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## PUC Votes 3-2 to Remand Laser Northeast Gathering Company’s Application for Status as a Public Utility

*Michael A. Magee, Research Assistant*

In its May 19<sup>th</sup> decision, the Pennsylvania Public Utility Commission (PUC) moved one step closer to granting Laser Northeast Gathering Co. (Laser) public utility status. Laser applied for utility status to offer gas gathering and transportation pipeline services in Susquehanna County in January 2010. PUC’s 3-2 decision rejected Administrative Law Judge Susan Colwell’s recommendation to deny Laser’s application. Judge Colwell’s decision was based on her conclusion that Laser’s gathering system would not serve the “public,” but rather individual gas owners. PUC disagreed, finding that “public” may refer to individuals or companies, and remanded the case to determine whether utility status for Laser is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 PA. STAT. § 1103(a). The significance of the decision was emphasized by dissenting Commissioner James Cawley: “The Public Utility Code must be strictly



Photo: Diane McLaughlin

construed when pipelines are involved, because a certificate [of public convenience also confers the power of eminent domain, which upsets the negotiating balance between landowners and pipeline operators over rights-of-way or easements, with grave implications for the individual Pennsylvanians . . . given the enormity of shale gas extraction underway in the state.” PUC Press Release, May 19, 2011. For more information, please visit the [Government Agencies section of the Agricultural Law Resource and Reference Center’s Marcellus Shale Resource Area](#).

## Pennsylvania Department of Agriculture Promulgates New Milk Sanitation Regulations

*by Tanya J. Cramoy, Research Assistant*

Pennsylvania’s new Milk Sanitation Regulations consolidate and revise regulations regarding raw (unprocessed) milk for human consumption. 7 PA. CODE Ch. 59a. Within Pennsylvania, raw milk permit-holders may produce and sell raw whole milk, however, the regulations now require raw milk label information to be reviewed by the Department and to contain a consumer advisory of the increased risks associated with raw, unprocessed, animal-derived foods. Additionally, the packaging of raw milk for off-farm sales now requires mechanical filling and capping that must occur “in a room separate from the milk room.” Likewise, reusable containers must be washed in a room separate from any room devoted to bottling. New raw milk provisions also call for regular testing of bacterial, coliform, and somatic cell counts, as well as regular interval testing for drugs and specific pathogenic bacteria. Beyond raw milk sales, the new regulations bring Pennsylvania’s regulatory standards regarding pasteurized milk and milk for manufacturing into closer alignment with current federal recommendations. The previous regulations were based on the 1978 recommendations and did not reflect up-to-date knowledge regarding pathogenic bacteria and foodborne human illness. These regulations became effective on May 21, 2011. 41 Pa. Bull. 2540. For more information, visit the [PA Department of Agriculture](#) website.

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## Environmental Groups File Motion to Intervene in Chesapeake Bay Litigation

by Jay N. Angle, Research Assistant

On May 25, 2011, the Chesapeake Bay Foundation (CBF) and other environmental groups filed a motion to intervene to become a party in *American Farm Bureau Federation v. Environmental Protection Agency*. Am. Farm Bureau Fed'n v. EPA, No. 1:11-cv-00067-SHR (M.D. Pa. filed Jan. 10, 2011). The American Farm Bureau Federation (AFBF) and Pennsylvania Farm Bureau (PFB) initially filed a complaint against the Environmental Protection Agency (EPA) on January 10, 2011, in the U.S. District Court for the Middle District of Pennsylvania, to challenge EPA's finalized Chesapeake Bay Total Maximum Daily Loads (Bay TMDLs). AFBF and PFB argue that the Bay TMDLs improperly intrude upon state authority to make water quality decisions. Additionally, AFBF and PFB claim that EPA based the Bay TMDLs on erroneous information and that the public did not sufficiently participate in the TMDL process. CBF and its environmental group allies support the Bay TMDLs and oppose AFBF and PFB's complaint against EPA. CBF contends that EPA properly promulgated the Bay TMDLs and that EPA provided a lengthy and transparent TMDL process for the public. For more information, please visit the [Agricultural Law Resource and Reference Center's Chesapeake Bay Resource Area](#).

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## Commonwealth Court Affirms Use of Common Level Ratio for Clean and Green Property

by Brice T. McCoy, Research Assistant

The Pennsylvania Commonwealth Court has affirmed a trial court's application of the Common Level Ratio (CLR) to a Berks County property enrolled in the "Clean and Green" program (CG) as a forest reserve. *Blair v. Berks County Bd. of Assessment Appeals*, 2011 PA. Commw. LEXIS 213 (May 3, 2011). Land enrolled in CG is assessed by its use value rather than its market value, generally resulting in lower property taxes. The property in question includes a one acre "Farmstead" that was not entitled to preferential assessment under CG according to both the trial and appellate court. 72 PA. STAT. §§5490.1-5490.13. On appeal, the Berks County Board of Assessment Appeals argued that the trial court's application of the CLR was improper because the Farmstead's location on property enrolled in the CG program precludes application of the CLR to the Farmstead's fair market value. However, the Commonwealth Court determined that the trial court correctly applied the CLR in order to avoid a violation of the constitutional requirement of tax uniformity. For more information, visit the [Agricultural Law Resource and Reference Center's Clean and Green Resource Area](#).

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## PA Preferred® Legislation Passed by Pennsylvania House of Representatives

by Tanya J. Cramoy, Research Assistant

On May 25, 2011, Pennsylvania's House of Representatives unanimously passed House Bill 1424, which provides a statutory framework for the successful Pennsylvania Preferred® marketing program. Implemented in 2004, PA Preferred® is administered by the Department of Agriculture and helps consumers identify products of Pennsylvania agriculture by a displayed trademark. House Bill 1424 would give specific statutory authority for the Department to acquire, maintain, and license the PA Preferred® trademark. The bill establishes standard criteria for licensed trademark users who must: produce commodities harvested entirely in Pennsylvania or grown in Pennsylvania for 75% of their production cycle; process agricultural commodities in whole or in part within the Commonwealth; or be a restaurant using commodities from other licensees. Additionally, the bill would create a fund to aid promotion of the program and to assist with the costs of monitoring and enforcing trademark use. Unauthorized use of the trademark would subject violators to civil penalties and/or injunctive relief. House Bill 1424 now moves to the State Senate for consideration. For more information, please visit the [Agricultural Law Resource and Reference Center's PA Preferred® Resource Area](#).

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