

UPDATED INVENTORY – FEBRUARY 2004

Inventory of CAFO Cases

N.B: All attorneys listed are plaintiffs' counsel. Case names may not be precise.

California

Center on Race, Poverty and the Environment v. County of Kern, Borba Dairy Farms

Claims/Issues CA NEPA (CEQA): Failure to consider cumulative impacts, direct impacts, mitig, reas alternatives, feasible mitig and alternatives

Posture/Result May '01: Environmental Impact Report inadequate. Dairy & county must comply w/CEQA and include consideration of 34 existing dairies in the county; air quality, health impacts. County must prepare a second environmental impact report. April 2002: Second environmental impact report inadequate. County must analyze air pollution health effects at the fence-line where the public has access and must analyze the feasibility of reduced herd size alternatives. October 2003: Court ruled third environmental impact report adequate.

Attorney(s) Luke Cole and Brent Newell; Aaron Isherwood

Other Info California state ct

Association of Irrigated Residents v. County of Madera

Claims/Issues CEQA (CA law) challenge to conditional use permit

Posture/Result Complaint filed in August '01; Appeal pending in Sept. '02

Attorney(s) Brent Newell

Other Info 9,000 cow dairy. Appellate court upheld issuance of CUP and compliance with the California Environmental Quality Act. Published decision *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383.

Association of Irrigated Residents v. Borba et al.

Claims/Issues CAA

Posture/Result Notice letter sent Dec. '01. No filing to date.

Attorney(s) Brent Newell

Other Info 2 other factory dairies in California also noticed

Association of Irrigated Residents v. U.S. EPA

Claims/Issues CAA: challenge to EPA's approval of California's Title V permitting program when state law exempted agricultural sources of air pollution from state and federal clean air permit programs.

Posture/Result Settlement in May 2002. Resulted in California administering a federal Title V (operating permits) program for agriculture and issuing a Notice of Deficiency to the state to require removal of the exemption or be subject to sanctions. Legislature passed SB 700 under threat of sanctions and Governor Davis signed bill in September 2003.

Attorney(s) Brent Newell

UPDATED INVENTORY – FEBRUARY 2004

Other Info

Association of Irrigated Residents, DeltaKeeper, and Sierra Club v. California Regional Water Quality Control Board, Central Valley Region

Claims/Issues California Environmental Quality Act case alleged decision to waive state water quality permits for 800 animal feeding operations violated CEQA because the Regional Board failed to prepare an environmental impact report.

Posture/Result Regional Board voluntarily rescinded the "waiver" policy two months after the case was filed.

Attorney(s) Brent Newell

Other Info

Save Our Shafter v. County of Kern

Claims/Issues California Environmental Quality Act case alleged environmental impact report inadequate because of failure to analyze odor and fly impacts, failure to analyze a reasonable scope of alternatives to the project, and failure to analyze cumulative odor and fly impacts.

Posture/Result Court agreed with Petitioners and issued a writ of mandate that invalidated the fly impact analysis, cumulative odor and fly analysis, and alternatives.

Attorney(s) Caroline Farrell

Other Info

Florida

Save Our Suwannee, Inc. v. Florida Dept of Env'l Protection

Claims/Issues State law to compel DEP to enforce CWA re: discharges, monitoring, individual NPDES permits

Posture/Result Complaint filed April '01; motions for judgment on the pleading by defendant and defendant-intervenor denied in August '02; first amended complaint filed in August '02; trial held November 2003

Attorney(s) Melanie Shepherdson, NRDC

Other Info Large dairies (#35) in Florida; Intervenor is Sunshine State Milk Producers

Andersen et al. v. Smithfield Foods, Inc.

Claims/Issues RICO: racketeering (mail and wire fraud, money laundering)

Posture/Result Complaint filed February '01; defendants' motion to dismiss granted and plaintiffs' complaint dismissed with prejudice in June '02; on appeal, dismissal upheld

Attorney(s) Waterkeeper Alliance tort lawyers

Other Info M.D. Florida; Class action

Kentucky

Kentucky Farm Bureau Fed'n v. Commonwealth of Kentucky & KY Natural Resources & Env'l Protection Cabinet et al.

Claims/Issues Farm Bureau challenge to void KY state regs on integrator liability

UPDATED INVENTORY – FEBRUARY 2004

Posture/Result Cir ct voided regulation based on KY state law—regulation was not approved by the state legislature; Appeal to be heard week of 6/18/01: challenging constitutionality of a law that allows the legislature to review agency action; legislature acted and effectively gutted regulations; case is on hold

Attorney(s) Betsy Bennett and Hank Graddy, Sierra Club

Other Info KY Resources Council and Sierra Club are intervenors

Commonwealth of Kentucky v. Tyson Chicken

Claims/Issues Nuisance

Posture/Result First hearing: penalty reduced from \$400K to \$500; ordinance found to be valid; Tyson appealed; Waiting for trial

Attorney(s) Betsy Bennett and Hank Graddy

Other Info City amended nuisance ordinance to cover chicken odor; criminal penalty = \$25/chicken/day

Sierra Club v. Tyson Chicken

Claims/Issues CERCLA; EPCRA (failure to report ammonia emissions)

Posture/Result Complaint filed April '02

Attorney(s) Philip Shepherd, Barclay Rogers

Other Info KY Federal ct; also litigating integrator liability as part of the case.

Idaho

Bosma v. Butler (and Butler v. Bosma counter claims)

Claims/Issues Breach of contract, trespassing and interference with prospective business against the Butlers, defamation against the Butlers and Charlie Tebbutt

Posture/Result Trespassing, interference with business and trespassing claims dropped in April 2002. Butler's counterclaims are now for breach of contract, nuisance, trespass, injunctive relief and punitive damage. Trial scheduled to start July 19, 2004.

Attorney(s) Richard Eymann, general counsel. Charlie Tebbutt, co-counsel.

Other Info This case formed from a previously settled case, Idaho Rural Council v Bosma, in which Tebbutt was the lead attorney.

Idaho Conservation League v. Matthews Sunnydale Feedlot

Claims/Issues Citizen suit for violations of Clean Water Act, including dumping wastewater into Snake River through a pipe. Operator making significant changes to feedlot.

Posture/Result Case is in settlement negotiations.

Attorney(s) Bill Eddie with Advocates for the West

Other Info Contact Person: Justin Hayes (208-345-6942, ext. 24).

Indiana

Save the Valley, Inc. v. EPA, 99 F. Supp. 2d 981 (S.D. Ind. 2000)

Claims/Issues CWA: require NPDES permit; Federal Mandamus Statute: compel EPA to enforce CWA/take over state program

Posture/Result Pls survived motion to dismiss in March '00; cross motions for SJ filed in Feb. '02. Decision 2003 in favor of plaintiffs. EPA ordered to require that IDEM implement NPDES

UPDATED INVENTORY – FEBRUARY 2004

program for CAFOs or withdraw delegated authority. State has developed CAFO permit rules.

Attorney(s) Scott Treadway
Other Info S.D. Indiana; holding: mandatory duty on EPA to assume enforcement of states NPDES permit program if state fails to enforce CWA standards

Companion case against the state in state ct

Claims/Issues Nuisance based on odor; Trespass
Posture/Result Four hog operations temporarily/ permanently closed
Attorney(s) Ron Farley
Other Info St. Clair County, Alabama; Litigation not the sole reason for farms shutting down

Iowa

Sierra Club v. Murphy's of Iowa

Claims/Issues No NPDES permit; Public Trust Doctrine; Nuisance; Trespass; Negligence
Posture/Result Trial set for Sept. '01 in state court postponed to July '02; SETTLED--\$\$ to plaintiffs; protections for trout stream. Currently on appeal to Iowa Supreme Court re. duty to obtain NPDES permit.
Attorney(s) Wally Taylor
Other Info Iowa state court; 3300 hogs; Above ground storage facility; Straight nuisance case filed also

Smithfield Foods, Inc. v. State of Iowa (not exact case name)

Claims/Issues Constitutional challenge to Iowa law banning packer ownership of livestock
Posture/Result Complaint filed July 2002. Law overturned as unconstitutional.
Attorney(s) Iowa AG's office
Other Info Fed ct in Des Moines. Other plaintiffs: Murphy Farms, Prestage-Stoecker. Similar law in South Dakota overturned in May '02 but appeal expected. That case went to 8th Cir where lower decision was upheld.

Gacke v. Port Xtra LLC

Claims/Issues Nuisance (hog farm neighbors)
Posture/Result Award to plaintiffs of \$100,000 in Jan. '02; appeal and cross-appeal filed
Attorney(s) Thomas Lipps
Other Info Iowa state court. Lipps has many more nuisance cases representing farm neighbors

Michigan

Sierra Club v. River Ridge Farms

Claims/Issues CWA § 301, 402: no NPDES permit, pollutant discharge; also Michigan state law
Posture/Result Complaint filed; SETTLED in June '02
Attorney(s) Aaron Isherwood
Other Info Michigan; 2 facilities; Cows: dairy, feedlot

UPDATED INVENTORY – FEBRUARY 2004

Sierra Club v. Walnutdale Farms

Claims/Issues CWA § 301, 402: no NPDES permit, pollutant discharge; also Michigan state law
Posture/Result Interim settlement in Feb. '02: def must build a new lagoon with a liner; no spreading manure on frozen/saturated ground
Attorney(s) Aaron Isherwood
Other Info W.D. Michigan; Dairy

Sierra Club/Nat'l Wildlife Federation v. Mericam

Claims/Issues CWA: repeated discharges
Posture/Result Complaints filed in June '02
Attorney(s) Aaron Isherwood and Neil Kagan
Other Info Michigan

Minnesota

Minnesota v. ValAdCo

Claims/Issues Violation of state air pollution standards (emissions of hydrogen sulfide); nuisance; violation of an agreement with Minn Pollution Control Agency to install and maintain lagoon cover
Posture/Result Amended complaint filed August 2002
Attorney(s) Minn. AG's office
Other Info Renville County district court

Missouri

CLEAN v. Premium Standard Farms

Claims/Issues CWA, CAA, CERCLA, EPCRA
Posture/Result Survived motion for SJ; Discovery not closed. SETTLED in Feb. '02
Attorney(s) Charlie Speer
Other Info W.D. Missouri; Companion case: CLEAN v. Continental Green (bought out PSF). Terms of the settlement: \$350,000 in civil penalties and spend up to \$50 million to develop and install new wastewater treatment technologies, \$300,000 in SEPs to reduce air emissions and odors from swine houses.

State of Missouri ex rel. Nixon v. Premium Standard Farms

Claims/Issues Violations of state water quality laws for hog waste spills
Posture/Result Complaint filed June 2002
Attorney(s) Missouri AG's office
Other Info Jackson County circuit court. Consent agreement from 1999 requires PSF to spend \$25 million on new technology for waste systems

Montana

UPDATED INVENTORY – FEBRUARY 2004

Montana Env'l Information Center v. Montana Dept of Env'l Quality

Claims/Issues State NEPA: no site specific analysis; State constitutional right to a "clean and healthful environment"; MPDES regs: wastewater discharge

Posture/Result Complaint filed June '01; pl's motion for SJ submitted; June '02; Decision Nov '03, statewide general permit invalidated on MEPA and state constitutional grounds.

Attorney(s) Jory Ruggiero, David (Kim) Wilson

Other Info State uses blanket permitting for wastewater discharges; 1 yr before farms must submit WMP

Nebraska

IBP, Inc. Consent Decree

Claims/Issues CAA (emissions of hydrogen sulfide); CWA (discharges of ammonia); RCRA; CERCLA; EPCRA

Posture/Result IBP will pay \$4.1 million in civil penalties; IBP will spend \$10 million on treatment system improvements at the Dakota City, NE facility; closure work at former facility in Palestine, TX

Attorney(s) DOJ/EPA

Other Info Agreement lodged in U.S. District Court in Omaha, NE

Hanchera v. Red Willow County

Claims/Issues Government exempted a 25,000 head hog facility from all local zoning regulations

Posture/Result Case presently in NE Court of Appeals for the second time. Court will hear argument in Winter of 2004.

Attorney(s) Steve Virgil

Other Info CAFO had not yet been built. Plaintiff lost trial in court on first round, it was reversed on appeal, and then lost before the same judge the second time.

Krings/Sierra Club v. Polk County

Claims/Issues County government has approved CAFO even though there is no plan in place to manage waste generated by the dairy and no plan to address air and water quality, all contrary to local and state laws.

Posture/Result Currently before the Court of Appeals after having been dismissed following 18 months of litigation. Case is briefed and will be argued this fall.

Attorney(s) Steve Virgil

Other Info 5400 head dairy, has not been built. The court concluded previously that the plaintiffs lacked standing to bring the case based on the county's motion to dismiss, which was filed after final arguments had been made. This was the second such motion filed by the defendants.

Concerned Citizens of Cedar Valley v. Boone County

Claims/Issues CAFO violates state and local laws requiring minimum set-backs from neighboring uses and adequate waste management plans for the CAFO waste stream.

Posture/Result Court dismissed case based on a procedural argument made by the CAFO developer. The case is briefed and will be argued in April 2004.

UPDATED INVENTORY – FEBRUARY 2004

Attorney Steve Virgil
Other Info CAFO has not yet been built. 40,000 head hog CAFO.

Christensen v. Kearney County
Claims/Issues Cattle feedlot located 300 feet from a residence.
Posture/Result Won every motion so far, case has been through final arguments and post-argument briefs. Waiting for court's decision, which was expected in January.
Attorney Steve Virgil
Other Info A 10,000 head cattle feedlot. Family has lived there for over 50 years, strong local support, local and state press.

Friends of Walker Township and Sierra Club v. Neb. Dept. of Environmental Quality
Claims/Issues Challenges the NDEQ's ability to significantly amend a permit to construct and operate a CAFO without first submitting the amended permit to public review and comment.
Posture/Result A hearing to stay the permit is scheduled for March 5, 2004
Attorney Steve Virgil

North Carolina
Water Keeper Alliance, Inc. v. Smithfield Foods, Brown's # 5/6 and #9/22, 2001 U.S. Dist. LEXIS 21314 (E.D.N.C. September 20, 2001)
Claims/Issues CWA: no NPDES permit, discharges, mishandled waste, discharge from drainage tiles; RCRA: disposal of hazardous waste, open dumping, imminent and substantial endangerment
Posture/Result Complaint filed February '01; defendants' motion to dismiss denied in Sept. '01; in discovery
Attorney(s) Dan Estrin
Other Info From denial of motion to dismiss: CAFOs must apply for an NPDES permits; sprayfields are part of a CAFO; sprayfields do not qualify for the agricultural stormwater exemption; citizen suit provisions of the CWA and RCRA are constitutional

Neuse River Foundation et al v. Smithfield Foods;
Jones et al. v. Smithfield Foods
Claims/Issues Public Trust; Nuisance; Trespass; Strict liability; Negligence; Punitive damages; Unfair and deceptive trade practices
Posture/Result Complaints filed August '00, February '01; Suits dismissed in March '01: standing, failure to state a claim; Appeal heard in NC Ct of Appeals in August '02; dismissal upheld
Attorney(s) Doug Abrams
Other Info

United States v. Lakeview Packing Co.
Claims/Issues CWA (waste discharge)
Posture/Result Fined \$75,000 and 5 years probation
Attorney(s) U.S. Atty's office, Greenville NC
Other Info E.D. North Carolina. Def knowingly discharged-pipes installed to bypass septic system and discharge waste into creek

UPDATED INVENTORY – FEBRUARY 2004

Waterkeeper Alliance et al. v. North Carolina Department of Environment and Natural Resources

Claims/Issues Challenge to DENR's adoption of the general permits for swine, poultry and cattle
Posture/Result Petition filed August '02; motion to dismiss filed Jan '03; awaiting decision, conducting discovery
Attorney(s) Jeff Odefey
Other Info

Oklahoma

Sierra Club v. Seaboard Farms

Claims/Issues CWA; CERCLA; EPCRA
Posture/Result Plaintiff survived SJ on standing; defs filed a motion to dismiss (mootness-no longer discharging) still pending as of Sept '02; pls moved for SJ on discharges to an intermittent stream and whether CAFO operation w/out a permit is a violation of the CWA pending as of Sept '02
Attorney(s) Aaron Isherwood
Other Info Oklahoma; Large hog farm

City of Tulsa v. Tyson Foods, City of Decatur, Ark, et al.

Claims/Issues CERCLA; OK water quality laws; nuisance; trespass; negligence
Posture/Result Complaint filed Dec. '01; in discovery; trial set for Feb. '03
Attorney(s) Mike Romig, City Atty's office; outside counsel
Other Info Phosphorous in drinking water supply; land application of chicken litter

South Dakota

Concerned Rosebud Area Citizens v. Babbitt

Claims/Issues NEPA: no EIS for BIA approval of lease/contract between tribe and pork producer
Posture/Result Project shut down; then Integrator Sun Prairie filed in SD fed ct; no EIS req'd; arb & cap; TROs and PIs for 2+ yrs; 8th Cir argument: 1st site-sustain rescission of the lease (need EIS); 2nd site- stay of the injunction for project construction. 8th Cir decision: struck down dist ct order allowing hog farm to be built and operated in April '02. Denied integrator's request for rehearing in August '02.
Attorney(s) Jim Dougherty
Other Info Original case in D.D.C.; Proposed 900,000 head of hog/yr; 13 sites over 4K acres; Only completed 1 site so far

Texas

Parker v. Oosten/G & P Holsteins-fed ct

Claims/Issues CWA: discharge; Negligence: operation of facility; Res Ipsa Loquitur; Negligence per se; Trespass; Nuisance (other tort claims)
Posture/Result Notice letter sent Nov. '00; Complaint filed June '01; Pretrial conference Sept '02

UPDATED INVENTORY – FEBRUARY 2004

Attorney(s) Stuart Henry
Other Info N.D. Texas

Parker v. Oosten/G & P Holsteins–state ct

Claims/Issues NPDES permit wrongfully issued
Posture/Result TX Natural Resource Conservation Comm'n revoked state NPDES permit for numerous unauthorized discharges in March '02; revocation appealed
Attorney(s) Stuart Henry
Other Info TX state ct

Utah

Dotson et al v. Four Circle Farms

Claims/Issues General nuisance, property value loss, and health damages.
Posture/Result In settlement negotiations. Otherwise, pending Daubert motions on health issues and protective order for Halverson's visit. No trial date set.
Attorney(s) Bruce Plenk
Other Info Experts: Kathy Martin, Drs. Kaye Kilburn and Stephanie Seemuth and Marlene Halverson

Virginia

Griffin et al. v. Smithfield Foods, Inc., 183 F. Supp. 2d 824 (E.D. Va. 2002)

Claims/Issues Class action by pork producers in GA for violations of Packers and Stockyards Act for anti-competitive, discriminatory and deceptive practices
Posture/Result SJ granted to defendants in Jan. '02
Attorney(s) Wyatt B. Durette
Other Info

Washington

CARE v. Henry Bosma Dairy, 65 F. Supp. 2d 1129 (E.D. Wash. 1999)

Claims/Issues CWA and state CWA (discharges of animal waste)
Posture/Result Env'l organizations have standing; dairies are strictly liable for 15 CWA violations; plaintiffs established continuing violations and reasonable likelihood of recurrent violations of some discharges
Attorney(s) Charlie Tebbutt

Penalty phase: 2001 U.S. Dist. LEXIS 3579 (E.D. Wash. February 27, 2001)

Posture/Result Judgment against defendant for \$171,500 in civil penalties; plaintiff's fees and costs in excess of \$425,000; on appeal and cross appeal to the 9th Cir; judgment upheld '02, 305 F.3d 943.

Wisconsin

Nelson v. Matsche Farms, Inc.

Claims/Issues Nuisance, negligence, trespass (neighboring cattle operation)
Posture/Result First amended complaint filed April '02
Attorney(s) Glenn Stoddard, Melissa Scanlan, Andrew Hanson

UPDATED INVENTORY – FEBRUARY 2004

Other Info Lawsuit also challenges Wisconsin "Right to Farm" law that shields livestock operations from nuisance liability

Sierra Club v. Maple Ridge Dairy

Claims/Issues CWA (runoff to stream; applying on frozen ground); RCRA (dumping manure on frozen field)

Posture/Result Notice letter sent April '02; SETTLED in June '02

Attorney(s) Melissa Scanlan

Other Info Settlement terms: \$51,250 in penalties, SEPs, atty's fees. \$28,500 for conservation easements. Refrain from spreading manure on frozen ground. Maintain 6-mos of manure storage capacity; reduce manure application based on a phosphorous standard.

Sierra Club v. Jon De Farm, Inc.

Claims/Issues CWA (discharging manure)

Posture/Results Notice letter sent Sept. '02

Attorney(s) Melissa Scanlan, Andrew Hanson, Glenn Stoddard

Other Info Wisc.

Centerville CARES v. Maple Leaf Dairy

Claims/Issues Clean Air Act violations and EPCRA and CERCLA

Posture/Result 60 day notice pending

Attorney(s) Andrew Hanson