

# Right to Farm 101 for Aquaculture Stakeholders in Pennsylvania

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Commercial aquaculture operations, like traditional agricultural operations, sometimes face legal challenges from neighbors raising concerns about farm operations. Nuisance lawsuits filed against agricultural operations often involve allegations by neighboring property owners that the odor, dust, or noise associated with farming is interfering with their ability to enjoy and use their property. In general, “right-to-farm” legislation protects agricultural operations from such nuisance claims when certain conditions are satisfied. This document examines Pennsylvania’s right-to-farm legislation and how it applies to commercial aquaculture. For a more comprehensive explanation of right-to-farm laws and their significance, please refer to the National Sea Grant Law Center’s document entitled “Aquaculture and the Right to Farm,” which can be found at <http://nsglc.olemiss.edu/projects/ag-food-law>.

State right-to-farm laws usually contain the following key elements:

- **Time in Operation Requirements** designating how long agricultural operations must be in existence before any statutory nuisance defense becomes available;
- **Preemption Clauses** ensure that municipal laws do not diminish nuisance protections for farmers;
- **Legal Presumptions or Complete Defenses** for farmers operating in conformance with applicable laws;
- **Exceptions** for recovery of damages due to injury; for public health, safety, and/or welfare; and/or for improper or negligent operation of farms; and
- **Best Management Practices (BMPs)** that farmers must adhere to for nuisance protections to apply.

The second page of this fact sheet provides a snapshot summary of Pennsylvania’s right-to-farm legislation with respect to these key elements. While the following information encompasses the state’s statute as it exists in 2018, it is important for aquaculture stakeholders to remember that, because the industry is developing, states may alter or add to their right-to-farm legislation in the future. The outcome of related court cases could also alter applicable provisions of a state’s right-to-farm law. Aquaculture stakeholders should consult an attorney or another outside source before taking any action based on the following information. Interested parties might first contact Pennsylvania Sea Grant, housed at the Pennsylvania State University, or Pennsylvania State University’s land-grant Extension.

## For more information about these programs:

Pennsylvania Sea Grant: <https://seagrant.psu.edu>

Pennsylvania State University Extension: <https://extension.psu.edu>

## Summary of Pennsylvania's Right-to-Farm Legislation

- Pennsylvania's right-to-farm legislation was enacted in 1982 and can be found in the Pennsylvania Statutes at Title 3, Sections 951 – 957.
- Pennsylvania includes aquacultural products in its definition of "agricultural commodities." A farm is a "normal agricultural operation" if the activities, practices, equipment, and procedures that farmers use or engage in the production and preparation of agricultural commodities: 1) take place on no less than ten contiguous acres of land; or 2) take place on less than ten contiguous acres of land but have an anticipated yearly gross income of at least \$10,000.
- Agricultural operations are not nuisances in Pennsylvania if they have been in operation for one year or more prior to the date of the action, where the circumstances complained of have existed substantially unchanged since the established date of the operation and are normal agricultural operations.
- Nuisance protections apply to agricultural operations if the physical facilities of an operation are substantially expanded or substantially altered and the expanded or altered facility has either: 1) been in operation for one year or more prior to the date of bringing the action; or 2) been addressed in a nutrient management plan approved prior to the commencement of the expansion or alteration.
- Pennsylvania's legislation contains a time in operation requirement of one year or more.
  - Every municipality that defines or prohibits a public nuisance must exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the operation does not have a direct adverse effect on the public health and safety.
  - Municipalities cannot prohibit direct commercial sales of agricultural commodities on property owned and operated by a landowner who produces no less than 50% of the commodities sold. Under circumstances of crop failure due to reasons beyond the control of the landowner, such direct sales must be authorized notwithstanding municipal ordinance, public nuisance, or zoning prohibitions, and without regard to the 50% limitation.
- Pennsylvania's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Pennsylvania's legislation contains four exceptions.
  - Nuisance protections do not apply to those who wish to recover damages for injuries sustained by them because of an agricultural operation conducted illegally in violation of any Federal, State, or local statute or applicable governmental regulation.
  - Nuisance protections do not apply to those who wish to recover damages for injuries sustained because of any pollution of, or change in condition of, the waters of any stream due to flooding of lands caused by an agricultural operation.
  - Both the state and municipalities may protect the public health, safety, and welfare without being restricted by nuisance protections, and municipalities retain the authority to enforce State law.
  - Nuisance protections do not apply to those wishing to recover damages for injuries sustained because of any agricultural operation conducted illegally in violation of any Federal, State or local statute or applicable governmental regulation.
- Pennsylvania's does not require farms to abide by any management practices requirements.
- Pennsylvania has not yet produced a BMP manual related to aquaculture.