

Statement of
Walter Bradley, Dairy Farmers of America, Inc.
To The House Committee on Energy and Commerce
Subcommittee on Environment and the Economy
Regarding H.R. 2997, the Superfund Common Sense Act of 2011

June 27, 2012

Mr. Chairman, members of the Committee, my name is Walter Bradley. I currently work in government and business relations at Dairy Farmers of America, Inc. (DFA) in the southwest council, which includes New Mexico, and portions of Texas, Oklahoma, Kansas and Arizona. In this capacity I work directly with New Mexico state legislators and state environmental agencies on legislation and regulations. After a 4 year effort, we have recently completed passing comprehensive dairy rules that included agreement between industry, government and environmental groups in the state. I also work directly with dairy producers in various business efforts including energy audits and anaerobic digesters, whose feedstock is manure, for on-farm energy production. Formerly, I served as a state senator and lieutenant governor for the great state of New Mexico, and I have a great understanding and appreciation of public service for our country.

I am testifying today on behalf of the nearly 15,000 farmer-owners of DFA, who raise their herds and their families in 48 states across the nation, in strong support of H.R. 2997. H.R. 2977 will once and for all affirm that the very same livestock manure used to fertilize our nation's organic crops is not a hazardous or toxic substance under Superfund.

DFA's members are diverse in size, thought and farm management. They are all similar, however, in that they are proud stewards of the land who understand quality feed and quality milk comes from land that is respected and well cared for. Additionally, DFA's members and the manure generated from their herds are already regulated by state and federal law.

I have the pleasure of specifically serving the dairy industry of New Mexico. New Mexico's average dairy herd is about 2,500 cows, considerably larger than the average dairy nationally, and the state is the eight largest producer of the nation's milk. While farms are large in our state, they are owned and run by families who live and work on their farms. Most support several family members and are multi-generational.

The last few years have posed extraordinary challenges for producers across the country, but especially in my region, where a majority of feed is imported from other regions. In 2009 and part of 2010, our producers dealt with very volatile milk prices and input costs, a supply/demand imbalance, and other world factors, which drove down price and operating margins. Many lost a generation's worth of equity while others left the business. In New Mexico, most took on more debt.

This year, we are facing another low margin cycle. Some in our area are still paying for feed and other bills acquired during 2009. Since January of this year, we have lost 21 dairies in the area and 5 in New Mexico specifically with several on the cusp of exiting the business. Prices, feed costs, supply/demand fluctuations and weather, are all things farmers cannot always control. The uncertainty that these and other factors bring to the industry is startling.

One thing we can deliver – that we should be delivering to our dairymen – is regulatory surety. I ask this committee to do just that. Bring certainty to the nation’s dairy farmers on the treatment of manure, a resource and potential source of income, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Emergency Planning and Community Right to Know Act (EPCRA) regulation.

Specifically, make clear the intent of Congress to not regulate manure under these laws. We are not seeking an exemption from the federal Clean Water Act (CWA) or the Clean Air Act (CAA) or similar state laws including any federal or state worker protection laws. We are merely seeking clarification under CERCLA and EPCRA that animal manure does not necessitate an emergency response nor does it create a Superfund site.

Congress created the Superfund to deal specifically with the problem of cleaning up toxic waste sites, including hazardous materials such as petrochemicals, inorganic raw materials and petroleum oil used to make hazardous products and waste. At the same time, EPCRA was adopted to require the reporting of releases of hazardous chemicals and to enable emergency responses from governmental authorities when necessary. The composition and use of animal manure by farmers does not meet the threshold of being considered a hazardous waste.

It should also be pointed out that both the CERCLA and EPCRA include exemptions for animal operations. For example the definition of a "hazardous chemical" under CERCLA excludes "any substance to the extent it is used in agriculture operations". At the same time, EPCRA specifically exempts “any substance to the extent that it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer from the definition of being a hazardous chemical.”

CERCLA was passed in the wake of Love Canal for the purpose of dealing with the “legacy of hazardous substances and wastes which pose a serious threat to human health and the environment.” The law states that it was intended “to clean the worst abandoned hazardous waste sites in the country.” The legislative history contains a litany of references to “synthetic,” “manmade” chemicals, “chemical contamination,” and the results of “modern chemical technology” as the problems CERCLA intended to address. It contains no reference to an intention to clean up manure or urea, or their byproducts, from cattle or any other animal agricultural operations.

Without this clarity, the courts are left to redefine the regulation. Animal manure has been safely used as a fertilizer and soil amendment all over the world for centuries. In recent years, however, we have seen litigation challenge the use of animal manure as a fertilizer by claiming contamination and damage to natural resources.

The issue of CERCLA/EPCRA’s applicability to the livestock industry has been discussed in Congress several times in the last decade. I believe congressional intent is clear. When the law

was passed, Congress did not intend for manure to be regulated as a hazardous substance. Moreover, recent history demonstrates that Congress understands the value of manure to producers and has encouraged its creative use. Laws have been passed and initiatives undertaken to encourage rural America to participate in the renewable energy field through the development of on-farm energy production. Whether it is producing biogas, electricity or biodiesel derived from manure, Congress has acknowledged manure's value by funding research, passing tax credits and mandates for its use. How can we possibly ask dairy producers to invest millions of dollars in technologies to support the nation's energy needs without addressing the threat that manure might be classified as a hazardous substance.

Besides being used for bio-energy production, manure is frequently spread on fields for fertilizer. When waterways are near, farmers often use a buffer strip as they are sensitive to keeping water sources clean. The buffer strip produces no income or feed, but protects the environment. This simple, long standing and environmentally respectful practice is threatened by the insecurity surrounding manure's possible regulation under CERCLA/EPCRA. Conversely, I find it interesting that petroleum-based fertilizers, the alternative to this naturally occurring fertilizer are exempt from such laws.

As a fertilizer, manure is excellent as it contains nitrogen, phosphorus, potassium and other nutrients. Manure not only supplies many nutrients for crop production, including micronutrients, but it is also a valuable source of organic matter. Increasing soil organic matter improves soil structure or tilth, increases the water-holding capacity of coarse-textured sandy soils, improves drainage in fine-textured clay soils, provides a source of slow release nutrients, reduces wind and water erosion, and promotes growth of earthworms and other beneficial soil organisms. Additionally, its use reduces an operations dependence on man-made chemical fertilizers, which have become very expensive.

If Congress does not act, if the courts are allowed to determine the specifics of this law, how will this law be applied to dairy and other agriculture producers? Will producers need a special permit to dispose of manure? What about the phosphates used by people on their lawns, golf clubs or other community green areas? Would they be classified a Superfund site? On this issue, the science and common sense are in agreement. The phosphates in manure are not now, nor have they ever been, equivalent to the harmful chemicals that CERCLA has been addressing for the last 32 years.

In 2005, the United States Environmental Protection Agency (EPA) entered into a Consent Agreement with animal agriculture to address emissions of air pollutants from animal feeding operations that may be subject to requirements of the CAA, the hazardous substance release notification provisions of CERCLA and the emergency notification provisions of EPCRA. In order to secure a substantive sampling, covering different types of operations in different geographic regions, the impacted industries paid for their portion of the study themselves. The data is currently being analyzed for the purpose of proposing "threshold requirements" for reporting air emissions from animal operations of various sizes that could be put into effect next year. It is clear that CWA and the CAA already provide sufficient authority to address the needs and challenges associated with animal agriculture. EPA is currently moving under the provisions of the CAA to deal with air emissions from ammonia, hydrogen sulfide and other substances. Using CERCLA and EPCRA authority to enforce water and air quality standards on animal agriculture is another example of "regulatory overkill" at its worst.

I will also note that legal action can already be brought against animal operations that are not complying with the CWA to require cleanup. At the same time, Total Maximum Daily Load requirements have been instituted in watersheds requiring farmers to comply with nutrient runoff.

Lastly, animal agricultural operations are subject to a vast array of federal, state and local environmental laws and authority to deal with every conceivable environmental problem presented by them. They include the CAA, CWA, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, FIFRA, soil conservation, dust and odor mitigation controls, as well as nuisance laws, which have been applied broadly throughout the country to provide environmental protection from every conceivable aspect of animal agricultural operations. In New Mexico, we have the Ground Water Protection Bureau, the Surface Water Bureau, the Air Quality Bureau and a set of New Mexico Dairy Rules for permitting of all dairies in addition to all the federal rules and regulations. There has been no indication that environmental laws such as these are inadequate.

The statute is clear in my view. However, that has not been enough to prevent litigation over applying the Superfund Laws to manure from animal agriculture, and decisions that they apply. I hope Congress addresses this issue and makes clear their original intent that manure from animal agriculture is exempt as a CERCLA hazardous substance.

I commend Congressman Long for his leadership on this issue and hope to soon see H.R. 2997, the Superfund Common-Sense Act of 2011, passed and signed into law.

Thank you for the opportunity to participate in today's hearing.