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pro bono publico

VIA ELECTRONIC MAIL

December 9, 2005

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Legal Assistant

OF COUNSEL

Jodi Habush Sinykin
5630 N. Lake Drive
Milwaukee, WI 53217
414.961.8944
hslaw@bizwi.rr.com

Robert Rohland
Wisconsin Department of Natural Resources
Black River Service Center
910 Hwy 54 East
Black River Falls, WI 54615

Re: Comments on WPDES Permit No WI-0061671-02-0, Heller Farm, Inc.

Dear Mr. Rohland:

Midwest Environmental Advocates, Inc. (MEA) is writing to comment on the DNR's proposed Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit No. WI WI-0061671-02-0 ("Proposed Permit") for Heller Farm, Inc. We are submitting these comments on behalf of Wisconsin Environmental Law Advocates.

COMMENT: Section 1.1 of the Proposed Permit should be rewritten to immediately prohibit the spreading of liquid manure on frozen or snow covered ground.

As written, the Proposed Permit allows Heller Farm to spread liquid manure on frozen or snow covered ground so long as the spreading complies with the minimal setback and gradient restrictions in section 3.2.8. However, the permit prospectively prohibits such land spreading as of September 31, 2010. Although Heller Farms currently has only approximately thirty days' liquid manure storage capacity, there is no compliance schedule requiring it to expand this capacity to meet the prohibition that will start in 2010. There is also no reason to wait five years before instituting this prohibition; it should go into effect as soon as possible, and Heller Farm should not be allowed to continue land spreading on frozen and snow covered ground for these five years. Section 1.1 should be rewritten to require Heller Farm to increase its liquid manure storage capacity *as soon as possible* so that it can stop spreading on frozen and snow covered ground. The Proposed Permit should contain a compliance schedule to this effect.

Winter land spreading of liquid manure creates a serious risk of manure and nutrient runoff, with corresponding damage to state waters, wildlife and private wells. In the twelve months from July 2004 to June 2005, there were at least 52



Organizations listed for identification purposes only.

702 E. Johnson Street, Madison, WI 53703
Telephone 608.251.5047 Fax 608.268.0205
advocate@midwestadvocates.org • www.midwestadvocates.org

documented manure runoff events in Wisconsin, almost two thirds of which happened in the winter months. The DNR has recognized that manure runoff is a problem and has identified the winter months as the “high risk runoff period.” In light of this, DNR recently proposed revisions to Section NR 243.14 that would ultimately prohibit all surface applications of liquid manure from February 1 to March 31 of each year. The DNR has also prohibited landspreading of liquid manure on frozen or snow covered ground in other recent permits, including Burnside Dairy’s proposed WPDES permit, no. WI 0063045-01. Clearly the DNR recognizes the dangers of allowing winter spreading of liquid manure and has acted in other contexts to control this practice.

The DNR has the authority to require more restrictive winter landspreading practices than those explicitly required in NR 243.14(a), (b). Specifically, the department may “include conditions in the WPDES [permit] that are in addition to or in place of the criteria in par. (b), when necessary to protect water quality. These conditions may include additional restrictions on . . . winter landspreading and distribution schedules.” Wis. Admin. Code § NR 214.14(c). In this case, the DNR should prohibit Heller Farm from land spreading liquid manure on frozen and snow covered ground as soon as possible instead of waiting five years to impose this common-sense restriction.

COMMENT: Section 1.1 of the Proposed Permit should prohibit solid manure applications in addition to liquid manure applications on frozen and snow-covered ground.

In DNR’s and MEA’s enforcement experience, solid manure has been shown to discharge from a land application area as easily as liquid manure during snow melt conditions. Given the recent solid manure runoff problems that have occurred at other WPDES-permitted CAFOs in Wisconsin, the justification for differentiating between solid and liquid manure applications is dwindling. As a result, Section 1.1 should prohibit application of both solid *and* liquid manure applications on frozen and snow-covered ground.

COMMENT: Section 1.1 of the Proposed Permit should prohibit all solid and liquid manure applications from February 1 to March 31, regardless of whether the ground is frozen or snow-covered.

The DNR recently proposed revisions to Section NR 243.14 that would ultimately prohibit all surface applications of liquid manure during the “high risk runoff period” of February 1 to March 31 of each year. The DNR’s reasons for proposing this manure spreading prohibition are sound: as shown above, there have been dozens of manure runoff events in the last year, the majority of which occurred when the ground was frozen or covered with snow. However, a number of runoff events also occurred while snow was actively melting, which is a common condition during February and March.

A land spreading prohibition on frozen or snow-covered ground in Section 1.1 of the Proposed Permit would not be stringent enough given that solid and liquid manure can just as easily runoff during a snow melt as it can when the ground is frozen or completely snow covered. Therefore, in the Proposed Permit DNR should entirely prohibit applications of solid and liquid manure during February and March.

COMMENT: Section 1.1. should be amended to remove the “incorporation” exception for winter manure spreading.

Even after September 31, 2010, when the permit’s liquid manure winter landspreading prohibition goes into effect, Section 1.1 still allows Heller Farm to apply liquid manure on frozen or snow-covered ground when the manure is “properly incorporated.” This is problematic for two reasons. First, while incorporation may help prevent acute manure runoff events, it may not necessarily prevent chronic delivery of pollutants during snow-melt events or early spring rainfall. Second, Section 1.1 does not state when the manure must be incorporated. As a result, Heller Farm should not be allowed to spread solid or liquid manure at all when the ground is frozen or snow covered, regardless of whether it intends to incorporate the manure.

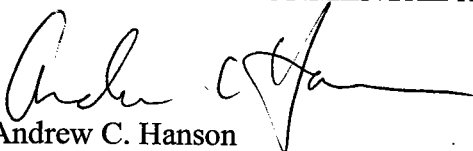
COMMENT: Even if the DNR allows winter manure applications on frozen and snow covered ground in Section 1.1, the DNR should require immediate incorporation.

Section 1.1 allows, after September 31, 2010, liquid manure applications on frozen and snow-covered ground when properly incorporated. However, Section 1.1 does not state when the manure must be incorporated after it is applied. The DNR should clarify that, if allowed at all, liquid or solid manure applied on snow-covered ground must be immediately incorporated. Further, the DNR should make clear that it is impossible to incorporate solid or liquid manure where the ground is covered with more than four inches of snow, thereby prohibiting solid and liquid manure applications under such conditions.

Thank you for the opportunity to comment on the Proposed Permit. We look forward to your written response.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.


Andrew C. Hanson

cc: Erin Chalmers
Ted Johnson, DNR
Marty Engel, DNR
Duane Popple, DNR