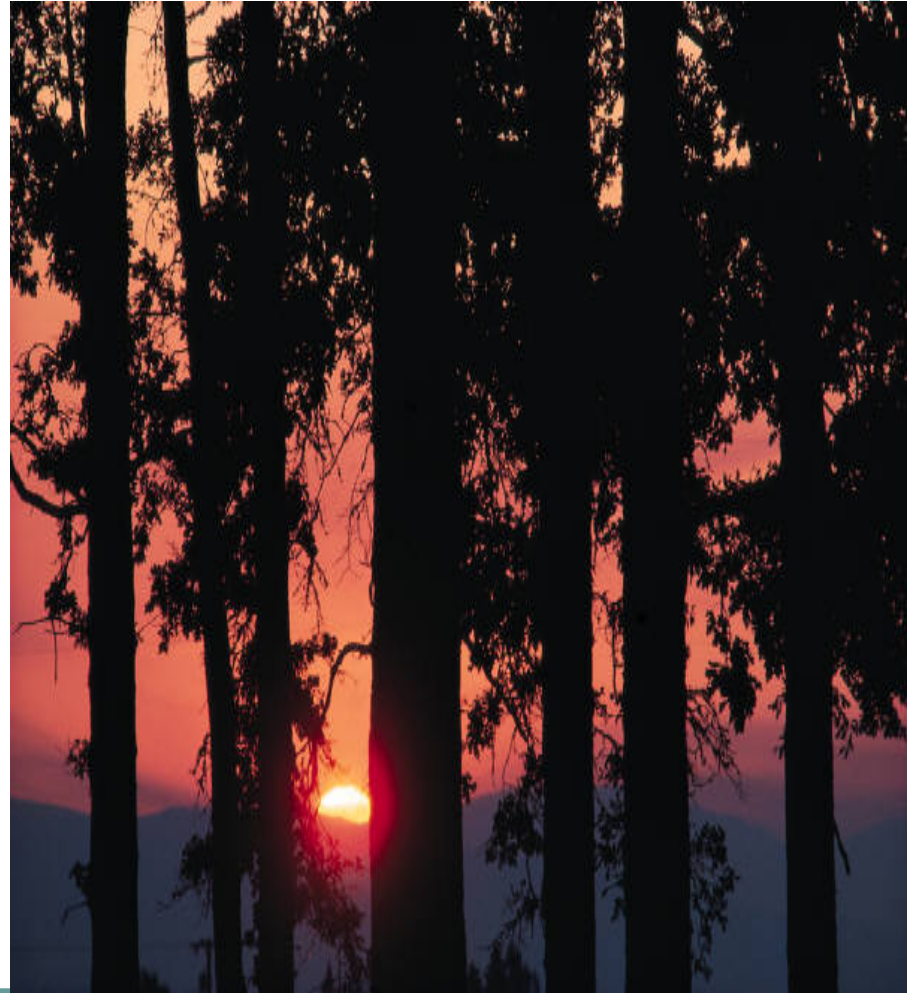


Ammonia – The Regulatory Climate

- John C. Becker
- *Penn State University*
- *Agricultural Economics and Law*



Common Law Remedies

- Nuisance
- Trespass
- Negligence

Legislative Action Involving Air and Hazardous Substances

Federal

- Clean Air Act, CERCLA (Superfund), EPCRA (Emergency Planning and Community Right to Know Act),

State

- PA Air Pollution Control Act, Right to Farm, Municipalities Planning Code (MPC)

Local

- Land Use Planning or Other Ordinances

Does Federal or State Law Preempt other laws?

Air Pollution Issues

- What is the Pollutant?
- What is its Source?
- Where is the source?
- What does the Pollutant affect?
- What is the impact of a new pollution source?

Hazardous Substances

- Did the release of a hazardous substance occur?
- How much of the hazardous substance was released?
- Who is responsible for the environmental effects of the release?

EPCRA

- Does the facility have an obligation to report the presence of a hazardous substance on its premises?

Air Pollution Sources

- **Mobile Sources**
 - Fuel combustion emissions
- **Non-Industrial Stationary Sources**
 - Human activities and natural events
- **Industrial Stationary Sources**
 - Manufacturing plants, oil refineries, power generation facilities

Air Quality: Criteria Pollutants

- Carbon Monoxide (CO)
- Sulfur Dioxide (SO₂)
- Nitric Oxides (NO)
- Surface Level Ozone (O₃)
- Solid and Liquid Particulate Matter (PM)
- Lead (Pb)

Key Air Quality Issues

- Is the facility meeting its requirements?
 - As a source of air pollutants
- Where should new polluting facilities be located?
- What type of technology requirements will be imposed on new polluting facilities?

- Air Quality Considerations New Facilities

- New Source Performance Standards
- New Source Review Program
- Prevention of Significant Deterioration Program

Hazardous Air Pollutants (HAP)

- Congress designated “***hazardous air pollutants***”, which includes ammonia and hydrogen sulfide.
- “***Major sources***” of HAP emit more than 10 tons per year (an average of 54 lbs per day for a 365 day year) of any one HAP or 25 tons or more (135 lbs per day) of any combination of HAP’s.
- “***Area Sources***” are all others.
- Emission Standards.

National Emission Standards for Hazardous Air Pollutants

- Emission levels for HAP that are adequate to protect public health with an ample margin of safety.
- MACT “Maximum Achievable Control Technology”
- Achieve the maximum degree of pollutant reduction that is achievable in light of economic, energy and environmental considerations

PA Air Pollution Control Act

- Except as required under the Federal Clean Air Act or regulations issued under it, the Air Pollution Control Act does not apply to the production of agricultural commodities and the Environmental Quality Board may not adopt regulations relating to air contaminants and air pollution from the production of agricultural commodities. (35 P.S. 4004.1).
- Implications

- As Federal Clean Air Act enforcement turns to agricultural air quality, PA will likely become involved.
- Large scale animal production facilities with large manure quantities are most likely to be affected.

Hazardous Substances

- *Comprehensive Environmental Response, Compensation, and Liability Act*
 - Release of a hazardous substance triggers a reporting obligation.
 - Normal application of fertilizer is not a release.
 - Hazardous substances include ammonia and hydrogen sulfide.
 - Reporting requirement for ammonia and hydrogen sulfide is 100 lbs per day.

Right to Farm Law

- PA Right to Farm Law provides a defense to nuisance suits that involve “normal agricultural operations.”
 - Operate for one year or more without complaint, or Comply with Nutrient Management Act.
 - Have no direct effect of public health and safety.
 - Comply with all other federal, state and local requirements.

Municipalities Planning Code

1. Authority for local governments to enact zoning laws and regulations.
2. Zoning laws can not be more restrictive than restrictions in the Right to Farm Law, The Nutrient Management Act and the Agricultural Security Law.
3. Zoning in areas where agriculture has traditionally been present may restrict these activities only if the activities directly affect public health and safety.

Concluding Thoughts

- Welcome to the wild world of modern agricultural environmental law!
 - Environmental policies in place for up to 30 years
 - Policies were not designed to specifically apply to agricultural operations.
 - In recent years, environmental advocates urged the application of these rules to modern agricultural operations.
 - Were they correct in doing so?

Do You Have Any Questions?

