Section C:
Communities Using Laws to Challenge CAFOs

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Clean Air Act (CAA) and Superfund Law (CERCLA)

- Previously, the Environmental Protection Agency (EPA) had the authority to restrict and monitor CAFO air emissions.
- October 10, 2003: The Bush Administration EPA issued a consent decree that took place behind closed doors giving CAFOs complete immunity from these laws.
- Allows CAFOs to pay a $500 fine and buy permanent immunity from lawsuits, versus the previous fine of $27,000/day for CAA violations.
CAFO Regulations

- Clean Water Act (CWA)
  - CAFOs regulated under the National Pollution Discharge Elimination System (NPDES) permit program
  - Permit requires a nutrient management plan
    - Plan for handling manure wastes
    - Assures appropriate use of nutrients when spreading
  - Permits are issued by the States
    - Some states incorporate *air quality and public health concerns* into the NPDES permitting process (MD)
CAFO Regulations

- Local ordinances
  - Building permits and siting clauses
- Right-to-farm laws
  - Can **protect** CAFOs from all regulations
  - Right-to-farm laws in 50% of the states prohibit local ordinances from imposing restrictions on any kind of agricultural facility
Case Study

- Western Maryland community challenges a swine CAFO

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Background

- Approximately 25 homes within a quarter mile of the swine CAFO
- Neighbors (especially elderly and asthmatics) began to experience severe respiratory and gastrointestinal problems
- Community sought legal advice
- Challenged the swine CAFO owner in 4 ways
Challenging the Swine CAFO

1. Nuisance lawsuit against the CAFO owner
   - Attempted to shut down facility, claiming that hog odors were a nuisance

2. County department of zoning
   - Appealed decision that allowed barns to be built

3. Maryland Department of the Environment (MDE)
   - NPDES permit inquiry

4. Maryland Department of Health and Mental Hygiene (DHMH)
   - Health Investigation
Community’s attorney sites Maryland Code Ann., Health-General §20-307, requesting a health investigation

- Public health nuisance code
- Requires the written complaint of 2 physicians
- If the condition of the place investigated may injure the health of any individual or has the potential to do so, the place is in “a state of nuisance,” and the Secretary shall order the nuisance abated

Maryland Department of Health investigates
Aspects of Health Investigation

- Full-scale epidemiologic study not permitted due to lack of money
- Reviewed literature regarding health effects associated with swine CAFOs
- Reviewed medical reports
- Interviewed neighbors using health and quality of life survey validated by Penn State
- Reviewed air quality monitoring data
- *Maryland Department of the Environment conducted separate NPDES permit inquiry during this time*
Health Department Findings

- **Two** different reports
  - First *approved* report
    - “…there is a potential for health injury in this community as a result of the swine CAFO...a "state of nuisance" exists according to Health-General §20-307.”
  - Second *approved* report
    - “…it is our conclusion that there is insufficient basis for an adverse finding [by the Health Department] concerning the impact of the subject CAFO facility on human health.”
What Happened to the Community?

1. Nuisance lawsuit
   - Settles and one adjacent neighbor sells out to CAFO owner
   - CAFO not required to do anything

2. Maryland Department of Health
   - Fails to find a nuisance
   - Does not issue an order of abatement

Homeowner’s note—
You destroyed my health,
You destroyed my life,
Now you have my house too,
Hope you’re happy…
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2. Maryland Department of Health
   - Fails to find a nuisance
   - Does not issue an order of abatement
3. MDE
   - Denies NPDES permit and keeps CAFO at half capacity (<2,500 hogs)
4. County department of zoning
   - Adopts Maryland’s first zoning ordinance aimed at controlling the development of swine CAFOs
**Take Home Messages**

- Thousands of real communities are battling swine CAFOs across the country
- Communities that have prevented the construction of the CAFOs in the first place are the most successful
- Federal regulations concerning the siting and practices of these facilities is needed to protect rural health
What Happened to the Community?

- To date, the swine CAFO discussed in the example is still restricted by MDE to less than 2,500 hogs.
- MDE is revising the NPDES* permitting process to require all CAFOs in Maryland, regardless of size, to have a NPDES permit.
- Additional public hearings regarding the draft NPDES document will take place in November 2008, with final approval expected in early 2009.

  - [http://www.mde.state.md.us/assets/document/CAFO_revised_draft_5.23.08.pdf](http://www.mde.state.md.us/assets/document/CAFO_revised_draft_5.23.08.pdf)

*National Pollution Discharge Elimination System