

Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

February 2007

Farmer Wins Nuisance Lawsuit

By Jordan Lamb

On February 5th, the Wisconsin Court of Appeals affirmed a trial court's ruling in favor of the Sawyer County cranberry grower who was sued by a group of neighboring landowners and the State of Wisconsin for being an environmental nuisance, despite the fact that the farming operation had never been cited with an environmental violation by either the DNR or DATCP.

Although the decision did not address right-to-farm law issues specifically, the case is important for Wisconsin farmers because the Court upheld the lower court's finding that, in this case, farming did not create a nuisance. The State has announced that it will not seek Wisconsin Supreme Court review of this decision, however, it is unclear whether the landowners will seek further review by the Supreme Court.

Interestingly, this case has prompted the introduction of legislation by Representative Mary Williams (R-Medford), who has introduced AB 804. This legislation which would prohibit the Wisconsin Department of Justice from bringing an action to enjoin a public nuisance if the alleged activity is not in violation of a statute, rule, permit or ordinance. The bill has been referred to the Assembly Committee on Property Rights for consideration.

Great Lakes Compact Legislation Gets Public Hearing

By Jordan Lamb

On Thursday, February 21st, the Senate Committee on Environment and Natural Resources held a public hearing in Kenosha on a draft of legislation intended to both ratify and implement the Great Lakes Water Resources Compact in the State of Wisconsin. However, as noted by 19 Wisconsin business and industry organizations, including 5 agricultural organizations, this draft legislation goes "beyond simple Compact ratification in Wisconsin and, instead, creates a brand new water use permitting system that would be effective prior to the Compact's ratification and grants very broad authority to the DNR." These groups called for adoption of a "strong and fair" Great Lakes Compact that, among other issues, "will not damage private property rights by placing groundwater in the public trust in Wisconsin." (Click [here](#) to see a copy of the groups' memo to legislators.)

Electrician Legislation Passes State Senate

By Jordan Lamb

On February 19th, the State Senate passed Senate Bill 167, authored by State Sen. Russ Decker (D-Weston), with a unanimous vote. This legislation requires individuals and businesses involved in the installation, repair or the maintenance of electrical wiring to obtain a license from the Wisconsin Department of Commerce. Individuals who perform electrical work on their own residences and facilities are *exempt* from the requirement. SB 167 is intended to increase consumer confidence in the quality of electrical work that is purchased.

EPA Appoints 30 to New Ag Advisory Committee

By Jordan Lamb

The head of the Environmental Protection Agency announced Feb. 21 that he has appointed 30 people to serve on the agency's newly formed Farm, Ranch, and Rural Communities Advisory Committee.

EPA Administrator Stephen Johnson said the committee will advise him and subsequent administrators on agricultural issues that affect farms, ranches, and rural communities. The committee also will address the challenges of meeting growing demand for renewable fuels and curbing waste from concentrated animal feeding operations (CAFOs).

The committee is scheduled to hold its first meeting March 13-14 in Washington, D.C., at which time the committee will examine EPA's policies and regulations on climate change and renewable energy and how those regulations might affect the agriculture community. In addition, the committee will address how the agriculture industry can play a significant role in the nation's ability to reduce its greenhouse gas emissions and its dependence on oil imports. Finally, the committee will also be asked to develop an environmental strategy to manage waste from livestock operations that considers both regulatory and voluntary approaches, and that provides tools for producers to improve environmental performance.

DNR Moves Ahead With NR 151 Revisions

By Jordan Lamb

As was noted in the March issue of *Capitol Link*, the Wisconsin Department of Natural Resources (DNR) has published its intent to revise NR 151, an administrative rule related to nutrient management performance standards. This rule establishes the nutrient management performance standards adopted under Wisconsin's nonpoint source pollution statute.

Although a draft of the proposed revision is not yet available for review, according to the scope statement published in the Wisconsin Administrative Register, the Department proposes to **“develop an agricultural buffer or equivalent performance standard and a performance standard to address manure runoff from smaller, non-permitted farms...”** In addition, the Department **“proposes to create a performance standard to provide adequate control of sediment, manure and other runoff from small or medium-sized, non-permitted farms that may cause water pollution and fish kills.”**

The scope statement indicates that research conducted by the University of Wisconsin on agricultural riparian buffers will serve as an informational guide to the development of this standard and that information from the Wisconsin Buffer Initiative Report of 2005 will be utilized.

The DNR has formed a citizen advisory committee to provide an initial review of the draft revisions. It is anticipated that this citizen committee will meet in December and a draft of the revised rule will be available in January for consideration by the Natural Resources Board. (For additional background information, see DNR's NR 151 fact sheet available online at:

<http://dnr.wi.gov/org/water/nm/nps/pdf/rules/NR151SubIIAgFactSheet.pdf>.)

A Note About Administrative Rulemaking Procedure in Wisconsin:

Administrative agencies, such as the DNR, are granted the authority to promulgate administrative rules by the Legislature in statutes. Agencies are required to hold public hearings on the administrative rules that they write. In addition, the Legislature may also choose to hold legislative public hearings on proposed administrative rules before the rules become final. As a result, as administrative rules are developed, there are several opportunities for the public to provide comments on the proposed rules. Look for the schedule of public hearing dates and locations on the proposed revisions to NR 151 in future issues of *Capitol Link*.

DATCP and DNR Develop Procedures for Review and Approval of More Stringent Local Livestock Standards

By Jordan Lamb

In response to several local political subdivisions proposing more stringent livestock ordinances than those livestock facility siting standards that are contained in ATCP 51, the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Natural Resources (DNR) have jointly developed procedures for review of more stringent local standards.

DATCP and DNR are required by Wisconsin statute to approval local restrictions in livestock ordinance that are more stringent than the statewide standards. Local governments are responsible for initiating the agencies' review when the local government is proposing a more stringent standard. A local government may submit a request for review to either DNR or DATCP, however, the procedures ensure that *both* agencies will work together to reach a mutually acceptable response to the request.

The development of these procedures should help to ensure coordinated and consistent responses to local governments from the DNR and DATCP.

NR Board Will Consider Adoption of Final Air Pollutant Rule Revisions at December Meeting

By Jordan Lamb

At their December meeting, the Natural Resources Board will consider whether to adopt a revision to Wis. Admin. Code s. NR 445 which extends 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.

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