



# Growing Michigan

*Michigan Agricultural News*

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*"If we can turn a waste product into alternative energy, that's an exciting idea to explore."*

Bob McCann, Michigan DEQ

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## Michigan Court Upholds State CAFO Rule

Michigan Farm Bureau and several Michigan farms and associations, represented by Varnum, filed suit in Newaygo County Circuit Court last year to clarify a water discharge rule. The court sought to have Michigan's CAFO Rule, R 323.2196(1), declared invalid insofar as it purports to regulate CAFOs with only the potential to discharge waste. For example, many large poultry farms have manure that is dry before it leaves the barn and can be sold as commercial fertilizer, and therefore poses no risk to Michigan waters. Similarly, some dairy farms have enclosed manure treatment systems, or digesters, which create biogas for energy. Plaintiffs argued that because these operations do not actually discharge or propose to discharge waste into the environment, DEQ has no authority to regulate them.

On January 20, 2009, the Newaygo County Circuit Court issued its opinion. While the Court accepted Plaintiffs' underlying position "that certain CAFOs pose no risk to pollute water resources ... [and] should not be ensnared into a costly, complex regulatory scheme to address an environmental risk that does not exist," it nonetheless upheld DEQ's CAFO Rule. "Naturally, we're disappointed," said Michigan Farm Bureau President Wayne H. Wood. "On several grounds, we still believe that a 'permit to discharge' should not be required of a farm that does not discharge. That said, we respect the judge's decision and, as is customary in any legal proceeding, we will evaluate our options for pursuing this matter further."

## Townships Cannot Prohibit Certain Secondary Farm Businesses

In an unusual twist, Michigan-based War-Ag Farms was able to use the Michigan Natural Resources and Environmental Protection Act (NREPA) to expand its farm business operations. War-Ag challenged Franklin Township's denial of its request for a conditional use permit to sell and distribute pesticides and fertilizer as a secondary business to its farming operation. War-Ag had obtained licenses from the Michigan Department of Agriculture to sell pesticides and fertilizer prior to applying for the township's conditional use permit. It argued that the Department of Agriculture's approval barred the township from interfering. The Michigan Court of Appeals agreed, holding that the township's ordinance was preempted by NREPA. Specifically, the Court held that the township's "requirements are not found in the NREPA and conflict with the Department of Agriculture's decision to allow plaintiffs to sell and distribute pesticides and fertilizer from their farm. This is an area of regulation expressly reserved for the state under the NREPA." While Michigan's environmental regulations often interfere with farm activities, the War-Ag case reminds farmers that on occasion they can be helpful.

## Michigan Farm Turns Manure into Energy

Scenic View Dairy of Fennville has been operating its anaerobic manure digester for nearly two years, producing not only electricity but also natural gas for sale. Manure is pumped into large insulated tanks, where it's heated to the ideal temperature for tiny bacteria to work on producing methane gas. The gas is pumped to a building, where half of it is used to power two generators that create electricity for the farm and for sale, and the other half is purified, compressed and put into the state's natural gas pipeline. Michigan State University plans to spend \$3 million in grant and foundation money to help small and midsize farms put in methane digesters, some shared among farms. There are now more than 100 in the United States. Last year, the Environmental Protection Agency estimated that digesters could be installed at another 6,900 American farms.

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*"This inventory will be a valuable tool for businesses and communities to identify areas that have a high potential for sustainable biomass energy production."*

Skip Pruss, Director, Michigan Department of Energy, Labor & Economic Growth.

*"[I]f Michigan's agri-food sector appeared on the Fortune 500 List, it would rank 62nd, which speaks volumes of the importance of agriculture to Michigan's economic health."*

Don Koivisto, Director Michigan Department of Agriculture

#### Michigan Agricultural Venues:

- Biosolids and Energy Conference, March 3 - 4 at MSU in East Lansing. See calendar at [www.biosolids.org](http://www.biosolids.org)
- MSU Agriculture and Natural Resources Week in East Lansing, March 6 - 14, 2009. See [www.ANRWeek.canr.msu.edu](http://www.ANRWeek.canr.msu.edu)
- Varnum Water Law Conference in Grand Rapids, March 10, 2009. See [www.varnumlaw.com/events](http://www.varnumlaw.com/events).
- Michigan Agri-Energy Conference in Kalamazoo, March 30, 2009. See [www.AgEnergy.org](http://www.AgEnergy.org)

## University to Inventory Biomass

MSU will conduct a two-fold inventory of Michigan's agricultural energy resources:

- Statewide biomass feedstock inventory of the type, supply, location and energy potential;
- identification of farms and other sites with strong potential for installation of anaerobic digestors and energy recovery systems.

The inventories, to be completed this summer, will focus on agricultural crops and crop residues, animal manure, wood and wood waste that can be converted to electricity, biogas and cellulosic ethanol. Agriculture is Michigan's second largest industry.

## Michigan Law Hopes to Boost Local Agriculture

In an effort to encourage school districts to buy more locally raised food, the Michigan Legislature authorized school districts to purchase up to \$100,000 of food in a single transaction without the prior requirement of competitive bidding. The two House Bills, 6365 and 6366, were signed by the Governor on December 23, 2008 and take immediate effect. The Governor also signed into law House Bill 6368, which requires the Michigan Department of Education and Michigan Department of Agriculture to collaborate on "procurement procedures and tools for school food authorities to purchase local farm products" and encourages "school food service directors to include local farmers, processors, and suppliers when taking bids for farm products that fall under the small purchase threshold."

## Rutabaga Energy on the Energy Horizon?

Michigan State University has been studying genetically modified rutabagas as a potential source of biodiesel feedstock. A normal rutabaga produces oil in its seeds, but the rest of the plant is mostly starch. A gene controlling carbohydrate metabolism and shown to increase oil yield in canola seeds was inserted into the rutabaga to prevent starch production and promote oil biosynthesis in the green and root tissues. The expected result is a two or three fold increase in oil yield. The modified plant could yield 525 gallons of oil per acre compared with 160 gallons of oil per acre from canola.

## Changes to SPCC Regulations

On December 5, 2008, U.S. EPA amended the Spill Prevention Control and Countermeasure (SPCC) regulations related to petroleum and other oil discharges. Farms that could reasonably be expected to discharge oil into the navigable waters of the United States or adjoining shorelines and that have (1) a total underground buried storage capacity of more than 42,000 gallons, (2) a total aboveground oil storage capacity of more than 1,320 gallons, or (3) an aboveground oil storage capacity of more than 660 gallons in a single container must comply with SPCC requirements. The new SPCC amendments benefit farms in several ways, including:

- Clarifying that a nurse tank is exempt from certain secondary containment sizing requirements
- Exempting oil discharges from some pesticide application equipment and related mix containers
- Exempting farms from SPCC loading rack requirements
- Allowing certain qualified facilities to complete and self-certify the streamlined SPCC Plan template
- Streamlining security and integrity testing requirements
- Simplifying facility diagram requirements

*Varnum attorneys have practical experience serving the needs of agricultural producers, food processors, and suppliers.*

