



**The National Agricultural Law Center**  
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**Sixth Annual MidSouth Agricultural &  
Environmental Law Conference**

***“Early Bird” Online CLE***  
**5/15/19**

(479) 575-7646      nataglaw@uark.edu

**Reminder:**

- **Sixth Annual MidSouth Agricultural & Environmental Law Conference on June 6-7 in Memphis, TN**
- **Networking:**
  - June 6<sup>th</sup>: Annual “Beer & BBQ” dinner reception at the Rendezvous from 6:30-8:30 pm.
- **Conference specifics:**
  - Held at the University of Memphis Cecil C. Humphreys School of Law
  - June 7<sup>th</sup>: Registration at 7:30am with CLE beginning at 8am.
- **More information available [here](#).**

**2019 Ag. & Env. Law Update:**

**Peggy Hall**  
*Agricultural and Resource Law Program, Ohio State University*

**Stephanie Showalter - Otts**  
*National Sea Grant Law Center*

**Ross Pifer**  
*Penn State University Center for Agricultural and Shale Law*

**Elizabeth Rumley**  
*National Agricultural Law Center*

- Agricultural nutrients
- Agritourism
- Lake Erie Bill of Rights
- GMO Salmon
- Transboundary Aquifer Use in Agriculture
- Cell-Cultured Food Products
  - Labeling and Regulation
- Glyphosate Litigation
- Waters of the United States (WOTUS)
- Right-to-Farm
- Hemp



**Report & Research available at**  
<https://nationalaglawcenter.org/center-publications/#nutrientmanagement>

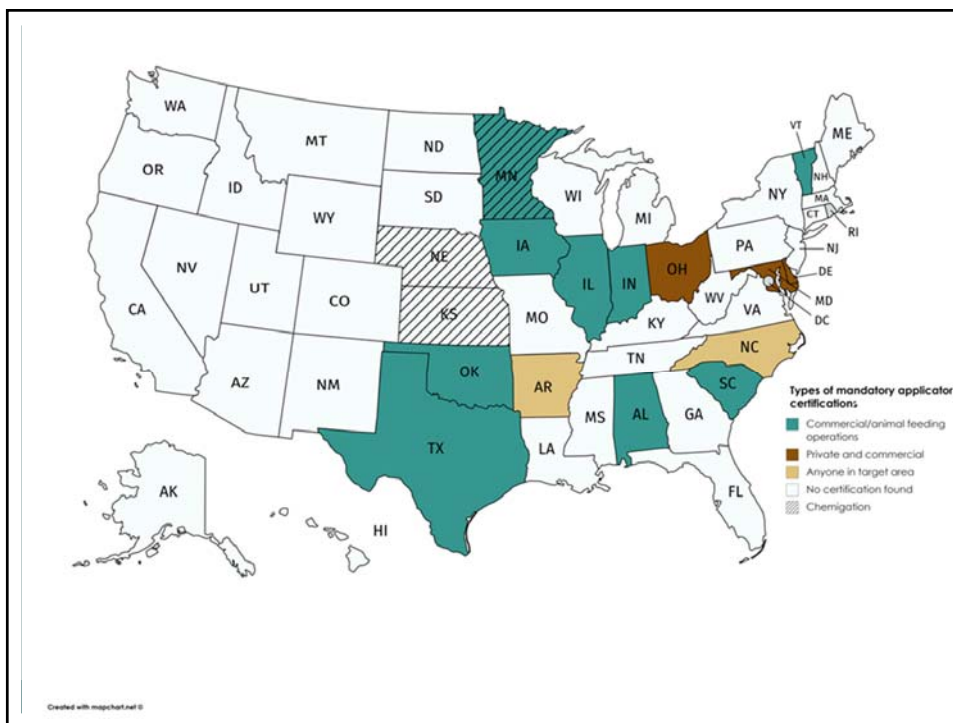
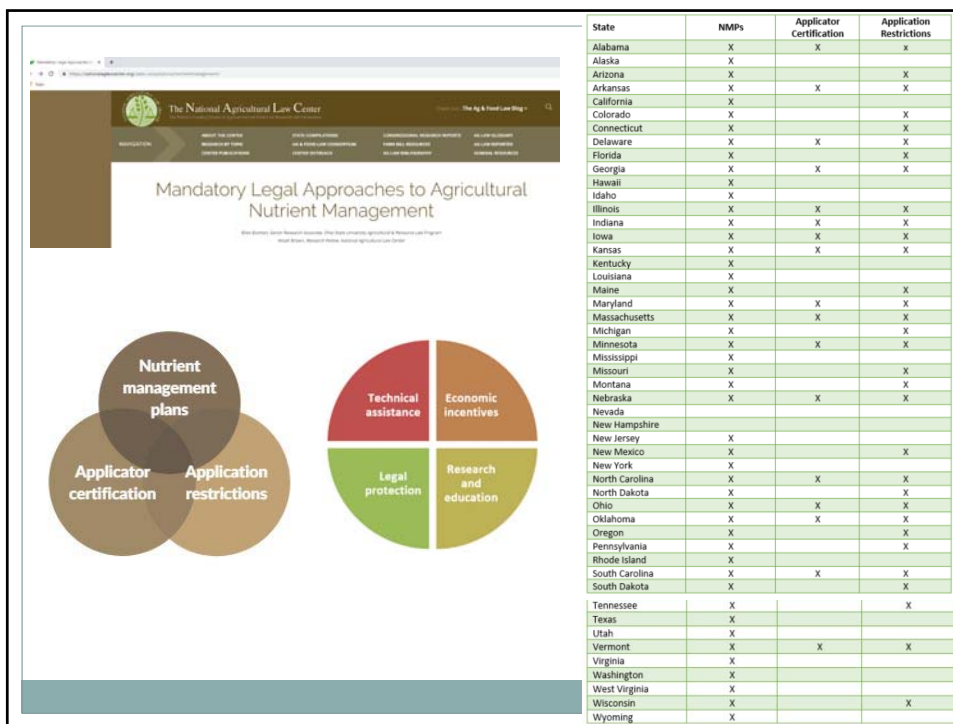
**State Legal Approaches to Reducing Water Quality Impacts from the Use of Agricultural Nutrients on Farmland**  
*Peggy Kirk Hall and Ellen Essman*

NATIONAL AGRICULTURAL LAW CENTER  
MAY 2019

USDA United States Department of Agriculture  
National Agricultural Library

NATIONAL AGRICULTURAL LAW CENTER

THE OHIO STATE UNIVERSITY  
COLLEGE OF FOOD, AGRICULTURAL, AND ENVIRONMENTAL SCIENCES



# 2-year-old boy dies from injuries suffered when bounce pad blows away near Lincoln

From staff reports Oct 6, 2016 2



LOCAL & STATE Posted August 9, 2017 Updated August 16, 2017

INCREASE FONT SIZE


## Family of Oakland teenager killed in hayride crash settles lawsuit with farm

Cassidy Charette was killed on Oct. 11, 2014, in a haunted hayride at Harvest Hill Farms.

AGRITOURISM INDUSTRY ACCIDENT VICTIMS - THE LAW OFFICES OF SEAN M. CLEARY

Our law firm provides quality legal representation for those injured in agriculture-related accidents.

https://nationalaglawcenter.org/consortium/webinars/agritourismrisk/



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## Farms and Fun: Reducing Liability Risk for Agritourism

Topic:

The agritourism industry is in a growth pattern. The number of farms receiving income from agritourism in the U.S. expanded from 23,350 in 2007 to 33,161 in 2012 and agritourism income grew from \$566 million to \$704 million, with an average income of over \$24,000 per farm. Research suggests that agritourism operations will continue on this track in the future due to persistent consumer interest in food and farming coupled with an economic need to augment farm income through diversification.

However, bringing people onto the farm for fun also brings risks of injuries and the possibility of legal liability. In this webinar, we'll address areas of high risk exposure for agritourism operations and tools for reducing liability risk such as immunity laws, best management practices, agritourism readiness plans and insurance options.

Participation:  
This webinar was recorded on January 16, 2019. To listen to a recording of the webinar, please click [here](#).

<https://nationalaglawcenter.org/consortium/webinars/agritourismrisk/>

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## Reducing Risk in Agritourism: Factsheet Series

*Peggy Kirk Hall, Associate Professor-Agricultural and Resource Law Program; Ohio State University Extension*  
*Evin Bachelor, Law Fellow- Agricultural and Resource Law Program; Ohio State University Extension*

The number of farms receiving income from agritourism in the U.S. expanded from 23,350 in 2007 to 33,161 in 2012. Research suggests that agritourism operations will continue on this track in the future due to consumer interest in food and farming coupled with an economic need to augment farm income through diversification. Running an agritourism business is not without its challenges, however. This series of factsheets discusses legal issues essential to reducing risks on potential agritourism operations. Each factsheet will identify questions to consider, and will also include a checklist or tips for operators to consider in reducing risk.

*Farm Animals and People: Liability Issues for Agritourism*  
*Food Sales at Agritourism Operations: Legal Issues*  
*Agritourism Immunity Laws in the United States*  
*Agritourism Activities and Zoning*  
*Agritourism and Insurance*

Download combined factsheets Posted 3/19/19

<https://nationalaglawcenter.org/center-publications/#agritourismfactsheet>

<https://nationalaglawcenter.org/state-compilations/agritourism/>



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A National AgLaw Center Research Publication

## States' Agritourism Statutes

Compiled by:  
**Alexandra Lizano**  
Research Assistant  
 &  
**Elizabeth Rumley**  
Senior Staff Attorney  
 National Agricultural Law Center

Over half of the states in the United States have enacted statutes that address agritourism. These statutes vary from liability protections for

<https://nationalaglawcenter.org/state-compilations/agritourism/>

Ohio Agricultural Law Blog--Case Watch: The Lake Erie Bill of Rights Lawsuit

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AG LAW BLOG // OHIO AGRICULTURAL LAW BLOG--CASE WATCH: THE LAKE ERIE BILL OF RIGHTS LAWSUIT

[Link to this Article](#)  
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Ohio Agricultural Law Blog--Case Watch: The Lake Erie Bill of Rights Lawsuit

**Ohio Agricultural Law Blog--Case Watch: The Lake Erie Bill of Rights Lawsuit**

Thursday, March 28th, 2019

Peggy Kirk Holl, Associate Professor, Agricultural & Resource Law

The media storm that surrounded the controversial Lake Erie Bill of Rights (LEBOR) has quieted, but the federal lawsuit over LEBOR has heated up. Just a month ago, Toledo residents voted to approve LEBOR. The measure establishes rights within the City's charter for the Lake Erie Ecosystem to "exist, flourish, and naturally evolve" as well as rights to self-government and a clean and healthy environment for the citizens of Toledo. LEBOR states that corporations or governments that violate these rights can be liable for harm caused and also cannot use existing federal and state laws or permits in defense of the violations. Dreyfus Farm Partnership [files a lawsuit](#) in federal court the day after LEBOR passed. The farm's [complaint](#) asks a federal court to declare LEBOR unconstitutional on several grounds and also claims that LEBOR violates state laws. Recent developments in the past week prompted us to provide this quick update on the lawsuit.

**City of Toledo agrees to a preliminary injunction.** The court announced on March 18 that the City of Toledo agreed to the entry of a [Preliminary Injunction Order](#). Dreyfus Farm requested the injunction when it filed the lawsuit. The court stated that the purpose of a preliminary injunction "is merely to preserve the relative positions of the parties until a trial on the merits can be held" and noted that the City of Toledo has not "commenced or initiated any action against Dreyfus Farms or others pursuant to LEBOR." Toledo therefore agreed to the injunction and to maintain its current position of not taking any action to enforce LEBOR.

[Lake Erie Ecosystem and Toledoans for Safe Water ask to join the lawsuit.](#)

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**TOLEDOANS for SAFE WATER**

# The Lake Erie Bill of Rights

## Citizens Initiative

[Mobile Version](#)

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Toledoans for Safe Water is a grassroots organization in the Toledo area working to establish a Bill of Rights to protect Lake Erie and the communities that rely on its health and viability.

## LAKE ERIE BILL OF RIGHTS

## ESTABLISHING A BILL OF RIGHTS FOR LAKE ERIE, WHICH PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS

*We the people of the City of Toledo* declare that Lake Erie and the Lake Erie watershed comprise an ecosystem upon which millions of people and countless species depend for health, drinking water and survival. We further declare that this ecosystem, which has suffered for more than a century under continuous assault and ruin due to industrialization, is in imminent danger of irreversible devastation due to continued abuse by people and corporations enabled by reckless government policies, permitting and licensing of activities that unremittingly create cumulative harm, and lack of protective intervention. Continued abuse consisting of direct dumping of industrial wastes, runoff of noxious substances from large scale agricultural practices, including factory hog and chicken farms, combined with the effects of global climate change, constitute an immediate emergency.

*We the people of the City of Toledo* find that this emergency requires shifting public governance from policies that urge voluntary action, or that merely regulate the amount of harm allowed by law over a given period of time, to adopting laws which prohibit activities that violate fundamental rights which, to date, have gone unprotected by government and suffered the indifference of state-chartered for-profit corporations.

*We the people of the City of Toledo* find that laws ostensibly enacted to protect us, and to foster our health, prosperity, and fundamental rights do neither; and that the very air, land, and water – on which our lives and happiness depend – are threatened. Thus it has become necessary that we reclaim, reaffirm, and assert our inherent and inalienable rights, and to extend legal rights to our natural environment in order to ensure that the natural world, along with our values, our interests, and our rights, are no longer subordinated to the accumulation of surplus wealth and unaccountable political power.

*We the people of the City of Toledo* affirm Article 1, Section 1, of the Ohio State Constitution, which states: "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

*We the people of the City of Toledo* affirm Article 1, Section 2, of the Ohio State Constitution, which states: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly."

*And since all power of governance is inherent in the people*, we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment over powers claimed by certain corporations.

[Link to text](#)



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## Lake Erie Bill of Rights

- City of Toledo, OH passed ballot initiative granting Lake Erie legal rights.
- Lawsuits challenging LEBOR filed next day.
- Legal rights for nature recognized in a few other countries, but never in United States.
- Similar initiatives by local governments in Ohio and other states have failed.



## AquaBounty's AquAdvantage Salmon

- Hybrid Atlantic salmon incorporating genes from Pacific Chinook salmon and ocean pout
- Significant pushback in the United States
  - 2015: FDA approval
  - 2016: Congress banned import until labels mandated
  - 2016: FDA issued import alert
  - 2016: USDA National Bioengineered Food Disclosure Law
  - 2018: USDA Final National Bioengineered Food Disclosure Standard

## Import Alert Lifted

- In March 2019, the FDA lifted its import alert
- In response to USDA's issuance of final regulations implementing the Disclosure Law
- AquAdvantage salmon can now be imported, cultivated, and marketed in the United States

## Transboundary Aquifer Use in Agriculture

- Mississippi River Valley Alluvial Aquifer is used by multiple states in the region for agricultural water supply.
- Each state has different rules governing how water is allocated and used.
- Mississippi levels are critical.
- MS v. TN lawsuit involves different, deeper aquifer that is used for drinking water.
- NSGLC published report comparing state laws governing MRVA use.

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## Cell-Cultured Food Products

- **State Labeling Statutes**
  - Montana HB 327 – Real Meat Act (Apr. 18, 2019)
  - Arkansas HB 1407 – Truth in Labeling legislation (Mar. 18, 2019)
  - South Dakota SB 68 – defines misbranding (Mar. 18, 2019)
  - North Dakota HB 1400 – misrepresentation of nonmeat as a meat food product (Mar. 12, 2019)

## Cell-Cultured Food Products

- **State Labeling Statutes**
  - Mississippi SB 2922 – labeling as meat or meat food product (Mar. 12, 2019)
  - Wyoming SB 68 – Meat from harvested livestock or poultry (Feb. 26, 2019)
  - Missouri – Meat Advertising Law (June 2018)
    - ✦ Originally passed by legislature as SB 977
  
  - Legislation also is pending in numerous states.

## Cell-Cultured Food Products

- **Arkansas statute**
  - Stated purpose of statute is to prevent public deception about a food product's origin.
  - Food products defined by legislation include beef, pork, poultry, and rice.
  - Definition of meat specifically excludes synthetic products derived from plants, insects, or from products grown in a lab.

## Cell-Cultured Food Products

- **Mississippi statute**
  - “A food product that contains cultured animal tissue produced from animal cell cultures outside of the organism from which it is derived shall not be labeled as meat or a meat food product. A plant-based or insect-based food product shall not be labeled as meat or a meat food product.”

## Cell-Cultured Food Products

- **Federal Regulation**
  - Oct. 23-24, 2018 – USDA and FDA hold joint public meeting.
  - Nov. 16, 2018 – USDA and FDA issue joint press release.
  - Mar. 7, 2019 – USDA and FDA announce formal agreement:
    - ✦ FDA will oversee cell collection, cell banks, and cell growth and differentiation.
    - ✦ USDA will oversee production and labeling of food products derived from cells.

## Cell-Cultured Food Products

- **Related labeling issues:**
  - Plant-based “milk” products
    - ✦ Jan. 28, 2019 – FDA comment period closed; FDA sought comment on its approach to the use of dairy terms in plant-based products.
  - Rice
    - ✦ Addressed in recent Arkansas statute

## Glyphosate Litigation

- **Three Leading Cases:**
  - Dewayne Johnson – Superior Court of California, San Francisco
    - ✦ Aug. 10, 2018, jury verdict – \$289 million
    - ✦ Oct. 22, 2018 – verdict upheld but reduced to \$78 million
  - Edwin Hardeman – U.S. District Court, San Francisco
    - ✦ Mar. 27, 2019 – jury verdict – \$80 million

## Glyphosate Litigation

- **Three Leading Cases:**
  - Alva & Alberta Pilliod – Superior Court of California, Oakland
    - ✦ May 13, 2019, jury verdict
      - Alva - \$18 million compensatory damages
      - Alberta - \$37 million compensatory damages
      - \$1 billion in punitive damages to each plaintiff
- **13,000+ pending cases per media reports**

## Glyphosate Litigation

- **EPA Press Release – Apr. 30, 2019**
  - “EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen.”
  - 2017 human health risk assessment did not identify public health risks.
  - 2017 ecological assessment did identify ecological risks.

## Waters of the United States

- **Proposed Rule to Revise Definition of WOTUS**

- **Timeline:**

- ✦ Dec. 11, 2018 – EPA and Army announce proposed rule.
- ✦ Feb. 14, 2019 – Notice of proposed rule published in Federal Register.
- ✦ Feb. 27-28, 2019 – EPA and Army held public hearing in Kansas City.
- ✦ Apr. 15, 2019 – Public comment period closed.

## Waters of the United States


- **Proposed Rule to Revise Definition of WOTUS**

- Proposed rule would replace definition of WOTUS that was promulgated by agencies on June 29, 2015.

- **2018 Applicability Date Rule Litigation**

- Mar. 8, 2019 – US announces withdrawal of appeal.





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[www.pennstateaglaw.com](http://www.pennstateaglaw.com)

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## Right-to-Farm Statutes, Generally

- **Purpose:** provides an affirmative defense to agricultural operations facing nuisance suits if certain requirements are met
  - Passed in all 50 states, but different specifics everywhere.
    - × <http://nationalaglawcenter.org/state-compilations/right-to-farm/>
- **Nuisance** - substantial interference with another's use and enjoyment of his land
- **Elements**
  - *Fault* - defendant intentionally, negligently, or recklessly interfered with plaintiff's use and enjoyment of their property
  - *Substantial and ongoing* (not petty...)
  - *Reasonableness* (utility vs. harm)

## Smithfield Foods (N.C.)

- **26 lawsuits filed against subsidiary of Smithfield Foods-alleging nuisance**
  - Jury returned verdict in first five cases, others still pending.
- **“No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality outside of the operation after the operation has been in operation for more than one year, when such operation was not a nuisance at the time the operation began.” *NC Gen Stat § 106-701 (2013)***
  - **Ruling:** RTF statute did not apply. Reasoning: some of the residents lived in the area before the hog farm was established so there was no “coming to the nuisance”
    - × “At bottom, plaintiffs’ nuisance claims have nothing to do with changed conditions in the area, and therefore, as a matter of law, the right-to-farm law does not bar those claims.” – Ruling on motion

## Smithfield Cases

- **1<sup>st</sup> jury verdict of \$75K for each of the 10 plaintiffs with a further \$50 million added as punitive damages**
  - Reduced by the judge to a total of \$3.25 million
    - × Punitive damages capped at “three times the amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever is greater.”
      - NC Gen Stat § 1D-25 (2015)
- **2<sup>nd</sup> jury verdict of \$25.13 million — \$65,000 for each plaintiff in compensatory damages and \$12.5 million each in punitive damages**
  - Reduced to a total of \$630,000
- **3<sup>rd</sup> jury verdict of \$23.5 million in compensatory damages and \$450 million in punitive damages**
  - Reduced to a total of \$94 million
- **4<sup>th</sup> jury verdict of \$100k in compensatory damages, no punitive**
- **5<sup>th</sup> jury verdict of \$139k in compensatory damages and punitive of \$281,000.**

All cases have been appealed to the Fourth Circuit

## Notes

- **Plaintiffs did not prove that the farms were operating in violation of any permit, law or regulation.**
- **The grower was not a named party in the lawsuit**
  - Even though it's likely that their contract made them responsible for the manure
- **Amended RTF proposals/updates**
  - Utah
  - Nebraska
  - Georgia
  - West Virginia (passed)
  - Oklahoma (passed)
  - North Carolina (passed)

<https://nationalaglawcenter.org/state-compilations/righttofarmoverview/>

## New N.C Right to Farm Statute

- Plaintiff must be the legal possessor of the land, be located within a ½ mile of the alleged nuisance and bring the lawsuit within 1 year of the establishment of the farm
- A fundamental change to the operation does not include any of the following:
  1. A change in ownership or size.
  2. An interruption of farming for a period of no more than three years.
  3. Participation in a government-sponsored agricultural program.
  4. Employment of new technology.
  5. A change in the type of agricultural or forestry product produced.
    - N.C. Session Law 2018-113

## What is Industrial Hemp?

2018 Farm Bill definition:

“The term ‘hemp’ means the plant *Cannabis sativa* and any part of that plant, including the seeds thereof and all derivatives, extracts cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”

## IH & The Law: Past, Present, & Future

### Controlled Substances Act of 1970

- Considered all *Cannabis sativa* as marijuana, and, therefore a Schedule I narcotic
- Was problematic under federal and state law
- Required a permit from Drug Enforcement Administration

### Agricultural Act of 2014 (2014 Farm Bill)

- Opened the door up to industrial hemp production in the bounds of “a pilot program to study the growth, cultivation, or marketing”
- Subject to many requirements, could be produced without DEA permit

### Agricultural Improvement Act of 2018 (2018 Farm Bill)

- Landmark change in U.S. law
- Many aspects still to be implemented

### States' Laws

- <https://nationalaglawcenter.org/state-compilations/hempprovisions/>
- At least 42 states

## 2018 Farm Bill

- **Removed “industrial hemp” from the Controlled Substances Act of 1970**
- **Strengthens interstate commerce (i.e., transport across state lines) of IH and IH products**
  - “Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp . . . or hemp products.”
  - “No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products . . . .”
- **Sets range of penalties for violations**
- **Calls for State and tribal plans, as well as USDA Plan**
- **Felony Conviction Requirement**
  - No one with a felony conviction related to a controlled substance offense shall be eligible for a license for industrial hemp for 10 years following the date of their conviction

## 2018 Farm Bill: Next Steps

- **State Plans**
  - Land to be used for planting; testing; effective disposal of plants and plant products; compliance with law enforcement; certification that state has necessary personnel and resources
- **USDA Plan**
- **Transition from 2014 to 2018 Farm Bill**

## CBD Oil and the FDA

- **Current issue: use of CBD oil in food and dietary supplements.**
  - The vast majority of the market share for industrial hemp is in CBD oil
- **In the past FDA has not cracked down on its usage and promoters are claiming all kinds of health benefits:**
  - Erectile dysfunction
  - Cure for cancer
  - Alzheimer's treatment
  - Depression
  - And the list goes on...

## Along came Epidiolex...

- FDA approved a highly refined CBD product as a drug for the treatment of several forms of childhood epilepsy.
- The Food, Drug, and Cosmetics Act contains a prohibition against adding drugs to food products called the Drug Exclusion Rule
  - There is an exception for food products that were already selling overtly labeled products before the drug went into trials; however this only applies to legal substances

## Future of CBD

There is a lot of confusion at the moment...

- FDA says that it is bound by the law, but they aren't doing much to enforce it
- States are taking wildly different approaches on hemp:
  - Some states are banning it like Ohio (although this is changing)
  - Some states are going to approve it anyways (CA has a bill to do so pending)
- Statements from FDA say this could take years to resolve unless Congress gets involved...

## Some Remaining Issues:

- Interstate commerce
- THC testing mechanism
- Registration/License/Assessment of fees
- Availability of lending
- Intellectual property
- Industry infrastructure
- Role of the Food and Drug Administration (especially with CBD)
- Crop insurance products
- Importation of seeds

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# I'm Talking About the Big D and I Don't Mean Dallas

Family Law Issues in Agriculture  
National Agriculture Law Center  
May 2019

By Cari B. Rincker, Esq.

**RINCKER**  
*Law* PLLC RINCKERLAW.COM

## Who I Am

- Grew up on a beef cattle farm in Illinois
  - Advanced degrees in animal science
- Past-Chair of the ABA, General Practice, Solo & Small Firm Division's Agriculture Law Committee
- Client base ranges from livestock producers & food entrepreneurs to mid-size agri-businesses



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## Of Course I Have a Disclaimer...

- I'm a lawyer but not necessarily your lawyer
- Today's presentation is for informational purposes only should not be considered legal advice
  - Before making decisions for your farm or food business, it is always best to have a candid conversation with an attorney about your specific circumstances



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## Family Law Issues With Agriculture

Nuptial Agreements

Children Issues

Spousal Maintenance Issues

Special Farm Income Issues

Animal Issues

Equitable Distribution of Farm and Agriculture Businesses

Farm Estate and Succession Planning Issues

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## Nuptial Agreements



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## Major Topics Discussed in Prenups and Postnups

- Identification of Marital Property and Separate Property
- What happens to Marital Property with a divorce
- Spousal Maintenance
- Estate Rights
- Promises During the Marriage
- Break-Up Procedures
- Miscellaneous Terms

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## What Prenups Cannot Discuss

### Kids (with limited exceptions)

- No child support, custody/visitation provisions
- Religion is okay



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## Anatomy of a Prenup

### Identification of Marital Property and Separate Property



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## Anatomy of a Prenup

What Happens to Marital Property in the Case of a Divorce

- 2 Options:
- Follow the law/ Silence
- Make Your Own Rules



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## Anatomy of a Prenup

Spousal Maintenance

- 3 options:
- Silence/ Follow the Law
- Waiver
- Make Your Own Rules



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## Anatomy of a Prenup

### Estate Rights

- 3 Options:
  - Follow the Law/ No Waiver
  - Waiver of Estate Rights/ Right of Spousal Election
  - Make Your Own Rules



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## Anatomy of a Prenup

### Promises During Marriage

- Examples:
  - Life/ Disability/ Long-Term Care Insurance
  - Access to monies
  - Joint title of real estate / farm business



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## Anatomy of a Prenup

### Promises During Marriage

- What isn't (usually) enforceable
  - Lifestyle clauses (promises not to smoke/ drink)
  - Cheating clauses



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## Anatomy of a Prenup

### Break-up Procedures

- Dealing with jointly or separately owned real estate
  - Would procedures differ if you have children?
- Dealing with joint business interests
- Alternative Dispute Resolution
  - Mediation clause



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## Validity of a Prenup/ Postnup

Most states will uphold a nuptial agreement if 3 things are satisfied:

- Terms are fair and reasonable
- Both sides are represented by separate counsel
- No duress
  - Ideally, signed 3 months before the wedding invitations go out



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## Children Issues



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## Potential Children Issues

Custody (or the Allocation of Parental Responsibilities)

Visitation/ Parenting Time

Child Support



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## Warning About the C Word

Some states are moving away from the word "custody"

- Illinois uses "allocation of parental responsibilities"
- Texas says "possession and access"

In family law mediation, this word is oftentimes avoided because it is so emotional for parents



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## Children Issues: 2 Types of Custody

### Physical Custody

- Who has 51% or more of the time?
- If 50/50 then “joint”

### Legal Custody

- Decision-making over “major decisions” for:
  - Health: Nonemergency medical decisions
  - Education
  - Religion
  - Extra-curricular activities

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## Factors in Considering “Custody”

The factors can vary from state to state but typically the “best interest of the child” standard or some deviation thereof

- Prior agreements
- Age and health of the parents
- Financial stability of the parents
- Ability for parents to provide for the child’s emotional and intellectual development



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## Factors in Considering “Custody”

The factors can vary from state to state

- Home environment and parental guidance
- Child preference
- Sibling connection
- Care and affection shown by the parents
- Which parent has been the primary caretaker
- Parents’ cooperation with visitation in the past
- Any past conduct with a parent removing the child from jurisdiction without authorization
- Parental fitness
- Physical violence

Eschbach factors – New York



## Children Issues: Parenting Time

Basic Schedule

School Break Schedule

Summer

- 4-H / FFA/ Livestock shows?

Holiday Schedule



## Children Issues: Child Support

### Basic Support

- This is a **math equation** and it varies from state to state
- Arguments for **deviation** upwards and downwards (factors depend on the state)
  - Child's physical and emotional state
  - Child's educational needs
  - Financial resources of the parents
  - Medical expenses

### Child Expenses

- Health Insurance
- Unreimbursed Medical
- Day care expenses
- Educational Expenses
  - College?
- Extra-Curricular Activities

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## Emancipation

The law varies from state to state

In some states, the age of emancipation is 18 years of age

In other states, the age of emancipation is 21

This can be negotiated – sometimes it is through college (4 year program or age 22)



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## Modification

You can modify child support in most states if there is a substantial change in circumstance

Some states allow parents to revisit child support if 3 years have passed or income has gone up or down 15%



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## Spousal Maintenance



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## Spousal Maintenance

Applicability

Calculations

Duration

Termination

Farm Income Issues



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## Spousal Maintenance: Applicability

Applied when there is income disparity

Law will differ from state to state on the applicability but oftentimes when 1 spouse was unemployed or underemployed to care for the family



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## Spousal Maintenance: Calculations

### Formulaic vs. Case Law Rules

- New York and Illinois have formulas now based on income
- New York has an income cap of \$185K

Usually there are deviation factors



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## Spousal Maintenance: Duration

This varies from state to state

Some states like Illinois have set durations depending on the length of the marriage

In states like New York, there are guideline ranges based on duration of marriage

Other states, case law or statutes dictates factors for court to consider

- Longer the marriage, longer maintenance
- Longer if illness / disability



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## Spousal Maintenance: Termination

Death of either Party

Remarriage

End of specified Duration

Cohabitation

- “Conjugal relationship”



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## Farm Income Issues for Child Support & Spousal Support Calculations



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## What is Considered Income for Support Calculations

### Gross income less deductions

- What goes into income and what deductions are included varies from state to state



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## What is Considered Income for Support Calculations

### What is usually considered income

- Employment income
- **Net profit from a business or self employment income**
- All other income, including investment income
- Workers' compensation
- Disability benefits/ SSDI
- Social security / SSI
- Unemployment
- Pension and retirement benefits
- Annuity payments
- **Self-employment depreciation deduction**
- **Self-employment entertainment and travel allowances**

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## Farm Income Issues for Child Support & Spousal Support Calculations

### Depreciation of Farm Assets

- Accelerated depreciation of farm assets can be considered income for child support and spousal support purposes
- Discovery issues- looking back through historic tax returns



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## Farm Income Issues for Child Support & Spousal Maintenance Calculations

### Pre-Paying Expenses

- Look at what was prepaid in the fall/winter for the upcoming growing season



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## Farm Income Issues for Child Support & Spousal Maintenance Calculations

### Grain Inventory

- Were assets hoarded in anticipation of a divorce?
- Need this also for equitable distribution



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## Farm Income Issues for Child Support & Spousal Maintenance Calculations

### Look at the Schedule F or Business Deductions

- Too much in entertainment, subscriptions, professional fees, etc.?
- Look for reasonableness



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## Farm Income Issues for Child Support & Spousal Maintenance Calculations

### Variable income

- Courts will typically average the last three years if income varies substantially from year to year



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## Farm Income Issues for Child Support & Spousal Maintenance Calculations

Consider hiring a forensic accountant to help identify red flags and help determine income



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## Division of Farm and Agribusinesses



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## Division of Farm and Agri-Business

What is  
Equitable  
Distribution?

Special Concerns  
for Farm and  
Agri-Business



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## Equitable Distribution

Equitable does not mean equal – what is fair and equitable is based on factors that differ from state to state



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## Community Property States

### Community Property

- California
- Texas
- Louisiana
- Arizona
- Washington
- Idaho
- Nevada
- New Mexico
- Wisconsin

### Quasi – Community Property States



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## Farm or Agri-Business as an Asset

### Valuation

- Forensic accounting vs. business valuations
- Cost can vary depending on complexity of business
- Working out a payment plan



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## Farm or Agri-Business as an Asset

### Division of farm or agri-business asset

- Valuation of the business itself and all of its assets including farm equipment, grain inventory, pre-pays, etc.
- Does the farm have any intellectual property?



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## Farm or Agri-Business as an Asset

Keeping the farm or agri-business intact

- Can the farming operation switch to a business relationship?
- Think about a path to separate if continuing business doesn't work



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## Animal Issues



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## Animal Issues

Pets/ Companion  
Animals

Quasi-Companion  
Animals

- Horses
- 4-H Projects

Livestock



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## Animal Issues: Pets

- In most states, they are considered property
- Some states are taking more of a quasi-property approach where people can ask for joint ownership and joint allocation of pet responsibility
- New York applies a “best of all concerned” standard for married couples
  - No “pet visitation”
- Farm dogs would still fall under “companion animals” despite added importance to farm operation



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## Animal Issues: Quasi-Companion Animals

- In some states, horses are considered companion animals and others they are classified as livestock animals
- Most states will have a property view when it applies to horses
- Should you hire an equine appraiser?



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## Animal Issues: Livestock

### Issues to consider:

- What is premarital separate property?
- What about progeny?
- Frozen genetics (e.g., semen and embryos)
- Does the livestock need appraised?



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## Implications Farm Estate and Succession Planning



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## Estate and Succession Planning

Guardians/  
Custodians for  
Children

Farm and Agri-  
Business  
Interests



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## Estate and Succession Planning

### Guardians / Custodians

- Divorcing or Separating Parents can pick a guardian or custodian for their child(ren) in the event that they both predecease the minor children
- This is done in the parenting plan agreement and will usurp the Last Will and Testament if a conflict



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## Estate and Succession Planning

### Farm Business Succession

- Life insurance trusts
- Farm property to stay with the children via trust
- Provisions requiring postnuptial agreements

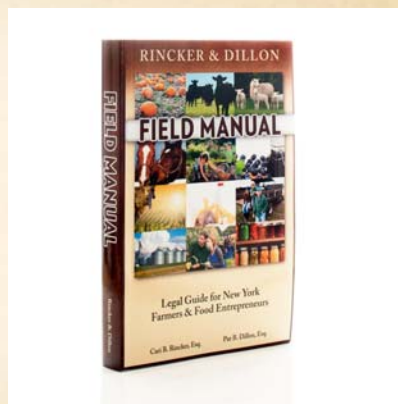


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## Oh, P.S. – I Just Wrote a Book

Cari B. Rincker & Patrick B. Dillon, “Field Manual: Legal Guide for New York Farmers & Food Entrepreneurs” (2013)

Available at  
<http://www.amazon.com/Field-Manual-Legal-Farmers-Entrepreneurs/dp/1484965191>



Also available on Kindle

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