

**Defending Agriculture** 

Legal, environmental hot button issues that impact U.S. farmers.

Storm Water Runoff Exemption Threatened

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On Nov. 16, a U. S. District Court Judge rejected arguments by state and local government agencies as well as agricultural interests in a case which will force Florida to set water pollution standards to control water runoff coming from farms and running into waters of the state or the United States.

The *Miami Herald*, in an article Nov. 17, put it correctly: "U.S. TO BE CZAR FOR WATER POLLUTION." This is a huge defeat for agriculture in terms of the agricultural storm water runoff exemption we have had in agriculture since 1973.

I wrote about this case in September and described a Consent Decree which had been entered into between the Florida Wildlife Federation, Inc. vs. Jackson, (Case No. 4:08-cv-00324-RH-WCS) in U.S. District Court in the Northern District of Florida. I pointed out that under this case, the Clean Water Act could be used to require farmers in Florida and every other state to have legal limits developed to control rainwater runoff from every farm and ranch in the country.

The District Court Judge rejected arguments that the new rules to be drafted by U.S. EPA would be unscientific, and that complying with the new effluent limitation rules would be too costly for farmers. Florida environmentalists claim that runoff from Florida farms is causing algae blooms. According to the news' articles, environmentalist lawyers showed the court photographs of Florida waterways clogged with algae scum clearly suggesting farmers are the cause.

Agricultural producers must wake up and understand the gravity of this case. This will be the first time EPA will be issuing standards with specific numeric limits to control runoff from not only Florida's farms but eventually this will move to every state. This is a battle that has been going on for several decades.

One has to wonder why agriculture's lawyers cannot get across the point that America's farmers and ranchers have an agricultural storm water exemption. Congress has addressed this issue and made it very clear that agriculture has an exemption. Apparently the courts are ignoring a statutory requirement in the Clean Water Act.

The Consent Decree declares: "Numeric water quality criteria for nutrients proposed pursuant to this consent decree will consist of numeric values that EPA determines are protective of the designated uses of waters ..." It goes on to declare that such revised water quality standards shall be proposed by January 14, 2010.

This case has settled through a consent decree with environmental and government lawyers cutting the deal. No evidence or witnesses were put on through a trial to explain to the court what the facts are involving production agriculture and the use of water and the runoff of that water.

With cases like this, one has to raise the question: where were the lawyers and experts from the U.S. Department of Agriculture?

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