

**SOUND AGRICULTURAL PRACTICE  
Opinion Number 10-2**

**SUBJECT:** Request for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to whether certain agricultural practices conducted by Glenn and Ann Halloran in the Town of Callicoon, Sullivan County are sound.

**REQUESTORS:** Glenn and Ann Halloran  
Halloran Farm, Keller Road  
Callicoon Center, NY 12724-0105

**Preliminary Statement**

By letter dated November 17, 2009 Glenn and Ann Halloran indicated that a neighbor had initiated a law suit (alleging interference with quiet enjoyment of property) against them. The Hallorans requested a sound agricultural practice review be conducted as to whether the maintenance of a farm access driveway is sound relative to safety of traffic on a Town road. The Commissioner, pursuant to Agriculture and Markets Law (AML) Section 308, may (upon consultation with the Advisory Council on Agriculture) issue opinions as to whether a particular agriculture practice is sound. An agricultural practice conducted in an agricultural district or on land receiving an agricultural assessment shall not constitute a private nuisance provided that the practice is determined to be a sound agricultural practice pursuant to an opinion of the Commissioner. According to Mr. and Mrs. Halloran, and upon reviewing documentation submitted by the attorney representing the neighbor, it appears that the agricultural practices to be reviewed are as follows: soundness of the maintenance of a farm access driveway and the alleged impact of the driveway on Keller Road, Callicoon Center, New York.

The Department conducted a sound agricultural practice review of these practices on the Halloran property. The following information and findings have been considered in reaching this Opinion.

**Information Considered in Support of the Opinion**

1. Glenn and Ann Halloran own and operate a red deer and beef farm on approximately 127 acres owned and 450 additional acres rented for hay production and pasture in the Town of Callicoon, Sullivan County. According to Mr. Halloran he and his wife raise approximately 65 beef animals and 180 deer. According to the Department's agricultural district file, the property is located within Sullivan County Agricultural District No. 1, which was recertified on September 23, 2006. According to the Town of Callicoon Assessor the property receives an agricultural value assessment.

## Sound Agricultural Practice

### Opinion Number 10-2

2. On November 6, 2009 Matt Brower, Department Agricultural Resources Specialist, conducted a field review of the Halloran property. According to Mr. Halloran, farm income is generated from the sale of beef cattle and venison. The Halloran family has been farming this site for approximately twenty-three years. According to Mr. Halloran the farm access driveway was constructed approximately five years ago. Prior to the installation of the new driveway an access to the south was utilized. However, the prior driveway did not provide adequate access for the expanding farm operation; it was located between two houses, was narrow and had a sharp turn that could not accommodate farm trucks and agricultural equipment. Further, barns are located on both sides of Keller Road requiring the Hallorans to cross the road on a regular basis. According to Mr. Halloran the new access driveway allows him to get farm equipment off of the edge of the road and is used predominately for agricultural activities. According to Mr. Halloran the original driveway is used for his Outdoor Wood Furnace business which was started in 1994.

3. According to Mr. Halloran he first became aware that one of his neighbors complained about his driveway when he received a copy of a letter dated January 20, 2009 sent from the complaining neighbor to Mr. Kevin Ziers, Town of Callicoon Code Enforcement Officer. Mr. Halloran provided Mr. Brower with a copy of the January 20, 2009 letter. According to Mr. Halloran none of his other neighbors have complained about the driveway.

4. It appears that as a response to the January 20, 2009 letter the Hallorans met with Town of Callicoon officials and the complainant neighbor on February 6, 2009. The transcript from the meeting indicates that the Hallorans and the Town representatives were attempting to address the concerns expressed in the January 20, 2009 letter. According to Mr. Halloran he moved his outdoor furnaces from the side of Keller Road up the hill on his property to screen it from the road. According to Mr. Halloran this was done within seven days of the meeting on February 6, 2009 to address his complaining neighbor's concerns.

5. In the January 20, 2009 letter the neighbor alleges that "Keller Road at the Halloran Farm presents hazardous driving conditions which have increased." Further, while driving on Keller Road in November of 2008 the neighbor alleges that his car "slid in the same muddy section of the road that they have created." The neighbor further stated that the Town has been "neglecting erosion issues north of the Halloran's driveway where they have recently placed cattle in the past year or two, and more than recently doubled their live stock population in the eroded section north of their driveway."

## Sound Agricultural Practice

### Opinion Number 10-2

6. Mr. Halloran indicated that he was served with a Summons from the neighbor and provided Mr. Brower with copies of the Summons and Verified Complaint dated October 20, 2009.

7. During Mr. Brower's site investigation he did not observe cattle in the area north of the driveway. According to Mr. Halloran the neighbor's property is past the Hallorans' farm at the end of Keller Road.

8. The Plaintiff neighbor asserts in the Verified Complaint, in part, "That at some time in 2005, the defendants reconfigured their property by building two driveways (without proper permits) on their property which reconfigures the natural water flow from the property over the adjoining roadway." "That this significant change in the water flow has caused the roadway to become unstable and crumble. This condition has made the ingress and egress from the property located at 218 Keller Road [his property] to be dangerous and hazardous to the physical safety of individuals seeking to access the property." "This change in the natural flow of the rain and snow runoff has seriously impacted the accessibility of [his] property resulting in a devaluation of said property. Consistent requests have been made of the defendants to correct this condition so that it does not impact on the property. The defendants have admitted they have created a problem for said property but have refused to correct the condition."

9. According to Mr. Halloran, he did not admit to creating any problem on Keller Road. Mr. Halloran acknowledges that he has been working with the Sullivan County Soil and Water Conservation District (SWCD) to reduce the amount of water flowing from the driveway onto Keller Road.

10. During the field review, Mr. Brower observed where drain tile was installed across the driveway to help reduce surface water flow. Mr. Brower observed that the tile was backfilled with stone to increase the infiltration rate. Mr. Halloran showed Mr. Brower where the surface water from the driveway had been redirected into a pond on the property. Mr. Halloran informed Mr. Brower that he purchased a sweeper to clean mud off of the road approximately once a month.

11. During his site investigation, Mr. Brower observed that Keller Road was constructed across the slope of a steep hill. The hill slopes from west to east and the driveway is on the west side of the road. According to the *Soil Survey of Sullivan County New York* the range of slopes for the soils in the area draining toward the driveway and the road is 8-25%, with the majority of the soils having a slope of 15-25%. The Soil Survey also describes the rate of surface runoff for these soils as ranging from medium to very rapid.

## **Sound Agricultural Practice**

### **Opinion Number 10-2**

12. During his visit, Mr. Brower observed that Keller Road was narrow and the pavement was cracked in a number of places. The condition of the road was similar north and south of the Halloran property. At the time of Mr. Brower's field visit he observed that there was no water flowing across the road; however, there was some soil on the road but the soil did not appear to be sufficient to cause a traffic hazard.

13. On December 21, 2009, Mr. Brower met with David Erlwein, Highway Supervisor for the Town of Callicoon, to discuss the road condition and the drainage from the Halloran property. Mr. Erlwein informed Mr. Brower that he was at that area to repair the road during the Spring of 2009. This repair was discussed at and a result of the February 2009 meeting and was an attempt to address the complaining neighbor's concerns. Mr. Erlwein stated that the Town placed large rocks under the road as a base and repaved the damaged area. He stated that the road appeared to be holding up well after the repair. Mr. Erlwein indicated that the feed deliveries to the Halloran Farm did damage the road some.

14. Mr. Erlwein indicated to Mr. Brower that it appeared that the tile in the driveway and the road repair seemed to have helped improve the condition of Keller Road. He also indicated that the amount of mud on the road has not resulted in the Town having to sweep the mud off the road or close the road because of unsafe conditions. He indicated that the complainant had filed a law suit against the Town and that Mr. Brower could contact the Town attorney for copies of the Town's affidavits.

15. On December 28, 2009 Mr. Brower contacted Marvin Newberg, Esq., Town of Callicoon Attorney for copies of the affidavits. Mr. Newberg forwarded copies of the Affidavits of Supervisor Linda Babicz and David Erlwein to the Department.

16. On December 22, 2009 the Department wrote to ten owners of land adjacent to the Halloran property notifying them of the agricultural practice review and inviting them to comment on the practice. The Department received two responses to its inquiry. On March 1, 2010 the Department received correspondence from Jo Anne Kriskowski, an owner of property adjacent to the Halloran property. Ms. Kriskowski indicated that she has never had any problem with the Halloran farm operation.

17. On January 11, 2010 the Department received correspondence from Donna Maria Lasher, Esq. indicating that she represents a neighboring landowner of the Hallorans. She indicated that the Hallorans' request for a sound agricultural practice was in response to a lawsuit filed by her client. Ms. Lasher stated "the issue as you can see has not been the agricultural use of the property but rather

## **Sound Agricultural Practice**

### **Opinion Number 10-2**

the industrial use. The Halloran's sell large outdoor wood burning furnaces and it is our belief that this is one of the reasons for the creation of the driveways in question."

18. Ms. Lasher forwarded copies of litigation documents including a Summons and Verified Complaint filed in Supreme Court, Sullivan County; a Verified Answer by Glenn and Ann Halloran; a Notice of Petition and Petition against the Town of Callicoon Supervisor Linda Babicz, et al; Affidavits of Linda Babicz, Town Supervisor, and David Erlwein, Highway Superintendent for the Town of Callicoon; and a copy of a transcript of a meeting held on February 6, 2009 attended by the Complainant, Mr. and Mrs. Halloran, Town Supervisor Babicz, CEO Ziers, Matt Halloran, Lori Bertsch-Brustman, Esq., and David Erlwein, Town Highway Superintendent.

19. The allegation that the outdoor wood burning furnace is the cause of the alleged damage to Keller road is beyond the scope of this review. A determination concerning whether the outdoor wood burning furnace business caused the damage to Keller Road is not part of this review.

20. The Complainant in the transcript of the meeting held on February 6, 2009 (provided by Ms. Lasher) indicated that the increase in the number of cattle at the farm has increased the amount of traffic crossing the road and questioned why the cattle couldn't be moved to a barn on the same side of the road as the driveway. Mr. Halloran stated the barn in question is used for equipment storage and to house the deer. Mr. Halloran further stated that the deer and the beef cattle need to be separated.

21. On January 12, 2010, Mr. Brower contacted Brian Brustman, Manager of the Sullivan County Soil and Water Conservation District to discuss the runoff from the Halloran property. Mr. Brustman indicated to Mr. Brower that he had been to the Halloran's property during the Spring or Summer of 2009. He stated that because of the steep slope of the hill on the west side of the road that there is not much the Hallorans or the Town can do to reduce the amount of runoff from the hill. He stated that the Hallorans have not made any changes on the property to increase the amount of runoff and the drainage work that was completed was the most cost effective method of reducing runoff into the road. Mr. Brustman indicated that any other improvements to reduce the runoff would be cost prohibitive.

22. According to the Town Code Enforcement Officer there are no zoning code violations on file against the Hallorans.

## Sound Agricultural Practice

### Opinion Number 10-2

23. The Complainant contends that the Hallorans are in violation of local law because they have not obtained a permit from the Town to install the driveway at issue. Kevin Ziers, Code Enforcement Officer for the Town, indicated at the February 6, 2009 meeting that a permit was not needed.

24. Agriculture and Markets Law §308(1)(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 Mr. Halloran, they are not participating in the AEM program. Mr. Halloran stated that the Sullivan County Soil and Water Conservation District has visited the property and provided suggestions concerning their farm operation.

### 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 Guidelines<sup>1</sup> by which agricultural practices are evaluated, I find the following:

1. The Department has found no evidence or received other information indicating that Mr. and Mrs. Halloran have been cited for any violation of federal, State or local law as a result of the farm access driveway to their livestock operation.

2. The Department has found no evidence that the livestock operation farm access driveway has resulted in bodily harm or property damage off the site. In the paperwork received from the neighbor's attorney, there is no claim or demonstration that the Hallorans' driveway has caused any bodily harm or property damage. The Complainant has alleged that the driveway has caused unsafe driving conditions and devaluation of property. However, the Department is not aware of any injuries in the vicinity of the Halloran Farm driveway on Keller Road nor has the Town closed the road as a result of mud or runoff from the

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<sup>1</sup> 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 10-2

Halloran Farm. Further, it appears that the only support for the Complainant's assertion of devaluation of his property is his inability to sell his home.

3. The Department's farm visit indicates that the farm is located on a steep hill that slopes from west to east where the rate of surface runoff is medium to rapid. It appears that the Hallorans are properly managing their farm operation and have attempted to reduce surface water flow off of the property; installed drain tiles, backfilled stone, redirected water into a pond, and acquired a sweeper to clean mud off of Keller Road. The SWCD Manager indicated that there is no cost effective method to reduce the runoff in this area beyond the measures that the Hallorans have installed. The Department contacted the Town's Code Enforcement Officer and confirmed that the Hallorans' operation is in compliance with Town Code.

4. The construction of a farm access driveway is necessary to the Hallorans' livestock farm operation. The farm access driveway appears adequate to accommodate deliveries and farm equipment movement within the property. Further, the location of barns and pasture on both sides of Keller Road necessitates crossing the road on a regular basis. The old driveway was narrow, did not provide adequate access and could not accommodate farm trucks and agricultural equipment.

### Conclusion

Based on the foregoing and in accordance with section 308 of the Agriculture and Markets Law, I conclude that the practices conducted on the Halloran property associated with the installation and maintenance of a farm access driveway, as described above, is sound. In reaching this conclusion, the fact that the Hallorans have not been cited for any violation of the Code of the Town of Callicoon has been taken into account.

6/9/10

Date



PATRICK HOOKER

Commissioner of Agriculture and  
Markets of the State of New York

