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Stockmen's Liability Under the Missouri Nuisance Law

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There is no one thing a stockman can do and gain absolute protection under the nuisance law. Thus you must attempt to prevent such lawsuits from arising. This implies that those who follow a "good neighbor" policy are less likely to be sued. Try to avoid causing your neighbors discomfort.

This Guide only discusses some general principles affecting the civil liability of feedlot operators under the nuisance laws. If you are faced with a potential air or water pollution problem, don't hesitate to discuss it with your attorney. Technical information on constructing lagoons and other pollution control facilities can be obtained through your local University of Missouri Extension Center. Additional information on water pollution can be found in UMC Guide 850, "Water Pollution Laws and Regulations."

Pollution of water and air caused by the raising of cattle, swine, poultry, and other domestic farm animals in confinement systems is a very real problem. Whether conditions arising from any particular operation constitute a *nuisance* is a question of fact and depends on the circumstances of each case. Should the conditions be found to constitute a nuisance, damages and/or an injunction are the legal remedies and are determined by the courts.

The purpose of this publication is to discuss general aspects of lawsuits for nuisances and to emphasize the importance of taking steps to prevent such lawsuits from arising.

What Is A Nuisance?

A nuisance is essentially an unreasonable interference by one person's use of his property with the use and enjoyment of another's property. Typical unreasonable uses are those producing foul odors, water pollution, loud and recurring noises, and physical conditions amounting to a health hazard. The defendant (the person being sued) counters by arguing that the animal operation is his livelihood. To close down his operation would cost him thousands of dollars invested in buildings and equipment which cannot readily be converted to another agricultural use. The defendant argues that it is not fair to shut down his operation.

But what is "fair"? Should the complaining party be forced to continue living under allegedly undesirable conditions? Should the farmer be forced to close down his livestock operation and lose a substantial investment? Obviously, the court's decision may work a hardship on one of the parties. To generalize what is fair in all cases is impossible. Instead, the circumstances of each case determine which party has the greatest interest. As the circumstances change, the legal result may also change.

Legal Remedies In A Nuisance Lawsuit

In a nuisance lawsuit the complaining party (the plaintiff) may ask for (1) an injunction, (2) damages (either actual or punitive), or (3) both an injunction and damages.

A lawsuit for an injunction is referred to as an equitable action. This means that the primary factor determining whether the court will close down an animal operation is fairness to both parties. The court must go through a process

*This is a revision of the Guide prepared originally by Donald R. Levi and John C. Holstein. Some sections of this revision appear essentially unchanged. Thus, a heavy debt is acknowledged to Levi and Holstein.

of weighing the interests of both parties in deciding which has the greatest interest. In essence, the court must balance the relative hardships involved between closing down the defendant's operation and forcing the plaintiff to live in undesirable conditions.

Injunctions are of two basic types: temporary and permanent. Where the farmer simply needs more time to alleviate the nuisance-causing condition, courts are prone to grant an injunction of a temporary nature. Once the nuisance has been eliminated, the court reviews its injunctive order and, if the court agrees that the proposed use is reasonable, allows the farmer to resume his enterprise. Where the farmer is unable to alter his operation to make it less objectionable, a permanent injunction is sometimes appropriate. Partly because of the severity of a permanent injunction, courts have been reluctant to permanently enjoin a farmer's operation.

Many petitions for injunctive relief are accompanied by a separate request for actual and perhaps punitive damages. By seeking actual damages, the plaintiff wants reimbursement for his out-of-pocket expenses and property losses. Basically, actual damages reflect any decrease in property values which result from the nuisance condition. Punitive damages, on the other hand, are awarded on account of the defendant's malicious conduct (legal malice).

Legal malice is basically defined as the doing of a wrongful act intentionally without just cause or excuse. For example, you might be liable for punitive damages if you could have altered your method of operation at little or no cost and thereby prevented any damage to your neighbors. In general, if your management practices are far from ideal, it is possible that punitive damages may be assessed against you.

Nuisances: Permanent vs. Temporary

A temporary nuisance is one which is abatable. For example, a farmer might be able to make his animal operation less objectionable to his neighbors by constructing lagoons, spraying for flies, or hauling manure more frequently. Should a farmer be sued for a temporary nuisance, he is liable in damages for the inconveniences that the complaining party has suffered in the past. If the farmer fails to take steps to abate the nuisance, he can be sued by the same plaintiff for damages arising since the previous lawsuit.

A farmer may periodically find himself defending a lawsuit if he fails to abate the nuisance condition. Thus, the farmer is encouraged to alter his management practices in order to avoid being sued again.

A nuisance which is not abatable is known as a permanent nuisance. All damages—both past and future—can be awarded the complaining party in one lawsuit because nothing can be done to relieve the inconvenience being suffered by the complaining party. The same plaintiff cannot later sue the farmer.

The court determines whether an operation constitutes a temporary or a permanent nuisance. This classification may have a decided influence on the farmer's future course of action.

Another Classification of Nuisances: Public vs. Private

Nuisances are also classified according to the number of people affected by the unreasonable use. When a person uses his property in such a manner as to interfere with the rights of a substantial number of people, this may characterize a "public nuisance." If he interferes with the rights of only a few people, a "private nuisance" is said to result.

Where a public nuisance is involved, it is more likely that an injunction will be granted. Since the court is weighing the interests of the parties, the interests of the public will likely be greater than those of a private individual.

The current trend in court decisions is to require the owner to modify the nuisance-causing operation if economically feasible. Ideally, this will relieve the plaintiff of the alleged inconvenient living conditions while permitting the defendant to continue to operate his modified feeding facilities.

Thus, the court may not close an operation if modifications significantly reduce odors, wastes and noise. However, odors, wastes and noise from feedlots may spread in many different directions. Thus, a farmer may have great difficulty "cleaning up" polluted air and water. For this reason agricultural enterprises must search for *preventive* solutions to this problem

What Have the Courts Said About Livestock and Related Operations?

Several cases in the midwest serve to illustrate the effect of nuisance laws on various types of livestock operations. In CASE A, the operator of a 7,500-head feedlot was sued by the owner of a nearby dairy farm. A small creek originating near the feedlot also ran through the dairy farmer's land. The dairy farmer had a well near the creek which was his only source of water.

After a heavy three-day rain washed manure out of the feedlot and into a creek flowing through the dairyman's farm, the water in the dairy farmer's well turned brown and smelled strongly of manure. Cattle became sick after drinking this water. The farmer had substantial veterinary expenses and some cattle died. He was forced to start hauling water from other sources, and eventually had to abandon his dairy operation.

The dairy farmer sued the feedlot operator and the court awarded him $15,000 in "actual" damages (i.e., veterinary expenses, value of cattle lost, lost profits, etc.). However, the feedlot operator was not required to pay "punitive damages," evidently because he immediately took steps to avoid further pollution as soon as he learned the dairy farmer's well was contaminated.

This case illustrates some kinds of losses for which actual damages can be reimbursed. Several similar cases can be found in which farmers brought suit against cities which were dumping raw sewage into streams running by the farmer's land. Again in these cases, the farmers were paid actual damages incurred when cattle became sick from drinking water from the polluted stream.

Other recent cases illustrate that, under some circumstances,

the individual causing the nuisance may also be held liable for punitive damages. In CASE B, a poultry processing plant was the alleged offender. Here a nearby resident complained that the defendant processing company's three lagoons, all located within 300 to 500 feet of his personal residence, drained onto his property. More specifically, he complained of odors, flies and insects which accompanied the waste water and filth. In essence, he was arguing that their operation constituted a hazard to his family's health, and that the value of his property had been lowered. Evidently the jury agreed; they returned a verdict for $25,000 in actual damages *and* $15,000 in punitive damages.

Nuisance law controlled the outcome of both Case A and Case B. Thus, a logical question is: "Why were punitive damages granted in Case B but not in Case A?" You will recall that punitive damages have been defined as "the doing of a wrongful act intentionally without just cause or excuse."

This does not mean that you will be held responsible for punitive damages only if you intend to damage you neighbor. Rather, it means that you may be held liable for punitive damages if you could or should have foreseen (or if you knew) that the manner in which you conducted your operation might damage your neighbor. That is, if you intended *to do the act* which you should have known might interfere with your neighbor's rights, you may be held responsible not only for actual damages, but also for punitive damages.

With this background, compare the facts in the two cases. In Case A, an abnormally heavy rain contributed to the pollution problem. Thus, it was less likely that the feedlot owner could or should have foreseen that runoff from his feedlot might damage the dairy farmer. And, as soon as the feedlot operator learned of the problem he immediately took steps to try to solve it.

In Case B, the lagoons had a capacity to handle the waste from 11,000 birds per day, using 55 gallons of water per bird. However, the plant was actually processing 20,000 birds per day, using 70 gallons of water per bird. The Missouri Supreme Court stated that this was sufficient evidence on which the jury could award punitive damages. In other words, operating the plant at approximately twice the lagoon capacity could foreseeably overload the lagoons and creat uncomfortable living conditions for residents within 300 to 500 feet of the lagoons. Thus, legally this was "the intentional doing of a wrongful act without just cause or excuse."

How Can These Lawsuits Be Avoided?

Obviously, all livestock operators want to avoid being held liable for both actual and punitive damages if at all possible. Likewise, they do not want to see their buildings and equipment stand idle after being closed by an injunction.

Different legal problems exist in a suit for damages than in a suit for an injunction. The primary question in a damage suit is: "Did you damage your neighbor?" Whether you intended to do so or negligently did so is irrelevent to your liability, at least with regard to actual damages.

However, as previously noted, in a suit for an injunction, the court simply "weighs the interests" of the respective parties. This means there is no one thing which you can do to assure that the scales of justice will always tip in your favor. Thus, livestock operators must seek to prevent the problem from arising if possible.

The following discussion may be important to you in either preventing lawsuits or improving your position to make it more likely that the scales of justice will tip in your favor.

Comply with State and Federal Laws. A good way to avoid penalties resulting from a lawsuit is for livestock and poultry producers to comply with the laws and regulations in force. Both federal and state laws have been passed in recent years in an attempt to prevent pollution at its source. Agencies charged with enforcing laws and regulations of most interest to livestock and poultry include the federal Environmental Protection Agency (EPA) and a state agency, the Missouri Clean Water Commission.

The EPA has national responsibility for implementing the 1972 Water Pollution Act and amendments which include control of confined feeding operations. In Missouri, EPA works through the state regulatory agencies. So livestock producers should contact the Missouri Clean Water Commission when questions arise about animal waste management regulations.

Have an Approved Waste Management System. To comply with state and federal laws on water pollution related to confined feeding of livestock and poultry, it is necessary to have an approved waste management system for the confined feeding unit. The system approved by the Clean Water Commission includes three basic concepts.

(1) Systems must be designed so that there will be no direct discharge into surface or subsurface water as there is in industrial or municipal waste treatment systems.

(2) Systems must be designed and managed so that all animal wastes are collected and applied to the land in a controlled manner.

(3) A *letter of approval* will be issued by the Clean Water Commission upon completion of an approved system. Structures and facilities must be designed to handle the wastes produced. A description of what constitutes an approved system and the design data are provided in UMC Extension Division Miscellaneous Publication No. 232.

Good Management Important. The owner has the responsibility, according to the law, that no water pollution will originate from his property. If all the waste is applied to the land in an approved manner, then water pollution does not occur. But any waste management system designed so that there is no point source of discharge from the property will require attention and proper management from the operator and/or owner.

A properly designed, well managed livestock waste disposal system is not likely to create water pollution and odor problems or bring complaints from neighbors. But even a properly designed system can be mismanaged so that pollution results. If the owner permits overflow or fails to haul and spread at the proper time, a nuisance could be created. Thus, proper management is extremely important.

Letter of Approval may be Helpful. An important part of the Missouri Approach is the *letter of approval* issued by the Clean Water Commission. This letter is issued to all

individuals who apply and show sufficient evidence of having a waste management system that can be managed and operated so that water pollution problems will not be created.

The letter of approval offers incentives to the livestock producer. A record of his waste disposal system is placed on file, indicating that the wastes are being disposed of in an approved manner and are not causing water pollution problems.

Securing a letter of approval does not mean that a neighbor cannot bring suit or that the operation will automatically not be declared a nuisance. However, a letter of approval may be very important in the outcome of a lawsuit. If an operator has complied with all requirements of the regulatory agencies it is less likely that a jury would conclude that the plaintiff was intentionally injured by a wrongful act. In turn this would make it less likely that punitive damages would be assessed.

Select Site Away from Residences and Streams. As a practical matter, *locating a feedlot some distance from residences and streams may be the most important single thing in avoiding nuisance lawsuits.* Location is also the key to preventing stream pollution. In selecting a site, remember that an equitable action for an injunction is tried in a court of "good conscience." Thus, "do unto others as you would have them do unto you" is a good rule to follow. Would you like it if someone built a large confinement shelter for finishing hogs directly across the road from your home?

This situation occurred in one recent case when a 40 x 500 foot confinement turkey feeding shelter was erected directly across the road from a neighbor's house. The neighbor's request for an injunction was granted, and the shelter house is now idle. Only one flock of turkeys had been fed in the house, so the loss to the owner was substantial.

Does it Help if You Were There First? The feedlot is less likely to be held liable for damages to a nearby neighbor if he initiated his operation before such neighbor moved into the nearby residence. The fact that "you were there first" does not insure that you will always win a lawsuit, but *the jury is permitted to consider this fact* in their deliberations.

One can argue that a neighbor must accept the bad consequences of country life along with its benefits. In essence, this implies that a resident "moving to" a 500-head feedlot *assumes the risk* of undesirable living conditions. However, most courts would not grant a feedlot owner absolute protection under these circumstances for two reasons. First, if one "assumes the risk" of living in these conditions, this presumes that he realized how bad conditions were at the time he took residence. This may not be true, for example, if a person moves near the feedlot during the winter when little or no odor problem exists.

Second, even if a person realizes the quality of living conditions near a 500-head feedlot, is it fair to say he has no right to sue if the lot is increased in size to 1,000, 5,000 or even 10,000 head? Obviously, subsequent increases in size of the feedlot may potentially cause greater water and air pollution, and may also affect property values for nearby residents. Thus, the courts do not give the feedlot operator automatic protection just because he was there first, but do allow the jury to take this into consideration in arriving at their verdict. A jury likely would be unsympathetic toward a nearby neighbor who moved in one month and sued the feedlot operator the next.

Know Contractual Rights and Duties. When livestock are fed by farmers on a contract with a feed company (or processor), possibly either or both may be liable for damages in a nuisance action. Here, the terms of the contract may be a factor in determining which party is liable for such damages. If the contract creates an employer-independent contractor relationship, the farmer may be solely liable.

Thus, it is imperative that farmers know what type relationship is created by their contract. An attorney can analyze such contracts and make this determination. More information on employer-independent contractor relationships can be found in UMC Guide 451, "Farmer's Liability for Acts and Injuries of Employees."

County Zoning. In some situations zoning restrictions may help farmers avoid nuisance lawsuits while in other situations they may not help at all. An area zoned for agricultural production is less likely to attract residential development, thus lessening the likelihood of confrontation between farmers and rural residents. On the other hand, once a nuisance lawsuit arises the presence or absence of an agricultural zone may not be significant.

The courts have not yet gone so far to say that nuisance lawsuits cannot be brought against farmers in areas zoned for agricultural production. Many nuisance problems have arisen between farmers operating in an area zoned for agricultural use and rural residents living nearby in an area zoned for residential use. Furthermore, land zoned for agricultural use may be rezoned for residential use as the public interests shift from rural to more urban orientation.

To secure the maximum benefit from zoning, farmers must participate in the process of creating and re-examining zoning restrictions to insure representation of their interests.

Summary

There are circumstances where you can be held responsible for nuisance conditions arising from livestock confinement. Whenever your operation unreasonably interferes with the use and enjoyment of another person's property, a nuisance exists. Remedies for nuisance include damages, injunctions, or both.

To avoid creating liability for nuisances, farmers must take preventive steps. Proper management is of primary importance. Do not exceed the design capacity of feedlots. Lagoons should not be allowed to overflow. Animal carcasses should be disposed of properly and promptly.

Location and design of the livestock facilities are equally important. State and federal laws regulate aspects of larger livestock facilities. Compliance with pollution regulatory agencies will help reduce your liability for punitive damages. Once approval is acquired, proper management is necessary. Locating the facility away from residences and streams may be the most important single factor in avoiding nuisance lawsuits.

Nuisance conditions are easily created by livestock confinement where management becomes careless and fails to follow a "good neighbor" policy. Prevention is the key.

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