

Ms. Tinka Hyde
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

March 9, 2016

Re: Petition for emergency action pursuant to EPA's authority under the Safe Drinking Water Act to address groundwater contamination in Kewaunee County, Wisconsin.

Dear Ms. Hyde,

Thank you for the opportunity to discuss our Safe Drinking Water Act petition with you and your staff on February 18, 2016. We appreciate the ongoing dialogue with EPA on this matter, and look forward to providing meaningful input into EPA's response to the petition. We are writing today to provide some additional follow-up information and to formalize in writing our specific requests for immediate and longer-term action to resolve the ongoing drinking water crisis for residents of Kewaunee County.

The petitioners continue to be concerned with the slow progress in response to our petition, filed nearly 18 months ago. The EPA's approach so far has been to rely on the Wisconsin DNR, which has in turn convened work groups on various issues related to the drinking water problem. The DNR work group process has not resulted in any direct action to provide local residents with clean, reliable drinking water. Moreover, while we wait for local solutions to the problem, residents are still encountering unreasonable delays in well test processing, and new CAFOs are being permitted in Kewaunee County without adequate protections for groundwater. Recently, we have learned that the free water kiosk stationed at a local school—the one reliable, public source of clean water for local residents—has been vandalized, is no longer in operation, and its future is uncertain.

To help resolve the principal immediate need, we ask that EPA work directly with the state to provide a clean water source for affected residents and to immediately publicize how and where to access the clean drinking water source on a publicly accessible website. Additional notice should be published in the local newspapers or sent by U.S. Mail to residents throughout the county. We further request that EPA work with DNR to ensure that well test results are returned as soon as possible and that the agencies provide some way for residents awaiting well test results to access the clean drinking water source in the meantime. The importance of this immediate relief cannot be stressed enough, especially in light of the recent problems with the water kiosk that was previously providing water to some residents.

While DNR is set to soon unveil the recommendations from the various work groups, it has not committed to actually implementing those recommendations on a near-term basis. We thus ask that EPA work directly with DNR and the State to ensure that any rule changes that are necessary to implement the recommendations are initiated as quickly as possible, and any rule changes that can be done through emergency rulemaking procedures should be made immediately.

For example, DNR can use its existing authority under Wis. Admin. Code NR 738 to provide emergency water supplies to well owners whose wells have been impacted by offsite livestock bacterial or nitrate contamination. In our correspondence with the DNR during work group meetings, DNR staff indicated that DNR has authority under this provision to make available Environmental Fund funds for wells contaminated with fecal bacteria provided that evidence demonstrates that the bacterial contamination is caused by livestock. We are awaiting a formal confirmation of this interpretation by DNR attorneys. While we believe this is a straightforward application of the rule, if modification of regulations are necessary for DNR to immediately provide emergency water supplies under this provision, those changes should be done through emergency rulemaking.

Further, where potential or known contamination has occurred, all well owners in the vicinity, at least those within 1 mile of the contaminated well, should be immediately notified about the nature and extent of the contamination and given information about how to obtain a well test for their own wells and an interim water supply.

Petitioners also seek research conducted by EPA or DNR beyond the studies that have been conducted thus far into the nature and extent of the contamination. While several studies have noted the frequency and type of contamination, you stated in our discussion that no significant resources have gone into developing a robust study of the contamination pathways that are the root cause of the drinking water contamination in the county, or manure and other contaminant application rates for this topography. This is the fundamental question that must be addressed in order to better understand what a long term management plan for groundwater quality must be and which practices must be implemented in order to abate the contamination. As an initial step toward that end, we request that EPA order CAFOs that operate and land apply manure in particularly sensitive areas of the county to install groundwater monitoring at application sites to ensure that their operations are not contributing to the groundwater contamination, and to track contamination pathways. Our initial petition described prior agency precedent for this kind of order under the Safe Drinking Water Act and other statutes, including in Yakima Valley, Washington.

Increased resources and DNR staff time are also necessary to perform basic inspections and audits, and initiate enforcement actions where necessary in the event of contamination. Several recommendations of the compliance work group can be implemented immediately, including increasing communication and transparency between the agencies and manure haulers, producers, and the general public about contamination events and how to respond.

In order to address this issue efficiently and with public transparency, EPA should exercise close oversight of DNR to develop an enforceable plan and timeline to take the actions described above, and to implement appropriate recommendations from the work groups. This overarching plan should be publicly noticed with an opportunity for public input before final EPA approval. The EPA has taken similar actions in other states to address petitions for corrective action under the Clean Water Act. Given the direct, immediate public health implications at stake here, it is even more critical in this case.

We appreciate EPA's willingness to work with Wisconsin on responding to these issues, and we look forward to hearing about the next steps in the process at our meeting to be scheduled next month.

Sincerely,

Mark Redsten
President and CEO
Clean Wisconsin

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Midwest Environmental Advocates

Attorney Christa Westerberg
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