AGRICULTURE AND ENVIRONMENTAL LAW: FOCUSING ON DEFENSE STRATEGIES

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ABSTRACT

The agriculture industry faces mounting challenges that threaten its very existence. Political winds are blowing regulatory structures from reasonable requirements for the agriculture industry to unreasonable and far-reaching regulatory requirements, which is creating uncertainty for the industry and its community of hard-working people. This Article addresses recent developments in environmental lawsuits impacting agriculture and discusses how regulatory changes on the state and federal level may affect agricultural operations. The authors offer guidance for practical steps the agricultural community can take in response to protect and grow this vital industry.

I. INTRODUCTION

In an age of ever-increasing technology, when information is only a click away, a steady stream of information on the environment and sustainability bombards people. The agriculture industry faces mounting challenges that threaten its very existence. Populations are growing at a record pace, necessitating a ready supply of food in coming decades. Yet, people view the agriculture industry as an enemy, often relying on misinformation or viewing agriculture and the environment as mutually exclusive entities. Citizen lawsuits attempt to stop normal agricultural activities, and if such efforts fail, protesters look to the regulatory purview of state and federal law.

Political winds are blowing regulatory structures from reasonable requirements for the agriculture industry to unreasonable and far-reaching regulatory requirements, which is creating uncertainty for the industry and its community of hard-working people. The court of public perception has not been decidedly better, as certain environmental groups actively confront agriculture by means of targeted media campaigns and social media outlets.

In the midst of these legal, regulatory, and public attacks, the agricultural community has soldiered on and revealed the strength and grit that is deep in the roots of this industry and its people. This Article provides an overview of some of the chief environmental and cultural challenges facing the agricultural industry and suggests how the agricultural community can manage these issues as they arise. Specifically, this Article addresses recent developments in environmental lawsuits impacting agriculture. The Article also discusses how regulatory changes on the state and federal level may affect agricultural operations. Finally, the authors offer guidance for practical steps the agricultural community can take in response to protect and grow this vital industry.

II. ENVIRONMENTAL ISSUES IMPACT THE AGRICULTURAL INDUSTRY

A. Animal Waste and RCRA Regulation

In recent years, environmental groups have brought legal actions against agricultural businesses with the aim of bringing ordinary agricultural practices under the regulation and control of the Environmental Protection Agency (EPA) by way of the Resource Conservation and Restoration Act (RCRA).[1] These attempts traditionally failed, as courts refused to find that the RCRA applies to most ordinary agricultural practices. Further, courts refused to find that agricultural waste is "solid waste" within the meaning of RCRA.[2]

Solid waste is defined under the RCRA as "'garbage, refuse…and other discarded materials' resulting from commercial and community activities."[3] Animal waste does not fit this definition because, generally, it is not discarded and is a useful by-product of animal agriculture.[4] This animal waste viewpoint is supported by EPA Regulations, which exempt manure from RCRA if it is "returned to the soil as fertilizers and soil conditioners."[5] In fact, the EPA declined to bring an RCRA action against an agricultural operation based on the theory that manure was "solid waste" for almost forty-years.[6] Accordingly, hard-working individuals in the agriculture industry reasonably believed manure was produced as part of their normal agricultural operations was safe from RCRA's reach.[7]

This belief was shattered with the first-time ruling from the U.S. District Court for the Eastern District of Washington, manure from a dairy could be "solid

1. Reed J. McCalib, *Opening the Gates of Cow Palace: Regulating Runoff Manure As A Hazardous Waste Under RCRA*, 116 Mich. L. Rev. 501, 520 (2017); John G. Dillard, *Can EPA Regulate Animal Operations as Landfills?*, Olsson Frank Weeda Terman Matz, PC (April 24, 2014), https://perma.cc/YBA9-F7B5. *See* Safe Air for Everyone v. Meyer, 373 F.3d 1035 (9th Cir. 2004) (concluding that grass residue remaining after a Kentucky bluegrass harvest does not qualify as solid waste within the meaning of the RCRA); Oklahoma v. Tyson Foods, Inc., No. 05-CV-0329-GKF-PJC, 2010 WL 653032 at *1 (N.D. Okla. Feb. 17, 2010).

2. McCalib, *supra* note 1, at 520. *See also Meyer*, 373 F.3d 1035 at 1045 (9th Cir. 2004) (holding grass residue from Kentucky-bluegrass operations was not a solid waste pursuant to RCRA because there was "undisputed evidence that the Growers reuse the grass residue in a continuous farming process," and thus, "[t]he bluegrass residue is not discarded, abandoned, or given up, and it does not qualify as 'solid waste' under RCRA, based on its statutory definition of 'solid waste' as 'discarded material.'").

3. Dillard, *supra* note 1.

4. *Id.*

5. 40 C.F.R. § 257.1(c)(1) (2013); Dillard, *supra* note 1.

6. McCalib, *supra* note 1, at 511. *See also* Debora K. Kristensen, When Animal Manure Is Regulated Like Municipal Dumps – Imposing RCRA Liability on Agricultural Operations, https://perma.cc/H5QA-7A76 (archived Mar. 6, 2019).

7. McCalib, *supra* note 1, at 511.

waste," and thus regulated by RCRA. The court further held excessive manure spreading on agricultural fields and leakage from underground storage lagoons presented "imminent and substantial endangerment" to public health and the environment, and this danger could be enjoined by citizen lawsuits.[8]

1. Cow Palace—What Does this Case Mean for Agricultural Operations?

In granting summary judgment for the Community Association for Restoration of the Environment (CARE), Judge Rice held excessively applying manure to crops without regard for the crop's actual nutritional needs, along with storing manure in defective lagoons resulted in leakage, caused manure to qualify for regulation as "solid waste" within the meaning of RCRA.[9]

CARE filed a string of lawsuits against dairy operations in Washington alleging issues related to nitrate contamination of groundwater it believed was caused by the dairies' mismanagement of animal waste.[10] CARE alleged excessive application of manure to fields and leakage from manure storage qualified the manure as "discarded" material within RCRA.[11] In *Community Association for Restoration of the Environment, Inc. v. Cow Palace, LLC*, the court agreed. If this first-time (and, arguably, unprecedented) opinion is echoed throughout the country, concentrated animal feeding operations (CAFOs) without Clean Water Act (CWA) permits could be subjected to RCRA permitting requirements, as well as citizen lawsuits.[12]

In *Cow Palace*, the court accepted Plaintiff's contentions that manure satisfies RCRA's definition of solid waste based on the reasoning that manure becomes "discarded material" when it is over-applied to fields, stored in leaky or defective underground containers, or stored in unlined composting areas. In such

8. Cmty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC, 80 F. Supp. 3d 1180, 1228 (E.D. Wash. 2015); *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, SMITH, GAMBRELL & RUSSELL, https://perma.cc/ZR98-EUXJ (archived on Mar. 6, 2019).

9. *Cow Palace, LLC*, 80 F. Supp. 3d at 1180; *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, supra note 8.

10. *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, *supra* note 8; Cow Palace, LLC, 80 F. Supp. 3d 1180; *See generally* Cmty. Ass'n for Restoration of the Env't, Inc. v. George & Margaret LLC, 954 F. Supp. 2d 1151 (E.D. Wash. 2013); Cmty. Ass'n for Restoration of the Env't, Inc. v. D & A Dairy, LLC, No. 13-CV-3018-TOR, 2013 WL 3188846 (E.D. Wash. June 21, 2013); Cmty. Ass'n for Restoration of the Env't, Inc. v. Henry Bosma Diary, No. 13-CV-3019-TOR, 2013 WL 3188851 (E.D. Wash. June 21, 2013).

11. *Cow Palace, LLC*, 80 F. Supp. 3d at 1187; *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, *supra* note 8.

12. *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, *supra* note 8.

instances, according to this court, manure is no longer a beneficial agricultural by-product but becomes solid waste.

Importantly, the court reasoned when agricultural manure is properly applied as a fertilizer, it would still be exempt from RCRA regulation.[13] The court emphasized that, in this case, the dairy "excessively over-applied manure to their agricultural fields," and this practice effectively constituted discarding the manure, which qualified it as solid waste.[14] The *Cow Palace* decision raises significant questions concerning the standard for over-applying manure and leaves agricultural operators in an unenviable position of finding the line between manure being a "beneficial agricultural by-product" and manure becoming "discarded material."

The dairies eventually reached a settlement agreement with CARE. The settlement required the dairies to limit their application of manure, to use double liners in storage lagoons, and to provide clean drinking water to residents until the groundwater contamination was cured.[15]

While not binding in jurisdictions outside of Washington, the *Cow Palace* decision may be used as a launching pad for environmentalist groups to file suit against agricultural operations based on their manure management practices. Accordingly, this case raises concerns for agricultural operators about the potential of RCRA application.[16] If found in violation of RCRA for animal waste management processes, an agricultural operator could face liability for damages, attorney's fees, expert fees, and court costs and be ordered to take remedial action to rectify any contamination or environmental damage purportedly caused by their operations.[17]

2. Moving Forward from Cow Palace—What Agricultural Producers Need to Know to Protect Themselves and Their Operations

The agricultural industry and its members understand manure is a valuable by-product critical to the ecological and economic sustainability of animal farming operations.[18] The agricultural industry is accustomed to CWA regulation, but

13. *See Cow Palace, LLC*, 80 F. Supp. 3d at 1221.

14. *Id.*; *Federal Court: Manure From Dairy is Solid Waste Regulated by RCRA*, *supra* note 8.

15. Tom Howell Jr., *Dairies Reach Settlement in Landmark Case That Defines Manure as Solid Waste*, WASH. TIMES (May 11, 2015), https://perma.cc/97R3-P44U.

16. Tiffany Dowell, *Washington Court Holds Manure Subject to Federal Regulation, Parties Agree to Settle*, TEX. A&M: TEX. AGRIC. L. BLOG (May 20, 2015) https://perma.cc/GL8S-2RE8.

17. *Id.*

18. Dillard, *supra* note 1.

stretching RCRA—a statute intended to regulate hazardous waste and sanitary landfills—to cover livestock, dairy, and poultry operations creates confusion and uncertainty in what regulations may apply.[19]

Agricultural operators need to know how to respond to the *Cow Palace* ruling and how to avoid RCRA regulation of their animal waste practices. The most important lesson from *Cow Palace* is operators must ensure proper storage and avoid application of manure in fields. The turning point in *Cow Palace* was when the court found the dairy "excessively" over-applied the manure, which allowed the manure to seep into the groundwater supply.[20] Because of this, the court held the manure was discarded material, which qualified it as solid waste.[21]

The court clarified that if manure had been properly applied, it would have remained an agricultural by-product and exempted from RCRA regulation.[22] Operators must ensure manure application is in proportion to the lands' nutritional needs.[23] Manure over-application may be found if it is applied without regard to the lands' needs or in such quantities the land cannot absorb it, as this facilitates an opportunity for the animal waste to seep into the groundwater below.[24]

Agricultural operators must ensure sufficient lining of storage lagoons in order to prevent leaking.[25] In *Cow Palace*, the storage lagoons—like the manure application—became problematic when evidence demonstrated that they caused a threat to environmental or public health by leaking into the groundwater.[26] Agricultural producers may avoid RCRA regulation and liability by making every effort to avoid animal waste leakage.

It is also critical for agriculture producers to develop "detailed written manure storage and application [procedures,] and then to strictly [implement] these guidelines.[27] Acting in good faith and making every effort to follow industry best practices will greatly benefit operators should they face on RCRA-based action.

Agricultural operators should also ensure that transfer of agricultural resources (such as animal waste) is clearly defined and memorialized in written agreements with the recipient, even if these transfers are for little or no cost.[28]

19. *Id.*
20. Dowell, *supra* note 16.
21. *Id.*
22. *Id.*
23. *See id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. Coty Hopinks-Baul, *Bad Facts Make Bad Law – How a Dairy Opened the RCRA Pandora's Box*, FOOD & AG L. INSIGHTS (Feb. 17, 2015), https://perma.cc/7GXE-BPPZ.

Operators should be mindful of any opportunity to demonstrate animal waste is managed as a valuable agricultural by-product and not "discarded," which creates the risk of animal waste resources being considered solid waste.[29]

When agricultural resources are managed as the valuable products they really are, operators are more likely to avoid public health and environmental impact lawsuits, bad press, and cleanup liability.[30] While some of the techniques and processes described above may be costly and cumbersome, the benefit of avoiding RCRA regulation and liability will far out-weigh these costs and burdens.

B. EPCRA and CERCLA Reporting Requirements for the Agricultural Industry

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) are federal laws which require reporting about actual and potential releases of "hazardous substances" into water, air, soil, or collectively, the environment.[31] These two laws are the result of well-publicized environmental disasters that occurred when information was not available to local, state, and federal authorities that might have been able to avoid or reduce negative environmental impacts.[32]

While agricultural operations have historically avoided these reporting regulations, the statutes' language left open the possibility of whether these acts should be interpreted to apply to air emissions from farm activities and operations.[33] Decomposing animal waste emits ammonia and hydrogen sulfide, both at which fit within the CERCLA's definition of "hazardous substances" and within the EPCRA's definition of "extremely hazardous substances."[34] Statutory reporting requirements generally apply to these categories of substances, and the reporting quantity is 100 pounds per day.[35]

In 2008, the EPA finalized a rule exempting all farms from reporting air releases from animal waste pursuant to CERCLA reporting requirements, as well

29. *Id.*

30. *Id.*

31. Animal Manure Management, *CERCLA and EPCRA Reporting for Animal Agriculture,* EXTENSION (Feb. 1, 2018), https://perma.cc/4ESG-562C.

32. *Id.*

33. *Id.*

34. Tiffany Dowell, *DC Circuit Court: Farms Must Report Air Emissions, Exemption Unlawful*, TEX. A&M: TEX. AGRIC. L. BLOG (May 1, 2017) https://perma.cc/N2YU-HAXR [hereinafter *DC Circuit Court*].

35. *Id.*

as most farms from reporting pursuant to EPCRA, with the exception of CAFO.[36] From the time this rule was released, lawsuits began rolling in, and this emission reporting issue has been in the court system for a decade.[37] Environmental groups, primarily led by Waterkeeper Alliance, have asserted CERCLA and EPCRA do not permit the EPA to exempt anyone from these statutes' reporting requirements, if the releases at issue exceed the statutory quantity.[38] These environmental groups further argue the EPA's rule was arbitrary because it treated waste at agricultural operations differently than animal waste at a zoo or slaughterhouse, which are not exempt from reporting.[39]

A significant development in this ongoing controversy unfolded in April 2017 when the D.C. Circuit Court of Appeals held agricultural operations were required to report air emissions pursuant to federal laws, specifically pursuant to CERCLA and EPCRA.[40] This holding re-energized the ongoing confusion for agricultural producers as to whether they must report these emissions, especially in light of the obvious difficulty related to estimating and reporting emissions that occur as animal waste decomposes.[41]

In response to this confusion, Congress stepped in and passed the Fair Agricultural Reporting Method Act (FARM Act) in order to clarify the reporting issue.[42] The FARM Act's language specifically states "'air emissions from animal waste at a farm'" are exempt from reporting pursuant to CERCLA.[43] Accordingly, Congress overruled the D.C. court's holding and passed the reporting exemption itself.[44] The act was silent on the EPCRA reporting requirements.

This prompted the EPA to adopt a direct final rule that addressed the April 2017 D.C. Circuit holding, and the EPA did so by codifying the statutory reporting exemption for CERCLA that was included in the FARM Act.[45] The EPA also provided specific guidance that animal waste reporting was exempt from EPCRA

36. *Id.* A CAFO is defined as an operation that stables more than a certain number of animals—I.E. more than 1,000 head of cattle, 10,000 head of sheep, or 55,000 turkeys.

37. *EPA Proposes Rule to Exempt Farm Animal Waste Reporting*, JACKSON WALKER (Nov. 15, 2018), https://perma.cc/4JGK-UGAF.

38. *DC Circuit Court*, *supra* note 34.

39. *Id.*

40. *EPA Proposes Rule to Exempt Farm Animal Waste Reporting*, *supra* note 37.

41. *Id.*

42. *Id.*

43. Tiffany Dowell, *EPA: No Animal Waste Emissions Reporting Required for Agriculture*, TEX. A&M: TEX. AGRIC. L. BLOG (May 1, 2018), https://perma.cc/36L7-X38F [hereinafter *EPA*].

44. *Id.*

45. *Id.*

reporting requirements.[46] Unsurprisingly, environmental groups are already challenging the EPCRA guidance in another action filed in Federal Court, claiming the EPCRA guidance was improperly adopted by the EPA because no such exemption was in the FARM Act.[47]

In response, the EPA explained the interplay between CERCLA and EPCRA justifies and supports the exemption.[48] The EPA specifically cites two reasons for forming this conclusion. First, because emissions from animal waste are exempt pursuant to CERCLA, they are likewise not required to be reported pursuant to EPCRA Section 304.[49] Second, EPCRA "expressly excludes farms that only use substances in 'routine agricultural operations'" from reporting hazardous substance releases.[50]

Based on Congress and the EPA's recent actions, farmers and ranchers will not be required to report air emissions of hazardous substances from animal waste for either CERLA or EPCRA.[51] If an operator made an initial notification prior to the FARM Act being passed, they will not be required to take any further action; for now, agricultural operators can breathe a sigh of relief.[52] It should not be thought that this issue has been permanently resolved. Accordingly, agricultural operators should stay up-to-date on developments in this matter in both the court system and in the legislature. Operators should also maintain regular contact with state and federal representatives and encourage legislators to protect and defend the recent government actions to exempt farmers and ranchers from animal waste reporting requirements for CERCLA and EPCRA.

C. CWA Coverage and Regulation—The Effect Recent Court Action May Have on the Agricultural Industry

The CWA was passed in 1972 with the purpose of restoring and maintaining the "chemical, physical, and biological integrity of the nation's waters."[53] This act regulates "navigable waters" which are defined in the statute as "waters of the United States" (WOTUS), a phrase whose meaning has been hotly contested over

46. *Id.*
47. *Id.*
48. *EPA Proposes Rule to Exempt Farm Animal Waste Reporting*, *supra* note 37.
49. *EPA*, *supra* note 43.
50. *Id.*
51. *Id.*
52. *Id.*
53. Tiffany Dowell, *The Clean Water Act and Agriculture: The Basics*, TEX. A&M: TEX. AGRIC. L. BLOG (Sept. 2, 2015), https://perma.cc/BDX2-RD3W.

the past three decades.[54] Within the agricultural industry, one of the most important sections of the CWA is Section 402, which provides that a person may not discharge a pollutant from a point source into a navigable water, unless a permit has been obtained.[55]

Within the statute, a pollutant is defined as any type of industrial, municipal, or agricultural waste that is discharged into water and can include such things as fertilizer, herbicides, pesticides, and manure.[56] A point source is statutorily defined as "'any discernable, confined, and discrete conveyance…from which pollutants are or may be discharged.'"[57] Many agricultural operations are not considered point source facilities.[58] The statute does not define what WOTUS should mean, and this lack of a clear definition has been the launching pad for much debate and many lawsuits about what should qualify as WOTUS.[59]

The result of the WOTUS quandary is an identity crisis of sorts for the CWA, as courts have issued conflicting decisions about whether the CWA regulates pollutant releases into groundwater that is hydrologically connected to navigable waters.[60] The Ninth and Fourth Circuits found the CWA should apply broadly and imposed liability for indirect releases of pollutants into federally protected surface waters via groundwater.[61] The Sixth Circuit found the CWA should apply narrowly and impose liability only for direct releases of pollutants into federally protected surface waters.[62] This has caused both regulators and the regulated community to live in great uncertainty and to be in limbo while awaiting a possible Supreme Court decision and clarity from the EPA.

1. Pollutants, Groundwater, and the Federal Court System

The most famous CWA case is *Rapanos v. United States*—a one-hundred page plus Supreme Court opinion from 2006, in which Justice Scalia stated that

54. *Clean Water Act – An Overview*, NAT'L AGRIC. L. CTR., https://perma.cc/5C92-DH5Q (archived Mar. 6, 2019). *See also* Tiffany Dowell, Does the Clean Water Act Apply to Groundwater? (March 19, 2018), https://perma.cc/6GDE-MFQ5.

55. *Id.*

56. *Id.*

57. *Id.*

58. Clean Water Act – An Overview, *supra* note 54.

59. *Id.*

60. Stacy L. Brownhill & Julie A. Rosen, *Clean Water Act Groundwater Pollution Liability in Limbo*, RILEY CARLOCK & APPLEWHITE (Oct. 4, 2018), https://perma.cc/VM2V-7LWW.

61. *See* Hawai'i Wildlife Fund v. City of Maui, 886 F.3d 737, 747 (9th Cir. Mar. 30, 2018); Sierra Club v. Va. Elec. & Power Co., 145 F. Supp. 3d 601, 607 (E.D. Va. 2015).

62. *See* Tenn. Clean Water Network v. Tenn. Valley Auth., 206 F. Supp. 3d 1280, 1301-02 (M.D. Tenn. 2016); Ky. Waterways All. v. Ky. Util. Co., 905 F.3d 925, 933 (6th Cir. 2018).

the CWA "does not forbid the 'addition of any pollutant *directly* to navigable waters from any point source,' but rather the 'addition of any pollutant *to* navigable waters.'"[63]

In 2018, this issue is still alive and well, and throughout the year, federal circuit courts faced several cases addressing whether the CWA should impose liability for pollution that finds its way to navigable waters via groundwater. In March 2018, the Ninth Circuit held that Maui County was liable pursuant to the CWA for releasing treated wastewater into injections wells without a permit, because this wastewater was traced to the Pacific Ocean three months later.[64] The court explained that there was a "fairly traceable" connection between a point source and a navigable water, despite the delayed migration through the groundwater intermediary.[65]

In September 2018, the Fourth Circuit concluded that while there was a direct hydrological connection between a power plant's coal ash landfill and settling ponds and the presence of arsenic in nearby rivers, the landfill and settling ponds were not "point sources" within the meaning of the CWA and, accordingly, were not subject to CWA liability.[66] In explaining this conclusion, the court stated that point sources were defined as "any discernible, confined and discrete conveyance," whereas the coal ash landfill and ponds were "static recipients" of rainwater and groundwater that flowed diffusely through them.[67]

In late September 2018, the Sixth Circuit rejected the hydrological connection theory and held that two coal power plants were not liable for violating the CWA when their settling ash ponds leaked selenium and other chemicals into nearby bodies of water.[68] In so finding, the court relied on the CWA's term "effluent limitation," which is defined as a restricting pollutants that "are discharged from point sources *into* navigable waters."[69] The court held the word "into" indicated a need for directness and left no room for "intermediary mediums to carry the pollutants."[70] Thus, the court seemed to reject the argument that coal ash ponds could constitute point sources.

In summary, the Ninth and Fourth Circuits found that when a pollutant travels through groundwater, it can still be deemed to originally come from a

63. Rapanos v. United States, 547 U.S. 715, 743 (2006).

64. *Hawai'i Wildlife Fund*, 886 F. 3d at 749.

65. *Id.*

66. *Sierra Club*, 145 F. Supp. 3d at 411.

67. *Id.* at 410-11.

68. Tenn. Clean Water Network v. Tenn. Valley Auth., 905 F.3d 436, 447 (6th Cir. 2018); Ky. Waterways All. v. Ky. Util. Co., 905 F.3d 925, 933 (6th Cir. 2018).

69. *Tenn. Valley Auth*., 905 F.3d at 444; *Ky. Waterways All*., 905 F.3d 934.

70. *Id*.

"point source."[71] These circuits relied on Justice Scalia's *Rapanos v. United States* quote that showed his support for imposing CWA liability for indirect releases that are not directly emitted into navigable waters but rather passed through conveyances in between.[72] Conversely, the Sixth Circuit held that when a pollutant travels through groundwater, it comes from groundwater, and groundwater is not a point source.[73] The Sixth Circuit also found that Justice Scalia's quote was merely meant to explain that pollutants could travel through multiple point sources and still be covered by the CWA.[74]

These decisions did not address whether groundwater constituted navigable water within the CWA, and if groundwater does qualify as a navigable water, that would significantly expand the CWA's coverage.[75] The issue of whether the CWA applies to discharges of pollutants into groundwater that eventually reach navigable waters, it seems the answer depends on the jurisdiction where the discharge occurs.[76]

Many are looking to the Supreme Court to resolve the circuit split described above and to provide clear guidance on these matters. However, it seems this guidance may be delayed, as the Supreme Court announced that it does not want to grant certiorari on cases that could change the way groundwater is regulated until the Court receives guidance from the Trump Administration.[77] The Supreme Court's Justices requested the United States Solicitor General to provide an assessment of two cases before the Court that raise the issue of whether groundwater should be within the purview of the CWA.[78]

Until clarity is given from either the Supreme Court or the EPA, parties that discharge pollutants into groundwater must research the court decisions in their jurisdictions to determine what their jurisdictions have held on these matters.[79] As

71. Hawai'i Wildlife Fund v. City of Maui, 886 F.3d 737, 746 (9th Cir. 2018); Upstate Forever v. Kinder Morgan Energy Partners, 887 F.3d 637, 650 (4th Cir. 2018).

72. *Hawai'i Wildlife Fund*, 886 F. 3d at 746; *Upstate Forever*, 887 F.3d at 650.

73. *Tenn. Valley Auth*., 905 F.3d at 444; *Ky. Waterways All*., 905 F.3d at 934.

74. *Tenn. Valley Auth*., 905 F.3d at 444-45; *Ky. Waterways All*., 905 F.3d at 936.

75. Brownhill & Rosen, *supra* note 60.

76. Rachel Jacobson et al., *Sixth Circuit Holds Clean Water Act Does Not Require Permits for Discharges to Groundwater*, WILMER HALE (Oct. 1, 2018), https://perma.cc/27KM-79SC.

77. David Schultz & Kimberly Strawbridge Robinson, *Supreme Court Wants Administration to Enter Groundwater Cases*, BLOOMBERG ENV'T. (Dec. 3, 2018), https://perma.cc/C6YD-W2KJ.

78. *Id.*

79. *See id.*

the regulated community awaits further guidance, it should expect to see the number of citizen suits on this matter increase.[80]

2. How Will This Recent Litigation Impact the Agricultural Industry?

Farms classified as CAFOs are subject to National Pollutant Discharge Elimination System (NPDES) permitting pursuant to the CWA, because these operations are "point sources" of pollution due to their large potential for polluting water.[81] The CWA prohibits point sources from discharging pollutants to the WOTUS, unless authorized by a NPDES permit.[82] CAFOs that discharge pollutants in WOTUS must acquire NPDES permits, and regulations also require CAFO operators to develop nutrient management plans that cover how to manage their production areas and land application areas, as well as record-keeping and reporting requirements.[83] CAFOs can either be given individual permits, which cover a single facility, or general permits that cover a group of operations with similar characteristics in a specific region.[84]

CAFOs will be significantly impacted if there is a finding that discharging pollutants into groundwater qualifies as discharging pollutants into WOTUS. CAFOs may face CWA liability for these actions, even if they are releasing pollutants under a NPDES permit.[85] Accordingly, developments as to what constitutes a point source and navigable water are two issues about which CAFO operators should be concerned. CAFO operators should also be working proactively with industry organizations and their legislators to ensure that the federal government does not crystalize the Ninth and Fourth Circuits' reasoning into statutes or regulations.

The agriculture industry as a whole should be concerned about the limbo created by these conflicting cases, and as a regulated community, it should tread carefully.[86] Agricultural operators should also be aware of what publicly available information about their operations is available and could be used to support

80. David Chung & Elizabeth B. Dawson, *The Clean (Ground) Water Act?* TRENDS (Dec. 27, 2018), https://perma.cc/J8BE-6BNU.

81. Animal Manure Management, *What Are the Clean Water Act Requirements That Apply to Animal Agriculture?*, EXTENSION (Apr. 17, 2018), https://perma.cc/S2WQ-WNRV.

82. *Id.*

83. *Id.*

84. Marin Bozic & Gabriella Sorg, *Concentrated Animal Feeding Operations Permits on Public Notice – Dairy Cattle*, DAIRY MKT. & POLICY 3 (Aug. 6, 2018), https://perma.cc/XVC9-9SL3.

85. Brownhill & Rosen, *supra* note 60.

86. *Id.*

possible citizen suits against them based on claims of illegal discharges.[87] All of the cases described above began as citizen suits that alleged CWA violations.[88]

Another area of litigation the agricultural industry must monitor are the lawsuits and injunctions related to the EPA's Rule regarding the definition of WOTUS. Under the direction of the Obama Administration, the EPA issued a rule that defined WOTUS so broadly that most bodies of water were brought under the CWA's regulatory and permitting coverage.[89] This rule has been hotly contested since its release—leading to a number of states, including Texas, issuing injunctions against the rule and, thereby, nullifying its effect in those states.[90] As a result of the injunctions, the prior rule defining WOTUS has been reinstated in these states.[91]

The Obama Era WOTUS rule remains in effect in twenty-three states, and the prior rule is in effect in the remaining states.[92] Uncertainty about the WOTUS rule remains until the EPA provides clarity, or the Supreme Court addresses the matter.[93] What is certain is the battle over what WOTUS should mean is far from over.[94] Courts are clearly split on the issue of WOTUS and the application of CWA regulation. In addition, the Trump Administration is charting its own course to change the regulatory landscape of the CWA, attempting to reign in decades-old regulations on water quality.

The implications of the legal and regulatory matters described in this article are significant for the agricultural industry. Agricultural operators must educate themselves on the state of the law in their areas and contact their local, state, and federal representatives to advocate for laws and regulations that provide reasonable standards for operators to follow. Operators should also seek to join industry organizations and fellow agricultural businesses to communicate a unified message in their state and on the national stage concerning environmental regulations and the importance of the agricultural industry in the U.S. and globally.

87. *Id.*

88. *Id.*

89. *EPA's WOTUS Rule Only Muddies the Waters*, EDISON ELEC. INST., https://perma.cc/V24U-3MV5 (archived Mar 6, 2019).

90. *WOTUS Rule Blocked in Texas, Louisiana, and Mississippi*, RED ON LINE, https://perma.cc/ED63-LRVU (archived Mar. 6, 2019).

91. *Id.*

92. *Id.*

93. Ellen Essman & Evin Bachelor, *The Ag Law Harvest*, OHIO AGRIC. L. BLOG (Dec. 4, 2018), https://perma.cc/EXN4-NT7F.

94. *Id.*

D. Nuisance Cases and the Agricultural Industry

One type of litigation on the rise against agricultural operations is nuisance lawsuits.[95] Nuisance lawsuits begin when a neighbor claims that an agricultural operator's activities prevent them from using and enjoying their property.[96]

Not all annoyances or disturbances qualify as nuisance activities, and courts require plaintiffs to show that the complained of activity either: (1) causes "significant harm;" (2) that the operator acted negligently or in violation of state or federal law; or (3) the operated failed to act in accordance with "generally accepted management practices."[97]

In nuisance lawsuits, courts balance two competing considerations: (a) the right of the farmer to use their land the way they want to; and (b) the right of the neighbor to enjoy their property.[98] Nuisance law seeks to resolve this conflict by balancing these competing interests.[99]

1. Nuisance Claims and Right to Farm Statutes

Every state in the U.S. has a Right-to-Farm statute, and the general policy behind these statutes is to reduce the loss of agricultural resources by limiting circumstances under which agricultural operations can be subjected to nuisance suits and to also protect operators that are following state regulations.[100] Right-to-Farm (RTF) laws give operators a legal defense against nuisance lawsuits brought by plaintiffs that move into a rural area and seek to change the way existing agricultural businesses operate.[101] This provides agricultural operators with a sense of security that their livelihoods are valued and accepted in their communities and requires complaining neighbors to satisfy a higher standard to successfully prove a nuisance cause of action.[102]

However, RTF statutes are not a defense to every type of nuisance lawsuit, as illustrated in the recent *Murphy-Brown* nuisance cases in North Carolina. Agribusinesses across the nation are tracking twenty-six cases that were filed by over 500 plaintiffs living near hog farms operated under contracts with Murphy Brown. In these nuisance lawsuits, plaintiffs alleged that the hog farms

95. FARM PROTECTION FROM NUISANCE LAWSUITS, PA STATE UNIV. SCH. OF LAW, https://perma.cc/2AGW-AUKR (archived Mar. 6, 2019).

96. *Id.*

97. *Id.*; Susan M. Brehm, *From Red Barn to Facility: Changing Environmental Liability to Fit the Changing Structure of Livestock Production*, 93 Cal. L. Rev. 797, 798 (2005).

98. FARM PROTECTION FROM NUISANCE LAWSUITS, *supra* note 95.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

substantially interfered with the use and enjoyment of their property. These cases resulted in jury awards ranging from $50 million to $473.5 million. North Carolina has a punitive damages cap, which required the total damages to be reduced, but the amounts were still significant.[103]

For many, the glaring question here is "where was North Carolina's Right to Farm statute in all of this?" In these cases, the RTF statute was found to be inapplicable.[104] The plaintiffs argued that either they or the prior owners of their properties had lived in the area prior to the hog farms being built, thus there were no "changed conditions" in the area, which precluded defendants from raising the Right to Farm defense.[105] The court accepted this argument, finding the RTF Act inapplicable.[106] The court noted that it did not matter that some of these landowners previously used their land for agricultural operations, or that the area had historically been used for agricultural purposes.[107] In light of the North Carolina court's finding, it is interesting to consider how this case may have evolved in Texas and pursuant to Texas' Right-to-Farm statute.

Texas' Right-to-Farm Act is one of the more robust in the country, which reflects Texas' policy to "conserve, protect, and encourage the development and improvements of its agricultural land…and agricultural products."[108] Further, the purpose of Texas' statute is to "reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be…considered a nuisance."[109]

This act seeks to bar nuisance claims against agricultural operations and provides, in relevant part,

> [N]o nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as

103. Tiffany Dowell, *$50 Million Nuisance Verdict in NC Hog Farm Case*, TEX. A&M: TEX. AGRIC. L. BLOG (May 14, 2018), http://perma.cc/U53Z-XY4G [hereinafter *$50 Million*]. The $473.5 million-dollar award was reduced by North Carolina's statute to $94 million.

104. *Id.*

105. *Id*. North Carolina's Right-to-Farm Act, in relevant part, provides "No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, public or private, by any changed conditions in or about the locality outside of the operation after the operation has been in operation for more than one year, when such operation was not a nuisance at the time the operation began."

106. *Id.*

107. *Id.*

108. Mary H. Barkley & Chris Brown, Liability Is Blowin' in the Wind . . . or Is It? A Look at Feedlots and Their Downwind Neighbors, 80 TEX. B.J. 766, 767 (2017).

109. *Id.* at 767.

> constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation.[110]

Thus, when an agricultural operation has been functioning for at least one year, and the conditions that are allegedly causing the nuisance have not changed, then the Right-to-Farm Act applies and can be raised as an affirmative defense.[111] In Texas, the focus is on the operation itself and the operations activities that allegedly constitute a nuisance. Conversely, in North Carolina, the focus is on conditions surrounding the operation. This subtle difference would likely bring about a vastly different result if these cases were tried in Texas.

2. What Can Agricultural Operators Learn from These Cases?

The North Carolina nuisance cases garnered the attention of livestock and crop producers across the country and raised deep concern about the impact that these cases may have on the industry.[112] For many, these verdicts were a harsh wake-up call that nuisance cases for agricultural activities can lead to significant liability and steep damages.[113]

North Carolina Agriculture Commissioner Steve Troxler said that these nuisance cases are an issue that must be addressed on a national level.[114] While he acknowledged that some people do not like the agricultural industry, he commented that "When they don't like it, they're biting the hand that feeds them," because "food is a national security issue. If we lost the ability to feed ourselves, then we won't last long."[115]

Beyond food security, these nuisance lawsuits affect more than the big agribusinesses that plaintiffs claim to be going after.[116] In many states, the agricultural industry is major part of the economy. As an example, the North Carolina hog industry produces 46,000 jobs and generates $3 billion in value-added revenue in the state.[117] If the hog industry in North Carolina were to dissolve, then many rural communities relying on this industry would be in serious

110. *Id.*

111. *Id.*

112. John Hart, *Nuisance Lawsuits Now Threaten All Farmers*, SOUTHEAST FARM PRESS (Aug. 6, 2018), https://www.farmprogress.com/hog/nuisance-lawsuits-now-threaten-all-farmers.

113. *$50 Million*, *supra* note 103.

114. Hart, *supra* note 112.

115. *Id.*

116. Jessica Domel, *Nuisance Lawsuits Could Affect Farmers Nationwide*, TEX. FARM BUREAU: TEX. AGRIC. DAILY (Aug. 7, 2018), https://perma.cc/PJ4T-TKV3.

117. Hart, *supra* note 112.

trouble.[118] These causes of action affect the individual farmers and ranchers that have sought to do everything according to the law and be good neighbors.[119]

Accordingly, these nuisance causes are significant to the agricultural industry and its members nationwide.[120] The fact that an agricultural business can operate in accordance with applicable laws and permits and still face significant liability and immense damages, because these operations are not to a plaintiffs' liking is a standard and precedent that could have devastating consequences if allowed to take root and spread on a national scale.

In response to these cases, agricultural operators should be familiar with the Right-to-Farm statutes are in their states and the protections the statutes can provide for them should they ever face a nuisance lawsuit. If operators identify weaknesses in their states' Right-to-Farm statutes, or other laws regarding agriculture, they should contact their lawmakers and seek to collaboratively work with their representatives to amend or draft new laws, as needed. Raising these issues with legislatures is imperative to protecting and preserving the agricultural industry, as a whole, and the interests and livelihood of individual farmers and ranchers.

Agricultural operators can also reduce the threat of nuisance actions by strong neighbor relations. Operators should increase transparency concerning their operations and share information with neighbors—both new and old—in an effort to address neighbors' concerns prior to formal, legal complaints being made.[121] When farmers communicate how their operations work, it fosters understanding, compromise, and responsibility.[122] Often neighbors who feel heard and understood by neighboring agricultural operations are less likely to complain.

If an agricultural operation conducts activities that might reasonably impact (or annoy) neighbors, then operators should give neighbors a heads-up about when these activities will occur.[123] This gives neighbors the ability to prepare themselves for the potential impact in advance. When neighbors see an agricultural business seeking to operate with respect and transparency, the neighbors may be less likely to be incited against agricultural businesses and refrain from pursuing nuisance causes of action.[124] This kind of open communication encourages operators and their neighbors to establish a relationship of mutual understanding and respect,

118. *Id.*
119. *See* Domel, *supra* note 116.
120. Hart, *supra* note 112.
121. FARM PROTECTION FROM NUISANCE LAWSUITS, *supra* note 95.
122. *Id.*
123. *Id.*
124. *Id.*

reducing the likelihood that a neighbor will pursue a nuisance lawsuit against neighboring agricultural operations.

E. Overview of Other Environmental Issues Affecting Agriculture

The agriculture industry has also faced some recent resistance in states that are typically thought of as "agricultural areas," as well as facing resistance in the "court of public opinion" due to targeted marketing campaigns that have been pushed through a variety of channels, such as social media. These instances reveal the need for the agricultural community to unify and develop proactive ways to respond to these challenges and to protect the industry and to restore and bolster its favorable reputation.

1. Governor Kasich's Executive Order in Ohio

In July 2018, Ohio's Governor, John Kasich, signed an executive order that directed the Ohio Department of Agriculture to consider declaring eight watershed areas as "Watersheds in Distress", due to increased nutrient levels resulting from phosphorus attached to soil sediment.[125] This executive order seeks to cover 7,000 farmers and ranchers and more than 2 million acres of land.

Ohio's Farm Bureau responded to this order with great concern and stated that the order does not have a realistic recognition of the time, financial, and educational resources that will be required from farmers in order to comply.[126] The Farm Bureau has also expressed concern about the regulations that may be created as part of this executive order and how these new regulations may conflict with existing regulations.[127]

The Ohio agricultural industry is also concerned about the science applied, the processes through which this order may be enacted, and what state agency authorities will be responsible for carrying the order out.[128] This order came as a big surprise to Ohio farmers, because it ignored the transparent and inclusive approach that Kasich promised in his "Common Sense Initiative."[129] Despite this promise, the agricultural community was wholly left out of the process that led to this executive order, which has led to frustration amongst the community.[130]

125. Matt Reese, *Gov. Kasich Announces Executive Order Directed at Agriculture and Water Quality*, OHIO'S COUNTRY J. (July 11, 2018), https://perma.cc/75ES-ZFVW.

126. Lynn Snyder, *Farm Bureau Critical of Kasich Executive Order*, OHIO FARM BUREAU (July 11, 2018), https://perma.cc/7DTK-VJNY.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

Farmers also have reasonable questions about the logistics of this order, and many are feeling uncertain about how the order will be carried out and what it will mean for their livelihoods.[131]

2. Call for a Moratorium in Iowa

Iowa has roughly 13,000 CAFOs and is the country's leader in hog farming, as the state markets approximately 50 million hogs per year.[132] The Iowa hog farm industry has experienced rapid growth since 2001, when there were only 722 CAFOs in the state.[133] This rapid growth has led to much unrest about the effects the CAFOs are having on the state's environment.[134]

A report was released in early 2018 that called for Iowa to not allow any new hog operations to be constructed until a study was conducted to analyze how the hog farm industry is impacting the state of Iowa and its residents.[135] The report concluded that Iowa's regulatory system was failing to protect its environment and public health for the sake of promoting growth in the livestock industry.[136]

This report found that livestock production contributes to degrading the water and air quality in the environment and causes an increase in asthma and other illnesses for residents that live near hog CAFOs.[137] The report also states that homes near hog farms saw a 20-40% decline in value due to the homes' proximity to hog farms and the odor that emanates from these operations.[138] The report called for a moratorium to address new construction of CAFOs and for land covenants to be established, as well as other local, legal strategies that would limit expansion and new development of CAFOs.[139] The pork industry acknowledges the growth but believes this rapid expansion is good for farmers and Iowa's economy.[140] The industry understands there are some concerns but believes the concerns are being adequately addressed by the current regulatory scheme.[141]

131. *Id.*

132. Kristin Guess, *Demands for CAFO Regulation Increasing*, COURIER (July 29, 2018), https://perma.cc/FKH9-FHS4.

133. *Id.*

134. *Id.*

135. *Report Calls for Hog Farm Moratorium in Iowa*, AG WEB (Jan. 26, 2018), https://perma.cc/MV4K-QG6Y.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

The hog industry in Iowa is facing opposition from Iowa residents, and Iowa legislators are facing pressure from constituents. The rapid growth in Iowa's hog farm industry has some touting that it has been too much, too soon. Others believe the rapid growth is of great benefit to Iowa's economy, as a whole, and Iowa's agricultural community, specifically.

3. Golden Sands Dairy Legal Battle in Wisconsin

The challenges do not end in Ohio and Iowa. In 2012, the Wysocki family proposed plans to build a 3,500-cow dairy in Saratoga, Wisconsin.[142] The family wanted to communicate these plans to the local community and were met with concern and resistance from town residents, which was mostly centered on the potential pollution levels and negative impacts on the community's drinking water.[143] What followed was a five-year legal battle between the town of Saratoga and the Wysocki family.[144]

The case made its way to the Wisconsin Supreme Court in 2018, and the court ruled in favor of the dairy, despite town zoning ordinances that sought to prevent the land from being used for agricultural purposes.[145] The court's ruling also allowed the family to expand from its original plans for a 3,500-cow dairy and to build a 5,300-cow dairy, instead.[146]

The family will still have to complete the permitting process with the Wisconsin Department of Natural Resources and satisfy the town's livestock ordinances, but after a long and hard-fought legal battle, this was a tremendous step in the right direction.[147]

4. Proposed Oregon Legislation Threatens to Create Nation's Toughest Dairy Laws

In Oregon, two bills were proposed in response to Lost Valley Farm, a large dairy that was cited and fined for over 200 environmental violations.[148] This situation has been used by critics to assert that Oregon's permitting process,

142. Taylor Leach, *Wisconsin Supreme Court Allows Dairy to Expand*, AG WEB (June 26, 2018), https://perma.cc/T79K-G8GE.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Tracy Loew, *Oregon Bills Seek Nation's Toughest Dairy Regulations*, STATESMAN J. (Dec. 12, 2018), https://perma.cc/F7D6-HEP4.

environmental oversight, and enforcement powers are inadequate, and it has created an initiative to strengthen dairy regulation.[149]

The proposed bills would apply to large dairies and seek to categorize large dairies as industrial operations, as opposed to agricultural or farming operations. This would cause large dairies to no longer be eligible for regulatory exemptions currently available under Oregon's right-to-farm statute and other laws.[150] The legislation would enable communities to influence siting decisions and to enact health and safety ordinances that would "restrict or prohibit air and water emissions."[151]

The bills call for a moratorium on permits for new or expanded large dairies and propose to eliminate or cap large dairies' ability to utilize an exemption in Oregon law that allows cattle owners to use unlimited water without acquiring the generally required permits for industrial water use.[152]

One of the bills seeks to require Oregon to begin regulating air emissions from large dairies—a regulatory requirement Oregon does not currently have in place.[153] It also proposes to prohibit Oregon from issuing permits to new, large dairies until applicants have secured water rights.[154]

This bill seeks to require new, large dairies to post bonds as security for environmental, health, or animal welfare costs that may be incurred in relation to manure spills, improperly disposing of animals, excessively applying manure, cleaning abandoned facilities, or relocating animals after a facility closes.[155] The bill proposes to require the Oregon Department of Agriculture to study and report on the economic impacts large dairies have on small and medium size dairies and to require the state to create a task force that would address animal welfare and recommend minimum standards for animal welfare at large dairies.[156]

A Senate committee voted to introduce these bills in Oregon's 2019 Legislative session that begins on January 22.[157] Tracking the response and traction this legislation secures in Oregon will be important and informative for dairy operators across the nation, as this type of legislation threatens to negatively impact the dairy industry in Oregon and beyond.

149. *Id.*

150. *Id*. Large dairies are defined as having at least 2,500 cows or having at least 700 mature cows with no seasonal pasture access.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

5. The Agricultural Industry in the Age of Social Media

Social media is a powerful and important tool that helps people connect, build relationships, and share information. Interacting on social media allows people to develop communities and share their stories in a way that was not possible in previous generations. Social media is an important and often under-utilized tool for the agricultural industry, as agribusinesses need to find ways to connect with people, share their stories, and inform the public about all of the good that agriculture does and all of the needs that the industry meets.

The general public still has faith in farmers and ranchers, although some are wary of certain agricultural practices. Social media gives farmers and ranchers a platform to address some of the myths and misnomers about agriculture and to help the public understand how their agricultural operation works and why it must function that way. Agricultural operators can share how they strategically make decisions for their operations and share the process of developing crops and managing livestock operations.[158] This gives the public an opportunity to understand what "Farm-to-Table" practically means and allows people to see the hard work and sweat equity that goes into producing agricultural products.

Social media can also be used as a means of building a community within the agricultural industry, as the industry is facing an increased amount of legal, regulatory, and public perception attacks.[159] As members of the agricultural industry connect, they can form alliances and work together to protect their operations, livelihood, and industry.

Strategic use of social media channels gives the agricultural industry and its individual members, the ability to combat misinformation and to start winning in the court of public opinion. This platform can be used to expose incorrect information and open communication channels for people that are interested in the agricultural industry and how it works, even if they have some reservations or questions about certain aspects.[160] This dialogue is how the industry can begin to turn public opinion back toward understanding, supporting, and protecting the agricultural industry and its community.

In this modern age of technology, the agriculture industry must find ways to use social media channels to open communication with the public, tell the stories of individual farmers and ranchers, share information that corrects misconceptions about agriculture, and share how valuable the agricultural industry is and what critical needs it meets. As the agriculture industry grows in effectively using social

158. *See* Timothy Wier, *How Farmers Use Social Media [Stats & Marketing Tips]*, FARM MARKET ID (May 11, 2018), https://perma.cc/AU3T-2J9W.

159. *Id.*

160. Cheyenne Hoover, *How Social Media Has Affected the Agriculture Industry*, ARABLE (Mar. 1, 2018), https://perma.cc/9AAF-W9V2.

media, it will start seeing victories in the court of public opinion, which may help the industry see more victories elsewhere.

III. CONCLUSION

The agriculture industry is facing a number of operational, legal, regulatory, and public perception challenges, and it is important for the industry's response to be unified, resolute, and strategic. As such, the agricultural community must work with legislators to strengthen Right-to-Farm Acts to resist the efforts of environmental groups to "carve out" certain activities from the traditional protection of Right-to-Farm laws.

Farmers and Ranchers must also work with their state and federal representatives to pass laws and regulations that provide reasonable permitting, reporting, and regulatory requirements and to strengthen laws that exempt agricultural operations from burdensome and unreasonable reporting and permitting requirements.

The agricultural community must connect and unify in order to communicate a resolute message to legislators, environmental groups, and the public at large. Part of this message must be communicating the importance of the agricultural industry and how many needs this industry meets. Agriculture must begin to use creative channels, such as social media, in order to connect with the public and address the misconceptions and, in some cases, pure deception that has been spread about agriculture amongst the public through a variety of channels.

Addressing these issues will give the agricultural industry an opportunity to connect with the public, address public concerns and questions about agricultural operations, and reaffirm the vital nature of agriculture and the many needs that agricultural operations meet. This will give the industry and its community an opportunity to restore public faith in and support of agriculture and will help the agricultural industry and community to shift the pendulum in their favor in the court of public perception. This is key for the industry to begin winning in all of the other forums.