May 29, 2012

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing to you regarding the Environmental Protection Agency's (EPA) use of aerial surveillance inspections of regulated livestock operations in Nebraska. It is our understanding that the Region 7 Office of Enforcement has conducted a series of aerial surveillance flights as a method for inspecting animal feeding operations over the past several months. As you might imagine, this practice has resulted in privacy concerns among our constituents and raises several questions for us.

Thus, we would appreciate your response to the following questions.

On what statutory authority is the EPA relying to conduct aerial surveillance inspections?

It is our understanding that EPA Region 7 staff have informed the regulated community in Nebraska that the aerial surveillance is being conducted pursuant to federal standards under the Clean Water Act. Is this understanding correct? If so, is enforcement with respect to Clean Water Act the exclusive purpose of the flights?

Have photographs from these flights been used by the agency as the sole evidence against a livestock operation, or have photographs been used, without corroborating evidence from an on-the-ground inspection, to encourage a livestock owner/operator into taking action in response to issues or concerns raised by EPA?

Approximately, how many aerial surveillance inspection flights have been conducted in Region 7?

Of these flights, how many have targeted operations in Nebraska?

How many more are planned?

What criteria are used to identify operations for aerial surveillance?

How many enforcement actions have resulted from the flights in Region 7?

Did EPA conduct aerial surveillance inspections prior to 2010? If so, for how long has this practice been utilized?

Have similar aerial surveillance inspections been carried out in regions other than Region 7? If so, in what regions have these occurred and, specifically, in what states within those regions have they occurred?
Does EPA inform local and state authorities when flights are scheduled to occur?

To what extent are entities targeted for aerial surveillance flights currently subject to on-site inspections by the Nebraska Department of Environmental Quality (NDEQ)?

At what elevation are flights typically operating when images are recorded?

Do these aerial surveillance flights ever disrupt livestock? Have any of the operations that have been subject to aerial inspections raised concerns with increased animal stress or noise?

Do images ever record land or buildings not currently subject to regulation under the Clean Water Act or other applicable federal law?

Do the images collected ever include residential buildings? If so, are those residences occupied by the responsible parties associated with the regulated facility?

Are aerial surveillance inspections recorded exclusively using still photography? Has video equipment ever been used?

For how long are images kept?

Where photographic images are not used in an enforcement action, for how long do the images remain on file? Who maintains these photographic records?

Has EPA shared or otherwise distributed any aerial images of Nebraska entities with other federal or state agencies other than the State of Nebraska? Does EPA plan to share the images? Are the images subject to release under the Freedom of Information Act?

As you can appreciate, farmers and ranchers in Nebraska pride themselves on the stewardship of our state's natural resources. They understand what it means to be regulated entities and the importance of compliance with federal regulations. Thus, we look forward to better understanding EPA's use of aerial surveillance inspections and would appreciate your response to these questions by June 10, 2012.

Sincerely,

Mike Johanns
United States Senator

Ben Nelson
United States Senator

Jeff Fortenberry
United States Representative

Adrian Smith
United States Representative

Lee Terry
United States Representative

Cc: Karl Brooks, EPA Region 7