

The Honorable John D. Dingell and the Honorable Hilda L. Solis

1. At the Subcommittee hearing on November 16, 2005, you were asked whether you agreed with the description of environmental and human health risks presented by large-scale concentrated animal feeding operations (CAFOs) as described in the Environmental Protection Agency's (EPA) Fact Sheet dated November 19, 2001, announcing a civil settlement between the U.S. EPA and Premium Standard Farms, Inc. and Continental Grain Company. The Fact Sheet described the human health and environmental risks as follows:

“Significant human health and environmental risks are generally associated with large-scale Concentrated Animal Feeding Operations (CAFOs). Improper handling of manure from feedlots, lagoons and improper land application can result in excessive nutrients (nitrogen and phosphorus); pathogens (i.e., fecal coli form); and other pollutants in the water. This pollution can kill fish, cause excessive algae growth, and contaminate drinking water. In addition, emissions of air pollutants from very large CAFOs may result in significant health effects for nearby residents.”

During the hearing you responded that you would need to have the fact sheet “in front of me” and “be able to carefully read it” before you could provide an answer.

Now that you have had an opportunity to carefully read the EPA the Comprehensive Environmental Response, Compensation and Liability Act Fact Sheet, do you agree with its description of the human health and environmental risks associated with large-scale CAFOs? If not, please explain why not.

Answer: EPA believes that the fact sheet describes the human health and environmental risks that can be associated with operations that improperly handle manure from feedlots, lagoons and land application.

2. Please provide any other information EPA has relating to the human health or environment risks associated with large-scale CAFOs.

Answer: To EPA's knowledge, no official quantitative risk assessment or studies have been conducted to estimate the human health risks associated with large-scale CAFOs.

3. You were asked at the November 16 Subcommittee hearing what size city would generate waste approximately equal to the amount of animal waste generated by two million hogs. Please provide a response to the question.

Answer: EPA estimates that two million hogs produce a volume of manure equal to the solid waste stream of a U.S. city of about 2,667,000 million (that is, a city slightly smaller than Chicago). This estimate is calculated by dividing the average per person waste generation rate (4.5 lb/day) by EPA data on the amount of manure produced by 2,000,000 hogs per year.

4. What number of hogs or size of herd or flock would trigger the reporting requirements for ammonia and hydrogen sulfide of 100 pounds per day?

Answer: As noted in EPA’s testimony, a scientifically sound methodology for estimating or measuring air emissions from AFOs does not currently exist. This conclusion is based on a report by the National Academy of Sciences in which they concluded that scientifically sound and practical protocols for measuring air emissions from AFOs are inadequate. Therefore, EPA does not yet have the data to make a prediction as to the number of hogs or size of a herd or flock that would trigger the reporting requirements for ammonia and hydrogen sulfide of 100 pounds per day.

5. Is EPA aware of any small farm operations, as opposed to large-scale industrialized CAFOs, that have triggered the reporting requirements for ammonia and hydrogen sulfide?

Answer: EPA is not aware of any small farm operations that have triggered the reporting requirements for ammonia and hydrogen sulfide. However, the size of operation is not included in the notification requirements, so the Agency would not be in a position to gather that data.

6. For Fiscal Year (FY) 2003, FY 2004, and FY 2005, please identify the name and location of each animal feeding operation that reported releases of ammonia pursuant to (a) Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and (b) Section 304 of the Emergency Planning and Community Right to Know Act (EPCRA) and provide the amount of the ammonia releases reported.

Answer: EPA’s data is collected in Calendar Year (CY) rather than Fiscal Year (FY) format and was extracted from the public National Response Center (NRC) web site. The NRC is responsible for receiving the telephone notifications of the release. EPCRA reports are submitted to State and local governments; therefore, EPA does not have data on those reports.

CY 2003 – There were no reports of ammonia released from animal feeding operations under CERCLA.

CY 2004 -

Name	Location	Number of Reports from Facility	Ammonia released (pounds)
Buchanan Livestock	69 W Church St., Jasper, GA 30143	4 notifications on 2/4/04 regarding release on 11/07/03	Unknown amount

Circle Four Farms	341 South Main St Millford, UT 84751	1 notification on 8/30/04 regarding release on 8/30/04 from 25 farms. 25 notifications on 12/31/04 regarding release on 8/30/04 – location correction to notification made on 8/30/04 – Initial Continuous Release report	Unknown amount (continuous release of ammonia from hog lagoons)
Mapleleaf Dairy Inc	6832 Highway X, Cleveland, WI 53015	1 notification on 1/23/04 regarding release that occurred 4/15/97. 1 notification on 3/1/04 regarding release that occurred 4/1/97. – Initial Continuous Release report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Summers Nursery Farm, Harris, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Wade Farm Princeton, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount

Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Wiles Farm Princeton, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Scott Colby Farm Route 1 Jamesport, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Sharp Farm Jamesport, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Hickory Creek Farm Princeton, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Denver Miller Farm Princeton, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount

Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Overlook Ranch Newton, MO	1 notification on 11/04/04 regarding release that occurred on 11/04/04-Initial Continuous Release Report	Unknown amount
Premium Standard Farms 13301 US Hwy 87, Dalheart, TX 79022	205 South Sedane Lane, Dalheart, TX	1 notification on 10/05/04 regarding release that occurred on 10/05/04 – Initial Continuous Release Report	100 pounds/day
Premium Standard Farms 13301 US Hwy 87, Dalheart, TX 79022	S4 Sight, Dalheart, TX	1 notification on 10/05/04 regarding release that occurred on 10/05/04 – Initial Continuous Release Report	100 pounds/day
Premium Standard Farms 13301 US Hwy 87, Dalheart, TX 79022	Multiplier Finish Sight, Dalheart, TX	1 notification on 10/05/04 regarding release that occurred on 10/05/04 – Initial Continuous Release Report	100 pounds/day
Premium Standard Farms 13301 US Hwy 87, Dalheart, TX 79022	Hyplanes Nursery Dalheart, TX	1 notification on 10/05/04 regarding release that occurred on 10/05/04 – Initial Continuous Release Report	100 pounds/day
Stirman Adams	3634 Ky Highway Calhoun, KY	1 notification on 2/04/04 regarding release that occurred on 11//07/03	Unknown amount

Tyson Chicken 14660 US 41 S Robards, KY	4200 Isley Rd Dawson Springs, KY	1 notification on 1/26/04 regarding release that occurred on 1/26/04-Initial Continuous Release Report	78.4 pounds/day
Tyson Chicken 14660 US 41 S Robards, KY	Tyson Chicken Farm 4, Dawson Springs, KY	1 notification on 1/26/04 regarding release that occurred on 1/26/04-Initial Continuous Release Report	78.4 pounds/day
Tyson Chicken 14660 US 41 S Robards, KY	Chicken Farm 5, Dawson Springs, KY	1 notification on 1/26/04 regarding release that occurred on 1/26/04-Initial Continuous Release Report	78.4 pounds/day

CY 2005-

Name	Location	Number of Reports from Facility	Ammonia released (pounds)
ANC Sytsma Dairy	6160 Vanbell Rd Sunny Side, WA	1 notification on 7/28/05 regarding release that occurred on 7/28/05-Initial Continuous Release Report	165,000 pounds/year
Bar E Dairy	78 S Reynolds Rd Othello, WA	1 notification on 10/06/05 regarding release that occurred on 1/01/05-Continuous Release Report	Unknown
Coachlight Farms	824 Brooks Rd Iowa Falls, IA	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	Unknown

CY One Farms, LLC	30232 Grand Ave Aplington, IA	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	100 pounds/day
D&A Dairy	3001 Dekker Rd Outlook, WA	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	262,800 pounds/year
Elberta Valley AG	16100 S W Elberta, UT	1 notification on 08/11/05 regarding release that occurred on 08/11/05-Initial Continuous Release Report	Unknown
Fenceline Farms	824 Brooks Rd Iowa Falls	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	100 pound/day
Golob Dairy	500 Nelson Rd Granger, WA	1 notification on 08/09/05 regarding release that occurred on 08/09/05-Initial Continuous Release Report	408 pounds/day
Grand Prix Farms, LLC	824 Brooks Rd Iowa Falls, IA	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	100 pounds/day

Hofstra Dairy	28408 Fern Bluff Rd, Monroe, WA	1 notification on 06/28/05 regarding release that occurred on 01/01/05-Initial Continuous Release Report	Unknown
Insignia Farms	824 Brooks Rd Iowa Falls, IA	1 notification on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	100 pounds/day
Iowa Select Farms	P.O. Box 400 Iowa Falls, IA	3 notifications on 08/31/05 regarding release that occurred on 08/31/05-Initial Continuous Release Report	100 pounds/day
Purdue Farms	7858 S Meridian Rd Oakland City, IN	1 notification on 11/11/05 regarding release that occurred on 11/11/05	Unknown
Scheenstra Farms	2850 Alexander Rd Sunnyside, WA	1 notification on 08/15/05 regarding release that occurred on 01/01/99-Initial Continuous Release Report	360 pounds/day
Terry Koons Farms	RRTE 1, Box 34, Switz City, IN	1 notification on 06/29/05 regarding release that occurred on 06/29/05-Initial Continuous Release Report	100 pounds/day
Three Mile Farms	75906 Threemile Rd, Boardman, OR	1 notification on 03/29/05 regarding release that occurred on 03/29/05	15,500 pounds/day

7. Please identify for FY 2003, FY 2004, and FY 2005 the name and location of each animal feeding operation that reported releases of hydrogen sulfide pursuant to (a) section 103 of CERCLA, and (b) section 304 of EPCRA, and provide the amount of the hydrogen sulfide releases reported.

Answer: EPA’s data is collected in Calendar Year (CY) rather than Fiscal Year (FY) format and was extracted from the public National Response Center (NRC) web site. The NRC is responsible for receiving the telephone notifications of the release. EPCRA reports are submitted to State and local governments; therefore, EPA does not have data on those reports.

CY 2003 – There were no reports of hydrogen sulfide released from animal feeding operations under CERCLA.

CY 2004 – All of the facilities in this table released both Hydrogen Sulfide and Ammonia:

Name	Location	Hydrogen Sulfide and Ammonia released (pounds)
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Badger – Wolf Farm Newton, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Brantley Farm Newton, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Green Hills Farm Unionville, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Hedgewood Farm Princeton, MO	Unknown amount-Initial Continuous Release Report

Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Locust Ridge Farm Harris, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Somerset Farm Powersville, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Peach Perkins Farm Newton, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	South Meadows Farm Browning, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Terre Haute Farm Lucerne, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Valley View Farm Green Castle, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Whitetail Farm Unionville, MO	Unknown amount-Initial Continuous Release Report

Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Ruckman Farm Albany, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	South Meadows Farm Browning, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms 805 Pennsylvania Ave, Suite 200, Kansas City, MO 64105	Homan Farm King City, MO	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	S3/S4 Farm Wallace, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Buffalo Ridge/S6 Farm Cameron, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	S5 Farm Lillington, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	S1/S2 Farm Faison, NC	Unknown amount-Initial Continuous Release Report

Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Goshen Ridge Farm Mount Olive, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Mills Farm Chocowinity, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Multiplier Farm Tarboro, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Southern Maid Farm Cordele, GA	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	Bladen Springs Farm Council, NC	Unknown amount-Initial Continuous Release Report
Premium Standard Farms of NC PO Box 349 Clinton, NC 28329	M1 Farm Raeford, NC	Unknown amount-Initial Continuous Release Report
Smith Brothers Inc PO Box 778 Kent, WA 99357	11792 Road Royal City, WA	Unknown amount-Initial Continuous Release Report

CY 2005 – All of the facilities in this table released both Hydrogen Sulfide and Ammonia:

Name	Location	Hydrogen Sulfide and Ammonia released (pounds)
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Insignia Farms, LLC 824 Brooks Road Iowa Falls, IA	Alden, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Iowa Select Farms 811 South Oak St Iowa Falls, IA	Dumont, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Iowa Select Farms 811 South Oak St Iowa Falls, IA	Allison, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
JJM Farms, LLC 1307 Scenic View Dr Iowa Falls, IA	Clarksville, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Maridale Farms, LLC 2843 S Bayshore Dr Coconut Grove, FL	Deloit, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Omega One, LLC 803 N Shore Dr Clear Lake, IA	Rembrandt, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Omega One, LLC 803 N Shore Dr Clear Lake, IA	McIntire, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Providence Farms, LLC 59211 300 th St Cambidge, IA	Union, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report
Skylimit Investments, LLC 1107 Siloam Ave Iowa Falls, IA	Ida Grove, IA	25 pounds/day (HS) 100 pounds/day (A) Initial Continuous Release Report

8. At the November 16 Subcommittee hearing, you testified that in FY 2004 with respect to ammonia reports from fixed sources “we were able to confirm that 45 were from animal feeding operations, six episodic, and six continuous.”

Please identify the 45 companies that reported and the amounts they reported and describe the distinction between episodic and continuous releases, and the regulatory requirements that apply to each.

Answer: The following is the list of companies that reported. Some may have reported more than once which is why there are less than 45 companies reporting and some companies made multiple reports in one call which is why the total reports below is greater than 45. The data provided at the hearing were based on counting the fields downloaded from the NRC's public website; whereas the information gathered to respond to these more specific questions was pulled from the NRC public reports on the incident. The NRC incident reports appear to be more conclusive.

- 1) Buchannan Livestock (episodic, 4 reports)
- 2) Circle Four Farms (continuous, 25 reports)
- 3) Maple Leaf Dairy Inc (episodic, 2 reports)
- 4) Premium Standard Farms, MO (continuous, 26 reports)
- 5) Premium Standard Farms, NC (continuous, 10 reports)
- 6) Stirman Adams (episodic, 1 report)
- 7) Smith Brothers, Inc (continuous, 1 report)
- 8) Tyson Chicken (continuous, 3 reports)

Episodic reports are a call to the NRC about a release that has occurred at or above an RQ during any 24 hour period; whereas, continuous release notifications are the initial call to the NRC which is then followed up with a written report to the EPA Regional Office where the release is occurring describing a release of a more continuous nature. The continuous release notifications allow a facility owner/operator to report their releases in a manner that reduces burden because they don't have to call each 24 hour period.

9. In your testimony at the November 16 hearing, you said in response to Rep. Dingell's question of whether the Administration has provided guidance to small farmers that have animal feeding operations that "we haven't provided sufficient guidance. I think we can do better."

(a) What guidance, if any, has the Administration provided to small farmers with respect to their reporting obligations under CERCLA or EPCRA?

(b) Please provide a copy of any such guidance.

(c) When you state that you can do better, please specifically detail what you intend to do "better" in providing guidance to small farmers as to whether they have anything to fear from the reporting requirements and, if so, under what circumstances they likely would have to report.

(d) When specifically do you intend to provide guidance to address the concerns of small farmers?

Answer: The Agency has guidance on continuous release reporting available on its web site (<http://www.epa.gov/superfund/resources/release/faciliti.htm>). The guidance is not specific to small farmers with respect to their reporting obligations under CERCLA and EPCRA. Once the emissions study has been completed, the Agency will be able to provide guidance to

all farmers, including small farmers, with respect to their reporting obligations under CERCLA and EPCRA, within 18 months of completion of the study.

10. Does EPA have a system where a company with an animal feeding operation can report electronically releases above the reportable quantity limit?

Answer: No, the Agency does not currently have a system where a company with an animal feeding operation (or any operation) can report electronically regarding releases above the reportable quantity limit.

11. Please provide an estimate of how much time it would take a company with a release above the reportable quantity limit to file the required report.

Answer: An episodic release notification requires a telephone report to the National Response Center. Continuous release reporting is more detailed, but significantly reduces the reporting burden overall. The current Information Collection Requests for “Notification of Episodic Releases of Oil and Hazardous Substances,” and “Continuous Release Reporting Regulation under CERCLA,” provides the Agency’s best estimate of the burden associated with notification requirements under CERCLA section 103.

For episodic releases, the estimated cost to the facility owner/operator making the notification is \$166.99 per notification. Included in this estimate is the cost of making the telephone notification (2 hours) and the cost of recordkeeping (2.1 hours). For continuous release reporting, the average estimated cost to the facility owner/operator making the notification over a three-year period is \$5,096. It is important to note that this figure is for a “typical” respondent and assumes that they will report eight continuous hazardous substances releases in year one and experience a change in one release in the second and third years. This figure also includes providing an initial telephone notification, preparing an initial written report, preparing a follow-up written report, conducting annual evaluations, reporting other changes in information, and record keeping.

Since it is likely that the number of continuous release reports at farms will be much less than estimated in the information collection request, we believe that the actual costs for a farm operation would be significantly less than the costs estimated in the information collection request.

12. Are there any regulatory consequences under Federal law that follow the reporting of releases of ammonia or hydrogen sulphide above reportable quantity limits under CERCLA or EPCRA?

Answer: There are no prescriptive regulatory consequences under Federal law that follow the reporting of releases of ammonia or hydrogen sulfide, or any other hazardous substance or extremely hazardous substance, above reportable quantity limits under CERCLA or EPCRA. There could, however, be costs associated with any Federal response that is undertaken which results from the release of ammonia or hydrogen sulfide above the reportable quantity limits.

13. Are there any regulatory consequences under State law that directly flow from or follow the reporting of releases of hazardous substances under CERCLA or extremely hazardous substances under EPCRA that are above the reportable quantity limit?

Answer: EPA is not aware of any specific regulatory consequences under State law that directly flow from or follow the reporting of releases of hazardous substances under CERCLA or extremely hazardous substances under EPCRA that are above the reportable quantity limit.

14. The American Heritage Dictionary definition of “manure” is “animal dung, compost, or other material used to fertilize soil.” The Webster’s II New College Dictionary definition of “manure” is “material for fertilizing soil, as animal dung or compost.” Does EPA believe “manure” is a fertilizer for the purpose of CERCLA, Section 101(22)? If not, please specifically state the reasons why not.

Answer: Although EPA is aware that many farmers use “manure” as a fertilizer, the Agency has not taken a position on whether “manure” is a fertilizer with respect to CERCLA section 101(22).

15. At the November 16 Subcommittee hearing, in response to a question from Rep. Solis, you testified that you wanted to “double check” whether the Superfund definition of “release” excludes the “normal application of fertilizer.” Now that you have had the opportunity to double check, do you agree that the Superfund definition of “release” excludes the “normal application of fertilizer”?

Answer: Yes, EPA agrees that the CERCLA definition of “release” excludes the “normal application of fertilizer.”

16. Has EPA ever published guidance or interpreted in any manner the exception from the definition of “release” for “the normal application of fertilizer”? If so, please provide any such guidance or interpretation.

Answer: No, EPA has not published guidance or interpreted in any manner the exclusion from the definition of “release” for “the normal application of fertilizer.”

17. Is the EPA aware of any legislative history with respect to the exclusion from the term “release” for the “normal application of fertilizer” (CERCLA Section 101(22))? If so, please provide the legislative history.

Answer: Yes, EPA is aware of legislative history with respect to the exclusion from the term “release” for the “normal application of fertilizer” (CERCLA section 101(22)). The specific excerpt from the “Senate Report No. 96-848, to accompany S. 1480, the Environmental Emergency Response Act, by the Committee on Environment and Public Works, 96th Cong., 2d Sess., July 13, 1980” is attached.

18. Has EPA ever taken a position or expressed a view, formal or informal, in any administrative or other civil proceeding with respect to the interpretation of “the

normal application of fertilizer” exclusion in CERCLA Section 101(22)?

Answer: EPA has not taken a position or expressed a view, formal or informal, in any administrative or other civil proceeding with respect to the interpretation of “the normal application of fertilizer” exclusion in CERCLA section 101(22).

19. Is EPA aware of any private litigation where the “normal application of fertilizer” exclusion from the definition of “release” has been an issue? If so, please cite any such cases and describe any administrative or judicial interpretations of the exclusion for “the normal application of fertilizer.”

Answer: While EPA is aware that private litigation is ongoing, the Agency is not aware of all of the litigation that may be underway. EPA is not a party to or otherwise involved in this private litigation. Therefore, the Agency is not aware of whether this issue, in particular, has been raised in any of the private litigation.

20. Does EPA support treating “manure” the same as chemical or other commercial fertilizers for the purpose of CERCLA and, in particular, for the purpose of the exclusion from the definition of “release” for “the normal application of fertilizer”?

Answer: EPA has not taken a position on what constitutes the normal application of fertilizer.

21. The reporting requirements are for “hazardous substances” under CERCLA Section 103 and are for “extremely hazardous substances” under EPCRA. Both ammonia and hydrogen sulfide are listed as “hazardous substances” under CERCLA and “extremely hazardous substances” under EPCRA. Does EPA support differentiating among industries for the reporting of releases of the same “hazardous substance” or “extremely hazardous substance”? If so, please explain on what basis you support different treatment among industries for reporting requirements.

Answer: CERCLA and EPCRA do not differentiate among industries for the reporting of releases of the same “hazardous substance” or “extremely hazardous substance.” If the Agency were to make that determination, EPA would be required to do so through regulation.

22. If manure is consolidated into a big lagoon, does EPA consider that circumstance “a naturally occurring substance in its unaltered state . . . from a location where it is naturally found”?

Answer: EPA has not taken a position as to whether manure, consolidated into a big lagoon is “a naturally occurring substance in its unaltered state . . . from a location where it is naturally found.” However, there is a qualified limitation of CERCLA response authority in CERCLA §104(a)(3) regarding “a release or threat of release . . . of a naturally occurring substance in its unaltered form or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.” CERCLA section 104(a)(4) outlines the circumstances when this qualified limitation of response authority may no longer apply (e.g., in an emergency). EPA has never responded to such a release of a naturally

occurring substance. In any case, the qualified limitation of response authority is not tied to the reporting requirements of CERCLA and EPCRA.

23. Is EPA aware that substances such as phosphorus are added to the feed at animal feeding operations? If so, please describe the types of animal feeding operations that add phosphorous to the feed.

Answer: Yes, EPA is aware that phosphorus (P) is added to animal feed. It is a mineral that is required for normal metabolism. Veterinarians have told farmers with problems with dairy cow breed-back, or keeping calves to parturition, that they need more phosphorus in the diet. Swine and poultry do not have enzymes in the gut to make the phosphorus found in plant materials available to animals, so this phosphorus passes through in the feces. Mineral phosphorus (dicalcium phosphate, oyster shell, etc.) has always been added to give the animal the phosphorus that it needs. Phytase, and other similar products, make the phosphorus found in the plant material available to the animal, and therefore the amount of mineral phosphorus added to the diet can be reduced.

According to discussions with the Natural Resource Conservation Service, the swine and poultry industries by and large did not use Phytase until other similar products became available thus driving down the price and making their use more economical, except where it was regulated by state law, i.e., Maryland. We see estimates that approximately 70% of the broiler industry, 50% of the swine industry and 50% of the layer and turkey industries are using Phytase. One may find corresponding manure analyses from broilers showing a drop from 36-38 lbs of P/ton, pre-Phytase, to 23-26 lbs. of P/ton, post-Phytase.

24. Has EPA issued any guidance or a formal or informal interpretation of the term “naturally occurring substance” as it is used in CERCLA Section 104(a)(3)(A)? If so, please provide any such guidance or interpretation.

Answer: No, EPA has not issued any guidance or a formal or informal interpretation of the term “naturally occurring substance” as it is used in CERCLA section 104(a)(3)(A).

25. Has EPA or the Department of Justice taken a position or expressed a view, formal or informal, on the term “naturally occurring substance” as used in CERCLA, Section 104(a)(3)(A), in any administrative or civil action? If so, please provide any document that reflects such position or view.

EPA and DOJ have taken positions or expressed views on the term “naturally occurring substance” in two civil actions in which the United States was a party, and the third case provides the Court’s position on burden of proof:

(1) *United States v. Iron Mountain Mines, Inc.*, 812 F. Supp. 1528 (E. D. Calif. 1992) and 987 F. Supp. 1244 (E. D. Calif. 1997). This CERCLA cost recovery action concerns a mine at which intensive mining activity caused severe acid mine drainage (AMD) that posed a threat to the environment. The 1992 opinion granted partial summary judgment to the United States on defendant mining company’s defense based on section 104(a)(3)(A) of CERCLA. According to this opinion, the United States took the position

that although the defendant is not liable for the costs of responding to releases of naturally occurring substances, this defense was not applicable in this case. The Federal government submitted evidence that AMD flowing from the mine, although it consisted of naturally occurring substances, was not itself naturally occurring but rather was created by the mining. The 1997 opinion granted partial summary judgment to the United States when the mining company tried again to litigate the section 104(a)(3)(A) issue, finding that the law of the case doctrine applies. According to this opinion, while the United States argued that the 3 Records of Decision (RODs) issued to date for the site targeted contamination from the mine workings and mining waste piles, the 1992 opinion found that releases from mining activity are not naturally occurring, and therefore the law of the case doctrine precludes the mining company from re-litigating the section 104(a)(3)(A) issue.

(2) *United States v. W.R. Grace & Company*, 280 F. Supp. 1149 (D. Montana 2003). The court found that defendant corporations were liable under CERCLA for the cleanup of asbestos at the Libby Asbestos Site. The court found that EPA's response actions at the site did not conflict with the limitation on responses set forth in section 104(a)(3)(A) of CERCLA, reasoning that evidence presented at trial by the Federal government demonstrated that the actions were taken in response to releases and threats of releases associated with mined and processed vermiculite, not to a "naturally occurring substance in its unaltered form."

(3) *United States v. Louisiana-Pacific Corporation*, 1994 U.S. Dist. LEXIS 20590 (E.D. Calif. 1994). Citing the private litigation listed in the Response to Question 26, below, the court stated that there are two ways to view section 104(a)(3)(A) of CERCLA, either as limiting EPA's authority to respond to naturally occurring substances, or as a legislative declaration that no release occurs where there are only naturally occurring substances. In either case, the court says that plaintiffs bear the burden of demonstrating that a hazardous substance (in this case, asbestos) was not a naturally occurring substance. However, the court rejects defendants' argument that, in the absence of background studies, plaintiffs cannot prove that there were greater levels of arsenic present than occurred naturally, and denies defendants' summary judgment motion on this issue.

26. Is EPA aware of any private litigation where the term "naturally occurring substance" as used in CERCLA, Section 104(a)(3)(A), has been an issue and/or has been discussed? If so, please identify the case and provide a citation for the case, if available.

Answer: The Agency is aware of the following private litigation in which this term was at issue and/or was discussed: *Mid Valley Bank v. North Valley Bank*, 764 F. Supp. 1377 (E.D. Calif. 1991). EPA is not a party to or otherwise involved in this private litigation.

27. Is it correct that EPA staff in a meeting on November 8, 2005, informed the Committee staff that the farm industry, particularly the swine industry, requested and successfully negotiated to include CERCLA and EPCRA in the Animal Feeding Operations Consent Agreement and Final Order (70 FR 5948)? If so, please identify

the specific companies or associations that requested to include CERCLA and EPCRA in the Animal Feeding Operations Consent Agreement and Final Order.

Answer: Yes. The representatives of the following entities negotiated with EPA to include CERCLA and EPCRA in the Animal Feeding Operations Consent Agreement and Final Order:

1. National Chicken Council
2. United Egg Producers
3. National Turkey Federation
4. U.S. Poultry and Egg Association
5. California Poultry Federation
6. National Pork Producers Council
7. National Milk Producers Federation

28. What are the reasons that led EPA and the farm industry to negotiate the Animal Feeding Operations Consent Agreement?

Answer: In recent years, the increased size and consolidation of agricultural operations, including poultry, swine, and dairy operations, have been the focus of an increasing number of citizen complaints and concerns about possible health impacts. In December of 2001, EPA and the U.S. Department of Agriculture asked the National Academy of Sciences (NAS) to review and evaluate the scientific basis for estimating emissions of various air pollutants from AFOs. The NAS issued its final report in February 2003 and concluded that scientifically sound and practical protocols needed to be developed for measuring air emissions from AFOs. These findings posed problems for EPA regulation of AFOs. EPA began reviewing conceptual enforcement agreements initiated by livestock groups, to specifically address the data and emissions-estimating methodology needs cited by the NAS, while bringing a large segment of the AFO industry into compliance with the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Emergency Planning and Community Right to Know Act (EPCRA).

29. Please identify the approximately 2,700 companies that are signatories or have submitted proposed agreements to EPA for the Animal Feeding Operations Consent Agreement.

Answer: EPA identified 20 settling respondents when these agreements were filed with EPA's Environmental Appeals Board (EAB). On Friday, Jan. 27, 2006, the EPA's Environmental Appeals Board (EAB) approved the first 20 Air Compliance Agreements. These 20 Agreements are comprised of 10 agreements from the swine industry, and 10 agreements from the egg-laying industry. EPA is evaluating the remaining agreements and plans to send those satisfying the requirements for participation to the EAB for approval as soon as possible. The names of the first set of 20 Respondents submitted to the EAB are as follows:

Egg Layers:

1. P & W Eggs
2313 Hilltop
Anita, Iowa 50020
2. MCM Poultry Farm
5611 Peck Road
Arcadia, CA 91006-5851
3. Water Works
2104 E 300 South
Portland, IN 47371
4. Bob Wendel & Son's Poultry
14830 Cochran Road
New Weston, OH 45348
5. K-Brand Farms
715 Glen Wild Road
Box 119
WoodRidge, NY 12789
6. Henningsen Foods, Inc.
Shell Egg Division
851 Third Street
P.O. Box 70
David City, NE 68632
7. Lennartz Farms
3178 St. Peter Rd.
Ft. Recovery, Ohio 45846
8. Center Fresh Egg Farm, LLP
546 9th Ave. East
Oskaloosa, Iowa 52577
9. Badgett Enterprises LTD
743 Mercer Darke County Line Rd.
Ft. Recovery, OH 45846
10. Greg B. Nelson
8690 Quail Circle
Manhattan, KS 66502

Swine:

11. Fairway Farms
328 Monterey Rd.
Franklin, KY 42134

12. Brenton Brothers, Inc.
P.O. Box 190 - 1415 Walnut
Dalles Center, Iowa 50063

13. Roe Farm, Inc.
72368 110th St.
LeRoy, MN 55951

14. Terry Finnerty
10347 W. SR 26
Dunkirk, IN 47336

15. Jerry and Ruth Warren
6873 E. 625 N
Union City, IN 47390

16. E & S Swine, Inc.
2492 Mobleys Bridge Rd.
Grimesland, N.C. 27837

17. C & C Farms
4201 Hayes Mill Rd.
Godwin, N.C. 28344

18. Kermit Williamson Farm
17 Pond Lane Rd.
Clinton, N.C. 28328

19. James A. Zoltenko
RR1, Box 106
Courtland, KS 66939

20. Kober Farms LLC
8990 Peach Ridge
Sparta, MI 49345

30. Does the Clean Air Act (CAA) or the Clean Water Act provide authority for State or Federal trustees to recover damages for injury to, destruction of, or loss of natural resources? If so, please cite the specific authority under the Clean Air Act or the Clean Water Act.

Answer: The CAA does not contain a provision authorizing State or Federal Trustees to seek recovery of damages for injury to, or destruction of, natural resources. The Clean Water Act also does not contain a provision authorizing State or Federal Trustees to recover damages for injury to, or destruction of, natural resources. In 1990, Section 311 of the Clean Water Act was amended and supplemented by the Oil Pollution Act, which does allow State and Federal Trustees to recover damages for injury to, and destruction of, natural resources as a result of oil spills to navigable waters.

31. Have any companies in the farm community asked EPA and the Administration to issue guidance to further explain how the term “normal application of fertilizer” should be interpreted for the purpose of the Superfund statute? If so, please describe the specific request, the date of the request, and the company or organization which made the request.

Answer: EPA has not been asked by any companies in the farm community to issue guidance to further explain how the term “normal application of fertilizer” should be interpreted for the purpose of the Superfund statute.

32. Does the Superfund statute authorize or permit citizen suit actions for natural resource damages?

Answer: No, CERCLA does not authorize or permit citizen suit actions for natural resource damages.

33. Does EPA agree that there can be no recovery of response costs or damages under the Superfund statute (Section 107(j)) for “federally permitted releases” as defined in Section 101(10)?

Answer: Yes, as long as the release is in compliance with the permit. However, such costs and damages may be recoverable under other Federal or State laws, including common law.

34. Would a discharge permitted under Section 402 of the Clean Water Act (National Pollutant Discharge Elimination System) qualify as a “federally permitted release” under Superfund?

Answer: Yes. CERCLA section 101(10) states in part that, “[t]he term “federally permitted release” means (A) discharges in compliance with a permit under section 1342 of Title 33. Section 1342 of Title 33 is also known as Federal Water Pollution Control Act section 402 – National Pollutant Discharge Elimination System (NPDES).

35. Does EPA normally or routinely issue Clean Water Act permits for discharges or releases of phosphorus or phosphorus compounds from CAFOs? Please identify any permits EPA has issued for discharges or releases of phosphorus or phosphorus compounds from CAFOs.

Answer: The CAFO effluent guideline is based on a technology design standard that, in effect, prohibits discharges of all pollutants, including phosphorus and phosphorus

compounds, from the CAFO production area except during a 24-hour/25-year storm. NPDES permits implement this requirement; therefore, any permit issued to a CAFO pursuant to the 2003 CAFO effluent guideline or pursuant to the previous CAFO regulation would be examples of permits addressing the release of phosphorus or phosphorus compounds from CAFOs.

The 2003 CAFO effluent guideline also required large CAFOs that apply nutrients to their fields to do so in accordance with a nutrient management plan. The effect of this requirement is to regulate the discharge of the pollutants, including phosphorus, that are contained in CAFO wastes.

36. If EPA or an authorized State issued a Clean Water Act permit for a discharge or release of phosphorus or phosphorus compounds from a CAFO, would such a discharge be a “federally permitted release” and thus exempt from liability under CERCLA? If not, please explain why not.

Answer: Whether such a discharge would be a “federally permitted release” and thus exempt from liability under CERCLA would depend upon what section of the Clean Water Act the permit for a discharge or release of phosphorus or phosphorus compounds was issued under. The CERCLA section 101 definition of “federally permitted release” (enclosed) specifically identifies the types of discharges or emissions that are “federally permitted” by statutory authority.

37. Does EPA have information that authorized States are routinely permitting discharges or releases of phosphorus or phosphorous compounds from CAFOs pursuant to the Clean Water Act? If so, please provide such information.

Answer: As stated in response to Q 35, the CAFO effluent guideline is based on a technology design standard that, in effect, prohibits discharges of all pollutants, including phosphorus and phosphorus compounds, from the CAFO production area except during a 24-hour/25-year storm. The 2003 CAFO effluent guideline also required large CAFOs that apply nutrients to their fields to do so in accordance with a nutrient management plan. The effect of this requirement is to regulate the discharge of the pollutants, including phosphorus, that are contained in CAFO wastes.

38. What are the specific types of discharges or releases from CAFOs that are being permitted under the Clean Water Act?

Answer: As stated in response to Q 35, the CAFO effluent guideline is based on a technology design standard. It is estimated that the CAFO regulation will reduce 56 million pounds of phosphorus, 110 million pounds of nitrogen, and 2.1 billion pounds of sediment annually.

39. In January 2003, the Government Accountability Office (GAO) estimated that 4,500 permits had been issued to CAFOs under the Clean Water Act. Based on the latest information available, what is the EPA estimate of the number of CAFOs with Clean Water Act permits?

Answer: To date, approximately 8,140 CAFOs have Clean Water Act permits.

40. Please provide any estimates or other information EPA has with respect to the number of CAFOs in the United States that should have permits under the Clean Water Act.

Answer: EPA has initiated a rulemaking in which we expect to identify the circumstances when CAFOs must apply for NPDES permits. Therefore, we cannot make an estimate at this time.

41. Please identify the enforcement actions the EPA has undertaken in each of the past five fiscal years against CAFOs for violations of the Clean Water Act. Further, please identify the nature of the violation, any disposition or settlement of the case, and the amount of penalties assessed.

Answer: Beginning in FY 2005, EPA formally collected data on enforcement and compliance assurance activities aimed at minimizing the discharge of pollutants into surface waters from concentrated animal feeding operations (CAFOs) for civil violations. The enclosed document, from EPA's Integrated Compliance Information System (ICIS), provides more detailed information on the civil enforcement FY 2005 CAFO case listing. Prior to FY05, EPA gathered information informally and manually relating to enforcement actions for Clean Water Act violations by CAFOs, therefore we do not have a complete listing of enforcement actions specifically against CAFOs for FY2001- FY2004.

42. In January 2003, the GAO estimated that EPA's revised regulations under the Clean Water Act could increase the number of concentrated animal feeding operations that are required to obtain permits to 11,500. At the Subcommittee hearing, Rep. Stupak asked you how many concentrated animal feeding operations are required to have a Clean Water National Pollutant Discharge Elimination System permit and how many have actually been permitted. You promised to answer for the record. Please provide your response to Rep. Stupak's question.

Answer: EPA promulgated regulations in 2003 that required many CAFOs to apply for NPDES permits. When the U.S. Court of Appeals for the Second Circuit vacated and remanded portions of that regulation, EPA initiated a rulemaking to address the issue and is in the process of developing a proposed rule to address the Court's decision. At this time, EPA has not completed its proposal and so is not in a position to estimate how many CAFOs would be required to have an NPDES permit.

43. How many administrative or civil enforcement actions has EPA brought in the last five years against animal feeding operations under the Clean Air Act? Please identify each such enforcement action and the violation alleged.

Answer: EPA has undertaken 2 civil enforcement actions against animal feeding operations for Clean Air Act violations, as described below:

1. Premium Standard Farms: In 1999, EPA intervened in a Clean Water Act citizen suit initiated against PSF and Continental Grain Company. This action later included allegations under the Clean Air Act (CAA), CERCLA, and EPCRA. CAA Section 110 violations alleged included failure to obtain preconstruction and operating permits. In November of 2001, the U.S. EPA and the Justice Department entered into a consent decree with PSF. Settlement of this case included payment of a \$350,000 penalty, and monitoring of air emissions of particulate matter, volatile organic compounds, hydrogen sulfide, and ammonia from representative barns and lagoons. If the monitoring levels were found to exceed CAA thresholds for any regulated pollutant, the companies would have been required to apply to the State of Missouri for any necessary Clean Air Act permits. The Consent Decree also required PSF to significantly reduce hydrogen sulfide and ammonia emissions.

2. Buckeye Egg Farms, LLC: In November of 2003, EPA and the Department of Justice filed a judicial complaint against Buckeye Egg Farms citing failure to comply with a Unilateral Order requiring air monitoring testing under the Clean Air Act. In February of 2004, Ohio Fresh Eggs, the new owner of the egg-layer facility in Ohio, agreed to investigate, install, and test a PM control device and implement ammonia reduction technology. The settlement also included payment of an \$880,000 penalty. Ohio Fresh Eggs is currently testing potential PM control devices and ammonia reduction technologies.

44. How many animal feeding operations in the United States would be considered large CAFOs (using the EPA Clean Water Act criteria) in each of the following farm industry sectors?

Answer: The following numbers animal feeding operations are approximations:

(a)	Swine (we do not have broken down by weight)	5,533
(b)	Chickens	2,154
(c)	Laying hens or broilers	1,119
(d)	Turkeys	415
(e)	Cattle	2,048
(f)	Dairy	1,639
(g)	Swine (weighing less than 55 pounds)	-----

45. If “manure” was legislatively exempted from the definition of “hazardous substance” and “pollutant or contaminant” under CERCLA, would that eliminate Federal liability for any natural resources damages that may result from a large spill?

Answer: Exempting substances from the definition of “hazardous substance” and “pollutant or contaminant” under CERCLA would eliminate liability for natural resource damages under CERCLA.

46. Has EPA ever listed a CAFO on the Superfund National Priorities List? If so, please identify the facility and describe the circumstances of the listing.

Answer: EPA has not listed a CAFO on the Superfund National Priorities List.

47. In your testimony, you state that one of the reasons for conducting the monitoring study is to “allow respondents to determine and comply with their regulatory responsibilities under the CAA . . .” Please describe the responsibilities an animal feeding operation has under the Clean Air Act, excluding obligations relating to diesel generators.

Answer: If an animal feeding operation has emissions of sufficient quantity that meet or exceed the threshold, they may have an obligation to apply for a Title V permit or an NSR/PSD permit.

48. For each of the following air pollutants please list and describe current regulations under the Federal Clean Air Act that limit or control emissions of that pollutant from animal feeding operations, excluding operation of diesel generators.

- (a) Ammonia
- (b) Hydrogen sulfide
- (c) PM2.5
- (d) Coarse particles
- (e) Volatile organic compounds
- (f) Nitrogen oxides

Answer: There are no specific federal regulations under the Clean Air Act that limit or control emissions of Hydrogen sulfide, PM2.5, Coarse particles, Volatile organic compounds, or Nitrogen oxides from these sources. (Ammonia is not a regulated pollutant). However, these pollutants may be regulated by State Implementation Plans.