

CAFO TRICKS OF THE TRADE: AGMANDERING

Agmandering, à la gerrymandering, involves manipulating physical boundaries to favor one group over another (in this case, proponents of CAFOs over neighbors/local communities). It is a tactic used by CAFO owners to reduce state or federal National Pollutant Discharge Elimination System (NPDES) permit requirements or evade permitting altogether. Gerrymandering weakens the ability of affected populations to determine their political destiny. Similarly, agmandering renders communities defenseless against the ravages of the unchecked proliferation of CAFOs. Agmandering (not an official term for the practices described in this document) is allowed under current federal and state corporate laws.

Even permitted CAFOs in states with better regulatory track records can pollute the environment and endanger human health. Unpermitted and underregulated CAFOs magnify those harms. Agmandering lets CAFOs fly under the regulatory radar. The end result is an increased number of unpermitted and underregulated CAFOs and amplification of CAFO harms.

Agmandering involves one or both of the following maneuvers:

- 1. Strategically altering CAFO parcel and crop field legal boundaries (e.g., redrawing lot lines and subdividing properties) and,**
- 2. Assigning ownership of those properties to different persons or legal entities to claim separate ownership.** Business owners often form separate legal limited liability entities for different lines of business for financial liability purposes. That way, if one line of business fails, the profits from the others are protected. Additionally, the owner's private assets are not at risk. Adopting this legal corporate structuring strategy encourages investment in CAFOs and new CAFO ventures. Such structuring also creates a "corporate veil," shrouding transparency and allowing CAFO owners to benefit from the advantages of limited liability while shirking the corresponding responsibility and skirting regulations.

The following is a real-life example of agmandering in the Midwest. The diagram will help the reader follow the text:

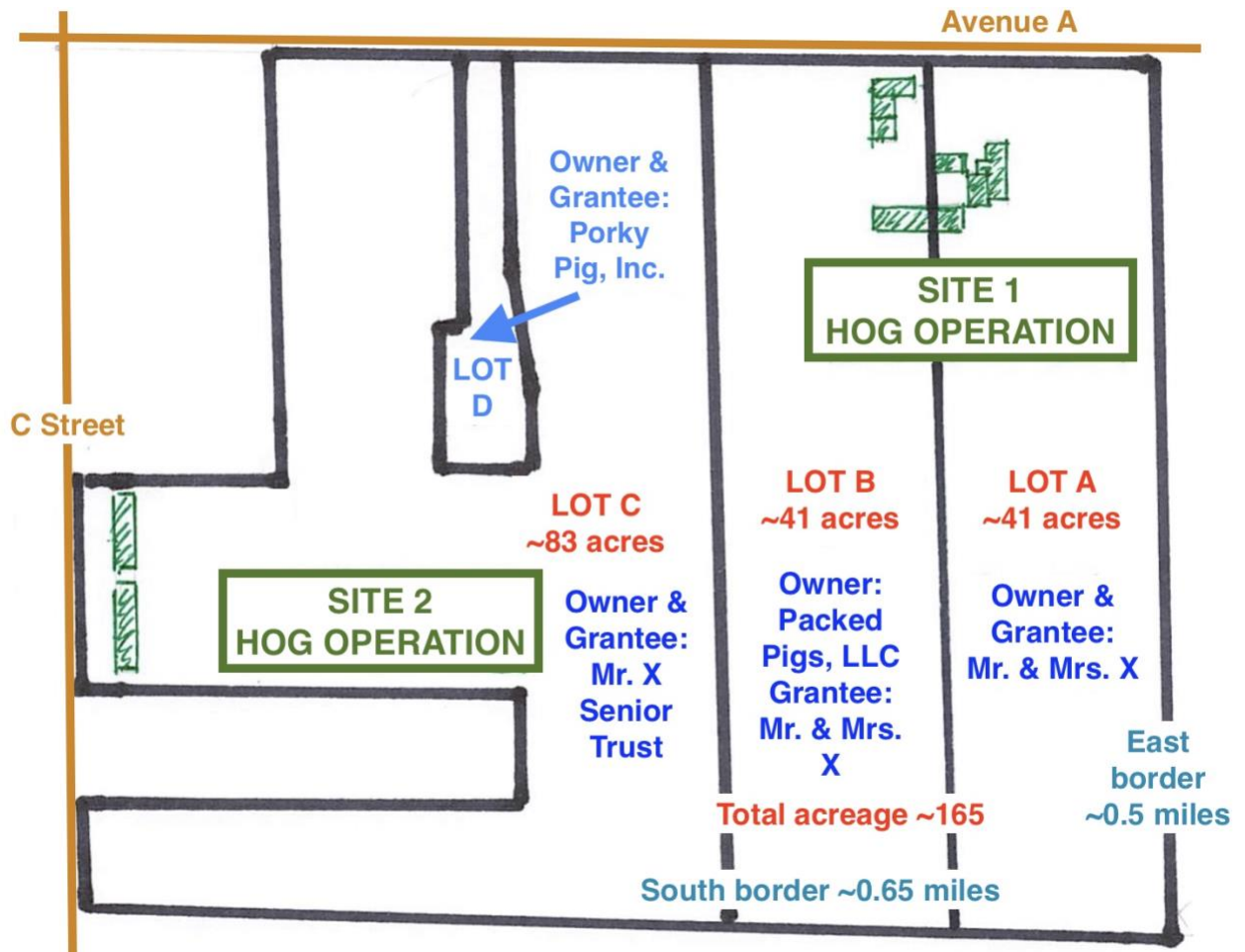


Figure 1: A picture is worth a thousand words

Once Upon a Time, There Was a Large Swine CAFO

The hog operation, 'Packed Pigs, LLC,' was established as a business entity in 2003 by 'Mr. and Mrs. X.' It was situated on two sites* on three adjoining land parcels (Lots A, B, and C). The entry to Site 1 (Lots A & B) is off one road (Avenue A), and the entry to Site 2 (Lot C) is off another road (C Street). Mr. X's parents originally owned all the land. In 1996, Lot A was split off and sold to Mr. and Mrs. X. In 2004, Lot B was split off and sold to Mr. and Mrs. X. Mr. and Mrs. X remain the grantees for Lot A and B, but ownership of Lot B is assigned to 'Packed Pigs' (notably not Packed Pigs, LLC). The property owner for Lot C is listed as a trust (Mr. X Senior Trust) in the name of Mr. X's father, Mr. X Senior. All three parcels contain hog-finishing barns and waste storage structures.

*Both sites confine hogs in barns with deep pit waste storage structures.

After the finalization of the 2008 CAFO Final Rule under the Clean Water Act, the state mandated that large CAFOs by regulatory definition (> 1000 animal units) operate with an NPDES permit. The owner of Packed Pigs, LLC, was obliged to apply for an NPDES permit based on the size of

his hog operation (2,500 or more swine weighing > 55 lbs). Of note, a hog producer who keeps his herd size just under 2,500 (say 2,499) can operate in this state without a permit (and therefore no oversight). Packed Pigs, LLC CAFO operated under an NPDES permit from 01/01/2008 until it expired on 04/01/2020. According to the state agency in charge of regulating NPDES permits for CAFOs [‘agency’], there were 4,400 swine > 55 lbs in 2020.

Chapter 1: All in the Family

Mr. X was the NPDES permittee for Packed Pigs, LLC CAFO until the permit was routinely reissued in 2016 when Packed Pigs, LLC was designated as the permittee. Most NPDES permits these days list a business entity instead of a person as the permittee, making it difficult to know who is the responsible party “behind the CAFO curtain.” Along comes Mr. Y, who happens to be related to Mr. X. The NPDES permit was modified effective 03/22/2019, naming Mr. Y as the new CAFO permittee. Designating a new CAFO permittee is a relatively simple matter. The agency must only be informed of the change and will issue a revised permit. A permittee name change is considered a “minor modification” of the NPDES permit.

Chapter 2: The Permit Goes “Poof”

Until that fateful day (03/22/2019), when Mr. Y was named the new NPDES CAFO permittee, the entire hog operation appeared to be under Mr. X’s jurisdiction.

In what appeared to be an agmandering ploy, control of the hog operation was allegedly split. Mr. Y made the case to the regulatory agency that an NPDES permit was no longer required because there was no longer one large hog CAFO but two smaller hog operations under “separate ownership.” And just like that, Packed Pigs, LLC CAFO was divided in two, and the NPDES permit was officially terminated on 06/09/21. Goodbye permit, goodbye oversight. Presumably, Mr. X owns/operates Packed Pigs, located on Lots A & B (Site 1), given that he and his wife live on Lot A. Presumably, Mr. Y has something to do with the hog operation located on Lot C (Site 2), even though he doesn’t own the land upon which the CAFO structures sit. According to the County Register of Deeds, Mr. and Mrs. X are the grantees for the land parcels (A and B) upon which the site 1 hog finishing barns/waste storage structures are located, and a trust in the name of Mr. X’s father (‘Mr. X Senior Trust’) is the grantee for the land parcel C upon which the site 2 hog finishing barns/waste storage structures are located. Mr. Y might have a leasing arrangement with Mr. X’s father (Mr. X Senior), but if so, those records are not publicly available. A search revealed no public record of a hog farm operated by Mr. Y at site 2.

The regulatory agency provided the following rationale for terminating the NPDES permit: *The farm is comprised of two separate sites on separate parcels with different owners. Each site is also under the CAFO permitting threshold, one houses 2,050 swine greater than 55 pounds (lbs.) and the other 2,400 swine greater than 55 lbs.*

Chapter 3: Who’s Really Minding the Pigs?

Limited liability corporations and other business entities must file an annual statement with the state licensing agency. Mr. X has been listed as the resident agent for Packed Pigs, LLC, since the LLC was first formed in 2003, at least as of the last filing on 01/22/24. Mr. and Mrs. X are still the grantees for Lots A and B, and the Mr. X Senior Trust is still the grantee for Lot C. CAFO NPDES permittees aren’t required to own the land upon which the CAFO sits or the barns/waste storage facilities. Since the NPDES permit was terminated, Mr. Y’s connection to

the hog operation(s) on sites 1 or 2 is unclear. He is no longer the NPDES permittee, doesn't own any of the lots, and has no membership interest (e.g., ownership stake) in Packed Pigs, LLC, per LARA (at least as of the last filings in 2024). Mr. Y and his father (Mr. Z) are tied to Lot D (Mr. Y is the president of Porky Pigs, Inc., the company that is listed as the owner/grantee for Lot D).

Who's minding the pigs? Given the maze of involved parcel owners and business entities, it's hard to tell.

Chapter 4: Nothing changed for the neighbors, not the number of pigs or the amount of manure. In an example of agmandering, changing the name of the NPDES CAFO permittee to claim "separate ownership" led to the reclassification of one large permitted CAFO as two below-threshold animal feeding operations (AFOs). The adjacent hog operations are still operating as one large CAFO based on the total number of animals, but now, without a permit and, therefore, no oversight. **That's a whole lot of stink and potentially more. Alarmingly, the two sites under "separate ownership" could, in theory, add 548 more hogs (for a total of 4,998 hogs or 2,499 per AFO) and still go unpermitted.**

No regulatory oversight, no protection!

CAFOs generate massive volumes of manure. The manure output of one CAFO can rival or exceed the amount of waste produced by the human inhabitants of an entire city or even some counties. Excess nutrients that escape into the environment become pollutants. Like human waste, CAFO manure contains significant concentrations of human pathogens (germs capable of causing human disease) and other contaminants. Unlike human waste, CAFO manure requires no treatment before land application. The manure keeps coming, production cycle after production cycle, year after year. NPDES permits, while inadequate, at least afford some degree of protection.

Unpermitted high-density livestock operations, while encouraged to follow voluntary manure best management practices, enjoy freedom from oversight. Meanwhile, neighbors and local communities bear the brunt of the public health, environmental, and socioeconomic harms.

The moral of the story: Unrestrained CAFO (and AFO) siting and herd sizes harm human health and the environment. Regulatory oversight should depend on livestock density (total animal numbers/geographic area), not agmandering-enabled nebulous ownership rights/claims.

The above information was compiled from analyzing state records and other publicly available sources.