

United States Senate

WASHINGTON, DC 20510

Wednesday, June 28, 2006

Please Oppose Efforts to Burden Communities with Contaminated Water Supplies and Cleanup Costs

Dear Colleague:


We are writing to ask that you join with state and local organizations and drinking water providers to oppose efforts to eliminate large agricultural operations' legal responsibility for cleaning up contamination and reporting dangerous releases of pollution.

As in years past, some large agricultural operations are trying to eliminate their liability to pay for cleanups under Superfund and obligation to report the release of smog-forming pollution under the Emergency Planning and Community Right-to-Know Act. This could burden state and local governments, water providers and taxpayers with the cost of cleaning up contaminated drinking and surface water supplies and other environmental resources. It could also eliminate one of the only tools that state and local governments have to identify air pollution sources. Identifying such sources is a critical first step in understanding the magnitude of potentially serious threats to public health and environmental quality.

Leading state and local organizations have sent letters opposing this effort to shift costs onto the backs of communities and weaken environmental protections, and have asked Members of Congress to assist them in this important fight. These organizations include:

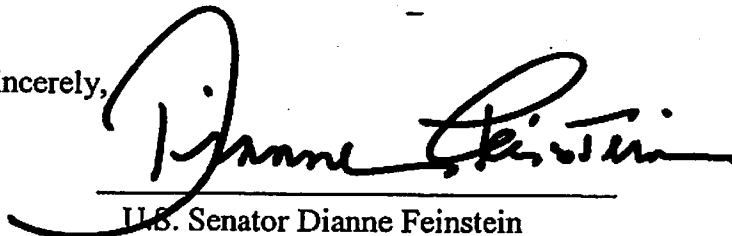
- U.S. Conference of Mayors,
- National Association of Counties,
- National Association of City and County Health Officials,
- American Water Works Association,
- American Metropolitan Water Agencies,
- Attorneys General from eight states,
- Iowa Department of Natural Resources,
- City of Waco,
- City of Tulsa, and
- More than 20 national and state public health and environmental organizations.

Please join us in opposing efforts to undermine critical public health protections and burden communities with cleanup costs.



U.S. Senator Barbara Boxer

Sincerely,



U.S. Senator Dianne Feinstein



THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
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September 4, 2007

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Executive Director:
TOM COCHRAN

The Honorable Barbara Boxer
Chair, Environment and Public Works Committee
United States Senate
Washington, DC 20510

Dear Madam Chairwoman:

The U.S. Conference of Mayors is writing to express our opposition to amending the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) to provide that animal manure waste not be considered a hazardous substance or pollutant/contaminant under the Act.

The Conference of Mayors, primarily through its Mayors' Water Council, has advocated since 1997 for the development of a flexible national program for the sustainable management of watersheds and their resources. We maintain that the protection, preservation and enhancement of water resources is critical to the continued revitalization of the nation's cities and that clean water is necessary to maintain the quality of life in cities, supporting recreational, historical, cultural and economic development activities across the country. Exempting mismanaged animal manure wastes from environmental responsibility is contrary to the interests of our cities and the public health and economic impact on our citizens.

The U.S. Conference of Mayors calls upon Congress, as well as Governors, state legislatures, and federal and state regulatory authorities to aggressively take action to protect the nation's water supplies from further degradation due to non-point agricultural sources. We have called for the establishment of policies that are flexible in protecting water supplies. We have been early and strong supporters of water quality trading approaches that would allow less costly solutions for large animal feedlot operations and dairy and livestock farms to come into, or stay in, compliance with requirements designed to protect surface and ground water resources from contamination by phosphorous and nitrogen contaminants constituents of animal manures.

The cost to cities to comply with water and CERCLA related unfunded federal mandates has been exceptionally high over the last three decades. The current situation with animal wastes impairing city water supplies has added to those costs unfairly. Regulatory enforcement of agricultural non-point sources has not been aggressively applied as it has for cities. The Conference of Mayors values the

economic and nutritional contributions that animal farmers make to this nation and its citizens, but we should not and cannot overlook the fact that many large dairy operations externalize the costs to control nutrient impacts that impair our municipal drinking water supplies and degrades the water quality of our estuaries, lakes and rivers. We urge Congress to adopt federal policies that address the impacts on ground waters and surface waters, and associated threats to drinking water supplies from urban, suburban, rural, agricultural and other activities in an equitable manner ensuring that all sectors of society are proportionately responsible and equally accountable for maintaining and improving the quality of the nation's waters.

The proposal to exempt animal manure that is mismanaged and pollutes community water resources from CERCLA is contrary to the interests of our nation's cities and should not be adopted. Animal wastes that are properly managed and/or land applied according to good management practices should never become a pollutant or contaminant. We urge you to help protect our cities, citizens and water resources.

If you have any questions, please contact Judy Sheahan of my staff at 202-861-6775. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom Cochran". The signature is written in a cursive, slightly slanted style.

Tom Cochran
Executive Director



June 26, 2006

Dear Member of Congress:

On behalf of the National Association of Counties (NACo), I am writing about a proposal to remove animal manure waste as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Many counties across the nation have been involved in controversies surrounding these large concentrated animal feeding operations (CAFOs). While CAFOs may bring economic benefit to a region, they also have the potential to present environmental and public health threats. Animal waste, if not properly managed, can cause serious environmental damage such as oxygen depletion of surface water, pathogens, nutrient contamination of surface and ground water, unsafe air emissions and nuisance odors. Public health has been threatened through contamination of drinking water, fish kills, shellfish contamination and swimming advisories.

NACo believes that the availability of an adequate supply of clean water is vital to our nation. At the same time, we recognize that the elimination of water pollution is a long-term process that is limited by economic and social costs. Rural communities are largely dependent on CAFOs, for they bolster local economies. On the other hand, technologies and best practices exist for CAFOs that can lessen their environmental and public health footprints on the community.

In addition to environmental and public health threats, clean-up of polluted waterways from CAFOs have the potential to be a huge unfunded federal mandate, mainly by passing on the costs of remediation to our counties who had little to do with the pollution in the first place. To that end, we encourage you to oppose removing animal manure waste as a pollutant/contaminate under CERCLA.

If you have any questions, feel free to contact Julie Ufner on my staff at 202-942-4269. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, which appears to read 'Larry E. Naake', is written over a white background.

Larry E. Naake
Executive Director

NACCHO

National Association of County & City Health Officials

August 31, 2007

The Honorable Barbara Boxer
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Senator Inhofe:

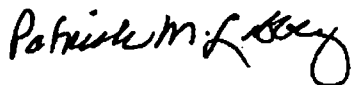
On behalf of the nation's local public health officials, I write to express our opposition to any attempt to amend the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in a manner that would adversely affect the ability of local governments to protect the health of their communities.

Proposed legislation (S. 807) would provide blanket exemptions from CERCLA for substances associated with concentrated animal feeding operations (CAFOs) that can threaten the public's health. The measure would preclude manure from being considered a "hazardous substance" under Section 101(14) and from the definition of a "pollutant or contaminant" under Section 101(33) of CERCLA. This change is unnecessary and unwise for several reasons. Manure is not considered a hazardous substance, pollutant or contaminant under CERCLA. Further, CERCLA already has an exemption for the normal application of fertilizer that would include manure. However, phosphorus, a constituent present in manure, is a hazardous substance under CERCLA which can pollute drinking water sources affected by animal feeding operations. If an exemption for manure were to be added to CERCLA, communities could be precluded from cost recovery for pollution beyond the normal application of fertilizer currently permitted under CERCLA.

This legislation would also exempt dangerous substances emitted by CAFOs from notification requirements under CERCLA, thereby depriving local health officials of the information that they need to protect the public's health. Large amounts of animal waste have been associated with CAFOs. Several pathogens commonly found in animal waste have been found in contaminated drinking water and have caused severe disease outbreaks. The Environmental Protection Agency has found that "improperly managed manure has caused serious acute and chronic water quality problems throughout the United States." Byproducts of animal wastes such as hydrogen sulfide, ammonia, and particulate matter have been associated with increased air pollution and smog. Animal waste may contain antibiotics which can contribute to antibiotic resistance in humans. Local health officials cannot take precautions to notify the public of health hazards if they do not have appropriate information about potential contaminants.

I urge you and your colleagues to oppose efforts to provide exemptions for manure under CERCLA, whether as a stand alone bill or an amendment to a larger piece of legislation such as the Farm Bill. Please feel free to contact me with any questions regarding this important public health issue.

Sincerely,



Patrick M. Libbey
Executive Director





**American Water Works
Association**

The Authoritative Resource on Safe Water SM

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June 6, 2006

Dear Members of the House and Senate:

Efforts are underway in Congress to eliminate existing authorities from the Superfund statute that have been used by community water systems to protect local watersheds and drinking water supplies. We urge you to resist those efforts.

H.R. 4341 would prevent drinking water systems from recovering the costs of removing or reducing high levels of contaminants such as phosphorus from large upstream animal feeding operations. This bill would eliminate manure from the meaning of a "hazardous substance" under Section 101(14) and from the definition of a "pollutant or contaminant" under Section 101(33) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). This change is unnecessary and unwise for several reasons.

First, it is unnecessary because manure is not classified as a "hazardous substance" under CERCLA. Further CERCLA already has an exemption for the normal application of fertilizer that would include manure. There is no need to amend the definition to exclude manure.

The provision is unwise because phosphorus is a hazardous substance under CERCLA and has contaminated local drinking water supplies, resulting in additional treatment costs for the drinking water ratepayers. The City of Waco, Texas, has documented that its ratepayers have had to absorb \$3.5 million through their rates for treating water contaminated by phosphorus from large-scale dairy operations.

If a broad exemption for manure were to be added to CERCLA, communities such as Waco would be precluded from cost recovery for pollution beyond the normal application of fertilizer currently permitted under CERCLA. This would unfairly shift the burden of clean up from the polluter to local ratepayers.

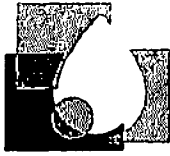
We strongly urge that this bill not be enacted nor the provisions of the bill be incorporated into any other legislation in either the House or Senate.

The American Water Works Association (AWWA) is the nation's oldest and largest organization of drinking water professionals. Our utility members provide safe and affordable water to more than 80 percent of the American people.

If you need more information, please don't hesitate to contact Al Warburton in our Washington office or me.

Sincerely,

Tom Curtis
Deputy Executive Director for Government Affairs



ASSOCIATION OF
METROPOLITAN
WATER AGENCIES

July 23, 2007

Subject: Oppose CERCLA Animal Waste Exemption in Farm Bill

Dear Representatives:

As the House of Representatives prepares this week to consider legislation to reauthorize the Farm Bill, we urge you to reject language that would exempt components of animal waste from designation as a hazardous substance pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Enactment of such an exemption would bring about serious consequences for the quality of America's drinking water supplies.

During last week's markup of the legislation, the Agriculture Committee adopted an amendment expressing the "sense of the committee that farm animal manure should not be considered as hazardous substance" under CERCLA. This follows the introduction earlier this year of legislation in the House and Senate that would specifically exempt animal waste and its components from the law.

As representatives of community drinking water systems, we believe it is important to note that animal manure itself is not currently considered a hazardous substance, pollutant or contaminant under CERCLA. Moreover, the law already contains an exemption for the normal application of fertilizer that includes manure.

However, phosphorus and other CERCLA-regulated hazardous substances that are known to compromise the quality of drinking water are commonly present in animal manure. If Congress were to provide a blanket CERCLA exemption for animal waste, consolidated animal feeding operations (CAFOs) would be free to discharge manure containing such hazardous substances into the environment without regard to its impact or liability for its damages. As a result, the costs of additional treatment to make water potable would be forced upon community water systems and their ratepayers, unfairly shifting the burden of cleanup away from polluters.

Later this year, Congress will celebrate the 35th anniversary of the Clean Water Act, landmark legislation modeled on the belief that all Americans must share the responsibility of maintaining the health of our nation's water supply. Exempting CAFOs from their fair share of this duty not only threatens to reverse the water quality gains that have been realized over the recent decades, but would also set a dangerous precedent encouraging other polluters to seek waivers from our environmental laws.

Again, we urge you to oppose a blanket exemption for animal waste and its components from the important requirements of CERCLA.

Sincerely,

Diane VanDe Hei
Executive Director

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Diane VanDe Hei
Executive Director

STATE ATTORNEYS GENERAL

A Communication from the Chief Legal Officers
Of the Following States:

California - Connecticut - Kentucky - New Jersey - New Mexico -
Oklahoma - Wisconsin

June 27, 2006

Dear Members of Congress:

We, the undersigned Attorneys General, write to express our concern with proposed legislation, H.R. 4341, that would exempt industrial-scale animal feeding operations from important provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Emergency Planning and Community Right-to-Know Act ("EPCRA"). As the chief legal officers of our states, we think that the proposed amendments, if enacted, would seriously impair our ability to protect the health of our citizens and the environment. Accordingly, we urge you to oppose these proposed amendments to CERCLA and EPCRA.

H.R. 4341 would exempt industrial-scale animal feeding operations from the provisions of CERCLA that require releases of hazardous substances to be reported to the government and the provisions that, among other things, authorize states to recover the costs of responding to releases of hazardous substances and the resulting damages to natural resources. It would also exempt animal feeding operations from the provisions of section 11004(a) of EPCRA that require reporting of the release of hazardous and extremely hazardous substances to the government. These exemptions would apply not only to the animal waste generated at animal feeding operations, but also to anything commingled with that waste, any process water, or any other substance in or emitted by the waste.

The exemption of animal feeding operations from CERCLA and EPCRA would severely constrain the ability of the states and the Environmental Protection Agency ("EPA") to require the investigation and cleanup of natural resources polluted by the improper disposal of industrial agricultural waste across the country. As of 2003, EPA estimated that animal feeding operations in the United States generated approximately 500 million tons of waste each year, three times more raw waste than is generated yearly by all the humans in the United States. 68 Fed. Reg. 7176-01, 7179-7180 (2003). The EPA reports that the primary pollutants commonly associated with animal waste that can be released into the environment include phosphorus, nitrogen, ammonia, pathogens, pesticides, antibiotics, hormones and metals, such as arsenic, copper, selenium, zinc, cadmium, molybdenum, nickel, lead, iron, manganese, aluminum, and boron. 66 Fed. Reg. 2960-01, 2976, 2978 (2001); 68 Fed. Reg. at 7181. The poultry industry alone is estimated to release approximately two million pounds of arsenic into the environment each year in the United States. *See Testimony of Robert S. Lawrence,*

MD, Johns Hopkins Bloomberg School of Public Health, before the House Subcommittee on Environment and Hazardous Materials, p. 9 (November 16, 2005).

Environmental problems can arise at industrial-scale animal feeding operations as opposed to family farms, in part, because large volumes of waste are generated by thousands of animals in confined operations that generally lack adequate facilities and land to appropriately manage the waste. See e.g., U.S. EPA, Risk Assessment Evaluation for Concentration Animal Feeding Operations, (May 2004). As a result, the waste is often managed and disposed of in a manner that results in the release of hazardous substances into the environment. According to EPA, "[o]ne animal facility with a large population of animals can easily equal a small city in terms of waste production" and "[c]urrent practices of waste handling often include minimal or no treatment before the wastes are disseminated into the environment." See U.S. EPA, Risk Assessment, at p. iv.

Water pollution caused by animal waste generated at Concentrated Animal Feeding Operations ("CAFOs") is included as part of the EPA's five national enforcement priorities for fiscal years 2005-2007. See U.S. EPA, *November 2004 - Compliance National Priority*. According to the EPA's 1998 and 2000 National Water Quality Inventory Reports, the agricultural sector, including CAFOs, "contributes to the impairment of at least 170,000 river miles, 2.4 million lake acres, and almost 2,000 estuarine square miles" and is the "leading contributor to identified water quality impairments in the nation's rivers and streams, lakes, ponds, and reservoirs." 56 Fed. Reg. at 2973; 68 Fed. Reg. at 7237. Pollution from animal feeding operations can have significant adverse effects on public health, drinking water supplies, recreation, and aquatic life.

Industrial-scale animal feeding operations can also emit air pollutants that have the potential to adversely affect human health and the environment, such as ammonia, particulate matter and hydrogen sulfide. See *Testimony of Robert Lawrence*, at 4. For example, EPA has reported that animal waste management is the largest source of air emissions of ammonia, a CERCLA hazardous substance, in the United States.¹ In 2003, the National Academy of Science issued a report discussing the environmental and human health impacts of air emissions from animal feeding operations and setting forth recommendations for monitoring, setting standards and reducing emissions. See National Research Council of the National Academies, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (Nat'l Academies Press 2003). In response, the EPA proposed a legal agreement with the animal feeding operation industry, in part, "to address emissions of air pollutants and hazardous substances from certain animal feeding operations" through a national monitoring program.² If federal law is amended as proposed by H.R. 4441, an estimated 238,000 industrial-scale animal feeding operations would not be required to report their emissions of hazardous or extremely hazardous substances under either section 9603 of CERCLA or section

¹ The EPA also reports that livestock operations are estimated to produce as much as eighty percent of total ammonia emissions. <http://www.epa.gov/ORD/NRMRL/pubs/600r02017/600r02017.pdf>

² See <http://www.epa.gov/compliance/implementation/air/consent/consent/caa/cafo-agr-050121.pdf>.

11004(a) of EPCRA, thereby depriving the states of important information necessary to respond to the impacts of these facilities on human health and the environment.

Proponents of these exemptions assert that CERCLA and EPCRA should not be utilized to monitor and clean up hazardous substances released into the environment by industrial-scale animal feeding operations. Essentially, they assert that all industrial-scale animal feeding operations are highly regulated under the Clean Water Act and that Congress did not intend for CERCLA to apply to releases of hazardous substances from these operations.

Facilities permitted under the Clean Water Act are not wholly exempt from CERCLA and EPCRA, although there are provisions in the statutes that provide certain protections for facilities in compliance with a federal permit. Regardless, it is critical to understand that, although industrial-scale animal feeding operations are a significant source of pollution across the country, only a small fraction of the operations are actually regulated under the Clean Water Act³. As of 2003, the EPA estimated that there were approximately 238,000 animal feeding operations in the United States. See 68 Fed. Reg. at 7179-7180. In 2004, the EPA estimated that only 18,000 animal feeding operations were subject to regulation as CAFOs under the Clean Water Act and only thirty-four percent of those operations had actually obtained permits. See U.S. EPA, *November 2004 - Compliance National Priority: Clean Water Act, Wet Weather, Concentrated Animal Feeding Operations*. Additionally, the CAFO permit is primarily directed at regulating nutrients, as opposed to other constituents such as metals and pathogens. See e.g., 40 C.F.R. § 412.4.

Further, it is clear that Congress intended CERCLA to apply to animal feeding operations that dispose of waste in a manner that releases hazardous substances into the environment. While Congress created an exemption for the "normal application of fertilizer," see 42 U.S.C. § 9601(22)(D) of CERCLA, the legislative history plainly indicates that CERCLA was intended to apply to activities such as dumping, spilling or emitting fertilizer in any place or in amounts significantly greater than are beneficial to crops. See S. Rep. No. 96-848, at 45 (1980)⁴. Similarly, section 11021 of EPCRA contains an exemption from the definition of "hazardous chemical" for substances used in "routine agricultural operations" and release reporting under section 11004(a) is only required when the facility releases regulated substances above the thresholds established to protect public health and the environment. See 40 C.F.R. § 355.40. These provisions are adequate to protect all legitimate uses of animal waste by farmers, while ensuring that the states retain the ability to properly respond to releases of hazardous substances caused by dumping or other improper waste management activities of industrial-scale animal feeding operations.

³ EPA, by regulation, has determined that it will only regulate primarily the largest of the animal feeding operations, called Concentrated Animal Feeding Operations or CAFOs, under the Clean Water Act. See 68 Fed. Reg. 7179-80.

⁴ Specifically, the Senate Report states that "[t]he term 'normal field application' means the act of putting fertilizer on crops or cropland, and does not mean any dumping, spilling, or emitting, whether accidental or intentional, in any other place or of significantly greater concentrations or amounts than are beneficial to crops."

Considering the potential nature and magnitude of the pollution caused by industrialized animal feeding operations across the nation, it is important to maintain the authority of the states to appropriately monitor and respond to releases of hazardous substances from these facilities. The proposed exemption of animal waste from CERCLA and EPCRA would severely constrain our ability to protect human health and the environment. Accordingly, we urge you to oppose H.R. 4341.

Thank you for your consideration.

Sincerely,

Bill Lockyer
Attorney General California

Richard Blumenthal
Attorney General Connecticut

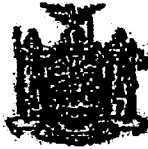
Gregory D. Stumbo
Attorney General Kentucky

Zufma V. Farber
Attorney General New Jersey

Patricia A. Madrid
Attorney General New Mexico

W.A. Drew Edmondson
Attorney General Oklahoma

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ELIOT SPITZER
Attorney General

(212) 416-4050

June 26, 2006

Honorable Conrad Burns
Chairman
Interior and Related Agencies Subcommittee
Senate Committee on Appropriations
United States Senate
SD-187 Dirksen Senate Office Building
Washington, DC 20510

Honorable Byron L. Dorgan
Ranking Member
Interior and Related Agencies Subcommittee
Senate Committee on Appropriations
United States Senate
SH-323 Hart Senate Office Building
Washington, DC 20510

Re: Environmental exemptions for animal feeding operations
H.R. 4341 and Senate appropriations language

Dear Senators Burns and Dorgan:

I am writing to express my concern about H.R. 4341 or any similar legislation in the Senate that would carve major loopholes into two of our nation's most important environmental laws. By excluding manure from the definition of "hazardous substance" in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as Superfund) and the definition of "pollutant" in the Emergency Planning and Community Right-to-Know Act (EPCRA), H.R. 4341 threatens to compromise the public's need for effective environmental protection.

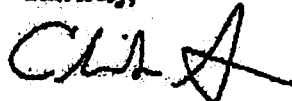
Both CERCLA and EPCRA are critical to protecting public health and the environment, especially drinking water supplies, and have withstood the test of time. A new, sweeping exemption for manure would set a dangerous precedent of eroding vital legislation of general application.

06/27/2006 9:31AM

CERCLA allows governmental bodies to recover the costs of cleaning up releases of hazardous substances and to recover damages for injuries to natural resources caused by such releases. EPCRA requires those responsible for unpermitted releases of pollutants (such as spills) to report such releases to state and local officials. Both laws already exempt traditional agricultural practices, such as the normal application of local manure as fertilizer. In addition to exempting manure from the reach of CERCLA and EPCRA, H.R. 4341 defines manure to include anything in or commingled with animal waste, no matter how harmful. Thus, the proposed legislation would take from the states the ability to recover costs or damages in federal court from manure spills that, although rare, unfortunately can have broad and devastating effects.

The overwhelming majority of agricultural operations comply with existing law and need no broad exemption for manure. The elimination of CERCLA and EPCRA as potential enforcement tools in this area would be a serious mistake. Therefore, I respectfully urge you to resist any effort to that would accomplish such an unwise objective.

Sincerely,



ELIOT SPITZER
Attorney General

cc: Subcommittee Members



STATE OF IOWA

THOMAS J. VILBACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

June 7, 2006

The Honorable Tom Harkin
731 Hart Senate Office Building
Washington, DC 20510

Dear Senator Harkin:

The Iowa Department of Natural Resources opposes Senator Craig's amendment which seeks to exempt livestock operations from certain federal regulations.

While animal agriculture is subject to a number of permitting requirements, there continue to be concerns related to phosphorous and nitrogen runoff into our surface and groundwater. Iowa has more than 800 large earthen manure basins that have been in place for a number of years. A number of those predate the passage of many of the requirements that current operations must follow. Many Iowa streams and lakes are impaired by nutrients and are included on the EPA impaired waters list. Exempting livestock operations from CERCLA oversight removes an important tool to the state in its long term efforts to manage runoff or infiltration from these sites, particularly regarding potential cleanup.

EPCRA establishes requirements for reporting storage and release of hazardous and toxic chemicals. This information is reported to EPA so that they can watch for trends and changes in industries where emissions of these pollutants may be increasing and causing an increased risk to the public. There are minimum reporting thresholds that prevent those with truly low emissions from having to report. It is critical that any source of these emissions (over the thresholds) report such so that if limits need to be set, they are done before dangerous amounts of emissions cause serious threats to public health. It is the emissions that count, not who is emitting them that matters.

Senator Craig acknowledges EPA's recognition of the lack of current information related to animal agriculture. The current study on emissions from agricultural facilities through a consent agreement with many agricultural producers (where temporary relief from reporting is already provided) will help to provide the information necessary to determine whether these sources fall below the minimum reporting requirements. The study will also include information as to what size facilities may be expected to exceed those thresholds, and where further evaluation of public health risk should be conducted.

The Department of Natural Resources believes that it is important that time be allowed for the current air quality study to be completed so that enough information is available to determine the risks associated with emissions from animal feeding operations. If the emissions are determined to be below the minimum, then the requirements of EPCRA would not be applicable in any case.

Sincerely,



Jeffrey R. Vonk
Director



CITY OF WACO

City Manager's Office

Post Office Box 2570

Waco, Texas 76702-2570

254 / 750-5640

Fax: 254 / 750-5880

www.waco-texas.com

June 2, 2006

The Honorable James M. Inhofe
Chairman
Senate Committee on Environment
and Public Works
410 Dirksen
Washington, D.C. 20510

The Honorable James M. Jeffords
Ranking Member
Senate Committee on Environment
and Public Works
410 Dirksen
Washington, D.C. 20510

Re: City of Waco Litigation Against Upstream Dairy CAFOs

Dear Senators Inhofe and Jeffords:

I am City Manager for the City of Waco, Texas, and have served in that position for four years. I was born and raised in Waco and am a life long resident of this community.

As you may know, after years of attempting to resolve water quality issues in Lake Waco by meeting and negotiating with dairy operators in the watershed and dairy industry representatives, the City of Waco was unable to achieve any meaningful solution to the problem. In fact, the City was unable to get any of the dairies to even admit they were contributing to the problem, despite the fact that every known public or private study that has examined these issues has concluded that the dairies are the most significant cause of the overloading of phosphorus into Lake Waco.

As a result of the dairies unwillingness to resolve these issues, the City of Waco sent out letters to sixteen different dairies in the watershed notifying those dairies that a suit would be filed by the City against those dairies unless those dairies contacted the City within 60 days and sought to resolve the issue. Only one dairy responded to this letter, and the City has worked with that dairy to resolve the issues and has not sued that dairy. Another dairy, without the knowledge of the City, filed for bankruptcy protection before the notice letter was sent. The City has not sued that dairy. The City is aware of no claim that this bankruptcy filing was due to any activities of the City.

After these extensive efforts to resolve these issues failed to result in any meaningful agreements to improve water quality, the City of Waco brought suit against fourteen large industrial dairies in the watershed, based on TCEQ records demonstrating very poor regulatory compliance at those dairies. The lawsuit was brought under both the Federal Clean Water Act the Federal Superfund statute (CERCLA). The City's lawsuit was highly effective. The City settled with eight of the fourteen original dairy defendants before the lawsuit was finally resolved in January 2006 by mediation. Under the eight pre-mediation settlements, the dairies have agreed to certain changes in their management practices, which allow them to continue agricultural operations and at the same time

June 2, 2006

protect the river and the lake. The remaining six dairies settled with the City in January 2006 after court-ordered mediation. The final six settlements resolved the entire lawsuit.

None of the dairies that have settled with the City of Waco have paid money to settle the lawsuit. In one case, an insurance company for one of the dairies paid a cash settlement on behalf of that dairy, practically all of which the City then returned to the dairy operator in exchange for a conservation easement prohibiting the over polluted land on that dairy from ever again being used as a CAFO, but allowing it to be used for other agricultural purposes.

To the knowledge of the City of Waco, none of the fourteen dairies it sued have filed for bankruptcy protection or even threatened to file. The settlements ultimately reached with all fourteen dairies are consistent with the protections sought from the dairies when the City originally sent notices of its intent to sue. In fact, the one dairy that responded to the City's notice letter is currently negotiating with the City for a settlement on similar terms. It is the City's understanding that the dairy industry actually discouraged the fourteen dairies from responding to the City within the 60-day notice period and attempting to resolve the issues. This lack of response led to the filing of the lawsuit.

The final six settlements that were concluded by a Settlement Agreement filed January 11, 2006, are consistent with the earlier settlements. The only significant difference is the provision for a two-year sampling period during which the water quality in the North Bosque River will be tested during high flow events to determine if an agreed level of improvement in concentrations of phosphorus is achieved. If the improvement is achieved after the sampling period, the dairies would not be required to comply with any additional restrictions, including additional restrictions related to removal of solid manure, reduction in phosphorus diet, and land application of wastewater. If the water quality improvements are not achieved, each of the six dairies will have to comply with the additional restrictions. However, these additional restrictions are consistent with the earlier settlements and consistent with the requirements the City has sought all along.

It has never been the City of Waco's intent to put the dairies it sued or any other dairies out of business, and the City's lawsuit has not put any dairy out of business. The dairies claim that they were implementing a number of the City's requested changes in management practices even before the settlements.

It is critically important to the City of Waco to protect its public drinking water supply and the City had no choice but to undertake efforts to deal with the single most significant cause of taste and odor problems in Lake Waco—phosphorus released from dairy cow waste. The City of Waco is spending more than \$54 million for capital improvements specifically to deal with taste and odor problems caused by excessive phosphorus released from dairy cow waste. Because some of the dairy operators in our watershed elect to over-apply waste to land and otherwise fail to properly manage waste, our citizens are burdened with significantly increased water rates.

The City of Waco remains opposed to any amendment to CERCLA that would exclude manure from the definition of hazardous substance.

Senate Committee on Environment and Public Works

Page: 3

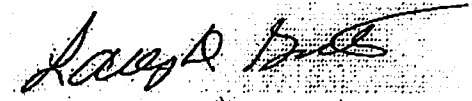
June 2, 2006

Thank you for your time and attention to this important issue and feel free to contact me if you have any questions or desire any additional information.

Sincerely yours,

CITY OF WACO, TEXAS

By:



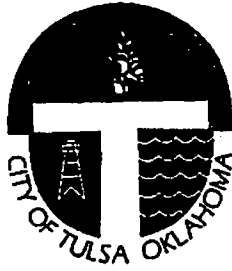
Larry D. Groth, P.E.
City Manager

mp

Cc: The Honorable Kay Bailey Hutchison
The Honorable John Cornyn
The Honorable Chet Edwards

Kathy Taylor
MAYOR

918 • 596 • 7411



OFFICE OF THE MAYOR

200 CIVIC CENTER

TULSA, OKLAHOMA

74103

June 2, 2005

Dear Members of the House and Senate:

As the Mayor of Tulsa, Oklahoma I am writing to express my deep concerns about a proposal that could preclude community drinking water providers, such as the Tulsa Metropolitan Utilities Authority, from recovering the costs of removing or reducing high levels of contaminants, such as phosphorus, from large upstream animal feeding operations.

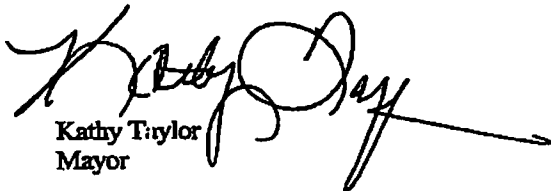
The Comprehensive Environmental Response Compensation and Liability Act (CERCLA) is the only federal statute that allows municipal governments and drinking water utilities to recover cleanup or water treatment costs from parties responsible for contamination of local drinking water supplies with hazardous substances. By exempting from regulation the application of animal manure at rates above the needs of crops, the proposal would preclude local communities from recovering the monies that they are being forced to spend to deal with the problem.

Nonpoint source pollution of drinking water supplies is a significant problem both in Oklahoma and elsewhere, and communities have been burdened with the high cost of treating the polluted water. In the case of my own city, residents have had to absorb substantial amounts of money through their rates for the purpose of treating water contaminated by large-scale poultry operations. Changing the CERCLA definition of a hazardous substance would also preclude federal or state cleanup efforts, forcing the treatment burden – and thus the treatment cost – onto community water systems and local consumers.

Progress is being today made on cleaning up Tulsa's water supply because we were able to use CERCLA to make those responsible for contamination take steps to solve the problem. Other communities deserve the same opportunity.

I strongly urge you to withhold your support for amendments to CERCLA regarding animal waste.

Sincerely,



Kathy Taylor
Mayor

KLT/ch

**Earthjustice · Environmental Integrity Project · Environmental Working Group ·
Food and Water Watch · Institute for Agriculture and Trade Policy · Izaak Walton
League of America · The Humane Society of the United States · National
Environmental Trust · Natural Resources Defense Council · Sierra Club · Sustainable
Agriculture Coalition · Union of Concerned Scientists · U.S. PIRG · Waterkeeper
Alliance · Western Organization of Resource Councils ·**

**PROTECT DRINKING WATER AND AIR FROM HAZARDOUS SUBSTANCES
IN FACTORY FARM WASTE**

**The Honorable Tom Harkin
Chair, Senate Agriculture Committee
731 Hart Building
Washington DC 20510**

**The Honorable Saxby Chambliss
Ranking Member, Senate Agriculture Committee
416 Russell Building
Washington DC 20510**

September 5, 2007

Dear Chairman Harkin and Ranking Member Chambliss:

When your committee takes up the Farm Bill, we understand that there may be an effort to exempt hazardous substances associated with excess amounts of livestock waste, such as phosphorus, ammonia and hydrogen sulfide, from key definitions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). We urge you to oppose these unwarranted exemptions, which will result in increased threats to drinking water supplies, force water users to bear the costs imposed by sloppy operations and withhold important information about air toxics from emergency responders and neighboring communities.

Representatives of some large-scale agriculture operations have argued to members of Congress and to farming communities that such an amendment is urgently needed to protect family farms from frivolous lawsuits and allow farmers to continue to use manure as fertilizer for crop production. These assertions are not based in fact: CERCLA's cost recovery and reporting requirements do not threaten responsible operators who manage manure as a valuable fertilizer. Farm lobby groups have spread a great deal of misinformation about how these laws affect agricultural operations, and we hope that the Environment and Public Works Committee, which has jurisdiction over these important public health and environmental protection statutes, will fully explore these issues before the Senate considers any changes.

As you know, the size of livestock operations has increased tremendously in recent years. Unlike in earlier decades, many of today's large-scale operations confine thousands, or even millions, of animals in closed buildings, producing huge volumes of waste material that can pose serious threats to air and water resources. A number of the large confined animal feeding operations generate as much waste as – or more than – a small city, but few of these facilities employ sophisticated means of treating this waste material.

Some large livestock operations now find themselves producing more waste than can be responsibly managed by traditional land application practices. Instead of responding to this situation by adopting more advanced treatment or moving waste materials outside of watersheds that cannot tolerate additional pollutant loadings, some operations simply “dump” excess manure. Whether they allow leaks and spills from manure storage lagoons, spray or apply manure to frozen or bare ground or

simply overapply far in excess of the agronomic needs of crops, their practices result in pollution of groundwater and surface water with excess nutrients and dangerous pathogens, arsenic and other toxic metal compounds and antibiotics.

The City of Waco, Texas, for example, projects that it will spend more than \$80 million for capital improvements specifically to deal with taste and odor problems caused by excessive phosphorus released from dairy cow waste. Facing what appeared to be ever-increasing water treatment expenditures to eliminate ever-increasing nutrient loadings from agricultural operations, the City urged upstream feeding operations to adopt better manure management techniques. When that effort failed, they used the most effective legal tool available: a CERCLA cost recovery suit. The suit – against 14 operations that had a history of problems – was used not to shut down dairies or collect monies from farmers, but to leverage new, enforceable agreements for better manure management at these facilities.

If Congress amends CERCLA with a special exemption for livestock waste, it will deny communities across America a critically important tool for protecting their invaluable water supplies from pollution caused by those large-scale agricultural operations that fail to properly manage their waste. It will declare that water users, not polluters, must bear the burdens of pollution, a radical shift in longstanding federal law.

Another impact of the proposed exemptions would be to prevent federal, state and local emergency responders from accessing information about toxic releases from these facilities. For example, many of the large feeding operations release extremely large volumes of hazardous air pollutants, such as ammonia and hydrogen sulfide. These volumes can exceed those produced by large, non-agricultural industries. A number of studies, including one by Iowa State University and the University of Iowa in 2002, have found a variety of health problems among animal feeding operation workers and residents who live near these operations, including bronchitis, asthma and antibiotic-resistant bacterial infections. These findings are of great concern to many rural communities, and action by Congress to ban reporting by these facilities would do a great disservice to those who are working hard to develop a better understanding of the full impacts of these releases.

Advocates for exempting livestock waste from CERCLA and EPCRA claim that livestock operations are strictly regulated under other environmental laws. In fact, the EPA and the states have failed to adequately control large-scale agricultural pollution using federal environmental laws. Even the largest livestock operations historically have not been regulated under the Clean Air Act, although many release harmful levels of air toxics such as ammonia and hydrogen sulfide. Nor has the Clean Water Act effectively controlled farm pollution. It has required large livestock operations to obtain permits for more than 30 years, but noncompliance has been widespread. The EPA estimates that only 8,500 of the nation's 18,800 Concentrated Animal Feeding Operations currently have Clean Water Act permits, even though approximately 14,000 facilities will need permits.

What's more, an animal feeding operation may be exempt from CERCLA to the extent that its releases are permitted by its Clean Water Act permit. In addition, livestock producers who are using their manure in quantities that crops can utilize are protected under the law– **CERCLA already includes a specific exception for the "normal field application of fertilizer."** Only those livestock operators who have excess manure, fail to find a viable alternative use, and so dump it on the land to get rid of it, rather than use it to fertilize crops, have potential liability.

Large livestock operations can be significant sources of pollution. Virtually all of them operate without the air pollution controls, and a significant number without the water pollution controls that are required for industrial facilities generating comparable quantities of waste. We urge you not to

exempt hazardous substances associated with livestock waste from the health and environmental protections that CERCLA and EPCRA provide. Thank you for considering our views.

Sincerely,

Joan Mulhern
Senior Legislative Counsel
Earthjustice

Karla Raettig
Counsel
Environmental Integrity Project

Wenonah Hauter
Executive Director
Food and Water Watch

Sandra Schubert
Legislative Director
Environmental Working Group

Mimi Brody
Director of Federal Legislation
The Humane Society of the United States

Jim Harkness
President
Institute for Agriculture and Trade Policy

K.C. Duerig
Chair, Animal Factory Campaign Team
Western Organization of Resource Councils

Margaret Mellon
Director Food and Environment
Union of Concerned Scientists

Velma Smith
Senior Policy Associate
National Environmental Trust

Karen Wayland
Legislative Director
Natural Resources Defense Council

Debbie Sease
Legislative Director
Sierra Club

Martha Noble
Senior Policy Associate
Sustainable Agriculture Coalition

Anna Aurilio
Director, Washington DC Office
U.S. PIRG

Steve Fleischli
President
Waterkeeper Alliance

Brad Redlin
Director of Agricultural Programs
Izaak Walton League of America

CC: Members of the Senate Agriculture Committee
The Honorable Barbara Boxer, Chair, Senate Environment and Public Works Committee

**Alliance for the Great Lakes • American Bottom Conservancy • American Rivers •
Animal Welfare Institute • Appalachian Center for the Economy and the
Environment • Arizona PIRG • Center on Race, Poverty & the Environment •
Christen Farms • Citizens Against Factory Farms, Inc • Clean Water Action •
Clean Water Action Alliance of Minnesota • Clean Water Network of Florida •
Coast Action Group • Community Association for Restoration of the Environment •
Concerned Residents Against Pig Confinements • Dakota Rural Action •
Earthjustice • Environmental Law and Policy Center • Environment Colorado •
Environment Michigan • Families Against Rural Messes • Family Farm Defenders
• Family Farms for the Future • Friends of Milwaukee's Rivers • Great Lakes
Aquatic Habitat Network and Fund • Gulf Restoration Network • Help Save the
Apalachicola River Group • Idaho Conservation League • Illinois Stewardship
Alliance • Indigenous Environmental Network • Iowa CCI • Iowa Environmental
Council • Iowa Farmers Union • Lower Susquehanna Riverkeeper • Michigan
Environmental Council • Michigan Land Use Institute • Michigan Nature
Association • Midwest Environmental Advocates • Milwaukee Riverkeeper • The
Minnesota Project • Missouri Coalition for the Environment • New Jersey State
Federation of Sportsmen's Clubs • National Lawyers Guild Environmental Justice
Committee • Natural Resources Defense Council • The New York Environmental
Law & Justice Project • Northwest Environmental Defense Center • The Ohio
Environmental Council • Ozark Clear Water • Raymond Proffitt Foundation •
Save the Valley • Sierra Club • Sustainable Agriculture Coalition • Tip of the Mitt
Watershed Council • United States Public Interest Research Group • Waterkeeper
Alliance • Western Environmental Law Center • Western Organization of Resource
Councils • West Virginia B.A.S.S. Federation Nation • Wyoming Outdoor Council**

OPPOSE LEGISLATION TO EXEMPT LIVESTOCK MANURE FROM CERCLA

August 4, 2006

Dear Member of Congress:

The Clean Water Network, an alliance of more than 1,000 public interest groups working to strengthen federal clean water policy, opposes H.R. 4341 and S. 3681, which would exempt contamination from livestock manure from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Proponents of this legislation argue that CERCLA is redundant because the Clean Water Act strictly regulates pollution from livestock operations. However, both laws are essential to protect people's health and the environment from livestock waste. CERCLA and the Clean Water Act serve different purposes but are complementary. While the Clean Water Act seeks to limit pollution from Concentrated Animal Feeding Operations (CAFOs), CERCLA focuses on remediation. CERCLA is the only federal statute that allows for State and local governments to recover cleanup costs from parties responsible

for contamination of local drinking water supplies. The Clean Water Act does not authorize State or Federal Trustees to seek recovery of damages for injury to, or destruction of, natural resources from CAFO pollution.

Water pollution from livestock operations remains a serious national problem. In 1998, EPA and USDA reported that livestock pollution affected about 35,000 river miles in 22 states that categorized impacts from specific types of agriculture. In 2003, when EPA published its CAFO permitting rules, it said that 29 states had specifically cited livestock operations as contributing to water quality impairments

The Clean Water Act has required permits for CAFOs for more than 30 years. Yet noncompliance with permitting requirements is widespread, and most CAFOs do not have Clean Water Act permits. In 2003, the EPA estimated that there are almost 15,000 large and medium-sized livestock operations; in that same year the Government Accountability Office estimated that Clean Water Act permits had been issued to only 4,500 operations. The EPA recently proposed CAFO permitting rules that may narrow the universe of CAFOs required to obtain a Clean Water Act permit.

The more effectively the Clean Water Act controls pollution from CAFOs, the less communities and states will need to rely upon CERCLA to recover the costs of remediation. Ironically, many of the interest groups seeking to exempt livestock manure from CERCLA are also litigating to weaken the Clean Water Act's CAFO permitting requirements. Should they succeed, CAFOs will be poorly controlled under the Clean Water Act and states and communities will be left with little recourse under federal law to clean up waters.

Congress recognized a role for both the Clean Water Act and CERCLA and harmonized their requirements by exempting federally permitted releases from CERCLA. An animal feeding operation may be exempt from CERCLA to the extent that its releases are permitted by its Clean Water Act permit.

If CAFOs fail to comply with the Clean Water Act, CERCLA gives livestock operators a strong incentive for the responsible management of livestock manure. CERCLA provides a unique safety net to cities and states whose water is damaged by livestock operations. We urge you to oppose H.R. 4341 and S. 3681, which would eliminate accountability for the livestock industry under CERCLA and instead burden downstream water users with cleanup costs.

Sincerely,

Cheryl Mendoza
Manager
Water Conservation Program
Alliance for the Great Lakes
Chicago, IL

Kathy Andria
President
American Bottom Conservancy
East St. Louis, IL

S. Elizabeth Birnbaum
Vice President for Government Affairs
American Rivers
Washington, DC

Margaret Janes
Executive Director
Appalachian Center for the Economy
and the Environment
Mathias, WV

Diane Brown
Executive Director
Arizona PIRG
Phoenix, AZ

Brent Newell
Staff Attorney & Director
San Joaquin Valley Air Quality Project
Center on Race, Poverty and the
Environment
San Francisco, CA

Rolf Christen
Christen Farms
Green City, MO

Sharon Lewis
Secretary
Citizens Against Factory Farms, Inc.
Mount Sterling, IL

Paul Schwartz
National Policy Coordinator
Clean Water Action
Washington, DC

Julie Jansen
Program Manager
Clean Water Action Alliance of
Minnesota
Minneapolis, MN

Linda Young
Director
Clean Water Network of Florida
Tallahassee, FL

Alan Levine
Director
Coast Action Group
Point Arena, CA

Helen Reddout
President
Community Association for Restoration
of the Environment
Outlook, WA

David Leifheit
Spokesperson
Concerned Residents Against Pig
Confinements
Hana, IL

Lois Andersen
Interim Director
Dakota Rural Action
Brookings, SD

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Senior Attorney
Earthjustice
Washington, DC

Albert Ettinger
Senior Staff Attorney
Environmental Law and Policy Center
Chicago, IL

Stephanie Thomas -
Clean Water Advocate
Environment Colorado
Denver, CO

Mike Shriberg
Director
Environment Michigan
Ann Arbor, MI

Karen Hudson
President
Families Against Rural Messes
Elmwood, IL

John Peck
Executive Director
Family Farm Defenders
Madison, WI

Terry Spence
President
Family Farms for the Future
Unionville, MO

Lynn Broaddus
Executive Director
Friends of Milwaukee's Rivers
Milwaukee, WI

Emily Hartz
Program Associate
Great Lakes Aquatic Habitat Network
and Fund
Petoskey, MI

Cynthia Sarthou
Executive Director
Gulf Restoration Network
New Orleans, LA

Marilyn Blackwell
President
Help Save the Apalachicola River Group
Wewahatchka, FL

Courtney E. Washburn
Community Conservation Associate
Idaho Conservation League
Boise, ID

Gayle Keiser
Executive Director
Illinois Stewardship Alliance
Rochester, IL

Bob Shimek
Special Projects
Indigenous Environmental Network
Bemidji, MN

Carissa Lenfert
Rural Organizer
Iowa CCI
Des Moines, IA

Richard Leopold
Executive Director
Iowa Environmental Council
Des Moines, IA

Chris Petersen
President
Iowa Farmers Union
Ames, IA

James Clift
Policy Director
Michigan Environmental Council
Lansing, MI

Patty Cantrell
Entrepreneurial Agriculture Director
Michigan Land Use Institute
Beulah, MI

Jeremy P. Emmi
Executive Director
Michigan Nature Association
Williamston, MI

Andrew Hanson
Attorney
Midwest Environmental Advocates
Madison, WI

Cheryl Nenn
Milwaukee Riverkeeper
Milwaukee, WI

Loni Kemp
Senior Policy Analyst
The Minnesota Project
Canton, MN

Kim Knowles
Water Policy Analyst
Missouri Coalition for the Environment
St. Louis, MO

George P. Howard
Conservation Director
New Jersey State Federation of
Sportsmen's Clubs
Pittstown, NJ

Jeff Thomson
Co-Chair
National Lawyers Guild Environmental
Justice Committee
New York, NY

Jon Devine
Senior Attorney
Natural Resources Defense Council
Washington, DC

Joel Kupferman
Executive Director
The New York Environmental Law &
Justice Project
New York, NY

Mark Riskedahl
Executive Director
Northwest Environmental Defense
Center
Portland, OR

Vicki Deisner
Executive Director
Ohio Environmental Council
Columbus, OH

Mark Adams
Core Member
Ozark Clear Water
Neosho, MO

John C. O'Herron, II
President
Raymond Proffitt Foundation
Langhorne, PA

Richard Hill
President
Save the Valley
Madison, IN

Ed Hopkins
Director of Environmental Quality
Program
Sierra Club
Washington, DC

Vivian C. Leven
Research Associate
Society for Animal Protection Policy
Animal Welfare Institute
Washington, DC

Michael Helfrich
Lower Susquehanna Riverkeeper
Stewards of the Lower Susquehanna
York, PA

Martha Noble
Senior Policy Analyst
Sustainable Agriculture Coalition
Washington, DC

Grenetta Thomassey, PhD
Policy Director
Tip of the Mitt Watershed Council
Petoskey, MI

Christy Leavitt
Clean Water Advocate
United States Public Interest Research
Group
Washington, DC

Steve Jones
Director of Air and Water Quality
Wyoming Outdoor Council
Lander, WY

Jeff Odefey
Staff Attorney
Waterkeeper Alliance
Irvington, NY

Greg Costello
Executive Director
Western Environmental Law Center
Eugene, OR

Don Nelson
Chairman
Western Organization of Resources
Councils
Billings, MT

Jim Summers
Conservation Director
West Virginia B.A.S.S. Federation
Nation
Worthington, WV



American Public Health Association

Working for a Healthier World

800 I Street, NW • Washington, DC 20001-3710

(202) 777-APHA • Fax: (202) 777-2534 • comments@apha.org • www.apha.org

August 30, 2007

The Honorable Barbara Boxer
Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Bldg.
Washington, DC 20510-6175

Dear Chairman Boxer:

The American Public Health Association (APHA) is the oldest, largest and most diverse organization of public health professionals in the world, dedicated to protecting all Americans and their communities from preventable, serious health threats and assuring community-based health promotion and disease prevention activities and preventive health services are universally accessible in the United States. I write on behalf of APHA to express our concerns regarding Concentrated Animal Feed Operations (CAFOs) and our opposition to potential efforts to exempt certain wastes from regulation under federal hazardous waste laws.

In 2003, APHA adopted a resolution calling for a moratorium on CAFOs. We believe the negative health impacts these facilities have on our air, water and soil constitute the need for a moratorium on until additional scientific data on the risks to public health have been collected and uncertainties resolved.

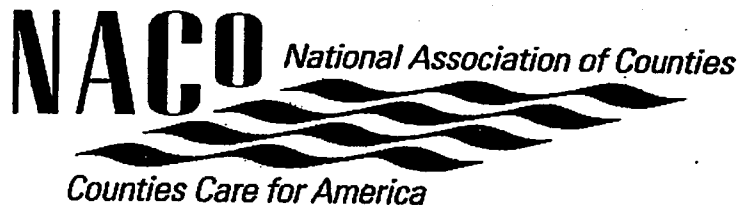
CAFO generated animal wastes often contain heavy metals, antibiotics, pathogen bacteria, nitrogen, phosphorus as well as dust and mold. This waste is often spread, untreated on nearby cropland. Runoff from this practice can carry human pathogens and other toxics into surface waters that serve as drinking water sources.

Access to safe drinking water and clean air are key element to ensuring the health of the public. Efforts that would remove animal wastes as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act, thus limiting important pollution reporting data and the efforts of communities to recover the costs of cleaning up water sources contaminated by CAFOs, run counter to public health practice and policy making. In order to ensure the safest drinking water and cleanest air for the American public, we urge you to oppose efforts to eliminate important pollution reporting requirements and cleanup liability protections.

Sincerely,

Georges C. Benjamin, MD, FACP, FACEP (Emeritus)
Executive Director

cc: The Honorable Tom Harkin



June 26, 2006

Dear Member of Congress:

On behalf of the National Association of Counties (NACo), I am writing about a proposal to remove animal manure waste as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Many counties across the nation have been involved in controversies surrounding these large concentrated animal feeding operations (CAFOs). While CAFOs may bring economic benefit to a region, they also have the potential to present environmental and public health threats. Animal waste, if not properly managed, can cause serious environmental damage such as oxygen depletion of surface water, pathogens, nutrient contamination of surface and ground water, unsafe air emissions and nuisance odors. Public health has been threatened through contamination of drinking water, fish kills, shellfish contamination and swimming advisories.

NACo believes that the availability of an adequate supply of clean water is vital to our nation. At the same time, we recognize that the elimination of water pollution is a long-term process that is limited by economic and social costs. Rural communities are largely dependent on CAFOs, for they bolster local economies. On the other hand, technologies and best practices exist for CAFOs that can lessen their environmental and public health footprints on the community.

In addition to environmental and public health threats, clean-up of polluted waterways from CAFOs have the potential to be a huge unfunded federal mandate, mainly by passing on the costs of remediation to our counties who had little to do with the pollution in the first place. To that end, we encourage you to oppose removing animal manure waste as a pollutant/contaminate under CERCLA.

If you have any questions, feel free to contact Julie Ufner on my staff at 202-942-4269. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Larry E. Naake', is written over a circular, textured stamp that is partially obscured by the signature.

Larry E. Naake
Executive Director

March 20, 2007

The Honorable Barbara Boxer
Chairman
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Boxer:

We are writing in response to recent testimony provided by EPA Administrator Stephen Johnson before the Senate Environment and Public Works Committee regarding EPA's plan to exempt emissions of air pollutants from manure from reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). Administrator Johnson indicated at a hearing held on March 7, 2007, that state and local officials implementing Title III of the Superfund Amendments and Reauthorization Act consulted by EPA did not object to eliminating the CERCLA and EPCRA reporting requirements for ammonia and hydrogen sulfide emissions from manure.

However, what Mr. Johnson failed to mention is that EPA staff also sought the input of state and local air pollution control agencies, who voiced a different view. During a conference call EPA's Office of Solid Waste and Emergency Response held with the National Association of Clean Air Agencies (NACAA) on November 9, 2006, we expressed several concerns to EPA about exempting from EPCRA and CERCLA the reporting of emissions of ammonia and hydrogen sulfide from manure, which we discuss below:

- Ammonia and hydrogen sulfide are air pollutants with demonstrated health effects. Human exposure to ammonia triggers respiratory problems, causes nasal and eye irritation and in large enough amounts can be fatal.¹ It also contributes directly to the formation of fine particulate matter (PM_{2.5}), which causes severe health effects in people, including death, heart attacks and increased severity of asthma attacks, as well as visibility impairment.² Hydrogen sulfide is a toxic air pollutant that can cause severe health effects, even death, at high concentrations

¹ Schiffman, S.S., et al., *Health Effects of Aerial Emissions from Animal Production and Waste Management Systems*, available at http://www.cals.ncsu.edu/waste_mgt/natlcenter/summary.pdf and Agency for Toxic Substances and Disease Registry, "Public Health Statement for Ammonia" (September 2004), available at <http://www.atsdr.cdc.gov/toxprofiles/phs126.html#bookmark05>.

² EPA, "Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information," (OAQPS Staff Paper) (December 2005), available at http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.

of exposure.³ As reported in the *Dayton Daily News*, "At least 24 people in the Midwest have died from inhaling hydrogen sulfide and methane from manure since the 1970s, including fifth-generation Michigan dairy farmer Carl Theuerkauf and four members of his family, who collapsed one by one in 1989 after breathing methane gas from a manure pit."⁴

- Air emissions from animal farming operations (AFOs) are not trivial. AFO ammonia emissions represent *half* the U.S. ammonia emissions inventory.⁵ Monitoring conducted of Premium Standard Farms (PSF) by EPA (under a settlement agreement) in 2004 shows that PSF releases 3 million pounds of ammonia annually from barns and lagoons at its Somerset facility, making it the fifth largest industrial emitter of ammonia in the country.⁶ In Iowa, the greatest number of air complaints the state air agency receives concern emissions from manure storage pits. Iowa monitored ten homes for ammonia and hydrogen sulfide emissions and recorded high ammonia emissions on a regular basis and high hydrogen sulfide emissions periodically.⁷
- AFOs produce millions of tons of manure each year. According to EPA, AFOs generate approximately 500 million tons of waste each year, three times more raw waste than is generated yearly by people in the U.S.⁸ Thus, manure is not a minor source of air emissions.
- Given the paucity of monitors in rural states, CERCLA and EPCRA reports may be the only source of information to people affected by excessive air emissions from AFOs.
- EPA is currently conducting a monitoring study to collect information about the air emissions from AFOs and to determine whether air emissions from AFOs, including emissions from manure, warrant regulation. EPA should not consider a blanket exemption from reporting requirements for air pollutant emissions from manure while data on this very subject is being collected. (Farms participating in this monitoring study have already received a waiver from enforcement of CERCLA and EPCRA reporting provisions for air emissions of hydrogen sulfide and ammonia.)⁹

³ Agency for Toxic Substances and Disease Registry, "Public Health Statement for Hydrogen Sulfide" (July 2006), available at <http://www.atsdr.cdc.gov/toxprofiles/phs114.html>.

⁴ Wagner and Sutherly, "The supersizing of America's livestock farms," *Dayton Daily News* (December 1, 2002).

⁵ National Research Council, "Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs" (pre-publication copy released Dec. 12, 2002), at p. 42.

⁶ Premium Standard Farms, *Air Emissions Monitoring Completion Report* (Nov. 17, 2004) and EPA, "Toxics Release Inventory" (2004), available at <http://www.epa.gov/triexplorer>.

⁷ Iowa Department of Natural Resources Ambient Air Monitoring Group, "Results of the Iowa DNR Animal Feeding Odor Study" (January 2006).

⁸ 68 *Federal Register* at pp. 7179-80.

⁹ 70 *Federal Register* at p. 4963. Specifically, EPA covenants not to sue participating AFOs – whether or not they are actually monitored – for "civil violations of CERCLA section 103 or EPCRA section 304 from

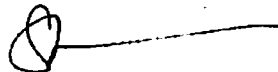
- We are also concerned about the precedent this action will set with respect to application of the Clean Air Act to air emissions from manure.

In our discussions with EPA, we suggested other means for reducing the perceived regulatory burden and uncertainty with respect to CERCLA and EPCRA: EPA could determine a size threshold for farms, based on animal units, below which a farm might reasonably assume its air emissions of ammonia and hydrogen sulfide were below CERCLA and EPCRA reporting thresholds. We do not believe a blanket exemption is warranted given the demonstrated health effects associated with ammonia and hydrogen sulfide, the amounts of manure produced by AFOs and the usefulness of the data contained in CERCLA and EPCRA reports to state and local air agencies and the people living near these facilities.

On a related issue, we understand that legislation has been introduced to exempt from CERCLA and EPCRA reporting of all air pollutant emissions from manure. We would oppose such a statutory exemption for the same reasons cited above. A legislative exemption is even more problematic because such an exemption would require legislative action to be reversed, as opposed to an EPA interpretation that could be changed administratively.

Please feel free to contact me at 202-624-7864 if you have any questions.

Sincerely,



S. William Becker
Executive Director

air emissions of Hydrogen Sulfide (H₂S) or Ammonia (NH₃) that are not singular unexpected or accidental releases such as those caused by an explosion, fire or other abnormal occurrence."

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 12, 2006

MYTH VS. FACT:

Animal Feeding Operations, Protection of Drinking Water Supplies & the Superfund Law

Dear Colleague:

Efforts are underway to eliminate all existing authorities from the Superfund statute that have been used by cities (Waco, Texas, and Tulsa, Oklahoma) and States (Oklahoma) to protect local watersheds and drinking water supplies. The bill seeking to accomplish this is H.R. 4341. It should not be enacted.

As Ranking Members of the Committees with jurisdiction over Superfund and the Clean Water Act, we wish to clarify some of the common misperceptions that have been created:

Myth: Manure is at risk of being classified as a "hazardous waste."

Fact: *Manure is not classified as a "hazardous waste." There have been three cases brought in the 25-year history of the Superfund program. In each of the cases, the contaminant in question was phosphorous, a hazardous substance under Superfund, that had allegedly come from agricultural operations and that had contaminated local drinking water supplies and watersheds and resulted in additional treatment costs for the city ratepayers or, in the case of the State of Oklahoma, damages to the Illinois River watershed.*

Myth: Congress did not intend to apply the Superfund law to "manure."

Fact: *Congress specifically considered the application of fertilizer and created a legal exemption for the normal application of fertilizer:*

"Section 101(22), the term 'release'...excludes... (D) the normal application of fertilizer."

Legislative history defines the term "normal field application" as "the act of putting fertilizer on crops or cropland, and does not mean any dumping, spilling, or emitting, whether accidental or intentional, in any other place or of significantly greater concentrations or amounts that are beneficial to crops." (S. Rep. No. 96-848, at 46 (1980)).

Congress also created another prohibition on the recovery of response costs or damages under the Superfund statute for "federally permitted releases" (Section 107(j) and Section 101(10)). Thus, if an animal feeding operation is compliant with a permit under the Clean Water Act there is no liability under the Superfund statute.

Myth: Animal agriculture operations are already highly regulated under the Clean Water Act and Clean Air Act. These regulations provide for permitting, enforcement, and remediation.

Fact: *Clean Water Act regulations on the application of manure associated with animal feeding operations are under attack by some in the agriculture industry. Neither the Clean Air Act nor the Clean Water Act contain provisions authorizing State or Federal Trustees to seek recovery of damages for injury to, or destruction of, natural resources. Further, Superfund is the only federal statute that allows for State and local governments to recover cleanup costs from parties responsible for contamination of local drinking water supplies.*

Myth: If "manure" is not exempted from liability under the Superfund law, all farms, large and small, would be at risk of operational uncertainty, impending litigation and potential liability for commercially acceptable practices and naturally occurring organic materials produced at their farming operations.

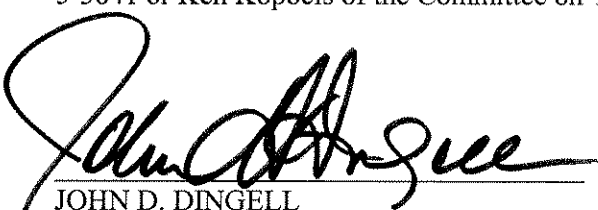
Fact: *There is no reason to believe that any farms, large or small, are in danger of being held liable under Superfund for response costs or damages as long as they are applying manure in quantities that are beneficial to crops OR are in compliance with a Clean Water Act permit.*

Myth: If "manure" is not exempted from liability under the Superfund law, all farms, large and small, would be at risk of being designated as Superfund sites.

Fact: *No farm has ever been designated a Superfund site due to fertilizer releases. Only the President can designate a farm as a Superfund site, after a notice and comment period. This is a discretionary function; no lawsuit or other legal action can force the President to designate a facility on the Superfund National Priorities List. Superfund designations affect only the most severely contaminated sites.*

For more information, please contact Dick Frandsen of the Committee on Energy and Commerce Democratic staff at ext. 5-3641 or Ken Kopocis of the Committee on Transportation and Infrastructure Democratic staff at ext. 5-0060.

Sincerely,



JOHN D. DINGELL



JAMES L. OBERSTAR