



December 2007

Welcome to PDPW's Capitol Link electronic newsletter!

DNR Proposes Revisions to NR 151 – Agricultural Nonpoint Source Pollution Performance Standards

Wisconsin Administrative Rule Chapter NR 151 establishes the agricultural “performance standards” that Wisconsin farmers have to meet in order to achieve compliance with Wisconsin’s soil and water resource management program. In general, NR 151 is currently being revised by the Department of Natural Resources (DNR). These revisions seek to create new agricultural performance standards to further limit nutrient inputs to waterbodies and to clarify provisions in existing agricultural performance standards and prohibitions regarding manure storage facility closures and direct runoff of manure. DNR also intends to modify NR 153, the funding allocation portion of the nonpoint program concurrently with the NR 151 rule revision.

Included in the initial proposed changes to NR 151 are the following provisions that may be of interest:

New Phosphorus Index Performance Standard: DNR is proposing a new Phosphorus Index performance standard that would set a statewide phosphorus index (PI) of 6 for all agricultural land use. However, in areas where Total Maximum Daily Loads (TMDLs) have been developed to determine the maximum amount of pollutants that can be discharged to impaired waters, the rule would allow for lower PI values and more stringent soil loss rates if warranted by the TMDL.

What is the P Index? The Phosphorus (P) Index is an agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute P to the nearest stream or lake. Wisconsin's P Index uses a set of equations to estimate P losses from an individual field to nearby surface water for an average weather year. The P Index currently includes two primary components (1) a Particulate P Index that estimates annual delivery of sediment-bound P; and (2) a Soluble P Index that estimates annual runoff dissolved P loads, including dissolved P losses from unincorporated manure or fertilizer P applications. Edge-of-field losses of particulate and soluble P are summed and then multiplied by a P delivery factor that accounts for P deposition or infiltration as runoff travels from the field to the stream. For more information on the P Index, go to UW Extension’s web site at: <http://wpindex.soils.wisc.edu/>.

New Tillage Setback Performance Standard: This proposed new performance standard establishes a tillage setback of 15 feet. Harvesting would be allowed provided it stays in self-sustaining vegetative cover and is not tilled.

Modifications to the Sheet, Rill and Wind Erosion Performance Standard: Under current law, land where crops or feed is grown is required to be “cropped to achieve a soil erosion rate equal to, less than the “tolerable” (T) rate established for that soil.” Under the proposed revisions to NR 151, this performance standard has been expanded to include “pastures” as well. In addition, a provision was added to require more stringent soil loss rates in areas with impaired waters if warranted by an approved TMDL.

Amended Manure Storage Facility Provisions: Under current NR 151, a livestock operation is prohibited from having overflow of manure storage facilities. This is a statutory prohibition and, therefore, does not require an offer of cost sharing. However, according to DNR, some landowners pump or drain facilities onto the ground in order to prevent overflows. Accordingly, a definition of “overflow” has been created in revised NR 151 such that “overflow” means “an accidental or intentional discharge to the environment from flow over the brim of a facility or from flow directed onto the ground through a pump or pipe.”

NR 151 Agricultural Advisory Committee Created. In order to gather input regarding their proposed changes, the DNR has formed an agricultural advisory committee that will meet three times before the Department takes a final draft rule to the Natural Resources Board for authorization to take the rule to public hearings. This advisory committee met for the first time on December 10th and is scheduled to meet again on January 7 and February 7, 2008. It is expected that the draft rule will be taken to the NR Board in March or April 2008 and that public hearings will be held on the rule in June 2008.

To review the proposed draft of revised NR 151, go to the DNR’s web site at:
<http://dnr.wi.gov/runoff/admrules/151/rulerevision.htm>.

Final NR 445 Rule Heading to NR Board in January

The DNR has proposed revisions to NR 445 that extend the implementation deadline for air permit requirements and hazardous air pollutant emission requirements for sources of emissions of hazardous air contaminants associated with agricultural waste until July 31, 2011. This extension more suitably corresponds to the projected completion dates for both state and federal air emissions studies on livestock operations.

The final draft rule that contains this extension is anticipated to be presented to the Natural Resources Board at their January 23, 2008 meeting in Madison. Those who wish to testify before the Board with regard to this proposed rule change must notify the NR Board assistant, Laurie Ross, Laurie.Ross@Wisconsin.gov or (608) 267-7420 no later than 4 p.m. Friday, January 18, 2007. In addition, written comments on the proposed changes can also be prepared and submitted to the Board through Ms. Ross prior to the meeting.

Feral Swine Legislation Passes State Assembly

Representative Lee Nerison (R-Westby) has authored AB 334, which designates feral swine as harmful wild animals and makes it illegal to possess, introduce, stock or release feral pigs into the wild. On December 11th, the State Assembly passed AB 334 on a voice vote. The bill next moves to the State Senate for consideration. State Senator Kathleen Vinehout (D-Alma), chair of the Senate Agriculture Committee, has indicated that she will move the bill through the Senate in January.

Capitol Link Details

The PDPW *Capitol Link* monthly e-newsletter is sponsored by DeWitt Ross & Stevens law firm. DeWitt Ross & Stevens is a Wisconsin law firm whose members are leaders in their areas of practice and in their communities. Founded in 1903, today there are more than 80 attorneys in our offices in Madison and Milwaukee. Nominated by peers as top lawyers nationally and locally, DeWitt's attorneys offer numerous services including strategic counseling, advocacy, collaboration, alternative dispute resolution, negotiation, mediation, lobbying, and litigation.

This newsletter is a periodic publication produced by PDPW and DeWitt Ross & Stevens. The information provided in this newsletter is provided for educational and informational purposes only. PDPW does not attempt to influence legislation or administrative rules at any level. The contents of this newsletter are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific situation. You are urged to consult an attorney concerning your own situation and any legal questions you may have.

Jordan Lamb is an associate at DeWitt Ross & Stevens' Capitol Square office in Madison. Jordan's law practice focuses on government relations and administrative law. She concentrates on legislative drafting, legislative research, and facilitating communication between clients and state government including administrative agencies and the State Legislature. Ms. Lamb also offers litigation support for administrative law issues. Jordan can be contacted at 608-252-9358 or at jkl@dewittross.com. For more information about DeWitt Ross & Stevens, go to www.dewittross.com.



Brought to you by:
Professional Dairy Producers of Wisconsin
N5776 US Hwy 151, Suite 1
Fond du Lac, WI 54937
Phone: 800-947-7379
mail@pdpw.org
www.pdpw.org
