



# Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

July 13, 2012

## WI Supreme Court Says Livestock Siting Law Preempts Stricter Local Regulations

By Jordan Lamb -- DeWitt Ross & Stevens

After a six year legal battle, the Wisconsin Supreme Court decided on July 11, 2012 that Wisconsin's Livestock Facility Siting law *does preempt* the application of any stricter local environmental regulations inserted into a siting permit. In a 5-2 decision, the Court concluded that the Legislature expressly withdrew the power to regulate livestock facility siting from local political subdivisions "in any manner not prescribed by the siting law."

The case arose when the Town of Magnolia attempted to impose additional and stricter water well testing, land use and nutrient management requirements on the Larson Acres dairy farm when it applied for a livestock facility siting permit. Larson Acres challenged the additional requirements before the Wisconsin Livestock Siting Review Board, which determined that the Town could not deviate from the state standards. The Wisconsin Supreme Court agreed. The Court re-stated the language of the siting statute, which describes the purpose of the siting law as providing "uniform regulation of livestock operations." To effectuate this goal, a uniform statewide standard was created and the Court concluded that this statewide standard prevents political subdivisions from enforcing "varied and inconsistent livestock facility siting standards."

From the perspective of Wisconsin livestock farmers, this decision is critical to maintaining the ability of the siting law to establish the permitting standards for siting new and expanding livestock facilities in Wisconsin. The law provides a framework for permitting livestock operations, which provides Wisconsin farmers with certainty with regard to the applicable regulations when seeking to site or expand a livestock farm. To date, the state siting law has been adopted by 23 counties and 41 towns in Wisconsin.

Importantly, however, the decision does not prevent the state government, the federal government or private citizens from using the legal process to enforce all applicable environmental regulations on farms, including the enforcement of the provisions contained in a farmer's Wisconsin Pollutant Discharge Elimination System (WPDES) permit. The Court clearly writes, "Nothing in the Siting Law preempts the enforcement of such regulations, so long as the enforcement takes place outside of the siting permit application process."

## Natural Resources Board Will Hold Special Meeting on Proposed Wolf Hunt Rule

By Jordan Lamb -- DeWitt Ross & Stevens

On July 17<sup>th</sup>, the Natural Resources Board will hold a special meeting in Stevens Point to consider the proposed administrative rule creating a wolf hunting season and amending the state's wolf depredation payment program. Many farm groups have expressed support for the wolf hunt program as a means to reduce and control the wolf population in Wisconsin. Cattle and calves have become increasing victims of wolf depredations in recent years.

The recent delisting of the gray wolf from the federal endangered species list allowed Wisconsin to authorize a wolf hunting season. Accordingly, the State Legislature approved legislation this spring directing the DNR to do so.

The proposed rule creates a quota for the first wolf harvest, establishes a hunting license application program, defines the Wolf Harvesting Zones (*i.e.*, areas in which wolves may be hunted) and revised the wolf depredation program. Importantly for Wisconsin cattle farmers, the proposed depredation program allows claims for up to 5 calf losses for each one calf loss that is verified to have been depredated by a wolf. For more information about the proposed rule, go to the DNR's web site at: <http://dnr.wi.gov/topic/wildlifehabitat/wolf/>.

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