

1999 SENATE NATURAL RESOURCES

SB 2366

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2366

Senate Natural Resources Committee

Conference Committee

Hearing Date January 28, 1999

Tape Number	Side A	Side B	Meter #
1		x	2895-6203
2	x		0-640
2	x		0-580
Committee Clerk Signature <i>Lyla A. Zager</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on SB2366: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 14 of SECTION 23-29-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE DEFINITION OF SOLID WASTE.

SENATOR NAADEN testified there are products that come out of various types of plants in ND, whether it is a pasta, corn, potato, etc., and there have been regulations regarding the waste.

There aren't producers that are intentionally trying to destroy the environment, and this is what this bill is about.

SENATOR HEITKAMP presented amendments for consideration. (See attached)

REPRESENTATIVE BRUSEGAARD testified in support of SB2366. The benefit of large animal facilities is the opportunity for farmers to market their grain. Regarding the financial

assurance requirements, no lending agencies would issue a loan to build a large facility without these assurances set into code.

BOB BERGQUIST, ND Pork Producers Council and EnviroPork, testified in support of SB2366. It has been our feeling that the Legislature intended animal manure to always be exempt from solid waste management rules. We are taking a substance that is a nutrient and recycling it. This is the positive part of the farming operation to use it as a fertilizer. To include manure in a solid waste management rule doesn't make sense. The storage facilities are well designed, but they are designed for temporary storage, not long-term permanent storage such as a landfill.

SENATOR TRAYNOR asked what are your results in your operation if the state moves in and says manure is a solid waste.

BOB BERGQUIST replied in our situation we would have to obtain a new type of permit. There may be some elections held to have approval to have the farm located where it is, and how the lagoon is constructed. If it was required to have a synthetic lining, rather than a clay lining, that could be an issue, but unwarranted, and it could shut down the operation.

BRIAN KRAMER, ND Farm Bureau, testified in support of SB2366. If manure were included as solid waste, it would place a financial burden on agricultural producers. If the farmers and ranchers can spread the manure or incorporate the manure into their existing operations, it is beneficial for fertilizing crops.

RICHARD SCHLOESE, ND Farmers Union, testified the organization established a feedlot association which funded a study through NDSU which would have supplied Northern Plains Premium Beef. (See attached policy) On the issue of existing operations how this will impact

them if authority still resides with the health department, we do address some of the technology. If the amendments were attached to this bill, we could change our position on this.

SENATOR HEITKAMP stated the amendments deal with some of the concerns in your position paper. What they specifically address is water issues and how they relate to your concerns.

RICHARD SCHLOESE stated the organization would look more favorably on this bill if the amendments dealing with the financial assurances and the setback requirements were included.

LINDA RAUSER, rancher from Keene, ND, testified after reviewing the proposed amendments, she is not nearly as opposed to SB2366, but is unsure of the necessity of this bill. There is always the danger of this bill opening up the irresponsible dumping of agricultural waste, be it tainted seed or processing byproducts, and it may encourage out-of-state dumping. We are already covered under federal law protecting us from animal waste, and this cannot be less than federal law.

FRANCIS J. SCHWINDT, ND Dept. of Health, (See attached testimony) What the amendments do is put the language back and leaves all the categories of waste in there. Regarding the exemptions, what it does is add subsection a, because subsection b is basically the exemptions that are in the current law now.

SENATOR TRAYNOR asked "exclusion of agricultural waste" would that let anyone from outside ND import anything from dead cows or whatever.

FRANCIS J. SCHWINDT because we are removing "exclusion of agricultural waste" from the definition of solid waste, we wouldn't have any other regulation that would manage those wastes if they came in from someplace else.

Page 4
Senate Natural Resources Committee
Bill/Resolution Number Sb 2366
Hearing Date January 28, 1999

LYLE WITHAM, Assistant States Attorney, referred to the proposed amendment, under subsection b, this is the language that is currently in the statute and it should not be underlined. What should be underlined is subsection a, which is the new language. For clarity sake, it is good to have the 2 subsections of a and b.

SENATOR HEITKAMP asked if the underline under "The term does not include" is old language.

LYLE WITHAM replied yes.

SENATOR TRAYNOR closed the hearing on SB2366.

COMMITTEE ACTION-February 4, 1999-(Tape 2, Side A-Meter#0-580)

Committee discussion on SB2366 included exempting manure from solid waste in the amendment. Section a should be underlined and Section b should not be underlined because it is already included in the bill. Following the discussion, SENATOR FISCHER made a MOTION TO AMEND, seconded by SENATOR HEITKAMP. Roll call vote indicated 6 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING. A motion for DO PASS AS AMENDED was made by SENATOR FISCHER, seconded by SENATOR FREBORG. Roll call vote indicated 4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING. SENATOR CHRISTMANN volunteered to carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2366 Amendment to: _____

Requested by Legislative Council Date of Request: 1-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

This bill changes the definition of solid waste. Wastes from agricultural operations and animal manure would no longer be defined as solid waste. The department would have to amend the administrative rules to reflect this change, but the fiscal impact should be less than \$5,000.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:	< 5,000	—	< 5,000	—	< 5,000	—

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: < 5,000
- c. For the 2001-03 biennium: < 5,000

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
	-0-			-0-			-0-	

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Robert A. Barnett

Date Prepared: 1-25-99

Department State Department of Health

Phone Number 328-2392

PROPOSED AMENDMENTS TO SENATE BILL NO. 2366

Page 1, after line 16, insert:

Section 2. Two new subsections to section 61-28-04 of the North Dakota Century Code are created and enacted as follows:

Adopt rules to establish financial assurance requirements for any person owning or operating a concentrated or confined animal feeding operation larger than one thousand animal units for proper closure of the operation. Financial assurance requirements may include trust funds, surety bonds, letters of credit, personal bonds, equity liens, letters of commitment, or certificates of deposit. Financial assurance in the form of insurance may only be required if the facility or operation poses a special threat to surface or ground waters of the state, and other forms of financial assurance are not adequate to provide for proper closure.

Adopt rules for set-back requirements for new concentrated or confined animal feeding operations larger than one thousand animal units permitted by the department after July 31, 1999, from glacial aquifers, lakes, rivers, streams, state and national parks, wellhead protection areas, and other environmentally sensitive or important surface or groundwater resources or recreation areas located in the state. Set-back distances shall not be greater than is reasonably necessary to protect the resource in question.

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2366

Page 1, line 9, remove "and" and remove the overstrike over "~~, and agricultural~~"

Page 1, line 10, remove "animal manure," ^{land} overstrike "solid" and insert immediately thereafter
":

- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; ^e
- b. Solid"

Renumber accordingly

Date: 2-4-99

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Natural Resources Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number SB2366

Action Taken MOTION to AMEND

Motion Made By Fischer Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-4-99

Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number SB 2366

Action Taken DO PASS AS AMENDED

Motion Made By Fischer Seconded By Freborg

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp		✓			
Senator Rolland W. Redlin		✓			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Christmann

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2366: Natural Resources Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2366 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "and" and remove the overstrike over "~~and agricultural~~"

Page 1, line 10, remove "animal manure," and overstrike "solid" and insert immediately thereafter ":

- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
- b. Solid"

Renumber accordingly

1999 HOUSE NATURAL RESOURCES

SB 2366

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2366

House Natural Resources Committee

Conference Committee

Hearing Date 3/5/99

Tape Number	Side A	Side B	Meter #
1	x		10.0-end
		x	0.0-28.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: REP. BRUSEGAARD introduced the bill. SEE HANDOUTS.

REP. LUNDGREN asks what is agri-waste? BRUESEGAARD replies that agricultural waste is manure and crop residues, returned to the soil as fertilizer or soil conditioners. LUNDGREN asks if it limited to that. BRUSEGAARD replies that he thinks so. LUNDGREN asks what the n regulates the amount, the type, and other thing regarding soil conditioners? BRUSEGAARD replies that a reg. nutrient management plant looks after the operation that he is familiar with. LUNDGREN asks if he thinks it's a little risky to leave it unrestricted, especially with seepage. BRUSEGAARD replies that the lagoons are sighted by the state health department. LUNDGREN states that some agricultural facilities are not required to have nut. plant. BRUSEGAARD replies that SCHWINDT would be better to reply to the question. REP. DROVDAL asks about manure modification. Jokingly.

REP. PORTER asks what safeguards are in place, as far as time in storage and the order problem? BRUSEGAARD replies that nothing in this bill deals with odor violations.

REP. KELSH asks if there is a type of bonding or insurance requirements. BRUSEGAARD replies that he is not aware of any bonding requirements on that.

REP. NELSON ask how much agricultural products are being used at Enviro-Pork?

BRUSEGAARD replies that he does not have those numbers with him, bunt has them at his desk.

REP. NOTTESTAD asks to have the honey wagon explained to the committee, how they inject the animal waste into the ground. BRUSEGAARD then goes on to explain the procedure.

SUPPORT

SEN. NAADEN talks about having 90 sows and 1200 piglets. He also talks about disposing of agriculture waste. Also good use of the byproducts.

REP. LUNDGREN asks if he is aware of removing the agricultural waste from the solid waste definition, that you also remove from hazardous waste, infectious waste, industrial waste, solid waste management and special waste and storage and transportation requirement? NAADEN replies with yes. LUNDGREN then asks if he is okay with that. NAADEN replies yes, I am okay with that. I don't think it's a hazardous waste. It's natural, it's as natural as the air we breath.

LUNDGREN then states that it can be an infectious matter because of its fecal content, a lot of bacterial and viral infections are carried in it. So yes it can be considered a hazardous material.

REP. SANDVIG asks if one is in violation of the law if they pump the matter out the pit or lagoon and then put it into a honey wagon and put it on the land, are they in violation of the law?

NAADEN replies that he does not think so. The health department could answer the question better. Most honey wagons are equipped with knives now.

SUPPORT

FRANCIS SCHWINDT, ND HEALTH DEPARTMENT, they do support the bill the way the senate has amended it. It allows the department to keep managing agricultural waste in a fashion that is historically, it also mirrors the requirement that the federal EPA imposes on these kind of things.

REP. SANDVIG asks how are family farms regulated? SCHWINDT replies with reading what agricultural waste is as a definition. So for small facilities there is essentially no requirements.

REP. NELSON asks what is the threshold in small or commercial operations, the definition.

SCHWINDT replies that they don't define small or commercial. Are you referring to feedlots?

NELSON states that basically the definition, when does the health department have jurisdiction?

When does an operation get big enough that it's not a family farm any more? SCHWINDT replies that there are couple different areas, and the solid waste rule defines that.

REP. LUNDGREN asks about the definition in the administrative rules. SCHWINDT then reads the rules aloud to the committee. LUNDGREN then asks agricultural waste means solid waste, we are about to take agricultural waste out of the definition of solid waste. SCHWINDT replies only if it is returned to the soil.

REP. HANSON asks about the states of Iowa and Nebraska having a lot of feed lots. How would this regulation compare to their state laws? SCHWINDT replies that he really can't answer that.

REP. NOTTESTAD asks about a pit or a lagoon being abandoned then what happens?

SCHWINDT replies that it would be addressed under the water pollution statute.

REP. KELSH asks if there is any requirements for bonding or insurance? SCHWINDT replies that they have normally never come across a pit that has been abandoned. KELSH asks about enviro-pork being new, and talks about no new cases. SCHWINDT states that there are other hog co-op's in the states, such as in Scranton, ND.

REP. DEKREY states to KELSH that no matter when you are being financed by a bank, the bank requires you to carry insurance. When it comes to environmental and land is being sold, either the buyer or the seller is going to have to assume any environmental impact that is going to exist on that property. Believe me, they are going to require you to carry insurance. I can't believe how much environmental stuff is included already.

REP. NELSON talks about a dairy farm that was abandoned in Towner, ND.

REP. HENEGAR talks about the lagoons in the Bismarck area. SCHWINDT talks about the sludge and trickle effect of the lagoons and that they are two different types of lagoons.

REP. LUNDGREN asks if the administrative rules and the century code differ, if we take agricultural waste out of the century code as part of the definition of solid waste, but you have it in your administrative rules, what is going to happen to that? SCHWINDT replies that the way the definition is now, it fits in very well, and we would leave it. LUNDGREN asks that you have the authority for solid waste management programs, and this is no longer consider solid waste, do have the authority then for rules, permits and such? In century code its no longer solid waste. SCHWINDT replies that there are qualifications that we have for eliminating solid. If it is not being used and nothing returned to the soil, then it still does remain a solid waste. Then it is still regulated. LUNDGREN asks in what time frame? SCHWINDT replies that they are limited to a time frame. LUNDGREN states that is not law, it's a subjective opinion. We're opening this up

to any time limit. If you choose to do anything with that time limit it is not in the statute.

SCHWINDT replies that yes it would be.

REP. NOTTESTAD asks about the pipeline below the surface and would that be the same as pumping out of a normal pit? SCHWINDT replies that they did do that last fall and did not agitate the pond.

REP. KELSH talks about enviro-pork. SCHWINDT replies that it was the courts ruling.

SUPPORT

BRIAN KRAMER, ND FARM BUREAU, would like the record to show they are in favor of this bill.

LANCE GAEBE, MILK PRODUCERS OF ND, would like the record to show they are in favor of this bill.

JULIE ELLINGSON, ND STOCKMEN'S ASSOC., would like the record to show they are in favor of this bill.

OPPOSE

MARY R. CHRISTENSON, DAKOTA RESOURCE COUNCIL, talks about factory farming, and how they are ruining the country. Factory farming like enviro-pork should be outlawed.

Stated that there is pressure to have these big facilities.

REP. NOTTESTAD asks if Minnesota and Iowa are going away from these operations.

CHRISTENSON replies that she believes they are not going away, but they are placing the hogs some where else. NOTTESTAD asks how many piglets are farrowed a year in these operations?

CHRISTENSON replies about 100,000. NOTTESTAD where are they grown out? how many in

North Dakota? CHRISTENSON replies that she does not know. NOTTESTAD informs her

none! None are grown out in North Dakota. NOTTESTAD asks if she has ever taken a tour of the operation such as enviro-pork. CHRISTENSON states no that she has not. NOTTESTAD comments that CHRISTENSON made the accusation that highway no. 2 would be a wash if the lagoon at enviro-pork broke. NOTTESTAD then asks CHRISTENSON when did water start running up hill? Highway 2 is above it. CHRISTENSON states that's what she's been told. REP. CLARK asks about her stating that 600,000 gallons leak from these lagoons in a year. CHRISTENSON states that is what she has been told. CLARK asks if she has any idea how much leaks from city lagoons? Because they are far more leakable than animal waste lagoons. CHRISTENSON replies she does not know that, but the health department would.

REP. NELSON asks about the leakage that are occurring aren't there monitoring wells?

NELSON encourages her to take a tour of one of these facilities, because a little knowledge sometimes would help. See how these lagoons are constructed. There are protections taken for ground water. CHRISTENSON still states that bonding should be a step taken still.

REP. DEKREY asks about her organization, how many farmers and ranchers or other members do you have total in the state. CHRISTENSON says about 500 or so. DEKREY asks how they are financially supported is it strictly dues from you members? CHRISTENSON replies that they are. DEKREY asks what is their operating budget? CHRISTENSON replies that no she does not. DEKREY states that he wonders if their organization is really a farming and ranching organization or if you have other source of funding that would excuse some of your feelings on these issues.

REP. GALVIN asks about bonding as an option, wouldn't that be quite burden on the farmers, he wouldn't be getting his money back. CHRISTENSON states that this would not concern an average farmer.

REP. NOTTESTAD asks if the amendment of being bonded passes, then would city lagoons then have to be bonded? CHRISTENSON replies that the health dept. can answer that better.

SCHWINDT replies that city lagoons are not normally bonded. They are in a different situation.

REP. NELSON asks about monitoring the wells. NELSON wonders if city lagoons are more unregulated than solid waste lagoons. Also potential leakage.

LYLE WITHUM, ND HEALTH DEPT., would like to be known for his testimonial as being informational, but on the record he is in support of the bill. WITHUM talks about the ruling in the enviro-pork court case.

The committee hearing was then closed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2366 A

House Natural Resources Committee

Conference Committee

Hearing Date 3/12/99

Tape Number	Side A	Side B	Meter #
1	x		48.0-50.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: The committee decided to take up action on SB 2366.

REP. GROSZ held it for an additional week, REP. S. KELSH wanted to put an amendment on it.

KELSH was not in committee, REP. DEKREY moved for a DO PASS, seconded by REP.

NELSON. The roll call vote was taken with 9 YES, 2 NO, 4 ABSENT. The motion carries. The

CARRIER of the bill is REP. NELSON.

Date: 3.12.99

Roll Call Vote #: 3/

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

House House Natural Resources Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken 2366 Do Pass

Motion Made By DeKrey Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	✓				
Vice-Chairman Dale Henegar	✓				
Representative David Drovdal	✓				
Representative Pat Galvin					
Representative Duane DeKrey	✓				
Rep. Darrell D. Nottestad	✓				
Representative Jon O. Nelson	✓				
Representative Byron Clark	✓				
Representative Todd Porter					
Representative Jon Martinson	✓				
Reperesentative Lyle Hanson	✓				
Representative Scot Kelsh					
Representative Deb Lundgren					
Representative Sally M. Sandvig		✓			
Representative Dorvan Solberg		✓			

Total (Yes) 9 No 2

Absent 4

Floor Assignment Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 12, 1999 10:40 a.m.

Module No: HR-45-4634
Carrier: Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2366, as engrossed: Natural Resources Committee (Rep. Grosz, Chairman) recommends **DO PASS** (9 YEAS, 2 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2366 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2366

1. 4. WETLANDS POLICY

2. A. Wetlands of less than one acre should not be under any jurisdiction by
3. state or federal agencies.

4.
5. B. When dealing with farmland, primary consideration should be given to
6. the economic impact on agriculture.

7.
8. C. Landowners should be able to move water within the boundaries of
9. their property without regulation, interference or easements.

10.
11. D. No net gain of wetland acres.

12.
13. E. Any policy developed should recognize the function of wetlands as an
14. agricultural property.

15.
16. F. Water outside the boundary of a wetland should be considered
17. sheetwater and not subject, under any circumstances, to jurisdiction
18. by state or federal agencies.

19.
20. 5. LIVESTOCK PRODUCTION RECOMMENDATIONS

21. Livestock production is essential to the well-being of North Dakota. North
22. Dakota Farmers Union actively promotes the development of livestock
23. production in North Dakota as a vital component in maintaining a healthy
24. agriculture sector.

25.
26. North Dakota Farmers Union recognizes that family farming and good
27. stewardship of the land are not incongruous and that sound environmental

1. practices and family farm agriculture should work together. Our policy
2. encourages a well-balanced, sensible environmental policy that protects
3. the public and the environment without unduly burdening family farmers
4. through excessive regulation or economic hardship.

5.

6. A. IMPLICATIONS OF SCALE

7. Livestock waste is a valuable resource that provides essential nutri-
8. ents to crop land. However, when livestock waste is concentrated into
9. large volumes, improperly stored, transported, or disposed, it can
10. have a negative effect on the environment. The issue of scale is critical
11. in determining the levels of risk associated with waste management,
12. and therefore paramount in the development of policy. Matching the
13. appropriate regulatory control to the appropriate scale may be key in
14. designing appropriate livestock waste management practices.

15. While stewardship is essential at every level of livestock production,
16. the current megafarm trend in livestock production has consequences
17. that need to be addressed at a different level than small-scale
18. production. The large amount of waste generated by industrial-sized
19. production presents a considerable waste management challenge. In
20. addition to the detrimental effects large quantities of waste can have
21. on land and water, there are also concerns that waste containing
22. bacteria, viruses, and other possibly dangerous organisms being
23. released into the environment in huge volumes could lead to public
24. health issues.

25.

26. However, there is general concern that any additional regulations
27. aimed at industrial sized agriculture would lead to costly and intrusive

1. measures for all producers that could force small to medium size
2. producers out of business.

3.

4. North Dakota Farmers Union supports a tiered system that deter-
5. mines the degree of regulation by the size of the operation. This
6. system should have at least three categories and should be based on
7. animal units.

8.

9. B. FEDERAL REGULATION

10. The Environmental Protection Agency, the Administration and Con-
11. gress are working to establish national standards for large-scale
12. confinement operations or CAFOs (Confined Animal Feeding Opera-
13. tions) that may include regulatory, statutory and/or voluntary (incentive
14. based) measures.

15.

16. Because there is a great variance in environmental conditions from
17. state to state and even within each state, broad national guidelines
18. may not be appropriate for every location.

19.

20. North Dakota Farmers Union supports national minimum guidelines
21. or standards that give primacy for implementation and flexibility in
22. regional planning to the states. A national policy should discourage
23. polluters from "shopping" among the states for the lowest environ-
24. mental standards and encourage states and localities to establish
25. standards beyond the federal minimums.

26.

27.

1. C. STATE REGULATION

2. North Dakota's current guidelines require concentrated feeding or
3. feedlot operations of equal to or over two hundred animal units to meet
4. approval requirements. Any operation, regardless of its number, may
5. also require approval if it is determined that waste from that operation
6. is a pollution threat.

7.
8. North Dakota Farmers Union supports state standards that are NOT
9. size neutral. A graduated system of at least three tiers, small (below
10. 200), medium (200-1,000) and large (over 1,000) should be imple-
11. mented with a sliding scale of standards that address each size
12. operation.

13.
14. North Dakota Farmers Union urges the North Dakota Department of
15. Health to issue rules for livestock operations over 1,000 animal units
16. that prohibit locating over glacial aquifers, require bonding and
17. provide an opportunity for a public vote through the administrative
18. process.

19.
20. North Dakota should safeguard the right of political subdivisions to
21. enact and enforce their own zoning ordinances and we strongly
22. encourage all townships and counties to establish their own stan-
23. dards, so long as minimum state requirements are met.

24.
25. We would support legislation that codifies these specifications.

26.
27.

1. D. NORTH DAKOTA DEFINITION OF ANIMAL UNIT

2. A unit of measure equal to approximately 1,000 pounds of animal.

3.	ANIMAL	AU
----	--------	----

4.	1.5 feeder cattle	1
----	-------------------	---

5.	1 mature dairy/beef	1
----	---------------------	---

6.	1 horse	1
----	---------	---

7.	4 swine (over 55 lbs)	1
----	-----------------------	---

8.	8 sheep	1
----	---------	---

9.	30 turkeys	1
----	------------	---

10.	80 chickens	1
-----	-------------	---

11.

12. E. SPECIFIC RECOMMENDATIONS FOR LARGE-SCALE FACILITIES:

13. 1) North Dakota Farmers Union SUPPORTS holding animal "own-

14. ers" responsible for spills as it pertains to contract feeding, which

15. shifts the responsibility from the corporate owners to the contract

16. feeder. However, it is important to note that since corporations

17. cannot "own" livestock in ND under NDCC 10-06, this would NOT

18. have the desired effect of holding corporations financially respon-

19. sible for spills or flawed lagoon designs. A more appropriate state

20. policy would be to draw capital investors or lagoon designers into

21. the chain of liability.

22.

23. 2) Because technology exists that reduces environmental impact,

24. enhances the quality of life for neighbors and communities, and

25. encourages increased production, North Dakota Farmers Union

26. SUPPORTS using a higher standard of technology for waste

27. storage than an open air lagoon. New and expanding large scale

1. operations should be required to utilize new technologies.
- 2.
3. 3) North Dakota Farmers Union SUPPORTS setback distances
4. from an existing residence (residence on the facility not appli-
5. cable), business, church, school or public use area.
- 6.
7. 4) Permit applicants must prepare and submit a manure manage-
8. ment plan containing detailed information regarding proposed
9. method of distribution (optimum crop schedule, timing and loca-
10. tion of applications, calculations about how much land is necessary
11. for application, methods to reduce/eliminate potential water pol-
12. lution and odor, and detailed records for 3-5 years following
13. application detailing methods and dates of application.)
14. (a) ND regulations restrict spreading of waste on ice, however,
15. not on frozen ground.
16. (b) Application of waste should be injected or incorporated into
17. the soil. Aerial spraying of liquid waste should be prohibited.
18. (c) No waste should be applied to slopes so high as to be highly
19. erodible.
- 20.
21. 5) Permit applicants for a large scale facility must serve notice to the
22. public describing the type of facility to be constructed, the type of
23. waste to be generated, and the waste handling treatment to be
24. used, a legal description of the property, and notice of a public
25. comment period. Applicants must develop a "baseline" for moni-
26. toring future water/soil quality. In addition, all managers, operators
27. must complete training in waste management and odor control.

- 1.
2. 6) Permit holders must disclose the number of animal units within a
3. facility upon request. The Health Department should develop a
4. policy that includes nursing animals in permitted amount of animal
5. units.
- 6.
7. 7) Annual, unannounced inspections of operations including inde-
8. pendent testing of water quality.
- 9.
10. 8) "Bad Actor" legislation allowing the state to reject permits from
11. producers who have a poor environmental record (habitual envi-
12. ronmental damage) or whose permit has been revoked in another
13. state.
- 14.
15. 9) Facility closing requirements that ensure proper clean-up if they
16. cease operating. This would require total removal of manure and
17. contaminated soils within a specified period after closure and
18. revegetation within three years of closure.
- 19.
20. 10) Existing operations should be required to comply with new rules
21. within a certain amount of time. NO grandfather clauses.
- 22.
23. 11) In order to protect taxpayers, permits should require financial
24. assurances including proof of liability insurance to a determined
25. amount, net worth, or adequate bonding.
- 26.
- 27.

1. 12) Increase the statute of limitations for the nuisance law.

2.

3. 13) Provide penalties.

4.

5. 6. STATE WATER POLICY

6. Since our state's water belongs to all the people of North Dakota, the North
7. Dakota Water Commission should manage our water resources to the
8. greatest advantage to our citizens, with all areas of the state being given
9. equitable consideration.

10.

11. A. We call for adoption of a comprehensive state water policy which will
12. allow North Dakota to claim its rightful share of water resources.

13. We believe the majority of funding for water projects should come from
14. the federal government due to the long-standing commitment that was
15. made to the people of North Dakota for diversion of Missouri River
16. water.

17.

18. We believe supplemental state funding of water development projects
19. to be in the best interest of North Dakota. These programs should be
20. funded through the state's personal and corporate income taxes.

21.

22. B. To give more family farmers the opportunity to irrigate from groundwa-
23. ter, we suggest that the state legislature allow the State Water
24. Commission to limit water permit acquisition to 320 acres every three
25. years to a maximum acreage of 640 acres per farm.

26.

27. C. The Devils Lake Basin continues to have problems with excess water

Testimony on Senate Bill No. 2366
Before the Senate Natural Resources Committee
by
Francis J. Schwindt, Chief
Environmental Health Section
North Dakota Department of Health

The Department of Health is charged with the administration of the State Solid Waste Program, authorized by Chapter 23-29 NDCC - the Solid Waste Management Act. Senate Bill No. 2366 changes the definition of "solid waste" by deleting wastes from agricultural operations and by excluding animal manure.

By deleting agricultural operations from the definition of solid waste, North Dakota's definition would no longer be consistent with the federal Resource Conservation & Recovery Act. This definition must be equivalent to the federal definition for approval of the state's solid waste program by the U.S. Environmental Protection Agency.

W h y ' -7

The exclusion of agricultural wastes from the North Dakota law would not only apply to agricultural waste generators in North Dakota, but would exclude all agricultural wastes generated nationwide from being regulated as a solid waste in North Dakota. Therefore, these wastes could be imported and the state would have no regulatory authority to manage their disposal. Some examples of wastes that may fall into this category include: treated seed, spoiled grain, dead animals, contaminated animals, meat packing waste, contaminated residue from agricultural chemical spills, and discontinued agricultural chemicals such as DDT, Toxaphene, and arsenic.

The hierarchy of solid waste management activities in the solid waste law prefers recycling of solid wastes over disposal. The Department encourages recycling of many wastes, including animal manure, biosolids, processing residues, etc. The proposed changes, including the exclusion of animal manure from the definition, might reduce incentives to properly recycle or manage such materials, and at the same time might reduce the Department's ability to respond to sudden or non-sudden releases and spills of such materials. The Department routinely assists in the cleanup of spills from trucks and trains transporting agricultural materials and also responds to complaints regarding improper disposal of animal manure or dead livestock into rivers, wetlands, and other environmentally unsuitable locations.

If agricultural wastes are not defined as solid wastes by law, there would be no authority to include those wastes under the rules. Thus, agricultural operation wastes that are not by definition a solid waste would also be excluded as hazardous

waste, industrial waste or commercial waste since these are all subcategories of solid waste.

The Department believes that the deletion of agricultural operations waste from the definition of solid waste could have a serious impact on the Department's authority to protect human health and the environment from the improper disposal of these wastes. However, the Department would propose some amendments to this bill that may accomplish most of what the sponsors proposed. These amendments do change the definition of solid waste but closely follow the federal rules that exempt agricultural wastes that are recycled back to the land.

Rep. Tom Brusegaard

ND Legislative Assembly
RR1 Box 4
58235

Phone: (701) 869 - 2855
FAX:
email: tbrusega@state.nd.us

Friday, March 5, 1999

House Natural Resources Committee

Mr. Chairman, members of the committee:

I appear in front of you today to ask that you lend your support to SB2366. 2366 would specifically exclude animal manure from the definition of solid waste. This change would encourage the responsible development of ND's livestock industry.

I am a grain farmer, I have no interest in raising livestock. As a result, one might wonder why I care. The best way to add value to my grain is to feed it to livestock. As an added bonus we get a valuable by-product, manure.

Natural manure is perhaps the best fertilizer in the world. I would love to inject the waste from a hog facility like Enviro-Pork. This legislation will encourage farmers to use natural nutrient plans as an alternative to chemical fertilizers.

Solid waste laws are designed for permanent storage of dangerous products. Animal manure is stored temporarily rather than permanently and it is useful, not dangerous.

Thomas Brusegaard



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2468

Ref:8P-HW

January 26, 1999

Neil M. Knatterud, Director
Division of Waste Management
North Dakota Department of Health
1200 Missouri Avenue
Bismarck, ND 58506-5520

Dear Mr. Knatterud:

The purpose of this letter is to convey to you our concerns about a proposed rule change under Senate Bill 2366 that would remove the term "agricultural operations" from the definition of solid waste (North Dakota Century Code, Section 23-29-03, Subsection 14). These concerns were expressed to you yesterday in a phone conversation between Gerry Allen of my staff, Steve Tillotson, and yourself. Our concerns are as follows:

(1) By removing "agricultural operations" from the State's solid waste definition, we could interpret your rules as being less stringent than EPA rules under 40 CFR Part 258. This could affect North Dakota's solid waste program approval, which EPA granted on September 20, 1995. As you are aware, State solid waste programs approved by EPA can be more stringent than 40 CFR 258 regulations, but they cannot be less stringent.

(2) Solid wastes such as old pesticides and/or pesticide containers, old agricultural fertilizers, rotting grains, old treated seed, and old grain baits may go totally unregulated if "agricultural operations" were removed from the State's definition of solid waste. This may be an issue since some old seed/grains were treated with pesticides. Some examples are: corn and wheat with mercury, canola seed with Lindane, and grasshopper baits with arsenic.

(3) There are many instances where hazardous and toxic wastes have been disposed of inappropriately by adding them to agricultural fertilizers. This "tainted" fertilizer could then be easily land spread and this is something we do not support.

Removing "agricultural operations" from the State's definition of solid waste creates a potential for hazardous and toxic waste contamination, which could pose serious risks to human health and the environment. Consequently, we strongly support its continued regulation under the



01-20-98 TEL 1-800-368-312 FAX 303-312-6004 E P A

State's solid waste program. If you have questions or need additional information, please contact Gerry Allen of my staff at 303/312-7008.

Sincerely yours,

Mindy Nohr for WT.

Wanda C. Taunton, Director
Solid & Hazardous Waste Program

cc: Steve Tillotson, NDS DH
Gerry Allen, 8P-HW
Sara Summers, 8P-SA

PROPOSED AMENDMENT TO SENATE BILL NO. 2366

Page 1, line 9, delete the fourth word "and"

Page 1, line 9, reinsert the words "and agricultural" after the word "mining"

Page 1, line 10, delete the words "animal manure"

Page 1, line 10, revise the entire last sentence to read "The term does not include:

add language

a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners;

add language

b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to the permits under section 402 of the Federal Water Pollution Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.]."

To: Rep. Tom Brussegard

From: Daryl Dukart
President, North Dakota Pork Producers Council

The North Dakota Pork Producers Council strongly supports SB 2366 Which specifically exempts livestock manure from the solid waste landfill regulations. This legislation will bring North Dakota in line with national EPA regulations.

Manure is a valuable, recycled nutrient by product of livestock production, which is utilized at agronomic rates by our members to replace expensive chemical fertilizer.

Manure storage is temporary in nature, where as the solid waste rules are designed for permanent disposal of waste. To require livestock producers to meet solid waste requirements would do nothing to further protect the environment than the stringent requirements we comply with through our manure management plans. The financial burden of meeting landfill storage requirements would in fact force many producers out of business.

We strongly urge a "do pass" on this legislation which is so vital to the livestock producers of North Dakota.



Daryl Dukart
President, North Dakota Pork Producers Council

Testimony on SB 2366

By Richard Schlosser, North Dakota Farmers Union

Before House Natural Resources Committee

Mr. Chairman, members of the committee my name is Richard Schlosser and I am testifying on behalf of the 40,000 members of North Dakota Farmers Union.

Livestock production is essential to the well being of North Dakota. North Dakota Farmers Union actively promotes the development of livestock production in North Dakota as a vital component in maintaining a healthy agricultural sector. This was evidenced in our support of the livestock producer endeavor to build a livestock processing facility. We even went through the process of developing a cooperative feed lot to supply cattle to the processing facility. All the time we were working on the feed lot plans, we were aware of the need to develop this lot within the frame work of responsible stewardship.

We, therefore, reviewed state and federal policy regarding large confined animal feeding operations. We established a committee that drew up a draft proposal, and our board of governors reviewed the draft. The draft language was then submitted to our policy committee for review and revision, and the language was finally approved by our members at our state convention. I mention this process not to tell you of the details, but to mention the pains we took to develop a policy on this issue. We felt it was important. We recognize that family farming and good stewardship of the land are not incongruous, and that sound environmental practices and family farm agriculture should work together. Our policy encourages a well balanced, sensible environmental policy that protects the public and the environment without unduly burdening family farmers.

Livestock waste is a valuable resource that provides essential nutrients to crop land. However, when livestock waste is concentrated into large volumes, improperly

stored, transported, or disposed, it can have a negative impact on the environment. The issue of scale is critical in determining the levels of risk associated with waste management. North Dakota Farmers Union supports state standards that are not size neutral. We also urge the state health department to issue rules for livestock operations over 1,000 animal units, such as requiring bonding and setbacks. We understand that amendments dealing with these two issues have been discussed. We think that these requirements would be an improvement to this bill.

In its present form SB 2366 removes animal waste from the solid waste law. Our question is, "Do we want to open the doors to large confined animal feeding operations that can operate in North Dakota because of our more lenient regulations?" For economic and environmental reasons, we hope not. We, therefore, oppose SB 2366 in its present form.

In conclusion, I think that we can all agree that our vision of North Dakota agriculture is one that consists of prosperous family farms and vibrant rural communities. We need to do this by working together and not by passing legislation that will create the public backlash that we have seen in other states. North Dakota prides itself in its quality resources. Let us, therefore, as a state protect those resources; our family farms and our clean North Dakota environment.

Thank you