

FOOD AND AGRICULTURE SECTOR

The food and agriculture sector includes a wide range of businesses from farm and farm-related industries to food service and food manufacturing. According to the U.S. Department of Agriculture, food accounted for a 12.6 percent share of the typical American's household expenditures in 2014, ranking third behind housing and transportation expenses. Additionally, in 2014, agriculture and agricultural-related industries contributed \$835 billion to the nation's gross domestic product, representing a 4.8 percent share.

The food and agriculture industry faces many challenges in meeting the growing demand for food around the globe. With the world's population expected to exceed nine billion by 2050, the industry will need to significantly increase production while taking important steps to protect the environment and conserve precious natural resources such as land and water. Companies operating across the sector face a complex body of laws and regulations at the state, national and international levels. In particular, environmental rules and standards are becoming increasingly stringent, requiring food and agriculture companies to seek the advice and representation of experienced California environmental counsel.

Laws and Regulations Impacting the Food and Agriculture Sector

Food

The U.S. Food and Drug Administration (FDA) has broad authority to regulate food for human and animal consumption. The FDA's responsibilities range from food safety and food safety modernization to retail food protection and imports and exports. Under the Federal Food, Drug and Cosmetic Act (FDCA), businesses in the food industry must comply with a host of requirements, including submitting to inspections, complying with labeling and reporting mandates, and meeting good manufacturing practice requirements. Unless specifically exempted, facilities that manufacture, process, pack or hold food must also register with the FDA before beginning these activities.

Additionally, the Food Safety Modernization Act (FSMA) aims to ensure the safety of the U.S. food supply and gives the FDA additional oversight authority to work towards preventing problems within the food system.

The attorneys at Bick Law understand the wide range of environmental issues that impact companies operating in the food industry. We work directly with clients to ensure that their operations satisfy regulatory requirements at the state, federal and international levels. When litigation is involved, our lawyers work to protect and defend our clients at every stage of the legal process.

Agriculture

A number of significant environmental issues impact companies in the agriculture industry today, including:

- Chemical pesticides;
- Air emissions and greenhouse gas generation;
- Water use and water quality;
- Endangered species and habitats;
- Land use;
- Erosion;
- Wetlands encroachment;
- Renewable energy and energy use; and
- Waste management.

Statutes regulating the industry include the National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA), the Endangered Species Act (ESA), the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Farms that use pesticides, for example, must register chemical use under TSCA. Manufacturers of such pesticides must comply with FIFRA. Most farms require permits for industrial wastewater and storm water runoff from the land and animal feeding operations. Manure and wastewater from these operations can contribute pollutants to the environment, ranging from nitrogen, phosphorous and organic matter to sediments, pathogens, hormones and antibiotics.

The Clean Water Act has serious implications for the agriculture industry. Recently, the U.S. Army Corps and the Environmental Protection Agency issued new CWA regulations which redefine “waters of the United States” to include any water that is hydrologically connected to navigable waters, including “ephemeral streams”—low spots in the land that drain and channel water away from farmland after a rain, but are otherwise dry.

The legal team at Bick Law has decades of experience representing individual farm owners, state farm bureaus and other entities across the agriculture industry. We provide skilled counsel in environmental litigation and enforcement actions, permitting, and compliance matters. Additionally, attorneys in our environmental transactions practice regularly advise parties in connection with sophisticated agriculture deals and real estate transactions.

Food and Agriculture: Restaurants and Hospitality

Businesses in the restaurant and hospitality industry are also subject to strict regulatory oversight. In addition to food safety requirements, these companies often run into environmental issues and challenges involving land use, indoor air quality, waste management, air permits and water discharge.

The attorneys at Bick Law provide comprehensive environmental counsel to companies throughout the restaurant and hospitality industry. Whether we are advising a client in connection with a land acquisition or divestiture involving environmental contamination or helping a business develop a compliance program, our lawyers help clients avoid, manage and mitigate environmental risks and challenges.

Wineries and Vineyards

Wineries and vineyards face a number of key environmental challenges. Chief among these is the acquisition and disposal of water, which implicates both state and federal laws. Wineries are also subject to water quality discharge requirements and may need to apply for discharge permits or waivers from regional water quality control boards. Additionally, wineries and growers must satisfy a number of agency permitting requirements. These requirements often implicate environmental impact reporting requirements under the National Environmental Protection Act or the California Environmental Quality Act. Growers and wineries generate large volumes of waste, some of which is classified as hazardous under state and federal law.

When a winery or grower is not in compliance with disposal requirements, it can be subject to tens of thousands of dollars in daily fines even if the non-compliance was unintentional. Wineries are also subject to emission regulations under the Clean Air Act for pollutants including nitrogen and sulfur

oxides, particulate matter and volatile organic compounds and may be subject to winery-specific rules by Air Pollution Control Districts. Like the rest of the agriculture sector, vineyards may be subject to the Clean Water Act and the Endangered Species Act because of the potential for vernal pools and ephemeral streams that may be considered "waters of the United States" and may create critical habitat.

Bick Law regularly counsels growers and wine-making businesses. Our lawyers have a deep understanding of the environmental laws and regulations impacting the industry and work with wineries and growers to meet their regulatory obligations.