

OBSTACLES IN LEGALLY PROTECTING FARM ANIMALS IN THE UNITED STATES AS ANIMAL RIGHTS ABUSES AND ENVIRONMENTAL DEGRADATION CONTINUE

*Elizabeth Bennett*¹

RESUMO: O artigo aborda questões relacionadas às forças dos lobbies agrícolas e farmacêuticas para manter o status quo na sociedade norte-americana. Desta forma, temas relacionados aos direitos dos animais e ambientais serão discutidas através do enfoque do consumo da carne. Este paper busca, assim, através da de uma visão multidisciplinar e jurídica, apresentar as principais normas de proteção dos Estados Unidos. Ao final, a autora demonstra que há uma inadequação das leis de proteção dos animais e ambientais, tentando oferecer soluções para uma proteção futura.

PALAVRAS-CHAVE: Direitos dos Animais, Fábrica de Fazenda, a Operação Concentrada de Alimentação Animal (CAFO “), Meio Ambiente, Agricultura, Artigos farmacêuticos, Lobby, a Lei de Abate Humanitário, a Lei do Bem-Estar Animal (AWA), Lei da Água Limpa (CWA), Lei do Ar Limpo (“CEA”), a regra Gases de Efeito Estufa alfaiataria, Compensação de Resposta Global do Impacto Ambiental e Responsabilidade Civil (CERCLA “), Planos de Emergência e Direito de Saber da Comunidade (“ EPCRA “), Concorrência Desleal

ABSTRACT: Navigating through a wide array of laws that fail to protect animals raised for consumption is a common obstacle and frustration animal rights activists and lawyers face every day in the United States, and across the world. While laws specifically targeted at protecting animals fail to include adequate, if any, protections for farmed

¹ Estudante selecionada pela Pace University, School of Law para participar do II World Conference on Bioethics and Animal Rights. E-mail: ebennett@law.pace.edu

animals, other regulatory schemes that could apply often fall short as well. The cultural and religious history and values in the United States join forces with powerful agricultural and pharmaceutical lobbyists to maintain the status quo and the United State's willful blindness to the realities of the animal rights and environmental issues associated with modern meat consumption. This Comment explores various multidisciplinary legal theories through which farm animals may be protected under United States Law. The Comment ultimately concludes that the current laws inadequately protect farm animals from animal rights abuses and the environment from pollution and offers solutions for future protection.

KEYWORDS: Animal Rights, Factory Farm, Concentrated Animal Feeding Operation ("CAFO"), Environment, Agriculture, Pharmaceutical, Lobby, Humane Slaughter Act, Animal Welfare Act ("AWA"), Clean Water Act ("CWA"), Clean Air Act ("CAA"), Greenhouse Gas Tailoring Rule, Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), Emergency Planning and Community Right to Know Act ("EPCRA"), Unfair Competition.

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1. Introduction

The Humane Slaughter Act and other laws purporting to protect animals do not effectively regulate the way animals are treated when alive and growing in factory farm settings. Nor do the current environmental laws in the United States effectively regulate the pollution factory farms emit. These regulations must be amended to fully protect animals, both those in factory farms and those in surrounding natural habitats that are affected by the resulting pollution. Despite the appearance of a concern for animal welfare found in our society and recent growing awareness regarding conditions at factory farms and the resulting environmental threats, few changes have been made to the

factory farming industry. A new approach to animal rights and welfare is needed to stop the massive cruelty occurring at factory farms. While it is possible that environmental laws may be able to accomplish more to protect animals at factory farms than animal welfare laws, there are still many loopholes and enforcement problems with the applicable environmental laws that lead to incomplete regulation of factory farms.

Likewise, unfair competition laws could be used to regulate unlawful and inhumane conditions at factory farms, but they are generally not enforced unless there is a willing plaintiff with standing to bring suit. Legislators could enact similar laws targeted at protecting the living conditions of farm animals, but the enforcement and funding obstacles present in current legislation would remain. The more animal welfare and rights groups can expose the horrors present at factory farms, the more likely further regulations will be promulgated and the better they will be enforced.

This note begins with an examination of the animal rights and environmental problems associated with large scale animal farming operations. Societal resistance to greater regulation protecting farm animals is then explained through a discussion of how religion, the legal system, and societal attitudes have played a part in this resistance in the United States. Section IV details flaws present in the Humane Slaughter Act in addressing the animal abuse occurring at these factory farms. The Animal Welfare Act is then examined in Section V and its deficiencies at protecting farm animals are explored. The next section goes on to propose ways that environmental laws, if properly enforced, could decrease the prevalence of certain evils at factory farms, such as overcrowding and unsanitary conditions. Section VII discusses how unfair competition and false advertisement laws can be enforced by damaged parties, presumably farms whose businesses are hurt by the advantage factory farms receive when treating their animals inhumanely to decrease price and increase profits, which could result in settlements prohibi-

ting the inhumane tactics. Section VIII suggests solutions to the lack of laws and adequate enforcement against animal cruelty in factory farm settings. Lastly, the note concludes with a brief summary.

2. How Factory Farming Affects Animals and the Environment

Large scale meat and dairy farming operations create many animal rights and environmental violations. Many of the environmental problems and animal abuse issues associated with factory farms stem from the fact that they are so intensely overcrowded. This crowding leads to a larger bulk of pollutants and more uncomfortable living conditions for the animals. The pollutants spewing from factory farms not only cause great harm to the environment, but also damage the habitats and health of animals both in the immediate area and vastly far-reaching due to the resultant climate impacts. Factory farms have seriously detrimental environmental and animal rights implications that must be addressed.

Characteristic conditions at factory farms include overly crowded and unsanitary living spaces for the animals, little access to outdoor areas, no outlets through which animals can practice natural behaviors, such as rummaging or dust-bathing, and often-times workers who are physically and verbally abusive to the animals.¹ Further, animals are often not properly anesthetized when undergoing physical procedures or during the slaughtering process.² These conditions in which the animals are crowded, kept unhealthy physically and psychologically, and not permitted to behave naturally are highly injurious, but continue with little criticism.

In addition to the horrific animal rights abuses found within the factories, many animals suffer outside the factory because

of the pollution that originates there. Because of animals' close reliance on their environments for survival, most environmental impacts also greatly affect animals. Factory farms produce immense amounts of hazardous pollution, due in large part to the concentrated conditions.³ Water pollution problems caused largely by factory farm runoff include increased fecal coliform content and exorbitant levels of nutrients from fertilizer such as nitrogen and phosphorus.⁴ This leads to the explosion of algae blooms, decreased dissolved oxygen content, denitrification, and even fish kills.⁵ The increased algae and decreased oxygen levels choke out plants and animals that are important to the natural ecosystem, creating an imbalance and hindering the proper function of the plants and animals that once thrived there.⁶

Factory farms also cause air pollution in the form of methane, nitrous oxide, and gaseous ammonia, for example, which contribute to global warming impacts and respiratory health problems.⁷ Agriculture and land-use changes related to crop and animal production cause an estimated one-third of all greenhouse gases ("GHG") caused by humans.⁸ Methane is a particularly strong GHG, as it traps heat in the atmosphere more than 20 times more effectively than carbon dioxide over a 100-year period.⁹ Ruminant livestock, such as cattle, produce approximately 80 million metric tons of methane per year globally.¹⁰ This accounts for roughly 28% of the total global methane emitted caused by human-related activities.¹¹ Among the livestock industries in the U.S., the cow-calf sector of the beef industry is responsible for the largest amount, 58 percent, of methane emissions.¹² Every adult cow emits between 176 to 242 lbs., or 80-110 kgs, of methane every year and each dairy cow emits more methane than those raised for beef.¹³

Clearly, factory farming contributes greatly to air pollution and climate change. Therefore, the impacts on the environment and animals caused by factory farming are even graver than they appear at first glance after one accounts for various climate

change-related phenomena. Climate change due to GHGs, like methane, causes various environmental problems such as increased temperature, frequent weather events, sea-level rise, increased prevalence of invasive species that disturb ecosystems, and many more associated issues.¹⁴ This, in turn, affects animals in that their habitats are destroyed or lost, invasive species compete for and damage resources, and temperature changes alter the areas on which animals rely- often causing them to lose the ability to survive as they once had.¹⁵ Certainly the full impacts on animals and the environment are immeasurable.

In addition to these pollutants, approximately 24 million pounds of antibiotics are administered to livestock per year.¹⁶ This makes up for 70 percent of the nation's use of antibiotics.¹⁷ Such antibiotics are used prophylactically, to prevent disease in these overcrowded conditions where disease would otherwise flourish.¹⁸ Large amounts of these antibiotics end up in our water system, leading to antibiotic resistant bacteria and thus resistance in humans and other animals.¹⁹ As a result, the antibiotics administered to livestock disturb surrounding and far-reaching ecosystems from the very smallest bacteria up to the top of the food chain.

Likewise, factory farmers administer various hormones to their livestock in an effort to increase productivity.²⁰ These hormones also end up in the water system and affect ecosystems and animals, including humans- causing various health impacts such as increased prostate cancer rates.²¹ Many farm animals grow disproportionately due to the high amounts of hormones they are treated with, causing them health problems and injuries.²² Hormones lead to imbalances that make ecosystems, humans, and other animals unhealthy.

The pollution created in the factory farming process is even greater once the resources needed to produce meat and dairy are factored into the equation. Creating meat is a highly water intensive operation. For example, 2,500 gallons of water are needed

in order to create one pound of beef.²³ Half of all the water used in the United States is used for livestock production.²⁴ For every one unit of soy protein produced, one unit of land, water, and fossil fuels are needed versus 6-17 land units, 4.4 to 26 water units, and 6-20 fossil fuel units needed respectively to produce one unit of animal protein.²⁵ In addition to wasted water, up to ten times more grain is required to produce grain-fed beef in the United States than through direct grain consumption.²⁶ The average fossil fuel intensity for foods in the U.S is a three to one ratio while the ratio for industrially-produced meat can be up to thirty-five to one.²⁷ These additional considerations only begin to skim the surface of the extra environmental burdens associated with meat production, yet they demonstrate the detrimental environmental loading associated with meat.

Factory farms are one of the leading causes of pollution and likely the leading cause of animal rights abuses, yet they remain largely unregulated. The inhumane conditions at large-scale animal farming operations are oft-overlooked. The pollution from factory farms, which is largely exempted from many environmental laws, leads to contaminated land, air, and water, and stresses and damages surrounding natural ecosystems, the animals found within them, and areas sensitive to global warming impacts. The factory farm model must be addressed and changed. Many laws come close to addressing these problems, but fail to prohibit the immense pollution and animal rights abuses.

3. Societal Resistance

Improving laws protecting animals is difficult due to societal resistance based on traditions, convenience, lack of knowledge about where modern meat comes from, and general unpopularity of the movement. The nearly complete exclusion of farm animals from regulations that are designed to stop the exact abu-

ses they endure is such a glaring example of how animals are protected in accordance with the needs and desires of humans, and not in a way that recognizes the animal as a being with an end in itself. Many people lack knowledge about how animals are mistreated in farming operations.²⁸ Many of the people who lack this knowledge purposefully avoid educating themselves on the topic so as to avoid addressing the evils they contribute to as they continue to live their daily life unchanged. Furthermore, interested parties, such as agribusiness and pharmaceuticals, fight successfully against regulation.²⁹ Even the general public often resists further regulation, fearing that this will hinder their desires- e.g. to buy inexpensive meat.³⁰ This is partly a result of the enormous amount of propaganda the meat and dairy industries, among others, barrage the general public with concerning the health benefits of meat and dairy and the inability of humans to get enough protein, calcium, etc. from non-animal products.³¹ Further, because many believe that animals lack the ability to think, feel emotions, and experience, ensuring they are treated humanely is not a top priority.³²

Society in the United States is also deeply embedded with Judeo-Christian ideals that lead many to believe our dominion over animals is justified.³³ Within this set of beliefs, is the principle that humans reign supreme and other animals were created for human use.³⁴ I am sure I am not alone when I tell you that my grandmother responded to my vegetarianism by saying, "The good Lord put Cattle on this Earth for us to eat!" This societal attitude toward animals is reflective of an overall attitude toward nature and the environment as a resource for humans to exploit freely. However, Wise correctly points out that religion and animal rights do not necessarily have to clash in the face of animal abuse.³⁵ Wise also points out the various other atrocities religion has been used to justify.³⁶ Though we may be correct in recognizing that our society operates under many religious beliefs, this does not serve as a valid justification for society's lackadaisical approach to animal abuse. Instead, this understand-

ding allows us to approach animal rights and abuse issues in a manner better suited to persuade a religious society of the evils associated with factory farm animal production. For instance, this may be accomplished through emphasizing, not that it is morally wrong to eat or use animals despite possibly believing this, but instead focusing on the horrific living conditions and gruesome deaths “God’s creatures” are forced to endure.

This religion-based outlook regarding animals is also apparent in our legal system, which treats animals as property, further hindering their protection.³⁷ Despite the fact that the legal system is secularized to a certain extent, religious views remain at the bedrock of the legal system’s foundation, which encourages people to treat animals like products and commodities.³⁸ Because, according to religious tradition, non-human animals were created for human use, animals are thus treated as human property.³⁹ This was clearly established long ago in *Pierson v. Post*, which held that in order to assert possession over an animal, one must have control over the animal physically- by trapping the animal in such a way that it could not escape or mortally wounding or killing the animal.⁴⁰ This common law occupancy requirement clearly is based on a view of nonhuman animals as property and solely in existence for the use of humans.

There is much debate over whether it is morally permissible to treat animals as property and the repercussions of treating them as such. On one end of the spectrum, some argue that animals’ status as property is the root of all evil committed against them.⁴¹ This view, however, is too extreme for some, who argue that the property status of animals is not at the root of the problem, but it is the lack of strong laws regulating treatment of animals that is at issue.⁴² Epstein argues that animals are not worthy of rights because they are fundamentally different from humans and actually benefit from their status as property.⁴³ This argument, however, fails to recognize all of the suffering animals are subjected to as a result of their property status- e.g. treatment and living conditions of factory farmed animals. The

argument also fails to truly address the fact that we already grant some rights to animals and that we grant rights to humans that lack fundamentally human characteristics, like those that animals are said to lack. Examining factory farms alone convincingly demonstrates the pain inflicted upon animals as a result of their legal status lacking “personhood.”

Most societal mechanisms disfavor consideration of the treatment of animals when there is any perceived human expense. This is apparent in the fact that anti-cruelty laws largely do not apply to farm animals, as discussed below in Sections IV and V.⁴⁴ Farm animals are the animals that we have the most exploitative relationship with and the ones that would “cost” most for us to protect. It is no coincidence that we protect these animals the least. It serves human needs to exploit these animals, as the majority of society enjoys eating them, these consumers do not want to pay high prices to be able to eat them, the factory farmers want the largest profits possible, and the pharmaceutical companies do not want to lose out on the majority of their antibiotics sales. Thus, it works conveniently for society to continue operating factory farms as they have, with no consideration of how the animals are being treated during their lives or in their deaths.

4. The Humane Slaughter Act’s Failures

The Humane Slaughter Act of 1978 (“HSA”) does not adequately protect animals produced for consumption in the United States.⁴⁵ The HSA includes provisions regarding what constitutes humane slaughter,⁴⁶ an authorization for the Secretary of Agriculture (the “Secretary”) to conduct further research and designate different methods of slaughter,⁴⁷ and an exemption for ritual slaughter.⁴⁸ The humane methods of slaughter provision does not define humane, but only lists two forms of slaughter that were found to be humane.⁴⁹ The first method includes, “in

the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”⁵⁰ The second provision includes that,

by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.⁵¹

Thus, the HSA provides for killing when an animal is “rendered insensible to pain” or by cutting the carotid arteries to induce loss of consciousness.⁵²

The first problem presented by this statute, is that it is not properly publicly enforced. The United States Department of Agriculture (the “USDA”), led by the Secretary of Agriculture, is responsible for enforcing the HSA.⁵³ However, the USDA opposed the HSA and many of its members do not strictly enforce the laws against the regulated slaughterhouses in the hopes that they may someday get high-paying jobs working for them.⁵⁴ Enforcement agents are far from present in the industry, leaving many industry employees completely unaware of the HSA.⁵⁵ There are numerous accounts of animals being processed before they are actually rendered insensible to pain.⁵⁶

An example of improper enforcement by the USDA against reprehensible conditions at a slaughterhouse is the recent closure of Bushway Packing, Inc. This organically certified Vermont slaughterhouse was cited for mistreating animals three times in six months by the Department of Agriculture, but it was not until the Humane Society of the United States captured these abuses on tape in an undercover investigation that the plant was closed.⁵⁷ The Humane Society caught slaughterhouse employees kicking calves, excessively electrically prodding them,

and not completely rendering them senseless before slaughtering or even skinning them.⁵⁸ They even captured a Department of Agriculture inspector informing employees about how they could escape being shut down for violations and failing to stop an employee from cutting an animal that was not rendered insensible to pain.⁵⁹ Bushway Packing provides a sadly representative example of how the HSA is not being adequately followed or enforced by the Department of Agriculture.

Secondly, poultry, fish, and rabbits are not included in the HSA. Congress's failure to include chickens is particularly appalling because of the enormous number of chickens slaughtered for food every year. In the United States alone, 9.08 billion chickens were slaughtered for consumption in 2008.⁶⁰ The slaughter of these animals is not nationally regulated,⁶¹ nor is the slaughter of all of the unwanted male chicks eliminated through the culling process at egg production facilities.⁶² Under the HSA, none of these animals have to be stunned before they are processed and killed.⁶³ The pain these animals feel is of no concern to Congress.

Thus, even though the HSA sets out to protect animals slaughtered for human purposes, the exemptions and lack of enforcement render the Act unable to protect most farm animals in a meaningful way. For the HSA to even begin to protect farm animals adequately, another agency or entity would likely need to assume enforcement responsibilities and many key exemptions would have to be removed from the Act.

5. Animal Welfare Act Excludes Agricultural Animals

The other main Act dealing with the treatment of animals is the Animal Welfare Act.⁶⁴

This Act regulates how animals are transported, handled, and sold.⁶⁵ However, the Act specifically does not regulate the treatment of farm animals produced for consumption.⁶⁶ Many

animal welfare activists have argued that farm animals should be included under the provisions of the Animal Welfare Act.⁶⁷ If farm animals were included under this Act, and it was actually enforced, much of the unnecessary cruelty to farm animals could be eliminated.

6. Using Environmental Laws to Regulate Cruelty to Animals in Factory Farms

Due to the fact that the HSA and Animal Welfare Act largely fail to regulate the

treatment and slaughter of factory-farmed animals and greater societal acceptance of environmental issues than animal rights issues, some activists have turned to Environmental laws as a way to decrease animal cruelty.⁶⁸ Environmental issues are generally of greater social concern and thus are often more frequently enacted and broadly encompassing. Because, as previously discussed, the overcrowding at factory farms leads to much of the pollution and animal rights issues, if laws can be used to decrease pollution from factory farms, this would likely have to lead to less crowded conditions and therefore, hopefully, more humane treatment of farm animals.

The Clean Water Act (“CWA”) includes regulations that specifically target factory farm pollution. Under the CWA, animal feeding operations (“AFO”) and CAFOs are subject to National Pollutant Discharge Elimination System (“NPDES”) permitting requirements and thus in order to operate, they must obtain a NPDES permit that meets the requirements of the CWA.⁶⁹ The Environmental Protection Agency (“EPA”) defines AFOs as follows:

(1) Animal feeding operation (“AFO”) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.⁷⁰

EPA further defines Concentrated animal feeding operations as follows:

(2) Concentrated animal feeding operation (“CAFO”) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.⁷¹

A large AFO is defined as:

(4) Large concentrated animal feeding operation (“Large CAFO”). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(i) 700 mature dairy cows, whether milked or dry;

(ii) 1,000 veal calves;

(iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(iv) 2,500 swine each weighing 55 pounds or more;

(v) 10,000 swine each weighing less than 55 pounds;

(vi) 500 horses;

- (vii) 10,000 sheep or lambs;
- (viii) 55,000 turkeys;
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).⁷²

Medium AFOs are defined as follows:

- (6) Medium concentrated animal feeding operation (“Medium CAFO”). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b) (6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:
 - (i) The type and number of animals that it stables or confines falls within any of the following ranges:
 - (A) 200 to 699 mature dairy cows, whether milked or dry;
 - (B) 300 to 999 veal calves;
 - (C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (D) 750 to 2,499 swine each weighing 55 pounds or more;
 - (E) 3,000 to 9,999 swine each weighing less than 55 pounds;
 - (F) 150 to 499 horses;
 - (G) 3,000 to 9,999 sheep or lambs;

- (H) 16,500 to 54,999 turkeys;
 - (I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 - (K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
 - (L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 - (M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- (ii) Either one of the following conditions are met:
- (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
 - (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.⁷³

As you can see, in order for factory farms to be regulated under the CWA as a point source, they must be very large.

The Clean Air Act (“CAA”) is another mechanism that could be used to prevent pollution associated with factory farms. Although the CAA does not specifically regulate factory farms now, there is a push for EPA to include factory farms under the scope of this Act.⁷⁴ The Humane Society, along with other concerned groups, even recently petitioned the EPA to include factory farm pollution in CAA regulations.⁷⁵ If factory farms were regulated under the CAA, the EPA or regulating State agency, would have the right to enter these facilities and could also attempt to decrease crowding by enforcing against the resultant air pollution.

The EPA recently enacted a rule titled, “Prevention of Significant Deterioration and Title V Greenhouse Tailoring Rule” (“GHG Tailoring Rule”).⁷⁶ This final rule, which was published in the Federal Register on June 3, 2010, regulates six pollutants that EPA deemed to be GHGs.⁷⁷ Methane is among the six pollutants,⁷⁸ and is a strong GHG that factory farms emit,⁷⁹ as was discussed in Section II above. Under this action, EPA sets forth criteria specific to GHG emitting sources that vary from the criteria set forth under the Prevention of Serious Deterioration and title V programs of the Clean Air Act for other pollutants.⁸⁰ Because the regulation of GHGs is a new concept, where GHGs had previously gone unregulated unless regulated for reasons differing from their affect on climate change, the EPA is phasing in the applicability of these requirements.⁸¹ The EPA believes this phase-in is needed to eliminate undue burden on permitting authorities and small sources.⁸² The regulation of GHGs will first apply to the largest emitters, and will slowly begin to apply to smaller sources.⁸³ A variety of smaller sources are exempt from PSD and title V permitting for GHG emissions until April 30, 2016 at the earliest.⁸⁴ Agriculture, of course, is one of the industry groups to which EPA has granted this regulatory relief.⁸⁵ Though EPA will regulate agriculture in this tailored fashion, the regulation of methane as the restrictions grow increasingly strict, could have a large impact on how factory farms operate.

Air pollution notification regulations for factory farms under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and Emergency Planning and Community Right to Know Act (“EPCRA”) were largely exempted by the EPA during the recent Bush Administration.⁸⁶ Included in this exemption were releases of hazardous substances to the air, originating from animal waste.⁸⁷ Thus, regulating factory farms through air pollution laws may be less promising than attempting to regulate conditions through the use of the CWA or the new GHG Tailoring Rule.

Despite the fact that waste from factory farms is regulated under the Clean Water Act and potentially could be regulated under the Clean Air Act and GHG Tailoring Rule, many factory farms are not effectively regulated. Under the CWA, agricultural operations that do not fall under the CAFO category are largely unregulated as the waste from their facility is generally not classified as a point source.⁸⁸ Even if a farm is deemed to be a CAFO, the agricultural storm water discharges from the facility are not considered a point source and are also largely unregulated.⁸⁹ Pollution to groundwater is not considered pollution to waters of the state for regulatory purposes under the CWA.⁹⁰ Clearly, the CWA does not adequately regulate factory farms, despite the fact that this type of regulation has the potential to strictly prohibit excessive pollution from factory farms, and in turn can regulate the overcrowded, unsanitary living conditions of farm animals.

One reason these laws are weak is that the regulation of AFOs and CAFOs has been highly affected by agricultural groups' lobbying.⁹¹ Not only does agribusiness lobby legislators for less restrictive laws, pharmaceutical companies also lobby to keep these laws lenient. Pharmaceutical companies lobby because they provide antibiotics in large amounts to overcrowded factory farms where the animals are inevitably diseased due to the close, unhealthy quarters for the animals.⁹² These antibiotics also increase growth rates.⁹³ Because the desire for antibiotics in factory farms depends in large part on poor conditions therein and the use of these antibiotics contributes seventy percent of the nation's use of antibiotics,⁹⁴ the pharmaceutical companies have strong motives to keep factory farm regulation limited, so that the largest, most crowded producers continue to need bulk antibiotics.

In the event that the regulations are actually passed and apply, they are often not properly enforced by states, like the HSA and AWA. As discussed above, the NPDES Permit Program and Effluent Limitation Guidelines and Standards for Concentrated

Animal Feeding Operations (“EPA CAFO Rule”) are the mechanisms for enforcement against factory farm pollution.⁹⁵ States also share in the duty to regulate AFOs.⁹⁶ On paper, the regulations may appear to be complete, however many states lack adequate resources and authority to effectively regulate livestock operations.⁹⁷ The vast amount of pollution that continues to pour from factory farms alone shows that these rules are not properly enforced.

If the CWA, CAA, and now possibly the GHG Tailoring Rule regulations were properly applied and enforced against factory farm pollution, it is likely that this would lead to less crowded and, thus, more humane conditions for animals produced for consumption at these farms. This would extend beyond the scope of the HSA in that it would lead to regulation of, not only slaughter techniques and procedures, but also of the acceptable living conditions permitted at factory farms. Decreasing crowding would also lead to decreased prevalence of disease prevalent in factory farmed animals subject to commonly found inhumane living conditions.

One major problem with the model of using environmental laws in an effort to decrease crowding and better conditions for animals in factory farms is the new movement for factory farms to make their processes more “green.” A prime example of this is the proposed Oswego County, New York 72,000-head slaughterhouse/ethanol plant.⁹⁸ This plant proposes to use corn to produce ethanol and the byproduct of this process, distillery grain, would be used to feed the animals.⁹⁹ In turn, the animal feces would be converted into biofuel and used to power the ethanol plant.¹⁰⁰ If factory farms succeed at vastly reducing the pollution they create, especially while creating “renewable” energy, they will be able to continue operating crowded facilities with less repercussions and societal uproar. This may even lead to increased animal consumption, in that people who previously limited animal product intake because of the impact on

the environment may feel better about eating animals that were farmed in “environmentally friendly” farms.

Using environmental laws is undoubtedly a temporary fix to a deeply rooted problem and the animal rights implications must be addressed as well. However, because society remains so resistant to animal rights considerations, this environmental approach should be taken as an additional attempt to decrease animal suffering in the meantime while recognizing that the animal rights issues must still be addressed. Despite the potential limitations of taking this approach, it still has potential to accomplish more to benefit animals than animal rights approaches because of the strong societal and legal resistance involved at this time.

7. Using Unfair Competition Laws to Regulate Cruelty to Animals

Another way of regulating cruelty toward farm animals is the use of anti-competition laws. Most States have similar anti-competition laws that can be used to decrease the prevalence of cost-cutting animal growth and slaughter techniques that intensify cruelty to animals throughout the process.¹⁰¹ Under title 15, section 45 of the United States Code, “Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.”¹⁰² The advantage that factory farms using cost-cutting tactics that lead to poor treatment of animals receive in the form of greater profits and ability to sell products at lower prices than more humane competitors could potentially fall under this regulation. Likewise, false advertisement by factory farms where animals are abused may also fall under this law. Competitors who are undersold as a result of cruel and deceptive factory farming practices, could use this regulation as a means for impro-

ving the treatment and living conditions of animals in factory farms.

Donna Mo points out that many methods of slaughter that decrease costs are inhumane and even violate the HSA, but are not publicly enforced.¹⁰³ Companies, such as farms that do not use inhumane practices to cut costs or mock-meat producers, can use unfair competition laws to bring suit against companies that can sell less expensive products because they are able to cut costs unfairly by using cruel, often illegal practices. Further, false advertisement of happy animals roaming free in sunny pastures can also be attacked as “deceptive acts or practices” under such laws.¹⁰⁴ Thus, using laws against unfair competition may be another useful tool in decreasing cruelty to animals in factory farms.

However, the drawback to using this type of enforcement against animal cruelty is that those who would have standing to bring such a suit are also financially interested parties. As a result, their primary goal in bringing an unfair competition suit against a factory farm would not truly be improvement of living conditions for farm animals. These plaintiffs may also hesitate in pushing for the most stringent regulations against animal cruelty, as they may be weary of inadvertently creating requirements that they will then have to follow. Thus, while using laws against unfair competition and deceptive advertising in order to improve living conditions for farm animals does not represent a complete solution to animal abuse at factory farms, this tactic could serve an important role in the overall effort to stop animal abuse at such farms and slaughterhouses.

8. Recommendations

Further regulation and greater enforcement is needed in order to protect farm animals from cruel living conditions, treatment, and deaths. After examining the many mechanisms and

laws that can be used to combat farm animal abuse and improve living conditions, the fact that factory farms are not more stringently regulated seems puzzling. First, the laws protecting animals from abuse exclude farm animals. Then the environmental laws that could be applied to improve living conditions of animals are not properly enforced and include many exemptions. The unfair competition laws can only be applied by competing farms, which will undoubtedly have ulterior motives and will likely lack the requisite advocacy role needed to really improve factory farm conditions. While it is important for advocates to attempt to use these laws in an effort to decrease animal suffering within and caused by factory farms, it is clear that new regulations and a new societal understanding of animal suffering is required if we truly hope to end animal cruelty resulting from factory farms.

Scully argues that a Humane Farming Act should be made,¹⁰⁵ which is another possible way to decrease the current animal abuses at factory farms. Under the Humane Farming Act, Scully calls for provisions regulating the living conditions of farm animals and humane treatment where animals are not merely seen as a means to a profit.¹⁰⁶ Among other things, this Act would include specific regulations for animal feed ingredients, the amount of space each animal must be allotted, adequate enforcement funding requirements, and severe penalties for violations.¹⁰⁷ Mosel also calls for a similar Federal statute aimed at improving the living conditions of factory farmed animals.¹⁰⁸ A Humane Farming Act is severely overdue, but even if passed, it would present many of the same problems that the other applicable statutes already create. For instance, like the HSA, a Humane Farming Act would likely be implemented by interested parties and not vigorously enforced. The enforcement problems being recognized, a new statute could address this in depth and provide for a better enforcement mechanism than those provided in other applicable statutes.

A danger of further regulation, however, is that it could also lead to outsourcing of meat production to less regulated countries.¹⁰⁹ In an attempt to avoid this, activists should work to raise awareness of the horrors associated with factory farms, making sure to provide details of the terrible living conditions farm animals are subjected to and their horrible deaths. The massive amounts of pollution associated with factory farms should also be a key focus of the campaign to educate people about factory farms, as this may be a more readily accepted angle through which to approach this sensitive topic. The campaign should not only encompass and target the United States, but should also include other countries- especially those that produce large quantities of meat. Continuing to raise awareness about the problems associated with factory farming could lead to decreased market demand for inexpensive, cruelly produced meats.

On top of education campaigns, both public and private enforcement efforts must be increased. More funds should be allocated to enforcing the HSA and CWA CAFO Rules. In addition, the CAA should be expanded to include factory farm pollution. One way to accomplish this could be through citizen suits or other lawsuits that aim to force the government to provide requisite protections for its citizens. Furthermore, there must be a campaign to amend the AWA to include farm animals, although this is unlikely because such inclusion may nearly eliminate legally operating livestock operations. Ideally, international laws or treaties regulating the treatment and living conditions of animals, including farm animals produced for food, would be an effective way to decrease animal suffering inflicted at factory farms. International treaties and laws are often extremely difficult to agree upon and given the societal and industrial impact of regulations concerning the operation of factory farms, it is unlikely such an effort would succeed at this time. However, starting a running dialogue between countries and political leaders about factory farming issues could prove beneficial in ac-

completing this goal as more people reject the legitimacy of the factory farm system.

Due to social resistance, changing the public's outlook on animals, their worth, and the unfair treatment they endure is the first step toward achieving better regulation of factory farms. There is already much more interest in the mistreatment of animals in factory farms now than there had been in the past. This is a sign that we are moving in the right direction, toward more adequate protection of factory farmed animals. However, there is still a long way to go and many obstacles to accomplishing the proper treatment of animals. Raising awareness of the terrible, inhumane conditions at factory farms may be the best way to convince the public, and lawmakers in turn, that strict regulations and enforcement mechanisms are needed here.

9. Conclusion

Current laws that grant animals rights fail to protect farm animals that are, in many ways, subjected to the cruelest treatment. These laws treat animals as property and thus, only protect animals to the extent that their designated use to human society is maintained with minimal human expense. It is for this reason that farm animals have been protected most sparingly. While the laws are inadequate and further laws should be created to address the mistreatment of farm animals, until society really sees animals as more than just a means to their ends and a resource for them to use, egregious animal abuse at factory farms and other settings will continue, as human desires will continuously be put first.

Even though it is clear and largely accepted that certain animal rights should be protected, as is reflected in current laws protecting animals, these laws contain loopholes that suit human desires and are not properly enforced in part because of the lack of urgency the public and government feel toward protec-

ting these rights. This societal attitude is akin to the person who agrees that animals are mistreated at factory farms, knows it is bad, but continues to support them by eating meat. Because humans operate under the general mindset that they are supreme, other animals are inferior, and it is natural and necessary for us to use them, all the regulations in the world will likely not end animal abuse.

Society's common resistance to see animals as ends in themselves, if only for self preservation and the maintenance of the status quo, is the very reason for the necessity of the approach to regulate factory farms using laws that were not designed to protect animals. Environmental laws often serve human needs and health, and are thus more apt to be created and enforced. Anti unfair competition laws also serve human desires to profit. Thus these laws seem more promising in that they serve the interests that are most generally accepted. The hope of using these laws as a mechanism for improving the living conditions of factory farmed animals is a somewhat desperate attempt to protect farm animals when society and government do not see the protection of these animals as a priority. Still, whatever regulations we can promulgate in the meantime to decrease animal suffering should be enacted as we continue to raise awareness of the pain and suffering inflicted upon farm animals confined in tiny living quarters, fed waste products, pumped with antibiotics, and handled as if they were inanimate objects that cannot feel pain, in the hopes that society will eventually deem farm animal protection a priority instead of a mere inconvenience.

NOTAS

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² See *id.*

- ³ See Michael L. McKinney et al., *Environmental Science: Systems and Solutions* 262-63 (Jones and Bartlett Publishes 2007).
- ⁴ *See id.*
- ⁵ *See id.*
- ⁶ *See id.*
- ⁷ Sustainable Table, <http://www.sustainabletable.org/issues/airpollution/> (last visited Nov. 21, 2009).
- ⁸ Keith Paustian, et al., *Pew Center on Global Climate Change, Agriculture's Role in Greenhouse Gas Mitigation*, Sept. 2006, <http://www.pewclimate.org/docUploads/Agriculture%27s%20Role%20in%20GHG%20Mitigation.pdf>.
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- ¹¹ *Id.*
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- ¹³ *Id.*
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- ¹⁶ *See* Natural Res. Def. Council, *Facts about Pollution from Livestock Farms*, <http://www.nrdc.org/water/pollution/ffarms.asp> (last visited Nov. 21, 2009).
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- ¹⁸ Brianna L. Ladapo, *Antibiotics in Agriculture: How Corporate Overuse is Putting You at Risk and Why the FDA and USDA Aren't Protecting You*, May 22, 2009, <http://www.natural-health-journals.com/477/antibiotics-in-agriculture>.

- ¹⁹ See Natural Res. Def. Council, *supra* note 16. See also United States v. An Article of Drug Consisting of 4,680 Pails, More or Less, Each Pail Containing 60 Packets, Etc., 725 F.2d 976, 988 (Tex. Ct. App. 1984) (discussing the concern that arose from the use of subtherapeutic antibiotics on food-producing animals).
- ²⁰ See Belsandia, *supra* note 1.
- ²¹ See Ladapo, *supra* note 18.
- ²² See Belsandia, *supra* note 1 (explaining, for example, how chickens treated with excessive hormone doses grow breasts too large for their legs to support, often causing broken legs that disable the chickens from reaching their food, resulting in death by starvation).
- ²³ Jeff Nelson, How Much Water to Make One Pound of Beef?, Mar. 1, 2001, http://www.vegsource.com/articles/pimentel_water.htm.
- ²⁴ Chooseveg.com, Wasting Resources, <http://www.chooseveg.com/conservation.asp> (last visited Aug. 18, 2010).
- ²⁵ The Humane Society of the United States, Guide to Vegetarian Eating, <http://www.humanesociety.org/assets/pdfs/farm/gve.pdf> (last visited Aug. 18, 2010).
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- ³⁹ See Wise, *supra* note 32, at 22-24.
- ⁴⁰ See *Pierson v. Post*, 3 Cai. R. 175, 175 (N.Y. Sup. Ct. 1805).
- ⁴¹ Gary L. Francione & Anna E. Charlton, *Animal Advocacy in the 21st Century: The Abolition of the Property Status of Nonhumans*, in ANIMAL LAW AND THE COURTS: A READER 7 (Taimie L. Bryant, Rebecca J. Huss & David N. Cassuto, eds., Thomson West 2008).
- ⁴² See Richard A. Epstein, *Animals as Objects, or Subjects, of Rights*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 143-144 (Cass R. Sunstein & Martha C. Nussbaum, eds., 2004). See also Robert Garner, *Political Ideology and the Legal Status of Animals*, 8 Animal L. 77, 77-78 (2002).
- ⁴³ See Epstein, *supra* note 42, at 148-152.
- ⁴⁴ See, e.g., U.S.C. §§ 2131, 2132 (g) (2006) (requiring that animals be treated humanely, but excluding farm animals from the definition of animal); 7 U.S.C. § 1901 et. seq. (2006) (which regulates slaughter, but excludes chickens, does not discuss living conditions, and is often not properly enforced).
- ⁴⁵ See Humane Slaughter Act of 1978, 7 U.S.C. §§ 1901-06 (2006).
- ⁴⁶ See *id.* at § 1902.
- ⁴⁷ See *id.* at § 1904 (a), (b).
- ⁴⁸ See *id.* at § 1906 (2006).
- ⁴⁹ See *id.* at § 1902.
- ⁵⁰ *Id.* at § 1902 (a).
- ⁵¹ *Id.* at § 1902 (b).
- ⁵² See *id.* at § 1902, (a), (b).

- ⁵³ See 21 U.S.C. § 603 (2006); see also Humane Slaughter Resolution, Pub. L. No. 107-171, §10305, 116 Stat. 134, 493-94 (2002) (codified at 7 U.S.C. §1901 (2006)).
- ⁵⁴ Donna Mo, *Unhappy Cows and Unfair Competition: Using Unfair Competition Laws to Fight Farm Animal Abuse*, 52 UCLA L. Rev. 1313, 1318-19 (2005) (citing GAIL A. EISNITZ, *SLAUGHTERHOUSE* (Prometheus Books 1997)).
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- ⁶¹ See Humane Slaughter Act of 1978, 7 U.S.C. §§ 1901-06 (2006).
- ⁶² See USDA, *supra* note 60.
- ⁶³ See Humane Slaughter Act of 1978, 7 U.S.C. §§ 1901-06 (2006).
- ⁶⁴ See Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (2006).
- ⁶⁵ See *id.*
- ⁶⁶ See *id.* § 2132 (g). See also Peter Singer, *In Defense of Animals* 176 (Wiley-Blackwell 1991).

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- ⁶⁸ See Cecilia Isaacs-Blundin, *Why Manure May Be the Farm Animal Advocate's Best Friend: Using Environmental Statutes to Access Factory Farms*, 2 *J. ANIMAL L. & ETHICS* 173, 174-75 (2007).
- ⁶⁹ 40 C.F.R. § 122.23 (a) (2008).
- ⁷⁰ 40 C.F.R. § 122.23 (b)(1)(i), (ii) (2008).
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- ⁷⁸ *Id.*
- ⁷⁹ *Ruminant Livestock*, *supra* note 10.
- ⁸⁰ *GHG Tailoring Rule*, *supra* note 77.
- ⁸¹ *See id.*
- ⁸² *Id.*
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- ⁸⁴ *Id.*
- ⁸⁵ *See id.*
- ⁸⁶ See Food and Water Watch, *Bush Administration Exempts Factory Farms From Regulation*, Dec. 12, 2008, <http://www.foodandwaterwatch.org/press/bush-administration-exempts-factory-farms-from-regulation-article12182008> (last visited Nov. 29, 2009).
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