

SOUND AGRICULTURAL PRACTICE

Opinion Number 97-3

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 Jon Milot in the Town of Minden, Montgomery County.

REQUESTOR: Ms. Elma Phillips
Chairperson, Montgomery County Agricultural and Farmland Protection Board
P.O. Box 1500
Fonda, New York 12068-1500

Preliminary Statement

On February 3, 1997 the Department received a formal request from Elma Phillips, Chairperson for the Montgomery County Agricultural and Farmland Protection Board, to review the soundness of an agricultural practice on the Milot farm. Ms. Phillips requested that the Commissioner issue an opinion as to the soundness of transporting animal waste from one location on the Milot farm to another, on public roads, for the purpose of land application. One of the neighbors has expressed concerns with the transporting of manure along public roads.

Pursuant to this request, the Department conducted a sound agricultural practice review of the animal waste transportation practice used at the farm. On February 25, 1997, Department Agricultural Resource Specialist Matt Brower and Department Senior Attorney John Rusnica visited the Milot farm to observe the manure spreader and to gather information on the landowner's transportation of animal waste.

Information Considered in Support of the Opinion

1. The farm is a partnership owned by Jon Milot and his brother Jeffery. The farm is located on Oldick Road in the Town of Minden, Montgomery County, and consists of approximately 277 acres, of which 180 acres are tillable. Mr. Milot also rents approximately 85 acres. According to the Department's agricultural district file, the farm is located in Montgomery County Agricultural District #1 which was recertified January 29, 1990.
2. Jon Milot told Department staff that he uses a New Holland spreader to land apply the manure twice a day. He indicated that a neighbor who lives on Young Drive, about 1 mile from the farm, has been complaining about manure being spilled on the road. Mr. Milot stated that going past the neighbor's house is the most practical route to this portion of the farm. Mr. Milot indicated that he is unable to access the Young Drive fields from his own property because he would have to cross a large stream

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between the barn and the fields. Mr. Milot also indicated that taking the only other alternate route would require him to travel approximately 3 additional miles to reach these particular fields.

3. Jon Milot stated to Department staff that it takes him about 4 to 5 months to adequately cover the fields on Young Drive with manure. He indicated that he has temporarily stopped spreading on these fields because of the complaints. He also indicated that it is necessary to apply manure to these fields for crop production because of their low fertility level and the need to prevent nutrient overloading on other fields closer to the farm.
4. During Department staff's visit, they inspected the manure spreader used to transport the manure. Mr. Milot indicated that he had made some improvements to the tailgate of the spreader to try to prevent any leaks. According to Mr. Brower, it appeared that the spreader was well sealed with no visible leaks. Mr. Brower stated that Mr. Milot had just returned from applying manure to a field across the road from the barn. Mr. Brower inspected the route used and did not see any signs that manure had leaked from the spreader.
5. Mr. Milot stated to Department staff that a neighbor reported him to the New York State Police and that he had received a citation from Trooper Maxian for spilling manure on the road near the neighbor's residence. Mr. Milot also stated that he appeared before Judge Klemme, the Justice of the Peace for the Town of Minden, on February 19, 1997. Mr. Milot informed Department staff that the Judge dismissed the charges.
6. Mr. Milot indicated to Department staff that the spreader does leak a small amount from time to time depending upon the amount of water in the manure. He also indicated that the purchase of a new spreader that would be less likely to leak would cost approximately \$11,000.
7. On March 3, 1997 Mr. Brower contacted Judge Klemme to request a copy of the court papers relative to this case. Judge Klemme stated that he dismissed the case because, based on the evidence, it appeared the quantity of manure spilled on the road was minimal and was not enough to cause any harm. Judge Klemme also indicated to Mr. Brower that it appears that the farmer is making an effort to control the problem.
8. On March 3, 1997 Mr. Brower contacted the complainant to gather information relative to his concerns. The complainant indicated that Mr. Milot had been passing his house every day with manure for about 6 months. The complainant also stated that manure spilled onto the road every day and that the problem occurred along the entire route used by Mr. Milot. The neighbor described the quantity of manure being dropped on the road as individual piles reoccurring about one to one and a half feet in diameter and about two inches high. According to the complainant, after the spreader

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was repaired the situation improved. He also indicated that Mr. Milot has not passed his house with the spreader in approximately two weeks.

9. The complainant stated to Mr. Brower that when the manure is spilled in front of his driveway he cannot avoid driving through it and it gets on his car. The complainant also stated that his dog rolls in the manure and brings the odor into the house. He also indicated to Mr. Brower that the problem with the manure on the road has caused him to have medical problems, such as high blood pressure.
10. On March 4, 1997 Mr. Brower contacted another neighbor of the Milot farm. This neighbor stated that the manure was not leaking from the spreader every day and that the situation has been better since Mr. Milot improved the spreader. He indicated to Mr. Brower that when the manure leaked from the spreader it was spilling along the entire route used by Mr. Milot. The neighbor stated that there are still some things that Mr. Milot can do to reduce the amount of manure leaking from the spreader, for example placing bales of hay in the spreader to help plug any leaks, but that farmers are bound to spill a little manure every now and then.
11. On March 10, 1997 the Department received from Judge Klemme a copy of the citation issued by officer Maxian on January 21, 1997. Mr. Milot was cited for littering, under Section 1220 of the Vehicle and Traffic Law. The document indicates that the charges were dismissed on February 19, 1997.
12. On March 3, 1997 Mr. Brower contacted Officer Maxian to determine the quantity of manure he observed at the time he issued the citation. Officer Maxian stated that the amount of manure that had leaked from the spreader was not significant and that he has observed manure on the roads in other rural areas as well.
13. Section 1220(a) of the Vehicle and Traffic Law states:

“No person shall throw, dump, deposit or place, or cause to be thrown, dumped, deposited or placed upon any highway, or within the limits of the right of way of such highway, or upon private lands adjacent thereto, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter.”
14. Section 1220(b-1) states:

“Nothing herein contained shall be construed as prohibiting the use of any highway or private lands adjacent thereto for the transport or transit of agricultural trucks, machines or implements or dairy or domestic animals or agricultural stock with any accompanying reasonable or unavoidable deposit of nauseous or offensive matter.”
15. On March 12, 1997 Mr. Brower contacted John Graves, a Department of Environmental Conservation Enforcement Officer for Region 4. Mr. Graves stated

that he had visited the site one time and he did observe a very small amount of manure on the road. According to Mr. Graves, he informed the farmer that he should fix the leaks in the spreader and avoid overloading. Mr. Graves also indicated that he told Mr. Milot that he could be cited for putting “noisome” or “unwholesome substances” on or near a highway under Section 71-3501 of the Environmental Conservation Law.

16. On March 12, 1997 Mr. Brower contacted Dr. Paul Rockwell, the Minden Health Officer, to gather information relative to his visit to the site. Dr. Rockwell indicated to Mr. Brower that he had visited the site once as a result of the neighbor’s complaints. Dr. Rockwell stated that at the time of his visit, Mr. Milot was returning to his farm after finishing manure application and there was not any manure on the road.

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 USDA Natural Resources Conservation Service; and the Sound Agricultural Practice Guidelines¹ by which agricultural practices are evaluated, I find the following:

1. The manure is land applied so it can be used to benefit soil fertility and ultimately crop production. Mr. Milot must pass the neighbor’s home in order to access this portion of his farm in the most efficient manner. Discontinuing the land application of manure on the fields near the neighbor’s residence could result in nutrient overloading on other portions of the farm.
2. The complainant indicated that the manure transporting practice conducted by Mr. Milot had resulted in the dog rolling in the manure, bringing the manure and odor inside the house and getting it on the furniture. The complainant also stated the manure gets on his car and the odor gets inside the car. The complainant stated that the manure issue has caused him to have a problem with high blood pressure. Several people interviewed by the Department described the amount of manure spilled as small or insignificant. Also, household pets which run at large can come into contact with various substances, whether on highways, in backyards, fields or woods. Under

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.

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all of the facts and circumstances, I have concluded that the practice in question does not cause significant bodily harm or property damage off the farm.

3. Mr. Milot has reduced the potential of manure spilling on the road by improving the spreader. While the use of hay bales, as suggested by one of the neighbors, may slightly reduce the amount of manure leaking from the spreader, it would reduce the capacity of the spreader and there is no evidence that it would provide a significant reduction in the amount of manure leaking from the spreader. Furthermore, Mr. Brower did not observe any openings in the spreader that needed to be plugged with hay bales or any other type of material. Another alternative that Mr. Milot has investigated to reduce the potential for manure spilling on the road is the purchase of a new manure spreader, which could cost as much as \$11,000. Even if purchased and used, the spilling of some manure is still likely.
4. Jon Milot was cited for a violation of Section 1220(a) of the Vehicle and Traffic Law. The charges were later dismissed by Judge Klemme who indicated that the amount of manure spilled did not appear to be significant enough to cause any harm. Section 1220(b-1) allows the "reasonable or unavoidable deposit of nauseous or offensive matter" by agricultural implements.

Conclusion

Based on the foregoing, and in accordance with Section 308 of the Agriculture and Markets Law, I conclude that the animal waste transportation practices on the Milot farm as described above are sound.

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Date



Donald R. Davidsen, D.V.M.
Commissioner