

U.S. House of Representatives
Energy and Commerce Committee
Subcommittee on Environment and the Economy
H.R. 2997 “The Superfund Common Sense Act”
Testimony of Susana M. Hildebrand, P.E., Chief Engineer of the TCEQ

The Texas Commission on Environmental Quality (TCEQ) regularly weighs matters that affect the environment and economy. Decisions made by the TCEQ are based on the law, common sense, good science, and fiscal responsibility¹. The Superfund Common Sense Act, H.R. 2997, is also based on these principles. This hearing is not about whether manure should be regulated. Animal agricultural operations that produce manure are already adequately regulated under other environmental laws, such as the federal Clean Water Act and Clean Air Act, as well as state-specific authorities such as the Texas Water Code and Texas Clean Air Act in Texas. The question is whether the additional regulatory burdens of CERCLA are necessary for manure. H.R. 2997 would remove the question from the purview of the courts and EPA, ensuring that resources dedicated to CERCLA are used to address the problems that Congress had intended.

CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), authorizes federal cleanup of releases of hazardous substances, imposes liability for cleanup, and provides for restoration or replacement of natural resources affected by a release. CERCLA defines a hazardous substance as a substance designated under various acts, including the Clean Air Act and the Clean Water Act. CERCLA also specifies reporting requirements when specific quantities of hazardous substances are released to the environment. CERCLA §103(a) excludes, “federally permitted” releases including discharges addressed through a NPDES permit from the release notification requirements of CERCLA. This exclusion is appropriate because effective regulatory and enforcement mechanisms already exist under applicable laws including the Clean Water Act (CWA) and the Clean Air Act. Specific agricultural operations, such as confined animal feeding operations, are already regulated under the NPDES Program and the Texas Pollutant Discharge Elimination System (TPDES) in Texas. TPDES permits regulate discharges from CAFOs and include best management practice requirements for manure management. With regard to air emissions, facilities in Texas are subject to the Texas Health and Safety Code, through the Texas Clean Air Act, and must be authorized prior to construction. In considering issuance of a permit, the TCEQ considers possible nuisance odors and addressing handling and storage of manure. Violations of state law or agency

¹Texas Commission on Environmental Quality Mission and Philosophy
<http://www.tceq.texas.gov/about/mission.html>

regulations, including odor and nuisance conditions, are subject to enforcement. Congress should make it clear that current environmental laws are adequate and that regulation under CERCLA is not necessary.

Moreover, as the United States Environmental Protection Agency (EPA) describes on its Superfund website, the CERCLA law was enacted following the discovery of high-risk toxic waste dumps such as Love Canal in New York and Times Beach in Missouri in the 1970s.² Also according to the EPA, “This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.”³ CERCLA was never intended to address the removal or cleanup of agricultural sites that are comprised of manure created by biological processes, as defined by H.R. 2997.

CERCLA and the federal Superfund program have had tremendous benefit in cleaning up legacy pollutants from some of the nation’s worst toxic waste sites. Applying CERCLA to agricultural operations that produce manure is not consistent with its original intent and will likely result in the diversion of federal, state, and local resources away from the cleanup of sites that contain hazardous substances and truly present the most significant risks to human health and the environment. Manure clearly does not fit into this category.

Conclusion

Regulating manure as a hazardous substance would be unduly burdensome to business owners who by and large manage manure properly. Congress should make it clear that manure is not a hazardous substance regulated under CERCLA. If Congress does not act to exclude manure, then it will allow the courts or EPA to define CERCLA applicability, resulting in ambiguous, duplicative, and inappropriate requirements to other mechanisms already available to state regulators charged with the mission of protecting human health and the environment. There is no additional benefit to regulating manure under CERCLA as there are other regulatory programs already in place to address environmental concerns. The facts are clear: stringent requirements meant for truly hazardous substances, such as those imposed under CERCLA, should not apply to manure.

² United States Protection Agency Superfund Basic Information
<http://www.epa.gov/superfund/about.htm>

³ United States Environmental Protection Agency Superfund CERCLA Overview
<http://www.epa.gov/superfund/policy/cercla.htm>