



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 21

November 9, 2023

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Roundup Lawsuits. In recent weeks, the Bayer Corporation was hit with three jury verdicts awarding substantial amounts to plaintiffs who claimed that exposure to Roundup caused their cancer. In the first case, a plaintiff in Philadelphia was awarded \$175 million, while in a separate Missouri case, another plaintiff was awarded \$1.25 million. Finally, a plaintiff in California was awarded \$332 million, the bulk of which was awarded as punitive damages. The recent decisions break Bayer's winning streak which had seen the company win nine cases in a row where the plaintiff had alleged that exposure to Roundup caused them to develop cancer. Bayer has stated its intention to appeal the verdicts. To learn more about these and other similar pesticide injury lawsuits, click **here** to read the NALC series "Plaintiffs & Pesticides."

PFAS Funding. The Environmental Protection Agency (EPA) has announced \$8 million in research funding to comprehend the impact of "forever chemicals" (PFAS) on agriculture, rural, and tribal communities. EPA is providing five grants of \$1.6 million each over four years to support research targeting the understanding and mitigation of PFAS exposure pathways. With this funding, EPA is hoping to increase its understanding of how PFAS moves through ecosystems, and impacts soil, water, plants, animals, and human exposure through the food supply. Notably, EPA is focusing on cost-effective strategies to mitigate PFAS in farms, even at low concentrations. The agency is seeking proposals linked to its **Strategic Plan** which outlines EPA's environmental priorities for the next four years. Information for applicants can be found **here**.

Texas Right to Farm. On Nov. 9, voters in the State of Texas approved a constitutional amendment (**Proposition 1**) enshrining the right to farm by almost 80% of the votes cast. The constitutional right to farm amendments differ from traditional right to farm statutes (to see your state's traditional right to farm statute click **here**) as they protect "generally accepted agricultural practices" while traditional right to farm statutes provide protection from nuisance lawsuits filed by neighbors. The TX amendment takes another step beyond what **MO** and **ND** enacted by limiting the power of state agencies and local governments from further regulating agricultural operations unless there is "clear

and convincing evidence" that the law is necessary to protect public health from imminent danger.

Food Waste. U.S. Senators Dick Durbin and Chuck Grassley introduced the bipartisan **Reduce Food Loss and Waste Act** to address the issue of food waste in the U.S. The bill would direct USDA to create a "Food Loss and Waste Reduction Certification" program, designed to establish criteria that businesses and organizations would have to meet to receive certification, a verification process to ensure that criteria is met, and create a label that certified organizations would be authorized to use on their products. The certification program would be similar to existing certifications such as ENERGY STAR and the BioPreferred. A summary of the Act can be read [here](#).

Water Quality. Environmental groups in California filed a **lawsuit** against the State Water Resources Control Board for approving water quality standards for nitrate pollution. The groups argue that the limits approved for agricultural runoff fail to sufficiently safeguard against health risks like cancer and thyroid diseases. Specifically, the groups allege that the new rules weaken protections from nitrate pollution by eliminating enforcement. Click [here](#) to find the latest version of the Board's rules.

Klamath Basin. The U.S. Supreme Court declined to grant an Oregon irrigation district's **petition for certiorari** challenging the U.S. Bureau of Reclamation over water delivery for endangered species and Native American tribes. The district argued against the Bureau's use of stored water from Upper Klamath Lake to benefit species and tribes, claiming that the government only had the right to store water, not use it. The Ninth Circuit's dismissal of the district's challenge was based on jurisdictional issues concerning sovereign immunity for the tribes. The Supreme Court's decision not to review the case leaves the Bureau's water delivery rules unchanged, impacting the irrigation district's water rights and contracts. The tribes and federal government both urged the Court to reject the appeal, emphasizing that the Ninth Circuit's decision was correct and did not raise substantial legal issues. To read the Ninth Circuit's decision, click [here](#).

Pesticides: Chlorpyrifos. The Eighth Circuit overturned an EPA regulation that revoked the food tolerances for chlorpyrifos which the agency did in 2021 after a ruling from the Ninth Circuit ordered EPA to either revoke or modify the tolerances. Without existing food tolerances, a pesticide may not be used on food crops. In its decision, the Eighth Circuit concluded that EPA had failed to exercise the full scope of its discretion when it determined to revoke all chlorpyrifos tolerances despite findings the agency had made in 2020 indicating that at least eleven tolerances were likely to meet necessary safety standards. While the court's decision reinstates all the revoked tolerances, it is currently unclear whether chlorpyrifos will be available for the 2024 growing season. To read the court's decision, click [here](#). For more information about the decision itself and the Ninth Circuit's previous ruling, click [here](#) to read NALC article "Eighth Circuit Ruling Revives Food Uses for Chlorpyrifos."

Pesticides: Roundup. On November 7, the Ninth Circuit ruled that California could not enforce a rule that would require cancer warning labels on glyphosate, the active ingredient in Monsanto's widely-used herbicide Roundup. The decision affirmed a previous ruling from a federal court in California which concluded that requiring a cancer warning label for glyphosate was a violation of the First Amendment. According to the Ninth Circuit, the label, required by California's Proposition 65, was "compelled commercial speech" that would have required Monsanto to "convey a controversial, fiercely contested message" that the company disagreed with. To read the Ninth Circuit's decision, click [here](#). To learn more about the lower court's decision, click [here](#) to read NALC article "Label-Free: Court Concludes No Warning Label for Glyphosate."

Pesticides: Advance Notice. California's Department of Pesticide Regulation is moving ahead with plans that would require farms to disclose their pesticide spraying schedules 24 to 48 hours in advance. The recently proposed rules describe how and when agricultural businesses would submit their pesticide use plans via a new online system to county agricultural commissioners. Funding for the proposal comes from the 2021-22 budget which appropriated \$10 million towards developing the notification system. The Department of Pesticide Regulation conducted pilot programs in several counties and is now proceeding with public hearings scheduled for December, with the comment period closing in January. More information on the proposal can be found [here](#).

Pesticides: Restricted Use Certification. EPA has granted approval for 67 individual state and tribal plans to certify pesticide applicators for restricted-use pesticides. Due to COVID-19-related delays, it has taken over six years to put into effect a 2017 rule that includes broader training mandates, with a requirement that applicators must be a minimum of 18 years old. As part of these changes, certifications are now limited to a maximum of five years, in contrast to the absence of a federal limit previously. All of the approved plans are available [here](#). To learn more about restricted use pesticides, click [here](#) to view NALC's Pesticides Reading Room.

ESA: Gray Wolf Relisted. The U.S. Fish and Wildlife Service has issued a **final rule** in response to a court order that overturned the Service's 2020 decision to remove the gray wolf from the List of Endangered and Threatened Wildlife. This final rule reinstates threatened status for gray wolves in Minnesota and endangered status for the species in 44 other U.S. States and Mexico. It also re-establishes critical habitat in Minnesota and Michigan, as well as certain rules under the Act for gray wolves in Minnesota. However, gray wolves in specific areas like Montana, Idaho, Wyoming, parts of Washington, Oregon, and Utah maintain their delisted status and remain unaffected by this rule. To learn more about the ESA and how it impacts agriculture, click [here](#) to read NALC's ESA Manual.

Organics Program. The USDA's Agricultural Marketing Service has published a final rule making updates to the organic livestock and poultry production standards. These revisions involve adding rules for handling livestock, transportation, poultry living conditions, and expanding current standards for livestock care, production practices, and non-poultry living conditions. The final rule will become effective on January 2, 2024 and can be found [here](#). To learn more about the rule and the changes it makes to the organic standards, click [here](#) to read NALC article "USDA Publishes Final Rule Amending Organic Livestock and Poultry Standards."

Brominated Vegetable Oil. The Food and Drug Administration has proposed banning the use of brominated vegetable oil (BVO) in food after recent studies have shown that the ingredient may cause adverse health effects. Used in various sodas and sports drinks to prevent citrus flavoring from separating, BVO is currently banned in both Europe and Japan. The proposed rule is open for public comment through January 17, 2024. To view the rule and learn how to submit a comment, click [here](#).

Wisconsin: Lab-Grown Meat. The Wisconsin State Legislature is currently considering a bill that would prohibit the sale of lab-grown meat within the state unless the product is clearly labeled as containing lab-grown animal cells. The bill would impose both monetary fines and up to a year imprisonment for violations of the labeling requirements. Click [here](#) to read the proposed bill. To learn more about efforts to regulate the labeling of lab-grown meat click [here](#) to view NALC webinar "What's in a Name?: Laws & Regulations Governing Alternative Protein Labels."

Michigan: Grain Dealers. The Governor of Michigan has signed **HB 4998**, which amends Sections 6 and 7 of the Grain Dealers Act to increase the time provided to the Michigan Department of Agriculture and Rural Development to either issue or deny a grain dealer license. Specifically, HB 4998 increases the time allowed from 30 days to 60 days. To learn more about state regulation of grain dealers, click [here](#) to find NALC's state law compilation "Regulation & Requirements for Grain Dealers."

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