

PENNSTATE



July 31, 2008

Volume 2, Issue 1

The Agricultural Law Resource & Reference Center

The Agricultural Law Brief

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

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GOVERNOR RENDELL SIGNS LEGISLATION TO ENCOURAGE DEVELOPMENT OF BIOFUELS

On July 10, Governor Edward G. Rendell signed legislation (H.B. 1202 and Special Session S.B. 22) that aims to increase the development of biofuels in Pennsylvania and to decrease the nation's dependence on foreign fuels. House Bill 1202, the Biofuel Development and In-State Production Incentive Act, establishes a mandate requiring that a specified percentage of cellulosic ethanol and biodiesel be included in every gallon of gasoline and diesel fuel that is sold in Pennsylvania. This requirement may add one billion gallons of

cellulosic ethanol and biodiesel to Pennsylvania's fuel supply. Cellulosic ethanol can be produced from switchgrass, paper pulp, wheat straw, agricultural waste such as corn cobs, and municipal waste. Due to the abundance of these products in the commonwealth, Governor Rendell has stated that "Pennsylvania can be to cellulosic ethanol what corn-based ethanol was to Iowa and the Midwest." Press Release, Governor's Office (Jul. 10, 2008).

Special Session Senate Bill 22 amended the Alternative Fuels Incentive Act to provide for biomass-based diesel production incentives through June 30, 2011. Under this legislation, producers can receive up to 75 cents for every gallon of biomass-based diesel that is produced and sold in Pennsylvania. The legislation authorizes an annual expenditure of \$5.3 million for these production incentives. For more information, please visit Pennsylvania's Energy Independence Strategy Web site at www.depweb.state.pa.us/energyindependent.



A typical ethanol plant in West Burlington, Iowa (Big River Resources, LLC). Photo by Steven Vaughn, USDA

WORLD TRADE ORGANIZATION (WTO) MEMBERS FAIL TO REACH AGREEMENT AT DOHA ROUND TRADE TALKS

The latest Doha Round trade talks collapsed on July 29 following nine days of intense discussions. WTO member nations had convened in Geneva, Switzerland, on July 21 in an effort to reach a consensus on agricultural and industrial trade measures. The Doha Round of trade negotiations began in 2001 and was envisioned as a developmental round to strengthen the economies of developing countries. Coming into this meeting, agricultural subsidies and market access had been among the biggest points of disagreement. Developing nations, such as India and Brazil, sought to reduce the level of subsidies provided to agricultural producers by developed nations, such as the United States and various European states.

According to WTO Director-General Pascal Lamy, members narrowed their disagreements on 18 of the 20 topics to be addressed at the meeting. Negotiations over the final draft agreement, however, ultimately broke down due to unresolved differences regarding the special safeguard mechanism (SSM). The SSM would allow developing countries to raise tariffs to address dramatic increases in agricultural and industrial imports. The member nations were unable to agree on the appropriate level of safeguard. Now that the Geneva mini-ministerial has concluded without an agreement, the future of the Doha Round is uncertain. For more information on this topic, please visit the WTO Doha Development Agenda Web site.

Beekeepers Fail to Establish Causation in Lawsuit Against Chemical Company

In *Bauer v. Bayer A.G.*, No. 3:CV-03-1687, 2008 WL 2522342 (M.D. Pa. Jun. 20, 2008), Judge Thomas I. Vanaskie (DSL '78) of the United States District Court for the Middle District of Pennsylvania entered judgment in favor of a chemical company (Bayer) in a lawsuit that had been filed by thirteen beekeepers. The apiarists alleged that the insecticide Gaucho, manufactured by Bayer, had caused substantial death within their honeybee populations. They noticed abnormally high death rates within their bee hives and theorized that the bees had been killed by exposure to Gaucho. In granting Bayer's motion for summary judgment, Judge Vanaskie refused to allow the expert testimony proffered by the beekeepers, ruling that the opinion of the expert witness was not based upon a reliable foundation. Without the testimony of this witness, the beekeepers could not present sufficient evidence on the issue of causation in order to proceed with the case. This court opinion does not discuss Colony Collapse Disorder (CCD), a mysterious ailment that has devastated honeybee populations across the country. CCD was first reported by a Pennsylvania beekeeper in November 2006. For information on CCD, visit <http://maarec.cas.psu.edu>.

Pennsylvania DCNR Accepts Bids for Natural Gas Drilling on 18 Tracts of State Forest Land

Under the authority of the Conservation and Natural Resources Act, 71 P.S. § 1340.302(a)(6), the Pennsylvania Department of Conservation and Natural Resources (DCNR) has announced that it will accept sealed bids to execute oil and natural gas leases on state forest lands covering 74,023 acres in Tioga and Lycoming Counties. DCNR began the lease sale on July 14 and will accept bids until September 3. All proceeds from the oil and gas leases will be directed into the Oil and Gas Lease Fund to be used for recreation, conservation, dams, or flood control. See 71 P.S. § 1331. This lease sale reflects the DCNR policy of shifting natural gas development from shallow to deep and medium natural gas reservoirs, such as exploration into the Marcellus Shale formation. This policy is intended to reduce the surface impact of natural gas development activities because deep gas drilling requires fewer wells than does shallow gas drilling. For more information on this topic, visit the [Natural Gas Exploration Resource Area](#) on the Ag Law Center Web site.

Lancaster County Court Orders Establishment of Agricultural Security Area (ASA)

A group of Lancaster County farmers sought to establish an Agricultural Security Area (ASA) pursuant to the Agricultural Area Security Law (AASL), 3 P.S. §§ 901-15. Under the provisions of the AASL, farmers who own land within an established ASA receive certain protections from both governmental regulation and the exercise of eminent domain. Farmers located within an ASA also may sell the developmental rights to their land through the grant of an Agricultural Conservation Easement. The East Lampeter Township Board of Supervisors denied the request to establish an ASA, finding that an ASA was unnecessary because existing farmland protection and preservation programs were sufficient to protect the farmers' interests. In a case of first impression, the Court of Common Pleas reversed the decision of the township and held that the "need [for an ASA] is determined by the petitioning farmers, not the municipal governing body." *In Re: Agric. Sec. Area in E. Lampeter Twp.*, No. CI-07-12367, slip op. at 6 (Lancaster Ct. Com. Pl. Jul. 11, 2008).

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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.

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