

Cooperative Extension

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Agritourism is an increasingly important strategy for farmers to expand farm income and employment opportunities for family members. By opening farms to visitors for educational and recreational purposes, agritourism also raises public awareness and appreciation of farming and agricultural issues. An estimated one in five New Jersey farms provide some form of agritourism activity such as on-farm direct marketing, educational tours, entertainment, outdoor recreation, or farm accommodations (Schilling, Sullivan & Komar, 2012).

While a promising business opportunity for some agricultural producers, attracting hundreds or even thousands of people onto the farm increases the likelihood that a guest or employee will be exposed to farm safety risks or even injury. These realities present additional legal liabilities to farm operators and should be carefully considered before inviting visitors on to a farm.

Farm-based safety risks can never be eliminated, however, they can be managed through a comprehensive approach to farm safety and risk management. This fact sheet offers strategies that a farm operator can adopt to create a safer environment for farm visitors and manage the legal liabilities that may arise from increased farm visitation.

The Concept of Liability

Anytime someone enters your property, invited or not, you have some level of responsibility for that individual's safety. Yes—it is conceivable that a landowner may be found liable for an injury to a trespasser if effort is not made to alert the trespasser (and others) to a known hazard through, for example, warning signs. Further, liability for an injury to any farm visitor can apply to both the owner and the 'possessor' of the property, the latter meaning the person who is 'in control' of the property where an injury occurred. It is important to understand the nature of liability laws in your state, as they do vary.

Generally, the highest "duty of care" (think of this as a legal obligation to provide a reasonable level of care to prevent others from being injured on your property) is owed to individuals visiting your farm for commerce. These include, for example, farm employees, farm market patrons, and visitors to your corn maze. For these guests, you have the obligation to proactively search for hazards on your farm and take efforts to protect visitors from being harmed by them. An example relevant to an agritourism farm may include ensuring that farm animals with which visitors may come into contact are healthy and of appropriate temperament. Another is ensuring safe ingress, egress, and parking for an agritourism event or farm market. Yet another is ensuring that a lane used for hayrides is reasonably smooth and free of obstructions. Failure to remediate known hazards on a farm may be viewed as your negligence if a guest or employee is injured—and you may find yourself accountable for damages.

The Basics of Agritourism Safety

What can an agritourism operator do to protect the well-being of farm visitors, and one's personal and business assets if a lawsuit is filed by an injured guest? There is no single action a business operator can take to address liability issues, but taking every reasonable effort to create a safe environment for farm patrons is clearly an essential one. Agritourism operators are well-advised to view farm safety holistically as a program encompassing steps to prevent exposure of visitors to farm hazards and respond to accidents when they do occur. Not only will it help the farm operator and staff identify farm hazards and address them (e.g., removing them, identifying certain areas as "off-limits" to farm guests, or posting rules/warnings), it demonstrates a level of proactivity that may provide an element of protection to the farmer in the event of a lawsuit.

Each farm has its own unique safety factors to consider. Common ones that often warrant attention include:

- The safety of parking areas (as well as farm entrances and exits);
- Storage of equipment and machinery that may pose a danger to visitors;
- “Attractive nuisances,” which are areas or features of the farm that may attract the interest of visitors, especially children (e.g., farm ponds, tractors, or farm animals) (Figure 1);
- Safe storage of farm chemicals (fertilizers, pesticides, etc.);
- Plans for accommodating people with limited mobility or disabilities;
- Appropriate lighting, as needed;
- The level of desired access to/contact with farm animals (Figure 2);
- Safety of food served on the farm (by you or a vendor);
- Contingencies for inclement weather; and
- Safety of buildings and structures that may be accessed by the public.

It is therefore important to inspect your farm regularly to identify potential hazards that could jeopardize the safety of visitors and employees. A routine farm walk-through should cover all areas that could be accessed by visitors, even those that are designated as off-limits to guests. During these inspections, look at your farm through the eyes of a guest. What hazards might younger or older guests encounter? Others might not discern hazards like you do because of your familiarity with the farm and its operation. Do not rely on the common sense of visitors to keep them safe; it is your responsibility to be conscientious about identifying and addressing possible risk factors. It may be useful to invite an Extension professional, insurance provider, or emergency responder to conduct a farm walk-through to help identify safety problems that you may overlook. Keeping a log of farm inspections is good protocol to document the steps taken to maintain a safe visitor environment in the event of a lawsuit filed by an injured guest.

Each farm attraction (e.g., a hayride or petting zoo) should have a “plan of operation” that details potential safety risks inherent to the attraction and specific procedures for safely managing the attraction for guests. Where appropriate, rules by which guests need to abide should be clearly posted for each attraction.

Farm staffing should be able to accommodate anticipated numbers of farm visitors. Employees should be trained generally to understand the farm and expectations the owner/manager has of employees. Importantly, each employee should also understand the farm safety plan and specific plans of operations for farm activities, as well as emergency response procedures. A full-staff training for new employees and a refresher training session for returning employees should be conducted each year.

Guests on your farm should be made aware (through signs and by staff) that they are visiting a working farm where certain inherent risks exist and that, by entering the farm, they accept such risks and must exercise reasonable caution (Figure 3). Further, farm rules should be clearly posted. Areas not intended for the public should be clearly delineated and marked as “off limits” (Figure 4). Parents should be advised to always accompany and closely monitor children. Rules specific to each farm attraction should be clearly displayed (e.g., “No Standing on the Hay Wagon” or “Wash Hands After Touching Farm Animals”). It is also a good idea to post farm rules and recommendations for ensuring a safe farm visit (e.g., appropriate clothing to wear) on the farm’s website.



Figure 1: Securing a farm pond and posting signage to limit access by visitors. Photo credit: Michelle Infante-Casella



Figure 2: A double fence and feeding tube limits visitor contact with farm animals. Photo credit: Michelle Infante-Casella



Figure 3: Example of a “working farm” sign, available from New Jersey Farm Bureau.



Figure 4: Clearly post areas that are intended to be off-limits to farm guests. Photo credit: Michelle Infante-Casella

Liability Protection – “Dress in Layers”

Despite taking precautions, there is a high likelihood that an accident or injury to a guest will occur when large numbers of people visit a farm. This is where the concept of liability protection being akin to the need for dressing in layers in cold weather comes into play. As previously noted, there is no single strategy for effectively protecting a farm against liability. Speaking to an attorney and your insurance provider is certainly recommended. You will likely be advised to approach liability management holistically, as a program or series of activities that demonstrate a proactive, responsible, and comprehensive approach to farm safety.

Potential “layers” of protection to consider include:

- **Consult with a legal or other qualified professional to determine which form of legal business formation is appropriate for your farm.** A sole proprietorship or general partnership will offer less liability protection than, for example, a corporate structure or limited liability partnership.
- **Document any accident on the farm.** Even a seemingly minor injury may result in the filing of a lawsuit. This may occur several months after the incident, when details of the event are forgotten by farm staff. Documenting, in real time, all farm accidents is an important component of emergency response, and one that may be important if the incident evolves into litigation. Elements of a simple one- or two-page incident response form should include the name, address, and contact information of the injured person; a detailed description of the incident (e.g., time, location, nature of accident); a description of any medical assistance provided or offered; witnesses; and the name and contact information of the person completing the report.
- **Understand applicable laws and regulations.** This is admittedly more easily said than done. However, ignorance of a law is never an accepted defense against its violation. Consult with knowledgeable parties—state Farm Bureau staff, Department of Agriculture personnel, Cooperative Extension staff, State Agriculture Development Committee or county agriculture development board staff, other farmers, etc.—to discuss applicable statutory and regulatory provisions that may affect your operation.
- **Understand the extent to which your current or contemplated agritourism activities are protected under your state right to farm statute.** In many states, this continues to be an evolving area.
- **Consider the use of indemnification/liability waivers.** Before allowing access to the farm, you may have a farm guest sign an agreement whereby s/he “agrees to indemnify and hold harmless the landowner from any claims made by the user or third parties arising from the use of the land or activities.” Waivers do not remove landowner responsibility for the safety of farm visitors, but they are legal documents in the eyes of the court system.
- **Post rules and warnings regarding known safety hazards.** Warnings should be appropriate and tailored to the circumstances of each farm or farm activity. Examples include:

- o “No consumption of alcoholic beverages allowed”
 - o “No smoking on farm”
 - o “This is a working farm—exercise caution!”
 - o “Caution: electric fence”
 - o “No swimming in pond”
 - o “Do not touch animals—they may bite”
- **Keep good records.** As discussed above, maintain a file of all accidents/injuries on your farm (i.e., incident response forms). Document efforts to identify and minimize farm hazards. Consider some form of visual documentation (i.e., photos, video) of your farm to show its condition and efforts to make it safe for guests. It is also advisable to keep a log of farm safety inspections/walk-throughs and employee trainings.

Planning for Emergencies

Despite a farmer’s best efforts, accidents will happen on the farm. Farm businesses should therefore have emergency response procedures that are reviewed regularly, posted, and incorporated into staff training. These procedures help to protect the welfare of farm guests and employees, facilitate emergency response, and can help to minimize personal and business damages that may result if a farm owner is found liable for an injury occurring on the farm.

Steps a farm owner can take to prepare for an emergency situation on the farm include:

- Invite emergency responders (e.g., fire department, EMS) to tour the farm;
- Maintain current emergency contact information for farm owners, managers, and staff, as well as key business contacts;
- Post the physical address, entrance, and GPS coordinates for the farm;
- Sketch a map of the farm and important features;
- List locations of emergency response equipment (e.g., first aid kits, fire extinguishers, personal protective equipment);
- Maintain product safety data sheets;
- Establish visitor capacity limits (buildings, attractions/rides, etc.);
- Train employees on emergency response roles; and,
- Post “In Case of Emergency” signs.

A Word on Insurance

Consult with a farm insurance provider about the types and levels of insurance that are appropriate for your enterprise. Review your insurance with your provider regularly (at least annually). It is important to consult with your insurance provider before changing the type(s) or extent of activities offered, or if anticipated visitation levels change significantly. You want to avoid the risk of having a claim denied because an activity was not specifically included in the farm’s insurance policy.

Also, discuss strategies for transferring risk to third-party vendors that may be operating on your farm (e.g., a vendor selling food or pony ride operator). Be sure that such vendors possess any applicable licenses and demonstrate proof of appropriate insurance and name you (the farm/operator) as an “additional insured.” As a specific example, ensure that outside vendors selling food on the farm have necessary approvals from a local health department. It is also advisable to have a written agreement with vendors that detail each party’s responsibilities.

Final Thoughts

The guidance contained in this fact sheet does not constitute legal advice. Each farm has its own unique circumstances—safety factors, potential legal liabilities, insurance requirements, and optimal business organization. Further, the legal concepts of landowner liability for agritourism and on-farm direct marketing activities are evolving. Anyone engaged in agritourism, or thinking of developing an agritourism enterprise, should therefore obtain advice from qualified legal and insurance professionals. Also, consider having others (e.g., your county agricultural agent, insurance provider, local emergency services professional, etc.) walk through your farm to lend an impartial eye and help identify potential hazards that may be present.

You are responsible for the safety and welfare of individuals from the moment they walk onto your farm. Keeping them safe is of paramount importance; but accidents invariably happen. Protecting your personal and business assets is therefore an essential risk management strategy.

For more resources on agritourism farm safety and liability management—including farm evaluation checklists, training videos, fact sheets, and a sample incident response form—please visit the New Jersey Agricultural Experiment Station’s Extension Training for Agritourism Development website at agritourism.rutgers.edu/training.

References

Rutgers New Jersey Agricultural Experiment Station. Extension programming for agritourism website. Accessed on June 6, 2016 at agritourism.rutgers.edu/training.

Schilling, B., Sullivan, K. & Komar, S. (2012). Examining the economic benefits of agritourism: the case of New Jersey. *Journal of Agriculture, Food Systems and Community Development* 3(1): 199-214.

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