

# Who is protected from nuisance suits under the Right to Farm Act (RTFA)

May 5, 2009

## Authors:

Derived and updated from a similar table by Patricia Norris, GUYER-SEEVERS CHAIR IN NATURAL RESOURCES at MSU and Gary Taylor, ASSISTANT PROFESSOR AND EXTENSION SPECIALIST at Iowa State University which appeared in *Planing and Zoning News*, March 2007 (p.6).

## Updating by:

Kurt H. Schindler, and Brad Neumann, LAND USE EDUCATORS, Michigan State University Extension.

### START 1.

Is the activity a farm or farm operation?

“Farm” defined as: the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the *commercial production of farm products*.

“Farm operation” defined as: the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the *commercial production*, harvesting, and storage of *farm products*....

Is it producing a “farm product”?

↓ Yes to both questions.

↓ No to either question.

### YES 2.

Is it engaged in “commercial production”?

↓ Yes

→ No

### YES 3.

Does the farm or farm operation comply with adopted (written) Generally Accepted Agricultural Management Practices (GAAMPs)?

NO Then it is not protected.

↓ Yes

↓ No

### NO 4.

Does the farm or farm operation change practices to comply with GAAMPs?

↓ Yes

↓ No

### YES.

The farm is protected. It remains protected even if:

- Change in ownership or size.
- Temporary cessation or interruption of farming
- Enrollment in governmental programs
- Adoption of new technology
- A change in the type of farm product being produced.

### NO.

Did the farm or farm operation exist, and not constitute a nuisance, before any change in the land use or occupancy of land within one mile of the boundaries of the farm land?

Yes ←

↓ No

NO Then it is not protected.

# Who is protected from zoning regulation under the Right to Farm Act (RTFA)

June 10, 2010

## Authors:

Kurt H. Schindler, and Brad Neumann, LAND USE EDUCATORS, Michigan State University Extension.  
With assistance from Patricia Norris, GUYER-SEEVERS CHAIR IN NATURAL RESOURCES at MSU and Gary Taylor, ASSISTANT PROFESSOR AND EXTENSION SPECIALIST at Iowa State University.

### START 1.

Is the activity a farm or farm operation?

“Farm” defined as: the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the *commercial production of farm products*.<sup>1</sup>

“Farm operation” defined as: the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the *commercial production*, harvesting, and storage of *farm products*....<sup>2</sup>

Is it producing a “farm product”?<sup>3</sup>

↓ Yes to both questions.

↓ No to either question.

### YES 2.

Is it engaged in “commercial production”?<sup>4</sup>

↓ Yes

→ No

↓

### YES 3.

Does the zoning ordinance try to restrict “Livestock production facilities” (50 animal units or more) and “farm markets” from zoning districts where farm/agriculture is otherwise permitted.<sup>5</sup>

Yes ←

↓ No

↓

### YES 4.

Does the zoning ordinance regulate accessory activities (farm sales stand, processing, etc.) for “farm products”<sup>3</sup> grown at that farm? (Note: regulation of sales, processing which are harvested elsewhere and brought to that farm can be regulated if over 50% of the products offered at the market.)

Yes ←

↓ No

↓

### YES 5.

Does the local ordinance, zoning ordinance, regulation, or resolution conflict in any other manner with the RTFA or any of the adopted GAAMPs?<sup>6</sup> (Note: Current adopted GAAMPs include Manure Management and Utilization, Pesticide Utilization and Pest Control, Nutrient Utilization, Care of Farm Animals, Cranberry Production, Site Selection and Odor Control for New and Expanding Livestock Production Facilities, Irrigation Water Use, and Farm Markets<sup>7</sup> (all found at web site [www.michigan.gov/gaamps](http://www.michigan.gov/gaamps)). Setback regulations are in GAAMPs for “Livestock Production Facilities” so local zoning setbacks in compliance with those GAAMPs can occur. Various regulation of Farm Markets are possible where zoning allows for agriculture.)

↓ Yes

→ No

### YES 6.

Has the local unit of government submitted to the Director of the Michigan Department of Agriculture the ordinance (and a showing that adverse effects on the environment or public health will exist within the local unit of government without such an ordinance) prescribing standards different from those contained in the RTFA and/or GAAMPs and it has been approved by the Michigan Agricultural Commission?<sup>8</sup>

↓ No

↓ Yes

### NO 7.

Does the local ordinance/zoning only require the farm or farm operation to comply with adopted (written) GAAMPs?

↓ No

→ Yes

↓

### NO.

The RTFA preempts local ordinance/local zoning.

### YES.

Local ordinance/zoning can regulate the activity.

1. M.C.L. 286.472(a), (Section 2(a) of the Right to Farm Act, P.A. 93 of 1981, as amended).

2. M.C.L. 286.472(b), (Section 2(b) of the Right to Farm Act, P.A. 93 of 1981, as amended.). This includes, but is not limited to: marketing produce at roadside stands or farm markets; the generation of noise, odors, dust, fumes, and other associated conditions; the operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws; field preparation and ground and aerial seeding and spraying; the application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides; use of alternative pest management techniques; the fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals; the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes; the conversion from a farm operation activity to other farm operation activities; and the employment and use of labor.

3. Generally “farm product” means forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits and vegetables; flowers, seed, grasses, trees; fish; apiaries; equine; other similar products; and any other product which incorporates the use of food, feed, fiber, or fur (M.C.L. 286.472(c), (Section 2(c) of the Right to Farm Act, P.A. 93 of 1981, as amended.)).

What a “farm product” and “farm operation” means, or includes, is regularly reviewed and defined by courts as a result of various disputes. See *Land Use Series* “Summary of zoning and Right to Farm Act court cases” at web site [www.msue.msu.edu/lu/](http://www.msue.msu.edu/lu/) .

- So far courts ruled “farm product” includes: hunting (*Milan Township v. Jaworski and Sexy Pheasant*, 2003); corn field as a maze, rental of horses for recreational riding (*Village of Rothbury v Double JJ Resort Ranch*, 2004).
- So far courts have ruled “farm product” does not include: breeding and boarding kennel (*Township of Groveland v Bowren*, 1998); wood pallets when produced from wood not grown on the farm/site (*Richmond Township v Erbes*, 195 Mich App 210, 1992).

4. “Commercial” or “for commercial purposes” does not have any minimum level of sales, so it can include even the smallest amount of commercial activity (*Shelby Township v Pepesh*, 2005), but must be at least partly commercial in nature (*Papadelis v City of Troy*, 2006) and M.C.L. 286.472(b) and (a), (Section 2(b) and 2(a) of the Right to Farm Act, P.A. 93 of 1981, as amended.).

5. GAAMPs for Site Selection and Odor Control reads “New and Expanding Livestock Production Facilities should only be constructed in areas where local zoning allows for agriculture uses.” GAAMPs for Farm Markets reads “the market must be located on land where local land use zoning allows for agriculture and its related activities.”

6. M.C.L. 286.474(6), (Section 4(6) of the Right to Farm Act, P.A. 93 of 1981, as amended.).

7. The GAAMP sets forth that a farm market is an “area” where transactions between a farm market operator and customers take place (not necessarily but might be a building). At least 50 percent of the products marketed/offered for sale (measured over a five year timeframe) must be from the affiliated farm. The “50 percent” is measured by use of floor space.

The farm market must be “affiliated” with a farm, meaning a farm under the same ownership or control (e.g. leased) as the farm market, but does not have to be located on the same property where the farm production occurs. The market must be located on land where local land use zoning allows for agriculture and its related activities.

Marketing is part of a farm market, and can include Community Supported Agriculture (CSA), U-Pick operations (also known as pick your own (PYO)), and associated activities and services to attract and entertain customers (e.g., cooking demonstrations, corn mazes, tours, fishing pond, hay rides, horseback riding, petting farms, picnic areas, etcetera (a much longer list is in the GAAMP)). Services to attract and entertain customers are subject to local zoning ordinances, state, federal laws, and associated rules and regulations.

If in a building/structure, the structure must comply with the Stille-Derosset-Hale Single State Construction Code Act (MCL 125.1501 *et seq.*) and placement of the structure shall comply with local zoning, including set-backs from property lines and right-of-ways. Parking may be on grass, gravel, or pavement; one vehicle parking space for every 200 sq. ft. of interior retail space or 1,000 sq. ft. of outdoor activity space. Driveways must have an Michigan Department of Transportation (MDOT), county road commission, or village/city street agency permits. Signs outside the farm market must comply with sign regulations of MDOT, and all applicable local regulations. External lighting must comply with all applicable local, state, and federal regulations for lighting outside the farm market.

All details in the GAAMP are not covered here.

8. M.C.L. 286.474(7), (Section 4(7) of the Right to Farm Act, P.A. 93 of 1981, as amended.).