Michigan’s GAAMP program as a model for semi-regulatory controls for non-point sources of pollution

INTRODUCTION
This memo examines Michigan’s GAAMP program, or Generally Accepted Agricultural Management Practices. This program has been described as a semi-regulatory framework for addressing non-point sources of pollution from agricultural sources. This paper will explore the history of the program, its current structure and how well the program meets its intended goals. The final section of this paper will examine how the state of Georgia addresses these same goals and discuss the advantages and disadvantages of Georgia’s current approach vs. the GAAMP approach.

HISTORY OF GAAMP
In 1981, Michigan adopted their first Right to Farm Act, a law designed to protect farmers from nuisance lawsuits while maintaining environmental quality and minimizing impacts to surrounding landowners (Norris and Cheney 2000). This law authorized the Michigan Department of Agriculture (MDA) to develop Generally Accepted Agricultural Management Practices (hereafter referred to as GAAMPs) as a minimum set of standards required by farmers to receive nuisance suit protection (SEMCOG 2000). The implementation of GAAMPs are entirely voluntary, with the primary benefit to the farmer being the protections offered under the Right to Farm Act.

CURRENT STRUCTURE
The Michigan Commission of Agriculture is the rulemaking body for the MDA. This Commission reviews and annually updates GAAMPs, utilizing the guidance and recommendations of appointed GAAMP committees. The current GAAMPs are as follows:

- Livestock Production Facility Site Selection (and Odor Control)
- Manure Management / Utilization
- Pesticide Utilization / Pest Control
- Nutrient Utilization
- Care of Animals
- Cranberry Production
- Irrigation Water Use

Because GAAMPs are voluntary, the implementation of GAAMPs is greatly affected by farmer education. The adoption of GAAMPs is facilitated by making them available over the web, by mail and through local extension.
The GAAMP program does not alter the susceptibility of farmers to enforcement action by the Michigan Department of Environmental Quality (MDEQ) for violations of water quality standards. However, the MDA (Michigan Department of Agriculture), not the MDEQ is the primary investigator of initial citizen complaints regarding environmental issues on farms. The respective roles of the two agencies are delineated in a memorandum of understanding and reference a set of procedures for response to environmental or nuisance complaints. The MDA investigates the complaint and if the operation is not in compliance with GAAMP and results in water quality degradation, the MDA will attempt to bring the operation into conformance (SEMCOG 2000). If MDA cannot bring the operation into conformance the problem is referred to MDEQ for enforcement action.

In recent years the Michigan Department of Agriculture and the Commission have taken a more pro-active role in utilizing GAAMPs to reduce conflicts, most notably through their adoption of an Irrigation Water Use standard. These new GAAMP standards do not establish legal criteria to resolve water use conflicts and do not establish priority rights for water use, but do set new standards established by an 18 member taskforce to reduce future water use conflicts. Michigan is the driest state east of the Mississippi during the months of July and August and is highly dependent upon irrigation water. The strength of these new standards to serve as a barrier against water related lawsuits has not been tested and the MDA warns that concerned water users should consult with several entities and a lawyer versed in water law (Loudon 2003).

**GAAMPS SUCCESS**

The GAAMPs program appears to provide an effective framework for improving communication and understanding between farmers and their neighbors, different agencies, and the courts regarding acceptable practices in agriculture. It is less clear if this framework has also increased the dialogue and cooperation between farmers and their neighbors regarding what constitutes such generally accepted practices. However, the process appears open and responsive to such a dialogue.

The nuisance suit protections afforded to farmers who follow the voluntary practices do appear to be greater than in other states. These differences will be examined further below. However, the benefits of the GAAMPs program far exceed the nuisance suit protection provisions. By establishing the MDA as the primary entity responsible for facilitating the development of GAAMPs, Michigan has effectively allowed improvements in standard practices to arise from within the agricultural community itself as opposed to reacting purely to regulatory demands. This framework appears to assure the role of the MDA in long-range state planning, improve the access to GAAMP information by farmers while increasing the likelihood of their voluntary participation.

Little information was available regarding complaint records related to GAAMP implementation. It is unclear if this program provides an enhanced approach to dealing with NPS pollution concerns.
GEORGIA COMPARISON

Georgia’s Right-to-Farm enabling legislation is much more traditional and limited in its application than the GAAMP program. The statute can be found in the Official Code of the Georgia Assembly, Title 41, sections 1-7 (O.C.G.A. § 41-1-7). The Georgia Act provides for the protection of farmers from nuisance suits, but only when the operation in question has been in existence for one year or longer, and only when the nuisance is the result of a change in surrounding land-use. For example, if a farmer has run a swine operation for many years and his neighbor of twenty years decides the operation has become a nuisance the Act provides no protection because the surrounding land-use has not changed. Likewise, if a subdivision is built next to a farm and a few years later the farmer decides to build a swine operation the Act provides no protection because the operation has not been in existence for one year prior to the change in land-use. The nuisance suit protections afforded to farmers are therefore very limited as farm operations must frequently adopt new practices in response to fluctuations in commodity and specialty markets.

Because Georgia state law does not specify an entity responsible for defining the industry standard practices for associated agricultural operations, such determinations of standards are frequently made by a judge in the midst of a nuisance suit with the aid of expert testimony from University scientists and government officials (Farm Foundation & Mark Risse pers. Comm.). State law in other parts of the country address this issue of accepted standards in different ways (the formation of GAAMPs being the most explicit). State law in some states simply requires conformity with all other federal, state, and local laws, with a presumption that no other adverse effects from such operations would follow. Other states task the Agricultural Commissioner to establish such standards by rule or regulation. Some agricultural operations are explicitly exempt from nuisance suits, such as feedlot operations in Oklahoma, Wyoming, Kansas and Tennessee (Farm Foundation).

GAAMPs are somewhat similar to Best Management Practices or BMPs, with some important differences. BMPs in Georgia are most frequently associated with non-point source abatement practices and do not address broadly applied standard practices for a diverse range of farm activities as outlined in Michigan’s GAAMPs program. The responsibility for producing and disseminating Agricultural BMPs which address non-point sources of pollution falls to the Georgia Soil and Water Conservation Commission (GSWCC). The Georgia EPD is the primary regulatory agency responsible for enforcing violations of air and water quality standards. The relationship between the GSWCC and the Georgia EPD is similar to that described for Michigan’s Department of Agriculture and the Department of Environmental Quality. Historically, the two have worked cooperatively to respond to non-point source complaints related to agricultural operations. Initial complaints were responded to by the GSWCC. If operators fail to comply with implementation of BMPs, the GSWCC refers the complaint to the GA EPD. In recent years the Georgia Department of Agriculture (GDA) has assumed many of the complaint response responsibilities previously performed by the GSWCC (Risse, Personal Communication). This change in responsibilities has been primarily the result of implementation of Concentrated Animal Feeding Operation regulations (CAFOs). The majority of agricultural complaints are now referred to the GDA.
ADVANTAGES AND DISADVANTAGES

Right to Farm provisions
The GAAMPs program possesses some distinct advantages over Georgia’s Right to Farm protections in that it specifically defines the industry standard practices for a range of agricultural operations, rather than leaving such determinations to the courts and the evidence of expert witnesses to decide. This extends the range of protections afforded to farmers faced with nuisance litigation well beyond just those cases where surrounding land use has changed and where the operation has been established longer than a year.

However, non-farmer interests may be less satisfied with these established definitions of “accepted agricultural practices.” Because the final decisions for the adoption or revision of such practices are made by the Commission of Agriculture with input by a task force appointed for each GAAMP, the hearing process for these standards may be limited in its consideration of other interests. However, there was little evidence found related to non-farmer support or lack of support for the GAAMP program during research for this review. The GAAMP program appears to attempt to build broad consensus before releasing or revising new practices. This may explain why only seven GAAMPs exist in the program’s 25 years of existence, leaving many standard practices yet to be defined.

Non-point Source reductions
The GAAMPs program was not established as a means to reduce non-point source pollution and in that regard differs quite significantly from GA’s BMP’s for Agriculture (revised and released March 2007). Any GAAMPs which result in the improvement of water quality are the result of minimum standards established for specific practices or operations such as nutrient management, pesticide management, feedlot siting and operation, and cranberry production. When comparing the standards and practices between the two volumes, it is apparent that the GA BMP manual is much more explicit in the wide variety of practices and tools necessary to control and prevent non-point source pollution originating from the farm site.

What the GAAMPs program lacks in content the GA BMP program lacks in mandate. Georgia BMP’s are established by the GSWCC rather than the by the GDA which removes ownership of these practices from the agricultural community. However, these recommended practices also lack in regulatory framework. Implementation of BMPs, while optional in both states, holds no additional incentive in the form of nuisance suit protections for participating farmers here in Georgia.

GAAMPs are very specific, highly defined minimum practice standards set for a limited number of agricultural practices and operations designed to create consistency amongst operations and reduce the risks of nuisance lawsuits. In contrast, Georgia’s BMPs provide an extensive array of management options specifically designed for dealing with non-point sources of pollution.
CONCLUSIONS
This review demonstrates that Michigan’s GAAMP program based on Right to Farm provisions and Georgia’s non-point source reduction programs on agricultural lands are currently very different programs with different histories and different goals. Aspects of the GAAMP program provide an excellent model for increasing protections to farmers from the risks of nuisance suits while engaging the farming community proactively in establishing uniform practice standards. The Michigan model has not however, utilized the GAAMP program to implement broad based non-point source abatement practices. Even if they were to do so, it does not appear that such action would constitute a regulatory framework for addressing non-point source pollution from agricultural sources.

CITATIONS


