



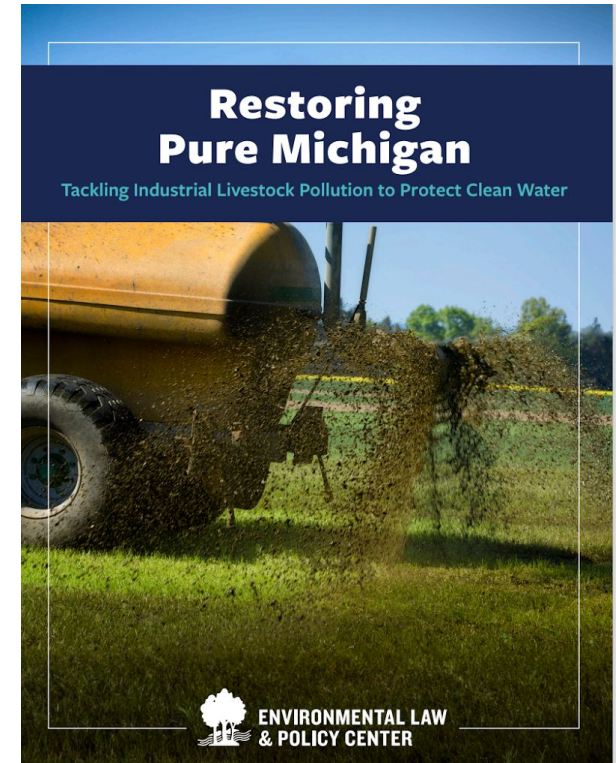
ENVIRONMENTAL LAW
& POLICY CENTER

CAFO Permitting in Michigan

Great Lakes Manure Conference May 2024

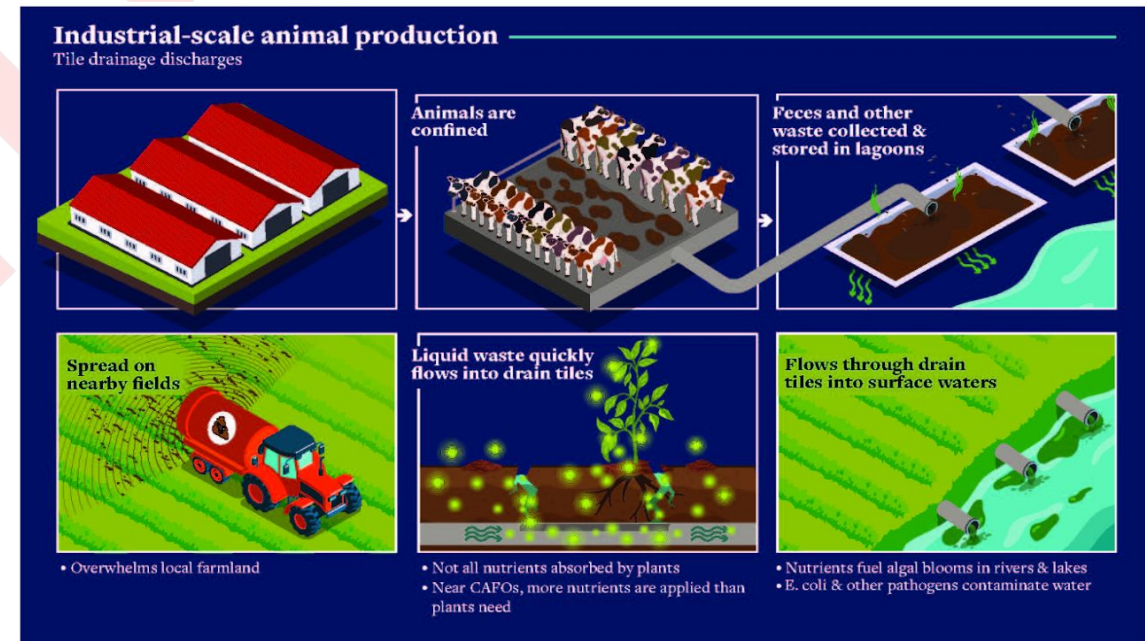
ELPC CAFO Report

- In March 2024, ELPC released a report about CAFOs in Michigan
 - Called “*Restoring Pure Michigan: Tackling Industrial Livestock Pollution to Protect Clean Water*”
 - Comprehensive overview:
 - How CAFOs cause water pollution
 - How CAFOs are inadequately regulated and receive unfair legal and economic advantages
 - Our recommendations to stem the pollution



ELPC CAFO Report

- Lots of stats and fun facts from USDA and EGLE:
 - 94% of farms (those earning less than \$50k per year) receive only 42% of federal farm subsidies; the largest 6% (earning over \$50k) receive the lion's share (58%);
 - The animals on Michigan's 290 CAFOs generate 63 million pounds of fecal waste per day; that 17 million more pounds per day than all of the state's 10 million human beings.
- And lots of drawings/images to break down complex topics



ELPC CAFO Report

- Current approach of pushing voluntary BMP adoption isn't working
 - The jury is not out; the data is clear
 - *Many common BMPs actually make pollution worse*
 - Limited interest from producers
- Investment of decades and hundreds of millions of dollars haven't moved the needle
- One approach we haven't tried?
 - Actually regulating CAFOs like the industrial polluter/point sources they are
 - Requiring them to fully internalize the cost of their waste management practices
- **Primary recommendation: Let's give it a shot!**

Specific recommendations:

1. Start a statewide nutrient TMDL (incl. Lake Erie)
2. Improve EGLE CAFO Permits
 - Get full coverage (expired permits, “no discharge” permits; medium CAFOs spreading liquid waste on tiled fields)
 - Improve/strengthen the permit terms^{***}
3. Improve EGLE enforcement of CAFO permits
4. Stop spending money on things that aren't working
 - Voluntary BMP adoption isn't working
 - Technology won't save us as long as CAFOs have the option of not spending money on technology

****Complicated by ongoing lawsuit*

Michigan's General CAFO Permit

Michigan CAFO Permits

- Michigan requires all Large CAFOs to carry a NPDES Permit
- The majority of Michigan's CAFOs get coverage under the General CAFO Permit (88%)
 - The rest hold individual permits (8%) or “no discharge”/non-NPDES permits (4%)
- Must be renewed every 5 years
- Public comment period, followed by ability to challenge in administrative “contested case” hearing

Michigan CAFO Permits

- **2020 General CAFO Permit Legal Challenges**
 - Pre-draft public engagement/comment period
 - Draft permit released
 - Public comment period
 - Final permit released
 - Final permit was a real compromise – the Draft permit had included some much needed improvements (winterspreading ban) but backed off many of them to placate CAFO industry
 - CAFOs challenged permit – twice
 - Filed a contested case challenge (permissible)
 - ELPC + other groups intervened
 - Filed a parallel legal case in Court of Claims (not permissible)
 - No intervention for outside parties

Michigan CAFO Permits

- **2020 General CAFO Permit Legal Challenges (cont)**
 1. Contested case hearing
 - 3 week Zoom trial winter 2022
 - Administrative law judge (ALJ) stayed ruling pending court challenge
 2. Court challenge proceeded to ruling + appeal
 - Eventually appealed to Michigan Supreme Court
 - ELPC + others filed amicus brief
 - Ruling expected by July 31

Michigan CAFO Permits

- **2020 General CAFO Permit Legal Challenges (cont)**
 - Michigan Supreme Court ruling could have significant impacts on:
 - All environmental general permits (not just CAFO permits)
 - Slaughterhouses example

Michigan CAFO Permits

•ELPC's recommendations for the Michigan General CAFO Permit:

- Prohibit the spreading of liquid waste on tiled fields
- Ban winter waste spreading
- Improve transparency re: manifesting
- Better (actually meaningful) monitoring for tile-drained fields
- Limit waste application to the Tri-State STP maintenance range
- Require the use of the Michigan Phosphorus Risk Assessment (MPRA)
- Require more detailed and more frequent data reporting
- Impose punishments for illicit discharges from production area via tile pipes

Local Control in Michigan

The Right to Farm Act and Michigan's GAAMPs

Local Control in Michigan – RTFA + GAAMPS

- **Right to Farm Acts (RTFAs)**
 - Immunize “farm operations” from nuisance suits
 - Protect profits, not farmers
 - CAFOs and Corporate entities won highest % of suits
 - Rural residences and small farms lost highest % of suits.
 - Provide protection even if “farm operation” changes or expands radically
 - Say, from an apple orchard to a 2,000-hog CAFO
 - Silences neighbors
 - Three strikes rule for “complaints”
 - **Handcuffs communities – limited/no local control due to GAAMPS**

Local Control in Michigan – RTFA + GAAMPS

Handcuffs communities – limited/no local control

- Michigan’s RTFA requires establishment of a set of Generally Accepted Agricultural Management Practices (GAAMPS)
- Curtails some of the most basic powers of local government (zoning, public health protection, disease management and control)
- Local governments cannot adopt any requirements that conflict or overlap with any GAAMPS
- For example (this is not legal advice):
 - If a town wanted to impose more stringent disease prevention measures on livestock facilities to prevent the spread of H1N1, they might be blocked because the “Care of Farm Animals” GAAMP lays out (extremely minimal) requirements for disease management.
 - If a town wanted to pass an ordinance saying that manure cannot be stored within 200 feet of a residence, that ordinance may be invalidated because the “Manure Management” GAAMP says that manure can be stockpiled anywhere, so long as it is covered with a “tarp, fleece blanket, or straw cover.”

Local Control in Michigan – RTFA + GAAMPS

GAAMPS

- Compliance with GAAMPS is a shield against nuisance liability
- GAAMPS include:
 - Care of Farm Animals
 - Farm Markets
 - Irrigation Water Use
 - Cranberry Production
 - Manure Management/Utilization
 - Nutrient Management
 - Pesticide Utilization – Pest Control
 - Site Selection

Local Control in Michigan – RTFA + GAAMPS

GAAMPS

- Site Selection GAAMP

- As long as the GAAMP's minimal standards are met, the siting will be allowed
 - Extremely minimal consideration of WQ impacts – no consideration of cumulative impacts (say, of multiple facilities closely located/in same watershed)
- And the GAAMPs committee has explicitly said that it cannot consider a number of factors that neighbors/localities might care about (“not within the purview”), and therefore cannot disapprove a siting application based on:
 - Air pollution
 - Roads and transportation issues; noise
 - Food system concerns
 - Zoonotic disease concerns
 - Property values
 - Tourism impacts; wildlife

- Determinations can be appealed within MDARD

- No right to judicial review

•Questions?

Sample