



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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PENNSYLVANIA SUPREME COURT RULES ON OIL AND GAS ACT PREEMPTION OF MUNICIPAL REGULATION

In companion cases decided on February 19, 2009, the Pennsylvania Supreme Court considered two municipal ordinances that attempted to regulate natural gas activities. Under principles of general and specific preemption, the Pennsylvania Oil and Gas Act (“Act”) supersedes all local ordinances that attempt to regulate features of gas operations addressed by the Act or that accomplish the same purposes as the Act. See 58 P.S. § 601.602. In *Huntley & Huntley, Inc. v. Borough of Oakmont*, 964 A.2d 855 (Pa. 2009), the court opened the door for some regulation of natural gas activities at the municipal



Photo from Pennsylvania Department of Environmental Protection Web site.

level by upholding a zoning restriction in an R-1 residential district. The court found that the Borough of Oakmont ordinance violated neither the features nor purposes prongs of Oil and Gas Act preemption, noting that the ordinance did not regulate “technical aspects of well functioning” and that the purposes of zoning were different than those in the Act. The court, however, imposed limitations on this ability to regulate natural gas activities by invalidating a “comprehensive regulatory scheme” in *Range Resources v. Salem Township*, 964 A.2d 869 (Pa. 2009). In that opinion, the court determined that the Salem Township ordinance violated principles of preemption by substantially overlapping with both the features and purposes of the Act. For more information on natural gas issues, please visit the [Agriculture Law Center Natural Gas Exploration Resource Area](http://www.dsl.psu.edu/centers/aglaw/gas.cfm) Web page at www.dsl.psu.edu/centers/aglaw/gas.cfm.

PENNSYLVANIA ODOR MANAGEMENT REGULATIONS BECOME EFFECTIVE FOR NEW AND EXPANDING CAFOS

Effective February 27, 2009, certain new and expanding animal farming operations must be in compliance with Pennsylvania’s Facility Odor Management Regulations, 25 Pa. Code §§ 83.701—83.812. These regulations were promulgated by the Pennsylvania State Conservation Commission (SCC) to implement the odor management provisions contained in 3 Pa.C.S.A. § 509. One of the purposes of these new regulations is to minimize potential conflicts between farms and their residential neighbors. Under the statute and regulations, a farm regulated as either a concentrated animal operation (CAO) or a concentrated animal feeding operation (CAFO) must develop and implement an odor management plan (OMP) for any new or expanded animal housing or manure management facilities constructed after the effective date of the regulations. The OMP must be prepared by an odor management specialist and must provide for the use of reasonably available technology and practices to manage the impact of any odor resulting from animal housing or manure management on the farm. All OMPs must be submitted to, and approved by, the SCC before new animal housing or manure management facilities can be used. For more information on this topic, please visit the [Pennsylvania Department of Agriculture Odor Management Program](http://www.dsl.psu.edu/centers/aglaw/odor.cfm) Web page.

Federal Court Upholds EPA's Failure to Exempt Rural Dust from Clean Air Act Regulation

In *American Farm Bureau Federation v. Environmental Protection Agency*, 559 F.3d 512 (D.C. Cir. Feb. 24, 2009), the U.S. Court of Appeals for the D.C. Circuit denied petitions for review filed by the American Farm Bureau Federation (AFBF) and other agricultural organizations challenging EPA's authority to regulate rural dust under the Clean Air Act (CAA). In 2006, EPA promulgated a final rule that established air quality standards for particulate matter. 71 Fed. Reg. 61,143. Although the provisions of this final rule primarily focused on the regulation of particulate matter in urban areas, EPA failed to exempt rural dust from its regulatory purview. AFBF argued that rural dust should have been exempted in the rule because the types of particulate matter predominant in rural areas had not been proven to have adverse health effects. The court rejected this argument, stating that EPA had provided evidence "that suggests [rural dust] likely is not safe." The court further stated that the CAA allows EPA to "err on the side of caution" in setting air quality standards. Thus, EPA's action was upheld as a permissible implementation of the CAA.

Dog Breeders Assert Constitutional Challenges to Pennsylvania Dog Law Amendments

Professional Dog Breeders Advisory Council and others have filed suit in the U.S. District Court for the Middle District of Pennsylvania challenging the constitutionality of recently-enacted revisions to Pennsylvania's Dog Law. *Professional Dog Breeders Advisory Council, Inc. v. Wolff*, Civil Action 1:09-cv-00258 (M.D. Pa. filed Feb. 9, 2009). Governor Rendell signed Act 119 into law on October 9, 2008, substantially amending the Dog Law. 3 P.S. §§ 459-101 to 459-1204. The present litigation alleges that these revisions violate the Equal Protection Clause of the U.S. Constitution by treating kennels classified under the statute as "commercial kennels" differently than other classifications of kennels, such as boarding or non-profit kennels, with a similar number of dogs. Among its other claims, the suit alleges that the law unconstitutionally regulates interstate commerce by charging higher license fees to out-of-state dealers. For more information on the Dog Law, please visit the [Pennsylvania Department of Agriculture Bureau of Dog Law Enforcement](http://www.pennsylvania.gov/agriculture/bureauofdoglaw/enforcement) Web page.

Chinese Legislature Approves New Food Safety Law

In the wake of numerous food contamination incidents, the Standing Committee of China's National People's Congress adopted a new food safety law on February 28, 2009, to replace the Food Hygiene Law of 1995. The new law aims to improve the safety of the Chinese food supply by restricting food additives and by enhancing government monitoring and supervision. Another approach included in the law is the imposition of joint liability upon individuals and organizations, including celebrity endorsers, who advertise an unsafe food product. China has a fragmented food safety regulatory system with at least five government departments—health, agriculture, quality supervision, commerce and industry, and food and drug—having major oversight responsibilities. The new law, which becomes effective on June 1, also calls for the creation of a Food Safety Committee with specific functions yet to be determined. The text of the law can be obtained at www.procedurallaw.cn/english/law/200903/t20090320_196425.html.

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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 as well as 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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