

The Livestock Management Facilities Act was created for the purpose of codifying the approval process for construction of new livestock facilities or the expansion of existing facilities within the State of Illinois in a way that provides a viable livestock industry and at the same time, providing environmental protections for the surrounding neighbors. The fact that the Department of Agriculture makes the statement "Please keep in mind that we are not here this evening to discuss or debate the merits or perceived inadequacies of the existing regulations or laws" speaks volumes about the lack of regulation for protecting the environment and existing homeowners in the area. The engineering firm Frank & West has created a nice little niche market by systematizing the application process and providing canned answers to sensitive questions as well as providing the minimum information required to get the application approved.

Environmental issues are the primary concern of residences in the area surrounding any proposed livestock operation. Unfortunately, livestock operations are not as easy to hide from neighbors as a commercial building would be. The planting of trees, installation of decorative fencing or the creation of landscaped berms are all ways a commercial developments can minimize the impact on the surrounding homes. Livestock facilities bring a much bigger challenge to the table though. That challenge is what to do with the odor created by the facility. Trees, fences and decorative berms do little to stop the spread of the odors created by the animals and their waste. When reviewing the testimony and comments from past hearings for new hog confinement facilities, I saw there was a great deal of talk about nutrition management plans, waste management plans and odor containment plans. Simply having these plans in place does not guarantee that any of these areas will not have a negative impact on the surrounding area. Nowhere in the testimony that I have found has there been discussion of "ENFORCEMENT" of these plans. There is discussion of making the plans available to the Department of Agriculture but nowhere does it discuss an inspection schedule to ensure the applicant is following through with the plans that are required to be developed. Unfortunately, when our legislators write the laws, they may have good intentions but they lack the institutional knowledge to develop strong enforcement plans to guarantee compliance. In the case of *Nickels V Burnett* the appellate court found the Act provides no remedy for any violation of the Act, no mechanisms to prevent violations, and that the Act explicitly denies any preemption of the IEPA Protection Act.

The engineers at Frank and West provide discussion about soil sample that they obtained and based on those samples, why they feel there is no risk to the environment. What they likely have not discussed is that the proposed site has been under-mined by the closed coal mine that operated just off interstate 55 at Mine Road. Due to these unique circumstances, additional studies should be conducted to understand any additional risk this may create. I have not had the time to research this but I do know that the area of the proposed site has been under-mined. When we purchased our home last year, we were concerned about the old abandoned mines in the area. We obtained copies of maps showing what area had been mined. The area from Mine Road to Morrisonville Road and between 5th road and 6th road has virtually all been mined. In addition to the concerns about the ground being under-mined, I see nothing where Frank and West typically talk about the type of road being used to access the proposed site. They will talk about traffic flow and how the additional traffic created by this operation will have a minimum impact on the flow of traffic. We are dealing with an Oil and Chip style road. The continuous flow of trucks making deliveries will create an excessive cost to the township responsible for maintaining the road. While there will be additional tax revenue generated by converting farm ground to a hog confinement center, the additional taxes going to the township will likely not cover the cost to continuously repair the road.

As I mentioned, we purchased our home just over a year ago. We bought in this area for several reasons: Ranch style home, affordability, cheaper taxes than Springfield and Chatham, Quiet area and the acreage that came with the house. My wife and I had aspirations of starting a small winery on the property. While we have some of the most beautiful sunsets each evening, that would not be enough to overcome having a hog operation approximately 1 mile from our home. There is no way we would want to proceed with this dream once the hog farm is built. I've already invested a significant amount of money in improvements to the property and have additional planned improvements. Unfortunately, with a hog farm a mile from my home, most of the money spent on the improvements will be money flushed down the toilet. Those who are arguing in favor of the

proposed site will state there is no evidence that this operation will cause a decrease in the value of our home. I wish that was a factual statement but the truth is, there are not a lot of people who WANT to live close to a hog farm. If you have two identical options available, one within a mile of a hog farm and the other with no hog farm within 10 miles, the prospective will always chose the one without the hog farm a mile away.

I'm not opposed to the agricultural industry. My family has been deeply involved in the industry for several decades. My father was a stockholder and a member of the board of directors with Brandt Consolidated for 50 years. We have been deeply involved with the development of custom application equipment through Great Northern Equipment Company and Precision Tank and Equipment. Springfield Plastics is another local business my family has become involved with. While I do not directly work within the Agricultural industry today, I spent a great deal of time growing up and in my early working career in the industry. Cleaning bulk storage tanks in Meredosia, Cleaning rail car loading pits in Ashland, building custom application equipment, modifying planters and tool bars, and manufacturing corn wheels for combines are just some of the tasks I have performed. I understand that the Ag industry is critical to the Illinois economy. What I'm opposed to is a process that is blind to the impact on anyone other than the applicant. Regardless of what the County Board recommends, regardless of any economical or environmental concerns that may be brought forth, the Department of Agriculture will simply hide behind the "process" and says, the application met the requirements and there is nothing we can do. If there is a contamination of wells in the area in two years, the Department of Agriculture isn't going to step in and provide a safe source of water for those affected. If the applicant puts the manure on their ground in a rate higher than necessary just because they have excess manure and need to get rid of it, the Department of Agriculture won't take any action against them. No one involved in this process will compensate the surrounding homeowners for the devaluation of their property. No one will step in and do anything in regards to a violation of the act because as the court pointed out in the Nickels V Burnett case the Act provides no remedy for any violation of the Act, no mechanisms to prevent violations, and that the Act explicitly denies any preemption of the IEPA Protection Act. However, the Department of Agriculture will continues to approve applications based solely on the 8 siting criteria without regard to any other factors.

Below are some of the points made by JUSTICE O'MALLEY in the case Nickels V Burnett:

Generally, "where a statute applies to an area formerly covered by the common law, we interpret the statute as adopting the common law unless the General Assembly clearly and specifically expressed an intention to change the common law." Morris v. Ameritech Illinois, 337 Ill. App. 3d 40, 49 (2003). However, where the legislature has provided a remedy on a subject, the courts will not add to or expand the legislative remedy through the interpretation of the legislative enactment. Morris, 337 Ill. App. 3d at 49. Where the legislature intends to preempt the subject matter at common law through a statutory enactment, it will clearly specify that intent. See, e.g., 820 ILCS 305/1 et seq. (West 2002) (Workers' Compensation Act); 720 ILCS 5/14--6 (2002) (civil liability for eavesdropping); 235 ILCS 5/6--21 (West 2002) (Dramshop Act). In McClaghry v. Village of Antioch, 296 Ill. App. 3d 636, 639 (1998), the court determined that the legislature had given the Illinois Commerce Commission plenary and exclusive jurisdiction over all aspects of railway safety issues. The court held that this statutorily exclusive jurisdiction foreclosed the plaintiff from maintaining a nuisance action. McClaghry, 296 Ill. App. 3d at 644.

With these principles in mind, we review the Act at issue in this cause. The Act is a comprehensive scheme regulating the construction and operation of livestock management facilities.

The legislative intent or policy behind the Act is as follows:

"(a) The General Assembly finds the following:

(1) Enhancements to the current regulations dealing with livestock production facilities are needed.

(2) The livestock industry is experiencing rapid changes as a result of many different occurrences within the industry including increased sophistication of production technology, increased demand for capital to maintain or expand operations, and changing consumer demands for a quality product.

(3) The livestock industry represents a major economic activity in the Illinois economy.

(4) The trend is for larger concentration of animals at a livestock management facility due to various market forces.

(5) Current regulation of the operation and management of livestock production is adequate for today's industry with a few modifications.

(6) Due to the increasing numbers of animals at a livestock management facility, there is a potential for greater impacts on the immediate area.

(7) Livestock waste lagoons must be constructed according to standards to maintain structural integrity and to protect groundwater.

(8) Since a majority of odor complaints result from manure application,

livestock producers must be provided with an educational program that will enhance neighbor awareness and their environmental management skills, with emphasis on management of livestock wastes.

(b) Therefore, it is the policy of the State of Illinois to maintain an economically viable

livestock industry in the State of Illinois while protecting the environment for the benefit of both the livestock producer and persons who live in the vicinity of a livestock production

facility." 510 ILCS 77/5 (West 2002).

Thus, the purpose of the Act is twofold: to promote the livestock industry and to make sure that the livestock industry is a good neighbor to nearby residents. The Act also provides that "[n]othing in this Act shall be construed as a limitation or preemption of any statutory or regulatory authority under the Illinois Environmental Protection Act [(415 ILCS 5/1 et seq. (West 2002))]." 510 ILCS 77/100 (West 2002).

Our examination of the Act reveals that the legislature included no mechanism whereby to punish or prevent violations of the Act. Further, the Act created no remedy, either public or private, for any violation of it. In order to preempt the field, the legislature is required either to state clearly its intention to do so or to create a new statutory remedy in an area already otherwise controlled by the common law. Morris, 337 Ill. App. 3d at 49. Additionally, the Act explicitly states that it is not to limit or preempt the Illinois Environmental Protection Act (Protection Act), which would otherwise control the subject matter of the construction and operation of livestock management facilities.

We recognize the import of defendants' argument. Why would the legislature have created such a comprehensive scheme to regulate and control the construction and operation of livestock management facilities if it had not intended to preempt all causes of action involving these facilities? We have no good answer to that

question. (Indeed, the question itself suggests that the Act is nothing more than a dead letter.) Further, it is not our place to provide such an answer; that responsibility falls squarely upon the legislature. Our responsibility is to implement the legislative intent as revealed by the plain language employed in the Act. That language is devoid of an intent to carry through with the promise engendered by the structure of the Act, namely, that the Act alone would provide a vehicle regulating the construction and operation of livestock management facilities. Thus, we have shown that the Act is largely chimerical; it declares that it is attempting to promote the livestock-raising industry, yet in the final analysis, it provides neither encouragement nor protection to those who must utilize the Act.

The Department is operating under premise that it is fulfilling requirements of the legislation. However, in the view of Justice O'Malley, the legislation has been written in a manner that is not consistent with the intent of the Act. Because of the lack of language to sufficiently satisfy the intent of the Act, the Department should cease the approval of applications until such time that the legislature files the amendatory language to satisfy the intent of the Act.

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