

Right to Farm: What is it? Is it enough?

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BCM Environmental
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Narrowest Definition:

Immunity from nuisance
lawsuit,
in limited circumstances

What is nuisance anyway?

Unreasonable interference
with quiet use and
enjoyment

What is not nuisance?

Many challenges a farm may encounter: trespass; encroachment; road or access way dispute; contract dispute; environmental violation; more

New Hampshire Example:

1. Must be “agricultural operation” (does this include agritourism?)

2. In operation for 1 year or more

3. Not a nuisance at the time it began operation

4. Not available if “injurious to public health or safety under” local (municipal) health ordinances

New Hampshire Nuisance Liability of Agricultural Operations

RSA 432:32 Agricultural Operation. – "Agricultural operation" when used in this subdivision includes any farm, agricultural or farming activity as defined in RSA 21:34-a.

RSA 432:33 Immunity from Suit. – No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2.

RSA 432:34 Negligent or Improper Operations. – The provisions of this subdivision shall not apply if a nuisance results from the negligent or improper operation of an agricultural operation. Agricultural operations shall not be found to be negligent or improper when they conform to federal, state and local laws, rules and regulations.

RSA 432:35 Limits. – Nothing contained in this subdivision shall be construed to modify or limit the duties and authority conferred upon the department of environmental services under RSA 485 or RSA 485-A or the commissioner of agriculture, markets, and food under any of the chapters in this title.

Maine Example:

1. Agricultural
Composting Operation;
Farm; Farm Operation

2. Compliance with applicable state and federal laws, rules and regulations

3. Best Management Practices

4. Have and follow
Nutrient Management
Plan

5. Before land use change
within one mile, no big
changes to farm and farm
not a nuisance

New Hampshire's Right to
Farm a Bit Narrow

Maine's broader

Other states broader still

All states have “right
to farm” laws

50-State compendium:

<http://nationalaglawcenter.org/state-compilations/right-to-farm/>

Your questions about
what is the Right to
Farm

Is Right to Farm
enough?

Not by a long shot!

Current trends in Northeast

1. Direct Sales
2. More farms

Current trends, continued

3. Farms more diversified

4. Farms closer to residential
and commercial areas

Current trends lead to
increased conflict:

- farmer v. neighbor/s
- farmer v. town
- farmer v. other regulator

Often, disputes are not
nuisance claims

So, Right to Farm no use

Solution is twofold:

- 1. State laws to support farms**
- 2. Education about the state laws**

Strong and broad
Right to Farm

Zoning and Land Use Protections

Examples from N.H.

Reversal of presumption
of not permitted if not
listed

Agritourism and mere
cultivation cannot be
prohibited in any zoning
district

Only certain triggers vest
towns and cities with
authority to regulate
agriculture

1. New

2. Significant expansion

3. Use after
abandonment

Towns and cities must
waive requirement if
unreasonable in the
context of farming (with
some exceptions)

When making law,
state clear purpose

“farming and agriculture, as defined in RSA 21:34-a, shall not be unreasonably limited by the use of municipal planning and zoning powers”

Local decision-makers
and farmers need to
know what laws apply to
farms

But, they
frequently don't

Why does this matter?

Local agriculture
suffers.

Education can empower
local decision-makers to
confidently regulate
farms

Sometimes, local
decision-makers need
confidence that they are
allowed to leave farmers
alone

New Hampshire
Coalition for
Sustaining
Agriculture

**\$8,000 grant from
Farm Credit East**

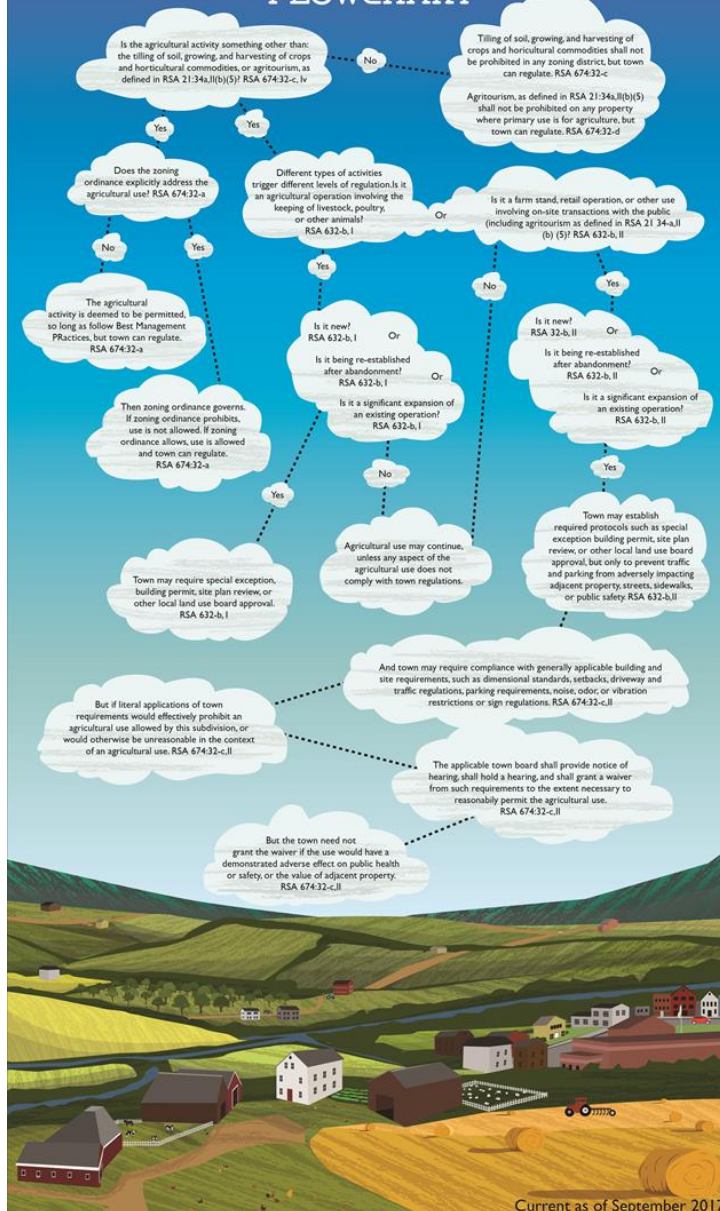
Toolkit for
Local Regulation
of
Agriculture

LOCAL REGULATION OF AGRICULTURE TOOLKIT



Presented by The NH Coalition for Sustaining Agriculture

LOCAL REGULATIONS OF AGRICULTURE FLOWCHART



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