

The Agriculturalist Lawyer



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Note From the Chair

By Anne "Beth" Crocker, section chair

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I hope that this newsletter finds you all doing well! It has been a busy spring and looks to be a busy summer as well. Currently, the Executive Committee is planning the third annual Agriculture Law Section CLE on Friday, Sept. 26, at the Mercer School of Law in Macon. Save the date on your calendar and also plan to join us on Thursday evening, Sept. 25, for a Taste of Georgia, where you'll be able to sample wines and cheeses produced right here in Georgia!

In this issue of *The Agriculturalist*, please review the brief legislative update highlighting new laws and/or amendments of interest to agriculture industry. Also, section Vice Chair Nowell Berreth has written a great article on the subject of carbon sequestration and its potential for Georgia landowners.

A number of great agricultural programs are currently scheduled for the summer months, and I just wanted to pass along some information about a few of them. First, the Seminar Group is hosting a 2-day CLE program scheduled for July 17-18 in Atlanta. The topics include:

- *The Carbon Issue - Setting the Stage*
- *Current Registries for Carbon Offsets in the U.S.*
- *Role of Landowners - Concerns and Strategies to Capitalize*
- *Commercial Industry Strategies / Emerging Trends*
- *Climate Change Issues Impacting Litigation*
- *Future Federal Legislation?*

This seminar is available via Live Webcast and will be worth 13.25 credit hours. To register please call 800-574-4852.

The second seminar of interest to section members and their clients is the Rural Lands Update being held in the mountains of Western North Carolina. This is a 4-hour CLE program being held on June 16 in Newland, N.C. and on June 17 in Sylva, N.C. The seminar is geared towards farmers, landowners and attorneys and CPAs who work with large landowners. Topics include:

1. *Rural Land Transfer Traps: Avoiding Property Tax Rollbacks when Gifting, Selling, Re-titling, or Changing the Use of Property.*

2. *Conservation Easements: What to Know When Your Client Asks*
3. *The Business of Land Ownership: Titling and Managing Land in a Business Entity*
4. *Ethical Issues in Representing Landowners: Identifying Your Client and Working With Non-legal Professionals*

For additional information about the seminar, please contact Andrew Branan with the North Carolina Farm Transition Network at 919-732-7859 or abranan@gmail.com. Also, please visit: www.ncftn.org for more information.

The third program that would be of interest to our section members was a new luncheon series of agricultural seminars put on by the Georgia Agribusiness Council. The inaugural GAC Horizon Series Luncheon was held on Monday, May 19, at The Commerce Club in Atlanta. Sen. Saxby Chambliss (R-GA), was the kick-off speaker. Registration began at 11:45 a.m., lunch was at 12:00, Sen. Chambliss spoke at 12:30 p.m. For more information, please contact Christy Page at cpage@ga-agribusiness.org or 706-726-2474.

And don't forget to participate in the latest discussion thread and topics of interest related to agricultural law by joining our Listserv at GA-Ag-Law@yahoogroups.com

This has been a great way to share questions, ideas and to have general discussion about agricultural issues of interest to most group members. To join, all section members have to do is send an e-mail to the moderator, Samuel Prim at hprim2@graceba.net. Also, if you have a current issue or case that you're working on and you'd like to write an article for *The Agriculturalist*, please let me know. We love to highlight the work of our section members and to provide current information to all of our readers.

Best wishes for a busy and fruitful summer in agricultural law!

Agriculture Law Legislative Update

By Anne “Beth” Crocker, section chair
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H B 649 – Blueberry Commodity Commission – This bill changes certain provisions relating to established agricultural commodity commissions and ratification, contributions and balloting. It provides for an Agricultural Commodity Commission for Blueberries, and changes certain provisions of the composition of a commodity commission such as appointments, terms of office, and compensation and certification of membership to Secretary of State, advisory boards, special committees, personnel, legal representation, eligibility of federation or organization members, acceptance of donations, voting and termination; to provide for appointment of commodity commission members; to provide an effective date; to repeal conflicting laws; and for other purposes.

HB 1088 – DOT Directional Signage for Agri-tourism Venues – This bill allows the Department of Agriculture and the Department of Transportation to post directional signs for agricultural tourist attractions; it also repeals the conflicting laws (Art. 3, Chapt. 6, Title 32 of the O.C.G.A.) to provide for the directional signs to be posted.

HB 1211 – Forest Conservation Use – A bill relating to revenue and taxation that provides for the special assessment of forestland use conservation property. This bill changes certain definitions of ad valorem taxation, provides valuation tables, power, authority and duty to the county tax commissioners and the state revenue commissioner. Provides local government assistance grants and repeals all conflicting laws.

HB 1081 – Ad Valorem Taxation – A bill to revise and change certain provisions relating to ad valorem taxation of property; to change certain provisions regarding qualifications for bona fide conservation use property; to change certain provisions regarding bona fide conservation use property which is subject to restrictive covenants; to provide for notice, procedures, and appeal rights regarding covenant breaches; to change certain provisions regarding the payment of interest in taxpayer appeals; to provide for interest. It also repeals all conflicting laws.

HB 1281 – Water Resources – This bill allows local governments to enforce additional outdoor water use restrictions with good cause shown. It also provides

exemption from certain penalties and exemptions for certain political subdivisions with good cause shown. It also prohibits placing restrictions on surface or ground water use for swimming pools. This bill also repeals all conflicting laws.

HB 1178 – Sales and Use Tax: Liquefied Petroleum Gas: Certain Purposes: Provides Exemption – This bill extends the current state sales tax exemption on fuels used for swine production until July 1, 2010.

HB 272 – Sales and Use Tax: Natural and Artificial Gas Sales: Provides Exemption – This bill provides a tax exemption to fuels used in manufacturing and processing.

SB 342 – Water Conservation and Drought Relief Act – A bill relating to additional powers and duties of the State Soil and Water Conservation Commission. Changes certain provisions relating to powers of the Environmental Protection Division with respect to federal acts, and receipt and expenditure of federal and state appropriations. This bill provides for the issuance of permits, certifications and any other necessary documents for the construction of new public water reservoirs. It also makes changes to certain provisions for permits needed to withdraw both ground and surface water, whether for farm or normal use. This bill also provides for an exemption with respect to certain sales of certain types of water efficient products for a limited period of time.

SB 515 – Georgia Seed Development Commission – A bill to restructure the Georgia Seed Development Commission, mainly focusing on changing certain provisions relating to the creation of an advisory board, its members, functions and terms of office.

SB 352 – Legislative Overrides on Certain Exemptions – A bill bringing every Georgia state agency under the Administrative Procedures Act (APA). Gives the power to respective committees of the Georgia Assembly to “hold” any new regulations until the Assembly is in session. These committees must approve the “hold” by a 2/3 majority vote, and in the case of a “hold” further action must be taken within the first 30 days of the session.

The Agricultural Carbon Market

Working Group:

Climate Change and the Role of the U.S. Agricultural Sector

By Nowell D. Berreth

Congress appears to be moving ahead rapidly to develop legislation to establish a cap and trade system for greenhouse gases in the U.S. More than 100 bills, resolutions and amendments addressing climate change were introduced in the 110th Congress, and that legislative activity may increase as the new Farm Bill is implemented. Led by former farm-state senators and former Senate majority leaders Bob Dole and Tom Daschle, Alston & Bird is addressing how potential climate change legislation will affect and potentially benefit agriculture, which is one of our country's largest economic sectors.

In connection with this effort, the firm is working with the Agricultural Carbon Market Working Group, which is comprised of national farm leaders from all three major agricultural commodities, the biofuels industry and other key agricultural stakeholders. The Working Group spent the past year studying and addressing potential carbon-offset markets for agriculture that could result from national policy. The Working Group has also worked with other agricultural organizations supporting carbon markets for agriculture, such as the nine-university Consortium for Agricultural Soil Mitigation of Greenhouse Gases.

What Is a Cap and Trade System?

Cap and trade is an approach used to control emissions of greenhouse gases in which a cap on the amount of emissions is set by a government agency or other regulating body. Credits are allocated or auctioned to emitters by the governing body. The total amount of credits cannot exceed the cap, which limits total emissions to that level. Emitters needing to increase their emissions above their allotment must purchase credits from emitters that have not used their allotment. Credits thus become a commodity that is bought and sold, i.e., traded.

Agriculture As Both a Source and Sink of Greenhouse Gases

Agriculture is both a source of greenhouse gases that are released into the atmosphere and a reservoir or "sink" that can reduce those emissions by sequestering carbon in the soil. Agricultural activities impact both the release and removal of three major greenhouse gases: carbon dioxide, methane and nitrous oxide.

As a source of greenhouse gases, the agriculture sector contributes approximately six to eight percent of U.S. annual emissions. The bulk of these emissions from agriculture involve nitrous oxide and methane. Agricultural sources of nitrous oxide emissions include soils, fertilizers and the use of manure on croplands. Methane from agriculture is largely emitted by livestock (enteric fermentation) and livestock manure.

There are significant opportunities to reduce these emissions through improvements in fertilizer applications and fertilizer technology, and through other crop and livestock management practices. And new technologies, such as advanced biofuels production processes and anaerobic digesters that convert animal waste to methane, which can be used to generate electricity, can allow farmers to produce valuable energy outputs and to achieve greenhouse-gas reductions by displacing fossil-fuel use.

As a sink, agricultural soil sequestration currently offsets about 10 percent of emissions from the sector itself, and less than one percent of total U.S. emissions. Agriculture has the potential to contribute much more to the national effort to reduce atmospheric concentrations of greenhouse gases by enhancing carbon absorption through changed agricultural practices, like low-till or no-till

cultivation, which allow the soil to absorb and retain more carbon, and by other practices. Tilling the soil with each year's plantings releases carbon into the atmosphere by disturbing the soil and increasing the exposure of carbon in the soil to the air. Tilling also removes plant residue from the prior year's crop that would have maintained the amount of carbon sequestered in the soil. No-till farming significantly enhances the amount of carbon that remains sequestered in the soil and significantly limits the amount of carbon released into the atmosphere with each year's plantings. In addition, as farmers rotate which crops they grow on their land from year to year, they can enhance sequestration through frequent use of cover crops – particularly those that do not require tillage and that fix carbon in the soil through their extensive root systems, such as hay. Other practices that help sequester carbon include planting grasses on the edges of cropland and streams to prevent soil erosion and changing grazing management on rangeland and pasture (for example, by rotating grazing areas and using improved plant species). Analyses of the additional sequestration potential of the nation's existing croplands alone range from 260 to 810 million metric tons of carbon dioxide per year.

Policy Options for Agriculture

The Working Group has identified a series of key policy principles that it believes form the basis for informed discussion on agricultural carbon greenhouse gas markets:

- Whether legislation should be enacted to protect agriculture's opportunity to participate in new revenue streams that derive from carbon-offset markets related to conservation practices and renewable fuels.
- Whether there should be limits on the agriculture sector as an eligible carbon-offset provider.
- Whether agricultural producers should be allowed to market the value of management practices and renewable fuel-related greenhouse gas offsets that result in demonstrable improvements to global climate both through emission reductions and additional carbon sequestered terrestrially.

- Whether U.S. agriculture should participate in an international carbon market so long as countries that have agreed on limits on emissions are treated under non-discriminatory protocols.
- Whether carbon credit prices should be established in the marketplace assuring a free, open, transparent trading environment.
- Whether individual states should be allowed to choose to develop trading rules and protocols for agriculture-related carbon offsets, and whether national standards should be developed similar to other commodities that provide consistency and standardization through agriculture in the United States.
- Whether the U.S. Department of Agriculture should play a lead role in providing education, research and measurement support to agricultural entities interested in defining and marketing the value of management activities and projects that store carbon and/or reduce emissions.

The Working Group invites you to participate in this process. It intends to deliver its policy recommendations to Congress during mid-2008. For more information, please visit the Working Group's website at http://www.21stcenturyag.org/index.php/c/Reports/d/Sept._24_Meeting_on_Agricultural_Carbon_Markets.

About the Author

Nowell Berreth focuses his practice on representing agribusinesses in litigation and with respect to legislative and public policy matters. He serves as the vice-chair of the Agriculture Law Section of the State Bar of Georgia. He received his J.D. from Georgia State University in 1998 and his B.A. in journalism in 1991 from the University of Georgia.