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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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December 1, 2005

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The Honorable Paul E. Gillmor
Chairman
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

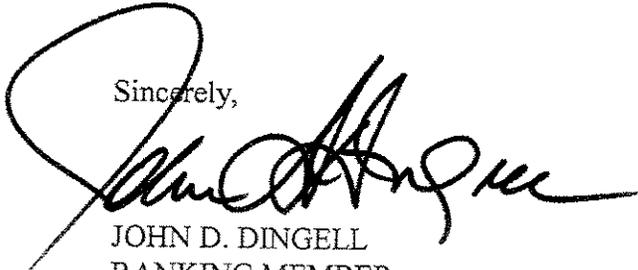
As provided in rule 4(c)(2) of the Rules of the Committee on Energy and Commerce, I request that you forward the attached follow-up questions for the record from Ranking Member Hilda Solis and me to the identified witnesses who appeared before the Subcommittee on Environment and Hazardous Materials hearing entitled "Superfund Laws and Animal Agriculture" held on November 16, 2005.

The attached questions, along with the witness responses, are to be included in the printed hearing record. Please request that each witness, in responding to each question, include the full text of each question before their answer.

I would further ask that when the responses are received, a copy of each response be forwarded to Sharon Davis (sharon.davis@mail.house.gov) or Candy Butler (cb2000@mail.house.gov) of the Committee's Democratic staff. If any further information is required, please have your staff contact Sharon Davis at ext. 5-3641 or by e-mail.

With every good wish.

Sincerely,


JOHN D. DINGELL
RANKING MEMBER

Attachments

The Honorable Joe Barton
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cc: The Honorable Joe Barton
Chairman
Committee on Energy and Commerce

The Honorable Hilda L. Solis
Ranking Member
Subcommittee on Environment and Hazardous Materials

Questions from the Honorable John D. Dingell and the Honorable Hilda L. Solis

Mr. Barry Breen, Deputy Assistant Administrator

Office of Solid Waste and Emergency Response

Environmental Protection Agency

November 16, 2005

**Subcommittee on Environment and Hazardous Materials Hearing entitled:
“Superfund Laws and Animal Agriculture”**

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.

2. Please provide any other information EPA has relating to the human health or environment 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.
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?

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?
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.
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.
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.

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?
10. Does EPA have a system where a company with an animal feeding operation can report electronically 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.
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?
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?
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.
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"?
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.
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.
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)?
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."
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"?

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

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

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.
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.

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.
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?
 - (a) Swine (weighing 55 pounds or more)
 - (b) Chickens
 - (c) Laying hens or broilers
 - (d) Turkeys
 - (e) Cattle
 - (f) Dairy
 - (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?
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.
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.

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