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## VIA ELECTRONIC MAIL

September 14, 2007

Ms. Eileen F. Pierce  
South Central Regional Air & Waste Leader  
Wisconsin Department of Natural Resources  
3911 Fish Hatchery Road  
Fitchburg, WI 53711  
Eileen.Pierce@dnr.state.wi.us

### Re: Comments on the Proposed Revisions to NR Sections 406, 407, and 445

Dear Ms. Pierce,

Thank you for the opportunity to comment on the proposed revisions to NR sections 406, 407, and 445. Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water.

### I. Introduction

NR sections 406, 407, and 445 provide for the permitting and regulation of stationary sources of hazardous air pollution, including agricultural sources. In some circumstances, however, agricultural sources of hazardous air pollution may be exempt from the permitting and emission requirements of those sections. NR 445 expressly provides that

source[s] of emissions of hazardous air contaminants associated with agricultural waste shall be deemed in compliance with all requirements, limitations and conditions in this chapter provided best management practices, as approved by the department, for the handling of agricultural waste are implemented at the source.

NR § 445.08(3)(c). When NR 445 was revised in 2004, the Department of Natural Resources ("DNR") anticipated that it would "participate in the development of" a variety of best management practices ("BMPs") to "regulate and control emissions from such sources" by July 1, 2007. *Id.* at note. To allow time for the department to develop these BMPs, the 2004 revisions to NR sections 406 and 407 included a three-year exemption for hazardous air contaminants

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associated with agricultural waste, the deadline for which was also July 1, 2007. NR §§ 406.04(3)(e); 407.03(2)(d). That deadline has come and gone, and, to date, DNR has not approved any BMPs for purposes of NR 445. Now, DNR seeks to extend the agricultural waste exemption under NR section 406 and 407, and the timeline for BMP approval under NR 445, by an additional four years, until July 31, 2011. *See* Order of the State of Wisconsin Natural Resources Board Repealing, Renumbering and Amending Rules, AM-24-07, at 1.

The proposed extensions and rule modifications will result in a combined seven year exemption for agricultural waste from DNR's hazardous air pollution regulations. This delay is caused solely by a lack of will on the part of DNR; it is neither warranted by the available science and technology concerning the control of agricultural air pollution, nor by an asserted need for continued study and analysis. For the reasons stated in this letter, Midwest Environmental Advocates strongly opposes the proposed revisions to NR sections 406, 407, and 445, and we urge DNR to expeditiously approve one or more BMPs and require prompt compliance from sources of hazardous air pollution associated with agricultural waste with the requirements of NR sections 406, 407, and 445.

## **II. Three Years is Sufficient Time for the Study, Approval, and Implementation of Best Management Practices for the Handling of Agricultural Waste.**

DNR asserts in its Scoping Statement that the reason for the four-year delay in implementation is the agency's desire to wait until two agricultural air quality studies are completed. These studies, one by EPA and one by the State, are designed to measure and evaluate air emissions from animal feeding operations, and best management practices for the control of hazardous air pollutant emissions from agricultural waste. *See* Scope Statement Relating to Air Permit and Hazardous Air emission Requirements Associated with Agricultural Waste, April 6, 2007, at 1-2. While these two ongoing studies will certainly add to the available science concerning agricultural sources of hazardous air pollution, their completion is hardly necessary for the implementation of the requirements of NR sections 406, 407, and 445.

The note to NR section 445.08(3)(c) states that DNR, at the time of the 2003 revisions to NR 445, "intend[ed] to participate in the development of best management practices to regulate and control emissions from such sources within 36 months of July 1, 2004." That seems like a very generous timeframe for the development and approval of a broad range of BMPs. An additional four year extension to that deadline is excessive and unnecessary. Furthermore, nothing in NR sections 406, 407, or 445 expressly mentions these two studies, or even impliedly connects the application of the hazardous air pollution regulations to these or any other studies. The public had a right to presume that DNR would use the three year period ending July 1, 2007 for the study of existing BMPs, or for the development of new BMPs, so that it would be in a position to begin applying the regulatory requirements to sources of agricultural waste by the time the exemptions came to an end. It appears that DNR has instead taken no action, and now seeks to fall back on these two ongoing studies to support its claim that an additional delay is needed.

**COMMENT:** DNR has had sufficient time to study a variety of BMPs for purposes of NR 445. It need not wait until the conclusion of the two studies mentioned in the rulemaking documents before it can implement one or more BMPs. Nothing in the present version of NR 445 expressly

or impliedly relies on any specific studies as a reason for the original 36-month exemption for sources of hazardous air pollution associated with agricultural waste.

**COMMENT:** DNR should establish a firm timeframe for the approval of BMPs, and the removal of the exemptions for agricultural waste sources, that has clear interim benchmarks, and is independent of external factors such as ongoing research and study.

### **III. Present Availability of Proven BMPs to Control Ammonia and Hydrogen Sulfide**

Other States and research institutions have recognized the effectiveness of a wide variety of BMPs to address hazardous air pollution, including ammonia and hydrogen sulfide, from animal feeding operations. DNR need not wait four years for the conclusion of the state and federal studies when it could easily implement some or all of these BMPs. While DNR is undoubtedly aware of the present state of the science concerning the control of agricultural air emissions, Midwest Environmental Advocates would like to point out several of the existing studies and regulatory schemes addressing these alarming sources of hazardous air pollution.

#### **A. Technical Report by the Iowa Department of Natural Resources**

The Iowa Department of Natural Resources (“IDNR”), at the request of the Iowa Legislature, prepared a technical report based on a field study to determine airborne levels of ammonia, hydrogen sulfide, and odor near animal feeding operations.<sup>1</sup> This detailed report, issued in 2004, addresses a variety of methods for the estimation of emissions from agricultural sources using scientifically calculated emissions factors and advanced computer modeling. It recommends a series of BMPs to reduce emissions of ammonia, hydrogen sulfide, odor, and particulates, explaining that “the bmp’s . . . have been included only if scientific evidence supports the practice.” Report at 8. The report also incorporates four Fact Sheets produced by the University of Iowa, which detail the purpose and use of each BMP to assist the landowner in installation and implementation. It concludes that “the findings of this task force demonstrate that current technologies are available to producers to reduce air emissions from livestock operations.” Report at 14.

#### **B. Ammonia Regulations by the Idaho Department of Environmental Quality**

In 2006, the Idaho Department of Environmental Quality (“IDEQ”) issued “Rules for the Control of Ammonia from Dairy Farms” which incorporates a unique and promising “permit by rule” scheme for the control of ammonia emissions. IDAPA §§ 58.01.01.760–764. The rules require the use of BMPs by dairy farms that have the potential to emit 100 or more tons of ammonia per year. *See* Fact Sheet, Docket 58-0101-0502: Rules for the Control of Ammonia from Dairy Farms (2006), *available at* [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0502\\_fact\\_sheet2.pdf](http://www.deq.idaho.gov/rules/air/58_0101_0502_fact_sheet2.pdf). The rules identify approximately thirty-seven different BMPs, which have been found by IDEQ

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<sup>1</sup> Iowa Department of Natural Resources, Animal Feeding Operations Technical Workgroup, Air Emissions Characterization, Dispersion Modeling, and Best Management Practices (2004), *available at* <http://www.iowadnr.com/air/afo/files/finalaforeport.pdf>. (hereinafter, “Report”).

to effectively reduce ammonia emissions from dairy farms, and assigns each BMP a number of “points” based on that BMP’s effectiveness.<sup>2</sup> The farm may choose from among these different BMPs so that the farm receives a total of 27 points. *Id.* at 2. Importantly, the rules provide that as new information becomes available, the IDEQ Director may add BMPs to the list and assign corresponding point values, thus ensuring the program’s ability to continuously adapt to changing science and technology. IDAPA § 58.01.01.764.01.

C. Odor Emissions Regulations by the Colorado Department of Public Health and Environment.

In 2006, the Colorado Department of Public Health and Environment (“CDPHE”), Air Quality Control Commission, enacted “Regulation No. 2 – Odor Emission” governing odor emissions from a variety of sources, most significantly housed commercial swine feeding operations. 5 CCR § 1001-4. While the regulation addresses odor, and not ammonia or hydrogen sulfide specifically, it does use best management practices as a means to control odor. Notably, agricultural sources may not be cited for odor violations if they are using “the best practical treatment, maintenance, and control currently available . . .” 5 CCR § 1001-4(A)(I)(C)(1). Furthermore, housed commercial swine feeding operations are required to obtain an air permit. Permit requirements include an odor management plan and a description of the technologies used to control the emissions of odorous gasses, including ammonia and hydrogen sulfide, as well as a list of required technologies that each operation must apply. 5 CCR § 1001-4(B)(VI)(D)(2).

This list of currently available BMPs is not exhaustive. There is undoubtedly a broad range of BMPs for the control of agricultural hazardous air emissions that have been developed, studied, and implemented to various degrees around the country. Approval of some BMPs now would certainly not preclude the approval of additional BMPs upon completion of the federal and state studies, or at any other time in the future. We hope that DNR will continue to monitor the sources of hazardous air pollution associated with agricultural waste, and the available methods to reduce it, so that its regulatory program evolves along with the scientific understanding. But the data make clear the pressing need for BMPs to reduce ammonia and hydrogen sulfide emissions now, even if those BMPs are revised in four years upon completion of the studies.

**COMMENT:** DNR should review the BMPs in use or recommended by other State agencies or research universities, and expeditiously approve one or more BMPs for purposes of NR 445.

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<sup>2</sup> To support the implementation of the rules, IDEQ has issued a scientific supporting document which will be of interest to DNR. *See* Idaho Department of Environmental Quality, Scientific Basis for the Control of Ammonia from Dairy Farms Best Management Practices (2006), available at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0502\\_scientific\\_basis\\_final.pdf](http://www.deq.idaho.gov/rules/air/58_0101_0502_scientific_basis_final.pdf). *See also* Ron E. Sheffield and Bruce Louks, University of Idaho, College of Agricultural and Life Sciences, Dairy Ammonia Control Practices (April 2007), available at <http://info.ag.uidaho.edu/pdf/CIS/CIS1138.pdf>.

#### **IV. Incompatibility with Timelines Contained in DBA Green Tier Charter**

DNR is currently in the process of finalizing a Charter with the Dairy Business Association under Wisconsin's Green Tier law. See Charter for Environmental Performance with the Dairy Business Association-GTAP for the Wisconsin Dairy Industry, *available at* <http://dnr.wi.gov/org/caer/cea/environmental/participants/widairy/documents/charter.pdf>. In section 4.F of that Charter, DNR commits itself to evaluating whether implementation of an Environmental Management System "should be approved as a de facto 'best management practice for the handling of agricultural waste'" for the purpose of compliance with NR 445 by January 1, 2008. It is impossible to harmonize that provision of the Charter with DNR's proposed delay in implementing NR sections 406, 407, and 445. It is confusing just how DNR can commit to a four-month deadline for evaluating one BMP at the behest of the Dairy Business Association while simultaneously asserting that it must wait four more years before it can evaluate and approve any other BMPs. At the very least, that provision of the DBA Green Tier Charter eviscerates DNR's argument that it cannot implement any BMPs until the completion of the state and federal studies.

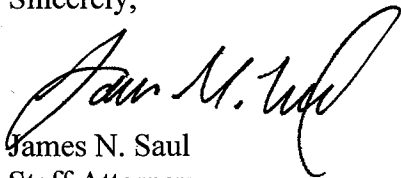
**COMMENT:** DNR should commit to evaluating not only the potential use of Green Tier Environmental Management Systems (as provided in section 4.F of the proposed DBA Green Tier Charter), but also the many BMPs that are currently available and scientifically proven, so that it may implement NR sections 406, 407, and 445 as applied to agricultural sources by January 1, 2008.

#### **V. Conclusion**

In conclusion, DNR should not delay the implementation of NR sections 406, 407, and 445 pertaining to sources of emissions of hazardous air contaminants associated with agricultural waste until July 31, 2011, as it proposes. An additional four year delay, following on the heels of a three year exemption, ignores the present availability of effective BMPs and continues to risk unnecessary exposure to ammonia and hydrogen sulfide.

Thank you for the opportunity to submit comments on this important issue. Midwest Environmental Advocates looks forward to receiving your written response.

Sincerely,



James N. Saul  
Staff Attorney  
Midwest Environmental Advocates, Inc.