National Milk Producers Federation

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Food Labeling

NMPF Calls on Sweden's Oatly to Respect U.S. Food Labeling Laws

In mid-May, the National Milk Producers Federation (NMPF) told Swedish food company Oatly, whose powdered, grass-based beverage is sold both in Europe and across the United States, that it should respect U.S. food labeling standards that restrict the use of the term "milk" to real dairy products.

Oatly is one of the latest fake "milks" that is exploiting a lax regulatory environment in the United States to mislabel its imitation dairy product. NMPF criticized Oatly for complaining to the U.S. Food and Drug Administration (FDA) that the company would be placed at a disadvantage if it could not call the product "oat milk," even though the term "oat milk" is not used anywhere except in the United States – not even in its native Sweden.

In the U.S. market, Oatly labels its product as "oat milk." But in its home market, where the product originated more than 25 years ago, Oatly is labeled as "havre dryck," or "oat drink" in Swedish. European Union (EU) regulations – similar to existing U.S. government standards – define milk as an animal product and do not allow plant-based milk copycats to use dairy terms.

Oatly's complaint was contained in an April 11 letter sent to FDA regarding a petition by the Good Food Institute (GFI), a group promoting vegan foods. Oatly wrote in support of GFI's petition, which called for FDA to modify existing food standards to sanction the current marketplace abuse of marketers using dairy terms on products made from plants, not milk.

In promoting its cereal-derived beverage as oat "milk," Oatly is blatantly skirting U.S. food labeling regulations, which dictate that any product using dairy terms including "milk," "cheese" or "yogurt" must have originated from an animal. NMPF has long insisted that FDA take enforcement action against similarly misbranded products.

To highlight Oatly's doublespeak to the FDA, NMPF has created a graphic (seen here) that illustrates the difference between Oatly's U.S. and Swedish packaging.

Contact: Beth Briczinski

CLICK HERE

to view our gallery of graphics that call out plant-based imitation dairy products!

In this issue

NMPF Presents Awards During 2018 ADSA Annual Meeting

At the American Dairy Science Association (ADSA) Annual Meeting in late June, NMPF awarded Zheng Zhou the 2018 NMPF Richard M. Hoyt Award. The award recognizes research efforts that have direct application to issues in the U.S. dairy industry, and is sponsored by the NMPF Dairy Leadership Scholarship Fund.

Zhou joined the Department of Animal and Veterinary Sciences at Clemson University as assistant professor of nutrigenomics in 2017. He has conducted extensive research in assessing the efficacy of methyl donor supplementation on transition cow performance, immune metabolism and health. His studies have shed light on immune, inflammatory and metabolic status in transition dairy cows, thus helping dairy producers make more informed decisions.

NMPF also presented awards to Russell Pate and Justin Rosadiuk as part of the NMPF Graduate Student Paper Presentation Contest in Dairy Production, Ph.D. and MS divisions, respectively. Russell is a graduate student at the University of Illinois. His presentation was titled, "Aluminosilicate clay reduces the deleterious effects of an aflatoxin challenge on inflammation markers in lactating Holstein cows." Justin is a graduate student at the University of Alberta. His presentation was titled, "Effects of differing planes of pre- and post-weaning phase nutrition on intake, growth and puberty in Holstein heifer calves."

Also at the meeting, newly elected board members were seated. Dr. Rafael Jiménez-Flores (Ohio State University) is the new ADSA Vice President, joined by Dr. Beth Briczinski (NMPF) and Dr. Nina von Keyserlingk (University of British Columbia) as the new Directors of the Dairy Foods and Dairy Production divisions, respectively.

Contact: Beth Briczinski

NMPF News

NMPF Announces 2018 Scholarship Winners

Isaac Salfer

Gustavo Mazon

At its June meeting, the NMPF Scholarship Committee selected two graduate students to receive scholarships as part of the 2018 NMPF National Dairy Leadership Scholarship Program. These students are conducting research in areas that will benefit dairy cooperatives and producers.

The 2018 Hintz Memorial Scholarship, given to the top scholarship candidate, was awarded to Isaac Salfer, a Ph.D. candidate in animal science at the Pennsylvania State University studying the effect of nutrient intake on circadian rhythms in the mammary gland of dairy cows.

A scholarship was also awarded to Gustavo Mazon, a master's candidate in animal science at the University of Kentucky, studying the effects of yeast-derived microbial protein in transition dairy cows' health and production.

Contact: Beth Briczinski

NMPF Tells FDA: Dairy Equivalence Process Must Uphold Food Safety, Resolve Barriers to U.S. Exports

In May, NMPF told the U.S. Food and Drug Administration (FDA) that the agency needs to adopt a prudent approach on dairy equivalence practices that is supportive of U.S. dairy exports. At issue is FDA's determination of whether a foreign country has "equivalent" food safety parameters to the United States, such as those followed by dairy farmers and processors.

Earlier this spring, in its first-ever equivalence action, FDA determined that European Union (EU) shellfish are as safe as those harvested in the United States, and as a result recommended granting equivalence to certain types of raw shellfish coming from the EU. This determination is meant to restart trade after an eight-year stalemate that began when the EU abruptly cut off access to its market for U.S. shellfish.

NMPF and the U.S. Dairy Export Council (USDEC) submitted joint comments in response to the March 9, 2018, *Federal Register* notice of FDA's equivalence determination. Additionally, NMPF held a meeting with FDA personnel to discuss international issues impacting dairy.

While the equivalence determination does not directly involve dairy, FDA's action is significant because it is the first time the agency has made an equivalence determination with far-reaching implications. Because there are several equivalence determinations for Grade 'A' dairy products currently pending with FDA, and because shellfish has a federal-state cooperative program and conference (like the Grade 'A' program and NCIMS), NMPF and USDEC closely scrutinized this determination process to learn more about how FDA evaluates the food safety systems of other countries and how it reaches its final decision.

NMPF and USDEC made clear that the groups were not commenting on FDA's decisions specifically, but on the *process* FDA followed. In summary, the groups said: **If we assume the shellfish equivalence process is a template for future dairy work, the organizations consider the model to be entirely unworkable for dairy.**

NMPF's comments focused on several concerns:

- The shellfish determination only allows two states to export to the EU, which runs counter to nationally harmonized food safety regulations in dairy, and should not be used by FDA as a template for dairy equivalence determinations.
- In the shellfish determination, FDA does not treat the members of the EU as the separate nations that they are, but has yielded to EU demands that the entire bloc of nations be considered, for equivalence purposes, as a single entity. Implementation of EU regulations varies at the individual European country level, which requires unique and separate reviews of legislation and regulations, technical consultations and observations from on-site evaluations, and data and risk assessments.
- While the EU retains its authority to "evaluate" new applications prior to authorizing additional U.S. states to resume exporting to the EU, under this proposed approach FDA appears to cede responsibility to the EU to determine whether additional EU countries (beyond Spain and the Netherlands) are equivalent from a food safety standpoint and able to ship to the United States in the future.
- The proposed approach does not fully address nontariff barriers to the EU market that have harmed U.S. shellfish producers since 2009.
- FDA's current determination is severely lacking in transparency, in opportunity for public input, and in consultation with other U.S. agencies (USDA and USTR) that have considerable experience with and expertise in the topic of equivalence determinations and trade.

NMPF will continue to collaborate with USDEC subject matter experts on future equivalence activities impacting Grade 'A' dairy products.

Contact: Beth Briczinski or Shawna Morris

Food Safety

Coalition Led by NMPF Helps Defeat Raw Milk Amendment to Farm Bill

NMPF worked successfully to defeat an amendment last month to the 2018 House Farm Bill that would have allowed the interstate sale of unpasteurized milk by leading a coalition of its member cooperatives, several other key industry stakeholders and consumer and public health advocates to oppose the measure.

A coalition of dairy farmers, processors, consumer groups, food safety advocates, federal and state public health regulators, and the medical community wrote to House leaders in May expressing serious concern with farm bill amendment 30. Offered by Rep. Thomas Massie (R-KY), the amendment would have removed existing regulations that prohibit the interstate sale of raw milk for direct human consumption. It ultimately failed by a vote of 331 against to 79 in favor.

In a May 14 letter to House leaders Paul Ryan (R-WI) and Nancy Pelosi (D-CA), NMPF and the International Dairy Foods Association (IDFA) said Massie's proposed amendment to the Farm Bill represented "an unnecessary risk to consumer safety and public health."

In addition to opposition from NMPF and IDFA, strong letters of opposition to the amendment were also sent to House leadership by the Safe Food Coalition – a consumer group consortium consisting of the Center for Foodborne Illness, Research & Prevention; the Center for Science in the Public Interest; the Consumer Federation of America; the National Consumers League; STOP Foodborne Illness; and The Pew Charitable Trusts.

The National Conference on Interstate Milk Shipments, a national food safety regulatory program that includes state milk regulatory agencies, dairy companies and FDA, also came out against the Massie measure, as did a coalition of 53 dairy cooperatives, state dairy associations and the American Association of Bovine Practitioners.

NMPF continues to be an outspoken leader in urging legislatures – at both the state and federal levels – to protect public health by not supporting the direct sale of raw milk to consumers.

Contact: Beth Briczinski

Food Safety

NMPF: Drug Residues Do Not Require a Preventive Control

NMPF has prepared an Issues Brief that outlines why drug residues in milk should not be identified by the government as a hazard requiring a preventive control – as the U.S. Food and Drug Administration (FDA) is suggesting. NMPF has informed FDA that the agency's guidance on this issue is wrong, and NMPF continues to advocate for proper recognition that this is not a food safety issue, nor a hazard which requires a preventative control in future versions of the guidance.

Chapter 3 of FDA's "Draft Guidance for Industry: Hazard Analysis and Risk-Based Preventive Controls for Human Food" reviews the biological, chemical and physical hazards that may be associated with specific ingredients, processes and equipment. As part of a facility's hazard analysis, a hazard is identified that requires a preventive control. It will then have to be determined what preventive controls are needed to reduce food safety risks and ensure the safety of food products for human consumption.

FDA's guidance indicates that drug residues in milk may require a preventive control. However, it is NMPF's position that testing raw milk for drug residues is not done as a food safety concern. Rather, at the levels for which milk is currently being tested for residues, the presence indicates adulteration under the federal Food, Drug and Cosmetic Act. The focus should remain on compliance with drug residue testing protocols, allowing facilities to spend limited resources on true, rather than perceived, food safety hazards.

Testing for drug residues – as is done to meet the requirements of the Pasteurized Milk Ordinance (PMO) – *as a pre-requisite program* is extremely effective at limiting the occurrence of drug residues in the milk supply, and should not be identified in hazard analyses as a hazard requiring a preventive control.

Contact: Beth Briczinski

Food Safety

FDA Issues Intentional Adulteration Guidance

On June 19, FDA released the first of three draft guidance documents designed to support compliance with the Intentional Adulteration (IA) Rule under the agency's Food Safety Modernization Act (FSMA). The remaining two documents are expected to come out later this year.

The final rule on intentional adulteration is designed to address hazards that may be intentionally introduced to foods with the intent to cause wide-spread harm to public health. Unlike the other FSMA rules that address specific foods or hazards, the IA rule requires the food industry to implement risk-reducing strategies for processes in food facilities that are significantly vulnerable to intentional adulteration.

Food facilities covered by the rule will be required to develop and implement a food defense plan that identifies vulnerabilities and mitigation strategies for those vulnerabilities. These facilities will then be required to ensure that the mitigation strategies are working. Dairy processing facilities are covered by the rule, but dairy farms are not. The first compliance date for large facilities is July 2019. Small businesses have an additional year.

This first part of the draft guidance includes chapters on components of the food defense plan, how to conduct vulnerability assessments, and how to identify and implement mitigation strategies, among others. The second installment will focus more on vulnerability assessments and training requirements. The third will go into more detail on corrective action, verification, reanalysis and recordkeeping requirements.

This draft guidance is intended to help the food industry implement the IA provisions in a flexible and cost-effective manner. FDA will announce plans to hold a public meeting on the draft guidance when the second installment is released. All three parts will be available for comment upon publication.

NMPF has been collaborating with FDA on intentional adulteration since September 2001. NMPF staff have participated in numerous vulnerability assessments and exercises, chaired the Food & Agriculture Sector Coordinating Council (FASCC), and are part of the Food Safety Preventive Controls Alliance Intentional Adulteration Subcommittee, which develops IA training programs for FDA.

Contact: Clay Detlefsen

Food Labeling

Comments from NMPF Illustrate Concern over Vitamin Naming Petition

NMPF has expressed concern over a new labeling proposal that was submitted to the U.S. Food and Drug Administration (FDA) requesting the use of simple vitamin letter names on both the Nutrition Facts label and Ingredient Declaration lines.

The petition, submitted by DSM Nutritional Products, proposed simplifying the vitamin names and grouping them into a single "VITAMINS" line below the ingredient list. In its comments, NMPF said this grouping may be interpreted by consumers as a special "call-out" of the nutrients for which the food is a good or excellent source. NMPF suggested the issue needed to be explored further, and expressed concern that the proposal would encourage fortification by manufacturers rather than the consumption of naturally nutrient-dense foods.

As part of NMPF's comments, the Federation cited two examples where unintended consequences from the petition may occur:

In comparing the vitamin declarations for whole milk and low-fat milk, the following would appear beneath the ingredient list:

VITAMINS: D	(for whole milk)
VITAMINS: A, D	(for low-fat milk)

This type of labeling could be misinterpreted by consumers concluding that whole milk is not a source of Vitamin A because it is not specifically noted in the vitamin declaration line. Whole milk contains Vitamin A naturally, and low-fat milk is fortified with Vitamin A to replace the amount lost when the milkfat is removed.

As a second example, low-fat milk would be labeled beneath the ingredient statement with "VITAMINS: A, D." By comparison, a vitamin-fortified water may have a much longer list of vitamins highlighted. However, consumers may not be aware that milk is a good source of nine essential nutrients – including vitamins B2, B3 and B12, which are naturally occurring.

These oversimplifications may falsely boost the perceived healthfulness of a heavily fortified product while minimizing the presence of naturally occurring nutrients in nutrient-dense foods for which consumption is encouraged by dietary guidance.

In its conclusion, NMPF suggested that FDA conduct consumer research on the perceptions of the labeling proposal, and that the agency go through formal rulemaking to obtain broad public comment before moving forward.

Contact: Beth Briczinski

Nutrition

NMPF Contributes to Process of Determining Scope of 2020 Dietary Guidelines

In March, NMPF submitted comments in response to a request from the Agriculture and Health and Human Services departments for feedback on the topics and questions proposed for the 2020-2025 Dietary Guidelines for Americans (2020 DGA).

The agencies kicked off the development process for the 2020 DGA with a public webinar in February to improve transparency around the guidelines' development, as well as to solicit public comment. The agencies sought input on proposed priority topics and supporting scientific questions. The proposed topics and questions follow a life stages approach – birth through older adulthood – and continue the 2015 DGA focus on healthy eating patterns over time.

In late summer or early fall, NMPF expects a call for public comment on Dietary Guideline Advisory Committee nominations, with the goal of releasing the guidelines at the end of 2020. Starting with the 2020 DGA, the guidelines must address nutritional and dietary guidelines and information for women who are pregnant, and children from birth to 2 years of age.

NMPF worked collaboratively with Dairy Management Inc. and the International Dairy Foods Association to prepare comments that emphasize the important nutrient contributions of dairy. Specifically, NMPF highlighted the change in the science of saturated fat – and dairy fat specifically – and the importance of maintaining a separate dairy group.

Contact: Beth Briczinski

Food Safety

2017 PMO and NCIMS Conference Documents Now Available

The electronic version of the 2017 revision of the Pasteurized Milk Ordinance (PMO) is now available on the NMPF website, and will eventually be available through FDA's website. For states that are not able to officially adopt the changes to the PMO through the issuance of IMS-a-51 (Actions of the 2017 National Conference on Interstate Milk Shipments), the effective date for the changes to the PMO is June 11, 2019. For those states that can officially adopt the changes to the PMO through the issuance of IMS-a-51, their effective date remains Dec. 6, 2018, as cited in IMS-a-51.

Other documents available that have been revised after the 2017 NCIMS Conference include:

- 2017 Methods for Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers (MMSR), and;
- 2017 Procedures Governing the Cooperative State-Public Health Service/FDA Program of the National Conference on Interstate Milk Shipments (Procedures).

Contact: Beth Briczinski

Food Safety

FDA Announces New Efforts to Advance Biotechnology Innovation

At the beginning of June, FDA Commissioner Scott Gottlieb and Deputy Commissioner Ann Abram announced the agency's commitment to adopt a regulatory approach for new biotechnology advances, such as genome editing and synthetic biology.

In early May, FDA formed a new Biotech Working Group comprising representatives from multiple FDA centers and offices. In the coming months, FDA will release an action plan that lays out the steps toward a flexible regulatory framework for evaluating the safety of products that also supports plant and animal biotechnology innovation.

On May 18, the NMPF Animal Health and Wellbeing Committee held a webinar with representatives from the Biotechnology Innovation Organization and National Association of State Departments of Agriculture to learn more about animal biotechnology regulation through FDA and USDA. Any regulatory pathway for approval of gene-edited animals must assure safety and efficacy of the technology for the animal, animal products and consumers.

Contact: Jamie Jonker

Food Safety

NMPF Submits Comments on Codex Antimicrobial Resistance Documents

On March 29, NMPF submitted comments to USDA and FDA on the Codex Task Force on Antimicrobial Resistance (TFAMR) documents "Proposed Draft Guidelines for the Integrated Monitoring and Surveillance of Foodborne Antimicrobial Resistance" and "Proposed Structure for the Draft Revision on the Code of Practice to Minimize and Contain Antimicrobial Resistance CAC/RCP 61-2005."

The "Proposed Draft Guidelines for the Integrated Surveillance of Antimicrobial Resistance" is intended to assist governments in the design and implementation of monitoring and surveillance programs for food-borne antimicrobial resistance (AMR) along the food chain at the national level. The "Proposed Structure for the Draft Revision on the Code of Practice to Minimize and Contain Antimicrobial Resistance CAC/RCP 61-2005" is intended to update guidance for measures along the food chain to minimize the development and spread of foodborne AMR. All comments on these documents will be considered at the next TFAMR meeting to be held in December in South Korea.

This work was made possible through support of the U.S. Dairy Export Council.

Contact: Jamie Jonker

Food Labeling

Biotechnology Food Labeling Proposal Reflects NMPF's Input

At the beginning of May, the U.S. Department of Agriculture (USDA) released its proposed regulatory standard for the labeling of bioengineered food. The proposal, which will now undergo a 60-day comment period, reflects much of the input provided by NMPF to ensure that consumers receive accurate information about the sources of their food. The USDA Agriculture Marketing Service's (AMS) proposed rule outlines mandatory uniform standards for how food marketing companies must provide consumers information about the use of biotechnology in the food supply. The proposed regulation follows the strict, science-based approach that was backed by NMPF to determine how foods made using bioengineering should be regulated.

Most notably, the proposed rule adheres to Congress' statutory determination that meat and milk derived from livestock consuming bioengineered feedstuffs are not subject to labeling because there is no difference in those products compared to those from animals that consumed non-bioengineered feed.

NMPF filed comments last year that said any new standard should provide consumers with accurate information while discouraging misleading marketing tactics or meaningless absence claims. NMPF has been an active participant in the Coalition for Safe Affordable Food, which supported the bioengineered food disclosure legislation passed by Congress in 2016.

NMPF said that the fact-based standard advanced by USDA should help reduce the confusing labeling claims too often seen in the marketplace. NMPF previously told USDA that too many food companies utilize "fear-mongering" to vilify food biotechnology, as they seek to profit from the consumer confusion surrounding its use.

There are still questions under consideration in USDA's final stages of regulatory review:

- Will the use of highly refined sugars and oils, without detectable genetic material in them, require a label?
- Is there a minimum level of bioengineered content, below which a disclosure is not required?
- What type of label disclosure is required for bioengineered ingredients?
- Will bioengineered enzymes such as chymosin trigger a need for disclosure?
- How can companies make voluntary disclosures beyond what will be required?

NMPF will file comments by July 3, 2018.

Contact: Clay Detlefsen

Animal Care

USDA to Allow Modified Foot-and-Mouth Research on U.S. Mainland for Vaccine Development

On April 26, Secretary of Agriculture Sonny Perdue authorized the movement of a modified, non-infectious version of the Foot and Mouth Disease (FMD) virus from the Plum Island Animal Disease Center to the U.S. mainland for the purposes of continued vaccine development and study.

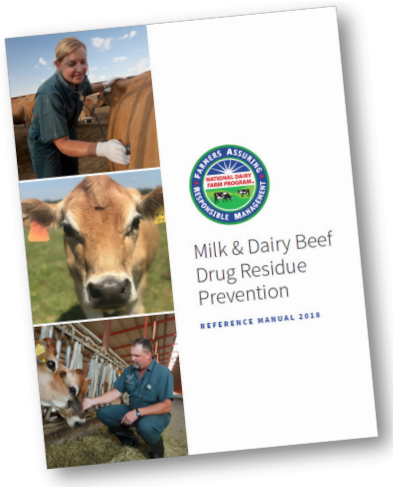
Identifying a vaccine that uses a modified virus will enable the Agriculture Department (USDA) to more quickly source and acquire the FMD vaccine in the event of an outbreak. With this announcement, vaccine companies may now apply for USDA permits to continue their work with this specific modified, non-infectious FMD virus in the United States. All permits granted would include appropriate biocontainment and use restrictions, and may be revoked if warranted.

On May 11, the NMPF Animal Health and Wellbeing Committee held a webinar with Zoetis FMD vaccine experts. The FMD-LL3B3D vaccine platform has been designed and developed collaboratively by Zoetis and the USDA-Animal Research Services. Vaccines derived from the platform strains are chemically inactivated according to OIE guidelines and formulated with an adjuvant that increases both the antibody and cellular immunes responses and non-structural genes that render the resultant vaccines fully compatible with DIVA, or "Differentiating Infected from Vaccinated Animals." This means one can tell the animal received a vaccine and did not get the disease.

Contact: Jamie Jonker

Animal Care

2018 FARM Milk and Dairy Beef Residue Avoidance Manual Now Available



The 2018 edition of the FARM Program's drug residue prevention manual is now available to download on the FARM website, with a Spanish version also available.

For nearly 40 years, the U.S. dairy industry has focused educational efforts on the judicious use of antibiotics through the annual publication of a best practices manual. The 2018 edition of the National Dairy FARM Program: Farmers Assuring Responsible Management™ Milk and Dairy Beef Drug Residue Prevention Manual is the primary educational tool for dairy farm managers throughout the country on the judicious and responsible use of antibiotics, including avoidance of drug residues in milk and meat.

The manual is a quick resource to review those antibiotics approved for dairy animals, and can also be used as an educational tool and resource for farm managers as they develop on-farm best management practices necessary to avoid milk and meat residues.

Contact: Jamie Jonker

Animal Care

OIE 86th General Session Includes Changes to Terrestrial Health Code

NMPF attended the 86th General Session of the World Organization for Animal Health (OIE), held in Paris in May, which included several actions of note for the U.S. dairy industry.

The Terrestrial Health Code includes several new and revised chapters: (1) updated chapters related to antimicrobial use and resistance monitoring, which includes a new term of "veterinary medical use" of antimicrobials to include treatment, control and prevention of disease; (2) updated chapter on zoning and compartmentalization to assist member countries in applying the concepts – free zone, infected zone, protection zone and containment zone – to better control animal disease and facilitate safe trade; and (3) new chapter on vaccination to provide guidance to member countries to successfully implement vaccination programs in support of animal disease control and eradication.

The full meeting report includes more details on these and other actions. This activity is supported by the U.S. Dairy Export Council and Dairy Management Inc.

Contact: Jamie Jonker

Animal Care

PACCARB Meeting Highlights FARM Program Success

On May 16, NMPF presented on the National Dairy Farmers Assuring Responsible Management (FARM) Program at the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB). PACCARB provides advice, information and recommendations to the Secretary of Health and Human Services regarding programs and policies intended to support and evaluate the implementation of U.S. government activities related to combating antibiotic-resistant bacteria.

The PACCARB meeting focused on antimicrobial stewardship in food and livestock production. NMPF was invited to discuss the success of the FARM Program as an education, outreach and evaluation program demonstrating the dairy industry's commitment to antibiotic stewardship. The NMPF presentation focused on educational, assessment and verification components of the FARM Animal Care and Antibiotic Stewardship programs. NMPF was the only livestock group that gave a presentation at the meeting demonstrating dairy industry leadership in antibiotic stewardship.

Contact: Jamie Jonker

Environment

NMPF Opposes Extension of Clean Water Act to Groundwater Sources

Last February, the U.S. Environmental Protection Agency (EPA) published a request for comment regarding previous statements it made about pollutant discharges from point sources that reach surface waters via groundwater. EPA has said that those discharges may be subject to the Clean Water Act (CWA) if there is a direct hydrological connection between the surface water and groundwater. NMPF joined with other agriculture groups in May in urging EPA to rescind its statements that groundwater could be regulated under the CWA.

NMPF does not believe the CWA should regulate groundwater and that such regulation is best left to the states. NMPF noted that Congress specifically considered and chose not to include groundwater under the CWA. Unfortunately, several courts have re-interpreted the CWA and taken a contrary stance, even though there also have been courts that ruled the CWA cannot regulate groundwater. It is likely the issue eventually will reach the Supreme Court.

NMPF is concerned about regulating farms under the CWA because a fact pattern can be prosecuted as a criminal act, resulting in possible imprisonment for up to six years and financial penalties of up to $100,000 per day. EPA's past statements on the issue are somewhat ambiguous. One example: "A general hydrological connection between all waters is not sufficient to subject an operator or owner of a point source to liability under the CWA, instead there must be a direct hydrological connection to surface waters." Determining if there is a "direct" connection is not easy and there is considerable uncertainty in those determinations.

NMPF and other agriculture groups have asked EPA to initiate rulemaking, retract past statements and make it clear that groundwater pollution should be regulated by state and local governments, not the federal government.

Contact: Clay Detlefsen

EPA Renews Farm Air Emissions Regulatory Efforts

After years of inactivity, the livestock industry-funded National Air Emissions Monitoring Study (NAEMS) is moving forward at the U.S. Environmental Protection Agency (EPA). NMPF met with senior officials at EPA in late May to discuss the agency's plans for estimating air emissions from animal feeding operations.

NAEMS monitoring was completed on dairy, pork and poultry farms more than seven years ago, but EPA has not finalized any emissions estimating methodologies for animal feeding operations. Additionally, EPA has only drafted methodologies for about one-quarter of the emissions source and pollutant combinations studied in the NAEMS. EPA was expected to develop and begin publishing emissions estimating methodologies by 2009 so the methodologies could be used by federal, state and local agencies, along with livestock industry operators, to determine compliance with the Clean Air Act (CAA) and other statutory requirements.

According to the EPA's Office of the Inspector General, delays in developing the emission estimating methodologies stem from limitations with NAEMS data, uncertainty over how to address feedback from the EPA's Science Advisory Board, and a lack of EPA agricultural air expertise and committed resources. As a result, requirements to control emissions from individual animal feeding operations remain undetermined and enforcement protections for consent agreement participants remain in effect.

EPA stated it will issue its timeline for completing the work by July. EPA also stated that if regulatory requirements are triggered by the emission estimates, such as permits under the CAA, agriculture entities will have 120 days to apply for such a permit. It is uncertain whether some dairy operations will need permits or face other regulatory burdens. NMPF will remain engaged with EPA as this process moves forward.

Contact: Clay Detlefsen

Upcoming Dates

World Dairy Expo
Madison, Wisconsin — October 2 – 6, 2018

U.S. Animal Health Association Meeting
Kansas City, Missouri — October 18 – 24, 2018

NMPF Joint Annual Meeting
Phoenix, Arizona — October 29 – 31, 2018

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The National Milk Producers Federation, based in Arlington, Va., develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

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