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Laws and Regulation Impacting Livestock Wastes in Kentucky

J.L.Taraba and R.M. Williams

In recent years, the number of laws and regulations prescribing the rules for everyday life seem to be ever more complex and pervasive. Changing farming methods, expansion of the urban community and increasing public environmental concerns have increased the agricultural producer's need to think more seriously about his method of livestock waste disposal. Laws, regulations, practices, standards and ordinances range from the obvious (solid waste management) to the not so obvious (protection of endangered species). The public has protection from the farmers (discharge permits) and the farmer has protection from the public (Right to Farm laws). The following is an attempt to summarize those laws and regulations which may impact livestock waste disposal (utilization) in Kentucky.

Laws and regulations designed to protect the health and safety of the public as well as the environment are sometimes referred to as environmental laws. Kentucky has a number of laws which deal with water quality, waste disposal, air pollution and conservation which fall in this category. The National Environmental Policy Act (NEPA, PL 91-190) has as one declared purpose "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." Federal and state laws which are written to reflect this policy need not be in conflict with the normal operation of livestock enterprises. Best Management Practices (BMP) associated with manure disposal designed to keep soil nutrients at acceptable agronomic levels will normally not result in violation of state regulations written to protect the environment. Also, proper management and utilization of livestock waste can be a significant contribution to the economic well-being of a livestock enterprise, since the wastes have considerable economic value when properly utilized.

Other laws, usually referred to as Right to Farm laws, are written to protect the farming community from encroachment of non-farming interests.

Unplanned non-farming interests, urban sprawl, industrial expansion, etc. into prime farming areas often result in the loss or reduction in farming operations. The result may be the loss of livelihood of the rural community and financial loss to the state as a whole.

Federal and State Agencies

There are a number of state and federal agencies which may be concerned with proper disposal of livestock wastes. The Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection operates under authority of KRS 224 and is generally charged prescribing regulations for abatement and control of pollution of air and water. The Division of Water (DOW) Division of Waste Management (DMW) and the Division of Air Quality each have regulations which may impact the disposal of livestock wastes. At the Federal level, the U.S. Agricultural Stabilization and Conservation Service (ASCS) and the U.S. Soil Conservation Service (SCS) have programs to assist farmers in the proper disposal and utilization of livestock waste. Laws and regulations designed to protect the environment are generally written to regulate the discharge of municipal and industrial waste, livestock waste returned to the soil as fertilizers and soil conditions are generally excluded from regulation.

Water Quality Regulations

Permitting procedures established to abate pollution of water sources from animal production facilities have been established by the D.O.W. Anyone who plans to construct and operate a manure handling system for a confined feeding operation must apply to the DOW for a construction and an operating permit. The system must be designed to keep all manure and other waste out of stream and groundwater. Sufficient land must be available to spread the excess water and solid waste. Financial assistance is available through the U.S. ASCS, if the operation has no previous record of water quality violations. The US SCS provides assistance in the design of the facilities as well as the development of a manure disposal plan. Non-point sources are generally excluded from regulation so long as they do not cause a violation of stream water quality standard, (401KAR 5:031, 40CFR Part 131).

Solid Waste Regulations

Federal (40 CFR 257) and state (401 KAR 47:100) solid waste regulations generally exclude agricultural wastes which are returned to the soil as fertilizers or soil conditioners. Agricultural solid waste disposal is regulated with a permit-by-rule (401 KAR 47:100) which is automatic and no application is required; however, DWM environmental performance standards (401 KAR 47:030) are considered when determining compliance.

Drinking Water Supply Regulations

In an effort to protect the state drinking water supply, the DOW has adopted recommended practices for water supply reservoirs (401 KAR 8:020) and Kentucky water well construction practices and standards (401 KAR 6:030). Both establish minimum distances to sources of livestock waste and facilities. Local governments are attempting to provide some protection to water supplies through the use of local ordinances (401 KAR 4:020). The ordinances attempt to restrict activities which would adversely impact watershed for surface impoundments and well recharge areas.

Air Quality Regulations

State administrative regulations contain little about the regulation of odors from agricultural facilities; however, persistent offensive odors may be a basis for public nuisance lawsuits. The odor regulation requires that odor not be detectable at equal to or greater than 7 dilution on a Barnaby-Cheney scentometer at the property line of the farm from which the odor is generated

"Right to Farm" Laws

The Kentucky General Assembly has attempted to reduce the agricultural producer's exposure to nuisance lawsuits by passing a "Right to Farm" law (KRS 413.072) in 1980. The Agricultural District and Conservation Act (KRS 262.850, 1982) has the declared purpose to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource. Both of these laws were established in part to protect agricultural operation from the effect of urban expansion into predominantly agricultural areas. State agencies must take action "to mitigate the impact of their present and future plans and programs upon the continued use of land with an agricultural district." The combined effect of these laws is to reduce the pressure on farms to sell out due to nuisance actions and urban expansion through annexation and local ordinances. Neither of these laws provide any protection if an operation is negligent or in violation of water quality regulations. The Right to Farm law voids local ordinances which may declare agricultural operations nuisances.

Interactions Among Laws and Regulations

Regulations written to accomplish different objectives may mean that an operator who is in compliance with one regulation may be in violation of others. Circumstances surrounding a solid waste disposal activity, (heavy rains following field application for example) may result in violation of water quality standards. Storing large amounts of solid wastes would appear to satisfy the no discharge requirement for DOW permitting procedures, but could violate the intent of the DWM solid waste disposal requirements. Even though DOW and DWM regulations have no specific provisions for regulation of non-point sources, runoff from pastures into streams or well recharge areas may endanger public water supplies. Local ordinances and zoning laws (through the use of special permit and operating standards) may encourage the use of Best Management Practices to control pollution of watersheds and well recharge areas. However, unduly restrictive or improperly written ordinances may run afoul of the Right to Farm and Agricultural District laws.

Solid livestock waste may be utilized in a number of ways which are acceptable under the regulations. Direct land application is the most common method of utilization; however composting and use as a high protein animal feed are gaining popularity. Land application of solid and liquids must be done at rates and times which do not cause pollution of area water sources. Odor control should be considered during land application near residential areas, and if incorporation in the soil is not practical atmospheric conditions should be taken into account.