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**PROTECT DRINKING WATER AND AIR FROM HAZARDOUS SUBSTANCES
OPPOSE H.R. 4341 AND S. 3681**

September 20, 2006

Dear Member of Congress:

We urge you to oppose S. 3681 and H.R. 4341, which would exempt hazardous substances associated with excess amounts of livestock waste, such as phosphorus, ammonia and hydrogen sulfide, from key definitions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). This may also emerge as a rider to an appropriations bill. We urge you to oppose these unwarranted exemptions, which will result in increased threats to drinking water supplies, force water users to bear the costs imposed by sloppy operations and withhold important information about air toxics from emergency responders and neighboring communities.

Representatives of some large-scale agriculture operations have argued to members of Congress and to farming communities that such action is urgently needed to protect family farms from frivolous lawsuits and allow farmers to continue to use manure as fertilizer for crop production. These assertions are not based in fact: Superfund's cost recovery and reporting requirements do not threaten responsible operators who manage manure as a valuable fertilizer.

As you know, the size of livestock operations has increased tremendously in recent years. Unlike in earlier decades, many of today's large-scale operations confine thousands, or even millions, of animals in closed buildings, producing huge volumes of waste material that can pose serious threats to air and water resources. A number of the large confined animal feeding operations generate as much waste as – or more than – a small city, but few of these facilities employ sophisticated means of treating this waste material.

Some large livestock operations now find themselves producing more waste than can be responsibly managed by traditional land application practices. Instead of responding to this situation by adopting more advanced treatment or moving waste materials outside of watersheds that cannot tolerate additional pollutant loadings, some operations simply “dump” excess manure. Whether they allow leaks and spills from manure storage lagoons, spray or apply manure to frozen or bare ground or simply overapply far in excess of the agronomic needs of crops, their practices result in pollution of groundwater and surface water with excess nutrients and dangerous pathogens, arsenic and other toxic metal compounds and antibiotics.

The City of Waco, Texas, for example, is spending more than \$54 million for capital improvements specifically to deal with taste and odor problems caused by excessive phosphorus released from dairy cow waste. Facing what appeared to be ever-increasing water treatment expenditures to

eliminate ever-increasing nutrient loadings from agricultural operations, the City urged upstream feeding operations to adopt better manure management techniques. When that effort failed, they used the most effective legal tool available: a Superfund cost recovery suit. The suit – against 14 operations that had a history of problems – was used not to shut down dairies or collect monies from farmers, but to leverage new, enforceable agreements for better manure management at these facilities.

If Congress amends Superfund with a special exemption for livestock waste, it will deny the City of Waco and others like it a critical device to protect their valuable water supplies from polluting practices by those large-scale agricultural operations that fail to properly manage their waste. It will declare that water users, not polluters, must bear the burdens of pollution.

Another impact of the proposed exemptions would be to prevent federal, state and local emergency responders from accessing information about toxic releases from these facilities. For example, many of the large feeding operations release large volumes of hazardous air pollutants, such as ammonia and hydrogen sulfide. A number of studies have found a variety of health problems among animal feeding operation workers and residents who live near these operations, including bronchitis, asthma and antibiotic-resistant bacterial infections. These findings are of great concern to many rural communities, and action by Congress to ban reporting by these facilities would do a great disservice to those who are working hard to develop a better understanding of the full impacts of these releases.

Advocates for exempting livestock waste from CERCLA and EPCRA claim that livestock operations are strictly regulated under other environmental laws. In fact, the EPA and the states have failed to adequately control large-scale agricultural pollution using federal environmental laws. Even the largest livestock operations historically have not been regulated under the Clean Air Act, although many release harmful levels of air toxics such as ammonia and hydrogen sulfide. Nor has the Clean Water Act effectively controlled farm pollution. It has required large livestock operations to obtain permits for more than 30 years, but noncompliance is widespread. The EPA estimates that only 8,500 of the nation's 18,800 Concentrated Animal Feeding Operations currently have Clean Water Act permits, even though approximately 14,000 facilities need permits.

What's more, an animal feeding operation may be exempt from CERCLA to the extent that its releases are permitted by its Clean Water Act permit. In addition, livestock producers who are using their manure in quantities that crops can utilize are protected under the law. **CERCLA already includes a specific exception for the "normal field application of fertilizer."** Only those livestock operators who have excess manure, fail to find a viable alternative use, and so dump it on the land to get rid of it, rather than use it to fertilize crops, have potential liability.

Large livestock operations can be significant sources of pollution. Virtually all of them operate without the air pollution controls, and a significant number without the water pollution controls that are required for industrial facilities generating comparable quantities of waste. We urge you not to exempt hazardous substances associated with livestock waste from the health and environmental protections that CERCLA and EPCRA provide. Thank you for considering our views.

Sincerely,

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