Statement of the American Farm Bureau Federation

STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
REGARDING CONFINED ANIMAL FEEDING OPERATIONS

September 6, 2007

Presented by Chris Chinn
Chair, Young Farmers & Ranchers Committee

600 Maryland Ave. SW | Suite 1000W | Washington, DC 20024 | p. 202.406.3600 | f. 202.406.3606 | www.fb.org

The American Farm Bureau Federation (AFBF) respectfully submits our views to the committee as it reviews the impact of Confined Animal Feeding Operations (CAFOs). As the nation's largest general farm organization and the representative of millions of farmers and ranchers in every state in the nation, AFBF has a vital interest in how animal care issues affecting our members are perceived, examined and decided.

OVERVIEW

Many people outside of agriculture and the livestock industry have concerns about the environmental and health impacts of livestock operations. Some have gone so far as to demonize livestock operations, calling them factory farms and industrial livestock production. In fact, many of these livestock farms continue to be family owned and operated. Contrary to anti-livestock rhetoric, this nation's livestock industry is proficient at producing safe and abundant food while protecting our natural resources. The industry is highly regulated and farmers often surpass requirements when fulfilling their roles as caretakers of the environment and good citizens of their communities.

It is often overlooked, but the vast majority of farmers who operate CAFOs are involved in a family-based business, are highly educated college graduates, community leaders, and experts in science and technology. Most are trained in humane animal husbandry and environmental sciences and spend great amounts of time, money and other resources ensuring that their operations do not harm the environment. More good news is that the efficiency of livestock production in the United States ensures Americans can purchase beef, pork, eggs, turkey, chicken and milk that is safe, nutritious and affordable. Providing meat to the United States and international markets also supports hundreds of thousands of jobs on farms, in rural communities, and in value-added food chain facilities nationwide.

Livestock production helps drive our bedrock agricultural economy in the United States with receipts annually on par with crop receipts. This means that the total value of cattle, hog, sheep, broiler, turkey, egg, milk, butter, cheese, honey, and farm-raised fish sales is roughly equivalent to the dollars generated from selling wheat, corn, rice, hay,

cotton, soybeans, peanuts, tobacco, fruits, nuts, vegetables, and greenhouse/nursery crops. Typically, cattle and sheep production has been located in areas where crop production is not economically practical, thus making efficient use of land resources that would otherwise lack an economic use. Hog, dairy, poultry, and egg production has historically been co-located with crop production to make the most efficient use of crop production and crop aftermath. This co-location continues today, with livestock operations locating near biofuels production and making highly efficient use of the by-products of ethanol production.

Livestock farms and ranches employ hundreds of thousands of workers, providing rural residents with jobs and benefits that would otherwise not exist. In the hog business alone, Iowa State University researchers estimate more than 34,000 full-time jobs are directly attributable to farm-level production, with more than 110,000 additional jobs in the processing/packing sector. In the cattle industry, the American Farm Bureau Federation estimates more than 23,000 employees work in feedyards alone. America's livestock producers work hard, not only to feed their own families, but the families of thousands of others whose livelihoods depend on producing and processing livestock and meat products. By virtue of feed they purchase for their livestock, these farmers also are supporting farmers involved in crop production.

America's livestock producers face generally low profit margins. They must watch expenses closely, so economics as well as science ensures they make judicious decisions when it comes to the use of livestock inputs. They consider carefully the impact of their activities on not only the quality of the end product, but on the quality of life of the livestock under their care.

America's livestock producers are the most efficient producers in the world, providing safe and wholesome meat, poultry, egg, and milk products despite regulatory burdens that far exceed those faced by their competitors in Asia and South America. Here in the United States, feed and other inputs cost more, labor costs more and is less available, yet despite this, our nation's innovative farmers and ranchers still produce

among the best and safest all-around product in the world. That being said, this cannot continue indefinitely. Many operations are near the tipping point where needless regulation that accomplishes no real environmental or food safety goal will drive them out of business. Additional regulation means dollars out of the pockets of farmers and ranchers, pure and simple. While other facets of our economy simply pass along costs such as these, farmers – independent livestock producers in particular – do not have this option. The vast majority of farmers are price-takers, rather than price-setters, in our economic system. While America's livestock producers recognize the need for adequate regulations to ensure environmental quality, food safety and other science-based endeavors, they increasingly find their livelihoods threatened by government regulations that cross the threshold of common sense in attempts to address any number of perceived societal ills.

The population of the United States passed 300 million people in 2006. Many demographers predict that number will exceed 400 million by 2040. A sober question that must be asked is "how will we feed one-third more people in just 35 more years?" A short and equally sober answer would be "not from domestic food production if irrational regulations shift production of meat, milk, poultry, and eggs outside the United States."

If Americans are concerned about the environmental impacts of agricultural production and the safety of their foods and beverages, the nation would be well-served to preserve food production here at home. Our nation has the best environmental and food safety protocols in the world. Recent concerns about the safety of imported foods point out the simple fact that if we make it so hard and cost-prohibitive for America's farmers and ranchers to stay in business, our nation will be forced to import a larger portion of our food. We will import most of that food from nations which have significantly fewer environmental, food safety and labor safeguards. Simply put, in a misguided effort to stamp out problems here at home that are either marginal or do not exist, we will create larger problems that are arguably more serious.

CLEAN WATER ACT

CAFOs are regulated by the Clean Water Act. They must either have zero discharges, or obtain a National Pollutant Discharge Elimination System (NPDES) permit. Contrary to the assertions of some, it would be incorrect to presume that all or even most CAFOs experience actual discharges to navigable waters. The evidence clearly demonstrates that CAFOs as a class cannot be presumed to be discharging, that the vast majority of CAFOs do not discharge, and that the probability is extremely high that a majority of CAFOs will never have a discharge in the future.

Livestock producers whose operations are classified as CAFOs, however, are highly regulated with some of the most stringent fines and enforcement actions available under the Clean Water Act. As with any regulated group, there are events and actors that cause a catastrophic failure of the regulatory system, and they must always be dealt with swiftly and in full accordance with the law. Spills and discharges can occur, but in spite of the rhetoric of anti-livestock groups, they are not the norm and do not represent the practices of the overwhelming majority of livestock producers.

In particular, we note that any animal feeding operation (pork, poultry, beef, dairy or horse) of almost any size faces potential enforcement and severe penalties for even a single discharge from the operation to waters of the United States. This was not the case (and was certainly not perceived to be the case) prior to EPA's 2003 CAFO rule. Perhaps even more important is that the 2003 rule extended CWA protections to the application of manure to CAFO lands. Under this change, the application of manure to these lands without appropriate and documented agronomic and conservation best management practices would make any resulting storm water runoff of pollutants to waters of the United States a CWA "discharge" potentially subject to substantial penalties.

These changes are monumental shifts in the federal policies and regulations that govern animal feeding operations. They have created substantial and effective incentives for CAFOs to prevent any discharge from CAFO production areas and to use sound and effective manure application practices in land application areas. They represent

substantial improvements in water quality protection. Moreover, these benefits will be realized even for CAFOs that do not need a federal NPDES permit. This is a sound policy outcome because certain aspects of the Second Circuit Court of Appeals *Waterkeeper* ruling will make the permitting process for CAFOs that do seek permit coverage more bureaucratic, more cumbersome, and less adaptable to changing operational circumstances.

NUTRIENT MANAGEMENT PLANS

EPA's CAFO rule will require every permit to include a nutrient management plan. These plans contain management practices and procedures necessary to implement applicable effluent limitations and standards. NMPs will:

- Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- Ensure proper management of mortalities (*i.e.*, dead animals) . . .;
- Ensure that clean water is diverted, as appropriate, from the production area;
- Prevent direct contact of confined animals with waters of the United States;
- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, [or] process wastewater . . .;
- Identify appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

- Identify specific records that will be maintained to document the implementation and management of the minimum elements.

These provisions require (1) minimization of phosphorus and nitrogen transport from the field to surface waters through land application rates; (2) annual testing of manure for nitrogen and phosphorus content and five-year testing of soil for phosphorus content; (3) periodic inspection of land application equipment; and (4) land application setbacks from waters or vegetated buffers.

INNOVATION

Beyond design and engineering of adequate structures to perform waste management, livestock producers today are employing new methods to reduce nutrients in a CAFO's internal waste stream. Modifying animal diets to reduce nutrient excretion and improvements in biological, physical, and chemical treatment processes for manure and wastewaters can reduce the acres of land needed to utilize manure nutrients. Furthermore, byproduct recovery processes are being developed that can transform waste into energy and other value-added products to be marketed off the farm. Additional management practices include costly and burdensome requirements like the daily inspections of water lines, weekly inspections of storm water and runoff diversion devices, and manure, litter or process wastewater impoundments, and maintenance of records documenting these daily and weekly inspections.

TWO-TIERED ASSURANCE

Existing data have established the fact that the vast majority of CAFOs do not discharge and should not be presumed to discharge.

The major livestock, poultry and egg producing states have state regulatory programs that involve permitting requirements. Under these programs, many states keep records of manure releases or discharges from livestock operations. Some also have strict requirements that CAFOs report not only "discharges" to the waters of the state or U.S.,

but also other types of permit violations, as well as manure spills, releases, or other incidents regardless of whether they involve waters of the U.S. Some of these states actively accept and act on public complaints about incidents, releases, or violations and they record the complaints and the actions taken in response. Some of these states require each regulated CAFO to have a periodic visit from a state regulator/inspector to check compliance.

The scope, extent and consistency of these publicly available release or discharge records have grown extensively since the late 1990s. While there are differences in the information collected and reported; there is a sufficient quantity and quality of information available to indicate just how rare CAFO discharges to waters of the U.S. really are. Professor Terence Centner of the University of Georgia argues:

> "To assume that data from ten years ago reasonably describes the current water quality conditions requires that the locations and practices of AFOs have not undergone any significant changes. It also assumes that if any changes have occurred due to the expansion or demise of operations, they have not markedly altered the pollution reported in the early 1990s. Furthermore, reliance on this data assumes polluters of the 1990s are engaged in the same activities today and that they have not implemented new pollution-prevention practices. Given the available data on current AFO practices, these assumptions are simply not realistic" (4).[1]

PROTECTING AIR QUALITY

The vast majority of farmers and ranchers live on or near their livestock operations. This means they and their families breathe the same air as their neighbors. Most livestock farms are proactively instituting practices to reduce air quality concerns for the welfare or their workers, neighbors, animals, and their own families. Most operations are now using natural barriers such as tree screens to help mitigate air quality issues. These screens help to direct air flow from our barns and lagoons away from other rural residences. Modern facilities are now being built with computer controlled

[1] See Centner (126-7) for a fuller explanation of recent changes in the AFO industry.

ventilation systems to ensure healthy indoor air. Although these common management practices help reduce emissions of odors, air particles, and gases, such as ammonia, there is much more that we do not understand about animal facilities and air emissions. A 2003 study conducted by the National Research Council of the National Academy of Sciences[2] and commissioned by the U.S. Environmental Protection Agency determined that there is insufficient data to fully understand the environmental and health impacts of large animal operations. In response to the NAS study, U.S. EPA is partnering with agricultural operations and land grant universities to measure air emissions from various types of livestock facilities. The aims of the National Air Emissions Monitoring[3] study are to collect accurate data and develop procedures to better estimate emissions from livestock facilities. It is important to note that over 2,500 livestock farmers are helping to share the cost of this study though voluntary participation. The USDA Air Quality Task Force[4] has brought more attention to agricultural air quality research needs; however, funding and support has fallen short. Scientific studies currently available have only scratched the surface, and the current patchwork of air regulations does not make sense for agriculture.

While the Clean Air Act sets national standards for criteria pollutants – such as nitrous oxides and fine and coarse particulate matter (PM), each state is charged with developing its own implementation plan to meet these standards in areas that have been given a non-attainment designation by U.S. EPA. EPA often offers guidance to states to reduce emissions, but this does not insure uniform treatment of agricultural operations across all states. As national air quality standards continue to be tightened, states with large agricultural production will be more apt to regulate agricultural sources in order to meet the federal emissions mandates. Because air quality reviews are conducted every five years, it is difficult to deal with regulations that are constantly changing. In addition to federal standards, individual states often impose additional air quality regulations and

---

[2] National Research Council. *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs.* 2003. Washington, DC. National Academies Press.

[3] http://cobweb.ecn.purdue.edu/~odor/NAEMS/

[4] http://www.airquality.nrcs.usda.gov/AAQTF/

permitting requirements. In Missouri, state regulations set limits on odor emissions and require odor control plans separate of any federal standards. Missouri also has optional programs to prevent pollution from agricultural feeding operations. This fragmented approach to air quality creates an uncertain environment for producers.

THE OVERKILL OF CERCLA

In addition to all the federal and state laws that already regulate agriculture, livestock and poultry producers, and anyone else who uses or transports animal manure have yet another looming concern. Recent lawsuits from activists and local and state municipalities seek to expand Superfund liability to animal manure. Collectively, the litigation argues that manure should be considered a hazardous substance – just like radioactive and toxic waste - under the Superfund laws.

The Superfund laws - the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA)—were crafted to address toxic or abandoned waste situations such as the notorious Three Mile Island and Love Canal sites. Animal manure has not been regulated under these laws, nor do we think that the congressional record indicates that Congress ever intended for a natural substance like manure to be regulated under such a strict liability scheme.

Compounds are typically regulated under Superfund without regard to facility size. Further, the threshold amounts of compound triggering clean-up requirements are from a business perspective, very small. Superfund was designed to mandate cleanup of compounds that are very harmful even in small amounts – manure is a beneficial and natural product that does not fit that description. Proper production use, storage and disposal of manure is certainly *not* harmful to human health or the environment. Numerous federal and state laws are in place to regulate farms when and where manure is found in areas and quantities that could pose an environmental or health risk if handled improperly. If the courts do eventually classify manure as a hazardous substance under

Superfund, then the liability and consequences to farmers and ranchers will negatively alter the viability and structure of American livestock and poultry production.

Most farms with animals could be exposed to severe liabilities and penalties as a result of being brought under the Superfund laws. Farmers may lose the option of using manure and be forced to rely on commercial fertilizer at three or more times its cost. And, ironically, manure and commercial fertilizer pose similar risks to the environment from over-application, runoff and air emissions. Congress did exclude the normal application of "commercial fertilizers" from Superfund liability, so it seems only reasonable that land application of manure as fertilizer should be afforded the same status.

Superfund already has a legacy of bankrupting small businesses caught in its path. If manure is determined to be a hazardous substance, the cost of technical monitoring and compliance will drastically affect small- and medium-sized farmers the most, while large producers with far greater financial resources would be better able to absorb the compliance and cleanup costs.

The risk of potential liability under the Superfund laws has compelled companies in other industries to relocate or significantly shift their facilities out of the U.S. American animal production is integrated, and future relocation decisions could result in the loss of animal-production contracts for farmers, leaving thousands of folks in financial ruin with empty barns.

The organic foods industry would be affected by any decision to classify as hazardous the use of manure as fertilizer. It is unclear *how* farmers who use organic methods would be allowed to continue applying manure to their crops, just as it is uncertain whether any effective, alternative fertilizer would be certified for use under organic standards.

Farmers and ranchers support research into new uses for manure. Using manure as a fuel source to generate energy shows great promise and federal, state and private investment is being made into research. Moreover, hazardous substances simply are not

used for energy generation. Which is precisely why petroleum based fuels are exempted from Superfund liability. Superfund liability would stifle innovation just as the promise of developing renewable energy from manure is getting under way. If manure is classified as hazardous waste under Superfund, using manure to generate energy—through methane digesters, for instance—could result in entrepreneurs and scientists being held liable for cleanup costs under CERCLA which would preclude the use of manure as a potential energy source.

CONCLUSION

Farmers and ranchers understand their roles in improving and maintaining the health and safety of the nations' environmental resources. Farmers are sensitive to the environment because they own and manage two-thirds of the nation's land. They are doing their part to promote the principles of environmental stewardship by being good caretakers of the nation's soil, air and water resources. But the cost of this stewardship is not cheap. Meeting the demand for food, feed and fuel as well as society's demands for improved environment quality requires farmers and ranchers to balance, and often individually bear, the cost of achieving many competing goals and objectives.

Agriculture's impacts on the environment are closely intertwined with countless human activities that yield a higher quality of life for all Americans. Our ability to increase agricultural productivity – with the use of modern crop production tools like fertilizers – has enabled our nation's farmers and ranchers to increase the production of food, feed and fuel without increasing the acreage of cropland. Our productive capacity is unprecedented in the world's history and allows our farmers and ranchers to meet the demands of our nation's growing population as well as growing world populations and markets abroad. On top of this unprecedented productivity, there is little doubt that farmers and ranchers have made great strides in improving our environment over the last three decades. By nearly every measure, our environment and natural resources are in better condition than any other time in recent history.

Lastly, we ask members to seek a balanced policy that will avoid business as usual, and steers way from classic command and control approaches. Agriculture is a delicate and interdependent economic activity and the originating link in the nations' food chain. Livestock production in the United States must survive and profit. It is essential to the health and livelihoods of many related aspects of agriculture, such as feed grain production, and many support sectors of our rural economies. If animal agriculture loses its economic sustainability due to overregulation, American consumers would be left to depend on foreign food imports, likely grown with less regard for food safety.