

March 4, 2004  
Public Hearing - CAFO Rules  
Fargo, ND

I am Dennis Fewless, Director of the Water Quality Division. Myself and Water Quality division staff are here today to hold the hearing on administration rules for Article 33-16 Control and Prevention and Abatement of Pollution of Waters in the State Pertaining to Animal Feeding Operations. With that we will start testimony and I would like to indicate that we would like testimony to be specific and directed towards our proposed rules and design manual that goes along with the proposed rules. With that I will open the floor for testimony. Please come forward with your comments, state your name and sign in when you come up to the podium.

Testimony:

I am Jim Tilton and I represent the North Dakota Pork Producer Council. I have one comment and it refers to pages 14 to 18 and I ask that this be considered. I think maybe page 14 has already been covered in the presentation given by Gary and my remarks go to page 18, number 7 and 8 where it refers to the expiration of permits and renewal of permits. I think in that situation that I would recommend to your organization that this be modified to say a review of the permit that if a person has an operation and they're not undergoing any significant expansion or any expansion and they are in compliance, that it would call then just for a renewal of that permit and not have to go through that entire process again, which will save considerable time and effort on the part of not only the producer but your office as well. Thank you very much.

Other testimony today?

We will consider this hearing closed at 4:50 on March 4, 2004. Thank you very much for coming.

March 10, 2004  
Public Hearing - CAFO Rules  
Dickinson, ND

Let it be shown that at 3:00 MT on the 10<sup>th</sup> of March, 2004, the location is at the Hospitality Inn in Dickinson, ND that I, Dennis Fewless, Director of Water Quality Division, myself and Water Quality staff are here to hold a hearing on administrative rules for Article 33-16 Control and Prevention and Abatement of Pollution of Waters in the state pertaining to animal feeding operations. With that we will start testimony and I would like to indicate we would like testimony to be specific and directed toward our proposed rules and design manual. With that I will open the floor for testimony. Please come forward with your comments, state your name and sign in when you come up to the podium.

Testimony:

I will leave the record open for 30 minutes for anybody that would after thinking about this for a bit would still like to testify, we will leave the hearing open for testimony and then I will come back and close it.

Gary Bracht indicated that April 12, 2004 is the closing date to send in written comments on these proposed rules.

Dennis kept the hearing open until 3:35 and with no further comments, the hearing was officially closed at this time on March 10, 2004. Thank you very much for coming.

March 11, 2004  
Public Hearing - CAFO Rules  
Bismarck, ND

It is 2:37 p.m. on the 11<sup>th</sup> of March 2004. The location is the North Dakota G&F Dept. I, Dennis Fewless, Director of Water Quality Division, myself and Water Quality staff are here to hold a hearing on administrative rules for Article 33-16 Control and Prevention and Abatement of Pollution of Waters in the state pertaining to animal feeding operations. With that we will start testimony and will open the floor for testimony. Please come forward with your comments, state your name and sign in when you come up to the podium.

Testimony:

For the record, my name is Wade Moser, I represent the North Dakota Stockmen's Association. I will be making some general comments concerning the design manual and rules and will also be submitting written comments prior to the closing of the date. First of all I want to thank the Health Department for allowing the Association to have input into the plans to this point; a lot of work was put into this. It was very much appreciated. The document that we have before us today is far better than the very first one that we came out with.

We do still have some concerns that we would like to bring to your attention. We hope to address in final version before it is made into rule. I will just cover some of the areas. We do have some concerns and worry about allowing interested individuals the right to receive copies of the permit - we do this as invasion of private property rights and think it is an unnecessary provision. We also disagree with the regulation of not allowing water spreading systems on what is considered course textured soils with high percolation rates especially since this is allowed in other industries. I think on page 39 of the design manual it talks about course textured soils, however, it doesn't say at what level or how deep those course textured soils might be or what soils are underneath, how deep it is to a usable water source - kind of a blanket statement. I think there needs to be some place in there that allows that depending on other soil types in the area. We are also concerned about the design manual being flexible, however, sometimes it's a one way flexibility that could potentially the rules be strengthened or stricter than more lenient and

we are concerned that all enforceable requirements should be included in the administrative code instead of only in the design manual. Since again the design manual can be changed without the transparency of legislative or rule making process. We feel there is a higher chance of things being more restrictive than less restrictive by allowing that manual to be flexible. We think that an appropriate wintering operation definitions should also be included. We are seeing discrepancies in the definition of wintering operations and we think that needs to be firmed up and a better, clearer definition; there seems to be a waffling on the definition of what it may or may not be. Most of the zoning rules have a definition in them already.

We do not see a need for monitoring wells if construction of holding ponds meets all requirements to prevent zero discharge. Instead we recommend using existing wells for sampling since this depth is a useable aquifer and keep in mind that anytime we add monitoring wells we are adding costs to the system that the producer will have to pay for. We recommend using named water courses as the nearest water in the state instead of blue line on the topog. maps. The named water courses usually provide the most recreational and health benefit to users. We do not see a need to continue to refer to “controlling odor during land application of manure since state law specifically exempts the odor standards during application.”

I think the Health Dept. should look into other sources of impervious material such as fly ash and hard packed manure for pond liners instead of just clay since they have proven successful in other mid western states. Vegetative buffers can be the most cost effective method of addressing run off in our excellent best management practices (BMPs) to reduce or prevent contaminants from reaching waters of the state. They should be considered acceptable BMPs all year. We feel it is unfair that producers have to complete nutrient management plans on their use of manure while commercial fertilizer applicators are not regulated at all. Spring runoff which is referred to under the no potential to pollute determination rules is undefined as presented. It appears spring runoff which is referred to no potential to pollute will prevent an operation from being able to obtain a no potential to pollute determination. Proving a groundwater contamination source is nearly impossible so regulations need to be relaxed on GW issues. Again, the high cost of tests and other criteria are going to be burdens for the producer. We feel that the Health Dept should look into establishing healthy schedule and publish this with the regulations before they are adopted instead of doing so after the fact. A medication pen should not be included in the

production area definition since cattle are not kept there for extended periods of time.

The Health Dept. must be reminded that discharge from a livestock production area is only considered a violation when it reaches waters of the state. I don't think it is reflected very well in either the manual or the rule. We are also concerned that the Health Dept. not be allowed to specify additional designs and monitoring requirements on an as needed basis to facilities. Again we feel that all requirements must be spelled out in the regulation document from the beginning, leaving no surprises for a producer who may want to get into compliance. It appears to us it is a one way flexibility.

Addressing those that may file complaints, it goes to the public notice portion of it, complainers should be required to make written statements, not just anonymous phone complaints; the producers referenced should also get copies of the complaints. Only residents who live in the area who are potentially negatively affected, should have a standing to make a complaint. All other complaints should be viewed as harassment. Public notices and hearings should only be required if the local governing authority requires them as per their local zoning ordinance, public hearings for existing operations wanting to upgrade facilities are unnecessary. Oftentimes, we see no science brought forward and in most cases those that are currently in operation or who may want to expand slightly have to go through a hearing process and wanting to comply with the law and get their facility upgraded and this just creates an atmosphere of harassment in the communities. We think the burden of proof should fall upon the Health Dept. to show that an operation is not in compliance when denying that no potential to pollute determination instead of requiring operations to prove that it is in compliance. We also feel that it is probably unnecessary for the Health Dept. to keep copies of the producer's design plans for feed storage areas nor is it necessary for them to recheck animal waste system calculations. We've heard from several engineers about that. Considering they are required to be done by professional licensed engineers; again, I think this adds time and cost to the department when they could be assisting producers in other areas. There is a provision in the rules or in the design that talks about minimizing visual impacts. We don't feel this has anything to do with the operation or whether it is or out of compliance. This language should be removed from the regulations since gaging visual impacts is subjective and has no health impact. Some specific comments on the manual itself, page 9, definition of manure, we have a concern that manure is defined as rainwater and snow melt is

also included in manure and we think those need to be taken out. On page 18 there is a need or clarification of the definition of the livestock area, section 3.2.1 No. 1a. On page 19 section 3.2.1 No. 2c, we have a concern about the availability or need to identify past watertables during soil borings. I'm not familiar enough with it to know how available that information may be or at what cost. On page 20 section 3.2.1 No. 5a, the Association recommends removing the language about ensuring a safe work site as it should not be regulated by the Health Dept. - that really has nothing to do with health standards we don't believe. Page 24 section 4.1, I guess a lot of the whole provision talks about siting and the site location and we would argue that the site location is not the single most important factor in preventing water and air control rather management is. We feel we could take the best manager on the worst site and be in better condition than the worst manager on the best site and if we view management as being a higher priority and a more important factor, I think the rules could probably reflect that. We also have a concern on page 27 where it requires soil borings to be plugged according to the 33-18-20 - soil borings are not usually drilled into their aquifer as a water well again requiring a licensed well driller to plug those soil borings, adds expense which is unnecessary. On page 28 section 4.2 No. 1, we do have concern over the 270-day storage. In the past it has been 180 days which we think is sufficient and this probably should be a decision that is made at the producer level or the engineer's level based on what kind of management again that producer would like to operate on that facility. I did mention on page 39 the water spreading. On page 45 section 7.4 No. 4 we have also concern about the language reasonable expectations that manure might contain elevated salts, metals, and harmful materials; I'm not sure who is going to make that reasonable expectations determination and probably needs to be taken out also, in our opinion. Although the definition of waters of the state is not in the rules although it is in the definition, I know it is in another century code area. We find those very confusing and most of the time no one can explain even when they appear on site whether it's waters of the state or not and we think that needs to be worked on in probably another session. Also, on page 44, we'd asked the Health Dept. to look at section 7 to see if that is a repeat of section 3.2.2 in the design manual which is on page 21 which talks about the nutrient management plan. On the rule itself I don't know if it's a typo or if it's intended to be that way on page 14 No. 3, we would recommend changing the language from no potential to discharge to no potential to pollute. That's the only place in there we see where it talks about discharge instead of pollutant. With those I guess we'll probably submit our official written comments to specifically target those certain sections of the rule and design manual.

Thank you Mr. Moser.

Other testimony on the proposed rules:

My name is Mark Quanbeck, Square Butte feedlot. Rules should be of a standard form and have a blanket issuance on everybody so everybody plays on the same rules, same game. The flexibility I think is a recipe for a system of favors and abuse. It tends to run toward who you like and if someone doesn't like somebody it doesn't mean that they are a bad producer and I think that's a little bit of a problem. I suggest on the manure nutrient management plan rather than going about every producer and hashing out a management plan which can be very extensive, we had to go through it, it took months to do, we get our manure haulers certified so that they can take a lot of the responsibility away, and their processes are certified by you or whatever - give us some protection there. I just want to mention that a feedlot in our area preserves highly erodible land and since we have to keep cattle out of our feedlot, we've had just horrendous problems with erosion and a drought environment we just can't do that again. For that reason alone, feedlots should be held in fairly high regards. I heard mention in some of your rules, I think that's a good route. It gives the producer some confidence if he has certain methods that he uses year in and year out, he can have the confidence that he is not going to be harassed by developers or activists and he has the confidence to meet with you that he is doing the right thing because it has been established. It's probably a better way to enforce it rather than trying to use these "gotcha" kind of principals that just don't help anybody. Fines I think they should be described in fairly decent detail so that you feel like you are getting fined the appropriate amount for whatever it is that is said to have been done. Again, the flexibility isn't there so that your leverage to fine that you think is just outrageous and I think the livestock numbers in our situation are being micro managed by the state and I think this results in bad decisions. Again, it leaves the producer without the kind of control he would like and it's absolutely the wrong approach to use. And that's really what I all have.

Thank you for your testimony.

Other testimony today? What I am going to do right now is I am not officially going to close the hearing but we will leave it open for 30 minutes in case after you have time to think about it or if

somebody else may come in, they can notify me and will still have the opportunity to testify.

With no further comments, the hearing was officially closed at 3:20 on March 11, 2004. Thank you very much for coming (15 people attended the hearing).