

Executive Summary

Concerns about handling and disposing of animal manure have divided many rural communities in recent years. As a result, local and state governments have become more involved, with some implementing policies to restrict livestock production. While a string of federal regulations are in place already, federal courts could classify animal manure as hazardous waste, thus subjecting the country's farms and ranches to the strictest environmental-protection laws.

Issue Background

Animal manure has been used as fertilizer by many cultures all over the world for centuries. Most farmers and ranchers today believe animal manure from their livestock operations is natural and, obviously, unavoidable.

While farmers have applied manure to their fields and pastures for years, many modern-day gardeners and other individuals who live in more urban areas also like to add manure to the soil to boost their plantings. More recently, manure was found to have additional uses, including—most significantly—as a source of renewable energy.

Manure is produced, stored and put to productive use on millions of farms and ranches across the country, but critics of the practice have emerged. Not surprisingly, manure generated by animals housed in climate-controlled facilities on large farms tends to generate the most criticism from individuals who generally cite foul-smelling air and water pollution as their main concerns.

Containment of animal manure and use of nutrient management plans are common in today's American agriculture. Farmers and ranchers routinely comply with a range of existing federal and state environmental laws, regulations

and permit processes. They also work with the private sector, universities and government agencies to develop new and emerging technologies for manure management.

Regardless, a few municipal and state officials have responded to the critics by pushing to classify manure as a hazardous substance under the so-called Superfund laws, which are this country's toughest environmental laws.

However, Superfund laws—the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and

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AFBF Policy

AFBF Policy 111, Environmental Protection and Regulations (excerpted):

“We support amending the Superfund Amendment and Reauthorization Act (SARA), Comprehensive Environmental Recovery, Compensation and Liability Act (CERCLA), and Emergency Plan-

ning and Community Right-to-Know Act (EPCRA) to exclude agricultural operations. The requirements of these laws are too stringent and inappropriate for farming operations.”

The entire policy book is posted at <http://silo.fb.org/Policy/AFBFPolicyBook.htm>.

What's Happening Now?

Congress has the ability to clarify that livestock manure should not be considered a “hazardous substance” or “pollutant or contaminant” under the Comprehensive Environmental Recovery, Compensation and Liability Act or be subject to the reporting requirements

of the Emergency Planning and Community Right-to-Know Act.

Bipartisan legislation in the 110th Congress (H.R. 1398/S. 807) has significant support in both the House and Senate. As of mid-July 2007, there are 126 co-sponsors in the House and 26 in the Senate.

Key Legal Actions Involving Animal Waste

Some local authorities in recent years have filed lawsuits claiming animal manure from farms should fall under the toxic waste cleanup and liability provisions of the Superfund laws. Here's a look at these activities:

- The city of Tulsa, Okla., in 2001 sued poultry companies that had farmer-growers in the Lake Eucha watershed east of the city. A federal district court ruled that phosphate in manure is a hazardous substance under a Superfund law, the Comprehensive Environmental Response, Compensation and Liability Act. The ruling later was vacated under a settlement agreement.

- The city of Waco, Texas, in 2004 sued 14 individual dairies in the Lake Waco watershed west of the city, alleging the phosphorus in manure is a hazardous substance. A federal district judge declined to dismiss the case, and the parties recently reached a settlement.

- Oklahoma's attorney general in 2005 filed a lawsuit against Arkansas poultry companies that asserts claims under CERCLA and the federal Solid Waste Disposal Act (known as RCRA), alleging damages to natural resources in the Illinois River watershed as a result of applying poultry litter as fertilizer to fields within the watershed. The suit is still pending before the federal court.

Economic Analysis

If manure is classified as a hazardous substance subject to Superfund laws, the economic consequences could be catastrophic for the animal feeding and food production sectors. Not only would farmers, ranchers and others who manage this country's 9 billion-plus head of broilers, turkeys, lambs, steers, heifers and hogs be affected, but owners of horses, laying hens and seedstock/breeder animals also would be affected, as would manure transporters and anyone who applies manure.

Many farm operations already have state-of-the-art manure and waste disposal facilities that contain manure until its disposal in a manner consistent with state and federal laws and agronomic standards. Adding Superfund designation would stress the financial situations of thousands of law-abiding individuals by turning their animal manure from a potential profit center into a hazardous waste disposal nightmare.

Many producers of hogs and poultry are contract growers; they own the manure that's created while the integrated company they contract with owns the birds. Most of these contractual relationships offer a relatively low, but regular, income for the growers, who bear the costs of improving their facilities.

Designating manure a Superfund material will impose significant and unfair financial burdens on these contract growers—as well as on cattle feeders and dairymen—who are forced to deal with this new-found hazardous waste.

Public Relations Resources

Talking Points:

- American farmers and ranchers apply animal manure in a safe and responsible manner to improve farm and ranch lands across the country every day. Manure is a natural fertilizer used for thousands of years.
- Farmers and ranchers generally live near their barns, pastures and fields, and they want a safe, clean environment for their families and themselves as much as anyone.
- Federal and state laws already on the books regulate many farm and ranch activities, including the application of manure to fields and pastures.
- Our country's Superfund laws were written to help our country deal with its most hazardous in-

dustrial and nuclear waste sites. Today's farms and ranches should not be treated like Love Canal and Three Mile Island of 30 years ago by being subjected to Superfund laws.

- Farmers and ranchers support research and development efforts to find new uses for animal manure, which could join wind and crops like corn as sources of renewable energy in the future.

Issue Background

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Community Right-to-Know Act (EPCRA)—were crafted to deal with toxic or abandoned waste situations such as the notorious Three Mile Island and Love Canal sites of the 1970s.

Many people, including members of Congress, believe their predecessors never intended for the Superfund laws to apply to farms and agricultural wastes, and these laws should not be amended so they may be used against farms and ranches in the future. But if normal animal manure eventually is classified as a hazardous substance using Superfund laws, then the risks to American farmers and ranchers who raise cattle, hogs, poultry and other animals or apply manure to crops cannot be overstated.

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 ability to use manure and be forced to rely on commercial fertilizer at three or more times the cost. And, ironically, manure and commercial fertilizer pose similar risks to the environment from over-application, runoff and air emissions.

In addition, the costs of technical monitoring and compliance likely would affect small- and medium-sized farms the most, while large producers with far greater financial resources would be able to more easily absorb the costs.

Further, the issues associated with disposing of manure that can no longer be put to other uses will remain, and the risk of potential liability under the Superfund laws may compel companies to relocate or shift their facilities out of the U.S. Because much of U.S. animal production is integrated, relocation decisions could result in the loss of animal-production contracts for

farmers, and thousands of folks may be left in financial ruin.

The organic foods industry also would likely be affected by any decision to classify as hazardous the use of manure as fertilizer. It is unclear whether 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 to generate energy is one promising area of research. But if manure is classified as hazardous waste under Superfund laws, then using manure to generate energy—through methane digesters, for instance—could result in entrepreneurs and scientists being held liable under CERCLA. The potential for liability would preclude innovation just as the development of renewable energy from manure is getting under way.

The ‘Superfund’ Laws

The Superfund laws were designed to be blunt tools to address the country’s worst industrial sites and chemical landfills:

The Emergency Planning and Community Right-to-Know Act (EPCRA)—Adopted in 1986, this law forces the reporting of hazardous chemical releases to spur emergency responses.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—This 1980 law provides for clean-up of the worst industrial toxic waste sites and spills such as Three Mile Island and Love Canal. CERCLA is one of the country’s strongest environmental statutes.

Anyone who raises livestock, uses manure on their fields as fertil-

izer or hauls it could be vulnerable to CERCLA liability if manure is classified as a hazardous substance because CERCLA liability is:

- *Strict*—Applied without regard to knowledge, fault or wrongdoing. Overall compliance with the law or good intentions are generally not defenses.

- *Joint and Several*—May be imposed 100 percent on any one contributor to the pollution, even if that contributor was a small player.

- *Retroactive*—May apply to activities that occurred before the statute was enacted, as no prior date cutoff exists.

In addition, CERCLA could have broad applicability:

- Farmers who use manure as a fertilizer could be held liable

as “owners” or “operators” for the otherwise legal use of manure on their fields.

- Farmers who sell, trade or barter litter for use as a fertilizer could be liable as “generators” of hazardous waste.

- Farmers also could be held liable as “generators” where their livestock directly introduces manure into the environment.

- Farmers, hauling firms and others could be held liable as “transporters.”

- Farmers and landowners could be held liable as “owners” or “operators” for past manure application on their land, even if it occurred before the land was theirs.

- Proper, costly disposal of a hazardous substance would remain.

Laws, Regulations to Protect Environment Already Apply

Some critics want Superfund laws to apply to manure used as fertilizer. But agriculture already is or soon will be regulated by federal and state environmental laws, regulations and permitting processes:

- The federal Clean Water Act, the Clean Air Act and related legislation.

- The Environmental Protection Agency’s proposed National

Pollutant Discharge Elimination System regulations concerning concentrated animal feeding operations will require nutrient management plans. Most state permitting authorities already require nutrient management planning.

- State statutes and regulations cover clean water and air, soil conservation, dust and odor control, and nuisance conditions.

See EPA’s compilation of state regulations at www.epa.gov/docs/epacfr40/find-aid.info/state.

For More Information

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Additional Resources

Additional information is posted on Farm Bureau’s intranet site, SILO, at <http://silofb.org/issues/livestock>.

Among the resources posted on the Livestock Issues Management pages on SILO are news clips, links to past Issues Management Briefings about related issues and links to agricultural law programs around the U.S. Links to related conference calls and PowerPoint® slide presentations also are posted on these pages.