



TEXAS CATTLE FEEDERS ASSOCIATION

NEWSLETTER

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Volume 49, Number 35

August 28, 2015

U.S. District Court Issues Injunction Against WOTUS Rule Implementation

The EPA and the Army Corps of Engineers final rule on Clean Water Act (CWA) jurisdiction (WOTUS rule) is scheduled to take effect today, Aug. 28. However, a federal district court in North Dakota yesterday granted a request from 13 states (Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming) to immediately block implementation of the rule.

Unfortunately, EPA has decided to take a narrow interpretation of the injunction and indicated the agency would move forward with implementation of the WOTUS rule in all other states and territories not party to the North Dakota lawsuit. EPA is also expected to appeal the North Dakota decision claiming the district court lacks jurisdiction in this matter because the CWA recognizes federal appeals court as the appropriate venue to provide judicial review of final agency rules.

TCFA has spoken with several attorneys who believe EPA's interpretation is wrong. They believe that federal district court has jurisdiction and there is a strong legal argument that the injunction applies nationally.

However, EPA's jurisdiction argument is bolstered by rulings in two other district courts this week. According to *Inside EPA*, U.S. District Court for the Northern District of West Virginia Judge Irene Keeley dismissed without prejudice litigation over the rule in Murray Energy Corporation v. EPA, et al., finding that the court lacks jurisdiction to review the suit and also to decide whether to grant a motion from the energy company seeking a preliminary injunction to block the rule from taking effect. Separately, U.S. District Court for the Southern District of Georgia's Brunswick Division Judge Lisa Wood issued a decision rejecting Georgia's request for an injunction halting the rule.

In issuing his ruling on injunctive relief, U.S. District Court for the District of North Dakota Southeastern Division's Chief District Judge Ralph Erickson concluded he has jurisdiction to hear the suit because only CWA rules that establish effluent limits and "other limitations" must be heard in appeals court, whereas EPA's rule defines waters of the United States.

"Original jurisdiction is vested in this court and not the court of appeals," he writes. The rule "has at best only an attenuated connection to any permitting process. If the exceptionally expansive view advocated by the government is adopted" and the appellate court deemed the correct venue to hear the case, it "would encompass virtually all EPA actions under the Clean Water Act, something precisely contrary" to the CWA, he says.

After concluding the district court has authority to hear the suit, Judge Erickson then attacks the merits of the regulation and strongly suggests he will find for the states and scrap the rule outright. His order enjoining the agencies from implementing it says the jurisdiction rule is "arbitrary and capricious" as the agencies "failed to establish a 'rational connection between the facts found' and the Rule as it will be promulgated."

The order says EPA and the Corps in issuing the rule violated the CWA by overstepping the parameters laid out in *Rapanos v. United States*, the 2006 Supreme Court ruling that created the competing jurisdiction tests. In addition, Judge Erickson says the states are likely to succeed in their challenge because "it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule at issue, and it appears likely the EPA failed to comply with APA requirements when promulgating the Rule."

A copy of Judge Erickson's order is available at <http://tinyurl.com/WOTUS-8-28-15>.

Study Finds Saturated Fats Not Linked to Several Diseases

A recent study conducted by McMaster University and published in the *British Medical Journal* found no increased risk of heart disease associated with the intake of saturated fats. Saturated fats were also not found to be an added factor in cases of stroke and Type 2 diabetes. It did find, however, that trans fats may increase risk of coronary heart disease. The study analyzed 41 separated research studies that were published from 1981 to 2014.

"For years, everyone has been advised to cut out fats. Trans fats have no health benefits and pose a significant risk for heart disease, but the case for saturated fat is less clear," said lead author Russel de Souza,

assistant professor in the Department of Clinical Epidemiology and Biostatistics with the Michael G. DeGroot School of Medicine.

To learn about other findings of the study, visit <http://tinyurl.com/fats-8-28-15>.

FDA Releases Biannual Progress Report on Use of Antimicrobials in Food-Producing Animals

This week, the U.S. Food and Drug Administration (FDA) announced its third progress report highlighting its recent actions to promote the judicious use of antimicrobials in food-producing animals. Last week, TCFA submitted comments in reference to regulation in part 514 supporting the collection and reporting of useful data concerning the sales of antimicrobial drugs for food-producing animals, while opposing the species specific reporting of antimicrobial drug sales for food-producing animals which is highly problematic and susceptible to gross misinterpretation. To view full comments submitted by TCFA, visit <http://tinyurl.com/FDA-8-15>.

In addition to its progress report, FDA recently issued two supporting regulations to further promote the judicious use of antimicrobials in food-producing animals. In May 2015, in order to obtain estimates of sales broke out by major food-producing species, the agency proposed revisions to its annual reporting requirements for drug sponsors of antimicrobials sold or distributed for use in food-producing animals. The FDA also announced the Veterinary Feed Directive (VFD) final rule in early June 2015. The VFD final rule outlines the revised process for authorizing use of VFD drugs in feed.

The agency is also announcing open registration for its public meeting to obtain stakeholder input on approaches for collecting on-farm antimicrobial drug use and resistance data. The FDA, USDA and the Centers for Disease Control and Prevention are working together to develop and implement a plan to collect additional data on antibiotic use in food-producing animals and will conduct a jointly sponsored public meeting to obtain input on approaches for collecting on-farm antimicrobial drug use and resistance data. The public meeting will be held on Sept. 30 in Washington D.C.

For more information, visit <http://tinyurl.com/FDA-8-28-15>.

Beneficial Uses of Manure and Environmental Protection

NCBA, along with other livestock groups and the EPA, released a comprehensive manure fact sheet titled Beneficial Uses of Manure and Environmental Protection. The fact sheet, available to the public, showcases the importance of manure and how it can benefit the economy while also being managed in ways to protect the environment.

“While we don’t see eye to eye on many of EPA’s regulatory efforts, we do agree that responsible manure management can be an important resource for crop production. We also agree that manure storage and utilization can be done in a manner which results in the improvement of soil and water quality,” said NCBA President Philip Ellis.

To view the fact sheet, visit <http://tinyurl.com/NCBA-8-28-15>.

Beta-Agonists not to Blame for Fatigue Cattle Syndrome

Fatigue cattle syndrome is a condition in which cattle may experience some mobility problems most often occurring upon arrival at packing plants. As universities began to study this condition in 2013, they found the use of beta-agonists to be the common denominator. Since this time, scientists have studied deeper into the issue and have found that beta-agonists may not be entirely to blame, and there are other possible solutions to prevent this condition in cattle.

There are several stress factors, including heat, transport and loading stresses, that could contribute to the condition that can cause an increase in lactic acid and Creatine phosphokinase (CPK) levels. Limiting other long and short term stresses that could trigger these responses will be a key factor going forward in the control of fatigue cattle syndrome.

To learn more, visit <http://tinyurl.com/FCS-8-28-15>.

Workshops Available Regarding FDA Guidance and Veterinary Feed Directive

The Farm Foundation, NFP, is hosting 12 workshops across the country to help educate producers, feed suppliers and veterinarians on FDA’s new Veterinary Feed Directive (VFD). According to Farm Foundation, the workshops are designed for attendees to gain a comprehensive understanding of two Guidance for Industry (GFIs) issued by the FDA regarding the use of medically important antimicrobial drugs in food-producing animals. There will also be opportunity for government agencies, universities and extension personnel to learn about the new requirements.

The workshops are free of charge and run from 8:30 a.m. to 4:00 p.m. A workshop is available in Amarillo on Sept. 11, 2015. To learn more about the workshops, visit <http://tinyurl.com/VFD-7-17-15>.

Germany May Be Next to Ban GMO Crops

Germany has begun plans to ban cultivation of GMO crops. According to *Reuters*, German Agriculture Minister Christian Schmidt has informed German state governments of his intention to tell the European Union (EU) that Germany will make use of new “opt-out” rules to stop GMO crop cultivation even if varieties have been approved by the EU. The EU has set up a system where new GMO crops can go through a process to be approved for growth, but this system also allows individual nations to opt out by banning the GMO crops that the European Commission has already approved as safe. If they choose to opt out, Germany will have to do so by Oct. 3, as will other countries that wish to do the same.

To read more from *Reuters*, visit <http://tinyurl.com/GMO-8-28-15>.

2015 Dr. Kenneth & Caroline McDonald Eng Foundation Symposium

The 2015 Dr. Kenneth & Caroline McDonald Eng Foundation Symposium will be held Sept. 17-18 at the Skirvin Hotel in Oklahoma City, Okla., with the theme being “Innovations in Intensive Beef Cow Production, Care and Management.” The Symposium is used for universities to present their latest research findings that targets improvements in beef cow efficiency and profitability by intensive and semi-confined production systems. Research is conducted through the Dr. Kenneth and Caroline McDonald Eng Foundation.

For more information or to register for the Symposium, visit <http://www.ansi.okstate.edu/eng-symposium>.

Feedlot Cowboy College

Beef Today's Feedlot Cowboy College will be held Sept. 15-16 at the Wichita Marriott in Wichita, Kan. This special event is designed specifically for feedlot cattle care personnel who are involved in the day-to-day care and welfare of animals. Speakers will include Dan Thompson, DVM, Ph.D., Mike Apley, DVM, Ph.D. and Tom Noffsinger, DVM, who will focus on improving cattle health and performance through management practices such as low-stress cattle handling and utilization of new technologies.

To learn more about Feedlot Cowboy College or to register, visit <http://tinyurl.com/Cowboy-College>.

Rural Town Hall Hosts Presidential Hopefuls

RFD-TV News' Rural Town Hall series has reached out to all of the candidates vying for the 2016 presidency to discuss issues of concern in rural America and production agriculture. Two candidates, Dr. Ben Carson and Louisiana Gov. Bobby Jindal, have been on the program. South Carolina Sen. Lindsey Graham is next scheduled to make an appearance. The one-hour program features the presidential hopeful in front of a live audience to answer questions on issues that affect rural America posed by audience members and call-ins.

To learn more about this series, visit <http://tinyurl.com/RFD-TV-8-28-15>.

Texas Environmental Excellence Awards

The Texas Commission on Environmental Quality (TCEQ) is accepting applications for the 2016 Texas Environmental Excellence Awards. This is the highest environmental honor in the state, which recognizes inspiring efforts of businesses, local governments, schools, students, individuals and other entities. The awards recognize projects from nine areas, including categories such as agriculture, pollution prevention and water conservation.

Applications may be submitted through Sept. 25, 2015. To apply, visit www.teea.org/apply/.

Beef Industry Internship Available in Washington D.C.

The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) government affairs office in Washington, D.C., is now accepting applications for the spring 2016 public policy internship. The internship is open to college juniors, seniors and graduate students and runs from Jan. 11, 2016 through May 13, 2016.

“The internship gives college students the opportunity to work alongside staff on a range of issues that impact U.S. cattlemen and women,” said NCBA Executive Director of Legislative Affairs Kristina Butts. “The internship is designed to work closely with the lobbying team on Capitol Hill; to assist with NCBA and PLC's regulatory efforts; and to work closely with the communications team.”

Applications are due by Oct. 1, 2015. To learn more about the internship and how to apply, visit <http://www.beefusa.org/newsreleases1.aspx?NewsID=5086>.