

SOUND AGRICULTURAL PRACTICE
Opinion Number 08-1

SUBJECT: Request for an Opinion Pursuant to §308 of the Agriculture and Markets Law as to the soundness of a certain agricultural practice conducted by Patrick (Rick) Pilarski in the Town of Bennington, Wyoming County

REQUESTER: Merlyn E. Bissell, Esq.
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Preliminary Statement

In a letter to the Department dated April 30, 2007, Merlyn E. Bissell, Esq. requested an opinion regarding the soundness of an agricultural practice conducted on his client's property. Mr. Bissell requested that the Commissioner issue an opinion as to the soundness of the manure management conducted by his client, Patrick Pilarski, from a water quality perspective, on lands used for the production of crops, livestock and livestock products. This sound agricultural practice request stems from a verbal complaint filed with the New York State Department of Environmental Conservation ("DEC") by an adjacent non-farm neighbor concerned that runoff might be contaminating his pond.

The Department conducted a sound agricultural practice review of the manure management practices at the Patrick Pilarski property. The following information and findings have been considered in reaching this Opinion.

Information Considered in Support of the Opinion

1. Mr. Pilarski owns and operates a small farm in the Town of Bennington, Wyoming County. According to Mr. Pilarski, he owns approximately 48.5 acres in the Town of Bennington and raises approximately 9 cow-calf beef "pairs" and 20 laying hens. His farm consists of approximately 30 acres of pasture and hayland; 20 acres of woodland and a 5 acre farmstead. According to the Department's Agricultural District file, the farm is located in Wyoming County Agricultural District # 4, which was last recertified in 2001.
2. Department Agricultural Resource Specialist Michael Saviola visited the site on May 30, 2007 to collect information on the practice. According to Mr. Pilarski, he has been raising animals and mowing hay at the farm since 1997. Prior to that, his property was part of a larger farm operation consisting of a dairy farm with cash crops and fruit trees. He stated that approximately four steers, one bull and all the "replacement" calves are sold at a local livestock auction. Mr. Pilarski indicated that he receives an agricultural assessment annually.
3. Mr. Pilarski stated that one of his neighbors complained about his farm operation and suggested that his pond has been contaminated by the farm operation. The neighbor's property is directly adjacent to Mr. Pilarski's farmstead. Mr. Pilarski informed Mr. Saviola that on April 26,

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2007 a representative of the NYS Department of Environmental Conservation (DEC), Division of Water, inspected the “barnyard area” (run-in shed) on his farm in response to the verbal complaint from the neighbor that runoff might be “contaminating the outlet of a down gradient pond and associated drainageways and tributaries of Cayuga Creek.” The DEC summarized its inspection in a letter to Mr. Pilarski dated April 27, 2007. The letter indicates that on the day of the inspection, run-off from the barnyard was minimal; however, under certain circumstances such as rainfall events and times of snow melt, run-off may contaminate the drainageways, which could have a negative impact on the water quality of the Cayuga Creek watershed. DEC’s letter informed Mr. Pilarski that such contamination can be a violation of the Environmental Conservation Law (ECL) and requested that Mr. Pilarski contact the Wyoming County Soil & Water Conservation District (SWCD) for technical assistance on barnyard and manure management practices that could be undertaken on his farm to minimize contaminated run-off. The letter further indicates that DEC anticipates that Mr. Pilarski will implement the guidance provided by the SWCD to rectify the problems in a timely manner on a voluntary basis and that his farm may be periodically inspected in the future to ensure remediation work is being performed in a reasonable timeframe.

4. In response to the complaint, Mr. Pilarski voluntarily contacted the Wyoming County Soil & Water Conservation District (SWCD). On May 4, 2007, David Reckahn of the SWCD visited the Pilarski farm. During that farm visit, Mr. Pilarski expressed an interest in voluntarily conducting an Agricultural Environmental Management (AEM) assessment and field evaluation on his farm operation to document his farm stewardship activities. As part of the AEM field evaluation, a Tier I Questionnaire and series of Tier II worksheets were completed during the site visit. District staff summarized the following as a result of their AEM field assessment:

- Clean water from the run-in shed is being collected via roof gutters and is safely conveyed away from the “barnyard” area and any potential pollutant sources.
- Approximately half of the volume of manure and hay bedding collects in the barnyard area (much of it covered) until the fields are dry enough for land application (spreading).
- The manure and waste hay is spread on permanent grass fields which appear to be large enough for the number of animal units; the well-vegetated nature of the pastures appears to limit runoff. The District recommended soil testing to determine soil nutrient needs.
- The need for a diversion adjacent to the barnyard area was identified for the purpose of diverting or excluding clean water away from the barnyard area and any potential pollutant sources; removal of solids when dry conditions exist; and establishment of a grass filter area to act as a buffer to the neighbor’s property.
- The District further indicated that, if necessary, “concrete and curbing” (concrete barnyard) could be used to limit runoff and better facilitate the clean up of solids (barnyard scraping).

The District concluded by stating that it offered technical guidance to the landowner in developing plans for and implementing conservation practices.

5. Mr. Pilarski stated that during the growing season he intensively manages his pastures and rotationally grazes his livestock in five fenced, five-acre pastures. He also stated that the barnyard area is only used as a winter feeding area and is generally cleaned out in the spring. Mr. Pilarski indicated that he typically cleans up existing solids as conditions allow and seeds the barnyard area when the animals are out on pasture. Some manure, waste hay bedding and mostly soil were observed in piles in front of the barnyard area during Mr. Saviola’s farm visit as Mr. Pilarski was in

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the process of cleaning the covered area of the barnyard. However, he stated that because of a shoulder injury, he was unable to continue to clean the barnyard as he typically does each spring as soil moisture conditions allow.

6. During his site visit, Mr. Saviola observed that the animals appeared healthy; the pastures were well vegetated and no excessive accumulation of manure was observed in the pastures. The winter feeding area is approximately 36 feet to the adjacent property, and over 100 feet to the neighboring pond. The area between the winter feeding area and pond consists of grass, brush and trees with an open canopy. It appeared well-vegetated and Mr. Saviola observed no evidence of runoff (observable, defined channels) or sediment migration at the time of his visit. A subsequent site visit on October 9, 2007 revealed that Mr. Pilarski followed up on the SWCD's recommendations and recently installed a diversion within the barnyard area as well as along the property line to collect runoff from the winter feeding area and safely convey it in a southeasterly direction to a grassed filter area away from the adjacent landowner's pond. Based on the site visit, they appear to be functioning as intended.

7. The Department mailed a letter to twelve landowners adjacent to the Pilarski property notifying them of the agricultural practice review and inviting them to comment on the practice. The Department received three responses providing comments on the practice. The Department did not receive a response from the adjacent landowner who initiated the verbal complaint to the DEC.

8. One of the commenters was in support of the practice. These neighbors stated that they had no opposition to Mr. Pilarski spreading non-liquid manure on his property and that this has been a sound agricultural practice for hundreds of years. The neighbors also noted that Mr. Pilarski undoubtedly has little manure to spread as they suspect he doesn't have many animals.

9. Another comment letter was received from different neighbors who cited odor concerns related to dairy farms located in Bliss, NY, and the potability of drinking water at Letchworth Central School. They did not, however, express any concern specific to manure handling practices at the Pilarski farm. The comment letter further states that every year Mr. Pilarski gives them cow manure for their small 25'x30' garden.

10. A third comment letter from different neighbors indicated they have no problem with Mr. Pilarski being a farmer but expressed a concern about water quality; specifically requested the periodic testing of their private well (not at their expense), and inquired about the condition of the animals. However, they failed to provide specifics as to the potability of their well water, the type, depth or condition of the well itself; or provide an explanation as to why the water from the well should be tested or details pertaining to the condition of the animals, and further did not document any property damage or groundwater contamination. It should be noted that the property owned by these responding landowners is topographically up gradient from the Pilarski farm's winter feeding area and is located over 500 feet away across a county highway.

11. According to the Soil Survey of Wyoming County, the area of the Pilarski farm is principally comprised of Langford channery silt loam and Erie silt loam. According to the Soil Survey, the Langford series soils consists of deep, moderately well drained to well drained, medium textured soils that formed in low lime glacial till. These soils have a "well expressed" fragipan at a depth of about 15 to 24 inches. The Erie series is made up of deep, somewhat poorly drained,

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medium textured soils. These soils have a “strongly expressed” fragipan at a depth of about 10 to 16 inches. They formed in mixed glacial till.

12. On June 4, 2007, Mr. Saviola visited the Wyoming County Environmental Health Department to determine if a complaint had been filed related to the Pilarski farm. Mr. Andrew Meyer, Public Health Sanitarian with the Department, reviewed that agency’s files and did not find any record of a complaint being filed or any information pertaining to the Pilarski farm.

13. On June 10, 2007, Mr. Saviola contacted the Town of Bennington to determine if Mr. Pilarski had been cited by the Town for any violations of any local laws or ordinances as they pertain to the farm operation. Ms. Ellen Grant, Town of Bennington Supervisor, indicated that the Town had no records of any violation relative to the Pilarski property.

14. On July 13, 2007, Mr. Saviola contacted Mike Baker, Cornell Beef Extension Specialist, to gather information on beef animal stocking rates and grazing. According to Mr. Baker, if the farmer is intensively managing his pastureland and hayfields, and assuming a conservative forage availability estimate of 1,600 lbs. of dry matter/acre, Mr. Pilarski’s farm could support as many as 44 beef animals/ acre/ day throughout the course of the grazing season.

15. On October 1, 2007, Mr. Saviola contacted James Vogel of DEC’s Region 9 office. Mr. Vogel was the DEC staff person who handled the telephone complaint made by the adjacent landowner. Mr. Vogel indicated that he visited both properties and referred Mr. Pilarski to the local county SWCD. Mr. Vogel also indicated that no summons or notice of violation was issued as a result of the verbal complaint and further stated that he did not collect water samples for laboratory analysis.

16. On January 10, 2008, Mr. Vogel of the DEC and Mr. Reckahn of the Wyoming County SWCD visited Mr. Pilarski’s farm to evaluate the remedial efforts he undertook to implement the SWCD’s recommendations. Mr. Vogel indicated in a letter to the Department dated January 14, 2008 that Mr. Pilarski has implemented the recommendations with the exception of the installation of a fence to exclude animals from the lower section of the barnyard to allow growth of a grassed filter area; that Mr. Pilarski agreed to install the fence as soon as the area dries up to allow for machinery to dig post holes; and that Mr. Pilarski also agreed to do minor regrading and seeding of the area.

17. Mr. Reckahn provided Mr. Vogel with an updated AEM plan for Mr. Pilarski’s farm on January 10, 2008. Mr. Reckahn indicates that after inspection on January 10, 2008 the fence for animal use exclusion needs to be installed as soon as possible for the landowner; and, thereafter, animals can be used in the filter area to clip grass for maximum nutrient uptake and filtering.

18. Mr. Saviola also conducted a review of available literature on the subjects of pasture and grazing management conducted by the Cornell Department of Animal Science. According to the literature, the pastures are under stocked and are well-vegetated; thus reducing the potential for environmental impact to the adjacent landowner which could otherwise occur due to over-grazing.

19. 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 Wyoming County, SWCD Mr. Pilarski participates in the Agricultural Environmental Management program. Specifically, Mr. Pilarski completed AEM Tiers I and II and installed a diversion as recommended by the SWCD. Mr. Pilarski also agreed to conduct soil testing to determine future nutrient needs of the soil on his farm.

Findings

Based upon the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; the New York State Department of Environmental Conservation; the New York State College of Agriculture & Life Sciences at Cornell University; 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. Pilarski 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 off-site property damage. The potential for the contamination of the well of a neighbor who raised concerns, as a result of the farming activities, is low due to its proximity (located >500 feet away) and the well is upgradient and across a county highway from the pastures and Mr. Pilarski's winter feeding area. The Department has found no evidence that the manure management presents a significant risk to the water quality of the adjacent neighbor's pond. While this neighbor filed the initial verbal complaint with the DEC, the neighbor did not respond to the Department's request for information and none of the other adjacent landowners expressed concerns specific to the Pilarski farm operation. One response received by the Department supported the farming activities at the Pilarski farm.
3. The Department's farm visit indicates that Mr. Pilarski is properly managing the farm's manure. Based on the results of the farm visit and the Agricultural Environmental Management (AEM) Tier II Summary and Field Evaluation conducted by the Wyoming County SWCD, which document Mr. Pilarski's positive farm stewardship, and his willingness to voluntarily participate in the AEM Program, manure management practices conducted on the farm do not appear to present a significant water quality concern to adjacent non-farm landowners. Significantly, in accordance with the recommendation of the SWCD Mr. Pilarski installed, at his own expense, diversions within his winter feeding area and along his property line to collect runoff and safely convey it in a southeasterly direction to a grassed filter area away from the adjacent landowner's pond. Mr. Pilarski has also

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 & Markets in determining what is sound pursuant to §308 of the Agriculture & 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 specific weight in assessing agricultural practices.

agreed to install a fence to exclude animals from the lower section of his barnyard to allow growth of a grassed filter area; and to do minor regarding and seeding of the area.

4. The feeding area on the Pilarski farm located adjacent to the complainant's property is only utilized during the winter months and accumulated solids are removed from the area each spring and spread on pastures and hay fields when field conditions allow. Livestock are then pastured once field conditions allow for animal grazing. The removal and landspreading of the manure from the barnyard is necessary to Mr. Pilarski's livestock farm operation. It appears that Mr. Pilarski does not allow manure to accumulate in the pasture areas and the minor amount of manure that is deposited by the livestock is utilized by the forage grasses.

Conclusion

Based on the foregoing and in accordance with §308 of the Agriculture and Markets Law, I conclude that, from a water quality perspective, the manure management practices at the Patrick Pilarski property, as described above, are sound.

2/25/08

Date

Patrick Hooker

Patrick Hooker

Commissioner of Agriculture and Markets