Farm Protection From Nuisance Lawsuits

The purpose of this publication is to help you know and understand more about this important issue. It is provided by the Penn State Dickinson Agricultural Law Resource and Reference Center. The material is general and educational in nature. It is not intended to be legal advice. If you need legal advice, you are encouraged to seek the aid of a competent attorney in your area.

Technological and economic changes in agriculture are changing the public view of farming. Almost gone are the days where one family raises a few animals and crops to feed those animals. Satellite technology and genetically modified seed allow a single farmer to do the work of several farmers. Closer contact with homeowners moving away from the city and large numbers of animals on the farm may lead to numerous conflicts and eventually a nuisance lawsuit.

Prevention Rather Than Litigation:

"There is certainly every reason to take prudent and reasonable steps to avoid a nuisance lawsuit." See reference.

This paper discusses some factors present in an agricultural nuisance lawsuit. In the present changing agricultural environment, a farmer is more likely to be involved in a lawsuit. Understanding the Right to Farm (RTF) law and applying normal farming practices will reduce the potential for being involved in a nuisance lawsuit. The old adage, "an ounce of prevention is worth a pound of cure," is one worth remembering.

The Pennsylvania Right to Farm Law provides a Defense to Nuisance Actions IF:

1. the agricultural operation has been operating lawfully without a complaint for one year or more prior to the time when the operation is claimed to be a nuisance; or
2. the agricultural operation has adopted and is operating in compliance with an

approved nutrient management plan.

What Are Agricultural Nuisance Lawsuits?
A nuisance lawsuit involves a neighbor suing a farmer to force him to stop doing a harmful farming activity or force him to pay damages for his harmful farming actions. The lawsuit starts when a neighbor cannot enjoy his property because of the farmer's activities next door. The neighbor asks the court to make the farmer change.

Is Every Complaint A Nuisance?
Not all complaints of annoyance or disturbance are indicative of nuisance activity. Courts apply a standard of "significant harm" before ordering an activity to stop. Significant harm means a harm of importance, rather than something of slight inconvenience or petty annoyance. Slight inconvenience or petty annoyance is measured by a normal healthy person of ordinary habits and sensibilities.

In a Nuisance Lawsuit the Court Will Consider:
(a) the right of the farmer to continue using his land in the way he wants to, and
(b) the right of a neighbor to enjoy his property.

Nuisance law solves this conflict by determining if a "significant harm" has occurred.

Who Decides What is a Significant Harm?
Normally, a nuisance lawsuit will ask a jury to decide when a farming practice is a significant harm. The jury weighs the interest of each party and attempts to reach the fairest possible judgment. Results will vary depending on the makeup of the jury. There is no one thing that a farmer can do to avoid a nuisance lawsuit, but a farmer's legal position can be improved by applying acceptable farming practices.

Different Types of Nuisances Lawsuits
Public Nuisance

According to Pennsylvania caselaw, a public nuisance is defined as an inconvenience or troublesome offense that annoys the whole community in general, and not merely one particular person. A public nuisance threatens the public health, safety or welfare, or damages community resources, such as public roads, parks and water supplies. If a large number of people are affected by the activity, it is classified as a public nuisance. Public nuisance actions are generally brought by public officials (e.g., township zoning compliance officers, district attorneys or the state attorney general).

Private Nuisance

A private nuisance is defined as conduct that is a legal cause of an invasion on another's interest in the private use and enjoyment of land, and the invasion is either
(a) intentional and unreasonable action, or
(b) an unintentional act which are considered to be negligent, reckless or an abnormally dangerous type of activity.

The Pennsylvania Right to Farm (RTF) Law
The policy behind the Right To Farm Law is to reduce the loss of agricultural resources by limiting the circumstances under which agricultural operations may be the subject of nuisance suits and ordinances. The RTF Law helps to protect farmers from newcomers who want to challenge the way farmers have operated. The RTF Law provides farm families with a sense of security that farming is a valued and accepted activity in their communities.

Pennsylvania's Right To Farm law is **not** an absolute prohibition against nuisance suits. Farmers may still be sued over nuisance activities but the RTF law is a defense if:
1. The agricultural operation has been operating lawfully without a complaint for one year or more prior to the time when the operation is claimed to be a nuisance; or
2. The agricultural operation has adopted and is operating in compliance with an approved nutrient management plan.

In each of the above cases, the activity which is the subject of the complaint must not be a threat to health or safety or welfare or the authority of a municipality to enforce State law.

Operating Lawfully for One Year
For the "Right To Farm" law to apply the operation must be considered a "normal agricultural operation" and must continue "substantially unchanged" without complaint for one year from the time the operation is begun until the nuisance charge is made. A normal agricultural activity is an activity that farmers use to produce and prepare animals and products for market. The activities must take place on not less than ten contiguous acres of land or if on less than ten acres, the activity must have an anticipated yearly gross income of at least $10,000. The term normal agricultural operation can include new activities, practices, equipment and procedures consistent with technological development within the agriculture community.

If the activity has been substantially altered or changed after its inception, it is protected by the "Right To Farm" law the activity if it has been conducted in its altered or changed state for one year or more before a nuisance complaint is brought against it.

The one-year requirement should not present significant obstacles to farming operations that remain unchanged from year to year and generation to generation. The difficulty, however, is that few farming operations remain unchanged for long periods of time. New

enterprises and expansion of existing enterprises are constantly being considered. The definition of a substantial change has yet to be defined by Pennsylvania courts.

Complying with the Nutrient Management Plan
A recent amendment to the RTF added protection against a nuisance suit if a farmer has adopted and is in compliance with an approved nutrient management plan. The Nutrient Management Act requires all large animal feeding operations, those with two animal units per acre (2000 lb. live weight of animal per acre), to implement a nutrient management plan but any agricultural operation, regardless of type or size, can implement a nutrient management plan (NMP).

Exceptions to the Protection Offered by the Right to Farm Law
The Pennsylvania Right To Farm law is a defense to a nuisance lawsuit with two exceptions. The first exception is that the Right To Farm law may not in any way restrict or impede the authority of the State of Pennsylvania from protecting the public health, safety, and welfare or the authority of a municipality to enforce State law. A farmer who threatens public health, safety, and welfare or the authority of a municipality to enforce state law will be unable to receive the protection of the Right To Farm law.

The second exception is that the law does not defeat the right of a person, firm, or corporation to sue for damages caused by an operation conducted in violation of any Federal, State, or Local law which applies to that operation.

Prevention rather than Litigation:
Despite being armed with this knowledge about nuisance liability, a nuisance lawsuit can happen to any farmer. However, there is certainly every reason to take reasonable and prudent steps to avoid increasing the chances of such complaints being delivered in the future. The old adage, "an ounce of prevention is worth a pound of cure," is one worth remembering.

An important step to take is to share information about your operation with your neighbors before complaints are made. Take pride in the business you are running and give your neighbors insight into what you do and how you do it. If your operation involves activities that may impact your neighbors, let them know when you intend to perform that activity. If they know of your plans to spread manure, plow nearby fields, work late into the night or apply chemicals, they can prepare themselves to deal with the activity in advance. By taking this simple step you are not giving up control and putting yourself at the mercy of your neighbor in order to make use of your own land, but you are expressing a degree of respect for your neighbor's interests in enjoyment of his or her property. By showing respect for your neighbor, you establish respect as an important part of the neighbor relationship. Respect should be mutual.

Mediation: An Alternative to Court Resolution of a Complaint:
If a complaint develops despite your best efforts to avoid it, you should consider available alternatives to using the court system to resolve the disagreement. Mediation is one of those alternatives. Mediation is simply bringing both parties, the farmer and the

complaining neighbor, together and with the help of a mediator, working out a solution agreeable to both parties.

Benefits of Mediation:

1. Avoiding Lawsuits

— affected parties are directly involved in reaching an agreement

2. Preserving a sense of community

— mutually acceptable agreements are good for the community

3. Reducing future conflicts

— since both parties agree, they are more likely to implement the plan

4. Developing creative solutions

— disputing parties can generate responsive "outside the box" solutions

5. Saving time

— cases are frequently settled in a single meeting

6. Saving money

— less legal and attorney fees

To locate a mediator, contact your County Extension Agent.