

## Court picks defendants

It seems inconceivable—but it's true—the Arizona Supreme Court did tell Sun Citians last week who they could sue in a decision on the Spur feedlot odor pollution case.

The court voted 4-1 to make the Del E. Webb Development Co. a co-defendant with Spur Industries in the damage suit launched 5½ years ago.

Spur has moved its cattle feeding operations from 111th and Olive avenues as a result of a court decision involving the wafting odors. But the suit for damages has lingered on.

The Supreme Court ruled Feb. 13 that if the 145 residents prosecuting the lawsuit win their case, Webb will have to pay part of the damages because Webb induced folks to move to Sun City with knowledge that the feedlot existed nearby.

Well, it certainly appears that the residents should be able to determine for themselves who they want to sue.

In a libel case the victim has such a choice. Let's take a situation in which a speaker at a public meeting defamed a citizen. The victim could sue the speaker or the reporter who wrote the story or the copyreader who handled the story or the editor who had final authority or the newspaper publisher or the owners of the newspaper. Or the

victim could sue all of these or just some of these.

We can't understand why such a situation doesn't exist in the Spur case.

Should Spur be sued successfully, then it would seem that the court could award only half the damages (or whatever percentage it determined was Spur's responsibility) on the basis that the responsibility was shared with Webb.

We are not saying that Webb should or should not be sued by the residents. We are saying that it's not the business of the Supreme Court or any other court to dictate who the defendants should be in any lawsuit. The option of whether to sue all or only some of the potential defendants should rest with those who suffered the contended damage.

There is a tendency for courts to get too meddlesome in areas beyond their venue, and this symptom on a national basis has resulted in a general disintegration of confidence in and respect for the courts. The issue goes beyond Spur and Webb and 145 residents who objected to odors; it involves the structure of our society as we have known (or imagined) it and the shape of this structure in the decades and centuries to come.

# NEWS-SUN

THE COMBINED YOUNGTOWN NEWS AND SUN CITY SUN

2-23-73

## Ruling puts Webb, Spur on same side of suit

2-16-73  
NEWS-SUN

The efforts of the Del E. Webb Development Co. to attract retired persons to Sun City have taken an unusual twist as a result of an Arizona Supreme Court ruling Tuesday.

The court ruled, by a four to one vote, that Webb should be a defendant along with Spur Industries in the damage suit filed by residents in 1967 against Spur's feedlot operation at Olive and 111th avenues.

About 145 Sun City and Youngtown residents filed the damage suit because of the odors drifting from the lot. The operation was forced to move in 1971 when a subsequent suit by Webb was successful in having the lot declared a public nuisance.

Tuesday the court ruled that Webb should pay part of

the damages if the residents' win their suit because the company encouraged them to move to Sun City, knowing the feedlot was nearby.

In effect the residents will be suing Webb along with Spur.

It was the second setback for Webb in the affair. Nearly a year ago the

Supreme Court ruled the company would have to pay part of Spur's moving costs. The court said Spur was forced to move in the public interest and not for any wrongdoing, noting that the feedlot operation was begun in 1955 without knowledge by Spur that a residential community would grow next to it.

*Az Rep. 3/18/72*

## **Feedlot move must be paid by Del Webb**

The Arizona Supreme Court ruled yesterday that Del Webb Construction Co. must compensate Spur Industries for the court-ordered move of its cattle feedlot away from Sun City.

The amount to be paid will be determined by the Superior Court, the ruling said.

Webb was successful in a lawsuit to declare the feedlot and its resultant odors a public nuisance and permanently prohibiting the operation of a feedlot near Webb's Sun City retirement community development.

In the unanimous high court opinion written by Justice James Duke Cameron, the court held that although the operation of Spur's feedlot was both a public and private nuisance to the citizens of Sun City, a lawful business must be protected from encroachment by others.

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## **Feedlot move**

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The Supreme Court noted that Spur began its cattle feeding operation in 1956 and that Webb didn't begin the development of the Sun City community until 1959.

However, "had Spur located the feedlot near the outskirts of a city and had the city grown toward the feedlot," Cameron wrote, "Spur would have to suffer the cost of abating the nuisance."

Cameron said there was no indication at the time the feedlot began operation that "a new city would spring up, full-blown, alongside . . . and that the developer of that city would ask the court to order Spur to move.

"Spur is required to move not because of any wrongdoing on (its part), but because of a . . . regard of the courts for the rights and interests of the public."

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Mar. 12, 1972 in The Arizona Republic

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# Webb Company Must Help Pay Spur Feedlot Move

*Mar. 22, 1972*

In a recent setting decision, the Arizona Supreme Court ruled Friday that the Del Webb Construction Company must compensate Spur Industries for moving its feeding lots away from the periphery of Sun City.

The decision which was a unanimous one found that the Webb Company must pay part of the cost of moving the feedlot even though a lower court had found the feedlot a "public nuisance."

The court, in the decision, thought to be the first of its kind in the nation, found that:

"Spur is required to move not because of any wrongdoing on the part of Spur, but because of a proper and legitimate regard of the courts for the rights and interest of the public," Cameron said.

"Del Webb, on the other

hand, is entitled to the relief prayed for (a permanent injunction), not because Webb is blameless; but because of the damage to the people who have been encouraged to purchase homes in Sun City.

"It does not equitably or legally follow however, that Webb, being entitled to the injunction, is then free of any liability to Spur if Webb has in fact been the cause of the damage Spur has sustained.

"It does not seem harsh to require a developer, who has taken advantage of the lesser land values in a rural area as well as the availability of large tracts of land on which to build and develop a new town or city in the area, to indemnify those who are forced to leave as a result."

"Having brought people to the nuisance to the foreseeable detriment of Spur, Webb must pay Spur for a reasonable amount of



SPUR FEEDLOT IN JUNE, 1971

the cost of moving or shutting down," the opinion said.

Justice James Duke Cameron wrote in the decision that both Spur and

Webb would have to bear their own court costs since "both sides have obtained a measure of relief" in the action.

The matter was remanded to Maricopa County Superior Court for the determination of damages sustained by Spur.

# CATTLE WILL STAY DURING SPUR APPEAL

March 3, 1971

Spur feed lots will not have to start moving out for at least five or six months, if at all, as result of a decision Monday afternoon by the State Supreme Court.

After an hour and a half hearing, the five justices ruled: +That the high court will accept on appeal a Superior Court judgment declaring the cattle feed lots off Olive Avenue a public nuisance and ordering them to be cleared out over an 11-month period.

+That Spur be granted its plea for delay of the judgment during the appeal. The action, which formally "supercedes" the Superior Court judgment also carried a \$10,000 bond which Spur must post.

Chief Justice Fred C. Struckmeyer Jr. told The Sun City Citizen that the appeal would be put on the docket as soon as attorneys for both parties, Webb Development Co. and Spur, submit their briefs. This, he speculated, should take about six weeks.

In all, he said the case should be decided in five months or so.

In its ruling, the court accepted the arguments of Spur's attorney, Mark Wilmer, that the firm would sustain "staggering" damages by having to move during the appeal.

"The net is that Spur is destroyed," he declared.

Wilmer held that the issue of delay of judgment "is

whether Webb is hurt by the delay...a short delay."

The suit was brought in 1967 by Webb claiming that the odor and flies from Spur's operation was preventing webb from developing certain lands off of Olive Avenue.

During the trial in Judge Kenneth C. Chatwin's Superior Court and again Monday, Webb's attorney, Dennis Marlowe, argued that by law in a public nuisance action the plaintiff is not only seeking relief for himself but for everyone affected by the nuisance. Further, Marlowe has hit hard at his contention that a stay of judgment was permitting the continuation of an illegal act—operating a public nuisance.

Judge Chatwin last month had denied Spur a delay during appeal and at the same time signed the judgment against the cattle feeding firm. Under its terms, Spur was to have completed the first of three phases of its move by Feb. 28, just a few days after the judgment was entered. The second phase was to be completed April 30 and the final by Aug. 1.

Originally, Judge Chatwin had ordered the first phase started Dec. 31, 1970. But Spur's plea for delay of judgment and subsequent hearings made that deadline moot.

Marlowe had hoped to get a setting in another Superior

Court sometime in March for the first of the \$1 million in damage suits Sun Citians have brought against Spur over the odors and other alleged nuisances. However, the Supreme Court's ruling may further delay those plans.

At Monday's hearing, the attorneys covered most of the main points brought up at the Superior Court trial and subsequent hearings.

Marlowe suggested a maxim in regard to operation of a public nuisance—"shape up or ship out. If you can't shape up, the law will ship you out."

The Webb attorney admitted during the proceeds he thought Judge Chatwin was wrong in setting the first move for Feb. 28—so close to the judgment. "But not much wrong," he added. "They (Spur people) brought this on themselves."

Marlowe contested Wilmer's arguments that beginning the move would be costly. The Webb attorney suggested that no more cattle be moved in and that those in the pens affected by the first move be taken to other pens there.

Wilmer spoke in terms of nearly \$2 million as the possible loss to Spur having to move out and that there was no legal or practical reason for the judgment to take effect during appeal.

Marlowe said he saw the suit boiling down to three factors—the undisputed fact that Spur is operating a public nuisance and health nuisance, that the court has authority to remedy the nuisance and that Webb has a right to be in court on the issue.

At one point, Wilmer said that it would be difficult in finding pens for the moved cattle. He alluded to upsetting the "social patterns" of the cattle by placing them with other cattle.

Marlowe later said that "we are lost, simply lost," if there is more concern over the social patterns of cows than social patterns of humans. His point was that the law recognized social patterns of humans when confronted with public nuisances.

A number of times the Supreme Court justices interrupted the attorneys' presentations to ask questions.

# High Court Gives Spur New Delay

*Feb 24 71*  
The State Supreme Court has delayed for a week an injunction judgment of Superior Court Judge Kenneth C. Chatwin ordering Spur cattle feeding company to complete the first phase of moving out of its operation south of Olive Avenue by this Sunday.

Supreme Court Judge Fred C. Struckmeyer announced the decision Tuesday afternoon, four days after Judge Chatwin had signed the formal "public nuisance" judgment against Spur and rejected its motion to delay the order until an appeal in the case.

Spur attorneys promptly went to the Supreme Court, asking it for a stay (delay) of judgment while the case is on appeal.

The high court granted a temporary delay of a week pending a hearing which is set for 2 p.m. next Tuesday.

At that time the attorneys will get another chance to argue the issue.

If the Supreme Court grants a permanent stay, Spur will not have to move

out its cattle until the case is resolved in the appellate court.

If it is not granted, presumably the company would have to start the first phase of the move, as ordered by Judge Chatwin.

Two weeks ago, Judge Chatwin revised his judgment moving the first moving deadline from Dec. 31 to Feb. 28. However, the other two moving deadlines remained the same — the second third of the operation must be out by April 30 and the final third by Aug. 1.

The judge's action last week was relayed to William V. Dewey, president of the Sun City Homeowners Association, who expressed delight.

Dewey predicted a rapid conclusion not only to the Spur case, but to the \$5 million in damage suits Sun Citizens have brought against the company over odors and other "nuisances" from the feed pens.

Dewey said he would confer soon with Dennis Marlowe, attorney for both the Del E. Webb Develop-

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## -DELAY DENIED-

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ment Co., plaintiff in the injunction suit against Spur, and the Sun Citizens suing for damage.

He said he believes out of the conference will come plans for requesting a setting on the first of the damage suits in the Superior Court of Judge Donald Froeb.

# Spur Claims New Process Bars Odors From Sun City

Oct. 7, 1970

After five months of testing and evaluating, Spur Industries believes it has found an effective method of preventing odor from its feedlots at Olive and 115th avenues from reaching the Sun City area.

Donald C. Entz, president of Spur, said the system involves neutralizing any odor before it reaches the residential areas.

Basically, a chemical compound is circulated through pipes on the perimeter of the pens nearest the residential areas. The pipes have small holes at periodic intervals which permit the vapor to escape.

THE CHEMICAL compound, which was developed specifically for this type of application and is known by the trade name Chem-screen, neutralizes the components of the air which produce odor. A short distance from the perimeter, only a slight wintergreen scent is noticeable, Entz said, and a little farther away no odor at all is evident.

"This is more than theory," Entz said. "We waited to announce publicly that we had installed the new system until it had been given a thorough trial because we didn't want to raise false hopes. It has been given a severe test now, and we believe it works."

A. Boyd Clements, Spur vice president, said that after recent heavy rains both he and the general foreman at the Glendale operations made repeated visits to Sun City to see if any odor was evident in the protected areas. Since wet weather tends to increase the odor level, they considered this a good test of the system.

"IT WAS amazing," Clements said. "Neither of us, at any time, could detect any odor whatsoever in the Sun City residential area being protected by the chemical screen.

"If our experience is a reliable barometer of conditions since we installed the system, I think we've finally found an answer to our problems as far as odor is concerned."

If further evaluation, including a sampling of opinion from Sun City residents, indicates the system is effective, Spur will double the system's

size. This will effectively screen all of Sun City nearest the feedlot as at present, Entz contends.

THE SYSTEM automatically goes into operation whenever a breeze is blowing from the feedlots in the direction of Sun City. A unique weather vane switch, which Spur devised, turns the system on.

In addition, during rainy weather or at any other time when odor might be a problem even in the absence of a breeze, the system is turned on by hand.

Clements said 1,600 feet of pipe have been installed so far. Including the vaporizers and blowers, the system cost about \$4,000 to install, and it will cost some \$12,000 a year to operate. While this is a sizable expenditure, both Spur officers said it is money well spent if it solves the odor problem.

"WE WANT to be good neighbors to the people of Sun City," Clements said. "We want them to take pride in our operation, which has earned a reputation as one of the cleanest and most efficient in the business

"We sincerely hope the new environmental control system we now have put into operation will do away with any barriers to a good relationship between the people of Spur and the people of Sun City."

Entz announced that Spur definitely plans to appeal an order by Superior Court Judge Kenneth Chatwin last month that Spur must phase out its Olive Avenue feedlot operation by next Aug. 30.

THE ORDER called for halting operations on the first segment—all property within a half-mile of Olive Avenue—by Dec. 31. The segment south of that point to Northern Avenue was given an April 30 deadline.

Aug. 30 was set as the final date for the area south of Northern Avenue.

An appeal could stay execution of Judge Chatwin's order for a lengthy period and, if successful, would overturn it altogether. In any event, the prospects are that Spur operations will not cease in the near future and, therefore, the effectiveness of the odor abatement process is of concern to Sun City residents.

Sun City residents have \$5 million in lawsuits pending against Spur. The suits charge that odors from the feedlot prevent the residents from enjoying their domiciles.



# Spur Seeks Odor Suit Settlement

*September 16, 1970*

Spur Feeding Co., in the wake of a court order announced Friday to phase out its operation, has initiated negotiations aimed at an out-of-court settlement in \$5 million worth of Sun City resident lawsuits.

Irving LaBaer, chairman of the Sun City Homeowners Association pollution committee, said Dennis Marlow, attorney for the Sun City litigants, had been tendered a proposal by Spur lawyers for a settlement.

LaBaer said the initial Spur proposal was not deemed acceptable. However, the opening of such negotiations represents a major

breakthrough for Sun Citians who have been pursuing the legal action for up to three years.

THE ORDER to phase out operations resulted from a Del E. Webb Development Co. suit seeking to enjoin Spur from further operation of cattle feedlots on its property near Sun City's southern border, south of Olive Avenue.

The decision issued by Superior Court Judge Kenneth Chatwin is scheduled to become final when the formal judgment is signed and opposing attorneys have had 10 days to file objections, reported John Meeker, the Webb development firm's president.

With settlement of this suit, Superior Court Judge Donald Froeb is expected to set a trial date soon for the first of the resident suits against Spur. The trial had been postponed pending outcome of the Webb suit.

JUDGE CHATWIN'S ruling declared the feedlot operation constituted a public nuisance and set up a three-stage schedule for phasing out cattle feeding on the property.

Spur was ordered to stop operating on all of its land located within one-half mile of Olive Avenue by Dec. 31 and its property south from that point to Northern Avenue by April 30.

Another segment of land held by Spur, below Northern Avenue, was ordered to be phased out by next Aug. 31.

Judge Chatwin ruled that the feed mill being operated on the property by Spur does not constitute a nuisance and may continue in operation.

THE WEBB suit filed in 1967 and alleged that offensive odors emitting from the Spur feeding operation were preventing development and sale of its Sun City property.

The operation, which was feeding only a small number of cattle when Webb acquired the retirement community property in 1959, now has a feeding capacity of approximately 30,000 head, Meeker said.

Over the same period, Sun City has grown to a community of approximately 15,000 residents, he added.

# Webb-Spur Suit Ends, Decision Expected Soon

Judge Kenneth Chatwin heard oral arguments, the final stage in the Webb suit against the Spur cattle feedlot, and took the case under advisement Friday. Although the Superior Court judge is expected to issue his decision in the case before he leaves on vacation this month, he gave no indication of when he might do so.

He will decide if the Del E. Webb Development Co will be granted an injunction to

close the feedlot and if Webb will be declared a codefendant in damage suits filed against Spur by Sun City residents. Webb contends it cannot fully develop its property because of fecal odors emanating from the feedlot.

**RESIDENT DAMAGE** suits will not be tried until Judge Chatwin makes his decision on the case.

Defense counsel for the

Spur company argued Friday that the Webb company was fully aware or should have been aware that a cattle feedlot was in operation at the time land was purchased.

It was Webb's obligation, the defense claimed, to determine whether the property was fit for its intended use.

The Webb company came into an agrarian area, fully aware of the character of the environment, defense argued.

**THERE WAS NO** knowledge on the part of Spur, defense said, that the Webb company intended to develop south to Olive Avenue.

Spur was lawfully conducting a legitimate business when the land for Sun City was purchased and is still doing so, the defense said. "Nothing Spur has done has made their operation unlawful." Webb knowingly and intentionally went into an area suited for residential use, the defense maintained.

"The Webb company moved into an area in which

*Aug. 5, 1970*  
they were unwelcome from the standpoint of what they intended to do.

"SPUR'S expansion, which ended in 1962, was about 300 per cent. Webb's expansion is several thousand per cent. Webb knew or should have known that trouble would develop."

L. Dennis Marlowe, Webb's counsel, maintained that the Webb company's predecessor had a right to build houses on his land, and that the Webb company, as a result, did also.

The success of Youngtown, Marlowe said, was a factor in the Webb decision to develop in the area. It was determined that the area was a good one in which to live, he said.

**IT WAS** impossible, Marlowe maintained, for the Webb company to foresee formation of the Spur corporation and its expansion from 35 to approximately 113 acres.

Additionally, Marlowe charged that the operation of a feedlot, by reason of odors that emanate from the lot, actually involves more land than is occupied.

NEWS-SUN

THURSDAY, DECEMBER 14, 1967

# 30 SUITS FILED AGAINST SPUR TO HALT ODORS

Sun City property owners have filed 29 lawsuits totaling \$464,165 against Spur Feeding Co. and its officers, who also have been sued by the Del E, Webb Development Co. for a permanent injunction.

Odors emanating from the cattle feeding operation on Olive Avenue west of Sun City are at issue. The 29 property owner suits filed in Maricopa County Superior Court charge that the odors have depressed their property values between \$1,000 and \$8,500 each and all ask for \$10,000 apiece in punitive damages.

The suits, claiming that 30,000 head of cattle are fed on the Spur lot, charge:

"Manure is daily accumulated on the property, odors are not kept under control, and the operation has emitted into the air vile, stinking, nauseating, and obnoxious odors which are frequently carried by air currents over the nearby residences."

The Webb suit asked the court to halt the feeding operation and order removal of manure from the premises.

George Meade, Sun City Homeowners Association president, issued the following statement:

"These individual suits will benefit the entire community and deserve the support of everyone in Sun City. A property value exceeding \$100,000,000 is at stake.

"A fund, now nearly \$3,000, is being raised by the committee to engage experts, pay various other expenses for the 29 suits, and all are urged to contribute. Contributions are to be made to the Committee on Air Pollution, P.O. Box 383, Sun City.

"Members of the committee conferred with the officers of Spur Feeding Co. with the purpose of eliminating the odors from the feeding lots.

"Spur uses some feeding lots near the \$5 million Swift plant near Tolleson. We suggested they move the feeding pens near Sun City to Tolleson. They refused, stating that the people in Tolleson would object to the odor.

"A chemical company contacted us and stated that they had a product to eliminate odors. We examined the pens using the product.

"We took this matter up with the Spur company. They promised to try the material on five acres. Then, after subsequent calls on the Spur company, the reply was the tryout was to be on 75 acres near Sun City, next reply tryout on 75 acres near Tolleson.

"Communication with the chemical company disclosed that nothing was attempted with the product.

"The Committee on Air Pollution then came to the conclusion that nothing could be done through cooperation with Spur Feeding Co. and recommended our recourse could only be through court action.

"The Del E, Webb Development Co. had contacted the Spur Feeding Co. with a view of purchasing their land and thus removing the cattle pens.

"These negotiations did not materialize and the result is that the Webb company has brought suit against Spur requesting that a permanent injunction be granted prohibiting the use of the cattle pens near Sun City.

"Support the Homeowners Association by joining now. Annual dues are only \$2 per person. It is the only organization representing everyone in Sun City."

## Hearing Slated Tuesday On Feedlot's Appeal Bid

Spur Feeding Co., ordered Friday to begin phasing out its Olive Avenue cattle feeding operation by Sunday, won a temporary reprieve yesterday from the Arizona Supreme Court.

Chief Justice Fred Struckmeyer told the courtroom, packed with Sun Citians, that a formal hearing would be held at 2 p.m. Tuesday to determine whether Spur has grounds for an appeal.

Judge Kenneth Chatwin ruled Friday in Superior Court against a stay of injunction and dismissed a Spur counterclaim against the Del E. Webb Corp., paving the way for a phaseout of the Spur cattle feeding operation.

**THE FIRST MOVE**—vacating the feedlot area within a half-mile of Olive Avenue, thereby creating an immediate buffer zone between the cattle and odor-engulfed Sun City—was to have been completed by Sunday.

With the Supreme Court action, the Spur move apparently will be delayed at least until Tuesday, but doubt existed after the ruling as to whether a temporary stay had been given.

"The court did not say whether they would have to move," L. Dennis Marlowe, Webb attorney, stated after the decision had been announced. "I don't know if they have to move or not because the court said nothing about a temporary stay of injunction."

**ATTORNEY** Roger Perry, representing Spur, stated that Spur would not have to move Sunday.

Perry, representing Wilmer, outlined the history of the court battle before the Supreme Court yesterday and stated that a stay should be given for two reasons: (1) the Sunday move would involve 10,000 cattle, and would be impossible to

complete, and (2) the cattle are approaching the finishing stage of their feeding and a move would result in a severe weight loss and financial loss to Spur at this time.

"Did Spur not make plans for moving the cattle if the suit was lost?" Chief Justice Struckmeyer asked.

"**WE DID THINK** of losing," Perry stated, "but we did not think one judge should make the decision. We were given 10 days from when the ruling was signed to move."

Justice Lorna Lockwood asked Perry where the cattle might be moved, but Perry declined to give an answer. Explaining that his first familiarization with the case was Monday, he apologized to the court for not knowing all the facts in the court battle.

Marlowe took 15 minutes to ask for a denial of the Spur petition. Marlowe stated that there was no reason for this court to take jurisdiction in the matter, that a public nuisance must be stopped, that no authority has been presented in the case for granting a stay to a public nuisance and a health nuisance.

**AFTER A SHORT** recess,

Justices Jack Hayes, Jesse Udall, Duke Cameron, Lorna Lockwood, and Struckmeyer announced that the Supreme Court would take jurisdiction in the matter.

**IN MAKING** the ruling, Judge Chatwin stated that a license to operate a beef cattle feedlot under state law 24-391 to 24-397 does not license the operator to operate a feedlot if it constitutes a public or private nuisance.

If such were true, the ruling continued, 24-391-97 would violate Article 2, Section 4, of the Arizona Constitution and the 14th Amendment of the U.S. Constitution.

**THE OPERATION** is also, Judge Chatwin concluded, in violation of public health statute 36-601 because the feedlot is a breeding place for "flies, rodents, mosquitoes, and other insects capable of carrying and transmitting disease..."

The ruling conclusion adds that the Del E. Webb Corp. is entitled to an injunction enjoining Spur Feeding Co. from operating its feeding pens and requiring Spur to remove manure and cattle from the area.