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NORTH CAROLINA CAFOs: AN EXAMPLE OF WHY THE UNITED STATES NEEDS TO RECOGNIZE THE RIGHT TO SAFE, CLEAN DRINKING WATER

*by Maggie Horstman**

North Carolina is one of the top pork producers in the nation, housing more than 9 million hogs on concentrated animal feeding operations (CAFOs).¹ Beginning in the 1990s, contract farming became the dominant method of pork production due to corporate consolidation.² The steep increase in factory farming, and consequentially, the increase in animal concentration and waste, has led to extensive water contamination.³ Contract farmers are typically required to take out loans to build facilities, sign contracts with corporations, and raise the company-owned pigs according to corporate-specified methods.⁴ However, contract farmers are without corporate guidance or financial support to dispose of large amounts of pig waste.⁵ Waste usually ends up in pits called lagoons, fostering the growth of dangerous bacteria. When lagoons fill up, the waste is sprayed onto crop fields,

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¹ USDA/National Agricultural Statistics Service, *United States Hog Inventory Up 3 Percent*, QUARTERLY HOGS AND PIGS (Dec. 2019), at 6.

² Jessie Stolark, *Stink, Swine, and Nuisance: The North Carolina Hog Industry and Its Waste Management Woes*, ENVTL. & ENERGY STUDY INST. (Aug. 10, 2018), <https://www.eesi.org/articles/view/stink-swine-and-nuisance-the-north-carolina-hog-industry-and-its-waste-mana>.

³ *Id.*

⁴ *Id.*

⁵ *See id.*

releasing dangerous fumes and exposing neighboring communities to toxic air pollutants like ammonia and hydrogen sulfide.⁶

As hurricanes become more frequent in the Chesapeake Bay region, farmers are finding it increasingly difficult to contain waste inside lagoons, and micro-organisms like *E. coli* and fecal bacteria are now found in drinking wells in North Carolina.⁷ After Hurricane Florence in 2019, forty-nine lagoons were reported to be damaged. Subsequently, tests of private wells showed a sizable increase in *E. coli* and total fecal coliform bacteria, in part due to farm animal waste.⁸ These contaminants can cause diarrhea, cramps, nausea, and vomiting.⁹

While public water regulations are established by the Environmental Protection Agency (EPA) and enforced by the states, such regulations do not apply to private drinking wells, and residents are responsible for the safety of their own water.¹⁰ Unfortunately, because the EPA has exempted CAFOs from notifying communities when they release dangerous toxins, there is no safeguard for private well water drinkers beyond testing the well water themselves.¹¹ The North Carolina Department of Environmental Quality's (DEQ) refusal to enforce stricter CAFO emission standards exposes a frightening truth: United States citizens are not guaranteed a right to safe, clean drinking water.

⁶ Jonathan Smith, *A Stench That Sickens, and An EPA That Doesn't Care*, EARTHJUSTICE (Dec. 13, 2018), <https://earthjustice.org/blog/2017-november/a-stench-that-sickens-and-an-epa-that-doesn-t-care>.

⁷ Associated Press, *Hurricanes That Cause Major Destruction Are Becoming More Frequent, Study Says*, L.A. TIMES (Nov. 11, 2019, 1:09 PM), <https://www.latimes.com/environment/story/2019-11-11/damaging-hurricanes-becoming-more-frequent>.

⁸ John Murawski, *The Amount of E. Coli and Fecal Matter in NC Wells Has Spiked Since Hurricane Florence*, THE NEWS & OBSERVER (Oct. 24, 2018, 3:47 PM), <https://amp.newsobserver.com/news/business/article220561095.html>.

⁹ *Id.*

¹⁰ *See id.* States can choose to make regulations that are more stringent than federal regulations.

¹¹ Emilie Karrick Surrusco, *The Storm Moved On, But North Carolina's Hog Waste Didn't*, EARTHJUSTICE (Jan. 9, 2019), <https://earthjustice.org/blog/2019-january/hog-waste-creates-problems-for-north-carolina-residents>.

According to the United States Geological Survey, about 2.4 million people rely on wells in their yards for water in North Carolina.¹² Many people, especially in rural areas, do not have access to the water infrastructure necessary to get access to public pipes; in fact, 1.4 million people in the United States lack access to indoor plumbing.¹³ Specifically, in rural areas, seventeen percent of people report having experienced issues with safe drinking water, twelve percent of people report issues with their sewage system, and twenty-three percent of private wells tested by the United States Geological Survey showed contaminants with health concerns, including arsenic, uranium, nitrates, and E. coli.¹⁴ Where a person lives is not the only factor determining their access to safe water; according to a study by Michigan State University, federal data does not accurately measure the water access gap, race is the strongest predictor of water and sanitation access, and poverty is a key obstacle to water access.¹⁵ These facts are exemplified through the EPA's launch of an investigation of North Carolina for civil rights violations in 2015.¹⁶

Hog farm pollution is a proven contributor to widespread water pollution in North Carolina. A study published by the University of North Carolina and Johns Hopkins found that high levels of fecal bacteria in waterways were linked to industrial hog operations.¹⁷ In an attempt to resolve water quality issues, North Carolina recently established the North Carolina Drinking Water Act, which requires the establishment of state-wide maximum contaminant levels, directs the state to consider limits on other pollutants when two or more other states have set limits on a given pollutant, requires the state to use the best avail-

able science to establish limits, and ensures contaminant limits are sufficient to protect vulnerable people, including pregnant and nursing mothers, infants, and children.¹⁸ Unfortunately, the Act still does not guarantee clean water to all North Carolina residents because many residents from lower socio-economic backgrounds only have access to private water sources.¹⁹ If North Carolina cannot provide public water to its citizens, it must include CAFO output restrictions in its Drinking Water Act to ensure private water is safe to consume.

The case of North Carolina CAFO pollution is just one of many examples that show the United States, with its abundant resources, fails to provide adequate water access to all its residents. Other instances of water contamination, like uranium mine leaks in a Navajo reservation's water source; lead contamination in Newark, New Jersey and Flint, Michigan; and a sewage pipe leakage in Alabama that caused a hookworm disease outbreak; among others, show that the United States has been adequately warned that it is not enough to simply ignore these ongoing crises.²⁰ In 2010, the United Nations established the right to water and sanitation²¹ to ensure that water is sufficient, safe, acceptable, physically accessible, and affordable.²² This right further stipulates that water be free from micro-organisms, chemical substances, and radiological hazards that create a threat to personal health.²³ Now that the EPA has provided North Carolina with a \$3,682,900 grant to support efforts to improve water quality, there's no question that DEQ has the

¹² Cheryl A. Dieter et al., U.S. Dept' of Interior, Circular 1441, *Estimated Use of Water in the United States in 2015* 57 (2018).

¹³ Radhika Fox, George McGraw, *Closing the Water Access Gap in the United States*, US WATER ALLIANCE.

¹⁴ *Id.*

¹⁵ *Id.*, at 20.

¹⁶ Press Release, *EPA Launches Investigation of North Carolina for Civil Rights Violations*, EARTHJUSTICE (Feb. 25, 2015), <https://earthjustice.org/news/press/2015/epa-launches-investigation-of-north-carolina-for-civil-rights-violations-0>.

¹⁷ Heaney, et al, *Source Tracking Swine Fecal Waste in Surface Water Proximal to Swine Concentrated Animal Feeding Operations*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Apr. 1, 2015), <https://pubmed.ncbi.nlm.nih.gov/25600418/>.

¹⁸ *Introducing the Safe Drinking Water Act*, GRAIG MEYER (Dec. 13, 2019), <https://www.graigmeyer.com/2019/12/introducing-the-safe-water-drinking-act>.

¹⁹ *Exposure to Contaminants Among Private Well Users in North Carolina: Enhancing the Role of Public Health*, J. ENVTL. HEALTH (April 2019), <https://www.neha.org/sites/default/files/jeh/JEH4.19-Column-Direct-From-CDC-EHS.pdf>

²⁰ Matt Black, *America's Clean Water Crisis Goes Far Beyond Flint*, PULITZER CTR. (Feb. 20, 2020) <https://pulitzercenter.org/projects/americas-clean-water-crisis-goes-far-beyond-flint>.

²¹ G.A. Res., GA/10967, U.N. Doc. A/RES/64/292, 64th Sess.

²² *The Human Right to Water and Sanitation*, U.N. DEP'T OF ECON. AND SOCIAL AFFAIRS, https://www.un.org/waterforlifedecade/human_right_to_water.shtml.

²³ *Id.*

resources necessary to achieve the United Nations' standards.²⁴

DUTCH SUPREME COURT RULING MARKS SEA CHANGE IN CLIMATE LITIGATION *by Adrian Lewis**

On December 20, 2019, the Dutch Supreme Court upheld lower-court rulings on *State of the Netherlands v. Urgenda Foundation*, in which the court ordered the Dutch government to reduce the Netherlands' greenhouse gas emissions to twenty-five percent below 1990 levels by the end of 2020.¹ This successful conclusion to more than four years of court proceedings has been called the strongest legal response to climate change in history and may represent the dawn of a new era in climate litigation.² These proceedings are representative of environmental activists' latest strategy to prompt more ambitious government responses to the climate crisis. The European Union (EU) has been the vanguard of progressive climate policy, imposing legally binding emissions targets on member states,

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¹ *Dutch supreme court upholds landmark ruling demanding climate action*, THE GUARDIAN (Dec. 20, 2019), <https://www.theguardian.com/world/2019/dec/20/dutch-supreme-court-upholds-landmark-ruling-demanding-climate-action> (last visited Sep. 27, 2020).

² *Landmark Decision by Dutch Supreme Court*, URGENDA, <https://www.urgenda.nl/en/themas/climate-case/> (last visited Aug. 23, 2020); John Schwartz, *In "Strongest" Climate Ruling Yet, Dutch Court Orders Leaders to Take Action*, N.Y. TIMES (Dec. 20, 2019), <https://www.nytimes.com/2019/12/20/climate/netherlands-climate-lawsuit.html>; Environmental Law Alliance Worldwide, *Climate Litigation Primer*, (2018), https://elaw.org/system/files/attachments/publicresource/ELAW_primer_4.pdf

²⁴ Press Release, Dawn Harris-Young, *North Carolina Receives \$3,682,900 Million Grant to Support Efforts to Improve and Protect Water Quality*, U.S. ENVTL. PROT. AGENCY (Sep. 19, 2019), <https://www.epa.gov/newsreleases/north-carolina-receives-3682900-million-grant-support-efforts-improve-and-protect-0>.