

# Other Legal Considerations

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# Nuisance Claims

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- Nuisance: “A condition that substantially interferes with the use and enjoyment of land by causing unreasonably discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it.”
- Commonly seen against ag operations related to odor, dust, flies, noise.
- Seeing nuisance complaints filed against hemp farms in the Northeast related to odor.



# Texas Right to Farm Statute

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- Potential defense to a nuisance claim.
- “No nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation.”



# “Agricultural Operation”

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- Cultivating the soil
- Producing crops for human consumption, animal feed, planting seed or fiber
- Floriculture
- Viticulture
- Horticulture
- Silviculture
- Wildlife management
- Raising or keeping livestock and poultry
- Cover crops, crop rotation, government programs



# Time in Operation/Changes in Operation

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- Operation must be in existence for one year or more prior to the date the lawsuit is filed.
- Established date of operation exists for each expansion/change.
- New activity does not divest prior established date for older activity.



# Attorney Fee Provision

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- A person who brings a nuisance suit that is barred by this statute is liable to the agricultural operator for all costs and expenses incurred in the defense of the action, including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense.



# Limitations on RTF Protection

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- Does not restrict ability of state to protect public health, safety, and welfare.
- Does not protect operations conducted in violation of applicable federal, state, or local laws (i.e. violating TDA regulations).



# Advice to Protect Against Nuisance Lawsuit

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- Have good relationships with your neighbors!
- Consider using a buffer to avoid “smelling with eyes.”
- Document when your operation begins and detailed records of what you do.





# Trespassing

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- Concern for growers is that people thinking the plants are marijuana could trespass on their property.
- Two distinct trespass claims: Civil and Criminal.



# Civil Trespass

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- Lawsuit between individuals—landowner versus trespasser.
- Elements:
  - Entry
  - Onto the property of another
  - Without consent of the owner
- Damage need not be proven in order to successfully prove civil trespass but would be required to recover monetary relief.



# Criminal Trespass

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- Misdemeanor charges brought by State against trespasser.
- Elements:
  - Person enters
  - The property of another
  - Without effective consent of the owner
  - The trespasser had notice that the entry was forbidden.



# Criminal Trespass - Notice

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- Texas Penal Code 30.05 lists 5 options for giving notice that entry is forbidden:
  - Oral or written communication by the owner or someone with apparent authority from the owner;
  - Fencing or other enclosure obviously designed to exclude intruders or to contain livestock;
  - a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;
  - the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.
  - Purple paint...



# Purple Paint

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- Method of giving notice entry forbidden.
- Requirements:
  - Placed on trees or posts
  - Vertical lines not less than 8" long and 1" wide
  - Bottom of mark is 3-5' from ground
  - Readily visible locations to any person approaching property and no more than 100' apart (forest) or 1,000' apart (other land)



# Hemp as Animal Feed

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- Currently, hemp is not legal to be fed to animals.
- FDA has not approved hemp as an animal or pet feed additive.
- Approval by FDA Association of American Feed Control Officials would be required.



# Conclusion

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- There are a number of potential legal issues that could arise related to hemp.
- Take time to investigate to learn about these issues and potential defenses.

