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Developments Impacting Food and Agricultural Law in Pennsylvania

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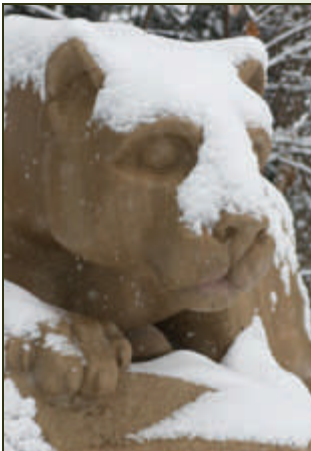
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STATE COLLEGE BOROUGH COUNCIL PASSES URBAN CHICKEN ORDINANCES

The State College Borough Council recently passed two ordinances, each by a 4-3 vote, that permit up to four chicken hens to be raised at a single family residence within the borough. The two ordinances amend the State College Animal and Zoning Codes, STATE COLLEGE, PA., CODE chs. II and XIX, which previously required a lot size of ten acres on which to raise chickens. The amendment to the Zoning Code, Ordinance 1913 (Dec. 1, 2008), requires that the chickens be housed in an enclosed coop that is located at least thirty feet from a primary structure on any neighboring lot. An outside run may be attached to the coop, but the run also must comply with the thirty foot set-back requirement. A chicken owner must use fencing or landscaping to screen the coop and attached run from ground-level view. Pursuant to the Animal Code amendment, Ordinance 1912 (Dec. 1, 2008), a chicken owner is required to compost the chicken waste or dispose of it using a double bag method. The slaughter of chickens is not permitted within the borough. With the passage of these ordinances, State College has joined a growing number of municipalities that permit the raising of so-called “urban chickens” or “city chickens.” For information on the City Chicken Project in New York City, please visit www.justfood.org/cityfarms/chickens/. Information on additional projects may be found at Web sites such as www.MadCityChickens.com, www.theCityChicken.com, and www.UrbanChickens.org.



Above: Photo by Stephen Ausmus, USDA
Left: Photo courtesy of Penn State College of
Agricultural Sciences.

SUPERIOR COURT INTERPRETS “PRODUCED IN PAYING QUANTITIES” CLAUSE IN FAVOR OF GAS COMPANY

In *T.W. Phillips Gas and Oil Co. v. Jedlicka*, No. 1918 WDA 2007, 2008 WL 5390464 (Pa. Super. Dec. 29, 2008), the Pennsylvania Superior Court upheld the validity of an oil and gas lease executed in 1928. The plaintiff gas company filed suit seeking a declaratory judgment as to the rights of the parties under the 1928 lease. The lease was to last for two years “and as long thereafter as oil or gas [was] produced in paying quantities.” The gas company drilled its first wells under the lease in 1929 and subsequently drilled wells in 1986, 2004, and 2005. Prior to filing suit, it sought to drill four additional wells. The defendant landowner, a successor in title to the original lessor, argued that the lease terminated in 1959 because the lease was not profitable in that year. Since that time, defendant argued, the lease had operated as a tenancy at will. Relying upon the 1899 Supreme Court precedent established in *Young v. Forest Oil Co.*, 45 A. 121 (Pa. 1899), the court ruled that the phrase “produced in paying quantities” is to be determined by the gas company so long as this determination is made in good faith and not for the purpose of “holding the land for purely speculative purposes.” As the party seeking lease forfeiture, defendant had not sustained her burden to prove that the gas company had acted in bad faith. For more information on this topic, visit the [Agricultural Law Center Natural Gas Exploration Resource Area](http://www.dsl.psu.edu/centers/aglaw/gas.cfm) Web page at www.dsl.psu.edu/centers/aglaw/gas.cfm.

Revised Milk Income Loss Contract Program Regulations Promulgated by USDA

As of December 22, eligible dairy producers can sign up for the Milk Income Loss Contract Program (MILC) administered by the USDA Farm Service Agency (FSA). MILC is a price support program that was established by the Food Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, 205 (codified at 7 U.S.C. § 7982) and reauthorized by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 1723 (to be codified at 7 U.S.C. § 8773). MILC compensates dairy producers when milk prices, as measured by the Boston Class I milk price, fall below \$16.94 per hundred of milk. This minimum price threshold is adjusted upward when the average cost of a sixteen percent dairy feed ration exceeds a specified level. To be eligible to receive MILC payments, producers must be in compliance with relevant conservation programs and meet income eligibility requirements. New regulations implementing MILC were published on December 4, 2008. 73 Fed. Reg. 73,764 (Dec. 4, 2008) (to be codified at C.F.R. pt. 1430). For more information on this topic, please visit the [FSA Milk Income Loss Contract Program](#) Web page.

Canada and Mexico Initiate WTO Trade Dispute Procedures Against U.S. on Country of Origin Labeling

Canada has filed a formal request for consultations with the Dispute Settlement Body of the World Trade Organization (WTO). WT/DS384/1 (Dec. 4, 2008) In its request, Canada seeks consultations with the United States to address the Country of Origin Labeling (COOL) law that became effective on September 30, 2008. Pursuant to COOL, retailers must label all covered commodities, including beef and pork, with the country of origin. Canada alleges that the requirements of this new law create an impediment to the purchase of Canadian livestock. As such, Canada claims that the United States is not in compliance with its obligations under the WTO Agreement. Nicaragua and Mexico have joined in Canada's request. WT/DS384/2 (Dec. 15, 2008) and WT/DS384/3 (Dec. 17, 2008). Additionally, Mexico has filed a separate request against the United States. WT/DS386/1 (Dec. 22, 2008). The parties now have sixty days from the filing date in which to resolve the issue. A dispute settlement panel may then be appointed. For more on this case, visit the [Dispute Settlement](#) section of the [WTO](#) Web site.

FDA Publishes One-Year Progress Summary of Food Protection Plan

On December 1, the U.S. Food and Drug Administration (FDA) published a One-Year Progress Summary of the agency's Food Protection Plan (Plan). FDA released the Plan in November 2007 to address both food safety and food defense issues. The Plan is based upon the three core elements of prevention, intervention, and response. The Progress Summary lists the ongoing goals and past accomplishments of FDA in the areas of food safety and food defense. The listed accomplishments include tasks related to development of foreign capacity and technical assistance, identification and understanding of food vulnerabilities, expansion of risk-based inspections, improvement of capacity to detect food contamination, enhancement of traceability capabilities, and improvement in the collaborative response to food safety threats. For more information on this topic, please visit the [FDA Food Protection Plan](#) Web page at <http://www.fda.gov/foodprotection/>.

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The Dickinson School of Law

THE AGRICULTURAL LAW RESOURCE & REFERENCE CENTER

207C Lewis Katz Building
University Park, PA 16802
Phone: 814-865-3723
Fax: 814-863-7274

<http://www.dsl.psu.edu/centers/aglaw.cfm>

STAFF

Center Director

Ross H. Pifer, J.D., LL.M.
Email: rhp102@dsl.psu.edu

Research Assistants

Jacqueline Calahong
Email: jac662@dsl.psu.edu

Anna Clovis

Email: amc447@dsl.psu.edu

Jan Rumsey

Email: jmr514@dsl.psu.edu

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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