

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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WATERKEEPER ALLIANCE, ET AL.,))
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Petitioners,))
))
v.)	Nos. 09-1017 &
)	09-1104 (Consolidated)
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U.S. ENVIRONMENTAL))
PROTECTION AGENCY,))
))
Respondent.))
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

Respondent-Intervenors National Pork Producers Council (“NPPC”) and U.S. Poultry & Egg Association (“USPOULTRY”)¹ respectfully submit this brief in support of EPA’s motion to stay the issuance of the mandate (Doc. No. 1684518).

¹ NPPC and USPOULTRY are both respondent-intervenors in Case No. 09-1017. NPPC is the petitioner in Case No. 09-1104, and USPOULTRY is a petitioner-intervenor in that case.

INTRODUCTION

By the time the mandate issues (at which point reports will be due “immediately”),² farmers at tens of thousands of small and medium sized farms will have had to determine whether the animal waste at their farms may emit hazardous substances like ammonia in amounts exceeding EPA’s CERCLA and EPCRA reporting thresholds. Unless EPA is given time to develop guidance on how to comply with the statutory reporting provisions, there will be no uniformity in how farms estimate their emissions.

Absent the requested stay, the holding in this case will result in a repeat performance of a reporting fiasco. As described below, in January 2009, when the recently-vacated rules went into effect, larger farms flooded state and local emergency planning authorities with emissions estimates that the agencies did not know what to do with. This time, when the mandate issues (or within a few days thereafter), tens of thousands of farmers who own smaller farms will repeat this futile exercise.

Unless EPA is given time to provide guidance, these farmers—primarily family farmers—will have to grapple with a federal reporting requirement without help from the government. These small farmers would largely be on their own—

² Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) 42 U.S.C. § 9603(a); Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004(a).

they do not have technical or legal assistance of the type needed to interpret EPA's reporting regulations. A pre-guidance reporting deadline would be an unfriendly introduction to CERCLA and EPCRA. A six-month stay would allow EPA to provide the guidance necessary for the nation's small and medium farms—by far the majority of farms in this country—to comply with a regulatory scheme that at present is foreign to them.

LEGAL STANDARD

Under D.C. Circuit Rule 41(a)(2), this Court may stay issuance of the mandate for “good cause.” Although typically only lasting up to 90 days, this Court has previously granted stays with a longer term where regulatory compliance was at issue. *See Indep. U.S. Tanker Owners Comm. v. Dole*, 809 F.2d 847, 854–55 (D.C. Cir. 1987) (granting six-month stay of mandate).

ARGUMENT

I. Prior to Issuance of the Mandate, Tens of Thousands of Small and Medium-Sized Farms Must Estimate Their Emissions to Determine Whether They Need to Report.

Under the recently vacated 2008 reporting rule, the nation's largest farms were required to comply with the EPCRA emergency reporting provision, and they have done their best to provide rough estimates to the local authorities using

various methods.³ Paul J. Bredwell III, USPOULTRY’s Vice President of Environmental Programs, explains that on January 20, 2009, the day that the EPCRA reporting rules went into effect for large CAFOs, the reporting situation “could be easily characterized as chaotic.” Declaration of Paul J. Bredwell III (attached as Ex. 4) ¶ 15. Mr. Bredwell received a call from the office of the Maryland State Emergency Planning Commission “asking [him] what the reports were and what were they supposed to do with them.” *Id.* ¶ 16. The caller “was puzzled as to why the reports were being submitted and acknowledged it was wasting their time.” *Id.*

Likewise, Michael Formica, NPPC’s Assistant Vice President & Legal Counsel, Domestic Affairs, recounts how state and local emergency response coordinators were “overwhelmed” by the volume of reports, to the point where they reportedly “rejected the hundreds of reports that followed” after fax machines ran out of paper, took “phone[s] off the hook,” and *actually began telling pork producers* “that there was no reporting requirement and *that the rule was simply an*

³ See, e.g., Declaration of John Pagel (attached as Ex. 1) ¶¶ 2, 10; Declaration of Jim Winn (attached as Ex. 2) ¶¶ 2, 10. Farms covered by Air Consent Agreements have also reported to the National Response Center and to local authorities, but their emissions estimates are unavoidably imprecise and of limited utility. See, e.g., Declaration of Douglas Wolf (attached as Ex. 3) ¶¶ 21–22. These and other declarations, which are attached as exhibits to this brief, were originally filed in the U.S. District Court for the District of Wisconsin in the related case, *Nat’l Pork Producers Council v. Jackson*, No. 09-cv-73.

internet hoax.” Declaration of Michael C. Formica (attached as Ex. 9) ¶¶ 7-9 (emphasis added). Even EPA appears to have been confused in the early days of the 2008 reporting rule: EPA Region 4 reportedly informed state officials that “they did not need to accept the reports and instead to direct any farmers to [contact] EPA’s Office of Water. *Id.* ¶ 9.

If the 2009 reporting trigger produced a situation that was “chaotic,” the upcoming days immediately following issuance of the mandate are sure to be worse. Now small and medium farms—defined by the number of the particular type of animal they produce⁴—will be required to determine whether they must file CERCLA and EPCRA reports. They represent the majority of farms in the United States. For example, there are more than 40,000 poultry farms in the United States, and about 90% of chicken broiler farms are small or medium entities not previously subject to the reporting requirement. Bredwell Decl. ¶ 10.⁵ The number of poultry farms alone required to report could cause the National Response Center to receive more reports in a few days than it typically receives in a year. *See* Formica Decl. ¶¶ 12–13 (noting 33,665 reports received in 1994, and 24,193 received in 2016).

⁴ *See* Regulatory Definitions of Large CAFOs, Medium CAFO[s], and Small CAFOs, https://www.epa.gov/sites/production/files/2015-08/documents/sector_table.pdf (last visited July 26, 2017).

⁵ The cutoff for large chicken (broiler) farms that use dry manure handling systems is 125,000 birds per growing cycle.

Most of the farmers managing these operations will find the new mandatory Federal reporting requirements to be “highly intimidating,” and they will be “extremely fearful of possible civil and criminal consequences if they make mistakes in what they report, or how they report it.” Declaration of Thomas R. Hebert (attached as Ex. 6) ¶ 6.⁶ They also are concerned about citizen suits, which “have the ability to put the livelihood of poultry and egg producers at risk.” Bredwell Decl. ¶ 8. Consequently they may choose to submit release reports for emissions that turn out to be below the legal reporting threshold.” *Id.*

Compounding these fears is the “complexity and scope of the written reporting requirements such as those set forth in EPA’s regulations.” Hebert Decl. ¶ 8. For instance, farmers are likely to be confused by the requirement to submit information on the identity and location of “sensitive” populations and ecosystems within a one-mile radius of their farms, and the frequency of the release of substances from animal waste, the fraction of the release from each release source, and the specific period over which it occurs. *See id.* And farmers are currently struggling with interpreting unfamiliar terms in EPA’s regulations. *See id.*; *see*

⁶ *See also* EPA Mot. (Doc. No. 1684518) at 6–7; Declaration of Laurie Fischer (attached as Ex. 7) ¶ 8 (“I have been informed by [Dairy Business Association of Wisconsin] members that the chemical substances, including manure, on their farms are used only for ordinary farming purposes but that they have made emergency reports under EPCRA for fear that they may be subject to large fines or criminal penalties if they do not make these reports.”).

also Formica Decl. ¶ 4 (“Just this week I have had conversations with leading pork producing companies—sophisticated operations—that are struggling with the details of what they are required to report, the process they need to use to calculate their estimated emissions, and the accuracy of the various techniques as applied to particular farms.”).

The confusion and fear that farmers are already experiencing is understandable: the “vast majority” of farmers have limited or no experience with mandatory environmental reporting under state or Federal law, and are without staff or outside counsel to advise and assist in the preparation of such reports. Hebert Decl. ¶ 6; *see also* Formica Decl. ¶ 5 (explaining how, in rural areas where many pork farmers reside, “there is a lack of legal assistance” and the “legal professionals that do provide services in [those] areas tend to be generalists, focusing on contracts, estate planning, and real estate, not specialists in federal environmental law.”). Many small farms, not being part of a large communications network, may also not learn of the new requirements for some time. Bredwell Decl. ¶¶ 12–13.

Nevertheless, farmers will take these requirements seriously, and will seek direction as to how to properly and correctly estimate their reported emissions. Hebert Decl. ¶ 6. But in the absence of such direction or guidance by EPA, small and medium sized farms will be placed in the untenable position of making

inaccurate and unreliable estimates based on “research or monitoring data from farms that do not have the same operating setup as their own systems, are not located in the same geographical locations, or do not have the same climates and operating conditions.” Hebert Decl. ¶ 7.

That many farmers reached out to EPA after this Court’s April 11, 2017 decision is a testament to the significance of this issue to them and the anxiety they face. EPA Mot. at 5–6. That significance was also demonstrated in 2009 by the voluminous number of calls made to NPPC from farmers concerned about compliance.⁷ In sum, an immediate reporting requirement will necessitate immediate compliance, and without guidance from EPA these farmers will be rightfully anxious about how to proceed.

II. Without a Reliable Estimation Method, Pre-Guidance Reporting Will Be Difficult.

A. EPA has yet to identify an authoritative method of estimation.

As this Court has recognized, regulators and scientists have thus far not been able to coalesce around one widely recognized and accepted method for estimating emissions. EPA Mot. at 5. Extant methods are unreliable, returning widely

⁷ Wolf Decl. ¶ 26 (“[NPPC’s] phone lines were overrun with calls from nervous producers who had no idea how to comply, as well as producers who attempted to comply only to be with bewilderment or misinformation from the state and local officials receiving the calls.” NPPC staff even received phone calls from state and local emergency planning authorities who were confused about the reports and who had been unable to get guidance from EPA.”).

varying results not only on a technique-by-technique basis, but also a study-by-study basis. As Mr. Bredwell explains, “[c]urrent research does not allow a poultry producer to estimate when they exceed the reporting threshold much less know what the upper bound of emission may be, which is also required when reporting.” Bredwell Decl. ¶ 7; *see also* Hebert Decl. ¶ 5 (“There are no nationally recognized or widely accepted air emissions estimation methodologies that livestock and poultry farmers or regulatory authorities could use to calculate or estimate ammonia (or other) air emissions from the manure produced by animals raised at livestock and poultry farms.”).

EPA’s Science Advisory Board (“SAB”) has recognized this problem. The SAB examined the emissions-estimating methodologies EPA had developed after EPA reviewed data from responses to a 2011 call for information and the National Air Emissions Monitoring Study. The SAB found that the data were valid for the farms actually assessed, but not sufficient to estimate emissions nationwide. Letter from Dr. David T. Allen, Chair, Science Advisory Board, to Hon. Bob Perciasepe, Acting Administrator, U.S. EPA, April 19, 2013, *available at* [https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/08A7FD5F8BD5D2FE85257B52004234FE/\\$File/EPA-SAB-13-003-unsigned+.pdf](https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned+.pdf) (last visited July 21, 2017). Numerous factors complicate emissions estimation, including the number of species from which emissions are to be

estimated, varying geographical and seasonal climatic conditions, and differing manure management techniques. Bredwell Decl. ¶ 6. As Mr. Bredwell explains, “researchers discovered that establishing a one-size-fits-all emissions estimation methodology was virtually impossible.” *Id.*

Real-world application reflects the present uncertainty in the scientific community. For example, Chad Bierman, a Wisconsin farmer who owns a pork farm (and has a master’s degree in animal science and genetics), used one emissions estimator from the University of Nebraska to estimate the amount of ammonia emissions that might come from his farm. That tool estimated anywhere from 165 to 335 pounds per day of ammonia emissions. *See, e.g.*, Declaration of Chad Bierman (attached as Ex. 8) ¶¶ 13–14 (noting that while “[u]niversities and others have developed preliminary [estimation] techniques, . . . these estimates vary substantially,” and describing the results of application of one of these models to his farm). Farmers should not have to determine whether they must report based on a tool that provides one estimate that is over 100% greater than another. Doing so would only add to the anxiety immediate compliance requirements would cause.

B. EPA has not provided guidance on the definitions of key terms underlying the reporting requirements.

Under these circumstances, farmers do not understand how to demonstrate compliance. Without a uniform way to estimate emissions or clarity as to what must be measured, farmers will have no certainty that they are reporting what is

required in the manner required. Not only are farmers without adequate tools to estimate their emissions, but they also lack guidance as to the scope of the activity covered by the rules and the meaning of key terms in EPA's reporting regulations. *See* Hebert Decl. ¶¶ 7–8.

For example, certain categories of farms may qualify for reduced reporting if their releases are “continuous and stable.” 40 C.F.R. § 302.8. But how are farmers to know whether their emissions qualify as “without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations”? *Id.* § 302.8(b). Or “predictable and regular in amount and rate of emission,” particularly given the variables inherent in emissions estimation identified above? *Id.* Without guidance as to who qualifies, no farmer will assume that she qualifies, and therefore farmers may provide reports that are wholly unnecessary. And once a report is made, follow-up requirements are triggered, *e.g.*, *id.* § 355.40(b), which will be time consuming and no more helpful, especially in the absence of a way to accurately estimate emissions. Moreover, CERCLA exempts the “normal application of fertilizer” from the definition of “release,” 42 U.S.C. § 9601(22)(D). EPCRA exempts “[a]ny substance to the extent it is used in routine agricultural operations” from the definition of “hazardous chemical,” 42 U.S.C. § 11021(e)(5). Due to the complex yet undefined nature of not only the requirements but also the

exemptions, farmers do not even know what emissions they are supposed to estimate and report.

As noted above, farmers have already expressed the concern that they do not know how to comply. We are not aware of any changes between April 11 and the date of this filing that would meaningfully aid farmers in complying with the new requirements. Since EPA is already working on guidance, it should be allowed to continue. EPA Mot. at 6.

III. Absent EPA Guidance, Erroneous Reporting Could Be Costly for Farmers While Providing Limited Benefits to Regulators or the Public.

A. Severe consequences can flow from erroneous reporting.

EPA has already identified the potential consequences farmers face from submitting defective reports, even if the defects are not the fault of the farmers. *See* EPA Mot. at 6–8. Citizen suits are also a possibility, and would have the additional threat of liability for attorneys' fees, which small farms in particular would be wholly unequipped to pay. *See* Bredwell Decl. ¶ 8. At the same time, it is these small farmers who will disproportionately bear the brunt of the reporting requirements, and therefore the associated costs and potential liability.

B. The potential consequences are out of proportion to any benefits from the reports.

Not only are the estimates sure to be unreliable, but the authorities receiving the reports will not know what to do with them. In Wisconsin, for example, when

farmers began providing reports to state and local authorities, these authorities were confused as to why the reports were being made, and they did not know how they were supposed to use the information. Some agency staff even went so far as to ask the farmers for information regarding the EPCRA reporting requirements. Fischer Decl. ¶ 7; Winn Decl. ¶¶ 10–13; Pagel Decl. ¶¶ 10–13.

The President of the National Association of SARA Title III [*i.e.*, EPCRA] Program Officials has expressed in a letter to Administrator Pruitt that the reports received thus far “are of no particular value” and “are generally ignored because they do not relate to any particular event.” Declaration of Timothy R. Gablehouse (attached as Ex. 5), Ex. A at 1. Instead, Mr. Gablehouse suggests that “open dialog and coordination can be more effective,” and that “[o]nly the LEPC and local first responders can determine what information they need from a farm as part of their emergency planning process.” *Id.* at 1–2; *see also, e.g.*, 73 Fed. Reg. 76,948, 76,954/2 (Dec. 18, 2008) (noting that many local responders believe the reporting “is of little value”). Mr. Gablehouse’s views demonstrate the need for guidance from EPA before farms begin to report.

Without EPA guidance, these reports will also have limited benefits to the public. Only accurate information can actually “help local communities protect

public health, safety, and the environment from chemical hazards,”⁸ the purpose of EPCRA. If local emergency response coordinators find the reports they have received so far to be useless, the information is unlikely to be useful to anyone else. Indeed, erroneous reporting will be more likely to have a detrimental effect, unnecessarily causing concern to the public. When promulgating the exceptions, for example, EPA noted that studies submitted “indicating the potential health issues associated with the emissions from animal waste at farms” had to do with *on-farm* issues, whereas the reporting is targeted at *off-site* emissions. 73 Fed. Reg. at 76,955/2. Immediate reporting of inaccurate information would do a disservice to communities that receive it.

CONCLUSION

Because issuance of the mandate before EPA can provide guidance will trigger confusion among farmers and agencies without benefiting the public, this Court should grant EPA’s request to stay the mandate for six months so it can avert a reporting fiasco.

⁸ U.S. EPA, Summary of the Emergency Planning & Community Right-to-Know Act, *available at* <https://www.epa.gov/laws-regulations/summary-emergency-planning-community-right-know-act> (last visited July 24, 2017).

DATED: July 27, 2017

Respectfully submitted,

/s/ David Y. Chung

Richard E. Schwartz

David Y. Chung

Elizabeth B. Dawson

CROWELL & MORING LLP

1001 Pennsylvania, Avenue, N.W.

Washington, DC 20004

Telephone: (202) 624-2500

Counsel for National Pork Producers

Council and U.S. Poultry & Egg Association

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,091 words, calculated using the Word Count feature of Microsoft Word 2010. This brief complies with the typeface and type-style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman and 14 point font.

/s/ David Y. Chung

David Y. Chung

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing brief to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 1

DECLARATION OF JOHN PAGEL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL PORK PRODUCERS COUNCIL
122 C Street, N.W.
Suite 875
Washington, D.C. 20001,

and

WISCONSIN PORK ASSOCIATION
9185 Old Potosi Road
Lancaster, WI 53813,

Case No. 3:09-cv-00073-slc

Plaintiffs,

and

DAIRY BUSINESS ASSOCIATION, INC.
4039 Ponce De Leon Boulevard
Oneida, WI 54155,

Intervening Plaintiff,

v.

LISA P. JACKSON
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460,

Defendant.

DECLARATION OF JOHN PAGEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, John Pagel, declare as follows:

1. I operate the Pagel's Ponderosa dairy farm located in Kewaunee County, Wisconsin and I am a member of the Dairy Business Association, Inc. I make this declaration

based upon my personal knowledge and in support of the Motion for Summary Judgment of the National Pork Producers Council, Wisconsin Pork Association and Dairy Business Association, Inc. I understand that the information that I am providing in this declaration will be used to determine whether my farm and similar farms qualify for a statutory exemption to emergency reporting requirements under the federal Emergency Planning and Community Right-to-Know Act (“EPCRA”). I have authorized the Dairy Business Association, Inc to represent my interests for this purpose.

2. My farm in Kewaunee County houses more than 700 mature dairy cows. These animals are stabled or otherwise confined in pens, barns or similar structures. As a large CAFO in Wisconsin, I operate pursuant to Wisconsin Pollution Discharge Elimination System WPDES Permit # 0059374.

3. I use a variety of substances on my farm. Those substances include pesticides, commercial fertilizer, substances used for cleaning facilities and equipment, and manure (animal excrement) produced by animals on my farm. I am aware of no chemicals at my farm other than those used in my ordinary farm operations.

4. Manure generated and stored on my farm is an excellent source of plant nutrients. Manure contains many of the elements required for plant growth (including nitrogen, phosphorus and potassium). Manure is also a soil enhancer that provides positive benefits to soil quality. The manure produced by and utilized by my farm is a valuable resource. I apply manure to fields throughout the cropping season in accordance with a comprehensive nutrient management plan which requires nutrients be utilized as fertilizer for plants.

5. I am told that ammonia, hydrogen sulfide and other substances are emitted from manure.

6. My farm uses a manure management system that involves the collection, storage, and land application of manure. My system includes a flume system and an anaerobic digester that first heats the manure to a temperature of 100° F, and then the methanogenic bacteria converts some of the energy of manure into a biogas which consists primarily of methane (CH₄, the same as natural gas) and CO₂. The digested manure is then pumped to a manure solids separator. The mechanical manure separator separates the digested manure into solid and liquid factions. The remaining solids are either utilized for animal bedding or applied to fields as fertilizer in accordance with my farm's nutrient management plan. The liquid manure, with most of the solids removed, is then transferred into storage pits. Periodically, the storage pits are emptied and the liquid manure is applied to fields in accordance with my farm's nutrient management plan.

7. I own or lease all of the cropland upon which I spread manure to fertilize crops.

8. I typically spread manure twice a year. I spread in the spring prior to planting corn crops. I also apply manure in the fall after crop harvest.

9. I cannot conclusively or reliably determine the amount of ammonia, hydrogen sulfide or other substances being emitted from the manure on my farm. Universities and others have developed preliminary techniques for estimating these rates. However, these estimates vary substantially from technique to technique and also from study to study.

10. I have reported an emissions estimate to the Kewaunee County Emergency Planning Committee and Wisconsin Emergency Management.

11. When I contacted the Kewaunee County Emergency Planning Committee to provide my initial telephone notification, the person I spoke with had no idea why I had called to report routine air emissions from my farm and expressed confusion as to what she was supposed

to do with the information I had provided. I explained to the employee that the U.S. Environmental Protection Agency directed me to report my emissions to local emergency management officials.

12. When I contacted Wisconsin Emergency Management to provide my initial telephone notification, agency personnel were unavailable so I left a voicemail reporting my emission estimates. The next day I called to confirm receipt of my voicemail emission report, but no knowledgeable personnel were available. A person from the Wisconsin Emergency Management support staff agreed to take my name, telephone number and address, but she did not seem to understand the purpose of my call.

13. I submitted a follow-up written notification to both the local and State agencies within 30 days of my initial telephone notification. Upon receipt of my written notification, the Kewaunee County Emergency Planning Committee commented that they did not have any resources available for farms seeking to report emissions. A Kewaunee County staff person then requested that I send an extra copy of the forms I was submitting in the event that other farms requested information about how to report their emissions pursuant to the new EPCRA rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March, 2009.

s / John Pagel

John Pagel

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of John Pagel to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
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TO STAY ISSUANCE OF MANDATE**

EXHIBIT 2

DECLARATION OF JIM WINN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL PORK PRODUCERS COUNCIL
122 C Street, N.W.
Suite 875
Washington, D.C. 20001,

and

WISCONSIN PORK ASSOCIATION
9185 Old Potosi Road
Lancaster, WI 53813,

Case No. 3:09-cv-00073-slc

Plaintiffs,

and

DAIRY BUSINESS ASSOCIATION, INC.
4039 Ponce De Leon Boulevard
Oneida, WI 54155,

Intervening Plaintiff,

v.

LISA P. JACKSON
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460,

Defendant.

DECLARATION OF JIM WINN IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Jim Winn, declare as follows:

1. I operate the Cottonwood Dairy farm located in Lafayette County, Wisconsin and I am a member of the Dairy Business Association, Inc. This declaration is made on the basis of

my own personal knowledge and is offered in support of the Motion for Summary Judgment of the National Pork Producers Council, Wisconsin Pork Association and Dairy Business Association, Inc. I understand that the information that I am providing in this declaration will be used to determine whether my farm and similar farms qualify for a statutory exemption to emergency reporting requirements under the federal Emergency Planning and Community Right-to-Know Act (“EPCRA”). I have authorized the Dairy Business Association, Inc to represent my interests for this purpose.

2. My farm in Lafayette County houses more than 700 mature dairy cows. These animals are stabled or otherwise confined in pens, barns or similar structures. As a large CAFO in Wisconsin, I operate pursuant to Wisconsin Pollution Discharge Elimination System WPDES Permit # 0059021.

3. I use a variety of substances on my farm. Those substances include pesticides, commercial fertilizer, substances used for cleaning facilities and equipment, and manure (animal excrement) produced by cows on my farm. I use all of these substances for farm purposes. I am aware of no chemicals at my farm other than those used in my ordinary farm operations.

4. The manure generated and stored on my farm is as an excellent source of nutrients for crops. Manure contains many of the elements required for plant growth – including nitrogen, phosphorus, and potassium. Manure is also a soil enhancer that provides positive benefits to soil quality. The manure produced by and utilized by my farm is a valuable resource. I typically apply manure to fields throughout the cropping season in accordance with a comprehensive nutrient management plan which requires that nutrients be utilized as fertilizer for plants.

5. It is my understanding that ammonia, hydrogen sulfide and other substances are released to the air from manure.

6. My farm utilizes a manure management system that involves the collection, storage, and land application of manure. Manure and other substances, such as feed and water, are collected and transferred into storage pits. Periodically, the storage pits are emptied and the solid and liquid manure is applied to fields in accordance with my farm's nutrient management plan.

7. I typically spread manure twice a year. I spread in the spring prior to planting corn crops. I also apply in the fall after harvest.

8. I own or lease some of the agricultural fields upon which I spread manure, and some of the manure is used by neighboring farmers to fertilize their crops.

9. I cannot conclusively or reliably determine the amount of ammonia, hydrogen sulfide or other substances being emitted from the manure on my farm. Universities and others have developed preliminary techniques for estimating these rates. However, these estimates vary substantially from technique to technique.

10. I have reported an emissions estimate to the Lafayette County Emergency Planning Committee and Wisconsin Emergency Management.

11. When I contacted the Lafayette County Emergency Planning Committee to provide my initial telephone notification, agency personnel were unavailable so I left a voicemail reporting my emissions estimate. The next day I received a call back from Lafayette County Emergency Planning employee, John Reichling. Mr. Reichling had no idea why I had called to report air emissions from my farm and expressed confusion as to what he was supposed to do with the information I had provided. I explained to the employee that the U.S. Environmental Protection Agency directed me to report my emissions to local emergency management officials.

12. When I contacted Wisconsin Emergency Management to provide my initial telephone notification, the staff person similarly had no idea what I was talking about, why I was calling or what the agency was supposed to do with the information I had provided. Again, I explained that EPA directed me to report my emissions to local emergency management officials.

13. I submitted a follow-up written notification to both the local and State agencies within 30 days of my initial telephone notification. To date, neither agency has responded to my written notification. I have received no guidance or confirmation that my reporting was in compliance with EPCRA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March, 2009.

s / Jim Winn

Jim Winn

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Jim Winn to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

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WATERKEEPER ALLIANCE, ET AL.,))	
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Petitioners,))	
))	Nos. 09-1017 &
v.))	09-1104 (Consolidated)
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U.S. ENVIRONMENTAL))	
PROTECTION AGENCY,))	
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Respondent.))	
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 3

DECLARATION OF DOUG WOLF

3. I am a member of the Wisconsin Pork Association (“WPA”) and voluntarily contribute “check off” funds as an investor in the National Pork Producers Council (“NPPC”), the national trade association representing the pork industry.

4. WPA is a non-profit trade association representing the interests of pork producers in Wisconsin. WPA’s members include pork producers residing in the Western District of Wisconsin. WPA has its headquarters in this district, in Grant County, Wisconsin. The mission of the WPA is to ensure the future of the Wisconsin Pork Industry and its membership. The WPA is committed to the success of the pork industry and provides the leadership for focusing on the identification and enhancement of opportunities while resolving industry challenges. The leadership maintains timely communications to the membership on actions taken regarding factors impacting the pork industry.

5. The NPPC is a non-profit trade association comprised of 43 state pork producer organizations, including WPA. NPPC represents the interests of the nation’s pork industry. NPPC’s mission is to serve as an advocate for reasonable legislation and regulations, develop revenue and market opportunities, and protect the livelihood of the nation’s 67,000 pork producers. NPPC’s mission includes representing pork producers in administrative and judicial proceedings involving national regulations and other government actions that affect the production of pork in the U.S.

6. I hold leadership positions and serve as a member of the Board of Directors for both organizations. In addition, at NPPC I serve as the organization’s Vice President, as well as Vice Chairman of its Environmental Policy Committee, where I am frequently involved in industry-wide discussions involving the environmental and regulatory performance of the pork industry. I am in frequent communication with our membership and investors regarding the

regulatory challenges facing the industry. In addition, I also served as Chair of the Conservation subcommittee of NPPC's Farm Bill Task Force where I served as the point person for the industry in negotiations with Congress and the United States Department of Agriculture over the development of on farm conservation and environmental protection policies associated with the 2008 Farm Bill.

Background and Agricultural Experience

7. I have always been involved in agriculture. I was born and raised on my farm, and have worked on the farm my entire life, and possess both a BS in Agricultural Economics from the University of Wisconsin, Platteville and an MS in Meat and Animal Production from the University of Wisconsin, Madison.

8. Growing up, my father raised hogs, operated a dairy, and grew row crops. We worked together as a partnership for 22 years before I took over full ownership of the farm.

9. Together with my son Shannon, I own and operate Wolf L+G Farms, L.L.C., a diversified farm located at 5590 Substation Rd, Lancaster, Wisconsin, that includes a farrow to finish hog operation, raising sows and market pigs. We also raise corn, soybeans, and hay, and we have a permanent pasture where we operate a cow-calf operation and also finish raising some cattle.

10. My farm is located on three separate parcels of land, each individually devoted to the raising of animals and growing of crops, plus a pasture where we graze cattle. In total, we own approximately 1250 acres and lease about 500 acres.

11. On Parcel One, I have a barn for finishing the raising of swine, a feedlot for cattle, and I raise row crops. Parcel Two is located across both a road and a pasture on which I graze cattle. Parcel two includes my sow barn and nursery for piglets, some crop fields, and, on the

other side of the crop fields, a separate barn for weaned pigs weighing up to about 55 pounds. Parcel three, located approximately one mile away, is a satellite operation that includes both crop land and space for raising hogs.

12. All the manure from my livestock operations is utilized on the same parcel of land where the livestock operation is located.

The Routine Use of Manure in Agricultural Operations

13. Through my involvement with NPPC and WPA, and through my personal experience in farming, I am familiar with the operations of many pork farms in Wisconsin and around the country. Chemicals on these farms, such as pesticides, fertilizer, cleaning products, and manure (animal excrement) are commonly used in farm operations. In fact, in my experience, farmers typically do not keep chemicals – including manure, if manure is viewed as a “chemical” – on their farms except for use in farm operations.

14. Pork farmers generally consider manure to be a valuable resource. They typically either use it on their farms – or sell or give it to neighboring farmers for use on those farms – primarily as a fertilizer and soil enhancer. Manure contains nutrients – such as nitrogen, potassium, and phosphorus – that are essential for growing crops. In addition, the routine use of manure serves as a soil conditioner, adding organic matter back to the soil, maintaining its richness and productivity, increasing the land’s water retention characteristics, and promoting greater yields than the use of other types of fertilizers.

15. I routinely use a variety of substances in my farm operations. All of the chemical substances at my farm, including manure, are used only for my ordinary farm operations. These substances include pesticides, cleaning agents, and fertilizers including manure.

16. I routinely use the manure produced at my farm as a fertilizer and soil enhancer for the raising of our crops, some of which are used for animal feed. The manure is a valuable resource that, used as a major component of my Comprehensive Nutrient Management Plan (CNMP), reduces the amount of chemical fertilizer that would otherwise be applied to agricultural land and enhances the condition of my soils, ensuring the long term, sustainable productivity of my farm.

17. My farm utilizes a manure management system that involves the collection, storage and land application of manure. Manure falls through slots in the floor of the hog barns and is collected and stored in concrete pits approximately eight to ten feet deep and located directly under the barn. From there, manure is transported and incorporated onto each Parcel's agricultural fields via an umbilical system. The manure is removed from the deep pits and directly pumped through a long hose attached behind my tractor where it is incorporated directly into the land using a chisel plow.

18. In order to maximize the value of my manure and its beneficial characteristics' and maximize the condition of my farms soils, my CNMP incorporates a rotating 4 year term for manure application per parcel. Under the terms of my CNMP, I bank the soils nutrient allocations, in coordination with my crop rotation schedule, from year one by using a combination of manure and the application of a 28% nitrogen commercial liquid fertilizer. This process allows me to practice no till farming for 3 years and achieve a higher level of environmental performance. Within each individual parcel of land I cycle the area from year to year where I spread manure. For each area, the manure is applied in the spring before planting as well as in the fall after harvest.

19. While my individual CNMP is specifically designed for my farm, routine use of the manure as a fertilizer and soil enhancer is typical of the vast majority of livestock operations in Wisconsin and generally throughout the United States, where the manure is treated as a valuable commodity and is the preferred method of fertilization on our farms. In this country, manure from pork and dairy operations is ordinarily applied to fields as a fertilizer and soil enhancer for agricultural crops.

Air Consent Agreement

20. I understand that ammonia and hydrogen sulfide are substances that can be emitted from manure. However, although my farm raises animals that generate manure, I do not know of any way that I can reliably determine the amount of ammonia or other substances being emitted from the manure at my farm. I am aware that universities and scientists have developed preliminary techniques for estimating these rates. However, these estimates vary substantially from technique to technique and also from study to study.

21. Because of the uncertainty concerning the air emissions associated with my farm, I decided to enter into a Consent Agreement with the U.S. Environmental Protection Agency (EPA) in 2006. In total, approximately 2,568 producers, representing 6,267 farms across the country, agreed to participate in the process with EPA regarding our air emissions. This total includes at least 1,856 pork producers.

22. The air consent agreement has provided a mechanism for funding EPA's National Air Emissions Monitoring Study ("NAEMS"), a two year study of livestock emissions being conducted by researchers at Purdue University.

23. NAEMS monitoring is currently underway around the nation. The monitoring phase of NAEMS is currently scheduled to conclude in early 2010. Afterwards, EPA will have eighteen months to evaluate all the monitoring data and then publish emission-estimating methods for use by livestock producers. These emission estimating methods are to be publicly available.

The Pork Industry's Experience with EPCRA Reporting

24. The December 18, 2008 announcement by EPA that pork producers who did not sign an air consent agreement must file reports of the routine emissions from their animal manure under EPCRA has caused significant confusion and concern throughout the industry. While I was not required to make a report because I have signed the air consent agreement, many of my fellow pork producers, both in Wisconsin and around the country, were taken by surprise by EPA's decision. For most, the first time they heard about EPA's new requirements came in mid-January 2009, days before the January 20 "effective date" of the EPA notice. As a senior member of NPPC's leadership and Vice Chair of its Environmental Policy Committee, I heard about many problems producers encountered in attempting to estimate emissions and file reports with their state and local emergency response authorities.

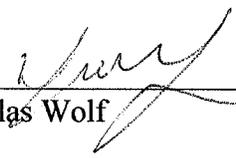
25. Producers ran into three major problems. First, EPA failed to effectively communicate to the agricultural community that the agency had issued a final rule and that EPA was requiring the majority of livestock producers nationwide to report manure air emissions without regard to their routine use of the manure. Second, EPA failed to provide any timely guidance to producers – as promised in EPA's final December 18, 2008 rule (73 Fed. Reg. 76,948, 76,952 (Dec. 18, 2008)) – on how to estimate their emissions or file their reports.

Finally, EPA failed to communicate to state and local emergency response authorities so that they would be prepared to receive these reports.

26. As a result of this failure of communication, the agricultural community across the country was overwhelmed with fear and confusion that continue still to this day. At NPPC, the phone lines were overrun with calls from nervous producers who had no idea how to comply, as well as producers who attempted to comply only to be met with bewilderment or misinformation from the state and local officials receiving the calls. NPPC staff even received phone calls from state and local emergency planning authorities who were confused about the reports and who had been unable to get guidance from EPA.

27. Producers also continue to face difficulty in attempting to estimate their emissions. Without EPA guidance, they were forced to find tools on their own. University extension specialists provided estimating methods, but they have only added to the confusion. In Wisconsin, many producers have tried to estimate emissions using two very different tools that both purport to roughly estimate the amount of emissions that might be associated with the routine manure management practices associated with agricultural operation. One estimator has been distributed by Wisconsin Extension which suggests that a pork producer finishing 2700 pigs will exceed the 100 pound reporting threshold for ammonia attributable to routine manure management activities. A second, more comprehensive estimator distributed by the University of Nebraska suggests that, all else being equal, the reporting threshold for a producer is actually 3333 finishing pigs, 25% higher.

Dated this _____ day of March, 2009.



Douglas Wolf

Subscribed and sworn to before me this

20th day of March, 2009.

Alan Meier

Notary Public

My Commission expires: 3-20-2011

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Doug Wolf to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 4

DECLARATION OF PAUL J. BREDWELL III

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

Nos. 09-1017(L), 09-1104

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WATERKEEPER ALLIANCE, ET AL.

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

PETITIONS FOR REVIEW OF FINAL ACTION
OF THE ENVIRONMENTAL PROTECTION AGENCY

DECLARATION OF PAUL J. BREDWELL III

I, Paul J. Bredwell III, hereby declare:

1. I am the Vice President of Environmental Programs for the U.S. Poultry & Egg Association (USPOULTRY), the world's largest and most active poultry organization. I have held my position with USPOULTRY for more than 9 years. During that period, I have been engaged in all aspects of poultry and egg production. This includes all aspects of environmental issues associated with raising poultry, including byproducts generated while the birds grow.

2. In 1986, I graduated from the Georgia Institute of Technology with a Bachelor's Degree in Civil Engineering. I currently hold a Professional's Engineering License in the states of Georgia, Tennessee, and South Carolina.

3. Prior to joining USPOULTRY I was employed as a consultant engineer and provided civil and environmental consulting services for multiple poultry companies in the United States over a period of 15 years.

4. USPOULTRY is a non-profit organization that progressively serves its poultry and egg members through research, education, communications and technical services. The association aspires to be the leading technical resource and voice for the industries it serves. Members of USPOULTRY include producers and processors of broilers, turkeys, ducks, eggs, and breeding stock, as well as allied companies. Formed in 1947, the association has affiliated organizations in 26 states and has member companies worldwide.

5. An overriding concern of USPOULTRY with regard to reporting ammonia emissions from animal waste is that the lack of a clear scientific basis for calculating those emissions will unavoidably require the submission of reports whose accuracy is unknown.

6. In 2007, animal agricultural organizations and farms that represented major aspects of animal protein production in the United States entered into a consent agreement. The consent agreement included a provision for the agricultural

groups to fund a study, entitled the “National Air Emissions Monitoring Study” (NAEMS). This study collected air emissions data from representative farms every minute of the day over a two-year period. These data were obtained to develop methodologies to estimate emissions from each animal agriculture sector (*i.e.*, broilers, swine, dairy, etc.). After collecting numerous data points that included ammonia concentration, temperature, humidity, and more, researchers discovered that establishing a one-size-fits-all emissions estimation methodology was virtually impossible. Climatic conditions that vary geographically and seasonally affect the decomposition of manure. Likewise, manure-management techniques like house-cleanout frequency, temperature-humidity set points and ventilation fan operation make every farm unique.

7. The lack of any scientifically validated methodology puts poultry and egg producers in an impossible position. To protect themselves from potential civil and criminal liability, they will be forced to submit uncertain emission reports that no one can verify. Current research does not allow a poultry producer to estimate when they exceed the reporting threshold much less know what the upper bound of emissions may be, which is also required when reporting.

8. The citizen lawsuit provisions within the CERCLA and EPCRA statutes are extremely concerning to our members. These lawsuits have the ability to put the livelihood of poultry and egg producers at risk. This risk alone is

intimidating to poultry producers, who may choose to submit release reports for emissions that turn out to be below the legal reporting threshold.

9. In addition, the large number of producers makes communicating the reporting requirement difficult. Raising commercial poultry continues to be an agricultural operation dominated by the relatively small family farmer, with most production occurring under contract with a producer. The farmer or “grower” normally supplies housing with all the necessary heating, cooling, feeding and watering systems, and the labor to facilitate bird growth. The producer supplies the chicks (or poults), feed, and veterinary medicines.

10. The number of broiler growers is estimated at over 32,000, while there are estimated to be more than 8,000 turkey growers, resulting in a total of more than 40,000 poultry growers in the U.S. According to a survey of poultry contract growers conducted by the National Chicken Council and U.S. Poultry & Egg Association,¹ 92% of growers in the U.S. raise 125,000 birds or less each cycle, which is roughly equivalent to five or six poultry houses on site (depending

¹ The survey provides a snapshot of 16,311 poultry growers around the nation; approximately were 500 turkey growers with the balance of responses from broiler growers. Portions of the survey results were published at Starkey, J., CAFO Revisions: Regulation Without Purpose?, WATT PoultryUSA (Jan. 2002).

on the age and the size of the houses).² As demonstrated in the chart below, nearly 60% of broiler growers have less than 75,000 birds, which is equivalent to three to four houses on site:

Distribution by Farm Size (Broilers)

Number of Birds Grown Per Cycle (5-6 cycles per year)	Percentage of Growers in U.S.
1-25K	8.6
25-50k	27.4
50-75k	23.1
75-100k	19.2
100-125k	11.6
125-150k	4.2
150-200k	4.4
200k plus	1.4

11. As stated above, the process of raising poultry for production occurs on thousands of privately owned farms across the country. Multiple agricultural operations take place on these farms to compensate for the thin margins they operate under. In addition to raising poultry, these farms will often raise cattle, grow crops, and grow forage. They are truly small businesses that contract with

² According to the survey by NCC and USPOULTRY, an average broiler grower has approximately 21,000 birds per house, although newer houses can have approximately 25,000 birds per house based on the placing density and the size of the house. The average turkey grower has 3.05 houses with 27,000 birds in each house. Note that most turkey growers likely use one poultry house up to five weeks of age, when the birds are transferred to two “grow out” houses.

poultry companies to grow 1-day old chicks to varying weights according to a specific market.

12. While USPOULTRY offers technical support to poultry and egg producers, these services are extended to them through the USPOULTRY membership the poultry companies hold. As such, USPOULTRY has no contact information for the overwhelming majority of poultry and egg farmers that contract with our members. This fact will make it difficult if not impossible to convey the requirement to report to many poultry producers across the United States.

13. A six-month stay of the reporting mandate will provide EPA and USPOULTRY with the time to develop an outreach campaign that will focus on reaching the largest number of producers possible to make them aware of the upcoming reporting requirement.

14. The following paragraphs demonstrate the difficulty farmers have experienced with the reporting requirements. In August of 2005, the poultry industry filed a petition with the EPA seeking an exemption from EPCRA and CERCLA reporting requirements for the emission of ammonia from poultry houses that operate dry liter systems. Following a three-year rulemaking process the Agency granted all animal feeding operations (AFOs) an exemption from filing CERCLA reports and an exemption for AFOs below the large concentrated animal feeding operation (CAFO) thresholds from filing EPCRA reports.

15. While the poultry industry was disappointed that EPA did not provide the full reporting exemption for ammonia emissions, USPOULTRY attempted to notify as many poultry growers as possible to inform them of the need to submit EPCRA reports if their farm exceeded the CAFO thresholds. USPOULTRY has no way of knowing how many of the approximately 40,000 farms submitted EPCRA reports but the first day of reporting could be easily characterized as chaotic.

16. On January 20, 2009, the day that the EPCRA reporting requirement went into effect, I received a call from the office of Maryland State Emergency Planning Commission asking me what the reports were and what were they supposed to do with them. I informed the caller the reports were being submitted in response to EPA's rule and in accordance the EPCRA reporting requirement. The individual I spoke with was puzzled as to why the reports were being submitted and acknowledged it was wasting their time. To my knowledge, neither the multiple reports filed on January 20, 2009 nor any of the EPRCA reports filed later resulted in an emergency response.

17. The situation was identical when poultry farmers notified Local Emergency Planning Committees (LEPCs), which are typically members of the local fire departments – often volunteer fire departments. In an attempt to understand how the LEPCs viewed receiving EPCRA reports, USPOULTRY reached out to the president of the National Association of SARA Title III Program

Officials (NASTTPO), Tim Gablehouse. Mr. Gablehouse informed USPOULTRY that while their organization is very interested in understanding the hazards their members may face when responding to an emergency on a farm, EPCRA reports that merely notify of releases of non-life-threatening, low concentrations of ammonia, do not provide meaningful information that enhances their ability to plan for emergency responses.

18. Nothing has changed since 2009 that would make a six-month stay of the reporting mandate affect state and local emergency planning capabilities or threaten the life of first responders or the public.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of July, 2017, in Fayetteville, Arkansas.



Paul J. Bredwell III, P.E.
Vice President – Environmental Programs
U.S. Poultry & Egg Association

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Paul J. Bredwell III to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 5

DECLARATION OF TIMOTHY R. GABLEHOUSE

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

Nos. 09-1017(L), 09-1104

**IN THE UNITED STATES COURT OF APPEALS
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Respondent.

PETITIONS FOR REVIEW OF FINAL ACTION
OF THE ENVIRONMENTAL PROTECTION AGENCY

**DECLARATION OF TIMOTHY R. GABLEHOUSE IN SUPPORT OF
NATIONAL PORK PRODUCERS COUNCIL'S AND U.S. POULTRY
& EGG ASSOCIATION'S PETITION FOR REHEARING**

DECLARATION OF TIMOTHY R. GABLEHOUSE

I, Timothy R. Gablehouse, hereby declare the following:

1. I am the President of the National Association of SARA Title III Program Officials.
2. Attached as Exhibit A to this Declaration is a true and correct copy of a letter that I sent to U.S. Environmental Protection Agency Administrator Scott Pruitt dated June 1, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of June, 2017, in Denver, Colorado.

/s/ Timothy R. Gablehouse
Timothy R. Gablehouse

EXHIBIT A



National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

June 1, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

Re: CAFOs and Emergency Release Reporting

Dear Administrator Pruitt:

I am writing on behalf of the National Association of SARA Title III Program Officials (NASTTPO), which is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCS), Local Emergency Planning Committees (LEPCs), various federal, state and local agencies, private industry and the vast number of volunteers that perform emergency planning and emergency response activities for their communities. Our membership is dedicated to working together with regulated facilities, transportation entities and communities at large to improve community preparedness for emergency events including hazardous materials releases.

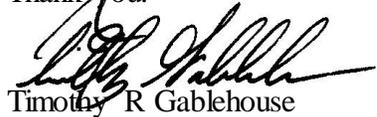
NASTTPO over the past several years has had the opportunity to work with various industry groups on emergency preparedness related rulemaking programs at EPA. These experiences have taught us that the most important thing to LEPCs and first responders is not detailed regulatory requirements for a facility's relationship to these groups, but rather the simple act of open dialog and coordination. Following the DC Circuit decision in *Waterkeeper Alliance v EPA*, we have had meaningful and encouraging discussions with the U.S. Poultry and Egg Association along these lines. NASTTPO believes that open dialog and coordination can be more effective than release reporting for farms that do not handle quantities of EPCRA EHS chemicals but are nevertheless expected to report regarding animal manure management.

We have had experience with EPCRA emergency release reports as well as CERCLA continuous release reports from farms primarily regarding ammonia from animal manure management. These reports are of no particular value to LEPCs and first responders and they are generally ignored because they do not relate to any particular event. (This should be contrasted to the few farms that utilize gas chlorine for water treatment where emergency release reports are useful because they are event specific.)

LEPCs and first responders do not need more generic data. They need information that is locally relevant and upon which they can act. This goal is best obtained by a program that promotes coordination between the regulated facilities and these local groups. Recent discussions suggest that such a program involving farms may be achievable.

We are in favor of reducing regulatory burdens if coordination on the information needs of LEPCs and first responders occurs. The information we want from farms is community-specific. Only the LEPC and local first responders can determine what information they need from a farm as part of their emergency planning process. What we really need is coordination between the farm and local responders and LEPCs. We want them to talk to each other.

Thank you.



Timothy R Gablehouse
President
410 17th St, Ste 275
Denver CO 80202
(303) 572-0050

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Timothy R. Gablehouse to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

**ARGUED DECEMBER 12, 2016
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
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EXHIBIT 6

DECLARATION OF THOMAS R. HEBERT

ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017

Nos. 09-1017(L), 09-1104

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Respondent.

PETITIONS FOR REVIEW OF FINAL ACTION
OF THE ENVIRONMENTAL PROTECTION AGENCY

DECLARATION OF THOMAS R. HEBERT

I, Thomas R. Hebert, hereby declare:

1. I am the managing director of Bayard Ridge Group LLC in Washington, DC. I am a regulatory, programmatic, and legislative policy consultant who has worked for livestock and poultry farmers for 19 years, advising them on environmental policy matters that directly involve their farming operations. I hold an undergraduate degree in Horticulture and a Master of Science degree in Agriculture Economics, both from Michigan State University.

2. Before entering the private sector as a consultant, I was the Deputy Under Secretary for Natural Resources in the U.S. Department of Agriculture (USDA) from 1993 to 1998. In that role, my primary responsibilities included the development and implementation of policy for the programs of the USDA's Natural Resources Conservation Service. I also led much of USDA's work with other federal agencies and the White House to develop the Administration's 1996 Farm Bill proposals, as well as the implementation of Farm Bill provisions. From 1989 to 1993, I served as a Senior Economist for the U.S. Senate Committee on Agriculture, Nutrition and Forestry. During that time, I played a key role in the development and passage of the conservation title for the 1990 Farm Bill.

3. My areas of policy and regulatory expertise include Clean Water Act regulatory requirements applicable to concentrated animal feeding operations (CAFOs); manure and nutrient management related to water quality; and monitoring of air emissions from manure as it may relate to Federal requirements and policy stemming from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know-Act (EPCRA). Livestock and poultry farmers look to me for expert advice and counsel on whether and how Federal environmental regulatory requirements apply to their operations.

4. Through my roughly 19 years of consulting experience and my prior government service, I have become deeply familiar with farmers' livestock and poultry production systems, as well as how they manage those systems. I have developed a thorough understanding of how livestock and poultry farmers are affected by environmental regulatory requirements, including how requirements can vary depending on the size of their farms. I also understand how the farmers' ages and their backgrounds shape and affect how they react to and deal with such requirements.

5. There are no nationally recognized or widely accepted air emissions estimation methodologies that livestock and poultry farmers or regulatory authorities could use to calculate or estimate ammonia (or other) air emissions from the manure produced by animals raised at livestock and poultry farms. I believe that the manure being managed by tens of thousands of livestock and poultry producers may be emitting to the air more than 100 pounds of ammonia per day. Farms that exceed that threshold would be subject to the CERCLA and EPCRA reporting requirements.

6. These tens of thousands of livestock and poultry producers will include all of the large CAFOs in this country, and essentially all of the medium-sized producers, as well as a large proportion of the small livestock and poultry producers. The vast majority of all of these operations will have either limited or

no experience with mandatory environmental reporting under state or Federal law. In my professional judgment, except for approximately 1,000 of these farms, these operations do not have staff to handle such reporting requirements, nor do they have outside legal counsel with experience in such matters. Once they are informed of reporting requirements, farmers will take them with the utmost seriousness. Without question, these farmers will find mandatory, Federal reporting requirements to be highly intimidating. It is not an obligation that they will take lightly and they will be extremely fearful of possible civil and criminal consequences if they make mistakes in what they report, or how they report it. Lacking prior experience or context, they will be looking for precise direction as to how to properly and correctly estimate their reported emissions.

7. Given that there are no nationally recognized or widely accepted air emissions estimation methodologies that livestock and poultry farmers or regulatory authorities can use, farmers will be forced to rely on research or monitoring data from farms that do not have the same operating setup as their own systems, are not located in the same geographical locations, or do not have the same climates and operating conditions. Farmers will either have to use these estimates or extrapolate from those estimates to develop estimates for their own operations. In either case, they will have to do this knowing that the estimates are

probably wrong. As a result, they will be fearful about exposing themselves to significant new liabilities for errors arising through no fault of their own.

8. These fears will be profoundly magnified by the complexity and scope of the written reporting requirements such as those set forth in EPA's regulations. Just to name a few items, farmers will be required to provide information on the identity and location of "sensitive" populations and ecosystems within a one-mile radius of their farms; and the frequency of the release and fraction of the release from each release source and the specific period over which it occurs. In addition, many of the most critical terms currently used in the current regulations are totally unfamiliar to farmers, and will cause confusion. For instance, how will farmers know whether, under CERCLA, the ammonia that is released into the air from manure on their farms constitute "continuous and stable" emissions when those farmers do not have a uniform, reliable method to estimate these emissions? And, assuming their emissions are "continuous and stable," how will farmers know whether there is a "statistically significant increase" in emissions without a uniform, reliable method to estimate them? No guidance on these and a host of other questions relevant to CERCLA/EPCRA emergency release reporting by farming operations has ever been issued by EPA. Nearly every livestock and poultry producer that I have spoken with on this subject of reporting under CERCLA over the last three months has had these and other questions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of July, 2017, in Washington, DC.



Thomas R. Hebert

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Thomas R. Hebert to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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WATERKEEPER ALLIANCE, ET AL.,))	
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Petitioners,))	
))	Nos. 09-1017 &
v.))	09-1104 (Consolidated)
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U.S. ENVIRONMENTAL))	
PROTECTION AGENCY,))	
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Respondent.))	
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 7

DECLARATION OF LAURIE FISCHER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL PORK PRODUCERS)
 COUNCIL,)
)
 WISCONSIN PORK ASSOCIATION,)
)
 and)
)
 DAIRY BUSINESS ASSOCIATION OF)
 WISCONSIN,)
 Plaintiffs,)
)
 v.)
)
 LISA P. JACKSON)
 Administrator, United States)
 Environmental Protection Agency,)
)
 Defendant.)
)

Civil Action No. 3:09-cv-00073-slc

DECLARATION OF LAURIE FISCHER
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Laurie Fischer, declare as follows:

1. I am the Executive Director of the Dairy Business Association of Wisconsin, Inc., ("DBA") located in Outagamie County, Wisconsin. I make this declaration based upon my personal knowledge and in support of the Motion for Summary Judgment of the National Pork Producers Council, Wisconsin Pork Association and Dairy Business Association, Inc.

2. DBA is a non-profit trade association representing milk producers, processors, dairy professionals, and associated vendors. DBA's charge, embodied in its mission statement

“Keeping the Cows in Wisconsin,” is to grow the state’s dairy industry and dairy processing infrastructure and preserve Wisconsin as “America's Dairyland.”

3. DBA’s members include at least 100 farms in Wisconsin that would qualify as “large CAFOs” because they house more than 700 mature dairy cows or 1000 cattle other than mature dairy cows. DBA’s members include dairy farms in the Western District of Wisconsin.

4. I am personally aware of the nature of the operations of most of DBA’s 677 farm members, as well as the operations of other dairy farms in Wisconsin and elsewhere. Chemicals on these farms, such as pesticides, commercial fertilizer, substances used for cleaning, and manure (including manure, other animal excrement, and bedding or other materials that become intermingled with manure), are commonly used in farm operations. The farms that I know of use chemicals or other substances only in their ordinary farm operations. They do not use chemicals for other purposes.

5. The manure produced at dairy farms is used principally as a fertilizer and soil enhancer on fields where farm crops are grown, either by the dairy farm itself or by other nearby farms. Manure is widely recognized as an excellent source of plant nutrients and as a soil enhancer that provides positive benefits to soil quality. Manure contains many of the elements required for plant growth (including nitrogen) and therefore is a good source of nutrients. Manure is routinely used on farms, including dairy farms, as a valuable resource that reduces the amount of commercial fertilizer that would otherwise be applied to agricultural land.

6. It is my understanding that ammonia, hydrogen sulfide, and other chemical substances are emitted from animal manure.

7. I have been informed by some DBA members that they have attempted to report their routine air emissions to local and state authorities in response to the U.S. Environmental

Protection Agency's December 18, 2008 Federal Register notice. These farmers indicate that the local and state authorities have expressed confusion as to why farmers were calling to report routine farm air emissions and what they were supposed to do with the information provided. Some agency staff have asked farmers for information regarding the EPCRA reporting requirements.

8. I have been informed by DBA members that the chemicals substances, including manure, on their farms are used only for ordinary farming purposes but that they have made emergency reports under EPCRA for fear that they may be subject to large fines or criminal penalties if they do not make these reports.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March, 2009.

s / Laurie Fischer
Laurie Fischer

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Laurie Fischer to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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WATERKEEPER ALLIANCE, ET AL.,))	
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Petitioners,))	
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PROTECTION AGENCY,))	
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 8

DECLARATION OF CHAD BIERMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

NATIONAL PORK PRODUCERS
COUNCIL,

and

WISCONSIN PORK ASSOCIATION,

Plaintiffs,

and

DAIRY BUSINESS ASSOCIATION,
INC.

Case No: 3:09-cv-00073-slc

Intervening Plaintiff,

v.

LISA P. JACKSON
Administrator
United States Environmental Protection
Agency,

Defendant.

**DECLARATION OF CHAD BIERMAN IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

I, CHAD BIERMAN declare as follows:

1. My name is Chad Bierman and I reside in La Crosse County, Wisconsin. I make this declaration based upon my personal knowledge.

2. I am a member of the Wisconsin Pork Association and voluntarily contribute "check off" funds to the National Pork Producers Council. I understand that the information that I am providing in this declaration will be used to determine whether my farm and similar farms qualify for a statutory exemption to

emergency reporting requirements under the federal Emergency Planning and Community Right-to-Know Act (“EPCRA”). I have authorized the National Pork Producers Council and Wisconsin Pork Association to represent my interests for this purpose.

3. I have spent nearly all my life in and around animal agriculture. During my childhood, my family operated a pork farm. In college I studied agriculture. I have received a Bachelor of Science degree in animal science and a Master’s Degree in animal science and genetics, both from South Dakota State University. I am currently a Ph.D. candidate in the animal science department at the University of Wisconsin—Madison campus.

4. I am the General Manager of the Babcock Genetics, Inc. (“Babcock”) pork farm located at N6671 County Hwy XX, Holmen, Wisconsin (the “Babcock Pork Farm”). The Babcock Pork Farm is located on one parcel of land that is devoted to the raising of swine for the production of pork.

5. The Babcock Pork Farm independently houses more than 2,500 swine that weigh 55 pounds or more. These swine are raised in environmentally controlled barns that have collection pits under the slatted floors.

6. A variety of chemical substances are used in the ordinary farming operations of the Babcock Pork Farm. These substances include pesticides, chemical fertilizers, cleaning agents, and manure (swine excrement, which may be mixed with dirt, bedding material, or other materials from the areas where the

animals are housed). I am aware of no chemicals at my farm other than those used in routine farm operations.

7. Manure produced at the Babcock Pork Farm is used for farm purposes, either as a fertilizer or soil enhancer on fields where crops are grown. Manure is widely recognized as a valuable resource because it is an excellent source of plant nutrients and a soil enhancer that provides positive benefits to soil quality. Manure contains many of the elements required for plant growth (including nitrogen, phosphorus and potassium) and therefore is a good source of nutrients.

8. It is my understanding that ammonia and hydrogen sulfide are substances that can be emitted from manure, including from the manure at the Babcock Pork Farm.

9. The Babcock Pork Farm utilizes a manure management system that involves the collection, storage, and land application of manure. Manure and other substances, such as feed and water, fall through perforations in the floor of the barns and into storage pits. Periodically, this manure is drained from the storage pits with the assistance of a scraping device and into a lift station. From the lift station, the manure is pumped into a two-phase purifying lagoon system. The manure is pumped into the first lagoon, which breaks down coarse solids. From this first lagoon, water flows into a second lagoon for further purifying. Both of these lagoons have clay and synthetic liners on top of the clay liner. The

manure is converted to liquid form and to date we have not had to remove solids from either lagoon.

10. Liquid from the second lagoon is pumped through an underground piping system to a pivot irrigation device. This pivot irrigation device spreads the liquid nutrients onto agricultural fields on which crops are grown. During the crop season, the pivot irrigation system has the potential to operate virtually every day.

11. Babcock owns or leases all of the 600 acres of agricultural fields upon which manure is applied to fertilize crops. The crops grown on these fields include corn, soybeans and alfalfa.

12. The Wisconsin Department of Natural Resources (“WDNR”) has issued a Wisconsin Pollution Discharge Elimination System (“WPDES”) permit (No. WI-005-6529-04-0) authorizing and regulating the manure management activities associated with the agricultural operations on the Babcock Pork Farm. Among other things, this WPDES permit requires that all landspreading of manure comply with a “Nutrient Management Plan” that is approved by the WDNR.

13. I cannot conclusively or reliably determine the amount of ammonia, hydrogen sulfide, or other substances being emitted from the manure on the Babcock Pork Farm. Universities and others have developed preliminary techniques for estimating these rates. However, I understand that these estimates vary substantially from technique to technique and also from study to study.

14. I have used an emission estimator prepared by the University of Nebraska that purports to roughly estimate the amount of ammonia emissions that

might be associated with the manure at the Babcock Pork Farm. Depending upon the assumptions that are made, this estimator suggests that there could be between 165 and 335 lbs/day of ammonia emissions attributable to the manure at the Babcock Pork Farm.

15. On January 20, 2009, I telephoned the designated contacts for the La Crosse County Emergency Planning Committee and Wisconsin Emergency Management to report the ammonia emission estimates associated with the Babcock Pork Farm as derived using the University of Nebraska emissions estimator. During my conversation with the Wisconsin Emergency Response contact, I was told that its staff was unaware that farms were required to report emissions-related information until that day (*i.e.*, January 20, 2009) and that staff were not prepared for the calls.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20th day of March, 2009.

s / Chad Bierman

Chad Bierman

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Chad Bierman to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung

**ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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WATERKEEPER ALLIANCE, ET AL.,))	
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U.S. ENVIRONMENTAL))	
PROTECTION AGENCY,))	
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Respondent.))	
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**NATIONAL PORK PRODUCERS COUNCIL’S AND U.S. POULTRY
& EGG ASSOCIATION’S BRIEF IN SUPPORT OF EPA’S MOTION
TO STAY ISSUANCE OF MANDATE**

EXHIBIT 9

DECLARATION OF MICHAEL C. FORMICA

ARGUED DECEMBER 12, 2016
DECIDED APRIL 11, 2017

Nos. 09-1017(L), 09-1104

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WATERKEEPER ALLIANCE, ET AL.

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

PETITIONS FOR REVIEW OF FINAL ACTION
OF THE ENVIRONMENTAL PROTECTION AGENCY

DECLARATION OF MICHAEL C. FORMICA

I, Michael C. Formica, hereby declare:

1. I am currently employed by the National Pork Producers Council (NPPC), a trade association representing the nation's hog farms, in its Washington, D.C. public policy office, where I serve as the Assistant Vice President & Legal Counsel, Domestic Affairs. This declaration is made based upon my personal knowledge and is offered in support of a request that this Court stay its mandate for a period of six months.

2. I have been an employee of NPPC since August 2006. During the course of my employment, though my duties have grown, I have been the primary individual responsible for dealing with environmental compliance issues on behalf of the organization. I also manage NPPC's Environmental Policy Committee. This work has given me extensive experience working directly with pork producers and other livestock farmers regarding their compliance with federal environmental laws and regulations generally, and specifically with regard to air emissions reporting rules.

3. In this declaration I will focus on my experience with the CERCLA and EPCRA reporting rules.

4. The struggle to estimate emissions from pork farms is not academic, or limited to the smallest farms. Just this week I have had conversations with leading pork producing companies—sophisticated operations—that are struggling with the details of what they are required to report, the process they need to use to calculate their estimated emissions, and the accuracy of the various techniques as applied to particular farms.

5. Most pork farms are smaller farms not previously subject to the reporting rules. In the rural areas where these farmers reside, just as there is a consistent lack of medical professionals, there is a lack of legal assistance. And the legal professionals that do provide services in rural areas tend to be generalists,

focusing on contracts, estate planning, and real estate, not specialists in federal environmental law. As a result, these farmers will have difficulty understanding the reporting requirements, and will seek guidance from EPA and the USDA.

6. I experienced this problem firsthand in 2009 when the reporting rules first took effect. Mass confusion resulted from the lack of guidance at that time, much of it caused by regulatory officials who were unaware that the reports were coming in or what they were for.

7. When the 2008 rule was issued, EPA failed to provide any guidance as to how agricultural operations should calculate, or even estimate, their emissions. Similarly, EPA provided no guidance, or even notice, to the state or local authorities receiving these reports as to what they would receive and why.

8. The result was chaos. Producers experienced multitudes of problems filing the reports. Many of the state and local emergency response coordinators at the time used fax machines. Typically, after the first 20 or so reports arrived, the fax machines ran out of paper and rejected the hundreds of reports that followed. In other offices, the voicemail systems were overwhelmed. We also heard reports that some offices that were open simply took the phone off the hook because so many reports were coming in.

9. In some states, instead of a lack of information, there was a significant amount of disinformation. For instance, producers in the state of Illinois were told

by state officials that there was no reporting requirement and that the rule was simply an internet hoax. Officials from EPA Region 4 were reported to have told state and county officials in North Carolina that they did not need to accept the reports and instead to direct any farmers to the EPA Office of Water.

10. Most shockingly for me personally was that when I returned home after attending the Presidential Inauguration (under EPA's 2008 Rule, EPCRA reports were due to be filed on January 20, 2009) I had phone messages from local officials from around the country who were trying to figure out why these reports were filed. They had found my home telephone number after hearing from pork producers trying to make the reports that I had information on the regulatory program that was prompting these reports.

11. If the Court's mandate were to issue immediately, we could expect something similar to occur today—but on a larger scale, because the universe of farms subject to the rule would be significantly greater. We conservatively estimate that there are somewhere between 60,000 and 100,000 livestock farms nationwide that might potentially be subject to a reporting requirement.

12. I had staff at NPPC examine the reporting rate at the National Response Center. As of July 26, 2017, there have been a total of 13,478 reported releases in 2017 to the National Response Center based upon its annual table of

reports received published at <http://nrc.uscg.mil/>. That averages out to a daily rate of 65.11 reports a day received by the NRC.

13. Going back to 1990, the average daily rate for reports to the National Response Center is 89.52, with the total volume of reports received in any one year ranging from a high of 33,665 in 1994 to the 24,193 reports received last year (in 2016). However, when this Court's decision takes effect, the National Response Center will likely receive significantly more reports over a few days than it has ever received in a full year over the 27 years of its existence.

Executed this 27th day of July, 2017, in Washington, D.C.



Michael C. Formica

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2017, I caused copies of the foregoing Declaration of Michael C. Formica to be served by the Court's CM/ECF system, which will send a notice of the filing to all registered CM/ECF users.

/s/ David Y. Chung

David Y. Chung