

Complaints gone bad

Most of the time dairy owners and their neighbors can settle conflicts. But when they can't, complaints can go all the way to the courts

By Lee Telega

"This is John up the road next to the old Carpenter place that you rent," the phone call began. "I just want you to know I'm mad as heck about the manure you're spreading. It's flowing into my fishpond, contaminating my well and stinking up the whole darn house and making us sick. I want to know what you're going to do about it. Or am I going to have to call my lawyer?"

Unfortunately, calls like this to dairy producers from neighbors are becoming more common. Often neighbors' concerns are about manure odors. But noise, dust, flies or pesticide use can also raise their ire.

If you have a good reputation in your neighborhood and have worked at developing and maintaining positive relationships with your neighbors, you and they can work things out - most of the time. When you can't, a complaint turns into a conflict that may draw lawyers into the fray.

Legal claims brought against farms generally fall into four categories. It's important to understand each one and the underlying practices on your dairy that may cause farm-related complaints.

1. Nuisance, private and public

A nuisance is defined as an activity that causes unreasonable and substantial interference with another's peaceful use and enjoyment of property. As pointed out, odors most often cause nuisance claims, but noise, flies and dust can also prompt complaints.

The doctrine of nuisance is a common law concept evolving over the centuries as judges settled disputes between individuals. It centers around two property ownership principles:

- Owners have the right to use and enjoy their property free of unreasonable interference by others
- Owners cannot use their property in a manner that may cause injury to others.

Nuisance law makes it possible to sue a neighbor whose actions adversely affect one's property. The suit can ask that a neighbor stop an activity and/or reimburse the lost value to the aggrieved party's property.

A "private" nuisance generally involves two parties. A "public" nuisance is when the rights of a substantial portion of the com-

munity is interfered with. Many times the nuisance is believed to threaten the health and/or safety of community residences. Court action alleging a public nuisance must be taken by a public entity such as a town, county or state prosecutor.

In most states, right-to-farm laws protect farms that meet certain conditions and use sound or acceptable farming practices from claims of nuisance. (See Legal primer for farms and their neighbors, page 22.)

2. Negligence

A claim of negligence can result from the careless actions or failures to act that injure someone or damage another's property. Right-to-farm laws do not protect against allegations of negligence.

Examples of negligence are inadequate supervision of employees, allowing cattle to stray and failure to maintain equipment.

If a court finds someone guilty of negligence, it can require payment of restitution to the injured party and may levy a punitive fine for the negligent acts.

3. Trespassing

Recent court decisions have ruled that the movement of chemicals, soil or animal waste across property lines constitutes a trespass, specifically if the incidence deprives use or enjoyment of the neighbor's property. Upon

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FYI

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Age-old point of law

One of the first records of a court case involving a conflict between a farmer and a neighbor was heard in England in 1610. William Aldred sued his neighbor, Thomas Benton, for erecting a pigsty near Aldred's house.

The court ruled in favor of Aldred, but Benton appealed. He argued that "the building of the house for hogs was necessary for the sustenance of man and one ought not to have so delicate a nose that he cannot bear the smell of hogs."

The appeals court rejected his claim and found his pigsty to be a nuisance. This early court deemed society should protect four things in a home: habitation by man, the pleasure of the inhabitant, necessary light and wholesome air. Society's standards have changed little since.

This case defined the two key issues that are still considered when farming nuisance disputes end up in court: Is the use that's alleged to be a nuisance reasonable for the area and does it substantially interfere with neighboring property?