Wyoming Department of Agriculture

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The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

February 22, 2011

Wayne Bogovich
National Engineer, Conservation Engineering Division
Department of Agriculture
Natural Resources Conservation Service
1400 Independence Ave. SW,
Room 6136, South Building
Washington, DC 20250

Dear Mr. Bogovich:

Following are the comments from the Wyoming Department of Agriculture (WDA) on Natural Resources Conservation Service's (NRCS) National Handbook of Conservation Practices and proposed changes to Nutrient Management Code 590 and Waste Facility Closure Code 360.

Our comments are specific to our mission within state government: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this proposal has major impacts upon our agriculture industry, our natural resources and the welfare of our citizens, we believe it is important you continue to inform us of proposed actions and decisions and provide us the opportunity to express pertinent issues and concerns.

The WDA appreciates NRCS efforts to incorporate scientific and environmentally sound practices on the nation's farms and ranches. We believe farmers and ranchers recognize the importance of their roles as environmental stewards while also remaining economically viable. We also support NRCS using Land Grant University studies to improve not only the environment, but also efficiencies and economics of today's agricultural producers. These Land Grant Universities in conjunction with the Cooperative Extension Service develop publications to educate agricultural producers of the most current findings and tested practices. While the end goal remains the same, the variety of ways to achieve the goal is contingent upon a variety of factors, thus utilizing Best Management Practices (BMPs).

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We are extremely concerned the NRCS revisions to Codes 590 and 360 neglect to consider the past programs and efforts, which utilized thousands of tax payer dollars to develop and incorporate site specific BMPs to reduce soil erosion, air pollution and water contamination. The NRCS programs are voluntary and often require financial assistance or matching funds from landowners. The changes to Code 590 and 360 are toeing the line of regulation by incorporating specific expectations and standards related in this case to Nutrient Management and Waste Facility Closure. We strongly encourage the NRCS remain autonomous from regulatory agencies such as the Environmental Protection Agency.

The Federal Register states *"NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide."* We are concerned the practices are not optional from state to state or region to region. Should Wyoming incorporate these changes to Code 590 and 360, those farmers and ranchers who choose to participate in NRCS programs will no longer have the ability to incorporate locally tested BMPs on their land.

Wyoming producers have worked diligently to improve their operations to reduce or eliminate surface and ground water contamination through BMPs developed at the local level by considering the area's precipitation, soil type, slope and proximity to surface water. The proposed draft changes to Code 590 are clearly developed by staff from the Midwest, who have unfortunately neglected to consider the negative impacts the changes will have on farmers and ranchers outside the Midwest.

The NRCS drafted language in the Draft Revision to Code 590 in September 2010, would require producers who apply manure to their land to take soil samples every 20 acres. While this may not cause small Midwestern or Eastern farmers with limited acreage a substantial expense, for those farmers and ranchers in the Western United States, taking a soil samples every 20 acres on one section of land would cost well over $1,000 for the soil tests, not including expense and time for the landowner to collect the samples and the cost for manure samples. We support removing the 20 acre or less sampling out of Code 590.

Additional and significant changes to Code 590, which also impact Code 360, state the following:
"Nutrients shall not be surface applied (except under emergency provisions in accordance with State law):

- *To frozen and/or snow-covered soils*
- *During seasons of high runoff potential*
- *During periods of winter dormancy*
- *When the top two inches of soil are saturated from rainfall or snow melt, and there is a high risk of transport of nutrients off-site.*

Treatment to measures shall be planned to address the movement of manure and nutrients to subsurface drainage (tile) and/or surface drained fields."

While we can appreciate the concerns of NRCS in addressing winter application of manure and contamination of surface waters, we strongly disagree with your agency developing regulatory "rules," which are not only site specific to areas of the Midwest, but also heavily related to dairy operations. NRCS not only failed to seek information from their offices in other states, they also failed to seek information online from Land Grant Universities and agencies. We offer the following excerpts from online articles and recommendations:

Wallaces Farmer article published on December 18, 2010 and titled "Winter Application of Manure: Follow Regulations, Use Common Sense" states: *"This law applies to liquid manure from confinement feeding operations that have more than 500 animal units in confinement. This law does not apply to:*

- *Manure from open feedlots*
- *Dry manure (frozen manure is not dry manure)*
- *Liquid manure from small animal feeding operation (confinements with 500 animal units or less)*
- *Liquid manure that can be appropriately injected or incorporated into the soil on the same date of application."*

http://www.wallacesfarmer.com/story.aspx/winter/application/of/manurefollow/regulations

The Saskatchewan Ministry of Agriculture has a publication dated November 2010 and titled "Contingency Planning for Winter Manure Application." The articles reads *"...spreading liquid or solid manure on snow or frozen ground is not an environmental hazard if proper precautions are observed."* The publication gives specific considerations for those producers who may have to apply manure in winter due to lack of storage or for other reasons.
http://www.agriculture.gov.sk.ca/planning_for_winter_manure_application

Another publication from the Ontario Ministry of Agriculture Food and Rural Affairs dated September 2010 titled "Winter Application of Manure and Other Agricultural Source Materials" discusses why winter application of manure is not recommended in their area due to possible runoff, they have provided examples when it is acceptable and provides recommendations to choosing appropriate fields and application.
http://www.omafra.gov.on.ca/english/engineer/facts/10-073.htm

Iowa State University published an article in December 2006 titled "Winter manure application." This article offers the following BMPs:

"Anytime manure is applied on frozen ground, there is an increased risk of environmental degradation. If manure application must take place in the winter time, the following are some guidelines to minimize runoff and subsequent loss of nutrients:

- *Apply manure to level ground.*

- *If applying manure on a terraced field or sloping field, avoid application to areas that drain to tile intakes that directly discharge to surface or ground water.*
- *Do not apply manure in grassed waterways.*
- *Apply the manure early in the winter prior to significant snowfall.*
- *Stay away from tile intakes, creeks, streams and other surface water.*
- *Do not apply manure on top of deeper snow cover, especially later in the winter.*
- *Applying manure on soybean stubble where less snow is captured in preferable to applying to standing cornstalks."* http://www.agronext.iastate.edu/immag/manureonsnow/Extension%20Guidelines%20-%20WinterNutrientApplication.pdf

A final article from the Maryland Department of Agriculture dated 2004 and titled "Timing of Nutrient Application" provides specific guidelines to Winter Application of Manure from November 16 through February 28. http://www.mda.state.md.us/resource_conservation/nutrient_management/manual/timing_of_nutrient_application.php

Winter application of manure directly impacts agricultural producers who choose to implement Code 360, Waste Facility Closure. Code 590 will inhibit the closure of facilities such as feedlots due to the severe restriction of applying manure during winter months. The recommendations to amend the soil and to reclaim the site are contingent upon removal of manure. We encourage NRCS to revisit Code 360 and consider the timeline in which a closure can actually occur.

The application of manure in Wyoming is limited to a very short window of time. Snow and winter conditions begin in late September or early October through early to mid May. The NRCS recommendations to Codes 590 and 360 are simply too restrictive. We encourage Wyoming NRCS State Conservationist to not only deny accepting these recommendations into section IV of the electronic Field Office Technical Guide, but to also provide site specific examples where these recommendations are not applicable to Wyoming and many other Western states.

The WDA supports educating agricultural operators when applying manure in winter and encourages producers to consider possible environmental degradation, including surface and ground water contamination; we do not support NRCS developing nationwide regulations and practices. Many farm and ranchlands in Wyoming are not snow covered throughout the winter and are not saturated. Additionally many of the fields where farmers may apply manure are hay meadows where slope is minimal and runoff is subsequently reduced.

We believe educating farmers and ranchers to the hazards of manure application and possible impacts to their own drinking water is a more appropriate role for NRCS. The WDA is willing to partner with the Wyoming Association of Conservation Districts and the Wyoming NRCS to incorporate BMPs for our site specific locations and operations. We strongly encourage NRCS to remove any recommendations, which have regulatory

implications or partnering with regulatory agencies where voluntary, cost-share programs are incorporated. The agriculture industry is grateful to the NRCS for their ability to fund programs and provide technical assistance. However, if NRCS deviates from a voluntary agency to a regulatory agency, the number of agricultural producers willing to partner with NRCS will decline dramatically.

We appreciate the opportunity to comment and encourage NRCS staff at the national level to contact states regarding negative impacts of Code 590 and 360 before finalizing the changes.

Sincerely,

Jason Fearneyhough

Jason Fearneyhough
Director

JF/jw

Cc: Governor's Planning Office
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