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**Public Hearing Testimony of Sarah Geers,
Staff Attorney, Midwest Environmental Advocates**

Tuesday, November 28, 2017

Department of Natural Resources Hearing on Wisconsin Pollution Discharge Elimination System Permits for Five Concentrated Animal Feeding Operations in Kewaunee County

I'm Sarah Geers, a staff attorney at Midwest Environmental Advocates, Wisconsin's only nonprofit environmental law center. For more than five years, we've worked with area residents concerned about the water quality impacts of CAFOs in Kewaunee County. We currently represent five Kewaunee residents in an appeal of Kinnard Farms' permit, which is one of the permits at issue today. We also represent four conservation and environmental organizations in a challenge to a settlement agreement between DNR and the Dairy Business Association. I submit these comments on behalf of Midwest Environmental Advocates to highlight concerns with each of the CAFO permits on public notice today.

First, I'll begin with general comments that reflect concerns with these five permits, but also with the CAFO program generally. Namely, how DNR regulates feed storage runoff treatment in vegetated treatment areas, and calf hutch area runoff. Over the past couple of years DNR was moving in the right direction to regulate these aspects of a CAFO production area as significant sources of surface water and groundwater pollution. Now, following a settlement with the Dairy Business Association, DNR is moving backward.

Each of the five draft permits on public notice use vegetated treatment areas for some portion of feed storage runoff, or have calf hutch areas, or both. Despite evidence that these practices, as currently permitted, cause water pollution, DNR is proposing to issue or reissue permits to these CAFOs without necessary protections. At a minimum, we ask that DNR explain whether these CAFOs have conducted modeling to demonstrate that these vegetated treatment areas and calf hutch areas will achieve the "no discharge" permit standard. DNR explanation is particularly necessary given that no other states in this region allow vegetated treatment areas to be used to treat polluted CAFO runoff. Wisconsinites deserve better, and Kewaunee County residents in particular need forward progress instead of a race to the bottom.

MEA's other main concern has to do specifically with the permit reissuance for Kinnard Farms. The draft permit does not contain an animal unit limit or off-site groundwater monitoring, both of which were ordered by an administrative law judge in 2014, and affirmed by a circuit court judge in 2016. Even though there is an appeal, DNR is legally obligated to follow that circuit court order because no party has obtained a stay of that decision. DNR's position that it may start over every permit term with a clean slate is

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not legal. That position has already been rejected in another case involving Richfield Dairy.

Beyond these legal problems, it is outrageous that DNR would try to do through this permit process what it has been unable to do through legal appeals. The Kewaunee residents who fought for water quality protections, and won, deserve more than to be dismissed after five years as DNR hits the figurative reset button on the Kinnard permit. DNR's position does not respect these petitioners or the rule of law, and it will not hold up in court.

Thank you for the opportunity to comment on DNR's proposal to issue permits to these CAFOs. I will follow up with more detailed written comments.