



Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Environmental Odors and Public Nuisance Law: A Research Anthology

Environmental Odors and Public Nuisance Law

Many substances in the environment can produce odors,¹ some of which might be harmful to health.² These odors often originate from factories,³ nature,⁴ human activity,⁵ or animals.⁶ In law, the term “nuisance” signals a condition, activity, or situation that interferes with a person’s use or enjoyment of property.⁷ However, when the matter affects a larger number of people, the problem is classified as a “public nuisance.”⁸ A public nuisance is defined as an “unreasonable interference with a right common to the general public, such as a condition dangerous to health.”⁹ Various types of claims can be brought within the realm of public nuisance law, including claims of odors as nuisances.¹⁰

This research anthology outlines resources and research about environmental odors and public nuisance law.¹¹ Attention is given to environmental odors and public nuisance, generally, and to environmental odors associated with animal feeding operations, specifically.

Background on Public Nuisance Law

- State Common Law of Public Nuisance in the Modern Administrative State
F. William Brownell, 24 NAT. RES. & ENV'T 34 (2010).
Summarizes the history of public nuisance law and its resurgence in environmental and tort law.

General Resources on Environmental Odors as a Nuisance

Public nuisance law originates from common law doctrine,¹² but courts must “closely scrutiniz[e]” cases “for state-specific characteristics, like how a nuisance is defined.”¹³ The resources listed below explore how courts have addressed various odors in the realm of nuisance law.

- [Industrial Odor Sources and Air Pollutant Concentrations in Globeville, a Denver, Colorado, Neighborhood](#)
Blayne Morgan et al., 65 J. AIR WASTE MGMT. ASS'N 1127 (2015).
Discusses results of a case study of industrial odor nuisance and pollution in Colorado and examines the state’s regulatory efforts surrounding odors as nuisances.



- [A Review of National and International Odor Policy, Odor Measurement Technology and Public Administration](#)
 SRF Consulting Group, Inc. (2004).
 Discusses the state of pollution control techniques and outlines nuisance cases addressing a variety of odors.
- Remedies for Sewage Treatment Plant Alleged or Deemed to Be Nuisance
 Marjorie A. Shields, Annotation, 101 A.L.R.5th 287 (originally published in 2002; American Law Reports databases are updated weekly).
 Explores common remedies for nuisance claims against sewage treatment plants, such as injunctive relief and damages.
- Sewage Treatment Plant as Constituting Nuisance
 Elizabeth A. Trainor, Annotation, 92 A.L.R.5th 517 (originally published in 2001; American Law Reports databases are updated weekly).
 Summarizes case law on nuisance cases involving sewage treatment plants and outlines the standards generally used to determine whether a sewage treatment plant constitutes a nuisance.
- Operation of Incinerator as Nuisance
 Peter G. Guthrie, Annotation, 41 A.L.R.3d 1009 (originally published in 1972; American Law Reports databases are updated weekly).
 Provides an overview of cases brought against incinerator facilities for claims of nuisance based, in part, on noxious smells.

Resources on CAFO-Related Odors as a Nuisance

The majority of the information available on environmental odors and nuisance law focuses on environmental odors produced by animal feeding operations (AFOs). Federal law defines AFOs as facilities where animals are “stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period” and where “crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.”¹⁴ If the facility holds a certain number of animals, it might be further classified as a medium or large concentrated animal feeding operation (CAFO).¹⁵ Various elements of an AFO facility, such as manure treatment and carcass disposal, could produce environmental odors.¹⁶

The following resources consider AFO- or CAFO-related environmental odors as they relate to nuisance in state law.

- [Preemption of Local Governmental Ordinances Regulating Concentrated Animal Feeding Operations in the United States](#)
 Terence J. Centner, 4 ENV'T & POLLUTION 66 (2015).
 Considers how right-to-farm acts on the state level might limit nuisance lawsuits from being brought and preempt local efforts to regulate CAFOs.

- [Yes, in Your Backyard—Model Legislative Efforts to Prevent Communities from Excluding CAFOs](#)
Vanessa Zborek, 5 WAKE FOREST J. L. & POL'Y 147 (2015).
Examines federal regulatory efforts toward CAFOs vis-à-vis public health harms and explores model legislative methods that impede community-level efforts to exclude CAFOs, such as a Model Right to Farm Act that extends immunity from nuisance suits to farms on an increase in livestock capacity.
- [Protecting Your Community from Existing and Proposed Concentrated Animal Feeding Operations \(CAFOs\): A Guide to Legal Actions](#)
MIDWEST ENVTL. ADVOCATES, INC. (updated November 2013).
Describes methods and approaches to enforcing a community's legal rights are protected with regards to effects from a CAFO, with particular focus on Wisconsin tort/nuisance law.
- [Anaerobic Digestion Technology: How Agricultural Producers—and the Environment—Might Profit from Nuisance Lawsuits](#)
Catherine Keske, 52 NAT. RES. J. 315 (2012).
Explores promising advances in anaerobic digestion technology, which uses microorganisms to convert organic material, such as manure, into biogas, and argues that the high cost of nuisance lawsuits spurs development and use of the technology.
- Legal and Policy Issues Related to Anaerobic Digestion at United States Livestock Facilities
Jennifer C. Fiser, 3 KY. J. EQUINE, AGRIC. & NAT. RES. L. 221 (2011).
Describes the development of anaerobic digestion systems and explains how they, in abating livestock-related odors, might decrease the prevalence of nuisance lawsuits.
- A Big Stink
Richard H. Middleton Jr. & Charles F. Speer, 47 TRIAL 26 (2011).
Recounts the effectiveness of nuisance lawsuits in securing damages for plaintiffs living near CAFOs and highlights the variations of common law nuisance standards across states.

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For further technical assistance with this inventory, please contact phlawprogram@cdc.gov. PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professional with questions regarding the application of law to a specific circumstance. The findings and conclusions in this summary are those of the author and do not necessarily represent the official views of CDC.

¹ AGENCY OF TOXIC SUBSTANCES AND DISEASE REGISTRY, [Environmental Odors](#), last accessed Dec. 7, 2015.

² See SRF Consulting Group, Inc., A Review of National and International Odor Policy, Odor Measurement Technology, and Public Administration, 2004, at 10 (explaining “[c]hemicals responsible for hog manure’s distinctive smell include compounds such as hydrogen-sulfide [which has] significant human health effects including headaches, nausea, and dizziness.”) and Carrie Hribar, Nat’l Ass’n of Local Bds. of Health, [Understanding Concentrated Animal Feeding Operations and Their Impact on Communities](#), at 8 (2010) (explaining “[m]ental health deterioration and an increased sensitization to smells can also result from living in close proximity to odors from CAFOs.”).

³ *Id.*, citing oil refineries, landfills, paper mills, and wastewater treatment plants as examples.

⁴ *Id.*, naming moist soil, gardens, and fires as examples.

⁵ *Id.*, listing compost, sewages, garbage, fires, and household cleaning agents as examples.

⁶ *Id.*, citing confined animal feeding operations (CAFOs) as an example.

⁷ NUISANCE, *Black’s Law Dictionary* (10th ed. 2014), citing a “loud noise or foul odor” as an example.

⁸ Also termed “common nuisance.”

⁹ NUISANCE, *Black’s Law Dictionary* (10th ed. 2014). Contrast “public nuisance” with the doctrine of private nuisance, which “attempts to balance the ‘the right of one individual to put his land to productive use and the right of nearby property owners to be free from physical invasions that substantially interfere with the use and enjoyment of their property.’” Vanessa Zborek, *Yes, in Your Backyard—Model Legislative Efforts to Prevent Communities from Excluding CAFOs*, 5 WAKE FOREST J. L. & POL’Y 147, 166 (2015).

¹⁰ See generally Lindsay F. Wiley, *Rethinking the New Public Health*, 69 WASH. & LEE L. REV. 207, 234 (2012) (explaining how “[o]ne kind of public nuisance claim is a fairly modest extension of this private nuisance doctrine. . . . At a certain point, [the] property-based private nuisance becomes a public one simply by virtue of the large number of people affected. But there is also another kind of public nuisance claim that does not necessarily have anything to do with the defendant’s property use or the plaintiffs’ property enjoyment. It is this broader kind of claim that has sparked most of the legal and political controversy over nuisance.”)

¹¹ PHLP searched for terms such as “Resources for this anthology were collected by searching for terms such as “environmental odors”; “nuisance odors”; “public nuisance odor resources”; “environmental health odor nuisance”; “noxious odors”; and “industrial odor nuisance” in Google and Google Scholar between July 30, 2015 and August 17, 2015. PHLP also searched for terms such as “environment! odor’ nuisance” in WestlawNext during the same period. WestlawNext was used for legal resources, while Google and Google Scholar were used for additional resources.

¹² Common law is defined as a “body of law derived from judicial decisions, rather than from statutes or constitutions.” *Black’s Law Dictionary* (10th ed. 2014). See also F. William Brownell, *State Common Law of Public Nuisance in the Modern Administrative State*, 24 NAT. RES. & ENV’T 34 (2010) (explaining the “common law of public nuisance arose in twelfth-century England as a criminal writ, brought by a sovereign to protect the exercise of rights common to his subjects.”).

¹³ Richard H. Middleton, Jr., Charles F. Speer, *A Big Stink*, TRIAL, at 26, 30 (Mar. 2011).

¹⁴ 40 C.F.R. § 122.23(b)(1).

¹⁵ *Id.* § 122.23(b)(2).

¹⁶ Middleton, Jr., at 28 (maintaining with any CAFO, the “major impact on the community is the smell.”).