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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

December 14, 2018

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

RE: Proposed Rule Amending Release Notification Regulations under the Emergency Planning and Community Right-to-Know Act (EPCRA) for Air Emissions from Animal Waste At Farms (Docket ID No. EPA-HQ-OLEM-2018-0318)

Dear Acting Administrator Wheeler,

We write regarding the Environmental Protection Agency's (EPA) proposed rule, published in the Federal Register on November 14, 2018. The proposed rule would exempt hazardous air emissions from animal waste from reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA). In our view, EPA has no legal authority to exempt these emissions from farms from the reporting requirements contained in Section 304 of EPCRA.

In 2008, EPA established different reporting requirements for air emissions from animal waste under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA. Livestock operators have successfully been reporting hazardous air emissions from animal waste to state and local officials under Section 304 of EPCRA since at least 2009.

The legal basis for EPA's proposed rule is fundamentally flawed. EPA's proposal is premised on an erroneous interpretation of the unambiguous requirements and exemptions that are included in the recently enacted 2018 Fair Agricultural Reporting Methods (FARM) Act. EPA's proposal also ignores the legislative history that accompanied the introduction, consideration, and enactment of the FARM Act. In the FARM Act, Congress crafted a narrow statutory exemption from CERCLA Section 103 reporting requirements, but deliberately took no steps to exempt farms from similar reporting requirements under EPCRA. Even a cursory review of the FARM Act's legislative history makes clear that Congress intended a narrow exemption for reporting requirements for certain air emissions under CERCLA, and only CERCLA. Any EPA rulemaking that attempts, as the current proposal attempts, to exempt reporting requirements for hazardous air emissions from animal waste has no basis in statute or Congressional intent. More to the point, the policy objectives of EPA's proposed rulemaking were specifically considered, and rejected, by Congress during the FARM Act's consideration.

## I. Background

In 2008, EPA finalized a rule to exempt most air emissions reporting requirements from animal waste on farms.<sup>1</sup> Under the rule, all farms were exempted from any CERCLA hazardous substances reporting requirements for emissions resulting from animal waste. However, under the rule, only a subset of farms were exempted from reporting requirements under EPCRA; EPA retained emissions reporting requirements for certain large farms.

In 2017, the D.C. Circuit Court of Appeals vacated EPA's 2008 reporting exemption in its *Waterkeeper Alliance v. EPA* decision.<sup>2</sup> Following the court's vacatur, all farms with emissions of hazardous substances in excess of the reportable quantities were required under CERCLA Section 103 to report those emissions to the National Response Center, and required under EPCRA Section 304 to separately report those emissions to state and local officials.

After *Waterkeeper Alliance*, various stakeholders engaged members of Congress about reporting requirements for animal waste emissions. Some agricultural stakeholders found these reporting requirements to be confusing and sought relief from the potential administrative and regulatory burdens associated with reporting such emissions. Other stakeholders, including environmental, public health, state and local government officials, and constituencies adjacent to large livestock operators made clear that the information made available to the public through EPCRA Section 304 reporting is extremely beneficial to them. These emissions data help inform siting and zoning decisions for large livestock farms; they provide important data for public health risk assessments; and, they help document specific harms to human health and the environment that impact areas surrounding large livestock operations.

In response to these competing concerns raised by interested stakeholders, Congress enacted the FARM Act in March 2018 as Title XI of Division S of the Consolidated Appropriations Act, 2018 (P.L. 115-141). The FARM Act created a narrow reporting exemption under Section 103 of CERCLA for farms for releases of hazardous substances that arise from animal waste and that are released into the air. Notably, this language deliberately did not amend reporting requirements under EPCRA. The FARM Act was carefully drafted to only provide a statutory exemption from reporting under CERCLA. The provision had the intended effect of preserving the 'status quo' for farms under the 2008 rule with respect to being exempt from CERCLA reporting. This achieved the goal of significantly reducing the administrative burden of emissions reporting for farms. Instead of having to prepare and submit two separate reports on their emissions, farms would no longer need to file an emissions report with the National Response Center, as would otherwise be required under CERCLA.

At the same time, this compromise ensured that community members and local officials seeking emissions data would still be able to access it through EPCRA. Citizens have come to rely upon having access to this data and larger farms already had substantial experience with the EPCRA reporting requirements for hazardous air emissions because they had been reporting those emissions for nearly a decade. When enacting the FARM Act, Congress was able to strike a

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<sup>1</sup> 40 C.F.R. Part 302; 40 C.F.R. Part 355.

<sup>2</sup> 853 F.3d 527 (D.C. Cir. 2017).

careful balance which simultaneously reduced reporting burdens on farms while preserving the public's access to valuable information to which they remain legally entitled under EPCRA.

## II. Legislative History and Committee Consideration of the FARM Act

The text of the FARM Act in P.L. 115-141 is identical to the text of S. 2421, sponsored by Senator Deb Fischer of Nebraska, which was introduced on February 13, 2018, and which was referred to the Senate Committee on Environment and Public Works (the Committee). Prior to its introduction, Senator Fischer's office shared earlier drafts of the FARM Act which included statutory language that exempted farms from animal waste air emissions reporting requirements under both CERCLA and EPCRA. While the offices involved in those negotiations were interested in providing farms relief from reporting requirements under CERCLA, we opposed such an exemption under EPCRA. In exchange for our support for the bill, Senator Fischer agreed to drop the offending provisions which would have exempted farms from reporting under EPCRA, and instead to limit the scope of the bill's reporting exemptions to only those required under Section 103 of CERCLA. It was only after those changes were incorporated into the bill's legislative text that broad, bipartisan support for the FARM Act became possible.

After the bill was introduced, the Committee held two legislative hearings on this language. The first hearing entitled "*Legislative Hearing on S. 2421, the Fair Agricultural Reporting Method Act*," took place in the Subcommittee on Superfund, Waste Management, and Regulatory Oversight on March 8, 2018.<sup>3</sup> The full committee also held a legislative hearing entitled "*S. \_\_, the Agriculture Creates Real Employment (ACRE) Act*,"<sup>4</sup> on March 14, 2018. The hearing was on a draft bill titled the ACRE Act, and the text of S. 2421 was included in that bill as Section 3.<sup>5</sup> During the course of those hearings, witness testimony and member statements made clear that the FARM Act was intended only to apply narrowly to reporting requirements under CERCLA. For example, during his opening statement in the subcommittee hearing on March 8, 2018, Subcommittee Ranking Member Booker stated:

"I was happy to see that this bill, S. 2421, only proposed to exempt CAFOs from reporting under CERCLA, and not under EPCRA. And I know that Senator Carper and others fought to limit the scope of the bill before signing on."<sup>6</sup>

Full Committee Ranking Member Carper, who was an original cosponsor of the FARM Act and helped draft its provisions, reiterated this point in his opening remarks, stating:

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<sup>3</sup> *Hearing on S. 2421, the Fair Agricultural Reporting Method Act Before the Subcomm. on Superfund, Waste Mgmt. & Regulatory Oversight of the S. Comm. on Env't & Pub. Works*, 115th Cong. (Mar. 8, 2018) [hereinafter *Hearing on FARM Act*], available at <https://www.epw.senate.gov/public/index.cfm/2018/3/legislative-hearing-on-s-2421-the-fair-agricultural-reporting-method-act>.

<sup>4</sup> *Hearing on S. \_\_, the Agriculture Creates Real Employment (ACRE) Act, Before the S. Comm. on Env't & Pub. Works*, 115th Cong. (Mar. 14, 2018) [hereinafter *Hearing on Draft ACRE Act*], available at <https://www.epw.senate.gov/public/index.cfm/2018/3/s-the-agriculture-creates-real-employment-acre-act>.

<sup>5</sup> *Compare ACRE Act, S. \_\_, 115th Cong. § 3 (2018)* (attached as appendix to this letter), *with FARM Act, S.2421, 115th Cong. (2018)* (as introduced).

<sup>6</sup> *Hearing on FARM Act, supra* note 3, at 10.

“One thing I worked hard on this legislation with Senators Fischer and Barrasso and others, as we were developing this legislation, is to make sure the FARM Act makes no change to EPCRA reporting, no change... I just want to thank both Senator Barrasso, and thank Senator Fischer, others, other staffs, and others for working with my staff and me and agreeing not to amend EPCRA in this bill. This is an issue that was critical for many members on our [D]emocratic side. We have repeatedly heard concerns from [s]tate and local officials, public health experts and other member of our communities who want information about what is in their air, and this bill seeks to strike a careful balance. As a result, it enjoys broad, bipartisan support.”<sup>7</sup>

Witnesses at both hearings also understood that Congress intended for EPCRA reporting requirements to continue if the legislation were enacted. Several Committee members specifically asked witnesses whether enacting the FARM Act would affect reporting requirements for farms under EPCRA. Those witnesses testified that the legislation would not, as they understood it, based both on a plain reading of the text and the manifest Congressional intent behind it. For example, in the subcommittee hearing on March 8, 2018, Senator Van Hollen had an extensive discussion with Bill Satterfield, Executive Director of the Delmarva Poultry Industry, on this point. Senator Van Hollen asked whether eliminating the reporting requirement under CERCLA would necessarily impact reporting requirements under EPCRA. Mr. Satterfield indicated they would not, because the two statutes were independent and had different purposes:

*Senator Van Hollen.* And the last comment I will make, Mr. Chairman, because I really am trying to figure this out with you, is in the decision, in the court decision, the judge said, in the final rule, that cutting back on CERCLA reporting requirements had the automatic effect of cutting back on Community Right-to-Know reporting and disclosure requirements. Is there something I am missing here, that is it an automatic flow-through? In other words, it doesn't touch that statute, but the Community Right-to-Know statute is directly linked with the CERCLA statute in terms of triggering reporting requirements?

*Mr. Satterfield.* My understanding is that, under CERCLA, the reports go to the National Response Center operated by the Coast Guard, and then 30 days later a written report to the regional EPA office. Under the EPCRA, the Community Right-to-Know, it is my understanding that those reports go to the local and State emergency responders, not necessarily to the Federal people. So there are two different reporting systems, two different purposes.

*Senator Van Hollen.* And they are totally independent, so this legislation, while it may impact CERCLA requirements, would not impact the Community Right-to-Know requirement?

*Mr. Satterfield.* That is my understanding, sir.<sup>8</sup>

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<sup>7</sup> *Id.* at 17–18.

<sup>8</sup> *Id.* at 64-65.

Other witnesses shared this same understanding of the legal effects of the legislation. During the full committee hearing on March 14, 2018, Senator Fischer asked Doug Miyamoto, Director of the Wyoming Department of Agriculture, about the FARM Act's effects on EPCRA reporting:

*Senator Fischer.* Can you please explain to the Committee the current regulatory framework livestock producers must comply under, and specifically under the bill before us, the ACRE Act and, subsequently, the FARM Act, do certain providers still have to comply with EPCRA reporting requirements?

*Mr. Miyamoto.* Mr. Chairman, Senator, they do. In confined animal feeding operations, they would still have a duty to report under EPCRA and comply with the regulatory requirements there.

*Senator Fischer.* So, just to be clear, producers and our large animal feeding operations, they still must comply with EPCRA, the Clean Water Act, and State regulations?

*Mr. Miyamoto.* Mr. Chairman, Senator, that is correct.<sup>9</sup>

### **III. Congressional Research Service Analysis of the FARM Act**

As part of the Committee's consideration of the FARM Act, the Committee asked the Congressional Research Service (CRS) to analyze the potential effects of the FARM Act's amendments to CERCLA. In response, CRS produced two memoranda which were made part of both hearing records, and are included in the Appendix. The CRS memorandum titled "Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421)" dated March 13, 2018, explains that the reporting requirements outlined in EPCRA Sec. 304(a)(1) and 304(a)(3) are contingent upon reporting under CERCLA. However, as CRS notes:

S. 2421 would not have a bearing on the reporting of releases of extremely hazardous substances under Section 304(a)(2) of EPCRA though, as this provision is not contingent upon reporting required under Section 103 of CERCLA. If the exemption from CERCLA in S. 2421 were enacted, the applicability of Section 304(a)(2) therefore would remain the same as in current law. An air release of an extremely hazardous substance emitted by animal waste at a farm would be subject to Section 304(a)(2) if all three statutory criteria for reporting were met...

An air release of an extremely hazardous substance emitted by animal waste (e.g., ammonia or hydrogen sulfide) would satisfy the third criterion of Section 304(a)(2)(C) of EPCRA, if the release were to occur in the same *manner* as a "release" that would require reporting under CERCLA. As outlined in the March 7<sup>th</sup> CRS memorandum, the term "release" in CERCLA is relatively broad with respect to the manner in which a hazardous substance may enter the environment, including spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term "environment" is defined in Section 101(8) of CERCLA to include surface water, groundwater, a drinking water supply, surface soils, sub-surface

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<sup>9</sup> Hearing on Draft ACRE Act, *supra* note 4, at 49–50.

soils, or ambient air. Section 329 of EPCRA defines the terms “release” and “environment” similar in scope to CERCLA. The federal regulations promulgated under Section 304 of EPCRA reflect these statutory definitions. Both CERCLA and EPCRA generally treat emissions into the ambient air as releases into the environment...

In implementation, EPA has treated the phrase “occurs in a manner” in EPCRA Section 304(a)(2)(C) to mean the nature of the release in terms of how a substance enters the environment, not that reporting *is* required under Section 103 of CERCLA. Otherwise, Section 304(a)(2) would be rendered meaningless in covering releases of extremely hazardous substances that do not require reporting as hazardous substances under CERCLA, while requiring reporting under CERCLA at the same time.<sup>10</sup>

In other words, as CRS explains, if an extremely hazardous substance (as defined by EPCRA), is emitted in excess of the reportable quantity, and is released into the environment in a manner which would generally trigger reporting (as those terms are defined in CERCLA), then reporting is required under EPCRA 304(a)(2), even though reporting is not required under CERCLA. There is no condition-precedent that a substance first be reported under CERCLA in order to trigger the reporting requirements that exist under EPCRA 304(a)(2).<sup>11</sup>

#### **IV. EPA’s Actions Following Enactment of the FARM ACT**

When Congress passed the FARM Act it made clear that EPCRA reporting requirements for farms would continue. However, it is equally clear that the policy preference of EPA’s current leadership is that no farm be required to report any hazardous air emissions from animal waste. Following the *Waterkeeper Alliance* decision, in October 2017, EPA issued guidance that EPCRA reporting was not required because these emissions were associated with “routine agricultural operations,” and “would therefore not be within the universe of facilities which are subject to EPCRA section 304 release reporting.” This interpretation directly contradicts EPA’s previous interpretations of EPCRA, because as has been noted previously, many large farms had been reporting their animal waste air emissions since at least 2009.

Despite Congress providing only a narrow exemption from CERCLA reporting, EPA has taken steps to achieve its preferred policy outcome through a novel legal theory offered in the form of guidance published on April 27, 2018. In that document EPA suggested that EPCRA reporting for farms was no longer required because CERCLA reporting was no longer required, i.e., because “[a]ir emissions from animal waste thus do not “occur in a manner” which would

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<sup>10</sup> Memorandum from David M. Bearden, Cong. Research Serv., to S. Comm. on Env’t & Pub. Works, *Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421)*, at 3–4 (Mar. 13, 2018) (emphasis in original), reprinted in 164 Cong. Rec. S1926 (daily ed. Mar. 22, 2018).

<sup>11</sup> See generally U.S. EPA OFFICE OF SOLID WASTE & EMERGENCY RESPONSE, EPA 550-B-15-001, *List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 112(r) of the Clean Air Act* (March 2015), available at [https://www.epa.gov/sites/production/files/2015-03/documents/list\\_of\\_lists.pdf](https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf).

require notification under CERCLA... these releases fall out of the reporting requirements of EPCRA Section 304.”<sup>12</sup>

Following the publication of this guidance, members of the Committee wrote to EPA about its ill-conceived guidance. In the letter, Committee members noted that EPA’s new guidance and interpretation of EPCRA Section 304 would have the presumably unintended effect of exempting reporting of releases for all substances designated as ‘extremely hazardous substances’ (EHS) under EPCRA, but not designated as hazardous substance under CERCLA.<sup>13</sup> Under EPA’s new interpretation of Section 304(a)(2), hundreds of EHS that currently are subject to release reporting requirements would now effectively be exempt.

EPA appears to have recognized the vulnerabilities intrinsic in its legal rationale for this new interpretation of EPCRA Section 304(a)(2)(C), and in the proposed rule attempts to draw a distinction between EPCRA reporting requirements from EHS for animal waste and for other substances listed as EHS. The rationale EPA presents in its proposed rulemaking, however, is similarly flawed and unpersuasive. The crux of EPA’s argument lies in that the FARM Act specified the reporting exemption applied to “releases of any substance from animal waste *into the air*.”<sup>14</sup> Namely, when Congress specified the medium into which the release occurred, EPA argues that the reporting criterion in Section 304(a)(2)(C) is no longer met, and therefore reporting requirements under Section 304 are obviated. This situation, EPA argues, is different for releases of other EHS under EPCRA which are not also hazardous substances under CERCLA.

To illustrate this difference, in its proposed rule EPA cites the EPCRA reporting requirements for trimethylchlorosilane, which is an EHS under EPCRA but not a hazardous substance under CERCLA. EPA notes that, even though trimethylchlorosilane is not reportable under Section 103(a), “a release of trimethylchlorosilane that ‘occurs in a manner’... would require notification under CERCLA Section 103(a) where, for example, the release is ‘into the environment’ as defined by CERCLA Section 101(22) . . . .”<sup>15</sup> The distinction EPA is attempting to draw between reporting requirements for releases “into the air” and releases “into the environment” is inapposite. The term “environment,” as defined in CERCLA Section 101(8), includes the ambient air. Therefore, a release “into the air” is by definition a release “into the environment.” More explicitly, the FARM Act deliberately limits the reporting exemption only for hazardous substances emitted into the air. Releases into the environment other than those into the air (i.e. spills, discharges into water, contamination of soil, etc.) were intentionally not exempted from these reporting requirements and are still required to be reported under CERCLA Section 103, which in turn requires reporting under EPCRA Section 304(a)(1).

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<sup>12</sup> U.S. EPA OFFICE OF LAND & EMERGENCY MGMT., *How does the Fair Agricultural Reporting Method (FARM) Act impact reporting of air emissions from animal waste under CERCLA Section 103 and EPCRA Section 304?*, at 1 (Apr. 27, 2018), attached in Appendix.

<sup>13</sup> Letter from Senator Tom Carper et al. to Scott Pruitt, EPA Admin’r (May 25, 2018), available at [https://www.epw.senate.gov/public/\\_cache/files/8/e/8e31f21c-0805-4cab-aa96-2e084d6e03e5/3FCE938E06E8830762AE52C34B36D2F5.5.25.2018-letter-to-epa-on-emission-reporting-under-epcra.pdf](https://www.epw.senate.gov/public/_cache/files/8/e/8e31f21c-0805-4cab-aa96-2e084d6e03e5/3FCE938E06E8830762AE52C34B36D2F5.5.25.2018-letter-to-epa-on-emission-reporting-under-epcra.pdf).

<sup>14</sup> 83 Fed. Reg. 56791, 56793 (Nov. 14, 2018) (emphasis in original).

<sup>15</sup> *Id.*

Under EPA's proposed interpretation of the FARM Act, if instead of limiting the CERCLA exemption to emissions into the air, Congress had instead carved out a broader exemption for reporting requirements under CERCLA and exempted releases into *all environmental media*, then the EPCRA reporting requirements under Section 304(a)(2) (into the air or any other media) would apply. In other words, EPA is arguing that a more expansive reporting exemption under CERCLA would require more extensive reporting under EPCRA. This is an illogical and unreasonable interpretation of the statute.

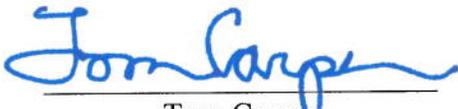
**V. Conclusion**

EPA is required to faithfully execute the laws as passed by Congress. EPA's proposed rule vastly exceeds EPA's statutory authority and countermands unambiguous Congressional intent. EPA's proposed interpretation of reporting requirements for hazardous air emissions from animal waste relies on a statutory interpretation that was considered, and specifically rejected by Congress, when it enacted the FARM Act into law. EPA should withdraw this proposed rule and faithfully execute and enforce EPCRA and CERCLA reporting requirements consistent with the laws passed by Congress.

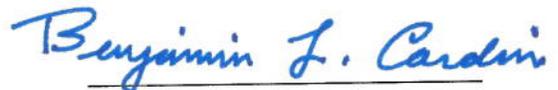
We respectfully request that this letter and the attached Appendices be added to the docket under EPA-HQ-OLEM-2018-0318, "Amending Release Notification Regulations under the Emergency Planning and Community Right-to-Know Act (EPCRA) for Air Emissions from Animal Waste.

Thank you for consideration of our views.

Sincerely,



Tom Carper  
Ranking Member



Benjamin L. Cardin  
United States Senator



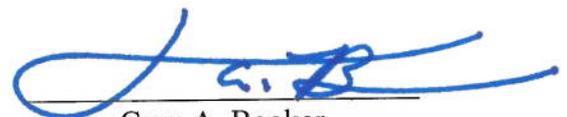
Bernard Sanders  
United States Senator



Sheldon Whitehouse  
United States Senator



Jeffrey A. Merkley  
United States Senator



Cory A. Booker  
United States Senator

*Edward J. Markey*

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Edward J. Markey  
United States Senator

*Tammy Duckworth*

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Tammy Duckworth  
United States Senator

*Chris Van Hollen*

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Chris Van Hollen  
United States Senator

*Kirsten Gillibrand*

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Kirsten Gillibrand  
United States Senator

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U.S. Senate Date: Thursday, March 8, 2017

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LEGISLATIVE HEARING ON S. 2421, THE FAIR AGRICULTURAL REPORTING  
METHOD ACT OF THE NEW REGULATORY DEFINITION OF WATERS OF THE  
UNITED STATES

Thursday, March 8, 2018

United States Senate

Committee on Environment and Public Works

Subcommittee on Superfund, Waste Management, and Regulatory  
Oversight

Washington, D.C.

The committee met, pursuant to notice, at 10:03 a.m. in  
room 406, Dirksen Senate Office Building, the Honorable Mike  
Rounds [chairman of the subcommittee], presiding.

Present: Senators Rounds, Booker, Moran, Ernst, and Van  
Hollen.

Also Present: Barrasso, Carper, Inhofe, Boozman, Wicker,  
Fischer, and Markey.

STATEMENT OF THE HONORABLE MIKE ROUNDS, A UNITED STATES SENATOR  
FROM THE STATE OF SOUTH DAKOTA

Senator Rounds. Well, good morning.

The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting today to conduct a legislative hearing on S. 2421, the Fair Agricultural Reporting Method, or FARM Act.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or CERCLA, was established to manage hazardous waste and respond to environmental emergency spills and natural disasters. Under CERCLA, the owner or operator of a facility must report the release of a certain amount of hazardous substance to authorities within 24 hours. This is to make certain that first responders have the information they need to adequately respond to a release of a hazardous substance into the environment and surrounding community.

Although ammonia and hydrogen sulfide are both considered hazardous substances under CERCLA, and both are emitted into the air from animal manure, Congress never intended normal agricultural operations and American farmers to be subject to the reporting requirements under these laws. CERCLA was intended to make certain State and Federal officials have the information they need in the event they have to respond to an emergency release of a hazardous substance. It is unlikely

Federal officials would be required to respond to an emergency release at a cattle operation or a poultry farm, particularly one resulting from animal waste or emissions.

Further, it is unlikely the U.S. Coast Guard, which coordinates CERCLA reporting, has the resources to manage the nearly 200,000 farms that would be required to report their daily activities under this rule. This additional burden on resources could potentially hinder the ability of first responders to respond to real emergencies.

Accordingly, in 2008, the Environmental Protection Agency released a rule exempting animal waste at agricultural operations from CERCLA reporting. However, in 2017, the D.C. Circuit Court, in *Waterkeeper Alliance v. EPA*, vacated the EPA's 2008 rule. This decision leaves approximately 200,000 American farmers subject to bureaucratic and burdensome reporting and paperwork, the requirements that may overwhelm first responders, while the benefits of this regulation are questionable at best.

That is why I have worked with Senator Fischer, Chairman Barrasso, Ranking Member Carper, and the rest of my bipartisan colleagues to introduce the Fair Agricultural Reporting Method, or FARM Act. This legislation would reinstate the CERCLA reporting exemption for air emissions from animal wastes so that American farmers and ranchers will not be burdened by needless Federal regulations and can continue to do what they do best.

American farmers and ranchers are already required to comply with multiple Federal regulations governing how they run their operations. Complying with these Federal regulations require hours of paperwork, time, money, and resources, all of which take away from actually being able to work on their land. We should not make them subject to additional layers of bureaucracy that Congress never intended them to be subject to.

It should also be noted that CERCLA is the basis for EPA's Superfund program. This law was intended to allow the EPA to coordinate cleanups of hazardous waste or Superfund sites. A U.S. farm or ranch is most certainly not a Superfund site and should not be regulated as such. The FARM Act prevents U.S. farmers and ranchers from being subject to needless regulations that have no environmental benefit.

I would like to thank Senator Fischer and Chairman Barrasso for their leadership on this issue. I am glad we were able to work in a bipartisan fashion to move this bill forward.

Our witnesses today are members of the agricultural community, with decades of experience in farming and ranching. They are well versed in agricultural operations and how Federal regulations affect their way of life, and their ability to do business and provide the food that we all rely on. I would like to thank our witnesses for being here today with us, and I look forward to hearing their testimony.

Now I would like to recognize Senator Booker for a five-minute opening statement.

Senator Booker.

[The prepared statement of Senator Rounds follows:]

STATEMENT OF THE HONORABLE CORY A. BOOKER, A UNITED STATES  
SENATOR FROM THE STATE OF NEW JERSEY

Senator Booker. I am really grateful, Chairman Rounds, to be able to serve with you on this Committee; it is exciting to have the opportunity to partner with you. I hope it is as well as my partnership with Senator Fischer. She and I were a great tag team. She is still mad at me for leaving her in the other committee.

But I want to thank our witnesses for being here today. I think this is just a really important conversation. The issue of air emissions from large CAFOs and the impact of those emissions on neighboring property owners is indeed a very serious issue, life-threatening issue.

As animal waste breaks down, it emits dangerous pollutants, specifically ammonia and hydrogen sulfide, as the Chairman said. To protect the health of the small family farmers and other residents who live near these massive CAFOs, there are currently two laws that require reporting of emissions of ammonia and hydrogen sulfide at levels of 100 pounds per day.

The first law, CERCLA, which the Chairman mentioned, requires reporting of these emissions to the Coast Guard National Response Center. The second law, EPCRA, requires reporting of emissions from extremely hazardous substances to State and local authorities. In 2008, again, as the Chairman

detailed, the EPA attempted to exempt all CAFOs from having to report their emissions under CERCLA, and also attempted to exempt all but the largest CAFOs from reporting under EPCRA.

Last year, the D.C. Circuit Court struck down the attempt by the EPA to exempt reporting emissions of hydrogen sulfide and ammonia from CAFOs. The D.C. Circuit Court, in its decision, stated the risk of harm of those emissions isn't just theoretical; people have become seriously ill and even died as a result of them.

EPA itself has found that hydrogen sulfide can cause respiratory irritation and cause central nervous system effects one mile downwind when emitted at current reportable quantity of 100 pounds per day. Of those affected, children are the most at risk for lung disease and health effects, and the closer a child lives to a CAFO, the greater the risk of asthma symptoms.

At the last meeting of this Committee, I talked about my 2016 trip to Duplin County, North Carolina. Given the focus of today's hearing, I want to again talk about my trip and my firsthand experiences going to Duplin County.

In 2016, residents from Duplin came to Washington, telling lawmakers that they desperately needed help. There are about 60,000 people that live in Duplin County, but there are more than 2 million pigs being raised there. And the primary way that the waste from those 2 million pigs is disposed of is by

piping it into huge, open-air lagoons and then spraying the waste out onto open fields, what I witnessed myself, with my own eyes.

These residents that came to Washington complained about suffering from serious respiratory problems such as asthma and chronic lung disease caused by living near these lagoons and spray fields. So, when I visited Duplin County, I wanted to see these conditions firsthand, and what I saw there is something I will never, ever forget.

I saw pig waste being sprayed; I saw how the wind was carrying the mist. Some of the spray would fall, but I watched it mist onto adjacent properties. I smelled what was a wretched, horrible smell standing hundreds and hundreds of yards away, and how that smell permeated the entire community. I heard heart-breaking stories from residents who said they too often felt like prisoners in their own homes.

In fact, I met a veteran from foreign wars who said I fought for my Country overseas and I came back and am a prisoner in my own home. They talked about how they no longer can have cookouts in their backyards; that they can't even open their windows or run their air conditioning because of that toxic smell.

So when we have legislation before us that would create exemptions from reporting, I think we need to be very careful

how we proceed. Under current law, we still have communities like Duplin County, where people are truly suffering, where their rates of respiratory illness and other diseases are higher than the general population.

I was happy to see that this bill, S. 2421, only proposes to exempt CAFOs from reporting under CERCLA, and not under EPCRA. And I know that Senator Carper and others fought to limit the scope of the bill before signing on. But the problem is that the EPA is again taking action to exempt CAFOs from having to report these emissions under EPCRA. If the EPA is successful in creating a complete exemption, local residents will no longer have access to information about the levels of these harmful chemicals being emitted literally into their front yards, as I know we will see from one witness.

Some farmers should not have to file unnecessary paperwork. I believe that very strongly. And ranchers who engage in pasture-based farming, like Mr. Mortenson does, should not have to calculate emissions and file forms.

But larger CAFOs are a different story. The type of operations that I saw in North Carolina, and the type in Iowa that Mr. Kuhn will describe in his testimony, create serious health risks. This is about people. This is about their lives, their livelihoods, their property values, and their health. And as it currently stands, reporting under EPCRA is not difficult;

large CAFOs have been doing it for years and a reporting mechanism is already in place.

So, I hope that between Congress and the EPA we can find a path forward that gives clarity to small farmers that they do not need to report their emissions, but that continues to require reporting under EPCRA by CAFOs that emit over 100 pounds per day of ammonia or hydrogen sulfide, serious dangerous agents.

Thank you, Senator Rounds, for this, which, again, I think is an urgently needed conversation, and I look forward to hearing from our witnesses.

[The prepared statement of Senator Booker follows:]

Senator Rounds. Thank you, Senator Booker, and I look forward to working with you on this Committee, as well as the Ranking Member.

Traditionally, in this Subcommittee, we would allow the Chairman and the Ranking Member of the full Committee to also have an opportunity to visit. Senator Barrasso just had to leave to go to a business meeting, so he has indicated that he would pass on his opportunity at this point. However, we are privileged in that Ranking Member Carper is here, and at this time I would like to ask Senator Carper if he would like to make an opening statement.

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES  
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Yes, I would. Thank you.

I appreciate very much the Chairman and the Ranking Member hosting this hearing today. Thank Senator Fischer and others for trying to lead us to a principled compromise, where we are mindful of the need to protect public health and, at the same time, to make sure that an industry which provides a lot of jobs in this Country, the ag industry, is able to be successful and compete in the world.

Delaware is not a big State. I go home almost every night; went home last night. We have three counties; the largest one is in Southern Delaware. Sussex County is the third largest county in America. It is a little State, but the third largest county in America.

We raise more chickens there, I am told, than any County in America. Last time I checked, we raise more soybean than any county in America. And I think the last time I checked we raise more lima beans than any county in America, and I think we have more five-star beaches than any county in America. So it is a little State, but that is quite a county, isn't it? But we have a lot of people who live there and we want to make sure they have a good environment in which to live; clean air, clean water.

We raise a lot of chickens on Delmarva, as Bill knows, Delaware, Maryland, and the Virginia eastern shore, and for years the farmers have taken chicken litter, chicken manure, and mixed with sawdust, which is usually on the floor of the chicken house; they mix it together and use it for fertilizer and spread it on farm fields all over Delmarva and certainly all over Sussex County in order to support raising soybeans, corn, and other crops.

For years and years we were not very good environmental stewards with the way we spread our chicken litter on our farm fields. Didn't do a good job. As Bill knows, a lot of our farm fields drain into creeks, drain into ditches, and eventually into rivers, Nanticoke River, which flows into the Chesapeake Bay. The Chesapeake Bay badly degraded and we were one of the reasons why it was badly degraded.

About 20 years ago, my last term as governor, we put together a farmer-led initiative, nutrient management commission, farmer-led, includes some environmentalists, includes the Department of Natural Resources and Environmental Control, and we figured out a way to make sure that folks who were spreading chicken litter on farm fields, which is high in phosphorus, high in nitrogen. It is good fertilizer, relatively expensive, we have to figure out what to do with it.

For those who, starting in the late 1990s, were going to be

spread chicken litter, they had to get a plan. They had to submit a plan, say this is my plan, here is how I am going to do it; have to have their soil tested to make sure it was appropriate for receiving chicken litter, how much could go onto the farm fields that would be safe for public health, and to make sure that the farmers were adhering to their nutrient management plan. We have been doing that for over 15 years.

Senator Van Hollen and Senator Cardin will tell you that the quality of the water in the Chesapeake Bay has significantly improved. Is it perfect? No, it is not. Delaware was not a good neighbor for many, many years. I think we are a much better neighbor today. They have a neighbor up to the north, Pennsylvania, so do we. I don't think Pennsylvania has sort of -- we have to get them online.

But Delaware is a much better neighbor today. Can we do better? Sure, we can always do better. Everything I do, everything all of us do, we can do better. But I just want to give you that for a little bit of context.

I have known Bill Satterfield forever. When I was elected State Treasurer at the age of 29, every time you get on the radio, if you are State Treasurer, it is not a hot commodity like being a Senator. Every now and then I would get invited to Radio Station WDOV -- was that the name of the station? -- WKEN in Dover, Delaware. One of the folks who was on, one of the

people who did this talk radio, and one of the folks who did some of the program and some of the interviews was Bill Satterfield.

He was nice enough to invite me to be on his show from time to time, and on my way, driving on Route 8 to WKEN to do the interview, I would drive -- was it a Tastee-Freez? -- I would drive by Tastee-Freez on my way. I love chocolate milkshakes. I would stop and get a chocolate milkshake. He was a co-owner. Who was the other guy who was a co-owner with you? Yeah, Rick.

And I would get a chocolate milkshake and then I would go do the interview, and he would say to me at the beginning of the interview, he would say, "How are you doing today?" And I would say, "great." There was a Tastee-Freez on the way out here on Route 8, and I love to stop there and get a chocolate milkshake; in fact, I am having one right now. And you guys make the best -- I don't know who owns that place, but they make the best chocolate milkshake.

But, anyway, from those humble beginnings, me, a State Treasurer, and Bill as a radio interview personality, he went on to join the Delmarva poultry industry in 1986, was named their Executive Director in 1993, and he works to advance the interests of our Delmarva poultry farmers. I said earlier ag is a big deal in our State, and especially in the southern part of the State.

I have said a million times before to my colleagues that it is possible to have clean air, it is possible to have clean water, cleaner air, cleaner water, and good public health, and still have jobs; and there is always a balance, and sometimes it is not easy to find that balance, but we think we are working toward that and still will continue to do this.

But I said in our full Committee here on ag issues last month, I acknowledged that sometimes environmental requirements can be complex. They can be confusing to those who farm, especially when those rules apply suddenly to them, and that is what happened in April of 2017 when the D.C. Circuit Court of appeals invalidated an EPA rule from 2008.

That rule had exempted all farms in the Nation, as we have heard today, from reporting requirements for hazardous air emissions from animal waste under CERCLA. That rule also exempted small and medium-sized farms from reporting under the Emergency Planning and Community Right-to-Know Act, which we know as EPCRA, but left in place, reporting requirements for large farms.

But with the FARM Act, the legislation that we are holding this hearing on today, we are hoping to provide certainty to farmers by legislatively exempting all farms under CERCLA, as was done by EPA in its 2008 rule.

One thing I worked hard on this legislation with Senators

Fischer and Barrasso and others, as we were developing this legislation, is to make sure the FARM Act makes no change to EPCRA reporting, no change. And I think Senator Booker has mentioned this already.

I just want to thank both Senator Barrasso, I want to thank Senator Fischer, others, other staffs and others for working with my staff and me and agreeing not to amend EPCRA in this bill. This is an issue that was critical for many members on our democratic side. We have repeatedly heard concerns from State and local officials, public health experts and other members of our communities who want information about what is in their air, and this bill seeks to strike a careful balance. As a result, it enjoys broad, bipartisan support. My hope is that that broad support can be translated into prompt legislative action.

Again, my thanks to all who played a role in crafting this compromise which is before us today.

Senator Booker and I show up most Thursdays, we will do it later today, at a Bible study group led by our Chaplain, Barry Black, for about a half an hour. It is for those seven or eight of us who need the most help, right?

One of the things that Chaplain Black, who is retired Navy Admiral, former Chief of Chaplains for the Navy and Marine Corps, he always reminds us every week of the Golden Rule: treat

other people the way we want to be treated and love thy neighbor as thyself. And this is an effort, I think, a good faith effort to try to make sure that we are true to that admonition.

We are not there yet, but it is striving toward perfection. Keep striving, keep striving, and hopefully some day we will get there. Maybe we will even get to Heaven. Who knows?

Thank you so much.

[The prepared statement of Senator Carper follows:]

Senator Rounds. Thank you, Senator Carper. I think Senator Booker was right as he suggested to me that not only will they probably clip your message here on behalf of your local Chamber of Commerce, but probably the dairy and milk industries will as well. Chocolate malts sound very good, actually.

I would also make note that Senator Carper has suggested that this is a bipartisan effort. A lot of that has to do with the leadership of Senator Fischer and her work here to gather both Republicans and Democrats as part of this. She currently has 12 Democrats and 21 Republicans on this as cosponsors, and that says a lot about the leadership that she has provided.

I would like to give Senator Fischer the opportunity to visit a little bit about this legislation before we move directly to our witnesses.

Senator Booker. And I would like to note for the record it was her birthday last week. She is now, I think, 38.

[Laughter.]

Senator Fischer. That would be correct.

[Laughter.]

STATEMENT OF THE HONORABLE DEB FISCHER, A UNITED STATES SENATOR  
FROM THE STATE OF NEBRASKA

Senator Fischer. Thank you, Chairman Rounds and Ranking Member Booker, for convening today's legislative hearing on important bipartisan legislation that would ensure common-sense policies prevail for our farmers, our ranchers, and our livestock markets.

Mr. Chairman, I thank you for your support, and to my other EPW colleagues, Chairman Barrasso, Ranking Member Carper, Senators Inhofe, Ernst, Moran, Duckworth, Wicker, and Boozman, for supporting this important legislation. I would also like to thank the witness panel for their willingness to share their time and experience with our Committee this morning.

Since my first day in Congress I have worked with my Senate colleagues to promote policies that enable our ag producers to prosper, while also safeguarding our environment. The bill before us today, the Fair Agricultural Reporting Method, or the FARM Act, would provide greater certainty for ag producers. It will protect farmers and ranchers from burdensome reporting requirements for animal waste emissions under the Superfund law, also known as CERCLA.

When CERCLA was enacted, Congress never intended the law to affect normal production agricultural practices. Instead, the law is meant to address dangerous industrial pollution, chemical

plant explosions, and the release of hazardous materials into the environment.

In an effort to clarify that animal manure is not a hazardous chemical emission, the EPA published a final rule in 2008 that exempted most livestock operations from animal waste emission reporting requirements under CERCLA. But last year the U.S. Court of Appeals for the D.C. Circuit vacated the 2008 rule, noting that the EPA does not have the authority to grant the reporting requirement exemption.

The Court's decision created confusion, and it created that for both the EPA and ag producers, and that sent a clear message that a legislative fix from Congress is needed to clarify these reporting requirements. My legislation does exactly that.

The FARM Act codifies the original intent from the EPA's 2008 rule by mirroring the intent of the exemption. It does so by providing an exemption for air emissions from animal waste from CERCLA reporting requirements. Most importantly, it provides ag producers with greater certainty by reinstating the status quo that producers have been operating under since EPA's final 2008 rule.

It is important to also note that while EPA administers CERCLA, producers must notify the National Response Center, which is housed under the U.S. Coast Guard, of their animal waste emission releases. The NRC reported that their daily

calls jumped from an average to 100 to 150 to well over 1,000 a day, creating at times a two-hour wait delay. Due to the extreme influx of reports, the director of the NRC wrote to me that without the CERCLA exemption, the increased reporting would absolutely hinder the Coast Guard's ability to respond to real emergencies around this Country.

We all want clean air and we want clean water. Our farmers and ranchers understand this better than most, and it is important for us to provide them the necessary tools that they need to continue to feed our Nation and to feed the world. America's farm and ranch families are currently experiencing a tough economy. We have depressed markets and we have tight margins. They shouldn't also have to worry about reporting their animal waste emissions.

This is an issue where we can provide a solution. It is one of those rare moments where everyone involved, our stakeholders, the EPA, and the National Response Center, all want a fix, and I am grateful for the bipartisan interest in seizing this opportunity.

I am looking forward to today's discussion and I thank my 33 colleagues on both sides of the aisle for joining me in this legislation.

Thank you, Mr. Chairman.

[The prepared statement of Senator Fischer follows:]

Senator Rounds. Thank you, Senator Fischer and, once again, thanks for the leadership on this. This is very, very important. Any time you bring together both Republicans and Democrats in these numbers, that says a lot about the work that you put into it, so thank you.

At this time, Senator Barrasso, who is the Chairman of our full Committee, has again rejoined the Subcommittee.

Senator Barrasso, would you care to make any opening comments?

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES  
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Well, thank you very much, Mr. Chairman. I want to thank you, as well as Ranking Member Booker, for convening this hearing on S. 2421, the Fair Agricultural Reporting Method Act, the FARM Act. It is important bipartisan legislation that is going to help bring clarity to ranchers and to farmers in Wyoming and all across the Country. I cosponsored the bill, strongly support it, and compliment Senator Fischer for its introduction.

The Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA, was enacted by Congress to give EPA the authority, the authority to respond to hazardous industrial pollution that threatens the environment and public health. It is an important and necessary law, provides tools to clean up polluted sites, and to hold responsible parties accountable.

But when applied to the everyday activities of ranches and farms, it really makes very little sense. That is why, in 2008, the EPA finalized a rule to clarify that farming ranches are exempted from air emission reporting requirements under CERCLA. Even the Obama Administration agreed that farmers and ranchers should be relieved of some of this burdensome regulation.

In April of 2017, the D.C. Circuit Court nullified the Obama Administration rule, mandating new onerous reporting

requirements for up to 100,000 farms and ranches.

Now, Mr. Chairman, I was home in Wyoming the last two weekends, one weekend in Riverton, Wyoming, the Fremont County Cattlemen's Association; last weekend in Big Piney and Marbleton, Wyoming at the Green River Valley Cattlemen's Association. Look, I continue to hear how out of touch the environmental regulations have become, and this is a textbook example. The people who labor year-round to feed, to clothe, to house our Nation should not be burdened with the time and money it takes to estimate and to record and to file emissions reports that even the EPA has said it does not need or want.

That is why enacting the FARM Act is critical. It is a common-sense bill. It protects ranchers and farmers in Wyoming and around the Nation from punishing and unnecessary Federal Government regulations. It eliminates regulatory uncertainty by putting into law the CERCLA animal air emissions exemption that producers have relied on since the EPA's 2008 rule. I believe it is an important bill.

I would like to again thank Chairman Rounds, Ranking Member Booker for holding this hearing, and especially like to thank Senator Fischer for bringing it to us, bringing it to the Senate as we move forward on this bill.

Thank you, Mr. Chairman.

[The prepared statement of Senator Barrasso follows:]

Senator Rounds. Thank you, Chairman Barrasso.

Our first witness for today's hearing is Mr. Todd Mortenson, who is the Owner-Operator of Mortenson Ranch in South Dakota. On a personal note, Todd lost his father, Clarence, just this last week, who was a good friend of mine, a real gentleman, and truly, with regard to modern sustainable ag practices, probably one of the fathers of making it a reality in South Dakota.

First of all, my condolences to you and to your family on the loss of your family, but also in South Dakota the loss of a real gentleman and a true part of the pride that we have in our State. So, just on a personal note, that loss is felt.

Todd is the owner and operator of the Mortenson Ranch in Stanley County, South Dakota. His cow calf operation sits along the beautiful Cheyenne River and Todd focuses on conservation and stewardship of his land. He has restored more than 90 percent of his 19,000-acre ranch back to native grasses, shrubs, and trees, and for this Todd was recognized by the Sand County Foundation as the Leopold Conservation Award winner in 2011.

The Mortenson Ranch was also the subject of a multi-year study conducted by the South Dakota State University and, in my opinion, is a gold standard for striking a perfect balance between ranching, economics, and environmental conservation.

I first went out to Todd's ranch way back in the 1990s and

I saw what they were doing for water improvement on livestock improvement, pasture improvement, bringing broadleaf back in and so forth, and it can be pointed to as a true success story for sustainable ag.

Senator Carper is still here. I would like to yield to Senator Carper to introduce our second witness at this time.

Senator Carper?

Senator Carper. I think I have done about as much harm to Bill Satterfield's reputation as anybody can. But if you didn't get the drift of my earlier statements when I talked about him, a little bit about his background.

Agriculture is hugely important in all of our States, but particularly in southern Delaware, and a big part of that is poultry. We always face, in every one of our States, the question can we have cleaner air, cleaner water, and still have jobs. Can we have better public health and still have jobs? And I always say it is a false choice to say you have to choose one or the other. We can have both. And part of what we want to do is make sure that we do a better of adhering to that thought, and I think Bill understands that, and he has helped to provide leadership for a big consortium of folks who raise chickens, process chickens, export chickens all over the world, and we are grateful for his service in that regard and I am just grateful for his friendship over all these years.

Senator Booker. Mr. Chairman, I just want to note for the record that Mr. Satterfield did not bring chocolate milkshakes for everybody.

[Laughter.]

Senator Rounds. Duly noted.

Senator Van Hollen. Mr. Chairman, if I just could, I believe, if I am not wrong, that Mr. Satterfield actually, if you still live in Salisbury, you are a Marylander, so we are very proud to have you as a Marylander, and thank you for being here.

Senator Carper. But he still votes in Delaware. No, I am just kidding.

[Laughter.]

Senator Carper. For the record, he does not.

Senator Rounds. We won't get into that today.

Mr. Satterfield, welcome.

Senator Carper. Thank you, Bill.

Senator Rounds. Our third witness for today's hearing is Mr. Mark Kuhn, Floyd County Supervisor, Floyd County, Iowa, and we welcome you, as well, to this very special panel. Thank you, sir, for being here.

Now we will turn to our first witness, Mr. Todd Mortenson, for five minutes.

Mr. Mortenson, you may begin.

STATEMENT OF TODD MORTENSON, MORTENSON RANCH, MEMBER, NATIONAL  
CATTLEMEN'S BEEF ASSOCIATION

Mr. Mortenson. Good morning. My name is Todd Mortenson. My wife, Deb, and I, along with our sons, Quinn and Jack, live on a ranch in Stanley County, South Dakota, along the Cheyenne River. I am a member of the South Dakota Cattlemen's Association and the National Cattlemen's Beef Association, and today I am representing cattle producers from across the Country.

Thank you, Chairman Rounds and Ranking Member Booker, for allowing me to testify on CERCLA reporting for agriculture and the importance of the FARM Act.

Farmers and ranchers truly are America's original environmentalists. We care more than anyone about the land that we manage because the environmental quality of our operations directly impacts not only the health of our livestock, but the water we drink and the air we breathe. I work hard to implement management practices that improve the environmental sustainability of my ranch so that someday I can pass it on to my sons. For example, we move cattle to the uplands during the summer months, allowing increased native plant growth and decreased sediment flow through the ranch creeks.

While I fully support best management practices that improve environmental quality, I cannot support needless

requirements that burden the agricultural community while providing no benefit. A prime example of this is the burdensome reporting requirement under CERCLA which requires farmers and ranchers to report manure odors to multiple Federal agencies for emergency response coordination. Let me say that again, because the absurd bears repeating. CERCLA reporting requires farmers and ranchers to report manure odors to the Federal Government so that the Federal Government can coordinate an emergency response to manure odors.

On my pasture-based cow calf operation, I manage 1,295 cows on 19,000 acres. Because my cattle are so spread out, the concentration of emissions is extremely low. But CERCLA does not consider concentration, only release. It makes no difference whether my cattle are spread over 10 acres or 10,000 acres; if my cattle emit over 100 pounds of ammonia or hydrogen sulfide per day, I am required to report their emissions to the Coast Guard and the EPA.

It is clear that Congress never intended for CERCLA to govern agricultural manure odors. The EPA understands this and, in 2008, exempted agricultural operations from CERCLA reporting requirements. While the exemption was put in place by the George W. Bush Administration, it was defended in court by the Obama Administration. In defending the exemption, the Obama EPA argued that Congress did not include an exemption for manure

emissions because they never dreamed that these low-level emissions would fall into the possible realm of regulation.

However, in April 2017, environmental groups won their lawsuit and the D.C. Circuit Court eliminated these important exemptions. When the mandate issues in May, nearly 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 requires, at minimum, one year to complete. The first step is an initial call to the Coast Guard, the agency tasked with coordinating emergency response for the Nation's hazardous emergencies, such as oil spills and chemical explosions.

The Coast Guard is on record stating that these reports don't help them at all. In fact, they only hurt their ability to respond to environmental and public health emergencies. For quotes from the Coast Guard's declaration to the D.C. Court, you can see my written testimony. In summary, the Coast Guard indicated that early calls in November from some livestock operations increased wait times to report emergency releases by up to two hours.

The initial call is followed by two written reports to the EPA sent over the span of one year. These reports require detailed information regarding my cattle's emissions, information that I simply do not have. Research in this area is

limited, to say the least. Only two land grant universities have done research to establish an emissions calculator, and, as a pasture-based producer, there is no available science to meet the statutory burden.

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 herd, I am required to start the process all over again.

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 just a couple of weeks ago, provides the relief that livestock owners and first responders need under CERCLA, and has the same bipartisan support exhibited under the Bush and Obama Administrations.

CERCLA is one of our most important environmental statutes, providing the tools we need to effectively clean up releases that harm both the environment and public health.

Unfortunately, we all know that environmental agencies are given low priority at both 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.

As May 1st quickly approaches, only Congress can ensure

that the agriculture 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.

Thank you for your time and thank you for your support of the FARM Act.

[The prepared statement of Mr. Mortenson follows:]

Senator Rounds. Thank you, Mr. Mortenson.

We will now turn to our second witness, Mr. Bill Satterfield.

Mr. Satterfield, you may begin.

STATEMENT OF BILL SATTERFIELD, EXECUTIVE DIRECTOR, DELMARVA  
POULTRY INDUSTRY, INC.

Mr. Satterfield. Good morning, Chairman Rounds, Ranking Member Booker, Mr. Van Hollen, and Senator Carper. Thank you for the trip down memory lane. What I do not recall is whether I charged you for that milkshake.

[Laughter.]

Senator Carper. Paid in full.

Mr. Satterfield. I am Bill Satterfield. I am the Executive Director of Delmarva Poultry Industry Incorporated, which is the trade association for the meat chicken industry in Delaware, the eastern shore of Maryland, and the eastern shore of Virginia. On behalf of America's chicken, turkey, and egg farmers, I thank the leadership of this Committee and our Delmarva Peninsula Senators for introducing the FARM Act. As you have heard, this will restore the CERCLA reporting requirement exemption to the limited purpose, which was never intended to be low-level air emissions from animal manure emissions.

The FARM Act is needed because EPA's original farm reporting 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. Therefore, failure to amend the CERCLA

statute now to remove the reporting requirement for farm air emissions reporting will subject, as we have heard, 200,000 farmers or more to these reporting requirements. Congress needs to clarify its intent immediately. The FARM Act will do this.

While CERCLA is a valuable tool to protect the public and the environment from accidental releases of hazardous substances, it is hard to believe it was ever the intent of Congress to extend the reporting requirements to farms that incidentally release ammonia that is generated as manure decomposes. This guided our 2005 petition requesting an exemption from CERCLA reporting.

After considering the request, EPA developed a rule that provided a narrow exemption for farms for reporting low level continuous releases of ammonia and hydrogen sulfide. EPA's exemption was based on Congress's intended purpose of notifying the National Response Center only when a truly hazardous substance is released. The NRC and the Coast Guard have indicated on several occasions that they did not intend to do anything with the information.

While it is true that ammonia, which in significant concentrations and volumes is a substance reportable under CERCLA, it is a by-product of manure decomposition. The concentrations on poultry farms are at very low levels and they dissipate rapidly into the air.

University of Georgia researchers, in 2009, found that ammonia concentrations were lower as distance from the poultry houses increased. At no time during that study did the measured ammonia levels meet or exceed OSHA's ammonia odor detection threshold levels, and this underscores EPA's rationale for providing the exemption in 2008. Similarly, we cannot imagine that local emergency response agencies, if they even get this information, would do anything other than scratch their head and say, what are we supposed to do now?

The EPA's anticipation on reporting concerns was entirely correct. In November of last year, poultry farmers from the Delmarva Peninsula and other parts of the Country attempted to initiate the then required CERCLA reporting process. One such grower is Sharon, who operates a poultry farm near Marydel, Maryland, just across the border from Delaware.

Upon calling the NRC to provide an initial notification of a continuous release, a recording informed her that NRC would not be accepting telephone notifications. And, as feared, as Senator Fischer was saying, the system was overloaded. The reporting to Sharon told her to submit the initial response in email form.

Well, you need to understand that many farmers do not use email, do not have email, so requiring email notification is not practical and could result in these farmers, wishing to be

compliant with the law, being in violation. Sharon is 73 years old; never has owned a computer, never used email, so that was not an option for her.

That is just one example of the numerous breakdowns in the reporting system starting last November. This indicates that the NRC did not recognize these reports as emergencies that require an immediate response or action.

Requiring the emissions monitoring is difficult. Calculating air emission levels is very complicated and it is hard to do, and there needs to be a whole lot more research on how do you do it, because chicken houses differ, the age of the birds have a factor, the age of the litter material, the weather, the treatment of the birds inside the house all play factors.

So, simply put, CERCLA was never intended to force farmers to report low level emissions from normal, everyday agricultural operations.

On behalf of Delmarva Poultry Industry Incorporated and the entire poultry industry nationwide, we thank the Committee and its members for introducing this Act. This bill will put enormous regulatory relief to countless farmers across America without, without sacrificing human health and will give them more time to focus on their vocation, which is producing food for America and the world.

I appreciate the opportunity to testify and would be happy to answer any questions at any time. Thank you.

[The prepared statement of Mr. Satterfield follows:]

Senator Rounds. Thank you, Mr. Satterfield.

We will now turn to our third witness, Mr. Kuhn.

Mr. Kuhn, you may begin.

STATEMENT OF MARK KUHN, FLOYD COUNTY SUPERVISOR, FLOYD COUNTY

Mr. Kuhn. Thank you, Chairman Rounds and Ranking Member Booker for inviting me to address the Subcommittee, and welcome from Iowa, hello from Iowa, Senator Ernst, the Hawkeye State.

I am a farmer and current member of the Board of Supervisors from Floyd County, Iowa. I served six terms as a State representative and was one of 12 legislators who drafted the last major change to Iowa's confined animal feeding law in 2002. I know how essential it is to monitor air emissions from CAFOs and why results should be shared with neighbors, communities, and emergency responders.

According to Iowa State University, Iowa's hogs, cattle, and poultry produce a combined total of 50 million tons of manure each year. Amid growing concerns about public health and the environment in 2001, Iowa Governor Tom Vilsack asked the College of Agriculture at Iowa State University and the College of Public Health at the University of Iowa to provide guidance regarding the impact of air quality surrounding CAFOs on Iowans and recommended methods for reducing and/or minimizing emissions.

Based on an analysis of peer-reviewed, duplicated, legitimate, and published scientific research, the consensus of the entire study group was that hydrogen sulfide and ammonia should be considered for regulatory action. Both of these gases

have been measured in the general vicinity of livestock operations at concentrations of potential health concern for rural residents under prolonged exposure.

In April 2002, Governor Vilsack signed new livestock regulations into law giving the Iowa Department of Natural Resources authority to develop air quality rules and monitor CAFOs. During the next two years, three attempts by the DNR to establish regulations for hydrogen sulfide and ammonia were nullified after strong opposition from the CAFO industry.

In March 2004, the industry introduced through friendly legislators a bill to set air emission standards. The bill was passed by the legislators, but vetoed by Governor Vilsack. In his veto message, Vilsack stated the bill represented a significant step backwards because it would not adequately protect the health of Iowans and it would set a standard so lenient it would undermine the credibility of the CAFO industry.

Nothing has changed in Iowa since the joint university report 16 years ago, with two key exceptions: Iowa has more than four times as many CAFOs as they did then and the pork industry is about to go hog-wild again. An unprecedented increase in packing plant capacity in Iowa, fueled by the demand for exported pork to China, will likely result in an onslaught of new CAFOs.

It is clear to me that the CAFO industry is opposed to any

air emission regulations. It intends to continue business as usual as long as State elected officials in Iowa allow it. This isn't a rural versus urban issue; it affects all Iowans. It pits neighbor versus neighbor all too often. It pits farmer versus farmer.

Please be assured these reporting requirements do not affect small family farms. The CAFO industry is industrialized factory farm agriculture. It is vertically integrated from top to bottom; giant corporations get the profits from the hogs they own and process at their packing plants, local farmers build the barns and get the manure, while neighbors get the pollution.

A preponderance of evidence shows that toxic air emissions from CAFOs can adversely affect immediate neighbors and nearby communities. Those with allergies, asthmatics, especially children, in which asthma is more common, and adults with COPD are at particular risk.

In Iowa it takes a good neighbor to be a good neighbor. I will close with the story of one good neighbor family in Floyd County. Jeff and Gail Schwartzkopf bought a house in the country near the small town of Rudd four years ago. Thirty days after they moved into their new home, they learned a large CAFO was going up 1,987 feet south of them. Once it was built and populated with thousands of squealing pigs, their lives changed forever.

According to Gail, "We tried to make the best of it, but nothing worked. We stopped enjoying the outdoors. We hate the stench, the biting flies, our burning eyes, scratchy throat, fatigue, digestive issues, and insomnia because we worry about our health. We can't open our windows or hang our clothes on the line to dry. There are only five or six days out of a month when it doesn't smell like rotten eggs."

The Schwartzkopf family is surrounded by three large CAFOs. They should be protected from toxic air emissions that impact their health and diminish their quality of life, but Iowa lawmakers refuse to act. So now it is up to you to protect their access to air emission information under both CERCLA and EPCRA.

This is a picture of Gail and her family, and the view from their front yard. The last thing Gail told me before I left for Washington, D.C. was "I wish this picture was scratch-and-sniff so all those Senators could partake of the toxic emissions and polluted air if only for a little while."

Thank you for listening.

[The prepared statement of Mr. Kuhn follows:]

Senator Rounds. Thank you, Mr. Kuhn, for your testimony today.

At this time, each of the Senators will have five minutes to ask questions of our witnesses. I will begin. Before I actually start with questions, I would like to ask unanimous consent to include two letters of support for this legislation and ask they be entered into the record of this meeting, a letter from the American Farm Bureau and a letter from the Wyoming Stock Growers Association.

Hearing none, we will enter it.

[The referenced information follows:]

Senator Rounds. With that, first of all, Mr. Mortenson, if I could just begin with you. I am familiar with where your ranch is and I know it is on the Cheyenne River and it overlooks the Oahe Dam and Reservoir. It is one of the most beautiful lakes in all of America, in my opinion; it is 180 miles long, 5, 6 miles wide in some areas, and you can go out and look down 10 foot and see the bottom. It is a couple hundred feet deep in a lot of areas, but it is absolutely beautiful and the water is clear.

America's ranchers, just as you, are on the front line of the Nation's conservation efforts. Ranchers like yourself are truly our best stewards of the land. Can you talk about what you do to protect the environment and South Dakota's natural resources and maybe also, on a brief basis, why you do it?

Mr. Mortenson. I will start with the last question, why you do it. It is the right thing to do because we all have to breathe the same air and drink the water. Like you said, we are on Lake Oahe, we are on the Cheyenne River arm of Lake Oahe, so what runs off my ranch basically goes all the way to New Orleans, so I am very cognizant of what that is and make sure that I am doing the best that I can to stop any pollution.

Now, as Senator Rounds indicated earlier, SDSU, the college in Brookings, has done research on the ranch, quite extensively, and one of the research projects they had had to do with water

quality; and what they found out is that the water running off our ranch is cleaner than the water that runs onto it from the neighboring farms and ranches. So we are very proud of that fact, that we are doing the right thing environmentally to clean up not only the water, but the air.

We practice what we call holistic management, and that means we take into account everything on the ranch, from the people to the land to the wildlife; and all of those things are interconnected, and if any of them aren't healthy, the whole system will fail. So we make sure that everything has a chance to thrive on the ranch, regardless of whether it is livestock or the trees, the shrubs, anything like that. We are very conscientious about the environment we live in.

Senator Rounds. You are a volunteer fireman, as well. Can you comment a little bit about what it would do with regard to first responders if we actually had to try to get the Corps of Engineers to respond? I am not even sure where the nearest Corps of Engineers office is and how many hundreds of miles away it is from our part of the world, but can you comment a little bit about what the impact would be if your local emergency responders had to respond to the call each time one of these reports was to be filed?

Mr. Mortenson. Certainly. Not only am I a volunteer fireman, but I am also a first responder, EMS first responder,

and it adds another layer, basically, of paperwork that you would have to do and potentially could slow down your response time. I am going to a Superfund site out in the middle of Stanley County somewhere; now I have to worry about, is it for real, or is it a chemical that I am worried about, or is it a cow pie that I might step in and slip and fall.

Those are very real concerns because, as a first responder, your first duty is to make sure that the scene is safe. So you can't enter a scene until you have determined that, and this will just slow down that response time.

Senator Rounds. Sometimes I think, when we get into these meetings here in D.C., we start talking about manure and we start talking about it as this thing which has little value. Can you talk about the value of manure as we see it, in terms of the ag operations and the value that we have with regard to manure?

Mr. Mortenson. Absolutely. In my operation, it is a pasture-based operation, obviously, and there is a little bug that we monitor, it is called the dung beetle. And that dung beetle, when that pat hits the ground, those things come from all over the place. They have little antenna that they sense the smell and they zoom in on those cow pats. They make little balls, lay their eggs in these little manure balls, and then roll them into a hole. They roll them away from the cow pat,

dig a hole, and down into it it goes.

When the eggs hatch, the larvae feed on the manure, and then when they are big enough, they come out. What does that do? Several things: it fertilizes the ground, number one, and, number two, it aerates the ground, it opens the ground up so the water percolates into the ground a lot easier. So the cow pat is very important to the overall health of our range land.

Senator Rounds. Do you know any producers out there right now that actually don't value manure in their operations?

Mr. Mortenson. None. I mean, with the cost of commercial fertilizer, this is, by far and away, the cheapest and the best product that is out there. And, like I say, for me, Mother Nature is doing the work; she is the one that is putting the fertilizer into the ground.

Senator Rounds. Mr. Mortenson, thank you.

Senator Booker.

Senator Booker. Mr. Chairman, if it is okay with you, I am going to defer to my Ranking Member and my colleague. Before I do, I just want to ask unanimous consent to submit into the record materials from the Congressional Research Service analyzing the effects of S. 2421, the FARM Act.

Senator Rounds. Without objection.

Senator Booker. Thank you.

[The referenced information follows:]

Senator Carper. I want to thank my colleague for yielding and giving me this opportunity to ask some questions so I can get going to another important meeting.

Thank you all for being here, for your testimony.

I want to come back to something that Mr. Satterfield said, talking about I think it was the University of Georgia that you talked about, with the level of emissions with respect to the poultry industry? Was that the University of Georgia?

Mr. Satterfield. University of Georgia, yes, sir.

Senator Carper. In about 30 seconds, just give us that real quick synopsis of that study.

And then what I am going to ask is Mr. Kuhn to compare and contrast what you presented to us today with what the University of Georgia is reporting here. Please. Just real briefly.

Mr. Satterfield. The University of Georgia study was looking at concentrations of ammonia outside of chicken houses, parts per million versus mass or volume of emissions that come out of the houses, so what is the air quality. And the study found that the measurements were made further and further away from the chicken houses, the ammonia detection levels kept going down and down and down. At no time during that study did the odor threshold levels exceed or meet OSHA's standards. And even when there were ammonia levels detected, they were well below EPA's standard.

So, you have to understand that as you move farther away, you are not impacting the neighbors as much as some people would have you believe. And it is important to understand that inside the chicken house, if the ammonia is too high, those birds are not going to live. Taking care of the animal, the welfare of the animal is the number one job of our growers, and preventing ammonia creation is among their top priorities.

If the ammonia is over 25 parts per million, it is hazardous for the birds, obviously not good for the farmers who are in the houses working with the houses. So a lot of efforts are made to keep the ammonia levels low. Some of that is done through improvements in feed conversion, the conversion of the feed ingredients into meat. We see each year a better feed conversion, more of the nutrients being made into meat, which means there is less opportunity for nitrogen to come out the rear end of the chicken and eventually form ammonia.

There are products available that can be put down in the chicken houses between flocks that will lower the pH, they are acid products that lower the pH, which discourages the formation of ammonia. That is an important part of the process. The U.S. Department of Agriculture's Natural Resources Conservation Service provides cost-share money for that.

Keeping the houses dry is important because the ammonia needs moisture to form. It is also good for bird health.

And then we have a program, as you know because you have been out on some farms, where we have a full-time employee whose job is to work with chicken growers to put up vegetative buffers around the chicken houses; trees, bushes, tall grasses. So those things help keep the ammonia levels low, keep them from dissipating to neighboring properties. As the Georgia study found, even without all those things, there still is a low level moving off the property.

Senator Carper. All right, thanks. Thanks very much.

What Mr. Satterfield is talking about reminds me of our layered approach that we have for border security. It is not just one thing, it is like a whole host of things to enable us to keep bad people and bad products from coming across our borders.

Mr. Kuhn, thank you very much for your testimony. It is great to have you here as well. Just react very briefly, if you will, I don't have much time, just real briefly, maybe about a minute, to what Mr. Satterfield has said in the Georgia study.

Mr. Kuhn. Yes, certainly.

Senator Carper. Mr. Chairman, could I ask unanimous consent the University of Georgia study that Mr. Satterfield has talked about be made a part of the record, please?

Senator Rounds. Is there objection?

Without objection.

[The referenced information follows:]

Senator Carper. Mr. Kuhn.

Mr. Kuhn. Yes. Thank you, Senator Carper. The results of documented research in Iowa are different than what Mr. Satterfield has described. Really, when the manure that is contained in one of these buildings is agitated and applied to the land, there is about one million --

Senator Carper. You are talking about poultry or one of the hog --

Mr. Kuhn. This is the hog CAFO like this.

Senator Carper. Yes, I understand.

Mr. Kuhn. There is about one million gallons of liquid manure underneath that building.

Senator Carper. One million gallons?

Mr. Kuhn. One million gallons. And numerous Iowa farmers have lost their lives due to high level of toxic gases. They really emit four different types of toxic gas: one, ammonia, which is constantly there; carbon dioxide; hydrogen sulfide; and methane. We have had numerous instances where farmers have gone in to repair something in the bottom of the pit, they have been asphyxiated; their son goes in to get them, they are asphyxiated. This is very sad, but true.

It should come as no surprise that when thousands of animals are confined in a building directly on top of all the manure they produce, it is going to stink. The farmer will tell

you it is the smell of money, but the neighbor would say it stinks to high heaven.

If the pharmaceutical plant in my hometown has a release of a toxic chemical, they are required to notify local, State, and national officials. Why should it be any different for corporate factory farms? We want all of our corporate citizens to be good stewards of our precious natural environment.

Senator Carper. Thank you very, very much.

And I want to again thank Senator Booker for letting me go ahead of him. Thanks so much.

Senator Rounds. Thank you, sir.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Mr. Satterfield, it is my understanding that there is a regulatory framework already in place for producers to comply with environmental rules and laws at both the State and the Federal level. In your experience, would including the additional reporting requirement under CERCLA result in any environmental benefit?

Mr. Satterfield. Senator Fischer, I don't believe so. This is a law dealing with emergency responses; it is not a law to measure emissions, to quantify and aggregate emissions, to then make policy decisions on whether additional regulations are needed because those levels may meet a certain threshold. So I

don't see any environmental benefit or human health benefit, at least from the chicken industry perspective, and that is all I can speak from, from keeping the requirement that farmers have to report.

With our chicken farms, the families live on the farm; they are family-owned farms. They live there, their children live there, and it is not a corporate operation. It may be with hogs in Iowa, I don't know, but, for us, the families live there. And if conditions were that bad, they would do other things to keep those ammonia levels low and inside the houses.

Senator Fischer. Thank you.

Mr. Mortenson, you stated in your testimony that complying with this reporting requirement is a multi-step process and it takes one year to comply. This is followed by additional reporting any time you add cattle to your operation.

I am a cattle rancher from Nebraska, and I understand the problems that ranchers are going to face, given that moving cattle between pastures under a plan of grazing system that we have could trigger additional reporting, among other problems, with the compliance, so this just sounds like a bad deal; and it is applying a law to agriculture that was never designed to be applied to production agriculture.

When the court issues its mandate on May 1st, walk me through the process that you are going to have to go through to

comply with this new law.

Mr. Mortenson. Thank you for the question, Senator Fischer. The first step is reporting to the National Response Center through the Coast Guard. And after that you have 30 days to send your written report in to the EPA, your regional EPA office, and, for me, that would be in Denver. And then after a one-year anniversary, you have 30 days again to re-report and note any changes or anything.

Now, for me, there is no scientific basis out there to gather that material. On a pasture-based system like I run, there is just nothing out there, so I am not going to be able to provide any sort of accuracy to the information that I supply.

As you said, I move the cattle around. I am in three different counties. During the spring, after they calve and are processed, the cows go to six different leases, so am I going to have to report that again? And when the cows are calving, my numbers go from one number, they just double, so what am I going to do now, do I have to report that I have baby calves on the ground?

It is just a reporting nightmare, and the EPA, on their page that you have to kind of go through, says it can take up to 10 hours to do this report in May. I don't have 10 hours to sit around and make guesstimates in May; it is just a busy time of the year for farmers and ranchers.

Senator Fischer. Right. Do you believe that the FARM Act is going to address that cumbersome process?

Mr. Mortenson. Yes, I do. I have great confidence in it.

Senator Fischer. You also discussed concerns about Federal agencies having a database on farm and ranch locations, and, justifiably, you note the concerns of supplying the Federal Government with personal information regarding the location of these operations, which in many cases coincides with exactly where we raise our families. Can you please explain why this is concerning for producers who can gain access to this information and what you believe the FARM Act can do to alleviate some of those concerns?

Mr. Mortenson. I think it is very dangerous when you start putting personal information out there for the public to digest. In this case, a Superfund designation on my ranch I think would attract a lot of attention; and not only on my ranch, but all the other ranches around the Country. You are giving them your location, you are giving them the number of cattle you run, so, to me, it puts me in a very dangerous situation, I feel.

I think this FARM Act will address that; we won't have to report, so, therefore, the numbers and where the cattle are will remain, you know, as personal information.

Senator Fischer. Thank you, sir.

Senator Rounds. Senator Van Hollen.

Senator Van Hollen. Thank you, Mr. Chairman. Thank you and the Ranking Member and my colleagues.

And to all the witnesses who are here, appreciate your testimony. I joined with Senator Carper and a number of my colleagues on a letter to Scott Pruitt at the EPA asking them to ask the court to continue the stay while we try to figure this out. I am trying to understand all the testimony and read through a lot of material.

Mr. Mortenson, I think you make a very good point, differentiating between the concentration of certain emissions, like ammonia, versus the mass of emissions, because from a human health perspective, of course, it is the concentration that has the biggest impact on human health, and I think that is a very important point.

Mr. Satterfield, welcome and thank you for all you do on behalf of the eastern shore's economy in Maryland. You drew the distinction and said that CERCLA never anticipated that the CERCLA reporting requirements would apply to "low level emissions" from these ongoing operations. What is the threshold for low level emissions and what is beyond that?

Mr. Satterfield. I do not have a numeric threshold for low level emissions versus higher level emissions. I don't have it in front of me. We can do some research and find out. But my point was that there is very little ammonia coming out of those

chicken houses because there is very little ammonia in the chicken houses if the birds are being properly cared for and the house is being properly managed.

Senator Van Hollen. Right. So I think those are all really good points. You drew this distinction, and from a human health perspective there is a distinction, right? So what I am trying to figure out, if we say that there is no obligation to report emissions under any circumstances, would that mean that even if there were concentrated emissions, maybe they weren't doing the job properly in one of the poultry houses and there were emissions that were concentrated to a point that it could have an impact on human health to the neighbor? If we pass this, what duty would remain with respect to farmers and reporting on those kind of emissions?

Mr. Satterfield. Well, as I tried to point out, this is an emergency response bill. Does the admission of emissions trigger the need for emergency responders such as Mr. Mortenson to come out and do something?

Senator Van Hollen. Right. And I agree. And probably 99 percent of the cases would never reach that concentrated level. I think it is a really important point on the concentration. You have a big spread-out farm, you may have a lot of emissions, but they are not concentrated enough to have impact on human health.

My question is, if you remove this requirement, in the event there was something that was not a low level emission, that was a high level concentrated emission, if we get rid of this entirely, is there any duty to report?

And my understanding is, if you get rid of it entirely, there is no duty to report something that we might all agree could have an impact on human health. So I am just trying to understand this provision, and you had used that term, and I have seen it used before, low level emissions; so then the question is if there was not an intent to apply this to low level emissions, does that mean there was an intent to apply it to high level, concentrated emissions.

Mr. Satterfield. I just cannot imagine from a chicken house there would be an escape of ammonia that would endanger the community.

Senator Van Hollen. Okay. And I defer to your expertise on that.

Mr. Kuhn, I don't know if, in your experience with some of the other concentrated feed lots, non-poultry, pork, whatever, in your experience, have there ever been emissions that would trigger a requirement to protect human health?

Mr. Kuhn. Most certainly there have been.

Senator Van Hollen. Outside the boundary of the operation. Because testimony on OSHA regulations is interesting testimony.

With respect to impact on human health outside the perimeter of a farming operation.

Mr. Kuhn. In my earlier remarks I referenced attempts to establish regulations and thresholds for hydrogen sulfide and ammonia. The DNR did extensive testing over a period of years to determine at the property line or at the separated distance, that means at the place of the residence, were there direct, verifiable emissions of odors that affect human health, and they found there were.

In Iowa, 1,000 animal units is equal to 1,000 live cattle. Unlike Mr. Mortenson, in Iowa they are built in confined feeding operations, 1,000 cattle, and certainly in some cases there are emissions that would threaten public health at the property line.

Senator Van Hollen. Mr. Chairman, if I could just ask one more, because the CRS report that I believe the Ranking Member asked to be put in the record has not yet arrived at the Committee, is that correct?

Senator Rounds. That would be correct.

Senator Van Hollen. Okay. And I understand one of the questions here is whether or not this legislation also eliminates the requirements to report under Community Right-to-Know. And I received a document, I believe from the Ranking Member, who is a co-sponsor of the bill, that indicates that

under the legislation, under Senator Fischer's legislation, that the reporting requirements under the Community Right-to-Know Act would remain in place under this legislation with respect to large farms and medium farms. It says those would still be required. And maybe this is a question Senator Fischer and I can talk about later.

But, Mr. Satterfield, what is your understanding of the impact of this legislation under the Community Right-to-Know requirements?

Mr. Satterfield. It is my understanding, Senator Van Hollen, that the FARM Act does absolutely nothing to the Community Right-to-Know Act.

Senator Van Hollen. Okay.

Mr. Satterfield. It just deals with CERCLA.

Senator Van Hollen. And the last comment I will make, Mr. Chairman, because I really am trying to figure this out with you, is in the decision, in the court decision, the judge said, in the final rule, that cutting back on CERCLA reporting requirements had the automatic effect of cutting back on Community Right-to-Know reporting and disclosure requirements. Is there something I am missing here, that is it an automatic flow-through? In other words, it doesn't touch that statute, but the Community Right-to-Know statute is directly linked with the CERCLA statute in terms of triggering reporting

requirements?

Mr. Satterfield. My understanding is that, under CERCLA, the reports go to the National Response Center operated by the Coast Guard, and then 30 days later a written report to the regional EPA office. Under the EPCRA, the Community Right-to-Know, it is my understanding that those reports go to the local and State emergency responders, not necessarily to the Federal people. So there are two different reporting systems, two different purposes.

Senator Van Hollen. And they are totally independent, so this legislation, while it may impact CERCLA requirements, would not impact the Community Right-to-Know requirement?

Mr. Satterfield. That is my understanding, sir.

Senator Van Hollen. Thank you.

Thank you, Mr. Chairman.

Senator Rounds. All right.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman, and thank you all very much for being here.

Mr. Mortenson, something that is problematic about the new reporting requirement is that it likely affects over 200,000 agriculture producers across the Country. Traditionally, as we have talked about, EPA regulates the large concentrated animal feeding operations, but the court decision goes way beyond that.

We are talking about feed lots, cow calf producers, stockers, poultry, et cetera, et cetera. There doesn't seem to be a limit on who is impacted by the new requirements.

Tell me what your buddies are thinking, in the sense of can they comply with this? What is their concern? You know, again, the solution to these problems need to come from the ground up, rather than a judge or somebody that has never been on a farm making some very, very important decisions. Tell me about your buddies.

Mr. Mortenson. Thank you, Senator Boozman, for the question. For the most part, the people that I have talked to, my neighbors, don't have any idea that this is even coming, so if nothing is done by Congress, on the first of May a big surprise is coming to them, and they are not going to be happy, to say the least, to be labeled as polluters, when all they are doing is the same agriculture that has been going on in this Country for hundreds of years, grazing cattle.

There are a lot more people who will be regulated under this that have no contact with the government. Not everybody signs up for a government program. There are a lot of people up there that step away from them just so they can keep their private business private. So now you are going to net those people that don't have any contact with the government as far as regulations, and I don't think that is the intention.

Senator Boozman. Right.

Mr. Mortenson. And again I will go back to the anger issue. When people learn, when this gets out in the Country widespread, everybody understands what is going to be required. We went through the animal ID thing a few years ago when you saw the anger there. I think this will be ten times worse, because basically it gives the government the same kind of information that the animal ID was going to give, and the anger in the Country will be tremendous.

Senator Boozman. Very good.

Mr. Satterfield, Arkansas produces a lot of chickens, a lot of poultry, much like the Delmarva Peninsula; we have that in common. Again, we talked about this, but tell me, tell the Committee how poultry growers keep their ammonia levels low. I know that, again, my experience has been that these are not huge, corporate-owned entities, these are family farms that people work in, young people are out there working in and participating. Tell me how you strive to do that.

Mr. Satterfield. Thank you, sir.

Senator Boozman. And tell me about the success in striving, what you are accomplishing.

Mr. Satterfield. These are family-owned farms on the Delmarva Peninsula who have contracts with the chicken companies, and the chicken companies have certain animal welfare

standards, and the grower's primary job is to make sure the conditions in those chicken houses are good for the birds; one, because it is the right thing to do and because if there are problems because of high ammonia levels, that is not good for the animal. That does not allow the bird to grow to its full potential and that cuts into the income of the families.

So keeping moisture levels low in the houses is important because moisture is necessary in the creation of ammonia. About 20 years ago, the watering systems in these chicken houses -- and the birds are raised on the floor, they are not in cages -- the watering systems changed from open troughs or open pans to a nipple drinker system kind of like a water fountain. The bird pecks at it, the drop comes down, so you have less water going onto the litter, less potential for human conditions, less potential for the development of ammonia. So that has been an important poultry health step.

The USDA provides cost-share money for acidic products to go in the chicken houses on the bedding material, when the birds are not in there, to reduce the pH, which will nullify the creation of ammonia, so that is important.

The feed conversion I mentioned, the more of the feed that goes into the creation of meat, less nitrogen is coming out the rear end of the bird, less opportunity for ammonia to be created.

So those are the big ones. And then we have our buffers program to capture the emissions once they come out of the chicken houses in low levels. Remember, the birds are down here on the floor; a human being up here. If he is smelling a lot of ammonia, imagine what the little chick is smelling. If there is too much ammonia, it impairs the quality of the bird and the quality of the paws, the feet of the birds, which are a very valuable export product. So high ammonia levels reduce the quality of the product that the companies want to sell, so everybody has an interest in keeping those ammonia levels down.

Senator Boozman. So the reality is, through science and technology, there has been tremendous advancement in recent years in that regard.

Thank you, Mr. Chairman, we appreciate it.

Senator Rounds. Thank you, Senator.

Senator Markey, I know you just pulled in. Are you prepared to ask some questions at this time?

Senator Markey. Yes, I am. Thank you. Thank you, Mr. Chairman, very much.

Mr. Kuhn, do you agree that high doses of emissions can pose a health hazard to workers and nearby communities?

Mr. Kuhn. Certainly.

Senator Markey. According to the CDC, these emissions can cause "chemical burns to the respiratory tract, skin, and eyes;

chronic lung disease; and even death.”

Mr. Kuhn, do you agree that nearby communities should be able to find out whether they are being exposed to high quantities of these chemicals?

Mr. Kuhn. Yes, I do.

Senator Markey. The CERCLA reporting requirements are triggered for farms that emit more than 100 pounds of ammonia or hydrogen sulfide a day. Some of these larger farms emit as much as 2,000 pounds of ammonia daily, and these are dangerous chemicals, and animal agriculture operations account for about three-quarters of our national ammonia pollution, according to the EPA. Unfortunately, the bill we are considering here would permanently keep the public from understanding where that pollution is coming from by removing reporting requirements.

Mr. Satterfield, since the D.C. Circuit Court decision last April that farms should report hazardous emissions from animal waste as directed under CERCLA, have farmers had success in working with the EPA to get clear guidance put in place to explain how to report their emissions?

Mr. Satterfield. No, sir, they have not.

Senator Markey. And to what do you attribute that?

Mr. Satterfield. Part of the problem is the difficulty in measuring emissions from chicken houses. There was a study done in 2007, the National Air Emissions Monitoring Study, to develop

emission factors that would allow farmers, on their farms, to calculate it. When the data were collected, it went to the EPA Scientific Advisory Committee, which said these are not good data. We don't have a real good way to measure the emissions and to share the measurement techniques with the farmers, because the emissions depend upon the age of the bird, the breed of the bird, the age of the bedding material on the floor, whether it has been around for years or just months, the climate, the humidity.

So one-size-fits-all does not work for every chicken house. So until EPA figures out what is the best method to give to every grower for him or her to measure emissions, there is no way that that person accurately can measure the emissions.

Senator Markey. So do you think that the Trump EPA should do a better job in working with farmers, collaborating with the farmers to make the reporting work for everyone, is that what you are saying? The Trump EPA is not collaborating well with the farmers?

Mr. Satterfield. Well, I am not saying they are not collaborating. And I think a new study is underway. I think that was on the EPA website in late 2017 or early 2018, that efforts are underway to develop --

Senator Markey. I appreciate that. But what you are saying, right now, the farmers are left to muddle through the

issues themselves, without getting the full cooperation from the Trump EPA, and they are just leaving the farmers out there on their own and in a state of confusion, almost like chickens with their heads cut off, right? They don't have a direction that they are being given by the EPA.

CERCLA actually does require the communities to have information they need to protect themselves. If industries emit dangerously high levels of hazardous chemicals, they should be reporting that under CERCLA. If we carve out a huge industry, we will cut into the safety of American families.

So, Mr. Kuhn, how would you solve this problem? What do you think the EPA should be doing here so that we can keep the standards which we have, but ensure that there is much closer collaboration going on between the Trump EPA and the farmers?

Mr. Kuhn. Well, I would like to mention that the ability already exists to measure hydrogen sulfide, ammonia, and even odor. After the passage of the legislation in 2004, the DNR was required to do studies on emissions of hydrogen sulfide and ammonia. They are trained in doing that. Inspectors were even taught about scentometers, where they could determine on a regular basis the odor that is emitted from these.

So I am a little concerned that we talk about technology at one time and then we say we don't have the ability to test it. Certainly, we do. So I just don't believe that -- I am not

really trusting the EPA when they promulgate the guidance on their new rule that would eliminate this. There needs to be it somewhere, and it is not coming from the State and it is not coming from CERCLA. It is not going to come from EPCRA. Who is going to provide it? People like the Schwartzkopfs are still suffering.

Senator Markey. I agree with you, and I think the EPA should just, in the words of Bill Belichick, do their job, get it done, cooperate, send clear guidance, and I think we would be in a much better position.

So I thank you, Mr. Chairman; I thank the Ranking Member.

Senator Rounds. Thank you.

Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

Let me apologize to the Committee here. I have been chairing the Armed Services Committee and I fear that what I am going to ask has already been covered, but it hasn't been covered to me yet, so if there is a little redundancy here, I do apologize for that.

The FARM Act, I am a cosponsor of that, it exempts the registered pesticide products in air emissions from animal waste from reporting requirements. In December, the EPA published a final rule to exempt all farms from reporting these. The rule was struck down last April by the U.S. Court of Appeals, the

D.C. Circuit.

This would be to Mr. Mortenson. In your testimony you say that the biggest challenges in your industry are urban encroachment, natural disasters, and government overreach. I know a little bit about that, the lengths of government, what they can do and control every aspect of American life. I spent a number of years chairing this Committee and we lived through that.

I find it interesting that the last Administration agreed that these reporting requirements weren't needed or wanted by agencies tasked with responding to emergency situations. Yet, the environmentalists sued, and you have to wonder why, as you stated in your written testimony, there is no environmental benefit, but it seems there is a lot of very specific information that is required in reporting these emissions.

So I would ask you, is there concern among your community, the farmers and ranchers, about how this information could be used to someone's disadvantage if it were in the wrong hands?

Mr. Mortenson. Thank you for the question, Senator Inhofe. Yes, there is. We are quite proud of our environmental record not only on the ranch, but as a State. We have done a very good job of keeping the waters --

Senator Inhofe. That is interesting you start off with that, because that is so obvious. The ones who are really

concerned are the ones who own the land, and yet there is this idea that Government has to come in and tell you how to make your land look right and farm right.

But go ahead.

Mr. Mortenson. Absolutely. One thing I would like to mention, our ranch was one of four that was featured in a Smithsonian exhibit called Legacy of the Land, and it ran for six months and then it was taken by the Library Association throughout the Country on a four-year tour. So, you know, we are trying to do the right thing by the environment. It is very important to us; we make our living off it.

So the problem I see coming is that people don't know this thing is coming; a lot of them are unaware of it. And on May 1st it is going to hit the fan, you know, the manure is literally going to hit the fan, because they then have 30 days to report, and where is the information? Where do I get information on pasture-based livestock to make any kind of judgment on how much ammonia or hydrogen sulfide my cattle are producing, and how does that change over the seasons?

I talked about the dung beetle earlier. They are burying that cow pat within an hour of it hitting the ground. In the wintertime, obviously, they are not, but there is so much science that is lacking here that there is no way I can make accurate report; and if you get junk in, you get junk out.

Senator Inhofe. Yes. I am very familiar with your area; I spent some time with the Chairman there. There is a lot of beauty there and I was not aware that you were singled out and honored in such a way, and I am very proud of you.

Mr. Satterfield, your testimony addresses the fact that information that would be reported is viewed by the EPA as essentially useless. I know the Coast Guard shares this view. Yet, your industry and the rest of the ag community will be charged with reporting these largely unknown and low-level emissions.

Is there concern among the industries as to the ability or inability to report this information accurately and the potential legal liability that they would be exposed to if they don't?

Mr. Satterfield. The method does not exist to give chicken growers the formula on how to measure emissions from their houses. EPA, as I mentioned to Senator Markey, put on its website it is in the process of trying to figure this out again. There was an effort a dozen years ago or more, millions of dollars spent to try to figure this out, and it couldn't be figured out.

So EPA, according to its website a few months ago, is going to try again, and then, and only then, will the growers, the chicken growers, the family farmers have the tools they need to

figure out what their emissions are.

One of the concerns we have is that a lower threshold is to be reported based on the EPA current guidance, an upper threshold, and then a yearly total. Well, the activists often take the numbers that best suit their purpose, which would be the upper threshold, and say that is it, for every chicken house, for 365 days a year, we have a huge problem out there, when in fact, when a little itty-bitty chick in a house of them, 25,000 to 30,000 birds, is not producing the upper threshold, which is at the maximum time coming out of the houses.

There are times between flocks there is no ammonia being sent out of the houses. So that is a concern, that the numbers are going to be turned by the critics of the animal agricultural industry to suit their purposes.

Senator Inhofe. And they seem to be in charge, too, quite often.

Let me just end on a positive note. Mr. Mortenson, you are probably familiar with the partnership program. We did this program, it was back during the Obama Administration, and they came out and they inspected, at our request, in fact, I made this a requirement, to get confirmation that they make at least two trips to my State of Oklahoma and really spend some time on the farms and the ranches.

They came up with the conclusion that they are the ones who

are really concerned about their own land, about the environment. I thought that was a great discovery, because that kind of broke the ice for the first time in my memory that Government doesn't know as much about your land as you do.

Mr. Mortenson. Absolutely. We hosted the regional --  
Senator Inhofe. Was that Fish and Wildlife you hosted?

Mr. Mortenson. No, it was the EPA Administrator out of Denver, and I can't remember what her name is.

Senator Inhofe. Oh, okay.

Mr. Mortenson. Very fine lady. But we gave her a tour of the ranch and she was really taken aback by what is going on on the land, and the care that we not only give livestock, but the land and the water, and our concern for the health of it all, how it all works together as a system; and if part of it isn't healthy, none of it is healthy.

So it is very important to us, and I speak for myself and, I think, the industry as a whole, that the environmentalist part of it is the most important part. We are trying to do the right thing, and I believe we are.

Senator Inhofe. I believe you are, too.

Mr. Chairman, pardon the interruption, Senator Booker.  
Thank you for your tolerance.

Senator Rounds. Thank you, Senator Inhofe.

Senator Booker, I think you have outlasted everybody else

on your side. I think it is your turn.

Senator Booker. I appreciate that, sir, and, again, thank you very much for this hearing.

Mr. Kuhn, could we just go real quick and just give a general answer of do you support this bill, S. 2421, and why or why not?

Mr. Kuhn. No, I do not, as it is currently written. I think it is a step backwards. People like the Schwartzkopfs and thousands of neighbors like them in Iowa have waited a long time. I explained the process through which the State of Iowa went, when they attempted to establish meaningful air emission standards for Iowa, and that failed.

I understand that the U.S. Coast Guard might not be the best place for this type of information to be presented, but for the Schwartzkopfs and other families like them, they want it somewhere, and they are not getting the answers they need now.

Neighbors do have the right and the need to know. When the manure is spread on the fields, I mentioned about a million gallons from a typical tank, it can be spread immediately adjacent to a neighbor's residence or their private drinking water well, and the CAFO operator is given up to 24 hours to incorporate it into the soil.

During that time, the smell from literally hundreds of thousands of gallons of liquid manure can be overwhelming, and

both the State representative and county supervisor have been called many times by my constituents, who have no place to turn but leave their homes.

Secondly, neighbors also need to know everything they can about dangerous air emissions so they can provide that data to their doctor when explaining the symptoms that affect their personal health. Hydrogen sulfide and ammonia emissions can have serious short- and long-term consequences. Neighbors need to be able to document that exposure so they can receive proper treatment for their conditions. The conditions that the Schwartzkopf family suffers from are real.

And, finally, as I stated in my written remarks, there is a real reason why eliminating dangerous air emissions would be detrimental to a neighbor. Last year, Governor Terry Branstad signed a law that limits damages that can be awarded to a person who wins a lawsuit against a CAFO. The new law requires "objectively documented medical evidence and proven to be caused by the facility." That terminology would eliminate studies and research done by universities and rely on actually documented research that the neighbors have to find for themselves. If reporting requirements under CERCLA and EPCRA are eliminated, good neighbors like the Schwartzkopfs will not be able to access information and, therefore, denied any chance for justice in Iowa against the powerful CAFO industry.

Senator Booker. And I think it is important the trends. New Jersey actually has a lot of farms. We actually are the Garden State and produce a lot of this Nation's produce. But there is a trend going through farming in America, which is small and mid-sized farms are getting fewer and far between, and these massive operations, massive agribusinesses are coming about. You are seeing that in the poultry industry and the pork industry.

As you said, some of these massive companies are not even American companies, like Smithfield, which is a Chinese-owned company; and these concentrations mean the imagery I grew up with of farming and the farmers that I know a lot of in New Jersey, which are small farmers and not producing the kind of waste that we are talking about, but these massive agribusinesses do create these hazards.

And the expansion you talked about in your earlier remarks of what is happening in Iowa, one thing you didn't mention on the record, as we look out the front yard of the Schwartzkopfs, the CAFO there has the right to expand; they could literally put another CAFO. As we see the pork industry growing in the State of Iowa, this expansion could have even a bigger deleterious effect on average Iowans, correct?

Mr. Kuhn. Yes, it does. This particular CAFO did not require what is called a master matrix application because it

falls one pig short of 1,000 animal units; and typically the industry builds them at that level so they don't have to go through this county process.

But when they expand, as this site did attempt to expand, they have to go through the county for a hearing, and the county goes out and it is actually the responsibility of the Board of Supervisors to ensure that that application meets all separation distances and passes a minimum threshold, sort of a pass-fail test.

Well, in this case, when the operator decided to expand his CAFO, he was required to come before the county board, and at that time, according to the laws of the State of Iowa, another site closer to this one was approved; and the only reason it is not in this picture is because the operator failed to start construction within one year. If they did, we could have seen another CAFO, which would have been about 1,878 feet from the bedroom window of the Schwartzkopfs.

So that is the problem we have. The owners of the CAFO don't live near it; the owners of the pigs don't live near it. But the Schwartzkopfs and the rural residents do.

Senator Booker. Well, I don't know if this is real or not, that you introduced legislation in the Iowa legislature that would have said that people who own CAFOs have to live near them. Probably would have solved the problem real quick if that

became the issue.

I just want to finish, because I have a lot of respect for Mr. Mortenson and the industry that you are in, the cattle industry. In New Jersey it is a common saying to say someone is all hat and no cattle, but, sir, you are hat and cattle, and I have a lot of respect for that.

In my opening statement, I agree, I said, I hope you heard, that pasture-based ranchers like you should not have to do this kind of emissions reporting; it really, to me, as you said, it borders on the absurd or crossed over into the border of the absurd. But there is a fundamental difference between the type of livestock raising that you do and what goes on in these large CAFOs with huge manure lagoons where numerous people have died.

And I want to put into the record, I only grabbed one article of the death as a result of these CAFOs. If I may put that into the record.

Senator Rounds. Without objection.

[The referenced information follows:]

Senator Booker. As a direct result of emissions. But you know that there is a fundamental difference between what Mr. Kuhn is talking about and the kind of animal agriculture that you do, sir.

Mr. Mortenson. Yes, I do. I understand the difference. And I am not an expert on that end of it, the CAFOs; I have no experience with them. I am just here to tell you about a ranch in Stanley County that is scared to death of this thing.

Senator Booker. And I respect that.

And I want to say for the record that the Chairman has not invited me to come out and visit your county. I hope he does. I try to pull him to Jersey all the time.

But your testimony says that there are no large CAFOs in your county, and I respect that, but someone in another State, who lives just a couple thousand feet from a huge CAFO, whose health and whose children's health are having to deal with the stench, have to deal with not being able to put clothing on the line, have to deal without having to open their windows.

You can understand why someone living next to that would be begging for the help of the government. And governments were established in this Nation, if you read our founding documents, for the protection of the citizenry. You can understand why folks would be appealing to the government to please do something about the health and safety risks that they are

experiencing as a result of these CAFOs, is that correct?

Mr. Mortenson. Yes, I can understand that.

Senator Booker. Thank you, sir.

And the last point I want to make is that reasonable regulations, as a former mayor, I had to cut through so much unreasonable regulations to deal with trying to get things done and help people get jobs, and economic opportunity is so important.

But what we see often here, and I see this in the river in Newark, New Jersey, is often what businesses do is they externalize their costs onto other people and they internalize their profits. That is not the free market; that is finding ways to do shortcuts that are hurting Americans. It is perverting capitalism and the free market by pushing costs out to the commons and internalizing profits. The river in Newark, New Jersey is polluted because of the bad practices of businesses. Large corporations, through a type of corporate villainy or theft from the future, did that.

Right now, I talked to the head of the EPA in our hearing that the Illinois River is being polluted by a lot of the waste of animals that have been pouring into those rivers.

So I am just hoping, Mr. Chairman, that we can find a balance, or I should really say to rebalance the scales to get rid of unneeded regulations on the people and ranchers, but to

make sure that families, now a growing number of American families, as these CAFOs, as you said, in Iowa, are becoming more prevalent in our society as folks like the Chinese are finding very creative ways to outsource their pollution onto Americans and import the finished product into their countries, that we find a way to rebalance the scales for health and safety for suffering families suffering from respiratory diseases, cancers, and the like, and to undo the undue regulations that are ranchers like Mr. Mortenson. I believe we can find that balance, but I think we still have work to do.

Thank you, sir.

Senator Rounds. Thank you, Senator Booker.

I think, just to wrap this up, first of all, the idea behind the subcommittee is to really be able to get in to look at the issues, learn a little bit more about the legislation involved, and to recognize that sometimes, as Mr. Kuhn has brought out there, there are issues that many cases your local units of government, as a mayor would understand, as a State legislator would understand, I am a former State legislator, that the question in many cases is where do you best address some of the issues, where is the best place to go.

One size does not fit all. We have different sizes here, different types of activities, all of which are trying to be addressed by one single piece of legislation.

I think what we have learned today is, number one, there is a need to address the challenges that are found within the legislation or found within the rulemaking processes of the EPA today. The second part is that there is room for not just Federal, but also State and local zoning, and rulemaking to be involved in this as well.

I have appreciated what all three of you have had to offer to this process today. The legislation before us is, in my opinion, a very good attempt to try to fix what is an impending disaster for a lot of small farms across this entire Country. At the same time, we recognize the need to try to address the concerns of all of our citizens across the Country as well.

So I want to thank Senator Booker for his participation in this, as well as the rest of our Committee members. I would really like to thank all of our witnesses today for their testimony; you have all provided valuable information to us as we move forward.

So, at this time, I would once again say that the record for this subcommittee will be open for two weeks, and that would bring us until Thursday, March 22nd.

With that, this hearing is adjourned.

[Whereupon, at 11:50 a.m. the subcommittee was adjourned.]

## **Appendix B**

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HEARING TO EXHIBIT S. \_\_\_\_\_, THE AGRICULTURE CREATES REAL  
EMPLOYMENT (ACRE) ACT

Wednesday, March 14, 2018

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Rounds, Ernst, Cardin, Booker, and Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES  
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order

Today we will hold a legislative hearing on the Agriculture Creates Real Employment, or the ACRE, Act. This is bipartisan draft legislation to help farmers, ranchers, and the communities they depend on get their relief from burdensome Federal regulations and policies.

The Senate Environment and Public Works Committee has a unique role to play in the policies that impact agriculture. Just last month this Committee held a hearing on this important issue and we heard testimony from real farmers and ranchers representing a diverse group of States.

The message from our witnesses' testimony was clear: the negative impact of many Federal environmental regulations and policies on American farming and ranching communities is real and it needs to be addressed. The testimony we heard was not about the value of environmental regulations, but about how some Federal regulations can be inflexible, antiquated, duplicative, and ultimately harmful to American agriculture, a critical part of our Nation's economy.

The draft bill we are discussing today is designed to provide relief for hardworking people that put a shovel in the

ground every day, working to feed this Country. I believe the ACRE Act provides that relief.

My bill addresses many issues that are critical to ranchers and farmers. These include protecting farmers' and ranchers' privacy; eliminating duplicative environmental permitting for the use of pesticides; addressing unneeded and counterproductive reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act, the CERCLA Act; and doing away with the unfair punishment of farmers who are wrongly accused of baiting migratory game birds simply because they are following normal farming practices.

The ACRE Act also supports an efficient permitting process at the U.S. Fish and Wildlife Service for predator control. The change will allow ranchers and farmers to better protect their livestock from predator attacks.

Most of these provisions were introduced as individual bills and have bipartisan support. One such bill introduced by Senator Fischer, the Fair Agriculture Reporting Method Act, or the FARM Act, has 12 Democratic cosponsors, including our Ranking Member. This bill addresses new animal waste emission reporting requirements.

Over the past several months, farmers and ranchers struggled to comply with ambiguous agency directives following an April of 2017 decision in the D.C. Circuit Court. The ruling

meant up to 100,000 farmers and ranchers, who have never been required to report under these laws, would suddenly be required to comply. Even though they wanted to comply with the ruling, the process and implications of compliance were unclear.

Because both CERCLA and EPCRA were not written with the intent of regulating these farm and ranches, the requirement to report emissions from animal waste came without context and largely without agency guidance.

Another bill is Senator Crapo's S. 340, the Sensible Environmental Protection Act, which was introduced along with Democrat Senators Donnelly, Heitkamp, and McCaskill. This bill amends the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, and the Clean Water Act to eliminate a duplicative permitting requirement.

The bill prohibits the Environmental Protection Agency from requiring a permit under the National Pollutant Discharge Elimination System for a pesticide application from a point source as long as the application is approved under FIFRA. In addition, the ACRE Act also has legislation sponsored by Independent Senator Angus King, S. 1206, which will ensure fair treatment and licensing requirements for the export of certain echinoderms.

Let us remember that farmers and ranchers are the original stewards; they understand that landscapes and watershed need to

be healthy to support native plants, wildlife, crops, and livestock. They are living proof that interacting with nature can be done in an environmentally sound way, often leaving the resources in better condition than they were found.

Washington policies do not always translate well in rural America. As I mentioned at our last agriculture hearing, in February, when I was home in Wyoming, I often hear about just how out of touch the environmental regulations have become. It has gotten to the point where ranchers and farmers are burdened by the thought that they will be fined thousands of dollars for simply putting a shovel in the ground.

I believe we should prioritize updating and revising policies that, while well-intentioned, were never designed to micromanage agriculture production. This is what the ACRE Act does.

Now, before we move to our witnesses today, I would like to turn to Ranking Member Carper for his remarks.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES  
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman. I have had a chance to personally welcome, as you have, each of our witnesses.

We are happy that you have joined us today. Welcome, with your presence and your testimony, your willingness to respond to some questions. I am going to have to leave here today at 11:00, so I will not be here for the entire hearing, but I very much want to make the next hour count, so thank you all.

Mr. Chairman, thanks a lot for bringing us in to cover this subject that is on our minds. It is something we have talked about a fair amount lately in another hearing actually right here in this room.

I think we all can agree on the title of the legislation that we are considering here today. There is no doubt that agriculture creates real employment; it does in our State, in Delaware, and I know it does in States that are represented in this Committee and the Senate.

As I have said in some of our previous hearings here, agriculture, believe it or not, is a critical economic driver in Delaware. Over 40 percent of our land is dedicated to farming and our State's agricultural sector employs some 30,000 Delawareans, while contributing nearly \$8 billion a year to the State's economy. That is a lot of money for a little State.

As my colleagues have heard me say a time or two before, I believe that our Country's environmental laws and regulations have, by and large, served our entire Nation, including our farmers, well. It is possible to have clean air and clean water. It is possible to protect our land and conserve species and still have good jobs, plenty of jobs. It takes some work to find the right solutions to achieve that balance, but the hard work almost always pays off.

One such example is the FARM Act, which is included as one of the sections in the ACRE Act. Its prime sponsor is here with us today, the Senator from Nebraska.

But, Mr. Chairman, as you know, we worked hard to strike a careful compromise on that legislation. In my opinion, the FARM Act is an example of where we can do a good job balancing the needs of our farmers, while preserving access to information that can help protect public health.

Unfortunately, I do not believe that the ACRE Act in its entirety represents the same thoughtful approach. The legislation recognizes and attempts to address concerns raised by some of our farmers. As drafted, though, I don't believe that it adequately balances those interests with the interests of other natural resource-dependent industries.

For example, Delaware has a booming wildlife tourism industry. I know other States represented here do too. But

visitors come from all over the world to observe migratory birds in Delaware, including the federally-listed threatened Red Knot. A 2016 U.S. Fish and Wildlife Service study found that more than 45 million people, 45 million people enjoyed bird watching that year, enjoying other wildlife watchers and contributing more than \$75 billion to the U.S. economy. The Endangered Species Act and Migratory Bird Treaty Act help ensure the long-term viability of that industry, too. In its current form, I fear that the ACRE Act could have harmful implications for these important laws.

Having said that, there may be ways to address farmers' concerns without unintended consequences. For example, our Federal agencies can work with stakeholders to explore administrative options that may resolve endangered species and migratory bird concerns. Or we in this Committee may be able to reach narrower, truly bipartisan compromises in some of the items contained in the ACRE Act. I hope so.

Further, there are stewardship success stories that this Committee and the Congress should examine that are examples of ways to improve collaboration and conservation outcomes in agriculture. For example, just last year, in the town of Blades, just south of Seaford, the world's first nylon plant was built some almost 80 years ago.

But in the town of Blades, located in the southwestern part

of our State, Perdue Farms worked with several communities to expand its multimillion dollar nutrient recycling investment on Delmarva. This investment and new composting operation increased the company's capacity to handle surplus poultry litter and allowed other agricultural byproducts to be recycled.

This actually started in my last term as governor, Mr. Chairman. We took some State money, added to that a lot of money from Perdue, and created this industry in the southwestern part of our State, so we are not just going to spread all those nutrients on farm fields, but actually turn some of them into -- I think it was the Scott lawn care people, the Scott people, they sell the stuff all over the Country as an organic fertilizer. But we have taken some important other steps in Delaware to help farmers become even better stewards of the land.

I have mentioned before, and I will do it again here briefly today, again, when I served as governor, the last year or two, we addressed high levels of agricultural runoff by forming the Nutrient Management Commission, farmer-led. The Commission brought together farmers and members of the environmental community to devise commonsense solutions, and that is basically three things: have farmers check the nutrient levels in their field, the ability of fields to absorb nutrients, phosphorous and nitrogen in particular; each of the

farmers are going to be using the nutrients to develop a plan that is appropriate for their farms at non-polluting levels; and then provide the training necessary to implement the plans.

Initiatives like those led by the Nutrient Management Commission and smart investments like those by Perdue in the State of Delaware are just two examples that this Committee can, and I think should, look at as we strive to protect our air, our water, while also creating economic opportunity in the agricultural industry.

So, we look forward to hearing from all of our colleagues, our witnesses today to advance current and future legislation that supports our farmers and protects our environment. I look forward to hearing from all of you. Thank you again so much for joining us today. Welcome.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Well, thank you very much, Senator Carper.

We are now going to turn to the witnesses, but I would like to first introduce Mr. Doug Miyamoto, who is joining us today and the first one to testify. He has served as the Director of the Wyoming Department of Agriculture since 2015. In his role as Director, Doug deals with issues that we will discuss here today on a daily basis: environmental reporting for Wyoming agriculture producers, predator management, liaising with Federal agencies to coordinate environmental resource issues, and many other issues that arise when getting our agriculture products to the end consumer.

Doug previously served as the Executive Director of the Wyoming Livestock Board, the Deputy Director of the Wyoming Department of Agriculture, and in several other positions at the Natural Resource Conservation Service, Wyoming State Engineer's Office, and the University of Wyoming.

Doug is uniquely qualified to speak to today's issues, both from his professional experience and because he received the highest quality education from the University of Wyoming.

Senator Carper. Shameless.

[Laughter.]

Senator Carper. Shameless pandering. What is their mascot? What is their mascot?

Senator Barrasso. My wife has three degrees from the University of Wyoming.

[Laughter.]

Senator Barrasso. I am going to get her down here and debate you, Mr. Ranking Member, and you don't stand a chance.

Senator Carper. I would lose.

Senator Barrasso. He is uniquely qualified because of his incredible education, background, and degree. He studied range management for his undergraduate degree and later earned a Masters in rangeland ecology. He serves Wyoming well by bringing his holistic approach to his leadership at the Wyoming Department of Agriculture, and I am pleased that he would join us here today.

In addition to Doug, we also have Mr. Ryan Yates, who is the Director of Congressional Relations for the American Farm Bureau Federation, and Mr. Jim Lyons, who is a Senior Fellow at the Center for American Progress.

So, I would like to welcome all three of you today. We would like to remind you that your full written testimony will be made part of the official hearing record, and please keep your statements to five minutes so that we may have time for questions.

Doug, please proceed.

STATEMENT OF DOUG MIYAMOTO, DIRECTOR, WYOMING DEPARTMENT OF  
AGRICULTURE

Mr. Miyamoto. Chairman Barrasso, thank you for that kind introduction. Ranking Member Carper, members of the Committee, thank you so much for the privilege of speaking to you today about the ACRE Act.

Again, Doug Miyamoto. I am the Director of the Wyoming Department of Agriculture, and I also currently serve as the Chairman of the Natural Resources and Environment Committee of the National Association of State Departments of Agriculture.

I am here today to talk about my support for the ACRE Act, and I will highlight a few of the reasons why in my testimony today. I am not an expert on all of the issues that are addressed by the ACRE Act, but there is a common theme of ensuring that the ag industry is subject to the correct and intended regulations for normal agricultural activities. I will emphasize individual sections of the ACRE Act on which the Wyoming Department of Agriculture and NASDA have concentrated on in recent years, as those are the ones with which I am most familiar.

Importantly, and I am sure you are all aware, Section 3 of the ACRE Act provides the exemptions from notice requirements and penalties revolving around CERCLA. I don't want to go into too much detail on this because I am sure you all have heard

about the issues surrounding CERCLA, so I would just like to point out some specifics regarding the impact of CERCLA and its affiliated reporting requirements to Wyoming.

Exempting farmers and ranchers not engaged in confined animal feeding operations is, in my opinion, simply the right thing to do. CERCLA was never intended to regulate the livestock industry, but, rather, to ensure cleanup of the Nation's most contaminated Superfund sites to protect the public.

I have been asked many questions from Wyoming's producers about how they are to estimate emissions and how they are supposed to report those emissions in a non-confined range cattle setting. Unconfined range cattle represents the majority of the operations in the State of Wyoming, and by one suggested measure this continuing estimating reporting requirement would apply to all livestock operations involving more than 206 head of cattle.

Obviously, this standard would incorporate the majority of the commercial livestock operations in Wyoming, and there is simply no way for the majority of Wyoming's cattle producers to know if their cattle are emitting more than 100 pounds of ammonia or hydrogen sulfide in any given day. Frankly, I don't know what to tell producers when they call me for technical assistance on how to comply with CERCLA at this point.

The exemptions proposed in this Act will provide producers some protection from liability, and it also will address Federal agencies of jurisdiction, the EPA and the Coast Guard, and eliminate them wasting their limited resources on administering a program that does nothing to protect public health and also does not ensure that the Nation's priority Superfund sites are addressed appropriately. Including livestock operations in the reporting and penalty provisions of CERCLA is counterproductive both for producers and for the agencies, and illustrates why this language has 29 bipartisan cosponsors.

Specific to Wyoming, another section I really wanted to highlight was Section 11 of the ACRE Act, and this simply reaffirms the authorities of the Fish and Wildlife Service to issue appropriate permits to address livestock depredation. As an example, I want to discuss eagle management and its challenges in Wyoming.

Wyoming is home to the largest population of Golden and Bald Eagles in the lower 48 States. Wyoming is also known as a destination for wildlife viewing, and we view eagles as a valuable component of a balanced ecosystem. We do not want to decimate eagle populations.

But in the instance of newborn livestock losses to eagle depredation, typically, additional newborn loss has already occurred before Fish and Wildlife Service can even pursue the

first step of an eagle take permit, which is eagle harassment. It is such a slow process that is a rarity for the next step, which would be live capture and removal, to ever even be pursued. Livestock producers have more frequently had to resort to much more surveillance of their young stock; they have had to move herds completely to entirely new locations; and they have had to build and purchase lambing sheds, calving sheds to conduct operations indoors to protect from these depredations.

We have seen a lot of sheep business leave entirely due to eagle depredation. In 2017 alone, Wyoming experienced 1,000 sheep and lamb losses to eagle depredation, according to the National Agricultural Statistic Service. This doesn't even mention the impact of ravens on sage grouse, which can be addressed also by this provision within the Act.

In conclusion, I would say, as a representative of government, I would assert to you that we have an obligation to ensure that our regulations are clear, consistent, and effective. I have made it a goal of the Wyoming Department of Agriculture to support commerce in the ag arena, even given the regulatory nature of our Department. One of my highest priorities is to lead the Department of Ag in a manner that emphasizes education before regulation and provides regulatory certainty for our producers.

Again, I sincerely appreciate specifically the work of my

Senator and Chairman Barrasso, Ranking Member Carper, and Senators Fischer and Donnelly on your specific work on CERCLA. That is very much appreciated. And I also appreciate the opportunity to present to the Committee today, and please know I am available for anything that you may need as a Committee. Thank you.

[The prepared statement of Mr. Miyamoto follows:]

Senator Barrasso. Well, thank you very much for your very thoughtful and thorough testimony. Appreciate it.

Mr. Yates.

STATEMENT OF RYAN YATES, DIRECTOR OF CONGRESSIONAL RELATIONS,  
AMERICAN FARM BUREAU FEDERATION

Mr. Yates. Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for calling this important hearing on the ACRE Act and inviting me to testify on behalf of the American Farm Bureau Federation. Farm Bureau commends you for your leadership in advancing legislation which addresses a range of environmental policy issues which impose real costs and substantive burdens to our members. I will highlight our comments and support section by section.

Farmers and ranchers support the solution provided in Section 3 of the ACRE Act, which will protect their businesses from financial strain and burden of unnecessary reporting requirements. CERCLA was enacted to provide for cleanup of the worst industrial chemical and toxic waste dumps and spills.

CERCLA has two primary purposes: to give the Federal Government tools necessary for prompt response to problems resulting from hazardous waste disposal, and to hold polluters financially responsible for cleanup. Unfortunately, in April 2017, the D.C. Circuit Court of Appeals issued a decision vacating EPA's 2008 exemption for agricultural operations. I would like to point out the public safety concerns caused by these reporting requirements.

Up to nearly 200,000 farms may have to report to the

National Response Center, overwhelming that system and drawing resources from actual emergencies. Additionally, there are national security implications. By requiring reporting, we will be creating a roadmap for nearly our entire animal agriculture production system. Obviously, this creates an opportunity for mischief for those wanting to harm our very safe and abundant food supply. Lastly, requiring individual farmers and ranchers to disclose personal home addresses along with their farm information creates an opportunity for activists to harass farmers and ranchers where they live and work.

Section 5 would protect farmers from Federal penalties levied under the Migratory Bird Treaty Act if they are following best practices provided by their State Cooperative Extension Service. AFBF supports the Hunter and Farmer Protection Act, which would allow each State's Cooperative Extension Service to clarify the difference between what constitutes baiting and normal agricultural practices.

Section 6 of the ACRE Act is a proposal that has long enjoyed bipartisan support, and we strongly support its adoption. It simply states that when a pesticide is lawfully applied under FIFRA, it is not also regulated under the Clean Water Act. It has been the longstanding view of the law until it was thrown into question by decisions in the Ninth Circuit. We believe it is a sensible approach that reflects the will of

Congress and prevents overregulation.

AFBF supports Section 7, the Farmer Identity Protection Act, which would prohibit the EPA or an EPA contractor from disclosing information collected under Clean Water Act requirements from livestock operations. AFBF opposes the disclosure of personal and/or business information by an organization, business, or government agency about individual farmers and ranchers. The release of any information should only be allowed under specific written or electronic authorization of the individual or the private business entity.

Section 8 would prohibit the EPA from enforcement of the Clean Water Act for agricultural operations through aerial surveillance without the written expressed consent of the owner-operator of the land. Farm Bureau supports the use of unmanned aircraft systems, or UAS, as another tool for farmers and ranchers to use in managing their crops and livestock, and making important business decisions. While Farm Bureau supports this technology and the potential opportunities it offers for farmers and ranchers, we are also concerned about the data collected from UAS and the privacy and security of the data. It is critical that data collected via UAS remain under the ownership and control of the farmer and is not available to government agencies or others without the farmer's permission.

Section 9 would provide immediate relief to the aquaculture

industry by reinstating the force and effect of the U.S. Fish and Wildlife Services' statutory depredation order for the double-crested cormorant with respect to freshwater aquaculture facilities. In response to a legal challenge against the Service, the U.S. District Court for the District of Columbia remanded the 2014 Aquaculture Depredation Order for the cormorant. The cormorant is a large water bird that feeds mainly on fish. As you can imagine, commercial fish ponds that are stocked at high densities make them highly susceptible to bird predation particularly by the cormorant. Predator control is vital to the success of American aquaculture.

Thank you, Mr. Chairman. We look forward to continuing to work with the Committee in securing enactment of this critically important legislation. I would be happy to answer any questions that you or the Committee may have. Thank you.

[The prepared statement of Mr. Yates follows:]

Senator Barrasso. Thank you so very much, Mr. Yates. We appreciate your testimony.

Now, Mr. Lyons.

STATEMENT OF JIM LYONS, SENIOR FELLOW, CENTER FOR AMERICAN  
PROGRESS, LECTURER, YALE SCHOOL OF FORESTRY AND ENVIRONMENTAL  
STUDIES

Mr. Lyons. Mr. Chairman, members of the Committee, I am Jim Lyons. I am currently a Senior Fellow at the Center for American Progress and a lecturer at the Yale School of Forestry and Environmental Studies. Previously, I have served as Deputy Assistant Secretary for Land and Minerals Management in the Department of the Interior under President Obama and as USDA Under Secretary for Natural Resources and Environment under President Clinton. And from 1985 to 1993 I was a member of the House Committee on Agriculture staff, where I had the opportunity to help lead the effort to shape both the Conservation and Forestry Titles of the 1990 Farm Bill.

I bring up the 1990 Farm Bill because I believe it was a groundbreaking effort that expanded the scope of our conservation toolkit. Since then, through successive Farm Bills I believe we have demonstrated the important relationship between farmers, ranchers, and Federal conservation agencies and the power of their partnership.

Voluntary conservation made possible by the technical and financial assistance by Federal conservation agencies and their State and private partners have maintained and restored the health of millions of acres of farm and ranchlands, and

conserved fragile soils, wetlands, water quality, and wildlife habitat.

We continue to depend on the Nation's farmers and ranchers not only for our food and fiber, but also for the care of our lands and natural resources. As Conservationist Aldo Leopold described in 1939, "It is the American farmer who must weave the greater part of the rug on which America stands." Nearly fourscore years later, Leopold's comments remain very valid.

American farmers and ranchers remain conservation leaders, and we have an obligation to the American people to ensure that we protect and promote the public-private partnership that has helped protect our capacity to produce safe and affordable food and fiber, and conserve America's soil, water, air, and wildlife resources.

The ACRE Act is an interesting amalgam of bills. I will do my best to address them today, but I implore you to work together in a thoughtful, bipartisan approach to build on the foundation of prior Farm Bills to improve efforts to weave the rug of conservation of which Leopold has spoken.

Given the limited time, I will comment on just a few sections of the bill.

On Section 3, the exemption from certain notice requirements and penalties under CERCLA, I understand that this would simply codify an exemption from these requirements that

had been implemented since 2008. Minimizing the burden on farmers for collecting and reporting necessary data makes sense, and I strongly support that objective.

I hunt and have hunted waterfowl on Maryland's eastern shore, so I understand the intent of Section 5 to further clarify the definition of normal agricultural activities under the Migratory Bird Treaty Act. But I would suggest, Mr. Chairman, that it might be better to address this definitional issue administratively, rather than setting a one-size-fits-all standard and statute. This should be done in collaboration with the NRCS, the U.S. Fish and Wildlife Service, and relevant State Fish and Wildlife agencies.

With regard to Section 6, the Congress has made several attempts in recent years to find common ground in avoiding duplication, providing clarity, and reducing the burden associated with data collection and reporting under FIFRA and the Clean Water Act. Efficiency in data collection reporting is important, provided the intent of both FIFRA and the Clean Water Act are met.

In places like Maryland, where I currently reside, this can be particularly problematic given the potential for pesticide applications to inadvertently impact waterways and the Chesapeake Bay. Simply having a pesticide registered under FIFRA, in my opinion, does not obviate the need for ensuring the

Clean Water Act requirements are met where the potential for impacting water resources occurs.

While I understand the purpose of Section 7, the Farmer Identity Protection Act, and the concern of livestock producers, I think it is important the data related to these activities be collected in a manner that permits research and analysis to benefit producers, help reduce operator costs, improve the efficiency of livestock operations, as well as protect public safety and the environment.

Regarding Section 8, aerial photography and assessments by their very nature are intended to cover large landscapes, making it difficult, if not nearly impossible, to gather permission from all those owners and operators who may be in the area that is the focus of these aerial surveys. Aerial surveys are an important tool for wildlife managers and research scientists whose studies can improve management practices that can benefit farmers and ranchers, as well as wildlife and the environment.

Finally, reaffirming the respective authorities of the U.S. Fish and Wildlife Service and APHIS to work together to address animal damage issues can do no harm, but I would suggest that a change in the law is not warranted. The issue raised by Mr. Miyamoto with regard to eagles and sheep losses is a very serious concern, I am well aware of that, but it seems to be more of an issue of providing adequate resources to the Fish and

Wildlife Service to do its job, rather than reaffirming in statute that APHIS and the Service do their jobs.

Thank you, Chairman Barrasso and members of the Committee. Appreciate the opportunity to share my thoughts today.

I would close by emphasizing one thing, and that is data and information are important management tools that can improve farm and ranch operations, inform new and better approaches for achieving conservation goals, and ensure that taxpayer dollars are used efficiently and effectively. That is, data are an asset, not just a bludgeon. If we can focus on opportunities to work together, agriculture, fish and wildlife, public health and safety, and our environment will benefit.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lyons follows:]

Senator Barrasso. Well, thank you very much for your testimony. Thank you all.

We will now have a round of five minutes of questions, and I will defer my time to Senator Inhofe.

Senator Inhofe. Well, thank you, Mr. Chairman.

I was listening, Mr. Miyamoto, to your opening statement. I chaired this Committee for a number of years, and the one thing, particularly during the last Administration, as a general rule, the Democrats want more regulation, and they want that regulation to come from Washington, not from locally or from the States. I remember going over the WOTUS rule. That was at a time when, and I think, Mr. Yates, you will remember this, that was the number one concern, I think, for the Farm Bureau at one time. This was the big issue.

Now, my State is an arid State, and we can just envision if the regulation that was put forth by the Obama Administration had become a reality. It wouldn't be long until our panhandle would be a wetland, and we were fully aware of that. There would be another army of bureaucrats crawling all over our farms and ranches in Oklahoma.

So, anyway, that is the overall thing. And, by the way, there was one really good program, it was called the Partnership Program that came from Fish and Wildlife, and this happened

actually in the last Administration, where they actually came out, in my case, before confirmation of the Fish and Wildlife Director, I said I want you to make two trips out to Oklahoma and talk about the partnership and the people who are the farmers and the ranchers on the ground; and they came back with the conclusion that they are just as concerned or more concerned than the bureaucracy here in Washington is on what they want to do with the land, and they were very impressed by the fact -- and it just stands to reason, but a lot of bureaucrats don't understand this, if you own a piece of property, you want it to be clean, you want it to conform. This is to your financial and to your benefit.

Mr. Miyamoto, when I look at the list of regulations, I come to the conclusion that there is the idea in Washington that you have to have someone here looking out after your property because you are not going to do a good job yourself. You, yourself, acknowledge that some of these regulations targeted in the bill were of no environmental benefit, so it is unclear as to why would the opposition be opposition to them, other than loss of control. Unfortunately, it is our State partners that are then forced to comply with Federal mandates coming with no financial support, so it comes back to unfunded mandates.

So, I ask you the question can you speak to the burdens that you and your fellow State agencies face when Washington or

the courts hand down unfunded mandates?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. The issue of unfunded mandates and delegated authority for State Departments of Agriculture is something that we have to think about frequently. We do carry out FIFRA regulations as a State Department of Agriculture in Wyoming, so this issue of pesticide regulation really does fall on the Department of Ag.

There are other examples of many other programs that we have delegated authority from the Federal Government to implement regulations in the State. As an example, within the Wyoming Department of Agriculture, we also undertake food safety measures from FDA and we have Federal Meat Inspection Act under the Food Safety Inspection Service, and we have to make sure that we can do a good job of carrying out our regulatory obligations.

So, when it comes to budgeting and unfunded mandates, we want to do a good job to carry out these Federal statutes in our State and uphold our end of the bargain, but it does become a challenge from time to time when there are so many of them. If they become duplicative, then it becomes impossible.

Senator Inhofe. And I really think that this bill addresses a long list of them, and I have taken the time, as other cosponsors have, of going over and analyzing each one.

I don't want to run out of time here. Mr. Yates, last week, in Senator Rounds' subcommittee hearing on the FARM Act, a colleague on the other side accused the Trump EPA of failing to provide farmers and ranchers with the guidance they need to comply with the recent court decisions that now requires ag industries to report to the EPA and the Coast Guard emissions from animal waste.

Your testimony states that there is no scientific consensus on how to measure these emissions, and it is worth noting that the Obama EPA believed that this information wasn't needed and defended the Bush era policy. So, since you believe there is not the scientific consensus, do you think the EPA would be able to develop the guidance that is really needed here?

Mr. Yates. Well, ultimately, that is something that livestock operators are going to need from the EPA and, to date, they have not been able to receive appropriate guidance that would give them the tools that they need to effectively measure those emissions on their livestock operation. I know there are a couple models that have been referenced. Texas A&M, I believe, and I believe there is another university that has developed a model.

Again, the application of those models to a particular livestock operation is inaccurate, at best, it is a guess, so I think if we are going to be requiring livestock operators to

report these emissions, they need to have the tools and the guidance to be able to effectively measure what it is that they are being required to report.

Senator Inhofe. I think it is interesting that back during the Obama Administration that is pretty much what their feeling was, too, at that time.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Carper.

Senator Carper. Before I ask a couple questions of our witnesses, I just want to note, if I could, Mr. Chairman and colleagues, for the record that during our hearing this morning, students across our Country are walking out of the classrooms for a brief while to mourn the loss of the victims of the Parkland shooting and to demand action to prevent gun violence in the future. I just want to acknowledge their efforts and to say that I share in solidarity with them.

First question I have for our witnesses, again, we appreciate you being here. Thank you very much for your testimony and for your willingness to stay on and answer some questions, and maybe even some questions for the record.

As you all know, and I think Mr. Lyons may have stated this, there is a longstanding tradition of bipartisan collaboration on Farm Bills and a lot of other agriculture

legislation. I hope that this Committee and I hope that this Congress can uphold that tradition this year.

With that said, based on what you just heard from your colleagues, what are the areas where you see agreement among the three of you? What are the areas where you see agreement among the three of you, please.

Mr. Lyons, do you want to lead us off?

Mr. Lyons. I think, first of all, Senator Carper, we agree that reducing the burden on agriculture producers of data collection and providing information is important, but we do need data and information, so gathering that in the most efficient and effective way possible is important.

I agree with the concern about harassment and the desire to make sure that the information is managed properly to help achieve its intended purpose; to help improve programs, to help improve the operations of producers, to help reduce costs both for them and to the taxpayer.

And I would like to think that we all agree that we need to meet not only the objectives of benefitting producers, but we also have an obligation as a community to protect public health and safety and the environment, and that is certainly an important part of why these statutes exist.

Senator Carper. All right, thank you.

Mr. Yates and Mr. Miyamoto, do you agree with anything he

said?

Mr. Yates. For the record?

Senator Carper. Yes.

Mr. Yates. For the record, Senator Carper, I am pleased to agree with Jim on the issues that he brought up. I think farmers and ranchers across the Country are the best stewards of our land and I think we want to work collectively within the regulatory fabric that we have to live and work in to produce the best results not only for farms and ranches, but for the environment. So, again, I would agree with Jim's comments on this.

Senator Carper. Good. Would you like to add any other thoughts of your own about what are some other areas you might see for agreement?

Mr. Yates. Well, I think, across the board, farmers and ranchers, when we go out to the field, I know President Duvall was in a couple weeks ago at your least hearing on environmental regulation.

Senator Carper. Zippy Duvall?

Mr. Yates. Zippy Duvall, yes, sir. He appreciated the commentary that you and he had at that hearing. But the number one thing that we hear from our farmers is concerns over red tape and regulations, in addition to a number of other issues that keep farmers up at night, and I think this bill represents

a good start at looking at identifying duplications of regulations and identifying opportunities to streamline those to ensure that the regulations are commonsense and they make the most sense for the folks that have to live and work under the guidance of those rules and regulations.

Senator Carper. I quote my parents almost every day of my life, something that they said, words of wisdom that they imparted to my sister and me when we were kids growing up. My dad was famous for saying, "Just use some common sense" to my sister and me, and he said it a lot. He did not say it so kindly.

All right, Mr. Miyamoto. Just come back to what Jim has said and Ryan has said. Anything that you agree with that they have said and anything you would like to add, other possible areas of agreement? Go ahead.

Mr. Miyamoto. Thank you, Senator. From what I heard today, there is a lot more agreement than there is disagreement. If there was one thing that I could certainly identify specifically, it would be the CERCLA piece and addressing that. So you are aware, I think that the aspects that are approached in this bill that addressed duplicative regulations and then sometimes regulations aimed in the wrong direction is a good start for us and would help me do a better job at home to not only regulate the agricultural community, but also to advocate

for it. Because I kind of have that dual role and take it very seriously.

Senator Carper. All right, thank you.

I have about 15 seconds left. I am going to have some questions for the record. I wish I could give them in person, but we will submit those for the record. Again, we appreciate very much your presence today and your contributions. Thank you.

Senator Barrasso. Thank you, Senator Carper.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

Thank you to our witnesses for being here today.

Mr. Miyamoto, I will start with you, Director. FIFRA established an effective and comprehensive regulatory --

Senator Carper. Could I interrupt?

Senator Ernst. Oh, yes.

Senator Carper. I apologize. I am going to go speak on the Floor on the banking bill right now. I apologize.

But could I just ask unanimous consent to submit for the record -- I have a unanimous consent request that somewhere in this pile right here, and I would ask permission to submit for the record.

And I apologize for interrupting you.

Senator Barrasso. Without objection. And had you attended

the University of Wyoming, you wouldn't have --

[Laughter.]

Senator Carper. Let the record show I was wait-listed there.

[Laughter.]

Senator Carper. As were our sons. They had to go to MIT and William & Mary.

[Laughter.]

Senator Carper. Thank you. I apologize.

Senator Ernst. No, you're fine, Senator Carper.

Okay, Director, we will start over again. As you know, FIFRA established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protections, and this regulatory system is pretty darn rigorous in examining environmental data and health exposure assessments for pesticide products.

Because this process specifically examines a product's potential impact on water, additional permitting requirements under the Clean Water Act are duplicative. We have talked a little bit about duplication of effort, and this will significantly increase the cost for State permitting authorities and pesticide users.

So, we have already discussed the duplication of effort, the unfunded mandates, but if you could, could you please

describe -- let's go a little bit further into the weeds -- the challenges that State Departments of Agriculture face when dealing with duplicative regulatory requirements, whether it is the costs associated with the paperwork shuffle, the timelines? Could you delve into that so that we know exactly what our State Departments of Ag go through?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. It is something that we struggle with. Initially, when the NPDES requirements for pesticide applications came to light, which was eight or nine years ago now, we had to do a series of workshops around the State with all of our certified pesticide applicators to inform them of this process, and it was quite an undertaking.

It was a good collaboration; we used our State Department of Environmental Quality, EPA Region 8 was also represented. But there was a lot of training that went into how our applicators would become compliant with NPDES permitting requirements that were never aimed in that direction.

So, initially there was a whole bunch of education, and even now, as people get recertified for pesticide application, we have training elements that are part of our training program that informs them of all of the steps that they have to take to get their NPDES permits and what the liabilities associated with those permits are.

I think you quoted or you stated very eloquently that FIFRA handles the regulation of pesticides. We do that as a State Department of Agriculture, and, really, both NPDES and our regulation of pesticide applications boil down to the approved label by EPA. And if you follow that label that is attached to that product, you will be in compliance. Other than that, you are just shuffling paper.

Senator Ernst. Very good. And that is a concern, too, the duplication of effort. The costs associated with that, what is a ballpark figure, to be qualified, and might be to the State Department as well?

Mr. Miyamoto. Mr. Chairman, Senator, if it is okay with you, I will have to research that a little bit. I am unsure of what DEQ spends on their NPDES program specific to pesticides. I know for us, the training and certification program that we, as a State, put into our program, not Federal funds, but State funds, is about half a million dollars.

Senator Ernst. Okay. And, bottom line, it boiled down to, you said, if they just follow the instructions on the label, correct?

Mr. Miyamoto. Correct.

Senator Ernst. Correct. Okay.

And Director and Mr. Yates, both of your testimonies made pretty compelling cases as to why the CERCLA reporting

requirement is unnecessary and why Congress never intended for emergency air emissions to apply to day-to-day practices on ag operations. Do you think the documentation and process under CERCLA for reporting routine low-level animal manure emissions on a farm to the Coast Guard's National Response Center is the best use of Federal, State, and local tax dollars?

Mr. Miyamoto. Mr. Chairman, Senator, again, thank you for the question. When I hear the term Superfund, that brings a lot to mind, and the expense associated with cleanup of Superfund undoubtedly is expensive. I have no idea what those expenses might be.

But when it comes to CERCLA, I am quite certain that both EPA and the Coast Guard have better things to do with limited resources to address those sites that really are hazardous and a threat to human health. I don't even know how to begin to tell producers how to estimate emissions from an individual head of livestock, so not only do I think that it is not, the regulation, aimed in the right direction; I don't have anything to tell my producers about how to accurately comply. I can't ethically give them a formula that I think that they could defend.

Senator Ernst. Thank you.

Mr. Yates?

Mr. Yates. Certainly, I would be in agreement. I think

EPA has recognized that low-level continuous emissions of ammonia and hydrogen sulfide from livestock are not releases that Congress intended to be regulated under CERCLA; and I think when you start looking at the numbers, the numbers that we have received over the last eight years, the annual phone calls to the National Response Center have averaged about 28,000 reports a year for the last eight years.

Looking at an additional 200,000 reports from farmers and ranchers, I don't think it is a great use of taxpayer dollars. Frankly, I think the NRC really should be focused on its true mission, and not receiving reports from farmers and ranchers trying to be in compliance with CERCLA.

Senator Ernst. Thank you very much. I struggle to understand how we would measure some of those emissions from the rancher and farmer standpoint, but also what exactly is the Coast Guard going to do when they respond? I don't think that is spelled out anywhere.

Anyway, thank you, Mr. Chairman.

Senator Barrasso. Thank you very much, Senator Ernst.

Senator Cardin.

Senator Cardin. Thank you, Mr. Chairman.

Mr. Lyons, welcome. It is always nice to have a Marylander here, so I am glad to see you.

Mr. Lyons. Thank you, Senator.

Senator Cardin. I appreciate your testimony. And I just really, first, want to underscore the point that you made about farmers and the importance to our environment that farmers understand, that has certainly been true in Maryland, recognizing that a clean environment is in their best interest and part of their responsibility, as they see it, is to leave the land in better shape for the next generation, which includes the environment and clean water, et cetera, so I thank you for making that point.

I want to sort of delve into the pesticide issue and insecticides, and the impact on the Chesapeake Bay, impact on clean water. We have made a real commitment to clean up the Chesapeake Bay, and all stakeholders are part of the process, including our farmers. They practice the best practices in order to minimize the concerns of pollution getting into the Bay. We very much appreciate all the work that they do.

I want to talk about the FIFRA statute and its regulations as to whether it is duplicative of what EPA would be doing in regards to protecting our environment from insecticides, and get your view as to whether in fact this is duplicative or whether there is a different concern in regards to water quality.

Mr. Lyons. Well, thank you, Senator, for the opportunity to address that, and I want to thank you for your leadership particularly in helping to protect the Chesapeake Bay, in spite

of efforts to cut funding for the important programs there, so really appreciate that.

I actually don't think that the duplication that is presented here between the Clean Water Act and FIFRA is completely accurate. FIFRA is designed to regulate the use and application of pesticides in general, and set standards, and certainly it sets standards for applications in relation to aqueous situations, in addition to land applications. But, really, the Clean Water Act serves a different purpose; it is really designed to protect our Nation's water quality by minimizing discharges of pesticides and other pollutants.

So, I think, particularly in a place like the Chesapeake Bay, where we have a high water table and much of the landscape is vulnerable to stormwater runoff and other impacts, that the provisions of the Clean Water Act and the requirements that are associated with it provide an added element of assurance that pesticides are not going to get into the waterways and have adverse impacts on those water bodies.

Senator Cardin. I thank you for that because the FIFRA statute deals with labeling, deals with other issues and the Clean Water Act deals with the quality of water in our Nation, so they have different standards to judge the regulatory activities. And we know that farming activities is the largest single source of pollutants entering the Bay. It is not the

largest increase that comes from runoff, but the largest single source is from farming, so, therefore, it is critically important we try to minimize the best that we can, and the Clean Water Act certainly has been important in doing that. Would you agree with that?

Mr. Lyons. Yes, I certainly do, Senator. I think it played an important role and I think we are seeing the benefits of that. I might mention, if I could actually put in the record, a recent Washington Post opinion by the editorial board, March 7<sup>th</sup>, that says why the Chesapeake Bay is the best in the world. It talks to the improvements that have been made over many years of effort to improving water quality and the health of the Chesapeake Bay, and I think it is a reflection of the fact that proper application of tools. I see the Clean Water Act as a tool for addressing water quality concerns as well as other standards, is important.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Cardin. Always appreciate the opportunity of including the Chesapeake Bay in our record.

Let me ask you one last question, which sometimes the reason for trying to get an exemption from the Clean Water Act deals with emergency situations where you have urgent issues that need to be dealt with quickly because of the health concerns that are brought about by some insects or invasions, things like that.

Do you see the Clean Water Act regulations and the current applications of the law inconsistent with emergency response?

Mr. Lyons. No, absolutely not, Senator. In fact, EPA developed a program to deal with emergency situations. I mean, zika would be a great example of that. Under those circumstances, an applicator can perform its pest control activities without having to wait for EPA approval for the application, so there is no inconsistency there.

Senator Cardin. Thank you.

Appreciate it, Mr. Chairman.

Senator Barrasso. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman. I thank you for calling this hearing today and I appreciate all of the witnesses coming to share your time and your expertise with us on these important issues.

This bill encompasses a variety of priorities that I and many members of this Committee have labored over for, in some cases, many years, and I am glad to see the Committee recognizes that these commonsense solutions do need to move forward.

The ACRE Act represents relief for ag producers from burdensome regulations, relief from regulations that do not offer more environmental protection and relief from regulations that have become duplicative and unnecessarily tie the hands of our producers.

I am especially pleased to see included in this legislation policies that I have championed in this Committee for many years, and this includes addressing what I believe is a duplicative permitting of pesticides under FIFRA and the Clean Water Act. I would remind my colleagues that this is an issue I agreed with the Obama Administration's EPA on, and it continues to be a concern in farm country.

Additionally, the ACRE Act also includes my legislation to provide regulatory relief for farmers and ranchers with above-ground, on-farm fuel storage. Intended for major oil refineries, the Spill Prevention, Control, and Countermeasure, or the SPCC, Rule would affect the amount of fuel producers can store on their land. And I certainly appreciate that the last WRDA bill included flexibility for producers, but more does need to be done.

Finally, the ACRE Act includes the Fair Agricultural Reporting Method, or the FARM Act, which would provide greater certainty for ag producers by eliminating the burdensome reporting requirements for animal waste emissions under CERCLA.

As of this morning, there are 37 cosponsors, Democrats and Republicans, on this stand-alone legislation. Our farm and ranch communities are in tough economic climates, and this bill before us does cut through the cumbersome red tape and enables our ag producers to continue to support their families and also to feed this hungry world.

Director, it is my understanding that reporting animal waste emissions under CERCLA provides no environmental benefit. Do you agree with that?

Mr. Miyamoto. Mr. Chairman, Senator, I do. We have operated regulatory frameworks for agriculture for quite some time now. The Clean Air Act is available to address air quality concerns. CERCLA was never a part of this until very recently, and the simple act of reporting does nothing to address any environmental concern.

Senator Fischer. Thank you. Can you please explain to the Committee the current regulatory framework livestock producers must comply under, and specifically under the bill before us, the ACRE Act and, subsequently, the FARM Act, do certain providers still have to comply with EPCRA reporting

requirements?

Mr. Miyamoto. Mr. Chairman, Senator, they do. In confined animal feeding operations, they would still have a duty to report under EPCRA and comply with the regulatory requirements there.

Senator Fischer. So, just to be clear, producers and our large animal feeding operations, they still must comply with EPCRA, the Clean Water Act, and State regulations?

Mr. Miyamoto. Mr. Chairman, Senator, that is correct.

Senator Fischer. Thank you.

Director, in your testimony, you discuss the duplicative permitting process of pesticides under FIFRA and the Clean Water Act, and this process creates unnecessary resource burdens and challenges for pesticides, registrants, and users, including the agriculture community. This is why I have cosponsored legislation that would clarify the intent of the law and eliminate the Clean Water Act permit requirement. Can you please speak to the impact on farmers that are subjected to acquire a Clean Water Act permit?

Mr. Miyamoto. Mr. Chairman, Senator, again, thank you for the question. I can speak to that to a degree. We have been operating our pesticide application regulatory program in conjunction with NPDES since 2009 or 2010, and it has just required a whole bunch more training. In that entire amount of

time, I do not believe that our State partners at the Department of Environmental Quality have regulated pesticide applicators under NPDES permit requirements, meaning I don't think they have taken regulatory action against any of those applicators.

We, on the other hand, have taken regulatory action against applicators that are not following the appropriate label. So, in essence, what it has become for us is just an exercise that we go through; make sure that you have your certified pesticide applicator's license, make sure that you are in line with either your major or minor NPDES pesticide general permit, make sure you have everything in order, and then go out and do your work. But when it comes to the regulation, FIFRA and the Department of Ag is where that resides.

Senator Fischer. Thank you, sir.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Fischer.

I am going to ask unanimous consent to enter for the record a number of letters of support and written testimony from groups who support various elements of the ACRE Act, including the National Agriculture Aviation Association, Wyoming Stock Growers Association, Agriculture Retailers Association, American Mosquito Control Association, National Pest Management Association, which includes more than 7,000 member companies.

Without objection, they are admitted to the record.

[The referenced information follows:]

Senator Barrasso. Mr. Miyamoto, across the Country, farmers and ranchers acknowledge some of their yield of crops, fish, livestock are going to be lost to predators of many varieties, and you made comment about that in your testimony. Farmer and ranchers depend on management tools like permits to eliminate predators to keep their livestock safe and to prevent excessive losses.

In Wyoming, ranchers lose newborn calves, lambs to ravens, to eagles. Indiana residents grapple with damage to transportation infrastructure from beavers. In Delaware, the State Wildlife Service helps to prevent damage to coastal salt marsh habitat from geese, other migratory waterfowl.

Could you just talk a little bit about the important role that permits play in predator management and the need for the agency to process permit applications efficiently?

Mr. Miyamoto. Mr. Chairman, thank you. I think that what permits provide in this whole discussion of depredation and damage caused by it is balance. The permit process allows the regulating agencies to keep track of what is going on out in the landscape. It requires our producers to go in and seek permission for a certain action, to remove or relocate depredating what they would consider nuisance species. But the permitting process makes sure that that is all accounted for and

so that we can manage to an objective.

Senator Barrasso. I want to ask Mr. Yates if you have any additional thoughts on that and what you have seen in terms of getting the permits to deal with these issues.

Mr. Yates. Certainly, Senator. Thank you for the question. Controlling wildlife damage is obviously a critical factor in maintaining the success of American agriculture, and permits are important. One example that we cite is the issue of the double-crested cormorant. Many of our commercial fish ponds are stocked at very high densities, from 2,000 to, say, 60,000 catfish per acre, and for bait fish it is 50,000 to almost 200,000 bait fish per acre.

When it comes to the depredation issues with the cormorant, I know a 2014 estimate for the Mississippi Delta Region show that 18 million to 200 million fingerlings per winter are lost to bird depredation. A 1996 USDA survey shows that bird depredation were responsible for 37 percent of catfish losses in the aquaculture industry.

So, certainly, the issue of permitting for depredation for the cormorants is a critical issue that I know our folks in the aquaculture industry are looking for Congress to provide immediate input and oversight on this important issue.

Senator Barrasso. Mr. Miyamoto, we talked about trying to give relief for farmers and ranchers in weed and pest districts

and others who face duplicative permitting requirements. That has been part of the questioning we have had from both sides of the aisle here today.

These permitting requirements are imposed, specifically in weed and pest districts, by the National Pollutant Discharge Elimination System. It requires one permit under the Federal Insecticide, Fungicide and Rodenticide Act, the FIFRA Act, but another under the Clean Water Act to apply a pesticide, even if the pesticide is already approved by the one Act. It just seems that our effort is supported by aviation groups, agriculture producers, public officials like sanitary districts, mosquito control groups.

And I have a letter that I am going to introduce from the Coalition to talk about that specific thing.

Without objection, that will be submitted for the record.

[The referenced information follows:]

Senator Barrasso. The Department of Agriculture in Wyoming has the responsibility for predator and pest control, the Weed and Pest Council, and human health priorities. You oversee this. Can you talk about the importance of pest and invasive species control, especially in a State with so much public land?

Mr. Miyamoto. Mr. Chairman, I think that Wyoming has a big job when it comes to controlling invasive species and for predator control, both. We have so many ties to Endangered Species Act and other considerations that there is a lot to do. When it comes to our predator districts and our weed and pest districts out there in those local communities, they have more job than they have time. Anything that we can do to streamline the process, as long as we are not harming anything on the environmental side of the equation, I think we should pursue that.

This example that you bring up of FIFRA as opposed to the Clean Water Act, NPDES permitting for pesticide applicators, in our experience at home, simply isn't necessary. We do it because we have to, but it doesn't change the application on the ground.

Senator Barrasso. Mr. Yates, Section 7 and 8 of the ACRE Act deal with the issue of farmer safety and privacy. Could you please elaborate on why issues such as the disclosure of

sensitive information of the location of certain farming operations or the aerial surveillance of farms by the Federal Government, why these are important and relevant issues to the agriculture community?

Mr. Yates. Thanks, Senator. I think, like most Americans, farmers and ranchers are very sensitive about their privacy, sensitive and concerned about information about their operation. Many farmers, it is not just the mailing address of their business; many farmers and ranchers live in the location of their business. Having that information get out or having aggregate data about farmers in a region, a county, a State, is dangerous and concerning for farmers and ranchers. So, I think when we are looking at data, obviously, many of us have discussed the issues of how we can use data to be more effective in the work that we do.

I think we should be mindful of that data and how that data can be used and who can access that data; and I think it is important in terms of oversight for this Committee to look at protecting the use of that data and ensuring that, if data is being requested from farmers and ranchers, that it is being done with their permission.

Senator Barrasso. One last question, Mr. Yates, before I turn to Senator Boozman. The president of your organization, as we talked about, Mr. Zippy Duvall, was here and stated in his

written testimony to our Committee in February, he said, "Farm income is reduced about 50 percent compared to five years ago." And he went on to say, "But I assure you that regulatory costs have not gone down."

So, in your opinion, will the provisions in the ACRE Act help reduce some of this regulatory burden on farmers and ranchers, and improve their income, while at the same time protect the environment?

Mr. Yates. The short answer to that is yes, Senator, I do believe that, and I think the bottom line is, as Congress and as Federal agencies look at rules and regulations, I think they should be looked at through a lens of is this effective, is this the best way to conduct business. When we are looking at the issue of FIFRA and the Clean Water Act, the bottom line is, is additional duplicative regulatory requirements going to provide for increased environmental protections on the ground? If the answer to that is no, then I think the ACRE Act does a great job in providing for streamlining and ensuring that regulatory burdens on farmers and ranchers are minimized and are effective in providing for strong environmental compliance at the local level.

Senator Barrasso. Thank you.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. I apologize for

being late, late. I had a Veterans Affairs Committee hearing and then a Homeland Security, so I have good excuses. The problem is right now is there is just a lot going on up here, lots of stuff that is important, but positive stuff, so thank you all for being here and we do appreciate your testimony.

Mr. Miyamoto, the FIFRA established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protection. It is rigorous; it examines the environmental data, health exposure assessments for pesticide products. This process specifically examines the product's potential impact on water. Additional permit requirements under the Clean Water Act are duplicative and will entail significant costs for State permitting authorities and pesticide users.

Could you please highlight some of the challenges that your Department faces when regulating some of the regulatory requirements?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. Our experience in Wyoming has been that we have co-regulated under FIFRA and the Clean Water Act for eight or nine years now. In the beginning there was a whole bunch of education that we had to do with our certified pesticide applicators to make sure that they understood that they needed to hold not only their certified applying license, but they

also needed to hold an NPDES permit.

I would argue that NPDES permits were designed for a completely different scenario, point source discharges, end-of-pipe type regulations, so it was difficult for us to come up with all of the right information that should be included in that application in order for them to get that permit.

Today, it is part of our standard operating and we do it, but I don't think that it gives us a corresponding increase in environmental benefit. It is one of those things that we do because we have to.

Senator Boozman. Very good. Thank you very much. Also, many feel that the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA, reporting is unnecessary and was never intended to regulate agriculture. Can you talk about some of the environmentally-based regulations that agriculture producers have to comply with and comment on CERCLA?

Mr. Miyamoto. Mr. Chairman, Senator, specifically, I think the aim behind CERCLA, or, you know, at least one of the considerations of CERCLA was to look at emissions; and, for agriculture, that would be probably most relevant to confined animal feeding operations. And when it comes to confined animal feeding operations, the major regulatory law that is in place to guard against environmental damage from confining animals and

feeding them would be the Clean Water Act.

I have worked extensively in trying to remediate those impacts, basically, relocating corrals and feeding areas to where we can write comprehensive nutrient management plans that allay a lot of the concern of concentrating all of these pollutants in one area and allowing them either to volatilize into the air or to get into the water. So I think there is a framework in place and Mr. Lyon mentioned NRCS, and they are a good partner of ours and they help us with implementing comprehensive nutrient management plans for all of these areas that address these concerns.

Senator Boozman. Very good. Thank you.

Mr. Yates, a criticism of the EPA under the previous Administration was the Agency's disconnect with rural America. Many hardworking Americans in rural States feel that they didn't and still really feel like their voice is marginalized. Time and again I heard from my constituents who described a "gotcha" attitude from Federal agencies. Instead of working with stakeholders and industry to develop and implement rules and regulations, the Federal Government would go it alone, without fully understanding how the rules would affect hardworking Americans.

Can you explain the importance of the Federal Government to work hand-in-hand with the stakeholders as we develop rules and

regulations? And then, also, do you believe that the current Administration has put an emphasis in cooperative federalism?

Mr. Yates. Senator Boozman, thank you for the question. I would suggest that it is critical, be it in our western States that have a large abundance of Federal lands, that proper coordination and consultation with Federal land management agencies is vital to ensuring that the proper decisions are made that make the most sense for the land. It certainly goes without saying that coordination between States, Federal Government, and end-users is ultimately going to provide for the best possible result moving forward in terms of complying with regulations.

Ultimately, I think the more interaction the Federal agencies have with folks at the local level, the better results you are going to have. Certainly, there have been criticisms from one Administration to another about do we have the best relationship, are they engaging with local stakeholders.

I would suggest that with this Administration, Administrator Pruitt, we have had a fantastic working relationship. I know they have a lot of work to do and I would like to certainly report that that relationship is a positive one and we continue to strive to identify more opportunities to work hand-in-hand with EPA to identify commonsense solutions to the issues that are facing American farmers and ranchers.

Senator Boozman. Good. Thank you, Mr. Yates.

Senator Barrasso. Thank you, Senator Boozman.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

Thank all of you. I appreciate you coming in today. I think we share with all the witnesses, and really all of us on this Committee and in the Senate, that we realize how important our Nation's farmers and ranchers are, and we don't want to overburden with regulations. But we also want to ensure, as Americans, that they have the right to privacy like so many of us do.

When I was over in the House I introduced a bill called the Farmer's Privacy Act. This was in reaction to a situation that occurred in my State of West Virginia, where a poultry farmer was surveilled by the EPA -- we are not talking about giant operations here, we are talking two or three houses -- by the EPA and then fined accordingly, or investigated. It just struck me that the EPA, we found out later, had rented a small aircraft to surveil the small farms in the eastern portion of our States.

I raised the point, even though it is difficult to get from point A to point B sometimes because of the mountains that we have, that we were violating that farmer's rights, and it just felt too intrusive to me. So, part of what is included in this bill is that privacy provisions.

I am wondering if you, in Wyoming, have had any of these same kind of circumstances where you have had aerial surveillance without permission or if this is an issue in other parts of the Country. So, if you want to start, Mr. Miyamoto.

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. We have experienced similar type of interest from mostly our special interest groups that have targeted individual ranchers and then would like to undermine their efforts to conduct successful business.

As a regulatory agency myself, I can tell you that we have been able to successfully regulate farms and ranchers in Wyoming without aerially surveilling them. We take that obligation fairly seriously, but I think it can be done, and probably should be done, face-to-face.

Senator Capito. Right. Right.

Does anybody else have any comments on that? I don't know if you heard anything at the Farm Bureau, Mr. Yates.

Mr. Yates. Senator, thank you. And thank you for your work on this important legislation. Again, as I mentioned in my testimony, the use of UAS in precision agriculture is a great tool. Many of our farmers are employing drones and drone technology.

Senator Capito. Right.

Mr. Yates. But, again, I think the broader concern for our

members is the use of those tools in providing for surveillance of farms and farm operations without the consent of the farmer or the landowner; and I think that ultimately, if those tools are going to be used, we need to make sure that we ensure that private property rights and privacy are taken into account and that farmers provide their permission for the use of that technology by a Federal agency or an outside organization.

Senator Capito. And that is the substance of my bill, and I want to thank the Chairman for including that in there.

I want to ask another question. We had two things happen, two visits I had most recently, one from a beef farmer in our State in conjunction with Trout Unlimited. And I think sometimes the misconception that our farmers want to be in opposition of environmental stewardship is just a misplaced concept, but they don't have the resources or the expertise to really move forward with what would be the best methods to go forward.

In this case, Trout Unlimited had partnered with the beef farmer to give him the resources to be able to clean up the stream and now it is a major trout stream in our area. So the landowner, obviously, has the benefit of that, along with others who want to recreate there. So it has a mutual benefit.

I would just ask, the partnerships that are developed, we also had the Wildlife Resources Foundation were just in our

State, wildlife folks were just in, same kind of partnerships that are occurring. Are you finding that is what is happening around in Wyoming, that the private sector and the recreational industry that revolves around using our land and fisheries is the same sort? Because, obviously, in Wyoming tourism is very important as well.

Mr. Miyamoto. Mr. Chairman, Senator, strangely enough, years ago I spent a good deal of the early part of my career doing nothing but watershed planning on a collaborative and community-based standpoint, and I think we developed over two dozen different non-point-source watershed-based plans to address 303(d) listed in paired segments, and we did it exactly in the manner that you are talking about.

What I learned through that experience is that local, voluntary, and incentive-based approaches for water quality improvement tend to work much, much better than any regulatory scheme that we could put in place to address those issues.

Senator Capito. Thank you.

And just a final comment, because I am out of time, but I know there is a portion of this bill that deals with predatory species. I would just mention that I hope -- I am not sure that it does because I haven't asked the question yet. But we have a problem with coyotes in our area and our livestock, and I would hope that resources would be available to help our agricultural

entities deal with this predator that is pretty sneaky and pretty tough to get. Thank you very much.

Senator Barrasso. Well, I want to thank all of the members for being here. I appreciate the testimony of the three witnesses.

Members may submit written questions. I know that Senator Carper has suggested he will be submitting some written questions, so I ask that you return those responses quickly.

The hearing record will remain open for two weeks.

I again want to thank you all for your testimony on this important issue.

The hearing is adjourned.

[Whereupon, at 11:29 a.m. the committee was adjourned.]

## **Appendix C**

115TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To modify and improve provisions relating to environmental requirements for agriculture and agricultural producers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To modify and improve provisions relating to environmental requirements for agriculture and agricultural producers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Agriculture Creates  
5 Real Employment Act” or the “ACRE Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-  
9 trator” means the Administrator of the Environ-  
10 mental Protection Agency.

1           (2) DIRECTOR.—The term “Director” means  
2           the Director of the United States Fish and Wildlife  
3           Service.

4 **SEC. 3. EXEMPTION FROM CERTAIN NOTICE REQUIRE-**  
5 **MENTS AND PENALTIES.**

6           (a) AMENDMENT TO CERCLA.—Section 103 of the  
7 Comprehensive Environmental Response, Compensation,  
8 and Liability Act of 1980 (42 U.S.C. 9603) is amended  
9 by striking subsection (e) and inserting the following:

10          “(e) APPLICABILITY TO REGISTERED PESTICIDE  
11 PRODUCTS AND AIR EMISSIONS FROM ANIMAL WASTE AT  
12 FARMS.—

13           “(1) DEFINITIONS.—In this subsection:

14           “(A) ANIMAL WASTE.—

15           “(i) IN GENERAL.—The term ‘animal  
16 waste’ means feces, urine, or other excre-  
17 ment, digestive emission, urea, or similar  
18 substance emitted by animals (including  
19 any form of livestock, poultry, or fish).

20           “(ii) INCLUSIONS.—The term ‘animal  
21 waste’ includes animal waste that is mixed  
22 or commingled with bedding, compost,  
23 feed, soil, or any other material typically  
24 found with that waste.

1           “(B) FARM.—The term ‘farm’ means a  
2           site or area (including associated structures)  
3           that—

4                   “(i) is used for—

5                           “(I) the production of a crop; or

6                           “(II) the raising or selling of ani-  
7                           mals (including any form of livestock,  
8                           poultry, or fish); and

9                           “(ii) under normal conditions, pro-  
10                           duces during a farm year agricultural  
11                           products the total value of which is not  
12                           less than \$1,000.

13           “(2) APPLICABILITY.—This section shall not  
14           apply to—

15                   “(A) the application of a pesticide product  
16                   registered under the Federal Insecticide, Fun-  
17                   gicide, and Rodenticide Act (7 U.S.C. 136 et  
18                   seq.) or the handling and storage of such a pes-  
19                   ticide product by an agricultural producer; or

20                   “(B) air emissions from animal waste (in-  
21                   cluding decomposing animal waste) at a farm.”.

22           (b) APPLICATION.—Nothing in this section or the  
23           amendment made by this section affects, or supersedes or  
24           modifies the responsibility of any Federal official or em-  
25           ployee to comply with or enforce, any requirement (as of

1 the date of enactment of this Act) under the Comprehen-  
2 sive Environmental Response, Compensation, and Liabil-  
3 ity Act of 1980 (42 U.S.C. 9601 et seq.), other than the  
4 hazardous substance notification requirements under sec-  
5 tion 103 of that Act (42 U.S.C. 9603) with respect to air  
6 emissions from animal waste at farms.

7 **SEC. 4. EXEMPTION OF EXPORTATION OF CERTAIN**  
8 **ECHINODERMS FROM PERMISSION AND LI-**  
9 **CENSING REQUIREMENTS.**

10 (a) EXEMPTION.—Not later than 30 days after the  
11 date of enactment of this Act, the Director shall amend  
12 section 14.92 of title 50, Code of Federal Regulations, to  
13 clarify that—

14 (1) fish or wildlife described in subsection (b)  
15 are fishery products exempt from the export permis-  
16 sion requirements of section 9(d)(1) of the Endan-  
17 gered Species Act of 1973 (16 U.S.C. 1538(d)(1));  
18 and

19 (2) any person may engage in business as an  
20 exporter of fish or wildlife described in subsection  
21 (b) without procuring—

22 (A) permission under section 9(d)(1) of the  
23 Endangered Species Act of 1973 (16 U.S.C.  
24 1538(d)(1)); or

1 (B) an export license under subpart I of  
2 part 14 of title 50, Code of Federal Regulations  
3 (or successor regulations).

4 (b) COVERED FISH OR WILDLIFE.—The fish or wild-  
5 life referred to in subsection (a) are members of the phy-  
6 lum Echinodermata that are commonly known as sea ur-  
7 chins and sea cucumbers (including any products of those  
8 members of the phylum Echinodermata) that—

9 (1) do not require a permit under part 16, 17,  
10 or 23 of title 50, Code of Federal Regulations (or  
11 successor regulations);

12 (2)(A) are harvested in waters under the juris-  
13 diction of the United States; or

14 (B) are processed in the United States; and

15 (3) are—

16 (A) exported for purposes of human or ani-  
17 mal consumption; or

18 (B) taken in waters under the jurisdiction  
19 of the United States or on the high seas for  
20 recreational purposes.

21 **SEC. 5. BAITING OF MIGRATORY GAME BIRDS.**

22 Section 3 of the Migratory Bird Treaty Act (16  
23 U.S.C. 704) is amended by striking subsection (b) and in-  
24 serting the following:

25 “(b) PROHIBITION OF BAITING.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) BAITED AREA.—

3 “(i) IN GENERAL.—The term ‘baited  
4 area’ means—

5 “(I) any area on which salt,  
6 grain, or other feed has been placed,  
7 exposed, deposited, distributed, or  
8 scattered, if the salt, grain, or feed  
9 could lure or attract migratory game  
10 birds; and

11 “(II) in the case of waterfowl,  
12 cranes (family Gruidae), and coots  
13 (family Rallidae), a standing,  
14 unharvested crop that has been ma-  
15 nipulated through activities such as  
16 mowing, discing, or rolling, unless the  
17 activities are normal agricultural prac-  
18 tices.

19 “(ii) EXCLUSIONS.—An area shall not  
20 be considered to be a ‘baited area’ if the  
21 area—

22 “(I) has been treated with a nor-  
23 mal agricultural practice;

24 “(II) has standing crops that  
25 have not been manipulated; or



1 planting, harvest, post-harvest, or soil  
2 conservation practices; and

3 “(II) is recommended for the  
4 successful harvest of a given crop by  
5 the applicable State office of the Co-  
6 operative Extension System of the De-  
7 partment of Agriculture, in consulta-  
8 tion with, and if requested, the con-  
9 currence of, the head of the applicable  
10 State department of fish and wildlife.

11 “(ii) INCLUSIONS.—

12 “(I) IN GENERAL.—Subject to  
13 subclause (II), the term ‘normal agri-  
14 cultural practice’ includes the destruc-  
15 tion of a crop in accordance with  
16 practices required by the Federal  
17 Crop Insurance Corporation for agri-  
18 cultural producers to obtain crop in-  
19 surance under the Federal Crop In-  
20 surance Act (7 U.S.C. 1501 et seq.)  
21 on land on which a crop during the  
22 current or immediately preceding crop  
23 year was not harvestable due to a nat-  
24 ural disaster (including any hurricane,  
25 storm, tornado, flood, high water,

1 wind-driven water, tidal wave, tsu-  
2 nami, earthquake, volcanic eruption,  
3 landslide, mudslide, drought, fire,  
4 snowstorm, or other catastrophe that  
5 is declared a major disaster by the  
6 President in accordance with section  
7 401 of the Robert T. Stafford Dis-  
8 aster Relief and Emergency Assist-  
9 ance Act (42 U.S.C. 5170)).

10 “(II) LIMITATIONS.—The term  
11 ‘normal agricultural practice’ only in-  
12 cludes a crop described in subclause  
13 (I) that has been destroyed or manip-  
14 ulated through activities that include  
15 (but are not limited to) mowing,  
16 discing, or rolling if the Federal Crop  
17 Insurance Corporation certifies that  
18 flooding was not an acceptable method  
19 of destruction to obtain crop insur-  
20 ance under the Federal Crop Insur-  
21 ance Act (7 U.S.C. 1501 et seq.).

22 “(E) WATERFOWL.—The term ‘waterfowl’  
23 means native species of the family Anatidae.

24 “(2) PROHIBITION.—It shall be unlawful for  
25 any person—

1           “(A) to take any migratory game bird by  
2           baiting or on or over any baited area, if the  
3           person knows or reasonably should know that  
4           the area is a baited area; or

5           “(B) to place or direct the placement of  
6           bait on or adjacent to an area for the purpose  
7           of causing, inducing, or allowing any person to  
8           take or attempt to take any migratory game  
9           bird by baiting or on or over the baited area.

10          “(3) REGULATIONS.—The Secretary of the In-  
11          terior may promulgate regulations to implement this  
12          subsection.

13          “(4) ANNUAL REPORTS.—The Secretary of Ag-  
14          riculture shall submit to the Secretary of the Inte-  
15          rior an annual report that describes any changes to  
16          normal agricultural practices across the range of  
17          crops grown by agricultural producers in each region  
18          of the United States in which the recommendations  
19          are provided to agricultural producers.”.

20 **SEC. 6. USE OF AUTHORIZED PESTICIDES; DISCHARGES OF**  
21 **PESTICIDES; REPORT.**

22          (a) USE OF AUTHORIZED PESTICIDES.—Section 3(f)  
23 of the Federal Insecticide, Fungicide, and Rodenticide Act  
24 (7 U.S.C. 136a(f)) is amended by adding at the end the  
25 following:



1           “(2) EXCEPTIONS.—Paragraph (1) shall not  
2 apply to the following discharges of a pesticide or  
3 pesticide residue:

4           “(A) A discharge resulting from the appli-  
5 cation of a pesticide in violation of a provision  
6 of the Federal Insecticide, Fungicide, and  
7 Rodenticide Act (7 U.S.C. 136 et seq.) relevant  
8 to protecting water quality if—

9           “(i) the discharge would not have oc-  
10 curred without the violation; or

11           “(ii) the quantity of pesticide or pes-  
12 ticide residue in the discharge is greater  
13 than would have occurred without the vio-  
14 lation.

15           “(B) Stormwater discharges subject to reg-  
16 ulation under subsection (p).

17           “(C) The following discharges subject to  
18 regulation under this section:

19           “(i) Manufacturing or industrial efflu-  
20 ent.

21           “(ii) Treatment works effluent.

22           “(iii) Discharges incidental to the nor-  
23 mal operation of a vessel, including a dis-  
24 charge resulting from ballasting operations  
25 or vessel biofouling prevention.”.

1 (c) REPORT.—Not later than 1 year after the date  
2 of enactment of this Act, the Administrator, in consulta-  
3 tion with the Secretary of Agriculture, shall submit a re-  
4 port to the Committee on Environment and Public Works  
5 and the Committee on Agriculture of the Senate and the  
6 Committee on Transportation and Infrastructure and the  
7 Committee on Agriculture of the House of Representatives  
8 that includes—

9 (1) the status of intra-agency coordination be-  
10 tween the Office of Water and the Office of Pes-  
11 ticide Programs of the Environmental Protection  
12 Agency regarding streamlining information collec-  
13 tion, standards of review, and data use relating to  
14 water quality impacts from the registration and use  
15 of pesticides;

16 (2) an analysis of the effectiveness of current  
17 regulatory actions relating to pesticide registration  
18 and use aimed at protecting water quality; and

19 (3) any recommendations on how the Federal  
20 Insecticide, Fungicide, and Rodenticide Act (7  
21 U.S.C. 136 et seq.) can be modified to better protect  
22 water quality and human health.

23 **SEC. 7. FARMER IDENTITY PROTECTION.**

24 (a) DEFINITIONS.—In this section:

1           (1) AGENCY.—The term “Agency” means the  
2 Environmental Protection Agency.

3           (2) LIVESTOCK OPERATION.—The term “live-  
4 stock operation” includes any operation involved in  
5 the raising or finishing of livestock and poultry.

6           (b) PROCUREMENT AND DISCLOSURE OF INFORMA-  
7 TION.—

8           (1) PROHIBITION.—Except as provided in para-  
9 graph (2), the Administrator, any officer or em-  
10 ployee of the Agency, or any contractor or coop-  
11 erator of the Agency, shall not disclose the informa-  
12 tion of any owner, operator, or employee of a live-  
13 stock operation provided to the Agency by a live-  
14 stock producer or a State agency in accordance with  
15 the Federal Water Pollution Control Act (33 U.S.C.  
16 1251 et seq.) or any other law, including—

- 17                   (A) names;  
18                   (B) telephone numbers;  
19                   (C) email addresses;  
20                   (D) physical addresses;  
21                   (E) Global Positioning System coordinates;  
22                   (F) financial information, including busi-  
23                   ness records and production data; or

1 (G) other identifying information regarding  
2 the location of the owner, operator, livestock, or  
3 employee.

4 (2) EFFECT.—Nothing in this section affects—

5 (A) the disclosure of information described  
6 in paragraph (1) if—

7 (i) the information has been trans-  
8 formed into a statistical or aggregate form  
9 at the county level or higher without any  
10 information that identifies the agricultural  
11 operation or agricultural producer; or

12 (ii) the livestock producer consents to  
13 the disclosure;

14 (B) the authority of any State agency to  
15 collect information on livestock operations; or

16 (C) the authority of the Agency to disclose  
17 the information on livestock operations to State  
18 or other Federal governmental agencies.

19 (3) CONDITION OF PERMIT OR OTHER PRO-  
20 GRAMS.—The approval of any permit, practice, or  
21 program administered by the Administrator shall not  
22 be conditioned on the consent of the livestock pro-  
23 ducer under paragraph (2)(A)(ii).

24 **SEC. 8. PRIVACY OF AGRICULTURAL PRODUCERS.**

25 (a) DEFINITIONS.—In this section:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means—

3                   (A) the Administrator; and

4                   (B) in the case of an action taken pursu-  
5           ant to a permit program approved under section  
6           402 of the Federal Water Pollution Control Act  
7           (33 U.S.C. 1342), the head of the State agency  
8           administering the program.

9           (2) AERIAL SURVEILLANCE.—The term “aerial  
10          surveillance” means any surveillance from the air,  
11          including—

12                   (A) surveillance conducted from manned or  
13          unmanned aircraft; or

14                   (B) the use of aerial or satellite images, re-  
15          gardless of whether the images are publicly  
16          available.

17          (3) AGRICULTURAL LAND.—

18                   (A) IN GENERAL.—The term “agricultural  
19          land” means land used primarily for agricul-  
20          tural production.

21                   (B) INCLUSIONS.—The term “agricultural  
22          land” includes—

23                           (i) cropland;

24                           (ii) grassland;

25                           (iii) prairie land;

- 1 (iv) improved pastureland;  
2 (v) rangeland;  
3 (vi) cropped woodland;  
4 (vii) marshes;  
5 (viii) reclaimed land;  
6 (ix) fish or other aquatic species habi-  
7 tat;  
8 (x) land used for—  
9 (I) agroforestry; or  
10 (II) the production of livestock;  
11 and  
12 (xi) land that contains existing infra-  
13 structure used for—  
14 (I) the production of livestock; or  
15 (II) another agricultural oper-  
16 ation.

17 (b) LIMITATION ON USE OF AERIAL SURVEIL-  
18 LANCE.—

19 (1) IN GENERAL.—Subject to paragraph (2), in  
20 exercising any authority under the Federal Water  
21 Pollution Control Act (33 U.S.C. 1251 et seq.), the  
22 Administrator may not conduct aerial surveillance of  
23 agricultural land.

24 (2) EXCEPTIONS.—The Administrator may con-  
25 duct aerial surveillance of agricultural land under

1 the Federal Water Pollution Control Act (33 U.S.C.  
2 1251 et seq.) if the Administrator—

3 (A) has obtained the voluntary written  
4 consent of the owner or operator of the land to  
5 be surveilled in accordance with subsection (c);  
6 or

7 (B) has obtained a certification of reason-  
8 able suspicion in accordance with subsection  
9 (d).

10 (c) VOLUNTARY WRITTEN CONSENT.—

11 (1) CONSENT REQUIRED.—In order to conduct  
12 aerial surveillance under subsection (b)(2)(A), the  
13 Administrator shall obtain from the owner or oper-  
14 ator of the land to be surveilled written consent to  
15 such surveillance.

16 (2) CONTENTS.—The Administrator shall en-  
17 sure that any written consent required under para-  
18 graph (1)—

19 (A) specifies the period during which the  
20 consent is effective, which may not exceed 1  
21 year;

22 (B) contains a specific description of the  
23 geographical area to be surveilled; and

24 (C) on the request of the owner or oper-  
25 ator of the land to be surveilled, contains limi-

1           tations on the days and times during which the  
2           surveillance may be conducted.

3           (3) ASSURANCE OF VOLUNTARY CONSENT.—

4           The Administrator—

5                   (A) shall ensure that any written consent  
6                   required under paragraph (1) is granted volun-  
7                   tarily by the owner or operator of the land to  
8                   be surveilled; and

9                   (B) may not threaten additional, more de-  
10                  tailed, or more thorough inspections, or other-  
11                  wise coerce or entice the owner or operator, in  
12                  order to obtain written consent.

13          (d) CERTIFICATION OF REASONABLE SUSPICION.—

14                  (1) IN GENERAL.—In order to conduct aerial  
15                  surveillance under subsection (b)(2)(B), the Admin-  
16                  istrator shall obtain from a United States district  
17                  court of competent jurisdiction (referred to in this  
18                  subsection as a “Court”) a certification of reason-  
19                  able suspicion in accordance with this subsection.

20                  (2) CERTIFICATION REQUIREMENTS.—A Court  
21                  may issue to the Administrator a certification of rea-  
22                  sonable suspicion if—

23                          (A) the Administrator submits to the  
24                          Court an affidavit setting forth specific and  
25                          articulable facts that would indicate to a rea-

1           sonable person that a violation of the Federal  
2           Water Pollution Control Act (33 U.S.C. 1251 et  
3           seq.) exists in the area to be surveilled; and

4                   (B) the Court finds that the Administrator  
5           has shown reasonable suspicion that an owner  
6           or operator of agricultural land in the area to  
7           be surveilled has violated the Federal Water  
8           Pollution Control Act (33 U.S.C. 1251 et seq.).

9           (e) DISCLOSURE OF INFORMATION.—

10                   (1) IN GENERAL.—Except as provided in para-  
11           graph (3), or for the purposes of an investigation or  
12           prosecution by the Administrator as described in  
13           subsection (f), the Administrator may not disclose  
14           information collected through aerial surveillance con-  
15           ducted under subsection (b)(2).

16                   (2) APPLICABILITY OF FOIA.—Section 552 of  
17           title 5, United States Code, shall not apply to any  
18           information collected through aerial surveillance con-  
19           ducted under subsection (b)(2).

20                   (3) RIGHT TO PETITION.—The owner or oper-  
21           ator of land surveilled under this section has the  
22           right to petition for copies of the information col-  
23           lected through such surveillance.

24                   (f) DESTRUCTION OF INFORMATION.—The Adminis-  
25           trator shall destroy information collected through aerial

1 surveillance conducted under subsection (b)(2) not later  
2 than 30 days after collection, unless the information is  
3 pertinent to an active investigation or prosecution by the  
4 Administrator.

5 (g) **RULE OF CONSTRUCTION.**—Nothing in this Act  
6 expands the power of the Administrator to inspect, mon-  
7 itor, or conduct surveillance of agricultural land pursuant  
8 to the Federal Water Pollution Control Act (33 U.S.C.  
9 1251 et seq.) or any other Federal law.

10 **SEC. 9. REGULATIONS RELATING TO TAKING OF DOUBLE-**  
11 **CRESTED CORMORANTS.**

12 (a) **FORCE AND EFFECT.**—

13 (1) **IN GENERAL.**—Subject to subsection (b),  
14 section 21.47 of title 50, Code of Federal Regula-  
15 tions (as in effect on the date of enactment of this  
16 Act), shall have the force and effect of law.

17 (2) **PUBLIC NOTICE.**—The Secretary of the In-  
18 terior, acting through the Director, shall notify the  
19 public of the authority provided by paragraph (1) in  
20 a manner determined appropriate by the Secretary.

21 (b) **SUNSET.**—The authority provided by subsection  
22 (a)(1) shall terminate on the date that is the earlier of—

23 (1) the effective date of a regulation promul-  
24 gated by the Director after the date of enactment of

1       this Act to control depredation of double-crested cor-  
2       morant populations; and

3               (2) the date that is 1 year after the date of en-  
4       actment of this Act.

5       (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
6       tion limits the authority of the Director to promulgate reg-  
7       ulations relating to the taking of double-crested cor-  
8       morants under any other law.

9       **SEC. 10. APPLICABILITY OF SPILL PREVENTION, CONTROL,**  
10       **AND COUNTERMEASURE RULE.**

11       Section 1049 of the Water Resources Reform and De-  
12       velopment Act of 2014 (33 U.S.C. 1361 note; 128 Stat.  
13       1257; 130 Stat. 1902) is amended—

14               (1) in subsection (b)—

15                       (A) in paragraph (1)(B), by striking  
16               “20,000” and inserting “42,000”;

17                       (B) in paragraph (2), by striking subpara-  
18               graph (A) and inserting the following:

19                               “(A) an aggregate aboveground storage ca-  
20               pacity greater than 10,000 gallons but less than  
21               42,000 gallons; and”;

22                       (C) in paragraph (3)—

23                               (i) by striking subparagraph (A) and  
24               inserting the following:

1           “(A) with an aggregate aboveground stor-  
2           age capacity of less than or equal to 10,000  
3           gallons; and”;

4                       (ii) in subparagraph (B), by striking  
5           “; and” and inserting a period; and

6           (D) by striking paragraph (4);

7           (2) in subsection (c)(2)(A)—

8                       (A) in clause (i), by striking “1,000” and  
9           inserting “1,320”; and

10                      (B) in clause (ii), by striking “2,500” and  
11           inserting “3,000”; and

12           (3) by striking subsection (d).

13 **SEC. 11. PREDATORY AND OTHER WILD ANIMALS.**

14           Section 1 of the Act of March 2, 1931 (7 U.S.C.  
15 8351), is amended—

16           (1) in the second sentence, by striking “The  
17           Secretary” and inserting the following:

18           “(c) ADMINISTRATION.—

19                       “(1) CONSISTENCY WITH OTHER AUTHORI-  
20           TIES.—The Secretary”;

21           (2) in the first sentence, by striking “The Sec-  
22           retary of Agriculture” and inserting the following:

23           “(a) DEFINITIONS.—In this section:

24                       “(1) PROGRAM.—The term ‘program’ means  
25           the program under subsection (b).

1           “(2) SECRETARY.—The term ‘Secretary’ means  
2 the Secretary of Agriculture.

3           “(b) PROGRAM.—The Secretary”;

4           (3) in subsection (c) (as designated by para-  
5 graph (1)), by adding at the end the following:

6           “(2) PERMITS.—In administering the program,  
7 the Secretary, acting through the Administrator of  
8 the Animal and Plant Health Inspection Service,  
9 shall use the most expeditious procedure practicable  
10 to process and administer relevant permits, includ-  
11 ing through collaboration with the Director of the  
12 United States Fish and Wildlife Service and the  
13 heads of other appropriate Federal departments and  
14 agencies with respect to the administration of har-  
15 assment and taking permits for nuisance species, in-  
16 cluding in instances of depredation.”; and

17           (4) by adding at the end the following:

18           “(d) ACTION BY FWS.—The Director of the United  
19 States Fish and Wildlife Service shall use the most expedi-  
20 tious procedure practicable to process and administer har-  
21 assment and taking permits for—

22           “(1) a nuisance species;

23           “(2) a depredating eagle (including with respect  
24 to livestock, wildlife, and species protected under the

1       Endangered Species Act of 1973 (16 U.S.C. 1531 et  
2       seq.) or any other Federal management program); or  
3               “(3) a migratory bird included on the list under  
4       section 10.13 of title 50, Code of Federal Regula-  
5       tions (or successor regulations).”.

## **Appendix D**

**MEMORANDUM**

March 7, 2018

**To:** Senate Committee on Environment and Public Works  
Attention: Kusai Merchant

**From:** David M. Bearden, Specialist in Environmental Policy, [dbearden@crs.loc.gov](mailto:dbearden@crs.loc.gov), 7-2390

**Subject:** **Fair Agricultural Reporting Method Act/FARM Act (S. 2421)**

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This memorandum responds to your request for an analysis of the potential effects of amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) proposed in the Fair Agricultural Reporting Method Act or “FARM Act” (S. 2421), as introduced in the 115<sup>th</sup> Congress on February 13, 2018. The bill would exempt air releases of hazardous substances emitted by animal waste at farms from requirements under CERCLA to notify the National Response Center. These amendments also would have a bearing on the applicability of requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) to notify state and local officials of such releases. However, EPCRA may continue to apply to the reporting of releases of separately listed extremely hazardous substances that are not contingent upon reporting under CERCLA, unless these releases may be covered by an exemption under EPCRA in current law for substances used in routine agricultural operations.

## Overview

Whether the reporting requirements of CERCLA and EPCRA should be applied to air releases of hazardous substances from animal waste has been a long-standing issue addressed in multiple hearings and legislation in Congress. The purpose of reporting releases under these statutes is to inform federal, state, and local emergency response officials if a response action were warranted to protect human health and the environment. Some have observed though that reporting may impose a compliance burden without a commensurate need if the relative risks of air releases would not warrant a response action in most instances. Although others may still value the information gained from reporting to evaluate sources of air emissions for regulatory planning or other purposes, such utility would be incidental to the response objectives of CERCLA and EPCRA. Potential disclosure of release reports to the public also has been an issue, but certain protections are available in current law for sensitive and confidential information.

During the George W. Bush Administration, the U.S. Environmental Protection Agency (EPA) finalized a rule in 2008 to exempt air releases of hazardous substances emitted by animal waste at most farms from reporting under CERCLA and EPCRA, because of its expectation that the relative risks would make a response action unlikely or impractical in most cases. EPA did apply EPCRA to require reporting from large concentrated animal feeding operations (CAFOs) based on the number and type of livestock, in response to some public comments expressing desire for the information. Litigation challenging EPA’s authority to create this administrative exemption led to a U.S. Court of Appeals for the D.C. Circuit decision in April 2017 (*Waterkeeper Alliance, et al., v. EPA*) that vacated the 2008 rule. In response to

petitions from EPA during the Trump Administration, the court subsequently stayed (i.e., delayed) the issuance of an order to lift the exemption in the 2008 rule until May 1, 2018.

EPA has released guidance that instructs farms to notify the National Response Center under CERCLA once the court issues its order, if air releases of hazardous substances emitted by animal waste are equal to or exceed reportable quantities.<sup>1</sup> The EPA guidance indicates that farms should not report releases to state and local officials under EPCRA though, based on the Trump Administration's interpretation that air releases from animal waste would be covered under the exemption for substances used in routine agricultural operations. The U.S. Court of Appeals April 2017 decision did not refer to this exemption.

If enacted into law, S. 2421 would amend CERCLA to provide an exemption from the reporting of air releases of hazardous substances emitted by animal waste at farms. In turn, this amendment would have the effect of exempting such releases of hazardous substances from reporting under EPCRA that is contingent upon reporting required under CERCLA. However, the potential applicability of EPCRA to air releases of separately listed extremely hazardous substances may depend on whether the Trump Administration's interpretation of the exemption for substances used in routine agricultural operations is challenged. Any potential reporting requirements under state or local laws may continue to apply though, as neither CERCLA nor EPCRA would preempt such requirements.

The following sections of this memorandum discuss the purposes of CERCLA and EPCRA in current law, the types of hazardous substances and extremely hazardous substances that may be released from animal waste at farms, the George W. Bush Administration 2008 rule, the D.C. Circuit April 2017 decision that vacated this rule, the Trump Administration's guidance issued in response to the reversal of the rule, and how the amendments to CERCLA proposed in S. 2421 may affect reporting requirements. I hope that this information is helpful to the Committee. I remain available if the Committee needs further assistance from CRS in consideration of S. 2421 and related issues.

## CERCLA

Enacted in 1980, CERCLA authorized the Superfund program administered by EPA to remediate environmental contamination from releases of hazardous substances at sites elevated for priority federal attention in coordination with the states, and established the financial liability of "potentially responsible parties" (PRPs) associated with a release.<sup>2</sup> Congress has amended CERCLA in multiple laws over time to clarify the applicability of the statute to federal facilities, and to modify various response, liability, and enforcement provisions to address issues that arose during the course of implementation.<sup>3</sup> Although risks posed by abandoned hazardous waste sites were a central topic in the debate of legislation that led to the enactment of CERCLA, the final bill that Congress enacted included language more broadly addressing past or present releases of hazardous substances across environmental media and industrial, commercial, and governmental sectors.<sup>4</sup>

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<sup>1</sup> For a summary of this guidance, see EPA, Office of Land and Emergency Management, *CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, 520-F-18-001, February 2018, available at: <https://www.epa.gov/epcra/fact-sheet-cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal>.

<sup>2</sup> 42 U.S.C. §§9601-9675.

<sup>3</sup> For a broader discussion of the scope and purposes of CERCLA than presented in this memorandum, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by David M. Bearden.

<sup>4</sup> See U.S. Congress, Senate Committee on Environment and Public Works, *A Legislative History of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)*, Public Law 96-510, committee print, prepared by Congressional Research Service, 97th Cong., 2nd sess., 1983, S. Serial No. 97-14 (Washington: GPO, 1983).

## Applicability to Releases

CERCLA generally applies to the release, or the substantial threat of a release, of a hazardous substance into the environment within the United States or under the jurisdiction of the United States. The geophysical scope of the environment covered under CERCLA encompasses multiple media. The term “environment” is defined in Section 101(8) to include surface water, groundwater, a drinking water supply, surface soils, sub-surface soils, or ambient air.<sup>5</sup> As defined in Section 101(22), the term “release” also is relatively broad in terms of the manner in which a hazardous substance may enter the environment, including spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.<sup>6</sup>

Section 101(14) of CERCLA references specific categories of chemicals designated under other laws as hazardous substances subject to CERCLA.<sup>7</sup> Section 102 authorizes EPA to designate additional hazardous substances that may present substantial danger to public health or welfare, or the environment, if a release were to occur.<sup>8</sup> Section 102 also authorizes EPA to establish a quantitative threshold for each hazardous substance to determine when a release must be reported to the federal government.<sup>9</sup> Section 103 requires the person responsible for a release to notify the National Response Center, if the release is equal to or exceeds the reportable quantity during a 24-hour period.<sup>10</sup> Section 103(f) authorizes an exception to offer compliance flexibility for a continuous release that is “stable in quantity and rate,” in which case notice may be provided to the National Response Center on an annual basis as an alternative to daily notification.<sup>11</sup> However, Section 103(f) requires intervening updates during the year to report a “statistically significant increase” in the quantity of a release above that previously reported or occurring.

Reporting requirements under CERCLA provide a mechanism through which the federal government may become aware of a release to determine whether a response action may be warranted to fulfill the objective of the statute to protect human health and the environment.<sup>12</sup> Whether a response action is warranted generally would depend on the potential risks of exposure at the site where the release occurs. Reportable quantities merely serve as thresholds to determine the quantity of a release that is subject to notification, but do not necessarily indicate a particular level of risk. As for any chemical, the potential risks of a release would depend on the concentration, duration, and frequency of exposure (i.e., the dose), the conditions of exposure, and individual characteristics of the exposed individual.<sup>13</sup>

Once a release is reported, Section 103(a) requires the National Response Center to notify EPA and other appropriate federal agencies, and the state in which the release occurs.<sup>14</sup> If warranted, Section 104 authorizes federal actions to respond to the release in coordination with the state, including enforcement of liability.<sup>15</sup> The federal response authorities of CERCLA are Presidential authorities delegated to EPA

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<sup>5</sup> 42 U.S.C. §9601(8).

<sup>6</sup> 42 U.S.C. §9601(22).

<sup>7</sup> 42 U.S.C. §9601(14).

<sup>8</sup> 42 U.S.C. §9602.

<sup>9</sup> Designated hazardous substances and reportable quantities are codified in federal regulation at 40 C.F.R. Part 302.

<sup>10</sup> 42 U.S.C. §9603. The U.S. Coast Guard administers the National Response Center.

<sup>11</sup> 42 U.S.C. §9603(f). Procedures for filing continuous release reports are codified in federal regulation at 40 C.F.R. §302.8.

<sup>12</sup> Releases reported under CERCLA also generate data that some may desire to evaluate sources of pollution for regulatory planning or other purposes, although this utility would be incidental to the statutory objective of CERCLA.

<sup>13</sup> For information on risk assessment, see National Academy of Sciences, National Research Council, *Science and Decisions: Advancing Risk Assessment*, 2009, available at: <http://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>. This report updates the previous National Research Council risk assessment guidelines issued in 1983.

<sup>14</sup> 42 U.S.C. §9603(a).

<sup>15</sup> 42 U.S.C. §9604.

and other federal agencies on the National Response Team.<sup>16</sup> The procedures for taking response actions under CERCLA are outlined in the National Oil and Hazardous Substances Pollution Contingency Plan.<sup>17</sup>

Section 107 of CERCLA establishes the categories of PRPs who may be held liable for response costs, natural resource damages, and the costs of federal studies of potential health hazards that may be associated with a release.<sup>18</sup> Federal response actions are subject to annual appropriations but may be recovered from the liable parties. PRPs generally may include current and past site owners and operators, persons who arranged for the treatment, disposal, or transport of a hazardous substance, and transporters who selected a site for disposal.

Section 104 also authorizes federal actions to respond to releases of other pollutants or contaminants that are not designated as hazardous substances, if the release would present an imminent and substantial danger to public health or welfare. However, CERCLA does not establish liability for such releases, nor does the statute require the reporting of such releases.

## Statutory Exemptions

Although CERCLA is relatively broad in its applicability to releases of hazardous substances, Congress has excluded certain types of substances or releases from the statutory definitions in Section 101 that it did not intend to be subject to the statute. Section 107(b) of CERCLA also provides defenses to liability for certain conditions beyond a party's control such as an act of God, act of war, or an act or omission of a third party.<sup>19</sup> In the 1980 enactment and subsequent amendments, Congress also has exempted specific categories of parties, circumstances, or uses that it did not intend to be subject to liability or reporting requirements, but for which federal authority remains available to respond to a release if warranted to protect human health and the environment.

Some of these exclusions or exemptions are based on practical considerations, whereas others are intended to avoid duplication or overlap with other laws that apply to the same releases. Among the exclusions or exemptions more directly relevant to the agricultural sector, Congress excluded the "normal application of fertilizer" from the definition of the term "release" in Section 101(22) of CERCLA, making such use not subject to the statute in its entirety. Congress also excluded hazardous substances that may be released as a result of the proper application of a pesticide from liability under the statute in Section 107(i),<sup>20</sup> and reporting requirements in Section 103(e).<sup>21</sup> The availability of the pesticide exemption is dependent upon proper application of the pesticide in accordance with federal registration requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).<sup>22</sup> Congress included both the fertilizer exclusion and the pesticide exemption in the 1980 enactment. Congress has not since amended CERCLA to exempt the agricultural sector more broadly.

## EPCRA

Once CERCLA required the reporting of releases of hazardous substances to the federal government, questions arose as to whether federal law also should require reporting of the same information directly to

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<sup>16</sup> Executive Order 12580, *Superfund Implementation*, January 23, 1987.

<sup>17</sup> 40 C.F.R. Part 300.

<sup>18</sup> 42 U.S.C. §9607.

<sup>19</sup> 42 U.S.C. §9607(b).

<sup>20</sup> 42 U.S.C. §9607(i).

<sup>21</sup> 42 U.S.C. §9603(e).

<sup>22</sup> 7 U.S.C. §§136-136y. Demonstration of the proper application of a federally registered pesticide generally would be subject to documentation of its use.

state and local governments to help facilitate their emergency response capabilities.<sup>23</sup> This question was among the prominent topics in the debate of the 1986 amendments to CERCLA. Although some state and local laws at that time addressed releases of hazardous substances, response authorities and capabilities varied among jurisdictions. Congress developed uniform federal requirements for the reporting of releases to state and local governments in EPCRA under Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499). Title III enacted EPCRA as a separate law, and not as an amendment CERCLA.<sup>24</sup>

EPCRA addresses emergency notification of releases at the state and local level to complement the reporting of releases to the federal government under CERCLA. Similar in objective to CERCLA, release notification under EPCRA provides a mechanism for state and local governments to determine whether a response action may be warranted under their own respective authorities, or in coordination with a federal response. Reporting under EPCRA also provides an earlier opportunity for state and local governments to become aware of a release instead of relying upon subsequent notification from the National Response Center once a release is reported to the federal government. However, EPCRA does not authorize federal actions to respond to a release, nor does the statute establish liability for releases. Federal response authorities and liability for releases are rooted in CERCLA.

EPCRA also requires notification at the state and local level for emergency planning purposes if a facility stores extremely hazardous substances or other hazardous chemicals in excess of certain amounts.<sup>25</sup> These notification requirements are intended to enhance state and local emergency preparedness in the event of an actual release. Other provisions of EPCRA also require the reporting of toxic chemicals used at a facility in excess of certain amounts to EPA for public disclosure in the federal Toxic Release Inventory (TRI).<sup>26</sup> These emergency planning and TRI disclosure requirements apply to the presence or use of chemicals at a facility, in addition to actual releases into the environment.

Section 324 of EPCRA generally requires information on chemicals reported for emergency planning purposes, disclosure on the TRI, and followup emergency notices of actual releases to be made available to the general public.<sup>27</sup> CERCLA does not include similar public disclosure requirements. However, followup emergency notices subject to EPCRA generally would include information on releases of hazardous substances that are subject to CERCLA. Section 322 of EPCRA authorizes the withholding of certain sensitive or confidential information from disclosure to the general public under Section 324.<sup>28</sup> As a matter of practice, the National Response Center also maintains a publicly available database that tracks the nature and general location of releases of hazardous substances reported under CERCLA, but not private or confidential information.<sup>29</sup> The following discussion of EPCRA focuses on emergency notification of releases into the environment potentially relevant to air releases, and statutory exemptions from notification in current law.<sup>30</sup>

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<sup>23</sup> See U.S. Congress, Senate Committee on Environment and Public Works, *A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499)*, committee print, prepared by Congressional Research Service, 101st Cong., 2nd sess., 1990, S. Prt. 101-120 (Washington: GPO, 1990).

<sup>24</sup> 42 U.S.C. §§11001-11050.

<sup>25</sup> For emergency planning, reportable quantities of extremely hazardous substances are codified in federal regulation at 40 C.F.R. Part 355, Appendix A, and of hazardous chemicals are codified in federal regulation at 40 C.F.R. Part 370.

<sup>26</sup> Threshold quantities subject to reporting for the TRI are codified in federal regulation at 40 C.F.R. Part 372.

<sup>27</sup> 42 U.S.C. §11044.

<sup>28</sup> 42 U.S.C. §11042.

<sup>29</sup> Information publicly disclosed from the database is available in reports that track releases by calendar year, available on the National Response Center's website at: <http://nrc.uscg.mil>.

<sup>30</sup> For a broader discussion of EPCRA than presented in this memorandum, see CRS Report RL32683, *The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary*, by David M. Bearden.

## Emergency Release Notification

Section 301 of EPCRA established the framework for the formation of State Emergency Response Commissions (SERCs) appointed by the governor of each state, and Local Emergency Planning Committees (LEPCs) within each state appointed by the respective SERC.<sup>31</sup> Section 302 authorizes EPA to establish quantitative thresholds for the reporting of releases of extremely hazardous substances into the environment.<sup>32</sup> Most of these substances also are listed as hazardous substances under CERCLA, but some of these substances are not designated under CERCLA.<sup>33</sup> Section 304 of EPCRA applies to emergency notification of releases into the environment.<sup>34</sup> This provision outlines three situations in which the reporting of releases of extremely hazardous substances or hazardous substances is required. In each situation, the person responsible for the release must notify the SERC and the appropriate LEPC that covers the local jurisdiction where the release occurs.

Two of these situations are contingent upon the release being subject to reporting to the National Response Center under Section 103 of CERCLA. Section 304(a)(1) of EPCRA requires the notification of a release of an extremely hazardous substance to the SERC and the appropriate LEPC, if the release also would require notification as a hazardous substance under Section 103 CERCLA.<sup>35</sup> If a substance is not designated as an extremely hazardous substance, Section 304(a)(3) requires the reporting of a release to the SERC and the appropriate LEPC if the release still would require notification as a hazardous substance under Section 103 of CERCLA.<sup>36</sup>

Section 304(a)(2) of EPCRA covers a third situation in which a substance is separately listed as an extremely hazardous substance, but is not subject to reporting under Section 103 of CERCLA. Section 304(a)(2) requires the reporting of a release of a separately listed extremely hazardous substance in such instances, if the release:

- is not a federally permitted release as defined in Section 101(10) of CERCLA,<sup>37</sup>
- is in an amount in excess of a reportable quantity that EPA designated under Section 302, and
- “occurs in a manner” which would require notification under Section 103 of CERCLA.<sup>38</sup>

With respect to the third criterion, the phrase “occurs in a manner” generally has been implemented over time to mean the nature of the release in terms of how the substance enters the environment. Section 329 of EPCRA defines the term “release” and “environment” similar in scope to CERCLA.<sup>39</sup> The regulations that EPA promulgated to implement Section 304 reflect these statutory definitions.<sup>40</sup>

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<sup>31</sup> 42 U.S.C. §11001.

<sup>32</sup> 42 U.S.C. §11002.

<sup>33</sup> Reportable quantities of extremely hazardous substances subject to emergency release notification under EPCRA are codified in federal regulation at 40 C.F.R. Part 355, Appendix A.

<sup>34</sup> 42 U.S.C. §11004.

<sup>35</sup> 42 U.S.C. §11004(a)(1).

<sup>36</sup> 42 U.S.C. §11004(a)(3).

<sup>37</sup> 42 U.S.C. §9601(10).

<sup>38</sup> 42 U.S.C. §11004(a)(2).

<sup>39</sup> 42 U.S.C. §11049. The definition of the term “release” in EPCRA is nearly identical to that in CERCLA. The definition of the term “environment” in EPCRA is similar to CERCLA, but is more generally worded in its description to encompass “water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.”

<sup>40</sup> 40 C.F.R. §355.61.

## Statutory Exemptions

In any of these scenarios involving extremely hazardous substances or hazardous substances, Section 304(a)(4) exempts a release of either substance from reporting under EPCRA, if the release would result in exposure to persons solely within the site or sites on which a facility is located.<sup>41</sup> Other factors also may determine whether a release is subject to reporting under EPCRA. In each instance of applicability, Section 304 refers to the reporting of a release at facilities where a hazardous chemical is produced, used, or stored. Conversely, if a hazardous chemical is not produced, used, or stored, at a facility, the reporting requirements do not apply.

Section 311(e) generally defines the term “hazardous chemical” to mean any such chemical regulated under the Occupational Safety and Health Act that is subject to federal requirements for hazard communication in the workplace.<sup>42</sup> However, Congress excluded certain uses from this definition in EPCRA, thereby exempting these uses from reporting requirements of the statute. Among those more directly relevant to the agricultural sector, uses of “any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer” are excluded from EPCRA. The statute does not further describe or define the scope of these uses though. Section 329(5) cross-references the definition in Section 311(e) for application of this exclusion across the requirements of the statute. Congress did not include a similarly broad exclusion from CERCLA for releases of hazardous substances used in routine agricultural operations.

## Animal Waste

“Animal waste” per se is not designated in CERCLA as a hazardous substance or in EPCRA as an extremely hazardous substance. Numerous studies have examined the chemical constituency of animal waste, and associated chemical by-products that may be generated from decomposition of the organic matter. For example, a 2003 study by the National Research Council found that air emissions from animal waste commonly include ammonia, hydrogen sulfide, methane, volatile organic compounds, and particulate matter that may consist of various chemicals.<sup>43</sup> Of these chemicals, ammonia and hydrogen sulfide are designated as hazardous substances in regulation under CERCLA<sup>44</sup> and as extremely hazardous substances in regulation under EPCRA.<sup>45</sup> The threshold for the reportable quantity of a release of ammonia or hydrogen sulfide into the environment under either CERCLA or EPCRA is 100 pounds during a 24-hour period into any media (e.g., air, water, or soils).

If such quantity were released into the ambient air, the concentrations generally would decline with increasing distance from the point of release as a result of dispersion.<sup>46</sup> The National Research Council 2003 study noted that potential risks from air releases would depend on exposure that may vary by site and among individuals. The Council found “little scientific evidence” that exposures beyond the boundaries of animal feeding operations have significant effects on human health because the

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<sup>41</sup> 42 U.S.C. §11004(a)(4).

<sup>42</sup> 42 U.S.C. §11021(e). This provision of EPCRA references the Occupational Safety and Health Administration’s definition of a hazardous chemical codified in federal regulation at 29 C.F.R. §1910.1200(c) that means “any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.”

<sup>43</sup> National Academies, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, 2003, 263 pp. available at: <https://www.nap.edu/catalog/10586/air-emissions-from-animal-feeding-operations-current-knowledge-future-needs>.

<sup>44</sup> 40 C.F.R. §302.4.

<sup>45</sup> 40 C.F.R. Part 355, Appendix A.

<sup>46</sup> The rate of dispersion of a chemical released into ambient air would depend on multiple factors (e.g., properties of the chemical, wind, temperature, humidity, and interaction with other chemicals present in the atmosphere).

concentrations “usually” are below threshold levels that would present a health risk.<sup>47</sup> The Council observed that risks of inhalation may be more significant within the boundaries of an animal feeding operation and within enclosed animal housing where concentrations are higher. The Council identified technical challenges in capturing and measuring air releases from animal waste for regulatory purposes, but recommended additional research and the development of best management practices to mitigate air releases. Additional studies have examined these issues since that time.<sup>48</sup>

## EPA 2008 Rule

As a matter of implementation, EPA historically has not applied CERCLA and EPCRA to air releases of hazardous substances from animal waste at farms, with the exception of large concentrated animal feeding operations (CAFOs) subject to EPCRA under a 2008 rule. On December 18, 2008, EPA finalized a rule during the George W. Bush Administration to establish an administrative exemption from reporting requirements of CERCLA for air releases of hazardous substances from animal waste at all farms, and to apply EPCRA only to large CAFOs of certain sizes.<sup>49</sup> The rule specified thresholds for the maximum number of livestock by type that an operation could stable or confine to qualify for the exemption from reporting under EPCRA. The rule exempted air releases from animal waste of livestock that are not stabled or confined. Operations that stable or confine livestock in numbers equal to or greater than the following thresholds were considered sufficiently large to make them subject to emergency notification requirements for air releases in excess of reportable quantities under EPCRA:

- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves (cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs);
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers, if the farm uses a liquid manure handling system;
- 125,000 chickens (other than laying hens), if the farm uses other than liquid manure handling system;
- 82,000 laying hens, if the farm uses other than a liquid manure handling system;
- 30,000 ducks (if the farm uses other than a liquid manure handling system); or
- 5,000 ducks (if the farm uses a liquid manure handling system).<sup>50</sup>

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<sup>47</sup> National Academies, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, 2003, p. 66.

<sup>48</sup> For example, see National Association of Local Boards of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, 2010, prepared under a cooperative agreement with the Centers for Disease Control and Prevention, available at: [https://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf). This study includes a bibliography of numerous other studies as well.

<sup>49</sup> U.S. Environmental Protection Agency, “CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms,” 73 *Federal Register* 76948-76960, December 18, 2008.

<sup>50</sup> 40 C.F.R. §355.31(g).

In the preamble to the final rule, EPA noted a petition submitted in August 2005 by the National Chicken Council, National Turkey Federation, and U.S. Poultry and Egg Association requesting an administrative exemption from CERCLA and EPCRA reporting requirements specifically for ammonia emissions from poultry operations. However, EPA indicated that the final rule was not a direct response to that petition.<sup>51</sup> EPA stated that the exemption from reporting was warranted in its view because a response action would be “impractical” or “unlikely” in most instances, and that the exemption was consistent with the agency’s goal of reducing the “burden” of reporting releases for which response actions most often are not expected.<sup>52</sup> EPA explained that its decision to apply EPCRA to large CAFOs was based on a response to public comments on the 2007 proposed rule by some who expressed a desire for this information because of the potentially greater magnitude of air releases.<sup>53</sup> The proposed rule would have exempted CAFOs of any size from reporting requirements.<sup>54</sup>

The 2008 rule did not exempt air releases from animal waste at farms from liability under Section 107 of CERCLA or otherwise restrict EPA’s authority under Section 104 to take federal response actions if warranted to protect human health and the environment. The 2008 rule also did not exempt air releases of hazardous substances from other potential sources at farms, or releases of hazardous substances from animal waste into other environmental media (e.g., soil, groundwater, or surface water), if such releases were to exceed thresholds for reporting.

However, releases from animal waste into surface waters in compliance with a Clean Water Act discharge permit would be treated as a “federally permitted release” under Section 101(10) of CERCLA.<sup>55</sup> Section 103(a) exempts federally permitted releases from reporting under the statute,<sup>56</sup> and Section 107(j) exempts federally permitted releases from liability under the statute.<sup>57</sup> Federally permitted releases exempt under CERCLA also are exempt from reporting under EPCRA. Exemptions for federally permitted releases are based on the presumption that regulation under another federal law would address potential risks. In current law, there is no similar permitting of air releases of hazardous substances from animal waste upon which to base a federally permitted release exemption.

## Litigation Challenging the EPA 2008 Rule

The Waterkeeper Alliance and other organizations filed a petition for review in court to challenge EPA’s authority to issue the 2008 rule, arguing against EPA’s conclusion that the reporting of hazardous substance releases from animal waste at farms under CERCLA and EPCRA is “unnecessary.”<sup>58</sup> On April 11, 2017, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) granted the petition and vacated the exemptions from reporting in the 2008 rule.<sup>59</sup> The court held that Congress did not authorize EPA to exempt releases of hazardous substances from the statutory reporting requirements under CERCLA and EPCRA.<sup>60</sup> The court concluded that the information gained from this reporting

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<sup>51</sup> U.S. Environmental Protection Agency, “CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms,” 73 *Federal Register* 76951, December 18, 2008.

<sup>52</sup> *Ibid.*, 73 *Federal Register* 76949.

<sup>53</sup> *Ibid.*, 73 *Federal Register* 76950.

<sup>54</sup> U.S. Environmental Protection Agency, “CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste,” 72 *Federal Register* 73700-73708, December 28, 2007.

<sup>55</sup> 42 U.S.C. §9601(10).

<sup>56</sup> 42 U.S.C. §9603(a).

<sup>57</sup> 42 U.S.C. §9607(j).

<sup>58</sup> Petition for Review, *Waterkeeper Alliance v. Env’tl. Prot. Agency*, 853 F.3d 527 (D.C. Cir. Jan. 15, 2009) (No. 09-1017).

<sup>59</sup> *Waterkeeper Alliance v. Env’tl. Prot. Agency*, 853 F.3d 527, 537-38 (D.C. Cir. 2017).

<sup>60</sup> *Id.* at 534-36.

would not have “trivial or no value,” but that the information could potentially provide “some real benefits” to the public and local emergency responders.<sup>61</sup> The court subsequently approved multiple EPA motions to stay (i.e., delay) the issuance of an order to lift the exemptions in the 2008 rule to allow more time to develop procedures for reporting and collecting release data, considering the potentially large number of farms that had not reported previously under the 2008 rule. The court granted the most recent stay on February 1, 2018, extending it until May 1, 2018.<sup>62</sup>

## Trump Administration Guidance

During the Trump Administration, EPA has issued guidance to instruct farms that they should comply with the reporting of air releases under Section 103 of CERCLA through filing annual continuous release reports with the National Response Center once the court order becomes effective after the expiration of the stay.<sup>63</sup> EPA has issued guidelines for farms to estimate the quantity of continuous releases using various existing methodologies, and has announced that the agency is developing additional methodologies to better inform emission estimates. This guidance for continuous release reporting and emission estimates applies to reporting under Section 103 of CERCLA.

EPA also has issued separate guidance outlining the Trump Administration’s interpretation that farms using substances in “routine agricultural operations” are excluded from emergency notification of releases under Section 304 of EPCRA.<sup>64</sup> Based on this interpretation, EPA has announced that farms are not required to report air releases from animal waste to state and local officials, and that the agency intends to conduct a rulemaking on its interpretation of this exemption. The George W. Bush Administration did not render an interpretation of the “routine agricultural operations” exemption in its 2008 rule and instead determined that Section 304 of EPCRA did apply to large CAFOs. The April 2017 D.C. Circuit decision made no reference to this particular exemption in EPCRA.

### S. 2421

As introduced, S. 2421 would amend Section 103(e) of CERCLA to exempt “air emissions from animal waste (including decomposing animal waste) at a farm” from reporting to the National Response Center regardless of the quantity of the release of hazardous substances in air emissions. The bill would define the term “animal waste”:

- to mean “feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish),” and
- to include “animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste.”

S. 2421 would define the term “farm” to mean a site or area (including associated structures) that:

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<sup>61</sup> *Id.* at 535-38.

<sup>62</sup> Per Curiam Order, *Waterkeeper Alliance v. Env’tl. Prot. Agency*, 853 F.3d 527 (D.C. Cir. Feb. 1, 2018) (No. 09-1017).

<sup>63</sup> During the Trump Administration, EPA has issued guidance for farms to report air releases from animal waste once the court order becomes effective. See “CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms” available at: <https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms> (as viewed on March 7, 2018).

<sup>64</sup> EPA, Office of Land and Emergency Management, *Does EPA Interpret EPCRA Section 304 to require farms to report releases from animal waste?*, October 25, 2017, available at: <https://www.epa.gov/epcra/question-and-answer-epcra-reporting-requirements-air-releases-hazardous-substances-animal>.

- is used “for the production of a crop;” or “the raising or selling of animals (including any form of livestock, poultry, or fish);” and
- “under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than \$1,000.”

S. 2421 would not exempt such air emissions from federal response authority under Section 104 if action were warranted to protect human health and the environment, or potential liability under Section 107.

In current law, Section 103(e) of CERCLA exempts the proper application of a federally registered pesticide from reporting. S. 2421 would strike Section 103(e) in its entirety, *reinsert* this existing exemption, and add an exemption for air emissions from animal waste at farms as defined in the bill. S. 2421 would not alter the treatment of pesticides under CERCLA in current law.

S. 2421 would not amend EPCRA. However, exempting releases of hazardous substances in air emissions from animal waste at farms from reporting under Section 103 of CERCLA would have the effect of exempting such releases from reporting to state and local officials under Section 304(a)(1) and Section 304(a)(3) of EPCRA. Reporting is required under both of these provisions contingent upon reporting of hazardous substances required under Section 103 of CERCLA. Exempting a release from reporting under Section 103 of CERCLA thereby would exempt the same release from reporting under these two provisions in Section 304 of EPCRA.

Whether releases of extremely hazardous substances in air emissions from animal waste would remain subject to other provisions of EPCRA would depend on two factors. First, Section 304(a)(2) applies to releases of separately listed extremely hazardous substances that are not subject to reporting as hazardous substances under Section 103 of CERCLA. For example, ammonia and hydrogen sulfide are listed separately as extremely hazardous substances under EPCRA, not only as hazardous substances under CERCLA. An exemption from CERCLA therefore may not necessarily apply to separately listed extremely hazardous substances covered under Section 304(a)(2) of EPCRA. Second, if substances released from animal waste may be considered substances used in routine agricultural operations, such releases may be exempt from reporting under EPCRA altogether, as the Trump Administration has interpreted.

If enacted into law, S. 2421 would amend CERCLA to provide an exemption from the reporting of air releases of hazardous substances emitted by animal waste at farms. In turn, this amendment would have the effect of exempting the same releases of hazardous substances from reporting under EPCRA that is contingent upon reporting required under CERCLA. However, the potential applicability of EPCRA to air releases of separately listed extremely hazardous substances may depend on whether the Trump Administration’s interpretation of the exemption for substances used in routine agricultural operations is challenged. Any potential reporting requirements under state or local laws may continue to apply though, as neither CERCLA nor EPCRA would preempt such requirements.

**MEMORANDUM**

March 13, 2018

**To:** Senate Committee on Environment and Public Works  
Attention: Kusai Merchant

Honorable Cory A. Booker, Ranking Member  
Subcommittee on Superfund, Waste Management, and Regulatory Oversight  
Attention: Adam Zipkin

**From:** David M. Bearden, Specialist in Environmental Policy, [dbearden@crs.loc.gov](mailto:dbearden@crs.loc.gov), 7-2390

**Subject:** **Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421)**

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This memorandum responds to your request for a more detailed discussion of the analysis presented in a CRS memorandum provided on March 7, 2018. CRS prepared this earlier memorandum to respond to your initial request for an analysis of amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the Fair Agricultural Reporting Method Act or “FARM Act” (S. 2421), as introduced on February 13, 2018. As discussed in the March 7<sup>th</sup> CRS memorandum, S. 2421 would exempt air releases of hazardous substances emitted by animal waste at farms from reporting requirements under CERCLA, and would have a bearing on the applicability of reporting requirements under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

This supplemental memorandum elaborates upon the analysis presented in the March 7<sup>th</sup> CRS memorandum to outline circumstances in which the emergency notification requirements in Section 304 of EPCRA would apply under current law, and the bearing of S. 2421 on the applicability of these requirements to air releases emitted by animal waste. The March 7<sup>th</sup> CRS memorandum provides additional background information in support of this analysis, and offers a broader examination of how S. 2421 would define the terms “animal waste” and “farm” for purposes of the bill. I hope that this supplemental memorandum is helpful to address your questions about circumstances in which EPCRA may continue to apply if S. 2421 were enacted. If you need further assistance from CRS in consideration of this legislation or related issues, please do not hesitate to contact me.

## Section 304 of EPCRA

As explained in the March 7<sup>th</sup> CRS memorandum, Section 304 of EPCRA outlines three situations in which the reporting of releases of extremely hazardous substances or hazardous substances into the environment is required.<sup>1</sup> In each situation, the person responsible for the release must notify the State Emergency Response Commission (SERC) and the appropriate Local Emergency Planning Committee

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<sup>1</sup> 42 U.S.C. §11004.

(LEPC) that covers the local jurisdiction where the release occurs. Two of these situations are contingent upon the release being subject to notification under Section 103 of CERCLA for reporting to the National Response Center.<sup>2</sup> The third situation is not contingent upon reporting under CERCLA. The three situations covered in Section 304 of EPCRA are as follows.

- Section 304(a)(1) requires notification of releases of extremely hazardous substances listed under EPCRA, if the release would require notification for hazardous substances under Section 103 of CERCLA.<sup>3</sup>
- Section 304(a)(3) requires notification of releases of other hazardous substances that are not separately listed as extremely hazardous substances under EPCRA, if the release would require notification under Section 103 of CERCLA.<sup>4</sup>
- Section 304(a)(2) requires notification of releases of extremely hazardous substances listed under EPCRA (but that are not subject to notification under CERCLA), if three criteria are met.<sup>5</sup>

In this third situation, releases of extremely hazardous substances listed under EPCRA would require notification under Section 304(a)(2), if the release:

- (A) is not a federally permitted release as defined in Section 101(10) of CERCLA;<sup>6</sup>
- (B) is in an amount in excess of a reportable quantity that the U.S. Environmental Protection Agency (EPA) designated under Section 302 of EPCRA;<sup>7</sup> and
- (C) “occurs in a manner” that would require notification under Section 103 of CERCLA.

## S. 2421

S. 2421 would amend Section 103(e) of CERCLA to exempt “air emissions from animal waste (including decomposing animal waste) at a farm” from reporting to the National Response Center regardless of the quantity of the release of hazardous substances in air emissions. The bill would not amend Section 304 or any other provisions of EPCRA. Although S. 2421 would not amend this statute, the bill would have the effect of eliminating reporting requirements under Section 304(a)(1) and Section 304(a)(3) of EPCRA for air releases of hazardous substances emitted by animal waste at farms, in so far as the terms “animal waste” and “farm” are defined in the bill.

Both Section 304(a)(1) and Section 304(a)(3) of EPCRA are contingent upon reporting required under Section 103 of CERCLA. Exempting a release from reporting under Section 103 of CERCLA thereby would have the effect of exempting the same release from reporting under Section 304(a)(1) and Section 304(a)(3) of EPCRA. The April 2017 court decision referenced in the March 7<sup>th</sup> CRS memorandum (*Waterkeeper Alliance, et al., v. EPA*) described this statutory relationship in terms of “a release that triggers the CERCLA duty also automatically trips the EPCRA reporting requirements in subsections (1) and (3)” of Section 304.<sup>8</sup>

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<sup>2</sup> 42 U.S.C. §9603.

<sup>3</sup> 42 U.S.C. §11004(a)(1).

<sup>4</sup> 42 U.S.C. §11004(a)(3).

<sup>5</sup> 42 U.S.C. §11004(a)(2).

<sup>6</sup> 42 U.S.C. §9601(10).

<sup>7</sup> 42 U.S.C. §11002.

<sup>8</sup> *Waterkeeper Alliance v. Env'tl. Prot. Agency*, 853 F.3d 527, 537-38 (D.C. Cir. 2017).

S. 2421 would not have a bearing on the reporting of releases of extremely hazardous substances under Section 304(a)(2) of EPCRA though, as this provision is not contingent upon reporting required under Section 103 of CERCLA. If the exemption from CERCLA in S. 2421 were enacted, the applicability of Section 304(a)(2) therefore would remain the same as in current law. An air release of an extremely hazardous substance emitted by animal waste at a farm would be subject to Section 304(a)(2) if all three statutory criteria for reporting were met.

An air release of an extremely hazardous substance emitted by animal waste would satisfy the first criterion in Section 304(a)(2)(A) if it were not a federally permitted release. Section 101(10) of CERCLA defines the term “federally permitted release” to mean releases regulated under other specific laws. Section 101(10)(H) authorizes a federally permitted release for “any emission into the air” subject to a permit, regulation, or State Implementation Plan, pursuant to the Clean Air Act.<sup>9</sup> CRS is not aware of the use of these authorities to regulate air releases emitted by animal waste upon which a federally permitted release presently could be based. If such air releases were permitted under the Clean Air Act, the releases would be exempt from reporting and liability under CERCLA as a federally permitted release, and thereby exempt from reporting to state and local officials under Section 304 of EPCRA.

An air release of an extremely hazardous substance emitted by animal waste would satisfy the second criterion in Section 304(a)(2)(B) if the quantity of the release were to exceed the quantitative threshold for reporting that EPA designated in federal regulation pursuant to Section 302 of EPCRA.<sup>10</sup> For example, EPA separately listed ammonia and hydrogen sulfide (substances commonly emitted by animal waste) as extremely hazardous substances, and designated 100 pounds released during a 24-hour period as the threshold for reporting under Section 302 of EPCRA. Air releases of ammonia or hydrogen sulfide emitted by animal waste in excess of 100 pounds during a 24-hour period therefore would satisfy this second criterion in Section 304(a)(2)(B).

An air release of an extremely hazardous substance emitted by animal waste (e.g., ammonia or hydrogen sulfide) would satisfy the third criterion of Section 304(a)(2)(C) of EPCRA, if the release were to occur in the same *manner* as a “release” that would require reporting under CERCLA. As outlined in the March 7<sup>th</sup> CRS memorandum, the term “release” in CERCLA is relatively broad with respect to the manner in which a hazardous substance may enter the environment, including spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.<sup>11</sup> The term “environment” is defined in Section 101(8) of CERCLA to include surface water, groundwater, a drinking water supply, surface soils, sub-surface soils, or ambient air.<sup>12</sup> Section 329 of EPCRA defines the terms “release” and “environment” similar in scope to CERCLA.<sup>13</sup> The federal regulations promulgated under Section 304 of EPCRA reflect these statutory definitions.<sup>14</sup> Both CERCLA and EPCRA generally treat emissions into the ambient air as releases into the environment.

In implementation, EPA has treated the phrase “occurs in a manner” in EPCRA Section 304(a)(2)(C) to mean the nature of the release in terms of how a substance enters the environment, not that reporting *is* required under Section 103 of CERCLA. Otherwise, Section 304(a)(2) would be rendered meaningless in

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<sup>9</sup> 42 U.S.C. §9601(10)(H).

<sup>10</sup> Reportable quantities for extremely hazardous substances subject to emergency release notification under Section 304 of EPCRA are codified in federal regulation at 40 C.F.R. Part 355, Appendix A.

<sup>11</sup> 42 U.S.C. §9601(22).

<sup>12</sup> 42 U.S.C. §9601(8).

<sup>13</sup> 42 U.S.C. §11049. The definition of the term “release” in EPCRA is nearly identical to that in CERCLA. The definition of the term “environment” in EPCRA is similar to CERCLA, but is more generally worded in its description to encompass “water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.”

<sup>14</sup> 40 C.F.R. §355.61.

covering releases of extremely hazardous substances that do not require reporting as hazardous substances under CERCLA, while requiring reporting under CERCLA at the same time.

The March 7<sup>th</sup> CRS memorandum observed that the exemption from reporting under Section 103 of CERCLA in S. 2421 may not necessarily exempt releases of separately listed extremely hazardous substances from reporting under Section 304(a)(2) of EPCRA. The applicability of this provision to a particular release would depend on whether all three statutory criteria outlined above are met. Regardless of these criteria though, Section 304 in its entirety may not apply to air releases from animal waste at farms if the Trump Administration's interpretation of the exemption for substances used in routine agricultural operations is not challenged.<sup>15</sup> S. 2421 would not have a bearing on this exemption.

Also as noted in the March 7<sup>th</sup> CRS memorandum, potential reporting requirements under state or local laws may continue to apply regardless of an exemption in federal law, as neither CERCLA nor EPCRA would preempt such state or local requirements.

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<sup>15</sup> The March 7<sup>th</sup> CRS memorandum provides further discussion of the Trump Administration's interpretation of the exemption in Section 311(e) of EPCRA for substances used in routine agricultural operations. This interpretation is outlined in the following agency guidance: EPA, Office of Land and Emergency Management, *Does EPA Interpret EPCRA Section 304 to require farms to report releases from animal waste?*, October 25, 2017, available at: <https://www.epa.gov/epcra/question-and-answer-epcra-reporting-requirements-air-releases-hazardous-substances-animal>.

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## **Appendix E**

## How does the Fair Agricultural Reporting Method (FARM) Act impact reporting of air emissions from animal waste under CERCLA Section 103 and EPCRA Section 304?

Farms do not need to report air emissions from animal waste at farms under either CERCLA or EPCRA.

On March 23, 2018, Congress signed into law the Consolidated Appropriations Act, 2018 (“Omnibus Bill”). Title XI of the Omnibus Bill, called the “Fair Agricultural Reporting Method Act” or “FARM Act,” expressly exempts “air emissions from animal waste (including decomposing animal waste) at a farm” from reporting under CERCLA section 103.

In line with the Agency’s prior statements interpreting EPCRA section 304(a)(2), air emissions from animal waste at farms do not need to be reported under EPCRA because these types of releases are now exempt from CERCLA. Under EPCRA section 304(a)(2), releases that are not subject to reporting under CERCLA section 103 need only be reported if the release:

- (a) is not federally permitted as defined in CERCLA,
- (b) exceeds the reportable quantity, and
- (c) occurs in a manner which would require notification under CERCLA section 103.

The release must meet all three criteria in order to be reported under EPCRA section 304(a)(2). As an initial matter, air emissions from animal waste at farms are generally not federally permitted and so would meet (a). For such emissions that exceed a reportable quantity (and thus meet (b)), the question then becomes whether the release “occurs in a manner which would require notification” under CERCLA. The FARM Act expressly excludes certain types of releases—air emissions from animal waste—from CERCLA reporting. Air emissions from animal waste thus do not “occur in a manner” which would require notification under CERCLA, and thus do not meet (c); therefore, these releases fall out of the reporting requirements of EPCRA section 304.

It is important to note that the FARM Act’s reporting exemption is tied to the nature or manner of these releases rather than to a specific substance. The FARM Act does not exempt substances typically associated with animal waste (such as ammonia and hydrogen sulfide) from reporting altogether; rather, it exempts from reporting only the release of these substances from animal waste *into the air*. Because air emissions from animal waste do not “occur in a manner” which would require notification under CERCLA, they do not meet the requirement under (c). As a result, the three requirements to trigger reporting under EPCRA section 304(a)(2) are not met and these releases do not need to be reported.

EPA’s interpretation based on the recent FARM Act is in line with prior statements the Agency has made to promote consistency between CERCLA and EPCRA release reporting. For example, in the 1987 final rule promulgating the EPCRA regulations, EPA cited to EPCRA section 304(a)(2) to adopt the reporting of continuous releases and exempt the application of registered pesticide products from EPCRA release reporting, noting: “Because such releases are not reportable under [CERCLA], they are also exempt from release reporting under [EPCRA]. . . . These releases, which include emissions from engine exhaust, certain nuclear material releases, and the normal application of fertilizer, are also excluded from release notification under [EPCRA].” *See 52 Federal Register 13384-13385 (April 22, 1987)*. Similarly, in a 1989 technical amendment to its EPCRA regulations, EPA excluded four categories of releases of radionuclides from EPCRA reporting which had been excluded from CERCLA reporting, stating: “Because of today’s exemptions of certain radionuclide releases from CERCLA notification requirements . . . such exempted releases also are exempt from the reporting requirements of section 304 of [EPCRA].” *See 54 Federal Register 22543 (May 24, 1989)*.

EPA intends to conduct a rulemaking to address the impact of the FARM Act on the reporting of air emissions from animal waste at farms under EPCRA.

## How does the FARM Act impact reporting of other types of releases (i.e., those that are not air emissions from animal waste)?

The FARM Act applies only to the reporting of air emissions from animal waste. The Act does not exempt any other type of release at a farm from reporting. In other words, the FARM Act does not apply to releases of substances from animal waste into non-air environmental media, nor to releases into air from sources other than animal waste at farms. For example, a release from animal waste into water (e.g., a lagoon breach) or a release from an anhydrous ammonia storage tank into the air would trigger reporting requirements under CERCLA if they exceed reportable quantities.

## **Appendix F**

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

May 25, 2018

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington DC 20004

Dear Administrator Pruitt:

We write to you today regarding guidance recently published by the Environmental Protection Agency with respect to air emissions reporting requirements under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA). We believe the guidance you have issued is legally flawed and is based on an erroneous interpretation of the law with implications beyond reporting of releases from animal waste. We ask you to rescind this guidance immediately.

The FARM Act, which was enacted in March of this year as part of the Consolidated Appropriations Act, 2018 (P.L. 115-141), exempted farms from reporting requirements for releases of hazardous substances under Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that arise from animal waste and that are released into the air. On April 27, 2018 EPA issued guidance regarding farms' reporting obligations under CERCLA and EPCRA.<sup>1</sup> In that guidance, EPA states, "[A]ir emissions from animal waste at farms do not need to be reported under EPCRA because these types of releases are now exempt from CERCLA." The guidance goes on to state: "Because air emissions from animal waste do not 'occur in a manner' which would require notification under CERCLA... the three requirements to trigger reporting under EPCRA section 304(a)(2) are not met and these releases do not need to be reported." This interpretation has no legal basis in statute, is starkly contradicted by the FARM Act's legislative history, and is inconsistent with EPA's decades-long implementation of EPCRA.

The text of the FARM Act in Title XI of Division S of Consolidated Appropriations Act, 2018 is identical to the text of S. 2421, which was introduced on February 13, 2018, and which was referred to the Senate Committee on Environment and Public Works (the Committee). As part of the Committee's consideration of the FARM Act, the Committee asked the Congressional Research Service to analyze the potential effects of these amendments to CERCLA. In response, the Congressional Research Service produced two memoranda which were made part of both

<sup>1</sup> [https://www.epa.gov/sites/production/files/2018-04/documents/cercla\\_epcra\\_q\\_and\\_a\\_farm\\_act\\_4-28-18.pdf](https://www.epa.gov/sites/production/files/2018-04/documents/cercla_epcra_q_and_a_farm_act_4-28-18.pdf)

hearing records. CRS notes: “In implementation, EPA has treated the phrase “occurs in a manner” in EPCRA Section 304(a)(2)(C) to mean the nature of the release in terms of how a substance enters the environment, not that reporting *is* required under Section 103 of CERCLA. Otherwise, Section 304(a)(2) would be rendered meaningless in covering releases of extremely hazardous substances that do not require reporting as hazardous substances under CERCLA.”<sup>2</sup> (emphasis in original). Indeed, EPA has designated hundreds of substances as “extremely hazardous substances” under EPCRA but which are not designated as “hazardous substances” under CERCLA.<sup>3</sup> Releases of such substances are not subject to the reporting requirements under CERCLA Section 103. If EPA’s April 27 guidance were valid, such substances would never be subject to reporting under EPCRA. Obviously, this is inconsistent with longstanding EPA policy with respect to such substances.

EPA’s April 27 guidance is also inconsistent with clear Congressional intent with respect to the FARM Act and its unambiguous legislative history. The Committee held two legislative hearings on this language, first on March 8, 2018,<sup>4</sup> and then on March 14, 2018.<sup>5</sup> At both hearings, witnesses testified in response to questions from members that enacting the FARM Act would have no impact on reporting requirements under EPCRA, and the bill sponsors stated repeatedly that the language under consideration makes no changes to EPCRA reporting for farms.<sup>6</sup> None of the hearing statements of the Committee members, witnesses, or materials entered into either the Committee record or the Congressional Record at the time of the FARM Act’s passage support EPA’s new interpretation of EPCRA Section 304. To the contrary, EPA’s legal analysis is at odds with the legislative record.

EPA is required to faithfully execute the laws as passed by Congress. It is clear that your April 27 guidance changes EPCRA reporting policies in ways that exceed EPA’s statutory authority and countermands Congressional intent. We ask again that you rescind it immediately.

Sincerely,

  
Thomas R. Carper  
Ranking Member

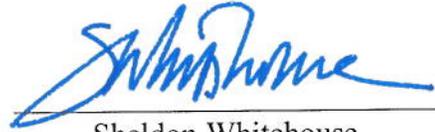
  
Benjamin L. Cardin  
United States Senator

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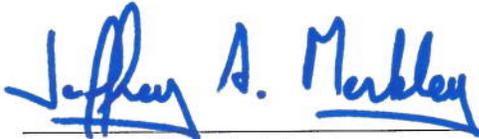
<sup>2</sup> Congressional Research Service memorandum to Senate Committee on Environment and Public Works, “Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421),” March 13, 2018, pp. 3-4.  
<sup>3</sup> [https://www.epa.gov/sites/production/files/2015-03/documents/list\\_of\\_lists.pdf](https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf)  
<sup>4</sup> <https://www.epw.senate.gov/public/index.cfm/hearings?ID=E0663FDD-1020-4DA3-AD29-960C3E31652D>  
<sup>5</sup> <https://www.epw.senate.gov/public/index.cfm/hearings?ID=270F9E69-740C-46D8-9D03-7CFAB6581FEE>  
<sup>6</sup> See “Legislative Hearing on S. 2421, the Fair Agricultural Reporting Method Act,” transcript, p. 10; p. 17-18; p. 65; and “Legislative hearing on “S. \_\_\_, the Agriculture Creates Real Employment (ACRE) Act,”” transcript, pp. 49-50.



Bernard Sanders  
United States Senator



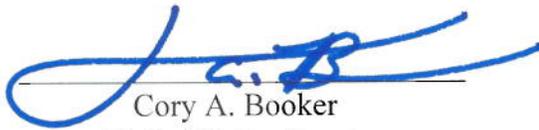
Sheldon Whitehouse  
United States Senator



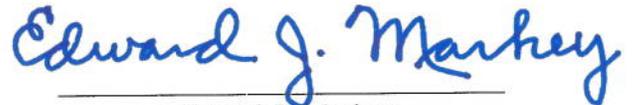
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United States Senator



Kirsten Gillibrand  
United States Senator



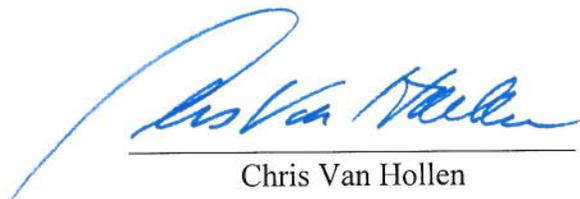
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Tammy Duckworth  
United States Senator



Chris Van Hollen  
United States Senator