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 /MidwestEnvironmentalAdvocates  
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June 8, 2015

*Delivered Via Electronic Mail*

Russ Rassmussen  
Division Administrator  
Wisconsin Department of Natural Resources  
101 South Webster Street  
Madison, WI 53703

Dear Mr. Rassmussen:

This letter is to follow up on the May 26 meeting between the EPA, DNR, and Petitioners in response to our Petition to EPA to address the groundwater quality crisis in Kewaunee County. Thank you to you and other DNR staff who attended and discussed working toward a solution. We appreciated the opportunity to learn about and provide input on the DNR's view of the problem and possible ways to address it. As we indicated at the meeting, we intended to provide more in depth feedback after we had some time to discuss the details.

The highest priority is to provide clean drinking water to all Kewaunee County residents who have polluted wells. Petitioners would provide valuable input on this topic. You indicated at the meeting that a clean drinking water subgroup would be convened in June of 2015. We appreciate your immediate attention to this public health emergency that has caused stress and illness, and created a financial burden for many county residents. While we look forward to participating in this subgroup, we hope that the process will not be extended and provide relief to Kewaunee County citizens as quickly as possible. We would suggest July 1, 2015, as a target date for implementing this remedy.

The DNR also proposed several other issues as potential subgroup topics. More data on certain issues would certainly be helpful, but it also seems clear based on the data in the Petition that CAFOs have over-populated the area already, and that permits for new or expanded CAFOs and waste-spreading activities should be carefully scrutinized, if not prohibited, in the interim. At the least, the DNR should attempt to understand nitrogen inputs and outputs before assuming the area can handle more waste.

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Subgroups focused on the following issues would allow the DNR and other stakeholders to better understand the groundwater pollution problem and to identify solutions:

- Nutrient Management Plans – Kewaunee County has serious groundwater pollution from pollutants associated with agriculture despite a high percentage of landspreading fields with NMPs. Areas to explore in this subgroup include recent research on crop nutrient uptake rates and timing, application rates, adequacy of tile line and sinkhole identification prior to NMP approval, frequency of spreading on frozen or snow-covered ground, and NMP accuracy and compliance. We would also like this subgroup to examine the added risks to groundwater associated with adding municipal and septage wastes to manure produced by CAFOs.
- Alternative Manure Management – It is critical to explore options to reduce the amount of manure and nutrients that need to be land applied, especially in a county such as Kewaunee with so many livestock producers coupled with a susceptible groundwater aquifer.
- Best Management Practices – It would be valuable to identify the best available science regarding effective best management practices to prevent groundwater pollution. This subgroup could also identify research needs, examine opportunities to gather more information, current monitoring and documentation requirements under the law, and develop policy recommendations to strengthen BMP requirements for agricultural producers
- Areas susceptible to groundwater contamination – Defining this concept through rules or guidance will provide environmental and public health protection and certainty for the regulated community. The Petitioners provide initial comments below on the DNR’s draft document defining areas susceptible to groundwater contamination.
- Enforcement – Appropriate enforcement of pollution laws incentivizes compliance. Areas to explore in this subgroup include DNR, permittee, and citizen monitoring, documentation requirements, consistency of DNR enforcement actions, agency enforcement resources, and the enforceability of permits. This subgroup could also examine existing permits for Kewaunee County CAFOs to provide an accounting of the total amount of liquid waste produced in the county, the amount of other waste mixed in those lagoons, and where that waste is land applied.
- Groundwater monitoring – Evaluate opportunities for the DNR and others to require groundwater monitoring to better understand potential sources of groundwater pollution and ensure compliance with groundwater discharge limitations.

The Petitioners also offer the following comments regarding the DNR’s draft document “Areas Susceptible to Groundwater Contamination.” In the Assumptions section on page 1, we ask the DNR to add a bullet point to identify that the focus of the document includes areas with sandy and / or thin soils. This is discussed in the body of the document, and for clarity and consistency it should be included in the central assumptions. In the Factors to identifying areas susceptible to groundwater contamination section, under Soil Type and Characteristics, add soil health as

a characteristic that can make an area more or less susceptible to groundwater contamination. Low quality soil does not provide the same amount of nutrient filtration as high quality soil.

Additionally, in the Over-riding Considerations section, it is appropriate to add the presence of tile lines as a Conduit to Groundwater that can make an area more susceptible to groundwater contamination. Tile lines act like fracture pathways to allow groundwater to move quickly to the path of least resistance into the aquifer with minimal soil filtration. Only “tile inlets discharging to groundwater quarries” are specifically listed as “direct conduits to groundwater” in current regulations. Wis. Admin. Code § NR 243.03(20).

The Karst Report Recommendations included in the draft document provide a very useful measure of susceptibility. We encourage the DNR to keep this table in the document. The Karst Task Force Report also included other recommendations that the DNR should include in its document defining “areas susceptible to groundwater contamination,” and consider in relevant subgroups. For example, the Report noted that identifying direct conduits to groundwater that are apparent at the surface does not adequately limit groundwater pollution risk. The Report advised regulators to use available information to identify “Karst Landscape Units” to guide management practices in these susceptible areas.<sup>1</sup> Other recommendations also deserve attention, such as the creation of a Carbonate Bedrock Management Zone,<sup>2</sup> and developing best management practices and conditions that farmers could undertake voluntarily or could be required in a large CAFO NMP.<sup>3</sup>

Finally, regarding the Existing Definitions section, we ask the DNR to add the explanatory language provided in NR 243 regarding areas susceptible to groundwater contamination. Wisconsin Admin. Code § NR 243.15(3)(c)2.a. provides the DNR with discretion to require groundwater monitoring or secondary containment based on several considerations, including where facilities are on or near areas susceptible to groundwater contamination, “such as direct conduits to groundwater, sandy soils, and sites with minimal separation between bedrock and high water tables.” The definition in NR 243 is broader and less prescriptive than the definition in NR 151, and is more consistent with the way in which “areas susceptible to groundwater contamination” is defined in this draft document.

Thank you again for convening the stakeholder meeting. While we are encouraged by your interest, we hope that the persistent groundwater contamination issues in Kewaunee County can be resolved promptly. I can be reached by phone at 608-251-5047 ext. 5, or via email at [swilliams@midwestadvocates.org](mailto:swilliams@midwestadvocates.org) for any questions or to follow up on the action discussed above.

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<sup>1</sup> Erb, Kevin & Ron Stieglitz (eds.), *Final Report of the Northeast Wisconsin Karst Task Force (Karst Report)*, at 3-4 (Feb. 9, 2007), available at <http://learningstore.uwex.edu/assets/pdfs/G3836.pdf>.

<sup>2</sup> *Karst Report*, at 5.

<sup>3</sup> *Karst Report*, at 13-15, 36-37.

Sincerely,

/s/

Sarah Williams  
Staff Attorney  
Midwest Environmental Advocates

On behalf of Petitioners:  
Clean Wisconsin  
Midwest Environmental Defense Center  
Clean Water Action Council of Northeast Wisconsin  
Kewaunee CARES  
Environmental Integrity Project

cc:  
Tom Davenport, US EPA  
Tom Poy, US EPA