



Right-to-Farm Law Issues

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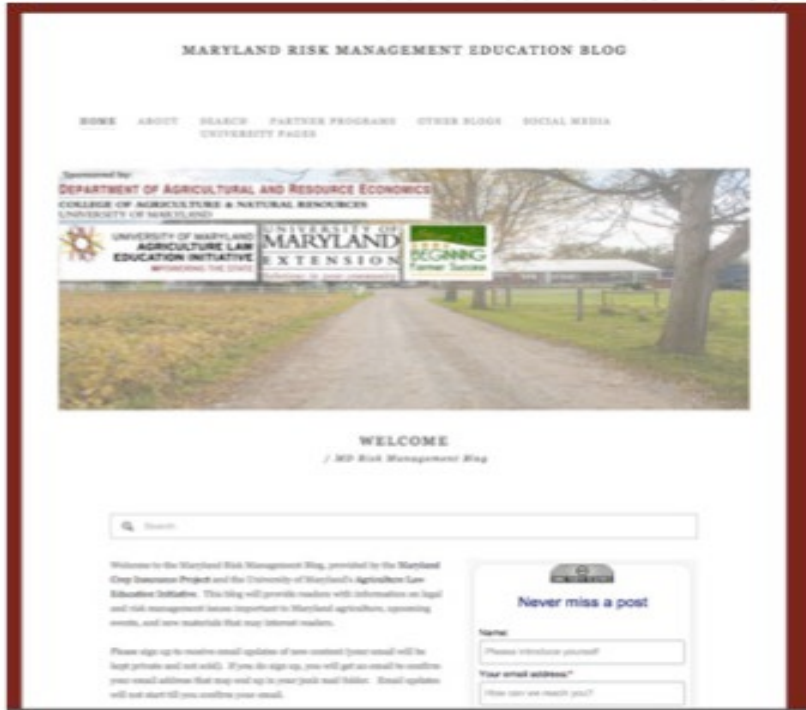


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This presentation is intended to provide general information over legal issues and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Maryland. For advice about how these issues might apply to your individual situation, consult an attorney.



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OVERVIEW



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Overview

- Right-to-farm laws protect agricultural operators against nuisance suits
- Farming causes odors, dust, and other issues that could potentially be a considered a nuisance

Overview



- 2018 saw a lot of news about these laws and concerns.
- Question is how would Maryland's law hold up in similar challenges.

THE YEAR OF RIGHT-TO-FARM



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Right-to-Farm Developments

Right-to-farm law did not protect “farmer” who used property to store septage lagoon waste (*Riddle v. Lanser* (Alaska 2018)).



Right-to-Farm Developments

- Bigger issue in 2018 has been focused around development of CAFO hog farms
- Challenges to these CAFOs common



Right-to-Farm Developments



Farm started in 1955 as a dairy, switched to cattle operation in 1990, and in 2011 became CAFO hog operation

Burlingame v. Dagostin

Right-to-Farm Developments

- Operation met 1 year requirement (began in 1955 did not look at when CAFO started)
- Spreading manure is normal ag operation

Right-to-Farm Developments

- *Honomichi* is challenge to two hog farms built in Iowa
- Trial court found RTF law is unconstitutional as applied to neighbors

Right-to-Farm Developments

- On appeal, court reversed.
- Trial court failed to use three prong test to determine if law unconstitutional as applied



Right-to-Farm Developments



2 justices concurred and stated they would have overturned previous decision ruling right-to-farm law was unconstitutional

Right-to-Farm Developments

N.C. Hog Farm Litigation, federal district court judge ruled that right-to-farm did not apply

Plaintiffs split into 26 trials; 4 held so far, all with verdicts for plaintiffs

1. \$50 M (reduced to \$3 M)
2. \$25 M (reduced to \$630k)
3. \$473.5 M (reduced to \$94 M)
4. Less than \$100k (judge ended punitive damages hearing)
5. \$420k (including actual and punitive damages)

Right-to-Farm Developments

Marsh et. al. v. Sandstone North et. al. – Illinois

- Two 7,500 hd swine finishing farms $\frac{1}{4}$ mile apart
- 10 plaintiffs, 5 residences, 1/10 to 1.6 mi. away
- Jury verdict, 5/24/16, no nuisance

King v. Peco Foods – Mississippi Poultry, broiler;

- 55 plaintiffs
- Jury verdict 3/15/17, no nuisance

Winter et. al. v. Gourley Premium Pork – Minnesota

- 3,200 sow farm
- 6 plaintiffs, 4 residences, $\frac{1}{4}$ to $\frac{1}{2}$ miles away
- Jury verdict 12/15/17, no nuisance

MARYLAND'S RIGHT-TO-FARM LAW



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Maryland's RTF Law

RTF law will only apply if certain conditions are met:

1. Need to be an agricultural or silvicultural operation, either:
 - a. Processes crops;
 - b. On-farm production; or
 - c. Harvesting or marketing of any agricultural, horticultural, silvicultural, apicultural, or product that was grown, raised, or cultivated by the producer.
2. Been in operation for 365 days; and
3. Be in compliance with all applicable laws, regulations, and permits.



Before Bringing a Suit

Complaint has to be heard first by a county agricultural reconciliation board or state's ag mediation program.

Affirmative defense is great, but does not mean the nuisance suit will automatically end.

Local review or mediation helps to control legal costs.

Local review or mediation helps find solutions in informal setting and provides win-win solutions.

If not heard by county board or mediation program first, then state court will lack jurisdiction to hear case.

Important feature of the law

County RTF Ordinances

22 of 23 Counties have similar language in their RTF ordinances

Common RTF ordinance requires:

Ag operations to utilize “generally accepted ag. management practices” (GAAMP).

Look to UME and local soil conservation districts to see if practice defined as GAAMP.

If not defined, then presume GAAMP but can present evidence that practice is not accepted.

Disclosure of RTF laws and ordinance existence when property is sold in the county

Puts new owners on notice that they are moving into an ag area

Exclusion to RTF Defense

Violations of federal, state, or local laws, regulations, and permits

Law probably only applies to nuisances caused by the ag operations, not other businesses the farmer might run.

Recent Alaska RTF case found that hobby farmer (who appeared to never sell a commodity) did not get the RTF law protection for a nuisance that may later support a farm (here he was storing septic waste for future use).

Exclusion to RTF Defense

Does not apply to claims of negligence

Negligence is a failure to exercise a standard of care we would expect from a reasonably prudent person.

Ex: You have cattle on your farm and you know the fence keeping the cattle off the road is not in condition to keep the cattle in. One day your neighbor is driving down the road and hits a cow that has wandered off your property.



Exclusion to RTF Defense

HB 472 would possible create a constitutional right to a clean and healthy environment

RTF law would not provide a defense in claims of violation of a constitutional right

WHAT ABOUT IN THE CASE OF LARGE PUNITIVE DAMAGES



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Remember NC Hog Farm Cases

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Punitive Damages

Damages above actual damages

Awarded only in certain situations (typically need a statute allowing these damages in limited cases)



Maryland and Punitive Damages



- Maryland courts require high bar for punitive damages
- Require showing of “actual malice” with clear and convincing evidence



Maryland and Punitive Damages

- This is a high bar in MD
- Actual malice means “a sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud”

Maryland and Punitive Damages

- In ag, normal farming operations that cause nuisance to neighbor not hit this standard
- Would have to go out of way to annoy neighbors and damage neighbors to reach actual malice.

WRAP UP



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Wrap Up

- We have seen large damages in cases involving farms at times in 2018
- These type of lawsuits would not result in similar damages in MD



Any Questions??

Thank you!



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