



FARM COMMONS

Dealing with Regulators Tipsheet

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DISCLAIMER: This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

My local zoning or health inspector wants me to do something I believe is not required, or a regulator has made a decision I disagree with. What can I do?

Whether it's installing a wastewater treatment system or upgrading restroom facilities, farmers don't always agree with the demands of local zoning boards or health inspectors. Laws and regulations—such as zoning, building, health codes, or even organic certification requirements—often seem riddled with ambiguities. In some cases, the law may clearly be on the farmer's side, yet the regulator insists on a different interpretation. Farmers can often challenge what an authority says, but this can be a delicate process where due diligence and interpersonal skills pay off. Here are some tips for strategically working with regulators.

Preparing to talk with your regulator: What should you know and how do you learn it?

🗨️ *Get to know your regulator's environment: What's their job, how are they regulated, and what challenges do they face?*

Who are these inspectors, zoning board members, or organic certifiers after all? First and foremost, regulators are people. They may not necessarily agree with the laws they are enforcing. They aren't the ones that made them up in the first place. Yet, if the regulator doesn't do the job—to ensure that the law is being followed—they could be out of a job. Regulators are only authorized to do what they are authorized to do. Their jobs are difficult. They are often inundated with protest, complaints, and even hostility. Seeing the situation from their perspective can help prevent the interaction from becoming a personal attack, which generally gets you nowhere.

🗨️ *Be familiar with the law at issue, at least the basics*

Learning the basics of the law at stake is essential. The best way to do this is to read it.

Most local laws are available on the internet. Or, your county library will most likely have a hard copy. You can even ask the librarian for help interpreting it. Farmers who approach an inspector or zoning authority with some familiarity of the law at issue will come across as being professional and are more likely to be taken seriously. For example, if you're dealing with an organic certifier, familiarize yourself with their guidelines. Decisions to deny organic certification are typically due to findings that fertilizers or other content contain substances prohibited for use in organic crop productions. Sometimes these findings only result in partial suspensions, and appeals are possible in almost every instance. By knowing the basics of the laws your regulators are enforcing, you will be able to ask more specific and pointed questions and may even be able to influence the outcome by proposing solutions and alternative approaches.

Work with an attorney

While it may be okay to question or challenge a regulator's decision—such as an inspector's instruction or a zoning board's restriction—without working with an attorney, it can be very advantageous to have an attorney on your side. The attorney will be able to pick up on certain nuances of the law and identify specific facts of your situation that you should emphasize, and perhaps others that you should minimize or refute. Ultimately, an attorney can help come up with the best interpretation of the law for your circumstances.

Prepare an outline of the relevant facts of your situation

How do you know which facts are relevant? The law at issue is your guide. A good place to start is to ask why it's there in the first place. Or, what is the overall purpose of this particular law? Then ask, what are the specific requirements and how am I following them? Generally, local laws have something to do with protecting health and safety. For example, upgrading restroom facilities on farms is linked to prevention of foodborne illness outbreaks. Relevant facts would include everything you're doing to address this, including how and why your current restroom facility is effective.

Identify specific questions about how the law at issue applies to your venture

Taking some time to strategically prepare your questions can help you steer the conversation in your favor. Here are some tips: Raising pointed issues or questions is generally more effective than asserting broad statements or questions such as, "This won't work for me," or "What am I supposed to do?" or especially, "You're wrong." Being as specific as possible saves time and can help the farmer shape the outcome of the discussion. It can also be helpful to preface your questions with your interpretation of the law and why your interpretation is reasonable. For example, "The law says this. Therefore, if I do this and this, do you agree that I would be in compliance?" Phrasing your questions in this way will get you a lot further than simply asking, "Can I do this?" and being stuck with a "no" answer.

Try to learn how the regulator has dealt with other farmers on similar issues

Regulators are required to be consistent when interpreting and applying the law. This raises the question, how have they dealt with other farmers on similar issues? The best way of going about this is to ask around, including other farmers or other businesses or individuals that are subject to the same or similar laws. Did the regulator allow another

farmer to do what you're wanting to do? If so, you can raise this with them directly. It can also be helpful to learn from other farmers about the regulator's personality and communication style. Are they open and easy going, or stern and hard-headed? Knowing this will help you determine how best to communicate—i.e., somewhat casually or more directly.

Talking with your regulator: What to expect and how to communicate

Whether it's on a phone call, during an inspection, or in a formal meeting, here are some things to consider when you actually have the opportunity to speak with a regulator.

Be professional, yet friendly

Regulators—including inspectors, certifiers, and folks who work at the health department—are human beings. While you want to set the tone of professionalism, including demonstrating that you've done your homework and that you know a thing or two about the law at issue, it's generally not in your favor to come off as defensive or a know-it-all. Such an approach may lead them to respond in kind. One tip would be to try and find something you agree upon. If things get tense try to weave that common ground back in. Whatever you do, it's generally best not to turn it into a personal attack.

Strategically disclose relevant or hypothetical facts

Generally, the more detailed facts you can provide, the more specific the regulator can be in addressing your concerns. It also shows you're taking the issue seriously and are consciously thinking about the impact of your actions. With that said, there may be times when you do not want to disclose all your facts up front. Discerning what is important can be tricky. One way of going about this is to present the entire conversation in hypotheticals. Start with "what if" questions or "let's say that" statements followed by the general question: "Would that be allowed?" Working with an attorney is strongly advised. The attorney can protect your confidentiality and will know the nuances around what facts are relevant and which are unnecessary to the question at hand.

If you get stuck, ask open-ended questions and listen

It very well may be that you come with a line of questions and the regulator simply says, "I don't know," or the infamous, "It depends." If they don't give you much, it can be helpful to ask open-ended questions and then listen for hints: "What do you see as the ultimate goal or purpose of this law?" or, "What are your suggestions for the best ways farmers can comply with this law?" If you really get stuck, try to guide the conversation toward tangible next steps for you: "What do you suggest I do to find out more?" or, "Who would you recommend I speak to next?" or simply, "What should be my next step?"

Take notes

Coming away with some documentation of what was said during the meeting is essential. This way you can hold the meeting participants accountable for what was said or not said should an issue or discrepancy arise later. The notes could come in handy if at any point you decided to challenge a regulator's decision or any enforcement action against you.

Getting results: When and how to follow up on an initial conversation

The key to getting results is to be persistent and follow up. The best approach for follow up will depend on what happened during your conversation.

- **Favorable recommendation.** If the regulator said anything in your favor, it's a good idea to follow up in writing affirming what was said. This could be through an email or a letter. Either way, this written documentation will provide further evidence supporting your course of action.
- **No solid answer provided.** If the regulator couldn't provide a solid answer, consider working toward building consensus over time. Continue to follow up as appropriate. For example, keep the inspector or certifier informed as new information emerges. These new facts could change their opinion or recommendation.
- **Unfavorable.** If a regulator insists their interpretation is right, you still might want to continue to follow up with them directly in the hopes of changing their decision over time. More likely, you might want to consider taking action to either challenge the decision or change the law altogether

Moving forward: Mobilizing to challenge or change the law

Challenge the regulator's instruction or decision

Sometimes all you can do is take an unfavorable decision up the chain of command. How this is done will depend on the protocol of the overseeing agency—e.g., the zoning board, health department, etc. Usually it involves filing a formal complaint, which is often in the form of a letter. The letter will need to be carefully crafted to preserve arguments for a formal legal action or lawsuit should that be required. If you choose to pursue this approach, it's best to work with an attorney.

Build a local campaign to change the law

An individual inspector, faced with a specific enforcement matter, is not in the best position to change the rules. A zoning board isn't going to want the hassle of changing the zoning code unless a lot of people are complaining about it. Regular dialogue by a coordinated group of citizens with agency leadership is often the best way to achieve change. How does one go about this? Changing a local law doesn't necessarily involve a complex campaign. It could simply involve spreading a call to action through word of mouth, community meetings, and so on. The call to action could be to encourage other farmers to contact the local agency with similar issues. Submitting emails, letters, and/or making direct phone calls can all help. A sample script can come in handy to ensure the message is consistent and on-topic. Another option would be to set up a group meeting with the head of the agency. Yet another option would be to organize a public meeting and ask top administrators or officials from the agency to attend. When the agency hears from multiple folks about the same topic, they begin to realize that this is a significant issue and not just a one-off matter involving one or only a few small farmers.