

PENNSTATE



The Dickinson
School of Law

The Agricultural Law Resource & Reference Center

The Agricultural Law Brief

August 31, 2008

Volume 2, Issue 2

Summarizing Local, State, National, and International Legal
Developments Impacting Food and Agricultural Law in Pennsylvania

INSIDE THIS ISSUE:

**PA Fair Share for
Clean Water Plan**

**Food Safety—
Cloned Animals**

**Country of Origin
Labeling (COOL)**

**Natural Gas—
Eminent Domain**

**Mad Cow Disease—
Private Testing**

Visit the
Agricultural Law
Center Website at

[www.dsl.psu.edu/
centers/aglaw.cfm](http://www.dsl.psu.edu/centers/aglaw.cfm)



To subscribe to
The Agricultural
Law Brief,
send an email to
rhp102@dsl.psu.edu



HOUSE AGRICULTURE COMMITTEE HOLDS PUBLIC HEARING ON FARM CONSERVATION FUNDING

On August 20, the Pennsylvania House of Representatives Agriculture and Rural Affairs Committee held a public hearing on farm conservation funding needs at Ag Progress Days in Rock Springs, Pennsylvania. Much of the testimony during this hearing focused on the Pennsylvania Fair Share for Clean Water Plan (Fair Share Plan). This conservation funding plan is supported by a broad range of organizations including the Pennsylvania Farm Bureau, the Chesapeake Bay Foundation, the Pennsylvania Association of Conservation Districts, the Pennsylvania Builders Association, and the Pennsylvania Municipal Authorities Association.



Photo by Lynn Betts, USDA Natural Resources
Conservation Service

The Fair Share Plan aims to help Pennsylvania meet its state and federal clean water mandates by funding wastewater plant improvements, providing direct aid to farmers to reduce nutrient runoff through the implementation of agricultural best management practices, funding technical assistance programs provided by county conservation districts, and restoring funds for research, education, and promotion programs. The plan also includes a nutrient credit trading program to encourage future economic growth and development as well as increased opportunities for farmers. A number of bills addressing portions of the Fair Share Plan are pending in both the Senate and the House of Representatives. For more information on the Pennsylvania Fair Share for Clean Water Plan, please visit www.PAFairSharePlan.org.

EUROPEAN FOOD SAFETY AUTHORITY PUBLISHES SCIENTIFIC OPINION ON EFFECTS OF ANIMAL CLONING

At the request of the European Commission, the European Food Safety Authority (EFSA) recently published a scientific opinion addressing the impact of animal cloning upon food safety, animal health and welfare, and the environment. The EFSA Journal (2008) 767, 1-49. Due to limited available data, the EFSA's Scientific Committee addressed only two species - cattle and swine - in its opinion. With regard to food safety, the opinion stated that "there is no indication that differences exist in terms of food safety for meat and milk of clones and their progeny compared with those from conventionally bred animals." The opinion, however, noted that the cloning process created some adverse animal health and welfare impacts including increased morbidity and mortality of cloned progeny. Based upon the available data, the authors of the opinion did not foresee any environmental impact of animal cloning. This opinion did not address the moral or ethical issues associated with cloning animals for food.

The European Parliament (EP) plans to address "the cloning of animals for food supply" during its plenary session on September 2. The EP's Agriculture Committee has called for a ban on the cloning of animals for the food supply as well as a ban on the importation of cloned animals and products from cloned animals. For more information, visit the [EFSA Animal Cloning](http://www.efsa.europa.eu) or the [U.S. Food and Drug Administration Animal Cloning](http://www.fda.gov) Web pages.

Country of Origin Labeling Required on Specified Food Products by September 30

The United States Department of Agriculture has issued an interim final rule establishing requirements for the mandatory country of origin labeling (COOL) of specified food products. 73 Fed. Reg. 45,106 (Aug. 1, 2008). COOL has been mandated by the provisions of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), Pub. L. No. 107-171, 116 Stat. 134, and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Pub. L. 110-246, 122 Stat. 1651. Pursuant to these statutes, retailers are required to indicate the country of origin for all covered commodities.

The 2002 Farm Bill included beef, veal, lamb, pork, fish and shellfish, perishable agricultural commodities (fruits and vegetables), and peanuts as covered commodities. The 2008 Farm Bill added chicken, goat, macadamia nuts, pecans, and ginseng to this list. Mandatory COOL became effective for fish and shellfish on April 4, 2005, and will become effective for all other covered commodities on September 30, 2008. For more information on this topic, please visit the [USDA Agricultural Marketing Service COOL](#) Web page.

Energy Company Seeks to Utilize Eminent Domain Process to Acquire Natural Gas Storage Rights

Steckman Ridge Group, a Texas-based energy company, has filed suit in the United States District Court for the Western District of Pennsylvania to acquire subsurface natural gas storage rights in Bedford County. Steckman seeks these rights in eminent domain through the federal Natural Gas Act, 15 U.S.C. § 717f(h), which authorizes the acquisition of private property rights in limited circumstances. The statute requires a certificate of public convenience, which the Federal Energy Regulatory Commission (FERC) issued to Steckman on June 5. The subject landowners object to the establishment of the storage field because it will limit their ability to profit from gas drilling into the Marcellus Shale formation. The landowners filed a motion for reconsideration with FERC, and on July 16, FERC authorized a rehearing of the grant of the certificate. If Steckman prevails in the pending suit, the landowners will be entitled to just compensation for their subsurface storage rights in an amount to be determined by the court. This case has been docketed as 3:08-cv-00177-KRG (W.D. Pa. filed July 15, 2008).

Beef Producer Not Permitted to Conduct BSE Testing of All Animals without USDA Approval

On August 29, the United States Court of Appeals for the District of Columbia Circuit ruled in favor of the United States Department of Agriculture (USDA) in a dispute over a beef producer's plan to conduct 100% testing for Mad Cow Disease (BSE). *Creekstone Farms Premium Beef, L.L.C. v. Department of Agric.*, Nos. 07-5173, 07-5199, 2008 WL 3980533 (D.C. Cir. Aug. 29, 2008). Creekstone sought to test all of its cattle in an effort to assure its foreign and domestic customers of the safety of its products. USDA denied Creekstone's request to conduct 100% testing on the basis that universal testing did not provide a benefit due to the lengthy incubation period of BSE and the relative youth of most animals at the time of slaughter. In contrast to universal testing, USDA's BSE surveillance program is based upon identifying high risk cattle for testing. The court ruled that USDA has the right to regulate BSE testing under the Virus-Serum-Toxin Act, 21 U.S.C. §§ 151-59. For more information on BSE, visit the [USDA BSE](#) Web page.

PENN STATE



**The Dickinson
School of Law**

THE AGRICULTURAL LAW RESOURCE & REFERENCE CENTER

**228 Beam Building
University Park, PA 16802
Phone: 814-865-3723
Fax: 814-863-7274**

<http://www.dsl.psu.edu/centers/aglaw.cfm>

Center Director

**Ross H. Pifer, J.D., LL.M.
Email: rhp102@dsl.psu.edu**

Research Assistants

**Jacqueline Calahong
Email: jac662@dsl.psu.edu**

**Anna Clovis
Email: amc447@dsl.psu.edu**

**Bryn Mayes
Email: bem213@dsl.psu.edu**

**Jan Rumsey
Email: jmr514@dsl.psu.edu**

ABOUT THE AGRICULTURAL LAW RESOURCE & REFERENCE CENTER

The Agricultural Law Resource and Reference Center is a collaboration between The Pennsylvania State University's Dickinson School of Law and College of Agricultural Sciences. Funded in part by the Pennsylvania Department of Agriculture, the Center is designed to provide the highest quality educational programs, information, and materials to those involved or interested in agricultural law and policy.

The Center does not provide legal advice, nor is its work intended to be a substitute for such advice and counsel.

For comments, suggestions, or to unsubscribe, email rhp102@dsl.psu.edu