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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR RESTORATION OF THE ENVIRONMENT, INC., a Washington Non-Profit Corporation and CENTER FOR FOOD SAFETY, INC., a Washington, D.C. Non-Profit Corporation, Plaintiffs, v. COW PALACE, LLC, a Washington Limited Liability Company, THE DOLSEN COMPANIES, a Washington Corporation, and THREE D PROPERTIES, LLC, a Washington Limited Liability Company, Defendants.	No. 13-CV-3016-TOR **MOTION FOR LEAVE TO SUBMIT BRIEF AS *AMICI CURIAE*** Without Oral Argument: 5/6/2015, 6:30 P.M.

I. RELIEF REQUESTED

American Farm Bureau Federation, National Cattlemen's Beef Association, U.S. Poultry & Egg Association, United Egg Producers, and National Council of Farmer Cooperatives ("Agricultural Associations") respectfully move the Court for an order granting them leave to file the attached *amici curiae* brief addressing the remedy phase of this case.[1] In the attached brief, the Agricultural Associations endeavor to provide an in-depth discussion of current federal and state environmental protection standards and practices for manure management, including how they are developed, their goals, and the challenges they confront. The Agricultural Associations also discuss why they believe that, where such standards and practices apply, they should be the basis for any order awarding injunctive relief in this case.

As this Court has previously noted, it has broad discretion to grant or refuse prospective *amici*'s participation. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). That discretion should be exercised to grant leave to participate when the information provided in the proposed brief is "timely and useful." *Nat'l Petrochemical & Refiners Ass'n v. Goldstone*, No. 10-cv-163, 2010 WL 2228471, *1 (E.D. Cal. June 3, 2010); *see also Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (granting leave to file an amicus brief because it "may be helpful and of interest to the Court").

Here, the Agricultural Associations seek to participate in the "classic role of amicus curiae" to "assist[] in a case of general public interests, supplementing the efforts of counsel[.]" *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus. State of Montana*, 694 F.2d 203, 204 (9th Cir. 1982). The purpose of the attached *amici* brief is to supplement the submissions of the parties by providing the Court with a discussion that focuses on the manure management

[1] Counsel for the Defendants indicated that they consent to the submission of the attached *amici* brief. Counsel for the Plaintiffs indicated that they do not consent.

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standards for environmental protection that are developed by federal and state agencies for use throughout the United States.

II. <u>INTERESTS OF PROPOSED *AMICI* AND JUSTIFICATION FOR *AMICI* STATUS</u>

Proposed *amici* are national agricultural organizations whose members grow crops and operate livestock and poultry feeding operations that manage manure under nutrient management plans.

American Farm Bureau Federation ("AFBF"), a not-for-profit, voluntary general farm organization, was founded to protect, promote, and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in all 50 states and Puerto Rico, representing around 6 million member families.

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United Egg Producers ("UEP") is a cooperative of egg farmers from all across the United States, representing the ownership of approximately 95% of all the nation's egg-laying hens. UEP assists its farm members in legislative, regulatory, and advocacy issues.

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The National Council of Farmer Cooperatives ("NCFC") is a nationwide trade association founded in 1929 to represent America's farmer cooperatives. NCFC's membership includes regional marketing, supply, bargaining, and farm credit bank cooperatives, as well as state councils of cooperatives, from across the United States. NCFC members handle almost every type of agricultural commodity produced in the United States, market those commodities domestically and abroad, and furnish production supplies and credit to their individual and farmer cooperative members. NCFC constituent members represent nearly 3,000 farmer cooperatives across the United States.

The Agricultural Associations' members manage manure to support their farming operations. The standards discussed in the attached brief are applied by their members nationwide. The associations believe that this information will help the Court exercise its equitable discretion during this phase of this case.

The Agricultural Associations' motion and proposed brief is timely. The Associations have filed this motion and proposed brief within the time allotted by this Court for the parties to file their trial briefs. The proposed *amici* brief will not delay the proceedings in this case.

The proposed *amici* brief has not been authored, edited, or reviewed by counsel for any party. Furthermore, no party or its counsel, or any person other than *amici*, has contributed money to fund the preparation and submission of the proposed brief.

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CONCLUSION

For the foregoing reasons, the Agricultural Associations respectfully request leave to file the attached brief as *amici curiae*.

DATED: May 4, 2015

Respectfully submitted,

/s/ Jeff Slothower
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CERTIFICATE OF SERVICE

I hereby certify on May 4, 2015, I electronically filed the foregoing Motion for Leave to Participate as *Amici Curiae* and Proposed Amici Curiae Brief with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all counsel of record.

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COMMUNITY ASSOCIATION FOR RESTORATION OF THE ENVIRONMENT, INC., a Washington Non-Profit Corporation and CENTER FOR FOOD SAFETY, INC., a Washington, D.C. Non-Profit Corporation, Plaintiffs, v. COW PALACE, LLC, a Washington Limited Liability Company, THE DOLSEN COMPANIES, a Washington Corporation, and THREE D PROPERTIES, LLC, a Washington Limited Liability Company, Defendants.	No. 13-CV-3016-TOR **BRIEF OF *AMICI* AMERICAN FARM BUREAU FEDERATION, NATIONAL CATTLEMEN'S BEEF ASSOCIATION, U.S. POULTRY & EGG ASSOCIATION, UNITED EGG PRODUCERS, AND NATIONAL COUNCIL OF FARMER COOPERATIVES**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION AND SUMMARY 1

INTERESTS OF AMICI 2

I. Manure Application Provides Multiple Benefits 3

A. Manure Has Market Value as a Fertilizer 4

B. Manure Rebuilds Soil 5

C. Manure Reduces Runoff and Soil Erosion 5

II. Nitrogen Compounds Are Both Essential to Life and Highly Mobile, Presenting Unique Management Challenges 6

A. Nitrogen Is Essential to Life 6

B. Nitrogen Is Mobile 7

C. Precise Prediction of Actual Nutrient Uptake and Loss is Unattainable in an Agricultural Setting 7

III. National and State Manure Management Practices and Standards Define the Proper Use and Handling of Manure as Fertilizer 8

A. Land Grant Universities and the Cooperative Extension Services 8

B. Natural Resources Conservation Service Standards 9

C. The Agricultural Waste Management Field Handbook 10

D. NRCS Comprehensive Nutrient Management Plans 10

E. EPA's Application of NRCS Standards 11

IV. Manure Management Standards Were Devised by Highly Specialized Experts 12

V. This Court Must Consider the Public Interest While Crafting Injunctive Relief that is Narrowly Tailored 14

VI. These National and State Standards Properly Do Not Seek to Totally Eliminate Unintended Losses of Manure Nutrients 15

A. Seepage of Liquids into Aquifers is a Function of Permeability, Depth of Liquid and Subsurface Thickness and Permeability 15

B. Losses of Liquid Manure from a Pond or Lagoon 17

C. The Risk of the Movement of Nutrients in the Soil Profile Under Composting Systems is Considerably Lower than for Waste Storage Facilities 19

D. Containment Pens Pose Small Seepage Risks 21

E. Nutrients are Always Present in the Soil Profile After Harvest Even When Ideal Nutrient Management Planning Practices are Used 21

CONCLUSION 24

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TABLE OF AUTHORITIES

Page(s)

Cases

Friends of the Earth, Inc. v. Laidlaw,
528 U.S. 137 (2000) 14

Kenner v. Convergys Corp.,
342 F.3d 1264 (11th Cir. 2003) 2, 3, 14

Sierra Club v. Penfold,
857 F.2d 1307 (9th Cir. 1988) 14

Weinberger v. Romero-Barcelo,
456 U.S. 305 (1982) 14

Statutes

42 U.S.C. § 7002(a)(1)(B) 14

Clean Water Act, 33 U.S.C. § 1251, *et seq.* 11

INTRODUCTION AND SUMMARY

As this Court considers the injunctive relief appropriate in this case, *amici* respectfully offer this brief to describe the critical role of manure in American agriculture and provide more detail about the federal and state standards that experts have developed for manure management.

Not only is animal manure an invaluable fertilizer, it helps to rebuild soil and reduce precipitation runoff and soil erosion on croplands. Over many decades, numerous governmental entities and university scientists and engineers have developed federal and state practices and standards for manure storage in ponds and lagoons, application to croplands, composting, and containment pens. These standards and practices, which reflect the scientific knowledge and extensive practical experience of specialized experts in government, academia, and elsewhere, were developed (and are constantly updated) to be protective of the environment and also economically feasible for most farmers.

Current federal and state standards are designed to avoid environmental problems, but they also recognize that risk cannot be totally eliminated. For example, producing zero loss of nutrients into the environment by precisely matching a crop's nutrient needs with the amount of nutrients supplied is not a realistic expectation: even with sound planning, and even if no fertilizer is used, some level of nutrients will be left in the soil after harvesting. Thus, the goal is to *manage*, not eliminate, the risk that nutrients applied to croplands will be lost into the environment rather than taken up by crops.

Design standards for manure storage in ponds and lagoons similarly incorporate a risk management system to avoid environmental harm from the inevitable losses of some liquid manure. These standards, for example, employ strict (but not zero) permeability limits for lining lagoons.

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In sum, these standards require farmers to responsibly manage the risk that nutrients will be lost into the environment, but they do not (and could not) totally eliminate those risks. *Amici* hope the information in this brief will aid the Court in the exercise of its equitable discretion in devising injunctive relief, which should involve consideration of the public interest and be tailored to what is necessary to accomplish established norms of environmental protection. Livestock and poultry farmers who responsibly operate their farms rely on the science-based standards and research discussed in this brief. We respectfully submit that the public interest is well served by farmers who implement these sound, nationally accepted practices. They are what is "reasonably required to accomplish" the goal of ensuring the use of the environmentally protective manure management practices developed by the acknowledged experts in this field. *Kenner v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003).

INTERESTS OF AMICI

Amici are national agricultural organizations whose members grow crops and operate livestock and poultry feeding operations that manage manure under nutrient management plans.

American Farm Bureau Federation ("AFBF"), a not-for-profit, voluntary general farm organization, was founded to protect, promote, and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in all 50 states and Puerto Rico, representing around 6 million member families.

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I. Manure Application Provides Multiple Benefits

Manure is valuable because it provides nutrients for crops, but it also has other benefits for croplands.[1] As our scientific understanding of the beneficial effects of manure's use has grown, so too has our understanding that its value goes beyond its nutrient content.

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[1] The use of manure in agriculture has a very long history. Neolithic communities in Europe used animal manure as fertilizer to increase crop production as early as 6000 B.C.E. Bogaard, A., et al., "Crop manuring and intensive land management by Europe's first farmers," Proceedings of the National Academy of Science, 110 (31), at 12589–12594 (2013). This Neolithic use of manure was strategic and economizing. *Id.* at 12590-91. Differing levels of manure were used on crops grown in the same location, where these differences correspond

(continued...)

A. Manure Has Market Value as a Fertilizer

First and foremost, animal manure is an excellent fertilizer.[2] That value is reflected in contract and market prices at which it is bought and sold. Sales are facilitated in many instances, for a fee, by a service industry built around brokering and transporting manure.[3, 4] Not surprisingly, several state Land Grant University Cooperative Extension programs have developed online manure value "calculators."[5]

(...continued)
directly to the observed differences in how well crops respond to supplemental nutrients. *See id.* Even at the dawn of agriculture in Europe 8000 years ago it was clear to farmers that their animal manure was a valuable resource that required management. The archaeobotanical evidence indicates that these Neolithic farmers were "investing" their scarce labor and resources into heavily manuring specific parcels of land, with a view towards the long term benefits of the investment (given that manure breaks down over multiple years to provide nutrients years). Furthermore, it appears to scientists that crop and animal production developed together, affecting each other and making the development of each possible. *See* Balter, M., "Researchers Discover First Use of Fertilizer," *Science* (July 15, 2013) ("And new evidence from both the Near East and Europe, Bogaard says, suggests that 'cropping and herding developed in tandem' and were 'entangled from the start.'").

[2] Payne, J.B., Lawrence, J., Manure as a Source of Crop Nutrients and Soil Amendment (2013), Livestock and Poultry Environmental Learning Center, *available at* http://www.extension.org/pages/8913/manure-as-a-source-of-crop-nutrients-and-soil-amendment#.VS_0Fe85Cpo

[3] For a discussion of how brokering is used to merchandise manure, with examples cited in various states, *see* Lawrence, J.D., Massey, R.E. Business Arrangements for Manure Offsite Transfer (2011), Livestock and Poultry Environmental Learning Center, *available at* http://www.extension.org/pages/8901/business-arrangements-for-manure-offsite-transfer#.VT-uRe9FCpo.

[4] *See* "Manure Brokers Help Manage Waste At Ohio CAFO Farms" (2015), *available at* http://wosu.org/2012/news/2015/02/09/manure-brokers-help-manage-waste-ohio-cafo-farms/ (interview with a pork producer in Ohio that markets his own animals' manure, or uses a broker, where price is set competitively relative to commercial fertilizer costs).

[5] *See, e.g.*, Minnesota (http://goo.gl/Dkiz0i); Nebraska (http://goo.gl/Urpkzi); New York (http://goo.gl/Dkiz0i); Vermont (http://goo.gl/0EXAY5); Missouri (http://goo.gl/0EXAY5).

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B. Manure Rebuilds Soil

Second, in addition to adding nutrients, manure improves soil in other ways.[6] Animal manure adds organic matter to soil, which has led the U.S. Environmental Protection Agency ("EPA") to characterize manure a soil "builder."[7] Organic matter, in turn, substantially improves soil's water holding capacity, making it more resilient to dry conditions.[8] It also eases the task of soil cultivation and reduces the harm to crop yields from soil compaction.[9]

C. Manure Reduces Runoff and Soil Erosion

Third, studies have found that use of animal manure reduces runoff and soil erosion, sometimes quite substantially.[10] A meta-review of multiple research efforts on this subject found that locations receiving manure annually had reductions in water runoff ranging from two to sixty-two percent, and soil losses were decreased by a range of fifteen to sixty-five percent.[11]

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[6] Graham, E., Grandy, S., and Thelen, M., Manure Effects on Soil Organisms and Soil Quality, Michigan State Univ. Extension, Emerging issues in animal agriculture, *available at* http://msue.anr.msu.edu/uploads/files/AABI/Manure%20effects%20on%20soil%20organisms.pdf ("It should now be evident that the increase in crop yields associated with manure application is not simply caused by the properties of the manure, but is instead the result of a series of complex interactions between the nutrients, organic matter and organisms in the manure and the existing conditions of the amended soil. Amendments can have profound effects on soil structure, soil chemistry and soil organisms (microbes and macrofauna) and have also been found to suppress soil pathogens and disease.").

[7] US EPA, Profile of the agricultural livestock production industry (archived ed.), at 43 (2000).

[8] University of Minnesota Extension, *Soil Management Series/Organic Matter Management.* (2013), *available at* http://www.extension.umn.edu/agriculture/tillage/soil-management/soil-management-series/organic-matter-management/ ("Manure is an excellent way to build organic matter.").

[9] *Id.*

[10] Risse M.L., et al., Land Application of Manure for Beneficial Resuse (prepared as part of a series of papers by the National Center for Manure and Animal Waste Management), at 10 (1998), *available at* http://www.ars.usda.gov/sp2userfiles/place/66120900/soilmanagementandcarbonsequestration/2001ajfb02.pdf. This entire paper provides a very thorough review of the research findings on the environmental effects and properties of manure reuse.

[11] *See id.*

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The greater the manure application rate, the greater the reductions in runoff and erosion losses.[12] While manure application might increase nutrient runoff *concentrations*, it appears to reduce runoff *volumes*, and therefore the total amount of nutrients lost from the manured field.[13]

II. Nitrogen Compounds Are Both Essential to Life and Highly Mobile, Presenting Unique Management Challenges[14]

Managing nitrogen poses special challenges. Its chemistry makes it highly mobile. It is essential to life and water quality, yet can be harmful in excessive quantities. Current federal and state guidelines and practices for the storage, handling, and use of animal manure reflect society's effort to help farmers protect the environment and thus continue to reap the benefits that animal manure can provide. Today's manure management guidelines and standards are designed to help farmers reduce the amount of nutrients that invariably remain in the soil profile after harvest, and thereby reduce the risk of environmental problems.

A. Nitrogen Is Essential to Life

Nitrogen is a fundamental component of amino acids, which are the building blocks of all of the proteins that are essential to all plant and animal tissues. Water quality can be severely harmed if reactive forms of nitrogen are *not* present, as aquatic life cannot live without it.

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[12] Gilley, J., E.; Risse, M., L.. Runoff and Soil Loss as Affected by the Application of Manure, DigitalCommons@University of Nebraska – Lincoln, Vol. 43(6), at 1583-1588 (2000).

[13] *See* Risse, et al. *supra* n. 11.

[14] This overarching perspective on the challenges of nitrogen management, whether from manure or chemical fertilizers, is part of the received wisdom of the chemical and biological science and policy community. For a general overview of nitrogen and its role in biological and industrial systems, and its properties, *see* http://www.chemistryexplained.com/elements/L-P/Nitrogen.html. For an example of how this then is relied on in the agronomic and manure management community see the Carlson, B., Vetsch, J., and Randall. G, "Nitrates in Drainage Water in Minnesota," University of Minnesota Extension (2013).

B. Nitrogen Is Mobile

Nitrogen is also highly mobile, moving easily into, out of, and through biological and physical systems. In its reactive forms, it is highly mobile in water and air. Bacterial activity changes nitrogen compounds into reactive forms that meet organisms' biological needs. In particular, the nitrate form moves easily with water, through the soil, then into plant root systems and into the growing plant.

This same mobility allows nitrogen to move downward through the soil profile toward groundwater. In agricultural settings, lack of rainfall can inhibit plant growth, which can cause unused nitrogen and other nutrients to accumulate in the soil. During precipitation events, depending on their timing relative to plant growth, such accumulated nitrogen will move through the soil profile with the water.[15]

C. Precise Prediction of Actual Nutrient Uptake and Loss is Unattainable in an Agricultural Setting

Supplying the precise amount of nitrogen needed by a particular crop would be a relatively straightforward task if all of the factors determining actual crop nutrient needs and uptake, and the movement of nutrients, could be predicted with precision. Crop production, however, is part of a biological and physical system where weather (*e.g.*, short term precipitation events and freeze/thaw cycles, longer term changes in seasons or incidence of drought) plays a dominant role and creates great uncertainty within a growing season and across years. Because weather is unpredictable, managing manure to support crop production and protect water quality is a risk management problem rather than a straightforward matching of nutrients needed with nutrients supplied. Today's set of federal and state guidelines account for this difficulty.

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[15] Lamb, J.A., Fernandez, F.G., Kaiser, D.E., "Understanding nitrogen in soils." (2014), University of Minnesota Extension, *available at* http://www.extension.umn.edu/agriculture/nutrient-management/nitrogen/understanding-nitrogen-in-soils/.

One of the fundamental challenges of using nutrients, whether from manure or from other types of fertilizer, in a biological system is that there is a chance every year that some nutrients will not be taken up by crops and instead enter the environment.[16] These losses are unavoidable (particularly in the case of biologically reactive nitrogen compounds) and the amounts are unpredictable. Today's manure management guidelines do not seek to achieve the unattainable goal of zero loss of nutrients. Rather, they are explicitly designed to minimize such losses.

III. National and State Manure Management Practices and Standards Define the Proper Use and Handling of Manure as Fertilizer

A. Land Grant Universities and the Cooperative Extension Services

American agriculture has always relied heavily on science, information, and educational services provided by the Nation's Land Grant Universities and the associated federal and state Cooperative Extension Services. Since 1907, this information has included matters involving manure.[17] These universities and extension services provide electronically available (and frequently used) links to online documents including guidance from every state in the country. Updates are frequent: less than two weeks ago, the extension community issued a new publication providing guidelines for applying liquid animal manure to cropland.[18]

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[16] *Id.* ("Inhibiting the conversion of NH4+-N to NO3--N (nitrate) can result in less N loss and more plant uptake; however, it is not possible to totally prevent the movement of some NO3--N to water supplies, but sound management practices can keep losses within acceptable limits.")

[17] The first extension bulletin published by Iowa State College (later University) in 1907 was focused on manure and the need to return manure, fodder and bedding to the soil to maintain its productivity. It exhibited a high degree of scientific understanding of the nutrient content in crops and the amount of nutrients needed to produce them. *See* Snyder, A.H, "Farm Manures," Iowa State College Extension (1907), *available at* http://www.agronext.iastate.edu/immag/pubs/extpub1oct1907.pdf

[18] Hoorman, J.J., Rausch, J.N., Brown, L.C, "Preferential Flow of Manure in Tile Drainage." (2015), Livestock and Poultry Learning Center Extension Publication, *available at* http://www.extension.org/pages/27488/preferential-flow-of-manure-in-tile-drainage#.VT5RLe9FCpo.

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There are few, if any, nutrient use decisions made today in the professional farming and ranching community that are not informed by this body of knowledge. The long history of the training of agricultural professionals working in the field with farmers and ranchers was formalized in 1992 by the American Society of Agronomy with the establishment of the Certified Crop Advisors and Certified Professional Agronomists programs. Today there are some 15,000 of these professionals working in the US and Canada with farmers and ranchers, and they guide the use of crop nutrients in much of agriculture. Their training and testing to become certified is largely based on the science and information generated and maintained by the Land Grant University and Cooperative Extension system.

B. Natural Resources Conservation Service Standards

The Land Grant University and Cooperative Extension system's body of knowledge has since the 1930s been turned into civil engineering-like practice standards by the US Department of Agriculture's Natural Resources Conservation Service (NRCS) (first called the Soil Erosion Service, then the Soil Conservation Service, and then the NRCS). This work was carried out in partnership with the USDA Agricultural Research Service and the Land Grant and Cooperative Extension system. Today these NRCS standards are compiled nationally, but each of NRCS's state organizations adapts these standards for use in their state, and only state practice standards are used for the design of practices in their states. The standards are maintained, supplied and used in electronic form.[19]

Since the 1930s, NRCS has worked through a network of county field offices, often in partnership with local soil and water conservation districts. This work often took place alongside, if not in direct relationship with, the local County Cooperative Extension Agent. Any practices in a farmer's or rancher's "conservation plan" prepared by NRCS was designed according to these practice standards.

C. The Agricultural Waste Management Field Handbook

NRCS first compiled the relevant national conservation practices standards for manure and agricultural waste management into the Agricultural Waste Management Field Handbook (AWMFH) in 1992.[20] The Handbook is used by the NRCS state organizations to develop their own state practice standards. It is regularly updated and relied on today to guide NRCS, soil and water conservation districts, and many non-federal agencies' work on manure management. The AWMFH standards, like many other NRCS conservation practice design standards, are regularly incorporated by reference into state or county guidelines, codes, and standards.[21]

D. NRCS Comprehensive Nutrient Management Plans

In 1998, the White House released a "Clean Water Action Plan" that guided the work of several federal agencies, including EPA and USDA, on issues and matters related to surface water quality. EPA and USDA subsequently developed the Unified National Strategy for Animal Feeding Operations. That strategy set a goal to have animal feeding operations adopt Comprehensive Nutrient Management Plans (CNMPs).[22] NRCS defines a CNMP and its

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[19] *See* USDA-NRCS National Conservation Practice Standards webpage: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/references/?cid=nrcsdev11_001020.

[20] *See* Part 651 - Agricultural Waste Management Field Handbook, USDA-NRCS e-Directives, *available at* http://directives.sc.egov.usda.gov/viewerFS.aspx?hid=21430.

[21] *See, e.g.*, Ohio (http://codes.ohio.gov/oac/901:10-2-04); South Carolina (http://www.scdhec.gov/Agency/docs/water-regs/r61-43.pdf); Taylor County, Wisconsin (http://www.co.taylor.wi.us/code/Chapter63.pdf).

[22] That strategy states that:

> USDA and EPA's goal is for AFO owners and operators to take actions to minimize water pollution from confinement facilities and land application of manure. To accomplish this goal, this Strategy is based on a national performance

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purpose as identifying the conservation and environmental actions, including nutrient management, that a livestock operation would follow to reduce threats to water quality and public health.[23]

E. EPA's Application of NRCS Standards

Given the depth and breadth of research, experience and use of the NRCS conservation practice standards related to animal manure management, EPA has relied heavily on the NRCS practice standards in establishing Clean Water Act (CWA) effluent limitation guidelines and permits for concentrated animal feeding operations (CAFOs). EPA's modern version of the CWA CAFO rule, initiated in 2001, and the land application area "Nutrient Management Plan" (NMP) provisions developed by EPA under the associated permitting rule, both relate directly to

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> expectation that all AFOs should develop and implement technically sound, economically feasible, and site-specific Comprehensive Nutrient Management Plans (CNMPs) to minimize impacts on water quality and public health.

USDA-US EPA, Unified National Strategy for Animal Feeding Operations, at 5 (1999), *available at* http://www.epa.gov/npdes/pubs/finafost.pdf.

[23] NRCS's technical guidance states:

> Conservation planning is a natural resource problem-solving process. The process integrates ecological (natural resource), economic, and production considerations in meeting both the owner's/operator's objectives and the public's natural resource protection needs. This approach emphasizes identifying desired future conditions, improving natural resource management, minimizing conflict, and addressing problems and opportunities. Comprehensive nutrient management plans (CNMPs) are developed in accordance with NRCS conservation planning policy and rely on the planning process and established conservation practice standards.
>
> A CNMP identifies management and conservation actions that will be followed to meet clearly defined soil and water conservation goals, including nutrient management, on an animal feeding operation (AFO). Defining soil and water conservation goals and identifying measures and schedules for attaining these goals are critical to reducing potential and actual threats to water quality and public health from AFOs. The CNMP fits within the total resource management objectives of the entire farm/animal feeding operation.

USDA NRCS, Comprehensive Nutrient Management Planning Technical Guidance, Section 600.50, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_003305.pdf.

NRCS's CNMP standards as well as Cooperative Extension standards and guidelines for manure used on crops.

In December 2004, EPA issued a document titled "Managing Manure Nutrients at Concentrated Animal Feeding Operations" (*Managing Manure*).[24] This document is designed to provide additional technical information for carrying out EPA's revised regulatory requirements for NPDES permitting of CAFOs.[25] *Managing Manure's* technical appendices (appendices D-O) all contain extensive references to Cooperative Extension publications and NRCS practice standards and guidelines. *Managing* Manure advises farmers to follow NRCS's conservation practices manual and consult with their state or local Cooperative Extension Office.[26]

IV. Manure Management Standards Were Devised by Highly Specialized Experts

The body of science, guidelines, and technical standards in place today for the design, management and operation of manure storage, handling and crop application systems were developed by agricultural and conservation and environmental research and policy professionals and experts, working through their respective institutions and organizations.

A recent NRCS fact sheet states that NRCS "works with farmers, ranchers and forest landowners across the country to help them boost agricultural productivity and protect our natural resources through conservation."[27] The scope of that work is considerable.[28] While the scope and focus of NRCS has evolved since the agency began, its focus on providing farmers

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[24] US EPA, Managing Manure Nutrients at Concentrated Animal Feeding Operations (2004). EPA-821-B-04-009.

[25] *See id.* at 1-1.

[26] *See id.* at N-1.

[27] See NRCS-GeneralFactsheet.pdf-15, *available at* http://www.nrcs.usda.gov/wps/PA_NRCSConsumption/download?cid=stelprdb1265824&ext=pdf.

and ranchers with solutions to the practical natural resource and environment challenges they face has not.[29]

The USDA Agricultural Research Service (ARS) and the USDA National Institute of Food and Agriculture (NIFA, formerly the Cooperative Extension Service), also develop solutions for farmers and ranchers. For example, the mission of the division of ARS that today houses and guides its work on animal agriculture and the environment supports researchers at 70 locations who develop technologies and strategies for farmers.[30]

The mission of USDA-NIFA, whose programs "propel cutting-edge discoveries from research laboratories to farms . . . and ensure scientific discoveries reach the people who can put them to use," is comparably focused.[31] NIFA includes a program area focused on water quality, including an emphasis on animal manure management.[32] During the previous four decades, these organizations have been instrumental in the development of manure management standards, including those adopted by EPA in the CAFO rule. The value of this work for environmental protection was acknowledged in 2002 by EPA when it wrote:

> Continued research by USDA, state agencies and universities has led to advances in technologies and management practices that minimize the potential environmental degradation attributable to discharge and runoff of manure and wastewater. Today, there are many more practicable options to properly collect,

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[28] *Id.* ("Over the past four years, working with our partners, NRCS has put conservation on more than 216 million acres of land, obligating more than $15 billion.")

[29] *See* "80 Years Helping People Help the Land: A Brief History of NRCS," *available at* http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/about/history/?cid=NRCS143_021392.

[30] *See* About ARS "Natural Resources and Sustainable Agricultural Systems," *available at* http://www.ars.usda.gov/pandp/locations/NPSLocation.htm?modecode=02-02-00-00.

[31] For information about NIFA, *see* http://nifa.usda.gov/about-nifa.

[32] *See* http://nifa.usda.gov/program/national-water-quality-program.

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store, treat, transport, and utilize manure and wastewater than there were in the 1970s, when the [previous] regulations were instituted.[33]

The manure management standards EPA adopted in the new CAFO rule directly reflect, and are largely the result of, technical and operational standards developed by the USDA agencies, Land Grant Universities and the Cooperative Extension System.

V. <u>This Court Must Consider the Public Interest While Crafting Injunctive Relief that is Narrowly Tailored</u>

In determining whether to issue a permanent injunction, the Court must balance the competing claims of injury and consider the public interest. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12 (1982); *see also Sierra Club v. Penfold*, 857 F.2d 1307, 1318 (9th Cir. 1988). Generally, injunctive relief must be narrowly tailored "to restrain no more than what is reasonably required to accomplish its ends." *Kenner v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003); *see also Friends of the Earth, Inc. v. Laidlaw*, 528 U.S. 137, 196 (2000) ("[F]ederal courts should aim to ensure the framing of relief no broader than required by the precise facts."). More specifically, injunctive relief under RCRA § 7002 must be "necessary" to abate any imminent and substantial endangerment. 42 U.S.C. § 7002(a)(1)(B).

As discussed above, the agricultural sector relies on manure to support farming operations. Over many decades, land grant universities, cooperative extension services, and NRCS have developed effective standards for manure management that are designed to protect the environment, yet be sufficiently economically feasible that farmers can actually implement them on a wide scale. Those standards are what are "reasonably required to accomplish" the goal of requiring the use of environmentally protective manure management practices. *Kenner*, 342 F.3d at 1269. Accordingly, any injunctive relief should be carefully tailored to incorporate

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[33] US EPA, Environmental and Economic Benefit Analysis of Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated (continued...)

these national and state standards, which are expertly designed to minimize losses of manure nutrients to surface water and groundwater as the manure is recycled as valuable fertilizer. Those standards are written to provide practical and clear guidance for proper farming practices. As explained below, these standards are suitable even though they recognize (and in fact, because they explicitly take into account) that, when supplying nutrients from either chemical fertilizers or manure to crops for crop production, the elimination of all losses of nutrients to surface water and groundwater is unattainable.

VI. These National and State Standards Properly Do Not Seek to Totally Eliminate Unintended Losses of Manure Nutrients

As detailed above, national and state standards for manure management have been designed by experts who apply both the latest scientific knowledge and extensive experience with American agriculture. Those standards are designed to effectively protect the environment, but for the reasons explained below, they do not attempt to impose the unattainable goal of reducing nutrient losses to zero. Below is a more detailed discussion of these standards for ponds and lagoons, application of manure to croplands, composting, and containment pens.

A. Seepage of Liquids into Aquifers is a Function of Permeability, Depth of Liquid and Subsurface Thickness and Permeability

Seepage of nutrients out of facilities downward into subsurface soil is a function of the permeability of the materials at the bottom of the facility and the depth of the liquid that is above the bottom surface, which creates hydraulic pressure.[34] Manure solids commonly add greater

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Animal Feeding Operations, EPA-821-R-03-003, at 1-8 (2002).

[34] "Seepage from these structures has the potential to pollute surface water and underground aquifers. The principal factors determining the potential for downward and/or lateral seepage of the stored wastes are the: permeability of the soil and bedrock horizons near the excavated limits of a constructed waste treatment lagoon or waste storage pond; depth of liquid in the pond that furnishes a driving hydraulic force to cause seepage, and thickness of low permeability horizons
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impermeability to the soil-liquid interface through a clogging of the pores of the soil mass by manure particles and the dead bacteria that result under anaerobic conditions. Some states allow for this property in the calculation of liner design.[35]

The term used to describe the interplay of the forces of permeability, hydraulic pressure, and depth of material is "specific discharge," which is a measure of the actual flow rate of liquid through a cross section as opposed to the permeability of the cross section itself.[36] There is a well-defined engineering equation derived from "Darcy's Law" that is used to calculate an estimate of the actual flow rate.[37] The shallower the depth of the liquids, the lower the hydraulic pressure and therefore the lower the actual rate of flow. This equation is instrumental in determining how a waste storage or treatment facility should be designed to reduce the risk of contamination of an aquifer. It also has obvious implications for the design of animal housing and manure composting areas, where downward hydraulic pressure will be near zero.

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between the boundary of the lagoon bottom and sides and the distance to the aquifer or water table." AWMFH at 10D-1.

[35] *Id.*

[36] *Id.*

[37] This equation and its use, with practical examples is presented in detail in AWMFH at 10D-12 to 10D-13.

B. Losses of Liquid Manure from a Pond or Lagoon[38]

NRCS national design standards for liquid waste treatment lagoons[39] or waste storage facilities[40] that handle manure liquids and process wastewater provide a risk management analysis for addressing the inevitable losses of some portion of the liquids they hold. These practice standards provide that the facilities should either (a) be located in soils with an acceptably low permeability or (b) be lined. These practice standards refer the user to the USDA NRCS Agricultural Waste Management Field Handbook (AWMFH), for more in-depth discussion of engineering and design.

The standards discuss liners made of various materials, each of which must be designed to achieve a specified low (but not zero) rate of permeability. Relative to the risks associated with this permeability and the hydraulic pressure created by the depth of the liquids in the facility, the AWMFH explains:

> The procedures in appendix 10D to the AWMFH provide a rational approach to selecting an optimal combination of liner thickness and permeability to achieve a

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[38] Storage ponds and treatment lagoons represent two distinct classes of liquid manure management, although they are commonly assumed to have the same function. That is not the case, even though their design standards are similar and in some respects identical. A "waste treatment lagoon" is designed to function as a waste treatment system, predominately using bacteria that live in anaerobic environments. The bacteria consume the manure solids and in the process change the composition and chemistry of the materials. Phosphorous generally remains in the lagoon in the sludge that settles to the bottom, composed of the dead bacteria. The liquid component contains nitrogen, which generally remains soluble and is used as a fertilizer, along with some phosphorous which also supplies crop nutrition. Waste storage facilities, ponds or pits perform a holding function, without intent of treating the material in any way. The differences become obvious when the manure materials are withdrawn for land application, as in the case of a storage facility where 100 percent of the material is removed, including all the nitrogen and phosphorous in the unit, and applied for crop production. In the case of the treatment lagoon, a sufficient volume of liquids is left in the lagoon to support its ongoing biological activity.

[39] USDA NRCS. Conservation Practice Standard – Waste Treatment Lagoon, Code 359, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_026002.pdf.

[40] USDA NRCS, Conservation Practice Standard – Waste Storage Facility, Code 313, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_026465.pdf.

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> relatively economical, but effective, liner design. It recognizes that manipulating the permeability of the soil liner is usually the most cost-effective approach to reduce seepage quantity. While clay liners obviously allow some seepage, the limited seepage from a properly designed site should have minimal impact on ground water quality. Numerous studies . . . have shown that waste storage ponds located in low permeability soils of sufficient thickness have a limited impact on the quality of ground water.[41]

The conservation practice standards for Waste Treatment Lagoons ("WTL CPS") and Waste Storage Facilities ("WSF CPS") explicitly reflect this risk management approach. For example, the WTL CPS discusses four "potential impact categories for liner seepage" that deal with groundwater, soil and rock conditions that create greater vulnerability to environmental damage.[42] In response, the WTL CPS prescribes the following:

> Consideration should be given to providing an additional measure of safety from lagoon seepage when any of the potential impact categories listed in Table 3 may be affected. Should any of the potential impact categories listed in Table 3 be affected, consideration should be given to the following:
>
> - A clay liner designed in accordance with procedures of AWMFH, Appendix 10D with a thickness and coefficient of permeability so that specific discharge is less than 1 x 10-6 cm/sec.
> - A flexible membrane liner
> - A geosynthetic clay liner (GCL) flexible membrane liner
> - A concrete liner designed in accordance with slabs on grade criteria, Waste Storage Facility (313), for fabricated structures requiring water tightness.[43]

The AWMFH develops this risk mitigation approach to dealing with specific discharge potential. The Handbook provides specific guidance as to where a specific kind of liner must be used, taking into account (a) specific discharges of various designs; (b), the degree of risk to groundwater supplies and wells given their proximity, distance and type; and (c) the vulnerability

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[41] USDA NRCS, Animal Waste Management Field Handbook (210–VI–AWMFH, rev. 1, March 2008), 10D–2 and 3, *available at* http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba.

[42] USDA NRCS, Conservation Practice Standard – Waste Treatment Lagoon, Code 359, at 4, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_026002.pdf.

[43] *Id.* at 4. A comparable discussion is found in the WSF CPS.

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of the site to seepage losses, given the rock, soils and height of groundwater. The higher the degree of risk and the higher the degree of vulnerability, the more impermeable the liner it recommends.[44]

Note that the referenced clay liner in the WTL CPS has a permeability of $1x10^{-6}$, a rate of loss of liquids from the lagoon of 924 gallons per day per acre of facility. While the WTL CPS does not list the coefficients for the other liner materials, those systems, also have non-zero rates of loss (albeit considerably smaller in the case of the high density polyethelene liner). Below are loss rates for four liner materials that are discussed in these and other comparable waste storage standards.

Material	Clay[45]	Geosynthetic Clay[46]	High Density Polyethylene[47]	Concrete[48]
Permeability	10^{-6}	10^{-7} to 10^{-10}	10^{-13}	10^{-10}

C. The Risk of the Movement of Nutrients in the Soil Profile Under Composting Systems is Considerably Lower than for Waste Storage Facilities

NRCS describes numerous benefits of composting manure.[49] It directs that composting generally be conducted on "a concrete pad, or in a well-drained location with firm ground." The

[44] AWMFH, Page 10-25.

[45] *See* NRCS, Code 359, at 4, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_026002.pdf.

[46] Estornell, P., Daniel, D.E., Hydraulic Conductivity of Three Geosynthetic Clay Liners, Journal of Geotechnical Engineering, Vol. 118, No. 10, at 1592-1606 (Oct. 1992).

[47] *See* Ploy-Flex, *available at* http://www.poly-flex.com/index.html.

[48] Nawy, E.G., Concrete Construction Engineering Handbook, at 5-10 (2008, 2nd Ed).

[49] It reduces "odor and fly problems," the "volume of the manure," it makes it "easier to transport and spread," it can be sold or used on other farms," the "nutrients in compost are released more slowly than from raw manure" and it "provides a way to store manure until you are ready to spread it." USDA NRCS, Composting Manure (2009), *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1167345.pdf.

ground "must be hard and dry enough for a tractor to work around the pile in all weather."[50] Any composting facility designed or funded by NRCS must meet the applicable NRCS conservation practice, which is designed to protect groundwater. [51, 52]

The risk of movement of liquids containing manure nutrients through the bottom of a windrow compost system into the soil is small, a conclusion that is confirmed by applying the logic of Darcy's Law and the specific discharge potential equation. As discussed above, estimates of the specific gradient through the bottom of a waste storage facility liner are based on the properties of the materials, and the volume of liquid pushing downward. That volume and weight of liquid creates the downward pressure that can force small quantities of liquid through the bottom. The downward hydraulic pressure in a windrow compost system will be negligible because the compost is moist but not saturated. The composting process requires the materials to be wet enough to facilitate bacterial activity, but not so wet that the pile becomes anaerobic and the rapid composting process is stopped.[53] Any excess liquid is not contained and would tend to run horizontally along the "well-drained, firm ground" at the surface, not vertically downward. Absent any significant hydraulic pressures in a compost system, the risk of the downward

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[50] *Id.*

[51] A facility is to be located "on a base of low permeability soils, concrete, or other liner material that will not allow contamination of ground water." USDA NRCS, Composting Facility Practice Standard, Code 317, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_026122.pdf.

[52] "If a compost facility is not protected from the weather, it should be sited to minimize the risk to ground water." AWMFH, 10-57.

[53] "*Moisture*—the moisture content of the compost mixture should be monitored periodically during the process. Low or high moisture content can slow or stop the compost process. High moisture content generally results in the process turning anaerobic and foul odors developing. High temperature drives off significant amounts of moisture, and the compost mix may become too dry, resulting in a need to add water." AWMFH, 10-68.

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movement of liquids carrying nutrients in a properly located and designed compost facility is small.

D. Containment Pens Pose Small Seepage Risks

Design standards for containment pens focus primarily on protection of surface water quality. Those standards also direct that they not be located in areas with a high water table due to the risk of groundwater contamination.[54, 55] Researchers have found that an active containment pen with a manure pack contributes no more nitrogen to ground water than the adjacent cropland.[56] The potential for nitrogen loss will be even lower when the containment pens regularly remove manure for storage or treatment, such as for composting or solids management, at another location. Darcy's Law and the factors for estimating specific discharge potential indicate that the risk of downward movement of nutrients from a properly surface drained containment pen will be small. Water will flow over the surface of the containment pen, and the hydraulic pressure will be minimal. These factors will reduce the risk of groundwater contamination.

E. Nutrients are Always Present in the Soil Profile After Harvest Even When Ideal Nutrient Management Planning Practices are Used

That nutrients always remain in the soil after a crop is harvested is an unavoidable consequence of plant growth, soil biological activity, and the ubiquity of nutrients in these systems. In fact, nutrients remain in the soil after harvest not only under the very best nutrient management practices, but also when crops are grown *without fertilizers*. Nitrogen moves

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[54] USDA NRCS, Heavy Use Area, Conservation Practice Standard, Code 561.

[55] Mink, L.L. et al., The Selection and Management of Feedlot Sites and Land Disposal of Animal Waste in Boise Valley, Idaho, Ground Water, Vol. 14, No. 6 (1976).

[56] Minnesota Pollution Control Agency, Feedlot Issues: Animal Waste Liability Account, Incident Reporting and Contingency Action Plan, at 7 (1999), *available at* http://www.pca.state.mn.us/index.php/view-document.html?gid=3632.

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downward out of the soil profile even beneath permanent vegetation. Thus the risk of nutrient loss is unavoidable. Risks due to uncontrollable factors are managed, not eliminated. One of the primary goals of nutrient management planning is to reduce these risks.

CNMPs are the central tool that NRCS has developed for controlling the amount of residual nutrients after harvesting. NRCS has specific technical standards—the 590 Nutrient Management Standard[57]—to properly budget and supply nutrients for crop production while protecting air, water and soil quality.[58] As with all other NRCS conservation practice standards, each state NRCS organization adapts the national standard to create a state standard.[59]

These estimates are not, however, expected to precisely predict plant needs and uptake, which determine the remaining amount of nitrogen in the soil.[60] Research in Minnesota looking at the movement of nitrogen out of tile drained fields over many years shows that mobility of

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[57] "Criteria for the CNMP Nutrient Management Element shall include all proposed applications of manure and other needed nutrients to meet the Nutrient Management conservation practice standard (code 590)." NRCS CNMP Technical Criteria, part 304.2, *available at* http://directives.sc.egov.usda.gov/viewerFS.aspx?hid=25686.

[58] USDA NRCS National Nutrient Management Standard, Code 590, *available at* http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046177.pdf

[59] In developing its 590 standard, Wisconsin NRCS, for example, defines the term "budgeting," to explain the role of estimates of nutrient removal now and for future crop years and that adjustments are made over time: "Document present and prior year's crop, estimated nutrient removal by these crops and known nutrient credits. When nutrients are applied for future crop needs in the rotation, implement a tracking process to allow adjustment of subsequent nutrient applications so that the total amount of nutrients applied to the farm or tract complies with this standard and is documented in the plan." USDA NRCS Wisconsin 590, *available at* http://datcp.wi.gov/uploads/Farms/pdf/590_final.pdf.

[60]"In the soil, mineral N is vulnerable to a complex variety of processes brought about by the interactive effects of weather and soil microbes. Some of these processes may cause the loss of available N. Therefore, the quantity of mineral N in soil and the changes in availability are generally unpredictable." Beagle, D. Durst, P.T., Nitrogen Fertilization of Corn (2003), Pennsylvania State University Extension, *available at* http://extension.psu.edu/plants/crops/grains/corn/nutrition/nitrogen-fertilization-of-corn.

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nitrogen in the soil with water leads to downward movement of nitrogen *under any circumstance*,[61] including when crops are produced without added fertilizers, when crops are fertilized at agronomic usage rates, and even when crops are replaced with perennial, unfertilized vegetation.[62]

Unpredictable weather is a primary reason that even the best estimates of nitrogen availability and use invariably miss the mark. The effects of drought on these systems dramatically illustrates this point. Drought in the growing season stunts crop growth, reducing nutrient uptake and leaving excess nutrients in the soils. The challenge is to predict how much of those excess nutrients will be present in the subsequent crop year.[63, 64]

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[61] Agricultural stormwater moves through the soil profile and into drain tiles, which convey the water away from the field. In the absence of drain tiles, that water would continue to move downward and would include some soluble nitrogen from the plant root zone.

[62] "Corn grown without the addition of N fertilizer lost around 10 lb. nitrate-N/A annually (Randall and Vetsch, 2011). Loss rates from soybeans (which received no N fertilizer) were nearly identical (Table 1). Generally, annual losses with row crops, where corn received near-optimum rates of N, ranged from 15 lb. nitrate-N/A (Table 1) on the low end at Waseca to 40 lb/A on the high end (Table 2) at Lamberton during four wet years. A separate project at the SROC using larger plots located approximately one mile away confirmed annual losses ranging from approximately 10 to 18 lb./A (Sands, et.al., 2008). Over the 40+ years of drainage research at the ROCs the only method shown to drastically reduce nitrate loss was to use perennial vegetation." Brad Carlson, B. Vetsch, J. Randall, G., Nitrates in Drainage Water in Minnesota (2013), University of Minnesota Extension, *available at* http://www.extension.umn.edu/agriculture/water/publications/pdfs/nitrates_in_drainage_formated_final.pdf.

[63] "Decision making is more complicated for fields in which a drought has severely affected the corn crop and the amount of nitrogen taken up was reduced. Large amounts of unused nitrate-N are probably left in these fields. The problem is to determine how much of that nitrate is likely to be available the following year. While there are no sure-fire methods, it is possible to estimate this amount." Five Post-Drought Strategies, A Special Report By Farm Progress, at 9 (2014), *available at* http://farmprogress.com/whitepaper-five-post-drought-strategies-better-2013-5.

[64] "Under drought conditions, there is the possibility that the drought stressed crop did not use all of the nitrogen that as applied. This unused (or residual or excess) N will remain in the soil profile until it is used by another crop or leached. Situations with the greatest potential for excess N to remain in the soil profile after the 2012 crop include fields with drought stressed corn, where manure was applied for the 2012 crop, or where forage legumes were grown in

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One of the key tools for reducing this risk is to apply no more of the nutrients than a best estimate of what the crop can productively use, given assumed average weather, reasonable yield goals, and the amount of plant-available nutrients that will be already present in the soil. Even if these nutrients are applied at the agronomic rate determined under a sound nutrient management plan, however, and even if the weather conforms to the average conditions assumed in the estimates, there will still be nutrients left in the soil post-harvest. These residual nutrients are not an intentional consequence of a farmer's practices, but a natural, inevitable consequence of plant growth.

CONCLUSION

Inevitably some nutrients will remain in the soil profile even when ideal nutrient management planning practices are implemented. Because total elimination of nutrient losses is not attainable, managing the risk of such losses is the real goal. A robust body of national and state manure management standards has been developed by government and university experts over decades, and those standards are constantly being updated. They apply the latest scientific knowledge and field experience to identify the most effective yet attainable agricultural practices

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2011. If fall, winter, and early spring rainfalls are normal or below normal, it is likely that unused N from 2012 will still be in the soil profile in spring 2013 and be available for the 2013 crop." Laboski, C.A.M, Wondering how much nitrate might be left in the soil from the 2012 crop? (2013), University of Wisconsin Extension, *available at* http://ipcm.wisc.edu/download/wcm-pdf/WCM2013/WCM20_2%20with%20flyer.pdf.

for environmental protection. The public interest is well served by farmers who implement those standards, which should be used to define practices required by any injunctive relief in this case.

DATED: May 4, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on May 4, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all counsel of record.

DATED this 4th day of May 2015.

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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR RESTORATION OF THE ENVIRONMENT, INC., a Washington Non-Profit Corporation and CENTER FOR FOOD SAFETY, INC., a Washington, D.C. Non-Profit Corporation, Plaintiffs, v. COW PALACE, LLC, a Washington Limited Liability Company, THE DOLSEN COMPANIES, a Washington Corporation, and THREE D PROPERTIES, LLC, a Washington Limited Liability Company, Defendants.	No. 13-CV-3016-TOR **[PROPOSED]** **ORDER GRANTING LEAVE TO FILE AN AMICUS BRIEF**

Considering the Motion for Leave to Submit Brief as *Amici Curiae* filed by American Farm Bureau Federation, National Cattlemen's Beef Association, U.S. Poultry & Egg Association, United Egg Producers, and National Council of Farmer Cooperatives (together, the "Agricultural Associations"), and all related materials, **IT IS HEREBY ORDERED** that:

The Motion for Leave to Submit Brief as *Amici Curiae* is **GRANTED** and the Agricultural Associations' brief is deemed properly filed on the date on which this Order is entered.

SO ORDERED on this ____ day of _________________, 2015.

[PROPOSED]
Hon. Thomas O. Rice
United States District Judge