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# CAN TOWNSHIPS REALLY SMELL? COPING WITH THE MALODOROUS PROBLEMS OF HOG FARMS IN RURAL MISSOURI

*Premium Standard Farms, Inc. v. Lincoln Township of  
Putnam County*<sup>1</sup>

by Benjamin A. Joplin

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## I. INTRODUCTION

Everywhere they appear, corporate hog farms spark controversy.<sup>2</sup> On one hand, they provide a much-needed boost to ailing rural economies. On the other, they bring with them the distinctive odor of tens of thousands of pigs, and the potential for irreparable environmental harm. While some towns encourage the establishment of Concentrated Animal Feed Operations (CAFOs),<sup>3</sup> others seek to prevent the entrance of CAFOs into their communities. In Northwestern Missouri, the town of Princeton embraced the boost Premium Stan-

dard Farms (PSF) gave the local economy.<sup>4</sup> Less than 150 miles to the east, the Lincoln Township of Putnam County, Missouri (Lincoln) has put up a fierce battle to PSF's efforts to remain in the area.

Lincoln's battle attracted so much national attention that country singer Willie Nelson brought the annual "Farm Aid" concert to the community in 1995.<sup>5</sup> Since then, PSF has challenged in court the method by which Lincoln sought to restrict PSF's growth in the township.<sup>6</sup> Because the challenge deals with the ability of rural areas to control the growth of large-scale

livestock operations through zoning and planning, the issue is important to small Missouri communities and communities in other states where there is a potential for such operations. Parties opposed to CAFOs have a variety of judicial and legislative options available in dealing with the problems of CAFOs, but care must be taken not to eliminate the good along with the evil. With the Missouri Supreme Court's decision in *Premium Standard Farms*, however, the methods by which local communities can now regulate the growth of CAFOs are uncertain.

## II. FACTS AND HOLDING

In early April, 1996, PSF purchased 3,084 acres of farm land located in Lincoln Township and began constructing White Tail Farms, a large scale hog farm operation.<sup>7</sup> Just over two months later, Lincoln adopted a comprehensive zoning package,<sup>8</sup> and informed PSF of the procedures and

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<sup>1</sup> 946 S.W.2d 234 (Mo. 1997).

<sup>2</sup> While this Note only deals with the problems of corporate hog farms, communities in close proximity to cattle, turkey and chicken farms experience many of the same problems as did Lincoln Township.

<sup>3</sup> CAFOs are large-scale livestock operations that typically raise cattle, pigs, turkeys, or chickens.

<sup>4</sup> PSF's corporate headquarters, as well as one of PSF's farms, are located in Princeton, Missouri.

<sup>5</sup> Mike Hendricks, *Willie Wails Against Corporate Farms*, KAN. CITY STAR, April 2, 1995, at B2.

<sup>6</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 234.

<sup>7</sup> *Id.* The farm consisted of twelve sites each containing eight hog barns and a large waste lagoon. The hog barns are constructed so that waste falls through the floor of the barn and is flushed into the corresponding lagoon. The lagoons, each lined with one foot of clay, are used to break down the hog waste. After the waste is broken down, that which remains is used to fertilize PSF's hay fields. *Id.*

<sup>8</sup> *Id.* MO. REV. STAT. § 65.677 (1994) grants townships the authority to issue regulations:

for the purpose of promoting health, safety, morals, comfort or the general welfare of the unincorporated portion of the township, to conserve and protect property and building values, to secure the most economical use of the land, and to facilitate the adequate provision of public improvements all in accordance with the comprehensive plan, the township board of any township to which the provisions of sections 65.650 to 65.700 are applicable shall have power after approval by vote of the people to regulate and restrict, by order of record, in the unincorporated portions of the township, the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of populations, the location and use of buildings, structures and land for trade, industry, residence or other purposes, including areas for agriculture, forestry, and recreation. The provisions of sections 65.650 to 65.700 shall not be exercised so as to impose regulations or to require permits with respect to land, used or to be used for the raising of crops, orchards or forestry or with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures. The powers of sections 65.650 to 65.700 shall not be construed:

- (1) So as to deprive the owner, lessee or tenant of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted;
- (2) So as to deprive any court of the power of determining the reasonableness of regulations and power in any action brought in any court affecting the provisions of sections 65.650 to 65.700 or the rules and regulations adopted thereunder;
- (3) To authorize interference with such public utility services as may have been authorized or ordered by the public service commission or by permit of the county commission as the case may be. *Id.*

requirements set forth in the package.<sup>9</sup> In mid-July, 1994, a Lincoln Township zoning officer inspected PSF's facility and determined that PSF had violated several of the regulations.<sup>10</sup>

PSF sued Lincoln in the Circuit Court of Putnam County seeking declaratory and injunctive relief.<sup>11</sup> PSF alleged that Lincoln lacked statutory authority to enact the zoning package.<sup>12</sup> Lincoln counter-claimed arguing that PSF's operation constituted a public nuisance, and seeking enforcement of the zoning regulations.<sup>13</sup> PSF then filed three summary judgment motions.<sup>14</sup> The trial court entered a judgment in favor of PSF.<sup>15</sup> Transfer was granted by the Supreme Court on behalf of Lincoln.<sup>16</sup> PSF then cross-appealed.

Lincoln first argued that the validity of zoning processes must be attacked through the procedures

set forth by the zoning authority.<sup>17</sup> PSF made no effort to appeal the determinations through those procedures. Lincoln further argued that even if structures cannot be regulated through township zoning regulations under § 65.677, agricultural land uses may be restricted and regulated under the statute.<sup>18</sup> Lincoln also claimed power to commence a public nuisance suit against PSF.<sup>19</sup> PSF responded that finishing buildings and lagoons are farm structures, and that regulation of such structures is proscribed by § 65.677.<sup>20</sup> PSF also argued that Lincoln had no statutory authority to impose bonding requirements for lagoon cleanup.<sup>21</sup>

Upon transfer to the Supreme Court, the court affirmed the trial court's order for summary judgment.<sup>22</sup> The court held that a township cannot attempt to restrict the operations of a large scale

livestock operation by enacting zoning regulations under § 65.677 because the farming operations fall within the statutory exclusion that prevents townships from imposing regulations on farm buildings and farm structures.<sup>23</sup> The court also held that as a township, Lincoln has no authority to prosecute a public nuisance action.<sup>24</sup>

### III. LEGAL HISTORY

#### A. FARM NUISANCE ACTIONS

Nuisance cases concerning livestock odor have been in existence since at least 1610.<sup>25</sup> The common law nuisance claim is intended to compensate property owners for decreased enjoyment resulting from the actions of a neighbor. Such actions will give rise to a nuisance action only when it results in an "unreasonable interference in the use and enjoyment of property."<sup>26</sup> However, to a reasonable person in the commu-

<sup>9</sup> *Premium Standard Farms, Inc.*, at 235-36. The zoning package requires that lagoons of certain size must be set back at least one mile from residences or dwellings, that feed lots must be set back 1,400 feet from such dwellings or residences, and that hog farms are required to carry a surety bond in the amount of \$750,000 for each lagoon. According to the language of the ordinance, PSF was required to be bonded for more than \$750,000 per lagoon to assist in cleanup or closing of lagoons. *Id.*

<sup>10</sup> *Id.* Because many of PSF's structures were constructed prior to enactment of the regulations, none of the lagoons or feedlots complied with the setback requirement. *Id.*

<sup>11</sup> *Id.* at 236.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* In its first motion for summary judgment, PSF argued that their farm was exempt from township zoning under § 65.677, and that Lincoln was without authority to impose closure bonds upon PSF under § 65.270. The trial court denied the first portion and granted the second portion of the motion. The arguments in second motion, denied by the trial court, are unclear. The third motion, which was granted by the court, alleged a violation of the Equal Protection Clause of the Fourteenth Amendment relating to membership on the township board of adjustment. *Premium Standard Farms, Inc. v. Lincoln Township of Putnam County*, No. CV94-58CC, (3rd Cir. Ct. Mo. May 31, 1996) (Holcomb, J.).

<sup>15</sup> *Premium Standard Farms, Inc.*, at 236. The trial court further declared portions of Lincoln's zoning provisions void ab initio and unenforceable. (The Equal Protection argument was not addressed by the Supreme Court in the instant decision.) *Id.*

<sup>16</sup> *Id.* Transfer to the Missouri Supreme Court prior to an opinion from a court of appeals is allowed when the question involved is of general importance, where opinions of appellate courts are in contravention, and when an existing law requires reexamination. *See* Mo. R. Cr. 83.02, 83.04, and 83.06.

<sup>17</sup> *See generally*, *Missouri Rock v. Winholtz*, 614 S.W.2d 734, 738 (Mo. Ct. App. 1981).

<sup>18</sup> *Id.*

<sup>19</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 240.

<sup>20</sup> *Id.* at 238.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 236. The court dealt only with the ability of Lincoln to promulgate the regulation at issue and the ability to prosecute a public nuisance action. *Id.*

<sup>23</sup> *Id.* at 240.

<sup>24</sup> *Id.*

<sup>25</sup> J. Patrick Wheeler, *Livestock Odor and Nuisance Actions vs. Right-to-Farm Laws: Report by Defendant Farmer's Attorney*, 68 N.D. L. REV. 459 (1992) (citing *Aldred's Case*, 77 Eng. Report 816 (1610)).

<sup>26</sup> Jerome Organ and Kristin Perry, *Controlling Externalities Associated with CAFOs*, 3 MO. ENV'T L. & POL'Y REV. 183, 195 (1996).

nity, the resulting harm must be significant.<sup>27</sup> The types of remedies awarded depend on the nature of the nuisance. Courts divide nuisances into two types, temporary and permanent.<sup>28</sup> Temporary nuisances are subject to a new suit and new damages with each incident, while permanent nuisances affect the market value of the land and therefore often require different damage calculations.<sup>29</sup>

Should a court determine that a nuisance exists, several categories of remedies are typically available.<sup>30</sup> The complaining party could seek monetary damages in reparation for the physical damages both to the land and to the party.<sup>31</sup> If the nuisance is sufficiently egregious, the court could award punitive damages.<sup>32</sup> The court also could issue an injunction preventing the offending landholder from engaging in the nuisance-causing activity.<sup>33</sup> The injunction could

either be temporary or permanent depending on the severity.<sup>34</sup> Alternatively, the court could create a quasi-easement on the complaining land that would allow the farming operation to continue within prescribed levels.<sup>35</sup>

There are two general types of nuisance actions, public and private. Public nuisance involves disruptions that affect a number of people.<sup>36</sup> Common examples include noise ordinance violations, houses of prostitution, and lawn-mowing requirements. Traditionally, only public officials or political subdivisions were empowered to bring a public nuisance action.<sup>37</sup> In Missouri, counties, cities, towns and villages<sup>38</sup> have been statutorily granted the express power to enjoin a public nuisance.<sup>39</sup> However, the township enabling statute includes no language granting such power, so it is presumed that townships have no such

power.<sup>40</sup>

While private individuals are free to pursue nuisance actions, relief is often more difficult to obtain.<sup>41</sup> In its most basic form, private nuisance actions involve the weighing of one landowner's interest in enjoying his/her land against the same interest of another landowner. Each has a right to use the land as they see fit, but each also has the right to be free of unusual impairments caused by the other.<sup>42</sup> In a typical Missouri private nuisance action, the plaintiff must establish with "reasonable likelihood" that the operation alleged to be a nuisance would produce such invasion of the rights of neighboring landowners as would call for the granting of injunctive relief.<sup>43</sup>

#### B. RIGHT TO FARM STATUTES

In 1982, Missouri enacted a statute intended to protect the nature and heritage of family owned and run farms.<sup>44</sup> Only three states had

<sup>27</sup> RESTATEMENT (SECOND) OF TORTS § 821f (1979). See also Wheeler, *supra* note 25, at 460.

<sup>28</sup> Organ & Perry, *supra* note 26, at 194 (citing Russell L. Weaver, Comment, *The Law of Private Nuisance in Missouri*, 44 Mo. L. Rev. 20 (1979)).

<sup>29</sup> *Id.*

<sup>30</sup> Russell L. Weaver, Comment, *The Law of Private Nuisance in Missouri*, 44 Mo. L. Rev. 20, 68 (1979).

<sup>31</sup> *Id.* at 69.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *infra* note 108.

<sup>36</sup> Organ & Perry, *supra* note 26, at 193.

<sup>37</sup> Jacqueline P. Hand, *Right-To-Farm Laws: Breaking New Ground In The Preservation Of Farmland*, 45 U. Pitt. L. Rev. 289, 300 (1984); see also Organ & Perry, *supra* note 26, at 197 n182.

<sup>38</sup> In Missouri, communities fall within several categories. The most basic category is the township, which is a simple subdivision of a county, irrespective of population or city status. Mo. Rev. Stat. § 47.010 (1996). An unincorporated town with fewer than 500 citizens is a village. Mo. Rev. Stat. § 72.050 (1996). An incorporated town with more than 500 citizens is a city. Missouri cities are further divided into classes depending on population. Mo. Rev. Stat. § 72.030, 72.040 (1996).

<sup>39</sup> See Mo. Rev. Stat. §§ 67.410, 71.285, 77.350, 77.560, 79.370, 79.380, 79.383, 80.090, 263.262 (1994).

<sup>40</sup> See Hand, *supra* note 37, at 300; Potashnick Truck Service, Inc. v. Sikeston, 173 S.W.2d 96, 100 (1943) (Where a legislature has granted authority to certain governmental entities but withheld it from others, it is presumed to have done so intentionally.).

<sup>41</sup> Hand, *supra* note 37, at 300.

<sup>42</sup> Organ & Perry, *supra* note 26, at 193.

<sup>43</sup> Lee v. Rolla Speedway, Inc., 494 S.W.2d 349, 354 (Mo. 1973) (citing City of Spickardsville v. Terry, 274 S.W.2d 21, 26 (Mo. Ct. App. 1954); Mason v. Deitering, 111 S.W. 862, 865 (Mo. App. 1908)).

<sup>44</sup> Mo. Rev. Stat. § 537.295 (Supp. 1984).

enacted such legislation in 1978, but by 1983, forty-seven states had enacted similar legislation.<sup>45</sup> Commonly known as right-to-farm statutes, these statutes provide that so long as a farm has been in operation for more than a year and so long as it was not a nuisance when it commenced operation, it cannot later be adjudged a nuisance due to changed conditions.<sup>46</sup>

The driving force behind these statutes were efforts to protect America's shrinking agricultural base.<sup>47</sup> Until the 1970's, American farms produced great surpluses of food.<sup>48</sup> Demand for food, both foreign and domestic, increased greatly in the early 70's, pushing agricultural production to extremes.<sup>49</sup> At the same time, population shifts from urban to rural areas created conflicts in land

use and increased the number of nuisance actions against farms.<sup>50</sup> Almost overnight, generational farmers were being sued in nuisance for manure odor, dust, noise, herbicides and pesticides, and other similar by-products of farming.<sup>51</sup> Legislatures encouraged landowners to continue to devote prime land for agricultural uses by ensuring a certain degree of protection from nuisance actions.<sup>52</sup>

Missouri's statute is modeled after North Carolina's approach, one which has proven popular among other Right to Farm states.<sup>53</sup> While on its face Missouri's Right to Farm Act purports to serve as an absolute defense to nuisance actions, closer scrutiny reveals a lesser degree of protection. Because Missouri's statute states that there must be a "changed condition in the

locality,"<sup>54</sup> there is no protection from actions by neighbors and residents who already lived there -- only new residents are barred from action.<sup>55</sup> Protection is further eroded because it may be difficult to establish that a farm was not a nuisance at an earlier time.<sup>56</sup> Furthermore, there is no statutory protection for negligent or improper operation of a farm, such as water pollution.<sup>57</sup>

Missouri amended the Right to Farm Act in 1990 to allow agricultural expansion only if all state, county and federal laws are met.<sup>58</sup> In addition, any livestock operation must maintain waste handling capabilities that meet or exceed standards established by the University of Missouri extension service.<sup>59</sup> A typical hog farm waste management system includes a

<sup>45</sup> See generally Alabama--ALA. CODE § 6-5-127 (Cum. Supp. 1981); Arizona--ARIZ. REV. STAT. ANN. §§ 3-1051, 3-1061 (Supp. 1974-82); Arkansas--ARK. STAT. ANN. § 34-120-126 (Cum. Supp. 1981); California--CAL. CIV. CODE § 3482.5 (West Supp. 1982); Colorado--COLO. REV. STAT. §§ 35-3.5-101-103 (Cum. Supp. 1982); Connecticut--Right to Farm Act, ch. 226, 1981 Conn. Pub. Acts 320; Delaware--DEL. CODE ANN. tit. 3, § 1401 (Cum. Supp. 1980); Florida--FLA. STAT. § 823.14 (1979); Georgia--GA. CODE § 41-107 (1982); Hawaii--HAW. REV. STAT. § 165-1 (1997); Idaho--IDAHO CODE § 22-4501 to -4504 (Cum. Supp. 1982); Illinois--ILL. REV. STAT. ch. 5, §§ 1101-1105 (1981); Indiana--IND. CODE ANN. § 34-1-52-4 (Burns Supp. 1982); Kentucky--KY. REV. STAT. § 413.072 (Cum. Supp. 1982); Louisiana--LA. REV. STAT. ANN. § 51:1202 (West Supp. 1982); Maine--ME. REV. STAT. ANN. tit. 17, § 2805 (Supp. 1982-1983); Maryland--MD. CTS. & JUD. PROC. CODE ANN. § 5-308 (Cum. Supp. 1982); Massachusetts--MASS. GEN. LAWS ANN. ch. 111, § 125A (West Cum. Supp. 1982); Michigan--MICH. COMP. LAWS ANN. § 286.471-474 (Cum. Supp. 1982-1983); Mississippi--MISS. CODE ANN. § 95-3-29 (Cum. Supp. 1981); Missouri--MO. ANN. STAT. § 537.295 (Vernon Supp. 1983); Montana--MONT. REV. CODE ANN. § 27-30-101, 45-8-111 (1981); New Hampshire--N.H. REV. STAT. ANN. § 430-C (Supp. 1981); New Mexico--Right to Farm Act, ch. 287, 1981 N.M. LAWS 1448; New York--N.Y. PUB. HEALTH LAW § 1300 (McKinney Supp. 1981-1982); North Carolina--N.C. GEN. STAT. §§ 106-701 (Cum. Supp. 1981); North Dakota--N.D. CENT. CODE §§ 42-04-01 to -04-05 (Supp. 1981); Oklahoma--OKLA. STAT. ANN. tit. 50, § 1.1 (West Supp. 1981-1982); Oregon--Act of Aug. 19, 1981, ch. 716, 1981 Or. Laws 944, 3; Pennsylvania--Act of June 10, 1982, ch. 133, 1982 Pa. Legis. Serv. 714 (Purdon); Rhode Island--R.I. GEN. LAWS §§ 2-23-1 to -7 (Michie Cum. Supp. 1982); South Carolina--S.C. CODE ANN. §§ 46-56-10 to -45-50 (Law. Co-op. Cum. Supp. 1981); Tennessee--TENN. CODE ANN. §§ 44-18-101 to -104 (Cum. Supp. 1982); Texas--TEX. AGRIC. CODE ANN. § 251.001-.005 (Vernon 1981); Utah--Act of Feb. 2, 1981, ch. 154, 1981 Utah Laws 930; Vermont--VT. STAT. ANN. tit. 12, § 5751-5753 (Cum. Supp. 1982); Virginia--VA. CODE § 3.1-22.28, -22.29 (Cum. Supp. 1981); Washington--WASH. REV. CODE §§ 7.48.300, .305, .310 (Supp. 1982); Wisconsin--WIS. STAT. ANN. §§ 814.04(9), 823.08 (West Cum. Supp. 1982-1983). Hand, *supra* note 37, at 297 n.46.

<sup>46</sup> Stephen F. Matthews, *Recent Developments in Missouri: Agricultural Law*, 54 UMKC L. REV. 610 (1986).

<sup>47</sup> See Hand, *supra* note 37, at 289.

<sup>48</sup> *Id.*, at 290.

<sup>49</sup> *Id.*

<sup>50</sup> Margaret Rosso Grossman and Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 95, 97 (1983).

<sup>51</sup> Hand, *supra* note 37, at 292.

<sup>52</sup> *Id.*, at 292-93.

<sup>53</sup> Grossman & Fischer, *supra* note 50, at 98.

<sup>54</sup> MO. REV. STAT. § 537.295(1) (Supp 1984).

<sup>55</sup> Matthews, *supra* note 46, at 610.

<sup>56</sup> *Id.*

<sup>57</sup> MO. REV. STAT. § 537.295(3) (1996). See also Organ & Perry, *supra* note 26, at 195.

<sup>58</sup> MO. REV. STAT. § 537.295(1) (1996). See also Organ & Perry, *supra* note 26, at 195.

<sup>59</sup> *Id.*

slotted concrete floor through which the manure falls and a waste irrigation system that flushes the manure into large lagoons or holding basins.<sup>60</sup> There the manure decomposes and is either reused to clean the barn, or is spread onto pastures as fertilizer.<sup>61</sup>

### C. PROBLEMS OF HOG FARMS

Problems involving livestock operations are not new. Most problems stem from the "vast accumulations of animal wastes that are produced by thousands of animals."<sup>62</sup> It is only recently that environmental concerns have become a consideration. Now, in addition to public and private nuisance actions, CAFOs are subject to state<sup>63</sup> and federal environmental regulation. In Missouri, agricultural odors are statutorily exempted from air pollution regulations.<sup>64</sup> However, operations like PSF's are still regulated by the federal Clean Air Act<sup>65</sup> and the Clean Water Act,<sup>66</sup> and by state law

specifically addressing CAFOs.<sup>67</sup>

Missouri's hog farm problem is only a few years old, but its foundation was laid in the early 1970's. At that time, Missouri was among the top five states in national hog production.<sup>68</sup> Although Missouri's hog production has dropped to seventh in the nation, the state's location and relatively mild climate offer many advantages.<sup>69</sup> A close proximity to the corn belt means lower feed prices, and sparsely populated areas, dense clay soil, and abundant pasture land make Missouri ideal for CAFOs.<sup>70</sup>

However, the hog farms come at a price. No matter how sparsely populated an area is, residents will still feel the effects of tens of thousands of pigs in their backyards. Nearly everywhere there are hog farms, there are nuisance suits. In those states where Right to Farm statutes are codified, the statutes are used both by farmers as a defense to nuisance suits, and by neighbors in

combating animal nuisances.<sup>71</sup> While Missouri has a Right to Farm Act, there have only been three reported decisions involving hog farm nuisance cases based on odor prior to the instant case.<sup>72</sup> All three cases were decided before Missouri's Right to Farm statute was enacted. This is despite the fact that five of the nation's largest pork producers have facilities in Missouri.<sup>73</sup>

In addition, the tens of thousands of animals produce massive quantities of waste, which if not properly contained, pose great threats to the environment.<sup>74</sup> Manure spills have already killed thousands of fish and rendered many small stream ecosystems irreparable. If a manure spill enters an underground aquifer, drinking water for untold numbers of people could be threatened. Because of past poor management, a federal lawsuit alleging violation of the Clean Water Act and Clean Air Act

<sup>60</sup> Dan Schuette, *Barnyard Boom: CAFOs and the Environment*, MISSOURI RESOURCES, Vol. 14, No. 3, at 7 (Fall 1997).

<sup>61</sup> *Id.*

<sup>62</sup> Grossman & Fischer, *supra* note 50, at 101. See also Schuette, *supra* note 60, at 7 (Different animals produce different types of manure. Each type of manure is composed of different nutrients, and therefore is beneficial to different types of crops.).

<sup>63</sup> Mo. CODE REGS. tit. 10, § 20-6300 (1996); Mo. CODE REGS. tit. 10, § 10-3.090 (1986).

<sup>64</sup> Mo. CODE REGS. tit. 10, § 10-3.090 (1986). See also Schuette, *supra* note 60, at 10.

<sup>65</sup> 42 U.S.C. § 7401-7671 (1997).

<sup>66</sup> 33 U.S.C. §§ 1251-1387 (1994).

<sup>67</sup> See Mo. CODE REGS. tit. 10, § 10; Mo. REV. STAT. § 640.700-755 (1996).

<sup>68</sup> Organ & Perry, *supra* note 26, at 183.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* Lower population density means fewer inhabitants are disturbed by the farm, dense clay is vital in constructing leakproof waste lagoons, and pasture land is very receptive to waste fertilization in which decomposed manure is spread across fields.

<sup>71</sup> See *Shatto v. McNulty*, 509 N.E.2d 897 (Ind. Ct. App. 1987) (Neighbors of hog farm sought abatement of nuisance and damages against farmer of as many as 150 hogs. The court held that because the hog farm was in existence prior to the Plaintiff's use of the land, the Right to Farm statute precluded a nuisance action.); *Valasek v. Baer*, 401 N.W.2d 33 (Iowa, 1987) (Court held that hog odors constituted nuisance and an injunction was appropriate.); *Flansburgh v. Coffey*, 370 N.W.2d 127 (Neb. 1985) (Landowners sought damages and injunction against neighboring hog farmers. The court held that because the hog farm came into existence after the plaintiffs, the Right to Farm statute did not protect the farm from a nuisance suit and an injunction was proper.); *Mayes v. Tabor*, 334 S.E.2d 489 (N.C. Ct. App. 1985) (Owners of boys summer camp sued farmer of three to five hundred hogs in nuisance. The court held that the Right to Farm statute did not preclude a nuisance suit when the boys camp had been in existence 45 years longer than the hog farm, and determined that injunctive relief was the proper remedy.).

<sup>72</sup> See Organ & Perry, *supra* note 26, at 196-97 n.17. See also *State ex rel. Hog Haven Farms v. Percy*, 42 S.W.2d 403 (Mo. 1931); *Bower v. Hog Builders, Inc.*, 461 S.W.2d 784 (Mo. 1970); *Minecke v. Stallsworth*, 483 S.W.2d 633 (Mo. Ct. App. 1972).

<sup>73</sup> Organ & Perry, *supra* note 26, at 184. Murphy Family Farms is the nation's largest pork producer and has a facility in Nevada, Missouri. Tyson Foods, Cargill, and Continental Grain, all within the top 12 pork producers, have facilities in Missouri. PSF, the nation's third largest producer is located almost exclusively in Missouri. *Id.*

<sup>74</sup> See Schuette, *supra* note 60, at 8.

has been filed against PSF by a number of north Missouri families.<sup>75</sup> Recently, Missouri Attorney General Jay Nixon informed PSF of his intent to file suit to address problems that have resulted in "a pattern of hog-waste spills into Missouri streams over the past few years."<sup>76</sup>

#### D. TOWNSHIP POWERS

Missouri has several levels of municipal classification -- County, City, Town, Village and Township.<sup>77</sup> The powers of a municipal corporation regarding zoning are statutory in nature.<sup>78</sup> County zoning powers may consist of zoning only, planning only, or both zoning and planning,<sup>79</sup> but counties may not exceed statutory authority in zoning land for certain uses.<sup>80</sup>

In 1989, the Missouri legislature granted townships zoning and/or planning power so long as the county has not enacted a zoning scheme.<sup>81</sup> Zoning ordinances may be enabled by a vote of the township electorate.<sup>82</sup> Unlike county zoning which restricts regulation of livestock farming, the township statute does not preclude such regulation.<sup>83</sup> Townships, therefore, arguably appear to be granted more leeway than counties in regulating livestock farms. However, the township enabling statute specifically precludes townships from attempting to exercise any power not statutorily granted.<sup>84</sup>

Like the county zoning statutes, however, townships are precluded from regulation of farm

structures or buildings.<sup>85</sup> Because much of the controversy centers around the waste management of a hog farm, the question under township zoning is whether townships can regulate an effluent lagoon because they are not precluded expressly from regulating livestock farming, or whether they are precluded from regulating an effluent lagoon because it is considered a farm structure for zoning purposes, and therefore not subject to regulation. Other states with similar zoning laws have faced the same question.<sup>86</sup>

#### IV. INSTANT DECISION

In the instant decision, the court's analysis begins<sup>87</sup> with Lincoln's claim that PSF failed to exhaust all available administrative

<sup>75</sup> See, e.g., *Attorney General to Sue Corporate Hog Producer*, COLUMBIA DAILY TRIB., October 19, 1997, at A1. Forty Northern Missouri families have formed Citizens' Legal Environmental Action Network to address PSF's alleged violations of the Clean Water Act. *Id.*

<sup>76</sup> *Id.* PSF has sixty days in which to correct alleged violations in order to avoid the suit.

<sup>77</sup> See MO. REV. STAT. § 46.040 (Counties), § 80.010 (Towns), § 72.030, 72.040, 72.050 (Villages), § 47.010 (Townships) (All 1996). See MO. REV. STAT. tit. VII (Cities) (1996).

<sup>78</sup> *Id.* It is a long-standing principle that counties may only exercise those powers expressly granted to them by the legislature and those powers fairly inferred therefrom. *Lancaster v. County of Atchison*, 180 S.W.2d 706, 708 (Mo. 1944).

<sup>79</sup> MO. REV. STAT. §§ 64.510-64.695 (1996); MO. REV. STAT. §§ 64.800-64.905 (1949).

<sup>80</sup> MO. REV. STAT. § 64.620(2) (1994); *Organ & Perry*, *supra* note 26, at 190. MO. REV. STAT. § 65.270 (1994) states, "No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

<sup>81</sup> Townships are areas located outside any incorporated city, town or village with an adopted city plan. MO. REV. STAT. § 65.650 (1996).

<sup>82</sup> MO. REV. STAT. § 65.650 (1996).

<sup>83</sup> See MO. REV. STAT. § 65.677 (1996). *But cf.*, MO. REV. STAT. § 64.122 (1996) (zoning in first class counties "may include appropriate and reasonable provisions for the control of the use of buildings, structures, or land."); MO. REV. STAT. § 64.620.2 (1996) ("The provisions of this section shall not apply to the incorporated portions of the counties, or to the raising of crops, livestock, orchards, or forestry.").

<sup>84</sup> MO. REV. STAT. § 65.270 (1994).

<sup>85</sup> MO. REV. STAT. § 65.677 (1994). Counties may regulate farm buildings or structures if they lie in a floodplain. MO. REV. STAT. § 64.620(2) (1994).

<sup>86</sup> See generally *Town of Libertyville v. Continental Illinois Nat. Bank and Trust Co. of Chicago*, 543 N.E.2d 350, 352 (Ill. 1989) (Livestock barns, silos, and drainage ponds constitute farm structures); *Kuehl v. Cass County*, 555 N.W.2d 686 (Iowa 1996) (Hog confinement facilities constitute farm structures); *Thompson v. Hancock County*, 539 N.W.2d 181 (Iowa 1995) (Hog barns constitute farm structures); *DeCoster v. Franklin County*, 497 N.W.2d 849 (Iowa 1993) (Lagoons are farm structures); *Boehm v. Burleigh County*, 130 N.W.2d 170 (N.D. 1964) (Horticultural nursery buildings constitute farm structures); *Cordell v. Codington County*, 526 N.W.2d 115 (S.D. 1994) (Farrow-to-finish operation constitutes a commercial farm structure).

<sup>87</sup> The court's discussion of the standard of review is omitted for the purposes of this Note. In Missouri, summary judgment is proper only when there exists no genuine issue of material fact, and the moving party is entitled to the judgment as a matter of law. MO. R. CT. 74.04(c)(3). The court noted its review is limited to the record on appeal and is essentially *de novo*. The court further noted that several other issues were raised on appeal by the parties but did not discuss the issues in the opinion. *Premium Standard Farms, Inc.*, 946 S.W.2d at 236-37.

remedies.<sup>88</sup> However, the court noted that the only unresolved issue was "whether the regulation of [feedlots and lagoons] is regulation of farm structures or farm buildings, an action townships are specifically not authorized to take under section 65.677 RSMo. [Sic]."<sup>89</sup> The issue according to the court is one incapable of resolution by the Lincoln zoning commission and must be addressed by the court.<sup>90</sup> The court stated "because the question . . . poses no factual questions or issues" but only questions of law, the doctrine does not apply.<sup>91</sup>

The court next analyzed Lincoln's attempted regulation of finishing buildings<sup>92</sup> and lagoons. The court stated that townships may regulate only those areas over which they are specifically granted powers

by the legislature.<sup>93</sup> The court also relied upon the language of the governing statute that states township zoning powers "shall not be exercised so as to impose regulations or to require permits. . . with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures."<sup>94</sup> The court then looked to the plain meaning of the statute to define the word 'farm,'<sup>95</sup> and concluded that the word farm included land owned for the purpose of raising crops or livestock.<sup>96</sup> The court also determined that the lagoons and barns were structures "incident to the raising of livestock, which is farming."<sup>97</sup> The court thus held that the Lincoln zoning package had exceeded the statutory limitations in that it attempted to regulate farm build-

ings or farm structures which are exempt from township control.<sup>98</sup>

The court held that while other jurisdictions may distinguish agriculture and farming, for purposes of the instant case, the court need not address the issue.<sup>99</sup> The court concluded that because lagoons and finishing barns are within the definition of farm structures and buildings under the statute, Lincoln has no power to so regulate their use.<sup>100</sup>

The court then observed that townships are not statutorily authorized to bring a public nuisance suit whereas villages, cities and counties have statutory power to pursue such claims.<sup>101</sup> The court noted that where the legislature grants authority to certain entities but fails to do so for other similarly situated entities, the courts shall presume

<sup>88</sup> The Missouri Supreme Court has held that generally, courts will not act until the parties have exhausted all non-judicial, administrative remedies available. See *Council House Redevelopment Corp. v. Hill*, 920 S.W.2d 890, 892 (Mo. 1996). The state legislature has also recognized the doctrine of exhaustion of administrative remedies, with the following: "[a]ny person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute. . . ." MO. REV. STAT. §536.100. Exceptions do exist, however. Should there be no adequate remedy through the administrative process, the courts will resolve the dispute. See *Glencoe Lime and Cement Co. v. City of St. Louis*, 108 S.W.2d 143, 144 (Mo. 1937); *City of St. Ann v. Elam*, 661 S.W.2d 632 (Mo. Ct. App. 1983). For example, where the authority of a political subdivision to issue a regulation is in question, the court may circumvent the administrative appeal requirement. *Missouri Rock, Inc. v. Winholtz*, 614 S.W.2d 734, 738 (Mo. Ct. App. 1981) (With regard to zoning regulations, the parties need not exhaust all administrative remedies). See also, *State ex rel. Kramer v. Schwartz*, 82 S.W.2d 63, 69 (Mo. 1935).

<sup>89</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 238.

<sup>90</sup> *Id.* The court relied upon a long list of authority for denial of Lincoln's claim. See generally *Council House Redevelopment Corporation*, 920 S.W.2d at 895 ( ; 73 C.J.S. Public Administrative Law and Procedure § 40. *But cf.*, *State ex rel. Cervantes v. Bloom*, 485 S.W.2d 446, 448 (Mo. Ct. App. 1972); *N.G. Heimos Greenhouse, Inc. v. City of Sunset Hills*, 597 S.W.2d 261, 263, n.4 (Mo. Ct. App. 1980).

<sup>91</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 238. (quoting *Council House*, 920 S.W.2d at 895).

<sup>92</sup> Finishing buildings are large barns where hogs are provided shelter and food in the final stages before slaughter.

<sup>93</sup> MO. REV. STAT. § 65.270 (1996). See *Lancaster v. County of Atchison*, 180 S.W.2d 706, 708 (Mo. 1944); *State ex rel. City of Blue Springs v. McWilliams*, 74 S.W.2d 363 (Mo. 1934); *State ex rel. City of Hannibal v. Smith*, 74 S.W.2d 367, 372 (Mo. 1934). Even though livestock farming is not proscribed in the township enabling statute, the fact that it was not expressly granted in the statute indicates the legislature's unwillingness to grant such authority.

<sup>94</sup> MO. REV. STAT. § 65.677 (1994).

<sup>95</sup> *Id.* See *Asbury v. Lombardi*, 846 S.W.2d 196, 202 (Mo. 1993).

<sup>96</sup> See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 824 (1981); BLACK'S LAW DICTIONARY 606 (6th Ed. 1990); MO. REV. STAT. § 350.010(6) (1994); MO. REV. STAT. §§ 400.9-109(3) (1994).

<sup>97</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 239. See generally *Easy Living Mobile Manor, Inc. v. Eureka Fire Protection District*, 513 S.W.2d 736, 739 (Mo. Ct. App. 1974) (In its broadest sense, structure means any construction). *Accord Kuehl v. Cass County*, 555 N.W.2d 686 (Iowa 1996) (Hog facilities are farm structures exempt from county zoning).

<sup>98</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 239.

<sup>99</sup> *Id.* (The court noted that the statute grants townships the authority to restrict "areas for agricultural, forestry and recreational uses;" it does not allow the regulation of agriculture. The court also noted that the statute proscribes imposing restrictions or regulations on farm buildings or structures).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 240. See MO. REV. STAT. §§ 67.410, 71.285, 77.530, 77.560, 79.370, 79.380, 79.383, 80.090, 263.262 (1994).



that the legislature did not intend to grant that power.<sup>102</sup> Furthermore noted the court, the power to prosecute a public nuisance action is not "necessarily or fairly implied in or incident to the powers expressly granted" townships.<sup>103</sup>

The court ultimately held that while townships may sue and be sued by the manner provided in this state, they may only do so to promote public safety, protect property, provide for public improvements and enforce zoning regulations.<sup>104</sup> In holding so, the court determined that Lincoln neither had the authority to enforce zoning regulations with respect to the farm operations of PSF, nor the ability to bring a public nuisance suit against PSF.<sup>105</sup>

#### V. COMMENT

For those Missouri townships that are attempting to preempt the ingress of corporate hog farms into their communities, this decision leaves them with little recourse other than private or public nuisance actions.

These remedies are difficult to evaluate. A township's ability to sue under a public nuisance cause of action is dependent upon the attorney general's willingness to grant the power to commence such an action.<sup>106</sup> Counties and, potentially, townships may be able to circumvent zoning restrictions by passing health ordinances that create buffer zones and impose other sanitation restrictions on CAFOs.<sup>107</sup> However, such ordinances are untested and it is unclear whether they would stand up to a legal challenge.<sup>108</sup> Private nuisance actions then may be the best options for residents of townships like Lincoln who are attempting to preserve property values negatively impacted by the presence of hog farms.<sup>109</sup>

Even still, there is no guarantee as to the success of such private actions. The damages associated with hog farm odors are difficult to assess.<sup>110</sup> Offensive smells are almost always a matter of personal

distaste.<sup>111</sup> A court has several options should this question be presented. The most obvious answer is to determine the amount of damage caused by medically cognizable damages -- loss of sleep, nausea, headaches, burning sensations in the ears, eyes, nose and throat. These damages could be calculated just as any other personal injury award is calculated.

In addition, it is important for parties to a private action to determine how odors are to be addressed in the future. The difficulty lies in compensating for or preventing future problems. The court could award permanent damages such that, in essence, the farm is paying for a permanent right to emit a certain amount of odor. While it is difficult to measure odor,<sup>112</sup> the quasi-easement could consider the number of hogs produced, the number of lagoons, the type of feed used, the processes by which effluent is decomposed, and other similar standards.<sup>113</sup> Or

<sup>102</sup> *Premium Standard Farms, Inc.*, 946 S.W.2d at 240.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* (citing MO. REV. STAT. § 65.677 (1994)).

<sup>105</sup> *Id.*

<sup>106</sup> MO. REV. STAT. §§ 27.060 (1996). See *Organ & Perry*, *supra* note 26, at 197. See also *Weaver*, *supra* note 30, at 30-31.

<sup>107</sup> Pettis County Missouri recently enacted a health ordinance targeting CAFOs exclusively. The ordinance was passed under the veil of § 192.300, which allows counties to pass regulations intended to "enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county." MO. REV. STAT. § 192.300 (Supp. 1996). The ordinance requires potential CAFO operators to submit to the county commission a copy of all application materials submitted to the Missouri Department of Natural Resources (DNR), and provides that so long as the DNR grants the application and the facility meets all county setback requirements, the permit shall be granted. The county setbacks are calculated based upon the number of animal units housed at the facility. The ordinance further restricts the manner in which and places where animal waste may be applied, and the amount of land that must be owned or leased per animal unit. Pettis County Ordinance No. 96-1, enacted June 7, 1996. Animal units are used to equate the different animals according to size, type, and waste production. For example, 1 beef cow equals 2.5 pigs weighing over 55 pounds each. *Schuetz*, *supra* note 60, at 7.

<sup>108</sup> The Iowa Supreme Court recently heard arguments between a group of Iowa hog farmers who allege the county in which they farm does not have statutory authority to regulate hog farming through health ordinances. The court's answer should be published sometime in early to mid 1998. See *Jerry Perkins, Hog Lot Skirmish Goes Back to Court*, *Des Moines Reg.*, November 16, 1997, at A1; *Frank Santiago, Hog Lot Skirmish Heard by Court*, *DES MOINES REG.*, November 19, 1997, at A1; *Iowa Supreme Court Hears Large Hog-Lot Pros. Cons.*, *OMAHA WORLD-HERALD*, November 19, 1997, at A19.

<sup>109</sup> *Weaver*, *supra* note 30, at 25-26.

<sup>110</sup> *J. Ronald Miner & Clyde L. Barth, Controlling Odors from Swine Buildings*, *Purdue University Cooperative Extension Service PIH-33* (1994) at 1.

<sup>111</sup> *Id.*

<sup>112</sup> The most common method of measuring odor is the Scintometer. A device which allows the tester to regulate the amount of unfiltered air entering the nose.

<sup>113</sup> See generally *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870 (N.Y. 1970) (A private nuisance action was commenced regarding the amount of dust produced by the cement plant. The court awarded damages for past dust emission, and restricted future dust emission by restricting the number of trucks of gravel that were used, the amount of crushing that took place, and the methods by which dust was prevented.)

the court could issue an injunction preventing the operation of the farm or ordering the farm to use preventative measures in the future to restrict odor emissions.

Under the current statutory scheme as interpreted in the instant case, it is clear that neither counties nor townships may restrict the construction or maintenance of farm buildings or structures. However, in response to the problems of hog farms, the legislature could choose several different routes to assist communities in dealing with the problems associated with hog farms.

First, the legislature could amend the zoning and planning enabling ordinances. While the current scheme does not allow counties or townships to regulate concentrated livestock farms there is no reason why the legislature could not enable such regulation in the future. Amending the statutes would not give counties or townships the power to regulate current farms, but potential farms would be subject to such regulation. Second, the legislature could enact statutes that require all hog farms to use certain means to reduce or restrict the odors emitted by lagoons and barns. The legislature could specify the means by which odor is controlled or list acceptable meth-

ods of control from which the farms could choose the one most compatible with their operation. The legislature could also allow townships and counties to proceed with public nuisance actions against such farms without seeking approval from the attorney general.

The legislature has already taken the first step in better regulating CAFOs. HB1207, signed into law in 1996, is an attempt to address many of the complaints common to CAFOs.<sup>114</sup> In addition, it answers many questions raised by the instant case regarding regulation of CAFOs. The statute allows the DNR to promulgate rules relating to the construction and operation of a CAFO holding more than one thousand animal units (Class I farms).<sup>115</sup> First, the statute establishes minimum setbacks from public buildings or private residences depending on the number of animal units held at the CAFO.<sup>116</sup> Facilities in existence prior to enactment of the statute, and those that have obtained written release from adjoining landowners, are exempted.<sup>117</sup> The DNR is allowed to reduce the buffer zone for good reason, but must propose the reduction to the county in which the facility is planned.<sup>118</sup> The county is not required to accept the recom-

mendation, and may increase the setback.<sup>119</sup>

The statute also requires that prospective CAFOs notify the DNR, the county commission, and adjacent neighbors prior to applying to the DNR for a CAFO construction permit.<sup>120</sup> It also establishes minimum standards for waste management, including the number of waste management inspectors employed by the facility, emergency shut off mechanisms, and containment structures, as well as emergency spill procedures.<sup>121</sup> In addition, the statute requires Class IA producers<sup>122</sup> to establish the Concentrate Animal Feeding Operation Indemnity Fund to assist in cleanup of spills or closed facilities.<sup>123</sup> The fund would serve the same function as the closure bond Lincoln unsuccessfully attempted to impose on PSF, and would be available for all classes of producers.<sup>124</sup>

The bill essentially holds producers such as PSF to higher standards in odor control and waste spillage prevention.<sup>125</sup> Most of the measures in HB1207 apply to Class IA CAFOs.<sup>126</sup> Neighbors of smaller farms, therefore, are left relatively unprotected. Furthermore, although the statute explicitly does not preempt local control of CAFOs,<sup>127</sup> the actual extent of local

<sup>114</sup> MO. REV. STAT. § 640.755 (1996).

<sup>115</sup> MO. REV. STAT. § 640.710(1) (1996).

<sup>116</sup> MO. REV. STAT. § 640.710(2) (1996). For facilities holding at least one thousand animal units, one thousand feet; for facilities holding more than three thousand and fewer than seven thousand animal units, two thousand feet; for facilities holding more than seven thousand animals, three thousand feet.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> MO. REV. STAT. § 640.715 (1996).

<sup>121</sup> MO. REV. STAT. §§ 640.725, 640.730, 640.735 (1996).

<sup>122</sup> Class IA producers are those producers holding more than seven thousand animal units.

<sup>123</sup> MO. REV. STAT. § 640.745 (1996)

<sup>124</sup> *Id.*

<sup>125</sup> Organ & Perry, *supra* note 26, at 187.

<sup>126</sup> *Id.*

<sup>127</sup> MO. REV. STAT. § 640.710 (1996).

control available is unclear in light of decisions such as PSF.<sup>128</sup>

There are also non-legislative alternatives. Several methods of odor and waste control are currently available and many more are undergoing research. Among the most promising are those methods which either limit initial production of odor, or prevent it from escaping into the air. Although they can be expensive, flexible covers which are drawn over lagoons restrict the opportunity for odors to escape.<sup>129</sup> Air scrubbing equipment, much like those used on industrial smokestacks and odor control chemicals, are available that mask or absorb the odor.<sup>130</sup> Enzymatic digestors speed the process of waste breakdown and decrease the odor.<sup>131</sup> Further research is being done in the area of livestock feed.<sup>132</sup> Certain mixtures of feed have proven to reduce the offensiveness, both environmentally and physically, of animal waste. Additionally, there are natural remedies that may be considered in planning and expanding hog farms.<sup>133</sup> Terrain and wind patterns may aid in choosing sites that would least impact neighboring residences.<sup>134</sup> Windbreaks may be

constructed to both disperse the odor and shield the operation from sight.<sup>135</sup> Some of these methods are already in use. In a recent unpublished decision, MFA farms, pursuant to a private nuisance action, was ordered to install large aerators in their lagoons to help dissipate the odor.<sup>136</sup> Although successful in that case, the success of this method in reducing odor is unclear at this time.

There are many options available to both individual communities and the legislature. However, both should be cognizant of the external effects of regulating such farms. Jobs and lives are on the line as much property enjoyment. CAFOs tend to choose unpopulated areas not just because there are fewer residents, but because the residents are typically in need of gainful employment. Any action taken should not prevent the economic boost that the development of corporate farms gives to ailing communities.

#### VI. CONCLUSION

Communities often express mixed reactions regarding the impact of CAFOs. While many are delighted at the economic prosper-

ity that these mega-farms bring, others are concerned about odors and other potential environmental costs. The town of Princeton, Missouri, is a good example. Residents of the once dying town are now enjoying the benefits of a multi-million dollar corporation based in their backyard.<sup>137</sup> More than two thousand new jobs have been created in a town that, ten years ago, would have been happy to find ten new jobs.<sup>138</sup> But, some residents complain of odors, environmental concerns and the loss of a rural lifestyle.

Considering the past environmental problems with CAFOs, the skepticism is understandable. However, reasonable state controls on waste and odor production will simultaneously lessen the environmental burdens and help revive ailing rural Missouri economies. Our nation was founded on a free-market economic system. If precautions are taken to reduce the offensiveness and environmental risks presented by CAFOs, should our government completely eliminate a profitable and beneficial industry?

<sup>128</sup> Organ & Perry, *supra* note 26, at 197.

<sup>129</sup> Miner & Barth, *supra* note 110, at 3.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Jonathan Roos, *A Useful New Tool For Iowa Farmers*, DES MOINES REG., January 15, 1998, A4.

<sup>133</sup> Lawson M. Safley, Jr. et al., *Lagoon Management*, Purdue University Cooperative Extension Service (PIH-62 1993) at 2.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Organ & Perry, *supra* note 26, at 197.

<sup>137</sup> Jim Patrico, *The Great Divide: Are Mega Farms The Death or the Rebirth of Rural Communities*, TOP PRODUCER, January 1995, at 19.

<sup>138</sup> *Id.*