

Defending the Family Farm

Program Protects Communities from Agribusiness Bullies

Thomas Linzey



Tom Linzey is an attorney, a co-founding member of the Community Environmental Legal Defense Fund. He is a cum laude graduate of Widener University School of Law — Harrisburg. His stint on the hustings in 2000 seeking the Attorney General's post as an independent brought in 66,000 votes statewide. As a consequence, a lot of the agribusiness issues made it into the campaign. Linzey's support came largely from farmers and locals in rural areas who understood the issues now confronting rural America. That experience revealed the need for a legal organization dedicated to the preservation of the family farm, the availability of clean, nutritious food, and a way of fighting to preserve the same. The Community Environmental Defense Fund is located in Chambersburg, Pennsylvania. The fund was founded in 1995 as a service organization for local government and non-profit organizations. The mission and its prospects make suggestions for the rest of the country, for which reason the metes and bounds of the effort are covered by these questions and answers.

ACRES U.S.A. What is it that brought Pennsylvania townships up fighting from their chairs?

TOM LINZEY. As much as anything, it was the Nutrient Management Act. This was a law passed by the Pennsylvania legislature, ostensibly to deal with the large amounts of liquid manure that is produced by these large hog confinement facilities and also large poultry facilities that put out waste litter. It wouldn't have been so bad that the legislature passed a law that had more holes in it than the Swiss cheese I had for lunch today, but the worst part was that it preempted local governments from passing anything stricter on manure disposal than what the state had passed. Now, what that meant was that municipal governments were paddling down the river without two oars, because they didn't have any way to regulate these factories that were coming in. So, they contacted us to find a way not only to regulate factory farms, but also to stop them from coming into their area.

ACRES U.S.A. Are you able to do this?

LINZEY. We have been! And that's the exciting part. As you probably know, communities across the United States have been struggling to deal with what we call the corporatization of agriculture,

which is the replacement of traditional diversified family farms with these four or five agribusiness corporations who have decided to monopolize the agricultural industry. For example, four corporations now control over 80 percent of the pork and beef production in the United States.

“We tripped over these laws in the Midwest called anti-corporate farming laws, which prohibit agribusiness corporations from owning farmland or engaging in farming, and they've been on the books since 1904.”

ACRES U.S.A. It's probably closer to two companies. . . .

LINZEY. Right — two of those four companies are minor players. But there has been a corporatization of agriculture across the United States, and the answer to that, for us, when these municipal officials started asking us for help, was not to tell them that their only option was to regulate odor, regulate water pollution, or regulate things, because when you regulate something, you automatically allow it in. All you're doing is regulating an activity after it's started. What we were looking for was a much more long-term type of solution, and we tripped over these laws in the Midwest called anti-corporate farming laws, which prohibit agribusiness corporations from owning farmland or engaging in farming, and they've been on the books since 1904 in places like Oklahoma and passed more recently in places like Nebraska and South Dakota. In South Dakota, the anti-corporate farming laws are now part of the constitution.

ACRES U.S.A. How, then, do they allow these big feedlots in Nebraska and Oklahoma, and the swine operations in Oklahoma?

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LINZEY. Well, Oklahoma is different because there the law is a bit more vague than in Nebraska and South Dakota, but the latter two states are pretty strict. The only thing that the laws allow is “grandfathering” — if there is already an operation set up, then it can continue to operate. But what the laws do by prohibiting ownership of farmland and also prohibiting the engaging in farming by a corporation is to prohibit output contracts, which are entered into by farmers and agribusiness corporations trying to control production. So they’re very valuable tools and have been very effective in South Dakota and Nebraska in keeping out the large agribusiness corporations that want to come into the state.

ACRES U.S.A. You say they grandfathered some of them in — as of when?

LINZEY. As of the time the laws were passed. It was 1998 in South Dakota, and, I think, 1996 in Nebraska. So the laws can’t shut down operations that were already there — in other words, if you have an agribusiness corporation that owns or contracts with a facility at the time the law was passed, then the law has to recognize, under the constitution, the property interests that the agribusiness company already has, and so it has to be allowed to continue to operate. What the law does, it keeps new ones from coming in. So, in Pennsylvania, we took South Dakota’s constitutional amendment that was passed by initiative in the state, and we reworked it into a municipal ordinance, and the municipal ordinance has been adopted by folks here in Pennsylvania in 10 municipal governments by unanimous votes in five counties over the past three years, and the ordinances do the same thing as those in the Midwest, which is to prohibit corporate ownership of land.

ACRES U.S.A. What about enforcing the federal environmental laws?

LINZEY. Well, the federal environmental laws are very weak. Not only are they weak, they don’t assert direct control over the agribusiness corporations. Reframing the problem here — is the problem water and air pollution? Well, of course it is, but the real problem is that factory farms are just a symptom, a symptom of this corporatization of agriculture.

ACRES U.S.A. How are you carrying out your stated mission?

LINZEY. We have four programs. One is grassroots litigation support. This amounts to teaching locals how to litigate without legal counsel in county, state and federal courts. We also have a technical support program where we supply assistance to non-profit groups to incorporate. This is to get 501(c)3 non-profit status so donations can become tax deductible. The objective is to build sustainable non-profit groups.

“Once we move from defining the authority to do business to defining how business is to be done, we’ve given up a crucial piece of puzzle in stopping the corporatism of agriculture.”

ACRES U.S.A. How do you deal with the confinement feeding operations — swine operations, feedlots, poultry?

LINZEY. We have a “corporation in the box” program which overlaps quite heavily our work on factory farming. Most factory farms are dealt with as house-of-agribusiness corporations. You see, you have to track back to the individuals and companies providing the capital and wherewithal for factory farms. These trace back to a handful of individuals who are running operations using agribusiness companies to shield the line of control. We’re dealing with very few entities.

ACRES U.S.A. You mentioned four areas of operation?

LINZEY. Yes. We have a sustainable communities program. We work with the south-central farmers’ market program to build direct retail markets. This is a two-step concept. The first challenge is how to collapse the corporate farming model. Also, how do we build a retail market that will put more dollars in the farmer’s pockets if they choose to do things differently than engaging in contract-agriculture operations?

ACRES U.S.A. The factory-farm situation, then, is high priority?

LINZEY. We were pulled in — you might say yanked in — to the factory-farm situation back in 1997. We were flooded with requests from township supervisors from across the state. About 50 township governments got in touch with us about curtailing the growth of factory farms, which were popping up all over the state. Specifically they were coming to us in response to the state’s passage of that Nutrient Management Act I mentioned earlier. The problems with the act were many. Self-inspection was one. That was serious enough, but more important was the sleeper proposition that factory farms were not regulated as to *whether* they came into the state, but *how!*

ACRES U.S.A. And once such a law is plugged in, factory farms become a *fait accompli*?

LINZEY. Well, the ability to say *no* is central to this issue. Once we move from defining the authority to do business to defining how business is to be done, we’ve given up a crucial piece of puzzle in stopping the corporatism of agriculture. The Nutrient Management Act preempts local government from adopting nutrient management ordinances. The title is a polished way of saying “manure management.” Before the Nutrient Management Act, townships were writing their own ordinances, and some of them were very strict and very good.

ACRES U.S.A. How does the preemption concept work?

LINZEY. It prohibits townships from adopting anything stricter than the requirements contained in the act. Right off the bat, it prohibited local township supervisors from adopting nutrient management ordinances. This is a classic example of state preemption of local democratic control over factory farms.

ACRES U.S.A. So they took away the right of people to protect themselves from the hazards and economically debilitating effects of the feedlot, the swine operation and intense air, water and soil pollution?

LINZEY. Precisely. And this is why residents of townships were screaming at their township supervisors to do something about those factory farms. The township solicitors were telling township supervisors there was nothing they could do. Once a state act is adopted, it trumps the township level.

ACRES U.S.A. Is that true?

LINZEY. No, it's hogwash. The only thing preempted was the nutrient management issue. Admittedly, that was a lot. Townships were passing ordinances at a pretty good clip. But I have to restate, the only thing preempted was the nutrient management issue. The act left wide windows open to regulate factory farms in other ways.

ACRES U.S.A. How many townships are you working with?

LINZEY. About 150. About 100 community groups are involved. These are small neighborhood groups. Often you have no more than 10 people around a kitchen table. Usually they do not consider themselves a real group, but they are. Those are the only real groups there are. They represent real democracy. People coming together at the kitchen table to look over a problem represent real democracy. When we're invited into a community, it's usually a case of a few people refusing to stand still for what is happening.

ACRES U.S.A. You have to be invited?

LINZEY. That's right. We go in when we're asked. There's a different dynamic if you go in when you're not invited. We always work with a community group to put on enough political pressure to require action. Franklin Township is a good horrible example. They have six factory-farm corporations in that township. They have close to a dozen factory-style farms — this in a township of, say, 1,400 people. Those 1,400 people have been made a target. This is inexcusable. One of the supervisors has put in a chicken barn and is a part of the problem.

ACRES U.S.A. The issues, then, are much broader than mere regulation?

LINZEY. Yes. The environmental problem is merely the tip of the iceberg. The concerns are broad-spectrum and democratic. One of the things we've learned is that the corporations target certain townships. There are many targeting components. Most of them choose townships

without zoning and land-use ordinances. They want no outside control over where factory farms are sited. They like to purchase land where there are no restrictions before they go into the permitting process. Lancaster Corporation hired real estate companies to do the looking for them. Real estate companies often check to see if township ordinances are in existence before they make an offer on a piece of property.

“Frankly, we can't find a benefit from these operations. Private gain from public money — that's the factory farm.”

ACRES U.S.A. You mentioned targeting. Other than ordinances and availability, what are the norms?

LINZEY. At least 92 percent of new factory farms are targeted for north-central and south-central Pennsylvania. Over 90 percent of existing factory farms are in those two areas. Those areas have populations too poor to fight these things. Factory-farm investors also look for travel corridors — north-south, east-west roads that enable the shipment of livestock. I recall driving up Highway 522 along the east side of the state and reading off the names of the townships — all of them familiar. Of course they were familiar! Those were the ones that had been calling for help. Those townships had easy access to the Pennsylvania Turnpike, Interstate 80.

ACRES U.S.A. Do you have any data on what factory farms do to adjoining property, economic damage?

LINZEY. We talk about economic damage as well as environmental damage and even political damage, especially to local democracy. People generally have some idea about environmental damage, chiefly groundwater contamination. Nationwide, 130 times more animal waste is produced than human waste. We have strict control of human waste management. We now have to ask for control of how hog and poultry waste are managed. Even the smaller hog operations use up to 30,000 gallons of water a day, not just for con-

sumption, but also for wash water, for replacement of lagoon water evaporation, washing of facilities, etc. That's 30,000 gallons of water *each day* for a typical hog operation. A typical hog will consume three to four gallons of water a day. Factor in other uses, you're looking at 15 gallons a day per hog.

ACRES U.S.A. What about property devaluation?

LINZEY. If your house is located a half-mile from a confinement-feeding facility, you can expect up to 40 percent devaluation of your property. You have to add to that the human health impact. There's growing evidence of antibiotic resistance to bacteria as a consequence of consuming factory-farm pork. That's not a nebulous comment. There is also increasing evidence concerning the health impact from ammonia and hydrogen sulfide emissions from these facilities. So, the scientific data are already there.

ACRES U.S.A. You mentioned location as related to major highway corridors. Isn't there tremendous truck traffic associated with the factory-farm model?

LINZEY. Indeed, they are located in the travel-corridor townships for a reason. They use a lot of trucks to haul livestock in and out.

ACRES U.S.A. How do you define the economic damage?

LINZEY. You can calibrate the economic damage, and you can assess the damage to our democracy, to the local democracy. Citizens are being removed from local government. Crucial decisions about food production are now being made by corporations that are located hundreds and thousands of miles away from the community in which the factory farms are sited. Along with market power for these corporations has come political power. There is now a factory-farm lobby that didn't exist even seven years ago. Corporations have arrogated to themselves the role of repealing local ordinances. They not only move to repeal local ordinances, they also claim the corporation's constitutional rights mean equal protection and due process.

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ACRES U.S.A. How do they get away with that?

LINZEY. Some of the ordinances treat corporations differently than individuals. The agribusiness corporations are claiming that their constitutional rights — rights originally claimed for you and me under the Constitution and Bill of Rights — are being violated, and that the corporations have the right to overthrow ordinances adopted by the locally elected township supervisors. In other words, ordinances passed by democratically elected representatives are overridden by a non-democratic board of directors and owners and shareholders and officers who have *no accountability whatsoever* for their actions. The problem is, you can't sue the guy behind any of this, because that's the reason for the corporation, to erect a shield. The corporations are being used as vehicles to overturn locally passed ordinances, this while not being accountable locally. A legal shield protects the people behind rural economic, social and political mischief. There's something fundamentally wrong with that.

ACRES U.S.A. What you're saying represents a mile-wide departure from the precepts that prevailed at the time of the Founding Fathers.

LINZEY. The history of corporations over the past 200 years defines the changes we've endured. We use a quote that comes from a writer who has studied the record. He says, *Our revolutionary colonists did not make a revolution over a tax on tea. They fought for many reasons, but chiefly to create a nation where citizens were the government that ruled corporations.* That's it in a nutshell. That's pretty much the bigger issue. There used to be very tight control over corporations in the United States. They only existed for limited periods, often for only 20 years. Imagine the agribusiness corporations existing for only 20 years, then having to apply for a new charter! They couldn't own other corporations, either. Almost 40 percent of our job is tracking down who's who. You have Acorn Farms, Franklin Family Farms, Century Park — you have corporations and subsidiary corporations. There are 190 subsidiary corporations in Pennsylvania.

ACRES U.S.A. The subsidiaries are shields?

LINZEY. Well, you can't sue and collect because you can't get more than is left in the bank account of the subsidiary. This is

a real challenge, trying to keep corporations from erecting shields. When this nation was founded, corporations had to exist for a public purpose. So we have to ask, *What is the public benefit from the factory farm?* Frankly, we can't find a benefit from these operations. Private gain from public money — that's the factory farm. There was a time when investors and directors were personally liable for damages caused by corporations. Now they're not. In 1886, the Supreme Court declared the corporations to have all the rights of individuals. The right to free speech protects corporate donations in elections. That's how lawmakers get money — as contributions from agribusiness.

“Call it Economics 101 or call it reality, mass production of cheap meat causes prices to crash for family farmers.”

ACRES U.S.A. Do corporations have Fourth Amendment rights?

LINZEY. Yes, and protection against search and seizure. No unannounced inspections, that protects corporations. The agribusiness corporations are trying to get our ordinances overturned because they treat corporations differently than people. The argument is being advanced that these ordinances violate the equal protection clause of the U.S. Constitution. That's the claim they are running with.

ACRES U.S.A. Do we fast-forward or go back? Back, we believe, to economic damage?

LINZEY. Concentration of power and money is a fact in the agricultural industry. Four corporations have control over 81 percent of the nation's food. Four corporations control over 59 percent of the hog industry. We've lost over 300,000 farmers in the past 20 years. The large agribusiness farms — 6 percent now receive over 59 percent of total farm revenue. That, to me, is the most horrifying statistic of them all. There are 2,000 deaths by suicide of farmers every year. This doesn't include equipment-related deaths. It is the number one cause of

farmer deaths nationally. Call it Economics 101 or call it reality, mass production of cheap meat causes prices to crash for family farmers. In 1957, a 200-pound hog sold on the open market for \$51. In 1999, a 250-pound hog dropped to \$31. Yet the cost of raising that hog was anywhere from \$38 to \$40. That's why we have so few independent farm producers left. This situation has left the independent producer with an uneasy choice — go corporate or go bankrupt.

ACRES U.S.A. You're talking about contract operations?

LINZEY. Yes. In North Carolina there are absolutely no family-farm pork producers left. Fully 95 percent of all hogs produced in North Carolina are now under corporate contracts. There is no longer a competitive market. The corporations aren't stupid. They don't have to own farms. They've learned they can get rid of their liability — they can side-step environmental liability — by using contracts.

ACRES U.S.A. What do the contracts do?

LINZEY. Under the contract, the corporation owns the animal — the live animal, that is. If an animal dies it then becomes the property of the farmer. A dead animal and the liability attached belongs to the farmer. Second, the farmer is obligated to purchase feed from the contracting corporation. The contract terminates at the option of the corporation. And the corporation reserves the right to force the farmer to make capital improvements. New equipment comes along, a new gadget is invented, and the farmer has to climb aboard the corporate bandwagon. All this notwithstanding, a contract can be terminated at the discretion of the company. Also the company holds the mortgage on the new farm, machine or facility. The average investment for each contract farm, about \$250,000. Most important of all, the farmer has full liability for environmental damage. Anything that happens to interdict the flow of meat to the corporation is the farmer's responsibility.

ACRES U.S.A. You mentioned the American Revolution and the status of corporations. Can you elaborate?

LINZEY. Farmers were quite involved in the Revolution. This was true for the New England farmer as well as the Southern planter. The grower took all the risks; the British merchant took all the profits. The planter paid the import duty in England. He paid the merchant for hauling his commodities. He met insurance costs himself, and the merchant transported the commodity and sold it for the planter in the British domestic market, and for this service he received a commission in that market, as well. All warehousing, inspection, insurance and storage fees were met by the grower, and all damage costs were met by the farmer, as well. It sounds like the same system we now have.

ACRES U.S.A. Moving off the individual plane, how do you assess the community damages?

LINZEY. Kansas State University and Missouri University, the University of North Carolina, Virginia Tech, all have provided us with studies. Hog farms on the scale we're talking about normally displace three times the number of family hog farms than they create in new jobs. Two counties in North Carolina produce almost 50 percent of the state's hogs. The number of farm jobs fell by 35 percent, population stagnated, and sales and property taxes fell behind the state's own growth rate. Studies have found that family farmers make over 70 percent of purchases within 20 miles of the farm. Corporation farms make only 40 percent. So much for your local farm equipment dealer, and so much for other businesses that service farmers. This is your iron-law economics.

ACRES U.S.A. What is the posture of farm organizations regarding all this in terms of Pennsylvania?

LINZEY. Farm Bureau endorses the factory farm. The Grange tends to go along with the Farm Bureau. The reasoning is that factory farms produce cheap meat, and cheap meat is what everyone wants. Once the small competitive producer is out of the way, monopoly control is totally secure. In the final analysis, the monopoly never brings prices down to the consumer. Add this — banks do not write loans to farmers unless a contract arrangement is operative. The result is destabilization of the economy as well as democracy. Corporations work not only to eliminate township ordinances, but also to strip away from township supervisors the right to do anything about factory farms.

ACRES U.S.A. What are some of the specifics?

LINZEY. Last year the legislature passed Acts 67 and 68. These limit the ability of the township to use zoning ordinances to control factory farming. They did this because townships were learning how to use the law to protect the township, the environment, and the local economy from predatory agribusiness. It is now illegal for a township to zone an area within the township to protect it from timber harvest. Timber harvesting is now a guaranteed right in all zones of a township. There also was an effort to remove weight restrictions on roads, but former Governor Ridge vetoed the measure. He quite properly noted that the measure stripped control away from the townships. I mention this to point out that agribusiness firms are not alone in writing laws.

ACRES U.S.A. For instance?

LINZEY. Townships have started writing ordinances requiring testing of sludge before application. The industry prefers the name *bio-solids* just as factory farms prefer the name *advanced agriculture*. In the case of sewage sludge, townships were sued for violating the corporation's constitutional rights.

ACRES U.S.A. How would you state your philosophy?

LINZEY. Approximately as follows:

1. Shouldn't local communities have the ability to democratically determine whether they want factory farm corporations operating in their townships?
2. If basic questions about food production and protecting the health, safety and welfare of communities are being made by unelected and unaccountable corporate boards of directors in other counties and other states, then hasn't this democratic system of ours been usurped?
3. Why are farm organizations like the Farm Bureau pro-factory farm? Why do they work against the passage of anti-factory farm legislation?
4. Why do state regulators — DEP, really meaning "department of everything permitted" — become mere shills for factory farm corporations? Why do state regulators refer to factory farms as "their clients"?

ACRES U.S.A. How have other states dealt with corporatization of agriculture?

LINZEY. In fact, there is massive resistance across the United States. Nine Midwestern states — states that contain 30 percent of the nation's farm production — have adopted tough anti-corporate agriculture laws. They prohibit non-family, corporate-owned agriculture, that is, corporations owning farms and engaging in farming. The Oklahoma law goes back to 1904. South Dakota and Nebraska passed their laws in the 1980s and 1990s. Nebraska had 70 percent support for its law in the farm community. South Dakota has a constitutional amendment proscribing corporate factory farms. The key line is the prohibition of non-family-owned farms or engagement in farming.

ACRES U.S.A. Have these laws met with approval?

LINZEY. These laws have been upheld by federal, state and local courts, including the U.S. Supreme Court. In 1945 and 1948, the High Court upheld the constitutionality of such statutes. Last March, Cornell examined all 433 counties in these nine states to discern whether the anti-corporate farm laws had been effective. Did they permit family farmers to rebound? The answer was, *Yes!* There were higher cash gains, higher returns.

ACRES U.S.A. How have you used this information?

LINZEY. We copycat-appropriated the South Dakota amendment and turned it into a township ordinance. It eliminates absentee corporate ownership and control. At least nine townships have adopted this ordinance. There is, of course, a family farm corporation exemption.

ACRES U.S.A. This term *engaging in farming*, what does it mean?

LINZEY. It was chosen deliberately. It applies to contract farming. If any entity has a pervasive influence, as is the case with the contract farm, it falls under the law. This ordinance has kept new factory farms from siting in the townships where it has been passed. As I mentioned earlier,

the ordinance is superior to mere regulation, because regulation does not address the question of whether a factory farm can enter. The regulatory system is always “end of the pipe.” It presumes to fix things after the problem has arrived. We want to fix things from the root cause. This means going after the people who finance the problem. Regulation simply does not address the three prongs so far identified — economic, environmental, democratic. Finally, the regulatory approach tends to push family farms out, factory farms in.

ACRES U.S.A. Absentee ownership has been notorious in ignoring local concerns — this with real estate, air pollution, water pollution. Is this the Pennsylvania experience?

LINZEY. We have found that 100 percent of the complaints in Franklin County were filed against absentee owners. We tell this to counties and townships who invite us in. We have a briefcase full of ordinances — some regulatory, some designed to stop siting, some to, in effect, make the factory farms pay for as much damage as they account for. We are active in the legislature, in defending ordinances, in communicating with people in other states, in fighting non-profit organizations that lock arms with Farm Bureau for the purpose of advancing factory farms. We’re up against a PR effort, against the sales job that calls factory farms “advanced farming.” You hear the argument that the only way the family farmer can survive is to partner and get bigger with the help of these corporations.

ACRES U.S.A. One more question — what was Pennsylvania Senate Bill 826?

LINZEY. It targeted townships that adopted the anti-factory-farm ordinances. It prohibited these ordinances and handed off to townships the legal costs made necessary by factory-farm lawsuits. That bill languished in committee. In terms of legislation that closed down township say-so, we have prevailed.

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