

**URBAN DEVELOPMENT/
RIGHT-TO-FARM**

Paul H. Patterson, Ph.D.
Assistant Professor
Poultry Science

This past fall I had the opportunity to hear two interesting presentations regarding urban vs. agriculture conflicts and right-to-farm issues. As poultry and other livestock operations come in closer contact with new urban and rural neighbors, being a good neighbor is not only the right thing to do from a neighborly standpoint, it may very well discourage litigation by urban neighbors that don't fully understand the needs and requirements of your farming operation.

Greg Andrews from the Pork Producers Environmental Law Education Network at Drake University in Des Moines, Iowa presented "The Future of Urban Vs. Agriculture Conflicts" at the recently held Regional Extension Poultry Specialist Workshop in Asheville, N.C. Andrews said nuisance complaints have been a hot issue recently with a lot of livestock producers involved in lawsuits. The basis of his advice to producers comes from research summarized in a book completed by Professor Neil Hamilton, entitled, "A Livestock Producer's Legal Guide To Nuisance, Land Use Control, and Environmental Law".

The restrictions on agricultural production are more and more prevalent. For example, recently the Environmental Law Education office received a call from the city

clerk of Miloy, Iowa, population 41, asking what ordinances they can pass to restrict farming operations within and adjacent to their town. Many of the small cities have large boundaries and several farm operations are within the city limit.

One of the things many states did in the late 1970s and early 1980s was pass right-to-farm laws. Many of the laws were clarifications of the rights coming from the nuisance doctrine. The nuisance doctrine simply says if you are there first, you get to continue. Therefore, they should have to put up with it.

Frankly, the right-to-farm laws have proved to be of limited effectiveness. An example was a case in Iowa where a feedlot was protected under the Right-To-Farm Law, but not the spreading of manure which one would think was an integral part of the feedlot.

The problem with the Right-To-Farm Law for judges is you should not be allowed to spread manure, for example, to the extent that your neighbor is so disturbed that he can't enjoy his property. Other examples where right-to-farm laws were not effective is when there is a change in the farming operation, for example, the farm expanded and shifted from one kind of production to another. The poultry farm shifted from dry litter to wet litter, and because of the shift, the Right-To-Farm Law would no longer apply.

Two other points Andrews made were:

1) when legislation is enacted to restrict others, it normally restricts

you. An example is when agricultural land is placed in an agricultural preservation zone with the good intentions of keeping it in agriculture. But many people see their land as their retirement and may want to develop and or sell off land in their old age.

2) It is not us vs. them anymore. Some extremely large livestock operations are coming into central Iowa under an agriculture exemption from county zoning. Probably it was never the intention of these laws to allow such an enterprise, but rather a typical farm during the period when the law was enacted in 1946.

Michael Olexa with the Food and Resource Economics Department at the University of Florida discussed "Nuisance Compliant Legislation" and what it could mean to poultry farms and their owners. His presentation was made at the 1994 National Poultry Waste Management Symposium held in Athens, Ga. last fall. Olexa pointed out that today, knowledge of specific areas of law such as environmental law and common law liability is becoming as critical for the operation of a farm as knowledge of traffic laws is for the operation of an automobile. Common law of torts imposes standards of behavior to deter wrongful, negligent, or unreasonable dangerous conduct and provides compensation for victims of such conduct. A tort is an act or omission that is deemed blameworthy. To agriculture, common law is much broader, addressing the reasonableness of all aspects of husbandry practices.

Nuisances affecting the public or private individuals have traditionally been the most widely used theory in environmental pollution actions. An example might involve animal waste runoff, or flies interfering with the public's right to safe drinking water. A public official could obtain an injunction stopping the activity creating the nuisance and an adjacent landowner may recover money damages through a private nuisance action.

A private nuisance must involve a substantial interference with another's use and enjoyment of land, such as exposing one to undue noise or unsightly appearance. It must be wrongful either by being intentional and unreasonable or from negligence, recklessness or abnormally dangerous activities.

In nearly every state, right-to-farm laws may give limited protection as a defense to a nuisance action. However, this defense is limited because it does not affect the enforceability of antipollution

laws.

Olexa concluded by saying that knowledge of nuisance law is vital for farmers in rapidly developing areas with expanding populations. Knowing the potential for nuisance actions, and the available defenses, is one preparatory step a farmer can make.

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Ag Secretary Appoints Haas

ST. LOUIS, Mo. — Willard Haas of Klingerstown, Pa., has been appointed to serve as a member of the United Soybean Board (USB) by Secretary of Agriculture Mike Espy.

Haas, who was nominated for the post by the Pennsylvania Soybean Association, was seated at the organization's annual meeting here in December 1994. In addition to serving as one of the 63 farmer-directors of USB, Haas was appointed to the international consumption committee.

Haas, his wife June, son Stephen and wife Virginia, farm about 1,400 acres of soybeans, corn, and wheat in the Klingerstown area. He also has a poultry operation of about 235,000 layers. Haas has been active in the Pennsylvania Soybean Association for a number of years, and was a school director for 10 years.

The USB manages soybean growers' investment in the National Soybean Checkoff, which funds research and marketing programs for soybean growers, who contribute 1/2 of 1 percent of the value of their crop when sold.

Also at the meeting, Barry Mumby, Fulton, Mich., was re-

lected chairman. Jerry Slocum, Coldwater, Miss., was elected vice chairman of the board and appointed chairman of the audit and evaluation and strategic planning committees. He previously served as treasurer of USB.

Russ Roe, LeRoy, Minn., was elected treasurer and chairman of the budget and finance committee. Roe previously chaired the research committee. Betty Wiese, Versailles, Ill., was elected secretary. All officers are also members of the USB executive committee.

In addition to elections and appointments, USB's farmer-directors reviewed and adopted the organizations' strategic plan. The plan establishes long-range goals, objectives and strategies to ensure coordinated use of check-off funds for maximum benefit to soybean farmers and the industry. It also specifies research and promotional programs that create, expand and protect markets for U.S. soybeans at home and abroad.



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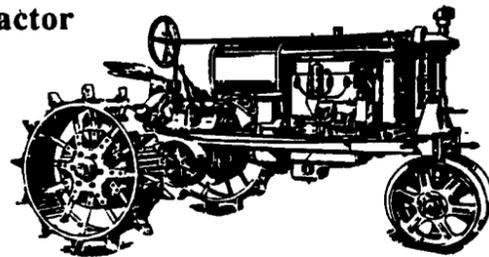
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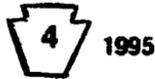
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