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INSIDE THIS ISSUE

Natural Gas—Cease and Desist Order

FDA Reportable Food Registry

Constitutionality of Pennsylvania Dog Law

EU—Response to Dairy Crisis

Clean Air Act—Regulation of CAFOs

DEP HALTS CABOT’S HYDRAULIC FRACTURING OPERATIONS IN SUSQUEHANNA COUNTY FOLLOWING MULTIPLE SPILLS

by Robert Jochen

On September 24, 2009, Pennsylvania’s Department of Environmental Protection (DEP) issued an order for Cabot Oil and Gas Corporation (Cabot) to cease all hydraulic fracturing operations within Susquehanna County. Currently, Cabot is the owner and operator of 128 permitted natural gas well sites located within the county. From September 16 to September 22, 2009, Cabot experienced three separate hydraulic fracturing gel spills. DEP estimates that approximately 7,000 to 8,400 gallons of the gel spilled onto the surrounding ground and eventually entered nearby Stevens Creek. Following the first two spills, DEP representatives viewed both dead and stressed fish within the creek. The discharge of these fluids into the creek violated Pennsylvania’s Clean Streams Law, 35 PA. STAT. §§ 691.301 and 691.307; Solid Waste Management Act, 35 PA. STAT. § 6018.610(1); and Oil and Gas Act, 58 PA. STAT. § 601.509. DEP issued the order to cease all hydraulic fracturing operations within the county after finding that Cabot failed to take adequate remedial measures to address the spills and resulting effects. Under the order, Cabot cannot resume hydraulic fracturing operations at any of its permitted well sites within Susquehanna County until it receives written authorization from DEP. For more on natural gas issues, visit the Center’s [Natural Gas Resource Area](#).



Above: Penn State Law students meet with USDA Secretary Tom Vilsack in Williamsburg, Virginia. Left: Photo of Christian W. Klay Winery courtesy of Pennsylvania Winery Association.

FOOD AND DRUG ADMINISTRATION ESTABLISHES ELECTRONIC PORTAL FOR THE REPORTING OF POTENTIALLY DANGEROUS FOOD ITEMS

by Christine Arena

The Food and Drug Administration (FDA) introduced the Reportable Food Registry (RFR) on September 9, 2009. 74 Fed. Reg. 46,434. The registry is an electronic portal where food industry officials are required to report food products that have a reasonable probability of sickening people or animals. The RFR, 21 U.S.C. § 350f, is a requirement under the Food and Drug Administration Amendments Act of 2007 (FDAAA), Pub. L. No. 110-85, 121 Stat. 823, which calls for “a reliable mechanism to track patterns of adulteration in food.” The FDAAA details the information to be included in the report and directs the FDA on how to review and respond to each report. Additionally, the FDA is required to alert the Department of Homeland Security if it is believed that the adulteration was deliberate. A “responsible party” must post to the RFR within 24 hours of discovering the potential danger of a food item. The responsible party also is required to investigate the cause of the adulteration if it originated in its facility. The system further allows for federal, state, and local government officials to voluntarily report information. Only foods regulated by the FDA, and not those regulated by USDA, must be reported. FDA Commissioner Margaret Hamburg declared the RFR to be a “significant step” towards the goal of strengthening food safety. For more information, or to submit a report, visit the [Reportable Food Registry](#) at www.fda.gov/Food/FoodSafety/FoodSafetyPrograms/RFR.



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FEDERAL COURT ADDRESSES THE CONSTITUTIONALITY OF PENNSYLVANIA'S DOG LAW

by Joshua Wilkins

On September 11, 2009, the U.S. District Court for the Middle District of Pennsylvania addressed the constitutionality of the Pennsylvania Dog Law, 3 PA. STAT. §§ 459-101 to 459-1204. *Prof'l Dog Breeders Advisory Council v. Wolff*, 2009 WL 2948527 (M.D. Pa. Sept. 11, 2009). In an opinion authored by Judge Sylvia H. Rambo (DSL '62), the court rejected the claim that the law violates the Equal Protection Clause. The court found that it is not a fundamental right to breed or sell dogs, and that the state had a rational basis to regulate the industry. Plaintiffs also argued that the law's authorization for state officials to inspect operations without a warrant violated the Fourth Amendment. Rejecting this argument, the court noted the reduced expectation of privacy in a heavily regulated industry, and that the law satisfied the applicable warrantless search test. One provision which imposed a \$300 annual fee upon out-of-state dealers was found to violate the dormant commerce clause, when in-state dealers were not required to pay the fee. For more information on the Dog Law, visit the [Bureau of Dog Law Enforcement](#) Web site.

EU AGRICULTURE COMMISSIONER PROPOSES MEASURES IN RESPONSE TO INTERNATIONAL DAIRY CRISIS

by Ross Pifer

On September 17, 2009, European Union Commissioner for Agriculture and Rural Development, Mariann Fischer Boel, presented the European Parliament with a series of measures to address the current dairy crisis. The worldwide market for dairy products has experienced a dramatic price decline in the past year with farmers in many countries, including the United States, receiving only half of what they previously received. This has led to widespread milk "strikes" throughout Europe. In her proposal, Commissioner Boel calls for Member States to provide up to € 15,000 to farmers in emergency aid. She also proposes that the dairy sector be included in Article 186 of the Single Common Market Organisation to permit the Commission to act quickly in times of extreme market disturbances. Furthermore, she suggests that long-term measures be implemented to facilitate market stabilization. In a position at odds with many producers, however, Boel opposes efforts to halt the elimination of milk production quotas in the EU by 2015. For more information, visit the [European Commission Agriculture and Rural Development](#) Web site.

COALITION PETITIONS EPA TO REGULATE CAFOs UNDER THE CLEAN AIR ACT

by Richard Lupinsky Jr.

A coalition of environmental and animal rights groups, including the Human Society of the United States (HSUS) filed a legal petition with the Environmental Protection Agency (EPA) on September 21, 2009, to include large confined animal feeding operations (CAFOs) on its list of stationary sources regulated under the Clean Air Act (CAA). Under the CAA's performance standard, 42 U.S.C. § 111 (1990), the Administrator of the EPA must keep a list of all stationary sources that "may reasonably be anticipated to endanger public health or welfare." The 69 page petition details a list of air pollutants that the coalition alleges are emitted by CAFOs, including the green house gases methane and nitrous oxide as well as ammonia and hydrogen sulfide. The EPA must determine either to publish a denial in the *Federal Register* or accept the petition and begin the rulemaking process, which requires a notice and comment period for interested parties. A copy of the petition can be found at [www.foe.org/sites/default/files/HSUS et al v EPA CAFO CAA Petition.pdf](http://www.foe.org/sites/default/files/HSUS_et_al_v_EPA_CAF0_CAA_Petition.pdf).



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