

THE USE OF CERCLA TO ADDRESS AGRICULTURAL POLLUTION

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Michele M. Merkel

I. INTRODUCTION

A. Over the last several decades, agriculture has changed dramatically. Small farms have increasingly been replaced by industrial-sized facilities that confine thousands, or even millions, of animals in small areas. As a result, agricultural operations produce an estimated 500 million tons of manure every year – three times the amount of waste the human population of the U.S. produces. See 68 Fed. Reg. 7176, 7180 (2003). Unlike human waste, however, livestock waste is not treated. Rather, it is stored in manure pits or “lagoons” and spread onto land.

B. Some large animal confinements release enormous quantities of toxic chemicals from decomposing manure– comparable to pollution from the nation’s largest manufacturing plants. For example, Threemile Canyon Farms in Boardman, Oregon, reported that its 52,300 dairy cow operation emits 15,500 pounds of ammonia per day, more than 5,675,000 pounds per year. See Letter from Tom Lindley on behalf of Threemile Canyon Farms to EPA Region X, April 18, 2005. That is 75,000 pounds more than the nation’s number one manufacturing source of ammonia air pollution according to the 2003 Toxics Release Inventory.

C. These operations also impair water quality in the nation’s rivers and lakes when manure overflows from storage lagoons or when manure is over-applied to land. For example, in 1995, approximately 25 million gallons of manure were discharged from a single hog operation in North Carolina. EPA, Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations, EPA–821-B-01-001 at 2-17 (2001). Similarly, discharges of thousands of gallons of animal waste have been reported in Iowa, Illinois, Minnesota, Missouri, Ohio and New York. Id. at 2-18; see also The New York Times, *How to Poison a River*, (Aug. 19, 2005) (commenting on a 3 million gallon spill from a 3,000 head dairy in New York); The Post Standard, *States Manure Lagoons Only Loosely Regulated; Pits Can Go Almost Anywhere. Black River Spill Killed 250,000 Fish, Endangered City’s Drinking Water* (Oct. 2, 2005). These discharges wreak havoc on the receiving waters, often killing hundreds of thousands of fish per event, and contaminate drinking water supplies. Id.

D. In the 26 year history of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), there have only been a modest number of lawsuits involving CERCLA claims brought against animal feeding operations to address air and water pollution.

E. However, as the cases and commentary below indicate, this is an issue that continues to generate interest and stirs intense debate.

II. BASIC CERCLA REQUIREMENTS

A. CERCLA Objectives

1. "In 1980, CERCLA was enacted in response to serious environmental and health risks posed by industrial pollution." United States v. Bestfoods, 524 U.S. 51, 55 (1998).

2. CERCLA has two main policy objectives. First, Congress intended to give the federal government the necessary tools for a prompt and effective response to problems of national magnitude resulting from hazardous waste disposal. U.S. v. Reilly Tar & Chemical Corp., 546 F. Supp. 1100, 1112 (D. Minn. 1982); see also Walls v. Waste Resource Corp., 823 F. 2d 977, 980 (6th Cir. 1987); Dedham Water Co. v. Cumberland Farms Dairy, Inc. 805 F.2d 1074, 1081 (1st Cir. 1986). Second, Congress intended that the polluters bear the costs and responsibility for remedying the harmful conditions that they created. Id.

3. CERCLA must be interpreted liberally so as to accomplish its goals of environmental protection and remediation. United States v. Bestfoods, 524 U.S. 51, 55 (1998), see also Dedham Water Co. v. Cumberland Farms Dairy, Inc., 805 F.2d 1074, 1082 (1st Cir. 1986) ("CERCLA is essentially a remedial statute designed by congress to protect and preserve public health and the environment, courts are obligated to construe its provisions liberally to avoid frustration of the beneficial legislative purposes."). Consequently, exceptions from liability under CERCLA are narrowly construed. See Idaho v. Hanna Mining Co., 882 F.2d 392, 396 (9th Cir. 1989).

B. Reporting and Cost-Recovery Provisions

1. Section 103 of CERCLA provides that any person in charge of a vessel or facility from which a hazardous substance has been released in a reportable quantity must immediately notify the National Response Center as soon as he has knowledge of a release (other than a federally permitted release). 42 U.S.C. § 9604(a). For example, releases of ammonia and hydrogen sulfide that exceed 100 pounds per day must be reported under section 103. 42 U.S.C. § 9603; 40 C.F.R. § 302.4. Section 103 of CERCLA further provides for relaxed reporting requirements for releases that are classified as a continuous. 42 U.S.C. § 9603(f).

2. If a reported release demands a response, the government may act to respond to that release. The federal government has two options for clean up under CERCLA. The federal government may clean up a contaminated area itself under section 104, or it may compel responsible parties to perform the cleanup under section 106. See Key Tronic Corp. v. United States, 511 U.S. 809, 814, 128 L. Ed. 2d 797, 114 S. Ct. 1960 (1994). In either case, the Government may recover its response costs under section 107, the "cost recovery" section of CERCLA. 42 U.S.C. § 9607.

3. In addition to the reporting requirements under CERCLA, owners and operators of facilities must also provide immediate notice of the release of an extremely hazardous substance under the Emergency, Planning and Community Right-to-Know Act (EPCRA). Section 304(a) requires an owner or operator of a facility to report the release of an extremely hazardous substance to designated state and local officials, if “such release requires notification of section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.” 42 U.S.C. § 11004(a); 40 C.F.R. § 355.40(b)(1). The EPCRA emergency reporting requirements, therefore, track the CERCLA requirements and ensure that federal, state and local authorities are notified of potentially dangerous chemical releases.

4. Citizen suits are not available under CERCLA to recover response or remedial costs under section 107, natural resources damages under section 107 or injunctive relief under section 106. 42 U.S.C. § 9659. However, citizen suits can be brought under section 310 for failure to report releases of hazardous substances that exceed reportable quantities.

C. Did Congress Intend to Regulate Agricultural Operations Under CERCLA and EPCRA?

1. There is evidence that Congress intended for CERCLA to apply to agriculture. First, Congress declined to exempt manure from the definition of hazardous substance as it did with natural gas and petroleum. 42 U.S.C. § 9601(14). Instead, Congress excluded the “normal application of fertilizer” from the definition of release. 42 U.S.C. § 9601(22). “The term “normal field application” means the act of putting fertilizer on crops or cropland, and does not mean any dumping, spilling, or emitting, whether accidental or intentional, in any other place or of significantly greater concentrations or amounts than are beneficial to crops.” S. Rep. No. 96-848, at 46 (1980). Congress also provided an exemption under EPCRA for reporting releases when the regulated substance “is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.” 42 U.S.C. § 11021(e)(5).

2. Both of these exemptions were considered by a District Court in Kentucky which held that neither of the exemptions should apply to Tyson’s poultry production operations. Sierra Club v. Tyson Foods, et al, 299 F. Supp. 2d 693 (W.D.Ky. 2003). Tyson did not qualify for the routine agricultural use exemption, because it did not store ammonia in its chicken houses for agricultural use, nor did it use the ammonia in an agricultural operation. Rather, it used exhaust fans and vents to release the ammonia from the houses to the environment so that it would not kill the chickens. Tyson did not qualify for the normal application of fertilizer exemption, because they were not applying ammonia to farm fields as fertilizer when they vented it into the atmosphere.

3. A District Court in Texas also considered the normal application of fertilizer exemption in a CAFO case. The court ruled that the exemption would not apply if the City of Waco could prove that Dairies improperly stored and maintained large amounts of waste on their property, causing hazardous releases of phosphorous and other pollutants to nearby sources of

drinking water. City of Waco v. Dennis Schouten et. al., Civil Action No. W-04-CA-118 (W.D. Texas).

III. ENFORCEMENT OF CERCLA AGAINST CAFOs

A. Government Civil Judicial Cases

1. Citizens Environmental Legal Action Network Inc. v. Premium Standard Farms, Inc. and Continental Grain Co., Case Nos. 97-6073-CV-SJ-6 and 98-6099-CV-SJ-6 (W.D. Mo.) – In 1999, EPA intervened in a Clean Water Act citizen suit against Premium Standard Farms, Inc. (PSF), the nation's second largest pork producer, and Continental Grain Company. EPA added allegations under the CAA (failure to obtain preconstruction and operating permits), CERCLA and EPCRA (failure to report releases of hazardous substances). Settlement of this case in 2001 included a requirement to monitor for air emissions of particulate matter, volatile organic compounds, hydrogen sulfide, and ammonia from representative barns and lagoons. Measurements taken pursuant to the settlement agreement reveal that PSF releases 3 million pounds of ammonia annually from the cluster of barns and lagoons at its Somerset facility. See Premium Standard Farms, *Air Emissions Monitoring Completion Report* (Nov. 17, 2004). These emissions make PSF the fifth largest industrial emitter of ammonia in the United States. This data does not include the ammonia gases released when liquid manure is sprayed on the company's nearby fields.

2. City of Tulsa v. Tyson Food Inc., et. al., 258 F. Supp. 2d 1263 (N.D. Okla 2003). – In 2001, the City of Tulsa filed suit against some of the largest poultry producers in the nation including Tyson, Simmons and Cargill. The City alleged that the Defendants' growers polluted Lakes Eucha and Spavinaw, from which Tulsa draws its water supply, with 170 million pounds of phosphorous each year by applying excess litter to land application areas. The City's complaint included claims for cost recovery and contribution under CERCLA. In response to motions for summary judgment, the District Court ruled that phosphorous contained in the poultry litter in the form of phosphate is a hazardous substance under CERCLA. The Court's ruling was vacated as part of a settlement agreement in July 2003.

3. City of Waco v. Dennis Schouten et. al., Civil Action No. W-04-CA-118 (W.D. Texas) – In 2004, the City of Waco filed suit against fourteen commercial dairies for failure to properly manage and dispose of waste. The complaint alleged that hazardous pollution from these dairies contaminated Lake Waco, which is the sole source of drinking water for the City of Waco and a significant source of drinking water for surrounding communities. The City's complaint included claims for cost recovery and contribution costs under CERCLA. A Court denied the dairies' Motion to Dismiss and held, among other things, that the type of phosphorous that was released by the dairies was a hazardous substance under CERCLA. City of Waco v. Dennis Schouten et. al., Civil Action No. W-04-CA-118 (W.D. Texas), Memorandum Opinion and Order at 8 (March 29, 2005). The Court also held that the normal application of fertilizer exemption would not apply if Plaintiffs could prove that the releases of hazardous substances were caused by the dairies' improper handling of animal waste. Id. at 9. The City settled with

eight of the fourteen original dairy defendants before the entire lawsuit was finally resolved in January 2006 by mediation. Under the settlements, the dairies have agreed to certain changes in their management practices, which allow them to continue agricultural operations and at the same time protect the river and the lake. Letter from Larry Groth, Waco City Manager, to Senators Inhofe and Jeffords, *City of Waco Litigation Against Upstream Dairy CAFOs* (June 2, 2006). None of the dairies that have settled with the City of Waco have paid money to settle the lawsuit. Id.

4. *State of Oklahoma v. Tysons Foods, Inc. et.al.*, Civil Action No. 4:05-cv-000329 JOE-SAJ (N.D. Okla.).— On June 13, 2005, the Oklahoma Attorney General’s Office filed a lawsuit against some of the nation’s largest producers of chickens, turkeys and eggs, including some out-of-state producers, for water pollution in the Illinois River watershed caused by the improper dumping and storage of poultry waste. The watershed contains elevated levels of a number of pollutants found in poultry waste. The AG’s office estimates that the phosphorous from the poultry waste dumped into the Illinois River watershed is equivalent to the waste that would be generated by 10.7 million people, a population greater than the states of Arkansas, Kansas and Oklahoma combined. Oklahoma Attorney General’s Office, News Release, *AG Sues Poultry Industry for Polluting Oklahoma Waters* (June 13, 2005). The watershed also serves as the source of drinking water for 22 public water supplies in eastern Oklahoma. Id.

The Attorney General’s complaint alleges violations of state and federal nuisance laws, trespass, as well as other violations of state environmental regulations. The State also seeks to recover the costs that it has had to incur, and will incur, to respond to the pollution under CERCLA. These costs include “the costs of monitoring, assessing and evaluating water quality, wildlife and biota in the [Illinois River Watershed].” Complaint at ¶ 76. The State also seeks to recover Natural Resource Damages for the injury to, destruction of, and loss of natural resources. Complaint at ¶ 89. In response to the complaint, Defendants’ filed third party complaints against 160 Oklahoma residents with septic tanks and small business owners. The Oklahoma Attorney General’s office asked the Court to dismiss these complaints, but the Court has not ruled yet. In addition, on November 5, 2005, the Arkansas Attorney General petitioned the Supreme Court for permission to file a bill of complaint to bring the state of Arkansas into the lawsuit. The Supreme Court denied the petition in February 2006. On May 2, 2006, the Arkansas Attorney General filed a motion to intervene in the District Court action, but the court has not yet ruled on the motion.

B. Citizen Suits

1. *Sierra Club v. Tyson Foods, et al.*, 299 F. Supp. 2d 693 (W.D. Ky. 2003).—Plaintiffs alleged that Tyson Foods violated CERCLA and EPCRA by failing to report emissions of ammonia, a hazardous substance. In response to partial motions for summary judgment, the District Court ruled that the term “facility” should be interpreted broadly, including facilities operated together for a single purpose at one site, and that the whole farm site is the proper regulated entity for purposes of the CERCLA and EPCRA reporting requirements. On January 26, 2005, the Sierra Club entered into a settlement agreement with Tyson Foods. Under the

decree, Tyson agreed to study and report on emissions from its chicken operations and mitigate ammonia emissions.

2. *Sierra Club v. Seaboard Farms*, 387 F. 3d 167 (10th Cir. 2004.)--Plaintiffs alleged that Seaboard Farms, operators of a swine CAFO, had violated CERCLA by failing to report ammonia emissions. A District court granted Defendant's motion for summary judgment, holding that the term "facility" should be narrowly construed so that each lagoon, barn and land application area is a separate facility for purposes of CERCLA reporting. The Court of Appeals reversed the District Court's decision, holding that the entire 25,000-head hog operation was a single facility and that Seaboard must report the combined emissions from all its waste pits and confinement buildings.

C. Administrative Actions

1. *EPA's Air Compliance Agreement (ACO)*—Over the past five years, EPA has declined to enforce the Clean Air Act, EPCRA and CERCLA against CAFOs. Instead, they negotiated an administrative consent agreement with the industry. On January 31, 2005, EPA offered every animal feeding operation in the country an opportunity to voluntarily sign the ACO which gives participating operations immunity from past and future violations under the Clean Air Act, CERCLA and EPCRA in exchange for monitoring at a limited number of facilities and payment of a small fine. See 70 Fed. Reg. 4958, 4958-4960 (Jan. 31, 2005).

- On August 21, 2006, the Environmental Appeals Board (EAB) approved the last batch of ACOs. EAB ratified a total of 2,568 Agreements, representing 1,856 swine, 468 dairy, 204 egg-laying, and 40 broiler chicken operations. These 2,568 Agreements cover 6,267 farms. EPA expects to commence monitoring early next year. After a two year monitoring study is concluded, EPA will evaluate the data and publish emission-estimating methods for animal feeding operations so that they can estimate their emissions and determine compliance with air pollution laws.
- Several groups filed a lawsuit against EPA on May 27, 2005 in the D.C. Circuit Court of Appeals challenging EPA's Air Compliance Agreement. Multiple petitions were filed and consolidated. The petitioners in the consolidated case are Association of Irrigated Residents, Clean Water Action of Minnesota, Community Association for the Restoration of the Environment, Environmental Integrity Project, Iowa Citizens for Community Improvement, and Sierra Club. Respondent intervener is the National Pork Producer's Council. The Court has not set a briefing schedule yet.

- Some of the Petitioners chief concerns that were expressed in comments to EPA are that: (1) the air monitoring is scientifically unsound, and lacks independent oversight; (2) the Agreement implies preclusion of citizen and state enforcement, and purports to provide amnesty from state and local law; (3) the Agreement lacks firm deadlines upon which the amnesty period terminates.

2. *Poultry Petition Requesting Administrative Exemption from CERCLA Reporting*—On August 5, 2005, the National Chicken Council, National Turkey Federation, and U.S. Poultry and Egg Association, on behalf of its member organizations, submitted a petition to EPA asking for an exemption from EPCRA and CERCLA ammonia reporting requirements for poultry operations. In response, EPA issued a notice of data availability asking the public to submit data by March 27, 2006 on the impact of ammonia emissions on public health and the environment from poultry operations. See 70 Fed. Reg. 76452 (Dec. 27, 2005). EPA has not made a decision yet to grant or deny the Petition.

- Petitioners argue that (1) ammonia emissions from poultry operations are insufficient to justify the regulatory burden of CERCLA and EPCRA reporting requirements; (2) recent legal developments have complicated CERCLA and EPCRA reporting requirements for poultry operations; and (3) EPA should exempt poultry farms from reporting ammonia emissions under CERCLA and EPCRA, because they have the authority to do so; ammonia emissions from poultry houses pose little or no risk to public health; and emergency response to ammonia releases from poultry houses is infeasible, inappropriate and burdens the emergency response system and the regulated community.
- Commenters that oppose an exemption argue that (1) the Poultry Petition ignores the ever-growing body of science that suggests that ammonia emissions from poultry operations have human health or environmental impacts that warrant emergency response; (2) an exemption would be at odds with the goals of EPCRA and CERCLA by depriving the government of information it needs to protect natural resources, and by exposing the public to potentially dangerous quantities of hazardous pollutants; (3) an exemption would leave ammonia emissions from poultry operations virtually unregulated, because EPCRA and CERCLA are necessary to address emissions of ammonia that would not otherwise be regulated under federal permitting statute; (4) it would be arbitrary for EPA to grant the petition, because it would be a departure from EPA's past positions on reporting exemptions; and (5) exempting poultry operations from EPCRA and CERCLA reporting requirements would prevent EPA from gathering critical data and would hamper its ability to ensure that emissions do not exceed harmful levels.

IV. LEGISLATIVE ACTIVITY

A. Over the past several years, Senator Craig has attempted to attach riders to various appropriations legislation that would exempt CAFOs from CERCLA and EPCRA.

B. On November 16, 2005, Representative Hall introduced a bill (H.R. 4341) that would amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to exclude manure from the definition of "hazardous substance" or "pollutant or contaminant" under that Act. It would also amend the Superfund Amendments and Reauthorization Act of 1986 to exempt releases associated with manure from the emergency notification requirements under that Act. Representative Hall's bill has 177 cosponsors.

C. On July 18, 2006, Senator Domenici introduced a similar bill (S.3681) called the Agricultural Protection and Prosperity Act of 2006. The Senate Bill has 27 cosponsors.

D. Summary of Key Provisions of Both Bills:

1. The amendment exempts manure from the definition of "hazardous substance" and "pollutant or contaminant" under CERCLA.

2. The amendment defines manure as including digestive emissions, feces, urine, urea and other excrement from livestock and any associated bedding, compost, or materials commingled with such excrement and any byproducts, any process water associated with these items and any byproducts, constituents, or substances contained in, originating from, or emissions relating to these items.

3. The amendment eliminates CERCLA and EPCRA notification and reporting requirements for all releases associated with manure, including ammonia and hydrogen sulfide air releases.

E. Impact of the Legislation: By excluding manure from the definition of "hazardous substance" and "pollutant or contaminant," releases or threatened releases of hazardous components of manure would not be covered by CERCLA or EPCRA, including the following key provisions:

1. *Notification (Section 103 of CERCLA and 304 of EPCRA):* The amendments would eliminate the requirement to report hazardous releases of toxic chemicals associated with manure, including ammonia and hydrogen sulfide, from CERCLA and EPCRA. This would prevent local, state and federal emergency responders from having critical information about potentially dangerous releases that could affect communities.

2. *Response Authorities (Section 104):* The amendments would prevent EPA or a state from using CERCLA to respond to hazardous substances released from manure (e.g. investigations or clean-up) that threaten the environment, welfare or public health.

3. *Abatement Actions (Section 106):* The amendments would prevent EPA from taking action, including issuing abatement orders, in situations where there is an imminent and substantial endangerment to the public health, welfare or environment.

4. *Liability provisions (Section 107)*: The amendments would include an exemption from liability for response costs incurred by EPA or a state. Agricultural operations would also be exempt from any natural resource damages that may result from a release of a hazardous substance. Therefore, the financial burden for clean-up and the cost to restore natural resources would fall on the public rather than the polluter.

F. EPA has indicated that these amendments may undermine EPA's Air Compliance Agreement. See EPA, *Proposed Amendment to Section 118 of Superfund Amendments* (Oct. 2005) (Not Official Agency Position—Technical Assistance Only). A primary motivation for participation in the Agreement was EPA's covenant not to sue for CERCLA and EPCRA violations. *Id.* Because many respondents signed up primarily based on the belief that they may currently trigger CERCLA and EPCRA ammonia emission reporting requirements, an elimination of reporting requirements may prompt requests by many to withdraw from the Agreement. *Id.* This would hamper EPA's ability to obtain data regarding air emissions and to ensure that emissions do not exceed harmful levels.

G. Arguments Advanced For and Against the Proposed Legislation

1. **Proponents:** Congress never intended to regulate manure under Superfund laws.

Opponents: While Congress did not exclude manure from the definition of "hazardous substance," it did exclude the "normal application of fertilizer" from the law's definition of "release." 42 U.S.C. § 9601(22). Congress also provided an exemption under EPCRA for reporting releases when the regulated substance "is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer." 42 U.S.C. § 11021(e)(5). In addition, Congress specifically provided that releases covered by and in compliance with a federally issued permit, such as a Clean Water Act permit, would have a defense to CERCLA liability.

No one has argued that manure itself is "hazardous." However, certain components of manure, such as phosphorous, or chemicals emitted from decomposing manure, such as ammonia and hydrogen sulfide, meet the CERCLA definition of hazardous substance and can be harmful if released above reportable quantities.

2. **Proponents:** Superfund is unnecessary, because animal agriculture operations have been appropriately regulated and have been required to have permits for years under the Clean Water Act and the Clean Air Act.

Opponents: CAFOs are not broadly permitted under the CAA and CWA. No CAFO has ever obtained a CAA permit. Although the Clean Water Act has required large livestock operations to obtain permits for more than 30 years, noncompliance has been widespread. In 2001, EPA estimated that at least 13,000 concentrated animal feeding operations were required to have Clean Water Act permits, but EPA and States had issued just 2,520 permits. 66 Fed. Reg. 2960, 2968 (2001). Some of the states with the highest numbers of CAFOs have permitted the fewest numbers of CAFOs under the CWA. For example, Arkansas has only issued permits to 5% of its 2,110 CAFOs, and Iowa has only issued NPDES permits to 2% of its 1,859 CAFOs. EPA, *CAFO Rule Implementation Status: National Summary* (Feb. 28, 2005). In spite of this

widespread noncompliance, EPA recently issued a proposed Clean Water Act regulation that would result in 25% fewer operations being permitted under the Clean Water Act than under its previous 2003 regulation. 71 Fed. Reg. 37744, 37774 (2006).

EPCRA and CERCLA are also necessary complements to federal permitting statutes to address hazardous pollutants that would not otherwise be regulated. Although CERCLA's list of hazardous substances was first identified under other statutes, including the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, CERCLA authorizes the Administrator of EPA to add to this list "substances which, when released to the environment may present a substantial danger to public health or welfare or the environment..." 42 U.S.C. § 9602 (a). For example, the Clean Air Act does not regulate ammonia or hydrogen sulfide as hazardous air pollutants; therefore, EPA listed these chemicals as hazardous substances under CERCLA. Finally, Superfund is a necessary complement to other federal statutes, because it is the only statute that allows for governments to recover cleanup costs from parties responsible for contamination of local drinking water supplies.

3. **Proponents:** A rash of lawsuits threatens agricultural operations of all types and sizes.

Opponents: In the 26 year history of Superfund, there have been only six lawsuits against animal feeding operations involving CERCLA claims, and only one of these suits is still pending. These lawsuits involved large-scale animal operations and/or operations that had a history of problems with manure management. In each case, the lawsuit followed attempted negotiations regarding waste management practices. Settlements primarily involved plans for improved manure management, not penalties.

4. **Proponents:** Any farm field where livestock are put out to pasture could become a Superfund hazardous waste site. Virtually every farm operation in the United States could be affected.

Opponents: No farm has ever been named to EPA's National Priority List (NPL) – the worst contamination cases in the Nation – due to problems with manure-associated pollution. And none is likely to be nominated or listed. For a site to be named to the NPL, it must be assessed and assigned a hazard score, and only sites with scores above a certain level are eligible for the listing. In addition, for over 10 years, EPA has followed a practice of listing only those sites which the affected Governor agrees should be made federal priorities. A decision to list or not list a site on the National Priorities List is a discretionary authority of the President's, and the President cannot be compelled, by lawsuit, to list a particular site.