



January 2010

INSIDE THIS ISSUE

Dairy Economic Loss Assistance Payment

Allegheny National Forest Litigation

Greenhouse Gas Emissions Agreement

Dairy Farm—Nuisance Litigation

Poultry Growing Arrangements

USDA ANNOUNCES COMBINED \$350 MILLION FINANCIAL ASSISTANCE FOR DAIRY PRODUCERS

by Joshua Wilkins

In December 2009, the USDA announced two programs to financially assist dairy producers. The dairy industry has struggled recently as milk prices have declined. The Dairy Economic Loss Assistance Payment (DELAP) Program, announced on December 17, 2009, will disburse \$290 million in one-time direct payments to dairy producers based on the annual production of individual operations. To be eligible for the program, the operation must have produced milk in the United States at any time between February and July in 2009, and be able to certify production data from those months. Producers earning more than \$500,000 annually between 2006 and 2008 in nonfarm income are not eligible for the program. The estimated payments will be \$0.32 per hundredweight of milk, and payments will be calculated up to a total of six million pounds per operation. Producers who did not participate in a 2009 dairy program must apply for DELAP by January 19, 2010. A second program was announced on December 18, 2009, through which the USDA will expedite the purchase of \$60 million of cheese and cheese products by the Commodity Credit Corporation from domestic producers to be distributed to low income families through food banks. Both programs were authorized by the 2010 Agricultural Appropriations Act, P.L. No. 111-80, 123 Stat. 2090. For more, visit the [USDA Farm Service Agency](#) Web site.



Photographs courtesy of Penn State College of Agricultural Sciences.

U.S. FOREST SERVICE ENJOINED FROM REQUIRING NEPA ANALYSIS PRIOR TO NATURAL GAS DRILLING IN ALLEGHENY NATIONAL FOREST

by Robert Jochen

The United States District Court for the Western District of Pennsylvania has issued a preliminary injunction enjoining the United States Forest Service from requiring environmental analyses prior to the extraction of private natural gas interests in the Allegheny National Forest. *Minard Run Oil Co. v. U.S. Forest Service*, 2009 WL 4937785 (W.D. Pa. Dec. 15, 2009). In *Minard Run*, the plaintiffs sought to prevent the Forest Service from implementing the terms of a settlement agreement it had reached to resolve prior litigation filed by an environmental advocacy group. See *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, 2009 WL 1324154 (W.D. Pa. May 12, 2009). Pursuant to the agreement, the Forest Service agreed to analyze future drilling proposals in the Allegheny National Forest according to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332. The plaintiffs in *Minard Run* argued that the agreement and its implementation were contrary to the law and also harmed them by preventing the drilling of future wells in the privately held mineral estates located within the forest. The district court found that the Forest Service did not possess regulatory authority over gas drilling in the National Forest and that NEPA analyses did not apply to such drilling. As such, the court preliminarily enjoined the new Forest Service requirements. For more information on natural gas issues, please visit the Agricultural Law Center's [Natural Gas Resource Area](#).



Visit the Agricultural Law Center Web site at:

www.law.psu.edu/aglaw

Subscribe to the Brief

USDA SIGNS AGREEMENT WITH THE U.S. DAIRY INDUSTRY TO PROMOTE SUSTAINABLE PRACTICES

by Richard Lupinsky Jr.

On December 15, 2009, at the UN Climate Change Conference in Copenhagen, USDA Secretary Tom Vilsack announced the execution of a Memorandum of Understanding (MOU) between USDA and the Innovation Center for U.S. Dairy. The agreement establishes a formal commitment to promote sustainable practices within the dairy industry with the aim to reduce greenhouse emissions up to 25% by 2020. To this end, USDA and dairy producers will promote the adoption of anaerobic digesters, which convert methane captured from livestock manure into electricity. USDA will encourage the adoption of digesters through research and program coordination while the Innovation Center will focus on communicating program opportunities, facilitating outreach, and assisting dairy producers in implementing emission-reducing projects. The three-year MOU imposes no financial obligations on either the government or the dairy industry. The Innovation Center was established through the national Dairy Checkoff program. For more information, visit the [Innovation Center for U.S. Dairy](http://www.usdairy.com) Web site at www.usdairy.com.

PROPOSED ILLINOIS DAIRY FARM PREVAILS IN NUISANCE LITIGATION FILED BY ENVIRONMENTAL GROUP

by Ross Pifer

An Illinois court has ruled in favor of a proposed dairy farm in a nuisance lawsuit. *Helping Others Maintain Env'tl. Standards v. Bos*, No. 2008 CH 42, slip op. (Jo Daviess Co. Cir. Ct. Dec. 15, 2009). An environmental organization, Helping Others Maintain Environmental Standards (HOMES), alleged that the dairy would constitute a nuisance and sought a permanent injunction preventing the construction and operation of the farm. At trial, HOMES presented testimony from neighbors concerned about noise, odor, and dust that would be emitted from the dairy if it were constructed. The court rejected this testimony as insufficient to establish a prospective nuisance. HOMES also alleged that the waste containment pond liners on the farm would not prevent leakage into the underlying surface water due to the location of the facility on karst bedrock. The court considered expert testimony as to the presence and impact of karst and determined that HOMES had failed to prove its entitlement to an injunction. The court's opinion has been posted on the [Agricultural Law Center's Right to Farm Resource Area](#).

USDA AMENDS REGULATIONS GOVERNING POULTRY GROWING ARRANGEMENTS

by Ross Pifer

On December 3, USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) promulgated a final rule to increase the records that poultry integrators must provide to their contract growers. 74 Fed. Reg. 63,271 (to be codified at 9 C.F.R. § 201.100). This rule was issued to improve transparency within the poultry growing market. Under the new rule, integrators are required to provide their contract growers with a copy of the poultry growing arrangement on a timely basis. This contract must contain the terms and criteria for placement in any performance improvement plan. The rule also ensures that the grower is free to discuss contract terms with specified advisors and individuals including other growers of the same integrator. Finally, the rule requires that an integrator provide a grower with 90 days written notice prior to the termination or non-renewal of a poultry growing arrangement. Failure to comply with the new rule may subject an integrator to sanctions under the Packers and Stockyard Act, 7 U.S.C. §§ 181-229c. For more information, visit the [GIPSA](#) Web site.

  <p>The Dickinson School of Law</p>	 <p>pennsylvania DEPARTMENT OF AGRICULTURE</p>	  <p>College of Agricultural Sciences</p>
--	--	--

**THE AGRICULTURAL LAW
RESOURCE AND REFERENCE CENTER**

207C Lewis Katz Building
University Park, PA 16802
Phone: 814-865-3723
Fax: 814-863-7274
www.law.psu.edu/aglaw

Center Director
Ross H. Pifer, J.D., LL.M.
 Email: rpifer@psu.edu

Research Assistants
Christine Arena
Robert Jochen
Richard Lupinsky Jr.
Joshua Wilkins

ABOUT THE AGRICULTURAL LAW RESOURCE AND REFERENCE CENTER

The Agricultural Law Resource and Reference Center has been established pursuant to Pennsylvania statute, 3 PA. STAT. §§ 2201-2209, as a collaborative enterprise between Penn State Law, the Penn State College of Agricultural Sciences, and the Pennsylvania Department of Agriculture. The Center provides information and educational programs on agricultural law and policy for producers and agribusinesses, attorneys, government officials, and the general public.

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 rpifer@psu.edu.