

AG ISSUES UPDATE

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USApple updates

Immigration and Ag Labor Activity in Congress

In May, Reps. Maria Salazar (R-Fla.), and Veronica Escobar (D-Texas) introduced bipartisan comprehensive immigration reform legislation. The Dignity Act includes border security, asylum reform, work authorization and guestworker reforms. The agriculture title includes many provisions supported by USApple in previous bills including stabilization of the current workforce, repeal of the Adverse Effect Wage Rate and streamlining of the H-2A program. Original cosponsors of the bill include Reps. Hillary Scholten (D-Mich.) and Mike Lawler (R-N.Y.). USApple and the other members of the Agriculture Workforce Coalition issued a statement thanking the sponsors of the bill.

Meanwhile, over in the Senate... the Senate Judiciary Committee held a hearing titled "Farm to Table: Immigrant Workers Get the Job Done" at the request of Senators Thom Tillis (R-N.C.) and Jon Ossoff (D-Ga.). Both Republicans and Democrats acknowledged the severe labor shortage that growers are facing and the need for reform. Republicans emphasized the importance of securing the border and reforming the asylum system as a critical first step. Many Democrats referenced the Farm Workforce Modernization Act which passed the House last Congress but fell short in the Senate.

FDA Issues Final Guidance on Arsenic in Apple Juice

Recently, FDA announced it will publish its final guidance for industry to address arsenic in apple juice. The guidance identifies an action level of 10 parts per billion (ppb) for inorganic arsenic in apple juice, which the agency proposed in 2013.

FDA testing results reflect a trend in reductions in the amount of inorganic arsenic in apple juice on the market, with an increasing percentage of samples testing below 3 ppb and 5 ppb. However, since the release of the 2013 draft, the agency has identified some apple juice samples with inorganic arsenic levels above 10 ppb. Therefore, FDA is finalizing an action level of 10 ppb because it considers this level achievable with the use of good manufacturing practices.

FDA says it expects that the 10 ppb action level, though non-binding, will help to encourage manufacturers to reduce levels of inorganic arsenic in apple juice. The agency will continue its current practice of monitoring arsenic in apple juice samples and if testing identifies inorganic arsenic in apple

juice above 10 ppb, the FDA will consider this action level, in addition to other factors, to determine whether to take enforcement action.

Farm Bureau Updates

Farm Bureau Responds to EPA Chesapeake Bay Lawsuit Settlement

On April 20, 2023, it was announced that the U. S. Environmental Protection Agency (EPA) and a group primarily consisting of environmental organizations and downstream Chesapeake Bay jurisdictions had agreed to a draft settlement agreement that would end two separate lawsuits filed against EPA during the Trump administration. One of the suits was from the Chesapeake Bay Foundation and several other groups, including Anne Arundel County, Maryland; the other was filed by the attorneys general of Maryland, Virginia, Delaware, and the District of Columbia. The settlement agreement has been published in the Federal Register for a 30-day public comment period.

The suits accused EPA of failing to enforce provisions of the Clean Water Act by not requiring Pennsylvania to develop a plan to fully meet pollution reduction goals for the Bay set several years earlier in a multi-state compact with the federal government (despite multiple attempts at submitting a satisfactory plan by the Pennsylvania DEP over the past several years). The suits also accused EPA of not using its mechanisms for penalizing states like Pennsylvania that did not meet their pollution reduction goals or for requiring the states to earmark sufficient funding for Bay clean-up (of course, EPA and the Bay states have already all but conceded that the 2025 targets announced back in 2010 for the Bay are not going to be met in any case, and EPA has no direct authority over Pennsylvania budget decisions, regardless).

The settlement requires EPA to focus more attention on agriculture, particularly concentrated animal feeding operations (CAFOs) and smaller animal feeding operations, as well as stormwater runoff (MS4s). For farms not currently required to have federal permits that have proximity to rivers and streams, EPA is to see if there is “significant damage to water quality from manure generation, manure management practices and/or available storage capacity, and compliance history. If EPA determines that a farm is a significant contributor of pollution, the regulators will confer with Pennsylvania officials about designating the farm as a pollution source subject to environmental permitting.”

Farm Bureau’s public response to date has been that the proposed settlement is under review, and will comment during the allotted 30-day period.

Additional Source Updates

Ag Organizations React to WOTUS Ruling

WASHINGTON — Editor's note: In *Sackett v. U.S. Environmental Protection Agency*, the U.S. Supreme Court ruled that the EPA and the Army Corps of Engineers wrongfully claimed oversight on wetlands owned by Chantell and Michael Sackett. The decision will likely have far-reaching consequences for those in the agricultural industry. The following statements have been released by Glenn "GT" Thompson, Chairman of the House Committee on Agriculture, National Association of State Departments of Agriculture, American Farm Bureau Federation, National Cattlemen's Beef Association, The Fertilizer Institute, National Association of Wheat Growers, and the National Pork Producers Council concerning the Supreme Court's decision.

Following the Supreme Court ruling in favor of Michael and Chantell Sackett in the *Sackett v. Environmental Protection Agency* case, Glenn "GT" Thompson, Chairman of the House Committee on Agriculture, issued the following statement:

"Today's unanimous ruling in Sackett v EPA is a victory for America's farmers, ranchers, and land owners. The decision reaffirms the rights of property owners and provides long-needed clarity to rural America. In light of this decision, the Biden Administration should withdraw its flawed final WOTUS rule. It is time to finally put an end to the regulatory whiplash and create a workable rule that promotes clean water while protecting the rights of rural Americans."

National Association of State Departments of Agriculture

SCOTUS decision in *Sackett v. EPA* clarifies states' authority and brings hope of regulatory certainty for farmers

In response to the U.S. Supreme Court's decision in *Sackett v. U.S. Environmental Protection Agency* on May 23rd, National Association of State Departments of Agriculture CEO Ted McKinney shares its impact on states, farmers and NASDA's next steps.

"The Supreme Court's unanimous decision in *Sackett v. EPA* today comes as welcome news to farmers, landowners and state departments of agriculture who sought clarity on what has been an over-litigated issue for decades," McKinney said. "We take relief in this decision as the justices clearly state the 'significant nexus theory is particularly implausible' and the EPA has no statutory basis to impose the standard."

In his opinion, Justice Alito also recognizes the limits of federal jurisdiction, and in doing so, acknowledges "Regulation of land and water use lies at the core of traditional state authority."

"Today's ruling proves that protecting our nation's waterways and growing food, fiber and fuel are two tandem efforts – not two competing interests," McKinney said. "There is, however, still work to be done

to ensure farmers and ranchers are equipped to best care for their land while following applicable federal or state requirements.”

NASDA turns to EPA and the U.S. Army Corps of Engineers to issue a revised version of their prematurely released WOTUS rule. Going against volumes of stakeholder input, EPA and the Corps issued a WOTUS rulemaking before today’s SCOTUS decision, which now renders portions of the agency’s final WOTUS rule moot.

Looking forward, NASDA will continue to work with EPA, the Corps and NASDA members to update and implement a regulatory framework that better reflects the needs of state agriculture departments, farmers, ranchers and all the communities they serve. -*Morning Ag Clips, May 23rd, 2023*