

# Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

---

---

June 2007

Welcome to PDPW's Capitol Link electronic newsletter!

This communication enables PDPW to keep you educated and informed about current issues affecting Wisconsin Agriculture and Agri-Business in a timely and effective way.

Thanks,  
Professional Dairy Producers of Wisconsin (PDPW)

---

---

## Federal Legislation Introduced to Clarify Manure is NOT Hazardous Waste

*By Jordan Lamb*

Earlier this year, a group of federal lawmakers introduced legislation that would clarify that manure is not a hazardous substance under the Superfund laws.

The Agricultural Protection and Prosperity Act of 2007 (H.R. 1398 / S. 807) would clarify that livestock manure is not classified as a hazardous substance, pollutant, or contaminant under CERCLA (Comprehensive Environmental Response Compensation and Liability Act) and EPCRA (*Emergency Planning and Community Right-To-Know Act*), otherwise known as the "Superfund laws." CERCLA was created in 1980 to provide for cleanup of the most severe industrial toxic waste sites and spills, including Love Canal and Times Beach. EPCRA, adopted in 1986 following the 1984 Union Carbide disaster in Bhopal, India, was created to force reporting of releases of hazardous chemicals and to enable emergency responses from governments. Both CERCLA and EPCRA contain provisions exempting "the normal application of fertilizer."

Neither of these laws were originally intended to apply to agricultural operations. However, there is the potential that a court could interpret them to include manure. If livestock manure is found to be a hazardous substance under Superfund law, then virtually every farm operation has the potential for exposure to the liabilities and penalties.

The proposed amendments to Superfund that are contained in the legislation will prevent a court from making the determination that manure is a hazardous substance. Livestock operations will still be subject to applicable provisions of the federal Clean Water Act, the Clean Air Act and various other state and federal environmental regulations.

---

---

## House Agriculture Subcommittee Approves Farm Bill Conservation Programs

By Jordan Lamb

On May 22, 2007, the House Agriculture Subcommittee on Conservation, Credit, Energy and Research approved the conservation title of the 2007 Farm Bill. These provisions would keep the funding for the Wetlands Reserve Program at current levels; would expand the definition of land management practices that is used in the Environmental Quality Incentives Program (EQIP) to include silviculture and forest management; and would freeze enrollments in the Conservation Security Program (CSP) at current levels until the new CSP program is phased in in 2012.

In addition, the conservation title to the 2007 Farm Bill would create a groundwater and surface water enhancement program that would allow cooperative agreements aimed at achieving water quality and quantity goals among the federal government, the states and Indian tribes. This provision was requested by the Bush administration.

This subcommittee also approved the energy, research and credit titles in the 2007 Farm Bill, which include the creation of an Agricultural Research Institute intended to coordinate the programs within the USDA and which include loan guarantees for biorefineries and biofuel production plants.

This markup by the Agriculture Subcommittee is the beginning of the House Agriculture Committee's process of crafting a new Farm Bill. The existing Farm Bill expires in September 2007. The new Farm Bill would authorize programs from 2008 through 2012.

---

---

## DNR Proposes Revisions to Air Emissions Rule

By Jordan Lamb

The Department of Natural Resources (DNR) has issued a scope statement in the Wisconsin Administrative Register indicating its intent to revise Wisconsin Administrative Code § NR 445, pertaining to air emissions associated with agricultural wastes.

The scope statement states that DNR is involved in a cooperative project to evaluate air emissions and best management practices for the control of hazardous air pollutant emissions from the handling of agricultural waste, but that the final report from this study is not expected to be complete until July 2008.

In addition, the scope statement states that the US EPA has "initiated a national two-year program to monitor and evaluate air emissions from animal feeding operations" but that the completion of data collection and evaluation from this study is not expected until mid-2010.

Accordingly, the DNR currently does not have as much information as it would like in order to base decisions on the rule's applicability to the regulation of air emissions associated with agricultural waste. Therefore, the DNR is proposing amendments to the rule to amend 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. (The DNR's scope statement is available for review online at <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmoId=2326>.)

It is expected that the DNR will request authorization to hold public hearings on the revisions to NR 445 at the June 2007 Natural Resources Board meeting, which will be held on June 27, 2007 in Waukesha. Look for updates on this rule revision and the proposed public hearing schedule in future editions of the *Capitol Link*.

---

---

## EPA Urges States to Adopt Numeric Water Quality Standards for Nutrients

By Jordan Lamb

Benjamin Grumbles, the top water official for U.S. Environmental Protection Agency (EPA), issued a memo on May 25, 2007 urging states to adopt **numeric** water quality standards for nitrogen and phosphorus.

Currently, Wisconsin imposes water quality standards through what EPA refers to as “narrative” approaches. In Wisconsin, we commonly refer to our water quality rules as being based on “best management practices” (BMPs). A narrative or BMP approach describes what the water quality of a particular water body *should* be, whereas, numeric standards for nitrogen and phosphorus sets *specific limits* on the quantity of each nutrient that is allowed in the water.

According to EPA, the adoption of state numerical standards would affect any person that is required to obtain a National Pollution Discharge Elimination System Permit. In Wisconsin, this program is administered by the Department of Natural Resources (DNR), which issues Wisconsin Pollution Discharge Elimination System (WPDES) permits to all livestock operations that have 1,000 or more animal units. (WPDES permits may also be issued to livestock operations with fewer animal units under certain circumstances.)

It is unclear what response the State of Wisconsin will have to EPA’s commitment to assist states with the development of numeric standards. The EPA stated that it will provide assistance to those states that are close to adopting numerical standards, and training, monitoring and modeling assistance to those that are still developing such standards.

---

---

## STATE BUDGET UPDATE:

### Joint Finance Committee Approves Funding for Discovery Farms

By Jordan Lamb

On June 5, 2007, the Joint Committee on Finance voted unanimously to approve \$150,000 annually to the University of Wisconsin Discovery Farms Program, which conducts research and evaluation of management practices in order to reduce non-point source pollution while maintaining farm profitability. The funding for this program comes from a one-time transfer from the Agricultural Chemical Cleanup Program.

---

---

## 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

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 K. Lamb  
608-252-9358  
[jk@devittross.com](mailto:jk@devittross.com)

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. For more information about DeWitt Ross & Stevens, go to [www.devittross.com](http://www.devittross.com).



**BROUGHT TO YOU BY PROFESSIONAL DAIRY PRODUCERS OF WISCONSIN**

N5776 US Hwy 151, Suite 1   Fond du Lac, WI 54937   800-947-7379   mail@pdpw.org   www.pdpw.org