



The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 1, Issue 8

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All previous issues of The Feed available [here](#).

Colorado Right to Repair. Colorado became the first state to enact a **right to repair law** for agricultural equipment on April 25. Manufacturers of agricultural equipment must make available to independent repair shops and owners of the equipment the documentation, parts, tools, and software necessary to make the repairs. Manufacturers do not have to disclose trade secrets and they are not responsible for actions that damage the equipment or violate any laws such as environmental statutes. To learn more about right to repair watch a recorded NALC webinar [here](#).

Foreign Ownership of Ag Land: Proposals. Since January 2023, more than half of states have proposed one or more bills to restrict foreign ownership. In the past few days, new proposals have been filed in Alabama (**HB 379**), Michigan (**SB 270**), and New York (**S 6522; S 6583**). For prior bills, see Volume 1, Issue 1 (Jan. 11) [here](#); Volume 1, Issue 2 (Jan. 25) [here](#); Volume 1, Issue 3 (Feb. 8) [here](#); Volume 1, Issue 4 (Feb. 24) [here](#); Volume 1, Issue 5 (March 9) [here](#); and Vol. 1, Issue 6 (March 22) [here](#); Volume 1, Issue 7 (April 14) [here](#).

Foreign Ownership: Enacted. Recently, Arkansas (**SB 338**) and Virginia (**SB 1438/HB 2325**) enacted laws which seek to restrict certain foreign investments in land located within their state. These states join Utah and Idaho to enact a foreign ownership law in 2023. Also, North Dakota enacted a law (**HB 1135**) which amends the state's foreign ownership law to restrict foreign governments from acquiring or holding an interest in the state's agricultural land. Proposals in Montana (**SB 203**), North Dakota (**HB 1371**), Oklahoma (**SB 212**), and Tennessee (**HB 40**) have been passed by the legislature but are not yet fully enacted.

- Conference opportunity (May 4-5, livestream available): **Marisa Bocci**, Partner, K&L Gates, will present "Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments," as part of NALC's inaugural **Western Agricultural & Environmental Law Conference**.

Hemp Bills in Congress. There are several bills relating to hemp production and the FDA's treatment of cannabinoids such as CBD. We are likely to see some, or all, of these bills included in the 2023 Farm Bill process. Current bills include:

- The Industrial Hemp Act of 2023 - **S 980** - Intended to reduce the regulatory burden on hemp fiber and oilseed crops by allowing options such as visual inspections instead of THC testing for these types of hemp crops.
- Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act of 2023 - **HR 1629** - This bill will force FDA to take steps towards recognizing cannabidiol, such as CBD, as a legal dietary supplement.
- CBD Product Safety and Standardization Act of 2023 - **HR 1628** - Would force FDA to create a pathway towards allowing food with cannabidiol to enter the commercial marketplace.
- Free to Grow Act - **HR 1428** - Would remove the 2018 Farm Bill language that **prohibits anyone with a felony conviction** for a controlled substance from receiving a license to grow industrial hemp for ten years.

To learn more about industrial hemp laws visit the NALC Reading Room by clicking [here](#).

Dicamba: Plaintiffs Claim EPA Rushed Registration. The plaintiffs in a lawsuit challenging EPA's 2020 decision to register certain formulations of dicamba for use directly onto crops have claimed that the decision was inappropriately rushed. According to the plaintiffs, EPA failed to address the Federal Insecticide, Fungicide, and Rodenticide Act violations cited by the Ninth Circuit in its 2020 decision overturning EPA's 2018 registration of dicamba for over-the-top use. EPA re-approved dicamba later that year, prompting the current lawsuit. The plaintiffs claim that because EPA's 2020 re-approval of dicamba was rushed, it is flawed in the same ways as the 2018 approval decision and should also be vacated. To read the plaintiffs' motion for summary judgment, click [here](#). For more NALC resources on the litigation surrounding dicamba, click [here](#).

- Conference opportunity: Brigit Rollins, Staff Attorney, National Agricultural Law Center will present "Pesticides in the Mid-South: Litigation and Regulatory Update," as part of the **10th Annual Mid-South Agricultural & Environmental Law Conference**.

California: Farmers Receive Water. For the first time since 2006, farmers in California will receive 100% of their water allocations from both the State Water Project and Central Valley Project thanks to winter rainstorms that have allowed critical reservoirs to reach capacity. The water supply will grant a reprieve to farmers who have been relying on groundwater to get through the historic drought plaguing the region. However, the reprieve may be short-lived as officials note that the Colorado River Basin, which supplies water to farmers in Southern California, is still in the midst of a decades-long drought. Click [here](#) to read the allotment announcement from the California Department of Water Resources.

- Conference opportunity (May 4-5, livestream available): James Eklund, Member, Sherman &

WOTUS Update: 2023 Rule Enjoined in Kentucky. The Sixth Circuit Court of Appeals issued an "administrative stay" of the 2023 WOTUS rule for the state of Kentucky, bringing the total number of states where the rule is blocked to 27. The stay is temporary, extending through May 10, while the court considers Kentucky's appeal of a lower court's decision to deny an injunction of the 2023 rule. To learn more, read NALC article **WOTUS Update: 2023 Rule Enjoined in 27 States**.

- Conference opportunity (May 4-5, livestream available): Robert P. Soran, Partner, Downey Brand, & Nicole E. Granquist, Partner, Downey Brand will present "Moving Targets in Muddied Waters: Advising Farmers, Landowners, and Lenders Regarding Waters of the United States," as part of the NALC's inaugural **Western Agricultural & Environmental Law Conference**.

NRCS Proposes Change to Conservation Standards. The USDA's Natural Resources Conservation Service is accepting comments on a proposed rule that would make revisions to the National Handbook of Conservation Practices. The proposal would make changes to some national conservation practice standards, including standards for anaerobic digesters, and irrigation and drainage tailwater recovery. Click [here](#) to read the proposal and learn more about how to submit a comment. To learn more about conservation programs, visit the NALC Conservation Programs Reading Room [here](#).

Environmental Justice. On April 21, President Biden issued an executive order on environmental justice aimed at helping communities that have experienced increased health risks and environmental degradation as the result of nearby pollution. The order states that "each [federal] agency should make achieving environmental justice part of its mission" by analyzing the environmental and health impacts of their actions and taking steps to prevent or mitigate negative impacts. The order also creates the White House Office of Environmental Justice within the Council on Environmental Quality to help "facilitate interagency collaboration on programs and activities related to environmental justice." To read the executive order, click [here](#). For more NALC resources on environmental justice, click [here](#).

Salmonella as an Adulterant in Some Poultry Products. The U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) has released a **proposed rule** to treat salmonella as an adulterant under the Poultry Products Inspection Act in breaded stuffed chicken products (such as chicken Kiev and chicken cordon bleu) if the level of salmonella is one colony forming unit per gram or higher. In 1994, E. coli O157:H7 was declared an adulterant in ground beef which significantly changed the meat industry. The current proposed rule only applies to breaded stuffed chicken products, but if applied to poultry more broadly could result in significant changes to the poultry industry. To read the Poultry Products Inspection Act click [here](#). To learn more about food safety laws visit the NALC Reading Room on the topic [here](#).

Chesapeake Bay Settlement. EPA announced that it has reached a proposed agreement to settle a lawsuit filed by the Chesapeake Bay Foundation with Maryland, Virginia, Delaware, and the District of Columbia over EPA's alleged failure to require Pennsylvania and New York to develop pollution reduction plans required by the Chesapeake Bay Agreement of 2014. Under the proposed settlement, EPA would be required to provide more oversight of animal feeding operations in Pennsylvania. The proposed settlement agreement will be available for public comment through May 22, and can be found [here](#). Read NALC article **Murky Tides: EPA Sued for Chesapeake Bay Cleanup** to learn more about the underlying lawsuit.

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Interested in becoming a conference sponsor?

Sponsors of the 2023 NALC conferences will be promoted in upcoming editions of The Feed. Contact **NALC Director Harrison Pittman** for more information.

Additionally, information regarding conference sponsorship levels and benefits is available online:

[Western Sponsorship Info](#)

[Mid-South Sponsorship Info](#)

Upcoming NALC Conferences

The **Western Ag & Environmental Law Conference** is a first-of-its-kind program focusing on legal issues important to the agricultural industry in the western U.S., including water rights, foreign ownership of agricultural land, cannabis, the Endangered Species Act, and pesticides. It will include up to 11 hours of continuing legal education credit, including one hour of legal ethics.

The conference is NEXT WEEK! Can't attend in person? A livestream option is also available.

Agenda, registration, and continuing education information available [here](#).

The Inaugural
**Western
Agricultural & Environmental
Law Conference**
May 4-5 · Reno, NV
#NALCWestern23

 
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The promotional graphic features a scenic background of a river valley with mountains. It includes the text "The Inaugural Western Agricultural & Environmental Law Conference" and "May 4-5 · Reno, NV #NALCWestern23". At the bottom, it displays the logos for the National Agricultural Law Center and the University of Arkansas System's Division of Agriculture, Research & Extension.

The **Mid-South Agricultural & Environmental Law Conference** will be held on June 8-9 at the iconic University of Memphis Cecil C. Humphreys School of Law. The annual "Beer & BBQ" networking dinner will be held at The Rendezvous on

The 10th Annual
**Mid-South
Agricultural & Environmental
Law Conference**

June 8-9 · Memphis, TN

"Early Bird" Bonus CLE Online on May 24

#NALCMidSouth23



June 8 with the program itself on June 9. The in-person June 9 program is also available via livestream.

The "Early Bird" registration deadline is May 23 to receive 3 hours of free online CLE. NASDA CEO Ted McKinney will deliver the keynote address via the May 24 "Early Bird," moderated by Wes Ward, Secretary, Arkansas Department of Agriculture.

Agenda, registration, and continuing education information available [here](#).

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