SOUND AGRICULTURAL PRACTICE
Opinion Number 96-1

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 Louis Ruggirello in the Town of Montgomery, Orange County.

REQUESTOR: Mr. James Niebuhr
Building Inspector, Town of Montgomery
110 Bracken Road
Montgomery, New York 12549-2627

Preliminary Statement

On May 4, 1995 Mr. James Niebuhr, Building Inspector for the Town of Montgomery in Orange County, called the Department to discuss a number of complaints he has received related to the Louis Ruggirello property. The Ruggirello farm is located on St. Andrews Road in the Town of Montgomery, Orange County. Mr. Kim Blot, Director of the Department's Division of Agricultural Protection and Development Services, explained to Mr. Niebuhr the sound agricultural practice provision of Section 308 of the Agriculture and Markets Law. After receiving additional correspondence from Mr. Niebuhr intended to clarify his concerns related to the Ruggirello property, the Department received a letter from Mr. Niebuhr on October 12, 1995 requesting an opinion as to whether the fencing practice at the Ruggirello farm is sound.

Pursuant to the informal requests for assistance, Department Agricultural Resource Specialist Mr. Matt Brower visited the Ruggirello property on July 13, 1995 with Mr. Niebuhr to gather information on the operation. Mr. Brower spoke with Mr. Ruggirello's two daughters, Marie and Lynn Ruggirello, and viewed the fence used to control the animals. Mr. Brower also met with five of the neighbors who have complained to Mr. Niebuhr about the fencing of the animals.

Information Considered in Support of the Opinion

1. The Ruggirello farm consists of approximately 50 acres which is used for pasture. Mr. Ruggirello has a variety of large and small animals, including approximately 46 beef animals, as well as a number of horses, goats, sheep, pigs and various poultry. According to the Department's agricultural district map dated August 18, 1988 the farm is located in Orange County Agricultural District #1.

2. At the time of Mr. Brower's field visit, the fence consisted of two strands of wire attached to metal posts. The fence was tested and it was electrified. All of the animals appeared to be confined, except for the poultry which were not fenced in. No animals were observed on the neighboring properties at the time of the field review.

3. Marie and Lynn Ruggirello advised Mr. Brower that the animals are raised to be sold. They indicated that the electrical charge on the fence is checked daily and if the animals do get out, they are put back in immediately and the fence is repaired. They also stated that most of the complaints have been related to the cows breaking through the fence and getting off the property.

4. On July 13, 1995 one of the complainants informed Mr. Brower that the last time the cows were off Mr. Ruggirello's property was in January of 1995. However, the complainant stated that the poultry are off the property almost daily. This complainant also stated that most of the time the electric fence is not working. According to the complainant, property damage includes animals defecating on the complainant's property and holes in the lawn caused by the hooves of the larger animals.

5. Another complainant indicated that Mr. Ruggirello's horses were on the complainant's property in either December of 1994 or January of 1995.

6. According to a third complainant, the horses were out in December of 1994, or January of 1995, and the goats were out in the spring of 1995. The complainant stated that property damage consisted of the goats destroying flowers.

7. Mr. Niebuhr provided the Department with copies of photos showing the cattle on one of the complainants' properties and several copies of complaints that have been filed with the Town of Montgomery Police Department. At the time, the most recent complaint was dated August 31, 1995. A complaint has been filed approximately every other month over the past two years. Mr. Niebuhr also provided the Department with copies of two small claims judgments, one dated August 27, 1993 and the other dated October 4, 1994. Both judgments awarded compensation to the complainant for property damage caused by Mr. Ruggirello's animals.

8. On October 13, 1995 Mr. Ruggirello stated to Mr. Brower in a telephone conversation that the animals are raised and sold for slaughter or breeding stock. He also stated that the animals are pastured and any additional feed is purchased. Mr. Ruggirello indicated that he attempted to construct a woven wire fence but his neighbor objected to the proposed location of the fence. According to Mr. Ruggirello, the animals have not been out since August of 1994 when approximately 30 beef animals got out. Mr. Ruggirello also informed Mr. Brower that the fence now consists of three strands of electrified wire.

9. On October 16, 1995 Linda Post, Officer in Charge for the Town of Montgomery Police Department, informed Mr. Brower that Mr. Ruggirello had not been cited for any violation because the Police Department was not aware of any law that had been violated as a result of the animals being on the neighbors' property. Officer Post also stated that the last time an officer was at the site and observed animals off the Ruggirello property was October 3, 1995 when three horses were on a neighbor's

property. On December 12, 1995, Officer June from the Police Department provided Mr. Brower with a copy of the most recent complaints of animals being off the Ruggirello property. According to the complaints, Mr. Ruggirello's horses were in the road on December 3, 1995 and his goats were in the road on December 7, 1995.

10. Section 95 of Article 5 of the Agriculture and Markets Law relates to "Protecting the breeding of pure bred stock." Section 95 states that: "It shall be unlawful for any person or persons owning or in possession of any bull of the age of more than six months, any stallion of the age of more than eighteen months, or buck or bore over five months of age, to suffer or permit such animal or animals to go, or range, or run at large on any lands or premises without consent of the person entitled to the possession of such land or premises." To the best of the Department's knowledge, the Ruggirello farm has not been the subject of a citation for violation of this law. Furthermore, the Department has not been able to determine whether any of the animals that have gotten off the Ruggirello property were bulls or stallions over the ages stated above.

11. Sections 300 to 309 of Article 18 of the Town Law sets forth requirements for the construction and maintenance of division fences. Section 309 states, among other things, that "such fence shall be otherwise substantially built and a reasonable sufficient inclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence." To the best of the Department's knowledge, the Ruggirello farm has not been the subject of a citation for violation of Section 309 of the Town Law.

Findings

Based upon the facts, information and circumstances described above, and in consultation with the State Advisory Council on Agriculture; the New York State College of Agriculture and Life Sciences at Cornell; the USDA Natural Resources Conservation Service; and the Sound Agricultural Practice Guidelines[1] by which agricultural practices are evaluated, I find the following:

1. The Ruggirello farm requires some type of fencing to contain farm animals when they are out to pasture. Also, some type of confinement is needed for animals that are not pastured.

[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.

2. The Ruggirello farm animals have repeatedly caused off farm property damage. While each individual incident may not be considered significant, the total of all the property damage that has been caused by the animals over time and the fact that the problem appears to be ongoing is significant.

3. The use of electric fence to control the movement of animals is a traditional agricultural practice. In this case, however, photos, small claims judgments and information provided by the Town Police Department and farm neighbors indicate that the practice as implemented and managed on this farm has been ineffective.

4. To the best of the Department's knowledge, the Ruggirello farm has not been the subject of a citation for any violation of any federal, state or local law or regulation in relation to the fencing practice.

Conclusion

Based on the foregoing, and in accordance with Section 308 of the Agriculture and Markets Law, I am unable to conclude that the fencing practice as it pertains to confinement of the animals on the Ruggirello farm is sound.

2/27/96
Date

Donald R. Davidsen, D.V.M.

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February 21, 1996

TO: Mark Alger

FROM: Joan A. Kehoe

SUBJECT: Proposed Sound Agricultural Practice Opinion #96-1

Section 308 of the Agriculture and Markets Law requires the Commissioner, in consultation with the State Advisory Council on Agriculture, to issue opinions upon the request of any person as to whether particular agricultural practices are sound. The practices are examined on a case-by-case basis in accordance with review guidelines (copy annexed) recommended by the Advisory Council. Section 308 further provides that an agricultural practice on land in an agricultural district or on land subject to an agricultural assessment outside a district shall not constitute a private nuisance if the Commissioner has issued an opinion that the practice is sound.

Attached for your review is a proposed opinion in response to a request by the Building Inspector for the Town of Montgomery (Orange County) concerning the soundness of the fencing practice at the farm of James Ruggirello. The opinion was prepared by Kim Blot and his staff, with the assistance of Ruth Moore of this Office. In accordance with AML §308, Charles Wille, as Chairman of the Advisory Council on Agriculture, State Conservationist Richard Swenson and Ronnie Coffman of Cornell have reviewed the proposed findings and conclusion and expressed agreement with the conclusion, or no objection. Mr. Swenson suggested that Mr. Ruggirello be advised to obtain a copy of NRCS Practice Standards relative to fencing. The NRCS standards were reviewed in evaluating the practice in this case but not utilized in reaching a recommended opinion because they were found to set a higher standard than the test for sound practices and also do not apply to all types of the livestock maintained on the Ruggirello farm.

Finding "4" of the opinion indicates that the Ruggirello farm has not been the subject of a citation for violation of law in relation to its fencing practices. In this regard, please note that Mr. Ruggirello was charged, on December 9, 1995, with failure to provide proper sustenance to his livestock under the animal cruelty prohibitions of the Agriculture and Markets Law. Although there has apparently been some suggestion or speculation that the animals might have broken through the fence in search of food, the

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criminal complaint does not contain any fence references. Since the opinion only addresses the fencing issue, the cruelty charge has not been referenced in the opinion.

I find that the proposed opinion that the Commissioner is unable to conclude that the fencing practice as it pertains to confinement of animals on the Ruggirello farm to be defensible from a legal standpoint. If you concur with the proposed findings and conclusion, please forward the proposed opinion with your recommendation to First Deputy Commissioner Stack for consideration by him and Dr. Davidsen. If you wish to discuss the matter, Kim and I would be glad to do so at your convenience.

Reviewer	Recommendation
Mark Alger	Approved Mark Alger 2/22/96
Keith W. Stack	Keith W. Stack Approved 2/22/96

JK\lh
Atts.
cc: Mr. Blot