



JOHNS HOPKINS
BLOOMBERG
SCHOOL *of* PUBLIC HEALTH

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

- 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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Public Domain

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

Health Dept. Role in Health/Nuisance Investigation

- Community's attorney cites 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."

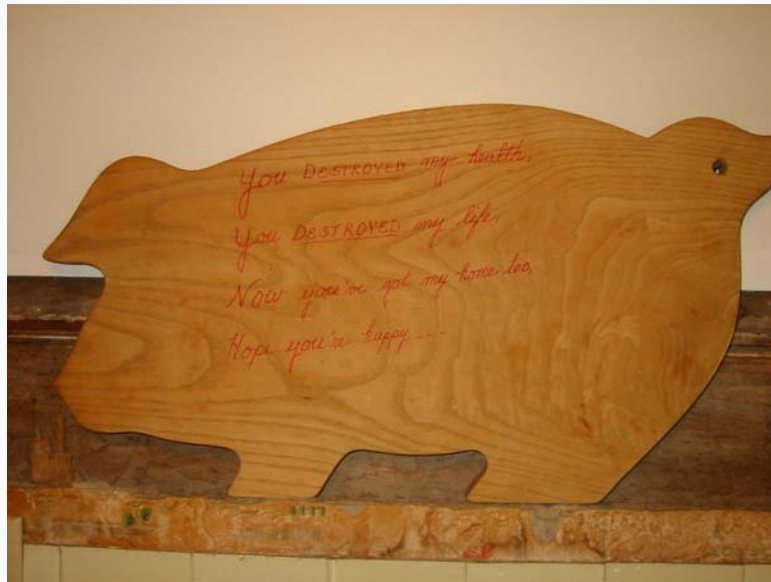
What Happened to the Community?

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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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