



U.S SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

August 16, 2016

The Honorable Sean Duffy
U.S. House of Representatives
Washington, DC 20515

Dear Representative Duffy:

Administrator Contreras-Sweet has asked me to respond to your recent inquiry regarding the U.S. Small Business Administration's (SBA) National Environmental Policy Act (NEPA) policies as they affect Wisconsin's dairy industry.

SBA's NEPA policy, first published on February 1, 1980 in the Federal Register, 45 FR 7358, is still in effect. It is presently embodied in our Standard Operating Procedure (SOP 90-57). We are aware that it is dated and in need of revision. Currently, we are making a concerted effort to update the Agency's NEPA policy, which we anticipate will take several months. A policy change is all the more necessary in view of the C & H Hog Farm case in Arkansas, which you allude to in your letter. That case applied SBA's 1980 policy to require a new more stringent Environmental Assessment (EA) of the farm's effect on the environment. The court did this even though the Farm Service Administration had done an EA under its regulations, which the court found lacking.

Presently, SBA has two environmental professionals who assess whether a full or partial NEPA review is necessary for both the 7(a) and 504 Programs on a loan by loan basis. We give special attention to screening large dollar loans of \$2 million or more. For those agricultural loans that need to undergo a NEPA analysis, the lender (for a 7(a) loan) or CDC (for a 504 loan) is instructed to obtain such a review. The Agency will then review the environmental report and, if needed, indicate whether more environmental information is needed or whether to go ahead with the loan.

Given the process prescribed by NEPA, any number of issues can arise that are case specific and can delay the project. For example, a number of permits are needed for farm operations, such as a Concentrated Animal Nutrient Management Plan, which is important for a number of environmental factors such as animal waste disposal. Because of the lack of staffing or budget at state agencies this may take a long time. Nevertheless, it is important for SBA to have the permits approved before making its findings under NEPA. Other issues may arise such as whether wetlands are affected by the farm operation and the effects on endangered species present at the farm site that need approval from the Fish and Wildlife Service (FWS) at the Department of the Interior.

We wish to point out that an Environmental Impact Statement (EIS) is only necessary if an Environmental Assessment under NEPA shows the need to do a further study by means of an EIS. There is no special guidance by SBA on when an EIS is required. This would depend on the findings of the EA. Guidance on how to perform an EA and, if indicated, an EIS is readily available and these procedures are usually performed by Environmental Professionals.

SBA's Milwaukee District Office, Chicago Regional Office and Office of Litigation in Headquarters are aware of the situation as it affects the Wisconsin dairy industry and have met with officials of the Wisconsin Business Development CDC, their counsel Michael Hitt, and the CDC's Environmental Consultant several months ago to alleviate the environmental problems as it affected their loans. We will reach out again to them to discuss their further concerns and attempt to facilitate their loan making activity supporting the dairy industry. We will also consult with the Wisconsin Department of Natural Resources to help facilitate the review process.

We appreciate your support of SBA and the Wisconsin small business community. If you or your staff has additional questions, please contact Daniel Krupnick, SBA Associate Administrator for Congressional and Legislative Affairs at (202) 205-6806. A similar letter is being sent to all of the Wisconsin Congressional Delegation.

Sincerely,



Eric S. Benderson
Associate General Counsel for Litigation