

Congress of the United States

Washington, DC 20515

May 2, 2007

MYTH VS. FACT: Animal Feeding Operations, Protection of Drinking Water Supplies & the Superfund Law

Dear Colleague:

Efforts are underway to eliminate all existing authorities from the Superfund statute that have been used by cities (Waco, Texas, and Tulsa, Oklahoma) and States (Oklahoma) to protect local watersheds and drinking water supplies. The bill seeking to accomplish this is H.R. 1398. H.R. 1398 would protect bad actors because animal feeding operations that engage in the normal application of fertilizer are already exempt from liability. We urge you to oppose H.R. 1398.

As Chairman of the Committees with jurisdiction over Superfund and the Clean Water Act, we also wish to clarify some of the common misperceptions that have been created:

Myth: Manure is at risk of being classified as a "hazardous waste."

Fact: *Manure is not classified as a "hazardous waste." There have been three cases brought in the 25-year history of the Superfund program. In each of the cases, the contaminant in question was phosphorous, a hazardous substance under Superfund, that had allegedly come from agricultural operations and that had contaminated local drinking water supplies and watersheds and resulted in additional treatment costs for the city ratepayers or, in the case of the State of Oklahoma, damages to the Illinois River watershed.*

Myth: Congress did not intend to apply the Superfund law to "manure."

Fact: *Congress specifically considered the application of fertilizer and created a legal exemption for the normal application of fertilizer:*

"Section 101(22), the term 'release'...excludes... (D) the normal application of fertilizer."

Legislative history defines the term "normal field application" as "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 that are beneficial to crops." (S. Rep. No. 96-848, at 46 (1980)).

Congress also created another prohibition on the recovery of response costs or damages under the Superfund statute for "federally permitted releases" (Section 107(j) and Section 101(10)). Thus, if an animal feeding operation is compliant with a permit under the Clean Water Act there is no liability under the Superfund statute.

Myth: Animal agriculture operations are already highly regulated under the Clean Water Act and Clean Air Act. These regulations provide for permitting, enforcement, and remediation.

Fact: *Clean Water Act regulations on the application of manure associated with animal feeding operations are under attack by some in the agriculture industry. Neither the Clean Air Act nor the Clean Water Act contain provisions authorizing State or Federal Trustees to seek recovery of damages for injury to, or destruction of, natural resources.*

Further, Superfund is the only federal statute that allows for State and local governments to recover cleanup costs from parties responsible for contamination of local drinking water supplies.

Myth: If "manure" is not exempted from liability under the Superfund law, all farms, large and small, would be at risk of operational uncertainty, impending litigation and potential liability for commercially acceptable practices and naturally occurring organic materials produced at their farming operations.

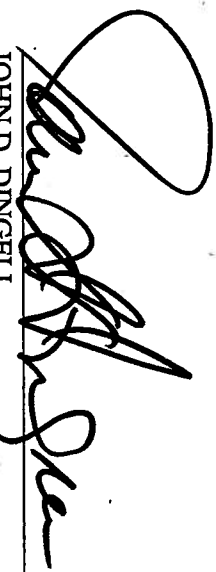
Fact: *There is no reason to believe that any farms, large or small, are in danger of being held liable under Superfund for response costs or damages as long as they are applying manure in quantities that are beneficial to crops OR are in compliance with a Clean Water Act permit.*

Myth: If "manure" is not exempted from liability under the Superfund law, all farms, large and small, would be at risk of being designated as Superfund sites.

Fact: *No farm has ever been designated a Superfund site due to fertilizer releases. Only the President can designate a farm as a Superfund site, after a notice and comment period. This is a discretionary function; no lawsuit or other legal action can force the President to designate a facility on the Superfund National Priorities List. Superfund designations affect only the most severely contaminated sites.*

For more information, please contact Dick Frandsen with the Committee on Energy and Commerce staff at ext. 5-2927 or Ryan Seiger with the Committee on Transportation and Infrastructure staff at ext. 5-0060.

Sincerely,



JOHN D. DINGELL
Chairman



JAMES I. OBERSTAR
Chairman
Committee on Transportation and Infrastructure