



Britt, Campbell, Nagel & Sproat LLP

490 CITY PARK AVENUE, COLUMBUS, OHIO, 43215-5797 (614)224-8339 FAX(614)224-2001

James C. Britt, Jr. - "Chet", Joel R. Campbell, Tom H. Nagel, John W. Sproat, Kristie C. Kuhn

LIABILITY FOR NEGLIGENT UTILIZATION OF ANIMAL MANURE

Utilization of manure by a person other than the owner or operator of a confined animal feeding facility (CAFF) which produces the manure can give rise to legal liability in various ways. Ohio Administrative Code Section 901:10-2-11(2) states:

If the owner or operator [of a CAFF] decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: "I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating the uses."

Thus, if the person receiving the manure from the CAFF fails to utilize it according to best management practices and applicable state laws, he or she can be shown to have been negligent in the utilization of manure and, therefore, could be liable in a lawsuit based on qualified nuisance brought by the neighbors of the land where the manure is utilized, assuming that the statutory requirements for the filing of a qualified nuisance action can be met.

If another individual applies manure to a landowner's field, the landowner could be held liable based on the degree of control the landowner exerts over the manure utilization process.

It is strongly advised that any landowner contemplating receiving manure produced by a CAFF and applied to his or her land by either the landowner or another, seek a legal opinion as to the extent of his or her exposure in a liability lawsuit based on the negligent utilization of the manure.

A landowner who does not wish manure to be applied to his land should notify in writing owners of adjoining fields that utilize manure.

Opinion Submitted by

A handwritten signature in blue ink that reads "John W. Sproat".

John W. Sproat, Attorney
490 City Park Avenue
Columbus, OH 43215