

Testimony

on behalf of the

**National Cattlemen’s Beef Association**

with regards to

“Legislative Hearing on S. 2421, the Fair Agricultural Reporting Method Act”

submitted to the

United States Senate  
Subcommittee on Superfund, Waste Management, and Regulatory Oversight  
Committee on Environment and Public Works  
Mike Rounds, Chairman

submitted by

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March 8, 2018  
Washington, DC



Good morning, my name is Todd Mortenson. I live with my wife Deb on a ranch located in west central South Dakota in Stanley County, along the Cheyenne River. My grandfather, Ben Young, started the home ranch in the 1930s and added ground in Ziebach county when the Oahe dam was built, flooding their bottom lands in the late 1950s.

I am a member of the South Dakota Cattlemen's Association and the National Cattlemen's Beef Association, and I'm testifying before you today representing cattle producers and family ranchers, each of whom have a stake in protecting the environment. Thank you, Chairman Rounds and Ranking Member Booker, for allowing me to testify today on the issue of CERCLA reporting for agriculture, and the importance of the FARM Act.

American cattlemen own and manage considerably more land than any other segment of agriculture— or any other industry for that matter. Ranchers graze cattle on approximately 666.4 million acres of the approximately two billion acres that makes up the United States' land mass. In addition, the acreage used to grow hay, feed grains, and food grains add millions more acres of land under cattlemen's stewardship. Some of the biggest challenges to our industry come from urban encroachment, natural disasters, and government overreach. Since our livelihood is made on the land, through the utilization of our natural resources, protecting the land not only makes good environmental sense; it is fundamental for our industry to remain strong. Cattle producers pride themselves on being good stewards of our country's natural resources. We maintain open spaces, healthy rangelands, provide wildlife habitat and feed the world. But to provide all these important functions, we must be able to operate without excessive federal burdens, like the one we are discussing today.

Farmers and ranchers truly are America's original environmentalists. In fact, I would say we care more than anyone about the land we manage, because our operations directly impact not only the health of our livestock, but the water we drink and the air we breathe. I work hard to implement conservation practices that improve the environmental sustainability of my operation, ensuring that I'll be able to pass my ranch on to the next generation. For example, we move cattle to the uplands during summer months, allowing increased native plant growth and decreased sediment flow through ranch creeks. Additionally, in the spring, our herds graze on grasses in riparian areas while stamping seeds into the ground to help increase future vegetation growth.

While I fully support conservation practices that benefit and improve environmental quality, I cannot support needless requirements that burden the agricultural community while providing no environmental or public health benefit. A prime example of this is the burdensome reporting requirement under CERCLA, which requires farmers and ranchers to report manure odors to multiple agencies within the federal government for emergency response coordination. On my pasture-based cow/calf operation, I manage 1,295 cattle on 19,000 acres of land. The concentration of emissions is extremely low, because my cattle are spread over such a large area. However,

CERCLA reporting requirements do not take concentration into account – only release. It makes no difference whether my cattle are spread over 10 acres or 10,000 acres. If my 1,295 cattle emit over 100 pounds of ammonia or hydrogen sulfide per day, I am required to report their emissions to the US Coast Guard and EPA. Our best estimation of how many beef cattle it takes to trigger the reporting requirement is 208 head of cattle. Clearly, I would fall under these reporting requirements.

It is clear that Congress never intended this law to govern routine manure odors from everyday farm and ranch activity. The EPA understands this and, in 2008, exempted agricultural operations from reporting requirements under the Superfund law. While the exemption was put in place by the Bush W. Administration, it was defended in court by the Obama Administration for eight years. In defending the exemption, the Obama EPA argued that Congress did not include an exemption for manure emissions because they never considered that these low-level releases would fall into the possible realm of regulation. However, in April 2017, environmental groups won their lawsuit when the D.C. Circuit court found that Congress provided no exemption for agriculture. When the mandate issues on May 1, 2018, over 200,000 farmers and ranchers will be required to report low-level manure odors to the federal government.

Reporting is no simple task. It is a three-step process that spans, at minimum, one year. The first step is an initial call to the Coast Guard, the agency tasked with coordinating emergency response for the nation's oil spills, chemical plant explosions, and other hazardous emergencies. The Coast Guard is on record stating that these reports do not help them at all – in fact, they only hurt their ability to respond to true environmental and public health emergencies. In a November 14, 2017 declaration to the D.C. Circuit Court, Director of Incident Management and Preparedness for the USCG Dana Tulis indicated that early reports from livestock operations "increased [call volume] from approximately 100-150 calls per day (not associated with air releases from farms) to over 1,000 phone calls per day."<sup>1</sup> This influx of non-emergency reports negatively impacts the Coast Guard's ability to coordinate response for true emergencies. The Coast Guard further indicated the abundance of farm calls meant that "wait times have been up to two hours for calls, many of which require immediate attention."

The initial call to the Coast Guard is followed by two written reports sent to the EPA, over the span of one year. These reports require specific, detailed information regarding my cattle's emissions – information that I simply don't have. Research in this area is limited, to say the least. Only two land-grant universities have completed studies related to calculating emissions from livestock on a per-pound basis, and the EPA has completed no research in the area.<sup>2</sup> Further, those who are considered experts in this area are not confident that available reporting methodologies

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<sup>1</sup> Tulis Aff. 2 (*Waterkeeper Alliance v. EPA*, 853 F.3d 527 (2017)).

<sup>2</sup> R. Stowell and R. Koelsch, *Ammonia Emissions Estimator*, University of Nebraska-Lincoln (2009); S. Preece, N. Cole, and B. Auvermann, *Ammonia Emissions from Cattle Feeding Operations*, Texas A&M (2012).

should be widely depended upon. According to Dr. Rick Stowell, co-creator of the University of Nebraska Lincoln's Ammonia Estimator Worksheet, "While I can place some confidence in differentiating between a 1,000-head feedlot and a 200-head feedlot, given all of the variability involved on AFOs and in research, I would not place much confidence in saying that a 300-head lot is definitely emitting more NH<sub>3</sub> than the neighboring 200-head lot or that we can be certain that either is above or below the threshold."<sup>3</sup> For pasture-based livestock, no research exists quantifying per-head ammonia or hydrogen sulfide emissions. However, research does indicate that ammonia emissions differ significantly based on diet and confinement. Requiring pasture-based operations to report using tools provided on EPA's webpage (research that focuses exclusively on grain-fed animals) is inadequate, and will lead to substantially inaccurate reporting. It should also be noted that this reporting requirement is not a "one and done" obligation. Any time I decide to increase the size of my heard, I have to file additional paperwork with the government.

In addition to concerns I have related to the accuracy of my reports, I also worry that I will be providing my specific residential location information to the EPA – an agency with an established record of farm location information misuse. The widespread collection and dissemination of farm location information by the government will put the privacy of producers and safety of our food system at risk, as individuals will have unfettered access to farm and residential location data. Many of the families who manage livestock operations live on their farms, so any data required by the government, like the data required for CERCLA reporting, creates a situation ripe for abuse.

To clarify these exemptions, Congress needs to change the law to reflect its intent that livestock producers are exempt from CERCLA reporting requirements. The FARM Act, introduced on February 13, 2018, provides the relief that farmers, ranchers, and first responders need under CERCLA, and carries strong bipartisan support, as was exhibited by the Bush and Obama Administrations. In 2018, its not often that Republicans and Democrats can agree on anything, and I for one am proud of you all for putting aside your differences and making your constituents a priority. CERCLA truly is one of our most vital environmental statutes – it provides the tools we need to efficiently and effectively cleanup releases that harm both the environment and public health. Unfortunately, we all know that environmental agencies are given low funding priority at both the federal and state level. The FARM Act will ensure that precious time and monetary resources are not siphoned from important cleanup efforts to address a paperwork requirement with no environmental or public health benefit.

In addition to maintaining my ranch, I also volunteer with the Hayes volunteer fire department and EMS First Responder in Stanley County, South Dakota. While I did not receive EPCRA reports from agricultural operations in 2009, because there are no large CAFOs in my county, the receipt of this paperwork would in no way improve my ability to do my job as an emergency responder.

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<sup>3</sup> Statement made by Dr. Rick Stowell in an email to Scott Yager, Chief Environmental Counsel for the National Cattlemen's Beef Association (Communication on November 7, 2017).

Rather, like the CERCLA reporting requirements, it would impose a burdensome paperwork requirement with no environmental or public health benefit. Rural emergency response teams are already stretched for time and resources – requiring additional, needless paperwork would only compound this burden.

Thank you for taking the time to hear my concerns, and for listening to livestock producers around the country. As the May 1, 2018 reporting deadline quickly approaches, only Congress can ensure that the agricultural community is protected from this reporting burden, the reliability of our emergency response coordination is maintained, and the integrity of the Superfund law is not degraded. The key to environmental sustainability is working together with stakeholders, not fighting us. Thank you for your time, and thank you for your support of the FARM Act.