Iowa’s Nuisance Law Must Change – Repeal 657.11 and 657.11A

Citizens who live next to an animal feeding operation (CAFO) should be able to file a nuisance suit and to have that nuisance suit heard in the courts in Iowa.

Neighbors living next to an animal feeding operation (AFO) have a right to the comfortable use and enjoyment of their property, without unreasonable intrusions of stench and pollution from their neighbor’s AFO. Allowing neighbors who have been harmed by the AFO to be compensated in damages is only fair and proper - it is just compensation.

Two sections of the Iowa Code attempt to restrict nuisance lawsuits against AFOs - Sections 657.11 and 657.11A. Both sections are troublesome and need to be repealed.

Problem with the AFO nuisance law

The most recent update to the nuisance law happened in 2017, in Section 657.11A, where damages are capped and restricted. Further, the law restricts a nuisance suit to only a permanent nuisance claim, and does not allow temporary or continuing nuisance, which further constrains the ability of a neighbor to bring a nuisance suit. Furthermore, if a neighbor takes an AFO owner to court using the nuisance laws and loses the case, and if the judge finds that the suit was frivolous, then the person bringing the action must pay the AFO owner the costs and expenses incurred in defending the action. Additionally language in 657.11A is not clear about whether the person bringing an AFO nuisance suit has the ability to request an injunction, as in the case of other nuisance suits. Section 657.11A also limits the court’s ability to balance which party was present on the land first – the neighbor or the AFO in reviewing the nuisance – which has implications in the neighbor’s loss of enjoyment of his or her property.

A prior attempt to restrict nuisance suits against AFOs remains on the books, Section 657.11. Section 657.11 codified that any AFO that met state and federal rules and regulations was exempt from nuisance suits. The Iowa Supreme Court issued a ruling in one case, called Gacke v. Pork Xtra, that 657.11 was unconstitutional as it applied to that case.

An AFO nuisance should be treated like any other nuisance

A nuisance is a nuisance. An AFO owner should not have any special advantage over his or her neighbors in a nuisance case. It is time to bring sensible regulations into the nuisance laws. Therefore, it is time to repeal 657.11A.

Neighbors and members of the public have very little recourse to challenge the siting and operation of an AFO, even when the operation is irresponsibly sited and operated. Federal laws and state laws are lax and tie the hands of the Iowa Department of Natural Resources. The legislature does not allow local zoning laws to apply to AFOs.
Consequently, the Iowa DNR is not able to effective protect the public. The only recourse is to turn to the courts. Iowa courts have a long history of protecting private property owners from nuisances. However, Iowa laws have been written to restrict the public’s right to challenge an AFO by restricting the nuisance laws as they apply to AFOs.

**Conclusion**

Iowa has become the nation’s leader in producing hogs. At any one time, there are 23.6 million pigs living in Iowa; there are only 3 million people living in the state; which means there are almost 8 pigs for every man, woman, and child living in the state. Each pig generates 5 times the amount of feces and urine that a human does. The pigs living in Iowa generate the waste of 118 million people. Most of the hogs in Iowa are raised in buildings that house hundreds and even thousands of animals. The waste is held in pits underneath the buildings for as long as a year. None of it is treated, as is the case for human waste which must be treated by a sewage treatment plant or a septic tank.

Neighbors complain of horrendous stench, non-stop noise, and physical ailments such as a running nose, breathing difficulties, watery eyes, sore throats, and nausea. They also report not being able to sit outside, not being able to hang laundry outdoors, and not being able to open their windows. The neighbors also report having difficulty working outdoors in the stench and polluted air.

If a neighbor is dealing with these kinds of issues, then a nuisance suit should be available to them, without the special restrictions made in Iowa Code Section 657.11 and 657.11A.

**Reference**

N. William Hines, “Here We Go Again: A Third Legislative Attempt to Protect Polluting Iowa CAFOs from Neighbors’ Nuisance Actions”, Iowa Law Review Online, University of Iowa, Volume 103, pages 41 to 74. See https://ilr.law.uiowa.edu/online/volume-103/

Morgan Honomichl, et. al. v Valley View Swine, LLC and JBS Live Pork, LLC, 914 NW2d 233, No. 16-1006, Iowa Supreme Court, opinion issued June 22, 2018