

**FARM BILL SUBSIDIES VIOLATE ENVIRONMENTAL
JUSTICE PRINCIPLES WITHOUT RECOURSE**

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The Agriculture Act (Farm Bill) primarily subsidizes crops which become livestock feed (rather than human food), artificially encouraging and sustaining animal-based agriculture and a meat-centric American diet. Animal agriculture creates environmental justice hazards by harming minority workers, minority communities, and minority societies in multiple ways. There are no sufficient legal mechanisms to link the farm bill distributions to environmental justice hazards or to prevent their harms. A policy shift away from federally assisting animal agriculture in the next farm bill will begin to correct these environmental justice hazards while maintaining and advancing existing judicial mechanisms such as the National Environmental Policy Act (NEPA).

INTRODUCTION

Environmental justice is a concept, agenda, and movement recognized by the United States government and advanced through Presidential Executive Orders and agency mandates. These actions ensure that disadvantaged and minority communities are not disproportionately harmed when the government implements programs which may affect the environment.¹ The principles of environmental justice are an extension of social justice and have been used to inform and address “the connections between discrimination, poverty, and the distribution of environmental risks.”² Environmental justice concerns are generally within the Environmental Protection Agency’s (EPA’s) purview and can manifest in the form of selective siting of gas pipelines, noisy airport runways, and prison facilities in economically disadvantaged areas, or resulting from the spraying or disposal of potentially dangerous chemicals, animal waste, and pesticides in poor communities.³ If left unchecked, these environmental matters

1. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf> [hereinafter Executive Order]; see generally *Learn About Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last updated Sept. 6, 2022); “Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (February 11, 1994), requires each Federal agency to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .” U.S. DEP’T OF AGRIC. *Environmental Justice Strategic Plan: 2016–2020* at 4.

2. ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 17 (9th ed. 2022) [hereinafter Percival Coursebook].

3. *Id.* at 18; *Standing Rock Sioux Tribe v. U. S. Army Corps of Eng’rs*, 282 F. Supp. 3d 91 (D.D.C. 2017); see also *Sierra Club v. Fed. Energy Regul. Comm’n*, 867 F.3d 1357 (D.C. Cir. 2017); *Ctr. for Cmty. Action & Env’t Just. v. FAA*, 18 F.4th 592 (9th Cir.2021); *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937 (4th Cir. 2020); *Or. Env’t Council v. Kunzman*, 817 F.2d 484 (9th Cir. 1987).

exacerbate systemic injustice, perpetuate wealth and health disparities, and selectively harm disadvantaged communities the hardest.⁴ Despite the dedicated stance the government claims to have on this issue, the federal government currently allots a tremendous amount of taxpayer money promoting and celebrating an industry that defies many environmental justice standards while perpetuating a single, hazardous product—the cow.⁵

The current use of federal funds to subsidize and influence our meat-centric food system—dominated by an exclusive group of powerful meat companies—is grossly wasteful, fails to recognize the negative environmental and health effects against disadvantaged populations as required by environmental justice directives, and directly contributes to creating disparities.⁶ If the federal government properly analyzed the extended effects of its funding choices through an environmental justice lens, this would reveal that a plant-centric focus on subsidy distribution would begin to eliminate these disturbing and unchallenged inequalities.⁷

The first portion of this article explains the importance and influence of government regulation on our food system.⁸ Subsidies allocated in the farm bill direct enormous bodies of industry, affecting everything from wide-scale land use to the price of a sandwich.⁹ The foundational discussion in this article will link our current food system and the hazards it generates to environmental justice inequities, introducing three levels of discrimination resulting directly from our federally-subsidized, meat-centric food system.¹⁰ From workers suffering personal injuries inside of a slaughterhouse or meat

4. *Environmental Justice and National Environmental Policy Act*, EPA (last updated Apr. 13, 2022), <https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act> [hereinafter NEPA Guidelines].

5. *See generally* DAVID ROBINSON SIMON, MEATONOMICS (2013) (explaining the economic burdens of industrial farming, including the industrial farming of cows). This article focuses on the cow in particular due to the staggering effects/numbers, but the article will also reference other livestock categories as well.

6. David Gillette & Warren Barge, *The True Cost of a Hamburger*, AM. INST. FOR ECON. RSCH. (Apr. 20, 2022), <https://www.aier.org/article/the-true-cost-of-a-hamburger/>. The top meat companies referenced as a group in this article herein are Tyson, JBS, Smithfield Foods, Cargill, and National Beef. These companies amount to over 85% of all meat production in the United States. Tom Polansek, *Explainer: how four big companies control the U.S. beef industry*, REUTERS (June 17, 2021), <https://www.reuters.com/business/how-four-big-companies-control-us-beef-industry-2021-06-17/>.

7. Tara O'Neill Hayes & Katerina Kerska, *PRIMER: Agriculture Subsidies and Their Influence on the Composition of U.S. Food Supply and Consumption*, AM. ACTION FORUM (Nov. 3, 2021), <https://www.americanactionforum.org/research/primer-agriculture-subsidies-and-their-influence-on-the-composition-of-u-s-food-supply-and-consumption/>.

8. Dennis W. Jansen et al., *U.S. Farm Subsidies: A Prime Example of Crony Capitalism*, TEX. A&M U. PRIV. ENTER. RSCH. CTR. (July 29, 2021), <https://perc.tamu.edu/PERC-Blog/PERC-Blog/U-S-Farm-Subsidies-A-Prime-Example-of-Crony-Capita>.

9. *See generally Farm Bill*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/farmbill> (last visited Nov. 27, 2022). This article does not currently dispute the merit of government intervention to keep our food economy stable. As inflation rises, however, the price of a McDonald's hamburger has gone relatively unchanged. SIMON, *supra* note 5, at 74–76.

10. *Infra* § 1(C).

processing facility; to the community degradation and nuisance in an area which supports a concentrated animal feed operation (CAFO); to the widespread generational health and climate disparities caused in part by the damaging effects of the large-scale factory farming industry, the farm bill subsidies exacerbate and cause environmental justice concerns without recourse.¹¹

The legal core of this article demonstrates the problem with addressing farm bill subsidy-driven environmental justice concerns with limited and insufficient recourse methods.¹² Traditional NEPA and the Administrative Procedure Act (APA) structures, nuisance claims, Title VI civil rights claims, and the barrier of proving disparate causation of large-scale environmental justice issues, all falter in significant ways which prevent the action currently required.¹³ This article provides recommendations for the government to act on immediately, using its own pre-existing words, dedications, and recourse mechanisms. Finally, this article concludes that any subsequent farm bills must include an explicit and dedicated focus on environmental justice, with provisions both to provide recourse for current injustices through existing judicial mechanisms, while also paving the way for a more just future.¹⁴ Inherent in the corrections to the Farm Bill is a policy shift away from wasteful and harmful animal agriculture practices to a more plant-centric focus when distributing subsidies, alleviating many aforementioned environmental justice concerns and following-through on the promises of Executive Order 12,898.¹⁵

The final piece of this article turns the focus to edible plants and begins to explain why they have the power to correct many environmental issues addressed earlier.¹⁶ This section samples why shifting subsidies to promote more edible plants in lieu of beef would save resources, land, and taxpayer dollars while vastly improving the cost-benefit ratio of the subsidized food system. From direct health benefits, improving local food economies, cleaning air, water, and land, the environmental justice objectives proclaimed by the government would begin to see the progress they deserve.

11. *Infra* § I(C).

12. *Infra* § I(D).

13. *Infra* § I(D)(1-3).

14. *EPA Launches New National Office Dedicated to Advancing Environmental Justice and Civil Rights*, EPA (Sept. 24, 2022), <https://www.epa.gov/newsreleases/epa-launches-new-national-office-dedicated-advancing-environmental-justice-and-civil>; Environmental Justice Strategic Plan, *supra* note 2; NINA M. HART & LINDA TSANG, CONG. RSCH. SERV., IF11932, *National Environmental Policy Act: Judicial Review and Remedies*, (Sept. 22, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF11932>; Jesse Hevia, *NEPA and Gentrification: Using Federal Environmental Review to Combat Urban Displacement*, 70 EMORY L. J. 711 (2021), <https://scholarlycommons.law.emory.edu/elj/vol70/iss3/4>.

15. *Infra* § II(C).

16. *Infra* § E to end.

I. BACKGROUND

A. *What is Environmental Justice?*

In 1994, President Bill Clinton signed into action Executive Order 12,898. The order declared, under the power of the EPA, that all federal agencies should consider environmental justice implications of their agency decisions and projects to “promote nondiscrimination in federal programs that affect human health and the environment.”¹⁷ This is an extension and acknowledgement of a larger social justice awareness movement that is currently used to guide projects which would have serious environmental impacts that disproportionately affect disadvantaged communities.¹⁸ In theory, if a federal agency such as the Food and Drug Administration (FDA) or United States Department of Agriculture (USDA) were to undertake a project which manipulates nature in some significant way, the NEPA-required environmental impact statement (EIS) should include a new layer of environmental justice analysis which guides decision making.¹⁹ The EIS should not only lay out how the project impacts the environment but whether the project especially impacts disadvantaged and minority communities.²⁰ There is an implied sense that this concern should be at the forefront of any EIS moving forward and create a special barrier to limiting detrimental projects and correcting past injustices.²¹ Executive Order 12,898 has one large problem: it concludes with § 6-609, which declares that this framework is merely guidance and therefore has no legal recourse and is not subject to any judicial review.²²

Even without a true legal duty to implement these environmental justice standards, almost all of the U.S. government’s federal agencies (at least motivated by the positive optics) set forth information on how they are addressing environmental justice.²³ NEPA is the mechanism which generally regulates the environmental impact of federally funded projects and has its own specific considerations in addressing and advancing environmental

17. Executive Order, *supra* note 1.

18. *Id.*

19. *Id.*; NEPA Guidelines, *supra* note 4.

20. *Id.*

21. Executive Order, *supra* note 1.

22. *Id.*

23. See, e.g., *Environmental Justice*, USDA, <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/environmental-justice/index> (last visited Apr. 7, 2023); *Environmental Justice*, FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/environmental-justice/index> (last visited Nov. 30, 2022); *Striving for Environmental Justice*, U.S. FISH AND WILDLIFE SERV. (Aug. 18, 2021), <https://www.fws.gov/story/2021-08/striving-environmental-justice>.

justice.²⁴ Like Executive Order 12,898, NEPA’s guidance notably concludes with the caveat that no enforceable rights are created, and environmental justice concerns should not cause any serious monetary or time delays to projects.²⁵ As this article will discuss, the Farm Bill is a categorical exemption to any NEPA analysis, and the lack of recourse methods in Executive Order 12,898 mean that significant environmental justice concerns caused by the Farm Bill are without standing.²⁶

B. What is the Farm Bill and How Does it Affect the Environment?

The Agriculture Act, commonly referred to as the Farm Bill, is a broad piece of legislation that is updated every five years and specifies the government’s involvement and initiatives surrounding the U.S. agriculture system.²⁷ An important part of the Farm Bill is the distribution of subsidies to various agricultural entities as a way to regulate the market and prevent food shortages. This has stabilized food prices for U.S. citizens since the Farm Bill’s precursor—the 1938 Agricultural Adjustment Act.²⁸ Subsidies distributed under the “Commodities” portion of the Farm Bill take the shape of crop insurance, price balancing, and direct payments.²⁹ Farmers growing crops which are used as feed in meat and dairy production (namely corn and soy) currently demand \$38.4 billion in subsidies annually.³⁰ The edible plant sector, fruits and vegetables, are generally excluded from the subsidy program and receive a negligible fraction of that amount.³¹

To demonstrate how the taxpayer-funded distribution affects our food system, land use, and the environment, this article focuses primarily on the

24. NEPA Guidelines, *supra* note 4; *see infra* § D.

25. *Id.*

26. *Bullwinkel v. United States DOE*, 899 F.Supp.2d 712, 717, 724 (2012).

27. Agriculture Improvement Act of 2018, H.R.2 115th Congress (2017–18), <https://www.congress.gov/bill/115th-congress/house-bill/2> (showing that the 2018 Farm Bill was enacted on December 20, 2018); “The Farm Bill continues its strong support for America’s farmers, ranchers, and forest stewards through a variety of safety net, farm loan, conservation, and disaster assistance programs.” *2018 Farm Bill*, FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/farm-bill/index> (last visited Apr. 7, 2023).

28. Allison Aubrey, *Does Subsidizing Crops We’re Told to Eat Less Of Fatten Us Up?*, NPR (July 18, 2016), <https://www.npr.org/sections/thesalt/2016/07/18/486051480>; Agriculture Adjustment Act 1938, 7 U.S.C. § 1282 (1938), <https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter35&edition=prelim>.

29. Jennifer Hoffpauir, *The Environmental Impact of Commodity Subsidies: NEPA and the Farm Bill*, 20 FORDHAM ENV’T L. REV. 233, 237 (2009), <https://ir.lawnet.fordham.edu/elr/vol20/iss1/5>.

30. SIMON, *supra* note 5, at 80.

31. *Id.* at 80; *see also*, Allie Condra, *Why Fruits, Vegetables Are Excluded from Farm Subsidies*, FOOD SAFETY NEWS (Nov. 9, 2011), <https://www.foodsafetynews.com/2011/11/fairness-why-fruits-vegetables-are-excluded-from-farm-subsidies/>, (explaining that this is somewhat by choice of the farmers).

cattle industry for illustration.³² Cows use up a staggering 40% of our entire land mass in the United States, which amounts to 938 million acres of land.³³ This land is used not only for grazing and housing feed lots, but also takes into account the crop fields used to grow food exclusively for the cattle's consumption.³⁴ Eighty percent of livestock-related land is controlled by a small handful of large companies who receive the lion's share of farm bill subsidies.³⁵ Seventy percent of all crops grown in the U.S. (mostly corn and soy) are fed to livestock, with cows consuming eight plant-based calories for every one calorie consumed by their human purchaser.³⁶ Notably, cows are considered a significant source of greenhouse gas emissions (methane), and the United Nations has deemed the food system a significant player in climate change—generating greenhouse gas in rates comparable to that of the transportation sector.³⁷

C. How Does Our Federally Subsidized Food System Implemented in the Farm Bill Cause Environmental Injustices?

The farm bill promotes the generation of artificially cheap animal feed and sustains the animal agriculture phenomenon, which causes environmental justice concerns at multiple magnifications as a result.

1. Local, Direct Injustice: Inside the Slaughterhouse.

Despite the dietary guidelines put forth by the U.S. government declaring that plant-based protein sources are perfectly acceptable to live a healthy life, the farm bill commodity subsidies are directed primarily towards crops that

32. Although the number of chickens killed is staggeringly larger, the cow has ample research surrounding it, has been targeted by the UN climate report, and is quite simply the largest waster in terms of calories in-out, land, and water use. *Rearing cattle produces more greenhouse gases than driving cars, UN report warns*, UN NEWS (NOV. 29, 2006), <https://news.un.org/en/story/2006/11/201222-rearing-cattle-produces-more-greenhouse-gases-driving-cars-un-report-warns> (hereinafter UN Climate Report).

33. Stacey Vanek Smith, Cardiff Garcia, *The U.S. Has Nearly 1.9 Billion Acres Of Land. Here's How It Is Used*, NPR (July 26, 2019), <https://www.npr.org/2019/07/26/745731823/the-u-s-has-nearly-1-9-billion-acres-of-land-heres-how-it-is-used>.

34. *Id.*

35. *USDA Announces Framework for Shoring Up the Food Supply Chain and Transforming the Food System to Be Fairer, More Competitive, More Resilient*, USDA (June 1, 2022), <https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming>; Polansek, *supra* note 6.

36. DR. RICHARD OPPENLANDER, *FOOD CHOICE AND SUSTAINABILITY* 44 (2013). When this article refers to waste, this ratio is one of the demonstrations. Theoretically, humans could have 8 time more calories available if cows were not used, based on their 8:1 calorie efficiency scale.

37. UN Climate Report, *supra* note 32; Christopher Booker & Sam Weber, *Cow burps are a major contributor to climate change—can scientists change that?*, PBS (Mar. 6, 2022), <https://www.pbs.org/newshour/show/cow-burps-are-a-major-contributor-to-climate-change-can-scientists-change-that>; *Feed-to-meat conversion inefficiency ratios*, A WELL-FED WORLD (last updated Oct. 26, 2015), <https://awellfedworld.org/feed-ratios/>.

become feed for livestock, not humans, and promotes the generation of animal-based foods.³⁸ Ninety-eight million cows and 70 million pigs are raised each year for food in the U.S. (and 9 billion chickens).³⁹ There are approximately 2,700 USDA slaughterhouses (the facility where animals are butchered) in the U.S.⁴⁰ In June of 2021, citing the pandemic shortages, the USDA announced a \$500 million program to expand “meat and poultry processing capacity,” indicating an endorsement that meat is a necessity part of American society.⁴¹ An under-discussed aspect of the meat industry is that a majority of people working the lines in slaughterhouses and meatpacking facilities are people of color or undocumented immigrants.⁴² The job involves exposure to disease, trauma, abuse, long hours, low pay, and physical ailments from repeated harmful motions.⁴³ Occupational Safety and Health Administration (OSHA) data reveals that slaughter and meat processing line workers experience repetitive motion injuries at a rate seven times higher than an average private industry.⁴⁴ In a Maryland plant, OSHA data showed over 75% of workers suffered nerve damage in at least one hand.⁴⁵ Further, the U.S. government does not track these injuries.⁴⁶ Slaughter, of course, requires the beef industry to thrive, which targets and abuses disadvantaged people as a workforce.⁴⁷ Unsurprisingly, during the

38. Niall McCarthy, *The Countries That Eat The Most Meat*, STATISTA (May 5, 2020), <https://www.statista.com/chart/3707/the-countries-that-eat-the-most-meat/>; See also *What foods are in the Protein Foods Group?*, U.S. DEPT. OF AGRICULTURE, <https://www.myplate.gov/eat-healthy/protein-foods> (last visited Nov. 27, 2022) (providing that “Vegetarians get enough protein from this group as long as the variety and amounts of foods selected are adequate. Protein sources from the Protein Foods Group for vegetarians include eggs (for ovo-vegetarians), beans, peas, and lentils, nuts and seeds (including nut and seed butters), and soy products (tofu, tempeh)”).

39. Oppenlander, *supra* note 36, at 80; see also NATIONAL AGRICULTURAL STATISTICS SERVICES (NASS) ET AL., 0499-0544, LIVESTOCK LAUGHTER I (2022), https://www.nass.usda.gov/Publications/Todays_Reports/reports/lstk0522.pdf.

40. *Id.* at 15 (“There are approximately 900 livestock plants in the United States operating under Federal Inspection and nearly 1,900 Non-Federally Inspected (State-inspected or custom-exempt) slaughter plants.”).

41. *USDA Announces \$500 Million for Expanded Meat & Poultry Processing Capacity as Part of Efforts to Increase Competition, Level the Playing Field for Family Farmers and Ranchers, and Build a Better Food System*, USDA (July 9, 2021), <https://www.usda.gov/media/press-releases/2021/07/09/usda-announces-500-million-expanded-meat-poultry-processing>.

42. Angela Stuesse & Nathan T. Dollar, *Who are America’s meat and poultry workers?*, ECON. POL’Y INST. (Sept. 24, 2020), <https://www.epi.org/blog/meat-and-poultry-worker-demographics/>.

43. Peggy Lowe, *Working ‘The Chain,’ Slaughterhouse Workers Face Lifelong Injuries*, NPR (Aug 11, 2016) <https://www.npr.org/sections/thesalt/2016/08/11/489468205/working-the-chain-slaughterhouse-workers-face-lifelong-injuries> (providing: “[t]he workers, most often immigrants and resettled refugees, slaughter and process hundreds of animals an hour, forced to work at high speeds in cold conditions, doing thousands of the same repetitions over and over, with few breaks”).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

COVID-19 pandemic, meat processing facilities suffered very high rates of disease due to relentless demand and insufficient worker safety protocols.⁴⁸ Meanwhile, the demand for meat products during the pandemic kept operations moving, which increased production and government commitments to promote the meat industry.⁴⁹ President Trump, as part of the Defense Production Act, exempted meatpacking facilities from state and local orders from closing while COVID ran through the facilities.⁵⁰

Worker safety in the animal slaughter and processing business is a serious problem that targets minority people as the brunt of its workforce, provides very few remedies or need to change, and is fueled by societies' desire for cheap meat products induced by the farm bill subsidies.

2. Community-Level Injustice: Siting, Nuisance, Land Use, and Jobs.

Like many environmental justice hazards, these factory farming operations, feedlots, and slaughterhouses are located in low-income rural areas and can decrease the property value of these communities.⁵¹ The community surrounding meat production endures multiple nuisances which are often exempt from lawsuits as a matter of public policy or as a matter of protecting the local industry.⁵² Nuisance claims against hog farming practices have been a historic and ongoing legal scenario outlining the frustrations of living in close proximity to an animal farming operation.⁵³ These nuisances can be tremendous hazards: polluting or depleting the local drinking water; further damaging property values; creating hazardous air quality conditions; perpetuating disease; promoting infestations of insects

48. Sky Chadde, *COVID-19 cases, deaths in meatpacking industry were much higher than previously known, congressional investigation shows*, INVESTIGATE MIDWEST (Oct. 28, 2021), <https://investigatamidwest.org/2021/10/28/covid-19-cases-deaths-in-meatpacking-industry-were-much-higher-than-previously-known-congressional-investigation-shows/>.

49. Joseph Balagtas and Joseph Cooper, *The Impact of Coronavirus COVID-19 on U.S. Meat and Livestock Markets*, U.S. DEPARTMENT OF AGRICULTURE OFFICE OF THE CHIEF ECONOMIST (March 2021), <https://www.usda.gov/sites/default/files/documents/covid-impact-livestock-markets.pdf>.

50. *Id.*

51. Percival Coursebook, *supra* note 2, at 19–20; *An Unjust Food System*, FARM SANCTUARY, <https://www.farmsanctuary.org/issue/social-justice/> (last visited Dec. 2, 2022); *see generally* N.C. Residents Living Near Large Hog Farms Have Elevated Disease, Death Risks, DUKE HEALTH NEWS (Sep. 19, 2018) <https://surgery.duke.edu/news/nc-residents-living-near-large-hog-farms-have-elevated-disease-death-risks>.

52. *See* McKiver v. Murphy-Brown LLC., 980 F.3d 937 (4th Cir. 2020). Percival Coursebook, *supra* note 2, at 79 (noting that after a successful nuisance lawsuit against a hog farm operation, North Carolina Legislature enacted the Right-to-Farm law, barring all similar subsequent lawsuits as a matter of public policy).

53. Aldred's Case, 77 Eng. Rep. 816 (1611), Percival Coursebook, *supra* note 2, at 63.

and rodents; and consuming local resources.⁵⁴ Even worse, natural disaster can cause these hazards to become completely uncontrollable, contaminating entire neighborhoods by spreading livestock feces and dead bodies of animals wherever the floodwaters take them.⁵⁵ Although the EPA regulates the permitting of CAFOs to a degree, the Clean Water Act does not regulate the agriculture operations that provide the feed to those animals.⁵⁶

The farm bill subsidy of animal feed also impacts the small farmer, who is quickly becoming a relic of the past.⁵⁷ By subsidizing crops which become animal feed, farmers are incentivized to grow a product that would ordinarily cost more to manufacture than to sell.⁵⁸ The subsidy ensures there will be a small profit for farmers despite the cost outweighing the value.⁵⁹ The profit margins provided by the subsidies are slim; however, this system is better suited for larger companies who can make up the profits through large volume. Meanwhile, small farms are left out or struggle to compete with such low competition prices.⁶⁰ The sale of crops in such large volume also requires a large volume buyer i.e., a CAFO.⁶¹ Despite the common and extensive marketing campaigns exclaiming free-range or kinder products, 99% of animals raised for food in the U.S. are part of a CAFO, further pushing out the small, local farmer which America has idealized and cherished.⁶² Importantly, but not surprisingly, minority small-scale farmers have had the hardest time staying afloat while big agricultural companies take over—

54. COMMITTEE ON A FRAMEWORK FOR ASSESSING THE HEALTH, ENVIRONMENTAL, AND SOCIAL EFFECTS OF THE FOOD SYSTEM ET AL., A FRAMEWORK FOR ASSESSING EFFECTS OF THE FOOD SYSTEM, (2015) (4, Environmental Effects of the U.S. Food System), <https://www.ncbi.nlm.nih.gov/books/NBK305182/>.

55. Cameron Oglesby, *Hurricane season spurs hog waste worries in North Carolina*, ENVIRONMENTAL HEALTH NEWS (May 17, 2021), <https://www.ehn.org/north-carolina-hurricanes-hog-farms-2652972415.html>; see also Carrie Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, CDC (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf (stating that “[a]nually, it is estimated that livestock animals in the U.S. produce each year somewhere between **3 and 20 times more manure than people** in the U.S. produce, or as much as 1.2–1.37 billion tons of waste (EPA, 2005). Though sewage treatment plants are required for human waste, no such treatment facility exists for livestock waste.”).

56. Percival Coursebook, *supra* note 2, at 589 (explaining that agriculture operations are a non-point source).

57. SIMON, *supra* note 5, at 81–83.

58. *Id.* at 82–84.

59. *Id.*

60. *Id.* at 85.

61. *Id.* at 84.

62. Oppenlander, *supra* note 36, at 80.

propelled by government assistance which has only continued the extensive history of hardship minority farmers have endured.⁶³

The operation of large-scale farming operations owned by a small number of domestic and foreign companies drains local communities of their resources, stunts the growth of local businesses, and causes environmental concerns particularly in low-income rural areas. These effects are fueled by the farm bill subsidies driving demand for cheap meat products.

3. Far-Reaching Injustice: Food Deserts, Health Concerns, and Climate Change

The broader effects of subsidizing the crops primarily used by the meat industry are many. However, under an environmental justice lens there are several important societal repercussions to identify which have no current method of judicial or administrative recourse. Food deserts are geographic areas that do not have an accessible source of proper nutrition (e.g., a grocery store within a reasonable distance). Food deserts are partly a result of limited resources being shipped to communities with the most means (or ones that can support a successful grocery store).⁶⁴ Similarly, food swamps are areas with only low-quality food (namely fast food which serves products severely underpriced and unhealthy) and are influenced by the farm bill subsidy.⁶⁵ Food deserts can be a serious cause of health concerns as well.⁶⁶

According to government statistics, only 12.2% of Americans meet their daily fruit requirements and less than 10% meet the vegetable mark.⁶⁷ With that number already so low for the population as a whole, in food deserts, access to fruits and vegetables is a central problem.⁶⁸ Related to access to healthier foods, statistics show Black males have “1.6 times higher rates” of

63. *See generally* Justice for Black Farmers Act of 2021 S.300 117th Congress (2021-22), <https://www.congress.gov/bill/117th-congress/senate-bill/300/> (directing the USDA to provide a variety of assistance to address historical discrimination and disparities in the agricultural sector); Ximena Bustillo, *In 2022, Black farmers were persistently left behind from the USDA's loan system*, NPR (Feb 19, 2023) <https://www.npr.org/2023/02/19/1156851675/in-2022-black-farmers-were-persistently-left-behind-from-the-usdas-loan-system>.

64. Amber Charles Alexis, *What Are Food Deserts? All You Need to Know*, HEALTHLINE (June 14, 2021), <https://www.healthline.com/nutrition/food-deserts#locations-stats> (explaining a reasonable distance is measured by walkability/public transit accessibility).

65. *Id.*

66. Whitney Sherman, *Research Shows Food Deserts More Abundant In Minority Neighborhoods*, JOHNS HOPKINS MAG., <https://hub.jhu.edu/magazine/2014/spring/racial-food-deserts/> (last visited Apr. 4, 2023).

67. Hayes, *supra* note 7 (noting that most vegetable quotas are met with frozen French fries or similar products).

68. Alexis, *supra* note 64.

heart disease than white males.⁶⁹ This discrepancy is due to clinical factors including lack of access to high-quality foods.⁷⁰ The Supplemental Nutrition Assistance Program (SNAP) is a program that provides 38 million Americans with food security monetary assistance and is the largest allotment of farm bill funds. However, SNAP assistance does not change the food selection locally available to participants.⁷¹

Research and government reports support the notion that climate change (in part propelled by excessive methane released by the animal agriculture industry) disproportionately affects disadvantaged communities.⁷² Scientists see strong climate change impacts in the form of heat waves, which often overwhelm lower income, densely populated urban populations the most—even killing those who cannot adequately stay cool or find air conditioned spaces.⁷³ Additionally, during climate-induced hurricane disasters, the wealthy are granted the ability to flee, while the poor (and the animals trapped in large scale farming operations) are more likely to be left to fend for themselves.⁷⁴

While the impacts of climate change are worthy of their own articles, they are not insignificant to this discussion. The farm bill subsidies create effects that are extremely far-reaching as they manipulate the entire food system, promote the industry of factory farming, create immense amounts of greenhouse gases, use vast amounts of the U.S. land and resources, and generate injustices which affect minority communities the most.

69. Kristen Samuelson, *Black adults' high cardiovascular disease risk not due to race itself*, NORTHWESTERN NOW (May 25, 2022), <https://news.northwestern.edu/stories/2022/05/black-adults-high-cardiovascular-disease-risk-not-due-to-race-itself/>.

70. *Id.*

71. Lauren Hall & Catlin Nchako, *A Closer Look at Who Benefits from SNAP: State-by-State Fact Sheets*, CENTER ON BUDGET AND POLICY PRIORITIES (Apr. 25, 2022), <https://www.cbpp.org/research/food-assistance/a-closer-look-at-who-benefits-from-snap-state-by-state-fact-sheets#Alabama>; UN Climate Report, *supra* note 32.

72. See EPA, *supra* note 1 (quoting Thomas J. Vilsack, Secretary of Agriculture: “This goal is more challenging because environmental justice communities are often more heavily affected by the impacts of climate change than any other sector of our Nation. Given that USDA programs touch almost every American every day, the Department is well positioned to help environmental justice communities build resilience and adaptation strategies to help them address the impacts of climate change.”); see EPA, *supra* note 14 (quoting North Carolina Governor Roy Cooper: “For too long, our underserved communities have been disproportionately impacted by climate change and unfair environmental impacts. That’s why we’re focused on moving North Carolina toward a more equitable, clean energy future for all, and this new office will help our state and country get there even sooner.”).

73. Lainey Laband, *How Minorities Are Disproportionately Affected by Climate Change, and What We Can Do To Help*, SIERRA CLUB REDWOOD CHAPTER (Nov. 24, 2020), <https://www.sierraclub.org/redwood/napa/blog/2020/11/how-minorities-are-disproportionately-affected-climate-change-and-what-we>.

74. *Id.* American food policy has many other implications, which are better suited for a different article.

D. Are there mechanisms in place to prevent environmental injustices?

1. NEPA Claims

The National Environmental Policy Act (NEPA) requires that all major federal actions which substantially affect the human environment must produce an environmental impact statement (EIS) at each step of the decision-making process. An EIS demonstrates the impacts caused by the project and examines any possible alternatives.⁷⁵ If an agency fails to carry out an EIS when necessary, a claim may be filed under the Administrative Procedure Act (APA) to force the agency to comply.⁷⁶ An agency can escape performing an EIS if the agency's initial environmental assessment (EA) reveals a finding of no significant impact or if a relevant statute or legislation declares an action categorically exempt from the EIS process.⁷⁷ Once an EIS is complete, the agency has fulfilled its duty. Courts have held that once the procedural requirement is met, the agency is allowed deference as to what to do with its EIS findings.⁷⁸

The farm bill's subsidization of crops which feed the meat industry should certainly be considered a major project by a government agency subject to NEPA requirements. Farm bill crop subsidies are a large-scale government action which significantly affects the human environment.⁷⁹ Additionally, the mere siting (where the operation is located) of animal agriculture facilities that benefit from the farm bill allocations should be subject to an EIS, per NEPA's "every step" language.⁸⁰ The farm bill's subsidies, however, are a categorical exclusion (CE) to an EIS.⁸¹ CEs are used when the agency pre-determines that there is no significant environmental affect, which may stem from policy reasoning.⁸²

Providing an EIS alone would not redress the situation described herein, beyond providing useful information for the public to view (which can be powerful).⁸³ In *Sierra Club v. Federal Energy Regulation Commission* (FERC), plaintiffs filed a suit on the basis that FERC did not take into account

75. Percival Coursebook, *supra* note 2, at 813 ("NEPA requires that an agency must—to the fullest extent possible under its statutory obligations—consider alternatives to its actions which would reduce environmental damage.").

76. *Id.* at 824.

77. *Id.* at 851.

78. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978) ("NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural It is to insure a fully informed and well-considered decision, not necessarily a decision the judges of the . . . Court would have reached.").

79. NEPA Guidelines, *supra* note 4; Hoffpauir, *supra* note 29 at 243.

80. Hoffpauir, *supra* note 29 at 257.

81. *Id.* at 256.

82. Percival Coursebook, *supra* note 2, at 851.

83. *Id.* at 820.

environmental justice concerns related to the placement of a natural gas pipeline passing through low-income, predominantly minority communities, as 83% of the pipeline would cross through designated environmental justice communities.⁸⁴ The court held that FERC needed to take this into account while creating their EIS.⁸⁵ The court also held, however, that simply making the assessment would fulfill FERC's procedural duty.⁸⁶ Shortly after the ruling, the EIS was amended to note the environmental justice concerns, and the permits were reinstated.⁸⁷

2. Civil Rights Claims

An environmental justice claim under Title VI of the Civil Rights Act is an option, but often insufficient.⁸⁸ Under this type of claim, based on *Alexander v. Sandoval*, a plaintiff is required to show a cognizable injury with causation and prove that they were intentionally discriminated against (at an individual level). This type of claim excludes speculative disparate impacts against a plaintiff or group of plaintiffs.⁸⁹ These elements have proven to be too limited and individualized—needing to prove direct, intentional discrimination to the specific plaintiff, and disparate impacts do not give rise to a cause of action.⁹⁰

The *Sandoval* decision has proven troublesome for Title VI recourse. In *South Camden Citizens*, an action group challenged the siting of a cement mixing facility, declaring in the complaint that the facility was intentionally sited due to minority populations in that area.⁹¹ The lower court (just four days before the *Sandoval* decision) denied defendant's motion to dismiss on the basis that, despite a facially neutral action with disparate adverse effects, the complaint showed enough facts to support an inference of discrimination.⁹² This victory for environmental justice was short-lived, as the Third Circuit ultimately reversed, in light of *Sandoval*.⁹³

84. *Sierra Club v. Fed. Energy Reg. Comm.*, 867 F.3d 1357 (D.C. Cir. 2017).

85. *Id.* at 1369.

86. *Id.* at 1372.

87. Percival Coursebook, *supra* note 2, at 870-71.

88. *Bullwinkel v. United States DOE*, 2013 U.S. Dist. LEXIS 12960.

89. *Alexander v. Sandoval*, 532 U.S. 275, 279-80 (April 24, 2001) ("This case presents the question whether private individuals may sue to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act of 1964.").

90. *Id.* at 281.

91. *South Camden Citizens in Action v. New Jersey Dep't of Env't Prot.*, 274 F.3d 771, 776 (2002).

92. *Id.* at 776.

93. *Id.* at 774 (quoting: "For the reasons we set forth, we hold that an administrative regulation cannot create an interest enforceable under section 1983 unless the interest already is implicit in the statute

In relation to NEPA enforcement, the *Bullwinkel* case demonstrated that environmental affects on minority communities amounting to disparate effects of regulated actions were not actionable.⁹⁴

Private individuals may sue to enforce § 601 of Title VI. However, the law is clear that § 601 prohibits only intentional discrimination. Plaintiff's Amended Complaint, and his More Definite Statement, do not allege intentional discrimination. Instead, Plaintiff's claims, which are *based on the premise that various agencies failed adequately to consider the impact of environmental effects on minority communities when performing their NEPA analysis, are disparate-impact claims that are not actionable under § 601.*⁹⁵

The *Bullwinkel* case is indicative of the gap between the far-reaching environmental affects and their impacts on individual people or communities. This leaves potential plaintiffs with attenuated demonstrations of causation for their injuries. Harms caused by farm practices and the farm bill, thus, are mostly without recourse.

3. Nuisance Claims

Traditional common law private nuisance claims have been successfully used in the past to address localized environmental and environmental justice issues. But these claims require the well-funded plaintiff (or more likely group of plaintiffs) to have: a cognizable injury, a developed chain of causation, means of redress for standing, and have not lost their ability to sue due to laches.⁹⁶ As mentioned earlier, nuisance claims have their own statutory hurdles designed to protect local industries—"a lawful enterprise is not a private nuisance per se."⁹⁷ For the purposes of this article, private nuisance claims are a possible solution but are too individualized and create relatively small ripples in a vast ocean, and thus far have failed to create significant change in relation to farm bill subsidy distribution.

authorizing the regulation, and that inasmuch as Title VI proscribes only intentional discrimination, the plaintiffs do not have a right enforceable through a 1983 action under the EPA's disparate impact discrimination regulations.").

94. *Bullwinkel v. United States DOE*, 2013 U.S. Dist. LEXIS 12960, 31; Percival *supra* note 2 at 880 (NEPA does generally look to both direct and "reasonably foreseeable" indirect effects, but when combined with environmental justice concerns the extended effects appear to be too far afield.).

95. *Bullwinkel*, U.S. Dist. LEXIS at 31 (emphasis added) (internal citations removed).

96. *McKiver v. Murphy-Brown, LLC.*, 980 F.3d 937, 952–54, 973 (4th Cir. 2020).

97. Percival *supra* note 2, at 79; *McKiver v. Murphy-Brown, LLC.*, at 985 (concurrence).

E. But what will I eat instead of meat?

Because this article suggests that focusing less on supporting animal food products can alleviate environmental justice concerns, this article must also preview the alternative—supporting edible plant products such as grains, beans, fruits, and vegetables. If the government is to lessen its encouragement of companies to manufacture animal food products (either by simply no longer subsidizing their resources, allowing for a market correction, or by directly targeting more human-edible plant production programs) the impacts of citizens eating more plants should be discussed. Government health recommendations already promote eating more plants both through the food pyramid and as a way to reduce disease risk by shifting the American diet away from beef.⁹⁸ If these recommendations are followed, then many benefits will begin to reveal themselves.

At a basic level, an herbivore requires 1/5 the land of an omnivore to generate the food which they eat.⁹⁹ The American food system (and the worldwide food system) already grow enough plants from a calorie perspective to feed ourselves, but those calories are fed to livestock rather than to people.¹⁰⁰ An individual can grow enough food to feed themselves with a single acre of land, and within that one acre a farmer can yield up to 60,000 pounds of potatoes per year compared to only 770 pounds of beef.¹⁰¹ In a similar vein, a pound of vegetables requires only 39 gallons of water to grow versus a whopping 1,847 gallons of water to generate a pound of

98. *Dietary Guidelines for Americans, 2020-2025*, USDA, https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.

99. Oppenlander *supra* note 36, at 80–83.

100. Adam Majendie, *Without Clearing Any New Farmland, We Could Feed Two Earths' Worth of People*, Bloomberg (Dec. 15, 2020), <https://www.bloomberg.com/news/features/2020-12-15/no-more-hunger-how-to-feed-everyone-on-earth-with-just-the-land-we-have> (This also answers the common question of “If we only eat plants, won’t that take a lot of water?” because we are already using that water, but on calorie-wasteful livestock feed).

101. FARMLAND LP, *One Acre Feeds a Person*, <https://www.farmlandlp.com/2012/01/one-acre-feeds-a-person/> (last visited Nov. 29, 2022) (This source, and most estimates, are simplified to demonstrate generalizations. There are certainly other things to take into account when repurposing livestock grazing area into growable land such as climate and soil quality, but the space is certainly available, and crops are already being grown); *Potato Production In USA*, KENOSHA POTATO, http://kenoshapotato.com/Potato_Production_USA.htm (last visited Nov. 29, 2022); James Videle, *Comparison of Farming in Production of Food Per Acre*, HUMANE PARTY, <https://humaneherald.files.wordpress.com/2019/01/production-of-foods-per-acre.pdf>.

beef.¹⁰² In fact, the animals we eat consume 50% of all water used in the U.S.¹⁰³

Due to farm bill offsets that artificially lowered prices of livestock feed—and meat as a result—Americans consume over 200 pounds of meat per person, per year.¹⁰⁴ Eating as much meat as Americans and American-influenced countries do is unique. Many countries and cultures have thrived on primarily plant-based diets for generations.¹⁰⁵ Although white Americans have taken hold of marketing the vegan brand, minority populations embrace plant-based diets as part of a deeper connection to their cultural roots while tackling generational health problems caused by the typical American (meat-centric) diet.¹⁰⁶ Inherent in a plant-centric food system is the reality that plants don't need slaughterhouses, don't create hazardous feces, don't waste other plants to make themselves, don't directly contribute to methane production, are generally healthy to eat, and don't create environmental injustices.

Still not sold on plants? Imagine sitting down for a classic plate (or two) of spaghetti, topped with a beautiful, fresh marina sauce, served with a side of grilled mixed vegetables and cannellini beans—both drizzled with extra virgin olive oil and fresh basil. A loaf of Tuscan bread to soak up all the extra sauce is mandatory, and finally, a refreshing raspberry sorbet with dark chocolate provides the dessert.¹⁰⁷

102. Kristi Delynko, *What's the Beef with Water?*, DENVER WATER (Feb. 14, 2019), <https://www.denverwater.org/tap/whats-beef-water>; See also *Why Meat Eats Resources*, WATER FOOTPRINT CALCULATOR (last updated July 12, 2022), <https://www.watercalculator.org/news/articles/why-meat-eats-resources/> (averaging the water consumption of the most commonly consumed vegetables per pound).

103. Oppenlander, *supra* note 36, at 90.

104. McCarthy, *supra* note 38; Perhaps unsurprisingly, America also suffers from staggering rates of heart disease, with minority groups incurring the highest rate percentages. *Heart Disease Facts*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed: October 14, 2022), <https://www.cdc.gov/heartdisease/facts.htm> (Notably, the CDC recommends a diet high in vegetables and low in red meat to fight heart disease).

105. Shauneen Miranda, *Nonwhite Americans are Eating Less Meat. Vegan Activists of Color Explain Why*, NPR (July 1, 2022), <https://www.npr.org/2022/07/01/1106943018/vegetarian-plant-based-diet-vegan> (explaining that minority communities have thrived off plant-based culture for generations: “If you think of the Black Hebrew Israelites, if you think of the Seventh-day Adventists, if you think of the Rastafarians—who coined the term ‘Ital lifestyle’ for eating plant-based—this is not new,” Wright-Brown said.”).

106. *Id.*

107. This meal is naturally completely plant-based, without substitutes or “fake” items. An express version consists of: 16oz box of pasta (\$0.95), 15oz can of beans (\$1.29), bag of frozen mixed vegetables (\$1.39), 28oz. can of crushed tomatoes with basil (\$1.79), loaf of Tuscan bread (\$4.99), seasonings (around \$1.00, varies). Feeds 4, grand total \$11.41. Prices generated from Target.com (Nov. 29, 2022).

II. ARGUMENT

A. The Farm Bill Creates Environmental Hazards Within the Doctrine of Environmental Justice

The uncomfortable hurdle for our society to recognize is that the food we eat creates severe environmental hazards, especially to vulnerable populations. Our society must recognize this before addressing how to change our food system.¹⁰⁸ Food production should be analyzed and legislated as an environmental issue. Food production creates immense climate change emissions, hazardous waste, dangerous environmental conditions, and can kill industry employees through the creation of unhealthy products.¹⁰⁹ What people eat is influenced by factors beyond personal choice—it is a result of what is available, promoted by government programs, and has a tremendous impact on our lives and environment.¹¹⁰ The science is sound, and society is ready to move beyond frontier notions of a wasteful cattle-centric food system that disproportionately harms environmental justice communities.¹¹¹ The Clean Air Act, Clean Water Act, and formation of the EPA have all successfully driven U.S. technology to grow and improve tremendously. Modern technological advances fall outside the scope of most environmental regulation as the food we eat is a relic of the industrial revolution of the 1800's.¹¹²

B. There is No Legal Mechanism to Properly Remedy the Environmental Justice Hazard Created by the Farm Bill

For environmental justice concerns to develop true solutions, a robust enforcement mechanism must allow for a broader concept of causation and

108. *Supra* § C.

109. UN Climate Report, *supra* note 32.

110. *The Factors That Influence Our Food Choices*, EUR. FOOD INFO. COUNCIL (EUFIC), <https://www.eufic.org/en/healthy-living/article/the-determinants-of-food-choice> (last updated June 6, 2006).

111. UN Climate Report, *supra* note 32.

112. For example, under the Clean Water Act agriculture runoff is not a point source which is regulated. Percival Coursebook, *supra* note 2; *see also* Hribar, *supra* note 55 (“Production has shifted from smaller, family-owned farms to large farms that often have corporate contracts. Most meat and dairy products now are produced on large farms with single species buildings or open-air pens (MacDonald & McBride, 2009). Modern farms have also become much more efficient. Since 1960, milk production has doubled, meat production has tripled, and egg production has quadrupled (Pew Commission on Industrial Animal Farm Production, 2009). Improvements to animal breeding, mechanical innovations, and the introduction of specially formulated feeds and animal pharmaceuticals have all increased the efficiency and productivity of animal agriculture. It also takes much less time to raise a fully grown animal. For example, in 1920, a chicken took approximately 16 weeks to reach 2.2 lbs., whereas now they can reach 5 lbs. in 7 weeks (Pew, 2009).”).

recognition of problems beyond individual disputes. As demonstrated, NEPA, Title VI, and private nuisance are not designed to address or provide recourse to environmental justice specifically.¹¹³ For an example that could not be addressed by the above mechanisms (yet within the logical sequence of our food system repercussions): imagine arguing in court that a farmer in Nebraska receiving government subsidized crop insurance is to blame for a food desert a thousand miles away, which in turn caused early-onset heart disease of a minority person in New York City.¹¹⁴

Environmental justice has been recognized because there are notable disproportionate harms against vulnerable communities, and rules which regulate any further action in the farm bill should put environmental justice at the forefront. The government has utilized less-stringent causation analyses in other statutes, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA allows potentially responsible parties to shift the common-law-style causation burden under a certain set of standards.¹¹⁵ CERCLA even holds parties responsible if their role was minimal.¹¹⁶ A policy shift and amendments to the next farm bill that mirror CERCLA are required to tackle many of the issues discussed in this article. This approach would fill the gap created by the traditional scope of courts.¹¹⁷

C. The next farm bill should focus on environmental justice.

The next iteration of the Farm Bill should take into account: the environmental injustices our current food systems cause, recognize the benefits of shifting subsidies away from the meat industry, and provide recourse mechanisms to finally allow for societal progress in correcting our food system.

The next farm bill should include the policies teased by the Green New Deal and supported by current government statements and dietary guidelines which would naturally shift the farm bill subsidies away from harmful, meat-centric programs, and instead focus on creating a better food system for all.¹¹⁸

113. *Supra* § D.

114. See, e.g., Jeff Guo, *These 26 states won't let you sue McDonald's for making you fat. The surprising consequence of banning obesity lawsuits.*, THE WASHINGTON POST (May 28, 2015), <https://www.washingtonpost.com/blogs/govbeat/wp/2015/05/28/these-26-states-wont-let-you-sue-mcdonalds-for-making-you-fat-the-surprising-consequence-of-banning-obesity-lawsuits/> (noting the ability to find recourse for food hazards and who causes them is certainly a topic best addressed in another, independent article).

115. Percival Coursebook, *supra* note 2 at 351–53.

116. *Id.*

117. *Infra* § H.

118. Green New Deal, H.R. Res 109, 116th Cong. (2019-20), <https://www.congress.gov/bill/116th-congress/house-resolution/109/text>.

This new policy-driven farm bill, guided by the current environmental justice problems resulting from current and past farm bills, should include:

1. Removal of the EIS categorical exclusion for farm bill subsidies.¹¹⁹ This would allow the NEPA process to take place, or forced one to take place when appropriate, which NEPA already has provisions and guidance in place for. NEPA and the APA are fairly reliable mechanisms with familiar protocols but need to be explicitly allowed as part of the farm bill decision-making process.
2. Guidance that, when preparing an EIS for farm bill distributions, there must be an explicit environmental justice category of analysis with multiple levels of impact, similar to those described in this article. The EIS should outline how the distributions affect food systems, their workers, farming communities, and society. By creating this far-reaching analysis, any injustice recorded in-line with the EIS will satisfy the disparate causation hurdle.
3. Rather than continue to subsidize and protect cattle-feed crops, the new farm bill should include a focus on providing aid to farmers in shifting their production away from livestock feed and towards more human edible products.¹²⁰
4. To prevent further abuse within the slaughterhouses and meat packing plants of America, the new farm bill should include a network to report health and safety violations, along with a fund to protect worker health. Simply by lessening the focus on cattle-feed subsidies, either less meat and less processing will be generated, or prices for those products will naturally increase to their real market-driven prices, in turn (hopefully) increasing wages and quality of workplace.¹²¹ The inevitable rise of edible plants would likely mean an increase in the need for farm

119. Hoffpauir, *supra* note 29 (This assertion is the basis of the cited article, which does a tremendous job laying out the technical workings of NEPA and the FSA Commodity programs, and why they should require an EIS for farm bill subsidies).

120. Tom Levitt, *Why Some Farmers Are Ditching Livestock and Growing Plants Instead*, ECOWATCH (Apr. 22, 2020), <https://www.ecowatch.com/farmers-plant-transition-2645785977.html>.

121. See AQUIDNECK FARM, <https://aquidneckfarms.com/> (providing an anecdotal example of a company attempting to be more transparent with a goal of higher quality products).

workers, however, and the new farm bill must proactively account for their well-being.

5. To benefit environmental justice communities, the new farm bill should target funds to depleted farming communities harmed by the wastefulness and nuisances produced in the past. The EPA currently does similar backward-looking actions to address past injustices, and a superfund-style effort could expand those programs to regrowing and reforming biological systems once depleted by factory farms.¹²² These funds should also help smaller farmers reclaim their land and former operations from larger companies. Future bills should include funds for public school and community garden networks, create independent food ecosystems, and take distribution discretion away from a handful of large companies.
6. Lastly, to address societal and global harms caused by past iterations of the farm bill and the heavy focus on wasteful meat-centric funding, the new farm bill must put climate change, food distribution, and human health at the forefront of all decision making and EIS analyses.¹²³

A genuine EIS with an extended environmental justice focus would reveal severe deficiencies in our existing federally subsidized food program. Failure to include environmental justice provisions has led to tremendous waste, pollution, and brought harm to disadvantaged populations. If this information were revealed through a formal EIS and the food systems were to change accordingly, the subsequent measures would inevitably lead to an increase in focus on the human population growing and consuming more plant-based foods in place of meat products. A policy shift which emphasizes a plant-centric focus when distributing federal dollars is a valid legal solution with far reaching and numerous benefits. Rather than wasting precious

122. See *Supporting Environmental Justice at Superfund Sites Environmental Justice: Then and Now*, EPA (last updated Apr. 18, 2023) <https://www.epa.gov/superfund/supporting-environmental-justice-superfund-sites> (quoting “EPA’s Superfund program focuses on making a visible and lasting difference in communities, ensuring that people can live and work in healthy, vibrant places. As part of that focus, EPA considers how to address environmental justice concerns throughout the Superfund cleanup process.” The EPA could address these concerns by entering former factory farm locations and their communities into the pool of superfund style cleanup efforts).

123. It would be insincere and well beyond the scope of this article to suggest that growing and eating more plants would solve climate change and eradicate heart disease. Rather, it is suggesting one of many small steps in a better direction, or, away from a worse direction.

resources on animal product, this shift uses a fraction of the resources already available to create healthy, edible food.

This shift would have the incredible consequence of creating less: meat, slaughter, abusive and dangerous working situations, noxious fumes released into the local atmosphere, hazardous wastewater contaminating local water systems, pest infestations from CAFO's, harm to the property values of environmental justice communities, promotion of heart-disease triggering foods, creation of dangerous methane gas emissions, and less harm to our environment, animals, and ourselves.

CONCLUSION

The current federally subsidized food system is a large-scale environmental project which has tremendous environmental impacts—disproportionately felt by minority and disadvantaged communities—and currently has no means of recourse to encourage change. A comprehensive rework of the next iteration of the Agriculture Act is required to force agencies to uphold their environmental justice dedications with judicial review and greater acceptance of scientific causation, backed by a policy shift away from the beef industry to a more plant-centric focus when distributing federal subsidies. This policy will steer the U.S. away from continuing to waste valuable resources while disproportionately harming vulnerable populations.