

Title 46 - Agriculture

CHAPTER 45

Nuisance Suits Related to Agricultural Operations

Editor's Note

2006 Act No. 290, Section 2, provides in part as follows:

"This act does not apply to any license or permit application for which a Department of Health and Environmental Control decision is made prior to the effective date."

SECTION 46-45-10. Legislative findings.

The General Assembly finds that:

- (1) The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products.
- (2) When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and as a result (a) agricultural facilities are sometimes forced to cease operations, and (b) many persons are discouraged from making investments in farm improvements or adopting new technology or methods.
- (3) This chapter is enacted to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural facilities and operations may be considered a nuisance.
- (4) The purpose of this chapter is to lessen the loss of farmland caused by common law nuisance actions which arise when nonagricultural land uses expand into agricultural areas. This purpose is justified by the stated social desire of preserving and encouraging agricultural production.
- (5) With the exception of new swine operations and new slaughterhouse operations, in the interest of homeland security and in order to secure the availability, quality, and safety of food produced in South Carolina, it is the intent of the General Assembly that state law and the regulations of the Department of Health and Environmental Control pre-empt the entire field of and constitute a complete and integrated regulatory plan for agricultural facilities and agricultural operations as defined in Section 46-45-20, thereby precluding a county from passing an ordinance that is not identical to the state provisions.

HISTORY: 1980 Act No. 452; 1990 Act No. 442, Section 1, eff April 24, 1990; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

Effect of Amendment

The 1990 amendment added references to "facilities" throughout, in (2) added "or adopting new technology or methods", and added item (4).

The 2006 amendment added item (5) relating to the relationship between county and state requirements.

SECTION 46-45-20. Definitions.

(A) For purposes of this chapter, "agricultural facility" includes, but is not limited to, any land, building, structure, pond, impoundment appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or products which are used in commercial aquaculture.

(B) For purposes of this chapter "agricultural operation" means:

- (1) the plowing, tilling, or preparation of soil at the agricultural facility;

- (2) the planting, growing, fertilizing, or harvesting of crops, ornamental horticulture, floriculture, and turf grasses;
- (3) the application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;
- (4) the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;
- (5) the production and keeping of the honeybees, the production of honeybee products, and honeybee processing facilities;
- (6) the production, processing, or packaging of eggs or egg products;
- (7) the manufacturing of feed for poultry or livestock;
- (8) the rotation of crops;
- (9) commercial aquaculture;
- (10) the application of existing, changed, or new technology, practices, processes, or procedures to an agricultural operation;
- (11) the operation of a roadside market; and
- (12) silviculture.

(C) For purposes of this chapter "new swine operations" means: porcine production operations not in existence on June 30, 2006.

(D) For purposes of this chapter, "new slaughterhouse operations" means agricultural operations that:

- (1) are established after this chapter's effective date; and
- (2) slaughter or process more than two hundred million pounds of livestock, hogs, aquatic animals, equine, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes.
- (3) a new slaughterhouse operation does not include a slaughterhouse located within the corporate limits of a city that relocates within that same county.

HISTORY: 1980 Act No. 452; 1990 Act No. 442, Section 1, eff April 24, 1990; 1992 Act No. 473, Section 1, eff June 18, 1992; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

#### Effect of Amendment

The 1990 amendment rewrote this section, which formerly defined agricultural operation as "includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock or poultry products."

The 1992 amendment in subsection (A), inserted "trees," and in subsection (B), added item (12) silviculture.

The 2006 amendment added subsections (C) and (D) defining "new swine operations" and "new slaughterhouse operations", respectively.

SECTION 46-45-30. Repealed by Section 47-20-165(E).

Code Commissioner's Note

At the direction of the Code Commissioner, this section was repealed, pursuant to Section 47-20-165(E), on the effective date of Regulation 61-43, Standards for Permitting of Agricultural Facilities, promulgated by State Register Volume 22, Issue No. 6, eff June 26, 1998.

#### Editor's Note

Former Section 46-45-30 was entitled "Operations not to be deemed a nuisance due to changed conditions" and was derived from 1980 Act No. 452; amended by 1990 Act No. 442, Section 1, eff April 24, 1990; 1996 Act No. 460, Section 2, eff July 1, 1996.

#### SECTION 46-45-40. Established date of operation.

For the purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced operation. If the physical facilities of the agricultural operation are expanded subsequently or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation of a previously established date of operation.

HISTORY: 1980 Act No. 452; 1990 Act No. 442, Section 1, eff April 24, 1990; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

#### Effect of Amendment

The 1990 amendment added this section, renumbering former section 46-45-40 as section 46-45-50.

The 2006 amendment reprinted this section with no apparent change.

#### SECTION 46-45-50. Liability for pollution and flooding.

The provisions of Section 46-45-70 do not affect or defeat the right of a person to recover damages for any injuries or damages sustained by him because of pollution of, or change in condition of, the waters of a stream or because of an overflow on his lands.

HISTORY: 1980 Act No. 452; 1990 Act No. 442, Section 1, eff April 24, 1990; 2002 Act No. 340, Section 11, eff June 30, 2002; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

#### Effect of Amendment

The 1990 amendment renumbered this section from former section 46-45-40, and made grammatical changes. Former section 46-45-50 was renumbered as section 46-45-60.

The 2002 amendment substituted "46-45-70" for "46-45-30".

The 2006 amendment reprinted this section with no apparent change.

#### SECTION 46-45-60. Local ordinances to contrary null and void.

(A) Notwithstanding any local law or ordinance, an agricultural operation or facility is considered to be in compliance with the local law or ordinance if the operation or facility would otherwise comply with state law or regulations governing the facility or operation. With the exception of new swine operations and new slaughterhouse operations, to the extent an ordinance of a unit of local government:

(1) attempts to regulate the licensing or operation of an agricultural facility in any manner that is not identical to the laws of this State and regulations of the Department of Health and Environmental Control and amendments thereto;

(2) makes the operation of an agricultural facility or an agricultural operation at an agricultural facility a nuisance or providing for abatement as a nuisance in derogation of this chapter; or

(3) is not identical to state law and regulations governing agricultural operations or agricultural facilities, is null and void. The provisions of this section do not apply whenever a nuisance results from the negligent, illegal, or improper operation of an agricultural facility. The provisions of this section do not apply to an agricultural facility or agricultural operation at an agricultural facility located within the corporate limits of a city.

(B) The provisions of this section shall not preclude any right a county may have to determine whether an agricultural use is a permitted use under the county's land use and zoning authority; provided, if an agricultural facility or an agricultural operation is a permitted use, or is approved as a use pursuant to any county conditional use, special exception or similar county procedure, county development standards, or other ordinances that are not identical with the laws of this State or the regulations of the Department of Health and Environmental Control are null and void to the extent they (a) apply to agricultural operations or facilities otherwise permitted by this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control, and (b) are not identical to this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control.

HISTORY: 1990 Act No. 442, Section 1, eff April 24, 1990; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

#### Editor's Note

1990 Act No. 442, renumbered former section 46-45-50 as section 46-45-60, added references to "agricultural facility" throughout, and inserted "illegal" after "negligent".

#### Effect of Amendment

The 2006 amendment rewrote this section.

SECTION 46-45-70. Established agricultural facility as nuisance; changed conditions in surrounding locality.

No established agricultural facility or any agricultural operation at an established agricultural facility is or may become a nuisance, private or public, by any changed conditions in or about the locality of the facility or operation. This section does not apply whenever a nuisance results from the negligent, improper, or illegal operation of an agricultural facility or operation.

HISTORY: 2002 Act No. 340, Section 6, eff June 30, 2002; 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).

#### Effect of Amendment

The 2006 amendment rewrote this section.

SECTION 46-45-80. Setback distances; waiver.

Any setback distances given in R. 61-43, Standards for Permitting of Agricultural Animal Facilities, are minimum siting requirements as established by the Department of Health and Environmental Control. The department may require additional setback distances on a case-by-case basis considering the factors set forth in the regulation. Such distances may be waived or reduced by written consent of the adjoining property owners, or otherwise without consent of the adjoining property owners, when there are innovative and alternative technologies approved by the department pursuant to the Innovative and Alternative Technologies Section of R. 61-43. All agricultural animal facilities affected by these setback provisions must have a vegetative buffer between the facility and the affected residence as established by DHEC unless otherwise agreed to in writing by the adjoining landowners.

HISTORY: 2006 Act No. 290, Section 1, eff upon approval (became law without the Governor's signature on May 30, 2006).