Seven Legal Trends that Could Change Agriculture

Peggy Kirk Hall
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1. Regulation of Agricultural Nutrient Applications
U.S. EPA Nutrient Reduction Policy

An Urgent Call to Action: Report of the State EPA Nutrients Innovations Task Group, Aug. 2009

Working in Partnership with States to Address P and N Pollution through a Framework for State Nutrient Reductions, March 2011

Renewed Call to Action to Reduce Nutrient Pollution and Support for Incremental Actions to Protect Water Quality and Public Health, Sept. 2016

Litigation Driven

- Clean Water Act
- Safe Drinking Water Act
- Resource Recovery and Conservation Act

The Des Moines Register

“Unregulated agricultural discharges into Iowa’s rivers, lakes and streams continue to increase costs to our customers and damage Iowa’s water quality and environment.”

Bill Stowe, Des Moines Water Works CEO
2. The Battle Over Waters of the United States ("WOTUS")
The Supreme Court has accepted the case for review.

IN THE SENATE OF THE UNITED STATES

January 12, 2017

Mrs. Fischer (for herself and Mrs. Ernst) submitted the following resolution, which was referred to the Committee on Environment and Public Works

RESOLUTION

Expressing the sense of the Senate that clean water is a national priority, and that the June 29, 2017, waters of the United States Rule should be withdrawn or vacated.
“President Trump is committed to eliminating harmful and unnecessary policies such as the Climate Action Plan and the Waters of the U.S. rule.”

A repeal of an existing agency rule cannot be “arbitrary and capricious.”

When regulators label property as “wetlands,” owners may seek judicial review.

*U.S. Army Corps of Engineers v. Hawes Co., et al.*

United States Supreme Court

3. Endangered Species Act
So what?

*ESA listing means:*

- Recovery plan
- Critical habitat
- Takings permits
- Mitigation

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**Improving ESA Implementation**

- Multi species petition rule
  
  *US Fish & Wildlife, October 27, 2016*

- Compensatory mitigation policy
  
  *US Fish & Wildlife, December 27, 2016*
4. Consumer driven food labeling

No. 128. An act relating to the labeling of food produced with genetic engineering.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(A) Federal law does not provide for the labeling of food that is produced with genetic engineering, as evidenced by the following:

(A) Federal labeling and food and drug laws do not require manufacturers of food produced with genetic engineering to label such food as genetically engineered.

(B) As indicated by the testimony of a U.S. Food and Drug Administration Consumer Safety Officer, the FDA has statutory authority to require labeling of food products, but does not consider genetically engineered foods to be materially different from their traditional counterparts to require such labeling.
Ohio Ag Law Blog

Congress Finalizes Mandatory GMO Labeling Law
By: Peggi Kirk Pat, Friday, July 10th, 2015

After several years of debate over voluntary versus mandatory GMO (genetically modified organism) labeling, Congress passed legislation yesterday to create a unified national standard requiring disclosure of information for bioengineered foods. Predictions are that President Obama will sign the legislation soon. Once effective, the new law will preempt state laws that require labeling of foods containing GMOs, such as the Vermont labeling law that recently became effective on July 1. The bill’s passage through Congress represented a bipartisan compromise led by senators Pat Roberts (R-KS) and Debbie Stabenow (D-MI). “This is the most important food and agriculture policy debate of the last 20 years,” said Sen. Roberts.

What’s in the bill?

The legislation amends the Agricultural Marketing Act of 1946 to include the following:

- Definition of food: a food is food intended for human consumption that contains genetically modified material that has been modified through in vitro recombinant DNA techniques and for which the modification could not otherwise be obtained through conventional breeding or found.

5. Ag data use

Ag data: agronomic, land and weather data generated by an Ag Retailer during any work contracted for a farmer.
Does the farmer own her ag data under United States’ IP laws?

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Industry led effort to create standards:
Privacy and Security Principles for Farm Data.
- Ownership
- Control
- Portability
- Choice
- Termination

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Creating an Ag Data Use Policy

Step 1: Identify what “ag data” is:
Ag Data means agronomic, land, and weather data generated by Ag facilities during any work contracted for farmer

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6. Drones

- Certification and regulation under new FAA rule.
- Trespass and privacy issues left to states.
- Surveillance activities?
7. CAUV

Contact your state Representative & Senator NOW and tell them we need CAUV reform!

If the state legislature does not act now, our best chance to reform CAUV will be lost! Call your legislators NOW to make your voice heard on HB 398 and SB 246.

Ohio Farm Bureau Federation

CAUV BILLS AWAITING COMMITTEE ACTION

LEGISLATION

Monday, March 13th, 2017

Peggy Kiehl, Asst. Professor, Agricultural & Resource Law

Legislation proposing changes to Ohio’s current agricultural use valuation (CAUV) program has remained on hold in the General Assembly since last fall. Senator Cliff Hite (R-Findlay) and Representative Brian Hill (R-Zanesville) introduced the companion bills on November 18, 2016. The Senate referred its bill, SB 246, to the Senate Ways and Means Committee on December 9, 2016 and House Bill 398 was referred to the House Government Accountability and Oversight Committee on January 20, 2016. Neither committee has acted on its bill.

Taking up Ohio Farm Bureau’s recommendations, the bill sponsors target two aspects of the CAUV program—the formula used to determine CAUV values and the valuation of land used for conservation practices or programs. To create more accurate valuations, the legislation proposes several changes to the CAUV formula.
“Be careful what you ask for…. If all of a sudden, the residential folks say, 'Hey, the farmers are getting a 50 percent tax reduction' and we're not, they may turn it around and say the savings are too much and the farmers could end up losing.”

Licking County Auditor to Columbus Dispatch, Feb. 8, 2015

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