

# NORTHEAST OHIO AGRI-CULTURE NEWSLETTER

Your Weekly Agriculture Update for  
Ashtabula and Trumbull Counties

May 30, 2023



Corn is up! Now we just need a little bit of rain.

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## ***Hello Northeast Ohio Counties!***

We could really use a good shot of rain to help along our crops in NE Ohio. Most fields have been planted, but the dry conditions are leading to inconsistent germination in locations.

A lot of hay has been made in the last couple of weeks, and without moisture we are likely to see thin second cuts later this year.

**Lee Beers**  
Trumbull County  
Extension Educator

**Andrew Holden**  
Ashtabula County  
Extension Educator

## ***The Ag Law Harvest***

By: Jeffrey K. Lewis, Esq.

Source: <https://farmoffice.osu.edu/blog>

We're back! We are excited to bring back our regular Ag Law Harvest posts, where we bring you interesting, timely, and important agricultural and environmental legal issues from across Ohio and the country. This month's post provides you with a look into Ohio's ongoing legal battle of some provisions in the recently enacted "Chicken Bill", a brief dive into the U.S. Department of Labor's new H-2A wage rules, a warning about conservation easement fraud, and an explanation of a court's recent decision to release an insurance company from its duty to defend its insured in a lawsuit. Battle of "Chicken Bill."



Ohio House Bill 507 ("HB 507"), sometimes referred to as "the Chicken Bill" went into effect last month and was widely known for reducing the number of poultry chicks that can be sold in lots (from six to three). However, HB 507 contained other non-poultry related provisions that have caused quite a stir. Environmental groups have sued the State, seeking a temporary restraining order, a preliminary and permanent injunction to prevent HB 507 from going into effect, and a declaratory judgement that HB 507 violates Ohio's Constitution. Two provisions within HB 507 have specifically caught the attention of the Plaintiffs in this case: (1) a revision to Ohio Revised Code § 155.33 that requires state agencies to lease public lands for oil and gas development (the "Mandatory Leasing Provision"); and (2) a revision to Ohio Revised Code § 4928.01 that defines "green energy" to include energy generated by using natural gas, so long as the energy generated meets certain emissions and sustainability requirements (the "Green Energy Provision").

Plaintiffs argue that the Mandatory Leasing Provision will cause irreparable harm to their members' "environmental, aesthetic, social, and recreational interests" in Ohio's public lands. Additionally, Plaintiffs assert that the Mandatory Leasing Provision and Green Energy Provision violate Ohio's Constitution by not following the "One-Subject Rule" and the "Three-Consideration Rule" both of which require transparency when creating and passing legislation in Ohio. The Franklin County Court of Common Pleas recently denied Plaintiffs' request for a temporary restraining order, reasoning that no new

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leases would likely be granted until the Oil and Gas Land Management Commission adopts its rules (as required by Ohio law) and that there is “no likelihood of any immediate and irreparable injury, loss, or damage to the plaintiffs.” Since the hearing on Plaintiffs’ request for a temporary restraining order, the State of Ohio has filed its answer denying Plaintiffs’ claims and currently all parties are in the process of briefing the court on the merits of Plaintiffs’ request for a preliminary injunction.

### **New H-2A Wage Rules: Harvesting Prosperity or Sowing Seeds of Despair?**

On February 28, 2023, the U.S. Department of Labor (the “DOL”) published a final rule establishing a new methodology for determining hourly Adverse Effect Wage Rates (“AEWR”) for non-range farm occupations (i.e. all farm occupations other than herding and production of livestock on the range) for H-2A workers. The new methodology has been in effect since March 30<sup>th</sup>. Late last month Rep. Ralph Norman and the Chairman of the House Committee on Agriculture, Rep. Glenn “GT” Thompson, introduced a resolution of disapproval under the Congressional Review Act, seeking to invalidate the DOL’s final rule. Similarly, the National Council of Agricultural Employers (“NCAE”) released a statement declaring that it has filed a Motion for Preliminary Injunction against the DOL’s new methodology.

Opponents of the new rule argue that the increased wages that farmers and ranchers will be required to pay will put family operations out of business. On the other hand, the DOL believes “this methodology strikes a reasonable balance between the [law’s] competing goals of providing employers with adequate supply of legal agricultural labor and protecting the wages and working conditions of workers in the United States similarly employed.” Producers can visit the DOL’s frequently asked questions publication to learn more about the new H-2A wage rule. As it stands, the new H-2A regulations remain in effect and producers should be taking all possible steps to follow the new rules. Make sure to speak with your attorney if you have any questions about compliance with H-2A regulations.

### **Conservation Easement Fraud – Protecting Land or Preying on Profits?**

For a while now, conservation easements have been utilized by farmers and landowners to preserve their land while also obtaining a substantial tax benefit. But not all actors in the conservation easement sphere are good ones. Earlier this month, a land appraiser in North Carolina pled guilty to conspiring to defraud the United States as part of a syndicated conservation easement tax shelter scheme. According to a press release by the U.S. Department of Justice (“DOJ”), Walter “Terry” Douglas Roberts II of Shelby, North Carolina conspired with others to defraud the United States by inflating the value of conservation easements which led to \$1.3 billion in fraudulent tax deductions. Roberts is guilty of inflating the value at least 18 conservation easements by failing to follow normal appraisal methods, making false statements, and manipulating or relying on knowingly manipulated data to achieve a desired tax

deduction amount. Roberts faces a maximum penalty of five years in prison and could be forced to pay back a specified amount to the U.S. Government.

Conservation easement fraud is not new, however. The Internal Revenue Service (“IRS”) has been monitoring the abuse of the conservation easement tax deductions for some time. The IRS has included these fraudulent transactions on its annual “Dirty Dozen” list of tax avoidance scams. The IRS has seen taxpayers, often encouraged by promoters armed with questionable appraisals, take inappropriately large deductions for these types of easements. These promoters twist the law to develop abusive tax shelters that do nothing more than “game the tax system with grossly inflated tax deductions and generate high fees for promoters.” The IRS urges taxpayers to avoid becoming entangled by these dishonest promoters and that “[i]f something sounds too good to be true, then it probably is.” If you have questions about the tax benefits of a conservation easement, make sure to speak with your attorney and/or tax professional.

### **Alleged Intentional Acts Not Covered by Insurance.**

An animal feed manufacturer is in hot water, literally. A city in Mississippi has accused Gold Coast Commodities, Inc. (“Gold Coast”), an animal feed manufacturer, of intentionally dumping hot, greasy wastewater into the City’s sewer system. Prior to the City’s investigation into Gold Coast’s alleged toxic dumping, Gold Coast purchased a pollution liability insurance policy from Crum & Forster Specialty Insurance Company (“Crum & Forster”). After an investigation conducted by the City and the Mississippi Department of Environmental Quality, the City filed a lawsuit against the feed manufacturer alleging that it intentionally dumped toxic waste into the City’s sewer system. Gold Coast then notified its insurance company of the potential claim. However, Crum & Forster denied coverage for Gold Coast’s alleged toxic dumping. According to the insurance policy, coverage exists for an “occurrence” defined as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” Crum & Forster refused to provide a defense or coverage for Gold Coast in the City’s toxic dumping lawsuit because the City alleges multiple times that Gold Coast acted intentionally, and therefore, Gold Coast’s actions were not an accident and not covered by the policy.

In response, Gold Coast filed a lawsuit against Crum & Forster asking a federal district court in Mississippi to declare that Crum & Forster is required to defend and provide coverage for Gold Coast under the terms of the insurance policy. On a motion to dismiss, the federal district court in Mississippi dismissed Gold Coast’s lawsuit against the insurance company. The district court reasoned that in the underlying toxic dumping lawsuit, the City is not alleging an accident, rather the City asserts that Gold Coast intentionally dumped the toxic waste. Thus, Crum & Forster is not obligated to provide a defense or coverage for Gold Coast, under the terms of the policy. Gold Coast appealed



to the Fifth Circuit Court of Appeals (which has jurisdiction over federal cases arising in Texas, Louisiana, and Mississippi).

The Fifth Circuit affirmed the decision of the federal district court, rejecting Gold Coast's claim that Crum & Forster is obligated to provide a defense and coverage for Gold Coast in the City's toxic dumping lawsuit. Gold Coast argued that the City seeks to recover under the legal theory of negligence in the toxic dumping case, therefore Gold Coast's actions are accidental in nature. The Fifth Circuit was unconvinced. The Fifth Circuit explained that when reading a complaint, the court must look at the factual allegations, not the legal conclusions. The Fifth Circuit found that the factual allegations in the City's lawsuit all referred to Gold Coast's intentional or knowing misconduct and any recovery sought under the theory of negligence is not a factual allegation, instead it is a legal conclusion. The Fifth Circuit concluded that using terms like "negligence" do not "transform the character of the factual allegations of intentional conduct against [Gold Coast] into allegations of accidental conduct constituting an 'occurrence.'" Thus, the Fifth Circuit affirmed the federal district court's decision to dismiss Gold Coast's lawsuit against its insurer. Unless the Supreme Court of the United States decides to take up the case, it looks like Gold Coast is all on its own in its fight against the City. The lesson here is that although insurance is important to have, its equally as important to speak with your insurance agent to understand what types of incidents are covered under your insurance policy.

## ***Ohio Crop Returns Outlook for 2023 - Final Crop Enterprise Budgets for 2023***

By: Barry Ward, Leader, Production Business Management

Lower crop prices and a mix of higher and lower input costs have been the theme for the last several months. High production costs in 2022 gave way to a mix of higher and lower input costs for the 2023 production year. Factors affecting both supply and demand have continued to drive commodity crop prices lower. The result of these changes is an outlook for limited positive margins for the 2023 corn, soybean and wheat crops.



Production costs for Ohio field crops are forecast to be slightly lower than last year with lower fertilizer and fuel prices leading the way. Higher rents, seed costs, machinery/equipment costs and interest rates mostly offset any benefit related to lower cost areas.

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Variable costs for corn in Ohio for 2023 are projected to range from \$514 to \$628 per acre depending on land productivity. The trend line corn yield (181.8 bpa) scenario included in the corn enterprise budget shows a decrease in variable costs of 10% but a decrease in total costs of only 5% due to higher rents and machinery/equipment costs.

Variable costs for 2023 Ohio soybeans are projected to range from \$280 to \$320 per acre. Variable costs for trend-line soybeans (56.5 bpa) are expected to decrease 10% in 2023 compared to 2022 while total costs are expected to decrease only 2% in 2023.

Wheat variable expenses for 2023 are projected to range from \$246 to \$309 per acre. The trend line wheat yield (75.4 bpa) scenario included in the wheat enterprise budget shows a decrease in variable costs of 3% with an increase in total costs of 4%.

Returns will be mixed depending on crop price change throughout the rest of the year. Grain prices used as assumptions in the 2023 crop enterprise budgets are \$5.00/bushel for corn, \$12.00/bushel for soybeans and \$8.00/bushel for wheat (wheat price set in October using the September '23 Futures price at that time).

Projected returns above variable costs (contribution margin) range from \$333 to \$463 per acre for corn and \$378 to \$494 per acre for soybeans. Projected returns above variable costs for wheat range from \$326 to \$415 per acre although significant crop price decreases since last fall (when the price was set for this enterprise budget) will likely cause wheat to be less profitable than these return projections indicate.

Return to Land is a measure calculated to assist in land rental and purchase decision making. The measure is calculated by starting with total receipts or revenue from the crop and subtracting all expenses except the land expense. Returns to Land for Ohio corn (Total receipts minus total costs except land cost) are projected to range from \$23 to \$254 per acre in 2023 depending on land production capabilities. Returns to land for Ohio soybeans are expected to range from \$130 to \$348 per acre depending on land production capabilities. Returns to land for wheat (not including straw or double-crop returns) are projected to range from \$129 per acre to \$295 per acre assuming a planting-time price of \$8/bushel. If a current forward harvest price for wheat of \$6.80/bushel is used, the Return to Land is in a lower range of \$60 to \$192 per acre depending on land production capabilities.

Total costs projected for trend line corn production in Ohio are estimated to be \$1,003 per acre. This includes all variable costs as well as fixed costs (or overhead

if you prefer) including machinery, labor, management and land costs. Fixed machinery costs of \$88 per acre include depreciation, interest, insurance and housing. A land charge of \$228 per acre is based on data from the Western Ohio Cropland Values and Cash Rents Survey Summary. Labor and management costs combined are calculated at \$88 per acre. Details of budget assumptions and numbers can be found in footnotes included in each budget.

Total costs projected for trend line soybean production in Ohio are estimated to be \$667 per acre. (Fixed machinery costs: \$69 per acre, land charge: \$228 per acre, labor and management costs combined: \$55 per acre.)

Total costs projected for trend line wheat production in Ohio are estimated to be \$619 per acre. (Fixed machinery costs: \$43 per acre, land charge: \$228 per acre, labor and management costs combined: \$56 per acre.)

Data used to compile these enterprise budgets includes research, surveys, market data, economic modeling, calculations and experience of authors.

Current budget analyses indicate less favorable returns for all three primary commodity crops in Ohio for 2023 but crop price change and harvest yields may change this outcome. These projections are based on OSU Extension Ohio Crop Enterprise Budgets. Newly updated Enterprise Budgets for 2023 have been completed and posted to the **Farm Office** website: <https://farmoffice.osu.edu/farm-management/enterprise-budgets>.

## ***The Ohio State University to establish Trimble technology labs in Columbus and Wooster for agriculture, construction, natural resources***

By Sherrie Whaley

Source: <https://cfaes.osu.edu/news/articles/the-ohio-state-university-establish-trimble-technology-labs-in-columbus-and-wooster>

COLUMBUS, Ohio—The Ohio State University has received a gift from Trimble, a technology company, to establish state-of-the-art technology labs for the College of Food, Agricultural, and Environmental Sciences(CFAES). This gift of software and hardware represents the largest philanthropic gift-in-kind investment to support teaching, research, and outreach in the history of CFAES.

The multidisciplinary labs at Ohio State will enhance teaching, research, and outreach activities in food and agricultural engineering, construction management, and natural resources. The Trimble technology labs will be located on the Columbus campus and Ohio State ATI on the CFAES Wooster campus. The labs will be the first to include Trimble agriculture solutions.



*Ohio State graduate students use various geospatial technologies such as remote sensing and global positioning systems with Trimble hardware and software. (Photo by Mitch Moser)*

The centerpieces of this gift are customized training workstations that simulate the use of Trimble agriculture hardware and software in the classroom environment. This technology will instruct students on technologies such as machine guidance control and steering in the classroom, as well as field leveling and water management systems. The workstations will enable students to interact with technology in the classroom before they begin working with equipment in the field.

“CFAES is proud to be the home of the first Trimble technology labs focused on agriculture. The impact this collaboration will have on our college and students is truly immeasurable,” said Cathann A. Kress, Ohio State vice president for agricultural administration and dean of CFAES. “It will allow us to be at the cutting edge of technology and innovation across our agriculture and environmental science disciplines. We are extremely grateful for Trimble’s investment in our college on both our Columbus and CFAES Wooster campuses.”

The labs also include components of Trimble’s broad Connected Construction portfolio, which enables professionals along the project lifecycle to bring collaboration, accuracy, and repeatability to the office and the field. Partnering with Trimble will allow students and faculty to more fully integrate technology tools that are transforming how buildings and living environments are designed and constructed.



“The Trimble technology labs on the Columbus and CFAES Wooster campuses will become indispensable as we prepare students for the technology-driven careers of the future in agriculture, construction, and natural resources,” said Scott Shearer, professor and chair, CFAES Department of Food, Agricultural and Biological Engineering. “In addition, these labs will enhance the land-grant mission of Ohio State by placing state-of-the-arts geospatial tools in the hands of researchers and Extension professionals to enhance the management of agriculture and natural resources across Ohio.”

The labs will support outreach programs through Ohio State University Extension—CFAES’ statewide outreach arm—and agricultural professional training programs to re-equip Ohio farmers and agricultural professionals in the adoption of new technologies to increase agricultural output while preserving environmental quality. The equipment and software will be integrated into CFAES curriculum, with a goal to have both labs open during fall semester 2023.

Trimble has a history of philanthropic support of Ohio State dating back to 1987. Daryl Matthews, senior vice president, Trimble, said, “Ohio State is an educational leader in producing innovative research and top-level graduates in agriculture and construction. In addition, we have many Ohio State alumni who work on teams across Trimble’s businesses, and we have a significant presence in Ohio with our operations. Supporting their important work by providing advanced technologies will help fuel their programs to develop professionals for the future.”

The labs will include a broad range of Trimble’s industry-leading geospatial and construction solutions such as the Trimble® XR10 HoloLens hardhat, robotic total stations, 3D scanners and GNSS systems. Advanced software solutions include eCognition® geospatial analysis software, RealWorks® scanning software, TerraFlex™ Advanced GIS data collection, Trimble Access™ field software, Trimble Business Center Infrastructure Construction edition, Tekla® Structures, Tekla Structural Designer, Trimble Connect® collaboration software, Estimation MEP, FieldLink Office, Quadri, SysQue, and the company’s popular 3D modeling software, SketchUp Pro and SketchUp Studio.

## ***Lee’s Monthly News Column***

Hello Trumbull County! I hope you are all making the most of the extended dry, and warm weather. Every farmer in Northeast Ohio has been busy getting crops planted, and some are even making hay. After a wet April, which delayed quite a lot of field work and made farmers nervous, this stretch of weather initially felt like a well-earned gift. However, at this point most of our crops have been planted in Trumbull County and now we need a rain to help get the crops out of the ground. Much of the county has received

less than 2" of rain for the month, and most of that fell about 20 days ago. The extended forecast doesn't offer much relief either.

With a long dry stretch like the one we're in now, there are several ways that farmers can still help give their crops a good chance. The first option is to alter seeding depth. The farther down you go, the more moisture you will find, so it may be beneficial to plant ½" deeper to get the seed closer to the water it needs to germinate. The second option is to limit the number of tillage passes across the field. Exposing soil to the sunlight and wind is a very quick way to dry it out, so tilling less will help maintain some of the soil's existing moisture. The third option is to install irrigation. Irrigation is not very common in our part of the country because we are usually fighting too much water, not too little. In periods of little rain, a good shot of moisture at the correct time can make a big difference. In home gardens this is often not a difficult task to accomplish with a garden hose or sprinkler. Over several hundred or thousands of acres, however, you need a much more advanced system. To replace one inch of rainwater, you would need to pump approximately 23,000 gallons of water for each acre. Imagine that water bill!

I've said it a thousand times – farming is about trade-offs. Planting deeper may delay germination, thus causing disease issues or poor stands. Moving to no-till practices will retain moisture, but the soil will warm up slower, which will delay planting. Irrigation is expensive, and in many years it may not be needed. We would all like to have our cake and eat it too, but sometimes we must make a decision that is best for the current conditions.

Like I mentioned, we are heading into more dry weather. Most farmers will be out working in the fields whether it is mowing hay, spreading manure, or planting soybeans. To do their work they will need to use the roadways to move equipment, so be sure to give them some space! If you see the orange slow moving vehicle (SMV) sign, slow down and pay attention. Equipment continues to get bigger, and mailboxes are still just as close to the road as always. Let's not add to our neighborhood farmers' stress by being impatient or driving too close to them in attempt to get on our way. Remember- no farms, no food!

Stay safe!

## ***Ashtabula County 4-H Camp is Filling Up-Get your Reservation in Today!***

One of the highlights of our Extension program during the summer months is all of our 4-H activities. These activities are highlighted by our resident 4H Camping week at the end of June at 4-H Camp Whitewood in Windsor, Ohio. Each year, we sell out camp

with nearly 165 youth ages 8-14 attending this week long camp chaperoned by 30 teenager camp counselors. This year's camp will be held from Sunday evening June 18 through Saturday morning June 27, 2023 and the cost of camp is \$360 per camper. This camping week is the culmination of a lot of hard work of our 4-H Camp Counselors who began their training program in January. This year's theme is "Camp Whitewood-Beyond time..." Our counselors are having a lot of fun developing activities around this time travel theme for the campers. I am so impressed with the maturity of our counselors and their leadership for our campers. For campers interested in attending, you may want to have your parents act quickly as our latest update indicated there are only 40 spots left for our camp this year. This is no surprise to me as our camp staff and counselors conduct an exceptional camp! Registration can be completed on-line at <http://www.4hcampwhitewood.com/>. More information about this camp can also be received by calling the Ashtabula County Extension office at 440-576-9008.

#### **4-H CLOVERBUD CAMP AT CAMP WHITEWOOD**

**FRIDAY, JUNE 23, 2023 10:00 A.M. - 2:00 P.M.**

at 4-H Camp Whitewood – 7983 S. Wiswell Rd. Windsor, OH

Check-In begins at 9:45 a.m.

Pick-Up is promptly at 2:00 p.m. on the REC PAD

\$25 per participant. Open to all Youth ages 5 – 8 as of 1/1/23

Come EXPLORE the great outdoors and spend the day at 4-H Camp Whitewood.

Activities include swimming, hiking, crafts and chuck-wagon lunch with the County 4-H Camp.

Grab your friends, swim gear and hiking shoes and join us for a day of FUN and ADVENTURE! The number of participants is limited so sign up now!

Pre-registration is necessary by June 15 to insure adequate supplies and supervision. [Register by clicking here. Click here for the health form.](#)

#### **CLOVERBUD ADVENTURE DAY**

**JULY 19, 2023**

**8:00 A.M. - 2:00 P.M.**

Open to all youth ages 5 – 8 as of 1/1/23.

At the Ashtabula County Fairgrounds

Cost: \$25.00

#### **Adventures in Nature & Science, Crafts and Animal Encounter, and more!**

The number of participants is limited to 40 so sign up now! Pre-registration is necessary to insure adequate supplies and supervision for your children. Participants are asked to bring their own lunch and water bottle. Refrigeration available. Snack will be provided.

[Register by clicking here.](#) Registrations and payment by cash, check or credit card is due by July 1. [Click here for the health form.](#)



OHIO STATE UNIVERSITY EXTENSION  
Ashtabula, Portage and Trumbull Counties

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# PROGRESSIVE AGRICULTURE SAFETY DAY®

Saturday, June 3, 2023 from 9:30 a.m. – 2:00 p.m.

This years event will be at the:

**Ashtabula County Antique Engine Club**

This **FREE** event is for children ages 4 and up.

Families are welcome to stay!

Registration will be in person only and begin at 9:00 AM

**A packed lunch is required for all participants**



## Topics Include

Water/Pond Safety	Chemical Safety
PTO Safety	Animal Safety
Equipment Safety	Grain Safety

Sign up for shirt sizes here

For additional information contact  
Rachel Kalas: 440-789-9131 or  
[asht.co.pafsd@gmail.com](mailto:asht.co.pafsd@gmail.com)



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FARM CREDIT

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# Women in Agriculture

## Ashtabula County Farm Tours

### Beef, a Backyard Garden, & Berries

Join us for one or all of this 3-part series featuring women owned farms!

**Mardy Townsend**  
**Marshy Meadows**

**Alexa Sandella**  
**Backyard Garden**

**Lois Wright Morton**  
**Outwash Terrace**

## Save the date! Rain or shine!

**Please wear boots, bring water, and be prepared for walking**

**Windsor, OH**

**Sunday, May 7<sup>th</sup>**  
**from 2-4 p.m.**

**Kingsville, OH**

**Sunday, July 30<sup>th</sup>**  
**from 2-4 p.m.**

**Pierpont, OH**

**Sunday, Sept. 10<sup>th</sup>**  
**from 2-4 p.m.**

To RSVP, call or email Julie Wayman 440-576-9008 or [wayman.31@osu.edu](mailto:wayman.31@osu.edu)



**THE OHIO STATE UNIVERSITY**

COLLEGE OF FOOD, AGRICULTURAL,  
AND ENVIRONMENTAL SCIENCES

[ashtabula.osu.edu](http://ashtabula.osu.edu)

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