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FARMERS SHOULD NOT CONTEST FEEDLOT INSPECTIONS

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The Land Correspondent

A car pulls into your driveway. A couple of people step out of the car and knock on your door.

You say "Hello," and they identify themselves as being a Department of Natural Resources (DNR) officer, or a Minnesota Pollution Control Agency (MPCA) inspector, or a county feedlot inspector.

And they want to look at your feedlot.

What do you do?

Let them. That's the advice from Christopher Kelley and Joseph Maternowski, attorneys from the Minneapolis law firm Lindquist & Vennum.

"Each of these people has the legal authority to come onto your property. The Environmental Protection Agency (EPA) would have it under the federal Clean Water Act, the MPCA would have it under the state statute that parallels the Clean Water language," Maternowski said.

According to Kelley, the federal Clean Water Act directly affects agricultural operations in several ways.

Among other things, the act prohibits the point-source discharge of pollutants into U.S. waters including wetlands without a National Pollutant Discharge Elimination System (NPDES) permit.

The term "pollutant" is defined broadly and includes "agricultural waste." In Minnesota, NPDES permits, including feedlot permits are issued and monitored by the MPCA.

Kelley also said the act gives authorized agency personnel the right to enter any premises in which an effluent source is located and that person can be an authorized contractor acting as a representative of the EPA.

Maternowski said farmers do have the right to deny access to their private property. But the inspector would likely get a warrant and return.

The Clean Water Act and state law also gives agency personnel the right to obtain a search warrant without notice to the owner occupant of property and an agency does not have to show a specific need for a “surprise search.”

“The problem in asserting your rights as an individual to demand that someone come back with a warrant is there are some implications in telling someone, ‘No you can’t come on my place.’ What might happen is they might come back with more force and power when they return,” Maternowski said.

While the idea of surprise inspections is new to the farm community, businesses have been subject to surprise inspections from OSHA for years.

Maternowski advises his business clients to cooperate, however, it is sometimes possible to negotiate a convenient time for the inspection. He suggested farmers could also try to reschedule an inspection.

It is important to know farmers can demand an official present identification and credentials prior to being allowed on private property. Farmers do have the right to deny access to anyone without proper identification.

“The bottom line is government agents generally do have broad authority to come on private property to investigate environmental issues,” Maternowski said.

He suggested farmers do the same thing businesses are doing – get into compliance.

Maternowski works with major corporations that have audit programs as a means of preventing enforcement.

For farmers, that means obtaining a feedlot permit and being aware of correct waste handling.

“I think the answer for people is to realize they are subject to this regulation and they should, in order to minimize their liability and the chance for a prosecution, see what they need to do to address this compliance issue.”