

MEMORANDUM

To: Professor Laurie Fowler
From: Kenna Hall

QUESTION PRESENTED:

Describe Michigan's Generally Accepted Agricultural Management Practices (GAAMP) including the motivation behind the regulations, the actual regulations, how they were developed, and the success or failure of the program in Michigan. Also discuss whether the program would be successful in Georgia.

Why The GAAMP Were Needed:

The problems the GAAMP's address arise from the growth of livestock production and the social and environmental effects these operations have on communities expanding beyond urban areas into the rural countryside. Conflicts between farming and residential neighbors over odors and pollution have created a need for regulatory legislation to govern the actions of farmers and in some cases, to protect farmers from costly nuisance litigation. In Michigan, agriculture and livestock production has grown significantly along with local opposition to livestock production resulting in numerous nuisance lawsuits and local protests.¹ Michigan's Generally Accepted Agricultural Management Practices (GAAMP) were needed after the Right to Farm Act of 1981 was passed (Public Act 93). This Act was passed to protect farmers from sight, sound, or odor nuisance lawsuits as long as they followed generally accepted agricultural practices. The Right to Farm Act of 1981 states in part:

286.473 Farm or farm operation as public or private nuisance . . .

¹ *Lessons From Michigan: Strategies For Regulating Intensive Livestock Operations- Right To Farm And The Role Of The State.* Wayne J. Caldwell, PhD, RPP, MCIP. June 2003. Ontario Ministry of Agriculture, Food and Rural Affairs. <http://www.omafra.gov.on.ca/english/nm/municipal/caldwl04b.htm>

“(1) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary.”²

The GAAMP were adopted by the Michigan Commission of Agriculture with the goals to “maintain environmental stewardship” and to “maintain a farmer's right to farm.”³

Effect on Local Governments:

The primary regulatory authority for agriculture in Michigan is the Michigan Department of Agriculture (MDA) which pre-empts the Michigan Department of Environmental Quality (MDEQ) and all other statutory authorities except in cases of ground and surface water contamination complaints.^{4 5} Because of this, local governments have very little authority over agricultural operations and work mostly in educating and reminding farmers of the consequences of their practices and supporting the efforts of local conservation programs.⁶ Local government also acts as a watchdog reporting suspected violations to the MDA.⁷

How Were the GAAMP Developed:

The GAAMP were developed by the Michigan Commission of Agriculture with technical and

2 *Michigan Right to Farm Act of 1981*. Section 3. Legislative Council, State of Michigan 286.473. History: 1981, Act 93, Imd. Eff. July 11, 1981; Am. 1987, Act 240, Imd. Eff. Dec. 28, 1987; Am. 1995, Act 94, Eff. Sept. 30, 1995.

3 *Right to Farm Act*. Michigan Department of Agriculture. © 2001-2006. http://www.michigan.gov/mda/0,1607,7-125-1567_1599_1605-13052--00.html

4 *Local Government and Drinking Water Protection Fact Sheet Series: Fact Sheet 6-1*. July 30, 1997. This document describes the regulatory framework for Michigan agriculture prior to the 1999 Amendment to the Right-to-Farm Act (PA 261). http://www.umf-outreach.edu/caer/downloads/6_1.pdf

5 In the case of ground or surface water contamination complaints, the MDA is first to respond and determines whether the farm complies with GAAMP. If not, then farm must be brought into compliance. If farm is not brought into compliance, then the farm is referred to the MDEQ and the Right-to-Farm Act of 1981 no longer applies. The Water Resources Commissions Act governs this situation and cases of water quality emergencies.

6 Id.

7 Id. at 2

other assistance from several groups including the MDA, Michigan Cooperative Extension, Michigan State University Agricultural Experimentation Station, Natural Resources and Conservation Service, and the Agricultural Stabilization and Conservation Services.⁸ Prior to the 1999 Amendment to the Right to Farm Act, the GAAMP provided rules and guidelines for five areas of agriculture:

1. Manure Management: storage, application, odor control, and runoff control.
2. Pesticide Management: application of pesticides, worker safety, record-keeping, transportation, storage, and disposal.
3. Nutrient (Nitrogen) Utilization: storage, soil conservation, irrigation management, and application of Nitrogen.
4. Care of Farm Animals: manure management and sanitation
5. Cranberry Production⁹

The Effects of PA 261 – The 1999 Amendment to the Right to Farm Act:

Before PA 261, farmers were immune to nuisance lawsuits under the Right-to-Farm Act if they followed the GAAMP, but they were still liable for violations of local zoning ordinances that differed from the GAAMP.¹⁰ The major goals of PA 261 were to 1) End this liability for local violations, making it impossible for local governments to pass laws that conflicted with the Right-to-Farm Act or the GAAMP, 2) Add recognition of local water and air quality concerns and to provide uniform state-wide standards of generally accepted agricultural management practices, and 3) Add site selection criteria (1999) and irrigation water use (2006) to the areas of agricultural management practices covered by the GAAMP.¹¹

Site Selection Criteria Under the New GAAMP:

Livestock production facilities seeking to expand their operations or open a new operation must propose a site plan and a manure management plan if they have 50 or more animal units, and the MDA

⁸ Id. at 1

⁹ Id.

¹⁰ *Michigan's Right to Farm Act and New Generally Accepted Agricultural and Management Practices – Public Act 261 of 1999 (SB 205)*. December 1999. Michigan State University Extension Land Use Series Public Policy Analysis. Authors: Patricia Norris and Gary Taylor. <http://web1.msue.msu.edu/wexford/pamphlet/AcrobatPamphletPA261GAAMP.PDF>

¹¹ Id. at 3

must approve these plans in a process called site verification (Note: this approval process is new and was not required by the old GAAMP. Previously, these steps were only taken in the event of a complaint).¹²

The site plan must include an outline of the project, areas of concern, a time line, and the people the farmer is working with on the project.¹³ The MDA uses the following guidelines to approve manure management practices:

- Is there sufficient land available for proper treatment/collection/storage of manure?
- Is the runoff collected and treated in an environmentally sound manner?
- Is the manure management system going to function properly?
- Is there a written maintenance plan and will there be good record-keeping?
- What will be done to minimize excessive odors?
- Is there an emergency action plan to implement in the event of a spill?
- What will be done to dispose of dead livestock and veterinary waste?
- Is there a conservation plan outlining the areas where manure will be applied?¹⁴

The site plan must also contain information regarding property boundaries and other deed restrictions, adjacent land uses, the names and addresses of the adjacent property owners, soil and wind maps, and the locations of all buildings, public utilities, septic systems, bodies of water, wells, wetlands, drains, roads, and fences.¹⁵

The New Notice Provision:

The new GAAMP require an initial site visit by the MDA and notice to all local units of government, and neighbors within one mile can appeal decisions made by the MDA to the Michigan Commission of Agriculture but they do not technically have to be notified under the new law.¹⁶

Policy Issues for Local Governments:

12 Id. at 4

13 Id. at 3

14 Id. at 5

15 Id.

16 Id. at 4

As mentioned previously, local governments have very little power and authority to make laws regulating agricultural operations because of the Right to Farm Act, but they are not completely powerless when it comes to livestock operations – they still have the power to enact ordinances that deal with issues not addressed by the Right-to-Farm Act or the GAAMP.¹⁷ For example, if a government wanted to establish setback requirements for all structures to protect surface water – this is allowed under the Right-to-Farm Act because it does not “extend, revise, or conflict” with the RTFA.¹⁸ The RTFA was not meant to be the “last word” on livestock operations, but a protection for farmers against nuisance lawsuits, and local governments still have the power to decide where in the jurisdiction livestock farms will be allowed to be located if they are allowed at all.¹⁹ Local governments are still responsible for regulating livestock operations with less than 50 animal units.

Have the GAAMP been successful?

The Right to Farm Act benefits new farmers by providing clear and concise regulations they can follow to shield themselves from nuisance lawsuits and it also serves as an incentive to operate a large livestock production (more than 50 animal units will trigger the protections of the Right to Farm Act).²⁰ This incentive could cause an unwanted effect of over-production of livestock if farmers are over-producing to ensure the beneficial protections of the law.²¹ Another issue the Right to Farm Act creates is that power to regulate agriculture is taken away from local governments, and it is arguable that local governments are better suited with knowing and understanding the needs of its citizens and thus are better at enacting legislation to control livestock production. It is possible that the needs of concerned non-

17 Id. at 8

18 Id.

19 Id. at 10

20 *Lessons From Michigan: Strategies For Regulating Intensive Livestock Operations- Right To Farm And The Role Of The State*. Wayne J. Caldwell, PhD, RPP, MCIP. June 2003. Ontario Ministry of Agriculture, Food and Rural Affairs. <http://www.omafra.gov.on.ca/english/nm/municipal/caldwl04b.htm>

21 Id.

farming citizens will be overlooked.

Conclusion:

Michigan has approached the changes to its agricultural landscape (rural residential development) with regulations aimed at consistency and fairness across the board. If Georgia were to adopt a Right to Farm Act to protect farming operations from nuisance lawsuits, it might consider using Michigan's framework as an example, but it should only consider doing so if faced with the same problem Michigan was faced with: rural non-farming residential development was leading to crowding around livestock farming operations and resulting in nuisance lawsuits. Georgia might consider leaving more regulatory choices to the local governments than Michigan did because sometimes local governments are better at dealing with unique situations like odor nuisance. However, Michigan's legislation is an excellent model to follow if the goal is clear, concise, and consistent regulations for all farming operations that are easily followed by farmers. The GAAMP are reviewed annually, and can always be made stricter if a local problem develops requiring more intense regulation.