

# NUISANCES FROM ANIMAL FEEDING OPERATIONS: RECONCILING AGRICULTURAL PRODUCTION AND NEIGHBORING PROPERTY RIGHTS

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Our society is founded upon a system of laws that balance competing interests. Over the centuries, various common law, civil, and criminal remedies have evolved to address conflicting rights and provide greater structure to rights held by property owners. One of the challenges has involved nuisance activities and the inability of nuisance law to address all relevant concerns.<sup>1</sup> In response to the loss of investments by farmers who were being enjoined under nuisance law

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1. See, e.g., Andrew Auchincloss Lundgren, *Beyond Zoning: Dynamic Land Use Planning in the Age of Sprawl*, 11 BUFF. ENVT'L. L.J. 101, 124-25 (2004) (discussing zoning as an alternative to nuisance law); Andrew Jackson Heimert, *Keeping Pigs Out of Parlors: Using Nuisance Law to Affect the Location of Pollution*, 27 ENVTL. L. 403, 414-15 (1997) (noting that nuisance law was unable to reduce pollution to optimal levels); Henry E. Smith, *Exclusion and Property Rules in the Law of Nuisance*, 90 VA. L. REV. 965, 1047 (2004) (noting that nuisance is supplemented by other rules of proper land use such as pollution control and zoning); Glenn P. Sugameli, *Takings Bills Threaten Private Property, People, and the Environment*, 8 FORDHAM ENVTL. L. J. 521, 560 (1997) (commenting that pollution controls were enacted due to the inability of nuisance law to protect health and property).

to cease objectionable activities, states enacted right-to-farm laws.<sup>2</sup> As farm groups realized the power of these laws, statutes were amended to provide even greater protection to agriculture and associated industries.<sup>3</sup> As the pendulum swung in favor of agriculture, some of the laws took so many rights from neighbors that they were declared a taking.<sup>4</sup>

Right-to-farm laws supplement property law, nuisance, land use, and pollution statutes in apportioning rights and responsibilities amongst neighboring landowners.<sup>5</sup> The original basis of right-to-farm laws was to protect agricultural production activities at farms and to preserve farmland.<sup>6</sup> However, with the passage of time, the landscape has changed, leading some to question the merit of the special legislative dispensation.<sup>7</sup> Right-to-farm laws intrude on neighbors' property rights,<sup>8</sup> reduce the sensitivity of producers to community rights,<sup>9</sup> and

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2. See Margaret Rosso Grossman & Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 95, 101-02 (discussing early right-to-farm laws and noting that most of the agricultural nuisance cases involved feed-lots); Neil D. Hamilton & David Bolte, *Nuisance Law and Livestock Production in the United States: A Fifty-State Analysis*, 10 J. AGRIC. TAX'N & LAW 99, 101 (1988) (observing the situation where persons move next to an existing farm and subsequently use nuisance law to stop objectionable activities); Jacqueline P. Hand, *Right-to-Farm Laws: Breaking New Ground in the Preservation of Farmland*, 45 U. PITTS. L. REV. 289, 305-06 (1984) (observing a priority for agricultural uses).

3. 1988 Ga. Laws 1775, § 1 (broadening the definition of agricultural operation to include processing facilities, adding coverage for the expansion of facilities, and covering the use of new technology). An analysis of the Georgia Right-to-Farm law was followed by an amendment that expanded the protection afforded agricultural operations. Terence J. Centner, *Agricultural Nuisances and the Georgia Right to Farm Law*, 23 GA. STATE BAR J. 19 (1986) (outlining six policy issues concerning the state's Right-to-Farm law).

4. See, e.g., Bormann v. Bd. of Supervisors, 584 N.W.2d 309, 321 (Iowa 1998); see also Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168, 173-178 (Iowa 2004) (citing *Bormann*) (finding a taking under state law and a violation of the inalienable rights clause of the state constitution).

5. See, e.g., Alfred Bettman, *Constitutionality of Zoning*, 37 HARV. L. REV. 834, 837 (1924) (observing that zoning operates to prevent nuisances); Eric R. Claeys, *Takings, Regulations, and Natural Property Rights*, 88 CORNELL L. REV. 1549, 1554 (2003) (observing that regulations were enacted to prevent nuisances and protect private rights).

6. See Grossman & Fischer, *supra* note 2, at 98 (observing that the nuisance laws protected farms and disappearing land resources); see also Hand, *supra* note 2, at 305 (discussing farms and retaining farmland in agricultural production).

7. See, e.g., David R. Bliss, *Tilting at Wind Turbines: Noise Nuisance in the Neighborhood After Rassier v. Houim*, 69 N. D. L. REV. 535, 540 (1993) (observing that right-to-farm laws free agricultural producers from nuisance actions that would hinder their operations and confer special dispensation on agricultural producers); Alexander A. Reinert, Note, *The Right to Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694, 1738 (1998) (suggesting that right-to-farm laws offer too much protection to farmers).

8. See Bormann v. Bd. of Supervisors, 584 N.W.2d at 321 (finding an easement that operated as an unconstitutional taking).

interfere with the efficient allocation of land use entitlements.<sup>10</sup> In reported cases, longstanding rural residents have sought relief from nuisances from aggravating conditions from livestock facilities.<sup>11</sup>

Justification for right-to-farm laws exists when a law incorporates the “coming to the nuisance” doctrine.<sup>12</sup> Under this doctrine, landowners may continue with existing activities that bother neighbors who have changed their land uses.<sup>13</sup> Priority of land usage supports the earlier activities: persons who move next to objectionable activities should not complain about them.<sup>14</sup> While coming to the nuisance is generally viewed as “simply one of a variety of material considerations in determining the existence of a nuisance and the proper remedy,”<sup>15</sup> equitable considerations may exist for a more definitive legislative preference for established land uses. A meaningful justification might involve the preservation of natural resources in the form of productive farmland.<sup>16</sup> Given the positive

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9. Joshua M. Duke & Scott A. Malcolm, *Legal Risk in Agriculture: Right-to-Farm Laws and Institutional Change*, 75 AGRIC. SYSTEMS 295, 299 (2003) (suggesting that right-to-farm laws have inadvertently affected management practices as farmers may be less sensitive to neighbors’ preferences because farmers believe they are protected against injunctions for nuisances).

10. See Reinert, *supra* note 7, at 1695 (observing that a reduced choice of options exists for lands burdened by adjacent nuisance activities under right-to-farm laws).

11. See Buchanan v. Simplot Feeders, L.P., 952 P.2d 610, 611 (E.D. Wash. 1998) (observing that the plaintiffs had lived in their house for ten years prior to the development of the activity alleged to be a nuisance); Crea v. Crea, 16 P.3d 922, 923 (Idaho 2000) (remarking that the plaintiffs’ home had been constructed in 1899 and the nuisance began around 1992); Finlay v. Finlay, 856 P.2d 183, 186 (Kan. Ct. App. 1993) (noting that the plaintiffs had resided in the house for more than thirty years prior to the improvements to a cattle pen).

12. See, e.g., Wendt v. Kerkhof, 594 N.E.2d 795, 798 (Ind. Ct. App. 1992) (holding the Indiana Right to Farm Act incorporated a coming to the nuisance doctrine that operated to defeat the defense because the plaintiffs resided on their property prior to the establishment of the alleged nuisance); Buchanan v. Simplot Feeders, L.P., 952 P.2d at 613 (finding that the Washington “Right to Farm Act was intended to protect existing farms . . . .” and not the expansion of a feedlot); Carpenter v. Double R Cattle Co., 669 P.2d 643, 655 (Idaho Ct. App. 1983) (observing that the Idaho Right-to-Farm law adapted the coming to the nuisance doctrine so that the expansion of the feedlot causing a nuisance would be subject to nuisance law).

13. See DiBlasi v. City of Seattle, 969 P.2d 10, 21 (Wash. 1998) (observing that persons who come to a nuisance may not qualify for relief).

14. This means that landowners enjoy the right to engage in activities that at some time in the future may be objectionable due to new neighboring land uses. See Terence J. Centner, *Anti-nuisance Legislation: Can the Derogation of Common Law Nuisance Be a Taking?*, 30 ENVTL. L. Rptr. 10253, 10254-55 (2000) (discussing the coming to the nuisance doctrine).

15. Mark v. State, 84 P.3d 155, 163 (Or. Ct. App. 2004); see also DiBlasi v. City of Seattle, 969 P.2d at 21 (observing that the coming to the nuisance doctrine is not dispositive of whether to provide relief for a nuisance).

16. Some right-to-farm laws note the loss of farmland in their legislative purpose. See IDAHO CODE ANN. § 22-4501 (2001) (noting “the premature removal of the lands from agricultural

amenities offered by farmland, it may be reasonable to offer encouragement for its continued use in agronomic production.<sup>17</sup>

While the right-to-farm concept provides a viable resolution for competing interests in many cases, two situations may be identified where right-to-farm laws experience difficulties in reconciling equities between agriculture and society.<sup>18</sup> First, how should concentrated animal feeding operations (CAFOs) and spray fields for animal waste be treated under right-to-farm laws?<sup>19</sup> The odors accompanying wastes at CAFOs and spray fields are quite different from the annoyances that were considered when right-to-farm laws were adopted.<sup>20</sup> Al-

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uses"); S.C. CODE ANN. § 46-45-10(4) (1987 & Supp. 2004) (enumerating a purpose of lessening the loss of farmland).

17. See Robert J. Johnston et al., *Estimating Amenity Benefits of Coastal Farmland*, 32 GROWTH & CHANGE 305, 316-21 (2001).

18. See, e.g., Alan J. Knauf, *The Southview Farm Case: A Giant Step to End Special Treatment Under [sic] for Agriculture Under Environmental Law*, 5 ALBANY L. ENVT'L OUTLOOK 2, 3 (2000) (suggesting that agriculture is not being required to meet the same environmental obligations as are imposed on other industries); David Osterberg & David Wallinga, *Addressing Externalities From Swine Production to Reduce Public Health and Environmental Impacts*, 94 AM. J. PUB. HEALTH 1703 (2004) (noting that right-to-farm laws may cause adverse public health impacts because they shield concentrated animal feeding operations); J. B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 ECOLOGY L.Q. 263, 315-16 (2000) (claiming that right-to-farm laws establish obstacles that interfere with environmental remedies).

19. A spray field is land where liquid from an animal waste lagoon is applied via an irrigation system. See Theo A.T.G. van Kempen et al., *Pigs As Recyclers for Nutrients Contained in Bermuda Grass Harvested from Spray Fields*, 81 BIORESOURCE TECH. 233, 233 (2002) (advocating feeding grass from a spray field to pigs); see also Charles W. Abdalla, *The Industrialization of Agriculture: Implications for Public Concern and Environmental Consequences of Intensive Livestock Operations*, 10 PENN ST. ENVT'L L. REV. 175, 188 (2002) (noting that some states have no regulatory mechanisms governing odors from animal feeding operations); Theodore A. Feitshans & Kelly Zering, *Federal Regulation of Animal and Poultry Production Under the Clean Water Act: Opportunities for Employing Economic Analysis to Improve Societal Results*, 10 PENN ST. ENVT'L L. REV. 193, 214 (2002) (noting that the Clean Water Act as applied to CAFOs fails to address odor issues); David R. Gillay, Comment, *Oklahoma's Concentrated Animal Feeding Operations Act: Balancing the Interests of Landowners with the Exponential Growth of the Hog Industry*, 35 TULSA L.J. 627, 630 (2000) (reporting on legislation that attempts to strike a "balance between air and water quality and economic development").

20. There have been marked changes in the size of animal operations since the adoption of right-to-farm laws. In addressing animal feeding operations, the book *Empty Pastures* noted that:

If we look in the countryside for farm animals, changes are very conspicuous. Farms involved in the production of animals have virtually vanished, especially in states that are not major producers of animals. Since 1960 hog farms have decreased by 92 percent; farms with dairy cows, by 93 percent; poultry operations, by 71 percent; and cattle operations, by 55 percent. . . . [T]he concentration of animals at individual locations help explain why animal wastes have become a major issue.

though right-to-farm laws were intended to protect producers of animals, most legislatures did not consider the possibility that this might involve thousands of animals accompanied by highly offensive odors.<sup>21</sup>

The second related situation involves supporting animal production through anti-nuisance protection for the reasonable use of animal manure. Manure application is an agronomic practice that should be encouraged so long as performed in a responsible manner.<sup>22</sup> While this practice is accompanied by objectionable odors, the short-term nature of smells from applications and manure's contribution to soil fertility differentiate this practice from CAFO production areas and spray fields.<sup>23</sup> However, applicators of manure may engage in application practices that are unacceptable. Guidance concerning the timing, concentration, and location of manure application may be needed to assure that it is conducted in a reasonable manner.<sup>24</sup>

This article articulates ideas that might be used to develop more objective resolutions for nuisances accompanying animal production. It recommends curbing protection for CAFOs and spray fields while supporting the sustainable agronomic practice of land application of manure for the production of crops. In delineating support for the agronomic practice of manure application, qualifications are needed to preclude unacceptable situations. Rather than proposing a

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TERENCE J. CENTNER, EMPTY PASTURES: CONFINED ANIMALS AND THE TRANSFORMATION OF THE RURAL LANDSCAPE 23 (2004).

21. *Contra*, MINN. STAT. ANN. § 561.19(2)(c)(1) (West Supp. 2005) (setting forth a special provision in the right-to-farm law regarding large animal production facilities).

22. See Jonathan D. Kaplan et al., *The Manure Hits the Land: Economic and Environmental Implications When Land Application of Nutrients Is Constrained*, 86 AM. J. AGRIC. ECON. 688 (2004) (noting that there is an abundance of literature reporting the merits of using manure as nutrients for crop production); A.A. Araji et al., *Efficient Use of Animal Manure on Cropland: Economic Analysis*, 79 BIORESOURCE TECH. 179, 179-180 (2001) (noting that the use of animal manure for crop production should be encouraged as it supplies nutrients and organic matter to the soil, augments the soil's water-holding capacity, and increases the soil's fertility).

23. Best management practices suggest that manure only be applied at certain times of the year and that manure be incorporated into the soil as soon as possible. For example, Iowa regulations on manure application methods and timing provide that:

The manure management plan shall identify the methods that will be used to land-apply the confinement feeding operation's manure. Methods to land-apply the manure may include, but are not limited to, surface-apply dry with no incorporation, surface-apply liquids with no incorporation, surface-apply liquid or dry with incorporation within 24 hours, surface-apply liquid or dry with incorporation after 24 hours, knifed in or soil injection of liquids, or irrigated liquids with no incorporation.

IOWA ADMIN. CODE r. 567-65.17(7)(a) (2005).

24. Guidance in the form of nutrient management regulations exist for the application of manure from some large animal production facilities. *See id.* at r. 567-65.17.

defense for all activities involving the application of manure, a more balanced approach is recommended that considers the rights of neighboring property owners to enjoy their properties. Thus, acceptable manure application practices are distinguished from unacceptable practices, and the anti-nuisance protection would be limited to acceptable practices.

### I. CAFOS AND SPRAY FIELDS

Changes in the production of animals suggest that further consideration of CAFOs and spray fields may be needed in state right-to-farm provisions.<sup>25</sup> The production of animals in buildings, feedlots, and pens at CAFOs entail business activities quite different from the preservation of the family farms of the 1970s.<sup>26</sup> Likewise, the disposal of animal waste via spray fields is a specialized business response creating odors that can be especially egregious.<sup>27</sup> Moreover, these odors may be injurious to the health of workers and neighbors.<sup>28</sup> Although right-to-farm laws were intended to protect moderate animal production, it is not clear that neighbors should have to accept the aggravating situations that accompany these specialized business activities.<sup>29</sup>

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25. Problems associated with confined animal production have received considerable attention. *See Abdalla, supra* note 19, at 175 (stating that the industrialization of animal operations has brought about concerns about environmental and other issues); Gillay, *supra* note 19, at 630 (stating that current farm operations no longer resemble family farms); *see also* Michael Steeves, *The EPA's Proposed CAFO Regulations Fall Short of Ensuring the Integrity of Our Nation's Waters*, 22 J. LAND RESOURCES & ENVT'L. L. 367, 367 (2002) (discussing problems with CAFOs).

26. CENTNER, *supra* note 20, at 19-20 (discussing the changes in farms from rural family farms to "hobby farms and 'super farms'").

27. *See ROBBIN MARKS, NATURAL RES. DEF. COUNCIL & THE CLEAN WATER NETWORK, CESSPOOLS OF SHAME: HOW FACTORY FARM LAGOONS AND SPRAYFIELDS THREATEN ENVIRONMENTAL AND PUBLIC HEALTH* 17, 26 (2001), available at <http://www.nrdc.org/water/pollution/cesspools/cesspools.pdf> (identifying air pollutants, pathogens, nitrates, and antibiotics as sources of potential health problems and also discussing worker death and injury as problems associated with lagoons); *see also* Dana Cole et al., *Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects*, 108 ENVTL. HEALTH PERSP. 685 (2000) (reviewing health issues associated with the swine industry); K.M. Thu, *Public Health Concerns for Neighbors of Large-Scale Swine Production Operations*, 8 J. AGRIC. SAFETY & HEALTH 175 (2002) (reporting health problems associated with the swine industry).

28. *See Cole, supra* note 27, at 685.

29. When considering special legislation regulating hog CAFOs in Oklahoma, testimony was offered on the objectionableness of these facilities:

It's the type of odor that makes it impossible for neighbors to stand to live on their own property. It's the type of odor that makes it impossible for them to stay in their houses with the windows open, and impossible for them to close the windows and turn on the air

To establish boundaries on the protection afforded CAFOs and spray fields, a number of statutory options exist. Primary is limiting the protection available to new operations so that residential landowners are not subjected to new nuisances.<sup>30</sup> Second, a provision governing expansion may be employed to clarify priorities for conflicting rights. A law might establish a size limit for operations that qualify for anti-nuisance protection or a statute of limitations for moderating conflicts.<sup>31</sup> Alternatively, a law may employ nutrient and odor management prerequisites as qualifications for anti-nuisance protection.<sup>32</sup>

#### A. *Operations Generating New Nuisances*

Right-to-farm laws incorporating a coming to the nuisance doctrine offer a reasonable resolution to nuisances created by livestock. These laws grant rights based upon priorities in land usage.<sup>33</sup> Activities that become a nuisance due to changes in neighboring land uses receive protection by an anti-nuisance law.<sup>34</sup> Neighbors are precluded from employing nuisance law to stop preexisting activities.<sup>35</sup> Thereby, activities that were objectionable when commenced and opera-

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conditioner because it sucks in that odor. It permeates their clothes, their furniture, everything in the house, they can't get rid of it. I've talked to numerous people in this situation who have told me this is what they endure on a daily basis.

David R. Gillay, *Oklahoma's Concentrated Animal Feeding Operations Act: Balancing the Interests of Landowners with the Exponential Growth of the Hog Industry*, 35 TULSA L.J. 627, 628-29 (2000) (quoting Representative Frank Davis).

30. This is often achieved by incorporating a coming to the nuisance doctrine in a right-to-farm law. *See infra* Part II.A.

31. *See MINN. STAT. ANN. § 561.19(2)(a), (c)(1)* (West 2000 & Supp. 2005); MISS. CODE. ANN. § 95-3-29 (West 1999); 3 PA. STAT. ANN. § 954(a) (West 1995 & Supp. 2005) (as amended by Pa. H.B. 1646, 2005 Gen. Assem., Sess. of 2005 (Pa. 2005)); TEX. AGRIC. CODE ANN. § 251.004 (Vernon 2004 & Supp. 2005).

32. *See 3 PA. STAT. ANN. § 954(a)* (West 1995 & Supp. 2005) (as amended by Pa. H.B. 1646, 2005 Gen. Assem., Sess. of 2005 (Pa. 2005)).

33. As noted by the Washington Supreme Court, when developers choose to build developments next to farms, they have notice of the farm activities being conducted in the production of crops and animals. *Buchanan v. Simplot Feeders L.P.*, 952 P.2d 610, 615 (Wash. 1998).

34. *See id.* at 614 (interpreting the requirement in the Washington Right-to-Farm law concerning application of nuisance immunity to situations where urban land uses encroach upon established agricultural areas).

35. *See Rancho Viejo, L.L.C. v. Tres Amigos Viejos, L.L.C.*, 123 Cal. Rptr. 2d 479, 493 (Cal. Ct. App. 2002) (affirming judgment for the defendant as the facts showed that the defendant's continued activity after purchase preceded that of the plaintiff so that the defendant qualified for the anti-nuisance defense of the California Right-to-Farm law).

tions generating new nuisances do not receive protection against nuisance lawsuits.<sup>36</sup>

Some farmers have not appreciated these qualifications. In a Georgia case, *Herrin v. Opatut*, a farmer constructed twenty-six chicken layer houses near existing residential neighbors.<sup>37</sup> More than 500,000 chickens were soon creating problems for the neighbors, and they filed a nuisance lawsuit against the farm to eliminate the flies and offensive odors generated by the chickens.<sup>38</sup> The neighbors asked the court to enjoin the farm "from further business activity."<sup>39</sup> The defendants denied that their farm created a problem and filed a motion to dismiss based on the Georgia Right-to-Farm law.<sup>40</sup> The Supreme Court of Georgia examined the new right-to-farm law and observed that its protection did apply.<sup>41</sup> The anti-nuisance protection was limited to situations where "nonagricultural land uses extend[ed] into agricultural areas."<sup>42</sup> Only facilities that have become nuisances as a result of changed conditions in the locality qualify for the defense.<sup>43</sup> Since the neighbors resided in their homes prior to the introduction of the layer houses, the defendants did not qualify for the anti-nuisance defense.<sup>44</sup>

Right-to-farm laws with a coming to the nuisance provision often delineate a time period requirement for operations to be engaged in their activities prior to the changes in the neighborhood.<sup>45</sup> For the *Herrin* dispute, the Georgia Right-to-Farm law delineated a one-year time period that the facility needed to be in existence "prior to the change in conditions in the locality . . ."<sup>46</sup> Thus, under laws incorporating the coming to the nuisance doctrine, it is not enough to be first but rather the operation must precede changes involving surrounding land

36. See *Buchanan v. Simplot Feeders L.P.*, 952 P.2d at 615 (Wash. 1998) (considering the legislative debate accompanying the adoption of the right-to-farm law and the incorporation of the coming to the nuisance doctrine).

37. *Herrin v. Opatut*, 281 S.E.2d 575, 576 (Ga. 1981).

38. *Id.*

39. *Id.*

40. *Id.*; GA. CODE ANN. § 41-1-7 (1985) (subsequently amended).

41. *Herrin v. Opatut*, 281 S.E.2d at 577.

42. *Id.*

43. *Id.*

44. *Id.* at 579.

45. See, e.g., IDAHO CODE ANN. § 22-4503 (2001).

No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began . . .

46. *Herrin v. Opatut*, 281 S.E.2d at 578.

uses by a year or more. Under these laws, the introduction of a CAFO or spray field remains subject to nuisance law.

#### B. *Expanding Operations and New Technology*

Animal feeding operations that expand and thereby create a nuisance present a more difficult issue. If the CAFO qualifies for anti-nuisance protection with respect to existing neighbors, does the expansion also qualify? Similarly, should the adoption of new technology, including the development of a spray field, be protected due to the earlier presence of the CAFO? Like new nuisance activities, the annoyances created by expanded operations and new technology may be so great that existing neighbors should not be required to bear them.<sup>47</sup>

The Supreme Court of Idaho considered a nuisance lawsuit against an expanding hog operation in *Crea v. Crea*.<sup>48</sup> In observing that the nuisance resulted from an expansion of the operation rather than changes in surrounding nonagricultural uses, the court found that the Idaho Right-to-Farm law did not apply.<sup>49</sup> Right-to-farm laws with the coming to the nuisance doctrine are intended to preclude "the encroachment of residential, commercial, or industrial property or use."<sup>50</sup> Agricultural producers may not expand operations in such a manner as to place new nuisances on existing neighbors.<sup>51</sup>

An Indiana court considered a nuisance involving a change in the type of farming activity and expansion in *Laux v. Chopin Land Associates, Inc.*<sup>52</sup> A change from grain farming to a hog raising operation was found to constitute a significant change in the type of operation that was not protected by the Indiana Right-to-Farm law.<sup>53</sup> Conversely, a change involving increases in the number of hogs raised on a farm was found to not necessarily constitute a significant change to the type of operation.<sup>54</sup> Under the Court's findings, the Indiana Right-to-Farm law does not allow the commencement of new production activities but permits some expansion of existing operations.<sup>55</sup>

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47. See *Crea v. Crea*, 16 P.3d 922, 922 (Idaho 2000) (finding that a new activity did not receive anti-nuisance protection by the Idaho Right-to-Farm law); see also *Durham v. Britt*, 451 S.E.2d 1, 4 (N.C. Ct. App. 1994) (reversing summary judgment for the defendants because there was a question whether a fundamental change in the nature of an agricultural activity qualified for anti-nuisance protection under the North Carolina Right-to-Farm law).

48. See *Crea v. Crea*, 16 P.3d at 923-24.

49. *Id.* at 925; accord IDAHO CODE ANN. §§ 22-4501-04 (2001 & Supp. 2004).

50. *Crea v. Crea*, 16 P.3d at 925.

51. *Id.*

52. *Laux v. Chopin Land Assocs., Inc.*, 550 N.E.2d 100 (Ind. Ct. App. 1990).

53. *Id.* at 103.

54. *Id.*

55. *Id.*

At least one state says that expansion of an operation relates back to the original date upon which the operation was established.<sup>56</sup> The Georgia Right-to-Farm law provides that expansion or adoption of new technology at an agricultural operation does not establish a separate and independent date of operation.<sup>57</sup> Moreover, under the Georgia law, “the commencement of the expanded operation does not divest the agricultural operation [or agricultural support facility] of a previously established date of operation.”<sup>58</sup> Other states may have alternative provisions that allow agricultural facilities to qualify for anti-nuisance protection for expanded operations or new technology.<sup>59</sup> Legislatures may choose to champion selected business activities by precluding neighbors from using nuisance law to enjoin enumerated activities.

### C. Size Limitations

Objections to CAFOs and spray fields involve problems associated with concentrations of animals and the method of disposal of their waste. To preclude objectionable nuisances accompanying specialized large CAFOs and spray fields, a legislature might incorporate a size limitation in a right-to-farm law.<sup>60</sup> Operations that are too large would not qualify for anti-nuisance protection. This limitation would supplement the other provisions of the state’s law.

The Minnesota legislature has incorporated a size limitation in its Right-to-Farm law.<sup>61</sup> The state’s law specifically provides that it does not protect animal feedlot facilities “with a swine capacity of 1,000 or more animal units . . . or a cattle capacity of 2,500 animals or more . . .”<sup>62</sup> The law declines to address poultry operations.<sup>63</sup> The qualification on animal numbers recognizes that such large operations may need to be treated differently.

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56. See GA. CODE ANN. § 41-1-7(d) (West 2003 & Supp. 2005).

57. *Id.*

58. *Id.*

59. See, e.g. *Horne v. Haladay*, 728 A.2d 954, 956-57 (Pa. Super. Ct. 1999) (finding that allegations concerning a poultry operation interfering with plaintiffs’ use and enjoyment of their property was defeated by the Pennsylvania Right-to-Farm law); *Charter Twp. of Shelby v. Papesh*, 704 N.W.2d 92, 110 (Mich. Ct. App. 2005) (denying plaintiff’s summary judgment on a nuisance claim against a poultry operation due to the possibility that the right-to-farm law provided a defense).

60. See MINN. STAT. ANN. § 561.19(2)(c)(4) (West 2000 & Supp. 2005).

61. *Id.*

62. *Id.*

63. See *id.*

**D. Statutes of Limitation**

Minnesota, Mississippi, Pennsylvania, and Texas have adopted right-to-farm laws containing provisions on time periods to serve as limitations on applying for relief from nuisances.<sup>64</sup> The Texas Right-to-Farm law exemplifies how a time period may reduce nuisance rights.<sup>65</sup> The law establishes a statute of repose “to give absolute protection to certain parties from the burden of indefinite potential liability.”<sup>66</sup> Protection is afforded to agricultural operations that are a nuisance when started.<sup>67</sup> The law reads:

No nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation . . .<sup>68</sup>

In addressing the meaning of this right-to-farm law, the Supreme Court of Texas found that two conditions were required to satisfy the statutory burden of proof.<sup>69</sup> First, the agricultural operation needs to have been in business lawfully for more than a year before the nuisance action was filed.<sup>70</sup> Second, the plaintiff needs to show that “the ‘conditions and circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged’ since then.”<sup>71</sup> Plaintiffs meeting these conditions have absolute protection against nuisance actions.<sup>72</sup>

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64. MINN. STAT. ANN. § 561.19(2)(a) (West 2000 & Supp. 2005); MISS. CODE ANN. § 95-3-29(1) (West 1999); 3 PA. STAT. ANN. § 954(a) (West 1995 & Supp. 2005) (as amended by Pa. H.B. 1646, 2005 Gen. Assem., Sess. of 2005 (Pa. 2005)); TEX. AGRIC. CODE ANN. § 251.004(a) (Vernon 2004).

65. See TEX. AGRIC. CODE ANN. § 251.004(a) (Vernon 2004).

66. Holubec v. Brandenberger, 111 S.W.3d 32, 37 (Tex. 2003) (referencing Sowders v. M.W. Kellogg Co., 663 S.W.2d 644, 647 (Tex. Ct. App. 1983)).

67. See TEX. AGRIC. CODE ANN. § 251.004(a) (Vernon 2004).

68. *Id.*

69. Holubec v. Brandenberger, 111 S.W.3d at 38 (analyzing TEX. AGRIC. CODE ANN. § 251.004(a) (Vernon 2004)).

70. *Id.*

71. *Id.*

72. See *id.*; see also Barrera v. Hondo Creek Cattle Co., 132 S.W.3d 544, 546-47 (Tex. App. 2004) (granting summary judgment to the defendants a nuisance lawsuit involving a cattle feedlot).

#### E. Nutrient and Odor Management Plans

Pennsylvania's Right-to-Farm law incorporates an idea whereby operations with approved nutrient and odor management plans are afforded protection against nuisance lawsuits.<sup>73</sup> Nutrient management plans are planning documents for determining appropriate practices to manage manure at animal feeding operations.<sup>74</sup> Odor management plans are "written site-specific plan[s] identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site."<sup>75</sup>

The Pennsylvania Right-to-Farm law provides:

No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation . . . and is otherwise in compliance therewith . . .<sup>76</sup>

Via nutrient management plans, agricultural operations in Pennsylvania that physically expand their facilities are able to maintain their defense against nuisance actions so long as their activities have been addressed by the plan.<sup>77</sup> Recently, the Pennsylvania legislature adopted Act 38 of 2005 which includes revised regulations governing nutrient management plans and added provisions requiring odor management plans.<sup>78</sup> The revised provisions impact the Pennsylvania Right-to-Farm law and provide greater direction for conducting activities according to accepted practices.<sup>79</sup> Under the revisions, new concentrated animal operations and operations that expand must develop and implement an odor man-

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73. 3 PA. CONS. STAT. ANN. § 954(a) (West Supp. 2005). Nutrient management plans are used to control water pollution. 40 C.F.R. § 412.4(c)(1) (2005).

74. 3 PA. CONS. STAT. ANN. § 2010.2 (West Supp. 2005).

75. 2005 Pa. Legis. Serv. Page no. 2005-38 (West) (codified as amended at 3 PA. CONS. STAT. ANN. § 503).

76. 3 PA. CONS. STAT. ANN. § 954(a) (West Supp. 2005) (revising nutrient and odor management regulations).

77. *Id.*

78. See Pa. H.B. 1646, 2005 Gen. Assembly Sess. (Pa. 2005).

79. See 3 PA. CONS. STAT. ANN. § 311 (West 2006) (dealing with local regulation of normal agricultural operations).

agement plan.<sup>80</sup> Failure of an operation to comply with the nutrient or odor requirements will result in disqualification from the anti-nuisance protection of the Pennsylvania Right-to-Farm law.<sup>81</sup>

## II. PROTECTION FOR MANURE APPLICATION

The application of manure to lands is an activity that may generate nuisance complaints.<sup>82</sup> Especially, residential neighbors often find that manure applications on nearby lands interfere with the enjoyment of their property.<sup>83</sup> While zoning or state legislation might establish provisions proscribing manure application within certain areas, such actions do not provide a reasonable response for all problems.<sup>84</sup> Moreover, manure application is a sustainable agronomic practice that has considerable value.<sup>85</sup> In reusing animal waste, manure contributes to the fertility of the soil by adding organic matter and nutrients.<sup>86</sup> Rather than precluding manure applications, a more appropriate response may be to differentiate between acceptable and unacceptable practices.<sup>87</sup> Through a right-to-farm law,

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80. *See id.* A concentrated animal operation is an agricultural operation “where the animal density exceeds two [animal equivalent units] per acre on an annualized basis.” *Id.* at § 506(a). An “animal equivalent unit” is “[o]ne thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.” *Id.* at § 503.

81. *Id.* at § 954(b), amended by 3 PA. CONS. STAT. ANN. § 514(c) (West 2006). By failing to comply with state regulations, an operation remains liable for damages sustained by others on account of the violation.

82. *See Pasco County v. Tampa Farm Serv., Inc.*, 573 So. 2d 909, 910 (Fla. Dist. Ct. App. 1990) (involving a conflict concerning odors from liquid poultry manure); *Herrin v. Opatut*, 281 S.E.2d 575, 576 (Ga. 1981) (considering odors from a poultry operation); *Crea v. Crea*, 16 P.3d 922, 924 (Idaho 2000) (considering the expansion of a hog operation); *Payne v. Skaar*, 900 P.2d 1352, 1356 (Idaho 1995) (considering odors from a cattle feedlot); *Laux v. Chopin Land Assocs.*, 550 N.E.2d 100, 103 (Ind. Ct. App. 1990) (considering odors from a hog operation); *Flansburgh v. Coffey*, 370 N.W.2d 127, 130 (Neb. 1985) (considering the construction of a hog confinement building); *Holubec v. Brandenberger*, 111 S.W.3d 32, 34 (Tex. 2003) (alleging noise and flies caused by sheep feedlot).

83. *See Pasco County v. Tampa Farm Serv., Inc.*, 573 So. 2d at 910.

84. *See OKLA. STAT. ANN. tit. 2, § 20-18(B)(2)* (Supp. 2006) (prescribing qualifications for a presumption that an animal feeding operation licensed and operated in compliance with rules “located on land more than three (3) miles outside the incorporated limits of any municipality and which is not located within one (1) mile of ten or more occupied residences shall not be deemed a nuisance . . .”).

85. *See Kaplan, supra* note 22, at 688; *Araji, supra* note 22, at 179-80.

86. *Kaplan, supra* note 22, at 688; *Araji, supra* note 22, at 179-80; *see also CENTNER, supra* note 20, at 63 (noting that the application of manure to land for crop growth is a recommended practice).

87. The issue of over-application was noted in the EPA’s comments accompanying the publication of new regulations for CAFOs. National Pollutant Discharge Elimination System Per-

sustainable manure-application practices would be recognized as acceptable while application in an unacceptable manner would not qualify for anti-nuisance protection.<sup>88</sup>

The suggestion involves adding a provision to a right-to-farm law supporting manure application pursuant to generally acceptable practices and acknowledging that this activity qualifies for anti-nuisance protection. The provision would differentiate permitted manure application to fields from other practices that remain subject to nuisance lawsuits. More specifically, over-application of manure as a waste byproduct and activities involving spray fields would not qualify for nuisance protection.<sup>89</sup> To define agronomic manure application, qualifications would circumscribe acceptable manure-application practices.

#### *A. Application Practices*

In many states, water quality regulations governing CAFOs already delineate requirements that prescribe practices for manure application.<sup>90</sup> To lend support to the agronomic practice of manure application as a source of nutrients for plant growth, similar provisions might be employed to prescribe generally acceptable application practices and agronomic rates as qualifications for anti-nuisance protection under a right-to-farm law. Before animal producers qualify for anti-nuisance protection for activities involving the application of manure, they would be required to be engaged in reasonable and prudent methods for the application of manure.<sup>91</sup> These practices would need to conform to all federal, state, and local laws and regulations.<sup>92</sup>

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mit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), Fed. Reg. 7176, 7176 (Feb. 12, 2003) (to be codified at 40 C.F.R. § 412 (2005)).

88. See, e.g., IOWA ADMIN. CODE r. 567-65.2(3) (2006) (outlining the minimum level of manure control for a feeding operation).

89. The distinction is that spray fields involve business decisions to employ specialized technologies to handle wastes that are accompanied by a known propensity of bothersome odors.

90. See 40 C.F.R. § 412.4(c) (2005) (prescribing federal best management practices for point-source CAFOs that apply manure to fields).

91. These methods may already exist as part of a state's regulations for the application of manure by animal feedings operations. See, e.g., IOWA ADMIN. CODE r. 567-65.3(4) (2005) (stating recommended practices); MINN. R. 7020.2225(1) (2003) (prohibiting certain land applications of manure).

92. The requirement that anti-nuisance defenses are limited to defendants who have complied with the law is already incorporated in many right-to-farm laws. See, e.g., ARIZ. REV. STAT. ANN. § 3-112 (2002); KAN. STAT. ANN. § 2-3202 (2001). In addition, practices that are malicious or injurious could be considered a nuisance. See 740 ILL. COMP. STAT. ANN. 70/3 (West

Regulations in Chapter 65 of the Iowa Administrative Code<sup>93</sup> and Chapter 7020 of Minnesota's Rules<sup>94</sup> delineate appropriate rules for the land application of manure. These regulations cover basic practices such as application near water bodies or on steeply sloping croplands.<sup>95</sup> A few provisions are quite specific, such as limitations on the application of manure on snow-covered ground.<sup>96</sup> Other provisions are rather general, such as Minnesota's prohibition on applying manure to "cause pollution of waters of the state . . .".<sup>97</sup> Although state water quality control measures for the application of manure only apply to some animal feeding operations, this does not preclude a right-to-farm law from requiring all operations with animals to conform with the measures to qualify for protection against nuisance lawsuits. Anti-nuisance protection for the land application of manure could be limited to situations where the acceptable manure application practices are followed.

#### B. *Agronomic Rates*

Regulations for animal feeding operations set forth provisions whereby manure needs to be applied according to agronomic rates to avoid pollution from over-application.<sup>98</sup> Agronomic rate requirements are established via nutrient management plans that incorporate application rates for manure to "minimize phosphorus and nitrogen transport from the field . . .".<sup>99</sup> Technical standards in the plans delineate field-specific assessments of the potential for nitrogen and phosphorus transport from the field to surface waters, address the application of nutrients on each field to achieve realistic production goals, and minimize nitrogen and phosphorus movement to surface waters.<sup>100</sup> By incorporating these agronomic rate requirements, manure applications would not involve the over-application of waste and the requirements would help minimize adverse impacts on neighbors. Right-to-farm laws addressing manure application could qualify

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2002) (establishing that the anti-nuisance defense is not available "whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances."); V.A. CODE ANN. § 3.1-22.29(A) (1994) (providing the anti-nuisance defense is not available for negligent or improper operations).

- 93. IOWA ADMIN. CODE r. 567-65 (2005).
- 94. MINN. R. 7020 (2003).
- 95. IOWA ADMIN. CODE r. 567-65.3(4)(e)-(f) (2005).
- 96. *Id.* at r. 567-65.3(4)(c).
- 97. MINN. R. 7020.2225(1)(A)(2) (2003).
- 98. *Id.*; IOWA ADMIN. CODE r. 567-65.3(4)(e)-(f) (2005).
- 99. 40 C.F.R. § 412.4(c)(2) (2005); *see also* IOWA ADMIN. CODE r. 567-65.3(1)- (2) (2005).
- 100. 40 C.F.R. § 412.4(c)(1) (2005).

anti-nuisance protection through a requirement that manure be applied pursuant to agronomic rate requirements.<sup>101</sup>

### C. Distinguishing Nutrient Qualifications

The Pennsylvania Right-to-Farm law forms a novel approach to addressing conflicts involving agricultural operations with animals. The law incorporates a statute of limitations and then offers further protection to operations that expand or are altered, so long as they have nutrient and odor management plans.<sup>102</sup> In declining to adopt a coming to the nuisance doctrine, the Pennsylvania Right-to-Farm law provides greater protection for nuisance activities than most right-to-farm laws.<sup>103</sup> Furthermore, it allows agricultural operations with timely nutrient and odor management plans to create new nuisances for existing neighbors.<sup>104</sup> This is a policy choice whereby the state has decided to allow existing operations to evolve despite the creation of a nuisance.<sup>105</sup>

The protection of manure application proposed in this article would establish anti-nuisance protection for sustainable manure-application practices. Acceptable manure-application practices would necessarily involve a nutrient management plan and agronomic rates. However, the implementation of a plan would not constitute a defense as is possible under the Pennsylvania law.<sup>106</sup> Rather, a plan would suggest that the agricultural operation was using generally acceptable practices that qualify manure application for anti-nuisance protection.<sup>107</sup> Other provisions of a state's right-to-farm law, such as the coming to the

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101. See 3 PA. CONS. STAT. ANN. § 954(a) (West 1995 & Supp. 2005) (as amended by H.B. 1646, 189th Gen. Assem. (Pa. 2005) (to be codified at 3 PA. CONS. STAT. ANN. § 514(c)) (discussing public nuisance and its limitations).

102. See 3 PA. STAT. ANN. § 954(a) (West 1995 & Supp. 2005). The Right-to-Farm law itself only references nutrient management plans. 3 PA. CONS. STAT. ANN. § 954(a) (Supp. 2005). However, because an agricultural operation must be "lawfully . . . in operation" for one year or more, persons claiming the anti-nuisance protection need to comply with other applicable laws. After the adoption of Act 38 of 2005, "lawfully . . . in operation" would include the implementation of an odor management plan. H.B. 1646 189th Gen. Assem. (Pa. 2005) (to be codified at 3 PA. CONS. STAT. ANN. § 509).

103. See Centner, *supra* note 14, at 10259-60 (differentiating laws embodying the coming to the nuisance doctrine from a right-to-farm law found unconstitutional in Iowa).

104. 3 PA. CONS. STAT. ANN. § 954(a) (Supp. 2005).

105. See *id.* All right-to-farm laws express policy choices that alter nuisance law. Pennsylvania's choice just happens to establish rules whereby neighbors may be prejudiced by nuisances arising from expanding operations.

106. 3 PA. CONS. STAT. ANN. § 954(a) (Supp. 2005).

107. See *Mark v. State*, 84 P.3d 155, 163 (Or. Ct. App. 2004); see also *DiBlasi v. City of Seattle*, 969 P.2d 10, 21 (Wash. 1998). This is consistent with the coming to the nuisance doctrine

nuisance doctrine, size limitations, or a statute of limitations, might affect whether an operator with acceptable practices qualifies for anti-nuisance protection.<sup>108</sup> Moreover, an operator with unacceptable practices would not qualify for anti-nuisance protection. In this manner, right-to-farm laws could provide a more equitable resolution for conflicts involving manure application.

### III. CONCLUSION

Anti-nuisance provisions remain a viable and important mechanism to resolve conflicts. Right-to-farm laws protect investments in existing facilities and support the continued long-term use of land resources for agricultural production. Simultaneously, communities change and landowners may decide that their properties are better suited for other activities. Anti-nuisance provisions need to protect investments and land resources while allowing communities to change. Right-to-farm laws that favor agriculture at the expense of other businesses, landowners, and community objectives are coming under increased scrutiny.<sup>109</sup> Democracies involve jurisprudence that attempts to equitably reconcile competing rights rather than provide favoritism for an industry or certain landowners.<sup>110</sup>

Right-to-farm laws show quite divergent responses to the need of protecting agricultural investments and farmland. Most laws form reasonable reconciliations for competing rights. Laws incorporating the coming to the nuisance doctrine recognize a need to protect investments and farmland but do not foist new nuisances on neighboring landowners. Right-to-farm laws that offer protection for new nuisance activities are not so benign. Their favoritism of agriculture

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which is generally not a defense but rather one consideration to be used in determining the existence of a nuisance and whether it qualifies for anti-nuisance protection.

108. These other provisions could decline to offer anti-nuisance protection to CAFOs and spray fields.

109. See, e.g., Bliss, *supra* note 7, at 540 (observing that right-to-farm laws free agricultural producers from nuisance actions that would hinder their operations and confer special dispensation on agricultural producers); see Reinert, *supra* note 7, at 1738 (suggesting that right-to-farm laws offer too much protection to farmers and a reduced choice of options exist for lands burdened by adjacent nuisance activities under right-to-farm laws.); see Bormann v. Kossuth County Bd. of Supervisors, 584 N.W.2d 309, 321 (Iowa 1998) (finding an easement that operated as an unconstitutional taking); Duke & Malcolm, *supra* note 9, at 299 (suggesting that right-to-farm laws have inadvertently affected management practices as farmers may be less sensitive to neighbors' preferences because farmers believe they are protected against injunctions for nuisances).

110. See *Kelo v. City of New London*, 125 S. Ct. 2655, 2664 (2005) (acknowledging that American "jurisprudence has recognized that the needs of society . . . have evolved over time in response to changed circumstances.").

comes at the expense of neighboring property owners.<sup>111</sup> While these laws express a legislative choice for resolving conflicts involving competing interests, they generate criticism and may infringe upon constitutional rights.<sup>112</sup>

An analogous conflict garnering public attention involves legislative choices on eminent domain condemnations as shown by the controversy considered by the U.S. Supreme Court in *Kelo v. City of New London*.<sup>113</sup> In upholding the right of a local government to condemn private property for an economic development project that would benefit the public at large, the Supreme Court affirmed a state action that impinged landowners' rights of property ownership.<sup>114</sup> The court noted that it was mindful of "the hardship that condemnations may entail, notwithstanding the payment of just compensation."<sup>115</sup> In a similar manner, an anti-nuisance law that allows persons to create new nuisances impinges on neighbors' common-law nuisance rights and creates hardship.<sup>116</sup>

Questions of whether governmental action involving the termination of land ownership (under eminent domain) or nuisance rights (under a right-to-farm law) violates a constitutional guarantee pose difficult choices involving balancing individual rights against the rights of others. Regarding the reduction of nuisance rights, if a government goes too far or takes too many rights, the action can be found to offend the takings clause of a state or federal constitution.<sup>117</sup> The Iowa Supreme Court found that two Iowa Right-to-Farm laws went too far and took uncompensated easements so were unconstitutional.<sup>118</sup> While the court's inter-

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111. See generally Bormann v. Kossuth County Bd. of Supervisors, 584 N.W.2d at 316 (stating that right-to-farm laws preclude neighboring property owners from securing relief under nuisance law for objectionable activities on neighboring lands).

112. E.g., *id.* at 321 (finding a taking under state and federal law); Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168, 171 (Iowa 2004) (finding a taking under state law and a violation of the inalienable rights clause of the state constitution).

113. See *Kelo v. City of New London*, 125 S. Ct. at 2655.

114. See *id.* at 2668 (2005) (involving condemning properties for the economic development project that were owned by persons who refused to sell).

115. *Id.*

116. This may occur under the Pennsylvania Right-to-Farm law. 3 PA. STAT. ANN. § 954(a) (West 1995 & Supp. 2005).

117. See *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 233 (2003); see also *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (Justice Holmes recognizing that "if regulation goes too far it will be recognized as a taking."). Under the Fifth Amendment, compensation must be paid whenever private property rights are taken for the public's use.

118. See *Bormann v. Kossuth County Bd. of Supervisors*, 584 N.W.2d 309, 321 (Iowa 1998) (finding a taking under state and federal law); *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168 at 171 (Iowa 2004) (finding a taking under state law and a violation of the inalienable rights clause of the state constitution).

pretation does not follow federal takings jurisprudence,<sup>119</sup> the rulings show a concern for protecting the rights of neighbors. Right-to-farm laws that cause too large an interference with others' rights may be challenged and may be found to violate constitutional provisions.

The necessity and wisdom of anti-nuisance legislation are matters of legitimate public debate.<sup>120</sup> Adding provisions to right-to-farm laws to address current issues involving the production of animals can strengthen public support for right-to-farm laws. By limiting protection of CAFO production areas and spray fields, a right-to-farm law would be less likely to offend neighboring property owners. By supporting the agronomic application of manure, a law could offer protection for producers engaged in this practice, while acknowledging that the producers must follow nutrient and odor management plans already applicable under other state and federal regulatory provisions. Today's rural America includes agricultural, recreational, and residential land uses. Property owners have obligations to neighbors, and our jurisprudence should strive to reconcile competing rights in an equitable fashion.

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119. See Centner, *supra* note 14, at 10257-58 (interpreting the facts of the *Bormann* decision under federal takings jurisprudence to conclude that section 352.11(1)(a) of the Iowa Code should have been analyzed as a regulatory taking); Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?*, 33 B.C. ENVTL. AFF. L. REV. 87, 123-25 (2005) (postulating that right-to-farm laws do not involve physical invasions and most do not go so far as to constitute a regulatory taking).

120. See *Kelo v. City of New London*, 125 S. Ct. 2655 at (2005) (noting that "the necessity and wisdom of using eminent domain to promote economic development" are matters for the public to decide).