

Written Testimony of Bill Satterfield
Senate Committee on Environment and Public Works
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
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Good morning, Chairman Rounds, Ranking Member Booker and members of the subcommittee. I am Bill Satterfield and I am the Executive Director of the Delmarva Poultry Industry Inc., an 1,800-member trade association working for the meat chicken industry in Delaware, the Eastern Shore of Maryland, and Virginia's Eastern Shore. On behalf of America's chicken, turkey and egg farmers, I thank Senators Fischer, Donnelly, Heitkamp, Chairman Barrasso and Subcommittee Chairman Rounds for introducing the Fair Agricultural Reporting Method Act (FARM Act). I also extend a special thanks to our Delmarva Peninsula Senators, Ranking Member Carper, Senator Coons and Senator Warner for their leadership on this issue and their support of the poultry farmers on the Delmarva Peninsula. This significant breakthrough legislation will restore the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reporting requirements to their intended purpose which was not low-level animal manure emissions. We in the poultry industry look forward to working with the committee to enact this united legislative effort that has been nearly 15 years in the making.

This piece of legislation is needed because EPA's original exemption was challenged in court and in its decision the court adopted a strict reading of the CERCLA statute and concluded that Congress did not authorize EPA to create the exemptions it did. Therefore, failure to amend the CERCLA statute to remove the reporting requirement for emissions of animal manure will subject thousands of poultry and egg farmers to a paperwork exercise that has no environmental or health benefit to the public. In fact, we estimate that more than 200,000 or more farmers and ranchers could be to be subjected to these reporting requirements if this bi-partisan legislation is not enacted into law. To prevent practical reversal of this important rule and expedite emergency response personnel's ability to respond to genuine hazardous releases and emergencies, Congress needs to act to clarify its intention and the FARM Act will effectively codify the EPA's vacated standard. The poultry industry and all of animal agriculture look forward to working with Congress to pass this legislation immediately and avoid unjustified reporting.

As you know, CERCLA was enacted by Congress in December 1980 to provide broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Section 103 of the CERCLA statute requires any person in charge of a facility to report the release of a hazardous substance in a quantity that meets or exceeds the reportable quantity in any 24-hour period for the hazardous substance released. Immediately upon gaining knowledge of a reportable release the person in charge must notify the National Response Center (NRC) which the Coast Guard oversees and is charged with handling reports of tanker, pipeline, and other significant volumes that are truly an emergency.

Section 103(f)(2) provides a mechanism for reporting continuous releases of hazardous substances that exceed the reportable quantity. There is also a continuous release reporting protocol that requires the person in charge to notify the NRC immediately upon gaining knowledge of a continuous release. Following the initial notification to the NRC, the person in charge must submit a written notification to regional EPA office within 30 days of the initial notification. Finally, the person in charge must submit a follow-up report within 30 days of the anniversary of the initial written report. If the facility undergoes any modification that increases the releases significantly, they must report those releases in a new report. All of these requirements for a normal agriculture operation was not the intent of CERCLA and provides no additional benefit to the public.

While CERCLA is a highly valuable tool that helps to protect the public and the environment from accidental releases of hazardous substances; as stated above, it is hard to believe it was the intent of Congress to extend the reporting requirements to farms that incidentally release ammonia that is generated as manure decomposes. This belief guided the poultry and egg industry's petition to the Environmental Protection Agency in 2005 requesting an exemption from CERCLA reporting. After considering the request and proposing a rule that followed the requirements of the Administrative Procedures Act, EPA developed a rule that provided a narrow exemption for farms that raise animals from reporting low level continuous emissions of ammonia and hydrogen sulfide into the air. EPA's rationale for providing the exemption was based on Congress's intended purpose of notifying the NRC when a truly hazardous substance is released and then the likelihood that a response to that notification would be acted upon by any government agency based on that information. EPA noted that it has never initiated a response to any NRC notifications of ammonia, hydrogen sulfide, or any other hazardous substances released to the air where animal manure at farms is the source of that release, and it should be noted that the NRC and the Coast Guard have indicated on several occasions that they do not intend to do anything with this information if the court ultimately rules to move forward with reporting animal farms.

While it is true that ammonia, which in significant concentrations and volumes is a substance reportable under CERCLA, it is a byproduct generated as manure naturally decomposes. The concentrations that occur on poultry and eggs farms are at very low levels and they dissipate rapidly into the air. A 2009 study by researchers at the University of Georgia found that ammonia concentrations were lower as distance from the poultry house increased, with ammonia levels at 100, 200, 300 and 500 feet being less than 1 part per million in approximately 60, 75, 85 and 90 percent of the observations taken during the study, respectively. Researchers found that at no time during the study did the measured ammonia levels meet or exceed the Occupational Safety and Health Administration – USEPA ammonia odor detection threshold values. This study underscores EPA's rationale for providing the exemption in 2008 because it could not foresee the agency initiating a response as a result of any such notification. Similarly, we cannot

imagine that local emergency response agencies would do anything from such notifications, if they receive them, other than scratch their heads and wonder what they are supposed to do.

As it turns out the Agency's anticipation was entirely correct. In November of 2017, a handful of poultry producers from the Delmarva Peninsula and other parts of the country attempted to initiate the CERCLA reporting process before the court issued the reporting mandate because they were fearful of potential violations. One such producer is Sharon who operates a poultry farm near Marydel, Maryland. Upon telephoning the NRC to provide an initial notification of a continuous release, she heard a recording informing her that the NRC would not be accepting telephone notifications. As feared, the NRC was not capable of handling the increased call volume prompted by the reporting requirement. The recording further directed her to submit the initial notification by email to the NRC. You need to understand that many of our farmers members do not have or use email regularly, so requiring an email notification is not practical and could result in farmers wishing to be compliant to be in violation of the CERCLA statute. Sharon is 73 years old and never has owned a computer or used email, so this was not an option for her. We received several telephone calls from our members that week with similar messages and concerns, including one that tried sending the email several times in one day, received an error message each time, and then was not able to reach anybody by telephone. This course of action by the NRC verifies that the Center fails to recognize the report as an emergency that requires a response, much less an immediate action. Further, it demonstrates the entire process is nothing more than an exercise in paperwork that could distract the NRC and other emergency response personnel from focusing on incidents that truly need emergency attention.

While the reporting requirements sound uncomplicated, just the opposite is true. In fact, the many variables that affect the generation of ammonia make calculating emission values very complicated. To address this issue in 2007, the animal agriculture industry funded the National Air Emissions Monitoring study hoping to develop emission factors that would allow poultry and livestock producers to calculate emissions on their farms. From 2007 until 2009, numerous data points, including ammonia concentration and volume, were collected each minute for the study. While the data collected to develop estimation methodologies was informative, the scientific advisory committee established by EPA to review the process determined that the data lacked the robustness to develop any verifiable test for farmers to report given the many variables that contribute to the generation of ammonia as animal manure decomposes. Despite recognizing this, EPA's current guidance documents, as required by the court order, indicate the need for poultry and egg producers to calculate emissions generated on their farm. Specifically, the reporting forms provided by EPA require a farmer to report a lower threshold of emissions, an upper threshold of emissions, and total quantity released over the past year – all values that are virtually impossible to calculate with any certainty. Simply put, CERCLA was never intended to force farmers and ranchers to report low level emissions from normal everyday agricultural operations.

On behalf of the Delmarva Poultry Industry Inc., and the entire poultry industry, I thank this committee for introducing the “Fair Agricultural Reporting Method Act.” This bill will provide enormous regulatory relief to countless poultry and livestock farmers across America and give them more time to focus on their vocation - producing an economical, safe and wholesome supply of food for the United States and the world.

I appreciate the opportunity to provide this testimony and I am happy to answer any questions you may have.