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Breaking through the soybean yield plateau

By MATT REESE

With the planting season finally here, the focus of the farmers of Ohio is likely not on the potential for a continuation of the soybean yield plateau in 2010, but maybe it should be. There has been a lot of talk in recent years about the stagnating soybean yield trend, while corn yields have continued to climb.

The roots of this perceived (or real) yield plateau can be traced back to the introduction of Roundup Ready (RR) soybean technology with varieties that really did sacrifice some yield.


"Initially, with the advent of RR technology, there was a yield drag. About 2002, the RR consistently started out-yielding the conventional varieties. But, if you look at yields from 2002 to now, they're still flat. Why is that?" asked Shawn Conley, a soybean Extension specialist at the University of Wisconsin, Madison at the Conservation Tillage and Technology Conference in Ada this winter.

There are a number of reasons for the limited soybean yield increases in recent years, Conley said. One crucial factor is that many are succumbing to the convenience of exclusive glyphosate for weed control.




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Better managing weeds, diseases and variety selection can help improve soybean yields.



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A conversation with

M. Howard Petricoff

energy and environmental law expert, Vorys, Sater, Seymour and Pease LLP



OCJ: Tell us about your background and how you got involved with the legal aspects of energy and the environment?

Howard: I graduated from law school during the first energy crisis, which was spawned by the OPEC oil embargo. As a recent hire with the Ohio Attorney General's Office, I was assigned to work on cases that arose out of a series of laws addressing energy conservation, self-generation and regulatory restructuring. During the seven years I spent as an assistant attorney general, I was primarily assigned to energy matters, and during that time studied for and received a master's degree. After leaving the Attorney General's office, I joined the law firm Vorys, Sater, Seymour and Pease LLP where I practice in the energy and environmental field.

OCJ: What state laws currently benefit the introduction and expansion of wind energy in Ohio?

Howard: Senate Bill 221 (SB 221), passed in June 2008, required all utilities and competitive retail electric service providers to include renewable energy as a part of their inventory of electric generation. The statute sets a minimum goal of 12.5% renewable energy use in Ohio by 2025. To reach this goal, every utility and competitive retail supplier of power, starting in 2009, must have a minimum percentage of renewable generation, which must increase annually.

SB 221 set up a mechanism at the Public Utilities Commission whereby all renewable generation sources can apply for a renewable certification. The generation from certificated renewable generation facilities then is tracked. Each megawatt hour (MWh) of renewable generation is issued a Renewable Energy Credit (REC). The RECs then become a currency that utilities and independent generation sellers use to meet their renewable energy portfolio requirements.

If a generator fails to have RECs equal to the percentage of electric sales required by the statute, the generator is fined at least \$45 per MWh. Thus, SB 221 is the keystone for selling wind energy because it creates the requirement to have renewable energy such as wind as part of the generation inventory and provides a practical way to track and account for the renewable energy.

OCJ: What is the expected role of wind energy in the overall renewable energy portfolio for Ohio?

Howard: Renewable energy includes wind power, solar power and generation from biomass. In the end, the market will decide how much of the renewable energy requirement will be comprised of wind versus other available renewable forms of energy.

The General Assembly was concerned about cost when it passed SB 221. The Public Utilities Commission can excuse utilities and independent electric suppliers from the REC requirements if RECs can only be purchased for an amount that would raise the cost of power more than 3%. Today, there are a number of wind projects being developed that appear to fit within economic limits, so wind will certainly be part of the renewable mix.

OCJ: What legal hurdles do wind companies encounter to get started with projects in Ohio?

Howard: Any wind farm over 5 MW must receive a certificate from the Ohio Power Siting Board before construction can commence. A Power Siting Board application is a significant undertaking — consultants must be retained to do extensive studies on the impact the wind turbines could have on birds and bats, general aviation, noise levels and shadows, as well as on the specific cost and type of equipment that will be used to generate the electricity.

The Power Siting Board then reviews the application and issues a Staff Report on whether the proposed wind farm will meet the health, safety and community impact criteria laid out in power siting statutes. Both the application and the Staff Report are made available to the public. Hearings are conducted, including public information hearings where people in the community can participate, as well as evidentiary hearings where the technical information is presented by expert witnesses.

In addition to the Power Siting Board certificate, a wind farm also must be authorized by the Regional Transmission Organization to interconnect with the interstate transmission grid.

OCJ: What are the main legal concerns for wind companies as they begin to move forward with construction in Ohio?

Howard: First and foremost, the wind company must secure leases from the landowners of the property that has wind suitable for generation. Harvesting wind is similar to harvesting a crop or

mining minerals — the basic property rights rest with the landowner and must be conveyed to the wind company.

Next, governmental permits must be obtained, which as noted above, consist primarily of the Power Siting Board certificate and interconnection authority from the Regional Transmission Organization. Finally, a myriad of construction-related licenses must be secured to cover items such as road crossings, heavy truck permits and construction easements.

OCJ: From a landowner's perspective, what are some key things to consider when working with wind companies?

Howard: The major focus is usually the time, nature and amount of the payment due to the landowner for leasing space for the wind turbines. Another thing to consider is repairs that may need to be completed to fences, farm roads, field tiles and crops as a result of construction. Additionally, landowners should make appropriate arrangements for repairs and compensation due to damage that might be caused from planned and unplanned maintenance work on the turbines. Finally, consideration should be made at the time of the lease on restoration of the property when the time comes to take the turbines and their towers down.

OCJ: What are some of the main concerns landowners typically have when considering leasing their land to wind companies?

Howard: The most important question is whether harvesting wind is compatible with the other uses being made of the property. Generally, crop agriculture fits well with wind farms. Land use needs for wind turbines relative to other energy projects is small. A wind turbine sits on a tower permanently affixed to a pedestal. Generally, the whole area around a pedestal can be farmed. A service road is needed to get to a turbine, but that road can also be used for farming purposes.

The major concerns for landowners generally occur during initial construction and at decommissioning. To both build and remove a wind turbine and tower, a crane and other heavy equipment will have to be brought on the landowners' property and that is sometimes where damage can occur. If the landowner and the wind company have worked out specifically when, where and how the construction and decommissioning will be conducted, and adequate

arrangements are made to repair damage to fences, fields, tiles and crops, the major issues will be addressed.

OCJ: How are these concerns addressed by wind companies?

Howard: The best place to address construction and decommissioning is in the lease agreement. The document should layout what the construction and decommissioning needs of the wind company will be and how the landowner will be compensated for damage.

OCJ: What provisions are in place for protecting the communities that will be a home to wind energy in terms of the environment, property value and public safety?

Howard: On March 22 of this year, the Power Siting Board issued its first wind farm certificate to Buckeye Wind. Buckeye was the test case in which the issues of noise, shadows, bird and bat impact, and property values were litigated. The Power Siting Board required as part of the certificate that the complaint procedure be established so affected landowners have a mechanism to raise grievances and have them addressed. I expect that a similar provision will be provided for other certificated projects.

OCJ: What do you think about the future of wind energy in Ohio?

Howard: Today, we depend on electricity for lighting, heating, cooling and ventilating our living and working spaces; powering our communication and information systems; and even bringing us entertainment. The beauty of wind generation is that it can supply this electricity without air or water pollution or consumption of fossil fuels.

I am often asked why we should locate wind turbines in Ohio as opposed to building turbines in the Dakotas or less populated parts of the Midwest? The answer is easy. Ohio is the fourth largest state in terms of electricity consumption. Bringing wind generation in from the Dakotas means long, expensive transmission grids. It also would be inefficient because transporting electricity long distances results in significant energy losses. Power made in Ohio and consumed in Ohio reduces the line losses as well as saves the cost of building and maintaining thousands of miles of transmission lines. For those reasons, I think wind power will play an important role in Ohio's energy future.