

Written Statement of
Leonard Blackham, Commissioner, Utah Department of Agriculture and Food
Chairman, NASDA Natural Resources and Pesticide Management Committee Veterinarian
before the
U.S. Senate
Environment and Public Works Committee
on
Concentrated Animal Feeding Operations (CAFOs) and Environmental Issues Facing Agriculture
Thursday, September 6, 2007
10:00am

Mr. Chairman and members of the Committee, thank you for the opportunity to testify on Concentrated Animal Feeding Operations (CAFOs) and environmental issues facing agriculture. My name is Leonard Blackham. I am the Commissioner of the Utah Department of Agriculture and Food, and I appear here today on behalf of the National Association of State Departments of Agriculture (NASDA). NASDA represents the commissioners, secretaries and directors of agriculture in the fifty states and four territories.

We share your commitment to the environment and have a long history of being stewards of the land by implementing sound conservation practices. Today, I would like to broadly outline the important role that state agriculture departments play in environmental protection and describe our efforts and issues related to animal feeding operations. The challenge today is how to maintain an economically viable and healthy agricultural landscape producing the food and fiber on which our country depends, while improving the agricultural environmental benefits our citizens enjoy. Agriculture provides not only the food and fiber of America, but is the largest offset provider against human activity. A healthy agricultural landscape provides clean air, water and open space.

Role of State Agriculture Departments

States are partners in the federal system of environmental protection. For example, a majority of the fifty state departments of agriculture have long been the lead state agencies for implementing federal pesticide laws. You may be surprised to hear that about half of the state conservation agencies are housed within the state agriculture departments. In this capacity, we oversee and implement soil and water conservation programs, non-point source water quality programs, and a variety of other environmental resource programs. In my state of Utah, we jointly administer the program for Concentrated Animal Feeding Operations (CAFOs) in partnership with the Utah Department of Environmental Quality.

State agriculture departments often tackle environmental, water quality, food safety, and pesticide management issues before they reach national attention. In part, this has occurred because we have established close working partnerships with farmers, ranchers, and a diverse mix of local stakeholders. However, the scope and range of our environmental activities are rapidly expanding. For instance, major initiatives on water quality, including proposals for Total Maximum Daily Loads (TMDLs), Concentrated Animal Feeding Operations (CAFOs), new Clean Air Act standards, and endangered species protection all have a significant impact on agricultural activities and individual farm and ranch operations. Implementing these new and ongoing regulatory activities are placing tremendous demands on state budgets and resources in the technical, financial, educational, and enforcement delivery system.

Agricultural Conservation Opportunities and Accomplishments

State-led initiatives and Farm Bill conservation programs have provided significant and continuing opportunities for major environmental quality protection. Crop and livestock producers are among the most dedicated and effective stewards of our natural resources because agriculture depends upon continued access to clean water, air and fertile land for its viability. Many of them have voluntarily adopted environmentally-friendly practices that have local, regional, and even global benefits. However, the public is increasingly looking to the agriculture sector to address a growing agenda of environmental issues—including nonpoint source pollution and water quality, water shortages, air quality, urban sprawl, animal predation, and invasive species. Other emerging challenges include climate change, carbon emissions, pesticide use, and biodiversity.

USDA conservation programs have increasingly addressed water quality management issues related to livestock operations. The Environmental Quality Incentives Program (EQIP) provides financial and technical assistance to install or implement conservation practices on working agricultural land. The 2002 Farm Bill required that sixty percent of EQIP funds be targeted at practices dealing with livestock production. Another important provision requires producers who receive cost-share money to complete a Nutrient Management Plan (NMP) or Comprehensive Nutrient Management Plan (CNMP). The 2002 Farm Bill provided an historic funding increase for EQIP authorizing \$6 billion over six years, starting with \$400 million in FY02 and increasing to \$1.3 billion in FY06. According to USDA, even with increased levels of funding, requests for EQIP contracts are exceeding available funding by almost six to one.

EQIP and other USDA conservation programs are critical to agriculture because meeting new environmental demands is a “make or break” challenge for producers. Many on-farm environmental enhancements are beyond the short-term and even long-term economic payback for producers. For example, many conservation practices have high capital or management input costs, but do not generate additional revenues. Agriculture is not organized in a fashion that allows increased costs of production to be passed on to consumers. As such, on-farm expenditures for conservation compete directly with servicing farm debt, and other family financial needs. In addition, implementing more stringent and complex standards usually increases the need for more costly approaches and technologies. Farmers are ready to do their part in accomplishing current and future national environmental goals. However, what will be expected of a cattle feeder in North Dakota will be quite different from the challenges faced by a citrus grower in Florida.

Many state departments of agriculture have begun to move on our own to try and fill the gaps in existing programs. These initiatives have taken different forms in each region of the country, reflecting state and regional differences both in what our farmers produce and in the most pressing agricultural challenges that they face. For example:

- California began implementing a Dairy Quality Assurance Program (CDQAP) in the late 1990's to promote public health (food safety), animal care and welfare, and environmental stewardship. CDQAP is a partnership of government, educators, and the dairy industry. For example, the environmental stewardship component is designed to assist producers in meeting all federal, state, regional, and local requirements related to manure management and water quality. The voluntary program provides education about their legal environmental obligations, resources, and funding for the certification of dairy operations.

- New York has developed the highly successful Agricultural Environmental Management (AEM) program. It's principal focus has been to provide direct assistance to farmers with the technical side of nutrient management planning, followed by cost sharing for improvements carried out under plans developed with that technical assistance. The primary environmental goal has been to assure that their dairy farms, which account for more than half of the state's agriculture output, can continue to operate within increasingly stringent water quality regulations.
- Kansas has focused on pesticide management as a key environmental challenge, developing programs to support integrated pest management and establishing Pesticide Management Areas designed to protect surface and ground water quality.
- The New Jersey Urban Conservation Action Partnership concerns itself with the issues that arise when farming coexists with urban and suburban development.
- Southwestern states are looking at programs that have a large water conservation component.
- Utah has partnered with state agencies, farm organizations, commodity groups and others to achieve an 86 percent success rate in developing and completing CNMPs for all CAFOs in our state.

Each of these state programs are designed to supplement those that already exist to help farmers carry out their stewardship function and bear the costs of what we see as substantial public benefits: open space conservation, resource preservation for future generations, clean air and water. Each is voluntary, incentive-based rather than sanction-based, designed to address local needs while complimenting existing programs, and carried out in collaboration with all federal and state agencies already engaged in local environmental management activities.

NASDA believes that such market-based approaches to agricultural environmental protection will be much more effective because they would:

- Reach more producers, thus provide greater environmental benefits overall;
- Give states flexibility to address their most critical problems;
- Target resources to where most needed on a site-specific basis;
- Increase local buy-in to find workable solutions;
- Emphasize preventive measures, which are more cost-effective and offer more economic returns;
- Address the expanding list of emerging problems (*i.e.* carbon emissions, etc.).

This is a high priority for state departments of agriculture and one of our key proposals for the 2007 Farm Bill is a bold, new initiative to address agricultural conservation, natural resource and environmental priorities through state partnership agreements. This new Agricultural Stewardship Partnership Agreement would be a "block-grant" type initiative that would give state and local governments more flexibility, innovative tools, and resources to implement agricultural conservation and environmental priorities.

Animal Feeding Operations (CAFOs) and Waste Management Issues

A strong livestock industry is essential to our Nation's economy, a healthy and high quality food supply, and the viability of our rural communities. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs) present a number of natural resource protection and management challenges. In recent years, animal feeding operations have become increasingly consolidated, specialized, and regionally concentrated.

If properly stored and used, manure from these operations can be a valuable resource. Applying manure to land can be an environmentally sound approach to fertilizing fields. With today's technology, manure can also be used in digesters to produce electricity and other beneficial by-products such as ethanol. If not managed correctly, wastes produced from animal operations can impact the environment and human health. We believe it is important to address waste management issues and water quality impacts in a way that is most appropriate for individual operations affected and which can be implemented with reasonable cost. States and producers need flexibility.

State Activities and Regulation of Animal Feeding Operations

The Environmental Protection Agency (EPA) has been regulating Concentrated Animal Feeding Operations (CAFOs) for more than 25 years. In many cases, the states preceded the federal government in both recognizing and regulating issues related to animal feeding operations. Throughout the 1970's, 1980's and 1990's, a number of states set higher or more restrictive standards for CAFOs, usually as a result of local issues or information. Some states developed permit programs and/or required design criteria for protection of both surface water and ground water. Other states implemented voluntary, incentive-based programs with strategies for nutrient management. These efforts have been led by state agriculture and conservation agencies working together with federal agencies, livestock and poultry industries, land grant universities, engineering consultants, scientists, and other local stakeholders.

Both state and federal CAFO rules have been reevaluated and updated over the past several years to keep up with industry changes, new technologies, and public perceptions. EPA finalized new regulations for CAFOs in 2003 which expanded the number of operations covered by the Clean Water Act (CWA) permit program to an estimated 15,500 operations. New permit requirements were added to include comprehensive nutrient management planning, and to extend coverage to include all poultry operations of a certain size. EPA is currently revising its 2003 CAFO rules to conform to a ruling of the 2nd Circuit U.S. Court of Appeals in 2005. EPA proposed a revised rule in 2006, but it has not yet been finalized.

NASDA supports EPA's proposed 2006 revised rule. Now, the state agriculture departments and other agricultural stakeholders are anxiously awaiting the agency's final rule. We have urged EPA to limit the final rule to the issues addressed by the court ruling and to provide more clarity on the regulatory obligations of livestock operations. States will need time to modify their CAFO programs to conform with the final rule. In late July, EPA announced that certain compliance deadlines would be extended until February 2009. This is helpful and will allow the states and other stakeholders an opportunity to adjust to the new requirements.

Although states have additional time to implement the new CAFO program requirements, the changes will create a resource and administrative challenge for state agriculture and conservation agencies. EPA has estimated that the CAFO regulations could result in compliance costs of \$850 million to \$940 million per year.

States will need to increase our efforts to identify, permit and inspect CAFOs. A major challenge is the ability of producers and state agency personnel to prepare the thousands of new nutrient management plans that will be required under the new rule. Livestock operators will need to address multiple nutrients in their waste management plans. They will need additional technical assistance, education, and training to comply with their permits. This creates additional demands on the state agriculture and conservation agencies which provide technical and financial assistance.

The key to achieving the national goal of assuring that animal feeding operations are managed to protect water quality is to provide states with the flexibility and resources to meet legal and programmatic responsibilities. We strongly believe that programs for managing animal nutrients are most appropriately implemented at the state and local level.

Other Environmental Challenges

While environmental improvements are being made, many challenges remain and new issues continue to emerge. NASDA believes there needs to be more recognition, evaluation and research on cross-media impacts from animal feeding operations. CAFOs can affect multiple pollutant media streams—soil, water, air— which could present management challenges or benefits. For example, methane emissions from an animal feeding operation could provide a potential energy source.

Air quality concerns associated with agricultural production include odors, ozone precursors, particulate emissions, and greenhouse gases. More study is needed. Very little science exists for agriculture related air quality issues. In fact, agriculture is currently financing \$15 million in research for EPA to help refine air quality issues.

EPA and USDA should develop partnerships with state agriculture departments to address these issues in a voluntary, incentive based way because we will have better success. For example, odor is a local issue. Addressing air quality concerns is an area of increasing emphasis in USDA conservation programs. Livestock producers enrolled in EQIP can receive cost-share assistance for installing anaerobic waste digestors, which significantly reduce odors. The new Conservation Security Program (CSP) provides enhancement payments for action that directly benefits air quality, including improving visibility, reducing near-surface ozone levels, reducing transport of fine and coarse particulates, reducing the potential for airborne agricultural chemicals and volatile organic compounds to affect human health, and increasing the sequestration of carbon on crop, range, and pasturelands.

Superfund Regulation of Animal Wastes

Recent lawsuits are threatening livestock and poultry operations by potential liability for emissions or discharges from manure produced or used in their operations.

NASDA strongly believes that it was never intended for agricultural operations and manure to be regulated under the Comprehensive Environmental Recovery, Compensation, and Liability Act (CERCLA) or the Environmental Protection and Community Right-to-Know Act (EPCRA), which are commonly known as Superfund.

We are pleased that EPA has issued guidance to clarify this issue, but urge Congress to pass legislation and confirm that agricultural byproducts produced during routine agricultural operations should not be subject to the provisions of EPCRA and CERCLA. If this clarification is not put into place, farming operations of all sizes could be subject to unwarranted litigation which would negatively impact their operations and the nation's food supply.

Animal agriculture operations and manure managements are already regulated under the Clean Water Act, Clean Air Act, and various state laws to protect the environment. These laws and regulations provide for permitting, enforcement, and if necessary, remediation.

It is important to note that CERCLA/EPCRA clearly exempt the application of chemical fertilizers containing the same constituents as manure—orthophosphate, ammonia, and hydrogen sulfide—which occur naturally in the environment.

This is not a large versus small farm issue. CERCLA/EPCRA current reporting requirements and liability thresholds for non-agricultural releases/emissions of regulated substances are quite low. This means virtually any agricultural operation producing, storing, and/or using animal manure could be held liable under laws. We do not want agriculture to be driven out of business or outside our borders by the heavy hand of government. CERCLA/EPCRA will only divert critical resources away from making agricultural environmental improvements to legal pockets.

State Surveys on Concentrated Animal Feeding Operations (CAFOs)

NASDA's Research Foundation has been conducting periodic surveys on CAFOs since 1997 with the latest surveys conducted in 2003 and 2005. These surveys were developed to obtain detailed information about state efforts to address water quality concerns, provide an overview of state requirements and regulations, and development of nutrient management plans.

The surveys show that many states have regulations more stringent and/or specific than federal regulations for CAFOs. Most states have required the development and implementation of a nutrient management plan for the application of manure, while some use a voluntary, incentive-based approach in accordance with sound agricultural practices and agronomic rates. Some states have developed more inclusive individual permit programs and/or required design criteria for protection of both surface water and ground water. Other states have specified additional surface water protection based on containment structure capacities. A number of states have mandatory training requirements for the operation of a variety of animal operations. In addition to the federal EQIP cost-share program, many states have their own cost-share programs or a low-interest loan program for best management practices. Most states have required inspections as part of their monitoring and enforcement process.

In 2006, NASDA launched CNMP Watch, a complete web-based source for manure and nutrient management planning information. This website was designed to help producers in preparing NMPs/CNMPs and provide all stakeholders with a portal for information on federal and state activities. The website address is: www.CNMPWatch.com.

Recommendations

As we have emphasized throughout our testimony, states have already taken a strong lead in working with and regulating animal feeding operations. The federal government should capitalize on the proven strengths of the state CAFO programs by providing funding, guidance, and coordination of resources to effectively achieve environmental quality on animal operations. NASDA offers the following recommendations to enhance our capabilities:

- EPA should provide states with the flexibility to account for regional differences in approach and should recognize “functionally equivalent” state programs that meet the National Pollutant Discharge Elimination System (NPDES) goals.
- More coordination is needed between EPA and USDA regarding components of CNMPs, and other forms of nutrient management planning. The CNMP used in the regulatory program as a permit requirement must be the same as the CNMP used voluntarily by non-permitted AFOs. If two different plans are used, the incentive for producers to voluntarily develop CNMPs in hope of avoiding the regulatory program disappears.
- Fully fund the EQIP and Section 319 Nonpoint Source Management Program. NASDA has long believed that the 319 program has been severely underfunded. Under the 319 program, states receive funds to support a wide variety of activities to address nonpoint source water quality issues, including technical assistance, education, training, technology transfer, demonstration projects, and monitoring.
- Provide and fund additional technical assistance from USDA’s Natural Resource Conservation Service (NRCS). Thousands of CNMPs are currently waiting for technical support to be completed.
- Provide more research and funding for water quality data and air quality data. Current information and statistics on water quality are lacking in completeness and are dated. Very little science and data currently exists for agricultural air quality issues. More state and federal funding is needed in these areas to get more accurate, science-based data. This evolving base of knowledge can be used to provide technical assistance and educational assistance to producers. From this knowledge, we also know which management practices and investments should be supported with financial assistance in the form of cost-share payments, loans, and grants.
- Additional research and technology development is needed to better understand cross media issues, such as air quality, odor, greenhouse gases.
- Congress should approve legislation to confirm that agricultural byproducts produced during routine agricultural operations should not be subject to the provisions of EPCRA and CERCLA.

Conclusion

One of the most significant trends in the last decade is the growing awareness of nearly all segments of the U.S. society in the importance of preserving our land, water and air resources. Agriculture—like other business sectors—has made substantial investments and taken great strides in protecting the environment.

The challenge today is how to maintain an economically viable and healthy agricultural landscape producing the food and fiber on which our country depends, while improving the agricultural environmental benefits our citizens enjoy. Agriculture provides not only the food and fiber of America, but is the largest offset provider against human activity. A healthy agricultural landscape provides clean air, water and open space.

NASDA urges you to carefully consider agriculture’s needs as we continue efforts to enhance environmental protection while maintaining a viable farm production system. We would welcome the opportunity to discuss these critical issues and look forward to working with you.