

Notes

Current Law

12 V.S.A. § 5753

§ 5753. Agricultural activities; protection from nuisance lawsuits

Currentness

(a)(1) **Agricultural activities** shall be entitled to a rebuttable presumption that the activity does not constitute a nuisance if the agricultural activity meets all of the following conditions:

(A) it is conducted in conformity with federal, State, and local laws and regulations (including required agricultural practices);

(B) it is consistent with good agricultural practices;

(C) it is established prior to surrounding nonagricultural activities; and

(D) it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.

(2) The presumption that the agricultural activity does not constitute a nuisance may be rebutted by a showing that the activity has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of the neighboring property.

(b) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health.

12 V.S.A. § 5752

§ 5752. Definitions

Currentness

For the purpose of this chapter, **“agricultural activity” means**, but is not limited to:

(1) the **cultivation or other use of land for producing food**, fiber, Christmas trees, maple sap, or horticultural and orchard crops; the raising, feeding, or management of domestic animals as defined in [6 V.S.A. § 1151](#) or bees; the operation of greenhouses; the production of maple syrup; the on-site storage, preparation, and sale of agricultural products principally produced on the farm; and the on-site production of fuel or power from agricultural products or wastes principally produced on the farm;

(2) the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops; the composting of material principally produced by the farm or to be used at least in part on the farm; the ditching and **subsurface drainage of farm fields** and the construction of farm ponds; the **handling of livestock wastes** and by-products; and the on-site storage and application of agricultural inputs, including lime, fertilizer, and pesticides;

(3) “farming” as defined in [10 V.S.A. § 6001](#); and

(4) “agricultural activities” as defined in [6 V.S.A. § 4802](#).

6 V.S.A. § 4802

§ 4802. Definitions

Currentness

- (10) “Agricultural activities” means the operation and management of an entity engaged in farming, including all those activities defined as “farming” in this chapter, “agricultural activity” in 12 V.S.A. § 5752, and all of the following:
- (A) selling agricultural products at roadside stands or farm markets;
 - (B) the generation of noise, odors, dust, fumes, and other associated conditions;
 - (C) the composting of material principally produced by the farm or to be used at least in part on the farm;
 - (D) the ditching and subsurface drainage of farm fields and the construction of farm ponds;
 - (E) the handling of livestock wastes and by-products;
 - (F) the operation of farm machinery and equipment, including irrigation and drainage systems, pumps, and on-farm grain dryers;
 - (G) the movement of farm vehicles, machinery, equipment, and products and associated inputs on the roadway;
 - (H) field preparation, crop protection, and ground and aerial seeding and spraying;
 - (I) the on-site storage and application of agricultural inputs, including lime, fertilizer, organic materials, conditioners, and pesticides;
 - (J) the use of alternative pest management techniques;
 - (K) the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes;
 - (L) the expansion of farming practices or agricultural activities on a farm or the change or conversion of farming practices or agricultural activities to other farming practices or agricultural activities on a farm; and
 - (M) the employment, use, and housing of farm labor.

TALKING POINTS

- A. What are you being asked to do and why?
 - a. Amend the Right to Farm Law in Vermont
 - b. Why?
 - i. Because 1) the law does not accomplish its goal, and 2) the law is poorly written, unclear, and does not actually accomplish its purpose.
- B. What is the purpose of the Right to Farm Law?
 - a. The RTF Law has a purpose that is set out in 12 V.S.A. §5751 and it is this:

“The General Assembly finds that agricultural production is a major contributor to the State's economy; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of existing and the initiation of new agricultural activities preserve the landscape and environmental resources of the State, contribute to the increase of tourism, and further the economic welfare and self-sufficiency of the people of the State; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the State. In order for the agricultural industry to survive in this State, farms will likely change, adopt new technologies, and diversify into new products, which for some farms will mean increasing in size. The General Assembly finds that agricultural activities are potentially subject to lawsuits based on the theory of nuisance, and that these suits encourage and could force the premature removal of the farmlands and other farm resources from agricultural use. It is the purpose of this chapter to protect reasonable agricultural activities conducted on the farm from nuisance lawsuits.”

- b. Primary Purposes of the RTF Law.
 - * Protect reasonable Ag activities from nuisance lawsuits
 - * encourage improvements
 - *allow farms to change, diversify and expansion

C. Does the existing law accomplish those goals/purpose?

a. Hard **NO**~!

i. The scheme is flawed

1. Rebuttable presumption conditioned on the Farmer showing 4 things.

a. The Ag activity is in conformity with federal, State, and local laws and regulations

i. Which laws and regs? All of them? Ones that have nothing to do with the issue complained of? There are tons of regs. Does the farmer have to prove conformity with ALL of them? How do you do that?

1. Analogy: Imagine if you had to prove compliance with criminal laws. Which laws? Shoplifting? Speeding? How would you do that?

2. No violations is not enough.

“The fact that there has been no enforcement of agricultural requirements does not mean that there has been compliance with agricultural regulations. To benefit from the presumption, a defendant has to make a showing of at least substantial compliance with RAPs. Evidence of lack of enforcement of RAPs does not support an inference of compliance.” P. 20 decision

3. What about unrelated violations?

a. Example: If the issue is manure smell, then what about a buffer violation?

4. Prove you comply with them all? How? Take forever.

b. it is consistent with good agricultural practices

i. What are “good” ag practices?

ii. This is can be debated by experts.

c. it is established prior to surrounding nonagricultural activities

i. As Steve Collier said- what are the surrounding activities? Residential? How far out? The activity complained of or SOME TYPE of farming on site?

d. it has not significantly changed since the commencement of the prior surrounding nonagricultural activity

i. DIRECT conflict with the purpose of the law, which is there to encourage innovation and change and better management practices.

- ii. Expansion and construction of new pit deemed to be change
- iii. Installation of tile drains = new change
- iv. What else would be a new change? New/different crops being grown?

D. Why does the existing law not accomplish those goals?

- a. Covers BOTH nuisance and trespass
- b. Automatic protections
 - i. Does not require the farmer to prove that they are in compliance. Plaintiff must show by a preponderance that the “activity is NOT conducted in accordance with generally accepted agricultural practices.”
 - 1. Generally accepted Ag practices is defined by:
 - a. Requirements of 6 VSA §215
 - b. Permit requirements
 - c. The RAP requirements/standards
 - 2. WHAT ABOUT THE ARGUMENT THAT REGULATORS CANNOT AGREE? – then
 - a. They should agree and work that out. They are government agencies and the regulators should get on the same page. DO NOT make the farmers carry that burden or be at risk because the experts do not agree!!! This argument puts the farmers at risk because there is disagreement. The pressure should be on the regulators to have the bases covered.
 - b. This covers 1) Section 215 which is the AG water quality statutes, and 2) Permits, and 3) the RAP. There are 3 places where there are rules. Statute, permit and Agency rules. There are still MANY places where a farmer could fall short. Lots of ways the farmer needs to Do It Right. That’s a lot of keep on top of!
 - c. The regulators are the ones who should be setting the standards- not neighbors. Too willy-nilly and variable. Need consistency.
 - ii. Burden on Plaintiff making allegation.
- c. Controlled and deference to state regulators- THE EXPERTS we entrust.
- d. There is still plenty of room here to sue a farmer if that they are doing something very wrong. But this lets the state be the gatekeeper.
 - i. Negligent operation
 - ii. Outside of the permits and standards in the industry.

E. Any further amendments?

- a. (2)(A) Generally accepted Ag practices include “permit requirements and requirements of (and standards set forth in) the RAP” - These are standards for water quality management practices.
- b. (2)(C) “practices conducted in a manner consistent with property and accepted customs and standards followed by similar operators of agricultural activities in the State.” (or across the country?) (what if what is being done is new? Innovative? Done somewhere else?) or properly accepted customs in a similar state or setting.

