



# AGRICULTURAL LAW

*The newsletter of the Illinois State Bar Association's Section on Agricultural Law*

## All-terrain vehicle stamps—The newest source of revenue for the State of Illinois

*By Jeffrey A. Mollet, Silver Lake Group, Ltd., Highland IL*

Coming soon to a point-of-sale retailer near you will be the “Off-Highway Usage Stamp,” made available pursuant to legislation passed in 2012 by the Illinois General Assembly. This law will require the owner of various off highway vehicles (“OHV”) to purchase a \$15 annual stamp. The stated purpose is to “develop public-access trails for OHV use in Illinois, and to capture more than \$1 million in unutilized federal funds available for motorized trail development and maintenance.” See, IDNR Web site at <<http://www.dnr.illinois.gov>>. These stamps will be valid from April 1 through March 13th in each year, and will be issued concurrent with hunting and fishing licenses beginning in 2014.

Included among the equipment covered by this tax are general ATVs, utility vehicles, off high-

way motorcycles and golf carts (whether used pursuant to local ordinance or not). The law generally applies to such OHVs when they are used in a location other than the property where the owner permanently resides. Other exemptions are anticipated as rules develop.

Once purchased, the sticker provided will need to be displayed permanently on the front half of the vehicle. Non compliance will be a petty offense and could carries a fine of \$120. It appears that conservation and department of revenue officers will be the primary enforcement mechanism for this stamp.

For more information, please review the Department of Natural Resources proposed rules of under Title 17, Part 2525. ■

## Use of unmanned aircraft by farmers: Legal considerations

*By Craig J. Sondgeroth*

Farmers are hoping to utilize unmanned aircraft systems (UAS), as known by the Federal Aviation Administration, for crop scouting, pesticide application, and other activities. While these aircraft, sometimes referred to as drones or unmanned aerial vehicles (UAV), may be a farmer’s next precision agriculture tool, the legal implications should also be considered. I recently discussed this topic with a client, who operates a crop scouting business and was considering a UAS purchase.

FAA approval is not required to fly model aircraft for recreation.<sup>1</sup> But FAA guidance says that

model aircraft flights are not for business purposes. If a UAS is flown for business purposes, an experimental airworthiness certificate<sup>2</sup> must be obtained from the FAA. Also, according to FAA guidance, a FAA issued pilot certificate is required to operate civil UAS.

In July, the FAA certified two expensive unmanned aircraft for commercial use. While this was a significant step for commercial UAS use, will a UAS affordable for agricultural purposes receive certification? Many farmers hope so.

*Continued on page 2*

## INSIDE

**All-terrain vehicle stamps—The newest source of revenue for the State of Illinois..... 1**

**Use of unmanned aircraft by farmers: Legal considerations..... 1**

**Illinois court says insurer cannot escape duty to defend hog odor lawsuit under “pollution exclusion” in umbrella policy ..... 3**



IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT [ABOUCHER@ISBA.ORG](mailto:ABOUCHER@ISBA.ORG)

## Use of unmanned aircraft by farmers: Legal considerations

Continued from page 1

Illinois recently limited the retention of information gathered by law enforcement "drones."<sup>3</sup> The use of a UAS for agricultural purposes would involve collection of information significantly different than that collected for law enforcement purposes. However, since farmers want to retain field picture and data for years, keep an eye out for this possible issue.

Further query: could this new technology lead to privacy concerns? For example, consider someone who has chosen to live in a rural area because of the privacy afforded. That rural resident may not be thrilled at the sight of a low-flying UAS equipped with a camera, when they are in the backyard pool or sun tanning.

For further information, see the November 7th FAA publication, *Integration of Civil*

*Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap.*<sup>4</sup> Also, the FAA is to adopt rules by 2015 for the operation of commercial UAS.<sup>5</sup>

Any casual reader of this article can foresee many other legal considerations. Stay tuned for additional developments! ■

Craig J. Sondgeroth is of Massie, Quick & Sondgeroth, LLC

1. Federal Aviation Administration, Unmanned Aircraft (UAS) Answers and Questions, [http://www.faa.gov/about/initiatives/uas/uas\\_faq/](http://www.faa.gov/about/initiatives/uas/uas_faq/)

2. Special Airworthiness Certificates – Experimental Category (SAC-EC).

3. Freedom from Drone Surveillance Act, P.A. 098-0569 (eff. Jan. 1, 2014).

4. Available at [http://www.faa.gov/about/initiatives/uas/media/UAS\\_Roadmap\\_2013.pdf](http://www.faa.gov/about/initiatives/uas/media/UAS_Roadmap_2013.pdf)

5. FAA Modernization and Reform Act of 2012, Subtitle B – Unmanned Aircraft Systems

### FREE to ISBA members

#### Your research isn't complete until you've searched ISBA section newsletters

Fourteen years' worth of articles, fully indexed and full-text searchable...and counting.



The ISBA's online newsletter index organizes all issues published since 1999 by subject, title and author.

More than a decade's worth of lawyer-written articles analyzing important Illinois caselaw and statutory developments as they happen.

[WWW.ISBA.ORG/PUBLICATIONS/SECTIONNEWSLETTERS](http://WWW.ISBA.ORG/PUBLICATIONS/SECTIONNEWSLETTERS)

## AGRICULTURAL LAW

Published at least four times per year.

Annual subscription rate for ISBA members: \$25.

To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760

### OFFICE

Illinois Bar Center  
424 S. Second Street  
Springfield, IL 62701  
Phones: 217-525-1760 OR 800-252-8908  
[www.isba.org](http://www.isba.org)

### EDITOR

Jeffrey A. Mollet  
560 Suppiger Way  
P.O. Box 188  
Highland, IL 62249

### MANAGING EDITOR/ PRODUCTION

Katie Underwood  
[kunderwood@isba.org](mailto:kunderwood@isba.org)

### AGRICULTURAL LAW SECTION COUNCIL

Kenneth R. Eathington, Chair  
Michael A. Mattingly, Vice Chair  
Lois Wood, Secretary  
James R. Grebe, Ex-Officio

Donald Bigham	Jeffrey A. Mollet
William J. Bolotin	Lynne R. Ostfeld
Christopher W. Byron	Jerry W. Quick
John W. Damisch	William M. Shay
Ann E. Hagerty	Craig J. Sondgeroth
Laurie A. Harmon	Donald L. Uchtmann
Barry O. Hines	Raymond J. Watson
Thomas K. Leeper	Andrew G. White
Claire A. Manning	

Mary Kinsley, Staff Liaison  
Carey C. Gill, Board Liaison  
Barry O. Hines, CLE Coordinator  
Lewis F. Matuszewich, CLE Committee Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

# Illinois court says insurer cannot escape duty to defend hog odor lawsuit under “pollution exclusion” in umbrella policy

By Kristine Tidgren

In what could broaden an insurer’s duty to defend Illinois livestock producers in odor lawsuits, an Illinois appeals court has rejected an insurer’s denial of coverage to hog confinement operators pursuant to a standard “pollution exclusion” provision in an umbrella liability policy.

In *Country Mutual Insurance Company v. Hilltop View, et al.*, No. 4-13-0124, 2013 Ill. App. (4th) 130124, 2013 Ill. App. LEXIS 788 (November 13, 2013), neighbors filed a nuisance and negligence action against the operators of a hog confinement facility and the owners of the surrounding fields upon which the manure was applied. The neighbors alleged that the “foul and obnoxious odors” caused them to suffer loss of enjoyment of their property and harmed their way of life. The operators’ insurer sought a declaratory judgment that it had no duty to defend the operators pursuant to a number of exclusions in the operators’ policies. A trial court summarily ruled that the insurer could not deny coverage based upon a “pollution exclusion” clause in the operators’ umbrella liability policy. The Illinois appellate court affirmed that ruling.

Relying on the Illinois Supreme Court’s decision in *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 687 N.E.2d 72 (Ill. 1997), the court began with the rule that a “pollution exclusion” clause applies only to injuries caused by “traditional environmental pollution.” In distinguishing this case from those involving “nonnaturally occurring” chemicals, the court found that odors emanating from hog confinements and the resulting manure application did not constitute “traditional environmental pollution.” In reaching this conclusion, the court relied on the fact that neighbors had “dealt with the smells” created by hog farms since their inception and that these farms were traditionally thought of as a source of food, not pollution. The court did note that while it “might be difficult” not to find “traditional environmental pollution” if, for example, a hog farmer dumped manure into a creek, that was not the issue before it.

The court also rejected the insurer’s argument that characterizing the hog odor as “traditional environmental pollution” was consistent with the Illinois Environmental

Protection Act’s alleged treatment of odors as “air pollution.” The court stated that even if such odors now constituted air pollution for purposes of the Act, that finding would have no bearing on whether these odors constituted “traditional environmental pollution.” What now constituted an environmental hazard under environmental protection laws, said the court, was far greater than what the Illinois Supreme Court had in mind when it spoke of “traditional environmental pollution.”

Finally, in turning the insurer’s own argu-

ment against it, the court stated that the Illinois Livestock Management Facilities Act supported a finding that manure application onto farm fields did not constitute “traditional environmental pollution.” In so finding, the court noted that the Act itself stated that the application of livestock waste to the land was an “acceptable, recommended, and established practice in Illinois.” ■

This article originally appeared on the Iowa State University Center for Agricultural Law and Taxation Web site at <<http://www.calt.iastate.edu/escapeduty.html>>.

## MAKE THE MOST OF YOUR ISBA MEMBERSHIP.



**FREE CLE FOR ELIGIBLE MEMBERS**

BROUGHT TO YOU BY ISBA MUTUAL INSURANCE COMPANY

# FASTCLE

FREE CLE CHANNEL

Meet your **MCLE** requirement for **FREE** over a 2 year period.

**EARN 15 HOURS MCLE PER BAR YEAR**

[www.ISBA.org/FREECLE](http://www.ISBA.org/FREECLE)

---

FASTCASE

BROUGHT TO YOU BY ISBA MUTUAL INSURANCE COMPANY

# FREE

## ONLINE LEGAL RESEARCH

>> Comprehensive 50-State & Federal Caselaw Database

**NOW WITH MOBILE ACCESS TIED TO YOUR ISBA ACCOUNT.**

[www.ISBA.org/FASTCASE](http://www.ISBA.org/FASTCASE)



---

**DAILY CASE DIGESTS & LEGAL NEWS**

*Read it with your morning coffee*

E-CLIPS

{ Covering the Illinois Supreme, Appellate & Seventh Circuit Court. }



**START YOUR WORKDAY IN THE KNOW.**

[www.ISBA.org/ECLIPS](http://www.ISBA.org/ECLIPS)

---

[www.ISBA.org](http://www.ISBA.org)



ILLINOIS STATE BAR ASSOCIATION

# AGRICULTURAL LAW

ILLINOIS BAR CENTER  
SPRINGFIELD, ILLINOIS 62701-1779

JANUARY 2014

VOL. 23 NO. 5

Non-Profit Org.  
U.S. POSTAGE  
PAID  
Springfield, Ill.  
Permit No. 820



## Save the Date!

### Hot Topics in Agricultural Law—2014

*Presented by the ISBA Agricultural Law Section*

**February 7, 2014**

**8:30 a.m. - 4:30 p.m.**

**6.50 MCLE hours, including 1.00 Professional Responsibility MCLE credit hours  
(PMCLE credit subject to approval)**

#### **Bloomington-Normal**

Marriot Hotel & Conference Center  
201 Broadway Street

Are you familiar with the updated Illinois and federal estate and income tax laws? Do you know how to best represent your client before the ICC when a utility files a petition to construct a new transmission line? Do you understand the importance eminent domain has on negotiating compensation during a pipeline easement acquisition? Attorneys new to the agricultural law arena who attend this seminar will benefit by gaining a fuller understanding of the law and practice affecting this area of concentration, while attorneys with intermediate practice experience will better understand:

- Whether a credit trust is still viable under the new tax bill;
- Income tax issues, including IRS regulations and court cases as they relate to agricultural pursuits;
- Rapidly deploying high-voltage overhead transmission line easement projects, pipeline easements, and the best ways to negotiate for farm owners' interests;
- Fracking issues that can arise with long-reach horizontal drilling and modern hydraulic fracturing;
- Changes to the Clean Air Act and Clean Water Act;
- Food safety law and food labeling; and
- New law office technology, social media, and ethical issues to avoid when using social media as an advertising and communication tool.

*Go to [www.isba.org/cle](http://www.isba.org/cle) for more information and to register.*