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PRESS RELEASE

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Farmers Ask: Where is Trump EPA's commitment to transparency in science?

Washington state farm advocacy group representing Pacific Northwest dairy farmers asks EPA Director Wheeler to conduct long-delayed peer review of damaging nitrate report. Group also seeks criminal investigation of EPA Region 10's attempt to cover up peer review failure.

Dairy farm leaders in Oregon, Washington and Idaho are claiming that EPA staff fraudulently generated a damaging science report that wrongly blamed dairy farms for nitrate pollution, failed to have the report properly peer reviewed, then attempted to cover up the lack of adequate peer review by changing the science study's categorization. The Washington State Dairy Federation, Idaho Dairyman's Association and Oregon Dairy Farmers Association met with Region 10 EPA staff in February, joining with Save Family Farming in its call for the EPA to allow the missing peer review and to retract the study pending that review. They also requested that the Regional Administrator produce the documents that would show who changed the categorization of the report to cover up the lack of adequate peer review.

Following the refusal by Regional Administrator Christopher Hladick to act on the requests by farmers, Central Washington Congressman Dan Newhouse sent a letter to EPA Director Andrew Wheeler formally supporting the farm groups' request. In addition, Save Family Farming is also asking the Department of Justice to investigate potential violations of federal law that makes it a crime for federal officials to lie or make false representations.

The letter submitted to EPA Director Andrew Wheeler states: "The Region 10 staff violated EPA and federal policy requiring extensive peer reviews for science studies categorized as 'influential.' They did not conduct the required peer review, then when called on it they falsely

claimed the study was not designated 'influential' and the 'other' designation gave them full discretion in the peer review process. However, study documents showed it was designated 'influential' through 2013. The attempt to change the designation likely came after staff falsely reported to the Regional Administrator the peer review was 'thorough and complete' on November 1, 2018 in the presence of several farm representatives."

The EPA Yakima Nitrate Report was initiated in 2010 and published in 2012 and 2013. Region 10 staff used the study and threats of federal litigation to coerce four dairies into signing a very punitive Administrative Order on Consent. One dairy went out of business, one has spent upwards of \$10 million in compliance costs made possible by additional family business operations, and two others are working to comply under severe financial strain. The report has also been used by Oregon attorney Charlie Tebbutt to sue a number of Washington dairy farms placing a chill over the entire Washington dairy community.

"I'm a small dairy farmer in northwest Washington state," said Larry Stap, president of Save Family Farming. "This false or falsified study has cost me and a few hundred other dairy farmers like me endless sleepless nights. The constant fear of EPA using false accusations to take action against me like they did the others is one thing. But the lawyer using this study to sue farmers has already cost me tens of thousands of dollars I can't afford."

Stap pointed out that a number of farms in his area and around the state are being sold or are going out of business in part because of the concerns related to this study and the actions of the litigation industry. "When sons or daughters watch their parents struggle to keep going and face this kind of corrupt action by our own government, as much as they may love great-grandpa's farm many are simply choosing a more secure way to make a living," Stap said.

In addition to the request to the EPA Director, Save Family Farming is also sending a letter to Jeffrey Bossert Clark, Assistant Attorney General of the Environment and Natural Resources Division. The letter accuses EPA staff involved with the study of lying to the Administrator in the presence of farm representatives about the nature of the peer review, then attempting to change the categorization of the review to cover up the lack of adequate review. The letter states Title 18 of federal law which states any federal official in the conduct of government business violates this law when they: "*knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.*"

"It may not violate the law to ignore EPA and federal requirements for a peer review for science studies of this nature," said Gerald Baron, Executive Director of Save Family Farming, "but it most certainly is a criminal act to knowingly lie about it and try to cover up the policy violation by changing the record or making false statements about the record." Baron pointed out that the law carries a penalty of up to five years in prison.

The letter to EPA Director Wheeler also noted that it was the same Region 10 leadership that supported using \$550,000 of taxpayer money on a public relations and lobbying campaign against farmers. The “What’s Upstream” campaign falsely claimed farms were unregulated and lobbied for more farm regulations using an environmental grant the EPA provided to the Northwest Indian Fisheries Commission. More than one third of the members of Congress wrote to EPA Director McCarthy in 2016 complaining of this action by Region 10 leadership which resulted in an Office of Inspector General investigation that determined the campaign involved state lobbying.

“Under Administrator Dennis McLerran and a long-embedded staff, this Region became known for its anti-farm policies and actions. The What’s Upstream campaign was the most visible example but by far the most devious and harmful to the farming community is this attack on dairy farmers using bogus science and the fraudulent effort to cover up the lack of peer review,” said Gerald Baron, Executive Director of Save Family Farming.

The letters to EPA and the Department of Justice follow years of effort by the northwest dairy farmers to address the misuse of science and the unjustified enforcement actions of Region 10 staff against Yakima-area dairy farms.

“With the change in administration we believed we would at least get new EPA leadership to listen to us and hear our concerns,” explained Larry Stap. “The new Region 10 administrator Christopher Hladick visited my farm and showed genuine interest and concern, but we were bitterly disappointed when pressured by his staff he turned his back on our requests to have the study get the peer review it should have had years ago.”

Stap commented that while farmers have growing concerns about the negative impacts of the trade wars on farm incomes, the changes in the EPA were seen as one of the most positive developments with the Trump administration. “Now we are not so sure,” he said. “There is growing concern that these leaders are more concerned about political pressure from the extremists in the environmental community and protecting their staff than what is right and wrong. This EPA action is so obviously wrong, but this administration seems unwilling to act.”

Stap said, “The EPA leadership under Trump has made lots of noise about ending collusion with the environmental community on sue and settle lawsuits and making their science transparent. So much for the noise. Where is the action? Why they refuse to allow a real peer review is beyond us. What are they so afraid of? We want to know the truth about sources of contamination, even if it points to us. Why don’t they? It doesn’t contribute to transparency or help to rebuild trust in this agency by farmers.”

In response to the requests by the farm groups to Regional Administrator Hladick and Associate Administrator Tate Bennett, Save Family Farming received a letter from Hladick on June 25 that included an offer to re-do the study. The letter confirmed EPA’s position that the study was categorized as “Other, “ thereby eliminating the need for a comprehensive peer review. It stated

that current nitrate data shows enforcement is working and that a new report “could contribute to a further understanding of the issues.”

In a July 2 response letter, Save Family Farming provided the initial peer review plan document showing the study was not categorized as “Other,” but “influential.” The letter notes that given definitions of categorization, the study would have to be categorized as “influential” because it bears on public policy and private sector decisions as required by the Office of Management and Budget. The group also noted in the letter that EPA staff has used current data in contradictory arguments and that farmers have no trust in EPA conducting a new study given the false nature of the previous one. The letter notes: “A new study conducted independently by the EPA makes little sense to farmers. How would an innocent man convicted of crimes because a prosecutor fabricated evidence be reassured when the same prosecutor offered to retry the case?”

Save Family Farming has provided documents showing a detailed technical analysis of the EPA study by a former lead agronomist for the USDA’s Natural Resources Conservation Service, Richard Fasching, on its website. The advocacy group’s website also includes reviews of the science study by more than 15 science experts from government agencies, academia and the agricultural community -- all of whom determined the data gathering methodology and the conclusions to be seriously flawed. In addition, communication between the farm groups and EPA are published. Those documents can be viewed at

<https://savefamilyfarming.org/blog/category/clean-water/clean-groundwater/epa-nitrate-study/>