




Municipal AFO Regulations: The Alma Decision

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§17-536

- the authority of cities of the second class (population of 801-5000) and villages (up to 800 population) "to prevent any pollution or injury to the stream or source of water for the supply of such [community] waterworks, shall extend fifteen miles beyond its corporate limits."

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background

- Furnas Co Farms (FCF) & Sands Livestock Systems proposed swine finishing facilities housing 30,000-36,000 hogs, 8 miles from Alma
- Alma hired environmental engineer to assess threat to community water supply
 - great move!

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Alma's regulations

- based on consultant's report, Alma adopted five ordinances
 - permit requirement
 - synthetic lagoon liner
 - monitoring wells
 - manure application restrictions
 - cleanup bond

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litigation

- FCF said ordinances invalid for conflicting with NEPA
 - NEPA = Neb Env Policy Act
- FCF sued city for \$1.6 million in damages due to construction delay
 - district court ruled city immune from damages suit
 - also ruled city ordinances not pre-empted by NEPA

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preemption

- preemption argument limited to NEPA
 - LWMA & title 130 regulations not before district court
 - LWMA = Livestock Waste Mgt Act
 - title 130 = DEQ AFO regulations
 - AFO = animal feeding operation
- NEPA has strong intergovernmental cooperation provisions
 - both LWMA, title 130 do not

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NEPA preemption

- §81-1504: "The [D]epartment [of Environmental Quality] shall have and may exercise the following powers and duties: . . .
- (18): *To encourage local units of government to handle air, land, and water pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefore*"

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cleanup bond preempted

- Alma had mandatory cleanup bond requirement (no exceptions), while NEPA authorized cleanup bonds for which DEQ could provide exceptions
 - in fact, DEQ had already exempted AFOs but this was not referenced in decision
- Alma's bonding requirement preempted because it was stricter than DEQ's requirement

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lessons from Alma

- do a wellhead protection area [WHPA] study
- adopt no WQ regulations more strict than NEPA, LWMA or title 130!
 - lagoon liners
 - monitoring wells
 - manure application restrictions
 - WQ = water quality

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what can city regulate?

- AFO ize, including maximum size
 - Alma had 2500 animal cap
- easiest thing to do is ban large facilities from recharge area
- can city automatically go 15 miles? NO!
 - study must justify going out that far
 - I would be uncomfortable going beyond designated WHPA

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LB1042

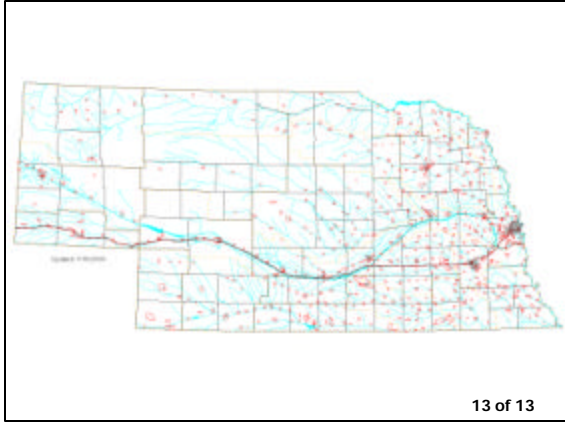
- would require a city or village using §17-536's 15-mile water protection regulatory jurisdiction to do a water supply protection study prior to invoking §17-536
 - similar to wellhead protection area study?
 - could DEQ etc. do these studies?
- public notice & hearing required before adopting regulations
 - regulations would have to be available at least 30 days in advance
- this is essentially what Alma did, and procedure would strengthen city's regulations from legal challenge

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LB916

- amends LWMA to comply with EPA requirements
- drops animal units & AFO categories (EPA too)
- changes fees; new annual per-animal fee
 - 10¢/beef animal
 - \$4/100 swine >55 pounds
- less detail in LWMA; more probably in title 130
- watch to see if LWMA changes impact city AFO regulations
- Questions?

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