



Siting Laws Endanger Livestock Operations

Posted on September 29, 2011 at 11:21 AM

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An obscure case in Wisconsin involving a family dairy farm was argued in the Wisconsin Supreme Court on September 21, 2011. The battle involving the dairy farmers began in 2002 and after numerous hearings, disputes and court cases, the Wisconsin Supreme Court has heard argument about whether a livestock siting act takes precedent over ordinances of local governments.

This issue is arising in many states.

The case is an example of the battle animal agriculture is facing not only in Wisconsin but throughout the United States. Simply put, local citizens and environmentalists are using the courts in an effort to control or stop the increase of concentrated animal feeding operations.

In 2004, the Wisconsin legislature passed the Livestock Siting Law. The purpose of the law was to set standards for the location, manure spreading, storage, odor, air emissions and water runoff management.

Wisconsin wanted to set standards to assure that local governments being subject to local political pressure did not harm agricultural interests and the state's economy. The Wisconsin law gave local governments the option of using the new state siting standards or adopting siting ordinances as long as they were not more restrictive than those passed by the Wisconsin legislature.

The Larson family, according to the Rock County Circuit Court, had been operating a cattle operation within the Town of Magnolia, Wisconsin, since 2002. The Larsons applied for a conditional use permit which the town denied because it claimed the Larsons' animal operation would pollute ground and surface water.

The Larsons appealed the initial denial which they won; however, the victory was eventually reversed by the Wisconsin Court of Appeals.

The Wisconsin state legislature did not like the judicial results nor the impact on Wisconsin agriculture, and in 2004 passed the Livestock Siting Law. The new law created a new Livestock Facilities Siting Review Board. (The state of Illinois also has a Livestock Facilities Siting Act which was involved in a recent case I tried).

The Wisconsin siting act sets forth requirements for the siting of livestock facilities and authorizes the state board to review siting decisions of political subdivisions.

After the statute was passed, the Larson farm filed a new permit application in 2006. The Town of Magnolia board expressed concern that the Larsons' dairy operation would cause groundwater contamination and likely cause pollution of a local groundwater aquifer. The board did issue the Larsons a conditional use permit in 2007, and the restrictions are typical in terms of trying to run a farming operation by legislative fiat.

Permit restrictions: Your future?

The restrictions are instructive; those in animal agriculture are going to see more of these restrictions in future.

For example, EPA, in its incessant grab for power over agriculture, follows some of the same ideas as set for by the town of Magnolia.

Not all the restrictions will be listed, but here's an example: The town said in its conditional permit that the Larsons have to develop a plan to utilize their land and control their nutrient management practices in an effort "...to substantially reduce and thereafter minimize nitrogen loading to surface and ground water..."

The permit also required no fall spreading of manure on tilled, drained land. Another requirement is that the crop rotation must include alfalfa on the entire farm in 3-4 year rotations. The permit conditions, incredibly, required the Larsons to plant alfalfa for 3 years for every year they planted corn.

One final requirement required soil testing of the farm, which is approximately 5,000 acres, to be soil tested every year, not every 4 years.

Reversal controversy

These conditional permit requirements were unacceptable. The Larsons requested that the town's decision be reviewed by the new Wisconsin Livestock Facilities Siting Review Board. The Siting Board *reversed* the town of Magnolia's conditions and that reversal put the case before the Rock County Circuit Court in 2008. That court reversed the Livestock Siting Board!

The town argued that the Siting Act undercut the ability of municipalities to use their statutory police powers to regulate public health and safety. This argument, of course, would allow the municipalities to "end run" the Siting Board's authority because, as in this case, the town imposed such onerous conditions in the permit, even though conditional, it represented a permit denial.

The Wisconsin Siting Board argued that the town of Magnolia could not attach conditions to the Larsons' application other than those already contained in a Wisconsin statute. The Court held that the Wisconsin Livestock Siting Statute only gives the Siting Board authority to review permit denials to see whether or not Wisconsin statutes were followed.

As a result, a Circuit Court judge concluded that the Wisconsin Siting Board had acted outside its authority and vacated the Siting Board's decision as beyond the powers given by the Wisconsin legislature.

This decision has been appealed to the Wisconsin Supreme Court, for a matter that began in 2002 was finally heard on September 21, 2011. Not many operations could continue this fight financially, but there are six Larson families farming 5,000 acres and milking 2,900 cows, according to local newspaper reports.

When the Wisconsin Supreme Court decision is handed down, it will once again indicate who will run agricultural operations. Will it be political or special interest groups or will it be producers?