

Legal Challenges: Right to Farm Laws, Property Rights
Saturday, June 8 Breakout II.2

Synopsis

Social “elites” in the USA oppose monoculture, GMOs, free trade agreements, CAFOs and water pollution from agricultural runoff. Farmers need to understand what farming practices they want to protect and become familiar with their state’s statutes regarding nuisance, trespass and water quality challenges.

State statutes should set forth express prohibitions regarding actions by non-farming neighbors. Farmers also need to examine any clauses that stipulate whether the plaintiffs pay the fees if the farmer loses the case. Regardless, farms need to carry liability insurance. There are no right to farm statutes that cover farmers suing farmers.

Session Summary

Moderator – Senator Brian Munzlinger, Missouri
Gary Baise, OFW Law

Baise presented five principles in the USA that social “elites oppose:

1. mono-culture (for example rice, soy and corn). National Clean Water Act water quality standards shut down tillage agriculture. It then shifted its focus to timber and forage. Some states, for example Illinois, transitioned to “prescription” farming to avoid water quality violations.
2. genetically modified organisms
3. international free trade agreements
4. confined animal feeding operations
5. agricultural practices that contribute to water pollution from runoff (USEPA has convicted ten farmers for runoff).

Lawsuits against right-to-farm statutes have been pressed by USEPA against several dairy operations in Washington and in Idaho. For a summary of the Moon vs North Idaho Farmers Association decision (2004) regarding grass smoke from post-harvest burn of straw and stubble go to

<http://www.nationalaglawcenter.org/assets/cases/moon.html>.

Farmers need to understand what they are attempting to protect and look at their state statutes regarding nuisance, trespass and water quality challenges. The last is becoming a commerce issue. They also need to examine any clauses that stipulate whether the plaintiffs pay

the fees if the farmer loses the case. Regardless, farms need to carry liability insurance.

Definitions of agriculture vary among states regarding application to horses, roosters and aquaculture.

Statutes of repose can work for the farm if it has been in operation for one to three years. It helps if the farm has state-approved best management practices.

In Baise's opinion Vermont's right-to-farm law is one of the worst statutes regarding whether it pre-empts all state and local ordinances that can hurt farmers. Wisconsin and Oregon statutes are exemplary in that they prevent localities from passing ordinances that are stricter than the state's.

Express prohibitions should go into state statutes. See Illinois and Indiana laws regarding what is considered a "substantial change" in an operation. In addition, if a plaintiff loses a case, the plaintiff pays the legal fees.

There are no right to farm statutes cover farmers suing farmers. The definition of "farmer" is vague, especially regarding whether it includes hobby farmers.

HSUS has launched several challenges against farming operations regarding USEPA Environmental Impact Statements for a horse slaughter facility and for GMO sugar beets. It is also pursuing VOCs coming off silage and dust emissions from dairy operations.

Several environmental interest groups have sued USEPA resulting in consent orders regarding standards and effluent limits on nutrient runoff in Florida, Maryland and Pennsylvania.

North Dakota passed the nation's first right to farm **constitutional** initiative in 2013. According to Carolyn Orr's January 2013 article in *Stateline Midwest*, [Measure 3](#) bars laws limiting farmers' right to "employ agricultural technology, modern livestock production and ranching practices." North Dakota is the first state to put such a guarantee for "modern" farming practices in its constitution.

Baise suggested that USEPA needs a separate research arm such as exists at the National Institutes for Health. USEPA also needs a governing board, not a single administrator.