UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5W-11

MAR 16 1984

Honorable Anthony Earl
Governor of Wisconsin
Madison, Wisconsin 53702

Dear Governor Earl:

I have recently learned that the Wisconsin State Assembly has approved legislation that transfers the responsibility for issuing permits for animal waste discharges from the Wisconsin Department of Natural Resources (WDNR) to the Department of Agriculture, Trade and Consumer Protection (DATCP). The purpose of this letter is to apprise you of certain regulatory requirements that must be addressed should such legislation be enacted.

The United States Environmental Protection Agency (U.S. EPA) regulation 40 C.F.R. 123 sets forth the requirements that must be met by a State in applying for and operating the National Pollutant Discharge Elimination System (NPDES) permit program. As you are aware, the WDNR completed this process for the entire NPDES program and was granted authority to administer this program on February 4, 1974. That delegation included authority to issue, for the purpose of the Federal NPDES program, permits to facilities that generate animal wastes. In order to establish the regulatory scheme envisioned by the proposed amendment, you would have to follow the requirements of 40 C.F.R. 123.62 which govern revisions to State delegated programs. Those revisions include developing a modified program description, a new Attorney General's statement and a new Memorandum of Agreement between our Agencies. The program description covers many very important items, including a detailed description of the applicable State permit issuance procedures and how they will be conducted by both Agencies; detailed compliance tracking and enforcement procedures; detailed field inspection procedures; staffing levels and sources of funding; copies of proposed permit forms; public participation procedures; a demonstration that the Federal regulations applicable to all point sources of pollution will be fully implemented including animal waste discharges; and finally, adoption of animal waste control rules at least as stringent as those required by U.S. EPA. Upon formal application by you, I would issue a public notice to provide opportunity for public comment and, if necessary, I would convene a public hearing on this matter as required by the Federal statute.

According to the provisions of the Clean Water Act (CWA), U.S. EPA must review and concur in permits proposed to be issued by a delegated State. Under the proposed amendment, this would mean we would review and concur in permits issued by WDNR and DATCP. Overview of the permit issuance process and the subsequent compliance tracking and enforcement process would also be conducted by my office.

I recently conducted a review of the WDNR's water pollution control program. Mr. Besadny may have informed you that I found your State water pollution

control program to be exemplary in every way. Your program is in my opinion one of the best, if not the best, overall programs in the country. It is a program of which you can be very proud.

Given the above, and based upon our experience with overseeing State operated NPDES permit programs, I would ask you to seriously question the desirability of bifurcating the existing WDNR permit program. The WDNR has in place a highly efficient water quality, permitting and enforcement program and is fully discharging the requirements of Federal and State law. Creation of a separate permitting authority will require duplication of field capabilities, technical knowledge, permit issuance procedures, public participation procedures, compliance tracking and enforcement systems, laboratory capabilities and program management expertise. Further the DATCP would need to obtain significant water quality expertise to operate the program. Given the scarcity of available resources, conscious duplication of existing ongoing activities needs very close scrutiny.

I would also like to express my concern over an action that would split the water pollution control effort in Wisconsin and the greatly increased burden that will be placed on my staff in working with two different agencies implementing the same program. The high quality of the WDNR water pollution control program has required only a limited overview by my staff. The need to have to reprogram resources from overviewing other less well run programs in order to ensure that a new program, as proposed in Wisconsin, is implemented in an acceptable fashion as required by the CWA concerns me greatly.

I appreciate this opportunity to provide you my thoughts on this matter. If you would care to discuss this matter in greater detail, please feel free to contact me.

Sincerely yours,

Robert Springer for

Valdas V. Adamkus
Regional Administrator

cc: Carroll Besadny, Secretary
Wisconsin Department of Natural Resources

LaVerne Ausman, Secretary
Department of Agriculture, Trade and
Consumer Protection

Honorable Jeffrey Neubauer
Chairman, Assembly Environmental
Resources Committee