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# "Only the Intervenor Cared": A Critical Juncture in the Rise of Dairy CAFOs and Neoliberal Environmental Policy in Wisconsin

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To the Graduate Council:

I am submitting herewith a thesis written by Sarah Emily D'Onofrio entitled "'Only the Intervenor Cared': A Critical Juncture in the Rise of Dairy CAFOs and Neoliberal Environmental Policy in Wisconsin." I have examined the final electronic copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in Sociology.

Sherry Cable, Paul K. Gellert, Major Professor

We have read this thesis and recommend its acceptance:

R. Scott Frey

Accepted for the Council:

Dixie L. Thompson

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

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“Only the Intervenor Cared”: A Critical Juncture in the Rise of Dairy CAFOs and  
Neoliberal Environmental Policy in Wisconsin

A Thesis Presented for the  
Master of Arts  
Degree  
The University of Tennessee, Knoxville

Sarah Emily D’Onofrio  
May 2018

## Dedications

*To Lucas Piegalski:*

For your endless kindness and willingness to get takeout for me when I'm exhausted.

*To Dr. Paul Gellert:*

For your guidance, incredible critiques, and patience (even when I bug you on your family vacations).

*To the Neighbors of CAFOs in Wisconsin:*

For sharing your stories and experiences. Someone is listening.

### **Abstract**

Building on scholarship regarding the rise of neoliberalism since the late 1970s and using a comparative-historical methodology, this thesis examines a case study regarding how state governments in the United States have succumbed to neoliberal pressures over time. Specifically, this thesis examines the rapid expansion of concentrated animal feeding operations (CAFOs) in Wisconsin since 1995. As these large CAFOs have grown in size, so have the social and environmental problems related to their use, including pollution of drinking water sources for rural communities. Based on analysis of hundreds of newspaper articles, this thesis finds that a critical juncture occurred with the demise of the Office of the Public Intervenor, a legally designated adversarial force unique to the state that had been created in the late 1960s as a compromise between conservationists and business interests to monitor state enforcement of environmental regulations, particularly water pollution. Public statements by political leaders from both parties, conservationists, dairy industry executives, and citizens are analyzed around three key time periods: the 1966-67 establishment of the Office of the Public Intervenor, the 1984 defense of its role against a challenge by the Wisconsin Supreme Court, and the 1995 elimination of the Office. In retrospect, the elimination of the public intervenor was a critical juncture necessary to create the conditions that enabled CAFOs to expand without the “burden” of state regulation. Subsequently, through incremental legal changes, Wisconsinites lost access to legal remedies that could curb polluting practices of large CAFOs. This project adds to the growing body of sociolegal literature which aims to understand the state-corporate neoliberal project, particularly how states use law and policy to facilitate the needs of large corporations, often against the will of their own people.

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## **Chapter 1: Bringing the Local Back to the Global: Neoliberalization, Rural Communities, and Regulatory Failure of CAFOs in Wisconsin**

Globalization and neoliberalism have had profound impacts on the way industries conduct business and how states implement environmental policy. From the 1980s to the 1990s, neoliberal logic, with an emphasis on free markets, limitless growth, and limited government intervention, came to dominate key economic and political institutions within the world-system (Arrighi 1994; Harvey 2005; 2007). The spread of neoliberalism was particularly notable in the United States. However, this thesis adds to the literature that suggests globalization, and the neoliberal logic that accompanies it, does not spread through “forces of globalization” or “the invisible hand” alone. Following a range of Marxist and neo-Polanyian scholars, this thesis works from the existing assumption that neoliberalization needs the state in order to function (see Sklair 2002; Sassen 2001; Peck and Tickell 2002; Block and Somers 2014). Indeed, for the purposes of this thesis, the “invisible hand” of the market is less of an abstract occurrence and more of a system that is advanced by capitalist interests and then enabled by the state *through law*. Once law which reflects neoliberal logic is established, its logic becomes harder to challenge over time or, in the terms of comparative historical analysts, becomes self reinforcing. While some parts of the state, particularly those concerned with constraining corporate power and regulating what economists call externalities, may end up weakened by neoliberal policy (as that is one of its goals), actions of the state are necessary for neoliberalization to be accomplished.

While the literature within environmental sociology, rural sociology, and political economy that focuses on globalization and national economies is necessary for the study of

mature capitalism, research in these areas often omits regional and state-level structural processes, namely regulatory policy. Rather than assume that neoliberalism occurs in some automatic or frictionless process, it is critical to analyze regional and state level processes in addition to national ones in order to understand the conditions over time in which neoliberal policy does and does not flourish. Indeed, the formal separation of politics, regulatory law, and neoliberalization disguises the informal and intimate connections that state and local governments have with special interests (O'Connor 1973). While a focus on shifts in the structure and corporatization of agriculture is important, it is worth acknowledging that these changes would not have happened without the regulatory approval of individual states. In the federal political system of the U.S., states have a considerable amount of control regarding the natural environment. States have the power not only to weaken environmental policy and enforcement, but also to provide legal protection for industries that pollute. Still, when citizens first come up against issues of pollution, their response is typically to reach out to the state regulatory agency legally tasked with regulating pollution.

Research regarding state response to environmental problems has shown that efforts to quell corporate polluting practices at the local level may be futile if they conflict with the economic and political goals of the state (Kolbe 2014; Gaarder 2013; Bonanno and Constance 2006). As a result, agencies tasked with environmental protection are often politicized, inadequate, and underfunded, leaving citizens in a position where they must fend for themselves often against large, well-organized corporate interests (Burr et. al. 2013; Cable and Benson 1993). As this thesis will show, some policies and laws and, importantly, their enforcement, are vital to democratic rule while others support neoliberalism. By investigating the purposive



actions of the state of Wisconsin to deregulate and otherwise facilitate the rise of large concentrated animal feeding operations (CAFOs)<sup>1</sup>, this case study rejects the assumption that the interests of capital are most effectively achieved by a state that takes a “hands off” approach. In the case of Wisconsin, the state was and still is critical for the expanding of capitalist agriculture and, more generally, accumulation of capital.

The shift to large scale farming and use of CAFOs over the past 50 years has coincided with a vast increase in groundwater pollution across the United States (Centner 2000; Foster and Magdoff 2000; Wender 2011). According to the U.S. Environmental Protection Agency’s National Water Quality Inventory Report to Congress, 17 states classified CAFOs as one of their top 10 sources of groundwater contamination (Food and Water Watch 2015). Indeed, neighbors of CAFOs have discovered nitrates, pesticides, endocrine disrupting chemicals, and fecal bacteria in the water that they use to drink, cook with, and bathe their children (Hribar 2010). Because of the exposure to these pollutants, people that live around large farms are vulnerable to CAFO related health problems, such as e coli poisoning, cancers, gastrointestinal issues, and even miscarriages in pregnant women (Wender 2011; Hribar 2010).

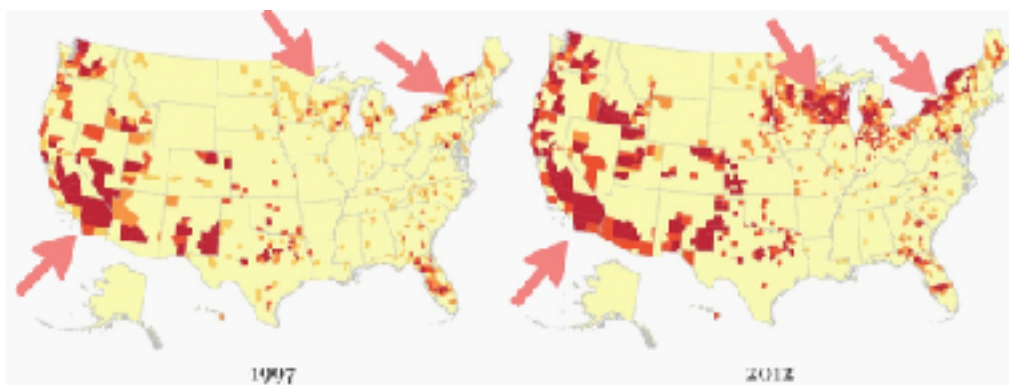
In circumstances where state governments prioritize economic development and integration into a globalized economy over environmental protection, rural communities are often left on their own to deal with the health and environmental consequences that the rapid expansion and underregulation of CAFOs can produce. This is not a task that local municipalities are capable of handling on their own. In 2012 alone, CAFOs produced 369 million tons of

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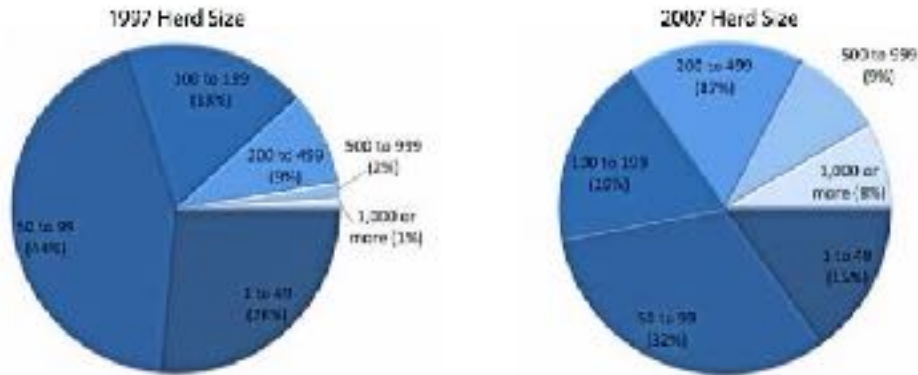
<sup>1</sup> The EPA (n.d) defines CAFOs as animal feeding operations in which animals are kept and raised in confinement. CAFOs vary by size depending on the amount and type of animal. For dairy, a small CAFO can contain 200 cows or fewer. A large CAFO exceeds 1000 cows (EPA n.d.).

manure, surpassing the amount of waste produced by the entire U.S. population 13 times (Food and Water Watch 2015). Although proponents of CAFOs claim that the risk associated with accruing massive amounts of animal waste can be managed, in places like Wisconsin, CAFOs have employed cheap waste management practices whenever possible while the state repeatedly fails to enforce existing regulations that protect rural drinking water sources (Bergquist 2017; Socially Responsible Agricultural Project 2015; Seely 2010b).

Between 1995 and 2010, the dairy industry in Wisconsin began to follow similar patterns of neoliberalization found in other states such as California, Washington, and New York (see figure 1). These patterns included an increase in scale, increased concentration, use of technology, and corporatization. The rise of CAFOs produced serious social and environmental problems across Wisconsin which, despite contestation from the dairy industry, have been acknowledged by the state (Seely 2014). Wisconsin witnessed the decline of small and medium sized farms over a short period due to harsh competition from farmers who embraced industrial agriculture and the use of CAFOs (see figure 2). During this period of change, many farmers had to make the tough decision to sell their farms or adopt the CAFO model of dairy production themselves.



**Figure 1: Changes in CAFO Density 1997-2012 (Factory Farm Map 2015)**



**Figure 2: Changes in Dairy Farm Herd Size in Wisconsin from 1997-2007 (Burr et. al. 2013)**

However, before the 1990s this transition was neither obvious nor predictable. Well into the 1990s, at a time when the dairy industry throughout the United States had already embraced CAFO use, Wisconsin was still associated with the small, family farm model of farming (Gilbert and Akor 1988; see figure 1). Therefore, in the case of Wisconsin, this accelerated shift to the CAFO model of production in dairy farming seemed peculiar and the pace and timing of the shift required explanation. In this thesis, I will examine this process of state-facilitated neoliberal deconstruction of the state in the dairy farming agricultural sector of Wisconsin over time. This project uses comparative historical analysis of key periods of environmental policy in Wisconsin, specifically pertaining to the dairy industry, to understand: 1) the timing and conditions favorable to neoliberalization, 2) how the relationship between the state, the public, the environment, and industry changed over the last several decades and, 3) the role of state lawmaking in the processes of neoliberalization.

This case study is divided into 7 chapters. Following this introduction is the conceptual framework in chapter 2. Chapter 2 addresses theories regarding the state-corporate neoliberal project within the fields of rural sociology, environmental sociology, and political economy. Specifically, the chapter highlights theories the role of the state in relation to globalization and neoliberalization, as well as the literature encompassing problems related to CAFOs and structural changes within U.S. agriculture. Chapter 3, or the research methods chapter, not only identifies my data sources and processes of analysis, but also includes a description of the data collection process, or what I call my “research journey.” Chapters 4 and 5 contextualizes this case study in time and space. In chapter 4, I introduce the problems associated with the CAFO model as well as problems with the regulation (or deregulation) of CAFOs in Wisconsin today. Then, in chapter 5, I shift to a discussion of the history of environmental protection in Wisconsin over time, specifically, I introduce the Office of the Public Intervenor and provide 3 political histories of periods including the creation (1967), a critical legal challenge (1984), and its elimination (1995). This chapter is followed by my findings, which are presented in chapter 6. In chapter 6, I started with a comparative analysis of key changes across each of the periods and subsequently formulated detailed descriptions of each of the debates. Within chapter 6, 1995 is identified as a critical juncture for CAFO development. Lastly, the concluding chapter serves to connect my findings to instances of contemporary social mobilization in Wisconsin and theories of the state-corporate neoliberal project as well as contemporary social movements regarding these environmental problems.

## Chapter 2: Conceptual Framework

Arguably, the dominant framework in the social sciences and sociology to the study of modern agriculture involves globalization. Indeed, over the last three decades, the agricultural industry in the United States has grown in average in size and global reach. The globalization literature highlights the increased use of transnational corporations and the neoliberal structural logic that accompanies them. All of these changes directly encourage the use of the CAFO model of production in agriculture which proliferated in Wisconsin after 1995.

### *Globalization, Neoliberalization, and the Role of the State*

Throughout the latter half of the twentieth century, industrial agribusinesses were transformed by transnational corporations. Not only did these corporations now have access to cheaper labor, technological advancements, and lax environmental regulations around the world, but they could absorb fiscal losses through branches in other countries (Heffernan 2000). A key characteristic of this new globalized era, as noted by Habermas (2002), Harvey (1989) and Giddens (2000), was capital *hypermobility* in which capital was able to quickly and easily move around the world. Increased capital mobility encouraged theorists to renew their efforts to theorize the relationship between corporations and the state. The global food and agri-business sector has been a fertile area of research for sociologists and political economists to examine these relationships. Thus, this literature review highlights the key works and critiques of this area.

According to Bonanno and Constance (2006), the literature on the impact of global capital hypermobility on the state-corporate relationship can be divided into several key perspectives. The first perspective theorizes the state as a toothless entity that has lost its power

to regulate and resist the influence of transnational corporations (McMichael 2004; Friedmann and McMichael 1989; Buttell and Jackson Smith 1998). The role of the state, then, is to aide the expansion of capitalist interests. Friedmann and McMichael (1989) note that as the goals of the global agri-food system shift to the production of goods for affluent global markets, this not only decreases the ability of the state to control the local food system, but forces the state to become a facilitator of global capitalist interests. In fact, as mentioned by Bonanno and Constance (2006), transnational corporations will often pit states against each other in order to extract regulatory concessions. In these cases, changes within state-market relations are understood as being caused by globalization itself.

The second perspective, while acknowledging the pull of global capitalist interests, argues that the state is not a powerless actor under globalization (Arrighi 1994; Koc 1994; Bonanno and Constance 2006; Kinchy et al 2008). Koc (1994), for example, highlights the role of nation-states in the decision to cooperate and expand global capitalist institutions like the International Monetary Fund and World Trade Organization. Neoliberalism-- what Kinchy et al. (2008) call a “utopian political ideology”-- posits that all societies would benefit from private property rights, individual liberty, unencumbered markets, and free trade (Harvey 2007). In contrast to the pervasive notion that neoliberalization is driven by global market forces, it is explicitly noted by critical political economy literature that neoliberalization is a state-corporate project (Sklair 2002; Sassen 2001; Peck and Tickell 2002). Kinchy et al (2008) falls within this second perspective because they specifically warn against conceptualizing state deregulation in mature capitalism as a result of an abstract process of globalization. Rather, empirical research

suggests that institutional shifts toward neoliberal ideologies occur due to , “... political struggle, diffusion, imitation, translation, learning and experimentation,” (Campbell and Pedersen 2003).

Taking this perspective even further, a third group of scholars argue that the state not only has a key role in this process, but has the ability to resist forces of globalization. The growth of corporate influence and activity and the problems associated with it clash with the objective of the state to maintain legitimacy (O’Connor 1974). The goal of the state in relation to its citizens is “...often contradictory to the designs of global producers and retailers whose capital accumulation activities are not necessarily linked to legitimated processes,” (Bonanno and Constance 2006: 67). These states, then, are more likely than corporations to face and respond to backlash by impacted communities against the will of corporate actors (Boggs 2000).

#### *Changes in the Structure and Regulation of the United States Dairy Industry*

Analysis of the agricultural industry in the United States provides key insights into the study of state-facilitated neoliberalization. Agriculture in the U.S. has followed a pattern of increased scale, concentration, and integration since at least the 1930s (Friedmann and McMichael 1989; DuPuis 1993; Albrecht 1997). From the 1930s-2000s (except for a small, temporary rise in family farms in the 1980s: see Albrecht 1997) there was a dramatic decrease in the number of small farms and an increase in farm size. In 1935, large industrialized farms were only 1.3 percent of all farms and managed about 29 percent of farmland in the US (Albrecht 1997). However, by 1992, the share of large farms had grown to 9 percent and managed 65 percent of U.S. farmland. Indeed, “The exodus of Americans from farming is one of the most dramatic changes in the U.S. economy and society in the past century,” (Lobao and Meyer 2001: 103). As a result, according to Buttell et al. (2001), the number of farms in the United States

decreased from 7 million in the 1930s to less than 2 million by the 1990s. These large-scale agricultural transitions had profound manifestations in communities whose cultures and livelihoods were deeply tied to family farms for generations. Lobao and Meyer (2001) noted that, “Displacement of farmers from farming, in effect, is an indicator of the system’s success,” (110).

When animal agriculture, including meat, dairy, and egg production, started to industrialize, it typically happened rapidly (Buttell et al 2000). This trend occurred in most states active in the dairy industry, although it did not fully embrace industrialization until the late 20th century (Buttell and Jackson Smith 1998). Between 1970 and 2006, the number of farms with dairy cows dropped 88 percent while dairy operations with more than 2,000 cows grew 104.6 percent between 2000 and 2006 alone (Socially Responsible Agricultural Project 2015). The CAFO model in animal agriculture advocates a structure in which hundreds to thousands of animals reside on one plot of land. The growth in the use of the CAFO model is a dramatic shift from the previously typical small farming model which utilized 100 cows or fewer. Analysis by the United States Department of Agriculture notes that, “In 1992, the midpoint of 101 cows was not much larger than the mean [of 61 dairy cows], reflecting the fact that most cows were on small and mid-size dairy farms. However, the midpoint rose sharply over the next two decades, to 900 cows by 2012, over 6 times larger than the mean herd size” (MacDonald and Newton 2014).

Interestingly, this transformation in the scale of dairying has not been uniform, either globally or in the United States. Various scholars have noted that there are key distinctions between states, that have either accelerated the growth of industrial agriculture or slowed their expansion, albeit temporarily (DuPuis 1993; Gilbert and Akor 1988). In a comparative historical



study of dairy farm structure in California and Wisconsin, Gilbert and Akor (1988) found that between 1950 and 1982, Wisconsin, unlike California during the same period, was able to resist what they called the “logics of production.” Specifically, Wisconsin maintained a small, mostly family oriented structure of dairy farming. During this period, their analysis found persistent “...historical patterns of social organization in agriculture of the respective states,” (Gilbert and Akor 1988: 66).

To understand these differences, they turn to historical, cultural, and ideological factors. Unlike California, they argue, Wisconsin has a dairy culture that was “...established in the late nineteenth century by an informal network of dairy farmers and their associations, agriculturalists at the University of Wisconsin, agribusiness leaders like the editor of *Hoard's Dairyman*, and state government officials,” (Gilbert and Akor 1988:67). These groups supported and maintained, “an ideology of progressive dairying,” (Gilbert and Akor 1988: 67). These progressive and politically influential groups pressured the state to form and enforce policy that preserved the traditional structure of small family dairying and the ecosystems around them . Since California, by contrast, did not have such an ideology, the government played a different role in agricultural development. Specifically, the state of California enacted policies that encouraged the use of industrial dairy farming. These policies were critical for the initial development of large dairy farms in California throughout the 1930s. This thesis will focus on the latter part of the 20th century when Wisconsin did, in fact, follow the patterns of industrialization that were present in California’s early dairy industry.

As agricultural firms grew in size over time, there was an increased demand amongst these firms for animal biotechnology. According to Kinchy et al (2008), the increased use of

agricultural biotechnology is associated with, "...accelerating consolidation and small farm loss, creating farmer dependence on multinational corporations, and driving prices down by stimulating overproduction." The dairy industry was the first within the agricultural sector to benefit from products that were created with biotechnology (Kinchy et al 2008). In 1986, Monsanto-- a multinational agrochemical corporation-- requested approval by the Food and Drug Administration for a hormone designed to increase milk production in cattle called the recombinant bovine growth hormone (rBGH). The literature suggests that as soon as biotechnology was introduced, specifically because of when and for whom it was introduced, it developed into a state-corporate neoliberal project despite objections from politicians and constituents from dairying states like California and Wisconsin (Mills 2002). The product was designed for dairy farmers to maximize their milk outputs. Ironically, goal of the federal government was to do the opposite. During the mid-1980s, the federal government was still trying to remedy a crisis of overproduction in the dairy industry. At the same time Monsanto requested approval for rBGH, the federal government had just instituted the Dairy Termination Program , a voluntary buyout program in which the government would, "...buy out an entire dairy herd and obtain a commitment from the participating farmers not to partake in dairying for the next five years," (Erba and Novakovic 1995: 15). The cattle would instead be used for meat production or exported to other countries. Indeed, Neal Jorgensen, the Dean of the College of Agriculture at the University of Wisconsin, noted that Monsanto's request. "...could not have come at a worse time," (U.S. House of Representatives 1986).

Using discursive institutional analysis, Kinchy et. al. (2008) examine the debates in Congress around the approval of rBGH. According to their analysis, the introduction of rBGH

was met with hostility from both farmers and farm advocates who claimed that this product would hurt small family farms. Multiple studies circulating at the time noted that there would be significant losses to small farmers if rBGH was to be approved (Collier 2000). However, as the debate went on, socio-economic considerations began to gain less traction. The Reagan Administration decided that agricultural biotechnology would be regulated the same way as biotechnology meant for humans. This decision was a key moment in the embrace of neoliberal logic because a clause within the regulation stated, "... among other things, regulations must *minimize the regulatory burden and accommodate rapid advances in biotechnology,*" (Kinchy et al. 2008: 164). Small farm groups immediately responded with a petition to the U.S. Food and Drug Administration. A Wisconsin farmer who supported the petition said, "It is legitimate to question whether technological advancements are social progress....Bovine Growth Hormone is not in the good culturally and socially for the industry on which it will have its impact...There is one key question: What do we want rural America to look like and what kind of society do we want functioning in rural America?" (Kinchy et al. 2008: 164) Despite the opinions of experts and the social mobilization against the drug, it was approved. In the EU, however, rBGH was banned based not only on the socioeconomic consequences of the drug's use, but due to animal welfare concerns, a policy which continues to this day.

The use of CAFOs and neoliberal logic go hand in hand. The CAFO model of production is designed to maximize profit for the entities that own them and for as cheap as possible. However, this goal is complicated when the state has strong and enforceable environmental regulations. Environmental problems caused by inappropriate waste disposal have been an issue for industry from the beginning and the agricultural sector is hardly dissimilar. Through

environmental deregulation, the state *chooses*, often against the will of their own people, to facilitate the goals of industry in increasingly problematic ways. The state, then, in its role as regulator of the environment, and in some cases technology, has a key role in neoliberalization. Indeed, this thesis adds to the second group of scholars listed above which decide against framing the state in the era of neoliberalism and globalization as toothless and weak. While that may be the end result, this perspective ignores the actions of the state in *processes of neoliberalization* which are central to this thesis.

### Chapter 3: Methods- The Research Journey

This thesis is a comparative historical within-case study of changes in environmental law and the regulation of the Wisconsin dairy industry. The goal of this research is to combine a historical political economy of the growth of CAFOs with a narrative analysis of three key time periods in Wisconsin's political and legal history. Through a comparison of these critical junctures, my aim is to track processes of legal neoliberalization within and around proposed laws which permitted and emboldened dairy CAFOs to proliferate over a short period of time.

#### *Process of Analysis*

In the 1990s, historical sociologists began to privilege the use of narratives for causal analysis. Narrative analysis is a methodology in which, "...historical reality is conceptualized 'not as time-bounded snapshots within which 'causes' affect one another... but as stories, cascades of events' in which 'complex actors encounter complex structures,'" (Abbott 1992: 227; Gotham and Staples 1996: 483). Narratives have a built-in emphasis on time because they require the analyst to produce some form of temporal ordering to make sense of events. Narrative analysis is particularly constructive for this project because I sought to understand the underlying logic of social and political processes over time. Whether or not the narratives used to push legislation are true or false, the narratives served a political purpose.

However, narrative analysis has been critiqued for failing to recognize causal mechanisms and trajectories across time periods (Haydu 1998). Scholars have noted that the addition of path dependency remedies issues that can occur with the use of narrative analysis alone (Sewell 1996; Levi 1997). Path dependency narratives, according to Haydu (1998: 352) "...begin with a historical fork in the road; identify the turn taken and emphasize how subsequent

developments make that choice irreversible.” According to Arthur (1994), path dependency is characterized by some form of a positive feedback loop. Steps along one path make some choices more attractive than others. Once a path is chosen, “...such effects begin to accumulate, [and] they generate a powerful cycle of self-reinforcing activity,” (Pierson 2004: 18). Indeed, the longer a path is in place, the harder it becomes to shift. Path dependency is used in this thesis to understand when the logic of neoliberalism and neoliberal policy took hold in Wisconsin and how, once in place, it became harder to challenge.

Path dependence is useful to the study of political dynamics because politics are particularly prone to positive feedback (Pierson 2004). According to Pierson (2004), path dependence in politics is marked by four features. First, when conditions favorable to a certain path start to take hold, the path is marked by uncertainty because during these critical junctures a number of outcomes could still take place. This initial political uncertainty emphasizes the second feature of contingency; even a small event can have lasting consequences if the conditions are favorable. Contingency is described by Berlin as, “...the study of what happened in the context of what could have happened?” (Berlin 1974: 176). It highlights the opportunism that occurs in politics, a practice which has a tendency to prefer short term policy solutions that can still have lasting impacts. The third feature, which relates to contingency, is the importance of timing and sequencing. Indeed, timing and sequence are key to understanding path dependence because, “When things happen within a sequence affects how they happen,” (Tilly 1994: 18). Early parts of a sequence set up the events that follow. After certain paths are in place, an event that happens “too late” can have less of an impact in than it would have earlier. Lastly, after the path has been established, it develops positive feedback and as a result, becomes more

difficult to challenge over time. In this regard, path dependency merges with sociological considerations of power to foster understanding of why certain structures remain in place so long despite dissent.

For the purposes of studying social change in the Wisconsin regulatory environment, this thesis focuses on the former rather than the latter processes involved in path dependence. Particularly, my analysis hones in on one specific critical juncture and its effects over time. Within comparative historical analysis, critical junctures are, "...moments in which uncertainty as to the future of an institutional arrangement allows for political agency and choice to play a decisive causal role in setting an institution on a certain path of development, a path that then persists over a long period of time," (Capoccia 2015: 147). The critical juncture approach notes that after events which cause political uncertainty, key actors have more social agency than they would otherwise (Capoccia and Kelemen 2007) Additionally, the conditions that exist at the time of the decision limit the types of decisions available, but does not determine them. Therefore, the questions that guided my analysis of narratives and path dependency created included:

1. Who supported particular laws and policies and what were their publicly political rationales for doing so?
2. Which arguments did the state accept in the end? Which ones did they reject? Which claims were dominant?
3. Which political rationales are reflected in the language of the law? Did the laws and policies adopted reflect neoliberal ideology?

#### *Data Sources and Collection Process*

This project began as a case study of Kewaunee County, Wisconsin, which has been identified as a key site for CAFO development (Burr et al. 2013; Socially Responsible Agricultural Project 2015). Kewaunee County is interesting for a case study not only because it

has the highest rate of animal concentration in the state, but the environmental conditions in this county are not conducive to the existence of large farms. This county and several others which surround it, including Brown, Door, and Manitowoc, are located near large bodies of surface water around the Great Lakes. However, the most pressing concern for neighbors of CAFOs in Kewaunee County is the pollution of underground aquifers where 95% of the population receives their drinking water. Much of Northeastern Wisconsin is located on top of highly fractured carbonate bedrock, or karst topography, and are as a result susceptible to groundwater contamination. When excessive untreated manure is spread on fields, the nutrients that cannot be soaked into the plants inevitably end up somewhere else in the environment. Interaction with rain or snow causes the manure to flow through the cracks and sinkholes in the ground and directly into underground aquifers. Indeed, some farmers have noted that the ground is so weak that sinkholes the size of tractors can appear in short periods of time (Golden 2014). The fact that the state kept allowing these large CAFOs to expand in an area with already vulnerable water resources warranted investigation.

In interviews with the state press and on social media, residents of Kewaunee County put specific emphasis on the 2005 Livestock Facility Siting Law as a cause of CAFO growth (Seely 2010b; Burr et. al. 2013). However, further investigation indicated that CAFO growth could not have been promoted by the siting law alone. While the siting law was very important for control of specific CAFO locations, it did not address why, even in cases against CAFO pollution that were successful in the courts, the punishments against CAFOs amounted to a slap on the wrist and required them to simply monitor their wells more often without changing their practices (Bergquist 2014). Using LexisNexis and resources available online from Midwest Environmental



Advocates, I searched for agricultural regulations that could possibly have influenced access to remedies available through the courts in Wisconsin. Environmental law reviews proved to be critical at this stage because they provided in-depth histories and explanations of key environmental laws that governed CAFOs, particularly the right to farm law. From these analyses, it became clear that before the siting law, the RTF law was crucial to the expansion of CAFOs because it limited the remedies available to citizens impacted by CAFOs. As noted by Centner (2000; 2006) and Hansen (2002), Wisconsin's 1995 RTF law was particularly broad and explicitly referenced limitations on the restrictions the state could place on CAFO pollution even if a lawsuit was successfully carried out against them. The RTF law also specifically shaped the role of the courts in their ability to regulate the activity of CAFOs. However, this law was passed in 1996, almost a decade before the siting law.

As I learned about these laws and well before learning about the public intervenor's office, my focus was on the most prominent environmental regulatory agency in Wisconsin, the WDNR, because of its failure to properly regulate large farms. However, after working backwards in Wisconsin's regulatory history, I found out that not only was there a distinct period in which the WDNR was accused of becoming "politicized," but this period coincided with the elimination of the public intervenor. Starting from a case in the modern era, the existence of the public intervenor in Wisconsin did not make sense politically or in terms of neoliberal logic. How was it possible that a place like Wisconsin today, a reflection of neoliberal logic, had a legacy of a watchdog agency to police the WDNR? What were the political and social conditions in which this agency was created and how were the circumstances in which it was eliminated different? Could this watchdog have interfered with CAFO growth?

When I began to recognize the importance of the public intervenor, law reviews from Wisconsin also provided important accounts of the office (Sinykin 2004). Sinykin's (2004) history of the public intervenor, while it had little mention of the siting law or RTF law, outlined the rise, the accomplishments, and the decline of the public intervenor. Recognizing the importance of the public intervenor necessitated the addition of two periods (1967 and 1984) because of the stark contrast between the environmental legislation of the former and latter periods. Beyond Sinykin and Huffman (2000), the literature regarding the public intervenor was very limited. Yet recognizing its potential importance, I decided to use online newspaper archives such as Lexisnexis, newspapers.com, and newspaperarchives.com to trace the existence of the public intervenor and to understand why it existed, how it remained for almost thirty years, and why it was eliminated. In essence, I was trying to understand how Wisconsin reached the point of a neoliberal logic of (de)regulation that exists today.

I started with the 1995 period on the newspapers.com archive with a keyword search of "public intervenor" and restricted those searches to papers from Wisconsin during 1995. Key sources for all of the periods included the *Daily Tribune*, the *Green Bay Press Gazette*, and the *Madison Capital Times*. Newspaper sources also included local papers such as the *Fond Du Lac Commonwealth Reporter*, the *Stevens Point Journal*, the *Post Crescent*, the *Wausau Daily Herald*, the *Oshkosh Northwestern*, and the *Sheboygan Press*. The search yielded 256 matches with all of them sorted by "best match" which corresponded to the number of times the term appeared in the articles. In many cases, the same article was printed in several papers. I saved articles that identified who supported or opposed the intervenor and their reasons why. After the articles became repetitive or vague, I sorted them based on their quotes, meaning that I coded

the articles based on whether the quote was from a politician or another representative of the state, a representative from a corporation, a citizen, a member of an environmental or sportsmen group, or the press. Then, I worked through the articles and typed out key quotes by hand and sorted them again into “for” and “against” eliminating the intervenor in order to pick up on narrative themes. I followed this protocol for all of the other periods as well

At this point, I was still examining the original four periods identified. However, after engaging in data collection for the right to farm law in 1995 and the livestock law in 2004, I was surprised by the lack of data hits compared to the 1995 search for “public intervenor.” A search for “right to farm” around the time of the debates yielded only 50 articles, many of which were either one article printed in multiple papers or vague descriptions of what the law was. This data was completely different from the specific quotations and the detailed narratives available in the public intervenor debate. Even more surprising, a search for the livestock law yielded 0 results in the year before and during the passage of the law when the debates should have occurred. Subsequently, a more expansive search on LexisNexis revealed that debates around this law did not seem to occur until 2008 and 2009, years after the law was already passed. Based on this time lag, I began to suspect that the public intervenor may have had an impact on educating the public and, as a result, decided to restructure the thesis and shift my narrative focus to the three periods around the rise (1967), the expansion (1984), and the fall of the public intervenor (1995).

My method was to work secondary sources and newspaper archives in tandem. The principle secondary source for the political history of the period surrounding the creation of the public intervenor was Huffman’s (2000) *Protectors of the Land and Water: Environmentalism in Wisconsin, 1961-1968*. This text not only provided detailed political context regarding the

commission that proposed major changes to the state of Wisconsin, but also descriptions of the actors who supported or became a part of the “red shirt” movement of outdoorsmen and hunters. It acted as a key reference when my initial search using “public intervenor” in 1967 had 0 results. When I used the terms “kellett commission”, “conservation”, “merger”, or a combination of each, around 75 to 150 hits would appear. The results corrected my initial hypothesis that the creation of the office was the result of a progressive legacy and dairy culture. Instead, I found that the creation was the result of a political compromise.

Then, from Sinykin’s (2004) account, I realized that 1984 was an important period to examine because the intervenor was strengthened at that time. The result was that I collected data related to a rich comparison of political differences between 1967 and 1995. In 1984, the US was undergoing a new wave of conservatism and push towards neoliberalization. The fact that the intervenor at that time was strengthened by the legislature seemed peculiar. The search for “public intervenor” during Wisconsin in 1984 yielded 173 results. However, those results were misleadingly inflated because the public intervenor was involved with many debates at the time. The articles that involved the intervenor did not consistently address the debate around the decision of the Wisconsin Supreme Court. Therefore, I restricted my search with the addition of the terms “supreme court.” It was with this search that I found an article in the *Sheboygan Press* with exact quotes from a key public hearing addressing the proposed role of the public intervenor in February of 1984. Within a month of this debate, the legislature decided to reinstate and strengthen the intervenor.

## Chapter 4: Wisconsin: Deconstructing CAFO Growth in America's Dairyland

### *The Rising Tide of Waste: Wisconsin, Regulatory Law, and CAFOs*

When told to imagine what is historically described as a farm, the common mental images entail grazing animals, rolling hills, and green pastures. However, the reality of farming today is quite different. Most of the meat and dairy produced in the United States comes from large CAFOs (Wender 2011). On a dairy CAFO, cows do not graze or even leave the long buildings that commonly contain thousands of cows at one time. Agricultural technology, such as growth hormones and mechanical milking parlors, allow the producers to milk hundreds of cows at the same time for twenty-four hours a day (Bergquist 2017). Feed is grown and waste is disposed of on the same plot of land. Proponents of CAFOs have maintained that the CAFO model is beneficial because, “CAFOs can provide [consumers with] a low-cost source of meat, milk, and eggs, due to efficient feeding and housing of animals, increased facility size, and animal specialization,” (Kolbe 2013: 419). The CAFO industry additionally claims to improve local economies by providing jobs and tax revenue. The CAFO model reflects the discourse and logics of the neoclassical economic perspective which encourage pursuit of profit, growth in technology to aide efficiency and highlights individual rational actors within a self-regulating marketplace.

Waste management and disposal practices of CAFO managers are at the heart of the debate around CAFOs in Wisconsin and beyond. The U.S. Environmental Protection Agency regulates CAFOs under the Clean Water Act . While manure is typically considered to be a non-point source pollutant under agency regulations, CAFOs are regulated as point sources because of the immense amount of animal waste they are capable of producing. CAFOs account for 65

percent of all animal waste produced annually (Gurian-Sherman 2008). Typically, the waste from hundreds or thousands of animals is kept untreated in open air lagoons or storage units until a portion of that waste is used to spread on fields. Despite the use of USDA and state approved nutrient management plans and permits, CAFOs have consistently engaged in “excessive” manure spreading. Analysis of the land available in Wisconsin for spreading versus amount of waste produced indicates that the amount of waste produced by farms is too large to be spread on fields in responsible amounts. In 2013, farms in Wisconsin produced around 12.4 million pounds of nitrogen (Wisconsin Department of Natural Resources 2014). Since the land was only able to grow enough crops to utilize 11.2 million pounds of nitrogen, an excess of 1.2 million pounds of nitrogen were partially kept in lagoons or lost to the environment around farms. Still, CAFO managers claim that this waste is an invaluable tool for farmers to keep soil healthy (Kinnard Farms n.d.).

Excessive spreading is essentially a form of deliberate and cheap waste disposal for large dairy farms. Records from the DNR repeatedly indicate that CAFOs engage in excessive spreading as well as winter spreading when their manure storage facilities fail to contain the amount of manure produced (Socially Responsible Agricultural Project 2015). The results of excessive and winter spreading include harm to surface water and freshwater resources as excess nitrogen and phosphorus is swept into nearby waterways and underground aquifers. The result is a number of environmental and social problems. Excessive nutrients in surface water have the potential to create irreversible damage to local ecosystems. Around 70 percent of the runoff in Wisconsin comes from agricultural sources (VanEgeren 2014). Some ecological consequences of the runoff are increases in toxic algal blooms and spontaneous fish kills (Golden 2014a).

Additionally, CAFOs, like all businesses, have accidents. If a truck carrying manure crashes or a large lagoon breaks- and there are several cases of exactly this (Socially Responsible Agricultural Project 2015)- large amounts of manure are dumped not only back into the ecosystem, but into the roadways and groundwater of rural communities.

Despite the fact that CAFOs are required to limit pollution under both state and federal regulations, rural sociologists, environmental lawyers, and public health experts have noted the consistent negative environmental and public health impacts by CAFOs on rural communities, especially in states that prioritize economic development (Burmeister 2002; Hribar 2010; Kolbe 2013). Communities that rely heavily on access to wells for drinking water are particularly vulnerable to the impacts on groundwater pollution caused by CAFOs. Samples of well water contaminated by CAFO pollution reveal the presence of nitrates, pathogenic organisms, pesticides, and antibiotic resistant bacteria (Hribar 2010). Rural communities that live adjacent to large CAFOs in northeastern Wisconsin have elected to switch to bottled water for their daily needs instead of relying on possibly contaminated groundwater water resources that were not being protected by the WDNR (Seely 2015).

The literature in both law and sociology indicate that groups that support the CAFO model of agriculture have used law to create political conflict between the state and rural communities (Welsh and Grey 2000; Burmeister 2002; Bonanno and Constance 2006). Interestingly, legal scholars, not sociologists, have identified specific laws that give CAFO managers and owners legal advantages which simultaneously disadvantage the communities that live around them (Centner 2000; Kolbe 2013; Centner and Alcorn 2015). For example, while almost every state in the US has a Right to Farm law (RTF), the RTF law in Wisconsin goes

further than others and limits the ability of the state to enforce environmental regulations and restrict the remedies available for aggrieved residents in court (Centner 2009). Similar limitations in neighboring Iowa's RTF law were declared unconstitutional by the Iowa Supreme Court twice for infringing on the rights of property owners (Centner 2006; Kolbe 2013). States with a high number of CAFOs such as Wisconsin and Georgia, have additionally enacted "preemptive ordinances" which challenge the capacity of local governments to use law to protect the groundwater sources in the environments they live in (Centner and Alcorn 2015).

### *Wisconsin as a Negative Case Study*

Wisconsin is a fascinating case for the study of the neoliberalization of the dairy industry. First, Wisconsin has experienced an accelerated version of the structural changes in farming that places around the U.S. have experienced, despite the fact that the small family farm model was dominant there throughout most of the 20th century (DuPuis 1993). The dairy industry in Wisconsin today is a key player in the global cheesemaking industry. Secondly, counties all over the state are having to confront environmental problems caused by these under regulated industries. Lastly, the state in the past had an environmental agency that could have addressed many of the problems caused by CAFOs today. Indeed, the public intervenor was unique to the state of Wisconsin.

One of the key questions this thesis addresses is the timing of the expansion of dairy CAFOs. Thus, built into the design of this case is an implicit comparison with the dairy industry in California, New York, and other dairying states. The case of the dairy industry in Wisconsin raises some important questions. Despite the fact that Wisconsin took much longer to adopt the CAFO model of production, Wisconsin currently ranks as the second largest producer of milk



behind California, which has three times the land area of Wisconsin and a longer legacy of CAFO use (Goodling 2016).

In the case of Wisconsin, the historical and political context is important to consider. Each of the conjectures occurred during particular historical moments in the development of neoliberalism. In the late 1960s, there was not only a growing national environmental movement in the United States, but neoliberalism was, at that point, an abstract idea proliferating through the discipline of economics (Peck and Tickell 2002). The embrace of state neoliberalization by Thatcher and Reagan in the 1980s thrust neoliberal logic into the spotlight. Throughout the 1990s, United States was ready and willing to expand free trade with agreements such as the North American Free Trade Agreement and the Global Agreements on Tariffs and Trade. By the early 2000s, neoliberal logic was so deeply integrated into policy that it was rendered invisible and assumed to be necessary in order for the market to function (Harvey 2005).

## **Chapter 5: The History of the Rise and Fall of the Office of the Public Intervenor**

### *Introducing the Office of the Public Intervenor*

A key focal point of this thesis is the role of the public intervenor in Wisconsin. The office of the public intervenor served some very important political, social, and environmental purposes throughout the twenty-eight years that it was active (Sinykin 2004). The public intervenor was created in 1968 as a “lobbyist for the public” in matters of environmental law, particularly issues with water pollution. The public intervenor was unique to the state of Wisconsin. The tasks of the office were to: 1) act as a watchdog agency and political counter to the DNR, 2) share information with and educate citizens about their environmental rights, 3) teach citizens how to get the state to acknowledge grievances and enforce regulations without using litigation, 4) litigate on behalf of individuals or groups of citizens in need, and 5) advance or create legislation that strengthened environmental policy. During the period in which the public intervenor was active, Wisconsin paved the way for environmental policy in the United States. Indeed, the public intervenor was created two years before the United States Environmental Protection Agency. Despite the fact that the public intervenor never was staffed by more than two or three lawyers and a number of environmental law students, the public intervenor was able to establish a number of environmental policies and win important court cases (Sinykin 2004). Wisconsin was the first state to ban the use of DDT, the first state to pass acid rain legislation, and created one of the most comprehensive groundwater protection laws in the country by 1984. The public intervenor enjoyed public support even after it was eliminated in 1995.

This comparative historical analysis is structured around the existence of the public intervenor. The initial selection of the periods used in this analysis was based on specific legal changes in the history of environmental law in Wisconsin that seemed legally necessary for the growth of CAFO development. Each period was marked by the debate and passage of specific pieces of legislation related to the public intervenor. First, from 1966-1967, there was a tense political struggle between conservationists and developers and an eventual compromise that resulted in the establishment of the public intervenor. Second, in 1984, public intervenor survived a major legal challenge by the Wisconsin Supreme Court with the assistance of the state legislature. Third, in 1995, Governor Thompson and a Conservative dominated state legislature pushed through a number of changes which pointed Wisconsin's regulatory regime in a neoliberal direction. Until that point, Republicans had consistently been a part of maintaining the legacy of conservation in environmental policy.

*Kellett Commission and the Reorganization Bill- 1965-1967*

The establishment of the public intervenor as an internal watchdog and adversarial force amongst environmental agencies of Wisconsin was originally part of a political compromise. The context for the creation of the public intervenor was an early struggle over the size and role of the Wisconsin state government. In stark contrast to the more recent period, environmentalists known as conservationists were ascendent politically and well positioned to withstand pressure from business interests and government officials focused on growth and development.

During the winter of 1965, with a mandate from the Wisconsin Legislature, Republican Governor Warren Knowles set forth one of the most ambitious reorganization projects in the history of Wisconsin's state government. The goal of this project was to maximize efficiency and

minimize the cost of state programs (Huffman 2000). According to Knowles, “The biggest business in Wisconsin is the least efficiently organized,” (The Oshkosh Northwestern 1967). Ideally, to Knowles and many of his Republican colleagues, the best way to run the state was like a business. Therefore, to make this goal a reality, Knowles established an executive order to assemble a task force that consisted of local business experts. One of these experts, and the head of this task force, was William Kellett, previously the CEO of Kimberly-Clark Paper Corporation. Both Kellett and Knowles aimed to restructure the state according to conservative and *laissez faire* principles. The initial commission was made up of, “...almost one hundred business leaders representing ninety-seven firms [who] met to devise a way to eliminate ‘inefficiency’ and shake up the ‘comfortable state bureaucracy,’” (Huffman 2000). While the second commission was more bipartisan, it was not representative of conservation interests.

However, political conditions at the time made the goals of Kellett, Knowles, and Republicans particularly difficult to achieve in matters of the environment as time went on. By the summer of 1965, water pollution in the Great Lakes, particularly Lake Erie, became a key issue in the public debate. Scientific evidence had been made public that declared, “...the lake had become a ‘dead sewer’ due to an influx of ‘artificial nutrients’ [which] prompted an outcry in the national press,” (Huffman 2000: 114). The political pressure to respond was so strong that Governor Knowles established a committee on water resources in September of 1965. This presented a distinct challenge for Knowles and the Kellett Committee; with water pollution issues in the spotlight, it became increasingly unclear how Republicans, especially conservatives, could reconcile supporting the interests of major polluters (such as the company that Kellett ran) while regulating their activities in ways that would satisfy the citizens of Wisconsin.

The quandary of Wisconsin Republicans became even more apparent when the Kellett Commission presented the first version of their government reorganization plan in the summer of 1966. The plan called for the reorganization and restructuring of around ninety state agencies into twenty-eight centralized departments and boards. One of the most contested of these changes was a merger of the Conservation Department and the Department of Resource Development to create the first environmental “super agency” in the United States - four years before the creation of the US Environmental Protection Agency (Huffman 2000). In addition, the reorganization proposed to disband the Wisconsin Conservation Commission and create a new three member commission that, unlike the Conservation Commission, was made up of political appointees. Despite the fact that the public mostly favored reorganization, the reaction of the conservation establishment indicated that this merger was not what they had requested. According to Huffman (2000), “The initial outburst by the conservation establishment greatly surprised Governor Knowles. Embroiled in an intense gubernatorial campaign...Knowles immediately moved to distance himself from the political implications of the merger, striving to retain as much of the ‘conservation vote’ as possible,” (150).

*Public Intervenor v. DNR. (1983) Wisconsin Supreme Court*

Between 1980 and 1983, the public intervenor faced its first major legal challenge against the Department of Natural Resources (Public Intervenor 1983). The initial lawsuit was brought forth by the public intervenor against the DNR starting in 1980. In January of 1980, the DNR proposed rules regarding pollution and cleanup regulations for the beds of waterways. The DNR held public hearings and gave the intervenor three weeks notice before those hearings. However, the intervenor urged the DNR to give more notice of those meetings. In March, the Natural

Resources Board (NRB) approved the rules proposed by the DNR without the proposed additions given by the intervenor. When the intervenor filed a petition to review the rules, the DNR responded with a motion to dismiss. The motion by the DNR was rejected by the court and the intervenor was allowed to reevaluate the rule's validity. However, another court ruled in 1981 that the actions of DNR, in fact, were a valid exercise of their rulemaking authority given to them in the Wisconsin Constitution. By 1983, this decision was appealed and the case made its way to the Supreme Court of Wisconsin which consisted at the time of mostly conservative justices. In a 5-2 decision, the Court ruled that the public intervenor did not have the authority to intervene in matters of the DNR as a legal equal unless the legal processes were initiated by actors outside of their office. In other words, when it came to cleaning up waterways, the public intervenor could only involve themselves directly in court processes if they co-opted existing cases. In the majority opinion, Justice Steinmetz (*Public Intervenor v. DNR* 1983) wrote:

The legislature has already created the DNR to represent the public in guarding our state's resources and placed a check on fears of bureaucracy by requiring the agency's administrative rules to be approved by appropriate legislative committees, which occurred in this case. The public intervenor under the enabling statute does not have the legal capacity to seek a declaratory judgment against the Wisconsin Department of Natural Resources nor the Natural Resources Board for a determination of the constitutionality of ch. NR 345, Wis. Adm. Code.

However, this decision was not made without dissent. Joined by Justice Shirley Abrahamson, Justice William Bablitch prepared a scathing dissent of the majority's decision. The dissent noted that the decision to establish precedent that relegated the intervenor to a subservient position under the DNR was against the legislative intent of the public intervenor in the first

place. Bablitch pointed out that challenging the authority of the DNR was the foundation of the purpose of the public intervenor. He highlighted that:

The decision in this case also ignores the legislative history behind the creation of the official of the public intervenor... Thus, the sole basis for the creation of the public intervenor was to create an adversarial force independent of the newly created DNR. That concept is seriously undermined by the majority's holding in this case, and certainly destroyed with respect to challenging an administrative rule.

A large part of the struggle which established the public intervenor was based on the assertion by the Conservation Commission and the Red Shirts that the DNR needed to be held accountable for their actions. Without including conservation interests, the agency could be easily influenced by politically powerful businesses that pollute. Therefore, according to Bablitch:

The legislature could not have intended to provide the public intervenor with a duty to protect the public interest without the right to challenge an administrative rule that could cause irreversible damage to public rights in state waters. That an administrative rule has the potential to cause irreparable harm to the public's interest in water is obvious. The majority's decision, however, renders the public intervenor powerless to challenge such a rule and to fulfill the legislative mandate of sec. 165.07, Stats.

Less than three months passed before similar sentiments were echoed by conservationists, concerned citizens, and state officials in public hearings (*The Sheboygan Press* 1984a; *The Sheboygan Press* 1984b).

*The 1995 Elimination of the Public Intervenor: From the Power of Letters to the Power of Dollars*

The context for the next debate about the public intervenor was framed in distinctive neoliberal discourse in which politicians appeared to be influenced more by dollars than the letters from constituents that swayed them in the 1960s and 1980s. After his re-election in 1995, Conservative Governor Tommy Thompson proposed radical changes to the state budget for

1995-1997, including deep funding cuts to a number of regulatory agencies. Some of the most drastic of the proposed cuts directly influenced the structure of Wisconsin's environmental regulators: the DNR and the public intervenor. First, Governor Thompson aimed to centralize political control over the DNR by altering the selection process of the head of the agency (Anderson 1995). Rather than the head of the DNR being chosen by a Citizens Advisory Board, the head would be chosen by the governor. Additionally, the proposed budget called for severe cuts to the DNR, including the elimination of over 400 staff members (Sinykin 2004). Simultaneously, the public intervenor, the "watchdog" that was supposed to keep the DNR in check, was eliminated by cuts to the Attorney General's office. The combination of these proposed radical changes prompted immediate outcry from constituents all over the state of Wisconsin.



## Chapter 6: Critical Debates and a Critical Juncture in CAFO Development

### *Changes in Political Discourse- 1967, 1984, and 1995*

Through a comparative analysis of these three debates around the public intervenor, critical differences in these periods across time can be identified which address why the intervenor was created, remained a position for almost thirty years, and was eventually eliminated. Indeed, the shift towards neoliberalization was not necessarily linear, effortless, or “rational.” Attempts to put the state of Wisconsin on a path towards neoliberalization failed multiple times before it was finally implemented in the 1990s. These failed attempts to establish regulatory regimes that would relegate conservation to a powerless position illustrated how much power the conservation voters had in the state up until the 1990s, regardless of the ideology of the dominant party. Throughout all of the periods, the debates can be divided between business and conservation interests with business interests consistently against the existence of the public intervenor. However, the scope of pro-business narratives changed over time. In the 1960s, the focus from the business community was on efficiency and fiscal responsibility in government. By the 1990s, the central focus of Thompson and fellow Republicans, who were politically supported by corporate interests, was on economic growth through deregulation- a position that was central to the state-corporate neoliberal project.

The change in political discourse corresponded with changes in political power dynamics between politicians, conservationists, and members of the business community across time. The bill that called for reorganization in the 1960s did not include a compromise, but was forced to create one through political pressure by the conservationists as directly noted by Kellett

(Waukesha Daily Freeman 1967). The environmentalists, hunters, and sportsmen resisted attempts to combine conservation and development for fear that their interests would take a backseat to business interests, particularly the paper industry which was one of the largest industries (and polluters) in the state at the time. It was not only the power of the conservation movement, but the weakness of business in comparison that forced Republican politicians and business leaders to back down despite strong opposition by Governor Knowles. As time moved on, as illustrated by the 1984 debate, business interests became more organized and united against the public intervenor, whose increase in power “scared [them] to death.” Still, during the 1984 debate, politicians remembered 1967 and did not want to mess with the public, particularly rural populations with positive experiences with the intervenor who “wrote more letters” (*The Sheboygan Press* 1984b).

However, the presence of this “noisy” (as it was called in the press) conservation constituency declined over time and made the opposition to the elimination of the public intervenor far less visible within the public sphere. The red shirts in the 1960s used mobilization tactics to flood town halls with people, create mass demonstrations, and send letters to elected officials. While thousands of letters were sent to Thompson, legislators, and the press as a plea for them to retain the public intervenor, there was not an existing social movement with similar political clout or mobilization techniques as the red shirts in the previous periods. There was far less input from individual citizens, from interviews during town hall meetings to letters to the editor, in 1967 compared to both 1984 and 1995. In 1995 in particular, the bulk of citizen input to the media were from individual environmentally concerned citizens and not members of sportsmen, hunting, or environmental groups.

Throughout the narratives from business interests and pro-business politicians between 1984 and 1995, there was a shift in the meaning of who was a conservationist. According to these new narratives, which were absent in 1967, conservationists were not the “good old sportsmen” and hunters from the past. Rather, they were radical environmentalists portrayed as a type of moral carpetbagger, coming from national movements into Wisconsin where they do not belong. This partially had to do with a decline in the constituency of sportsmen and hunters, but also a growth in the visibility of organized environmental groups, which at the time were portrayed as radical and violent by both state and national media due to a surge of direct-action tactics and eco-terrorism amongst environmentalists throughout the 1980s-1990s (Taylor 1995). This narrative not only fit in with larger media narratives at the time, but did so in a politically potent way that distracted from the reality of the groups that primarily used the public intervenor which included rural residents, small farmers, environmentally concerned citizens, sportsmen, and local citizen groups. While members of larger environmental organizations were there, they were not representatives from the larger organization, but from state chapters specific to Wisconsin. However, the narrative that the intervenor was supported by well-funded environmental groups disguised a politically unpalatable reality: it would disproportionately impact rural residents and small farmers if the intervenor was eliminated.

### *The 1967 Debate*

At this time, amid the rise of the environmental movement (Cable and Benson 1993) and before neoliberalism had even emerged according to the dating of most scholars (Arrighi 1994; Harvey 2005), the political debates were more balanced in terms of political influence of the parties involved. As we bring macro-level debates on neoliberalism down to the state level, we

see that conservation not only used to be a bi-partisan issue, but conservationists yielded significant political power in Wisconsin. While the businesses interests that backed the Kellett bill were politically influential, the conservation establishment could not be ignored. The conservation establishment consisted of legislators backed by rural areas in Northern Wisconsin and sporting and outdoor interests which were often called the “red shirts.” After Knowles was re-elected in November of 1966 and he reintroduced the Kellett Committee’s recommendations as a bill, Knowles again found himself pitted against this powerful conservation establishment. However, because of the stable Republican majority achieved during the election and a new term ahead, Knowles did not table the recommendations like he had done during election season. This set the stage for a critically important conflict in the history of Wisconsin’s environmental politics: the red shirt rally. The reorganization bill was proposed on January 27, 1967. The conservation establishment mobilized in less than two weeks. As noted by Huffman (2000) and state media sources (*The Post Crescent* 1967a; *Janesville Daily Gazette* 1967; *Wausau Daily Herald* 1967a),

As the legislature met on February 8, 1967, a large number of red shirts from the Dane County area, organized by Conservation Department staff, drove a "bulldozer type construction machine" and a dump truck around the capitol square carrying banners entitled "Stop the Kellett Bulldozer, Save Conservation." This entourage included upside—down American flags and a dog with a protest banner lashed to its back (155).

This rally was the starting point of a vigorous debate about the future of the regulation of natural resources in Wisconsin.

The political discourse throughout this debate indicated that support for the merger was most contentious between business and conservation interests. Support for the merger came almost exclusively (aside from the League of Women Voters of Wisconsin) from actors that had a

stake in expanding economic development. These included taxpayer associations, an aluminum company, the Wisconsin Manufacturers Association, the paper industry, as well as Kellett and the business leaders that formed the commission (*Green Bay Press Gazette* 1967a; *Wausau Daily Herald* 1967a). The governor in the middle of this debate went public with a strong stance in favor of the complete merger. However, while Republicans supported the merger, many of them, especially those from districts with significant levels of support for conservationists, were pressured to support conservationists. Indeed, many of these Republicans were sportsmen themselves. Conservationists united firmly against the bill. This coalition included numerous politically active red shirts, members of the Conservation Commission, the Wisconsin Wildlife Federation, the Wisconsin Conservation Congress, members of the state press, Democrats and, over time, an increasing number of Republicans.

Arguments presented in favor of the merger repeatedly included language that reflected goals of the business community. The argument that appeared most often was in favor of adding “modern efficiency” to the state government (*Green Bay Press Gazette* 1967a; *Wausau Daily Herald* 1967a; *Oshkosh Northwestern* 1967). Indeed, that was the stated purpose of the Kellett task force in the first place. Although efficiency was touted as a key goal of the legislation by its proponents, legislators and Governor Knowles especially highlighted cost-saving measures that would result from the bill. For example, Knowles said to the *Janesville Daily Gazette* (1967) at his keynote speech in support of reorganization, “This bill will revitalize the government structure of Wisconsin, it will increase efficiency and government responsiveness of that government, and over the years it will save many millions of taxpayer dollars.” However, Kellett acknowledged that this argument alone was weak in the face of angry conservation voters. Soon

before the bill was introduced, he told the *Sheboygan Press* (1967a), “We are not trying to sell our plan on the basis that it will save a certain sum of money. It will fall flat on its face if we try to justify it on this basis at this time.” Additionally, the language of expertise was used in the state press to describe the Kellett Commission and their recommendations. The logic of those who supported the conclusions of the commission noted that these were the experts in business, thus those who opposed, specifically the red shirts, missed the point. An article in the *Green Bay Press Gazette* (1967b) presented the red shirts as “noisy” and asserted that they had adopted a, “cultist belief that the existing commission is the best of all possible schemes, that to suggest its modification is akin to treason...”

While the entire reorganization bill could have potentially saved money and made the government more efficient, those were not the core concerns of the conservation establishment who were focused specifically on the merger between the Departments of Conservation and Resource Development. They viewed the experts of the business community in matters of conservation as inherently biased towards the interests of business over conservation. In legislative hearings and the state media, red shirts, “...averred that the Conservation Department stood for the public interest, in juxtaposition to other state agencies, like the Public Service Commission and the Department of Resource Development, that were ‘agents of industry’ and environmental exploitation,” (Huffman 2000: 154).

Additionally, advocates of the conservation establishment questioned why this merger was happening in the first place. Opponents of the merger noted that not only did the existing agency operate efficiently (Pearson 1967: Hemp 1967), but also the proposed plans would have made the agency more inefficient through agency changes (Wausau Daily Herald 1967b;

Stevens Point Journal 1967). This debate occurred after complex changes were made to Wisconsin's water pollution legislation. However, these changes were still being implemented. Dick Hemp, president of the Wisconsin Wildlife Federation, told the *Wausau Daily Herald* (1967):

As for the Resource Development Department, which has been given the responsibility of administering the water resource, it is just getting organized under the legislative guidelines laid down in the new Water Pollution Control Act enacted less than a year ago. Its policy board members contend that to impose a merger at this time would merely compound confusion in the many new procedures required under the act, which, incidentally is also described as one of the best in the nation.

With water pollution issues in the spotlight, it was difficult for bureaucrats not only in the Department of Conservation, but also the Department of Resource Development to justify the merger.

Sportsmen, conservation groups, and politicians, both Democrat and Republican also exhibited concern regarding the political legitimacy of the merger requested by the Kellett Commission. In one letter to the editor in the *Wausau Daily Herald*, Bertha Pearson (1967) asked:

I would like to quote from a letter just received from the Wisconsin Manufacturers Association: 'The measure proposes the consolidation of over 90 separate units into 14 operating departments plus a number of independent agencies, all functioning with direct administrative responsibility to the Governor.' I thought we were living in a democracy. Why change to a one-man rule of all our agencies?

The suggestion that the merger would be overseen by a salaried three-member board of political appointees while the Conservation Commission would be reduced to an advisory role was a key point of contention in the debate and articles from the state media indicate that Kellett was aware of how contentious this move was. The *Wausau Daily Herald* (1967b) noted:

The Kellett committee has already admitted one ‘mistake.’ Originally it asked for a three member paid commission to set the policy for the program. Under pressure, the committee revised that proposal to establish a nine member unpaid board of control. Commissioner Smith points to the danger of having a board of unpaid volunteers setting policies for such diverse activities...If the job proved too big the next likely step would be to ask for a paid commission to run the show full time. Yet this idea has already been discarded, even by the Kellett group.

Conservation Commissioner Charles Smith claimed that it was a “trend toward dictatorship,” (*Wausau Daily Herald* 1967a). They believed that the changes would result in conservation interests becoming toothless. This idea was not exclusive to the red shirts. As noted in the *Green Bay Press Gazette* (1967d), “‘Control of conservation,’ said [Senator] LaFave, should not be surrendered to people ‘who believe that industry should dominate the use of water and make a profit.’” Without a committee with independence and force behind it, conservationists were concerned that business interests would overshadow their input.

#### *The Compromise: Usurping the Kellett Bulldozer*

Initially, Republicans were committed to the passage of the Kellett reorganization plan in its entirety. The 1966 election season had been favorable to Republicans, which controlled the Senate, Assembly, and the position of governor. However, by March of 1967, their vision was cast into doubt in the face of an organized and politically active conservation movement. In addition to the red shirt rally, the conservation establishment wrote aggressively to their representatives and inundated town halls. As a result of this pressure, the legislature over the next few weeks could not pass the reorganization bill. During the March 8 session, a bitter debate ensued which resulted in five Republicans defecting from the majority in their objection to the natural resources merger. The debate in the legislature reportedly became so contentious that it tabled debates on the merger for another month (*Green Bay Press Gazette* 1967c). According to



the *Sheboygan Press* (1967b), “Furor over a conservation merger still stalks the fate of the Kellett bill on government reorganization, now set for a senate vote March 8. ‘Without some kind of compromise on conservation, I do not see how we can get the votes to pass the bill,’ Senate Majority Leader Jerris Leonard said Tuesday.”

The April session did not prove to be much easier. After two weeks of debates, it became increasingly clear to the legislature and the governor that without compromise, the fate of the bill seemed bleak (*Waukesha Daily Freeman* 1967). At this point, several Republicans, feeling the pressure from their constituents, became more amenable to the idea of compromise. For example, Senator Reuben LaFave (R-Oconto) “vowed to battle all the way to leave conservation alone. He said he was armed with petitions signed by 4,000 persons at Conservation congress meetings opposing the merger,” (*Waukesha Daily Freeman* 1967). Three days later, the *Sheboygan Press* published an article that claimed some Republicans were willing to take into account the concerns given by conservationists. According to the *Sheboygan Press* (1967c):

[Senator] Keppler and a group of his Republican colleagues met in conference in his capitol office Friday with key spokesmen of the Conservation Department. Although lawmakers were reluctant to discuss the meeting, the *Sheboygan Press* learned of the latest ‘compromise’ effort to ‘save’ the Kellett bill would keep the Conservation Department intact as an independent agency but place in under supervision of a natural resources board.

By the end of April, a final compromise had been produced. The compromise deferred the decision for the merger until 1969 but added an amendment that shifted the role of the Conservation Commission to a Natural Resources Board with a majority on that board in favor of conservation interests. Although this was not ideal for Kellett or Governor Knowles, Kellett indicated that the passage of a bill with compromise was better than no bill at all (*Wausau Daily*

*Herald* 1967c). However, Kellett recognized that this compromise would not have occurred without an organized conservation movement. As reported by Dean Jensen of the *Sheboygan Press* (1967b),

...Kellett said the ‘pressures of various conservation groups’ was a major factor for the senators’ decision to turn over the controversial merger to the 1969 legislature. ‘The trouble is,’ Kellett explained, ‘there wasn’t enough support by taxpayers and business groups to offset the effects of the conservationists.’”

The Governor, who was also aware of this stalemate, agreed to sign the compromise.

While the merger between the Department of Resource Development and the Department of Conservation would eventually occur by 1969, within the compromise amendment was a mandate for the creation of a public intervenor. In the reorganization bill, the powers of the Attorney General underwent “considerable enhancement” (Wyngaard 1967). This included the new role of appointing a public intervenor who, as a judicial overseer, “...was empowered to ‘formally intervene’ where needed ‘for the protection of ‘public rights’ in water and other natural resources.” (Huffman 2000: 164). Indeed, the legal mandate for the public intervenor was influenced deeply by the demands of the conservation establishment.

*The 1984 Debate: A Populist Defense of the Public Intervenor*

After the Supreme Court ruling, it appeared that not only legal experts took issue with the ruling, but so did local populations, particularly rural residents. On February 2, 1984, in response to this growing opposition, the Environmental Resources Committee of the State Assembly proposed a bill at a public hearing which sought to “...restore and further define the powers of the intervener,” (*The Sheboygan Press* 1984a). In this hearing, the groups that provided support for empowering the public intervenor included citizens groups (such as the Brown County

Conservation Alliance and the Appleton “Save Downtown Committee), Democratic legislators, the Wisconsin Environmental Decade, the League of Women Voters of Wisconsin, local chapters of national environmentalist groups (like the Sierra Club), legal experts from the University of Wisconsin and the Center for Public Representation, and local small farmers (*Fond Du Lac Commonwealth Reporter* 1984; *The Sheboygan Press* 1984a). During this period, Democrats controlled the Senate, Assembly, and the governorship. Although the effort to restore the intervenor had bipartisan political support, Democrats had such a large majority that Republican support on this issue was not essential. Throughout public hearings and press accounts, the most active groups against empowering the intervenor were dominated, almost exclusively, by well-organized corporate interests with agribusinesses as the most vocal opponents (*Green Bay Press-Gazette* 1984). In the February hearing, all of the people that voiced opposition were from industry groups. This observation was echoed by Democratic State Representative Jeffrey Neubauer at a public hearing. He told the *Sheboygan Press* (1984a):

...[Neubauer] found it significant that, “It was rural people coming into town to tell us how much they want it (the public intervenor) while those against it were from large, well-organized, well funded Madison based agri-business lobbies. I’d like to have the support of everybody on this, but if I have to take my choice, I’ll choose the rural people every time; they write more letters.”

Some opponents of the public intervenor included Wisconsin Food Processors Association, Farm Bureau Federation, Wisconsin Potato and Vegetable Growers association, Wisconsin Agri-Business Council and pork producers of Wisconsin (*Green Bay Press-Gazette* 1984; *The Sheboygan Press* 1984b). At a public hearing in Madison early February, all of the individuals that testified against the intervenor were from farm lobby groups.

Amongst the arguments given against the public intervenor was the claim that the intervenor needed to stay within its legal limits. However, at this point, it was still under dispute as to what those limits were. The head of the DNR at the time, Carroll Besadny, despite claiming that the agency would not take an official position in the debate, still claimed that the public intervenor was established as a mere “means of expression” for the conservation minority and was not intended to be an adversarial force (*Green Bay Press-Gazette* 1984). This was the preferred interpretation by agribusinesses who believed the intervenor was becoming too powerful and had serious potential to impede their business activities. Indeed, for Russell Weisensel, a representative of both the Wisconsin Agri-Business Council and Wisconsin Pork Producers, the notion that the public intervenor had the legal authority to take cases to court “scares me to death,” (*The Sheboygan Press* 1984b). Specifically, agri-businesses were concerned that, if expanded, the public intervenor would be able to initiate lawsuits against businesses and individuals rather than the DNR alone. This was especially the case for the Wisconsin Potato and Vegetable Growers Association, an organization that was still reeling from a controversy in which, “...aldicarb- a potato bug killer- showed up in wells several years ago near the Central Sands farm fields of Central Wisconsin where the pesticide had been heavily used, having percolated down through the sandy soils into underground water tables,” (*Post Crescent* 1984). Indeed, the public intervenor had taken actions against pesticide use before and the Wisconsin Potato and Vegetable Growers Association was concerned that if expanded, they would find themselves up against the intervenor again (*The Sheboygan Press* 1984b).

Other business interests, which included representatives from the Farm Bureau Federation and the Wisconsin Food Processors Association, said that they did not see a reason

why the public intervenor was legally necessary in the first place- which is similar to the perspective of the head of the DNR. As noted by William Kasakaitis, a lobbyist for the Wisconsin Food Processors Association, “The legislature created the DNR to conserve our... natural resources. I don’t think we need these extracurricular activities on the part of the public intervenor,” (*Fond Du Lac Commonwealth Reporter* 1984). These “extracurricular activities” did not, according to Roger Cliff of the Farm Bureau Federation, protect the people that needed it. He claimed in a public hearing that, “‘I don’t see why we have a public intervenor,’ Cliff said. ‘Our view of the public intervenor’s office is that basically it fronts for environmental groups which are already provided with extensive resources they can call upon. We in the Farm Bureau don’t have those resources and are at a great disadvantage,’ (*The Sheboygan Press* 1984a). However, this perspective was immediately disputed by Olav Van Look, a local farmer who ran a dairy farm with his wife, Diane. Van Look and other small farmers took issue with the Farm Bureau Federation who claimed to represent the interests of all members of the Farm Bureau. “Van Look whose testimony followed Cliff’s, disputed that Cliff spoke for a constituency of farmers. ‘I’m a member of the Farm Bureau too and I don’t agree with what the fellow said. Don’t let him tell you he speaks for all of us. He doesn’t,’” (*The Sheboygan Press* 1984a).

Indeed, the arguments for the elimination of the public intervenor stood in stark contrast with the narratives put forth in favor of keeping it. According to the *Sheboygan Press* (1984a):

For a handful of local farmers who were among many private citizens and representatives of citizens groups who took the day off to travel to the capitol building in Madison, Friday, it was a way of paying a debt. Farmers who had contended with industrial pollution in rural areas and members of citizen groups formed locally to protect the environment were there to testify before the environmental resources committee on behalf of the public intervenor’s office.

While the arguments from industry groups claimed the DNR was capable of protecting water resources without the aid of the public intervenor, the narratives given by farmers, citizen groups, and conservation groups reflected the opposite. Unlike the industry representatives, advocates of the intervenor recounted their experiences with the intervenor's office versus the DNR. The

*Sheboygan Press* (1984a) reported:

“After years of banging our heads against a brick wall to try to prevent the Golden Guernsey Osman Co-op from polluting out woods with dairy waste, we got somebody on our side. We got somebody to advise us on how to play the game,” Diane Van Look, Manitowoc County dairy farmer told the committee... Olav Van Look testified in addition to his wife on the role the intervenor had played in the couple's fight to get the DNR to force Golden Guernsey Osman plat to abandon its failed ridge and furrow waste system located above the Van Look woods. He said the family would have been unable to pay the kind of money necessary “just to fight an issue the Department of Natural Resources should have taken care of in the first place. Finally the DNR admitted, yes, there is pollution there. Finally with a push from the public intervenor, they decided to do something about it.”

For the Van Looks, getting the DNR alone to take their claims of pollution seriously was almost impossible and without the public intervenor's help, the alternative would have been to hire a lawyer which they could not afford. This claim was echoed by Caryl Terrell, the legislative coordinator for the Wisconsin chapter of the Sierra Club. Amongst Terrell and other members of the Sierra Club, the DNR repeatedly failed to, “... enact rules to protect resources because of political considerations or because an unclear legal mandate inhibits the DNR,” (*The Sheboygan Press* 1984b). If the public intervenor did not exist to pressure the DNR, according to Terrell, there would be a gap in the legislative process. Concern about this gap was also brought up by Norman Hicks, a representative from the Brown County Conservation Alliance, whose experiences working with the DNR led him to think that the agency was either “blind or

deaf” (*The Sheboygan Press* 1984b). Rebecca Layton, also a member of Brown County Conservation Alliance, stated that (*The Sheboygan Press* 1984b):

“People tend to feel helpless,” she told the Environmental Resources Committee at the public hearing on the intervenor bill. “They tend to believe that you can’t fight city hall. There’s nothing more intimidating than going to a hearing and facing row after row of three-piece suits. It gives you confidence to have a person (the intervenor) who says yes, you do have a point, and we will help you make that point.”

The claim was made repeatedly that the public intervenor was necessary not only for large groups that had an interest in protecting the environment such as the Sierra Club, but for regional interests like the Brown County Conservation Alliance and particularly rural residents who often, “...may be unfamiliar with ways of making their feelings known where and when it counts,” (*The Sheboygan Press* 1984b).

Along with rural residents and environmental groups, legal experts, including Ed Garvey, the Deputy Attorney General, opposed the elimination of the public intervenor on the grounds that the Supreme Court did not properly interpret the legislative intent of the public intervenor when it was established and, for this reason, voiced his support for the bill to restore it (*The Sheboygan Press* 1984b). An op-ed by the *Sheboygan Press* echoed this logic when they wrote, “‘The dissenting opinion in the case said the majority opinion ‘ignores the clear and unequivocal language and intent’ of the statute which created it, ‘ignores the legislative history behind the creation... and leads to a result the legislature could have never intended.’ We agree,” (1984c). This interpretation was endorsed by Arien Christensen, a professor of law at the University of Wisconsin and Louise Trubek of the Center for Public Representation.

### *Restoration and Expansion of the Public Intervenor*

After the state became aware of a growing public health concern involving pesticides and private wells, their response was to construct new regulations for protecting groundwater resources. This multi-year effort culminated in the creation of the 1984 Groundwater Bill- officially named AB 595- and was signed into law on May 4, 1984. The bill, which was originally designed to protect drinking water sources from industrial chemicals, pesticides, and garbage dumps, included an amendment which not only restored the office of the public intervenor, but gave them more legal authority despite strong opposition from organized and well-funded agribusiness organizations. The amendment overturned the decision made by the Wisconsin Supreme court. It gave, “Greater authority for the public intervenors of the state Justice Department to initiate court action to protect water and other natural resources,” (*The Post Crescent* 1984). After the public hearing in February, the amendment moved through the legislature with little debate. It was approved and adopted onto the Groundwater Bill less than two months after the initial public hearing, which indicates that the bill had political support in addition to strong public support.

### *The 1995 Debate: Shifting from Populism to Profit*

Support and opposition to the elimination of the public intervenor was, essentially, divided between local peoples and politicians that supported economic growth. Groups that strongly supported the elimination of the public intervenor either aimed to politically benefit from large corporate entities (i.e. the Republicans that supported this bill) or directly represented the interests of those corporations. For example, an article in the *Post Crescent* (1995c) noted:

Wisconsin’s Environmental Decade, citing reports filed with the state ethics board, reports that pro-intervenor lobbyists were outgunned 11-1 in the spending war. The top



eight groups that took positions against the intervenor- Wisconsin Manufacturers and Commerce, Wisconsin Realtors Association, Wisconsin Builders Association, Crandon Mining Co., Wisconsin Paper Council, Wisconsin Farm Bureau, Fair Liquidation of Waste, and Wisconsin Road Builders Association- spent \$741,500.

However, the large amount of public response in favor of the public intervenor could be seen throughout the data. Most of the calls for elimination did not come from the public, but from the state or business interests. The *Post Crescent* (1995c) and the *Madison Capital Times* (1995) strengthened this observation when they reported, “The governor’s mail, examined by the *Madison Capital Times* under an Open Records Law request, showed only two people wrote in support of cutting the intervenor’s office. One was a government affairs officer of a chemical company. The other lived in a suburb of Washington, D.C.”

Indeed, the vast majority of references to the public intervenor throughout the data were in reference to keeping the agency alive. The proposal to eliminate the public intervenor, “reportedly has attracted more mail and phone calls to the governor and legislators than any other in the huge budget, with public sentiment almost entirely in favor of keeping the intervenor office in tact,” (*The Post Crescent* 1995c). Groups against eliminating the public intervenor included most Democratic politicians (and some Republicans initially), local chapters of national environmental organizations, local citizen groups, the League of Women Voters, hunters and fishermen, and “average folks” (Erickson 1995; the *Post Crescent* 1995b). These average folks were people that were not necessarily members of or claim to represent specific interest or citizen groups. They included high school teachers, bookkeepers, and other environmentally concerned residents of Wisconsin who wrote letters to the state press and described their experiences with the intervenor. The desire to protect the public intervenor was so strong

amongst citizens that groups who did not always work together, or even agree ideologically, created a bipartisan coalition in support of the intervenor called “Friends of the Public

Intervenor” (*The Post Crescent* 1995a; Erickson 1995). According to the *Post Crescent* (1995b):

Friends of the Public Intervenor is an unusual alliance of conservation groups, generally composed of somewhat conservative sportsmen, and activist environmental organizations such as the Sierra Club and Wisconsin’s Environmental Decade. ‘We don’t usually swim in the same circles,’ Ogletree said, ‘but this is an issue that is so sensitive, everyone found themselves in the same boat saying, ‘I don’t like this.’

Thompson’s proposed budget became a catalyst to unite and mobilize any local group that prioritized conservation interests. After the debate was over, the *Green Bay Press Gazette* (Durkin 1995) noted, “If the infamous fight over Gov. Thompson’s budget did nothing else, it served as a matchmaker for the state’s varied hoards of conservation and environmental groups.”

The groups and politicians that aimed to eliminate the intervenor formulated their two key arguments using neoliberal logic. Specifically, arguments against the public intervenor focused on cost saving and economic growth. The narrative of wasteful government spending was the most prevalent among politicians and their staff. According to Thompson, the public intervenor created “unnecessary costs for taxpayers” (*The Post Crescent* 1995c). If the public intervenor was eliminated, Thompson claimed, it would save taxpayers over \$300,000 in two years (Mangan 1995). Politicians also claimed that the intervenor was a burden for business development. In an interview with the *Green Bay Press Gazette* (Hildebrand 1995), “Thompson has said the public intervenor should be eliminated because the office has used legal maneuvers to slow economic development...” Indeed, as economic development grew in Wisconsin, the relationship between the public intervenors, politicians, and businesses became more contentious. In 1995, there were a number of controversial development projects in Wisconsin

including the development of a mine for Exxon and a port expansion project (McClain 1995; Hildebrand 1995b). One Republican State Representative noted, “The public intervenor would have us shut down the harbor...I would say that might have a slight effect on the economy of Brown County and the entire state of Wisconsin,” (Hildebrand 1995b). For many Republicans, the public intervenor was not only an adversary of the DNR, but for business development in general.

Another rationale used by politicians was the idea that the public intervenor no longer served a purpose for Wisconsin’s environment. In other words, this form of argumentation implicitly accepted the necessity of the public intervenor when it was first established but then claimed that it had outlived its purpose and was legally unnecessary. According to an op-ed written by Kevin Keane (1995), Thompson’s press secretary, “...today, we have dozens of very strict and effective laws that protect our natural environment. We also have a very strong DNR, whose charge is to protect our environment and ensure that is not being abused.” If the public intervenor did serve a purpose, claimed Keane, it was to sue the state “at the request of the well-financed environmental movement” (Keane 1995). According to many Republicans, especially Governor Thompson, the actions of the public intervenor are not only redundant compared to the work of the “very strong” DNR, but did not reflect the will of Wisconsinites.

The narratives from citizens, politicians, and local organizations contrasted starkly with the rhetoric used to encourage the elimination of the public intervenor. Throughout this debate, citizens provided detailed stories in which they recollected their experiences with both the public intervenor and the DNR. While Thompson and others argued that the public intervenor was obsolete, a consistent theme within narratives that supported the intervenor was the idea that

citizens believed that they would have had to navigate through Wisconsin's complex environmental regulatory system on their own without the intervenor's assistance. For instance, in their report on a town hall meeting, the *Post Crescent* described the story of a 70-year-old rural resident and her experience with the public intervenor. According to the Culhane of the *Post Crescent* (1995b):

Dorothy Spilde talked about well water so bad it turned her potatoes black when she boiled them. She had to use bleach to clean her false teeth. The local sanitary district put the well in for her when new sewer lines passed too close to her old well. Only the well was bad. She tried calling the sanitary district. It did her no good. She called the state Department of Natural Resources. No help. In fact, *no one would help her until she finally called the office of the public intervenor*. An intern in that office waded into the bureaucratic mess and eventually extracted a promise from the district to replace the well. "No one gives a damn," Spilde said. "Only the intervenor cared." (Emphasis added)

Similar narratives were found in the *Madison Capital Times* (Krome 1995):

The painting of towering rocks along a rural Wisconsin road caught my eye as I stood in the waiting room. Its windy, wild landscape cheek-by-jowl beside a farmer's pastures gave me a perfect image of Wisconsin's natural beauty coexisting with the real world of farms and businesses.... It turns out, the landscape I admired was painted by Halsey Rinehart, a shopkeeper from Richland Center, who asked the intervenors to help protect a scenic rock formation from being destroyed by a road-widening project. After considerable negotiations, other ways were found to widen the road while sparing this major geological treasure. Rinehart painted the rock-bridge landscape as thanks and a tribute to the intervenor's problem solving.

The public intervenor was also described as one of the few protections against powerful corporate interests. As reported in the *Madison Capital Times* (Krome 1995):

And Tom LaBudde, a small businessman who cleans up soil contaminated by leaking underground storage tanks, tells what happened when the DNR reviewed its rules on this problem a couple of years ago. 'Some of the nation's biggest landfill companies got in the face of the DNR board and staff, pushing lenient rules that favored landfill soils rather than cleaning them up,' he told me. LaBudde described a protracted fight in which the intervenor often was the lone voice fighting for tough rules. In the end, the DNR was forced to write rules that maintained tough environmental protections. 'The environment

was well served, taxpayers were, small businesses like mine were, and had the public intervenor not been there, the wrong decision would have been made,' LaBudde said.

The narratives that discussed the DNR did not reflect the “very strong” agency that Keane described. Rather, the narratives portrayed the DNR as beholden to business interests and highly inefficient. The agency did not communicate properly with the population and, as a result, received more complaints than any other state agency in Wisconsin (Jenswold 1995).

Indeed, so many bureaucrats, small business owners, politicians and citizens spoke positively about the public intervenor, there was speculation throughout the state media that the elimination of the public intervenor did not serve the public at all. Right away, the narrative that the state would save money was challenged because Thompson’s budget shifted over half of the proposed amount saved by eliminating the intervenor directly to the Department of Development (Schmitz 1995). In fact, when the budget was initially announced, the proposal to eliminate the public intervenor even drew criticism from Republicans. For example, the Speaker of the State Assembly David Prosser (R-Appleton) noted, “It seems to me that a rather small amount of money would be saved by eliminating the office, but a large amount of havoc might be created if they didn’t exist,” (Miller 1995). The issue, then, was not fiscal responsibility, but political priorities which seemed to promote business development over environmental protection. Karen Harvey in the Post Crescent (Erickson 1995) contended that:

...Thompson’s budget as a power-grabbing scheme masked in voter-friendly terms such as ‘privatization’ and ‘deregulation.’ ‘We feel this budget, if passed, would create a totalitarian form of government, basically a dictatorship,’ she said. ‘It’s a blueprint for the centralization of power into the hands of a few, and we believe those few are the governor and corporate interests.’”

The concern that the elimination of the public intervenor was a foot in the door for corporate interests at the expense of the public was a consistent theme throughout the data (Culhane 1995a; Tylka 1995; Gedicks 1995). An op-ed in the *Fond du Lac Commonwealth Reporter* (Seefelt and Seefelt 1995) noted:

The chemical and agricultural interests have their representatives and lobbyists in the legislative halls at Madison, but who is looking out for the interests of the rest of us? We view the public intervenor office as the public's lobbyist. Without the public intervenor, we the citizens would be at the mercy of large corporate interests whose concerns are primarily economic.

The public intervenor was repeatedly described as a lobbyist for the public, despite claims from Republicans that the agency was the advocate for a well-funded environmental movement.

Towards the beginning of this debate, not all Republicans were willing to stand behind the narrative that the public intervenor was backed exclusively by environmentalists. Even going back to the 1980s, Senator Robert Cowles acted as one of the key Republicans in favor of keeping the public intervenor. As a representative from a northern, lakeside district, Cowles was aware of strong opposition to the budget by sportsmen and hunting groups. He noted that (*The Post Crescent* 1995a):

Resolutions supporting the intervenor and opposing Thompson's plan were passed at a number of the county-level Wisconsin Conservation Congress' annual spring meetings recently. "That's important for us to remember because it's not just extreme environmental types supporting the agency," Cowles said.... "There's lots of folks out there- average folks- who have been assisted one way or another by the public intervenor."

However, as time went on and the debate divided along political party lines, even Republicans who were once supportive of keeping the public intervenor faced intense political pressure from their own party and Governor Thompson to back away from that position. Indeed the bulk of

political pressure to eliminate the public intervenor came from the Governor himself and Republicans in the legislature rather than the public. Thompson's staff made it clear since the end of April that, despite the influx of pleas to keep the intervenor, there would not be a compromise under any circumstances. According to Keane, "Some things we will compromise on, but we're not about to compromise on the public intervenor," (Hildebrand 1995). Thompson threatened to veto any bill that would create a compromise for the public intervenor. By the end of June, even Republicans such as Cowles called the effort to save the public intervenor "politically impossible," (Miller 1995b). By the time the votes were cast, not a single Republican voted to preserve the office. As noted by *The Post Crescent* (Culhane 1995a), "Knowing that they had the votes, the majority didn't even debate the proposals." In a final debate on the budget, "State Sen. Joseph Leean, R-Waupaca, moved to table the Democratic amendment that would have left the office unchanged. The motion rule is not debatable. After Democratic protests against being silenced, the Senate voted 17-16 on party lines to table the motion, with Cowles joining the Republican majority," (Miller 1995b). The budget was approved and signed into law by Thompson in July, eliminating the public intervenor despite widespread public support.

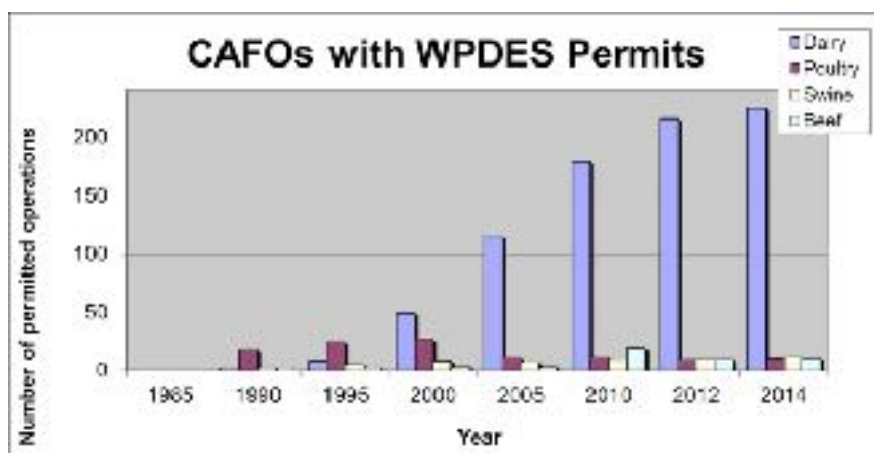
#### *1995 as a Critical Juncture for Neoliberalization*

The elimination of the public intervenor was a critical juncture for the development of dairy CAFOs despite the fact that, at the time, the number of large dairy CAFOs in the state was quite small compared to the scale today. The duties of the public intervenor and their interactions with large scale farms and similar large industries before it was eliminated indicate that if the public intervenor existed prior to 1995, it would have at least slowed down the rate of CAFO

development. The process of initial elimination and subsequent legal changes followed what Falleti and Mahoney (2015: 221) call a “self amplifying process.” Within this process:

...the initial events move the sequence in a particular direction, such that it becomes more and more likely that the process will be expanded, increased, strengthened, or otherwise enhanced. Over time, the process (or its outcome) does not remain stable but increases, grows, or becomes more prominent as a result of self amplifying mechanisms.

The loss of the public intervenor put Wisconsin on a self amplifying path in which neoliberal logic was made increasingly more attractive since there was no longer an adversarial force to resist it. When the public intervenor was eliminated, the public lost an essential advocate in the courts, the legislature, and against the DNR which tended to favor the interests of large corporations. The public intervenor was not only established to create new environmental regulations, but to ensure that existing ones were being enforced by the DNR. After the elimination of the intervenor, farms, perhaps farms that existed on a smaller scale before, expanded and did so rapidly over the span of 20 years (see figure 3).



**Figure 3: CAFOs with WPDES Permits (WDNR 2015)**



Wisconsin's pollution discharge elimination system (WPDES) permits correspond to the size of a farm. Particularly, in the state of Wisconsin, a dairy farm is a CAFO if there are a thousand "animal units" or about 800 dairy cows or more on one farm. The facility is also capable of being designated a CAFO if they are found to have discharged waste into neighboring wells or navigable waters (WDNR 2017). Despite the fact that this system was created in 1985, at this point, dairy farmers in Wisconsin still, for the most part, operated on many small scale farms rather than a few large scale farms. According to Gilbert and Akor (1988), the average herd number for dairy farms in Wisconsin was 44 while in California during the same period, the average was 343. As indicated in Table 3, the number of large dairy CAFOs which were permitted for waste management when the intervenor was active was small and even smaller than the number of poultry CAFOs operational at the time. However, before CAFO development rapidly increased, articles from the press indicate that large scale farms were already creating pollution problems in the early 1980s and even then, the DNR failed to provide meaningful solutions to the problem until the public intervenor stepped in. Indeed, the presence of the public intervenor was critical for WPDES permits to be applied to large scale agricultural operations in the first place.

Up until 1985, the only facilities that were required to have a WPDES permit were industrial and not agricultural operations. However, in the early 1980s, the political spotlight was on groundwater pollution across the state. Several key cases involving manure pollution from large scale farms, all of which involved the participation of the public intervenor, highlighted that existing waste management regulations did not take into account the scale of the new CAFO model. Existing regulations were not only weak, but they were not being enforced by the DNR

even in the early 1980s. While small farmers did not want to be crushed by regulation, they understood as rural residents themselves that they were necessary to protect water sources. The failure of the DNR to stand up against business interests was a theme throughout the periods. As previously noted, when the Van Look case against the went public, the focus was on the failure of the DNR in addition to the lack efficient regulations. When the case was reviewed by the natural resources board, they expressed “amazement” at the lack of DNR response (*The Sheboygan Press* 1983). The case finally was heard by the board after the Van Looks tried to work with the DNR for over 5 years. Despite being told by the DNR that they were sympathetic, the agency in Madison did not have contact with their enforcement staff in Green Bay until after the public intervenor testified on behalf of the Van Look couple in a public hearing.

After the elimination of the public intervenor, a number of laws were passed which incrementally increased the ability of large farms to expand and pollute with little accountability, therefore putting Wisconsin on a path towards neoliberalization. The Wisconsin legislature has been solidly Republican since 1993. With the Republican focus on business development and economic growth, the legislature has had little political will to strengthen and enforce environmental regulations. As a result, aggrieved rural residents have turned to the courts and zoning regulations as an attempt to protect the water resources in their communities. However, since the elimination of the public intervenor, laws have been passed which attack any possible legal maneuver available to the public that could potentially curb the development of large farms. The loss of the intervenor was hard enough, but now the state was actively advocating economic growth at the expense of the political agency of their own constituents. Two laws that serve this purpose are the amended Right to Farm law and the Livestock Facility Siting Law. These

subsequent laws reflected the neoliberal logic which encouraged the elimination of the intervenor.

Right to Farm (RTF) laws are found in some form across every state in the U.S., but Wisconsin's RTF law is particularly restrictive. This law, originally passed in 1982 and amended several times since, noted the extent to which rural populations were capable of engaging in nuisance lawsuits. A nuisance occurs when activities of a neighbor cause significant inconvenience or damage to either private or public property. The RTF law specifically addresses nuisances that come from farms which includes smells, pollution, and noises associated with agriculture. According to the Wisconsin Farm Bureau Federation (2011), "Wisconsin's Right to Farm law provides farmers with protections from frivolous nuisance lawsuits, allowing them to practice agriculture without fear of legal action as long as they follow good production practices." Advocates of RTF law contend that the bulk of nuisance lawsuits against farms are "frivolous," many using cases of urban residents moving to the countryside, unaware of the scents, sounds, and other problems that come with rural life. They posited that nuisance suits were another obstacle for struggling farmers. However, not only was the original law passed to overturn a lawsuit directed at a large CAFO, but there was little data to indicate frivolous lawsuits were as severe of a problem as proponents claimed. For example, Rep. Judy Klusman, R-Oshkosh who voted for an expansion of the law in 1996 told the *Stevens Point Journal* (1996), "Farmers have unfortunately been hauled into court and literally driven out of business from expensive lawsuits. It hasn't really happened in Wisconsin yet. I wanted to make sure some protections were there," Klusman said." In 1981, the Wisconsin Supreme Court ruled that a 16,000 chicken egg farm was found to be nuisance not only for neighbors, but for the entire

community whose school was adjacent to a manure storage facility (Hansen 2002). The community was not a recent development, but a rural community where many were small farmers and others had lived for generations. The legislature responded by passing the RTF law less than four months later. The original RTF law in Wisconsin limited the remedies available for the plaintiff if the nuisance occurred on an area of land zoned for agriculture. If an agricultural operation was found to be a nuisance yet it happened on land zoned for agriculture, the relief given to the plaintiff “shall not substantially restrict or regulate such uses or practices, unless such relief is necessary to protect public health or safety” (Hansen 2002). The state emphasized the importance of local zoning in cases where agricultural nuisances could or have endangered public health and safety. If the court rules that a nuisance was taking place on an area not zoned for agricultural use, the court could order further regulation of the farm until the nuisance was resolved. However, damages would be limited in cases in which the plaintiff moved onto their property after the farm was operational.

A number of changes were made to the original law in 1995 which drastically strengthened protections for farms, making Wisconsin’s RTF law one of the most broad RTF laws in the country. This is of concern to legal scholars who note that, “While most state laws involve a lawful exercise of the state's police powers, a right-to-farm law may set forth protection against nuisances that is so great that it operates to effect a regulatory taking,” (Centner 2006). First, the law stated that, rather than limited damages, if 1) the plaintiff moved onto their property after a farm was operational, and 2) the nuisance is not a threat to public safety, a court cannot rule that a farm is a nuisance (Hanson 2002). The statute severely limited the possibility of private nuisance lawsuits by altering the language to say that no agricultural operation can be

a nuisance unless they “present a substantial threat to public health or safety,” (Wisconsin State Legislature 1996). Amendments added between 1997 and 1999 limit the lengths the state was willing to go to curb agricultural development by restricting the remedies available to plaintiffs even if the farm was found to be a public nuisance. According to Hanson (2002), the amended RTF law limits the remedies available in 4 ways:

- 1) The relief awarded by the court may not substantially restrict the agricultural use or practice.
- 2) If the court orders an agricultural operation to mitigate the nuisance, it must consult the Department of Natural Resources (DNR) or the Department of Agriculture, Trade, and Consumer Protection (DATCP) for suggested mitigation measures.
- 3) The court must provide the agricultural defendant with at least one year to install the measures.
- 4) Most significantly, any action that the court orders cannot substantially or adversely affect the economic viability of the agricultural use.

While the 1982 laws were also created to encourage economic growth, they differed drastically from the 1995 laws because they acknowledged that in some cases, economic activity had to be curbed in order to protect the environment used by rural populations. By 1995, the law made clear that the natural resources of rural communities were less of a concern than economic development. It is additionally important to note that the nature of rural life is antithetical to contexts where farms could pose a “threat to the public” as rural residents can live in areas that are sparsely populated, limiting the number of people capable of being impacted by a single agricultural operation.

Lastly, the 1995 RTF amendments added what amounts to a deterrent against lodging nuisance lawsuits against agricultural operations to begin with. If the farm is accused and found not guilty of committing a nuisance, the burden of paying for legal costs is placed on the plaintiff. This places severe restrictions on the ability rural residents without economic means to

use the courts to resolve land use conflicts between rural communities and agricultural operations. For example, without the public intervenor, aggrieved citizens must use their own resources to hire environmental lawyers. This is especially problematic if rural residents are up against a large CAFO that is corporately owned and has a team of lawyers. In addition to the cost of paying for lawyers, the state has made proving a nuisance incredibly difficult and even if proved, the state will offer limited meaningful solutions. This not only impacts the utility of using the courts for solutions to agricultural pollution, but it also deters people from suing at all if they know that they could potentially end up owing substantial additional costs.

Since the public intervenor was no longer there to assist citizens navigate the courts, many of them turned to using local zoning ordinances to control pollution problems within their communities. However, in 2004 another law was passed which interfered with the abilities of local townships to pass ordinances that curbed pollution to protect their water sources. The Livestock Facility Siting Law has garnered significant controversy since it was first implemented. According to the Dairy Business Association (2004):

The goal of this legislation is to build a partnership among agriculture, local government, rural residents and environmental protection. This bill will establish scientific standards for local governments to use and follow when making local decisions that balance the needs of livestock producers who desire to expand with the interests of citizens and communities.

Indeed, they encouraged the use of state policy and not “emotional sentiment,” a possible dig at the very recent and highly publicized case of the Treml family in which a baby almost died due to nitrate exposure from a family well polluted by Stahl Farms. Despite the Dairy Business Association’s insistence that their position on the matter was objective and science based, they failed to address their own conflicts of interest. The law firm that represented Stahl Farms in

court also had a place on the Dairy Business Association's board of directors (Midwest Environmental Advocates 2005).

The Livestock Facility Siting Law, enacted in its current form in 2006, was written by and for the dairy industry. This fact is in no way a secret. The DBA has repeatedly mentioned to the media that since they wrote the law, they are the most qualified to respond to inquiries (Seely 2010a). According to Midwest Environmental Advocates (2016), "Though the law was intended to provide consistency in livestock siting rules, local communities essentially have to rubber-stamp applications and approve plans that may not be protective enough of local needs." While the law explicitly states that local governments have zoning authority, it biased the permit approval process in favor of CAFOs. This law took power away from locally elected officials because it created an incredibly complex regulatory system and expected local governments which often do not have the expertise or resources to enact it on their own (Saul n.d.). The law made it incredibly difficult for even well organized communities to engage in any meaningful action that limited the polluting capabilities of CAFOs since those polluting actors were now backed by the state. Indeed, when the town of Little Black rejected a proposal in 2009 for a 4,000 cow dairy CAFO due to water pollution concerns, they were met with a letter from the Wisconsin Department of Agriculture, Trade, and Consumer Protection which stated, "If you choose to pursue local requirements beyond the scope of the state siting law, the town will expose itself to unnecessary legal challenges from applicants and other interested parties that the town might not be able to defend," (Seely 2010b). Little Black is not alone. Midwest Environmental Advocates are still being sent letters from concerned localities about corporate threats of legal action for attempting to protect their water resources.

## Chapter 7: Concluding Remarks

### *Summary of Findings*

The purpose of this thesis was twofold: first, to understand through public debates why the intervenor was eliminated and second, to understand how subsequent legal developments after the elimination of the public intervenor put the dairy industry in Wisconsin on a self-amplifying path towards neoliberalization. Through the process of “tracing” the path of neoliberalism through neoliberal discourse in the context of specific policy outcomes, I found several key differences and similarities across each of the periods which not only highlight the political conditions that enabled neoliberal development through the state in Wisconsin, but changes in political power dynamics in the state over time. Particularly, the influence of a powerful conservation movement rather than organized business interests was critical to specific legal outcomes.

The narratives in this thesis follow claims made in the literature that the state government of Wisconsin fully embraced neoliberalism later than other places in the United States (Gilbert and Amor 1988). While neoliberal logic was present in statements from some public officials and corporate executives in 1984, those arguments were not broadly accepted by the public or the state. Both politicians and citizens at that time accepted an understanding of government regulation as necessary in order to protect natural resources and more broadly conserve environments that are fundamental to the livelihood and outdoor lifestyles of rural residents. Strikingly, the state took an aggressive stance advocating neoliberal logic and establishing neoliberal policy in the 1990s even when it was against the expressed desires of the vast majority of the public. The fact that the public response against the elimination of the intervenor was so



strong yet it was still eliminated demonstrates how key the role of the state is in processes of neoliberalization. This point is further strengthened by the subsequent adoption of a harsh RTF law and siting law which required that even in cases where farms could harm the health of the public, solutions to the problem could not negatively impact economic activities. In sum, corporate interests behind the expansion of CAFOs relied on the state to lay the legal path for them.

Indeed, throughout the entire existence of the intervenor, their mission and accomplishments were disputed by business interests. Political rhetoric was employed by business-friendly politicians and interest groups to portray the public intervenor as corrupt, useless, wasteful, and even a political ploy used by radical environmentalists over all three periods analyzed. Across all of the debates, business interests in Wisconsin, especially interests such as the Dairy Business Association, the Wisconsin Cheesemakers Association, and the Farm Federation Bureau, which prioritized the needs of large farms over small farms, were vocal in expressing the viewpoint that the form of environmental regulation practiced by the public intervenor was not conducive to business development. Indeed, the small farmers and rural residents which consistently supported the public intervenor eventually became one of the groups most negatively impacted by CAFO development. After its elimination, a gaping hole was left in Wisconsin's regulatory framework. After this critical juncture, there was no watchdog to keep the DNR in check, no legal advocate to take the DNR to court (except for hired legal representation), and less access to educational resources. Subsequent laws, including the amended Right to Farm law and the Livestock Facility Siting law, were directly advocated by business groups and served to limit any meaningful remedy offered by the state to curb CAFO development. Since the

elimination of the public intervenor and other legal developments, the “regulatory burden” of environmental regulation was lifted as limits on expansion of dairy CAFOs were effectively been rendered non-existent

*Raising a Stink: Wisconsinites and Recent Responses to CAFO Pollution*

Despite the fact that it was eliminated over 20 years ago, Wisconsinites have not forgotten the public intervenor. A fall 2016 newsletter from the Clean Water Action Council of Wisconsin directly called for a return of the public intervenor in the face of growing concerns of groundwater pollution caused by large CAFOs. According to Andy Wallander of the Clean Water Action Council (2016):

Since 1995, the citizens of this state have had to undergo major environmental impacts without the advice and assistance of a Public Intervenor’s Office. Corporations and special interests have the lawyers, experts, support staff, public relations staff, and budgets to launch promotional campaigns for their projects. Meanwhile, Average citizens have had few resources to protect themselves. For example, the rapid spread of concentrated animal feeding operations, or CAFOs, is clearly an issue which would have involved the Public Intervenor’s Office as large numbers of Wisconsin citizens are suddenly facing the imposition of huge industrial “farm” operations.

The Clean Water Action Council is keenly aware of the impact of the loss of the intervenor because they and other non-profit groups like Midwest Environmental Advocates have had to step in to fill the void left after its elimination. The newsletter additionally announced an anti-CAFO demonstration in Madison, aptly named “Raise a Stink,” against the state for permitting and encouraging what many citizens see as irresponsible farming practices (Clean Water Action Council 2016). A press release for the demonstration stated (Dougherty 2016):

We The People have the power to change what no longer serves us but we must stand together; unified in our message that we will exercise our collective power to protect our rights to clean water, clean air and a good quality of life. It's time our elected officials in

Madison decide to stand with us, the citizens of Wisconsin, and help us push back against a greedy and immoral industry that is poisoning our rural communities. We are not 'radicals', 'tree-huggers' or 'environmental activists'. We are people who are protecting our homes, our water, and quality of life from an industry with a horrid track record of polluting rural communities.

The Raise a Stink demonstrations have occurred for 2 years and, due to the lack of response from the state, are likely to continue for a third. The protests were attended by small farmers, rural residents, environmentally concerned citizens, as well as representatives environmental non-profits.

The elimination of the public intervenor put rural populations in a position where it was nearly impossible to protect the environment of the communities they live in while, simultaneously, it was easier for businesses to engage in environmentally harmful behaviors. While there are laws addressing water pollution on the books, the DNR has been rendered toothless by the state. Efforts to force the DNR, an already politicized and underfunded agency, to do their jobs has proven to be frustrating and time consuming for aggrieved citizens. However, this is a self fulfilling prophecy told by residents of Wisconsin since 1967. Over and over again, throughout all of the periods, residents claimed that if there was no adversarial force to reign in business interests, the state runs the risk of putting business interests before the health and well-being of their own population. This is exactly what occurred and continues to occur especially in Northern Wisconsin. Narratives from small farmers and other small business owners claimed that the DNR, in practice, did not stand up to business practices that violated the law even in 1984. The addition of the RTF amendments and the Livestock Facility Siting Law compounded the issues they were already facing and took away the few remaining legal mechanisms rural populations had to protect themselves. As a result, rural communities all over Wisconsin are

struggling to protect their water sources while neighboring CAFOs continuously expand with the permission of the state.

In conclusion, the actions of the state of Wisconsin enhanced the likelihood of CAFO expansion. In 1995, the Wisconsin reversed its history of populist support in favor of prioritizing business development and this approach has not changed today. This thesis adds to the literature that claims the state has a key role in processes of neoliberalization. Despite the fact that this research is limited because of a specific focus on Wisconsin, it contributes to a growing sociolegal scholarship concerned with the role of specific laws in processes of neoliberalization.

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### **Vita**

Sarah D'Onofrio graduated with a bachelor's degree in sociology with a concentration in law and society from the University of Delaware in 2015. Before graduation, Sarah was admitted with a graduate teaching assistantship to the University of Tennessee's graduate program for environmental sociology. After the completion of this thesis in August of 2017, Sarah will continue her education in the doctoral program within the department of sociology at the University of Tennessee as well as acting as a graduate teaching associate.