

AG ISSUES UPDATE
Edited by Brad Hollabaugh
December, 2016

USApple Meets With FDA to Discuss Agricultural Water Issues

On December 16 a USApple delegation met with senior FDA officials responsible for implementing the new rules developed as a result of the Food Safety Modernization Act. The group was comprised of Lee Showalter, Rice Fruit Company, Gardners, PA and chairman of the USApple Food Safety Committee; Jeremy Leavitt, Borton Fruit Company, Yakima, WA; Scott McQuiston, Dawson's Orchards, Enon Valley, PA; Jim Bair, USApple President and Mark Seetin, USApple Director of Regulatory and Industry Affairs.

The primary focus of the meeting was to discuss water testing protocols that report generic E. coli results as either Colony Forming Units (CFU) or Most Probable Number (MPN). While the two methods use distinctly different processes, both arrive at a number that estimates the level of bacteria present in the water sample.

In its revised proposed rule FDA would only accept water test results using the CFU method and would not recognize MPN results as valid, despite the fact that MPN testing has become the dominant testing protocol for water, surpassing the older CFU method.

The USApple representatives explained that very few laboratories report test results in CFU, so complying with that requirement would create a significant problem not only for the apple industry, but also for all fresh produce covered under the rule. The group provided the officials with research and information on CFU and MPN and provided examples where other regulators including the Environmental Protection Agency accept both methodologies.

The meeting was timely as the agency is still developing guidance that will specify what is expected of the industry under the new rules, so it is important for them to consider the problems that could arise if both methodologies are not accepted. *Source: USApple, Staff Contact: Mark Seetin.*

House Agriculture Committee Seeks Input on 2017 Legislative Priorities

In the wake of the November elections, work has already begun on planning for the 2017 legislative session. USApple Director of Regulatory & Industry Affairs, Mark Seetin, was among a group representing agricultural organizations from the Pesticide Policy Coalition (PPC) that was invited to discuss priorities for the upcoming session of Congress.

The House Agriculture Committee Republican staff reached out to the PPC asking for input on regulatory actions by the EPA and other federal agencies in the past year that should be reviewed and analyzed by Congress. The Committee intends to develop their priority oversight before the new Congress convenes. Among the topics discussed at the meeting were:

- **Waters of the United States (WOTUS)** - The agriculture community is united in opposition to the Waters of the United States (WOTUS) rule finalized by the EPA and the Army Corps of Engineers. The rule is a dramatic and unwarranted expansion of federal authority over private lands. In the last session of Congress, legislation was passed by the House that would roll back the WOTUS rule, but because of a threatened veto by President Obama, the bill stalled. With the threat of a Presidential veto gone when the current administration ends, the stage is set for Congressional action to roll back the WOTUS rule that hopefully will be supported by President Trump.
- **EPA's departure from science-based process** - Failures in EPA's current risk assessment process threatens not only the effectiveness and quantity of pest protection tools available, but whether any actual tools are left in that toolbox for growers to use. Agency evaluation must be returned to a science-based process, along with restoring transparency and predictability to the registration and review of pesticides. Returning to the science-based process called for under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) could resolve many concerns over Agency bias in pesticide regulation that have arisen over the past several years.
- **Worker Protection Standard (WPS)** - The EPA virtually ignored industry comments on the proposal to revise WPS, and the resulting rule poses significant challenges to growers who depend upon hired labor in their operation. Many provisions such as requiring mandatory safety training for workers without a "grace period" to complete the training, and the requirement that records relating to pesticide application and label information be made available to an undefined "designated representative" of the worker threaten to make the process of managing seasonal labor a regulatory nightmare.

The group expressed strong support to the committee staff for legislation that would remove the controversial "designated representative" language from WPS. In addition, support was voiced for a request from the National Association of State Departments of Agriculture (NASDA) to delay final implementation of the revised WPS for a minimum of one year so that no part of the rule would be implemented until 2018.

The meeting with staff allowed agricultural industry representatives to urge the committee to implement ongoing oversight of the EPA Office of Pesticide Programs in an effort to strengthen Congressional scrutiny of the Agency's departure from established policy, due process and sound science. Source: *Apple Bites* - 12.14.16, Staff Contact: Mark Seetin

President-Elect Trump Shaping Up his Cabinet

During the weeks after the election, President-elect Donald Trump has been selecting his cabinet members. Although these selections will need Senate confirmation, the cabinet is taking shape with these names as of the middle of December:

- Secretary of State: Rex W. Tillerson, president and chief executive of Exxon Mobil
- Interior Secretary: Ryan Zinke, Montana's freshman representative, a former Navy SEAL commander who was an early supporter of the president-elect and ran for office largely on a national security platform.
- Energy Secretary: Rick Perry, former Texas governor
- Labor Secretary: Andrew F. Puzder, chief executive of CKE Restaurants

- Small Business Administration: Linda McMahon, former chief executive of World Wrestling Entertainment
- E.P.A. Administrator: Scott Pruitt, Oklahoma attorney general
- Homeland Security Secretary: John F. Kelly, retired four-star Marine general
- Defense Secretary: James N. Mattis. General Mattis led a Marine division to Baghdad during the 2003 invasion of Iraq and led the United States Central Command from 2010-13.
- Treasury Secretary: Steven Mnuchin, Trump's campaign finance chairman and a former Goldman Sachs executive
- Transportation Secretary: Elaine L. Chao, the labor secretary under President George W. Bush. Ms. Chao, who is married to the Senate majority leader, Mitch McConnell, has been a fixture of the Republican establishment in Washington.
- Health and Human Services Secretary: Tom Price, a six-term Republican congressman from Georgia and orthopedic surgeon
- Commerce Secretary: Wilbur Ross, an investor and businessman who was the head of investment banking company Rothschild Inc. for 25 years
- Education Secretary: Betsy DeVos, a former chairwoman of the Michigan Republican Party and an education activist who is a passionate believer in school choice
- Secretary of Housing and Urban Development: Ben Carson, former neurosurgeon and presidential candidate
- Secretary of the Army: Vincent Viola, former U.S. Army infantry officer and the founder and executive chairman of Virtu Financial
- U.N. Ambassador: Nikki R. Haley, the governor of South Carolina
- C.I.A. Director: Mike Pompeo, representative of Kansas and a former Army officer
- U.S. Trade Representative: Dan DiMicco, former chief executive of the Nucor Corporation, a steel production company
- Attorney General: Jeff Sessions, Senator from Alabama
- National Security Advisor: Retired Lt. Gen. Michael Flynn, a former director of the Defense Intelligence Agency

Noticeably missing is the Secretary of Agriculture. Currently, it is rumored that Sen. Heidi Heitkamp from North Dakota has emerged as a leading choice. It remains to be seen if these folks will make it through the confirmation process. It is also unknown at this time how the new administration will handle the issues of Ag Labor, immigration, etc. Stay tuned! Source: *THE NEW YORK TIMES*, Dec. 14, 2016

Penn State Study Takes True Measure of Conservation Practices

A Penn State survey shows that Pennsylvania farmers have adopted more conservation practices in the Chesapeake Bay Watershed than previously given credit for. The survey of best management practices in the watershed shows that farmers have adopted several conservation practices, including conservation and manure management planning without the use of state or federal dollars. These survey results are the most comprehensive look at the utilization of best management practices in Pennsylvania's portion of the Chesapeake Bay Watershed to date.

The federal Environmental Protection Agency has developed a model to measure BMP usage in the watershed, but it only counted conservation practices that were paid for through cost-share dollars. Pennsylvania Farm Bureau, which heavily supported Penn State's survey, is hopeful the data collected by the university will be adopted by the EPA so that agriculture gets proper credit in efforts to clean up the bay.

Penn State officials recently presented the survey results to the Chesapeake Bay Program Agriculture Workgroup. In response to a report by an independent assessment company hired by the EPA, the workgroup is requesting that Penn State rework some of its data before a final determination is made over whether the data will be used in the Chesapeake Bay cleanup model.

The EPA has set nutrient reduction limits that farmers and other entities must meet in the Chesapeake Bay cleanup plan. However, Farm Bureau has contended all along that the EPA's data on best management practices is flawed and does not give the men and women of agriculture the proper credit they deserve in the cleanup plan.

"Preliminary findings from the survey reveal what we have been telling environmental officials, the public and lawmakers for years, that farmers have been shelling out their own money to pay for conservation projects that improve the land and reduce runoff in the watershed. The time has come for EPA to recognize the significant role agriculture is playing to reduce 'pollution' entering the watershed," said PFB President Rick Ebert.

Penn State received 6,782 surveys, a 34 percent response rate. To verify the validity of the data, researchers from Penn State visited 10 percent of respondents over the summer. The Penn State survey has found the following previously unreported best management practices:

- More than 350,000 acres of row crops are planted by farmers following manure management plans.
- Farmers have built nearly 2,100 manure storage facilities for dairy cows and another 824 similar facilities for other livestock.
- More than 2,300 barnyard runoff control measures.
- 2.3 million linear feet of stream bank fencing.
- More than 6,700 acres of riparian buffers that are at least 10 feet wide.

Pennsylvania Farm Bureau is calling on the EPA officials to accept data presented by Penn State and adjust its cleanup plan accordingly. PFB is thankful for the work done by Penn State to accurately measure the good work that farmers have done, voluntarily, on their land to positively impact water quality.

Farm Bureau Asks Court to Overturn WOTUS

The American Farm Bureau Federation, joined by several agricultural and business groups, asked a federal court to overturn the deeply flawed "Waters of the United States" rule. The court brief filed in the U.S. Court of Appeals for the Sixth Circuit outlines numerous

concerns with the WOTUS rule, as drafted by the federal Environmental Protection Agency and the U.S. Army Corps of Engineers.

In the court brief, Farm Bureau and others discuss how the EPA ignored procedural safeguards in the rule making process, including withholding documents, ridiculing public comments and issuing “covert propaganda” to try and generate public support for the rule.

“EPA set out to achieve a predetermined outcome and then manipulated the public notice-and-comment process to achieve that outcome,” AFBF General Counsel Ellen Steen said. “It treated the rulemaking process like a game to be won instead of a deliberative process for developing lawful and reasonable regulations.”

In addition, the court brief explains how the WOTUS rule violates the Clean Water Act, and expands federal authority to dry land. Farm Bureau and other groups are asking the court to strike the rule in its entirety. Steen said she expects that additional briefs will be filed in the coming months, with the potential for court arguments in March.

Fresh Apple Holdings at 120.3 Million

USApple released the December 2016 Market News report on inventories of fresh and processing apples. The report is a summary of inventory reports from more than 250 storage facilities in all major apple producing states as of December 1.

Highlights of the report include:

- U.S. fresh-market apple holdings of 120.3 million bushels on December 1, 2016, are 13 percent more than the December 1, 2015 holdings of 106.1 million bushels, and 12 percent more than the five-year average of 107.5 million bushels.
- Total processing apple holdings as of December 1, 2016, were 42.9 million bushels, 1 percent more than that of December 1, 2015, and 3 percent more than the five-year average for that date.
- The total number of apples in storage on December 1, 2016, was 163.2 million bushels, 10 percent more than last December's total of 148.5 million bushels. Source: *Apple Bites* - 12.14.16, Staff Contact: Mark Seetin

Wilson Joins USApple as Director of Consumer Health & Media Relations

Korena Wilson joined USApple on December 1 as the association's Director of Consumer Health and Media Relations. Wilson brings significant experience in promoting food, health, defense, economic development and science industries through both traditional media and social media channels. She also has particular expertise in high-profile crisis management initiatives.

In her role, Wilson will be responsible for raising consumer awareness and knowledge of apples' many benefits via proactive media relations programs as well as integrated social/digital campaigns, such as the award-winning annual "Apples for Education" program that helps raise funds for school causes nationwide. Wilson also will manage

USApple's health and nutrition research program, coordinating and releasing fresh, peer-reviewed studies on apples' healthy attributes.

In addition, Wilson will oversee USApple's crisis management program. USApple recently completed a comprehensive survey of its membership, and the results highlighted growers' desire for the association to continue its strong and active crisis communications program. Wilson has previously trained executives in the fresh produce industry on how to communicate effectively in high-pressure situations, and will continue that strategy with USApple. Source: *Apple Bites* - 12.14.16

2016 Apples4Ed Winning Causes Are...

We [USApple] are thrilled to announce the winning causes in the second annual Apples for Education campaign. More than \$17,000 will be awarded by the apple industry and partner brand Marzetti to the top 11 participating schools nationwide.

Winning ideas include an in-school food bank providing healthy foods for students to take home to their families; technologies for building solar powered compostable gardens; and integrating iPads into classrooms to enhance student learning.

The campaign reached more than eight million consumers on social channels, and earned more than 6,500 apple snacking photos in six weeks. This year's top five winning schools are:

1. St. Louis Park Middle School, St. Louis Park, MN | Providing an in-school food bank with healthy food for students in need to snack after class or prepare at home.
2. Sherwood Forest Elementary School, Federal Way, WA | Providing access to apples and other healthy snacks for students and their families at school, first thing in the morning.
3. St. Mary's Catholic School, Alexandria, VA | Motivating young learners with technology-driven activities on new classroom iPads.
4. Walter Biddle Saul High School, Philadelphia, PA | Reducing the school's carbon footprint with solar powered compost procedures.
5. Faith Elementary School, Faith, NC | Providing healthy fruits and vegetables for all students in every classroom.

Thank you for your continued support of the Apples for Education campaign and for allowing us to conduct these education programs with you, and on your behalf. This program has increased apple awareness, promoted healthy lifestyle habits and generated goodwill among our nation's schools, their students and their families. Source: *Apple Bites* - 12.14.16, Staff Contact: Korenna Wilson

Penn State Makes Changes to Extension Delivery System

Penn State Extension is creating new positions and reshaping its expertise teams to better serve farmers and other customers. The changes in Extension's business model will still retain county-level services. However, the position of District Director will split into two new positions: Business Operations Manager and Customer Relations Manager. Penn State

is also dividing services into 10 new regions, however Extension offices in Philadelphia and Pittsburgh will fall outside of these staffing changes.

Penn State officials say the changes in staffing are not budgetary related but are instead a reflection of the changing needs of farmers and consumers. In addition, Penn State says it is not reducing staffing at county offices. Penn State is also revamping its Extension teams, which will be comprised of Extension educators, along with Penn State researchers and academics. The new teams are:

- Food, Families & Health
- Food Safety & Quality
- Agronomy & Natural Resources
- 4-H Youth Development
- Energy, Entrepreneurship & Community Development
- Animal Systems
- Horticulture

Each team will be led by an Assistant Director of Programs; and staffing can be assigned as the need arises. Currently, county-based Extension offices are supervised by a regional manager. However, that position is being split to allow staff to focus on specific areas. A Customer Relationship Manager will serve as the point of contact for county commissioners and others and will serve as the public face of the local organization. A Business Operations Manager will provide the day-to-day operations oversight. Penn State says changes to Extension will occur by June 2017.

CHEMSWEEP To Be Offered in 15 Counties

Pennsylvania will offer its pesticide disposal service in 15 counties in 2017. CHEMSWEEP will be available in Bedford, Berks, Bradford, Butler, Columbia, Cumberland, Fulton, Lawrence, McKean, Montour, Northumberland, Schuylkill, Sullivan, Warren and York counties.

The program has collected more than 2.4 million pounds of unwanted pesticides since the program was established in 1993. Each year, pesticide products are discontinued, or become unusable, leaving a disposal problem for growers and professional applicators. Those unwanted pesticides can become a safety hazard.

Licensed pesticide applicators, pesticide dealers and commercial applicators in the designated counties can participate. A CHEMSWEEP registration form will be directed mailed and must be returned by February 28. CHEMSWEEP covers the disposal costs for the first 2,000 pounds per participant.

Spotted Lanternfly Quarantine Expands

The invasive Spotted Lanternfly has been discovered in new communities across southeastern Pennsylvania, forcing the Department of Agriculture to expand a quarantine area. The quarantined area includes municipalities in Berks, Bucks, Chester, Lehigh, Montgomery and Northampton counties.

The invasive species, native to Asia, is known to attack 25 plant species that grow in Pennsylvania. It has not been found in the United States prior to its initial detection in Berks County in 2014. The Spotted Lanternfly is an inch-long black, red and white spotted pest and is native to China, India, Japan and Vietnam. It is an invasive species in Korea, where it has attacked 25 plant species that also grow in Pennsylvania.

The pest had not been found in the United States prior to its initial detection in Berks County in the fall of 2014. Residents are encouraged to keep an eye out for egg masses, which are frequently laid on flat surfaces like outdoor furniture, equipment and the outsides of vehicles.

If you see an egg mass on trees or surfaces, scrap them off and kill them using alcohol or hand sanitizer. Make sure to double-bag the egg masses and thrown them in the garbage. For more information visit: www.agriculture.pa.gov.