

VIII. OTHER STATE STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of state laws in Nebraska.

A. Farmland Preservation

1. *Zoning and Planning*

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline each local area's requirements, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

Zoning⁴⁶ legislation authorizes counties and municipalities to divide their jurisdictions into zones and to permit or restrict the uses of land and structures within each zone. The agricultural use of land may be regulated and conditions may be imposed on the use of that land, which may include some environmental restrictions. However, farm buildings and structures are exempt from county zoning regulation.

2. *Conservation Easements*

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of easements. When easements are used for these purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of the easement.

Nebraska has adopted provisions which allow for conservation and preservation easements.⁴⁷ Conservation easements are interests in real property imposing limitations on the use of the property. Among the general purposes of conservation easements are:

- Retaining or protecting the property in its natural, scenic, or open condition;
- Assuring the property's availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use;
- Protecting air quality, water quality, or other natural resources; and
- Other conservation purposes which may qualify as charitable contributions.

A preservation easement is similar to the conservation easement in that it is an interest in real property imposing limitations on the use of the property. Preservation easements are for the following general purposes:

- Preserving the historical, architectural, archaeological, or cultural aspects of real property; or
- Other preservation purposes which may qualify as charitable contributions.

⁴⁶ NEB. REV. STAT. § 19-901 *et seq.* (1991 & Supp. 1996).

⁴⁷ NEB. REV. STAT. § 76-2,111 *et seq.* (1996).

The easement is created by written agreement between the parties and normally the holder of the easement on the property is a governmental body or charitable organization. Approval or acceptance of the easement by the holder is required. Easements may be released by the holder if the release is approved by the governing body of the holder upon a finding that the easement no longer substantially achieves the conservation or preservation purposes for which it was created. Easements may also be assigned to other governmental bodies or charitable organizations, or modified or terminated by court order.

Real property which is the subject of an easement is required to be assessed with regard to its restricted uses.

B. Nuisance and Right-to-Farm

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust or odor generated by the operation or may result from a lack of knowledge of what is involved in an agricultural operation. While not specifically an area where the state or federal authorities may become involved, court actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

1. Nuisance

Generally, a nuisance is any activity or use of property that causes annoyance, harm, inconvenience, or damage to another.⁴⁸ A nuisance is public when it violates public rights or causes an injury to the public at large. It is private when the damage is limited to nearby residents and landowners. State law gives parties injured by public or private nuisances the right to sue the person causing or allowing the nuisance for damages and for an injunction prohibiting the activity.

Nebraska nuisance laws also specifically define certain activities which constitute public or private nuisances and authorize cities, counties, and villages to enact ordinances to define, regulate, suppress, and prevent nuisances. Animal control programs, stagnant water, dead animals, carcasses, and offensive matter are specifically covered. Penalties for maintaining a nuisance include fines and jail terms. The government authorities can also seek an injunction against the offending activity.

⁴⁸ NEB. REV. STAT. § 18-1720 *et seq.* (1991).

2. *Right-to-Farm*

The Right-to-Farm Act⁴⁹ in Nebraska restricts the ability of neighboring land owners to bring nuisance claims against farm operations for noise, odor, dust, and the use of agricultural chemicals. However, this statute does not afford farmers absolute protection.

A livestock operation is not a public nuisance if:

- Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;
- The operation is in compliance with Council regulations and all local zoning regulations; and
- The nuisance action is filed by a person whose date of possession of the land occurred after the issuance of appropriate permits, or after the operation of the feedlot began when an onsite inspection has been made and the inspection reveals that no permit is required.

C. **Livestock Waste Management**

Producer Note: A common by-product of livestock operations is animal wastes which must be stored and disposed of properly. Many states are becoming more involved in the regulation of storage, treatment, handling, and land application of waste through regulations, recommendations, pollution prevention plans, and best management practices (BMPs).

1. *Livestock Waste Control Facilities*

Livestock waste control facilities are defined as any structure or combination of structures utilized to control livestock waste until it can be disposed of in a proper manner.

Livestock waste control facilities may include:

- Diversion terraces;
- Holding ponds;
- Debris basins;
- Liquid manure storage pits;

⁴⁹ NEB. REV. STAT. § 2-4401 *et seq.* (1991).

- Lagoons; and
- Other devices utilized to control livestock waste.

These facilities are required for an existing or proposed livestock operation when livestock wastes violate or threaten to violate water quality standards, groundwater quality standards, use classifications for Nebraska, or generally violate the Nebraska Environmental Protection Act. Livestock waste control facilities are also required when livestock wastes are potentially a threat for discharge into the waters of Nebraska.

Owners or operators must request DEQ to inspect their livestock operations to determine if violations or potential violations exist. Should, upon inspection, DEQ determine that livestock waste control facilities are required, the owner or operator must apply for a construction or operating permit.

Permits will contain requirements for design, storage capacity, manure disposal, and location of waste control structures, as well as requirements concerning the sufficiency of waste storage capacity.

2. Irrigation Distribution Systems

If livestock waste is distributed through any irrigation distribution system, except an open discharge system, the system must be equipped with an irrigation pipeline check valve assembly, involving:

- Vacuum relief valve;
- Inspection port; and
- Low pressure drain.

Producer Note: Recommendations for land application of waste are covered by NRCS technical guidance materials. These recommendations should be followed in order to preserve the producer's potential defenses in nuisance actions or to aid the producer when defending against alleged permit violations. While these recommendations do not have the force of law that agency regulations have, compliance with them will generally aid the producer.

D. Noxious Weeds

Noxious weed control⁵⁰ legislation creates a fund for each weed control authority. Funds are made available for expenses linked to noxious weed control. Each county in Nebraska has an elected Weed Board. The Board has authority to require landowners to control noxious weeds like the musk thistle. If a landowner fails to control the proscribed weeds, he or she may be fined and the cost of eradicating the weeds on their property assessed against them.

E. Aquaculture

Nebraska has created the Nebraska Aquaculture Board⁵¹ to encourage aquaculture within the state for the purposes of promoting agricultural diversification, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the natural resources of the state, and provide other benefits to the state. The Aquaculture Board has the authority to consider and recommend appropriate legislation to the legislature on most issues relating to aquaculture.

The term aquaculture is defined as the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes and the term agriculture includes aquaculture.⁵²

F. Dead Animal Disposal

The owner or custodian of any animal which dies must, within 36 hours after receiving knowledge of the death of the animal, bury it at least four feet below the surface of the ground, unless the animal is taken to a licensed rendering establishment in the state.⁵³ Only authorized agents and employees of rendering establishments may remove an animal from the site of its death.

If a dead animal is not properly disposed of, the sheriff of the county is authorized to enter the premises and carry out the requirements of Nebraska law regarding proper disposal. However, the owner of the animal remains liable for the expenses of the disposal.

⁵⁰ NEB. REV. STAT. § 2-945.01 *et seq.* (1991 & Supp. 1996).

⁵¹ NEB. REV. STAT. § 2-5001 *et seq.* (Supp. 1996).

⁵² NEB. REV. STAT. § 2-3804.01 (1991).

⁵³ NEB. REV. STAT. § 54-743 (1993).

