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PENNSYLVANIA SUPREME COURT INTERPRETS GUARANTEED MINIMUM ROYALTY ACT TO PERMIT DEDUCTIONS FOR POST-PRODUCTION COSTS

by Robert Jochen

On March 24, 2010, the Pennsylvania Supreme Court issued an opinion in a case of first impression interpreting Pennsylvania’s Guaranteed Minimum Royalty Act (GMRA), 58 PA. STAT. § 33. *Kilmer v. Elexco Land Services, Inc.*, 2010 WL 1170215 (Pa. 2010). In early 2008, the plaintiff-landowners filed a complaint seeking to invalidate their 2007 lease claiming that the lease’s royalty provision violated the GMRA. Under the GMRA, a lease is not valid unless it guarantees a royalty of at least one-eighth of all oil or natural gas removed from the property. The plaintiffs’ lease provided them with one-eighth of the sales proceeds received by the gas company, but authorized a reduction for the payment of post-production costs. The plaintiffs argued that allowing for deductions of post-production costs reduced the royalty to less than the one-eighth required by the GMRA. The defendants argued that the “net-back method” of assessing royalties, whereby one-eighth of the post-production costs are subtracted from one-eighth of the sale price of the gas, did not violate the GMRA. Although the GMRA is silent regarding the definition of royalty and the method for calculating it, the court held that “the GMRA should be read to permit the calculation of royalties at the wellhead, as provided by the net-back method used in the Lease.” For more information on natural gas issues, please visit the Agricultural Law Center’s [Natural Gas Resource Area](#).



Above: Photo by J. Craig Williams.

Left: Photo by PSU College of Agricultural Sciences.

NEW YORK APPELLATE COURT RULES AGAINST DAIRY UTILIZING A COW-SHARE ARRANGEMENT FOR DISTRIBUTION OF RAW MILK

by Christine Arena

A New York court has ruled that a permit is required under state law any time raw milk products are sold or otherwise provided to consumers. *Meadowsweet Dairy, LLC, v. Hooker*, 2010 WL 811302 (N.Y. App. Div. Mar. 11, 2010). Meadowsweet Dairy, LLC, which describes itself as a “community-owned dairy project,” engaged in an arrangement that allowed individuals to pay an initial membership fee and then ongoing quarterly fees in exchange for raw milk products. The quarterly fee was based on the individual member’s consumption of the products and was used to maintain the herd. Operations were disrupted, however, when the New York Department of Agriculture and Markets inspected the facility and destroyed 260 pounds of raw milk products alleged to be adulterated per N.Y. AGRIC. & MKTS. LAW §§ 198-214n. Meadowbrook believed it was not subject to the law because it was not selling the milk but merely distributing it to members as dividends for their investment in the LLC. The court disagreed, explaining that the law applied to any distribution of such products including giving them away to consumers. The court ruled that while LLC members may have owned interests in shares of the LLC, they did not own an interest in raw milk or other specific property of the LLC. Thus, Meadowbrook was required to obtain a raw milk permit in accordance with N.Y. COMP. CODES R. & REGS. tit. 1, § 2.2. For more on this case, please visit the [NY Dept. of Agriculture and Markets](#) Web site.



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COMMONWEALTH COURT CLARIFIES CLEAN AND GREEN ENROLLMENT REQUIREMENTS

by Joshua Wilkins

The Commonwealth Court has clarified several enrollment conditions for the Farmland and Forest Land Assessment Act of 1974, 72 PA. STAT. ANN. §§ 5490.1-5490.13, also known as Clean and Green (CG). *Way v. Berks County Bd. of Assessment Appeals*, 2010 WL 744234 (Pa. Commw. Ct. Mar. 5, 2010). Land enrolled in CG is preferentially assessed, lowering the property taxes. Landowners may enroll if they own eligible lands of at least ten acres, or have at least \$2000 anticipated annual gross income from agricultural production of the land. In *Way*, the court held that land contained within a public road is ineligible for the purpose of meeting the ten-acre minimum threshold. The court also ruled that only products actually sold may be considered as annual income, so hay grown and used by the farmer could not be counted towards the \$2000 annual income minimum. Additionally, the court held that the annual gross income from production of the land must be computed based upon current market conditions, and not upon possible future market increases. For more on CG, visit the Agricultural Law Center's [Clean and Green Resource Area](#).

USDA LIMITS PRODUCER-HANDLER EXEMPTION FROM REQUIREMENTS OF MILK MARKETING ORDERS

by Ross Pifer

USDA has issued a final decision to limit the exemption afforded to producer-handlers from the pooling and pricing requirements of all federal milk marketing orders. 75 Fed. Reg. 10,122 (Mar. 4, 2010). The regulation of milk pricing at the national level is accomplished through ten marketing orders, which each correspond to a specific geographic area regulated under the federal system. As part of this system, processors, also called handlers, are required to pay into a settlement fund for the appropriate market order area based their specific usage of milk. Handlers that primarily process milk for fluid milk sales generally pay more into this fund than do handlers who primarily process milk into cheese or butter. The administration of this fund helps to ensure that dairy producers are paid uniformly for milk regardless of the product into which their milk is processed. Producer-handlers, which are farms that process their own milk, are exempt from paying into this fund, but only if they sell three million pounds or less of milk each month. For more information, visit the [USDA Ag Marketing Service](#) Web site.

SWISS VOTERS REJECT REFERENDUM REQUIRING COURT-APPOINTED LAWYERS FOR ANIMALS

by Richard Lupinsky Jr.

On March 7, 2010, Swiss voters rejected a referendum that would have required each of its 26 cantons to create a public defender position specifically to represent animals in court. The proposal required both a majority of cantons and Swiss voters overall to vote in favor of the proposal. A majority of voters in each canton and more than two thirds of the voters overall, however, opposed the referendum. The initiative was put on the ballot after the Swiss Animal Protection organization collected over 100,000 signatures. Since 1992, the Zurich canton has had its own animal public defender position. Switzerland has some of the most stringent animal welfare laws of any nation. For example, the country's current animal protection law stipulates that social animals cannot be kept alone, farm animals must be given time to exercise outside their stalls, and anglers must complete a course on the humane catching of fish. Additionally, Swiss dog owners must take a training course prior to owning a dog. For more information on Swiss animal issues, please visit the [Swiss Federal Veterinary Office](#) Web site.

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