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OHIO BALLOT BOARD CERTIFIES LIVESTOCK CARE STANDARDS ISSUE FOR CONSIDERATION IN NOVEMBER GENERAL ELECTION

by Richard Lupinsky Jr.

On August 12, 2009, the Ohio Ballot Board certified language for an animal welfare issue to be placed on the November election ballot. The ballot initiative, identified as Issue 2, would create a Livestock Care Standards Board (LCSB), which would prescribe standards for the care of commercial livestock. Last fall, California passed a ballot initiative, Proposition 2, which addressed the animal welfare issue by dictating specific conditions for the confinement of livestock. In contrast, the Ohio measure imposes no specific confinement conditions, but instead creates a thirteen member board to devise and administer state livestock care standards. The LCSB would consist of agricultural representatives, veterinarians, food safety experts, a humane society representative, a university dean, and consumers. The formulated standards would be enforced by the Ohio Department of Agriculture subject to the authority of the Ohio General Assembly. Proponents of the Ohio ballot issue contend that the board will promote food safety, protect consumers, and ensure the care and well-being of livestock. Critics argue that the LCSB would put the economic interests of the agriculture industry before the humane treatment of agricultural livestock. The Ohio ballot initiative is similar to two measures recently advanced by the Michigan House of Representatives Agriculture Committee, House Bills 5127 and 5128, which would adopt certain industry standards and establish an Animal Care Advisory Council. For more information on Ohio Ballot Issue 2, please visit the [Ohio Ballot Board](#) Web site.



Photo by Christine Arena

COMMONWEALTH COURT RULES IN FAVOR OF ATTORNEY GENERAL IN CHALLENGE TO EAST BRUNSWICK TOWNSHIP BIOSOLIDS ORDINANCE

by Ross Pifer

In *Commonwealth v. East Brunswick Township*, No. 476 M.D. 2007, 2009 WL 2568075 (Pa. Commw. Ct. Aug. 21, 2009), the Commonwealth Court overruled preliminary objections filed by East Brunswick Township which sought to dismiss the Attorney General’s challenge to its biosolids ordinance. In 2006, the township enacted an ordinance imposing restrictions and prohibitions on the land application of biosolids. Alleging that the ordinance unlawfully regulated “normal agricultural operations,” the Attorney General filed suit under the provisions of the Agriculture, Communities, and Rural Environments Act (ACRE), 3 PA. CONS. STAT. §§ 311-318. His complaint asserted that the ordinance was preempted by several state laws including the Solid Waste Management Act (SWMA), 35 PA. STAT. §§ 6018.101-6018.1003. Referencing the township’s position in this case, the court stated that ordinances regulating the land application of biosolids “have not fared well under preemption challenges.” *Id.* at *8. While municipalities are not preempted by the SWMA from enacting zoning ordinances, the regulation of “how, when, and where sewage waste may be used to fertilize farmland” is not permitted. *Id.* Although its ruling was limited because of the case’s procedural posture, the court concluded that the SWMA preempted “many, if not all,” of the ordinance’s provisions. *Id.* at *7. For more information on ACRE, please visit the [Agricultural Law Center’s ACRE Resource Area](#).



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HEARING HELD ON CHALLENGE TO ALLEGHENY NATIONAL FOREST NATURAL GAS DRILLING RULES

by Robert Jochen

From August 24 through 26, 2009, an evidentiary hearing was held before the U.S. District Court in *Minard Run Oil Co. v. United States Forest Service*, No. 1:09-cv-125 (W.D. Pa. filed June 1, 2009). This case involves the right to drill for privately-owned natural gas rights located within the Allegheny National Forest (ANF). Minard Run, PA Oil and Gas Association (POGAM), and others filed suit after a settlement agreement was reached in *Forest Service Employees for Environmental Ethics v. United States Forest Service*, No. 1:08-cv-323 (W.D. Pa. filed Nov. 20, 2008). POGAM, as an intervenor in that case, unsuccessfully objected to the entry of the agreement. Pursuant to the settlement, the Forest Service will conduct an environmental analysis under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, before issuing a Notice to Proceed for the drilling of each well in ANF. In the instant case, Minard Run argues that NEPA requirements do not apply because of the limited federal role in the development of these private rights. For more on natural gas issues, visit the [Agricultural Law Center's Natural Gas Resource Area](#).

USDA FINALIZES "ANYTIME, ANYWHERE" RULE FOR MARKETING AND SALE OF MILK IN SCHOOLS

by Christine Arena

The United States Department of Agriculture's Food and Nutrition Service (USDA FNS) has issued a final rule pertaining to the marketing and availability for purchase of milk in schools. 74 Fed. Reg. 38,889 (Aug. 5, 2009) (to be codified at 7 C.F.R. pt. 210). The final rule will allow milk to be sold "anytime, anywhere" in all schools that are participants in the National School Lunch Program (NSLP). It will prohibit any direct or indirect limitations on milk sales and marketing, including those contained in exclusivity contracts with other beverage providers. The rule does not require the sale or marketing of milk products in schools outside of the NSLP, and it does not require that milk be made available at school-sponsored events. The final rule makes no changes to the interim rule, 70 Fed. Reg. 70,031 (Nov. 21, 2005), that had been promulgated in response to soft drink company contracts that could inhibit efforts to increase the sale and marketing of milk in schools. The rule becomes effective on September 4, 2009. For more information on the NSLP, visit the [USDA FNS](#) Web site at www.fns.usda.gov/cnd/Lunch.

COURT OF COMMON PLEAS UPHOLDS RULING IN FAVOR OF POULTRY FARM IN NUISANCE CASE

by Joshua Wilkins

On August 14, 2009, the Court of Common Pleas denied plaintiffs' motion for post-trial relief in a nuisance suit against a Snyder County poultry operation. *Remaley v. Zook*, No. CV-0580-2007 (Snyder Ct. Com. Pl. Aug. 14, 2009). In *Remaley*, the plaintiffs alleged that odors from the defendants' operation interfered with the use and enjoyment of their property. The defendants' property, which was located in an Agricultural Security Area, had been used as a dairy farm since 1979 with the poultry operation being added in 2007. Following a non-jury trial, the court held that the plaintiffs had failed to establish that the defendants' conduct was unreasonable. Thus, the plaintiffs had not proven the existence of a nuisance. The Court noted that although it was sympathetic to the plaintiffs' circumstances and believed that they were experiencing unpleasant odors, they had chosen to live in an agricultural area. In ruling on the post-trial motion, the Court affirmed its original decision in favor of the poultry operation. Both opinions are posted on the [Agricultural Law Center's Right to Farm Resource Area](#).



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