

BACKGROUND

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Rights Fight: Local Democracy vs. Factory Farms in Pennsylvania

By Adam D. Sacks†

Factory hog facilities—and their waste lagoons—in Illinois. Some Pennsylvania townships want to keep these giant polluters out.

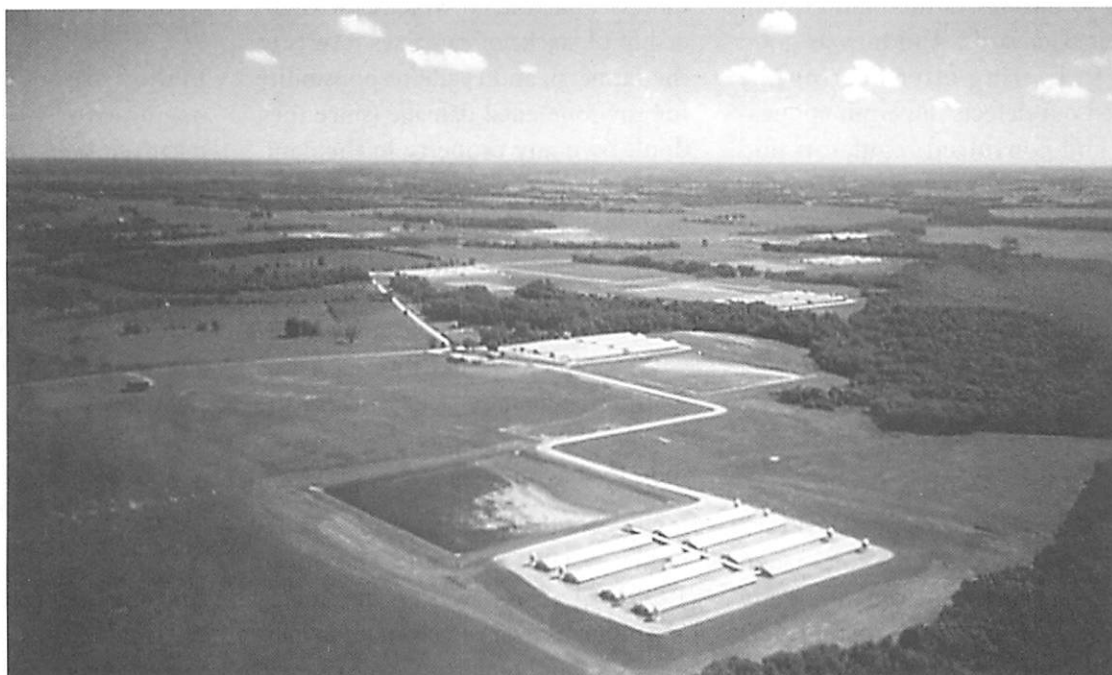


Photo by K. Hudson

Around 1998 life was getting tough for agribusiness in North Carolina. In thirteen years the state had risen from fifteenth to the number two hog producer in the country, with more hogs than people,¹ and its largely African-American Duplin and Sampson Counties were the nation's two largest pork-growing counties.² Pollution, public health, and environmental justice problems were causing widespread outcry; beginning in 1997 the state imposed a moratorium on all new pig farms for almost six years.³ So factory farm corporations were on the prowl for greener pastures (in a manner of speaking).

*They hang the man and flog the woman,
Who steals the goose from off the common,
Yet let the greater villain loose,
That steals the common from the goose.*

—Seventeenth-century English protest rhyme

Central Pennsylvania looked like an attractive target. It has an excellent system of roadways and accessible distribution centers. Land is relatively cheap. Many small farmers, as usual, were struggling. The Pennsylvania Farm Bureau,⁴ nominally a farmer advocacy organization, is firmly in the pocket of big agribusiness and highly influential in the legislature. The central part of the state is rural, with township populations ranging from several hundred to a few thousand. This means there were no zoning regulations (the townships didn't need them) to get in the way of large-scale hog farming—in fact, the primary purpose of rural township governments is to maintain the roads, and they would have no

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idea how to deal with powerful businesses. In short, the townships between Philadelphia in the east and Pittsburgh in the west were sitting ducks. Or so the ag boys thought.

The phone was ringing off the hook in the office of Thomas Linzey, a young attorney at the nonprofit organization he founded, the Community Environmental Legal Defense Fund (CELDF).⁵ Three years out of law school, Linzey was one of a rare breed of lawyer dedicated full time to public interest law. Idealistic and determined, he had set up a regulatory practice to help communities appeal permits issued to businesses they didn't want in their backyards. And he was good at it. In hearing after hearing, he pointed out defects in permit applications and convinced regulators and judges that these irresponsible corporate entities shouldn't be allowed to ply their noxious trades. Permits were rescinded, communities celebrated victories, Linzey and CELDF won prizes and kudos and were invited to "Environment Day" at the White House as guests of Vice President Al Gore. But there was a problem.

A few months after a community victory, the heretofore unpermitted corporation would return, permit in hand, ready to do business. What had happened? The only relevant issue in the regulatory appeal—whether all the bureaucratic dotted i's and crossed t's were in place—was resolved: the community had unearthed the problems with the permit, and the corporation proceeded to fix them. By challenging the permit and exposing the defects, the community had unwittingly done the corporation's work—for free. Since townships of a few thousand people generally don't stand much of a chance against corporate legal budgets, practically speaking there was no further recourse.

Linzey had been puzzling over the won battles and lost wars of his first three years when the factory farm

onslaught began. Townships were desperate, calling him and saying, "They're telling us that all we can do is regulate manure odor, but we don't want these toxic and destructive factory farms in our community at all! Please help us figure this out."

Not only do such operations seriously damage the environment, they also wreak havoc on the local economy and put independent family farmers out of business. The corporations enter into one-sided "output" contracts with farmers, hook them into expensive capital improvements and often issue the actual loans, own all the animals (unless some die, in which case ownership of stacks of carcasses reverts to the farmers), and evade responsibility for environmental damage (since they don't own any property in the community). The corporate party can unilaterally terminate the contract at any time, leaving the farmers to bail themselves out if they can (mostly they lose everything). Linzey didn't quite know what to do either, but figured it was worth looking around to see what the possibilities were. Some answers were soon forthcoming.

It turns out that nine states, from Oklahoma in 1907 to South Dakota in 1998, had passed laws or constitutional amendments against corporate ownership or control of farms.⁶ Some of these laws contained exceptions for incorporated farms that were family owned and were operated on a daily basis by one or more family members—real farmers, that is, not corporate executives. Linzey took text from these existing laws and turned it into a township law, the forerunner to several that followed, called the "Southampton Township Farm Ownership Ordinance."⁷

Although the people of Southampton Township and elsewhere in rural Pennsylvania would be the last to call themselves activists or revolutionaries, their battles for the health and integrity of their lives and homes against

corporate assault have the makings of a sociopolitical earthquake. These mostly conservative Republican communities found themselves asking what had happened to their democracy. How did it come to pass that a small handful of corporate directors a thousand miles away got to decide what takes place in their backyards? Why does the democratic decision of hundreds or thousands of citizens to keep out dangerous and destructive activity get trumped by distant interests whose only concern is how much of the community's wealth they can run away with, regardless of the "collateral" damage to the environmental, economic, and social fabric of the community?

In short, friends and neighbors began having conversations about what it means to be a sovereign people, with inalienable rights, whose government operates only with their consent—conversations that hadn't been heard in the town commons and around kitchen tables for a long, long time. They asked and tried to answer basic questions, such as, What is a democracy? What are the people's rights, responsibilities, and privileges? What is the law? Who makes it and who enforces it? What are the courts? Whose side are they on?

And they realized that the issue was not really the factory farm or the sludged field. The issue was who has the right to decide what happens in our communities: we the people, or the corporations that have taken over our economy and our government for the benefit of the very few to the detriment of the rest of us. Farms are just one of a thousand different fronts to fight harms from pollution to corruption to war. But there's only one fundamental issue: the right to decide.

Many townships began having these conversations. They shunned the regulatory system and passed ordinances to control both factory farms and another threat that appeared at around the same time—land-applied sewage

sludge (which had caused the tragic deaths of two teenagers in 1995). All of this local control began to cause some serious discomfort among agribusiness interests.

Of course, corporations could go ahead and sue the townships, which they did, claiming that their rights as legal “persons” in the eyes of the Constitution had been abrogated.⁸ Such outrageous but judicially and legislatively supported claims rightly infuriated the people in targeted communities: citizen response to corporate assertions that they were “people” became a crucial component in the subsequent organizing. In fact, two townships, Licking and Porter, even had the nerve to pass ordinances stripping corporations of their constitutional rights. But a more effective and efficient tactic than lawsuits was to have the friends of agribusiness in the legislature—our elected officials—do the corporate heavy lifting.

On May 2, 2001, Pennsylvania Senate Bill 826 was filed with the Agriculture and Rural Affairs Committee. It was an amendment, “further providing for limitation on local ordinances,” to a 1982 act “protecting agricultural operations from nuisance suits and ordinances under certain circumstances.” It wasn’t the least bit subtle: “No municipality shall adopt or enact a frivolous ordinance that would prohibit, restrict, or regulate an agricultural operation.” Included among the categories of the frivolous is an “attempt to regulate...the type of business that may own or conduct an agricultural operation.” Just to drive home the point and to punish any township that tries to protect itself, the bill entitles the “aggrieved party” to recover costs and attorney fees.

When Linzey heard about 826, he set out to rally the people. An unprecedented coalition formed to oppose this assault on local democracy. The Sierra Club, the United Mine Workers of America, Common Cause, the

Pennsylvania Farmers Union, the Pennsylvania Association for Sustainable Agriculture, and four hundred rural township governments all joined to defeat 826. Groups that ordinarily wouldn’t be talking to each other found common ground not because they were fighting sewage sludge or factory farms or some other single issue, but because they could all agree that the state was out of bounds usurping basic democratic rights. Senate Bill 826 never made it out of committee.

But it wasn’t over yet.

In one of those dark, dingy, well-manured backrooms where corporate politics thrive, the bill was renumbered to 1413, and on May 2, 2002 it was slipped into the Senate, where it passed 48 to 2. A leaked Pennsylvania Farm Bureau memorandum said that “the transformation was necessary to ‘avoid any bad publicity.’”⁹ People told Linzey it was a nice try, but you’ll never win against a vote like that. Undaunted, the coalition stormed into action, and threatened enough legislators with loss of a job that the bill never even came to a vote in the House.

And it still wasn’t over—illustrating once again the Jeffersonian wisdom that the price of liberty is constant vigilance.

This time, in 2003, the agribusiness forces attached the substance of the bill to an anti-sexual predator law on the last day of the legislative session. They figured that in an election year no legislator would want to be vulnerable to charges of favoring molest-

ing children (although the freshman sponsor of that bill withdrew her sponsorship, saying that the bill was intended to protect children, not corporations). The bill landed on the desk of Governor Ed Rendell, whereupon he was barraged by the local-democracy forces. He backed down and didn’t sign the bill, but stated that it was only because better regulatory protection was in order (and then it would be okay to strip municipalities of their rights).

Next, in 2004, Rendell unveiled his “ACRE” initiative (Agriculture, Communities, and Rural Environment), under which an appointed political board would have the authority to overturn local laws. In other words, laws passed democratically by a majority of citizens in the community could be struck down by an unelected collection of corporate appointees (for that’s who they would be). The coalition has beat that one back too—for now: it will likely come up again in the next legislative session.

So the vigilance continues. Each time the state government attempts such pro-business shenanigans, it increasingly reveals on whose behalf it is working. And each time, more people see with growing clarity how relentlessly our lives and rights are sold and legislated away, and we begin to understand how the failure of democracy leads to very real harms in our communities.

Thus, saving the sustainable family farm isn’t just about the sustainable family farm. It’s about the underlying

You can learn more about rights-based organizing by attending Democracy School, developed by Thomas Linzey and Richard Grossman of the Program on Corporations, Law and Democracy. Information at:
http://www.constitution411.org/natl_dem_schl/main/natl_ds.html

political power structure. It's about who decides the fate of communities, and in whose interest those decisions are made. Just as past empires established colonies (including those that rebelled to form our nation) for the purposes of expropriating resources to feed and entertain the nobility and the rising merchant class, so today do corporate-driven governments sustain a culture of expropriation of the commons, with a blindness and ferocity that threatens to render the earth unlivable.

Saving the sustainable family farm is also about uniting all of us who are fighting important single-issue battles. As long as we are divided and scattering our energies in a thousand different directions, we will continue to lose. When we finally unite on the common terra firma of local control—control over sustainability, health, well-being, and democracy—we will be in a position to create an irresistible force for the just, bountiful, and peaceful world we have been dreaming of for millennia.

Notes

- 1 Steve Wing, Dana Cole, and Gary Grant, "Environmental Injustice in North Carolina's Hog Industry," *Environmental Health Perspectives*, Volume 108, Number 3, March 2000, p. 225; <http://ehp.niehs.nih.gov/docs/2000/108p225-231wing/abstract.html>
- 2 Ibid, p. 227
- 3 Lauren Ornelas and Juliet Gellatley, "When Pigs Cry: A Report on the USA Pig Industry," *Viva! USA* (n.d.), p. 27. Available at www.vivausa.org/pdf/When%20Pigs%20Cry%20Report.pdf
- 4 www.pfb.com/index.htm. The Pennsylvania Farm Bureau can claim its large farmer "membership" because it sells insurance, and "joining" is part of buying the insurance.
- 5 www.celdf.org
- 6 A summary of anti-corporate farm law is available on the CELDF website at www.celdf.org/cdp/cdp13.asp
- 7 Available on CELDF website at www.celdf.org/scm/ord/ord7.asp
- 8 For a much more detailed discussion of corporate constitutional rights, see Richard Grossman, Thomas Linzey, and Daniel Brannen, "Model Legal Brief to Eliminate Corporate Rights," www.poclad.org/ModelLegalBrief.cfm. For a historical overview, see Thom Hartmann, *Unequal Protection*, Emmaus, PA: Rodale Press, 2002. Also, Ted Nace, *Gangs of America*, San Francisco: Berrett-Koehler, 2003; available online at no charge at www.gangsofamerica.com/read.html
- 9 www.boostdam.net/sludge/PASenateSludge-20020502.html

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