

Making Farm Policy in Pennsylvania That Supports Family Farms, Not Corporate Farms

Prepared by The Pennsylvania Family Farm Coalition

I. Corporate Farming Drives Independent Family Farmer-Based Agricultural Systems Out of Business.

Currently, six meatpacking corporations control close to 80% of pork production in the United States. See Hendrickson and Heffernen, *Concentration of Agricultural Markets* (February, 2002, Department of Rural Sociology – University of Missouri). While corporate control was once exercised through direct ownership of farms, agribusiness corporations have eliminated land-derived environmental liabilities by exercising control through production contracts with once-independent family hog farmers.

In 1980, 2% of hogs were raised under corporate production contracts. Today, over 60% of hogs in the United States are raised under those contracts. Morris, *Hogging the Market*, Institute for Local Self-Reliance (1999). In Pennsylvania, recently released USDA statistics have revealed that over 70% of hogs in Pennsylvania are now raised under corporate production contracts. See USDA Agricultural Census, *Data on Contract Producers* (Pennsylvania data, 2004) (documenting that over 863,000 hogs are raised under corporate contract at any given time, out of a total of 1.2 million hogs).

Corporate contracts shift environmental and nuisance liability to the once-independent family farmer (designated as a “grower”), reserve corporate ownership over the animals raised at the facility, require the grower to unilaterally make capital and infrastructure improvements, and can generally be terminated at the discretion of the corporation. See, e.g., Premium Standard Farms, Inc. *Market Hog Contract Grower Agreement* (2001), at <http://www.secinfo.com/dsvr4.4Fc66.1a.htm#1stPage>.

Vertically integrating hog production through corporate output contracts linked with meatpacking facilities, while externalizing social and environmental impacts to local communities, enables new corporate farms to economically displace three times the number of independent hog farmers in a given rural community. See Ikerd, *The Economic Impacts of Increased Contract Swine Production in Missouri*, University of Missouri (1997); Weida, *Concentrated Animal Feeding Operations and the Economics of Efficiency*, Colorado College (2000). See also, Weida, *The Regional Economic Implications of Concentrated Hog Feeding Operations in the Mahatongo Valley of Pennsylvania* (May 14, 2000). For a review of literature examining the overall economic implications of corporate farming on independent family farmers and rural communities, see Weida, *CAFO Operations and the Destruction of Agricultural Communities* (April 18, 2000).

National agricultural statistics reveal that over 300,000 family farmers have been driven from the marketplace - and that 65% of this country’s independent hog producers have been forced out of business - as agribusiness corporations have concentrated control over markets. Devore, *Greasing the Way for Factory Bacon: Corporate Hog Operations – and Their Lagoons – Threaten the Financial and Physical Health of Family Farms*, Sustainable Farming Connection (February, 1998). In Pennsylvania alone, 3,500 independent family livestock farmers have been eliminated over the past fifteen years.

Corporate farming systems have also resulted in the closure of open livestock auctions across the country, as corporate contracting has eliminated open and competitive livestock pricing. That lack of access to markets prevents new farmers and existing farmers from independently raising and selling livestock. Adding to the difficulty of moving livestock to markets, many financial institutions now require proof of consummated corporate production contracts prior to making capital loans for new and expanding operations.

II. Corporate Farming Threatens Public and Worker Health, and Creates a System of Production that Continuously Damages the Natural Environment.

Corporate farming systems - with production methods composed primarily of intensive confinement facilities – have been shown to produce manure containing heavy metals, antibiotics, pathogen bacteria, nitrogen, phosphorus, dust, mold, bacterial endotoxins, and volatile gases. American Public Health Association, *Association News*, 2003 Policy Statement 2003-7, *Precautionary Moratorium on New Concentrated Animal Feed Operations*. Epidemiology studies have linked several disease outbreaks involving pathogens to livestock waste. See Gagliardi JV, Karns JS, *Leaching of Escherichia coli O157:H7 in Diverse Soils Under Various Agricultural Management Practices*, *Appl. Environ. Microbiol.* 2000;66(3):877-883. Antibiotic use within intensive containment livestock facilities has been shown to breed multi-drug resistant bacteria. Chapin et al., *Airborne Multi-drug Resistant Bacteria Isolated from a Concentrated Swine Feeding Operation*, *Environmental Health Perspectives* (Nov. 22, 2004); Chee-Sanford JC, *Occurrence and Diversity of Tetracycline Resistance Genes in Lagoons and Groundwater Underlying Two Swine Production Facilities*, *Appl. Environ. Microbiol.* 2001;67(4):1494-1502.

Numerous studies have also documented respiratory problems among workers laboring in intensive livestock confinement facilities, including chronic bronchitis and non-allergic asthma in approximately 25% of workers. Thu KM, et al., *Proceedings: Understanding the Impacts of Large-Scale Swine Production, June 29-30, 1995*, Des Moines, IA: University of Iowa Printing Service; Donham, KJ, *The Concentration of Swine Production: Effects on Swine Health, Productivity, Human Health, and the Environment*, *Veterinary Clin. of North Amer; Food Animal Practice* 2000; 16:559-597. A recently released University of Iowa study revealed that children living on corporate hog farms are twice as likely to contract asthma as children living on other farms. Merchant, et al., *Asthma and Farm Exposures in a Cohort of Rural Iowa Children*, *Environmental Health Perspectives* (a publication of the National Institute of Environmental Health Sciences) (December 9, 2004).

Due to public health and worker concerns, the American Public Health Association, the Canadian Medical Association, the Michigan State Medical Society, and several local Boards of Health have called for a moratoria on all new construction of concentrated animal livestock operations. See Michigan State Medical Society, *Resolution 105-02A*, May, 2002; Canadian Medical Association, August, 2002; American Public Health Association, *2003-7 Resolution* (2003).

Corporate farms, due to absentee control, absentee livestock ownership, and the raw emphasis on production of livestock into the stream of commerce, are more likely to cause environmental damage than family owned and operated farms. Due to the very nature of corporate farming systems, those occurrences are likely to be more severe than violations of environmental regulations that occur on family owned and operated farms. In Pennsylvania and

elsewhere, several spills of liquid manure have occurred on corporate farms. *See, e.g., Rotz, DEP Responds to Hog Farm Manure Overflow*, Fulton County News, April 4, 2002; Mallin, MA, *Impacts of Industrial Animal Production on Rivers and Estuaries*, *Amer. Scientist* 2000:88:26-37. Even without overt spills, seepage from manure lagoons has been shown to cause environmental damage. Huffman RI, Westerman, PW, *Estimated Seepage Losses from Established Swine Waste Lagoons in the Lower Coastal Plain of North Carolina*. *Transactions American Society of Agricultural Engineers*, 1995:38(2):449-453. In rural Franklin County, Pennsylvania, a 1998 study revealed that 82% of all corporate livestock farms were owned or operated by out-of-County corporations, and that 100% of environmental complaints filed with the Franklin County Conservation District were filed against those corporate farms. *See The Franklin County Coalition, Concentrated Animal Operations in Franklin County: A Summary of Corporate Ownership* (1998).

III. An Independent, Family Farm Based Agricultural System Benefits Pennsylvania Rural Communities, Farmland, and the Natural Environment.

It has been found that independent family farm-based agricultural systems generate more permanent jobs, greater local retail spending, and higher per capita income than corporate farming systems. Thornsbury, Kambhampaty and Kenyon, *Economic Impact of a Swine Complex in Southside Virginia*, Virginia Tech University, Department of Agricultural and Applied Economics (1994); Center for Rural Affairs, *Corporate Hog Farming Update: Spotlight on Pork* (Spring, 1994). It has been shown that family livestock farmers support rural economies by making close to 80% of their purchases within twenty miles of the farm, while only close to 50% of purchases are made locally by corporate farms. Chism and Levins, *Farm Spending and Local Selling: How Do They Match Up?*, *Minnesota Agricultural Economist* (Spring, 1994).

Diverse family livestock farms contribute to economic stability within the agricultural system by avoiding the potential for wholesale destruction of livestock monocultures from viral or pathogenic infections that target specific animals. Not only are corporate farm systems more vulnerable to species-specific illness and disease, but close confinement of livestock enables infections to spread almost instantaneously throughout the livestock population.

Corporate farming's focus on industrially concentrating livestock for production - within specially constructed barns - reduces the land used by growers to raise livestock. That reduced use, in turn, leads to the selling of out-parcels by farmers for residential and industrial development, thus contributing to the long-term loss of agricultural land in Pennsylvania. Independent and diverse family farm systems – focused on whole-farm production methods – use a greater amount of farmland to sustain the farm. In addition, family farmers, aware that farms will be passed through generations of families, are more likely to care for the land to steward its productivity and environmental values. Family farms also stabilize families, creating farm cultures that cultivate and support the social fabric of rural communities. *See Goldschmidt, W., Small Business and the Community*, Washington, D.C.: U.S. Government Printing Office (1946).

While corporate farming systems decrease property values and cause regional adverse economic impacts, independent family farming systems stabilize property values and support regional economies. *See Palmquist et. al., The Effects of Environmental Impacts from Swine Operations on Surrounding Residential Property Values*, Department of Economics, North Carolina State University, (1995); Hamed, *et al., The Impacts of Animal Feeding Operations on*

Rural Land Values, University of Missouri-Columbia (May, 1999); Gomez and Zhang, *Impacts of Concentration in Hog Production on Economic Growth in Illinois: An Econometric Analysis* (August 2, 2000); Kilpatrick, John A., *Concentrated Animal Feeding Operations and Proximate Property Values*, *The Appraisal Journal* 301 (July, 2001).

IV. Given the Negative Impacts of Corporate Farming and the Benefits of Independent Family Farming, State Policy Should Support Independent Family Farmer-Based Agricultural Systems and Discourage Corporate Farming Systems.

Given the economic, social, environmental, and public health damage inflicted by corporate farming systems, it is logical that local and state policy should be geared towards supporting independent family farm systems while discouraging the proliferation of corporate farming systems.

Other States have taken steps to ban agribusiness corporate involvement in farming in an effort to protect and support an independent family farmer-based marketplace. Nine States in the Midwest have adopted “anti-corporate farming” laws which, to one degree or another, prohibit agribusiness corporate involvement in farming. *See* Okla.Stat. Ann. tit. 18, §951 (West 1986); Minn.Stat. §5002.4 (1994); Iowa Code Ann. §172C.5A (West 1990); Kan.Stat. Ann. §17-5904 (1995); Mo.Rev.Stat. §350.015 (1994); Nebraska Const., Art. XII, §8; Wis.Stat. Ann. §182.001; South Dakota Const. at Amendment E; N.D. Cent. Code §10-06.1. Those laws, while banning corporate involvement, specifically recognize the ability of family farmers to create “family farm corporations” not subject to the prohibitions of the law.

All State and Federal courts that have examined those laws have declared that protecting family farm systems is a legitimate governmental goal. *See Asbury Hospital v. Cass Co.*, 326 U.S. 207 (1945); *State ex rel. Webster v. Lehndorff Geneva*, 744 S.W.2d 801 (en banc 1988); *Omaha National Bank v. Spire*, 389 N.W.2d 269 (Neb. S.Ct. 1986); *MSM Farms v. Spire*, 927 F.2d 330 (8th Cir. 1991). A recent study of those laws has illustrated that they support family farm systems by creating higher cash gains for independent family farmers. Welsh and Lyson, *Anti-Corporate Farming Laws, the Goldschmidt Hypothesis and Rural Community Welfare* (Clarkson and Cornell Universities, 2001).

Within Pennsylvania, eleven rural communities in six Counties have adopted similar laws. The success of those community Ordinances in preventing the proliferation of corporate farming systems within those Townships has been evidenced by the aggressive attempts by agribusiness interests to judicially and legislatively overturn them. *See Leese, et al. v. Belfast Township*, No. 304 of 2001-C (Fulton County Court of Common Pleas).

V. Pennsylvania Law Already Recognizes the Distinction Between Corporate Farming and Independent Family Farm Systems, and Discourages Corporate Farming in Certain Areas.

Pennsylvania law already recognizes a distinction between corporate farming and independent, family farmer-based agricultural systems. Those provisions in the law, while creating benefits for family farm-based systems, fail to extend certain benefits to corporate farms.

Pennsylvania’s Local Tax Enabling Act, 53 P.S. §6902.1, enables municipal governments to distinguish between “family farm corporations” and other types of farming entities, for taxing purposes. Under the Act, a “family farm corporation” is defined as one in which 75% of the

assets of the corporation are devoted to farming, and in which 75% of the ownership of the corporation is by “members of the same family.” *Id.*

Pennsylvania’s Agricultural Education Loan Forgiveness Program (Act of June 26, 1992, P.L. 322, No. 64) provides loan forgiveness for students who go to work for a “family farm” or “family farm corporation,” using definitions identical to those used within Pennsylvania’s Local Tax Enabling Act.

Finally, Pennsylvania’s Agricultural Area Security Law distinguishes between a “private farm” and a “corporate farm,” in references to the types of “active farmers” eligible to sit on an Agricultural Security Area Advisory Committee. *See* Agricultural Area Security Law, Title 3, Chapter 14a, §904.

VI. Township Ordinances Adopted in Pennsylvania Since 1998 Seek to Protect an Independent Family Farming-Based Agricultural System and the Natural Environment by Discouraging Corporate Farming.

Lacking State legislation that prohibits or comprehensively discourages corporate farming systems, many rural Township governments have adopted local Ordinances that seek to protect family farmers and the natural environment by discouraging corporate farming systems. Beginning in 1998, eleven Township governments in six Pennsylvania Counties have adopted Ordinances modeled after the laws adopted by the residents of nine Midwestern States that ban agribusiness corporate involvement in farming. As adopted, those local Ordinances pursue the same goal – banning corporate farming while recognizing the right of family farmers to create and operate “family farm corporations” to take advantage of the tax and liability benefits of incorporation.

In addition to the “anti-corporate farming” Ordinances adopted by those eleven Townships, many other rural communities across the State have grown concerned about the rise of corporate farming. Using traditional land-use planning tools, those Townships have designated corporate farming operations (usually identified by livestock concentration) as “special uses” requiring a variance or special exception from zoning and land development Ordinances. The vast majority of those Ordinances require special approval from the Township for operations deemed to be concentrated animal feeding operations or some variant of those facilities. Generally, those Ordinances require a showing by the agribusiness corporation or the farm owner that the proposed development will not interfere with the health, safety, or welfare of the residents of the Township, prior to approving the land use request.

VII. The Rendell Administration’s ACRE Proposal – and Previous Legislation Driven by Republican Legislators and Agribusiness Interests – Encourages Corporate Farming by Subsidizing Agribusiness Challenges to Local Laws Controlling Corporate Farming.

Agribusiness interests, using certain legislators to advance their interests, have sought for over three years in Pennsylvania to override the authority of Township governments to adopt Ordinances that regulate and control corporate farming. Beginning with Senate Bill 826 in 2001, and ending with House Bill 1222 in 2003, agribusiness-supported legislators have sought to

pronounce Township Ordinances as “frivolous”, and require municipal governments to pay attorneys’ fees to agribusiness attorneys who bring suit against rural communities.

The proposal to create an “Agriculture Review Board” within the Rendell Administration’s recently announced “ACRE” Initiative, is a continuation of policy seeking to stop rural communities from adopting local laws that regulate and control corporate farming. It would enable a State Board of political appointees to stop the enforcement of - or adoption of - an Ordinance regulating or controlling “agriculture” within a Township.

Essentially, when petitioned, the Board would proceed to determine whether an Ordinance regulates or controls a “normal agricultural operation” under the Right to Farm law, and would place the Board in a position to define – *for the first time in Pennsylvania* – whether corporate farming constitutes a “normal agricultural operation.” Given that the Board consists of three individuals (out of five) who have already expressed opposition to any Township regulation of “agriculture,” it is inevitable that the Board would render a decision adverse to the Township, thus making it more difficult (and more expensive) for the rural community to obtain a positive ruling from successive appellate courts.

Thus, the creation of the Board would considerably *increase* the cost of defending a Township Ordinance focused on regulating or controlling corporate farming. It subsidizes agribusiness interests by creating a special quasi-judicial authority that can be used by agribusiness interests inexpensively, rather than forcing agribusiness interests to use the courts to challenge the Ordinances.

VIII. Encouraging Independent Family Farmer-Based Agricultural Systems and Discouraging Corporate Farming Systems Requires that the Initiative to Create an Agricultural Review Board be Removed from the ACRE Proposal.

Given that 70% of all hog production in Pennsylvania is now done under corporate production contracts, and that almost all Township Ordinances have been adopted by rural communities to control and regulate those corporate farms, ACRE’s “Agriculture Review Board” would operate as an inexpensive avenue for agribusiness interests to stop the adoption or enforcement of local laws controlling corporate farming. While offering an inexpensive, non-judicial outlet for agribusiness interests to strike down (or enjoin the enforcement of) laws, the Board would increase the costs for Township governments to defend local Ordinances, by forcing them to expend monies for attorneys at both the Review Board level, as well as in subsequent courts of appeal. As drafted, the ACRE initiative would eliminate *de novo* review by the appellate courts, thus making it more difficult for the Township to defend its Ordinance. In effect, the Agriculture Review Board would serve as a subsidy to agribusiness interests, increase the costs for rural communities to adopt corporate farming Ordinances, and thus encourage the proliferation of corporate farming systems.

Faced with two layers of court costs, and mounting threats from agribusiness interests to haul Township governments in front of a State Board, many rural communities will be “chilled” from adopting any Ordinances controlling corporate farming. Given that the model for the Agriculture Review Board is the New York “model” created to administratively override local laws dealing with corporate farming, this is simply another way in which the Board would encourage the proliferation of corporate farming systems. *See* New York Agriculture and

Markets Law, Art. 25-AA at §305 (granting the Ag and Markets Commissioner the authority to nullify local agricultural ordinances).

Indeed, the Commissioner of the New York Department of Agriculture and Markets has been very aggressive in striking down local Ordinances dealing with concentrated animal operations. Beginning in 1993, the Commissioner began to overturn decisions by Zoning Hearing Boards of Appeal, when those Boards denied variances for setbacks for livestock housing (Town of Fremont, issued 1/21/93). In 1994, the Commissioner struck a Town's requirement for an Environmental Assessment to be prepared prior to the issuance of building permits for concentrated operations (Town of Wilson, 5/26/94). In 2001, the Commissioner took action to overturn a local law that placed a moratoria on the issuance of building permits for new CAFO's (Town of Varick, 6/19/01). In 2002, the Commissioner overturned a local law regulating intensive livestock operations (Town of Milo, 9/17/02). In 2003, the Commissioner struck a Town's decision to deny a site plan for a new poultry facility (Town of Throop, 10/14/03). *See* Commissioner's Orders Issued Under AML §305-a(1), or Former §305(2).

Explicit recognition of the authority of Township governments to regulate and control corporate farms, coupled with the elimination of the Agriculture Review Board, would achieve the policy goal of discouraging corporate farming systems, while encouraging the viability and proliferation of independent, family-farmer based agricultural systems.