

# Capitol LINK

**CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS**

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**June 25, 2010**

## **Ag Groups Support NR Board Approval of NR 151**

*By Jordan Lamb – DeWitt Ross & Stevens*

On Wednesday, June 23<sup>rd</sup>, the Natural Resources Board approved a *revised* version of NR 151, Wisconsin's nonpoint source pollution rule. As a result of those revisions, agricultural groups including the Wisconsin Farm Bureau Federation, Wisconsin Corn Growers, Wisconsin Potato & Vegetable Growers Association, Wisconsin Pork Association and Wisconsin Cattlemen's Association spoke in support of the revised rule. A link to the joint press release issued by these groups is available online at:

<http://www.wfbf.com/archive/j/htmArchive/showPage.aspx?page=15728.htm&id=15728> .

Key revisions to the rule included:

- Requiring tillage setbacks of 5 feet instead of 20 feet on farm fields adjacent to surface water.
- Modifying the definition of a feedlot so that farmers who do supplemental feeding of livestock in pastures do not fall under rules designed for feedlots.
- Containment provisions for processed wastewater (milkhouse waste and leechate from stacked feed) are aligned with other state regulations.
- A phosphorus index (PI) of 6 is established for cropland. The accounting period for a field's phosphorus index would not be retroactive as originally proposed. Also, the phosphorus index will be codified and date-stamped, and the maximum one-year phosphorus index is increased from a PI of 10 to a PI of 12 to accommodate the unique needs of various crop rotations and agricultural practices.

NR 151 next goes to the Legislature for review by legislative committees.

## **Larson Acres Wins Livestock Siting Appeal**

*By Jordan Lamb – DeWitt Ross & Stevens*

The Wisconsin Court of Appeals has agreed with Larson Acres, Inc., and has decided that Wisconsin's Livestock Facility Siting Law *preempts* local authority to impose additional conditions on livestock facility siting permits. The Appeals Court concluded that the Livestock Facility Siting Review Board was correct in rejecting additional conditions imposed by the Town in the Larson siting permit.

A copy of the full decision issued on June 24, 2010 is available online at:

<http://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=51344> .

(Note: This is a 27 page pdf document.)

## Key High Capacity Well Case Decided

By Jordan Lamb – DeWitt Ross & Stevens

On Wednesday, June 16, 2010, the Wisconsin Court of Appeals, District II, issued a decision in the *Lake Beulah Management District v. State of Wisconsin Department of Natural Resources*, (Appeal No. 2008AP3170) that could substantially affect the regulation of high capacity wells in Wisconsin.

*Lake Beulah* involved a claim that a municipal high capacity well was affecting water levels in an adjacent lake in Walworth County. Many observers paid close attention to these proceedings because the case raised a number of legal issues regarding Wisconsin's public trust doctrine and the regulation of high capacity wells.

For more information about this case and its potential affect on Wisconsin farms, go to *The Lakeland Times* article, "Appeals Court: Public Trust Doctrine give DNR broad reach," available online at <http://www.lakelandtimes.com/main.asp?SectionID=9&SubSectionID=9&ArticleID=11541>.

## **DNR Proposes Statewide Water Use & Reporting Administrative Rule**

By Jordan Lamb – DeWitt Ross & Stevens

The Department of Natural Resources (DNR) is working on promulgating seven administrative rules to implement the Great Lakes Compact in Wisconsin. Currently, they have three draft rules authorized for public hearings at the end of June. One of those rules is proposed NR 856, which creates a statewide water use and reporting program. NR 856 applies to any person who has the capacity to withdraw water from "waters of the state" (surface or groundwater) of 100,000 gallons per day or more in any 30-day period *statewide*. The withdrawal capacity for a property is the total capacity in gallons per day from all water sources on the property. (A "property" or "one property" means "all contiguous land controlled by one owner, lessee or any other person having a possessory interest. Lands under singer ownership bisected by highways or railroad right-of-ways are considered contiguous.") Although this rule was authorized under the Great Lakes Compact, it is NOT limited to water users in the Great Lakes Basin. It applies to all water users across Wisconsin. The rule requires those persons who meet the capacity definition described above to: (a) register their withdrawal with the DNR; (b) measure the volumes of the withdrawal monthly; and (c) report those monthly totals annually.

We are concerned with the extent of the information that the proposed rule asks water users to provide as a part of the registration process. The rule requires all registrants to provide:

- The name, mailing address, telephone number, and email address of the owner and operator.
- The federal employer identification number of the owner, if applicable.
- The locations and sources of the withdrawal or diversion.
- The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source and, for water supply systems located in the Great Lakes Basin, an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.
- An estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.
- The uses made of the water.
- The places at which the water is used.
- The places at which any of the water is discharged.
- Whether the water use is continuous or intermittent.
- Whether the person holds an approval or permit under ss. 30.18, 281.35, 283.31, Stats., or other statutes.
- A map showing the location of the property or public water supply, sources, and discharges.

Public hearings on NR 856 have been scheduled as follows:

- June 28, 2010, Monday, 6:00 p.m., at the Ramada Plaza Terrace 1 & 2, 6331 South 13th Street, Milwaukee, WI.
- June 29, 2010, Tuesday, 6:00 p.m. Concurrent sessions will be held at the following two locations: the University of Wisconsin Green Bay, Instructional Services Building Room 1034, 2420 Nicolet Drive, Green Bay, WI (<http://www.uwgb.edu/team/maps/index.htm#is1034>) AND the Wisconsin Indianhead Technical College (WITC), Ashland Room 306 Conference Center, 2100 Beaser Avenue, Ashland, WI (<http://www.witc.edu/ashland/map.htm>).
- June 30, 2010, Wednesday, 6:00 p.m. Concurrent sessions will be held at the following two locations: the Pyle Center, Room 121 (Gayle VanDeBerg Auditorium), 702 Langdon St., Madison, WI (<http://conferencing.uwex.edu/location.cfm>) AND Northcentral Technical College (NTC), David Obey Center for Health Sciences Auditorium, 1000 Campus Dr., Wausau, WI 54401 (<http://www.ntc.edu/pdf/CentralCampusMap.pdf>).

Written comments on the proposed rules may be submitted via U.S. mail to Ms. Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by e-mail to [Kristy.Rogers@wisconsin.gov](mailto:Kristy.Rogers@wisconsin.gov).  
Written comments may be submitted until July 7, 2010.

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## Capitol Link Details

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