

Legal Threats to Animal Agriculture

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President Reagan

- ▶ “It is not my intention to do away with government. It is rather, to make it work – work with us, not over us; to stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.”

Five Trends in Agriculture

- ▶ 1. Opposition to mono-culture
- ▶ 2. Opposition to CAFOs
- ▶ 3. Opposition to international trade
- ▶ 4. Opposition to GMOs
- ▶ 5. Criminalization of CAFO runoff

Internet Data Mining RFP

- ▶ USDA seeks contractor for internet surveillance
- ▶ Surveillance/data mining for individuals involved in animal welfare or horse protection
- ▶ USDA seeks animal care personnel to monitor, collect and manage data on internet sites

Internet Data Mining RFP

- ▶ USDA vendor shall monitor internet for:
 - Sales of animals for pets
 - Sales of animals exhibited to public
 - Animals used for research, teaching, testing & experimenting
 - Horseshows & animal auctions

PM¹⁰ – Farm Dust

- ▶ Present standard is 150 ug/m³ = 24 hours
- ▶ EPA suggested 65ug/m³ to 85 ug/m³ in November, 2011
- ▶ EPA forced to reverse proposal
- ▶ Impact on Midwestern and Western tillage practices
- ▶ PM¹⁰ – farm dust = 10 microns
- ▶ 1 grain of sand = 90 microns

Case History

- ▶ ***American Farm Bureau Federation v. EPA***, Feb. 24, 2009
- ▶ Challenge to EPA retention of PM¹⁰ indicator for coarse PM
- ▶ Appeals Court allows EPA to regulate rural dust – Court chose to disregard lack of scientific support

GMOs & National Environmental Policy Act (NEPA)

- ▶ APHIS – regulates GE plants for experimental testing & commercial production
- ▶ Bentgrass & Bluegrass case (*ICTA v. Johnson*)
- ▶ NEPA – EIS statement required
- ▶ Fear of gene flow, enhanced weediness & increased use of other herbicides

Monsanto v. Geerston Seed Farm

▶ Alfalfa

- Organic & commercial growers
- Challenged APHIS' deregulating GE (Roundup Ready) alfalfa
 - EA prepared
 - APHIS found no significant impact & no plant pest risk
 - Geerston – need EIS

Monsanto v. Geerston Seed Farm

- Monsanto filed appeal in U.S. Supreme Court – won
- USDA–APHIS prepared Environmental Impact Statement (EIS)
- Center for Food Safety filed suit in California
- December 5, 2011 U.S. District Court ruled in USDA’s favor
- Center for Food Safety will appeal to 9th Circuit Court of Appeals in San Francisco

Clean Water Act

- ▶ ***Florida Wildlife Federation, Inc. v Jackson***

U.S. District Court, ND of Florida, 2009

- Ag storm water runoff exemption
- Environmentalists sue EPA – Consent Decree
- AFBF and ag groups sue over Consent Order
 - CWA allows water quality standards to address pollutants

Clean Water Act

- ▶ Farmers will be required to control nutrients in rainwater runoff – environmental groups
- ▶ Consent Decree requires “numeric water quality criteria for nutrients”
- ▶ Florida Ag Commissioner – “will shut down Florida agriculture”
- ▶ Chesapeake Bay & Mississippi Watershed next

Clean Water Act

- ▶ March, 2012 – Everglades Foundation Report
- ▶ Agriculture industry
 - Responsible for 76% of phosphorus pollution in FL
 - Pay only 24% of cost removal
 - Farmer removal cost \$47.00 per pound vs taxpayer funded cost \$350.00 per pound

Clean Water Act

- ▶ New court decision February 18, 2012
 - Controls nutrient levels
 - Nutrient numeric criteria – controls over-enrichment
 - EPA – January 14, 2010 proposed rule for Florida
 - 22,000 comments & 13 public meetings
 - March 6, 2012 – Rule takes effect

Clean Water Act

- ▶ Law suits
 - 5 environmental organizations
 - 13 Florida state organizations
 - 25 trade and farm groups
 - Florida Attorney General
- ▶ Court opinion – 86 pages

Clean Water Act

▶ Result

- State designated “uses” for its waters
- State sets water quality criteria or standard for the uses
 - Protect drinking water use
 - Fish and Wildlife use
 - Recreational use
 - Agricultural and industrial use

Clean Water Act

- ▶ Florida had narrative standard
 - “nutrient concentrations should not cause imbalance in natural populations of aquatic flora or fauna”
 - EPA said 40% of Florida water failed to meet standard

Clean Water Act

▶ **Numeric Nutrient Numbers**

▶ Lake Criteria

- Classifies lakes according to color & alkalinity
 - Lakes with color greater than “40 Platinum cobalt units” – color scale
 - Index to evaluate pollution levels in water
 - It is specific to the color yellow

Clean Water Act

- ▶ Numeric Nutrient Numbers
 - Alkalinity of more than 20 mg/L CaCO_3
 - EPA – strong association of color & alkalinity with nitrogen & phosphorus
 - Chlorophyll-a is set at 0.020 mg/L

Clean Water Act

▶ Stream Criteria

- Court overruled EPA
- Based on models & field studies
- EPA chose streams minimally disturbed by P & N loadings

Clean Water Act

- ▶ All streams must be at 90% of the best streams
 - Violations if exceed 1 in 3 years
- ▶ Arbitrary & capricious

Clean Water Act – Criminal

- ▶ Farmers going to jail
- ▶ EPA National Enforcement Initiative
- ▶ Clean Water Act being violated by farmers
 - June, 2011 – nation's 4th largest dairy co-op pleaded guilty
 - Discharged ammonia solution into creek & killed fish

Clean Water Act – Criminal

- ▶ March, 2011 – Idaho dairy farmer guilty of negligent misdemeanor for water runoff into canal
 - U.S. Attorney – discharge was negligent discharge or mistake
 - Open pipe – cap taken off pipe
 - Potential \$100,000 fine & 1 year of supervised release
 - August, 2011 – 60 days jail time, \$12,000 fine

Clean Water Act – Criminal

- ▶ July 11, 2011 – North Carolina hog producer guilty of discharging hog manure from lagoons into a local creek
 - News story doubted discharge into a water of the state
 - Stream was dry & no waste moved into a state water

Clean Water Act – Criminal

- ▶ February 13, 2012
 - CEO – 6 months in prison & 6 months home confinement

 - Freedman Farms – \$1.5 million in fines
 - \$500,000 criminal fine
 - \$925,000 restitution fine
 - \$ 75,000 to Southern Environmental Enforcement Network (SEEN)

Clean Water Act – Criminal

- ▶ 2011 – Indiana mint farmer discharging heated process water into roadside ditch
 - Water at facility reaches 160–190 degrees
 - Ditch alleged to be a water of the United States under the Clean Water Act
 - Neighbor’s dog jumped into ditch and was scalded to death

Clean Water Act – Criminal

- ▶ Sentenced:
 - 2 years probation
 - 8 months home detention
 - EPA – \$20,000 fine
 - IDEM – \$40,040 fine

Clean Water Act – Recent Decisions

- ▶ October 20, 2011 – *Rose Acre Farm v. North Carolina DNER*
 - Clean Water Act permit challenged
 - Required control of air emissions from fans
 - Ammonia, litter, feathers, and dust discharged
 - DNER required permit BMPs
 - Control feed to laying hens
 - Control recordkeeping system
 - Control migratory birds on property

Clean Water Act – Recent Decisions

- ▶ Rainwater carries pollutants from fans to ground and drain to storm water pond
- ▶ State claims NPDES permit required
- ▶ Appeal filed

Beef Products, Inc.

- ▶ McDonalds, Burger King, Safeway & Walmart stop purchase of lean finely textured beef (“LFTB”)
 - Supplements 70% of ground beef in America
 - 1.5 million cows needed to replace
 - 10–15 lbs. of lean beef from each carcass
 - Ammonium hydroxide kills pathogens in LFTB

Beef Products, Inc.

- ▶ USDA coined phrase “pink slime”
- ▶ 3,000 people in 3 plants out of a job

▶ Thank you