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

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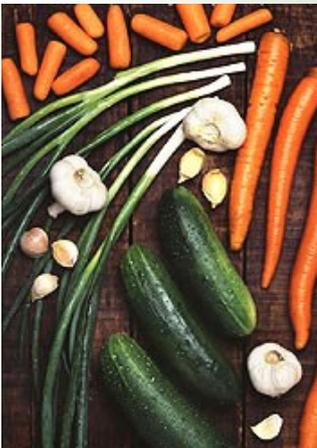
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CHINA AGREES TO RESUME IMPORTS OF POULTRY PRODUCTS FROM PENNSYLVANIA

On September 16, 2008, Chinese officials announced the lifting of the Chinese ban on the importation of poultry products from Pennsylvania. This announcement was made at the 19th U.S.—China Joint Commission on Commerce and Trade (JCCT), held at the Richard M. Nixon Presidential Library and Museum in Yorba Linda, California. Pursuant to its Quarantine Laws on Animals and Plants Entering and Exiting P.R.C., the Chinese Ministry of Agriculture had imposed the importation ban on Pennsylvania poultry products on August 17, 2006, due to the discovery of the H5N2 low-pathogenic avian influenza (LPAI) in a Pennsylvania bird market. Although LPAI generally is not viewed as a public health threat because it cannot be transmitted to humans, China often has imposed an importation ban following a reported LPAI occurrence. U.S. officials claim that such a ban is not in accordance with international standards.



The Joint Commission on Commerce and Trade at the Nixon Library (U.S. Dept. of Commerce Photo).

At the JCCT, Chinese officials also announced that import restrictions were lifted as to poultry products from Connecticut, Nebraska, New York, Rhode Island, and West Virginia. Current bans on poultry products from Arkansas and Virginia remain in effect although China has pledged to work with the U.S. to address these bans. For more information on this topic, please see the [JCCT Fact Sheet](#) or the [GAIN Report](#) available on the [USDA Foreign Agricultural Service](#) Web site at www.fas.usda.gov.

COURT UPHOLDS CONSTITUTIONALITY OF ACRE AND AFFIRMS RIGHT OF ATTORNEY GENERAL TO FILE SUIT

In [Commonwealth v. East Brunswick Township, No. 476 M.D. 2007, 2008 WL 4299620 \(Pa. Commw. Sept. 23, 2008\)](#), a township enacted an ordinance that prohibited any corporation from using biosolids as a fertilizer. Utilizing the procedures established in the Agriculture, Communities, and Rural Environments Act (ACRE), 3 Pa.C.S.A. §§ 311-18, a tree farmer who had been applying biosolids pursuant to an approved nutrient management plan requested that the Attorney General's Office (AG) review the ordinance in question. The AG believed that the biosolid ordinance interfered with a normal agricultural operation and filed a petition for review with the Commonwealth Court to invalidate the ordinance. The township responded by filing preliminary objections seeking dismissal of the petition on constitutional grounds as well as due to a lack of standing. In an opinion authored by Judge Mary Hannah Leavitt (DSL '78), the Commonwealth Court upheld the constitutionality of ACRE and further ruled that the AG has standing to challenge municipal ordinances under ACRE.

In its petition for review, the AG sought summary review, requesting that judgment be entered without the submission of evidence. On this issue, the court denied summary relief and ruled that the determination of whether the application of biosolids was a normal agricultural operation was not a legal question, but rather required the submission of evidence.

Landowner Seeks to Terminate Gas Lease For Failure to Comply with Minimum Royalty Statute

On September 16, 2008, argument was heard by the United States District Court for the Middle District of Pennsylvania on a motion to dismiss a lawsuit seeking to terminate an oil and gas lease. Plaintiff John Kropa, a Susquehanna County landowner, signed an oil and gas lease with Defendant Cabot Oil & Gas Corporation on March 8, 2006, for the sum of \$25 per acre. Subsequent to the execution of this agreement, the market for lease rates increased significantly. Kropa now argues that the agreement is void, in part, because it fails to guarantee him at least one-eighth royalty as required by Pennsylvania's minimum royalty statute, 58 P.S. § 33. Kropa bases this argument upon a provision in his lease—and one common to many leases—that provides for his royalties to be reduced to pay for post-production expenses. Cabot counters that the minimum royalty statute prohibits a landowner's royalties from being reduced to pay for production costs, but it does not address post-production expenses. *Kropa v. Cabot Oil & Gas Corporation*, Civil Action 3:08-cv-00551 (M.D. Pa. filed Mar. 25, 2008), presents a case of first impression in Pennsylvania.

Food and Drug Administration Issues Draft Guidance on Genetically Engineered Animals

The United States Food and Drug Administration (FDA) has released a draft guidance document addressing genetically engineered (GE) animals. 73 Fed. Reg. 54,407 (Sept. 19, 2008). GE animals are distinct from cloned animals and are those animals that contain new characteristics or traits introduced through alteration of the animal's DNA. Genetic modification has been or could be used to develop animals such as faster growing salmon, glow in the dark aquarium fish, hypo-allergenic pets, animals that generate less waste, or cows that produce pharmaceuticals in their milk.

The draft guidance provides for a pre-market review of GE animals and discusses the obligations of the producer of a GE animal to perform an environmental assessment under the National Environmental Policy Act, 42 U.S.C. §§ 4321-47. FDA asserts its regulatory authority over GE animals under provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-99a. For more information on this topic, please visit the [FDA Genetically Engineered Animals](http://www.fda.gov/cvm/GEAnimals.htm) Web page at www.fda.gov/cvm/GEAnimals.htm.

Federal Lawsuit Alleges Disparate Enforcement of PA Dog Law Against Lancaster County Kennels

Professional Dog Breeders Advisory Council, Inc., (PDBAC) has filed a federal lawsuit against Pennsylvania Department of Agriculture (PDA) officials alleging that the constitutional rights of PDBAC members have been violated by PDA Bureau of Dog Law Enforcement. The lawsuit contends that PDA is enforcing Pennsylvania's Dog Law "more harshly, disproportionately and aggressively" against kennel operators in Lancaster County than against those throughout the rest of the state. From January 1, 2006, to May 31, 2008, PDA issued 76 citations and 329 warnings to kennel operators in Lancaster County while issuing zero citations or warnings in similar counties. As such, PDBAC claims that PDA has arbitrarily targeted Lancaster County kennel operators in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution. This case has been docketed as *Professional Dog Breeders Advisory Council, Inc., v. Wolff*, Civil Action 2:08-cv-04233 (E.D. Pa. filed Sept. 3, 2008).



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ABOUT THE AGRICULTURAL LAW RESOURCE & REFERENCE CENTER

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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