

SOUND AGRICULTURAL PRACTICE
Opinion Number 06-1

SUBJECT: Request for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to the soundness of a certain agricultural practice conducted by Robert Reynolds, Sr. in the Town of Volney, Oswego County.

REQUESTOR: Mr. Robert Reynolds, Sr.
549 County Route 53
Oswego, New York 13126

Preliminary Statement

By letter, dated July 6, 2005, Robert Reynolds, Sr. requested that the Department review the soundness of an agricultural practice conducted on his property. Mr. Reynolds requested that the Commissioner issue an opinion as to the soundness of the manure management, from a water quality and odor perspective, conducted on his property. According to legal documents provided by Mr. Reynolds, several neighbors have filed a lawsuit against him claiming he has contaminated one well and has caused "obnoxious odors."

The Department conducted a sound agricultural practice review of the manure management at the Robert Reynolds, Sr. property. The following information and findings have been considered in reaching this Opinion.

Information Considered in Support of the Opinion

1. Mr. Reynolds owns and operates a small farm in the Towns of Volney and Scriba, Oswego County. According to Mr. Reynolds, he owns approximately 31 acres in the Town of Volney and 28 acres in the Town of Scriba. Mr. Reynolds indicated to Mr. Brower that he raises approximately 15 beef cattle and 20-35 pigs each year. According to the Department's agricultural district file, the farm is located in Oswego County Agricultural District #11, which was recertified on or about March 21, 2002.
2. Department Agricultural Resource Specialist Matt Brower, a Certified Crop Advisor and a certified Agricultural Waste Management Planner, visited the Reynolds property on August 2, 2005 to gather information on the practice. According to Mr. Reynolds, he has been raising animals at the site for approximately 30 years. He stated to Mr. Brower that the animals are sold for meat and that he generates over \$10,000 in gross income. On January 3 and 4, 2006 Mr. Brower spoke with the assessors for the Towns of Volney and Scriba

**Sound Agricultural Practice
Opinion Number 06-1**

and they confirm that Mr. Reynolds's property receives an agricultural value assessment.

3. Mr. Reynolds stated to Mr. Brower that one of his neighbors has complained about his (Reynolds's) farming activities for several years and is claiming that his (the neighbor's) well has been contaminated by the farm. This neighbor's property is across the road from the Reynolds property.

4. Mr. Reynolds stated to Mr. Brower that the cows run in and out of the barn throughout the year and the barn, which has a concrete floor, is generally cleaned in June. Mr. Reynolds indicates that he cleans the area around the outdoor cattle feeder in the spring. He also stated that all of the land is used for pasture, and the manure from the barn and feeder cleanings is spread on the pasture. Mr. Reynolds acknowledged that there had been one manure pile on the property several years ago, but indicated that he has not piled manure since then. According to Mr. Reynolds, the pigs are raised free range, on a separate area of the property, approximately 500 feet from the house of the neighbor who claims well contamination.

5. During his visit, Mr. Brower observed that the pasture area was well vegetated and there was no accumulation of manure on the property. The feeding area for the cows was observed to be approximately 300 feet from the subject neighbor's property and the area used to raise the pigs is approximately 500 feet from his property. The barn entrance is approximately 75 feet from the complaining neighbor's property. Mr. Brower also observed that the pasture area slopes away from the subject property and Mr. Brower reported that he did not observe any runoff or experience any unpleasant odor.

6. The Department wrote to ten persons owning land adjacent to the Reynolds property notifying them of the agricultural practice review and inviting them to comment on the practice. The Department received two responses and both commenters indicated that they support the farming activities on the Reynolds property and have not experienced any problems due to those activities. While the plaintiffs identified in the lawsuit against Mr. Reynolds were provided the opportunity to comment, the Department did not receive a response from any of them.

7. One neighbor stated that he and his wife live directly across the street from the Reynolds property. The neighbor stated that he has a dug well approximately 20 feet deep and he has not detected any water quality problems. He also stated that he has a large pond and has not noticed any reduction in water quality as a result of the farming activities. According to the neighbor, they have experienced some "slight odors" on occasion; however, they do not find the odor "offensive." He also indicated that they have not observed any unsound manure management practices.

8. According to the Soil Survey of Oswego County, the predominate soil in the pasture area is Ira gravelly fine sandy loam with a 3 to 8 percent slope. According to the Soil Survey, the upper portion of the soil profile consists of

**Sound Agricultural Practice
Opinion Number 06-1**

gravelly fine sandy loam with moderate permeability. The Soil Survey indicates that a “dense fragipan” exists at a depth of approximately 13 to 22 inches below the surface. The Survey also indicates that the permeability in the fragipan layer is slow, resulting in a seasonal high water table above the fragipan.

9. Mr. Reynolds informed Mr. Brower that he had John DeHollander, District Manager for the Oswego County Soil and Water Conservation, visit his property to review the well contamination complaint made by Mr. Reynolds’s neighbor. In a letter to the Department dated September 16, 2005, Mr. DeHollander indicated that he visited the Reynolds property on June 23, 2005. According to Mr. DeHollander, he toured the farm buildings and pasture area. Mr. DeHollander indicated in his letter that the property was well maintained with no odor, fly problems, or manure stock piling. Mr. DeHollander also stated that the number of animals at the property throughout the year does not “exceed the carrying capacity of either the barns and/or pasturelands.” Mr. DeHollander further stated that the surface runoff flow would be directed across the pasture area, in the opposite direction from the neighbor’s property.

10. Agriculture and Markets Law §308, subdivision 1, paragraph b requires that the Commissioner consider whether an agricultural practice is conducted by a farm owner or operator as part of his or her participation in the Agricultural Environmental Management (AEM) program as set forth in Agriculture and Markets Law Article 11-A. According to the Oswego County Soil and Water Conservation District, Mr. Reynolds does not participate in the Agricultural Environmental Management program.

11. On September 20, 2005, Mr. Brower contacted Evan Walsh from the Oswego County Health Department, to obtain information on the well contamination allegation. Mr. Walsh stated that he was familiar with the situation and the site and that the Department had no evidence of well contamination from the Reynolds property. He also indicated that it would be difficult to determine that contamination of a well was caused by farm activities, unless there was an obvious surface flow toward the well.

12. On October 17, 2005, Mr. Brower contacted the Town of Volney to determine if Mr. Reynolds has been cited by the Town for any violations of local laws or ordinances, as a result of his farming operation. Bonnie Gainey, Clerk for the Code Enforcement Officer, stated that she researched the Town records back as far as 1990 and found no evidence of any violation relative to the Reynolds property. The New York State Department of Health’s regulations for Public Water Supplies in Oswego County (10 NYCRR Part 135) do not include any regulations pertaining to the Town of Volney.

Findings

Based upon the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; the New York State College of Agriculture and Life Sciences at Cornell; the Natural Resources Conservation Service and the Sound Agricultural Practice Guidelines¹ by which agricultural practices are evaluated, I find the following:

1. The Department has found no evidence or received other information indicating that Mr. Reynolds has been cited for any violation of federal, State or local law as a result of his manure management practices.
2. The Department has found no evidence that the manure management has resulted in bodily harm or property damage off the site. The potential for contamination of the subject neighbor's well, as a result of the farming activities, is low due to the soil characteristics and the direction of the slope of the land, away from the neighbor's property. While this neighbor claims that Mr. Reynolds has contaminated his well, he did not respond to the Department's request for information nor did the other plaintiffs identified in the lawsuit. The two responses received by the Department are supportive of the farming activities conducted at the Reynolds property.
3. The Department's farm visit indicates that Mr. Reynolds is properly managing the farm's manure. This finding is supported by the Oswego County Soil and Water Conservation District, whose manager also conducted an on-farm visit and review of the practice. It appears that Mr. Reynolds has attempted to minimize the manure accumulation and odors associated with his farm. The only access to the barn for the animals is across the road from the subject neighbor's property. As a result, it is not possible to fence the animals further away from this person's property.
4. The removal and landspreading of the manure from the barn is necessary to Mr. Reynolds's livestock farm operation. It appears that Mr. Reynolds does not allow the manure to accumulate in the pasture area and does not pile the manure on the property. Mr. Reynolds does not feed the animals near the subject

¹ On November 1, 1993 the NYS Advisory Council on Agriculture published its report entitled *Protecting the Right of New York Farmers to Engage in Sound Agricultural Practices*. The Council developed guidelines to assist the Commissioner of the Department of Agriculture and Markets in determining what is sound pursuant to Section 308 of the Agriculture and Markets Law. The Guidelines state that the practice 1) should be legal; 2) should not cause bodily harm or property damage off the farm; 3) should achieve the results intended in a reasonable and supportable way; and 4) should be necessary. The sound agricultural practices guidelines recommended by the Advisory Council on Agriculture are given significant weight in assessing agricultural practices.

**Sound Agricultural Practice
Opinion Number 06-1**

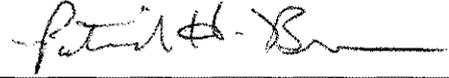
neighbor's property, which helps prevent odor problems and an accumulation of manure in close proximity to the neighbor.

Conclusion

Based on the foregoing and in accordance with section 308 of the Agriculture and Markets Law, I conclude that, from a water quality and odor perspective, the manure management practice at the Robert Reynolds, Sr. property, as described above, is sound.

3-2-06

Date



Patrick H. Brennan
Commissioner of
Agriculture and Markets