



O.U.E.

A Publication of Organizations United for the Environment

Update

Circle the Wagons: a CAFO Might Be on the Way

The wait is over. A local resident, Doug Beachel, recently submitted a “second-level” application to the PA Department of Environmental Protection (DEP) in Williamsport to raise 4,200 hogs in two barns in Montour County. He will raise these hogs for Country View Family Farms – a subsidiary of Hatfield Meats – that is located in Mt. Joy. Our summer issue described how the DEP rejected Beachel’s first application on the basis of evidence presented to it by Montour Citizens for a Clean Environment (MCCE) at a public hearing last January. This second level review is a technical one, and we expect a chance to respond to it when it is finished.

MCCE and its allies in the Task Force on Hog Factories (see the box below) have established a sub-committee to take action opposing this and other factory farm proposals. We have arranged to meet an attorney who will assess the Beachel application, and we have requested a meeting with DEP officials in order to express our abiding resistance to this hog factory. We will also seek from them a specific outline of the review process and the public’s legal role to participate in it. We plan to intensify our public education effort to remind area citizens of the hazards posed by these hog factories, and we will ask for your help in the battle.

How can you help? You can send money to OUE and earmark it for this fight. The Task Force will need funds, especially for legal counsel in preparing its response to the DEP’s review. Or, you can donate your time by coming to Task Force meetings and sharing your ideas and your labor. We need *your* help *now!* ♦

The Task Force on Hog Factories is comprised of the OUE Board, four groups currently opposing hog factory applications — MCCE, Concerned Citizens of Nippenose Valley, Concerned Citizens of Snyder County, and Concerned Citizens of Cleveland Township – and GreenWatch, an environmental consultant to grassroots organizations. The activities of these groups are described in recent issues, all posted on OUE’s web site: www.ouenews.org. The public is invited to attend our meetings. The Task Force meets the first Monday of each month at the United Methodist Church in Watsontown, at 7:00 p.m., and the OUE Board holds its regular monthly meeting immediately after.

How Can Citizens Shape Township Zoning Ordinances?

A Primer Based on the Work of John and Sandie Walker

I. Introduction

There is growing evidence that Big Meat (Hatfield and Smithfield) hopes to locate as many as *forty* new hog factories in central Pennsylvania. Given this possibility — a reasonable one if you’ve followed the march of hog factories across Pennsylvania — we will use most of this issue to describe steps citizens might consider taking, either to keep the companies from looking their way or to fight existing proposals for hog factories in their own back yards. We also decided that a good way to describe these crucial steps would be to report on a campaign currently being waged by an Orange Township couple, John and Sandie Walker. Following their steps actually makes for a fine primer about actions all citizens can take *now* and *whatever their situation* to stem this tide of hog factories, and of the millions of gallons of sewage they generate.

John and Sandie Walker, both retired college administrators, have appeared in our pages before when we covered the battle waged by CLEAN (Columbia/Lycoming Environmental Action Network) against the proposed expansion of a landfill in Millville. The Walkers and a determined band of citizens started CLEAN, held public meetings, put out a newsletter and lots of signs, lobbied public officials, and all the rest. A key to material CLEAN distributed and presented to the DEP was the particularly excellent way it was researched and

written. These well-written documents, along with all the other CLEAN activities, persuaded the DEP in October 2002 to spare the area the damnation of a huge landfill expansion that would pose health and safety hazards to its neighbors.

CLEAN’S efforts provide an essential first lesson in any grassroots battle with potential polluters: **You can’t wage these fights effectively unless you tell both fellow citizens and public officials in clear and persuasive detail why you have your fist in the air.**

In June, 2003 the Walkers were jolted into action again when they learned that the supervisors in Orange Township, on the advice of their solicitor, planned to remove language regulating landfills and CAFOs from the township’s zoning ordinance. What to do? Before we describe the actions the Walkers took, many of our readers will need the background information that follows.

II. A Brief Digression on the Law and Hog Factories in Pennsylvania

In our state, there are essentially three separate clearances a farmer must get in order to operate a hog factory. One of these is to acquire a building permit from township supervisors. These permits are typically issued if the supervisors view the applicant’s building plan as

consistent with the township zoning ordinance (and much more about that later). For reasons we will take up below, these permits have been fairly easy to get. However, as a notable exception, members of CCNV (whose “update” is below) were able to use their township ordinance as a key element in their successful resistance to two hog factories.

Second, the farmer would need to submit a “Nutrient Management Plan” (NMP) to the County Soil Conservation Agent, one consistent with the state’s 1993 Nutrient Management Act (NMA). The farmer’s NMP would have to satisfy the Agent that the liquid manure (typically millions of gallons) generated every year by a hog factory would be spread consistent with the law’s intent to avoid harmful concentrations of the manure on the fields.

However, the NMA contains inadequate provisions for monitoring this spreading process, especially its dependence on “self inspection” by the factory owners themselves, and it doesn’t address most of the ways that spread manure can pollute the air and the water. Most problematic, the NMA greatly reduces the power of supervisors to regulate the overall consequences of manure from CAFOs with its provision that no township can write a zoning ordinance more restrictive than the Act itself. Given these legislative stipulations, Soil Conservation Agents just about automatically grant NMP permits, and they will give their reason that the law allows them to do little else, even if some of them wanted to do so.

A factory farmer must also get what is called an NDPEs (National Pollution Discharge Elimination Permit) from the DEP, which will grant it if the agency concludes factory operations will not seriously pollute water sources in the area. For example, we earlier mentioned that the DEP rejected the initial Beachel NDPEs application for a factory farm in Montour County, and he has now submitted it for a second review. Though this particular case demonstrates that these permits are not automatically approved, a DEP official at the January hearing organized by MCCE stated that of the previous thirty applications that had come before hearing officials in our area all but a very few had been approved.

Related to these permitting regulations for hog factories is the “Right to Farm” law (RTF) which is aimed at protecting farmers from “nuisance” claims or complaints by their neighbors. However, the law also allows township supervisors to restrict CAFOs under some circumstances, and we will describe the specifics below. Because of this potential power on the part of the supervisors, last spring agribusiness corporations and the Pennsylvania Farm Bureau pressured the state Senate to pass Senate Bill 1413. This law would effectively have eliminated the power of supervisors to regulate any aspect of CAFOs. It included provisions that would allow Hatfield Meats, for instance, to sue a township *and its supervisors* for passing any legislation “inconsistent” with SB 1413. Last fall, an alliance of workers, farmers, environmentalists, and others kept the bill from being considered in the State House of Representatives.

Speaking of S.B 1413, as went to press we found out that key members in the state Senate and House might try to ram through a similar bill before the year’s end. We urge all our readers to contact their area’s elected state officials, and Governor Rendell, to register strong opposition to this renewed effort to strip from citizens any power to fight hog factories. You can do this easily by going to the following website: www.PennFuture.org.

As one can imagine, this regulatory framework, and the politics swirling about it, has greatly intimidated many local officials into thinking that they have no power over CAFOs and, more serious, if they do anything to regulate them they might be sued personally. Yet these laws are problems primarily because of the way they have

been interpreted, *rather than what they actually say*, as we shall find out below. For now, we will return to our accounting of the Walkers’ efforts to keep the hogs off their horizon.

III: The Walkers Take Necessary Steps One and Two

We should take note here to identify exactly *where* in this process the Walkers found themselves last summer. In their case, unlike that of the members of other Task Force groups fighting applications submitted and/or approved, the Walkers are contending with hog factories that might appear in some unknown future. That is, their campaign is *pre-emptive*, the stage where you have the relative luxury of working on your township supervisors to make sure they don’t panic and try to write an ordinance that sends out a “Bring us the hogs!” invitation to Hatfield.

In any case, what did the Walkers do? As an early step, John attended a meeting of the Task Force to describe his situation and the letters he had already written and to seek advice from others who were veterans of these battles. The Walkers also knew from their earlier work that public education is central to grassroots campaigns, that you must press your position both on local officials and on other citizens you want to join hands with you. The Walkers took this step in an especially thorough way, and here are some details of things that either one, or both of them, did during the ensuing weeks:

- **Wrote a series of letters to the Township Supervisors, to their solicitor, and members of the Township Planning Committee (which includes Sandie Walker), describing for them the environmental and economic consequences of hog factories and urging them to construct an ordinance that would protect their community from these results.****
- **Wrote a similar letter and sent it to *all* Orange Township voters, inviting them to a public meeting in late July.**
- **Wrote similar letters to Columbia County Commissioners and other relevant county officials.**
- **John appeared before the Township Supervisors in two public meetings to voice his concerns about their rewriting of the zoning ordinance.**
- **Wrote letters to the local media describing the problem and soliciting their interest and coverage of the issue.**
- **Wrote a letter to Agricultural Secretary, Dennis Wolff, urging him to restrain from his thoughtless and automatic championing of hog factories. Also sent Wolff a graphic and persuasive video revealing the potential horrors of hog factories.**
- **Sent a copy of the video to local public officials, and to the Township solicitor.**
- **Sent a copy of the video and a letter to recently elected Senator John Gordner.**
- **Sent a copy of the video, with other materials, to Public Television Station, WVIA, asking that it host a program on hog factories, which the station did on October 8th. (This program featured Thomas Linzey (see below) and Larry Breech, president of PA Farmers Union, pitted against Dennis Wolff and Paul Brubaker, the owner of a hog factory near Lewisburg. Both Linzey and Breech excellently got our message to the public.)**

***The Walkers have given us permission to share a sampling of these letters with any readers who would like to use them as mod-*

els for their own letters. If you want such a sample, please send your request with your name and address to OUE's mailing address.

In August, about six weeks after first learning that the Orange Township Supervisors were considering re-writing their zoning ordinance to exclude CAFOs, the Walkers took the next inevitable step in all grassroots environmental battles: **they solicited advice from a good lawyer.**

IV: Tom Linzey Makes the Case

Like so many in the state fighting factory farms, the Walkers sought the advice of Attorney Tom Linzey, director of Community Environmental Legal Defense Fund (CELDF). In our last issue we wrote about Linzey as one of the co-founders of the Daniel Pennock Democracy Schools that several Task Force members have or will attend (more about this below). In previous issues we have described his provision of legal advice to scores of townships throughout Pennsylvania in their battles with factory farms. The Walkers asked for Linzey's response to an assessment by the township supervisor of the supervisors' authority to regulate CAFOs.

Linzey's response to the Walkers contains a wonderfully succinct description of how township supervisors can use zoning ordinances to affect the permitting and operations of landfills and hog factories. The detailed clarity of Linzey's letter led us to get permission to quote from it, and we include the following key points he made regarding the authority of township supervisors in the state to regulate CAFOs.

- **As to CAFO's, the Nutrient Management Act...deals solely with manure disposal and....preempts local attempts to manage the disposal of animal manure from concentrated operations. [It] does not preempt any local Ordinances that deal with issues other than manure disposal. Thus townships can adopt Ordinances that deal with odor, water pollution, corporate compliance and other issues.**
- **The Right to Farm law protects only a "normal agricultural operation" that has either (1) been in operation for over a year, without a complaint, or (2) adopted and is operating in compliance with an approved NMP. The law protects such operations by serving as a defense to either (1) a nuisance suit brought by a neighbor... or (2) an Ordinance adopted by municipality designating the operation as a nuisance. The RTF...prevents a municipality from declaring that a "normal farming operation" is a nuisance, and regulating it as such, under certain, very specific conditions.**
- **The RTF law, however, does not protect any agricultural operation that "has a direct adverse effect on the public health and safety." In addition, at least one State Supreme Court has overturned the RTF law because it creates special property rights over other property rights.**
- **It is doubtful that any challenge to an Ordinance brought under the RTF would withstand constitutional judicial scrutiny, given the review by the State Supreme Courts over the past several years.**
- **Townships cannot exclude CAFOs in a zoning map, but can concentrate them in one area and can subject them to "conditional use" restrictions, dealing with a variety of issues that are not preempted by the NMA or the RTF law.**

And, concerning the authority of Townships to regulate corporations, Linzey concludes as follows:

- **Since 1904, states in the Midwest – that collectively produce 30% of this nation's total agricultural production – have adopted "anti-corporate farming" laws that prohibit non-family owned corporations from owning farms or engaging in farming. The laws have withstood a variety of constitutional challenges from corporate agribusiness, and received a favorable ruling from the U.S. Supreme Court in the Ashbury Hospital case in the 1940's....**
- **Since 1998, Township governments in Pennsylvania have been adopting Ordinances based on that [Midwest] model. Today, ten Townships in five Counties have adopted "anti-corporate farming" laws, and no new corporate farms have sited in those Townships. Agribusiness interests have sued a Fulton County Township over its Ordinance, and we're currently involved with its defense. Due to the history of finding the laws constitutional, the only real challenge to the laws has emerged as to whether Township governments, rather than state government, have the power to pass them.**

V: Back to the Walkers

Despite the Walkers' efforts, at its September meeting the Orange Township Supervisors discussed their plans to draw up a new zoning ordinance that excludes specific language about landfills and CAFOs. The supervisors did this even though the Township Planning Committee – that *they* had appointed – advised against the exclusion. When the supervisors described their plan, John Walker, armed with Linzey's analysis, persuaded them that before they presented their new ordinance for the public's consideration they should re-consider the collective advice of their Planning Commission and their Planning Consultant.

So, now the Walkers wait to see the outcome, though because Sandie is on the Planning Commission they will not be doing so passively. We will certainly update this situation in a later issue. For now, whatever the Township Supervisors do — leave CAFOs out of the ordinance or include them – the Walkers will have taken the absolutely essential first steps in response to the situation. In sum, they have:

1. **Mounted a well-researched and well-written public education campaign.**
2. **Used that campaign to press township supervisors to write ordinances that put citizen rights ahead of corporate rights.**
3. **Sought the advice of an experienced attorney.**

We want to emphasize, too, that the Walkers did virtually all this work alone. About half a dozen people, from the whole township, showed up for the meeting John called for in his letter to all of its citizens. Despite this turnout – the kind that so often destroys the confidence of grassroots workers – and with only marginal help from others, the Walkers pushed on, and on, and they are still pushing. Their example provides an especially good lesson about the power of a very, very few people who are willing to work long and hard and persistently, to affect change at the local level. Yet, despite the Walkers' fine example, to stop the march of hog factories into our lives our chances will be better with more people joining in, and they will be best, for sure, if *everyone* does.

VI. The Larger Picture: Seizing Power Back from the Corporations

The Walkers have shown how crucial it is crucial to press your town supervisors *now* – whether you face an actual hog farm, an actual permit, or don't yet face any of these — because the supervisors

have the power to write ordinances that will best protect you from hog factories, real or imagined. In using Tom Linzey's letter as part of their own educational campaign, the Walkers got to the very heart of these matters. Town supervisors, on the basis of unsound advice from their solicitors, are too often afraid to write ordinances that restrict, or outlaw, corporate hog factories despite the fact that key provisions of the laws give them the authority to do that.

The fear of most supervisors to use the laws to protect us from hog factories is a consequence of a long and hard campaign by corporations and their political servants to rob from citizens the power to protect their own environment. In other words, the corporations are our principal problem and, while we badly need to educate supervisors and urge them to use the powers that laws give them, we need to set aside more and more time to take on the corporations themselves.

We need to face the fact that corporate power in the U.S. is an ever expanding nemesis to those of us who believe in the great advantage of democratic power. As an example, the laws allow Hatfield Meats, hundreds of miles away from the fouled air and water their profit-seeking will generate, to inflict thousands of hogs on *your* community, damaging the health and well-being of many of its citizens. And the company can do that because a *single person*, and perhaps a few relatives, want the hogs there. Is this the kind of freedom we all stand for?

To fight this corporate assault on our liberties, the Walkers, and the rest of us, can do no better than to attend a session of the Thomas Pennock Democracy Schools that Tom Linzey and others are regularly holding described in our last issue and at: www.celdf.org/cdp.asp. These schools focus on the overriding key question that we all face over the long run in contending with hog factories: How can we realign the balance of power so that we have the true authority that is entitled to us as citizens in a democracy? ♦

Update on Concerned Citizens of Nippenose Valley

This update, from CCNV, continues a story we've been covering since the group got organized to fight off two hog factories in the Nippenose Valley. One of these factories was proposed by the Dougherty family, the other by the Lehmans, and in a recent issue we described the group's activities as providing one particularly good model of how to go about fighting hog factories. Other details of the way they have kept these factories at bay, so far, are included on their web site and in our previous issues.

We Have Some Good News to Share!

The Lehman's plan to build a hog factory in our Valley has officially been withdrawn, the second of the two families involved to pull out. Although many people think that our battle has been won, we assure you that is not the case. The Lehmans have stated that they will resubmit plans at a later date. Other good news is that a CCNV Member, Fred Callahan, was recently elected as one of our three Limestone Township Supervisors.

We are so happy to have someone who cares about the environment in that position. We are hopeful that he can keep the hog factories out and correct the troublesome trailer park situation described below.

For yet another reason we need to fight off hog factories in our valley, *The Journal of Cave and Karst Studies* (8-2003) has identified that a previously unreported cave-adapted fish inhabits a single cave in the Nippenose Valley. *The Journal* states that "This population represents the northernmost cave-adapted fish in the world" and recommends "that the U.S. Fish and Wildlife Service consider this troglomorphic sculpin for listing under the U.S. Endangered Species Act." Pollution from factory farms has been identified as a threat to cave fish!

The Mountain View Trailer park has been an environmental problem for years. In the past few years there have been pools of human sewage on its grounds, and trash is constantly blowing into the neighboring fields. Almost two years ago, several concerned people became involved and began to force the issue. CCNV also emerged during this time and has helped move things along. These efforts led to the park being closed in July. However, several trailers remain inhabited, and thus this problem still needs attention. In other words, our fight continues both with this trailer park and with the possibility that the Lehman's will re-apply for a permit.

CCNV is a non-profit corporation and can accept tax-deductible contributions. We would greatly appreciate your support of our efforts. Thanks to OUE for it's continued support. For more information about us, visit our web site @ <http://sites.micro-link.net/limestone>. Our mailing address is PO Box 831, Jersey Shore PA 17740. ♦

Extra! Extra! Read All About It! Bill Smedley of GreenWatch Scoops Time Magazine!

In our Fall/Winter 2001 issue we ran an article by Bill Smedley of GreenWatch about a federal tax credit adopted in the late 1970s, and still on the books, to encourage business to turn domestic coal into a synthetic fuel. Smedley wrote that a kind of synfuel was being produced on the grounds of the Washingtonville PP&L plant and expressed concerns that the process might foul the local air. He also reported that the synfuel these companies produced was no more efficient than coal and the program was simply a tax scam that annually provided businesses hundreds of millions of dollars of tax rebates. Now, at last, *Time Magazine* has caught up with Smedley. Its article "The Great Energy Scam" (10/13/03) updates the story and adds some interesting details, such as these: the two largest recipients of these tax credits are the holding company that owns the local PP&L and the Marriot Corporation (who joined the scam by buying some synfuel companies strictly to use the tax dodge they afforded).

Two things stand out about this story. One of them is its testament to the great value to having Bill Smedley and GreenWatch monitoring local polluters and tax scammers in our area. And, of course, this synfuel program exemplifies in yet another way why we need to "seize power back from the corporations." ♦

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