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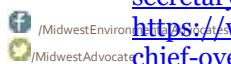
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¹ See <https://www.usnews.com/news/best-states/wisconsin/articles/2017-03-30/the-latest-dnr-secretary-defends-eliminating-magazine>; see also

<https://www.jsonline.com/story/news/local/wisconsin/2017/03/14/lawmakers-grill-wisconsin-dnr-chief-over-critical-audit/99176072/>.

MIDWESTADVOCATES.ORG

VIA FIRST CLASS MAIL

February 1, 2018

United States Environmental Protection Agency
Region 5
Regional Administrator Cathy Stepp
77 West Jackson Blvd.
Chicago, IL 60604-3590
Re: NPDES Petition for Program Withdrawal in Wisconsin

Regional Administrator Stepp:

As you're aware, Midwest Environmental Advocates, on behalf of 16 Wisconsin residents, filed a Petition for Corrective Action (Petition) with the U.S. Environmental Protection Agency (EPA) in October 2015. The Petition requested correction of deficiencies in the Wisconsin Pollutant Discharge Elimination System (WPDES) Program as administered by the Wisconsin Department of Natural Resources (WDNR or the Department), or withdrawal of the WDNR's authority to administer the WPDES Program due to the program's non-compliance with certain provisions of the Clean Water Act and implementing regulations.

The Petition is an action with which you were familiarly involved during your tenure at WDNR. The Petition incorporates the 75 deficiencies that EPA identified as part of its legal review that occurred while you were the Department Secretary. In your role as Secretary, you made several public statements that call into question your ability to be impartial in this matter. You also have expressed an opinion that many of the identified deficiencies were minor and inconsequential, and publicly stated your belief that WDNR has adequately addressed most of the deficiencies. It is especially concerning that these public statements came at a time when EPA was still undertaking its review and had not made a determination with respect to a majority of the issues.

As just one example, in March 2017 you appeared before the Joint Finance Committee as well as the Joint Audit Committee and stated that WDNR had resolved 73 of the 75 deficiencies.¹ As part of the EPA's investigation

into the Petition, however, as of March 2017 EPA had found that 13 of the 75 issues were completely unresolved.²

As the Administrator of EPA Region 5, you are now in a position of deciding the appropriateness of certain actions that occurred at WDNR under your leadership. ***For these reasons, MEA requests on behalf of Petitioners that you formally recuse yourself from any participation in the EPA's review of the Petition.*** Please respond to this request in writing, noting who will act in your stead if you anticipate recusing yourself. If you will not agree to recusal, please provide Petitioners an explanation of how you will guarantee an impartial, legally sufficient review of and action in response to the Petition.

Petitioners view the EPA's unbiased review as essential to avoiding follow-up legal action to address deficiencies outlined in the Petition. Petitioners' viewpoint is affirmed by certain federal regulations, which appear to frame your review of the Petition as in violation of standards for ethical and impartial conduct. *See* 5 C.F.R. § 2635, sub. E; *see also* 5 C.F.R. § 6401.

Neither MEA nor Petitioners wish to resort to time and financially-intensive legal action when your expert EPA program staff are most capable of understanding the technical interaction between the WPDES Program and the Clean Water Act. Thank you, and please don't hesitate to contact MEA with questions or concerns regarding this letter.

Sincerely,

/s/

Tressie Kamp and Jimmy Parra
Staff Attorneys
Midwest Environmental Advocates, Inc.

cc: Chris Korleski, Barbara Wester and John Colletti, EPA Region 5 (Via Electronic Mail)

² https://www.epa.gov/sites/production/files/2017-01/documents/wi_lar_status_12.29.2016.pdf