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NEW LIMITS ON HOG OPERATIONS IN COLORADO

— by Neil E. Harl*

On November 3, 1998, the voters in Colorado approved an initiative to impose significant new restrictions on commercial hog feeding operations in Colorado. The Colorado measure is the first limitation imposed on the organization and conduct of farming operations in that state. Other limitations have been imposed in nine states in the Middle West.

Scope of the initiative

The restrictions imposed by the Colorado initiative, which became a statutory provision on approval, apply to “housed commercial swine feeding operations.” That term is defined to include a feeding operation “capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations.” The provision requires operations to be combined for purposes of the size limitations as a single housed commercial swine feeding operation if they are under “common or affiliated ownership and management,” and are adjacent to or utilize a common area or system for manure disposal, are integrated in any way, are located or discharge within the same watershed or into watersheds that are hydrologically connected, or are located on or discharge onto land overlying the same groundwater aquifer. The measure defines “housed swine feeding operation” as “the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for forty-five days or longer in any twelve-month period, and crop or forage growth or production is not sustained in the area of confinement.”

The scope of the Colorado provision is, therefore, quite broad. Extension of the limitations to those with “common or affiliated ownership and management” which are in the same hydrologic area, overlying the same aquifer or “are integrated in any way” gives the initiative a significant reach in terms of imposing the restrictions on operations below 800,000 pounds of live weight.

Limitations on odors and disposing of animal waste

The Colorado initiative specifies that no new land waste application site or new waste impoundment used in connection with a housed commercial swine feeding operation can be located less than one mile from an occupied dwelling (without the written consent of the owner of the dwelling); one mile from a public or private school (without the written consent of the school’s board of trustees or board of directors); or one mile from the boundaries of any incorporated municipality (without the consent of the governing body by resolution).

These limitations are expected to lead to negotiations between housed commercial swine feeding operations and the designated affected parties along the lines of the suggestion made in Agricultural Law Digest in the November 7, 1998, issue.

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The provision specifies that no solid or liquid waste generated by a housed commercial swine feeding operation is to be applied to land at a rate exceeding, in amount or duration, the “agronomic rate of application.” The term “agronomic rate of application” means the “rate of application of nutrients that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants.” The initiative refers to guidance provided by the Colorado State University Cooperative Extension Service for the meaning of the limitations.

The initiative also states that the State Water Quality Control Commission is to promulgate rules, on or before March 1, 1999, requiring that all housed commercial swine feeding operations must “employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of its operations, including odor from its swine confinement structures, manure and composting storage sites, and odor and aerosol drift from land application equipment and sites.”

The initiative requires that all new or expanded “aerobic process wastewater vessels and impoundments, including but not limited to, treatment or storage lagoons” for housed commercial swine feeding operations be covered so as to minimize the emission of gases into the atmosphere and that all new aerobic impoundments must employ technologies to minimize the emission of odorous gases to the greatest extent practicable.

The provision also requires, on or before July 1, 1999, that all existing “anaerobic process wastewater vessels and impoundments, including but not limited to, aeration tanks and treatment or storage lagoons, owned or operated for use in connection with a housed commercial swine feeding operation” be covered so as to “capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere.”

Local control

The initiative states that local governments are not precluded from imposing requirements that are more restrictive than those contained in the measure. This is in contrast to the action of the Iowa General Assembly in 1998 in denying local governments a role in regulating animal feeding except as expressly authorized by state law. That action was in reaction to the decision of the Iowa Supreme Court on March 5, 1998 narrowing the authority of counties in dealing with confinement livestock facilities.

The initiative also authorizes “any person who may be adversely affected by a housed commercial swine feeding operation” to enforce the provisions by filing a civil action.

Conclusion

The Colorado provision is believed to be the first attempt at imposing comprehensive state-level requirements on animal feeding operations through a voter initiative. A key question is whether other states, where such initiatives are possible, will follow or whether other states will move legislatively in this direction.

FOOTNOTES

1 Initiative 1997-98 #113, State of Colorado.
3 Id.
4 Id.
7 Id.
8 Id.
10 See ns. 6-8 supra.
16 Id.
21 H.F. 2494, Sec. 9, Iowa General Assembly (1998).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

HOSTILE USE. The disputed land was enclosed by a fence which followed a road bordering the property. The land was used as part of the plaintiff’s ranch to pasture cattle in the summer for over 20 years. The defendant discovered that the defendant’s property included the disputed property when a survey was performed as part of a platting of the defendant’s property for purposes of developing a residential subdivision. The defendant approached the plaintiff about the true ownership of the disputed property and the plaintiff offered to either purchase the strip or exchange other property for it. However, nothing was done and the plaintiff’s use continued. The court held that the grazing of cattle was sufficient hostile use to support acquisition of the property by adverse possession. The court also held that the discussion between the parties as to ownership and a possible purchase did not defeat the adverse possession claim because the defendant did nothing