Collatoral Damage: Community Impacts of Factory Farms

- In their own words:
  The Rest of the Story: Corporate Hog Production in NC (NC EJ Network):
  
  https://www.youtube.com/watch?v=ReMXawj4oK8
Environmental Justice: A Starting Point

“Environmental hazards are inequitably distributed in the United States, with poor people and people of color bearing a greater share of pollution than richer people and white people.”

- Cole & Foster, at 10.

“Communities are not all created equal. In the United States, for example, some communities are routinely poisoned while the government looks the other way.”

- Bullard, in Bullard, ed., at 15.
Inequality in the Distribution of Environmental Benefits & Burdens
EJ is about Power & Inclusion: Having a Say in Decision-Making

• “EJ demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.”

• The Principles of EJ

• EJ “encompasses the political economy of environmental decision making. That is, [EJ] requires democratic decision making, community empowerment, and the incorporation of social structure ...in environmental decision-making processes.”

• Cole & Foster at 16.
Goals of Legal Action

- Decisive Court Ruling
  - Injunctive Relief
- Creating Political Space
- Articulating a Narrative
- Building a Record
- Support Community-Based Movement
Legal Strategies to Address EJ Issues

e.g.:
- Toxic Substances Control Act (TSCA)
- OSHA
- Clean Air Act
- Clean Water Act
- Resource Conservation Recovery Act (RCRA)
- FIFRA
- EPCRA/CERLCA (Superfund)
- NEPA
- Fed & State Consumer Protection Laws
- State Nuisance Law
- Prop 65 (Cal)
- State Toxics Laws (- requiring listing of hazardous products)
Civil Rights Law
Title VI, Civil Rights Act of 1964

§ 601:
• No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 602:
• Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of [section 601] of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objective of the statute authorizing the financial assistance in connection with which the action is taken.
Title VI: EPA Regulations

• “A recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination….”

• “A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies … or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.”
Potential Violations

• Intentional Discrimination
• Actions, Policies, Practices with an Unjustified Disparate Impact
• Exclusion from Participation in Processes
• Failure to Evaluate Disparate Impact
• Failure to Provide Language Access (Translation & Interpretation)

- No private right of action for disparate impact claims.
  - The theory: 601 creates rights, 602 just empowers agencies to effectuate the purpose of 601

- After Sandoval: Communities and advocates seeking to advance a disparate impact claim are left only to file administrative complaints with federal agencies
Title VI Administrative Complaints

Who Can File a Discrimination Complaint?
Anyone who believes that an entity that receives federal financial assistance from EPA has discriminated against someone on the basis of race, color, national origin (including limited-English proficiency), sex, disability or age, may file a complaint. The person or organization filing the complaint need not be a victim of the alleged discrimination but may complain on behalf of another person or group.

• File admin. complaint with federal agency that provides financial assistance to the program/activity in question
• Complaint must be filed within 180 days of action
EPA’s Investigation and Prosecution of Title VI Cases

• EPA’s “chronically unresponsive” Title VI program
  • 2011 internal audit revealed no case management system, many staff without environmental law or civil rights backgrounds

• EPA has only made 2 findings of discrimination
  • Most complaints rejected without investigation, many languish for years without any action
Why File?
Disparate Impact Claim:

• Adverse Impact
  • Water Pollution
  • Air Pollution
  • Decline in Property Value
  • Health Outcomes

• Disproportionate on the Basis of Race/Ethnicity
  • Statistically Significant Difference
Sources of Water & Air Pollution

- All fields surrounding this CAFO are tilled, carrying any runoff to county drains & waters of the State.
- Calf hutchies
- 10 million gallon sewage lagoon (No secondary containment in case of spill)
- Underground tile (Carries runoff or spilled waste open ditch leading to Fisher Lake)
- Open ditch: Runoff from barns runs into open ditch, which leads to underground drain tiles and county drains leading to waters of the State.
- Stormwater catch basin (Contains sewage. No secondary containment)
- To Lime Lake

- Dead animals (Most CAFOs have hundreds of animals die each year. Disposal methods vary, but often animals are left in piles to decompose, causing serious fly infestations.)
- Silage Bunkers (As it ages, silage ferments. Liquid leachate, very high in nutrients, runs off)
Water Pollution

- Flooding
- Waste can leach through aged, unlined lagoons
  - Eastern NC has a shallow water table
- Problems with sprayers and oversaturation of sprayfields can lead to runoff into surface water
- Surface water contamination impacts wildlife, leaves residents unable to fish or otherwise use waterways recreationally
Erosion of Sprayfields
Oversaturated Sprayfields
Improper Disposal of Dead Animals
Broken Sprayers
Air Pollution: Ventilator Fans
Fans Blow Pollution & Smell
Sprayers
### Effects

<table>
<thead>
<tr>
<th>Chemical Name</th>
<th>Smell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydrogen Sulfide</td>
<td>Rotten eggs</td>
</tr>
<tr>
<td>Dimethyl sulfide</td>
<td>Rotting vegetables</td>
</tr>
<tr>
<td>Butyric, isobutryic acid</td>
<td>Rancid butter</td>
</tr>
<tr>
<td>Valeric acid</td>
<td>Putrid, fecal smell</td>
</tr>
<tr>
<td>Isovaleric acid</td>
<td>Stinky feet</td>
</tr>
<tr>
<td>Skatole</td>
<td>Fecal, nauseating</td>
</tr>
<tr>
<td>Indole</td>
<td>Intense fecal</td>
</tr>
</tbody>
</table>

Chemicals affect the environment & cause quality of life and mental health effects, such as anxiety and depression, that can reduce immune system functionality.

Table from Environmental Defense Fund, “Raising a Stink: Air Emissions from Factory Farm”
## Community Health Effects

<table>
<thead>
<tr>
<th>Chemical Name</th>
<th>Health Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydrogen Sulfide</td>
<td>Cardiovascular effects, headaches, migraines, dizziness, nausea, neurological effects, cough</td>
</tr>
<tr>
<td>Ammonia</td>
<td>Reduced lung function, cough and excess mucus production, cardiovascular ailments; irritation of eyes, sinuses, and skin</td>
</tr>
<tr>
<td>Particulates</td>
<td>Progressive decline in lung function, asthma and bronchitis</td>
</tr>
<tr>
<td>Endotoxins</td>
<td>Respiratory issues including asthma</td>
</tr>
</tbody>
</table>

Other known community health effects include nausea, diarrhea, psychological and psycho-physiological problems.
Deadboxes: Disposal of Dead Animals
Proximity to Sacred Spaces
Density of Facilities: Hog Operations Within 3 Miles of a Person’s Home
Disproportionality

• On the basis of race, color, national origin
  • Clarity about allegation
• The impacted community (need to define)
  • Geographic proximity
• The reference group (need to define)
• Disparity must be statistically significant
Relationship Between the Location of Hog Facilities, Race, and Ethnicity
NC: REACH Complaint
2017 Letter of Concern

• **Jan. 2017**: EPA issues a Letter of Concern, expressing “deep concern” about disparate impact CAFOs have on non-white residents

• Letter is **not** a formal finding of discrimination—but EPA includes numerous recommendations NC DEQ can implement to begin addressing disparate impacts of
Eastern North Carolina Residents: Standing Up for Their Future
Thanks.

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