

Florida Solid and Hazardous Waste Regulation Handbook: Private Regulation¹

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Another form of solid and hazardous waste regulation is through private lawsuits. These lawsuits may be based on the legal principles of:

- nuisance.
- trespass, both intentional and unintentional.
- negligence.
- strict liability.

In addition, and perhaps even more importantly, federal solid and hazardous waste laws have sections known as citizen suit provisions. These sections allow citizens to enforce those particular laws through private lawsuits. It is important for you to understand how you may be held liable for your actions by other members of the public.

What Is an Example of Private Regulation?

Here is an example: If you were to dispose of a hazardous waste improperly, a representative or agent of the government could require you to clean it up. Your neighbor could also file a lawsuit against you to

require you to clean up the waste. In addition, environmental groups, banks, developers, and any other person interested in the land or the waste and its potential hazards could sue you for violating the statute or the regulations.

What Is Nuisance?

Under the theory of nuisance, a common basis for filing pollution lawsuits, you may not use your property in a way that causes harm to others. Nuisances may be:

- public, if they affect the rights of the general public.
- private, if they affect the rights of a particular individual.

Public nuisance suits may be brought against you by a public official on behalf of the public-at-large and certain types of public nuisances may be criminal acts. Private nuisance suits may only be brought by the person or persons directly affected by the nuisance.

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How Are Nuisance Cases Decided?

In nuisance suits, the court will often balance the social value of the nuisance against the harm it causes. If the harm is slight and the social value is great, the suit will fail. However, if the social value is small and the harm is great, the person bringing the suit (plaintiff) may recover monetary damages and prohibit the defendant from continuing the activity.

What Is an Example of a Nuisance?

One example of a nuisance is where neighbors or local officials might sue a dairy farmer, claiming that the farm is a nuisance (private) and a health hazard (public). The social value is inexpensive—convenient milk production. The harm may range from bad smells on occasional windy days to disease-carrying insects and rodents. The judge will try to compare these two factors, as part of the final decision, on whether the farm is, in fact, a nuisance, and what, if anything, should be done about it.

What Is the Florida Right-to-Farm Act?

The Florida Right-to-Farm Act restricts nuisance suits against farmers. The statute explicitly states that if a farm was not a nuisance when it was established, it will not be considered a public or private nuisance after it has been in operation for one year. This rule applies even if the farm changes ownership.

What Farming Activities Are Protected under This Statute?

The statute protects you if:

- you change the type of use on your farm.
- you change the intensity of use.
- the use of the surrounding land changes.

The statute also will protect the new owner if you sell your farm.

However, you are not protected by the statute if:

- your farm was located next to an established homestead or business on March 15, 1982.
- you increase the noise, odor, dust, or fumes by expanding your farm operation.

What Farming Activities Are Not Protected under This Statute?

This statute does not allow you to violate the general principles of negligence or nuisance. Contaminating water wells or misapplying pesticides will still leave you open to a potential lawsuit. The statute specifically mentions conditions that will be evidence of a nuisance. These conditions include:

- the presence of untreated or improperly treated waste, including human waste, garbage, dead animals, and dangerous waste materials.
- the presence of improperly built or maintained septic tanks, water closets or privies.
- the keeping of diseased animals which are dangerous to human health, unless you are following a current state or federal disease control program.
- the presence of unsanitary places where animals are slaughtered.

The statute does not protect unsanitary conditions or health hazards.

What Is Negligence?

Negligence simply means causing harm to someone else by failing to do what a reasonable person would have done under the same circumstances. The harm may be economic, physical, or emotional. Anyone seeking to recover for someone else's negligence must prove four legal ingredients:

1. *Duty*: Your responsibility to govern your own conduct so that others are not harmed.
2. *Breach of Duty*: Occurs if you do not fulfill your duty of care. That is, you do not act with the degree of caution or foresight that a reasonably prudent person would have used in the same situation.

3. *Causation*: When your failure to use due care was the cause of the plaintiff's harm. Proving this step may be difficult if the damage is only indirectly related to your act or if there were other possible causes for the harm.
4. *Damage*: The plaintiff must prove that s/he suffered actual damage from your act. If no damage resulted, even if you admit your conduct was negligent, the plaintiff has no claim for negligence.

What Is Negligence Per Se?

If you are named as a defendant in a private lawsuit because of your actions, and those actions violated a statute, the court will usually find the violation of the statute is evidence of negligence. This evidence is usually enough to find the defendant guilty of statutory negligence, or negligence per se, in the private suit as well. This rule only applies if the statute was intended to prevent the type of damage that actually occurred and started the lawsuit, and the statute was intended to protect people like the plaintiff.

Even complying with all statutes does not guarantee immunity from negligence actions. Lawful behavior may still be negligent.

What Is Strict Liability?

Strict liability means liability imposed without any evidence of negligence. It will not make any difference whether or not you acted reasonably, or how careful you may have been.

When Is Strict Liability Used?

Strict liability is usually imposed upon those who engage in abnormally dangerous or "ultrahazardous" activities (e.g., handling explosives, or other activities defined by statute, including generating, transporting, storing, or disposing of hazardous wastes) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Abnormally dangerous activities are judged on certain factors. Those factors include:

- the existence of a high degree of risk of some kind of harm to the person, land or property of others.
- the likelihood that the harm will be great.
- the inability to eliminate the risk by exercising reasonable care.
- the extent to which the activity is not a matter of common usage.
- the inappropriateness of the activity to its location.
- the extent to which the activity's value to the community is outweighed by its dangerous characteristics.

What Is Joint and Several Liability?

When 2 or more parties, acting independently, cause a harm, the law (or the courts) may impose the principle of joint and several liability. This principle allows the plaintiff to recover the full amount of damage from any single defendant, regardless of how much or how little that defendant was actually responsible for the injury.

What Is an Example of Joint and Several Liability?

A defendant may be only 10 percent at fault, yet be required to pay the plaintiff the full amount awarded. The defendants must then spread the loss among themselves. The defendant who paid the plaintiff's award can go back to court and sue the other defendants for reimbursement.

A specific example of joint and several liability might be where an abandoned hazardous waste site is discovered with 50 drums of chemicals. All 50 drums have the name of the companies they from which they originated painted on them. One of the drums may be from ABC Company and the rest are from XYZ Company. Under CERCLA, which specifically authorizes joint and several liability, EPA can force ABC Company to pay for the entire cleanup, even though only 1 drum out of the 50 came from ABC Company. ABC Company can then try to force (by

suing) XYZ Company to pay back ABC for XYZ's share (49/50 or 98%) of the cleanup costs.

Suppose, however, that only 1 drum out of the 50 had a company's name on it (in this case, ABC Company). EPA may force the ABC Company to pay the entire cost of cleanup since it is the only identifiable contributor. Since ABC Company does not know who the other contributors were, it has no way to recover its share of the cleanup cost.

What Is a Citizen Suit?

A citizen suit is a private lawsuit that is explicitly authorized by a statute. Such an authorizing provision is present in most major federal environmental statutes, including RCRA and CERCLA. The citizen suit provision allows people to bring an action against anyone who violated the statute, and in some cases, even against the government for failing to enforce a statute or rule.

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This handbook is designed to provide an accurate, current, and authoritative summary of the principal Florida laws that directly or indirectly relate to agriculture. It should provide a basic overview of the many rights and responsibilities farmers and farmland owners have under Florida laws. The reader is provided information about these rights and responsibilities and the appropriate contacts for more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this publication is based are subject to constant revision, portions of this

publication could become outdated at any time. Many details of cited laws are also left out due to space limitations.

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