



The Iowa Policy Project

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EXECUTIVE SUMMARY

CAFOs and the diminished defense of public health

Restrictions on nuisance lawsuits latest tool to prevent home-grown demand for stronger regulation of industry than offered by state law

By David Osterberg and James Merchant

In a legislative climate that increasingly bars local elected officials from protecting the health and financial security of Iowa residents, the means for individuals to respond on their own is threatened as well. The latest area: individuals challenging animal feeding operations in court.

Already, severe limitations prevent tougher regulation of animal feeding operations by cities and counties. Iowa Senate File 447 and a companion bill, House File 468, also seek to establish state law as a standard not to be challenged by local actions, but they take a different approach. The new approach is to tailor Iowa's nuisance law to limit "court actions involving an allegation of a public or private nuisance or the interference with a person's comfortable use and enjoyment of life or property caused by an animal feeding operation." The legislation limits damages that a neighbor may recover if harmed by a nearby operation, and the current House bill further penalizes the neighbor who fails in court by requiring that he or she pay the operation's legal fees.

The public health consequences of these legislative choices are as significant as the governance issues raised by the General Assembly to restrict options for those most affected by economic decisions while giving them no place to turn for redress if state policy is inadequate.

Why might a CAFO be a nuisance?

The impact of industrial farm animal production on human health implies more than an assessment of any disease, injury or impairment that may arise from exposure to livestock, livestock products or livestock production waste streams. The World Health Organization defines health as "a state of complete physical, mental and social well-being."¹ This definition is appropriate to both commercial and residential neighbors to the industrial production of livestock via concentrated animal feeding operations (CAFOs) or animal feeding operations of any size.

Rural residents are entitled to enjoy their family and home life, and their communities to enjoy use of public lands, without unreasonable and substantial interference. Iowa's nuisance law, Chapter 657, supports this common-sense observation.² A nuisance claim by CAFO neighbors or nearby community dwellers can involve issues and evidence of irritation, discomfort and annoyance in particular, as well as loss and enjoyment of one's property, home or community in general.

The broad definition of public health dovetails with the legal definition of nuisance. A nuisance claim involves an assertion that the conduct for which a defendant is responsible causes substantial and unreasonable impairment of a plaintiff's ability to use and enjoy their homestead, land or community public spaces. This impairment can include conduct and effects that cause material physical discomfort, irritation and significant annoyance. The impairment may rise to the level of a serious illness or injury, a medical condition, such as exposure to CAFO airborne pollution that causes or exacerbates asthma or obstructive lung disease.

Various reports we cite in this paper examine the health impacts that emerge from proximity to CAFOs, from sensation of irritation, mental and/or physical discomfort, and annoyance — such as a foul odor that results in nausea. Such complaints, whether temporary or long-standing, are highly consistent with the now extensive scientific literature compiled on CAFO exposures and adverse health effects.³ The impacts of CAFO exposures on the everyday lives of rural residents living within 1 1/2 miles of a swine CAFO are well-documented in several studies in CAFO-intensive eastern North Carolina.^{4,5} Documented activities impacting “beneficial use of property” and “quiet enjoyment of life” included “working outside, growing vegetables, sitting outside, eating outside, gardening, playing, barbequing, use of well water, sleeping, opening doors and windows, hanging out with neighbors, having family and guests over, and drying laundry among others.”⁶

Iowa studies of childhood asthma included one that found a high prevalence of asthma among rural children living on swine farms. Another that found a significantly higher level of doctor-diagnosed asthma among children attending school within a half-mile of a CAFO than in children attending school over 10 miles from a CAFO. Together, these studies find documented evidence of nuisance and injury among rural dwellers living up to three miles from the nearest CAFO.

Loss of property value because a CAFO moves into the neighborhood can be extreme. A recent article by Kilpatrick in the Appraisal Journal demonstrates the extensive devaluation in property caused by neighboring CAFOs as well as some large nuisance suite awards which seem to be the motivation behind the new Iowa legislation.⁷ The decrease in value can be up to 26 percent for nearby properties, depending on distance, wind direction, and other factors is significant is not in question. In one instance the author found a decrease of 88 percent. That values do fall is substantiated by reductions of the assessed value for property near CAFOs. Assessment reductions can range from 20 to 40 percent of value in counties in farm states including Colorado, Missouri, Michigan, Illinois and Iowa. According to one study “only landfills have a worse effect on adjacent property values.”⁸

Iowa lawmakers need to know the real effect on health and on property values of their policy choice. Should they severely limit adversely affected neighbors’ remaining protection against a politically powerful and well-funded industry whose impact on public health has already reached the tipping point? Or, should they let citizens keep long upheld rights and force the industry to clean up so as to minimize odor nuisance and impacts on the public’s health?

¹ Iowa Concentrated Animal Feeding Operation Air Quality Study, Environmental Health Sciences Research Center, 2002, <http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm>

² Chapter 657, Code of Iowa, Nuisances <https://www.legis.iowa.gov/docs/code/657.pdf>

³ Pew Commission on Industrial Farm Animal Production, “Putting Meat on the Table: Industrial Farm Animal Production in America,” Technical Report: Occupational and Community Public Health Impacts of Industrial Farm Animal Production, <http://www.pcifapia.org/reports/>

⁴ Wing S, Wolf S. Intensive livestock operations, health, and quality of life among eastern North Carolina residents. *Environmental Health Perspectives*. 2000; 108:233-8

⁵ Wing S, Horton R, Marshall S, Thu, K, Tajik M, Schinasi L, and Schiffman S, Air Pollution and Odor in Communities Near Industrial Swine Operations, 2008, *Environmental Health Perspectives* 116(10):1362-1368. Available at <https://ehp.niehs.nih.gov/11250/>

⁶ Tajik, M, Muhammad, N, Lowman, A, Thu, K, Wing, S, Grant, G (2008). Impact of odor from industrial hog operations on daily living activities. *New Solutions* 18 (2): 193-205. Available at <http://casw.org/sites/default/files/Tajik2008NewSolutions.pdf>

⁷ Kilpatrick, John A. Animal Operations and Residential Property Values. (2015) *The Appraisal Journal*, Winter 2015. http://www.myappraisalinstitute.org/webpac/pdf/TAJ2015/TAJ_WI15_p041-050_Feat3-AnimalOperations.pdf

⁸ *Ibid.* Page 46 & 47.

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