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INSIDE

Solicitation of articles: All AALA members are invited to submit articles to the Update. Please include copies of decisions and legislation with the article. To avoid duplication of effort, please notify the Editor of your proposed article.

IN FUTURE ISSUES

Farm provisions in Omnibus Spending Bill

In mid-October, the Congress and Clinton administration reached agreement on an omnibus spending bill. Several provisions contained in the legislation are important to agriculture.

The Omnibus Bill contains a provision extending Chapter 12 bankruptcy for another six months. Chapter 12 was originally enacted during the farm debt crisis of the 1980s, and was reauthorized in 1993 for five more years. The law expired at the end of September, and the provision in the Omnibus bill extends Chapter 12 until April 1, 1999. The bankruptcy reform bill, which did not pass this session of Congress, would have made Chapter 12 a permanent part of the bankruptcy code. Chapter 12 law will be back on the legislative table next spring with another attempt to make it permanent.

A number of farm-related tax provisions were included in the Omnibus Bill. Income averaging for farmers was made a permanent part of the Internal Revenue Code. As enacted as part of the Taxpayer Relief Act of 1997, income averaging would have been available only for the years 1998-2000. A provision was also included to allow farmers to carry back net operating losses for five years. Tax refunds may be obtained for these net operating loss carry backs. A provision was also included that should prevent the IRS from taxing AMTA payments (those made under the 1996 Farm Bill) until a farmer actually receives them. Earlier this year, Congress gave farmers the option of receiving the spring, 1999 payment in the fall of 1998. The IRS would have likely required the payments to be included in 1998 income even though a particular farmer may not have actually received them until 1999. A provision was also included to allow self-employed individuals to deduct 60% of health care insurance premiums in years 1999 through 2001. Seventy percent will be deductible in 2002 and 100% in 2003 and later years. Under legislation enacted in 1997, full deductibility would not have been achieved until 2007.

While numerous other tax provisions had been suggested to the Congress for inclusion in legislation this fall, only the four provisions mentioned above made it into the Omnibus Bill. The Congress is expected consider a significant tax bill next

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Weber v. Trinity Meadows Raceway

Horseracing is a multi-million-dollar enterprise worldwide. It has a significant impact on the economy of both the nation and the state of Texas. As with any endeavor, the costs of doing business must always be closely monitored. Under the Federal Water Pollution Control Act (hereinafter the Clean Water Act, *Weber v. Trinity Meadows Raceway, Inc., 1996 WL 477049,* has added and clarified yet another cost of doing business in the race world. By applying the definition of Concentrated Animal Feeding Operation (hereinafter CAFO) to a horse-racing facility, the court in *Weber* has served notice on the racing community that they also are subject to the restrictions of the Clean Water Act. Although an unpublished opinion, *Weber* clarifies important issues in CAFO regulation in the areas of applicability of permits, permit shields, and penalty guidelines. *Weber* is also the first readily accessible opinion applying CAFO regulation in an equine context.

Weber facts

Plaintiffs Mike and Rene Weber, as well as others unsuccessful in this cause of action, are individuals residing in Royal View Court, a bluff overlooking a large meadow. Across the meadow to the west is the tree-lined Clear Fork of the Trinity River. The Webers purchased their property and moved into their home in 1983,

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spring that may be designed to address these additional concerns.

The Omnibus Bill contains numerous provisions designed to provide financial assistance to farmers. $2.575 billion in funding was included to address crop disaster losses. The USDA Secretary was given broad authority to create and implement a disaster program. The legislation also makes $1.5 billion available to assist producers with crop losses in 1998, and an additional $875 million is made available to provide assistance to producers who have suffered a multiple-year crop loss. The legislation also includes $200 million for cost share assistance to livestock producers who lost their 1998 supplies of feed to disasters.

Conditions were placed on the receipt of disaster assistance. While the payments will be available to all producers of all crops who have had crop losses, and the payments will be allowed for losses in quantity and quality as well as severe economic losses because of damaging weather or related conditions, the Secretary was given authority to determine eligible crops losses, loss thresholds, eligible persons, payment limitations and payment rules. The Secretary was also authorized to provide incentives to those who purchased crop insurance in 1998. Likewise, recipients of 1998 disaster assistance who did not purchase crop insurance in 1998 must purchase crop insurance for the next two years.

The legislation also provides $3.15 billion in payments to producers eligible for contract payments under the 1996 Farm Bill. The assistance will be made in the form of a one-time payment, and will total approximately 52% of a producer's AMTA payment received in fiscal year 1998. A special provision is targeted for dairy producers that allows them to receive payments totaling $200 million.

For soybean producers ineligible for AMTA payments, the legislation amends the Energy Policy Act of 1992 to provide fuel use credits to operators of vehicle fleets who use fuel containing at least 20% bio-diesel by volume. The credits will offset up to 50% of annual vehicle acquisition requirements. Bio-diesel fuel which has been used widely in Europe for twenty years, will now meet the requirements of federal and state vehicle fleets to purchase alternative fuel vehicles. The law previously only required the purchase of alternative fuel vehicles and not the actual use of alternative fuels. Estimates are that the increased demand will increase soybean prices by up to 14 cents per bushel.

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Agricultural law position available

Director, National Center for Agricultural Law Research and Information

Located at the University of Arkansas School of Law Fayetteville, Arkansas

The National Center for Agricultural Law Research and Information (NCALRI) seeks candidates for the position of Director. NCALRI has been primarily supported since 1988 through annual congressional appropriations administered through the National Agricultural Library, an agency of the United States Department of Agriculture.

The NCALRI conducts research and analysis and provides up to date information to farmers and agribusinesses, attorneys, community groups, federal and state officials, and others confronting agricultural law issues. The NCALRI attorneys disseminate information through publications, symposia, television, and radio presentations. The NCALRI does not actively represent parties in legal actions, but staff attorneys do address specific legal questions within their areas of expertise from farmers, attorneys, agribusinesses, agricultural organizations and federal and state governmental entities. In cooperation with the National Agricultural Library, the NCALRI also provides a central system for collecting and indexing agricultural law materials, and for maintaining current bibliographies on specific agricultural law topics.

The NCALRI is located at the University of Arkansas School of Law, which offers the only graduate law program in the United States with a specialized curriculum of studies leading to the Master of Laws (LL.M.) Degree in Agricultural Law. The NCALRI attorneys, including the Director, may each be called upon to teach one course per year in this graduate agricultural law program. A number of graduate law students in this program also act as research assistants on the NCALRI projects. The NCALRI maintains close ties with the American Agricultural Law Association, which has its national office at this law school, and with the Dale Bumpers College of Agricultural, Food and Life Sciences, which is located on the University campus.

The Director is the chief administrative officer of the NCALRI, and oversees the work of 2 - 3 staff research attorneys a law librarian, several graduate law research assistants, and secretarial and other support staff. The Director, in consultation with the the NCALRI Local Advisory Committee, and with congressional, farm, agribusiness, and other constituent groups, will develop and implement the NCALRI outreach policies.

Candidates must have a law degree and demonstrable interest and experience in legal fields related to agricultural law. Salary is negotiable and will depend

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Iowa Supreme Court upholds property rights of landowners and invalidates nuisance protection law

By Roger A. McEowen and Neil E. Harl

In late September, the Iowa Supreme Court in *Bormann v. Board of Supervisors In And For Kossuth County*,[1] invalidated an Iowa law designed to preserve agricultural land and provide farmers protection from nuisance lawsuits.[2] The Iowa law allowed counties to designate agricultural areas of at least 300 contiguous acres.[3] Farming operations conducted within a designated area were not subject to nuisance lawsuits if they operated properly.[4]

The court ruled that this immunity created a property right—an easement to create odors—over land adjacent to the agricultural area's boundary. Property rights are constitutionally protected and cannot be taken by governmental action unless paid for.[5] Viewed in this light, the court ruled that the Iowa law was unconstitutional because the county did not pay the neighbors who would be required to endure the odors, and the neighbors could not bring a nuisance action to limit or stop odor production. The case is the first of its kind in the country where a court has invalidated a state law designed, in part, to provide nuisance protection to farm and ranch operations.

Precedent

The court's decision protecting property rights of adjacent owners is consistent with the court's earlier opinion in a 1979 case.[6] In *Ortner*, the court upheld an Iowa soil conservation law against a constitutional challenge.[7] The law limited the amount of soil erosion from farms. A landowner claimed that his farm was suffering damage from water and soil erosion from another farmer's land. The soil conservation district agreed and ordered the farmer to bring the soil loss within acceptable limits by either seeding the land to permanent pasture or haying or terracing the land. These measures were costly and the farmer challenged the soil conservation law as an unconstitutional taking of his private property. The court disagreed, thereby upholding the neighbor's private property right to be free from damage caused by an adjacent farm's excessive water and soil erosion. *Ortner*[8] was a nuisance case involving soil erosion. *Bormann*[9] involved odors, and the court's opinion is consistent with *Ortner*.[10] A state can enact legislation to prevent a nuisance resulting from excessive soil and water erosion, but cannot enact legislation that would allow a nuisance to be created. The court protected property rights in both cases.

A fundamental question in *Ortner*[11], *Bormann*[12] and every nuisance case is whether a nuisance should be permitted where there is no present use on the plaintiff's land to form the basis of an objection. In other words, the legal question in every nuisance action is whether there is a property right to conduct an activity that would constitute a nuisance if there were someone around to object.[13] For example, the Federal Circuit Court of Appeals stated in *Loveladies Harbor, Inc. v. United States*[14]: "Property rights as a matter of law since Blackstone's day have been understood to be subject to the power of the state to abate nuisances."[15] In other words, the "bundle of sticks" commonly referred to as "property rights" does not include a right to create a nuisance as defined by state law and the courts. Therefore, the immunity provision of the Iowa Agricultural Area Law[16] created a property right not otherwise contained in the "bundle of sticks." As the *Bormann*[17] court noted, under Iowa law the right to maintain a nuisance is an easement.[18] Thus, the immunity provision would allow a landowner to conduct an activity on their land which could be a nuisance if they did not have the easement. Because an easement is an interest in real property, it is subject to federal and state constitutional just compensation requirements. The United States Supreme Court will allow governmental entities to regulate either real or personal property for public good without the requirement of compensation so long as the action is not an unreasonable infringement of the rights of the private property owner. Thus, in these situations, a balancing of the benefit to society of the particular regulation and the burden imposed on the landowner is conducted.[19] However, no balancing is required where the government transfers a property right of one owner to another unless justified by an emergency or compensation is paid.[20]

The basic point is that a landowner has the right to use and enjoy his or her property in any manner so long as the activity conducted does not conflict with an adjoining landowner's similar right to use and enjoy his or her own property in any manner. A state law that defines activity constituting a nuisance is constitutional if reasonable, but a state law that takes a property right without awarding compensation is per se unconstitutional.

Impact on right-to-farm laws.

What is the likely impact of the court's decision? The implications could be particularly important for Iowa—most of Iowa's 99 counties have agricultural areas. Moreover, every state has enacted right-to-farm law that is designed to protect existing agricultural operations by giving farmers and ranchers who meet the legal requirements a defense in nuisance suits.[21]

The basic thrust of a particular state's right-to-farm law is that it is unfair for person to move next to a farming operation knowing the conditions which might be present and then ask a court to declare the farm a nuisance. Thus, the purpose of a right-to-farm law is to create a legal and economic climate in which farm operations can be continued.

While the Iowa right-to-farm law was not at issue in this case, a question can be raised whether the Iowa court or another state court might determine that its right-to-farm law gives farmers a property right to produce odors over adjacent land. If so, right-to-farm laws may be in peril.

However, concern over the constitutionality of right-to-farm laws may be unwarranted. These laws likely do not create a property right, but are similar to statutes defining activity constituting a nuisance. Indeed, many right-to-farm laws only provide protection if the farming operation is in compliance with applicable state and federal regulations and was in operation before the complaining party located nearby.[22] For example, in Kansas, the right-to-farm law creates a presumption that a farm is not a nuisance only if the statutory requirements

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are satisfied,[23] and provides no protection against lawsuits brought by fellow farmers.[24] Thus, those right-to-farm laws that represent reasonable restrictions on land use will likely be upheld as constitutional, if challenged in court.

Reaction of farm groups

Another important aspect of this case is how the farm organizations that have emphasized protection for private property rights will react. These groups have pushed rather vigorously in recent years for the courts to recognize private property rights for farmers and ranchers in areas where government regulation limits what farmers and ranchers can do on their land. Indeed, the Iowa Farm Bureau and the Iowa Pork Producers helped defend the farmers in this case. While the Iowa court unanimously upheld the notion of private property rights and the requirement that such rights are constitutionally protected, the private property right at issue was determined to be "taken" from landowners through a statutory grant of immunity from nuisance lawsuits.

Negotiation-based approach

The *Bormann*[25] decision raises the question of how the law should address nuisance-type disputes. A suggested approach is to ensure that property rights are defined as to what is not desired to occur and to take the necessary steps to develop a market in property rights.[26] The idea of developing a market in property rights as a possible solution to odor problems was first discussed publicly by the junior author following the taping of "Iowa Press," a weekly program on Iowa Public Television, on June 23, 1995. Unfortunately, the media coverage of that discussion referred to the concept as involving a tax on odors which misconstrued the nature of the proposal. With this perspective, those generating odors are infringing upon the property rights of surrounding neighbors. Compensation for infringement of this right can be recovered through a framework in which those responsible for the odors and those who would have to endure them are free to negotiate an outcome. The principles are fairly clear: those not polluting do not pay; those polluting a little pay a little; those polluting a great deal pay a lot. Under this approach, each resident within a specified distance would be free to negotiate a result with the agricultural operation producing the offensive odors. Once an agreement is reached, the agricultural operation could not be sued for nuisance. Perhaps the best solution for a particular offended person might be to accept a modest payment and endure some odors. Others might prefer to accept higher levels of odors and receive more payment.

What results would a negotiation approach encourage? Paying compensation for odors generated would cause large confinement operations, for example, to use the very best management to control odors, to employ the most effective odor-reducing technology, to "buffer" the operation by locating new facilities in the middle of larger tracts and, in general, to seek a least-cost solution to the odor problem. Conceivably, a confinement operation could control enough land to reduce odor levels at the boundary to near zero.

A potential drawback of such approach is that if an annual payment arrangement is worked out, a confinement operation may fear being subjected to escalating demands in later years. However, an enforceable long-term agreement specifying acceptable odor levels could eliminate this problem. The agreement would bind subsequent owners and residents.

The opposite is true also—in the event a one-time payment is negotiated, the neighbors may fear escalating odor levels in the later years. Again, that could be the case unless a long-term agreement on odor levels is negotiated. Also, some might feel uneasy negotiating with a large, wealthy feedlot. However, this is nearly always the problem, even with the nuisance approach. Thus, any system based on a negotiated solution should provide for mediation if an agreement cannot otherwise be reached. What if a confinement unit refuses to even discuss the matter? A solution could be that state permits for construction and operation of confinement units would not be issued until an agreement is filed.

It is doubtful that the negotiation approach would encourage large animal confinement operations to move to other states. Large producers would be converting the risk of a big lawsuit over odors for a fixed one-time or annual set of payments. Over time, the cost of this approach could well be less than dealing continuously with angry neighbors frustrated by right-to-farm laws that limit their ability to receive compensation for reductions in property values because of offensive odors.

Editor's note: An earlier version of this article appeared in 9 Agric. L. Dig. No. 21 (1998).

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[1] 584 N.W.2d 309 (Iowa 1998).
[2] Iowa Code § 352.1 *et. seq.* (1997).
[3] Iowa Code. § 352.6 (1997).
[4] Iowa Code. § 352.11(1) (1997).
[5] U.S. Const., Amend. V as applied to the states through the Fourteenth Amendment and Article I, Sections 9 and 18 of the Iowa Constitution.
[6] *Woodbury County Soil Conservation District v. Ortner*, 279 N.W.2d 276 (Iowa 1979).
[7] The statute at issue was Iowa Code Ch. 467A, now codified at § 161A.1 *et. seq.* (1997).
[8] See n. 6 *supra.*
[9] See n. 1 *supra.*
[10] See n. 6 *supra.*
[11] See n.6 supra.
[12] See n. 1 supra.
[13] See McEowen & Harl, *Principles of Agricultural Law*, § 11.07[2][b].
[14] 28 F.3d 1171 (Fed. Cir. 1994).
[15] 28 F.3d at 1178.
[16] Iowa Code § 352.11(1)(a).
[17] See n.1 supra.
[18] *Churchill v. Burlington Water Co.*, 94 Iowa 89, 93, 62 N.W. 646, 647 (1985).
[19] See *Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. Tigard,* 512 U.S. 374 (1994).
[20] This situation is referred to as a "per se" taking. See, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419 (1982) (ordinance requiring landlord to allow installation of cable TV receiver on apartment building and denying landlord ability to require payment exceeding $1 constituted compensable taking).
[21] For a state-by-state listing of right-to-farm laws, see 13 Harl, *Agricultural Law*, Appendix 124A (1998).
[22] See 13 Harl, *Agricultural Law,* Appendix 124A (1998).
[23] Kan. Stat. Ann. § 2-3202 (1997).
[24] *Finlay v. Finlay,* 18 Kan. App. 2d 479, 856 P.2d 183 (1993).
[25] See n. 1 *supra.*
[26] See McEowen and Harl, *Principles of Agricultural Law*, § 11.07[2][b].

RACEWAY/*Cont. from page 1*

upon the assurance of their real estate broker that the meadow would never be developed.

In the latter part of 1989, Trinity Meadows Raceway, Inc., purchased a small racetrack adjacent to the meadow and the meadow itself. Also in 1989, the Raceway began expansion activities, constructing its barn facility in the meadow below the Weber's home. Although a separate drainage system was installed for restrooms, the laundry room, jockey quarters, etc., the drainage system for the area surrounding the barns was constructed to drain at two outfall points into the Trinity River through pipes beneath the facility. The Raceway stables over 1,000 horses for more than forty-five days per year.

As part of the waste management system at the Raceway, the barn area has three-sided bins interspersed throughout the facility to contain barn waste and muck. The muck necessarily contains a significant amount of equine waste, including manure and urine. The Raceway had a contract with Clear Fork Materials company to remove the [illegible] mechanics of the system, however, [illegible] spillage and other discharge of waste onto the ground. The bins also often overflow, causing employees to [illegible] muck on the ground rather than in the bins. Thus, whenever it rains, muck is discharged into the river. In addition to the muck deposited on the ground being washed into the river by rain, the drainage system constructed for the barns drains directly into the river. The drainage system contains sandtraps designed to filter solid materials out of the waste, but the effectiveness of the sandtraps was largely disregarded.

The Webers testified that after the Raceway was in business full swing, they traveled to the other side of the river for a walk. During this trip, they observed one of the drainage pipes discharging a sour smelling waste into the river. Mrs. Weber stated that she no longer had any desire to visit the river because of its decreased attractiveness in her view.

Legal analysis

The court found that the Webers had standing but that other plaintiffs did not. Standing under the Clean Water Act is constitutional: to establish constitutional standing, one must satisfy a three-part test:

the party invoking the court's authority must show that he personally has suffered actual or threatened injury as a result of defendant's conduct;

that the injury can be traced to the challenged action; and

that the injury is likely to be redressed by a favorable decision.

The court held that the injury prong was satisfied because sufficient harm was demonstrated if "aesthetic, environmental, or recreational interests" were damaged. The injury may also be an "identifiable trifle" and still qualify to meet the injury prong of the standing analysis. Because the Webers testified regarding prior use of the river and discontinued interest in further use due to pollution, the court held that injury existed.

The second element, that the injury must be fairly traceable, was also met. Scientific certainty of causation is not required.

> They need only show a substantial likelihood that the Raceway's conduct caused their harm, and this likelihood may be established by showing that a defendant has: (1) discharged some pollutant in concentrations greater than allowed by its permit; (2) into a waterway in which the plaintiffs have an interest that is or may be adversely affected by the pollutant; and that (3) this pollutant causes or contributes to [illegible]

The court held that the evidence presented at trial met this test.

Redressability, the third [illegible] analysis, focuses on the connection between plaintiff's injury and the judicial relief sought. The court decided this factor in favor of the plaintiffs. It reasoned that submission to the NPDES permit requirements would better protect the river and its wildlife, allowing the Webers to once again enjoy recreational usage of the river. The remaining plaintiffs failed to present sufficient evidence to establish standing.

The Raceway, of course, contested plaintiffs' standing. Its contention was that any violations on its part were wholly past, denying the plaintiffs standing under *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation,* 489 U.S. 49 (1987). The court held that pursuant to the two-prong test of *Carr v. Alta Wilde Industries*, 931 F.2d 1055 (5th Cir. 1991), the violations were not wholly past because at trial discharges were established [illegible] plaintiff's complains was filed. Standing was granted.

The court next analyzed the relevant Clean Water Act provisions. It highlighted the fact that discharge of pollutants into United States waters is illegal without an NPDES permit. The court also specifically noted the inclusion of a CAFO as a point source and went on to find that the Raceway was, in fact, a CAFO. Also noted was the existence of other point sources on the Raceway's facility, including dump trucks, cement trucks, and outfall points of the drainage system under a *Southview Farms* analysis. *Concerned Area Residents v. Southview Farms*, 34 F.3d 114 (2d. Cir. 1994).

Several attempts were made to clear the Raceway of liability under the permit system. Three weeks after suit was filed the Raceway applied for an individual permit. Unfortunately for the Raceway pending permit applications do not provide a shield from liability. The court determined, therefore, that the application for an individual permit has no retroactive effect.

Region VI of the Environmental Protection Agency promulgated a general permit for CAFOs effective March 10 1993.

> There are two types of NPDES permits: individual and general. Typically EPA will promulgate a nationally uniform 'effluent limitation' on the discharge of a particular pollutant and implement that limitation in the form of individual NPDES permits issued to entities discharging that pollutant. See 33 U.S.C. sections 1311, 1342. Where EPA has not yet promulgated such [illegible] issuing a general NPDES permit that applies to a class of similar entities located in a particular geographic re[illegible]

Sierra Club, Lone StarChapter v. Cedar Point Oil Co., 73 F.3d 546, 552 n.10 (5th Cir. 1996).

The Raceway contended that its pending application shielded it because of the general permit regulations. After analyzing the general permit regulations and the preamble thereto, the court held that in order for the Raceway to be shielded by its permit application and the general permit, it was required to submit a Notice of Intent [hereinafter NOI] to be covered by the general permit. The Raceway did not submit a NOI and was thus not shielded. The court held that coverage by the general permit was automatic but only automatic upon filing of a NOI.

The Raceway had a storm water discharge permit, which it contended also provided a shield to liability. The court [illegible] solely of storm water associated with industrial activity as intended by the storm water permit. The court also noted that 57 Fed. Reg. 41305, Part I(B)(3)(ii)(b requires discharges of equine waste from a feedlot (including racetrack) to be specifically excluded from coverage under the general storm water permit. As a result, the Raceway was required to have a separate permit to cover its discharges.

Another important aspect of this opinion to the CAFO operator or attorney representing the CAFO operator is the inclusion of an analysis of the penalty

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If you desire a copy of any article or further information, please contact the Law School Library nearest your office.

—Drew L. Kershen, Professor of Law, The University of Oklahoma, Norman, OK

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provisions. Violators of the Act are subject to fines of up to $25,000 per day for each violation. Civil penalties are mandatory, but the amount to be assessed is discretionary. Factors to be considered in deciding the amount to be assessed are: the seriousness of the violation, the economic benefit resulting to the violator, history of violations, good faith effort to comply with regulations, and the economic impact of the penalty on the violator. The penalty must be high enough to be a penalty and not just a cost of doing business. In determining the penalty, the court must first calculate the maximum penalty, then indicate the factors addressed in its decision and any reasons for a reduction from the maximum penalty.

In determining the penalty assessable against the Raceway, the court considered a number of the applicable factors. It found numerous (though not egregiously numerous) violations and significant duration of violations. It found no potential harm to human health because of the organic nature of the pollution. The fact that the court found the organic nature of the pollutant to be a mitigating factor is highly relevant to CAFO cases of all kinds. Continuing with its penalty analysis, the court found economic benefit and no good faith attempt to comply with CAFO regulations. However, the court found that the impact of the full penalty would have a drastic effect on the Raceway. After analyzing the relevant factors, the court reduced the penalty by over fifty percent from its maximum amount.

Conclusion

Weber was an important case in the arena of environmental law. Applying the definition of Concentrated Animal Feeding Operation to a horse racing facility served notice on the racing community that they also are subject to the restrictions of the Clean Water Act. Although an unpublished opinion, *Weber* clarifies important issues in CAFO regulation in the areas of applicability of permits, permit shields, and penalty guidelines. *Weber* is also the first readily accessible opinion applying CAFO regulation in an equine context.

—Jared Melton, Lubbock, TX

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on qualifications. The NCALRI hopes to complete the search process by the end of December. The search will close with the hiring of the new director.

All candidates should submit a current resume to:

Professor Lonnie Beard
Chair, NCALRI Director Search Committee
University of Arkansas School of Law
Robert A. Leflar Law Center
Fayetteville, AR 72701

Telephone and email inquiries may be directed to Professor Beard at:

501 575-3706
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The University of Arkansas is an Affirmative Action/Equal Opportunity Employer and applications will be accepted without regard to age, race, color, sex, or national origin. Applications must have proof of legal authority to work in the United States.

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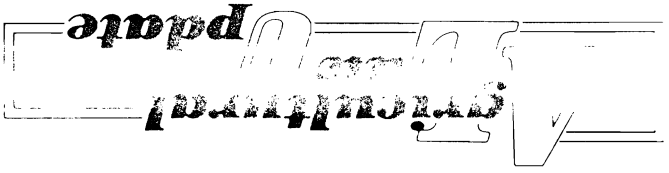

AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

19th annual conference report

The 19th Annual Educational Symposium of the American Agricultural Law Association was held October 23 and 24, 1998 in Columbus, Ohio. Sponsoring organizations in addition to the AALA were the University of Arkansas School of Law, the Farm Foundation, and Capital University School of Law. Over 200 practitioners, educators, and farm representatives attended the two-day program.

Thomas A. Lawler, Parkersburg, Iowa, assumed his duties as in-coming president of the Association. President-elect, Patricia A. Conover, was introduced to the membership. She called upon members to communicate with her concerning ideas for next year's conference, to be held in New Orleans, October 16-17, 1999.

Outgoing Board members, John Baldridge, Leon Geyer, and Walt Armbruster, Past-President, were recognized and thanked for their dedicated service to the Association. New directors, Patricia Conover, President-Elect, Gary D. Condra and Gerald A. Harrison, were introduced to the membership.

At the Friday luncheon, the Distinguished Service Award was presented to Phil Harris, Director, Tax Insight. The Professional Scholarship Award went to Roger McEowen for his article entitled *Current Legal Issues Impacting Farm and Ranch Organizational Planing*, 28 U. Toledo L. Rev. 697 (Summer 1997). The Student Scholarship Award went to S. Douglas Fish, for his article entitled *In Defense of FIFRA Preemption of Failure to Warn Claims*, 12 J. Nat. Res. & Envtl. L. 123 (1996-97).