

## Plans and Specifications NOT COMPLETE Until Environmental Information Submitted to WDNR

*Article written by: David Crass and Anna Wildeman of Michael Best & Friedrich, LLP*

Producers in Wisconsin which are considered Concentrated Animal Feeding Operations (CAFOs) must comply with a myriad of environmental protection rules. One such rule is the requirement to submit engineering design plans and specifications to the Wisconsin Department of Natural Resources (WDNR) for review and approval prior to starting construction on “reviewable facilities”. “Reviewable facilities,” as defined by Wis. Admin. Code ch. NR 243, include feed storage, leachate collection and transfer systems, permanent spray irrigation or other land application systems, groundwater monitoring systems, manure storage facilities, manure treatment or transfer systems, or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater.

Pursuant to state statutes, WDNR must either approve or deny such submitted plans and specifications within 90 days of receiving a “complete” submittal. The Department has recently taken the position that plans and specifications for such reviewable facilities will not be considered complete – and the 90 day clock will not start running - until the Department has received all information it deems necessary to complete an environmental review of the proposed project.

For producers caught unaware of this WDNR policy, significant delays in plan and specification review and approval can result leading to disrupted contracts and delayed construction schedules.

As of this writing, we believe the policy has only affected livestock operations submitting plans and specifications along with an application for WPDES permit issuance or re-issuance. However, the Department has stated in writing that feed storage pads and leachate collection systems are considered “industrial wastewater facilities” which state rules require an environmental assessment be completed prior to plan and specification approval. Taken to its logical extreme, the Department’s policy could require producers to submit an environmental assessment questionnaire with all plan and specification submittals. Up until now, livestock producers have typically only submitted environmental assessment questionnaires with WPDES permit applications.

DBA is working with WDNR to clarify these and other important interpretations of WDNR's authority and policy to speed the growth of the dairy industry in Wisconsin.

Contact DBA or Michael Best & Friedrich, LLP at 608.257.3501 for more information.