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September 27, 2016

Leah Nicol
Department of Natural Resources
1300 W. Clairemont Avenue
Eau Claire, WI 54701
Leah.Nicol@Wisconsin.gov

RE: Comment on Cranberry Creek Dairy, LLC
WPDES Permit No. WI-0065790-01-0

Dear Ms. Nicol,

Midwest Environmental Advocates, Inc. ("MEA") submits the following comments regarding the Wisconsin Department of Natural Resources' ("DNR") proposed reissuance of Cranberry Creek Dairy, LLC's ("Cranberry Creek") Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit ("Reissued Permit"). MEA is a non-profit environmental law center that provides legal and technical assistance to communities and families working for clean air, clean water, and clean government.

The Reissued Permit would allow Cranberry Creek to expand from a concentrated animal feeding operation ("CAFO") of 2,107 animal units ("AUs") to one of the largest CAFOs in the State at 7,250 AUs. Given the impaired status of the receiving waters and the need for the DNR to fully and accurately implement Wisconsin's WPDES program to protect Wisconsin's waters for all designated and achievable uses, MEA submits these limited comments to draw the DNR's attention to three issues:

- 1) MEA points to significant inaccuracies in spreading fields listed in Cranberry Creek's nutrient management plan ("NMP") and resulting insufficient acreage for land spreading of manure;
- 2) The public hearing and related Reissued Permit application materials raise uncertainty regarding completeness of the application; and
- 3) The interested public is entitled to more information regarding a forthcoming change in ownership that may result in significant operational modifications.

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The Cranberry Creek NMP erroneously lists multiple landowners as having agreed to accept the CAFO's manure.

As you're aware, CAFO owners/operators must demonstrate in NMPs the availability of sufficient acreage to spread generated manure and maintain compliance with minimum State requirements. Cranberry Creek's current NMP very likely fails to meet these requirements.

Cranberry Creek's current NMP states that it owns and rents 5,384 acres. However, at the September 20, 2016, public hearing on the Reissued Permit, eight (8) landowners testified that they were listed on the NMP but had never given Cranberry Creek permission to spread on their lands. Per testimony and related data, the combined land area is over 1,000 acres for all landowners, calling into question whether Cranberry Creek has sufficient acreage on which to spread all of its manure. While NMP amendments are permissible per state regulations, this disparity in available land base is significant such that the DNR must resolve this issue prior to final approval of the Reissued Permit.

As you're also aware, an inaccurate NMP hinders the DNR from allowing land spreading only at appropriate times and on appropriate fields. Preventable, significant changes in NMPs make it more likely that permittees will land spread manure on less than ideal fields, emergency spread manure in less than ideal conditions, and otherwise make emergency modifications to operations. In these cases, eventually the public was given opportunity to comment on a CAFO WPDES permit that differs significantly from the modified, actual permit and operations.

Pursuant to Wis. Admin. Code NR § 243.14, a permittee's NMP must "contain information necessary to document how the operation's land application activities will comply with the restrictions in NRCS Standard 590, this chapter and the conditions of the operation's WPDES permit." This is especially true if a CAFO has limited acreage for spreading, as the provision further states:

In cases where there is limited acreage available for application, the department may require that the permittee submit additional or more specific information, including verification that the permittee has permission to land apply manure on fields not owned by the permittee. The department may require additional management practices be included in the nutrient management plan to ensure compliance with the requirements of this chapter and the permittee's WPDES permit.

Wis. Admin. Code NR § 243.14(1)(b). The public hearing on the Reissued Permit included credible landowner testimony regarding 1,000 acres of fields incorrectly listed in the NMP. As such, the DNR has sufficient basis on which to request additional or more specific information and/or additional management practices. MEA specifically requests that the DNR do the following: (1) require Cranberry Creek to submit landowner verification for all

fields; and (2) require Cranberry Creek to submit an updated NMP that accurately omits all fields listed where landowners have not agreed to rent fields to the CAFO.

The Reissued Permit application materials raise concern regarding completeness of the application.

Cranberry Creek's WPDES Permit Fact Sheet states that any necessary updates to the NMP must be submitted by December 1, 2016, raising a question as to whether the Reissued Permit application is complete. CAFO owners must submit complete applications to the DNR for reissued WPDES permits, and a complete reissuance application must include an updated NMP. *See* Wis. Admin. Code NR § 243.12(1); *see also* Wis. Admin. Code NR § 243.12(2)(b)(4). Please explain in the DNR's response to written comments how, without an updated NMP as of the public notice or public hearing date for the Reissued Permit, the DNR is complying with its mandate to provide interested members of the public notice of complete WPDES permit applications. Wis. Stat. § 283.39(1).

Again, MEA understands that certain NMP changes are inevitable after finalizing draft and even final WPDES permits, but in this instance it appears that the DNR is public noticing a permit with known, significant uncertainties in the NMP. Please explain how the public in such a case is being afforded with the ability to comment on a complete CAFO WPDES permit application.

The interested public is entitled to more information regarding a forthcoming change in ownership that may result in significant operational modifications.

Residents who live in and around Dunn County have reason to believe that Cranberry Creek's current owners will soon sell the facility to Grassland Dairy Products, Inc. ("Grassland"), a large dairy producer based in Greenwood, Wisconsin. Such a sale could lead to many changes at Cranberry Creek, including an increase in the number of AUs, daily operations, and the number and location of spreading fields. It's significant to note that these concerns about change in ownership are not based in rumor alone but in significant factors such as Grassland representative presence at initial CAFO site visits and field walks.

Any or all of these modifications could require Cranberry Creek to update its NMP, from which would allow the DNR to determine that the updates constitute substantial revisions that require an updated NMP. The DNR requires all substantial revisions to a CAFO NMP to be public noticed and posted for 14 days, during which time written comments or petitions for hearing may be submitted. Wis. Stat. §§ 283.53(2)(c)-(d).

Statute allows for ownership change at WPDES-permitted facilities without public notice but only when other permit changes are not necessary. Wis. Stat. § 283.53(2d)(d). Please explain whether, particularly due to the formal and significant nature of Grassland's involvement in the Cranberry Creek WPDES permitting process, the public will have the opportunity to public notice on a WPDES permit and/or NMP for the permit revisions that would follow from a transfer of ownership in this case.

Thank you for your consideration and response to Midwest Environmental Advocates' comments on the Reissued Permit.

Sincerely,

/s/

Kate Hanson
Law Clerk

/s/

Tressie Kamp
Staff Attorney