PETITION FOR ADMINISTRATIVE REVIEW

Petitioner, House of Prayer Ministries, Inc., d/b/a Harvest Christian Camp (hereinafter "Petitioner" or "House of Prayer"), by and through counsel, hereby submits a Petition for Administrative Review of the Confined Feeding Operation Approval with Construction, Farm ID No. 6868 (the "CFO Approval") issued to Milco Dairy Farm, L.L.C. and Nico Niessen, ("Permittees" or "Milco Dairy") by the Indiana Department of Environmental Management ("IDEM") to construct and operate a new confined feeding operation with 1,400 dairy cows and three earthen lagoons to collect nearly 20 million gallons of animal waste, process waste and contaminated storm water on property located at 2625 E. 1200 N., Lewisville, Indiana (the "CFO").

A copy of IDEM's CFO Approval is attached hereto as Exhibit A.

House of Prayer files this Petition for Administrative Review pursuant to Indiana Code § 13-15-6, et seq., and I.C. § 4-21.5-3-7 and in support thereof, states as follows:
Interest of Petitioner

1. Petitioner House of Prayer is an Indiana non-profit, religious organization founded in 1974. House of Prayer has long operated a church ministry and youth camp known as Harvest Christian Camp on its property at 9630 South 25 West, in Lewisville, Indiana. On average, 120 children, staff and volunteers are at the camp at any given time and during the summer months, an average of 500 children, camp staff and volunteers are present at the facility. The youth camp is located within a half-mile of the IDEM-approved CFO. And, Shankatank Creek, which receives storm water drainage from several fields where waste generated at the IDEM-approved CFO will be spread, runs through the youth camp property. As such, House of Prayer, its staff, volunteers and parishioners will all be aggrieved and adversely affected by the CFO and its operations as approved by IDEM.

Respondents

2. Respondent IDEM is an administrative agency of the State of Indiana charged with implementation and enforcement of federal and state environmental laws for protection of public health and the environment including the regulation and permitting of CFOs that meet the definition of a concentrated animal feeding operation (CAFO) under 40 CFR 122.23(b). IDEM’s permitting decisions, including the CFO Approval at issue here, are subject to appeal to the Office of Environmental Adjudication (OEA).

3. IDEM issued the CFO Approval to Milco Dairy.

OEA Jurisdiction

4. The OEA has jurisdiction to decide this appeal according to IC § 13-15-6-3 and to revoke or modify the CFO Approval pursuant IC § 13-15-7-1. The OEA has de novo review of IDEM’s issuance of the CFO Approval. As will be discussed, the CFO Approval is inconsistent
with federal and state requirements applicable to the permitting and construction of new CFOs that meet the definition of a CAFO. Thus, Petitioner respectfully requests administrative review of the CFO Approval, a hearing before the OEA, and a decision by the OEA to deny or rescind the CFO Approval.

**Environmental, Technical and Procedural Deficiencies of the Permit**

5. Pursuant to 315 IAC 1-3-2(4)(A) and (B), the environmental concerns and/or technical deficiencies of the CFO Approval, and terms and conditions that would be appropriate to comply with the law are set forth below.

6. Any IDEM approval to construct and operate a new CFO must be made in accordance with Ind. Code § 13-18-10, *et. seq.*, and 327 IAC 19, *et. seq.* Furthermore, any IDEM approval to construct and operate a CFO that is also a CAFO under 40 CFR 122.23 must also meet the requirements of 40 CFR 122.23 and 40 CFR 122.42(e). The CFO Approval that IDEM issued to Milco Dairy fails to meet these requirements in several respects.

**Disclosure Statement Requirements Were Not Met**

7. Ind. Code § 13-18-10-1.4 provides in relevant part that in applying for a CFO Approval, “each responsible party” must provide a “disclosure statement” if “State or federal officials at any time alleged that the responsible party committed acts or omissions that constituted a material violation of state or federal environmental law” and those “acts or omissions . . . presented a substantial endangerment to human health or the environment.” IDEM and Milco Dairy failed to comply with this requirement.

8. A “responsible party” includes the applicant seeking CFO Approval, the officers, directors and senior management officials of the applicant if the applicant is a corporation, a partnership, a limited liability company, or a business association, and each “owner/operator” of
the CFO including persons that own the CFO’s waste management systems, the livestock, or is otherwise in control of the CFO or its land application activities. See Ind. Code § 13-11-2-191 and 327 IAC 19-2-32.

9. As noted in IDEM’s CFO Application form,¹ all responsible parties must be disclosed regardless of whether a disclosure statement for a particular responsible party is ultimately required so that IDEM can conduct the necessary “inquiry or investigation, consistent with [IDEM’s] duties” in determining whether to issue a CFO Approval. Ind. Code § 13-18-10-2.1(a)(2). And, failing to disclose all responsible parties is a basis on which IDEM may deny an application for CFO Approval under Ind. Code § 13-18-10-2.1(e).

10. Nevertheless, Milco Dairy identified only Nico Niessen and Milly Niessen as responsible parties in their application for CFO Approval, but did not identify the person(s) and/or entity(ies) that will own the livestock -- an entity that is separate and distinct from Milco Dairy. And, given the long history and relationship between Milco Dairy and now bankrupt Vreba Hoff Dairy Development, LLC (“Vreba Hoff”) and its owners including but not limited to, John Vander Hoff who may still be involved, full disclosure of all responsible parties is all the more critical to ensuring responsible ownership and operation of the CFO approved by IDEM.²

11. Furthermore, Milco Dairy did not fully and accurately disclose the nature and extent of its environmental regulatory history. Specifically, a consultant for Milco Dairy merely “review[ed] IDEM’s Virtual File Cabinet and [had] a discussion with the owner” to identify “violations and enforcement actions within the past 5 years.”³ However, that is not the standard. Ind. Code § 13-18-10-1.4 requires each responsible party, to disclose all material violations alleged

¹ See IDEM’s CFO Application Form at p. 23.
² Referring to Vreba Hoff’s bankruptcy due to foreclosures and lawsuits concerning fraud, breach of contract, personal injury and repeated environmental violations in three states including Michigan, Ohio and Indiana.
³ See Milco Dairy’s CFO Application, Section II. Disclosure Statement Attachment, at p. 25.
by “State or federal officials at any time,” not just those that occurred within a limited time frame.

12. Just based on the limited public records available on IDEM’s VFC, it is evident that Milco Dairy has been in operation for at least sixteen (16) years, and the relationship between Milco Dairy, Vreba Hoff and its owners go back to at least 1999 as well. Accordingly, full disclosure of all material environmental violations for each responsible party, including any that involve Vreba Hoff and its owners, in Indiana and other states is required for IDEM to be able to determine the nature and extent of the current relationship between Milco Dairy and Vreba Hoff including its agents and assigns, and whether all responsible parties have been identified and met the disclosure requirements of Ind. Code § 13-18-10-1.4.

13. Finally, in describing Milco Diary’s environmental violations that are readily available on IDEM’s VFC, Milco Dairy’s consultant inaccurately represented that those violations did not present a substantial endangerment to human health or the environment because they “did not result in a material release of manure to the environment.” Although that conclusion is arguable, demonstrating that a violation caused a material release of manure to the environment is not required to demonstrate that the violation nevertheless poses a substantial endangerment to human health or the environment.

14. Indeed, IDEM and Indiana courts have long recognized that certain violations of environmental laws and regulations constitute a substantial endangerment to public health and the environment regardless of whether actual harm results. For example, the Indiana Appellate Court in National Salvage & Service Corp. v. Commissioner of Indiana Dept. of Environmental Management, agreed with IDEM in concluding that “[a] facility without a [solid waste processing] permit poses an imminent and substantial endangerment to the health and welfare of the people in

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4 See Milco Dairy’s CFO Application, Section II. Disclosure Statement Attachment, at p. 25.
the area,” regardless of whether the unpermitted facility causes actual harm. 571 N.E.2d 548, 558 (Ind. App. 1991).


16. Consistent with these legal principles, IDEM has consistently determined that “[a]nthing greater than a paperwork issue” or “any release” that “resulted in IDEM taking an enforcement action,” to be a violation that constitutes a substantial endangerment to human health and the environment for purposes of Ind. Code § 13-18-10-1.4. See Objection to the Denials of Applications for CFO Approval and NPDES CAFO Construction/Expansions, New Fashion Pork, LLP, 2012 OEA 1, 8-9 (2012).\(^5\)

17. Based solely on public records available on IDEM’s VFC, it is clear that Milco Dairy has demonstrated intentional disregard for environmental regulations including repeated violations for constructing and expanding operations without first obtaining approval from IDEM,\(^6\) discharging waste into a clean storm water drain that flows to a ditch, failing to observe minimum setbacks in spreading waste, increasing waste storage capacity without prior approval of IDEM and without adequate stormwater control measures, among other violations that have resulted in enforcement actions and certainly posed a substantial endangerment to public health and the

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\(^5\) In rejecting IDEM’s position on this point, the OEA did not consider the foregoing jurisprudence.

\(^6\) Not only did Milco Dairy expand operations without prior approval from IDEM, it expanded operations after Henry County formally denied its requests to do so.
environment. Thus, Milco Dairy’s representation otherwise constitutes a misrepresentation of material fact warranting IDEM’s denial of Milco Dairy’s application for CFO Approval. Ind. Code § 13-18-10-2.1(e).

**Federal Permitting Requirements Were Not Followed**

18. The IDEM approved CFO at issue is also a CAFO under 40 CFR 122.23(b) and is, therefore, subject to NPDES permitting requirements – see 40 CFR 122.23(a) -- and “must meet the storm water requirements in 40 CFR 122.23(c) and 40 CFR 122.42(c)(1) through 40 CFR 122.42(c)(2).” See 327 IAC 19-11-1(a). Accordingly, “[a]ny permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of [40 CFR 122.42(e)] and applicable effluent limitations and standards, including those specified in 40 CFR part 412.” See 40 CFR 122.42(e)(1) (emphasis added).

19. Nevertheless, the CFO Approval issued to Milco Dairy lacks any enforceable requirement for Milco Dairy to implement a nutrient management plan as required by 40 CFR 122.42(e)(1). Instead, the CFO Approval makes a general reference to IDEM’s CFO Guidance Manual as providing an “outline” of the “federal regulation for CAFOs.” This deficiency is particularly problematic for House of Prayer given that its youth camp property is located downstream from the CFO and will be directly impacted from manure spills and runoff from the CFO into Shankatank Creek.

20. Finally, the CFO Approval lacks any recordkeeping requirements as set forth and required by 40 CFR 122.42(e)(2).

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7 See CFO Approval issued to Milco Dairy under “Special Approval Conditions.”
21. Based on the foregoing deficiencies, IDEM wrongfully issued the CFO Approval to Milco Dairy.

WHEREFORE, Petitioner House of Prayer requests that the Office of Environmental Adjudication vacate the decision of IDEM to issue the CFO Approval to Milco Dairy and order all additional relief as the OEA deems appropriate and allowed by law.

Respectfully submitted,

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219/464-0104

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Administrative Review has been served upon the following individuals and parties by United States mail postage prepaid, this 4th day of December, 2015.

Kim Ferraro

Nico Niessen
Milco Dairy Farm, LLC
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Lewisville, Indiana 47352

Indiana Department of Environmental Management
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