

The background of the slide is a photograph of a rural farm scene. In the upper right corner, two tall, cylindrical metal silos stand against a clear sky. The foreground and middle ground consist of a flat, open field, likely a farmstead or a large pasture, with some sparse vegetation and a fence line visible in the distance.

The County Impacts of NC Farm Act

NCACC 2018 Annual Meeting

August 24, 2018



Farm Act of 2018

Four notable issues:

1. Right-to-Farm Revisions
2. Notice of Proximity to Farms
3. Milk Issues
4. Property Taxes



The background of the slide is a photograph of a rural farm landscape. In the distance, two tall, cylindrical metal silos stand against a hazy, overcast sky. The foreground is a flat, grassy field. The overall color palette is muted, with greys, browns, and soft blues.

Farm Nuisance Litigation & Right-to-Farm Revisions



Lawsuit Claims

- 2014: 541 plaintiffs filed 26 lawsuits in federal court against Murphy-Brown/Smithfield
 - 89 swine farms involved; 75 are contract growers
- Suits claim nuisance from odor, flies, & trucks
- Alleged harm includes discomfort, annoyance, decreased quality of life, diminished property values, fear of disease
- Suits seek only money damages



Early Legal Losses

- Late 2014 : Judge refused to throw out damages claims re: annoyance, fear of disease, and diminished property values, ruling North Carolina law “not clear”
- Late 2017: Judge ruled NC’s Right-to-Farm defense inapplicable in all 26 cases
 - Residential use of nearby properties “had been in existence well before the operations of the subject farms began”



The Trials

- 11 trials scheduled during 2018-2019
 - These involve about 80 plaintiffs & 7 farms
 - Will resolve only 5 of the 26 cases
- Numerous unfavorable trial judge rulings
 - Refusal to allow jury to visit farms
 - Refusal to allow expert testimony re: odor



Verdicts (So Far)

Case	Verdict Date	Compensatory	Punitive	Total (Capped)
<i>McKiver I</i> (10 plaintiffs)	April 26, 2018	\$750k (\$75k/plaintiff)	\$50M (\$5M/plaintiff)	\$50.75M (\$3.25M)
<i>McGowan I</i> (2 plaintiffs)	June 29, 2018	\$130k (\$65k/plaintiff)	\$25M (\$12.5M/plaintiff)	\$25.13M (\$630k)
<i>Artis I</i> (6 plaintiffs)	August 3, 2018	\$23.5M (amounts vary)	\$450M (\$75M/plaintiff)	\$473M (\$94M)



Timing for Appeals

- No appeal until mid- to late-2019 unless trial judge grants Murphy-Brown/Smithfield's motion for early appeal
- Likely issues for appeal
 - Right-to-Farm defense
 - Damages for annoyance, fear of disease, diminished property value
 - Evidentiary rulings (farm visit, odor expert)



Right-to-Farm Changes

- Nuisance action may be filed against a farm only when plaintiff satisfies three conditions:
 1. Legal possessor of the property
 2. Property is located within ½ mile of the source of the activity or structure that is the alleged cause of the nuisance
 3. Files the action within one year of the farm's establishment or the date of a fundamental change to the farm
- Fundamental change does not include: changes in size, ownership, type of production



Right-to-Farm Revisions

- No punitive damages in farm nuisance cases, unless farm has criminal conviction or civil enforcement action relating to alleged nuisance within three years of act allegedly causing nuisance



Notice of Proximity to Farms

- Counties must provide “some form of notice reasonably calculated to alert” researchers when property located within:
 - one-half mile “of a poultry, swine, or dairy qualifying farm
 - 600 feet of other qualifying farm
 - one-half mile of a voluntary ag district
- Qualifying farm: (1) engaged in ag; (2) using erosion control practices; and (3) in 10-year conservation agreement



Milk Issues

- Milk Labeling Provision
 - NCDA authorized to “immediately develop” enforcement plan re: FDA’s standard of identity for milk
 - However, NCDA&CS may not implement the plan until 90 days after 11 southern states enact laws that “prohibit the sale of plant-based products mislabeled as milk”



Milk Issues

- Raw Milk Provision
 - Authorizes “independent or partial owners” of a cow, goat, or other lactating animal to dispense or acquire raw milk or raw milk products for personal use or consumption
 - Effective October 1, 2018



Property Taxes

- Farm Equipment
 - Appraisals may be conducted using any method authorized by statute
 - If county uses cost approach, it must use NCDOR-issued depreciation schedule



Questions

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