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July 2, 2019

Via Email

Christopher Hladick, Regional Administrator  
Environmental Protection Agency Region 10

Tate Bennett, Associate Administrator  
Office of Public Engagement and Environmental Education  
Environmental Protection Agency

CC: Rep. Dan Newhouse  
Rep. Cathy McMorris Rodgers  
Dan Wood, Washington State Dairy Federation  
Rick Nearebout, Idaho Dairymen's Association  
Tami Kerr, Oregon Dairy Farm Association

Dear Administrator Hladick and Associate Administrator Bennett:

Thank you for your letter of June 19 responding to our written concerns about the EPA nitrate study. The offer of conducting a new study is a step in the right direction but raises some concerns discussed below.

First, however, we must ask about the categorization of the study as "Other." In your letter you state that the project was categorized as "Other" when it was first entered into the database on March 22, 2012 and never changed from that time. On April 2 Jay Gordon and Larry Stap presented you and Mr. Kowalski with the EPA document titled PEER REVIEW PLAN (attached). This includes the OMB Category for the study which is marked "Influential" and dated 09/27/2012. We also presented on April 2 the March 2013 "Response" document prepared in response to the overwhelming scientific critique of the report which also identified the study as "influential". On page 35 of that document it states in response to numerous comments about the inadequate peer review for a science study identified as "influential":

*EPA's response: Agency guidance provides several options for the peer review of documents classified as "Influential" under the OMB work product criteria. Consistent with Agency Peer*

*Review Guidance, EPA utilized an external peer review approach, which included scientists from USGS, and the U.S. Department of Agriculture.*

If you have documentation of the categorization you describe we ask that you provide it to us. Since our repeated requests for documentation of that categorization have been ignored and given the clear record of the “influential” categorization, we continue to believe that the “other” categorization is a fabrication intended to cover up the lack of adequate review.

In addition to your assertion of the “Other” categorization contradicting two EPA documents, it seems problematic that this study would ever be considered for that category given the OMB definition of “influential science information:”

*scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. In the term 'influential scientific information,' the term 'influential' should be interpreted consistently with OMB's government-wide information quality guidelines and the information quality guidelines of the agency. ([https://en.wikipedia.org/wiki/U.S. Government peer review policies](https://en.wikipedia.org/wiki/U.S._Government_peer_review_policies))*

Even if the EPA categorized the study as “Other” there can be no justification of that categorization based on the OMB definition. When one party under the AOC must spend upwards of \$10 million to comply based on this study, when others made a decision to cease dairy operations as a result of the study and resulting enforcement and when 400 other dairies are forced to absorb additional costs because of the lawsuits and court decisions based on the study, would any reasonable person or judge determine that this study has no impact on private sector decisions?

The document showing the “influential” category states there would be 4 to 10 peer reviewers and these would be “independent experts.” Yet, two of the three who submitted reviews were from the EPA and the one from the USGS noted similar criticism of the report submitted by numerous science experts from other agencies, tribes, industry and academia. The fourth reviewer, Dr. David Tarkalson from the Agricultural Research Service, asked his name be removed because he did not have access to substantive parts of the data and conclusions. Apparently the other reviewers also received a copy of the study with some of the most significant data and conclusions missing. Does the EPA consider it a proper review when reviewers are provided significantly redacted data and conclusions?

You state in your letter that “seven years later the EPA has not received any scientific studies or data that would serve as a basis for reconsidering the study’s conclusions.”: Mr. Hladick, during our November 1, 2018 meeting with you we presented you with a three inch binder containing over fifteen very detailed documents from science experts who, without exception, presented very strong critiques of the study. Some of those critiques are positively damning and validate our concern that the study and conclusions go beyond incompetence to falsification. At your request, we met with Mr. Kowalski and other staff on February 27, 2019 and presented a very detailed critique by a retired former NRCS senior agronomist, Mr. Richard Fasching. His analysis presents a solid scientific indictment of this study and he concludes, as a number of others experts have, that the study qualifies as fraud. You note this is a serious allegation.

Indeed it is, as serious as the consequences for our dairy farms. This allegation, when proven, may indeed impact the future of EPA staff involved in this, as this study has very significant impact on the future of a large number of multi-generation family farms. We do not withdraw that allegation in any degree. The actions of your staff in fraudulently conducting the study have now been amplified by the fraudulent effort to cover the failure of the peer review.

Your rejection of a “second” peer review is based on your conclusion that it would not be useful because you state “the conclusions of which have been confirmed by subsequent data generated by the dairies themselves.” Every science expert (except for the two internal EPA reviewers) agreed that the data was faulty and that the conclusions EPA drew were not supported by the data. We have never disputed that the data shows levels of nitrate in groundwater above EPA limits. What is in dispute is the source of the nitrate. The report says this nitrate comes from current dairy operations. Current water testing data such as that generated by the dairies under the AOC continue to confirm high levels of nitrate. But, this does not identify the source. We are not requesting a first real peer review in order to verify high levels of nitrate — that fact has never been in dispute. We want the truth about the source of that nitrate and the EPA study demonstrably fails in identifying the source.

Your letter also states that the current data shows that actions by the dairies have begun to reduce nitrate concentrations in groundwater. It appears to us that your staff has consistently used the data for contradictory purposes. The purpose of the February 27 meeting was for Mr. Kowalski and the staff to show us that the current data show high and even higher levels of nitrate than previous tests thereby justifying the enforcement and showing that the original study was “too conservative.” We acknowledge that recent testing continues to show very high levels of nitrate from a few wells. But, where did this come from? When Mr. Fuentes said field applications were showing much improvement he was asked if that was showing up in the data. He reported that it takes a long time for improvements to show in reduced nitrate levels. He is correct as a recent science study from Canada shows it takes 30 to 50 years of improved farm practices to begin to reduce legacy nitrate. But your letter claims that reduced levels in current testing show the enforcement is working. This contradictory use of current data only adds to the mistrust.

We must ask again: why are you and your staff so afraid of a real peer review by recognized experts? Farmers have been asking for it, recognizing that it may indeed show significant contributions from current dairy operations. If so, changes need to be made. In any case, we want the truth. Truth in science has always required transparency. That’s why many were encouraged by the commitment of the new administration to that transparency. Your objection to a reasonable request to address the failure of the previous administration’s resistance to that transparency is troubling indeed. As more farmers and farm groups around the nation come to understand the serious failings of this EPA science study, the attempt to cover up that failing and the rejection of our request for improved transparency in critically important science, trust in this administration’s willingness to right the wrongs of the past will be lost.

Finally, regarding the suggestion of a new study. We must ask: if the first study was flawed in design, execution and conclusions how could we be assured a new study conducted by the same team would be better? Would you be willing to allow outside experts such as from the ARS be involved in this study every step of the way? Would a legitimate peer review be allowed this

time? Why would you suggest a new study while at the same time vigorously defending the old study? Doesn't this offer indicate agreement that there are problems with the existing study? If so, what about the continuing aggressive enforcement actions of EPA staff against the three dairies under the AOC? And if the situation warrants a new study, why allow the continuing use of a false study by the anti-dairy litigator to extract huge fees from our dairy farms and put some out of business? 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?

We note that Congressman Newhouse has requested the EPA Director retract this study. We reiterate our reasonable requests to you and Ms. Bennett:

- 1) Request the Agricultural Research Service to conduct a proper peer review of the existing study.
- 2) Pending that review, remove the study from further enforcement and litigation.
- 3) Provide the documentation that proves without question the "Other" categorization.

It was explained to you by our president Larry Stap the personal impact of this study on he, his family and almost every dairy family across the state. We appeal to you to do the right thing. But should you continue to take the position you have, be assured that we will never stop working to right the injustice of the agency you represent against our farmers.

Sincerely,



Larry Stap  
President, Save Family Farming



Gerald Baron  
Executive Director, Save Family Farming