

AG ISSUES UPDATE
Edited by Brad Hollabaugh
September, 2015

2015 Apple Man of the Year Announced

Congratulations to Lee Showalter of Rice Fruit Company in Gardners, PA. He has been named the 2015 Apple Man of the Year by The Packer. Lee was recognized for his extensive food safety efforts. The award was presented by The Packer's Tom Karst last month at the 2015 Apple Crop Outlook & Marketing Conference in Chicago. (*Apple Bites* - 9.9.15, USApple Association)

China Bounces Back Into Fresh Apple Export Picture

Beginning in 2012, in a move considered by many to be a negotiating tactic, China virtually closed its market to U.S. apples. In early 2015, the Chinese market reopened with the agreement between the U.S. and Chinese governments for mutual access to their respective fresh apple markets.

According to USDA data for the period from July 2014 to June 2015, fresh apple exports to China totaled 729,000 bushels (equivalent to 765,000 40lb cartons), which was the second highest level of exports to China on record and ranked China at number 13 of the top 20 export destinations for U.S. apples. The export resurgence occurred in spite of the fact that the Chinese market was reopened to the U.S. in the middle of the traditional July - June marketing year.

While the traditional USDA reporting period is from July - June, the Washington Apple Commission reports that sales to China finished their 2014 crop marketing effort very strongly at nearly 1.2 million cartons shipped between January and July 31. Included in those shipments were varieties other than the traditional Red Delicious. It is expected that when Chinese consumers experience the other varieties their purchases of U.S. apples will grow even further.

Overall, fresh exports from the 2014 U.S. apple crop totaled a record 52.8 million bushels, a 20 percent increase from the 2013 crop and 12 percent above the previous record of 46.7 million bushels set for the 2012 crop. The record level of exports occurred despite a prolonged labor dispute at West Coast ports that significantly curtailed apple exports through February 2015. (*Apple Bites* - 9.9.15, USApple Association)

Congress to Review School Meals & Other Nutrition Programs

The Healthy, Hunger-Free Kids Act will expire on September 30, unless Congress extends the current law or passes new legislation. The Act authorizes and funds most federal nutrition programs including the school lunch and breakfast programs and the Supplemental Feeding Program for Women, Infants and Children (WIC). Maintaining and building on the healthy meal standards included in the 2010 bill has been a top priority for USApple and was one of the legislative priorities that apple leaders lobbied Members of Congress on during the 2015 Capitol Hill Day.

Specifically, the requirement that schools provide a minimum of one-half cup serving of fruits or vegetables as part of the school meal. Also, that the Fresh Fruit and Vegetable Program remain fresh only and is not expanded to frozen or canned items. Kurrle attended an event last week with Agriculture Secretary Tom Vilsack where he urged Congress to act and reauthorize the bill. He highlighted the success of the current law saying that it is "resulting in more fruits and vegetables being consumed."

The Senate has set a tentative "markup" date of September 17. However, no schedule has been announced in the House. USApple will continue to work on our own and with other produce groups as the process moves forward. (*Apple Bites* - 9.9.15, USApple Association)

WOTUS Halted in 13 States

A federal judge in North Dakota blocked the implementation of the new "waters of the U.S." rule in 13 states. The preliminary injunction issued the day before the rule was set to take effect governs North Dakota and a dozen other states that sued the Environmental Protection Agency, claiming the agency overstepped its jurisdiction in crafting the WOTUS rule. Pennsylvania did not join the lawsuit.

In granting the preliminary injunction, Judge Ralph Erickson wrote that states suing the EPA are likely to succeed because it appears the agency exceeded its authority in creating the rule. According to published reports, EPA officials say the ruling only applies to the 13 states that brought suit against the agency.

"In all other respects, the rule is effective on August 28," EPA spokeswoman Melissa Harrison was quoted as saying in *The Hill*. "The agencies are evaluating these orders and considering next steps in the litigation."

PFB President Rick Ebert believes the EPA should halt further action on the rule. "While EPA tries to posture the legal impact of the ruling on Pennsylvania and other states, it received a clear and well-reasoned directive from federal court that it will likely lose its case against challengers to the WOTUS rule," Ebert said.

"A prudent agency should be very reluctant to move forward with any plan to implement or enforce a regulation that a competent court has initially found to be illegal until the legal process in the North Dakota case is fully completed. We hope and expect EPA to be prudent in putting this illegal rule on hold nationwide."

The rule significantly expands federal authority under the Clean Water Act, and as a result virtually all of Pennsylvania's land mass can be claimed by EPA officials as "regulated water." Farm Bureau believes the EPA is making a shaky argument by moving ahead with enforcement in other states.

"Even in the face of this court order, EPA is reportedly asserting it will enforce the new rule in the 37 states that are not part of the North Dakota lawsuit. Thus, for much of the nation, this unlawful rule will continue to create uncertainty and legal risk for commonplace land uses like farming," said American Farm Bureau Federation President Bob Stallman.

EPA Defied Government Concerns

A series of internal memos are significantly undermining the credibility of the Environmental Protection Agency's efforts as it created sweeping water regulations.

The documents released by the House Committee on Oversight and Government Reform show the Environmental Protection Agency ignored several legal, technical and scientific concerns outlined by the U.S. Army Corps of Engineers as it drafted the "waters of the United States" rule.

In fact, one memorandum suggested the Corps should withdraw its name and logo from the WOTUS rule altogether. The flawed rule gives sweeping new powers to the federal government to regulate small water bodies and dry land. However, there is not a universal belief between the agencies that the federal government has the Constitutional power to enforce the rule.

One internal Corps memo suggests the final rule is “legally vulnerably, difficult to defend in court, difficult for the Corps to explain and challenging for the Corps to implement.”

The 50 pages of documents confirmed Farm Bureau’s belief that the WOTUS rule makes it impossible for anyone to know what types of water and land features will fall under federal jurisdiction.

Equally troubling is the entire economic analysis used to support the rule has no factual basis in science or economics according to the Corps memos.

“It is clear from the memos that there were dire concerns internally that EPA was getting it wrong and with a high degree of arrogance,” said American Farm Bureau Federation President Bob Stallman. “The flawed economic study is just the tip of the iceberg, and it was known internally that trouble was ahead. In fact, the memos themselves were stamped ‘Litigation Sensitive.’ They were never intended to see the light of day.”

These memos damage the EPA’s credibility in drafting the rule and shows that politics played a key role in the final regulations, said Don Parrish, senior director of regulatory relations at AFBF. “As to whether or not this is truly a smoking gun, we think it is,” Parrish said. “We think the agencies’ credibility is shot, or at least EPA’s credibility.”

Farm Bureau, along with 29 states, sued in federal court to force the EPA to abandon the rule, arguing it violates limits put in place by the Clean Water Act. Farm Bureau hopes the documentation will compel the EPA to start over on the WOTUS rule and draft regulations that are reasonable and balanced, Parrish said. Above all, the documents show there is still much more to be learned about the behind-the-scenes work that went into creating the rule.

“U.S. Army Assistant Secretary Darcy pleaded with Congress to keep these memos from the public eye. Well, now we know what they say, and we want to know more. What other internal agency documents are out there?” Stallman said. “If the Corps’ economists objected so strongly, what did the EPA’s economists think? What else are these agencies hiding from the public? As Americans, we expect better, but during the entire WOTUS rulemaking process, we got worse – much, much worse.”

Farm Bureau Pushes Back on WOTUS Rule

In the days leading up the “waters of the U.S.” rule taking effect, Farm Bureau participated in a full-court press urging Congressional action on legislation that would send the Environmental Protection Agency back to the drawing board. During Ag Progress Days, nearly 300 visitors to our building submitted cards that were delivered to Sens. Bob Casey and Pat Toomey asking for them to support legislation that would stop the EPA from enforcing the rule.

The EPA expanded the scope of area it may regulate as water under the Clean Water Act and is claiming jurisdictions over nearly every Pennsylvania land area. During Ag Progress Days, PFB highlighted new maps prepared by Geosyntec Consulting for the American Farm Bureau Federation showing the scope of how much land and water will now be regulated by the EPA.

Under the WOTUS rule:

- All perennial streams will become regulated, along with a 100-foot-buffer surrounding them. This accounts for 7 percent of the state’s land mass.

- All water, including wetlands, located even partially within a tributary's 100-year floodplain up to 1,500 feet will fall under federal jurisdiction. This is 81 percent of the state's landmass.
- The rule also gives the EPA jurisdictional flexibility on a case-by-case basis on water and land features within 4,000 feet from a tributary that is in some way connected to downstream waters. This impacts 99 percent of the state's landmass.

"The rule is extremely complicated and confusing, but also vague, granting EPA unlimited power to determine whether any track of land is subject to new regulations. For farmers, it could mean new requirements for federal permits, restricting farming on existing land and severe penalties for using crop protection tools that are safe, scientifically sound and federally-approved," said PFB President Rick Ebert.

Visit PFB's website at www.pfb.com to view a fact sheet created by Farm Bureau to help farmers understand the new rule.

Penn State Ag Law Center Adds Shale Focus

Penn State is expanding its agriculture law center to reflect the growing interest of shale gas development in the Keystone State. The recently renamed Center for Agricultural and Shale Law will continue to offer research and outreach on legal issues impacting agriculture and natural gas development.

"Our focus has always been on rural communities," said Ross Pifer, who directs the Center for Agricultural and Shale Law. "Agriculture and shale issues have become such an important part of the issues facing rural communities."

The center operates much like Penn State Extension by disseminating research and holding presentations and workshops on agriculture and mineral resource law. The center's website contains an online reference library on common agriculture legal issues, such as Clean and Green and the ACRE law. Natural gas extraction, and the legal issues surrounding drilling and pipeline development, has been a growing issue facing landowners over the past five years.

The center recently hired a new attorney, M. Sean High, who will act as the lead researcher at the center and will direct its outreach strategy. High will focus on landowner issues, statutory protection of agriculture and business planning and will also send research compiled by the center to attorneys and other stakeholders.

Pipeline Task Force Created

The impact of natural gas development in the Marcellus Shale formation is making its presence known throughout the state. While shale gas drilling is concentrated in the state's northern tier, and in the counties around Pittsburgh, the need to move gas from wells to market is impacting a wider swath of the state—including farmland.

Several major transmission pipelines are proposed for the state, including one that could run from north to south roughly following the east side of the Susquehanna River, and another west-to-east pipeline that could bisect Pennsylvania's southern rim.

To address the growing impact that pipeline proposals are having on the state, the Pennsylvania Department of Environmental Protection created the Pipeline Infrastructure Taskforce to examine the issue from several perspectives, including agriculture, local government, public safety and end-

use of natural gas. A specific workgroup will look at the impact on agriculture lands and will create recommendations on how to minimize potential problems when pipelines cross farm fields. Three Pennsylvania Farm Bureau members, Ron Kopp, Jim Kennedy and Larry Morton, are members of the agriculture workgroup.

The more than 100 members of the task force will deliver a report to the DEP in mid-November outlining their findings, including best management practices. The agriculture workgroup will look at ways to mitigate the impacts of pipeline infrastructure on agriculture lands, and will examine the issue of preserved farmland, protecting top soil and no-till practices. There is also an issue of eminent domain and the potential impact it could have on farms, Kennedy said. "That could give a pipeline company the ability to go wherever they want to go," he said. "We have to let our feelings be known."

Farmers just want to make sure that companies constructing pipelines are abiding by the same rules and care is taken to protect the infrastructure farmers have installed on their fields to protect topsoil and prevent water runoff, Kopp said. "It's not going away," he said. "We have to make sure those best management practices are followed."

"28 Days" Heart Health Campaign Wins Marketing Excellence Award

USApple's "little engine that could" - 28 Days of Apples - has won another prominent industry award, this time the association's first-ever Produce Business Marketing Excellence Award. The nutrition education campaign centered on 28 ways for 28 days to incorporate apples and apple products into a healthy lifestyle during February, American Heart Month. The Education team conducted traditional media outreach but focused heavily on online engagement, which provided a daily dose of heart-healthy messages to encourage consumers to think even more positively about eating apples.

Key to the success of 28 Days was USApple member participation, which helped make the campaign so successful in 2014 that it was continued and expanded in 2015. USApple for year two created turnkey toolkits with prewritten blog and newsletter content, press releases, social media posts, graphics, and more that members could customize for their own use. Members also donated prize packages - anything from cookbooks to baskets of apple goodies - to be given away each day to a lucky participant who engaged in USApple's online dialogue.

The campaign generated 23 million media impressions, 3.2 million social media impressions, and 17,400 Facebook stories created by fans. (*Apple Bites* - 9.9.15, USApple Association)

Passing of the Apple Gavel: New USApple Officers and Board Members Seated

The official apple gavel was passed from 2014-2015 USApple Chairman Mark Nicholson (Red Jacket Orchards, Inc., Geneva, NY) to newly-elected chairman Mike Wade (Columbia Fruit Packers, Inc., Wenatchee, WA) at the association's annual Apple Crop Outlook and Marketing Conference in Chicago, Ill.

Other incoming officers joining Wade are Vice Chairman Jon Alegria of CPC International Apple Co., Tieton, WA and Secretary Mark Boyer of Ridgetop Orchards, LLC, Fishertown, PA. John Graden of Crunch Pak, LLC, Cashmere, WA, will remain treasurer, and Nicholson will continue to serve as immediate past chairman.

Chris Alpers (RedPath Orchards & Alpers Farms, Lake Leelanau, MI) joins USApple's executive committee. Mike Dietrich (Leo Dietrich & Sons, Conklin, MI), David Douglas (Douglas Fruit, Pasco,

WA), Philip Glaize, III (Glaize Apples, Winchester, VA), Craig Hinkle (Knouse Foods Cooperative, Inc., Peach Glen, PA) and Steve Smith (Yakima Fresh, Yakima, WA) are now directors on the board.

Julie Bancroft (Pennsylvania Apple Marketing Board, Harrisburg, PA) replaces Diane Smith (Michigan Apple Committee, Lansing, MI) as this year's state association board member. (*Apple Bites* - 9.9.15, USApple Association)

Industry Mourns Loss of Richard Lehnert

Richard Lehnert, associate editor with Good Fruit Grower for the past six years, died suddenly August 31 at his home in Trufant, Michigan.

After growing up on a Michigan dairy farm, Dick began writing about farming in 1962, while still a junior studying journalism at Michigan State University. He worked at newspapers for a year before joining the staff of Michigan Farmer, where he spent 26 years, the last 15 as chief editor. He joined the staff of Good Fruit Grower in 2010. Based in Michigan, he primarily provided articles about fruit production from the eastern side of North America.

Dick was a regular, and welcome face at many fruit industry and association meetings across the country. He will definitely be missed! -*Brad Hollabaugh*