



Defending Agriculture

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

Government Sending Farmers to Jail

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U.S.EPA and the U.S. Department of Justice are sending farmers to jail for violating the Clean Water Act.

EPA is using a very low standard to indict farmers and farming operations for discharging pollutants into what are called "waters of the United States." The United States Supreme Court has difficulty determining what is a "water of the United States," but EPA and DOJ are not constrained by the Supreme Court opinion and demonstrate their zeal against agriculture by indicting and getting farmers to plead guilty to felony violations of the Clean Water Act. (Criminal defense lawyers likely have little experience as to what is a "navigable water" of the United States.)

Farmer's Defense

A recent 5th Circuit case recently won by the National Pork Producers is a very important case in terms of a farmer's defense. There must be an actual discharge into a state or federal water before EPA can charge a violation. EPA appears to believe that even roadside ditches without water in them are a "water of the United States."

In June, 2011, the nation's fourth largest dairy cooperative pleaded guilty in a U.S. District court in Seattle, Washington to violating the CWA regarding a discharge of an ammonia solution from the company's dairy processing plant into a creek. The release killed a large number of fish including some listed under the Endangered Species Act. The DOJ has not published the amount of fine it is seeking.

On July 7, 2011, Freedman Farms, Inc. and its president, William B. Freedman, pleaded guilty in U.S. District Court in North Carolina to violating the CWA when it allegedly discharged hog waste into a local river. Freedman Farms went to trial but pleaded guilty to a felony. The DOJ press release indicates the hog manure was to be directed to two lagoons for treatment and disposal but allegedly manure was discharged directly into a local creek. One news story casts real doubt on whether there was a discharge into a "water of the state or the United States."

The news story claims, "Because of extreme dry conditions, there was almost no water in Browder's branch, and none of the waste reached the run of the Western Prong. The waste moved about ¾ mile to Silver Spoon Road, where it was blocked."

This does not sound as though there was a discharge into a "navigable water of the state or the United States" under the Rapanos Supreme Court standard.

Nonetheless, DOJ and EPA prosecuted Freedman and the corporation with four felonies. Several of the felonies have been dismissed and will be dropped if a federal judge accepts a plea arrangement. Freedman has also been ordered to publish a public apology and he may face up to a year in prison and his farm corporation will be asked to pay a fine of \$1.5 million.

CAFOs under attack

EPA's criminal investigators claim that "Large farms...can cause serious damage to the environment if they illegally discharge waste water into nearby lakes, rivers and streams." EPA has its own special agent in charge of a criminal enforcement program for North Carolina. The EPA agent makes it clear that EPA will be addressing violations from Concentrated Animal Feeding Operations with criminal sanctions. It appears negligence or simple mistakes are insufficient to inhibit the EPA criminal enforcement types.

In March, 2011, a federal jury in Boise, Idaho found a dairy farmer guilty of a "...negligent misdemeanor..." under the authority of the CWA. EPA and the U.S. Attorney asserted that this discharge from the dairy was a negligent discharge or in other words a mistake that should have been prevented. The dairy farmer faces a maximum sentence of 1 year in prison, a \$100,000.00 fine and one year of supervised release.

A recent Indiana case involves an Indiana mint farmer. The farmer has agreed to plead guilty to a charge of knowingly discharging pollutants without a permit in violation of the CWA. The farmer was a mint grower and processor of mint oil. The process of extracting the oil involves using boilers to create steam that is injected into mint tubs to extract the mint oil. The water that is discharged from the facility reaches temperatures of 160-190 degrees. This water was discharged into a roadside ditch. It is alleged that this water apparently did not soak into very dry ground and was discharged into another ditch which according to one story is a "water of the United States."

The story has another angle. A neighbor with whom it is alleged the farmer had difficulty with claimed to the newspapers that his dog was scalded to death after jumping into boiling hot water in the ditch. This same neighbor to the farmer claimed that he watched his dog boil to death in the nearby stream. The neighbor reported the death of his dog after the dog jumped into the boiling water from the mint processor and charges were brought against the farmer.

EPA and DOJ are targeting farming operations. Make sure you train your dog not to jump into boiling, steaming water because the one who gets burned may be you.

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