

**Environmental Integrity Project, Socially Responsible Agriculture Project,
Waterkeeper Alliance, Illinois Citizens for Clean Air & Water,
Center for Biological Diversity, Animal Welfare Institute, Food & Water Watch,
Sierra Club, Ohio Environmental Stewardship Alliance,
National Sustainable Agriculture Coalition, Ohio Environmental Council,
Friends of Family Farmers, Idaho Conservation League,
Center for Food Safety, Family Farm Defenders**

September 16, 2010

Jeff Schmidt
Acting Designated Federal Official
USDA/Natural Resources Conservation Service
420 South State Road 7, Suite 160
Royal Palm Beach, Florida 33414

VIA ELECTRONIC AND FIRST CLASS MAIL

RE: Nominations for the Agricultural Air Quality Task Force

Dear Mr. Schmidt:

The groups represented above join in submitting this endorsement letter in response to the Notice of Request for Nominations for the Agricultural Air Quality Task Force (“AAQTF”). Notice of Request for Nominations to the Task Force on Agricultural Air Quality, 75 Fed. Reg. 45,091-45,092 (Aug. 2, 2010). While we support AAQTF efforts to determine the extent to which agricultural activities contribute to air pollution and ways in which the agricultural industry can improve air quality, we are concerned that the previous AAQTF did not include a representative number of scientific and policy experts capable of effectively addressing environmental interests, public health and welfare, and the perspectives of independent farmers. We therefore write to endorse the nominations of several agricultural, environmental science and policy experts to the task force who are qualified to provide the representational balance required by the AAQTF’s authorizing legislation and the Federal Advisory Committee Act (“FACA”).

As you are aware, available evidence indicates that the health consequences of agricultural air pollution are serious for workers and for the public. *See* Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America* (2008); Iowa State University and The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study* (February 2002); Renee Sharp and Bill Walker, Environmental Working Group, *Particle Civics: How Cleaner Air in California Will Save Lives*

and Save Money (2002); S. Wing & S. Wolf, *Intensive Livestock Operations, Health, and Quality of Life Among Eastern North Carolina Residents*, 108 *Envtl. Health Persp.* 223-38 (2000); K. Thu et al., *A Control Study of the Physical and Mental Health of Residents Living Near a Large-Scale Swine Operation*, 3 *J. Agric. Safety & Health* 1, 13-26 (1997).

Recent studies demonstrate that children are particularly vulnerable to the adverse effects of agricultural air emissions. Children who live near Concentrated Animal Feeding Operations (“CAFOs”) have a higher risk of developing severe symptoms consistent with asthma. See J. Merchant, et. al., *Asthma and Farm Exposures in a Cohort of Rural Iowa Children*, 113 *Envtl. Health Persp.* 353 (2005). In addition, recent data shows that minority and lower-income students are most likely to be exposed to airborne effluent from swine CAFOs near schools. Mirabelli, et. al., *Race, Poverty, and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations*, 114 *Envtl. Health Persp.* 591 (2006).

In light of the widely recognized health and environmental effects of CAFO air emissions, and the importance of the AAQTF deliberations on these and related issues, the lack of a sufficiently diverse group of scientific experts, family farmers, public health, and environmental policy representatives on the task force would not ensure the representational balance mandated by law and could jeopardize the formation of credible public policy. We therefore have endorsed several nominees below to ensure representational balance on the task force.

I. The Task Force Must Include Representatives from All Sectors Affected by Agricultural Air Quality Decisions, Including the Public

The authorizing legislation for the AAQTF states that the task force “shall be comprised of employees of the Department of Agriculture, industry representatives, and other experts in the fields of agriculture and air quality.” 7 U.S.C. § 5405(d)(2) (2006). Because FACA, which governs the responsibilities of advisory committees, applies to the AAQTF, the task force’s authorizing legislation must be read in tandem with FACA. See 67 *Fed. Reg.* 60,208 (Sept. 25, 2002) (stating that the requirements of FACA apply to the AAQTF). This requires that the task force be fairly balanced with representatives from all sectors affected by agricultural air quality decisions, including the public. Therefore, while we are pleased that The Notice of Request for Nominations specifies that human health experts should be included as members of the AAQTF, we are disappointed that the Notice fails to solicit nominations for environmental advocates. Failure to include representatives from the environmental community would directly contravene section 4 (c) of the Task Force’s own charter, would fail to conform with FACA, and would undermine the Task Force’s purpose of better understanding agricultural air emissions.

A. FACA Requires Committee Membership to Be Fairly Balanced

Congress passed FACA in 1972 to address whether and to what extent committees, boards, and councils should be maintained to advise Executive Branch officers and agencies. *See* 5 U.S.C. app. 2 § 2(a) (2008); *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 445-46 (1989). Although acknowledging that advisory committees "are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government," 5 U.S.C. app. 2 § 2(a), Congress feared the proliferation of costly committees that could be dominated by representatives of industry and other special interests seeking to advance their own agendas. *See* H.R. Rep. No. 92-1017 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3491, 3496.

In striking a balance between the benefits and drawbacks of advisory boards, FACA mandates that advisory committee membership be "fairly balanced in terms of the points of view represented and the function to be performed by the advisory committee." 5 U.S.C. app. 2 § 5(b) (2). The legislative history makes clear that Congress intended the "fairly balanced" requirement to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee. *See* S. Rep. No. 1098 (1972).

B. The Current Committee is Not Fairly Balanced

The current AAQTF is comprised primarily of academic researchers, industry lobbyists, representatives from state and federal agencies, producers and an industry lawyer. Out of twenty-five members, there is only one person who represents the interests of the environment. In addition, there are no public health experts on the committee, and few producers that represent the interests of the family farmer and rancher. To provide the required balance, we endorse the following nominees who adequately represent the interests of family farmers, as well as those of the environmental and public health communities.

a. Endorsement of Environmental Advocate

To represent environmental interests, we nominate Brent Newell, who has expertise in agricultural law and policy issues, including those relating to agricultural air emissions. In 2004, Mr. Newell established and directed the San Joaquin Valley Air Quality Project. In 2008, Mr. Newell became Legal Director of the Center on Race, Poverty and the Environment, and a year later he was named General Counsel. Mr. Newell's work has focused almost exclusively on the San Joaquin Valley of California, an air basin with horrendous ozone and fine particulate matter pollution and in which agricultural air emissions have major effects. In *Association of Irrigated Residents v. EPA*, No. 02-70160 (9th Cir. 2001), a consolidated petition for review, Mr. Newell represented several community groups who were impacted by agricultural air emissions.

The petition for review concerned the Environmental Protection Agency's ("EPA") approval of California's Title V operating permits program that included an exemption for agricultural sources. The consolidated petitioners reached a settlement agreement with EPA that resulted in a federal operating permits program for California agricultural sources.

Mr. Newell also challenged the state of California's failure to adopt regulations that would reduce smog-forming emissions from pesticide use. The case, *El Comité para el Bienestar de Earlimart v. Helliker*, 416 F. Supp. 2d 912 (E.D. Cal. 2006), was overturned on a technicality, but California has retained the court-ordered regulations to ensure that the 4th largest source of smog-forming volatile organic compound emissions in the San Joaquin Valley will be subject to mandatory controls.

Mr. Newell has special expertise in the emissions and environmental effects caused by CAFOs, and has appeared before several county and state agencies to advocate for emissions reductions at San Joaquin Valley dairy CAFOs. He was invited to address the Committee on Air Emissions from Animal Feeding Operations for the National Research Council after the release of its report SCIENTIFIC BASIS FOR ESTIMATING EMISSIONS FROM ANIMAL FEEDING OPERATIONS (Interim Report). Mr. Newell has testified on multiple occasions for the California Senate Select Committee on Air Quality in the San Joaquin Valley.

Mr. Newell drafted California Senate Bill 700, a comprehensive regulatory approach for agricultural air pollution, and provided technical support to the legislators that championed the bill. The bill became law in 2003, replacing a decades-old exemption for agriculture from air regulation and establishing a fair and reasonable regulatory regime. Since the passage of SB 700, Mr. Newell has been actively engaged in the implementation of the bill, has been litigating several Clean Air Act citizen suits against dairy operations that have failed to comply with the Clean Air Act pre-construction permit program, and was the lead counsel in the legal challenge to EPA's Air Compliance Agreement.

As a policy advocate, Mr. Newell has appeared and participated in the San Joaquin Valley Air Pollution Control District's particulate matter and ozone regulatory activities that affect agricultural air emissions. He was also appointed to the California Pollution Control Financing Authority's Dairy Advisory Committee in 2005. His appointment as a policy expert provided special balance to the Committee, which also included industry policy representatives.

More recently, Mr. Newell has begun working on global warming issues, and is counsel in *Native Village of Kivalina v. ExxonMobil*, No. C-08-1138-SBA (N.D. Cal. 2008), a global warming public nuisance case.

Mr. Newell is a graduate of the University of Oregon School of Law where he specialized in environmental and natural resources law. In the past, some of these endorsing organizations have expressed concern with USDA's appointment of two attorneys to a task force dedicated to scientific inquiry. During past nomination processes, some of these endorsing organizations requested that membership on the AAQTF exclude attorneys, but USDA ignored that request.

The fact that attorneys who have served on the task force have represented the commercial agriculture sector results in improper influence by a special interest, which is in direct violation of FACA. 5 U.S.C. App. § 5 (b)(3). If USDA continues to allow attorneys to serve on the AAQTF, it should include attorneys representing environmental interests, to ensure that the Task Force will hear countervailing legal opinions when considering its recommendations. Mr. Newell's work with rural communities, including environmental justice communities, will also help USDA to provide the representational balance required by FACA.

b. Endorsement of Public Health Scientist

Because the AAQTF is charged with assessing research and data and making recommendations based upon sound scientific findings, we believe that the majority of the panel should consist of noted scientific experts who have worked extensively on agricultural air quality issues. Those scientific experts must include scientists who have specialized knowledge of the environmental and public health impacts of agricultural air emissions. We therefore endorse the nomination of Dr. Keeve E. Nachman, PhD, MHS, Director of the Farming for the Future Program at the Johns Hopkins Center for a Livable Future ("CLF") and faculty member at the Johns Hopkins Bloomberg School of Public Health ("JHSPH"). Dr. Nachman's current research examines the impacts of food animal production practices on environmental quality and public health. Dr. Nachman has published numerous peer-reviewed papers regarding characterization of risks from food animal production practices.

Prior to accepting a position at CLF, Dr. Nachman served as a toxicologist and risk assessor with the United States Army Corps of Engineers, where he conducted risk assessment for environmental remediation projects under CERCLA and RCRA, including formerly used defense sites ("FUDS") and active military sites. From 2006-2008, Dr. Nachman was an environmental health scientist and postdoctoral fellow in the National Center for Environmental Economics ("NCEE") at EPA. His research at EPA involved examining the relationship between air quality and health, including the relationship between exposures to fine particulate matter and respiratory conditions such as asthma. Dr. Nachman served as a member of the Probabilistic Risk Assessment Workgroup and was a participant in the EPA's efforts to establish probabilistic methods and uncertainty analyses, and incorporate them into the agency's assessments of environmental risks. As an agency scientist, Dr. Nachman served as a peer

reviewer for chemical toxicity assessments (for the Integrated Risk Information System (“IRIS program”)) and regulatory technical and policy documents.

Dr. Nachman’s doctoral training and research involved assessing risks resulting from the use of arsenic in industrial poultry production. In addition, he served as project co-manager and author of the “Profile of Maryland Environmental Public Health Report,” funded by the Centers for Disease Control and Prevention, which focused on successes and challenges associated with the delivery of environmental health services at the local level as part of the Johns Hopkins Center for Excellence in Community Environmental Health Practice.

c. Endorsement of Independent Family Farmers

Although there are currently producers on the committee, few represent the interests of the independent family farmer. To make sure that family farm interests are represented, we endorse the nominations of Terry Spence and Chris Petersen.

Mr. Spence owns and operates a second-generation family farm in northeast Missouri, near the Iowa border. He has been active in issues related to CAFOs since 1993, when the Missouri legislature exempted three counties in northeast Missouri from complying with Missouri’s anti-corporate farming law. Along with this exemption came 1.7 million hogs, with 80,000 of them near his farm. He is the president of both Citizens Legal Environmental Action Network (“CLEAN”) and Family Farms for the Future (“FFFF”), and is also a certified level III volunteer water quality monitor for Missouri Stream Team # 714.

Mr. Spence has been involved in litigation involving CAFOs for fifteen years, in the local Circuit Court, the Missouri Court of Appeals, and U.S. Federal Court. This entailed a federal suit under the Clean Water Act and Clean Air Act that resulted in a presently ongoing consent judgment. He has also been involved in two state consent decrees in which an expert panel consisting of Dr. Mike Williams from North Carolina State University, Dr. John Sweeten of Texas A&M University, and Dr. Larry Jacobs of the University of Minnesota, were to make recommendations regarding technologies to address odors and air emissions from the company’s Animal Feeding Operations (“AFOs”).

As a consultant for the Socially Responsible Agriculture Project (“SRA Project”), Mr. Spence has been active over the last fifteen years in organizing and working with citizens’ groups throughout Missouri and various other states who have experienced CAFO pollution in their communities. He has presented testimony before the U.S. House Sub-committee on CAFOs and at numerous Missouri Clean Water Commission and Missouri Air Conservation Commission hearings. He also participated in developing Missouri’s odor rule, which applies to Missouri’s “Class 1A” AFOs. He has attended and presented at numerous national conferences and

symposia relating to air emissions and animal waste, and was selected as one of the Thirty Heroes for Each of the Thirty Years of the Federal Clean Water Act. Mr. Spence and his CAFO work have been featured in the Boston Globe, The New York Times, Audubon Magazine, Sierra Club Magazine and various other state and local press outlets. The Missouri Attorney General recently named Mr. Spence as a recipient of the 2010 Justice Award for his dedication and commitment to environmental protection. We believe that, based on his personal experience and agricultural expertise, Mr. Spence would be an asset to the AAQTF.

Mr. Petersen is an independent pork producer in north central Iowa and the President of Iowa Farmers Union, and currently serves on the AAQTF. When he realized that corporate hog producers were destroying family farmers and their communities, threatening individual's health, and jeopardizing the environment, he began leveling the playing field by collaborating with other individuals and groups to hold politicians and corporations accountable for actions that severely affect rural America. The hardworking, effective group became known as the "Freedom Fighters." The Freedom Fighters have been instrumental in a new mandatory price reporting law; they have proposed price discrimination legislation for small livestock producers; they are responsible for proposed national legislation on packer feeding, and they continue to lobby the government for strict environmental laws to protect family farms and the environment.

Mr. Petersen has appeared on 60 Minutes and worked with PBS, BBC, and ARD German T.V. to educate the public about agricultural issues such as CAFO pollution. He was appointed to sit on the EPA's Revisions Panel Task Force from July through October 1999 as a family farmer and independent pork producer to give advice on rewriting the EPA's revised CAFO rules. Mr. Petersen maintains his position as a producer advisor on the University of Iowa's Center of Agricultural Health and Safety Board ("I-CASH"), which addresses general farm safety and public health issues related to CAFOs. In 1999 and 2000 he worked as an adviser to Vice President Al Gore on family farm issues and was an advisor on agriculture policy for the democratic candidates during the 2004 and 2008 presidential elections. Mr. Petersen was also appointed by Iowa Governor Culver to serve on the Iowa Department of Natural Resources ("IDNR") Air Quality Bureau PM_{2.5} Implementation Workgroup Committee and Agricultural Sub-Committee. IDNR convened this committee to ensure Iowa's proper implementation of EPA's 2006 revised National Ambient Air Quality Standard for 24-hour PM_{2.5} emissions, and thereby better protect public health. The workgroup will provide input and explore approaches for implementing the standard in Iowa by spring 2011.

In addition to operating his family farm, Mr. Petersen tirelessly continues to lobby against the harmful agricultural policies that threaten the public health, economic livelihoods, and the environment of rural communities. He also organizes citizens' groups affected by CAFO pollution as a consultant with the SRA Project. In light of Mr. Petersen's relevant background

and expertise working on agricultural air quality issues, as well as his status as a current member of the AAQTF, we strongly endorse his candidacy for another term.

As this letter explains, the current AAQTF does not include a representative number of scientific and policy experts that stand for the interests of environmental, public health, and independent farming communities. To provide better balance in these areas, we feel there should be at least 4 appointments to the AAQTF representing these interests. Therefore we endorse the following nominees: Brent Newell, Staff Attorney for the Center on Race, Poverty & the Environment; Dr. Keeve Nachman, Director of the Farming for the Future Program at the Johns Hopkins CLF and faculty member at JHSPH; Terry Spence, CLEAN, FFFF and SRA Project; and Chris Petersen, Iowa Farmers Union and SRA Project. Each of the nominees we endorse has an exceptional understanding of air quality policy issues and the present and future effect of these policies on agricultural air emissions. Each would provide thoughtful, well-balanced insight to the AAQTF.

The appointment of these nominees would help establish the expertise and representational balance needed to form credible public policy. We therefore urge you to appoint them to the AAQTF.

Thank you for your consideration.

Sincerely yours:

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Environmental Integrity Project

Danielle Diamond, Attorney
Illinois Citizens for Clean Air & Water
Socially Responsible Agriculture Project

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