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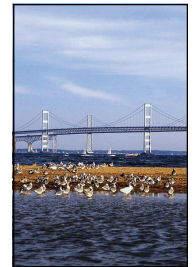
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Environmental Protection Agency Settles Chesapeake Bay Litigation and Issues New Restoration Strategy

by Jay N. Angle, Research Assistant

On May 11, 2010, the Environmental Protection Agency (EPA) reached a settlement with the Chesapeake Bay Foundation and other environmental groups concerning the restoration of the Chesapeake Bay. *Fowler v. EPA*, No. 1:09-cv-00005 (D.D.C. filed Jan. 5, 2009). The plaintiffs claimed that EPA failed to implement sufficient measures to achieve the goal of reducing pollution levels in the Chesapeake Bay. The binding settlement requires EPA to take specific actions to ensure pollution within the bay is reduced. One notable provision is the requirement for EPA to establish a Chesapeake Bay Total Maximum Day Load (TMDL). EPA will require each of the six watershed states to submit Water Implementation Plans, describing in detail a strategy to meet the TMDL and reduce pollution from both point and nonpoint sources. Following the settlement agreement, on May 12, 2010, EPA issued a new federal strategy for restoring and protecting the Chesapeake Bay. The strategy incorporates the



President's Executive Order No. 13,508 (May 12, 2009) and includes many of the commitments made in the settlement agreement. The strategy's main priorities are to restore clean water, recover habitats, sustain fish and wildlife, conserve land, and increase public access. To meet these goals, the strategy emphasizes accelerating the pace of restoration, increasing federal agency accountability, aggressively targeting areas with the most pollution and runoff potential, and launching new environmental initiatives. For more information, visit the [EPA Chesapeake Bay Program Office](#) Web site.

Federal District Court Denies Dismissal of Landowner Lawsuit Against Gas Company

by Michael A. Magee, Research Assistant

The United States District Court for the Western District of Pennsylvania recently denied a gas company's motion to dismiss a suit for the breach of a gas lease brought by Joseph and Donna Valentino of Washington County. *Valentino v. Range Resources—Appalachia, LLC*, No. 2:09-cv-01615, 2010 WL 2034550 (W.D. Pa. May 21, 2010). The Valentinos allege that they executed the lease of 114.2 acres to Range Resources—Appalachia (Range) on August 28, 2008, in return for a bonus payment of \$456,800.00, and that Range failed to pay within the specified period. The agreement between the Valentinos and Range included language thanking the Valentinos for entering into a natural gas lease as well as providing that the lease would not be valid until approved by Range management. The Valentinos argued that this writing constituted Range's acceptance of the lease. Range countered that the lease was unenforceable because it had not been approved by company management. Finding that the Valentinos had made a facially plausible claim for the lease's enforcement, the Court declined Range's motion to dismiss. The dispute is slated for a mediation conference no later than July 27, 2010. For more information on natural gas issues, please visit the Agricultural Law Center's [Natural Gas Exploration Resource Area](#).

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Legislation Establishes New Reporting Requirements for Marcellus Shale Gas Wells

by Grant C. Johnson, Research Assistant

Legislation, which became effective on May 21, 2010, amends the requirements for reporting Marcellus Shale gas well production data to the Pennsylvania Department of Environmental Protection (DEP). Senate Bill 297, sponsored by Senator Gene Yaw, amended the Pennsylvania Oil and Gas Act to require operators of Marcellus wells to provide well production information to DEP on a semi-annual basis, instead of annually. 58 PA. STAT. § 601.212. Operators now are required to file initial reports that include the status of each well and production data for the preceding calendar year with DEP on or before August 15, 2010. If the status of a well changes, subsequent semi-annual reports must be filed with DEP on or before February 15 and August 15 of each year. Furthermore, while the previous law required DEP to keep status reports confidential for five years, the new law eliminates the five year period for Marcellus Shale well production information and requires DEP to make these reports publicly available on its Web site beginning November 1, 2010. For more information on natural gas issues, please visit the Agricultural Law Center's [Natural Gas Exploration Resource Area](#).

Court Rules that Storage of Commercial Vehicles Not Permitted in Ag Zoning District

by Ross Pifer, Center Director

On May 27, 2010, the Pennsylvania Commonwealth Court ruled that using a farm building primarily for the storage of tractor-trailers was not permitted as of right in an agricultural zoning district. *Lancaster Twp. v. Zoning Hearing Bd. of Lancaster Twp.*, 2010 WL 2105154 (Pa. Commw. Ct.). Timothy and Cheryl Grosick owned a 62-acre parcel of real estate in Butler County upon which they constructed a building to store farm equipment as well as tractor-trailers for an interstate trucking business. In a decision that was upheld by the Court of Common Pleas, the township zoning hearing board found that this use was permitted under the zoning ordinance. The Commonwealth Court, however, ruled that this interpretation by the zoning hearing board constituted an abuse of discretion based upon evidence presented at hearing. Although the trucks were used on occasion to transport hay and fertilizer, the court found that the storage of them was not permitted as of right in an agricultural district where the trucks were used primarily for non-agricultural purposes. The court's opinion can be obtained from the [Administrative Office of Pennsylvania Courts](#) Web site.

Commonwealth Court Grants Summary Judgment to Attorney General in ACRE Challenge

by Ross Pifer, Center Director

In an unreported opinion, the Commonwealth Court has granted summary judgment in favor of the Attorney General (AG) in his challenge of a township ordinance attempting to regulate "intensive agriculture." *Commonwealth v. Richmond Twp.*, No. 360 M.D. 2006 (Pa. Commw. Ct. May 28, 2010). The AG challenged the ordinance using the procedural framework established by the Agriculture, Communities, and Rural Environment Act (ACRE), 3 PA. CONS. STAT. §§ 311-318. The AG asserted several arguments including that the definition of intensive agriculture was vague, arbitrary, and encouraged discriminatory enforcement; that the provisions conflicted with the Pennsylvania Nutrient Management Act, 3 PA. CONS. STAT. §§ 501-522; that the ordinance violated the Agricultural Area Security Law, 3 PA. STAT. § 911, by unreasonably restricting farm structures and practices; and that the ordinance considered certain normal agricultural operations to be public nuisances in violation of the Pennsylvania Right to Farm Law, 3 PA. STAT. § 953(a). The court agreed with the AG on all counts and enjoined the township from enforcing the ordinance. For more information on ACRE, please visit the Agricultural Law Center's [ACRE Resource Area](#).

About The Agricultural Law Resource and Reference Center: The center has been established pursuant to Pennsylvania statute, 3 PA. STAT. §§ 2201-2209, as a collaborative enterprise between Penn State Law, the Penn State College of Agricultural Sciences, and the Pennsylvania Department of Agriculture. The Center provides information and educational programs on agricultural law and policy for producers and agribusinesses, attorneys, government officials, and the general public. The Center does not provide legal advice, nor is its work intended to be a substitute for such advice and counsel.

