amended to give plaintiffs a reasonable chance for success.

In sum, each level of government plays an important role in mitigating the problems associated with CAFOs. The local government can use zoning to heed its citizens' interests, while the federal and state governments can determine the adequate regulation of environmental problems. While one solution may not be enough to mitigate the problems, action must be taken before CAFOs' operations reach the point of no return.

V. CONCLUSION

When Wisconsin enacted the RTF, the agricultural scene in Wisconsin differed significantly from its present state. Family farms have been largely supplanted by CAFOs, and these operations continue to expand in size. The RTF, designed to be impartial to farm size, shields farmers from unwarranted legal action. While CAFOs contribute to societal benefits, such as lower meat and dairy costs, their environmental repercussions are undeniable. The generated manure is a significant source of harm, leading to water pollution, air pollution, nuisances, pathogens, and a decline in property values.

Despite the benefits, CAFOs should not automatically fall under the protection of the RTF. While farms should be able to earn that protection, it should be after adhering to environmental regulations in a revised RTF. One solution is not enough to adequately regulate CAFOs, but a mixture of solutions may provide an answer without denying CAFOs deserved protections. CAFOs are an important part of the Wisconsin agricultural industry and deserve protection under the RTF law due to giving people cheaper products. However, the CAFOs need to be held to a higher standard to earn such protection under the RTF. In recent years, locals have pushed back against CAFOs and are seeing success. The tides may be shifting toward more regulation. The state

293. See Paczuski & LeCloux, *supra* note 3, at 3.

government should listen to its people and determine how to return farming to its rightful place in the heart of Wisconsin.

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