



2019 Ag and Environmental Law Overview

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OVERVIEW



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Overview

Number of issues involving animal agriculture, pesticides, bankruptcy, and environmental in 2019 and moving forward into 2020



Overview

USDA hemp regulations
are available

Not discussing today



BANKRUPTCY



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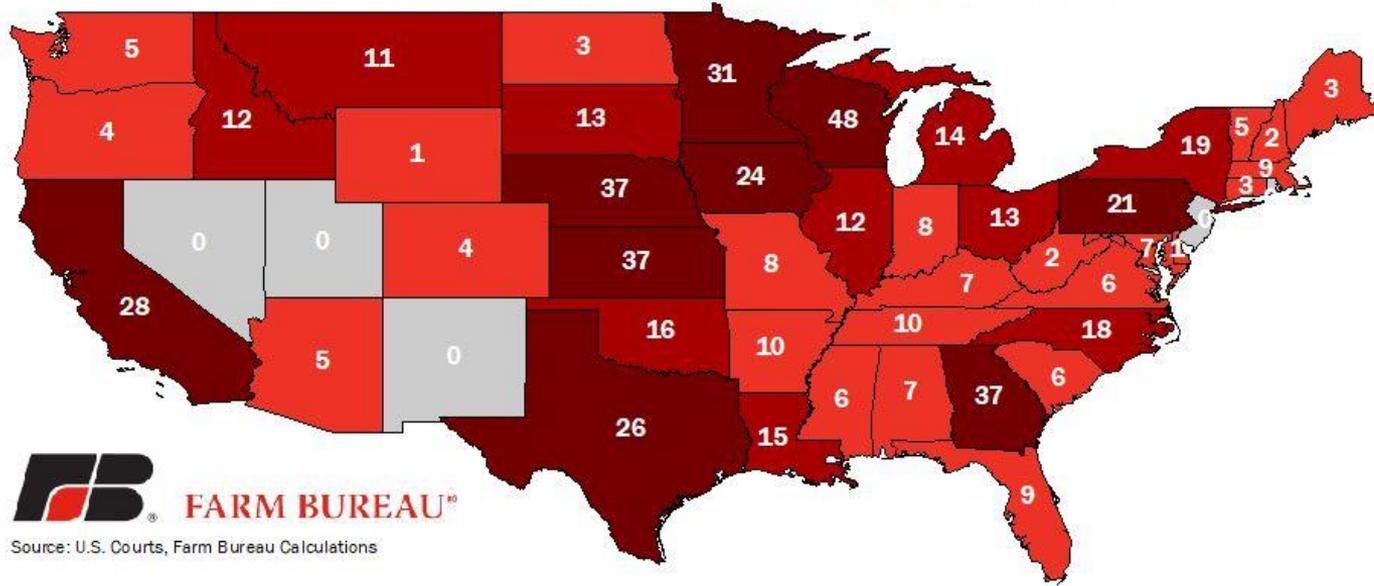
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Bankruptcy

- Through Sept. 30, 2019, Chapter 12 filings are up 24 percent from same period.
- This increase comes after filings fell during 2018.

Bankruptcy

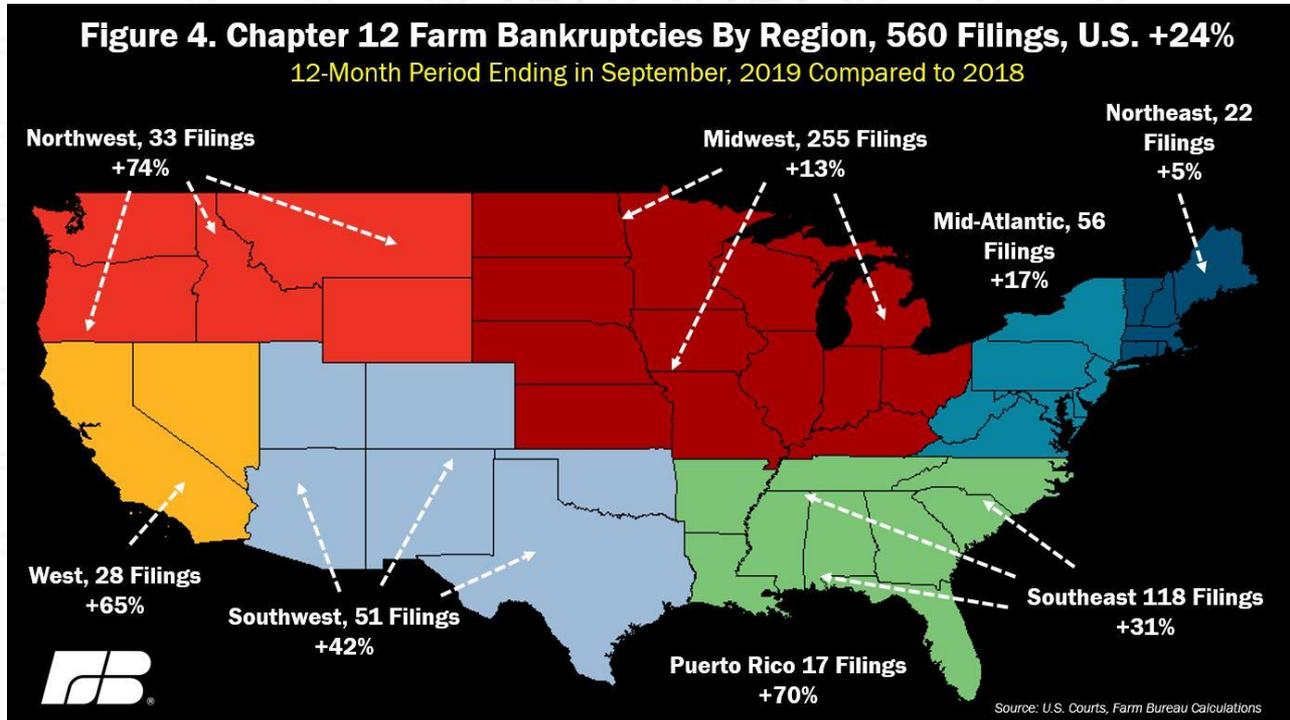
Figure 2. Total Chapter 12 Farm Bankruptcies by State
12-Month Period Ending in September 2019



Source: U.S. Courts, Farm Bureau Calculations



Bankruptcy



Bankruptcy

Family Farmer Relief Act recently signed by President

Law increases aggregated debt limits from \$4.1 million to \$10 million to allow more growers to qualify for Chapter 12 relief.



Bankruptcy

What to watch for in
2019 and 2020:

Will the recent changes
in Chapter 12 lead to an
increase in filings?



WOTUS



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WOTUS

- 2015: EPA and Army COE issued rule defining “waters of US” or WOTUS.
- Goal was to provide a more consistent definition of waters that fall under the Clean Water Act.

WOTUS



- Rule was immediately challenged
- Rule implemented in some states but not in others.

WOTUS

- EPA and Army COE recently announced repeal
- End of first step, in two step process to issue new rule



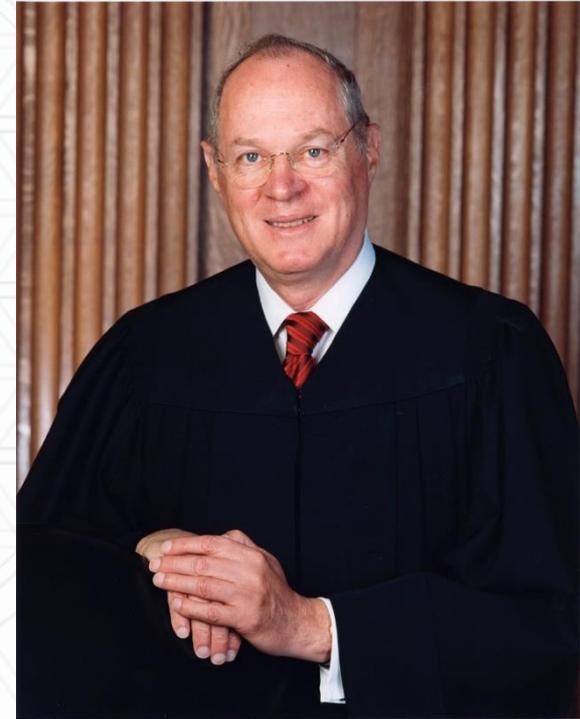
WOTUS

Unclear what final rule will look like.

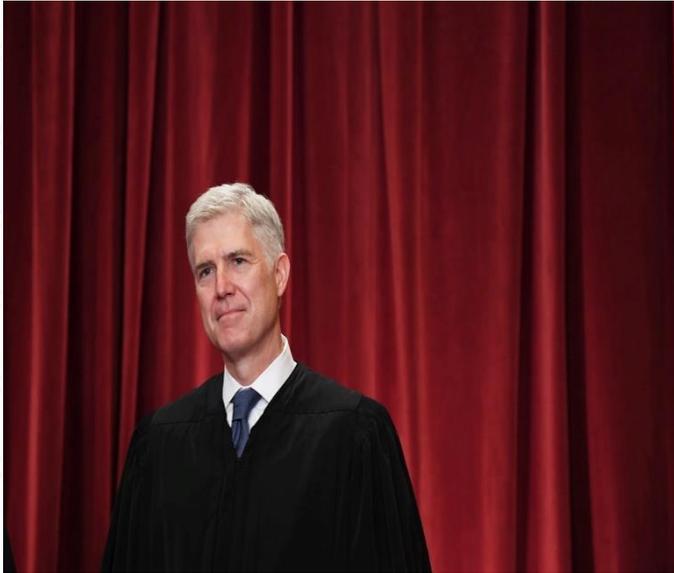
President wants one based around 2006 SCOTUS opinion in *Rapanos* but . . .



WOTUS



WOTUS



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WOTUS

- What to look forward to in 2020?
- **LAWSUITS!** Once the new rule is announced

A black rectangular box with white text that reads "THE END (OR IS IT?)". The text is in a bold, sans-serif font. The box is positioned on the right side of the slide, partially overlapping the background grid.

Other Clean Water Act Issues

- SCOTUS will hear appeal on do point source discharges into groundwater that eventually reach a WOTUS covered?
- Trial court and 9th Circuit found that it was covered.

CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS



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Climate Change

Court of Appeals of Minnesota recently made news by ruling state agency had to take into account climate change in dairy expansion project



Climate Change

MN has a law similar to
National Environmental
Protection Act



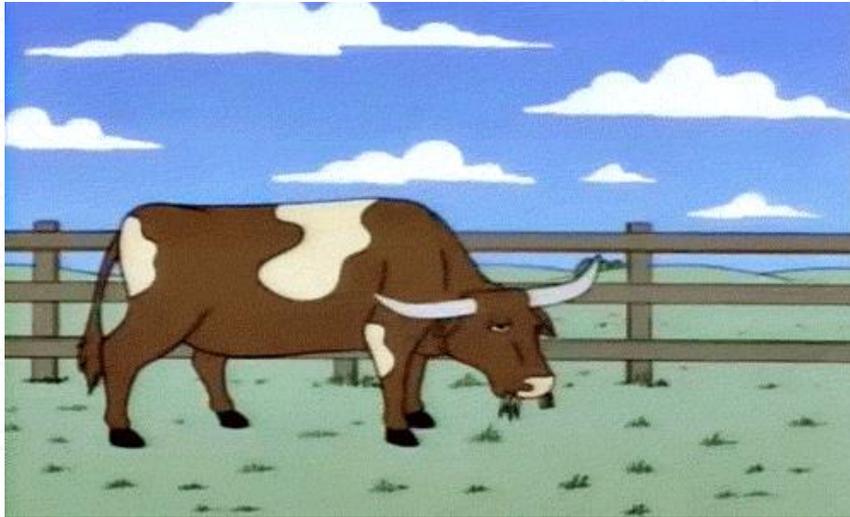
Climate Change

Public comments asked about impact of climate change and greenhouse gas emissions from dairy expansion

State agency never dealt with these issues



Climate Change



Court agreed with environmental groups

State required to deal with comments before denying need for environmental impact statement

Climate Change

Fact climate change and GHG emissions hard to deal with still have to respond to comments

Court reversed decision denying need for EIS and decision to grant water discharge permit for expansion



ANIMAL AGRICULTURAL ISSUES



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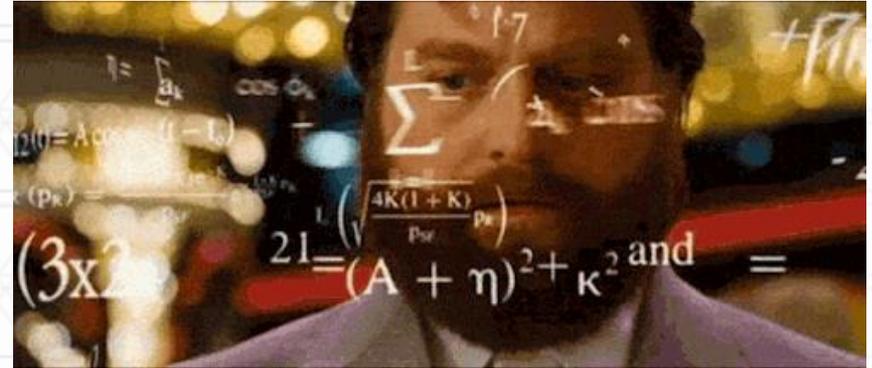
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Animal Agricultural Issues

Challenges to animal operations continue to be a hot issue in 2019 (and will probably be for the near future)



Animal Agricultural Issues

MO new law requiring county health ordinances to be no more stringent than state CAFO laws

Currently being challenged

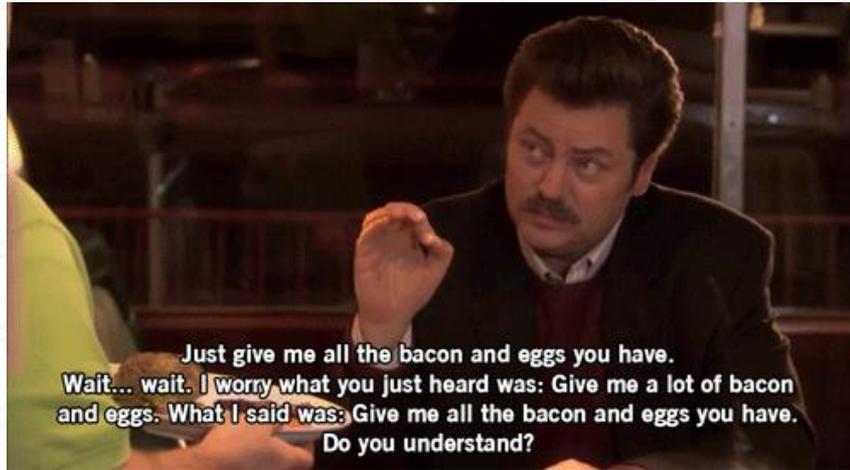


Animal Agricultural Issues

MO feedlot closed down after expanding from 900 head to 6,999 (7,000 would have required odor plan)

Neighbors and other sued the operation

Animal Agricultural Issues



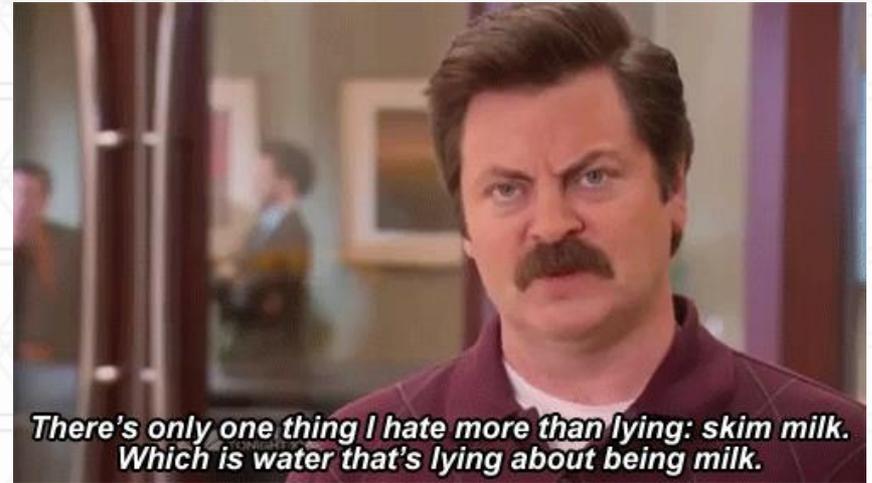
Pushes for states to take into account air quality when permitting new CAFOs

This is a growing area of concern in many states.

On-going Issues in Animal Agriculture

Confinement issues:

California will have
confinement
requirements go into
place in 2020 and 2022
passed in 2018



RIGHT-TO-FARM



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On-going Issues in Animal Agriculture



NC Hog Farm Litigation still ongoing with appeals filed.

Challenge to USDA loan guarantee for MD poultry farm still on-going.

Indiana Right-to-Farm

- *Himsel* is an Indiana court challenge to a hog farm by neighboring landowners
- Farm was established in 1941 and the non-ag uses in 1971. To the court the area was predominately ag
- Court also highlights time to challenge a CAFO is in permitting process



Australia Right-To-Farm Law

State of New South Wales Parliament has introduced proposed Right-to-Farm law and changes to trespass.

Right-to-Farm law provides similar US protections plus additional protections for farms that do not qualify that US laws do not.



Australia Right-To-Farm Law



Changes to trespass law would increase fines from \$5,000 to \$13,200 or \$22,000

Plus 12 months to 3 years in prison.

Australia Right-To-Farm Law

Opposition has been to trespass changes

Members of Parliament have not hidden the fact that the changes are to stop animal activist.



PESTICIDE ISSUES



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Roundup Class Actions

- How many people have seen the ads?
- Litigation is based around products liability theory



ROUNDUP WARNING
If you or a loved one has



eJustice www.roundupcancerlawsuits.com
CALL 800-797-6286

Roundup Class Actions

- Juries in California have awarded
 - \$81 million
 - \$300 million
 - \$2 Billion (reduced to \$86.7 million)
- Argument is that Roundup caused their cancers.

Roundup Class Actions



- Currently over 11,000 cases filed and awaiting trial – currently in mediation
- Should not be ignored could have huge impact on using Roundup

Dicamba Class Action

First trial in dicamba class action will start in early 2020 (Jan. 27, 2020).

First trial will involve Missouri peach grower, Bader Farms, who claimed damage in 2015 and 2016.



WRAP UP



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Wrap Up

2020 will probably see a number of legal concerns remain at the forefront



Wrap Up



Concerns about:

- Livestock issues
- Pesticides
- CWA and WOTUS

All will continue to be issues in 2020

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Podcast: marylandagpodcast.org



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State Law Update

Sarah Everhart, Managing Director,
Francis King Carey School of Law





Recent Legal Updates

- Senate Bill 546
- Effective October 1, 2019
- Nutrient Management (NM) Changes
 - Increased financial penalties for non-compliance
 - New supplementary reporting requirements on manure transport and land application
- Confined Animal Feeding Operations (CAFO)
 - New requirements for CAFO operators



Nutrient Management Planning Updates



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- Farmers with late or missing Annual Implementation Reports (AIRs) may be fined, after notice of violation, up to \$1,000.
- The fine for failing to implement a Nutrient Management Plan (NMP) is now capped at \$500 per violation and up to \$5,000 per operator, per year.

Phosphorus Management Tool Updates



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- Anyone who applies phosphorus to land in violation of the PMT regulations may be fined \$250.
- Businesses and certified consultants must comply with all NM reporting requirements including PMT implementation deadlines and submission of soil test data.
- Failure to do so may result in a fine of \$250.

Manure Transport Updates



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- The 2019 AIR will have an expanded section on manure transport and will require a farmer using animal manure to include:
 - The amount of animal manure imported to and exported from the farm;
 - For imported animal manure, the name and location of the sending farm; and
 - For exported animal manure, the name and location of the farm, alternative use facility, or manure broker that received the manure.
 - If the farm operator receives animal manure through a manure broker, the broker shall provide the operator with the name and location of the sending farm.

CAFO Updates



- Before construction a CAFO must be covered by the General Discharge Permit (GDP), issued by the Maryland Department of the Environment (MDE).
- One-time fee of at least \$2,000 for coverage under the GDP for a proposed/modified CAFO with a house capacity of 350,000 sq. ft. or more.
 - These CAFOs will also be subject to an annual fee (\$1,200) for continued coverage.



Questions?



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