Approved: 2-27-98
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Vice-Chairperson Joann Freeborn at 3:30 p.m. on February 3, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Chester Boruff, Deputy Director, Illinois Department of Agriculture, State Fairgrounds, P.O. Box 19281, Springfield, Il., 62794-9281

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. in room 313-S. She welcomed the Farm Bureau members and others attending today's meeting.

The Chairperson opened the floor for discussion and possible action on **HCR 5030**.

HCR 5030: **A concurrent resolution requiring the Attorney General to bring suit against the State of Nebraska to enforce the provisions of the Republican River Compact.**

Rep. Sharon Schwartz made a motion for **HCR 5030** to be passed favorably and placed on the Consent Calendar. Motion seconded by Rep. Dan Johnson. Motion carried.

The Chairperson recognized Rep. Laura McClure. Rep. McClure commended the committee on the work they have done on this bill, **HCR 5030**. She thinks it sends a strong message to Nebraska that we mean business, that water is important to this state and that we can win.

Chairperson Freeborn announced the agenda for tomorrow, February 4, 1998. **HB 2419** will have discussion and possible final action and a hearing on **HB 2732**. She also announced that minutes for the January 21, 22 and 26 meetings have been distributed for review. If committee members have corrections they need to contact the Chairperson's office by Friday, February 6, 1998. A document was distributed by Charles Benjamin for the committee to review, concerning pork production. (See attachment 1)

The Chairperson welcomed Chester Boruff, Deputy Director, Illinois Department of Agriculture. Mr. Boruff gave a presentation on "A Review of the National Environmental Dialogue on Pork Production and the Status of State and Federal Livestock Regulations". (See attachment 2) He addressed the committee and offered his perspectives on the status of regulations affecting the livestock industry and how individual states are dealing with this issue. He focused on projects and activities which have been occurring at the national level, as well as within individual states in hopes that it might benefit members of the Kansas Legislature as they deliberate potential changes to agricultural regulations in Kansas.

Mr. Boruff discussed and answered questions concerning the installation and maintenance of lagoons, and the costs involved in closures. He discussed the sizes of animal operations, animal units, animal waste management and the permits and licenses issued to spread waste. He was asked his thoughts on the toxicity of waste. He feels it is not particularly toxic depending on how it is used and stored. He feels there is a somewhat reduction in livestock in his state, with more larger farm operations and less smaller ones. Questions by the committee followed.

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on February 3, 1998.

Raney Gilliland, Legislative Research Department asked Mr. Boruff for studies and research in his state of confined animal feeding operations. He said he would come up with a list of those being done.

Chairperson Freeborn thanked Mr. Boruff for his presentation.

The meeting adjourned at 5:10 p.m.

The next meeting is scheduled for February 4, 1998.

HOUSE ENVIRONMENT COMMITTEE COMMITTEE
GUEST LIST

DATE: 2-3-98

NAME	REPRESENTING
Derenda Mitchell	Kansas Dept. Of Agricul.
Chris Williams	KDOC&H Ag. Div.
Larry Kleeman	League of KS Municipalities
Mike & Rose Murphy	Farm Bureau
Mary Burtis	KFB
J BOTTENBERG	KPPC
Tom Bruno	Allen & Assoc.
Ron & Anita OHLDE	K.F.B.
Deland Shore	Rep. Shore
Dana Wyatt	Ks farmers Union
Leon Lewis	KFB
HAROLD BURNS	KFB
Royce Shaw	KFB
Craig Ramsey	KFB
Henry & Shirley Bell	KFB
Charles Benjamin	KNRC/KS Sierra Club

URGENT RELEASE

November 14, 1997
Attn: Environmental Reporters

Diane Shea (NACo) 202/942-4269
Hamilton Brown (NATaT) 202/624-3522

LOCAL GOVERNMENT GROUPS WITHDRAW FROM PORK PRODUCTION DIALOGUE

The **National Association of Counties** (NACo) and the **National Association of Towns and Townships** (NATaT) will withdrawn today from the National Environmental Dialogue on Pork Production (NEDPP) because the nation's pork producers have refused to acknowledge the necessity for local government zoning and regulatory authority over intensive farming, such as massive livestock operations.

The NEDPP, convened by the National Pork Producers Council, USDA, USEPA, and others, has attempted to draft policies to address the environmental impacts of large-scale hog production facilities

Counties and Townships withdrew their support from the NEDPP because they are extremely concerned that without such acknowledgment and encouragement of local decision making, the Dialogue's recommendations might be used as a vehicle by state legislatures and regulatory agencies to diminish the role of counties and towns in protecting their citizens.

"While pork producers are an important part of our nation's economy, local elected officials have an obligation to assure that their facilities are 'good neighbors' and comply with our local ordinances and regulations," said Margaret Pollard, chair of the Chatham County (N.C.) Board of Commissioners and NACo representative. "The Dialogue discussion is heading in the wrong direction, to the point where we simply can participate no longer."

Sandy Hooker, Medo (Minn.) Township Supervisor, said "We are interested in working with pork producers and anyone else who is interested in developing an effective program for dealing with factory farms, provided that local officials can protect our zoning and siting authority, as well as our health, safety, and nuisance laws. Local officials are accountable to all of our citizens for determining the best uses of land within our jurisdictions."

House Environment
2-3-98
Attachment 1

Environmental Defense Fund - Center for Rural Affairs - Natural Resources Defense Council

June 25, 1997
For Immediate Release

For further information, contact:
Joe Rudek, EDF (919-821-7793)
Nancy Thompson, CRA (402-846-5428)
Jessica Landman, NRDC (202-289-2394)

PRESS RELEASE

ENVIRONMENTAL AND GRASSROOTS FARM GROUPS REJECT FLAWED PORK COUNCIL PROCESS

Wide Coalition of Organizations to Develop Alternative Proposal on Environmental Impacts of Industrial Pork Production

Two national environmental organizations, the Natural Resources Defense Council and the Environmental Defense Fund, and a rural policy organization, the Center for Rural Affairs in Nebraska, today announced that they have withdrawn from the National Environmental Dialogue on Pork Production (NEDPP) and will work together with a broad coalition of environmental, family farm and sustainable agriculture groups to fashion a united pro-active agenda for a clean environment and sustainable pork production.

The NEDPP, convened by the National Pork Producers Council (NPPC) and others, was to have addressed the environmental impacts of large scale pork production. The three groups explained that they were withdrawing from the NEDPP because the process was so flawed that it could not yield useful results. They noted the inadequate representation of family farm, community and grassroots groups in the dialogue process. The fact that the NPPC had mis-characterized the proposed Dialogue in its own press releases and had used the Dialogue as a reason to derail several state legislative processes and local initiatives aimed at environmental cleanup contributed to a lack of the trust that is required for good faith negotiations to succeed.

These three organizations, in addition to the American Farmland Trust, were the only environmental, conservation and rural policy groups invited to the NEDPP which also included federal. state. local government and NPPC representation.

NRDC, EDF and CRA also announced their plans to continue to work with a coalition of environmental, family farm, sustainable agriculture and grassroots groups (which includes pork producers), to develop a unified, positive agenda for tackling the environmental impacts of industrialized pork production. They plan to make their proposals available soon, and to engage in a spirited public debate about the problem and solutions. Their proposals will build upon successful efforts that have been made at the local and state

level, and leave room for state and local flexibility. They will invite comments from all stakeholders, including the National Pork Producers Council.

Robbin Marks, a Natural Resources Defense Council Senior Resource Specialist who had been invited to the NEDPP, said "Pollution from large scale factory farming represents one of the most significant environmental issues today. We look forward to working with EPA and USDA to fashion an effective national pollution control program."

Joe Rudek, Ph.D., an Environmental Defense Fund Senior Scientist invited to the NEDPP, said "We intend to expand our outreach and work together with family farmers and sustainable agriculture allies to bring forth a national policy agenda. We will bring it back to the producers, the State and Federal regulators and the grassroots."

Nancy Thompson, a consultant at the Center for Rural Affairs invited to the NEDPP, said "We are interested in working with both environmentalists and pork producers on these environmental issues and look forward to engaging in discussions with all stakeholders, including the NPPC, through an open and fair process."

- end -

Illinois Department of Agriculture

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A REVIEW OF THE NATIONAL ENVIRONMENTAL DIALOGUE ON PORK PRODUCTION AND THE STATUS OF STATE AND FEDERAL LIVESTOCK REGULATIONS

Presented to the Kansas General Assembly
By
Chester S. Boruff, Deputy Director
Illinois Department of Agriculture
February 3 & 4, 1998

House Environment
2-3-98
Attachment 2

A REVIEW OF THE NATIONAL ENVIRONMENTAL DIALOGUE ON PORK PRODUCTION AND THE STATUS OF STATE AND FEDERAL LIVESTOCK REGULATIONS

Presented to the Kansas General Assembly
By
Chester S. Boruff, Deputy Director
Illinois Department of Agriculture
February 3 and 4, 1998

It is an honor for me to address this committee of the Kansas General Assembly and to offer my perspectives on the status of regulations affecting the livestock industry and how individual states are dealing with this issue. Agriculture is a diverse industry, but even though conditions and commodities may differ from one state to the next, there is a great deal of similarity between states as they attempt to balance the protection of their natural resources with the need for a strong livestock industry to contribute to their state's economy.

In the not too distant future, we will look back upon these days and see that we have been living through very historic times for American agriculture. For the first time since the days of the Great Depression, farm programs are being phased out and soon we will be competing in a global market place without the safety net of government support programs. Biotechnology is making rapid advances towards improving the crops that our producers grow while making drastic changes in existing production systems and marketing channels. Information gathered by satellites and interpreted by computers is allowing farmers to adopt precision farming and manage their operations in a way never dreamed of by their predecessors. The conflict between urban and rural users of our nation's land continues to grow and policy makers are forced to grapple with the emotional issues of how we can make best make use of our land and water resources.

The challenges facing the livestock sector of our agricultural economy are also historic in proportion. Fish-killing bacteria have caused great concern over the quality of our nation's waterways. The pork industry is undergoing rapid changes as producers adopt

new technology and business structures in order to minimize the risk of the marketplace. Oprah wrangles with cattlemen over the safety of beef. And a sheep named "Dolly" has caused us all to question the ethical implications when technology allows us to manipulate the origins of animal and human life.

During my presentation today, I would like to focus on projects and activities which have been occurring at the national level, as well as within individual states, in hopes that it might benefit the members of the Kansas General Assembly as you deliberate potential changes to agricultural regulations here in Kansas.

The first project I would like to tell you about is the National Environmental Dialogue on Pork Production, convened early in 1997 by America's Clean Water Foundation. The Foundation was established in January, 1989, as a non-profit, public service organization dedicated to protecting and enhancing the quality of our nation's water. It has sponsored several pilot programs and collaborative efforts to draw attention to the need for citizen education and public involvement in dealing with environmental change. The foundation convened the National Environmental Dialogue on Pork Production in consultation with state environmental and agricultural programs, the USEPA, US Department of Agriculture, and the National Pork Producers Council. Participants in the dialogue's activities included members from state, federal and local government, environmental groups, and pork producers. The dialogue met on eight occasions throughout 1997, to visit farms and research institutions, to share their experiences and perspectives, and to hear from concerned citizens and scientific experts. After the initial meeting of the dialogue, the participants representing environmental groups decided to withdraw from the activity, citing their concerns that the dialogue would not be an impartial venue for them to promote their position. Later on in the year, as the dialogue was beginning to near completion, representatives of local governments chose to withdraw from the activity. They felt strongly that the dialogue product should include recommendations on establishing local control of siting and regulation of pork operations. Even though the local government representatives found no fault with the permitting and management portions of the recommendations, they felt that they could not lend their final

final support to the framework if it did not include provisions for local control. On December 17, 1997, the dialogue participants issued a Comprehensive Environmental Framework for Pork Production Operations. I will summarize the major recommendations made by this document.

The recommendations are intended to provide a regulatory framework to promote sound environmental performance by the pork production industry. Participants in the dialogue endeavored to construct a framework to 1) ensure that the environment is protected and enhanced and 2) provide pork producers with more certainty and consistency in regulatory programs. The framework was developed from the perspective of a "clean slate," as if no regulatory or environmental protection programs were currently in place. The intent is to provide a model that may be used by regulatory authorities at the federal and state levels to develop and modify regulations. The recommendations of the dialogue reflect a tremendous effort in reviewing and analyzing the best scientific data available, receiving testimony from interested parties with varying opinions regarding the regulation of the pork industry, and the professional judgement of regulators and policy makers at the federal, state and local levels.

The major provisions contained within the report include the following:

- The environmental framework should apply to all commercial pork production operations, regardless of size.
- Environmental regulations should immediately apply to all new and expanding pork production operations and existing operations should have five years to come into compliance with the recommendations.
- The siting of new or expanded operations should address potential cumulative effects within the watershed in which the operation is located.
- Setbacks from pork production facilities should protect homes, schools, and public facilities from odor and potential surface or groundwater contamination.
- Reverse setbacks should protect existing pork producers from urban encroachment.

- Regulations should be expanded to include land application of manure, and manure should be land applied only after nutrient testing and soil sampling are conducted.
- Manure should be applied in accordance with approved nutrient management plans.
- The rate of manure application should be restricted on soils that exceed established thresholds of nutrients within the soil. The Natural Resource Conservation Service of the USDA should provide threshold nutrient levels for all major soils on which to base manure application recommendations.
- Pork producers should guarantee the full cost of closing all lagoons, basins, and the disposal of manure if the producer stops operating at the site.
- All operators should be certified and all employees and contractors properly trained in order to assure that pork production has a limited impact on the environment.
- Producers who fully implement and maintain the recommendations contained within the framework should be shielded from frivolous nuisance lawsuits.

Throughout the project, participants stressed that all recommendations and regulations should be based on scientific data and not implemented in response to emotions or innuendoes. During meetings held in North Carolina and Iowa, participants in the dialogue had the opportunity to meet first hand with researchers and review projects being conducted to determine how to measure and minimize odor from livestock operations and how to prevent any environmental damage from the handling, storage, and application of livestock manure. Participants were encouraged by the amount of public and private resources currently being invested in this research and feel confident that solutions to these issues will be found in the near future.

The framework stresses that the best way to address negative environmental impacts from livestock production is to prevent pollution before it may occur. Toward that end, strong recommendations were made toward the development and implementation of operational and manure management plans to be implemented by all producers, regardless of size. These plans should realistically address, in advance, how producers will handle and dispose of animal manure in a responsible manner that will not lead to the contamination of soil or water resources. There has been much concern over whether or not manure

application rates should be based on nitrogen, phosphorus, or any other limiting elemental factors. Taking into account that the Natural Resource Conservation Service is developing threshold levels for soil nutrients, the dialogue framework suggests that if limitations are placed upon the application rates of manure they be established using NRCS guidelines.

One of the major reasons for opposition to intensive livestock and pork production facilities is that of odor. The dialogue reviewed siting criteria currently being used in European countries and under research here in the United States, in which several factors are included in determining the proper location and setback distances to apply to new and expanding operations. The dialogue recognized that setback distances can be critical, especially in those states where there is a high population density within the rural landscape.

The training and certification of livestock managers was considered to be a key factor in preventing pollution. Several states are beginning to implement operator training and certification programs, many of which are fashioned after preexisting pesticide applicator training and certification programs. Dialogue participants reviewed training materials currently being used in some states and recommended that states work cooperatively in sharing materials rather than reinventing the wheel as training programs are established from state to state.

The dialogue report also recommends that research continue to be a top priority and that government, academia, and the pork production industry should encourage and support research on several subjects. These include odor measurement and control, atmospheric deposition of pathogens and nitrogen-based compounds, improvements in manure and waste water storage facilities, and crop utilization and soil nutrient threshold capacities.

The recommendations made by the dialogue do not specify at which level of government regulatory control should be given for the enforcement of these regulations. Currently, this is one of the major sources of debate throughout several states as to whether or not local control should be given over the siting and regulation of livestock facilities or whether that regulation is best accomplished at the state or federal level. The

recommendations made by the dialogue recognize that an informed public is essential to making sound decisions. As such, the public should receive notice prior to the approval or disapproval of new or expanded operations. The public should be invited to comment on the proposed operation and the appropriate regulatory authority should have the discretion to hold hearings regarding the proposed livestock operation.

This concludes my remarks regarding the National Environmental Dialogue on Pork Production. Since its release in December, the report has been circulated throughout the pork production industry and has been reviewed by a number of state legislators and their staff members. As I mentioned earlier, it is the intent of the participants involved within this collaborative effort to provide recommendations for a framework of consistent and fair regulations to be applied to the pork industry and other livestock operations, as well. I am sure that the members of the dialogue as well as the facilitators for this project would encourage the members of this body to seriously consider this regulatory framework as you develop regulations for the livestock industry in Kansas.

Moving to the federal level, there has been an increased awareness on the impact livestock production may have on the environment, and in response, several initiatives have been proposed in an attempt to address the issue. On October 18, 1997, Vice President Al Gore announced that the administration would be using the 25th Anniversary of the Clean Water Act as a backdrop for a series of new clean water initiatives. Even though significant progress has been made in protecting the nation's water supplies, he suggested that further activities remain to be completed to remove the threat of harmful organisms in our waterways and to control polluted runoff which has thus far eluded control under conventional regulatory approaches.

In response, USEPA is planning a comprehensive review of its Clean Water Act regulations covering animal feeding operations. Under the Clean Water Act, large operations, referred to as Concentrated Animal Feeding Operations (CAFOs) are regulated under the National Pollutant Discharge Elimination System (NPDES). Current regulations generally define CAFOs as facilities that confine more than 1,000 animal units or are deemed by EPA or a state to be a significant cause of pollution.

The Agency has drafted a strategic plan which calls for an extensive review of existing regulations and may tighten certain standards that apply to the industry. Some of the components provided for in this plan may tighten existing effluent guidelines for CAFOs, scale back the existing exemptions that allow discharges to occur during storms, and may include increased regulations on construction criteria, operator training, maintenance practices, and record keeping. The Agency will assess whether manure application from CAFOs should be based on nitrogen or phosphorus loading and will involve the development of methods for determining appropriate application rates. During 1998, EPA plans to increase its rate of inspections at CAFOs located within high risk watersheds. The Agency is also considering changing its strategy from that of dealing with only concentrated animal feeding operations to one in which all animal feeding operations would have an increased level of inspection and permitting by USEPA. Many producers and representatives of the livestock industry are concerned that increased USEPA scrutiny will encourage small livestock operations to exit the industry. The threat of increased federal regulations, whether real or perceived, may accelerate the trend toward fewer and larger livestock operations.

Another option being discussed at the federal level is a bill introduced by U.S. Senator Tom Harkin from Iowa which would allow the United States Department of Agriculture to establish and carry out a permit program. If the bill becomes law, an operating permit would be granted to an animal owner who submits an Animal Waste Management Plan meeting the requirements of the Act and approved by the Secretary. This USDA permitting program would hinge upon a definition of concentrated animal feeding operation which would include nearly all confinement operations, regardless of size, as well as many outdoor livestock operations. Under the provisions of the Act, the livestock operator would need to apply for a construction and operating permit on all new and preexisting facilities. The Natural Resource Conservation Service/USDA would be responsible for periodic inspections necessary for the granting and continuation of the permit. Under the direction of the Secretary, location and construction criteria would be established for livestock operations of various types. Manure application would be

restricted from certain types of application fields and conditions and application rates would be limited to the uptake of specific crop nutrients. The public would be provided notice of proposed plans and given an opportunity for public comment for a period of at least 30 days prior to the granting of an operating or construction permit. The Act also includes provisions for the revocation of permits based upon failure to comply with the provisions of the Act or failure to comply with the Animal Waste Management Plan associated with the permit.

It remains to be seen how actively this bill will be promoted and supported in either house of Congress. If passed as proposed, it may place a heavy regulatory burden on the Natural Resource Conservation Service and stretch USDA's resources to administer a program of this magnitude.

As you are well aware, individual states are continuing to grapple with the issue of how to develop and implement livestock production regulations. The Illinois General Assembly passed the Livestock Management Facilities Act, which was signed into law May 21, 1996. Prior to the passage of this Act, Illinois had strict penalty provisions for livestock operations causing pollution under the provisions of the Illinois Environmental Protection Act. One of the major purposes of the Livestock Management Facilities Act is to prevent pollution events before they occur through the use of design criteria for earthen waste lagoons, the establishment of setback distances around livestock operations, the development and maintenance of livestock waste management plans, certified livestock operator training and testing, and provisions for financial responsibility when manure lagoons are closed. The Illinois Pollution Control Board adopted final rules for the Act and the Illinois Department of Agriculture has been administering the Act and rules. Amendments to the Act passed last year, call for further environmental protection around lagoons and for public notice to be given when operations are intending to construct lagoons. The Illinois General Assembly is currently in session and further amendments which may establish design criteria for pits and above ground storage structures, provide for greater citizen input, require more frequent inspections of livestock waste facilities, and stiffen penalty provisions have all been discussed. Also, a bill has been introduced which

would call for a moratorium on the construction of new and expanded facilities during the rest of 1998, and this moratorium would apply to livestock operations greater than 1,000 animal units. If passed, this moratorium could have a devastating financial impact on farming operations which have begun to make major investments in facilities but will be unable to complete or operate them under the provisions of the moratorium. In general, moratoriums, like embargos, send a strong negative signal to businesses. Midwest grain producers felt the effects of the 1980 grain embargo for several years, and many livestock producers expressed concern that a moratorium on their industry may lead to the further decline in family farm numbers. The timing of proposed moratoriums could be especially bad now, as cash hog markets are substantially below the cost of production and many producers may see a moratorium as a signal for them to leave the industry.

In the State of Iowa, the legislature continues to consider whether or not local governments should regulate large pork facilities. Iowa's Governor Branstat has suggested a proposal that includes doubling the fees charged for large hog facilities in order to fund a larger indemnity fund to protect local governments from the cost of cleaning abandoned hog lots, new state funding to hire additional inspectors to regulate large hog operations, a stiffening of penalties for habitual offenders, and licensing for commercial manure applicators and their workers. In exchange for this legislation, the Governor is asking lawmakers for provisions making it clear that local governments cannot regulate large hog facilities.

North Carolina is currently operating under the provisions of a moratorium passed last year, in order to allow counties time to adopt their own zoning ordinances. However, exemptions within the moratorium have allowed a certain level of construction to continue within the North Carolina pork industry.

The Maryland legislature is currently considering a bill introduced in January in response to concerns dealing with the impact agricultural production may be having on the quality and health of Maryland's waterways. The bill establishes an Animal Waste Technology Fund which will be used to provide funding for research dealing with the proper application and disposal of animal waste. The bill also establishes regulations for

any animal operation applying animal manure on an area greater than 10 acres. Those operations to which this statute would apply need to have a Nutrient Management Plan developed by a licensed nutrient management consultant and adhere to the provisions of the plan. Also, the bill establishes tax credits against Maryland income tax for the costs of new manure spreaders capable of being calibrated to a level of one ton per acre. Also, it would establish tax credits to offset the cost of commercial fertilizer necessary to convert agricultural production to comply with a Nutrient Management Plan. It also requires that by January 1, 2000, all contract feed that is fed to chickens must include enzymes or additives that reduce the content of phosphorus in poultry waste. The bill also expands the responsibilities of the Nutrient Management Advisory Committee which was previously established under Maryland law.

As I mentioned earlier in my presentation to you, these may indeed be historic times for American livestock producers and the jury is still out in terms of determining what level of regulation will provide the necessary protection of our natural resources without putting livestock operations of all sizes at an economic disadvantage with their competitors. No individual state is dealing in a vacuum and as such, the actions taken by any one state legislature will have a ripple effect on the industry nation wide. Toward that end, it is important that policy makers from the major livestock producing states share information regarding this issue and because of that it has been my honor to be able to share this perspective with you. Thank you for the opportunity to visit the State of Kansas and for the warm reception you and members of your staff have granted me.