A RURAL REVOLUTION:

THE RISE OF NUISANCE SUITS AGAINST ANIMAL FACTORIES

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* A shortened version of this article appeared in the March 2011 issue of TRIAL, published by the American Association for Justices, formerly the Association of Trial Lawyers of America (ATLA ®).
INTRODUCTION

"...these darn factories...they are raping the countryside...it's heartbreaking, to see something destroyed that you held so sacred – like your own home."\(^1\)

It is not just this single plaintive lament of Nina Baird that is now sweeping the American countryside, but rather a similar cacophonous chorus repeatedly heard and magnified throughout rural and now suburban America as neighbors of huge concentrated animal feeding operations (CAFOs) find themselves assaulted and frustrated by incessant odors, flies and fears of deadly bacteria and “super bugs.” CAFOs, large industrial animal factories, are not only reworking the rural landscape of this country but creating a virtual nightmare for people forced to endure the waste and other byproducts from these mammoth operations. Already in their short history, CAFOs have produced more than their share of environmental and health problems; they have polluted air and water, created toxic waste as well as novel and deadly pathogens.\(^2\)

While the voracious appetite of the industrial agricultural complex has been virtually unchecked in its effort to maximize economic efficiency at any cost by crowding more and more animals and birds into unacceptably small confined factory footprints, the trial bar, until recently, has been essentially nonexistent in efforts to stop this massive attack on people's enjoyment of their lives. Remarkably, the protection of rural lifestyles and the reigning in of this corporate model of raising animals and birds for meat, eggs, and milk need not rely on some novel, untested theory of liability and damages or some ponderous governmental
regulatory scheme to help alleviate this unnecessary and disgusting transformation of the countryside.

In the signal opinion *William Aldred's Case,* the construction of a hog sty thirty feet from a house was found to constitute an unnecessary nuisance and that common law doctrine was recognized and has remained a part of American Jurisprudence since its adoption from England. It was succinctly stated, “[i]f the stopping of the wholesome air, etc., gives cause of action, *a fortiori* an action lies in the case at bar for infecting and corrupting the air.”

And yet it would take another 389 years before the principle of nuisance law, as relied upon for relief from odiferous animals in *William Aldred's Case,* would find well-publicized and critical applications in the civil justice lore of the tort system in this country.

In *Hanes v. Continental Grain,* a group of courageous Missouri citizens, consisting of family farmers, small business people, and homemakers, sued the second largest pork producer in the United States for negligence in creating the unreasonable nuisance of tens of thousands of hogs at each of four factory sites in northern Missouri. Fifty-two of the plaintiffs prevailed and were awarded damages for the loss of enjoyment of their respective properties caused by the stench of manure and swarms of flies at their homes.

Rural preservationists, community activists, animal welfare proponents, and, most importantly, ordinary citizens became energized and more hopeful than ever before that the *Hanes* template would help force change in industrial agricultural activities; instead, the industry became more entrenched than ever, even as the trial bar increased its efforts to implement real protections for rural communities.

While successful litigation does continue to bear fruit in certain states, much remains to be done and those fortunate to represent neighbors of these complexes must understand the
history of their development, the nature of the resultant environmental insults, and the preferred remedies available to both the trial lawyer and client.
The CAFO Dilemma

It has been suggested that industrial capitalism seeks maximum efficiency at any cost and at the imperatives of culture, which historically have served as a counterweight to the moral blindness of the market. To take this analysis one step further, factory farms offer a ghoulish glimpse of what capitalism is capable of in the absence of critical moral or regulatory restraints.

Animal factories concentrate as many animals as possible in one space at the least expense of money, labor, and attention. And yet these operations concentrate not only animals, but also excrement, which, when properly dispersed, is a valuable source of fertilizer, but when concentrated is, at best, waste, and, at worse, a poison.

It is this artificially high concentration of waste that overwhelms the human senses and, indeed, the very fabric of entire communities. In a recent landmark study, which was a collaboration of the Pew Charitable Trusts and the Johns Hopkins Bloomberg School of Public Health, it has been emphatically shown that CAFOs not only generate controversy, but that they threaten community social capital, creating long-standing rifts within that community.

Such tensions are not without justification. The costs to rural America have been significant, as communities who initially embraced industrial farming as a much needed source of economic development have realized that the results have been, in some instances, often the reverse, with higher levels of unemployment and poverty and an unanticipated reliance by some struggling farmers who find themselves ensnared by the CAFOs themselves. Although some corporations are known as vertical integrators and own every aspect of the animal production chain, others are contract growers who struggle to eke out an economic living by growing animals for the larger producers. These growers, poorly trained, ill-equipped and often lacking in business savvy, are tied to long-term marketing contracts; they must construct
and finance the housing facilities, and end up being paid a price for the live hogs they can
deliver for slaughter. Unfortunately, they also own all of the waste, dead animals, and,
ultimately, a large share of the responsibility for the nuisance created.

On any CAFO, regardless of the ownership structure, the major impact upon the
community is the sheer smell, which can have dramatic consequences where lives are rooted in
enjoying the outdoors. As rural life experiences are disrupted by the stench of thousands of
animals, feelings of freedom and independence associated with life oriented to the outdoors give
way to feelings of isolation and infringement.

There are also very real physical reactions to exposure to the stench of hogs, dairy or
poultry waste. The Pew Report recognized three types of adverse community health effects
from CAFO emissions: respiratory symptoms, disease and impaired function, and
neurobehavioral symptoms. The generation of toxic dusts and gases causing these reactions
include hundreds of gases, vapors, aerosols, and chemical compounds. The most noxious and
offensive include hydrogen sulfide, ammonia, and various mercaptans.

Neurobehavioral insults in communities, including depression, have been increasingly
documented in residents living near CAFOs. In addition, negative mood states, including
anger, reduced vigor, fatigue, and confusion, have been observed. These negative feelings are
not without foundation; the subjects of much study and research include the escalating public
health concerns resulting from CAFOs, antimicrobial resistance, zoonotic disease transfer from
confined animals to humans, and potential pandemics resulting from exotic strains of swine and
avian flu and other viruses.

In investigating the complaints of neighbors, the trial lawyer must be cognizant of the
source points of odor, dust and flies in a total CAFO environment. Each source point makes its
own contributions to the degradation of the community atmosphere, and yet each also has the
ability to incorporate technological innovations which can minimize the resultant impact on neighbors.

Barns and housing facilities, some holding thousands of hogs or tens of thousands of chickens, create dust and gases from animal dander and feathers, as well as the decompositions of urine and feces as it is temporarily held in pits before being transferred to a larger holding facility or lagoon.¹⁹

Lagoons, which can comprise many surface acres of collected animal or poultry waste, are another source of vile odors and flies. These cesspits, which are nothing more than storage facilities for animal waste, also emit many chemical compounds, perhaps the most toxic of which is hydrogen sulfide; it can be released very rapidly when liquid manure slurry is agitated, an operation commonly performed to suspend solids so that the surface levels can be pumped down to allow for more barn flushing of waste effluent.²⁰

This need to constantly reduce the lagoon levels leads to the third source of odor and flies: and application of the waste. This fecal blanket spreads the waste over ever-increasing areas of the land, thus dramatically increasing the noxious effect on neighbors, sometimes at a considerable distance from the actual facilities. Land application is nothing more than a convenient method of disposal and is sometimes a poor alternative to chemical fertilizers. Ground application of CAFO waste can exceed the ecological capacity of the land to absorb all of the nutrients, and can contribute to excessive nutrient loading, contaminate surface waters, and stimulate bacteria and algal growth in those waters.²¹

A final source point of odor and flies is the handling of dead animals and birds. The disposal of carcasses is often haphazard, unsanitary, and, even when supposedly regulated, unenforced. Hog carcasses have been observed scattered on hillsides, and dead poultry has been photographed stacked in huge decomposing piles in the open near neighbors’ properties.²²
Composting, incineration, and the removal of deads to rendering facilities are often ignored or negligently managed and contribute to the unhealthy community conditions in neighboring communities.

The present system of producing food animals and fowl is simply not sustainable and presents an unacceptable level of risk to public health, the destruction of the quality of life of neighbors, and dramatic damage to the environment. While regulations and environmental laws can assist in diminishing the effects of CAFOs, they have been described as "about as tough as Kleenex." As will be seen, environmental enforcement claims may be available; however, nuisance litigation has proven to be the most successful vehicle for delivering just compensation to neighbors impacted by CAFOs.
GOVERNMENT AUTHORITIES APPLIED TO CAFOS

In the 1960s and early 1970s, when the beef industry was undergoing massive consolidation, major emphasis was placed on the passage of new regulatory programs for livestock feeding operations. Neighbors, up in arms about the overpowering odor and concerned about the adverse health effects, demanded enforcement of regulatory provisions to curb adverse environmental and health concerns. Those commonly-raised environmental concerns included the location of the new facilities and the resulting impact on wetlands, ground water, and surface waters. EPA's permitting of CAFOs was mandated by the 1972 Clean Water Act (CWA). This law requires that any discharge of pollutants from a point source be authorized in a National Pollutant Discharge Elimination System ("NPDES") permit. The definition of a source point in the CWA includes CAFOs. The definition of a CAFO is: an animal feeding operation with more than 1000 animal units (1000 beef cattle, 2500 swine each weighing over 55 pounds, etc.) being raised in confinement; 800 animal units with a discharge of animal waste into navigable waters; or as designated on a case-by-case basis. Thus, in order to be in compliance with the CWA, any discharge of pollutants from a CAFO must be authorized by and in compliance with a NPDES permit issued pursuant to 33 U.S.C. § 1362 (14), 40 C.F.R. § 122.23 (a) (1988).

The NPDES permit program was set up such that the states are primarily responsible for administering the program so long as the state regulations are at least as stringent as the federal requirements. However, some states have yet to promulgate NPDES permitting regulations for CAFOs, even though required to do so since 1972.

A NPDES permit establishes the conditions under which a discharge is authorized. For most types of discharges, such as city sewage treatment plants and industrial process wastewater, the permit requires meeting pollutant specific effluent limitations and self
monitoring requirements. However, the effluent guidelines for CAFOs do not contain limits on any specific pollutant. Rather, it requires a basic standard of no discharge unless certain limited exceptions are met. A discharge from a CAFO is only authorized from a facility designed, constructed, and operated to contain all process generated waste waters plus the runoff from a 25 year, 24-hour rainfall event.

Furthermore, the federal NPDES permit program does not directly control the location of operations, but rather, only controls and limits the discharge of pollutants to waters of the United States. The permit only requires that the facility be managed such that water pollution does not result from the operation of the facility. The requirement for no discharge at CAFOs is typically mandated in the permit and requires a manure management system that includes storage and use of the manure as a “fertilizer,” but in reality, CAFOs have frequent discharges of manure and other wastes into the environment.

Spills occur for a variety of reasons, among which are: lack of runoff controls at open lots, intentional pumping out of lagoons or pits, improper construction or maintenance of pipelines between the confinement building and the lagoon, overflows of lagoons and pits because of a lack of operation of the system, improper siting of lagoons over field tile lines, and failures in the irrigation pipe transporting wastewater to the land application site.

Discharges of manure result from: over application of manure, spreading manure on frozen ground, and spreading manure on land where tile inlets were located thus providing a direct conduit to surface water. And, of course, numerous incidents of intentional discharge of manure to the nearest creek or ditch have also been documented.

Critically, however, the NPDES permit program cannot regulate other environmental concerns such as odors, and in fact, there are no other federal laws or regulations on the books that give EPA the authority to regulate odors. Development of zoning ordinances to control
CAFOs may make sense if there aren’t any large CAFOs already in a community; however many townships, cities, and counties have looked toward zoning as a possible means of controlling CAFOs “after the horse is out of the barn.” An existing facility generally is allowed to continue to operate as a nonconforming use after a zoning ordinance is enacted. A community may be able to close or terminate nonconforming uses under an amortization process, but such processes are not available in all jurisdictions. Some states even prohibit townships, cities, and counties from regulating agricultural, farm, or livestock structures/uses in any fashion.

Studies and evidence proving the existence of health problems associated with living near CAFOs is finally catching up to the relatively recent phenomena of these gigantic animal factories. Consequences of residing near a CAFO may include exposure to the toxic microbe *Pfiesteria piscicida*, noxious odors, toxic chemicals, antibiotic resistant bacteria, E. coli, salmonella, flies, and particulate matter. Even communities that have no authority to enact zoning ordinances regulating CAFOs may have the ability to enact “health regulations.” For example, health ordinances have been successfully enacted by some counties in Michigan, North Carolina, Iowa, and Missouri; and, they have withstood court challenge. However, as with zoning regulations, these health ordinances can only be imposed upon prospective CAFOs and not CAFOs already in existence.
THE FOCUS ON NUISANCE CLAIMS

Although there are ample environmental laws, governmental agency rules, and regulations, including permitting requirements, these statutory pronouncements offer very little in the way of long-term relief from the nuisance dusts, gases, and vectors created by CAFOs. Neighbors and, unfortunately, CAFO operators easily recognize that too few facilities are monitored, regulated, or even inspected on a regular basis. Remedies under relevant enforcement provisions are of little assistance, and fines are minimal and amount to no more than added costs of doing business.

The only consistently successful strategy has been the reliance by neighbors on their state's judicial progeny of William Aldred's Case. Common law nuisance laws have several common threads, but must be closely scrutinized for individual state nuisances which can critically affect pleading issues, damage calculations, and proof requirements.

The preferred type of nuisance claim is for temporary nuisance, as opposed to a permanent nuisance. By definition, a temporary nuisance is one that is abatable; there are practices and/or technologies that can be utilized to diminish or extinguish the nuisance. The trial lawyer must focus on those technologies which can be amalgamated with existing barn structures, storage facilities, and land application equipment on topographical features to minimize the dusts, odor, and flies. Additionally, there is one simple no-technology solution that can dramatically decrease the impacts on neighbors every time: simply decrease the sheer number of animals or fowl being produced in one location. Almost without exception, the sheer number of animals and their waste will exceed the capacity of the CAFO's footprint to treat, absorb, and handle the waste.

However, the major difference in temporary vs. permanent nuisance consideration is in the available measure of damages. In a situation where a permanent nuisance exists, there is no
remedial action which can be undertaken to alleviate the problem, and the resultant damages are limited to those possessing an interest in the property and are restricted to a loss of value in the plaintiff’s property before and after the creation of the nuisance. A battle of real estate appraisers will not result in a meaningful verdict or judgment of compensation sufficient to adequately address the living hell created by a nuisance which robs one of the enjoyment of the use of his/her own property on a constant and daily basis.

Loss of enjoyment of an individual’s own property and/or home is well understood by jurors. The family home is often the largest monetary investment of one’s entire life; it serves as the focal point of all family activities and, often in rural areas, of the owner’s occupation. The intangible value of being able to enjoy one’s home or work is one which clearly expresses the jurors’ fears of similar intrusions on their own privacy and property rights.

Those who have the capacity to sue for loss of enjoyment of their property include anyone with a possessory interest in that property. In addition to homeowners, farmers, and businesspersons, children who occupy the affected property, and later reach the age of majority, may bring a claim for temporary nuisance.

Once the trial lawyer has established the type of nuisance claim to be brought and the measure of damages to most adequately compensate the client, proof of the nuisance must focus on the activities of the CAFO operation and the unreasonableness of the siting and design of the facility, the management of that farm factory, the lack of the compliance with regulations, and the customary state-of-the-art technologies available to address the nuisance. Retention of unbiased agricultural engineers and public health physicians with solid academic and occupational credentials regarding issues of industrial farming is absolutely necessary; however, many potential experts are unfortunately compromised because of their occupational
or academic allegiances to large land-grant institutions, many of which are liberally supported by corporate agricultural interests.

In addition, other sources of potentially powerful evidence include the very state and federal agencies charged with regulating the offending facility. Notices of violations, permitting discrepancies, and enforcement actions can all be relied upon to prove the unreasonable use of the land and the effect on neighbors.

Nor should the trial lawyers overlook individuals who might regularly visit the CAFO, find themselves on public roads adjoining the facility, and/or the affected neighbors. Mail delivery personnel, the local sheriff, and utility employees may all provide testimony to bolster the complaints of the plaintiff. Most importantly, other neighbors of the CAFO will add credence to the complaint, either as a witness or as another violated plaintiff, and will prevent defense counsel from successfully describing a single plaintiff as a tree-hugging radical environmentalist. Without question, multiple plaintiffs simultaneously bringing claims against the same facility(ies) dramatically increase the odds of success in a jury trial.
RIGHT-TO-FARM STATUTES

For the trial lawyer investigating a nuisance case against an agriculture-based industry, it is essential to recognize that state right-to-farm laws amount to land use regulations that will permit certain nuisance activities if the landowner meets certain statutory conditions. These legislatively-created affirmative defenses to nuisance suits interfere with the common law rights of neighboring property owners in the vicinity of the nuisance.

Unfortunately, there is a nagging misconception amongst members of the trial bar that ubiquitous right-to-farm statutes, now found in every state, universally preclude the ability to bring nuisance cases against industrial agriculture operations. However, the proliferation of these protective laws has now run head-on into the inescapable fact that the industrialization of meat production has essentially moved indoors, with producers tied to their respective markets through marketing contracts. This trend to huge factory farms with tens of thousands of hogs and hundreds of thousands of egg-laying chickens, confined in buildings in suburban and rural landscapes, has resulted in a myriad of statutory schemes interpreted by a geometrical progression of judicial decisions that articulate both defenses and exceptions to the application of right-to-farm statutes to agricultural nuisances.

Although initially crafted to protect farm investments and to preserve farmland from urban sprawl, many of these laws conveniently adopted a “coming to the nuisance” concept to preclude nuisance suits which were based on activities which were not a nuisance when commenced, but were possibly considered nuisances at a later time based upon the changed land uses or the changed land ownership of neighbors. On the other hand, residents or activities which pre-date the development of the offending CAFO will generally find widespread support for the maintenance of nuisance suits.
From a purely practical standpoint, the competent trial lawyer will studiously avoid any nuisance case where the client knowingly located himself near an offensive CAFO operation; the obvious competing equities surrounding his knowledge and the reasonableness of his actions versus the unreasonableness of the pre-existing commercial enterprise will never resolve in favor of the later arriving client in the eyes of the conscientious jurors.

Thankfully, many right-to-farm statutes also contain exceptions to their application and will allow nuisance claims to be pursued where the nuisance emanated from the negligent operation and/or maintenance of the agricultural facility, or posed a legitimate threat to public health or safety.\textsuperscript{49}

In addition, a material change in the offending activity may deny the right-to-farm defense to the CAFO. For instance, an expansion of the sheer magnitude of odor or of the number of flies caused by a substantial increase in the number of animals, or a change in the type of livestock being raised, has been found sufficient to defeat the right-to-farm defense.\textsuperscript{50} Likewise, a change in the technology applied or the methodology of waste treatment can defeat the legislative shield.\textsuperscript{51}

Overzealous legislators, intent on providing industrial agricultural corporations and operators as much judicial protection as possible, have, on occasion, overstepped their constitutional bounds and have had their statutory creations declared to be either an unlawful taking of a neighbor's private property or a violation of the state's constitutional clause on inalienable rights.\textsuperscript{52} Such constitutional challenges have been avoided where legislators have included statutory language interpreted to be either hybrid statutes of limitation\textsuperscript{53} or statutes of repose,\textsuperscript{54} so as not to provide complete immunity from all nuisance suits. Such triggering events as the initial operation of the facilities or the completion of the permitting process have also been utilized to deny the success of such challenges.
Where constitutional scrutiny has failed to undermine the preclusive effect of right-to-farm laws, or where insidious time constraints have prevented neighbors from asserting their common law nuisance claims, the practitioner may nevertheless seek redress from such offending arrival factories by couching a claim as a federal or state regulatory violation of environmental laws. Although perhaps not the most attractive cause of action, this may provide the sole source of judicial relief from such polluting activities.

The trial lawyer must be both cognizant of the applicable right-to-farm statutes and diligent in his/her scrutiny of the burgeoning case law addressing exceptions and challenges to onerous limitations of remedies placed upon neighbors of CAFOs. The shifting paradigm of truly agricultural activities, the widespread discrepancies in these statutes coupled with the judicial dexterity of certain courts to avoid the unnecessary intrusion on common law property rights and the inflexibility of others intent on protecting corporate farming interests, all require an exhaustive consideration of the appropriate state right-to-farm statute and case law before the institution of any nuisance suit for neighbors.
CONCLUSION

Nuisance litigation against industrial agriculture and its factory farms is the prolonged offspring of a tortuous thirty years of frustration for residents of rural America. That sense of frustration has emanated from a lack of official respect for the hellish conditions experienced by neighbors of those facilities, as well as a growing skepticism that any remedies could be achieved through political or legal regulatory channels.55

The trial bar has finally recognized the salutary effect that nuisance cases can have for the benefit of residents of rural communities under siege from industrial agriculture. As more and more rural inhabitants have reluctantly sought legal assistance as a last resort to protect their cherished property interests, trial lawyers have found clever alternatives to federal and state enforcement actions and logistical maneuvers around protective right-to-farm statutes to help stem the fecal tide of CAFO waste sweeping over rural America. There are indications that animal factories are only now beginning to implement real changes in waste handling procedures, but as time passes, many more property owners will still recognize the validity of nuisance suits to redress on-going wrongs caused by these polluting animal factories.
3 Mich 8 Jacobi Regis. (1610).
4 Id. at 58b-59a.
6 Id.
7 Michael Pollan, Omnivore’s Dilemma, p. 318.
8 Id.
9 Wendell Berry, Bringing It to the Table: On Farming and Food, Counterpoint Press (2009), p. 11.
10 Id., at 12.
13 See David Kirby, Animal Factory, supra at n. 1, at 86-87. The author’s rhetorical question actually proves the essence of the dilemma, “[w]hy own the farm, when you can own the farmer?” Id. at p. 42.
16 Id. at 17. Temporary and chronic respiratory irritation includes bronchitis, non-allergic asthma-like syndrome and noninfectious sinusitis. Id. at 16.
22 The Authors have documented many instances, including those mentioned, where there is a total disregard for preferred disposal methods.
23 Pew Report, at VIII.
24 Kirby, D. Animal Factory, n. 13, at 68.
26 Cornerstone of the Clean Water Act is that the discharge of any pollutant from a point source into navigable waters of the United States is unlawful unless the discharge is made according to the terms of a National Pollutant Discharge Elimination System (NPDES) permit obtained from either the United States Environmental Protection Agency (EPA) or from an authorized state agency. Hiebenthal v. Meduri Farms, 242 F Supp.2d 885 (D.Or. 2002).
28 A concentrated animal feeding operation that violates the Clean Water Act by discharging without permit remains in continuing state of violation until it either obtains National Pollutant Discharge Elimination System (NPDES) permit or no longer meets definition of point source. Carr v. Alta Verde Industries, Inc., 931 F.2d 1055 (5th Cir. 1991).
29 33 U.S.C. § 1342(n)
30 Congress created in the National Pollution Discharge Elimination Systems (NPDES) program established by this section, a system of concurrent state-federal jurisdiction, with leading role granted to the Environmental Protection Agency to set the parameters of state’s authority, to determine minimum standards for
regulation, to oversee state’s implementation of program, and to step in where, in administrator’s judgment, it is necessary, but Congress intended Agency to use that extensive authority sparingly and only where necessary to preserve integrity of national effort to cleanse nation’s waters. U.S. v. Cargill, Inc., 508 F. Supp. 794, (D.C.Del. 1981).


55 Premium Standard Farms, Inc. v. Lincoln Township, 946 S.W.2d 694 (Mo. 1997); Kuehl v Cass County, 555 N.W.2d 686 (Iowa 1996) (both holding hog confinement operations exempt from county zoning pursuant to agricultural or farm structure exemptions).


57 Pew Report, at 77. In September, 2010 the United States Environmental Protection Agency notified the Illinois Environmental Protection Agency that it was not properly administering its own CAFO program and was failing to comply with Section 402(c)(2) of the Clean Water Act, as it pertains to NPDES permitting and compliance. Letter of September 28, 2010 Susan Hedman, Region 5, Regional Administrator to Douglas Scott, Director, Illinois Environmental Protection Agency.

58 See n. 3, supra.

59 See n. 5, supra.

60 Pew Report, at 29.


62 See n. 5, supra.

63 The difference in appraisal values may be so miniscule that, even if paid by the CAFO, it may merely be absorbed as a cost of doing business.

64 See Souza v. Lappee, 69 Cal. Rptr. 2d 494, 500 (Ct. App. 1997) (discussing seven requisites for the right-to-farm defense); see also Terence J. Centner, “Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?,” 33 B.C. Envir. AFF. L Rev. 87 (2005).


69 See Ind. Code Ann. § 32-30-6-9(2) ("[t]his section does not apply if a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances."); Wis. Stat Ann. § 823.08 (the agricultural activity must be both unreasonable and a substantial threat to public health or safety).

70 Crea v. Crea, 16 P. 3d 922, 925 (Idaho 2000) (expansion of a hog operation was a nuisance); Audarn v. Britt, 451 S.E. 2d 1, 8-4 (N.C. Ct. App. 1994) (turkey farmers changed to raising hogs and was considered to be a nuisance).

71 Pasco County v. Tampa Farm Servs., Inc., 573 So. 2d 909, 912 (Fla. Dist. Ct. App. 1990) (a change from dry poultry manure to wet manure application resulted in loss of defense of right-to-farm statute).

72 See n. 2, supra.

73 Centner, supra note 1, citing Overgaard v. Rock County Board of Commissioners, No. 02-601, 2003 U.S. Dist. LEXIS 1301, al *21 (D. Minn. July 25, 2003) (finding a two year window in which nuisance claims can be brought
against agricultural operations). But see, *Wendrige v. Forst Farms, Inc.*, 662 N.W. 2d 546, 554–55 (Minn. Ct. App. 2003) (the statutory 2 year period is not absolute since a new offensive activity may occur that is a nuisance).


*55 D. Kirby, Animal Factory, at 75, citing, Donham K. and Thu K., “Understanding the Impacts of Large Scale Swine Productions,” Iowa’s Center for Agricultural Safety and Health (1996).*