Pennsylvania Right to Farm Act
3 Pa. Stat. §§ 951-957
Right to Farm Laws

Background

RTF Laws enacted in all fifty states.

- Enacted primarily between 1978 and 1983 after publication of a National Agricultural Lands study warning of a national crisis in farmland preservation
- Generally passed with little opposition
Right to Farm Laws

Background

All RTF Laws attempt to remedy farm – non-farm conflicts

- Urban encroachment on agricultural operations
- Expanded agricultural operations
- Less familiarity with agricultural operations
Right to Farm Laws

Background

- The specific provisions in RTF Laws vary from state to state.

- RTF Laws generally limit nuisance lawsuits against farms.
Right to Farm Laws

Background

- May Limit municipal ordinances
- May create mediations requirements
- May establish panels to review cases prior to suits being filed
Landowner cannot use land in manner that unreasonably interferes with another landowner’s use of land.
Background

Nuisance Law

- Nuisance is closely related to trespass
  - Nuisance is an interference with another’s use of his/her property
  - Trespass is an invasion onto another’s property
Background

Nuisance Law

Determination of nuisance balances benefit of use against harm caused by use.
Background
Nuisance Law

- Private Nuisance interferes with rights of individual.

- Public Nuisance interferes with rights of community.
Background

Nuisance Law

The remedies available for a party prevailing in a nuisance suit include:

- Injunction
- Damages
- Injunction but payment of damages by prevailing party
  - Least cost avoider solution
Background

Nuisance Law

- “Coming to the Nuisance” Defense
  - Early user has greater rights than later user.
  - “Coming to the Nuisance” was a defense under common law.
  - “Coming to the Nuisance” was being applied less frequently.
- Determination of a nuisance is highly fact-specific.
Pennsylvania Right to Farm Act

History

- Was enacted on June 10, 1982.

- Amended in 1998 to address expansion or alteration of agricultural opera.
Pennsylvania Right to Farm Act

Legislative Policy

- to limit “the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.”
- “to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. . . .”
Pennsylvania Right to Farm Act
Legislative Policy

“to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.”
Pennsylvania Right to Farm Act

Three Protections Granted By Act

- Requires that municipalities exclude normal agricultural operations from definition of nuisance;
- Limits ability of municipalities to restrict direct commercial sales of agricultural products; and
- Limits nuisance actions against agricultural operations.
Pennsylvania Right to Farm Act

“Normal Agricultural Operation”

- The activities, practices, equipment, and procedures utilized in production, harvesting, and preparation for market
- Of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities
- For operations that are at least ten acres in size or produce annual gross income of at least $10,000
Pennsylvania Right to Farm Act

Limitation on Nuisance Actions

- PA RTF Act is defense to nuisance action against agricultural operation where:
  - Operation has been lawfully operating for at least one year;
  - Conditions complained of have existed since established date of operation; and
  - Conditions complained of are normal agricultural operations.
Where agricultural operations are expanded or altered, PA RTF Act is defense to nuisance action if:

- Operation has expanded or altered for at least one year; OR
- Expansion or alteration has been addressed in Nutrient Management Plan.
Direct commercial sales are permitted:
- On property owned and operated by landowner
- Who produces at least 50% of agricultural commodities sold.
Pennsylvania Right to Farm Act

Exceptions

- PA RTF Act does not protect farms where:
  - Agricultural operation has direct adverse effect on public health and safety;
  - Zoning ordinance prohibits or limits operations;
  - Agricultural operation is in violation of federal, state, or local statute or regulation;
  - Agricultural operation pollutes water or causes flooding.
Pennsylvania Right to Farm Act

Case Law


**Facts:**
- Nov. 1993 – 122,000 laying hens in poultry house
- Aug. 1994 – decomposition building constructed
- Nov. 1995 – nuisance lawsuit filed

**Claims:**
- Failure to control flies, strong odor, and excessive noise
- Alleged devaluation of property by $60,000

Court Opinion:
- PA RTF Act covered private nuisance as well as public nuisance.
- PA RTF Act covered pre-existing neighbors.

Holding:
- Upheld dismissal of case because it had not been filed within one year time-period.
Pennsylvania Right to Farm Act

Case Law

- *Remaley v. Zook* (Snyder Co. 2009)
  - facts:
    - 1979 – Zooks begin dairy farming
    - April 2007 – Zooks begin construction of poultry barn
    - August 2007 – Chickens housed in poultry barn
    - November 2007 – Remaleys initiate nuisance litigation
Pennsylvania Right to Farm Act

Case Law

- Remaley v. Zook (Snyder Co. 2009)
  - Requested Relief:
    - Reconfiguration of poultry barn
    - Monetary damages for alleged devaluation of property
Pennsylvania Right to Farm Act

Case Law

- Remaley v. Zook (Snyder Co. 2009)
  - Court Ruling:
    - Poultry farm did not constitute a nuisance
    - Zooks conduct was not unreasonable
    - “[G]ravity of harm suffered by Plaintiffs does not outweigh the utility of Defendants’ conduct in operating a poultry farm in an agricultural community.”
There are two general types of RTF Laws:

- Limited Prohibition on Filing Suit Against Farming Operation (Type One)
- Absolute Prohibition on Filing Suit Against Farming Operation (Type Two)
Right to Farm Laws

Constitutional Issues

- Limited Prohibition on Filing Suit Against Farming Operation (Type One)
  - Farming operations receive immunity from nuisance after they have been in existence for a set period of time
  - Serves as a statute of limitations
  - Have not had constitutional issues
Right to Farm Laws
Constitutional Issues

- Absolute Prohibition on Filing Suit Against Farming Operation (Type Two)
  - Requires no passage of time
  - Have been subjected to constitutional scrutiny
Right to Farm Laws

Constitutional Issues

- PA RTF Act Hybrid of two types:
  - (Type One) opportunity to file suit if filed within one year of establishment or substantial modification of operation
  - (Type Two) one-year time period eliminated where producer has approved nutrient management plan and is in compliance with Nutrient Management Act
Right to Farm Laws
Constitutional Issues

- PA RTF Act constitutionality
  - (Type One) ruled constitutional in *Horne v. Haladay*
  - (Type Two) Constitutionality remains open issue
Right to Farm Laws

Unconstitutional Statutes

- In 1998, Iowa’s RTF Law stated:
  - “A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation.”
Right to Farm Laws
Challenge to Iowa RTF Law

- *Bormann v. Board of Supervisors*, 584 N.W.2d 309 (Iowa 1998)
  - Neighbors contended that Iowa’s RTF Law granting immunity from any future nuisance suits would result in the taking of property without just compensation
Challenge to Iowa RTF Law

*Bormann v. Board of Supervisors*

- **Argument:**
  - Iowa RTF Law nuisance immunity gave farms located in agricultural areas a right to create or maintain a nuisance.
  - This right would create an easement over neighboring properties.
  - Property owners had not received compensation for this easement.
Challenge to Iowa RTF Law

Bormann v. Board of Supervisors

- Iowa Supreme Court Ruling:
  - Agreed that the nuisance immunity statute would in effect create an easement
  - Since the government had not paid for this easement, the result was an unconstitutional taking of property without just compensation
Some RTF Laws will impose fees for an unsuccessful nuisance action.

Some RTF Laws do not protect large operations.

California has recently enacted a homeowner notification requirement.
California Right to Farm Law
Notification Requirement

- Requires notification be provided to individual purchasing property within one mile of a designated agricultural area.

“[T]he property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector.”
California Right to Farm Law

Notification Requirement

“Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pump and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides.”
California Right to Farm Law
Notification Requirement

“These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase.”
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