

**The Current State of the Battle**  
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Introduction

1. SERLO was formed in 2002 after the provincial takeover of siting and approval of Confined Feeding Operations (CFO's) from the jurisdiction of local municipalities and communities.
2. SERLO's objectives include promoting the voice and rights of landowners adjacent to CFO's and promoting and addressing concerns of contamination and depletion of ground and surface water.
3. If anyone doubted how intractable this problem would be, they should take some degree of instruction from this week's court ruling in the case of Ottawa and Sarsfield. It appears that even this nation's capital cannot keep the province in which it is located from shoving hog barns down its throat.
4. The impacts of ILOs on private property are directly related to the severity and immediacy of the threat.
  - a. This creates a two-stage battle:
    - i. Near term for air pollution and ground water spills
    - ii. Long term for aquifer pollution.
  - b. This changes the character of the battle because the ILO is present for the near battle but is likely to be gone before the long term battle is completed.
5. These problems are further complicated by the fact that pollution from the ILO and hence, property impacts, falls unevenly on the neighbors of the ILO.
  - a. By not considering the cost of pollution impacts on those neighbors who are affected by the ILO, you are assigning the only value to this cost that you are certain will not occur—zero.
  - b. The general rule in these cases should be easy to follow: if there is a potential problem with an ILO, you should protect the rights of current residents first and then permit the operation after this protection has been assured.

The conflict between the RM and the Province:

1. There is a built-in conflict of interest that springs from the principles that govern economic development.
  - a. Economic development is directly dependent on local spending and then re-spending—all of it must occur in the local area.
    - i. Therefore, there is no incentive for any other area to help you—you must do this for yourself.

- b. However, local is a relative term. For the County or RM, local means spending that occurs within its borders but for the province, spending within the county or RM is not significant—just spending within the province.
- c. Further, for many Counties or RMs with no community large enough to provide a full service economy to attract local spending, it may be impossible to successfully generate economic development with any kind of industrial project, let alone an ILO.
- d. For these very rural areas it is absolutely imperative to avoid any activities that create long-term costs through pollution—but because of low population density and, often, lower income citizens, it is precisely these areas that ILOs often target.

2. Permitting decisions by a large body like a province will seldom address the concerns of local areas. This is the critical weakness in trying to address ILO siting problems at the provincial level as Alberta is trying to do.

- a. This is particularly true when the provincial decisions to promote hog operations have been made to “correct” what are seen as other province-wide problems.
- b. For example, Saskatchewan tried to solve the problem created by the termination of the Crow Benefit by bringing in hogs.
- c. Attempts to promote or attract hog barns will generally succeed if only one condition is met—and that condition is within the ability of the Province to create: ILOs will usually locate where the enforcement of environmental regulations is most lax. Thus, there is an incentive for a province to relax environmental regulations to make sure their ILO program objectives are met.
  - 1. This creates a condition called “adverse selection” where more polluters are enticed to move to the area by the poor enforcement of environmental regulation.

3. There is a second concern here. Many provincial solutions to agricultural problems involve not ILOs alone, but ILOs and subsidies. Subsidies can be direct, cash subsidies to supplement the budgets of producers or they can be indirect—for example, lowering the costs of producers by relaxing the enforcement of regulations. In either case, subsidies are a political, not an economic solution to a problem.

- a. It should be no surprise that those who are first in line at the subsidy trough are generally politically and economically well connected to the centers of power.
- b. This is not the description of most rural areas. In fact, in the agricultural arena it often means that for those who receive the subsidies to actually get the payments, they must override the long term interests of the rural areas in which they are located.

Purpose of permitting:

1. To protect the right of exclusive use:

Exclusive use: those who have no claim on property should not gain economic benefit from enjoyment of the property. In other words, the right of use is exclusive to the property owner, and any violation of the right of exclusive use typically carries either payment of compensation to the rightful owner or assessment of a penalty. (Kilpatrick, 2001, p. 303).

Both the legal and economics professions view the right of exclusive use as fundamental to the long term beneficial use of property. If exclusive use is violated, those who own the land cannot be assured of compensation for the use of their property and they will tend to adopt short sighted land use policies. This lowers both the efficiency with which the property is used and the long-term societal benefits gained from use of the property (Snare, 1992; Stigler, 1992).

2. to assure that a proposed activity is commensurate with the long-term economic and social objectives of the area and its community.
  - i. For these reasons, permitting is (or should be), a local process and it must be implemented and controlled locally to successfully represent the residents of the rural area.
  - ii. This presupposes that the County or RM has long term plan for economic development and land use —most don't.

Methods of subverting the local permitting process:

1. Remove permitting from the area where the impacts will occur and the costs will be borne. This shifts the decision to the province and is accomplished through
  - a. Provincial oversight of ILO applications
  - b. Provincial writing and enforcing of environmental regulations
  - c. Provincial monitoring of ILO activities.
  - d. And, unfortunately, provincial responsiveness to ILO operators and provincial neglect of rural citizens who are the neighbors of the ILO.
2. Subvert or co-opt representative democracy. This can easily occur if the elected officials in the County or RM do not protect the right of exclusive use at the most local level and in areas where their own personal property is not located.
  - a. This puts a premium on both the selection and education of County and RM councils.
  - b. If the intent is to subvert the process, the premium is obviously placed on a different kind of selection and education criteria.
3. Subvert or remove the remedy for loss of exclusive use of private property through the courts.
  - a. In general, the kinds of trespass that occur because of ILO odor or pollution create a nuisance and nuisance is usually subject to lawsuit.

- b. However, the ILO industry has been very proactive in removing the ability to sue for nuisance when agricultural issues are involved.
- 4. Masquerade as being local in the County or RM—use REDAs or EDCs or other front organizations—use contracts with local individuals to achieve vertical integration goals.

Some Suggested Solutions To Canada's ILO Problems:

1. Always and everywhere, there is no substitute for organizing and acting locally.
2. All solutions will depend on the way ILO issues are treated in each respective province—provinces in Canada now have widely varied approaches to ILO problems.
  - i. This means the likelihood of attracting an ILO varies across the provinces with those provinces whose environmental regulation enforcement is the loosest attracting the most polluters.
3. In every case you should concentrate on those areas where the opposition is the weakest.
  - i. In some cases, this may mean increased use of publicity, plebiscites, and other methods to draw attention to the Province's intention to turn some rural communities into sacrifice zones.
  - ii. In other cases, either political action or direct challenges in court may be the only answers—this is expensive and it is probably why ILOs tend to locate in economically depressed areas.
  - iii. In all cases, proactive land use and economic planning should be instituted in every County and RM—and it should be carefully controlled by the residents of the County or RM to ensure that it does not become a front for ILOs that are trying to enter the area.
4. Far greater care needs to be exercised in the selection and education of RM officials. Candidates for these offices need to be forced to take pre-election positions on how potential ILO permits would be handled.
5. There needs to be a serious test—eventually at the Supreme Court level—in both the US and in Canada of whether any government can deny the right of exclusive use under the guise of the nuisance being inherent in some kinds of operations.
6. The use of health-related regulation of industrial agriculture may be considered, however, so far, attempts to do this in the United States (in Worth County, Iowa) have encountered problems from the courts.
7. Always require performance bonding and remediation bonding for any ILO that wants to locate in your County or RM.
8. One technique that has worked successfully in the US in several areas is simply buying out the offending operation. However,
  - i. this is clearly a short-run solution,
  - ii. it depends on the ability of the opponents to come up with the cash, and
  - iii. it is unlikely to have the desired effect unless (4) above is implemented.
9. Thought should be given to instituting education sessions for Provincial and County and RM officials—something that is relatively common in the US and seems

to be used less frequently in Canada. These processes are usually started by ratepayer pressure—not by the officials involved.

10. There is a need to have a serious, Canada-wide discussion of the purpose of agricultural subsidies and the efficacy of Canadian or provincial government involvement in agricultural operations that can have such a serious impact on rural communities. SERLO should be part of this discussion and you should help to focus it on the needs of rural communities and rural residents, not the needs of corporate agriculture.

11. Plan as though the future really matters

Sources:

Kilpatrick, John A. 2001. *Concentrated Animal Feeding Operations and Proximate Property Values*. The Appraisal Journal.

Snare, Frank. 1992. *The Concept of Property*, American Philosophical Quarterly 9.

Stigler, George, 1992. *Law or Economics?* Journal of Law and Economics 35: 455-469.