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Agricultural Law Update

VOLUME 5, NUMBER 7, WHOLE NUMBER 55 APRIL 1988

Official publication of the American Agricultural Law Association

INSIDE

IN FUTURE ISSUES

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FICA changes affect agriculture

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203 (1987)) makes several changes in Social Security taxes that are of immediate importance to farmers. As of January 1, 1988, individuals ages 18 to 21 who are employed by a parent in the parent's unincorporated trade or business are subject to Social Security (FICA) taxes. Starting January 1, 1988, wages earned by an individual who works for a spouse in the spouse's unincorporated trade or business are subject to FICA. The rate of tax will be 7.51 percent on the employer and 7.51 percent on the employee – a combined rate of 15.02 percent on a maximum amount of $45,000 of cash wages in 1988. More simply, the Social Security tax break for farm proprietors and farm partners who employ their children ages 18 to 21 or their spouses has ended. Farm corporations already had been required to pay Social Security taxes on their employees. Wages paid to children or to a spouse for services not in the employer's trade or business and to certain domestics in the employer's private home remain exempt from Social Security taxes.

If an employer pays more than $2,500 to all employees for agricultural labor during 1988, wages for all farm labor performed in 1988 are subject to FICA tax. If the $2,500 annual payroll test is not met, a worker's wages will be subject to FICA if the worker receives $150 or more in cash wages during the year. The previous 20-days-labor-per-year test for FICA coverage has been eliminated. These rules are designed to apply in subsequent years as well.

Self-employed farmers should be advised that the maximum amount of net earnings subject to self-employment tax for 1988 is $45,000 and that the net self-employment tax rate is 13.02 percent.

After 1987, the cost of employer-provided group-term life insurance is treated as wages for FICA tax purposes to the extent the cost is included in gross income for income tax purposes when the coverage provided is in excess of $50,000.

The Internal Revenue Service has sent Notice 831 to employers about the changes. *– Marvin Martin*

No more "sweat equity" in farm bankruptcies

On March 7, 1988, the United States Supreme Court decided *Norwest Bank Worthington, N.A. v. Ahlers*, 56 U.S.L.W. 4225, and rejected any expansion of the "new contribution of capital" exception to the absolute priority rule. The Eighth Circuit Court of Appeals had permitted family farmers to retain ownership of their farms by agreeing to contribute future labor and management services to the reorganized farming operation as a part of a Chapter 11 plan of reorganization. However, in the unanimous opinion written by Justice White, the Court clearly held that there was no such "sweat equity" exception that would allow owners to preserve their interest in a reorganized business in a cramdown under section 1129(b) of the Bankruptcy Code. And, in a footnote, the court raised a question as to the continued viability of the entire new contribution of capital exception to the absolute priority rule.

Mr. and Mrs. Ahlers own a family farm in Minnesota that, along with equipment and other personal property, secured a $1,000,000 loan to Norwest Bank. The bank began a state court proceeding to obtain possession of its personal property collateral. The Ahlers filed a Chapter 11 petition in response. A contested motion for relief from the automatic stay under section 362 of the Bankruptcy Code was eventually considered by the Eighth Circuit, which remanded the case to the district court to determine the probability of success of a plan of reorganization.

The district court found the reorganization of the Ahlers' farm to be "utterly unfeasible." However, the court of appeals again reversed, finding that a reorganization plan was feasible and outlining a plan for the debtors. 794 F.2d 388 (8th Cir. 1986). In reaching this conclusion, the court of appeals found that the debtors'

(Continued on next page)

promises of labor, experience, and expertise as farmers was a sufficient contribution of new value so as to fall within the exception to the absolute priority rule set forth in *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939). As a result, the debtors would be allowed to retain their farm under a plan confirmed under the cramdown provisions of section 1129(b), in which creditors' claims were not paid in full.

The Supreme Court found that what the Ahlers had to offer did not fit within the requirements of *L.A. Lumber*. According to the court, Mr. and Mrs. Ahlers offered only "a promise of future services [that] is intangible, inalienable, and in all likelihood, unenforceable." 56 U.S.L.W. at 4227. It was not an asset that could be reflected in a balance sheet or that could, after confirmation, be exchanged for value in the market place. The court also rejected the debtors' suggestion that there was any exception to the absolute priority rule broader than that set forth in *L.A. Lumber*.

In what may ultimately become the *Ahlers* decision's most important aspect, the court casts doubt on the continued viability of the *L.A. Lumber* exception to the absolute priority doctrine. According to the Court, the codification of the absolute priority rule in section 1129(b) in 1978, may have resulted in a Congressional repeal of the *L.A. Lumber* doctrine. 56 U.S.L.W. at 4226, n.3. This dicta gives deference to, but does not expressly adopt, the position of the Solicitor General's brief arguing that the *L.A. Lumber* exception no longer exists.

The Court went on to reject the debtors' broad equitable arguments concerning the treatment of unsecured creditors who would lose all value to the secured creditors in a cramdown. The debtors argued that such creditors would be better served by the Eighth Circuit decision than by rigid application of the absolute priority rule. In addressing this issue, the Court pointed out that the voting of creditors on a plan, and not the bankruptcy court's view of what is best for such creditors determines the acceptability of the plan. The Court also rejected the argument that retained equity in an insolvent farming operation has, for cramdown purposes, no value, since control and future profits are obviously of value to such debtors.

Finally, the Court noted that the appropriate response to the plight of financially distressed farmers was the Congressional relief provided by Chapter 12 and not an unjustified exception to the cramdown requirements of Chapter 11.

– *Philip L. Kunkel*

Mississippi court first to consider Agricultural Credit Act of 1987

Apparently the first of what will undoubtedly be dozens of court cases interpreting the Agricultural Credit Act of 1987 [101 Stat. 1574, 1577 (1987), Pub. L. No. 100-233], was rendered by a Federal District Court in Mississippi in early February.

The case of *Stainback v. Federal Land Bank of Jackson*, (No. DC 88-25-8-0, No. Dist., Delta Division, Judge Biggers) involved the issue of whether a farm borrower who had obtained a discharge after completion of a Chapter 7 bankruptcy proceeding, but whose property had not yet been foreclosed, was eligible for consideration for loan restructuring under Section 4.14A of the Act. The debtor's attorney, Preston Rideout, Jr. of Greenwood, Mississippi, successfully argued to the court that when the Congressional Conferees, who resolved differences between the House and Senate versions of the law, were drafting the final definition of "distressed loan," they had removed Senate language that would have excluded loans which were "subject to a foreclosure or bankruptcy proceeding" from the definition. He argued that the deletion of the limitation meant that the debtor in this case would still be entitled to consideration for restructuring.

The court agreed with this reasoning and granted a temporary restraining order on February 8, 1988, blocking a foreclosure sale that the Federal Land Bank had scheduled for that day. Subsequent discussions have led to an agreement that the debtor will be offered the opportunity to apply and be considered for restructuring.

The general issue of the availability of restructuring to borrowers whose loans were in some stage of debt collection procedure on January 6, 1988, the effective date of the Act, is uncertain and subject to varying interpretations among the Farm Credit system districts. Several districts, notably St. Paul and Omaha, have established restructuring policies which will provide borrowers who are in foreclosure or bankruptcy the opportunity to apply for restructuring. Each district was to have promulgated a restructuring policy by early March, and this policy should contain information on eligibility and the procedures for application and consideration.

In another recent decision involving the new Act, a federal district court in Iowa ruled that a Production Credit Association could have a receiver appointed to protect its interest in mortgaged property and that such action qualified as "other lawful action" allowed by the statute to proceed in order to avert consumption of the collateral, under Sec. 4.14A(j), 101 Stat. 1574, 1577 (1987), The Agricultural Credit Act of 1987, Pub. L. No. 100-233. The debtor's attorney had argued that there was no showing of a threat to the collateral and that the appointment of a receiver was inconsistent with considering the debtor for restructuring as required by the law. *See Production Credit Association of the Midlands v. Hanlon*, Civil No. 87-249-A (U.S. Dist. Ct. Iowa, Judge Wolle, March 8, 1988).

– *Neil D. Hamilton*

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VOL. 5, NO. 7, WHOLE NO. 55 APRIL 1988

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Agricultural Law Update is published by the American Agricultural Law Association. Publication office: Maynard Printing, Inc., 219 New York Ave., Des Moines, IA 50313. First class postage paid at Des Moines, IA 50313.

Letters and editorial contributions are welcome and should be directed to Linda Grim McCormick, Editor, 188 Morris Rd., Toney, AL 35773

Federal Register *in brief*

The following is a selection of matters that have been published in the *Federal Register* in the past few weeks.

1. FmHA. Guaranteed loan programs; account liquidation proceedings; interest rate buydown and eligibility determinations; interim rule. 53 Fed. Reg. 8148.

2. FmHA. Implementation of provisions of the Supplemental Appropriations Act (Pub. L. No. 100-71), dated Jul. 11, 1987; annual production loan and subordination grants to delinquent borrowers; final rule. Effective date Mar. 16, 1988. 53 Fed. Reg. 8738.

3. FmHA. Special debt set-aside of a portion of the indebtedness of Farmer Program borrowers; final rule. Effective date Feb. 24, 1988. 53 Fed. Reg. 5357.

4. FmHA. Loan and grant programs; highly erodible land and wetland conservation; final rule. Effective date Mar. 8, 1988. 53 Fed. Reg. 7330.

5. FmHA. Use of certification statements in collection of debt by FmHA; proposed rule. Comments due May 23, 1988. 53 Fed. Reg. 9318.

6. Department of Labor. Labor certification process for the temporary employment of aliens in agriculture and logging in the U.S.; 1988 adverse effect wage rates and allowable charges for meals. Effective date Mar. 15, 1988, 53 Fed. Reg. 8517.

7. IRS. Estate and gift taxes; effective date rules and return requirements relating to the generation-skipping transfer tax; temporary regulations. Applies to all generation-skipping transfers made after Oct. 22, 1986. 53 Fed. Reg. 8441.

8. IRS. Income tax; limitations on passive activity losses and credits; temporary regulations. 53 Fed. Reg. 5686.

9. INS. Control of employment of aliens; final rule. Amends the final rule published on May 1, 1987. Effective date Mar. 16, 1988. 53 Fed. Reg. 8611.

10. CCC. Standards for approval of warehouses for grain, rice, dry edible beans, and seed; final rule. Effective date April 18, 1988. 53 Fed. Reg. 8745.

11. CCC. Grains and similarly handled commodities; loan and purchase programs; final rule. Effective date Mar. 1, 1988. 53 Fed. Reg. 6131.

12. CCC. Cooperative marketing associations; eligibility requirements for price support; notice of proposed rule making. 53 Fed. Reg. 7370.

13. APHIS. Receipt of permit applications for release into the environment of genetically engineered organisms; notice. 53 Fed. Reg. 9130.

14. APHIS. Availability of environmental assessment and finding of no significant impact relative to issuance of a permit to field test genetically engineered herbicide tolerant tomato plants; notice. 53 Fed. Reg. 4439.

15. FCIC. General crop insurance regulations; final rule. Effective date Mar. 21, 1988. 53 Fed. Reg. 9099.

16. FCA. Organization; reorganization authorities for system institutions; advance notice of proposed rulemaking. 53 Fed. Reg. 4416.

17. FCA. Loan policies and operations; advance notice of proposed rulemaking. 53 Fed. Reg. 4417.

18. FCA. Funding and fiscal affairs, loan policies and operations, and funding operations; capital adequacy of Farm Credit System institutions; advance notice of proposed rulemaking. 53 Fed. Reg. 4642.

19. FCA. Disclosure to shareholders; accounting and reporting requirements; problem loans; notice of effective date of Mar. 8, 1988. 53 Fed. Reg. 7340.

20. SCS. Surface coal mining and reclamation operations on prime farmland; soil removal, stockpiling, replacement, and reconstruction specifications; proposed rule. 53 Fed. Reg. 4989.

21. SCS. Hydric soils of the U.S.; list availability. 53 Fed. Reg. 5206.

22. EPA. Agricultural chemicals in groundwater; proposed pesticide strategy; availability of documents and request for comments. Comments due June 27, 1988. 53 Fed. Reg. 5830. See this month's In-Depth article, "Groundwater Issues Emerge as Focus of FIFRA Reform", for discussion.

23. EPA. Pesticide programs; endangered species protection program; notice. EPA envisions a program that depends on pesticide product labeling and endangered species habitat maps to achieve the goal of protecting jeopardized endangered species. Comments due Jun. 7, 1988. 53 Fed. Reg. 7716.

24. ASCS. Farm marketing quotas, acreage allotments, and production adjustment; reconstitution of farms, allotments, quotas, bases, and acreages; interim rule. Effective date Mar. 1, 1988. 53 Fed. Reg. 6119.

25. ASCS. Conduct of futures and options trading pilot program. Lists the 40 counties in which the education program will be conducted. 53 Fed. Reg. 7220.

26. USDA. Publication of index of consent decisions; notice. Consent decisions will no longer be published in *Agricultural Decisions*, but will be available from the Department's Hearing Clerk upon request. An index of consent decisions will appear in *Agricultural Decisions*. Effective for all consent decisions issued after Dec. 31, 1986. 53 Fed. Reg. 6999.

27. USDA. Rules of practice governing formal adjudicatory proceedings instituted by the Secretary; final rule. Effective date Mar. 1, 1988. Permits the Administrative Law Judge to issue an oral decision at the close of a hearing instead of issuing a written decision at a later date. 53 Fed. Reg. 7177.

– *Linda Grim McCormick*

Farmer buyer held to be a merchant

An Ohio appellate court has reversed and remanded a case concerning the merchant exception to the statute of frauds. *Adams Landmark, Inc. v. Moore*, Nos. 452, 454 (Ohio Ct. App. Nov. 5, 1987) (available on WESTLAW).

The litigation was initiated by a seller, an agricultural cooperative, against a buyer who was delinquent in payment. The farmer-buyer raised the affirmative defense of the statute of frauds. The trial court granted the buyer's motion for summary judgment.

The appeal concerned the application of the merchant exception to the statute of frauds. Ohio Rev. Code Ann. § 1302.04 (Baldwin 1982). Evidence showed that the buyer received monthly statements of items purchased from the cooperatives and amounts due, and that the buyer did not object to the statements in writing within ten days. Under Ohio law, such written confirmations create a binding contract if the transactions are between merchants.

The court noted that the buyer was in the business of agriculture, operated nine farms, and had dealt with the cooperative for approximately twenty-five years. Thus, the farmer-buyer dealt in "goods of the kind" and so met the definition of a merchant under Ohio law.

– *Terence J. Centner*

Groundwater issues emerge as focus of FIFRA reform

by David A. Myers

In the past two years, serious efforts have been undertaken to amend federal pesticide regulations. To date, these efforts have not been successful. Recently, however, bills have been introduced in Congress that address the problem of groundwater contamination by pesticide use. The growing consensus on the problems related to groundwater contamination[1] make these recent efforts particularly noteworthy. In this article, I will discuss the basic regulatory scheme for pesticide control, efforts to amend this law, and the emerging issues relating to groundwater protection.

Regulatory Framework

The environmental and regulatory policies set out in the Federal Insecticide, Fungicide and Rodenticide Act[2](FIFRA) are implemented by the Environmental Protection Agency (EPA).[3] FIFRA is basically a licensing statute. Pesticide manufacturers must submit for registration the product formula, a proposed label, and a description of all test data concerning the product's efficacy and safety.[4] The EPA in turn must approve registration of the pesticide product if, among other requirements, the pesticide will perform its intended function without unreasonable adverse effects on the environment.[5]

The phrase "unreasonable adverse effects on the environment" is further defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of the pesticide.[6] Significantly, then, FIFRA allows for reasonable adverse effects on the environment if the use of such unsafe pesticides is sufficiently beneficial.

The Administrator must continually review those pesticides that have been registered and classified in order to assess their performance and effects. Depending upon any new evidence concerning the degree of harm to the environment, the Administrator may change the initial classification of a pesticide, cancel the registration, or suspend the use of a pesticide.[7]

In addition, under the federal Food, Drug and Cosmetic Act,[8] raw agricultural commodities contaminated with pesticides are deemed adulterated and subject to seizure unless the EPA has issued a tolerance for that pesticide and the residue is within this limit.[9] The Administrator must set these tolerance levels "to the extent necessary to protect the public health."[10] Manufacturers begin the process by submitting a petition which must include *inter alia* the product composition, method of application, health and safety tests, proposed tolerances, and reasonable grounds in support of the petition.[11]

For new products, the licensing approach seems functional. But testing of pesticides already in commercial use remains a formidable task. The *New York Times* reported that as of March, 1986, the EPA has been able to provide assurances of safety for only thirty-seven of the more than 600 active ingredients used currently in 45,000 pesticides, and that the EPA will be able to review only twenty-five active ingredients each year.[12] A study by the General Accounting Office in 1986 concluded that the EPA had not yet completed a *final* safety reassessment for a single active ingredient.[13]

Legislative Proposal

Bills introduced in both houses of the 99th Congress would have required that the more than 600 active ingredients still on the market be reregistered within nine years.[14] Manufacturers would have been assessed a fee to defray the cost of reregistration. The proposed legislation also contained a compromise between industry groups and environmentalists on access to registration data by requiring manufacturers to submit summaries that can be made available to the public upon request. According to the original sponsors, these bills represented a consensus of the National Agricultural Chemicals Association, representing ninety-two manufacturing companies, and the Campaign For Pesticide Reform, a coalition of forty-one environmental, consumer, and labor groups.[15]

The consensus eventually evaporated. The House of Representatives passed its version of the proposal, but added an amendment that would preempt state efforts to establish tolerance levels of pesticide residues on food.[16] Environmentalists vowed that this would be the law's undoing.[17] The Senate approved its version of the law, but rejected an amendment preventing states from setting more stringent residue levels.[18] This disagreement was never settled before Congress adjourned. The prospect for passage of similar bills introduced this past year[19] is, at best, uncertain.

Emerging Issues

Presently, FIFRA contains no provision dealing with groundwater pollution, reflecting in part the assumption that pesticides would not get into groundwater.[20] We are finding out, of course, that this is simply not the case. In a recent report, the EPA noted that at least nineteen different pesticides have been detected in groundwter in twenty-four states.[21] The report also summarizes significant findings of groundwater contamination from monitoring efforts in California, Hawaii, Florida, New York, Minnesota, and Iowa.[22]

The EPA has responded to date by developing data requirements for active ingredients likely to leach into groundwater, by initiating some special reviews of existing pesticides thought to be problematic, and by undertaking a national survey of active ingredients most likely to leach into groundwater.[23] Many contend, however, that much more aggressive efforts are needed in view of the burgeoning information base on pesticide groundwater pollution.[24]

Two bills have been introduced into Congress containing a national program to prevent groundwater contamination by pesticide use.[25] Based on similar legislation introduced last year, these bills require the EPA to set groundwater residue guidance levels (GRGLs) for pesticides having the potential to leach into the groundwater. If the Agency determines that a pesticide is present at a concentration that reaches or exceeds fifty percent of the GRGL, the EPA notifies the designated agency for the state in which the underground source of drinking water is located and allows the state six months to prevent any adverse effect on human health or the environment that may result from the presence of such pesticide. If the state fails to take appropriate action within six months, the EPA is then required to act.

If the EPA finds it likely that a GRGL will be exceeded in drinking water wells in different localities as a result of use of the pesticide in accordance with its label, it can amend the registration of the pesticide to insure that its use will not exceed such levels. These amendments may include geographic limitations; limitations on the rate at which the pesticide is applied; limitations on the time or frequency of pesticide use; limitations on the method of application, storage, handling, or disposal; and required site-specific responses.

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However, as former EPA pesticide program director Stephen Schatzow has observed, there are no special provisions for implementing these label amendments.[26] Consequently, the cancellation proceedings in section 6 of the Act would apply if the registrant refuses to make these changes. The criteria for making a registration amendment is therefore solely a risk-based decision (the EPA must require amendments to assure that the pesticide will not be present in groundwater wells at levels above the GRGL), while a decision under section 6(b) to cancel the use of a pesticide is a risk-benefit decision (the Agency must determine that the pesticide will cause an unreasonable adverse effect on the environment, taking into account the benefits of the use of any pesticides). Therefore, the EPA must make one type of determination to request a registration amendment and a different calculation in order to implement that decision.[27]

A preliminary response to this problem is suggested in the EPA's recently published Proposed Pesticide Strategy.[28] The Agency plans to use maximum contaminate levels (MCLs), the enforceable drinking water standards under the Safe Drinking Water Act,[29] or a similar EPA-designated protection criteria as reference points for determining unacceptable levels of pesticides in underground sources of drinking water. The agency's rebuttable presumption will be that the risks posed by pesticides at or above these reference points will be more significant than the local benefits derived from these pesticides.[30] Depending on the frequency and scope of such contamination, the Agency will consider cancellation of the pesticide's use in such areas as an appropriate response. Apparently, however, the presumption may be rebutted if the benefits of using the pesticide in the area are substantial or if there are management measures, other than cancellation, that could reduce contamination to acceptable levels.[31]

According to the Proposed Strategy, the Agency also expects that management measures may be triggered whenever there are indications that a pesticide's use has the potential to reach unacceptable levels. For example, the EPA may impose labeling requirements that change the rate, timing, or method of application for those pesticides that pose significant risks but do not warrant cancellation procedures.[32] The Agency may also restrict the use of certain pesticides to trained and certified applicators.[33]

Finally, in response to contamination that has already occurred, the EPA may consider cancelling the use of the pesticide in an entire county or state.[34] Moreover, the Agency may assist a state's short-term efforts to provide alternative water supplies whenever the contamination presents an imminent and substantial threat to human health.[35] The agency is expecting individual states to play a significant role in responding to contamination problems and suggests that the state management plans consider the development of a comprehensive corrective response scheme.[36] The Agency's proposal also encourages greater coordination of the various federal statutory enforcement activities in order to identify parties responsible for groundwater contamination resulting from pesticide misuse.[37]

The Proposed Strategy obviously raises a number of questions, and the EPA has solicited comments on its policies by June 27, 1988.[38] But it is significant that both the Proposed Strategy and the recent legislative proposals envision an expanded role for the federal government in the regulation of pesticides. This is, perhaps, fitting recognition of the serious problem of groundwater contamination.

FOOTNOTES

1. For a good overview, from several perspectives, on problems relating to groundwater contamination, see *Symposium: Prevention of Groundwater Contamination in Kansas*, 35 Kan. L. Rev. 241 (1987).

2. 7 U.S.C. §§ 135-136y(1982 & Supp IV 1986).

3. *See generally* Myers, *"Form and Content of American Pollution Law with an Emphasis on Pesticide Regulation," Proceedings of the Euro-American Agricultural Law Symposium and Third Symposium of the C.E.D.R.*, 4A Agric. L. Bull. 24 (George Spring ed. 1986). For more detailed summaries of pesticide regulations, *see* Breinholt, *Federal Pesticide Regulatory Law*, in 2 *Agricultural Law* 236 (J. Davidson ed. 1981 & Supp. 1985); Miller, *Federal Regulation of Pesticides*, in *Environmental Law Handbook* 398 (8th ed. 1985); 2 *F. Grad, Treatise on Environmental Law* §§ 8.01-8.06 (1987); 2 N. Harl, *Agricultural Law* §§ 15.01-15.05 (1986 & Supp. 1988); 2 J. Juergensmeyer & J. Wadley, *Agricultural Law* §§ 27.1-27.3 (1982 & Supp. 1985).

4. 7 U.S.C. § 136a(c) (1982).

5. 7 U.S.C. § 136a(c)(5) (1982).

6. 7 U.S.C. § 136(b) (1982).

7. 7 U.S.C. § 136(b) (1982 & Supp. 1987). *See generally* 2 *F. Grad, supra* note 3 at § 8.03 [7].

8. 21 U.S.C. §§ 301-392 (1982 & Supp. IV 1986).

9. 21 U.S.C. § 346a(a)(1) (1982). *See generally* Middlekauff, *Pesticide Residues in Food: Legal and Scientific Issues*, 42 Food Drug Cosm. L.J. 251 (1987).

10. 21 U.S.C. § 346a(b) (1982). For regulations setting out specific tolerance levels, see 40 C.F.R. § 180.1-180.1085 (1985).

11. 21 U.S.C. § 346a(b) (1982).

12. N.Y. Times, Mar. 6, 1986, § 1, at 16, col. 1.

13. Inside EPA, May 30, 1986, at 1.

14. S. 2215, 99th Cong., 2d Sess., 132 CONG. REC. 3132-43 (1986); H.R. 4363, 99th Cong., 2d Sess. (1986).

15. *See* S. 2215, 99th Cong., 2nd Sess. 132 CONG. REC. 2132, 3133 (1986) (statement of Senator Lugar).

16. *House Votes 329 to 4 to Toughen Environmental Law on Pesticides*, N.Y. Times, Sept. 20, 1986, § 1, at 1, col. 4.

17. *Id.*

18. *In the Congress*, 16 Envtl. L. Rep. (Envtl. L. Inst.) 10348 (Nov. 1986).

19. S. 1516, 100th Cong., 1st Sess. (1987); H.R. 2463, 100th Cong., 1st Sess. (1987); S. 2035, 100th Cong., 2d Sess. (1988).

20. Schatzow, *Pesticide Legislation Would Add to Burden on EPA, Industry*, Legal Times, Oct. 13, 1986, at 16, 17.

21. *Environmental Protection Agency, Agricultural Chemicals in Groundwater: Proposed Pesticide Strategy*. 21 (1987) (hereinafter referred to as *EPA Proposed Strategy*).

22. *Id.* at 22-24.

23. Schatzow, *supra* note 20, at 18.

24. Glicksman & Loggins, *Groundwater Pollution I: The Problem and the Law*, 35 Kan. L. Rev. 75, 131 (1986).

25. S. 1419, 100th Cong., 1st Sess. (1987); H.R. 3174, 100th Cong., 1st Sess. (1987). Two of the comprehensive FIFRA reform bills, S. 2035 and H.R. 2463, contain similar, though certainly not identical, groundwater contamination provisions.

26. Schatzow, *supra* note 20 at 18.

27. *Id.*

28. *EPA Proposed Strategy, supra* note 21.

29. 42 U.S.C. §§ 300f-300j-11 (1982 & Supp. 1987). For a general discussion of these standards, see Gray, *The Safe Drinking Water Act Amendments of 1986: Now a Tougher Act to Follow*, 16 Envtl. L. Rep. 10338 (Envtl. L. Inst.) (Nov. 1986).

30. *EPA Proposed Strategy, supra* note 21, at 82.

31. *Id.*

32. *Id.* at 88.

33. *Id.*

34. *Id.* at 122.

35. *Id.* at 136.

36. *Id.* at 133.

37. *Id.* at 147.

38. 53 Fed. Reg. 5830 (1988).

National Center for Agricultural Law Research and Information

Pursuant to a grant from Congress, the University of Arkansas School of Law is in the process of establishing the National Center for Agricultural Law Research and Information. The Center will function as an independent arm of the National Agricultural Library, which is administering the grant. The Center, when fully operational, will provide research, bibliographic, and clearinghouse services on a national level. It is contemplated that an international component will be phased in during the second year of the Center's operation.

The Center plans to carry out its clearinghouse function by establishing extensive networks that will generate a constant flow of a wide variety of current primary and secondary legal materials. Computerized bibliographies on a wide range of agricultural law topics are contemplated. The bibliographies will be constantly updated. Research on breaking issues in agricultural law is contemplated. The goal is to publish and disseminate studies quickly so as to provide maximum service to the agricultural law community.

The Center will not have an advocacy role. The Center will maintain a neutral stance on all issues and will address all sides of issues selected for research. Modest user fees are contemplated for those who wish to take advantage of the services provided by the Center.

When fully staffed, the Center will have the services of its director, three staff attorneys, an agricultural law librarian, a computer scientist, secretarial staff, and five or more graduate fellows. Graduate fellowship will be awarded to students in residence in the Graduate (LL.M.) Agricultural Law Program at the University of Arkansas School of Law.

Persons interested in learning more about the work of the Center or about available positions should contact Dean J.W. Looney (501-575-5601) or Professor Donald B. Pedersen (501-575-6109).

– Linda Grim McCormick

AG LAW CONFERENCE CALENDAR

Ninth Annual AALA Conference and Annual Meeting.
Oct. 13-14, 1988. Westin Crown Center, Kansas City, MO.
Topics to include: annual review of agricultural law; international agricultural trade; farm program participation; agriculture and the environment; agricultural taxation; and agricultural financing and credit.
Reserve these dates now. Details to follow.

Agricultural biotechnology and the public.
May 16-18, 1988. Minneapolis-St. Paul Airport Hilton, Minneapolis, MN.
Topics include: running the regulatory maze; biotechnology at USDA; and implications of policy for biotechnology.
Sponsored by the USDA in cooperation with land grant universities, state agricultural experiment stations, and the Cooperative Extension Service.
For further information, call 202-447-8181.

23rd Annual Banking Law Institute.
May 5-6, 1988. Marriott Crystal Gateway, Arlington, VA.
Topics include: lender liability; tax reform; and workouts and bankruptcy.
Sponsored by the Banking Law Institute and the Bank Lending Institute.
For more information, call 1-800-223-0787.

Second Annual Corporate Counsel Bankruptcy Law Institute.
Apr. 28-May 1, 1988. The Arizona Biltmore, Phoenix, AZ.
Topics include: Farm and agri-business bankruptcy; lender liability; and defense of security interests and avoidance actions.
Sponsored by the Corporate Counsel Bankruptcy Law Institute, Norton Bankruptcy Law and Practice.
For more information, call 404-535-7722.

Georgia Farm Law Program.
May 20, 1988. Macon Hilton, Macon, GA.
Topics include: federal farm programs; debtor/creditor law; Chapter 12; and farm taxation.
Sponsored by the Farmers Assistance Joint Committee of the Georgia Bar and the Younger Lawyers Section.
For more information, call 1-800-422-0893 or 404-542-2522.

Sixth Annual Pacific Bankruptcy Law Institute.
May 24-27, 1988. Hyatt Regency, San Francisco, CA.
Topics include: lender liability; partnership bankruptcy issues; and recent developments.
Sponsored by Norton Bankruptcy Law and Practice and Bankruptcy Court Decisions
For more information, call 404-535-7722.

Farm and Agribusiness Bankruptcy Institute.
May 12-13, 1988. Centre Plaza Hotel, Fresno, CA.
Topics include: financing farmers; problems and solutions; creative uses of farmer plans across the country; and taxation of farm bankruptcies.
Sponsored by Central California Bankruptcy Association and San Joaquin College of Law.
For more information call 209-264-5084.

Environmental Litigation.
June 20-24, 1988. University of Colorado School of Law, Boulder, CO.
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STATE ROUNDUP

FLORIDA. *Sovereign immunity does not bar action for negligence in brucellosis testing.* In *Hines v. Columbia Livestock Market of Lake City*, 516 So.2d 1040 (1987), a rancher sued the Florida Department of Agriculture and Consumer Services for damages arising from allegedly negligent brucellosis testing of some of the rancher's cattle. The complaint alleged that cattle the rancher had taken to sell at the market tested positive for brucellosis. This necessitated slaughtering all of the cattle, and quarantining and branding of the rancher's remaining cattle. The rancher alleged that the tests were negligently performed, and later amended the complaint to join the Department of Agriculture, alleging that the tests were administered under statutes and regulations enforced by the Department acting in concert with the livestock market.

The trial court granted summary judgment for the Department of Agriculture, based on the Florida Supreme Court ruling in *Trianon v. Park Condominium Assoc., Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985). The *Trianon* court held that governmental officials or employees performing discretionary governmental functions are not subject to the limited waiver of sovereign immunity under Fla. Stat. section 768.28.

The district court of appeals held that *Trianon* distinguished liability for negligence in operational acts performed by governmental officials in discretionary roles. "The lack of a common law duty for exercising a discretionary police power function must, however, be distinguished from existing common law duties of care applicable to the same officials or employees. . . during the course of their employment to enforce compliance with the law." 516 So.2d at 1041, citing 468 So.2d 920. Governmental entities may be held liable for negligent handling of equipment pursuant to discretionary policy power acts under Fla. State. section 768.28.

The appeals court stated that the complaint was not limited to the discretionary decisions to test for brucellosis or even to the choice of testing procedures. The appellant may attempt to prove negligent actionable performance by representatives of the Department of Agriculture. Therefore, the court reversed the summary judgment in favor of the agency and remanded the case.

— *Sid Ansbacher*

GEORGIA. *Security interest in accounts receivable.* In 1981, Metter Banking Company perfected a security interest in collateral of He-Bo Farms, including "accounts receivable and all contract rights of business". In 1982, He-Bo Farms borrowed $200,000 from Fisher Foods and the parties agreed that the proceeds from the sale of He-Bo's Vidalia onions would be deposited in the bank and that $1.00 of each bag of onions sold would be segregated for payment to Fisher. Furthermore, Fisher perfected a security interest in crops growing or harvested. When He-Bo Farms defaulted on the Fisher loan, Fisher obtained a judgment in the amount of $113,075.71. In an attempt to partially satisfy the judgment, He-Bo Farms transferred $54,475 worth of Vidalia onions to Fisher.

The bank sued Fisher claiming that it had a prior perfected security interest in the onion crop. The trial court granted Fisher summary judgment. The court of appeals reserved, in *Metter Banking Co. v. Fisher Foods, Inc.*, 359 S.E.2d 145 (1987), finding that although the bank did not have a perfected interest in "the crops," it did have a prior perfected interest in all of He-Bo's "accounts receivable and all contract rights of business." Since Ga. Code Ann. section 11-9-106 defines an "account" as "any right to payment for goods sold. . . whether or not it has been earned by performance," the court found that He-Bo Farms "had a right to payment for its onions, to be earned by sale, and did not have the right to give it up and thereby defeat the bank's perfected security interest in He-Bo's contract rights and accounts receivable 'whether or not [they have] been earned by performance.'"

Furthermore, the court held that even if Fisher's security interest in the crops defeated the bank's prior perfected interest in accounts receivable, it subordinated that right when it agreed to be paid out of the accounts received by the bank under the bank's security agreement with He-Bo Farms.

— *Daniel M. Roper*

MASSACHUSETTS. *Amendment to statute defining agriculture and farming.* On July 14, 1987, the Massachusetts legislature approved an amendment to the state law definitions of "agriculture" and "farming", found at Mass. Ann. Laws ch. 128, § 1A (Michie/Law. Co-op. 1976). This section is amended to include "the growing and harvesting of forest products upon forest land." 1987 Mass. Acts 253, 1987 Mass. Adv. Legis. Serv. 179 (Law. Co-op).

— *Julia R. Wilder*

PENNSYLVANIA. *Occupational diseases — presumed ocular histoplasmosis.* In order to satisfy the burden of proof, a claimant who seeks Workmen's Compensation benefits for disability arising from a non-scheduled occupational disease must prove that the claimant was exposed to the disease by reason of his employment, that the disease was causally related to the employment, and that the incidence of the disease is substantially greater in claimant's occupation than in the general population.

To satisfy the substantially greater incidence of disease requirement, the claimant must show more than a greater incidence. In the case of *Landis v. W.C.A. Bd. (Appeal of Hershey Equipment Co.)*, 526 A.2d 778 (1987), claimant's physician testified claimant had a greater risk of contracting the disease as an installer of equipment for chicken houses than in the general population, but the physician could not determine how much greater the risk was. The supreme court held such testimony failed to meet the burden of proof and reversed the lower court on this point.

— *John C. Becker*

AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

Membership renewal notice. Membership dues for 1988 were due February 1, 1988. The dues schedule is as follows: regular membership – $45; student membership – $20; sustaining membership – $75; institutional membership – $125; and foreign membership (outside U.S. and Canada) – $65. Dues may be paid to Mason E. Wiggins, Jr. at Heron, Burchette, Ruckert & Rothwell, Suite 700, 1025 Thomas Jefferson St., N.W., Washington, D.C. 20007. Preserve your right to vote in the upcoming election by paying your dues now.

AALA Distinguished Service Award. The AALA invites nominations for the Distinguished Service Award. The award is designed to recognize distinguished contributions to agricultural law in practice, research, teaching, extension, administration, or business.

Any AALA member may nominate another member for selection by submitting the name to the chair of the Awards Committee. Any member making a nomination should submit biographical information of no more than four pages (in quintuplicate) in support of the nominee. The nominee must be a current member of the AALA, and must have been a member thereof for at least the preceding three years. Nominations should be sent to John Becker, chair, AALA Awards Committee, Penn. State University, Department of Agricultural Economics, University Park, PA 16802; 814-865-7656.

Fifth Annual Student Writing Competition. The AALA is sponsoring its fifth annual Student Writing Competition. This year, the AALA will award two cash prizes in the amount of $500 and $250.

Papers must be submitted by June 30, 1988. For complete competition rules, contact Professor John Becker, Department of Agricultural Economics, Penn. State University, University Park, PA 16802; 814-865-7656.